The Chicago Conspiracy Trial—Suggestions for Judges

Judges can make an important contribution to students' understanding of the cases included in the Federal Judicial Center's Teaching Judicial History project. When meeting with students who are studying the cases, judges may wish to draw on these suggested discussion topics.

Overview

The trial of political activists following the Democratic National Convention of 1968 placed the federal courts at the center of public debates on the Vietnam War and radical dissent. Following the violent confrontations between Chicago police and demonstrators during the week of the convention, a report commissioned by Chicago's Mayor Daley blamed "outside agitators" for the violence, and a federal grand jury indicted eight individuals, including the five persons named in the report, on charges of conspiracy to incite riots. The defendants, some of whom had never met, represented a cross section of political dissent. The presiding judge, Julius Hoffman, was as controversial as the defendants and faced widespread criticism for his arbitrary rulings and open hostility to the defendants. In his most controversial action, Hoffman ordered the Black Panther leader, Bobby Seale, bound and gagged in the courtroom. Hoffman soon severed Seale's case, but the trial of the remaining seven was filled with the intentionally subversive behavior of the defendants and the angry, exaggerated responses of the judge. At the close of arguments, Hoffman cited the defendants and their lawyers for a total of 159 counts of criminal contempt and sentenced them to prison terms ranging from three months to more than four years. The jury acquitted all of the defendants of the conspiracy charge and found five of them guilty of individual charges of intent to incite riots.

The court of appeals overturned and remanded the convictions and the contempt charges. The court of appeals was particularly critical of the open biases displayed by Judge Hoffman and the U.S. attorney. A new judge, from outside the district, retried the contempt charges, and found the defendants and attorneys not guilty of all but 13 of the original specifications. The government declined to retry the criminal charges.

Understanding the court procedures and legal questions

In studying historic cases, students find it helpful to understand the differences between historical and current procedures in the federal courts. Students also want

to learn how the current courts handle similar cases. The questions below highlight features of the Chicago conspiracy trial that can frame conversations be-tween judges and students.

1. Although Judge Hoffman issued 159 contempt charges against the defendants and their attorneys, only a handful of those charges survived the appeal and retrial of the contempt specifications. The court of appeals found that many of the contempt charges against the attorneys penalized their legitimate advocacy of their clients' interests, and many of the contempt charges against the defendants punished behavior that may have been inappropriate but did not obstruct the trial. What authority does a trial judge have to issue contempt charges, and what function is served by the contempt authority?
2. The court of appeals found that Judge Hoffman had not asked potential jurors sufficient questions to determine their bias against the defendants or their exposure to pretrial publicity. Who conducts the voir dire process in federal trial courts today? What rights do attorneys have to participate in jury selection? How do judges ensure a fair jury?
3. Judge Hoffman barred several key witnesses called by the defense, and he narrowly restricted the testimony of others. The court of appeals determined that Hoffman was wrong to exclude some of the testimony, although the court affirmed the principle that a trial judge must have broad discretion to determine suitable evidence and testimony. What standards govern a district judge's authority to exclude witnesses?
4. The Chicago conspiracy trial reflected many of the most contentious political debates of the time, and both the defense and prosecution attorneys emphasized the political divisions represented in the case. The participants in the trial were also keenly aware of the intense media coverage and public interest in the outcome. What problems do judges face in managing highly politicized and publicized trials? How might Judge Hoffman have reduced the impact of political divisions on the trial proceedings? Can trials settle political disputes?

Focus on Documents

These excerpted documents can be the basis of a classroom discussion with students who have read about the Chicago conspiracy trial and reviewed these selections in advance of a judge's visit.

1. Decision of the U.S. Court of Appeals for the Seventh Circuit

In its decision reversing the criminal convictions, the court of appeals offered an unusually harsh assessment of Judge Hoffman's management of the trial and the U.S. attorney's personal attacks on the defendants. What was the impact of Judge Hoffman's demeanor? What rules or standards govern the demeanor or behavior of a judge during a trial? Are there any means other than appeal to enforce proper judicial behavior?

> The district judge's deprecatory and often antagonistic attitude toward the defense is evident in the record from the very beginning. It appears in remarks and actions both in the presence and absence of the jury. . . .
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> Most significant, however, were remarks in the presence of the jury, deprecatory of defense counsel and their case. These comments were often touched with sarcasm, implying rather than saying outright that defense counsel was inept, bumptious, or untrustworthy, or that his case lacked merit. Sometimes the comment was not associated with any ruling in ordinary course; sometimes gratuitously added to an otherwise proper ruling; nearly always unnecessary. Taken individually any one was not very significant and might be disregarded as a harmless attempt at humor. But cumulatively, they must have telegraphed to the jury the judge's contempt for the defense. . . .
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> In final argument, the United States Attorney went at least up to, and probably beyond, the outermost boundary of permissible inferences from the evidence in his characterizations of defendants. He referred to them as "evil men," "liars and obscene haters," "profligate extremists," and "violent anarchists." He suggested one defendant was doing well as it got dark because "predators always operate better when it gets close to dark." . . .
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> We conclude that the demeanor of the judge and prosecutors would require reversal if other errors did not.

2. Decision of Judge Edward Gignoux in the retrial of the contempt charges

Judge Edward Gignoux won praise, even from the defendants, for his management of the retrial of the contempt charges. How might his standard of case management applied to the original trial? How might he have handled the disruptions staged by the defendants? Who, according to Gignoux, is responsible for maintaining the integrity of the judicial process?

> In light of the unique character and long history of this case, and the defendants' attack on the integrity and fairness of the American judicial process, a concluding observation is appropriate. Throughout these proceedings, the defense has asserted that both the 1969 Anti-Riot Act prosecution and the present contempt proceedings have been "political

> trials" designed to suppress dissent. This position, they claim, gives them license unilaterally to dispense with the standards of civility to which American lawyers and litigants customarily adhere in criminal, as well as civil, trials. It is precisely to preserve the opportunity for the fair and dispassionate resolution of strenuously contested disputes by an impartial tribunal that rules governing the behavior of all the actors in a trial exist. . . .
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> Trials which proceed in accordance with the law, the rules of evidence and the standards of demeanor not only reaffirm the integrity and viability of the judicial process, but also serve to insure the ability of each one of us to protect the rights and liberties we enjoy as citizens.

3. Editorial by Tom Wicker, *New York Times*

Tom Wicker was one of many nationally known journalists who covered the Chicago conspiracy trial, and, like others, he thought the trial undermined public confidence in the judicial process. What, according to Wicker, was the most serious threat presented by the trial? What might the trial judge or the attorneys have done to preserve public confidence?

> If the Seven were on trial here to determine whether acts or intentions of theirs did cause the convention-week violence that actually happened, there would be only a factual question of guilt or innocence to be determined—the usual business of a criminal trial.
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> But that is not the case. The defendants here are the first to be tried under a provision of the 1968 Civil Rights Act that made it a Federal crime to cross a state line with the intention to cause a riot or a disturbance. The constitutionality of this statute has yet to be determined, but the Chicago trial clearly suggests—as indeed, does the language of the act—that what it seeks to prohibit or penalize is a state of mind, not an overt act.
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> Ironically, it is also pretty clear from this proceeding how difficult it is to prove a state of mind, long afterwards. It is probably more difficult for the prosecution, on whom rests the burden of proof, than for the defendants, which is why Mr. Schultz sounded so preposterous in his efforts to show that Rennie Davis was saying one thing to Roger Wilkins while "thinking other thoughts."
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> Nevertheless, if the issue of a trial actually comes down to "other thoughts," rather than to actual words and deeds, the deeper question may be whether even "the burden of proof" any longer means anything.

4. Closing arguments of Assistant U.S. Attorney Richard Schulz

The U.S. attorneys argued that the defendants were guilty of conspiracy to incite a riot, but the jury acquitted all of the defendants of the conspiracy charge. What is

required to prove conspiracy? Why would the U.S. attorney want to charge the defendants with conspiracy in addition to the individual criminal charges of intent to incite a riot?

> Let me briefly discuss the conspiracy charge.
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> We have shown that these defendants, all seven of them, had a mutual understanding to accomplish the objects of the conspiracy, that they had a common purpose of bringing disruption and inciting a violence in this city, and that all seven of them together participated in working together and siding each other to further these plans. Oh, they never explicitly said, "You do that to blow up that," and "I will do that to incite that crowd," that is not how they did it. It was tacit understanding, a working together in all these meetings and all of these conferences that they had, and that is how they conspired.
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> The only difference between five of the defendants and the remaining two, Rubin and Hoffman, were the ways of getting the people here. Rubin and Hoffman were going to get their people here by a music festival, and the others were going to get their people here by saying they were going to have a counter-convention of the grassroots of America.
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> All seven defendants worked together jointly for the common purpose and discussed and planned together for the common purpose of creating violent conflict and disruptions in this city. They were going to incite violence in this city by bringing other people here and by coming here themselves.