workers, was also "immaterial to the charges in the indictment." We attempted to introduce evidence of the frustrations of permit negotiations by the McCarthy movement; motions made on the floor of the Convention to recess and move to another city; marches by delegates where arrests and civil disobedience took place; beatings and detention of delegates on the Convention floor; the wholesale attack on cameramen in Lincoln Park. All of this was rejected. "The McCarthy people are not on trial here, Your Honor," was the response.

Finally, we were never allowed to explore the intentions and pre-Convention planning of the other party to the case, the government of the United States of America. We were permitted to deny the charges against ourselves but not to put our defense in the context of the Chicago police state and the Democratic Party electoral planning. An exploration of the intent of the other side was again either "immaterial" or "hearsay" or a violation of "national security." Some examples of the evidence the jury was thus prevented from hearing are as follows.

OUR FIRST WITNESS, Dr. Edward J. Sparling, president emeritus of Roosevelt University, could have testified to the report of a commission he chaired which criticized city permit negotiation and police brutality during the April 1968 peace march which foreshadowed the Convention. The report warned that a different approach should be taken towards the Convention protests coming up in August of that year. Our intent in coming to Chicago was influenced to a large degree by what had occurred that April.

- Justice Department officials could have testified much more extensively about the nature and content of their meetings with Rennie Davis, Mayor Daley and national officials.
- Because Judge Hoffman would not rule him a "hostile witness," Mayor Daley did not have to answer any questions at all about his pre-Convention decisions.
- Richard Goodwin could have told how he tried, and failed, to persuade Daley and Humphrey to take a constructive attitude towards demonstrations in the city.
- The testimony of Chicago attorney Robert Downs and author John Sack, who were among police during the Convention battles, was not admitted. Downs heard police slapping their weapons and eagerly discussing the clubbing of hippies when they were about to clear the park. Sack saw police unaffected, even laughing, about the term "pigs," and about the pitiful objects, like shoes, which were thrown at them.
- National Guardsman Richard Gillette was with soldiers who brought their private loaded weapons to Chicago riot duty to "kill the hippies," but was not allowed to report this to the jury.
- Renault ("Reggie") Robinson, a Chicago police officer who was the chairman of the Afro-American Patrolmen's League, had some of the most explosive testimony which was suppressed. He listened to police chanting, "Kill, kill, kill," in pre-Convention drills, and knew of cases where black patrolmen refused to participate in the bloodletting. After the Convention he was present at a police "victory party" where a captain stood at attention while his men shouted, "Sieg heil."

[VI]
On Contempt of Court

NO ISSUE IN THE Conspiracy Trial has been more misunderstood than that of our being held in contempt. Politicians, judges and lawyers–above all, the mass media–have outrageously exaggerated the courtroom confrontations. Our behavior has been described as violent and anarchic, part of a new conspiracy to stop the courts from functioning. The Yippies have enjoyed and fed this overreaction because they like to see powerful men tremble.

But the facts regarding our contempt of court are quite different from the myths. Time and again we were provoked into choosing between speaking out or becoming meek, silent accomplices to our own prosecution. Dave Dellinger set forth our common feelings at the end of the trial when he was sentenced for contempt:

> *Dellinger:* The first two contempts concerned the Moratorium and Bobby Seale, the two issues that the country refuses to solve, refuses to take seriously.
>
> *The Court:* Get to the subject of punishment and I will be glad to hear you. I don't want you to talk politics.
>
> *Dellinger:* You see, that's one of the reasons I have needed to stand up and speak anyway, because you have tried to keep what you call politics, which means the truth, out of this courtroom, just as the prosecution has . . .
>
> *The Court:* I will ask you to sit down . . .
>
> *Dellinger:* Therefore it is necessary . . .
>
> *The Court:* I won't let you go any further . . .
>
> *Dellinger:* You wanted us to be like good Germans, supporting the evils of our decade, and when we refused to be good Germans, and came to Chicago and demonstrated, despite the threats and intimidation of the establishment, now you want us to be like good Jews going quietly and politely to the concentration camps while you and this court suppress freedom and the truth. People will no longer be quiet, people are going to speak up. I am an old man, and I am just speaking feebly and not too well, but I reflect the spirit that will echo . . .
>
> *The Court:* Take him out.
>
> *Dellinger:* . . . throughout the world.
>
> [*Disorder*]

Contempt of court ordinarily refers to physical attempts to disrupt or delay the "administration of justice," such as when a defendant throws a chair at a witness or acts in some way to prevent a trial from occurring. Myth has it that we regularly tore apart the courtroom, that our slogan "Stop the Trial" meant stop it by forcible means. But a look at the record of 175 contempt citations shows that

nearly all of them were for words rather than deeds.

There was a small number of theatrical events which neither delayed nor disrupted the trial: bringing a birthday cake to Bobby Seale (which was stopped in the hallway); bringing U.S. and Vietnamese flags into the courtroom before the session began; and wearing judicial robes at the end of the trial. But the only physical violence which involved defendants during the five months occurred in conjunction with the chaining of Bobby Seale and the revocation of Dave Dellinger's bail. On these two occasions it was the arbitrary rulings of the judge and the physical attacks of the U.S. marshals which caused our "contempt," our resistance. The other moments of violence—perhaps five in all—took place between marshals and those spectators who could not adjust quickly enough to the totalitarian decorum of Judge Hoffman's courtroom.

Our "contempt," then, was present more in our attitudes than in our actions. We never respected the court. We mocked it in press conferences, demonstrations and speeches from the beginning of the trial. Both judge and prosecutor saw this mockery in the papers and on television. Since they could not punish us for exercising freedom of speech outside the courtroom, they chose to punish us for any evidence of disrespect we let slip inside the court. Nearly all of these occasions of disrespect were *spontaneous* reactions against government lies or violations of our rights. Few of them disrupted the proceedings, and in fact, what seemed to concern the government more was the disruption we were causing to the *image* of American justice. Most of all, the record of our contempt can be read as a record of assaults on the vanity and authority of Judge Julius J. Hoffman.

Even one of our critics accepted this view after reading the transcript of the contempt sentencing. Harry Kalven, a Chicago law professor who debated with Bill Kunstler during the trial, later discovered that there were "stretches of the trial during which few, if any, contempts arise" and that "over one hundred of the contempts have occurred within sixteen trial days of the five-month trial." And he concludes:

"I am impressed, contrary to the impressions I had gotten from the press coverage, by the sense that the interruptions were in no sense random events and that two or three triggering events, such as the handling of Seale and the revocation of Dellinger's bond, account for the major part of the troubles . . . the incidence of unrest seems not easily compatible with the notion that the defendants and counsel relentlessly and steadily pursued a single-minded strategy of disturbing the trial process."

Kalven's impression that there was no unified conspiracy in our contempt cannot be stressed too strongly.

EACH DEFENDANT REACTED in a different way.

Bobby Seale's "contempt" arose because of the judge's arbitrary refusal to delay the trial until Charles Garry was well, and his further refusal to let Bobby defend himself. This left Bobby with little choice. Seized in the night and moved to Chicago, facing a possible death sentence in Connecticut, what was he to do? Accept the legal counsel of two attorneys, Bill Kunstler and Len Weinglass, whom he had never seen before, accept his enslaved status during the Chicago trial while an appeal was being heard in higher courts?

He believed this would mean abandoning his right to a fair trial altogether. Instead his response was to stand in a disciplined way on rights which he correctly believed could not be legally suspended, constitutional rights which were supposedly guaranteed to black people during Reconstruction. Those laws, established through civil war, ensured the right of black people to equal protection of the law in white society. All of Bobby's "disruption" revolved around these contested rights. He stood or spoke only when his name arose in testimony or when evidence was introduced against him.

Unlike the other defendants, Bobby did not have the alternative of expressing his views in press conferences or speeches. He came to Chicago in chains, bound for Connecticut. The courtroom was his only forum, speaking there his only opportunity to break through the tissue of lies and stereotypes about the Black Panthers. The threat of severance from the trial or a contempt sentence was small, since Bobby was already expecting a long jail term. So his "contempt" was necessary to his legal defense and freedom of speech.

The goal was to create a trial within a trial to bring particular attention to the frame-up of Bobby and to build national support for the Panthers before his upcoming trial in Connecticut. Bobby wanted both ourselves and Panthers in the courtroom to keep the focus on himself, remaining cool under provocation. We were to avoid having our bail revoked, if possible, using our limited freedom to educate and organize people around the issues he was raising.

This decision was to cause controversy later because many felt we should not have gone ahead with the trial after the gagging and severance of Bobby. What actually happened was that we accumulated a full *one-third* of our total contempt citations during the three days Bobby was gagged, but we were physically and politically unable to stop the gagging. Even refusing to go on with the trial would have been symbolic because the trial would have continued anyway. Inside the courtroom we were powerless against that armed and ruthless machine. Only a massive political movement, which we have yet to build, could strike down Bobby's contempt sentence and liberate him from prison.

In the meantime, Bobby's act of courage has exposed and threatened the courts perhaps more than any single act in American judicial history. Bobby was following the Panthers' political tradition of expressing the right of black people to self-determination. Huey P. Newton had tested whether self-defense in the streets was constitutionally guaranteed to blacks, and Bobby was testing the same issue in the courtroom.

Dave Dellinger's "contempt" was the result of his militant nonviolent temperament. After 30 years of struggle, the radical pacifist philosophy of "speaking truth to power" and the strategy of awakening the social conscience through civil disobedience have become completely natural to Dave's personality. As long ago as World War II, for instance, he refused to register as a conscientious objector (even though a divinity school deferment was possible); when he was released after a year in jail, he again refused to register for CO status and was penalized with another one-

year term.

An analysis of his contempt citations in our trial reveals a spontaneous refusal to countenance even the smallest hypocrisy. When Foran claimed that Dave had planned the Moratorium "disruption" on the elevator in the Federal Building in Chicago, Dave's reply was typical: "I don't mind your making all of those objections. When you start lying about me, though, I think that is disgusting." At another point, Dave found it necessary to say: "I beg your pardon—I did not utter a single noise; when I have noises I stand up and say so."

Dave's spontaneous utterances ("Oh, Jesus"; "ridiculous") finally led to his loss of bail when he reacted to a police witness' accusation of violence on his part with: "Oh, bullshit, that is an absolute lie. Let's argue about what I stand for and what you stand for but let's not make up things like that."

Dave's more eloquent responses followed the theme of refusing to be a good German: "Decorum is more important than justice, I suppose," he said. "Just walk politely into jail." Dave's personal experience in prison during World War II also affected his attitude. At that time the judge and the prosecutor had termed him a sincere, dedicated young man, ahead of his times, but as soon as the jail doors closed on him he was thrown up against the wall. He was never again going to be polite for the sake of an illusory effectiveness.

> *The Court:* I have never sat in 50 years through a trial where a party to a lawsuit called the judge a liar.
>
> *Dellinger:* Maybe they were afraid to go to jail rather than tell the truth, but I would rather go to jail for however long you send me than to let you get away with that kind of thing, and people not realize what you are doing.

We were all shocked when *Rennie* got two-and-a-half years. During most of the trial he was a relatively mild-mannered defendant and was especially soft-spoken on the witness stand. But Rennie was sentenced to ten months on contempt charges for his performance *as a witness.* (Abbie, by contrast, violated every conceivable custom on the stand but received few contempt citations for his performance.) Rennie's contempt on the stand involved, first, remarking that the judge was asleep; second, stating that the judge had not read a document which was handed up in evidence; and third, trying to put his answers into context, instead of giving a simple yes or no answer. The rest of Rennie's "contempts" came at a few spontaneous moments, such as when

Photo: Alan Copeland/Photon West

he told Bobby the marshals had taken his birthday cake, or when he felt a moral obligation. ("Ladies and gentlemen of the jury, it's terrible, they're torturing Bobby Seale when you're out of the room.") Rennie seems to have been penalized for being so good. He was always the most clean-cut and responsible of the eight, whether in the Mobe or Conspiracy office, and was constantly referred to as a "4-H type" and "the boy next door" in the press. He came across that way to the Justice Department investigators in '68 and on the witness stand in '69. The cross-examination of Rennie, Foran said, was the hardest of his life. The government was frustrated: Rennie did not fit their image of a violent, pro-Vietcong revolutionary. Schultz acknowledged it all one day when he lost his temper and accused Rennie of having a "split personality."

Maybe Abbie understood it best when he said that the Mobe—with its structure, its staff, its marshals, its office, its program, and with Rennie as a "face man"—must have seemed serious and probably guilty compared to the Yippies. Rennie paid for being the Organization Man of the Conspiracy.

For *Abbie and Jerry,* on the other hand, the courtroom was a new theatre, perhaps a purer kind of theatre than anything in previous Yippie history. More than any of the other defendants, they wanted to create the *image* of a courtroom shambles. The setting could not have been more perfect: daily performances before a press gallery hungry for sensational news. Part of the Yippie genius is to manipulate the fact that the media will always play to the bizarre. Even the straightest reporter will communicate chaos because it sells. The Yippies know this because their politics involve consciously marketing themselves as mythic personality models for young kids. Now almost entirely media personalities, Abbie and Jerry would spend much of their courtroom time analyzing trial coverage in the papers, plotting press conferences, arranging for "Yippie witnesses" to get on the stand in time for the deadlines, even calculating which of the defendants was getting most of the media attention. They knew that the smallest unconventional act would goad the court into overreaction, would be fixed upon by the press and would spread an image of defiance and disorder to the country. The defiance would enthuse young people, the "disorder" would panic parents into greater paranoia, and the repression-rebellion cycle would increase in every home and school.

The Yippie theatricality sometimes merged with reality. The Yippies believed in confrontations which would risk jail in attempting to make the government back down. When Dave's bail was revoked near the end of the trial, for instance, it was they who pushed hardest for a deliberate disruption which would land all of the defendants in jail. It was their feeling that our being jailed together would help Dave get out and would create the right image to mobilize people for action at the trial's end. The next day they tried to implement this strategy, screaming a stream of epithets at the judge, the likes of which he had not heard for the full four months of the trial. Instead of rising to the provocation, however, as he had done on many minor occasions before, the judge would not play along, being satisfied merely to record the contempts in his doomsday book.

In the end, the two were treated as distinctly different individuals, Jerry getting two-and-a-half years for contempt, Abbie only eight months. Perhaps it was the judge's error in counting; nevertheless, it recalled the old gap between them, Jerry having been characterized as the "militant," Abbie as the "flower child." Compared to Abbie, Jerry's image as a Yippie was neither funny nor delightful. It was that of a hostile revolutionary, a more serious, nervous, even guilty, person in the courtroom. Jerry's endless needling of the prosecution seemed designed to hurt their feelings, while Abbie was never dislikable. His mockery as usual left the government not simply upset but laughing at itself and wondering if he was serious. Abbie is kind of a contemporary Voltaire who charms the very ruling class he threatens. He will be murdered by a right-wing lunatic, not by the "liberal" CIA.

John and Lee stayed out of direct contempt situations for the most part, perhaps because they were framed in the first place and saw little percentage in being punished further when they might be found innocent on the main charges. Though he occasionally lost his temper, John was respectful all the time. Even in his moments of contempt, he made his statements politely. Yet in the end he received a seven-month sentence. Lee hardly ever spoke in the courtroom. Instead, he had a unique form of contempt, a with-

Photo: Alan Copeland/Photon West

drawal into the *I Ching* and assorted sociology and science fiction texts. Lee was ahead in two ways: he lived there while in court and he shared the American underground's fear of never getting out of jail, once behind bars. The wonder is that he almost never lost control of what he told the judge was a "quiet rage."

OF ALL THE DEFENDANTS, I probably advocated the most careful line of behavior in the courtroom. One reason was to cultivate support within our jury of middle-aged Americans. My own hopes for the jury were perhaps higher than those of any other defendant (I once believed we had a potential base of eight among the 12[!]). And I believed that a verdict of acquittal for some and a hung jury for others would do more to disrupt the legal machinery of repression than any spontaneous act in court. It seemed possible to bring our life style and politics into the courtroom in ways calculated to educate the sympathetic jurors, without casting ourselves as the provocateurs of Judge Hoffman.

My more basic difference was with the "moral witness" and the "theatre" at the root of both the pacifist and Yippie politics. These principles can effectively expose institutions but can never prevent repression and punishment; as Abbie said, the trial would be "a victory every day until the last." Then we would be sentenced for contempt. We could strip away their authority and authenticity, but not their power. So it seemed a senseless sacrifice to accumulate prison time for spontaneous outbursts. But the graver danger was that we would be denied bail and held in prison during the time of appeals, thus cutting off our right to speak and organize. Since we were entering a period of repression where the higher courts were unreliable, it seemed best to keep our distance from the closing jaws of the State. With the State becoming totalitarian, moral witness was masochistic, and theatre a bad joke. A disciplined strategy seemed necessary: a minimum of legitimate resistance in the courtroom, a spectacular political defense, and massive speaking and organizing campaigns around the country. Exposure of the judiciary was possible, as in Huey's case, without volunteering for contempt citations.

There was no exit from confrontation, however. With a flexible and rational judge, it could have been avoided, but Julius Hoffman guaranteed it. He made it necessary for Bobby Seale, who was already in jail, to use the courtroom as his only forum. The absurdity of our cooperating with a madman like the judge forced everyone, including myself, to react to the situation in which we had been placed. Most

Photo: David Fenton/Liberation News Service

of my contempt citations occurred with respect to the treatment of Bobby and the exclusion of the testimony of Ramsey Clark.

In the end, Dave and Abbie were right in their argument that a symbolic stand would move people. Our differences didn't matter, since the contempt sentences were to be served concurrently with the five-year sentences. My own contempt sentence, 15 months, was the highest in relation to the number of citations (11).

THE CONTEMPT SENTENCES against *Bill and Lennie* had nothing whatever to do with disruption or obstruction. They were found in contempt because they tried to represent us as we were instead of molding us into crew-cut, buttoned-down, respectable defendants.

Before the trial neither had been a political radical. Bill was so much the "liberal" that he voted for Humphrey in 1968. His Movement legal practice was primarily in the South, where he relied on the liberalism of the higher courts in battles with Southern judges. Len's political background involved some modest work for the Democratic Party and a number of housing and welfare cases after we met in Newark several years ago. A trip to Cuba was perhaps his most unorthodox political act before the trial. He takes a rather cynical view of "mass movements" and has defined his work as a case-by-case effort to win individual justice.

The trial caused both to make choices. They found they could not function within the protection of the higher courts, nor could they behave in conventional ways in the courtroom.

The law, like politics, is organized around a principle of "representation," rather than direct participation by the people most affected. The citizen is reduced to being a client. He exercises choice only when he selects a lawyer. The lawyer then takes over as the expert in how best to represent his client's interests. The lawyer speaks for the client not in the particular style of that individual but in a proper and formalized way. Within this ritualized situation, the lawyer's highest obligation is not to the client but to the legal system itself. As a sworn "officer of the court" the lawyer is obliged to accept the judge as the "governor of the trial."

Such a game might be effective in a criminal trial where the primary object is to win no matter what happens to the truth. But when politics and identity are on trial and where a client's state of mind is the crime, then a lawyer tends to become part of the political confrontation. In our case, the lawyers had an obligation to be officers in the court of a madman, while making a vigorous defense of our revolutionary politics. Following their obligations to represent us caused Bill and Len to be held in contempt.

For adopting our spirit of equality in decision-making, they were called "mouthpieces" by Foran. The judge went even further at the time of sentencing. Not once, he declared, did either lawyer tell Bobby Seale to "cool it." This failure to act as officers of the court, the judge felt, was part of a pattern of conduct which is causing the national crime rate to rise. As he put it: "Waiting in the wings are lawyers who are willing to go beyond professional responsibility in their defense of a defendant." Nothing better proves the fact that the lawyers' contempt citations were for what they did *not* do. They did not disrupt the court once. They refused to act as our custodians or as disciplinarians for the judge.

Thus, as the legal nightmare unfolded, Bill and Len became themselves like defendants. Their hair grew longer (though Len broke down and had a haircut at one crucial moment). They became accustomed to sleeping in large communal apartments, and they gradually came to share our political conclusions about the law.

Bill especially went through a personal crisis whenever the courtroom disintegrated into a raw human experience. His years of politics have given him an accommodating surface which not everyone likes, but he could not maintain this carefully polished exterior as the ordeal intensified. When his old comrade, Ralph Abernathy, was prevented from testifying because he arrived a few minutes late, Bill dropped his courtroom manner: "I have sat here for four-and-a-half months and watched the objections sustained by Your Honor, and I know this is not a fair trial. I know it in my heart. If I have to lose my license to practice law, and if I have to go to jail, I can't think of a better cause than to tell Your Honor that you are doing a disservice to the law in saying we can't have Ralph Abernathy on the stand. . . . Everything I've learned in my life has come to naught. There is no law in the court . . ."

When the marshals dragged Dave's daughter and other spectators away during the sentencing, Bill dissolved into his human essence. He broke down and begged to be jailed: "Mine now, Judge, please. Please, I beg you. Come to mine. Do me too. I don't want to be out."

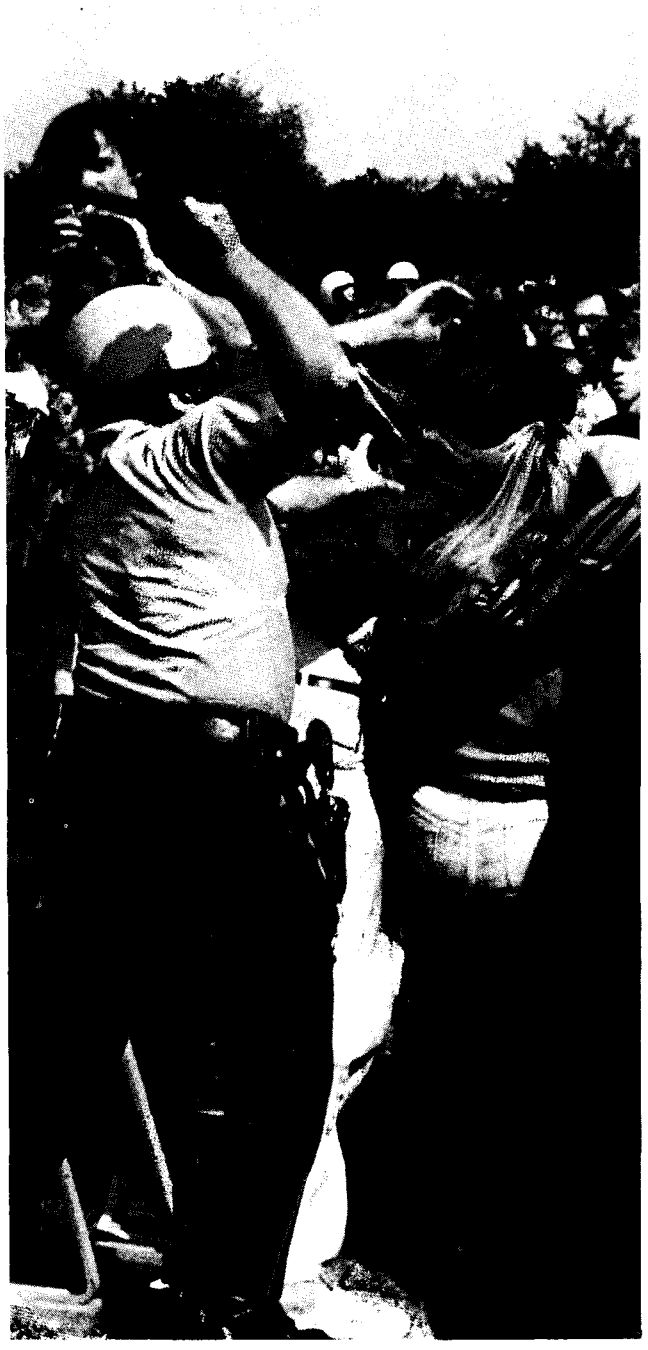
Len's courtroom behavior was far more restrained and correct than Bill's, yet he was called "wild man Weinglass" by the threatened judge. His acting in the way a model lawyer is expected to act was "disruptive" because it exposed the unfairness of the whole procedure and the impossibility of soothing the judge. Unlike Foran and Schultz, who relied on the judge's rulings rather than on prepared legal arguments, Len always worked to prepare case law for arguments which were always dismissed. Len's repeated questions about the different kinds of treatment accorded to government and defense drew no legal replies but only stern warnings from the judge. At the end of the trial, the judge still mispronounced Len's name, even as he was sentencing him:

> *The Court:* Since you tell me this is your first case in a federal court . . . you will get along better by being respectful.
>
> *Weinglass:* If I could answer that digression for a moment, with respect to our different understandings of respect, I was hopeful when I came here that after 20 weeks the Court would know my name.

In the end we came to love Bill and Len for what they were doing. By standing for the best and most neglected part of their tradition they were almost as heavily attacked as we were. After the trial, Bill was almost a client himself, being blamed for crossing state lines to incite a riot in Santa

Barbara. And Lennie was speaking at rallies too. If the Nixon-Agnew strategy is to frighten the "permissive" liberals away from the younger people, these two men were creating the only effective counter-strategy: *solidarity*.

So the story of our contempt is not unlike our defiance in the streets of Chicago the year before: people of different politics and life styles driven towards a common resistance. We did not know what would happen when we entered the streets, and we knew just as little when we stepped into that courtroom to see Julius Hoffman sitting under the Great Seal of the United States. There was no conspiracy, no pre-planned design. If the government is looking for the cause of the confrontation, it will have to look beyond the courtroom to the raging conflicts in America which no legal structure can contain.



[VII]
The Jury

It was an American verdict.

—SPIRO T. AGNEW

The trial had to come to some kind of conclusion just to prove that it works. It hurts people but it works. And it's everybody's responsibility to make it work. I think it shows that American society as a whole can be made to work.

—JUROR KAY RICHARDS

GOING UPSTAIRS TO the jury room on the first day of the trial, we felt like the early Christians being paraded before the Romans. Under the cold neon glare sat several hundred people who looked collectively like a Republican State Convention. It was the Silent Majority making a rare public appearance. They are silent because they have no grievances which require expression in the streets, since they can express their grievances by convicting radicals. There was hardly a black or a young person in the room. No hippies, not even what you could call a young "mod."

We tried unsuccessfully to challenge the procedure by which our jury was being selected. The jury panel foreclosed any chance for a trial by our peers. It did not even represent a real cross-section of the community. The voter lists, from which juries are selected, systematically exclude racial minorities, the young, the mobile and those who are alienated from the American political process. We, the critics of the political system, were to be judged by people who were registered in it.

We were worried too that the FBI or the police had in some way directly manipulated the process. Jessica Mitford's book on the Spock Trial revealed that the registrar had artfully excluded women from the baby doctor's jury panel and that the FBI had run a security check on each of the 5000 panel members. Veteran Chicago trial observers also gave us the impression that our panel was older and whiter than those usually found in the Federal Building. In answer to our questions about FBI checks on this jury panel, Foran merely scoffed.

But as the trial continued we came to feel the presence of police influence on the jury more clearly: first, a week later, suspicious letters stating "We are watching you—The Black Panthers" were sent to two jurors, one of whom was Kristi King, who seemed as though she might be sympathetic because she was young and had a sister in VISTA. Such letters are totally contrary to Panther policy, and the term "The Black Panthers" has never been used in party communications. Kristi's father apparently brought the letter to the attention of the FBI. The judge called her into court, showed her the letter for the first time, and asked if she could continue as a fair and impartial juror. Shaken and without time to think, she replied, "No." The other juror, who turned out to be an enemy, already knew about the letter and had discussed it with her roommate and told the judge she thought it was her "duty" to continue serving.