

**Lawyers and Revolutionaries: Notes from the
National Conference on Political Justice**

Featuring William Kunstler,
Charles Garry,
Jerry Rubin and others¹

by Kas Kalba and
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The trial of the Conspiracy 8-later-7 has opened a Pandora's box of questions about the American judicial system. Some of these questions concern the revolutionary forces in America. But others strike directly at our thinking about the courts.

Where, for example, does the young lawyer, steeped in the tradition of Brown v. Board of Education, fit into the iconoclastic cultural revolution that is occurring around him? Can he cling to notions like legal aid to the poor, school desegregation and civil liberties while the courtroom is being transformed into guerrilla theater?

Or, will the radical defendant allow himself to be defended by organizations such as the American Civil Liberties Union? Have his protests gone beyond traditional questions about rights? As Dwight MacDonald notes in the introduction to The Tales of Hoffman, an edited version of the Chicago trial transcript, "In the new style radical courtroom tactics, either the lawyers share the

alienation and often the hair style of their clients, or there are no lawyers."

The following report on the National Conference on Political Justice, held from March 19 to 21, 1970, may help us to understand some of the legal and emotional issues involved. The conference was held at the University of Pennsylvania, an institution that prides itself on not having undergone any violent student disturbances. But for the most part, the speakers assembled at the University brought to its halls a verbal turbulence that is probably without precedent in the school's lengthy history. Moreover, recent events in Bel Air, Maryland and elsewhere fueled the rhetorical heat of the speeches and gave the conference the air of a minor historical happening.

"Do It!" Jerry Rubin

On Thursday evening, Jerry Rubin arrives on the Penn campus. Half Mighty Mouse, with arched shoulders and upraised, clenched fist, and half Alfred E. Neuman, grinning with satisfaction at nearly 3,000 students who gathered at Irvine Auditorium to hear him, he proceeds to lambast the media, parents, the schools, liberals, ending it all with "Do it!", which not-so-incidentally is the title of his latest book.

He speaks a lot about freedom. "Freedom in America," Rubin quips, "is the right to grow up and oppress your children, dig it . . . We're gonna get stoned with our kids . . . Seven-year-olds know where it's at . . . before they get into the schools." Or: "Free speech in America is Eldridge Cleaver being able to have a best seller and still be shot down the minute he sets foot into the country."

In talking about his program, Rubin is less metaphorical, although not necessarily more precise. "We don't want to repeat the miserable life

our parents lead . . . their boredom . . . What we're against is competition that makes you look at your brother and say, 'I hope I get better grades than him or make more money than him . . .' We can't count on anyone in power because power is corrupt." But what *do* "we" want? On this count, Rubin's suggestions are abysmally few. "We're against racism, sexism, capitalism, and we want to 'do it!'" "Do what? "We're finding out that the only truth and education is action in the streets." To do what? To: "do it!"

In *Revolution for the Hell of It*, Abbie Hoffman writes, "We are living TV ads, movies. Yippie! There is no program. Program would make our movement sterile. We are living contradictions. I cannot really explain it. I do not even understand it myself." The carry-over to Jerry Rubin at Irvine Auditorium at first seems complete. Rubin has the audience in his palm, but it's not clear where he's leading them. Does he really want us to "do it," with all the mystery that the term conjures up (breaking windows? intercourse? dropping out of the universities, which are only an "advanced form of toilet training"?), or does he simply want us to reverberate these two cabalistic words at the enemy? Do it, do it, do it! The enemy won't know what the words mean any more than we do, but invocation of the unknown is power.

Only gradually does the dialectic of the new myth appear. Youth's language is its strength. For a moment, Rubin plays McLuhan. The youth culture, particularly their language, is continually being commercialized by the Establishment. We have *revolutions* in toilet paper, *sex* through Ultrabrite, *trips* to the Bahamas, Dodge *rebellions*. "But the key word is *fuck*; they [Rubin smiles] can't co-opt fuck."

So "fuck" it is. They'll never print that in the *Chicago Tribune*. And maybe not "do it" either. It's a myth of permissiveness we're talking of. That, after all, Rubin points out, was what the trial in Chicago was all about: youth's obscenity, its hair, clothes, music, drugs. Julius Hoffman was the principal who kept the

youngsters after school for bad manners and bad thoughts (the intent to riot). "It was like school, that was the only analogy."

Watching Jerry Rubin's bodily and verbal antics makes one almost forget that this man carries a prison sentence in his hip pocket. Yet prison, Rubin intimates, may be freer than the outside. While, to the bourgeois, prison is the next worst thing to incest, it is the locus of true brotherhood to Rubin. "There's no racism behind bars," he says. When he was ordered to have his hair cut after the Chicago trial, Rubin continues, the inmate barber whispered in his ear: "I won't cut off much, just trim it a little and wet it down."

Again, it was youth's obscenity, its long hair, and so on, that Julius Hoffman tried to suppress in Chicago. At the same time, Rubin is careful to point out, youth's enemies are not only on the repressive right but also among the liberals who—like the four dissenting jurors at the trial—are willing to compromise with injustice. The same applies to liberal lawyers who refuse to acknowledge the political nature of cases against Yippies, SDS members or Black Panthers. Rubin wants to turn civil liberties lawyers into flaming revolutionaries, as happened to William Kunstler.

Ultimately, there is a sense of both overture and apocalypse when Rubin speaks. Two students who were present at a private session with the Yippie leader before his public appearance reported the following in *The Daily Pennsylvanian*:

At one point, one of the people in the room remarked to Jerry that his father was a judge. To this, Mr. Rubin queried, "Why don't you kill him?" Of course, we all thought he was joking—but then, he explained how it really would be "dramatic" and dwelled on the subject of assassination to the point where none of us in the room doubted his seriousness. When one of us asked if the Yippies really believed in assassination as a political tactic, he simply replied "Sure!" and seemed surprised that we asked.

Who is Jerry Rubin? Someone on a total ego trip? Someone out to prove that violent thoughts and words should not be outlawed? Or a deadly serious revolutionary who is as disciplined as he is playful? It did not seem likely that the lawyers who were to speak on the following days would answer this question.

The Courtroom As A Political Forum

The four-member panel calmly prepares to discuss "Trials for War Dissenters." Set above the listeners, beneath a bank of unseen lights and fringed on both sides by deep-blue drapes, the panel looks like the usual assortment of patricians preparing to dissect the judiciary for the student plebians.

Bang! "We are on the brink of the greatest constitutional crisis since the beginning of this country," Stewart Meacham begins.² "We are in a situation where the state is exercising a monopoly on violence to perpetrate criminal acts on the peoples of the world." Should the judiciary be the forum for the resolution of essentially political controversy? This is the issue which the panel, in one form or another, will address itself to.

The background of the panelists puts the controversy in bold relief. James St. Clair, attorney for Rev. William Sloan Coffin of the Boston Five, says, "The courtroom is inherently unsuited for the resolution of political disputes . . . I do not at all support the conduct of counsel in the Chicago trial." While Mike Ferber of the Boston Five, in vivid contrast, says, "You can't separate politics and the legal system," and Richard Axelrod,³ "I hope Kunstler is held up as an example to attorneys around the country."

The contrast seems too pat, too typical, too much in keeping with what we know of the participants' ages and ideas of propriety. St. Clair, the perfect libertarian, believes that all people are entitled to legal representation. In his view men are indicted for civil or criminal acts, but not political ones. The lawyer is only an intermediary between the judge representing the godhead and the defendant, lost in the labyrinth of judicial procedure. The courtroom setting is

not designed to resolve political disputes, St. Clair continues, because the rules of evidence are designed to narrow issues, not to open them up, and because judges are not equipped by training or age to decide political matters. The single flaw in his logic concerns the lawyer's role in a trial like that of the Boston 5 or the Chicago 7. Who still believes that the strictly traditional defense in Boston accomplished what the defendants desired? Not the defendants, at any rate.

Axelrod reflects the thinking of the young radical lawyer. Criminal trials are inevitably political because it is the helpless, the poor and the outcast who are on trial. To him, "Lawyers are people with a skill, but they must realize they are no different from the people they defend except for that skill." When the charge is political, the trial can be used politically and the jury must render its verdict with this in mind.

Ferber is young too; and, like Axelrod, he sees most trials—and certainly all conspiracy trials—in a political context. What is the antidote to harassment of the politically insurgent by the state? One possibility, he suggests, is jury nullification. This morally and historically sanctioned right stems from Anglo-Saxon common law and early American colonial law. In cases involving basic community values, Ferber continues, it permits the jury to find for the defendant regardless of the law. Axelrod characterizes it as "jury civil disobedience" and warns that it may result in incarceration of the jury.⁴ It makes philosophical sense, he continues, for the community—through the jury's voice—to review the validity of its laws in this way. This defense, if it can be called that, asks the jury to rule on the defendant's *motive* rather than his *intent*.

This type of defense was used by David Harris in his draft-card burning case. He admitted that he intended to violate the law but argued that his motive was honorable. This same tactic was used by the Chicago 7. In trying to convince the jury of the legitimacy and beauty of their lifestyle, the defendants urged the jury to consider their motives rather than their acts.

Jury nullification is also at the heart of the Black Panther position that blacks should be tried by other blacks. Blacks should be judged by their own community standards and not by those of white lawmakers, who are more interested in order than in justice. The political trial puts the law and the defendants in the balance, and the vindication of the defendants comes through educating the jury in the justification of the defendants' action.

So the session ends. The lawyers differ in opinion, but they still defend their clients within the traditional rules. Many of us wonder why. How long can men continue to believe in the judicial system while going to jail for "crimes" of conscience, of dress, of lifestyle?

"All Power To The People"

At 9:30 on Saturday morning, March 21, the third of the four scheduled discussions begins. Its title is "Blacks and the Judicial Process". This time, panelists sit in bare-brick surroundings beneath large photo-prints of Huey Newton, Bobby Seale and Eldridge Cleaver.

Charles Garry, who was to represent Bobby Seale in Chicago and is now representing him in New Haven, speaks first. He says that racism is something every white man shares in—including himself. The degree depends on your level of self-analysis. Later Garry will unequivocally assert that, "Justice in America is irrelevant to the needs of 60 million Americans." What Garry puts in general terms, the others expand upon. They hope to describe what Haywood Burns calls "the way the black people experience the judicial system *en masse*."

Burns, a founder of the National Conference of Black Lawyers, focuses on the historical roots of racist law in America, from colonial law to literacy tests, poll taxes and contemporary consumer and zoning laws. His conclusion: "It is still the same kind of racist system that we are forced to live under and operate under." There are, he implies, some subtle differences now. In the nineteenth century, black people couldn't testify in court at all.

Today a black person(s) may present one kind of testimony and be overruled by the testimony of one or two whites.

Poverty is also at issue. "The kinds of due process," says Burns, "that a welfare mother can expect . . . are very different from those that a businessman can expect." The money bail system discriminates against the poor. Because of such defects in the judicial system, all blacks and poor people who are on trial are unquestionably political prisoners.

Cecil Moore adds to Burns' observations twenty-five years of experience in criminal practice. He says he has defended accused robbers, rapists, revolutionaries; in total, over 185,000 defendants—virtually all of whom were black. Too often blacks become defendants simply because the police or public needs scapegoats.

Moore, who comes across as an Adam Clayton Powell minus the pulpit, has gained a measure of power in Philadelphia's courts over the years. By habitually carrying 2,000 cases, his leverage with judges has been substantial. He can, after all, throw his cases into jury one by one, thereby clogging up the whole works. But, Moore points out, a black lawyer is not allowed to carry that type of leverage for very long. Recently, the State Supreme Court limited the individual lawyer's caseload to 188 at any one time.

Cecil Moore is an angry man—angry at such rulings and laws aimed primarily at the black man. "Most of the laws that were passed in the last six years," he claims, "were for black people." And he obviously means *against*, not *for*. Still, it is probably too late in his career for Moore to become a new-style political lawyer. "Every time I'm in court it's a political trial with a black man," he states; but he immediately adds, "I'd like my client to walk out any way I can make it."

The two Black Panther representatives on the panel set a different pace. Their language is delivered in a forceful staccato: "Power to the People . . . Power to the progressive forces . . . They use the black man like some kind of toy the courts can play with."

One of the Panthers, Rolando Montae, was recently convicted of aggravated assault in Philadelphia and is out on \$10,000 bail pending an appeal of a six-to-ten year jail sentence. Yet two politically less threatening co-defendants, who pleaded guilty to the original charge, were released on probation. *Racist, fascist, gestapo, decadent pigs*: the words spew freely from Montae's lips.

But the Panthers seem to sense the futility of sloganeering at a predominately white student audience. At times, they try a different tack. "You can't understand what it's like to live in our communities . . . the oppression twenty-four hours a day . . . All we want is the power to determine the destinies of our own black communities." They end with a recital of the Panthers' ten-point program, which includes exempting blacks from military service, black juries for black defendants, freeing all black prisoners and a U. N.-supervised plebescite for black "colonials" in white America.

Still, the question remains: can white activists, even radicals, get together with the militant blacks for the common goal of social justice. Charles Garry quotes Supreme Court Justice Douglas: "When law is tyranny, revolution is order," and he is spontaneously kissed on the cheek by Panther Barbara McGriff. Nevertheless, the audience's loudest approval comes when the Panthers mention Vietnam, not the ghetto streets. The truth of Jesse Jackson's (of SCLC and Operation Breadbasket) comments in a *Playboy* interview last year is unconsciously reaffirmed.

The issues that move them [the young white radicals] are qualitatively different from the ones that concern blacks. Many of the radical whites say that materialism is no good, that one must seek a new level of spiritualism. Well, we lived for years with spiritualism but without any materialism. Now we'd like to balance the two.

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. . . [W]e were unable to get any mass help from young whites on the hunger caravan we recently concluded in Illinois. The students were so radical that feeding starving people didn't constitute revolution to them, because "a man needs to do more than eat." But while they were saying that, they were eating very well. To us, they tend to be superfluous.

Political Justice and the Yippies

The Penn students are waiting for Kunstler, Garry and Wulf. For five minutes of pandemonium, 2,000 of them stamp and cheer the arrival of the hero of Chicago. The symposium is on "Hippies and the Judiciary". But nobody likes the word hippie. The word now is Yippie—it's *political*, baby, it's for change, and it's for revolution if necessary.

In a compelling Shakespearean voice, Kunstler makes more sense and turns on more people than anyone in three days. He speaks like a man humbled by self-revelation; not sure, perhaps, where all he has been through will lead him, but sure of what can no longer be. Hear him, slowly, calmly saying:

Justice in America is a supermarket; the judge is a poker player and the cards are other people's lives. The court is a negotiating session between the state and the criminal [to decide] how much the criminal must pay for having been arrested.

The new Yippie technique is ridicule: the societal reaction is derision, hate, fear and persecution. Again, Kunstler:

It is salutary to take the concerns in our society and to dramatize them graphically in such a way that ridicule may lead, as satire did in the eighteenth century, to an overthrow of these things, or if they will not yield, to the overthrow of the whole shebang.

Because the straight community, with a certain amount of proper intuition, understands that as their young people begin to ridicule existing society, all its values are in grave danger. And

because they feel that way, derision yields to hatred and fear—probably in that order—and hatred and fear lead to persecution, and persecution leads to court and jail, and that is precisely where the young people are today. It is not smoking a joint or two or public fornication or anything else that I have described that makes people Yippies or hippies. It is an attitude that contemporary society's values are decadent, indecent and obscene.

The other participants now contribute their bits—mostly it seems because they are there and have to speak. Is there really anything more to say?

Robert Mozenter, Philadelphia's Assistant District Attorney in charge of the narcotics division, speaks next, but is outclassed, outwitted and out-radicalized by the words which preceded him. The audience jeers him down when he explains that although most drug laws are unjust, he is not to blame: "I'm just a young guy doing my job." As Kunstler later comments, such statements abounded in Nazi Germany. If Mozenter didn't agree with the drug laws, what the hell was he doing prosecuting people under them? Mozenter never had a chance: he was just a nice young guy.⁵

The three attorneys—Garry, the longtime radical; Kunstler, the recently converted; and Wulf, the ACLU civil libertarian—dominate the last 90 minutes. As Wulf says, "I myself cannot write off the judicial system completely." The problem in the judiciary, he continues, is created by the conflicts within our society. The young are simply saying that they will no longer countenance poverty, racial oppression and hypocrisy in a government demanding peace at home and violence abroad. The problem is not the court system, but the dichotomy of wealth and deprivation, violence by the state and the new culture of music, sex and drugs,—and the problem of race. We have to continue educating the judges, particularly in the lower courts. But we shouldn't single out just the judges; the legislatures, the police departments and the D. A. offices are also to blame.

The other extreme is Garry. White hair, conservative suit, formal manner. He sounds robust and powerful. His tirade on the Chicago trial is the most remarkable speech of the conference:

I don't care who the lawyers were in that case. That judge, that senile old son-of-a-bitch had made up his mind from the day we walked in there on April 4, 1969, that he intended to get a conviction, that he intended to put the lawyers and the defendants in jail no matter what the hell happened [And then warming to the subject] It's about time that in the federal judiciary system this lifetime appointment bullshit stops. They pick the judges from the political trough; some accidentally have some talents in some human equation, but most of them are part of the political hack system who'll die to represent the establishment Oh, I know, some of you will say they can be impeached; when is the last time a motherfucker was ever impeached?

Garry raps like that. The room is too small to hold him when he cuts loose. What does he think of Mr. Wulf? "He can hang onto the system if he wants to, but I am satisfied that the system will not work. You can't amend it. You can't alter it. You've got to re-form it—completely, from the bottom up We are in a situation where this shit must cease!"

What can be done about this system? It is ironic that Garry has more suggestions than anyone else. First, change the federal courts to insure that defendants are tried by

their real peers and to allow for a system of peremptory challenge of judges, as exists in California. With peremptory challenge, who would allow himself to be tried by Judge Hoffman?

In closing, Garry again confounds everyone. He suddenly turns super-patriotic, almost hazy-eyed. "But remember the goal of America The America that we have always dreamt about is the kind of America which belongs to all of us, not just a few. We must bring America back to the people!"

Kunstler's concluding observations reveal that the five-month experience in Chicago has altered his life and his conception of law in this country. He says that he has learned three things from the trial. First, "that clients have a role to play in trials, that lawyers are not the ones to run the show." Political prisoners should literally handle their own cases. Secondly, "that a lawyer has a role in the courtroom *other* than following rules. Maybe this is not the decade for judicial rules that don't apply to contemporary situations, and [maybe] lawyers cannot be merely followers of the rules. When things happen in the courtroom that aggravate and despair them as men, such as the chaining and gagging of a black man, they must react—and not react with internal clucking, but react with an outward manifestation of the disgust and revulsion which they feel." Third, "the judges must realize that a lot of what happened . . . [in Chicago] would not

have happened had there been a recognition of humanity." Kunstler mentions that Hoffman recently granted one attorney an adjournment for seven weeks so the lawyer could vacation in the Carribean. There was no such casual postponement for Garry, who had to undergo a critical operation; nor was there recognition of Bobby Seale's right to defend himself. When the judiciary does not respect the people, the people cannot respect the judiciary.

Kunstler's final word to law students and young lawyers sings the vision of a new minority legal culture:

Go out and work with the people Be a worker-lawyer . . . don't have any barriers between you and the people . . . work in their minds and their hearts. I think young lawyers should think seriously of allying themselves with the social movement, not working for money, not working for the normal rewards of this system, finding a commune and sinking into it. Give up the idea of the law being a way to make money. That may take a terrific psychological reorientation, believe me, for I am no shining example of this. It takes a change—against property; for something else. I think for those who can do it, and will do it, their life will have far more transcendental value than it would if they cashed in their chips at age 71 with nothing in their hearts but a cold lump.

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1. The National Conference on Political Justice was sponsored by the International Affairs Association of the University of Pennsylvania. Jerry Rubin was presented by *Connaissance*.

2. Stewart Meacham is Peace Education Secretary for the American Friends Service Committee and a member of the coordinating committee of the New Mobe.

3. Richard Axelrod is Executive Secretary of the Philadelphia chapter of the Lawyers' Guild.

4. See, for example, *Bushel's Case*, Vaughan's Reports 135 (Ca. 1670). This case was cited by the defense attorney in the historic John Peter Zenger trial.

5. Robert Mozenter has left his position in the Philadelphia District Attorney's office since this article was written. He told the press he felt he would be more effective on the outside in attempting to rectify the discrepancies in Pennsylvania's narcotic laws.