

# Nobody heard his cries: The *New York Times*'s coverage of two key incidents in the “Chicago 8” trial.

By Nick Sharman

“Judge Hoffman thought we were evil incarnate and was doing whatever he could to disrupt our lives and the prosecution was very much the same way.” Gerry Lefcourt, one of the four lawyers arrested by Judge Hoffman commenting on his arrest during the “Chicago eight” trial.

## **Introduction and Setting the scene**

On the 24<sup>th</sup> September 1969, eight activists representing differing strands of “the Movement” of the 1960s went on trial in the Federal court in Chicago. The defendants were the first to be charged under a federal anti-riot law enacted in an effort to quell the riots that had erupted among African Americans in cities in the United States in the second half of the 1960s. The defendants in the Chicago trial were, however, charged with conspiracy to incite a riot and actually inciting a riot at the Democratic convention which had been held in Chicago in the late summer of 1968.

The trial of the “Chicago eight” attracted significant national media coverage – 6 of the defendants were, after all, some of the most well known radical leaders in the United States.<sup>1</sup> Bobby Seale was Chairman of the Black Panther Party, a militant black organisation which advocated, among other things, blacks arming themselves with guns in self-defence against police racism and brutality. Abbie Hoffman was a self-styled countercultural leader and political activist who was known for his demonstrations of political theatre such as throwing money on the floor of the New York stock exchange to illustrate the nature of capitalist society. Tom Hayden was an early leader of SDS (Students for a Democratic Society) and was the principal author of the Port Huron statement, the manifesto of the New Left. Also charged were anti-war leaders David Dellinger and Rennie Davis, and two lesser known defendants John Froines and Lee Weiner.<sup>2</sup>

Within six weeks of the trial opening two events occurred which fuelled media attention on the trial as well as galvanising political support for the two sides involved in the case. On the first day of the trial the presiding judge, Julius J. Hoffman, ordered

the arrest of four lawyers involved in the defence team. Judge Hoffman issued bench warrants for the four after refusing to accept their telegraphed withdrawal from the case. The defence argued that the four had only been engaged to prepare pre-trial motions and it had never been the intention that they be involved in arguing the case. One of the four, Gerry Lefcourt, had originally intended to be part of the defence team but had withdrawn to defend New York Panther leaders in what was to become known as the Panther 21 case which was running concurrently with the Chicago trial.<sup>3</sup> The second, more shocking, incident occurred in the trial when Panther leader Bobby Seale was chained and gagged in the courtroom for refusing to accept the Judge's ruling that he be denied the right to defend himself. Seale's lawyer Charles R. Garry, who was to have been the lead counsel, had been forced to withdraw from the case after the Judge denied a continuance so that Garry could have a gall bladder operation. In Garry's absence Seale had sought the right to defend himself - this request had been repeatedly denied by Judge Hoffman. After the chaining and gagging of Seale proved an ineffective mechanism in silencing him, Hoffman severed his case from that of the other defendants and ordered that he be retried separately at a later date. Seale also received a four-year (custodial?) sentence for contempt of court.

America's most prestigious paper, *The New York Times* provided significant coverage of these two events in the Chicago trial, despatching an experienced reporter, J Anthony Lukas, to cover the trial on a daily basis. Although the paper had, and continues to have, significant links to the political establishment and elite opinion in the United States, both through its readership and government and other agencies who sought to address that readership, there was also a strong strand of liberalism in the paper in the 1960s. The *New York Times* had strongly supported the civil rights movement during the 1960s and, by 1969, also supported the other main liberal cause of the period - opposition to the Vietnam War (Leff 2005). How though did the paper cover the arrest of the four lawyers and the chaining and gagging of Bobby Seale in the Chicago eight trial?

The paper will demonstrate that the *New York Times* covered the two events quite differently. I will argue that the *Times's* liberalism meant that its coverage was more sympathetic to the injustice perpetuated on the four lawyers than it was to the chaining and gagging of Bobby Seale. Whilst initially the paper framed its coverage

of the arrest of the four lawyers in terms of the polarizing battle between the extreme forces of radicalism and reaction in the trial the support which the lawyers were able to get from mainstream sources, such as the Harvard University law faculty and the American Civil Liberties Union (ACLU), meant that the paper made some adjustment to its framing of the story to recognise the civil liberties issues involved in the lawyers' arrest. Although the paper's political leanings meant that it did not fully investigate the degree of the Judge's partiality it nevertheless did a much better job of doing so than in the case of the chaining of Bobby Seale. The paper will demonstrate that the antipathy of the *New York Times* and liberal opinion to the Black Panther Party, of which Seale was chairman, significantly influenced its coverage of Seale's treatment in the trial. The newspaper's hostility to the Panthers meant that it was unable to adequately represent the injustice perpetuated on Seale in the trial. Seale's hostile and threatening language was represented by the paper as the primary reason for the confrontation that took place escalating to the level it did in the courtroom. The newspaper, however, inaccurately represented the reasons for Seale's dispute with the Judge, thus lessening the impact of his claims of injustice. At the same time the paper failed to give adequate treatment, a balanced coverage, to the defendants' and other opposition groups' views of what was occurring in the trial.

As *Washington Post* reporter Bill Claiborne, who worked at *The Post* in the late 60s, as well as working with *Times* reporters including Lukas, notes, "The Black Panthers were quite a bit more threatening and a lot of whites were afraid of them. It was inevitable that they would be treated that way by the media."

### **"I expect lawyers to respect the court": The *New York Times*'s coverage of the arrest of four defence lawyers**

In an omen of things to come on the first day of the "Chicago eight" trial, Judge Hoffman ordered that four defence lawyers who had attempted to withdraw from the proceedings by telegram be arrested on contempt of court charges for failing to withdraw in person from the trial. The four lawyers Gerry Lefcourt, Michael Tigar, Dennis Roberts and Michael Kennedy all worked outside Illinois – Lefcourt was in New York whilst the others were in California. All issued challenges to the warrants issued by Judge Hoffman with two of those challenges being successful. The two

lawyers whose challenges were unsuccessful, Gerry Lefcourt and Michael Tigar, were subsequently arrested and spent a day in a Chicago jail.<sup>4</sup> After Lefcourt and Tigar were released, a press conference was organised to protest the Judge's actions and mobilise support from other lawyers. This action, which Lefcourt describes as the main organising activity, proved very successful as the complete Harvard law faculty signed a petition condemning the Judge's actions and, according to the *New York Times*, over 150 lawyers from across the country turned up at the Chicago Federal court building on Monday the 29<sup>th</sup> September, five days after the Judge issued the warrants, to protest the treatment of the four defence lawyers. In the face of substantial pressure Judge Hoffman, in what *the Times* described as "an abrupt reversal" (Lukas 1969d) of his earlier stance vacated the orders against the lawyers.

How though did the *New York Times* cover the incident? Initially the *Times's* coverage was affected by its desire to denigrate both sides in the proceedings and thus trivialise the argument taking place between them in the Chicago trial. By 1969 the paper had adopted a strong position, both editorially and through the representations in news articles, against American involvement in the Vietnam War (Herbers 1969a and b, Kenworthy 1969, *New York Times* 1969c). This stance reflected the shift in liberal and elite opinion in the United States after the Tet offensive in 1968.<sup>5</sup> The *Times's* opposition to the war, however, only went as far as to include support for mainstream non-violent protest. Civil disobedience and violent forms of protest were condemned by the paper, as were the leaders who advocated the need for radical changes in American institutions, including the defendants in the Chicago trial (*New York Times* a and b, Herbers 1969a and Frankel 1969). The paper was thus in a difficult situation in the trial. On one hand they did not want to support the actions of the state in suppressing dissent, one of the principal aims of the Chicago trial. On the other they did not want to give too much credence to the defendants' attacks on major American institutions nor did they want to damage the anti-war campaign? by showing it to be a fringe and radical position. The way the paper handled this problem at times during the trial was to represent the trial as a fight between two warring, at times slightly absurd parties, who were unable to see each other's point of view. Like George and Martha in the Edward Albee play *Who's afraid of Virginia Woolf* the fights between the two were represented as constantly escalating without any likelihood of a satisfactory conclusion being reached. As an illustration of this

representation on the opening day of the trial the *Times's* story headline read: "8 go on trial today in another round in 1968 Chicago convention strife." The boxing metaphor is followed up by another later in the article as the two sides are said to be preparing to "face each other" in the courtroom (Lukas 1969b). The opening paragraph of the story also clearly represents the trial as a battle between two warring parties as well as representing the slightly absurd nature of the contest:

More than a year has passed. The grass has grown over the scuffle marks in Grant Park. The tear gas and the stink bombs have been flushed from the Conrad Hilton's lobby. But there is still no truce in the Battle of Chicago (Lukas 1969b).

As the trial drew to its conclusion many papers and magazines, for example, referred to the trial as a farce, thus further marginalising consideration of its implications for the American justice system and society (*Time* 1969).

The tone set in the first article as the trial began is initially maintained in the next day's coverage of the four lawyers' arrest by Judge Hoffman. Although the article lead with the arrest of the four lawyers the majority of the first column is directed at representing the fight between the two sides and emphasising the marked contrast in values and style between them. The sniping between defence attorney Len Weinglass and Judge Hoffman is, for example, directly quoted to emphasise the hostility and contempt which both sides felt for each other. The article also used particular examples of behaviour and dress to emphasise the total contrast in values and style between the two parties, and thus the unlikelihood of any resolution to their dispute. Contrast the article's representation of the "modish-cut blue suit" and the "colourful unorthodox garb worn by most of the defendants, including Tom Hayden's wearing "a blouse made of Berkeley liberation Flags sewn together," with the representation of the Judge's age and stern demeanour in the "wood panelled courtroom" rebuking the defendants for their attitude to the court (Lukas 1969e).

The effect of the continuation of the battle frame is that in the first story on the lawyers' arrest the issues it raised about equal treatment before the law and abuse of judicial power were not significantly dealt with by the paper. Instead the lawyers'

arrest formed part of the initial frame that the paper had used to cover the trial, the conflict between two warring and, apparently irreconcilable parties. This, however, was to change somewhat as the story developed and powerful sources within American society, recognised by the *New York Times*, gave their support to the lawyers' cause.

The *New York Times* published the next substantive story on the issue on the 27<sup>th</sup> September. The story had now graduated to the front page after the arrest and incarceration of two of the lawyers Michael Tigar and Gerry Lefcourt. In the story the lawyers' arrest is still framed within the context of the conflict between the authorities and the defendants, thus minimising any criticism of the Judge's actions. This conflict between the two sides is also represented at the start of the article by a quoted remark from Bobby Seale asserting his right to defend himself in the absence of his preferred lawyer Charles Garry. The story opens as follows:

Two defense attorneys were held under arrest... as the trial of the "Chicago eight" continued to be marked by *sharp clashes* (my italics) between the defense and Judge Julius J. Hoffman. The dispute over which lawyers should represent the eight leaders... reached an emotional peak when Bobby Seale... told the Judge: "If my constitutional rights are denied, I can only say that the Judge is a blatant racist" (Lukas 1969e).<sup>6</sup>

The representation of Seale's actions by the paper will be discussed shortly. After initially representing the lawyers' arrest in terms of this ongoing conflict between the two parties, at the end of the page 1 section of the story the paper, for the first time, gave weight to the criticism by the defendants, and other more authoritative sources, of the Judge's actions. One of the defendants David Dellinger, as well as lead counsel William Kunstler, are directly quoted by the paper criticising the intimidatory nature of the Judge's rulings. The report also acknowledged the Judge's "offer" to release the lawyers if the defendants would agree that they were adequately represented by counsel, thus waiving any sixth Amendment claims. This issue was important as Seale had insisted that Charles Garry was his lawyer and that in his absence he be allowed to defend himself. The paper also quotes American Civil Liberties Union executive Director Jay Miller's statement which says the ACLU was, "deeply concerned over

the Judge's treatment of these attorneys, which casts another pall over the whole trial" (Lukas 1969a).

Although this represented a greater willingness by the paper to acknowledge and print criticisms of the Judge's actions, the fact that the criticism was printed after the main frame of the story, the conflict between the two sides, was already established clearly diminished the power of this representation.<sup>7</sup> In addition, the paper printed only a few paragraphs at the end of the story regarding the ruling by a federal court judge in San Francisco that Judge Hoffman's warrants against the two other lawyers were invalid (*New York Times* 1969d). In the same story the paper also printed a large picture of detectives arresting Weatherman anti-war activist Bernadine Dohrn. Both of these two editorial decisions may have diminished the extent to which criticism of the Judge's actions would have resonated with the paper's audience. Similarly, although the paper acknowledged and appeared to support the defendants' criticism of the Judge's actions in trying to "auction off" the defendants' Sixth Amendment rights this aspect of the story, given the degree of injustice which it appears to illustrate, would seem to have justified a more weighty treatment and editorial comment, which it did not later receive. The fact that this did not occur may illustrate the paper's unwillingness to support the defendants too closely in their criticism of the court as well as the paper's desire to defend the judicial system which, as a key pillar in American society, the *New York Times* had a vested interest in maintaining. Bill Claiborne notes that there were significant limitations on what could be said in the media in criticism of a Federal Court judge at that time because of the position that he held. Claiborne also acknowledged that *the Times* itself had a vested interest in supporting the judicial system and that any criticism of the Judge's action would have reflected on the Federal system.

The most positive story, from the point of view of the defendants, that appeared in the paper on the lawyers' arrest was the story on Sunday Sept 28th entitled, "Lawyers rally to assail jailing: punishment of Chicago 8 counsel is denounced" (Perlmutter 1969). Unlike the other stories, which were framed in terms of the conflict between the defendants and the authorities in the trial, this story was written from the point of view of the defendants and their lawyers, who opposed Judge Hoffman's actions. The story arose out of the previously mentioned press conference organised by one of the

defendants, Abbie Hoffman, at Gerry Lefcourt's office in Manhattan, aimed at mobilising support for the lawyers among the legal fraternity as well as in the broader community. The article conveys the impression that the protest against Judge Hoffman's actions enjoyed widespread support and quotes extensively from Lefcourt and Abbie Hoffman expressing their opposition to the Judge's actions. The sense of mass protest is later affirmed by the *Times* in the Tuesday article detailing the lawyers' release by the Judge when the paper states that "lawyers from throughout the country began pouring into the city to demonstrate against the judge's action" (Lukas 1969d). As Gitlin (2003) notes, the representation by the media of the numbers involved in a protest was a key demonstration of the degree of support, and thus legitimacy, that the protest enjoyed.<sup>8</sup> The initial article also represented Lefcourt as reasonable and balanced in his protests by stating that despite Judge Hoffman's actions he had "declined to voice public criticism of the jurist" (Perlmutter 1969).<sup>9</sup>

Although Lefcourt argues that the press conference alerted the media to recognise the degree of injustice involved in Judge Hoffman's actions and that this accounted for the more positive coverage of the defendants' position on the lawyers' arrest, I would see the situation somewhat differently. The fact that the Judge's actions had generated opposition from the ACLU and many mainstream lawyers, including the entire law faculty at Harvard University, whose members signed a petition protesting the Judge's ruling, meant that the *New York Times* now had authoritative sources, so-called primary definers, to rely on in representing the protest. Substantial work has been done on the way that news outlets rely on key authoritative sources within society for their news (Hallin 1986, Cottle 1993, Tuchman 1978 and 2002) and the fact that the paper quotes primarily from Gerry Lefcourt and then, particularly, the Harvard Law faculty petition when describing the lawyers' release by Judge Hoffman illustrates the way the story had changed as it has unfolded. The lawyers' arrest is no longer part of the conflict between the defendants and the authorities in the Chicago trial it has been transformed into a civil liberties issue – as the Harvard law faculty refer to it, the right of "even the most unpopular defendant to adequate legal representation before an impartial judge" (Lukas 1969d).<sup>10</sup> This issue was now being fought by the respectable face of civil liberties, the Harvard Law faculty, and the ACLU, as it turns out successfully, thus illustrating the strength of the American justice system, rather than

by the defendants, which helps to explain the more positive coverage which the lawyers' arrest came to receive from the *New York Times*.

Although the *New York Times* came to represent the protest against the lawyers' arrest as a legitimate response by important sections of the community to a civil liberties issue the paper did not fully investigate the legitimacy of the Judge's actions in arresting the lawyers or the seemingly outrageous attempt to make the lawyers' release conditional on the defendants waiving any sixth Amendment claim. Apart from the fact that it is inconceivable that a higher court would have recognised that such a bargain could have been struck if there were a legitimate sixth Amendment claim, a point not raised by the *Times's* coverage, it is likely that there were limitations within the culture of the paper on the degree of criticisms that could be levelled at the Judge's actions. As reporter Bill Chapman, who covered the trial for the *Washington Post*, stated in an interview with me, "what is required from a reporter is something you acquire primarily through reading the newspaper as well as talking to colleagues over time." An experienced journalist such as Lukas would be well aware of the culture of the *New York Times* and what would constitute what Diamond describes as a "*Times* kind of story handled in a *Times* kind of way" (Diamond 1995).<sup>11</sup> The paper's culture is thus likely to constrain any detailed consideration of the legitimacy of a federal judge's actions particularly when these investigations would reflect badly on the judicial system and positively on a group of defendants challenging mainstream values in American society.

**"The Panther and the Paper": The *New York Times's* representation of the chaining and gagging of Bobby G Seale.**

Having considered the *New York Times's* coverage of the lawyers' arrest, I now move to a consideration of the paper's coverage of probably the most famous incident in the "Chicago 8" trial, the chaining and gagging of Bobby Seale. The circumstances of the incident were as follows. Judge Hoffman initially denied a defence motion for a continuance of the trial so that Charles R. Garry, Seale's preferred lawyer, could recover from a gall bladder operation to act as lead counsel (Schultz 1993). Following the denial of this motion Seale stood up on the third day of the trial and read a statement requesting that he be allowed to act as his own counsel as well as requesting

the right to read an opening statement on his own behalf. Judge Hoffman denied the motion on the grounds that defence attorney William Kunstler adequately represented Seale. Although Seale had dismissed Kunstler, Judge Hoffman based his argument on the fact that Kunstler had already signed an appearance to represent Seale in order to be able to visit him in jail and that this was binding on him. Seale continued throughout the first weeks of the trial to protest what he regarded as the unconstitutional nature of Judge Hoffman's ruling. Seale's protests became more vociferous in the fourth week as witnesses testified against him and he sought the right to cross-examine them. After failing a second time to convince Hoffman of the validity of his motion (Lukas 1969f) Seale's protests continued to the point where on the 29<sup>th</sup> October, five weeks after the trial had begun, Seale was bound and gagged in the courtroom by Judge Hoffman (Lukas 1969k). After failing to resolve the issue Seale's case was severed from that of the other seven defendants on the 5<sup>th</sup> November 1969 (Lukas 1969j). One final point to note is that although Seale's language was highly confrontational in his dealing with Judge Hoffman he did not at any stage, as Harry Kalven (1970) notes, seek to randomly disrupt the trial nor did he make any physical threats to the Judge or anyone else in the courtroom.

How, though, did the *New York Times* cover the Seale incident in the trial? The first point to note is that unlike the other defendants in the trial whose frequent "outbursts" against the Judge were only occasionally quoted, Seale's sometimes inflammatory criticisms of Judge Hoffman were quoted, often at length, at the start of most of the articles leading up to and including the time of Judge Hoffman's decision to gag and chain him (Lukas 1969a, f, g, h, i and k). This was done before any explanation of the reasons for Seale's comments was made – that is Judge Hoffman's refusal to allow him to defend himself. The effect was to emphasise the threat that Seale posed to authority – the direct quotations adding force and immediacy to his challenge to the judicial system – as well as defining Seale's statements, rather than the Judge's intransigence, as the reason why he was restrained in the trial. Harry Kalven (1970) acknowledges that whilst Seale did make inflammatory comments against the Judge "Seale appears to have actually said less in the way of epithets than Jerry Rubin or Abbie Hoffman."

The power of the representation of Seale's threatening comments also needs to be viewed in the context of the already established threat to law and order that the *New York Times* had represented the Panthers as posing in its previous coverage of their activities. This is evidenced, for example, in the coverage, two months earlier, of the resignation of Stokely Carmichael from the Black Panther Party. Carmichael's resignation and his strident criticisms of the party and its methods were given front-page treatment by the paper without any attempt to provide a balancing assessment of its role in American society through, for instance, quoting Panther sources (Fraser 1969, Pace 1969). Carmichael's criticism and the paper's own suggestions of unsubstantiated threats against his supporters by Panther members were given prominence despite the fact that as Stew Albert, a close associate of the Panthers notes, "Stokely Carmichael was only a nominal member of the Panthers and that was for a brief time."<sup>12</sup> The representation of the Panthers by the *New York Times* was not in many senses surprising. The Panthers were viewed by the American establishment as one of the primary threats to American domestic security. J Edgar Hoover described them as in fact "the greatest threat to internal security in the country" (PBS 2002) and Hoover's FBI through the COINTELPRO operation had sought throughout the 1960s to infiltrate and undermine the organization through both violent and non-violent means (Cunningham 2004). During the "Chicago eight" trial Panther leaders Fred Hampton and Mark Clark were killed by Chicago police in what former United States Attorney-General Ramsey Clark and NAACP chief Roy Wilkins in a report on the incident described as "a probable government murder" (Metropolitan Applied Research Centre 1973). Clark confirmed that this was his view in a recent interview with the author.

Returning to the coverage of Seale's chaining and gagging - the focus on the event, particularly conflict in the event, rather than explaining the causes of that conflict is not unfamiliar in newspaper coverage. As Gitlin (2003) notes, "the routine norms of journalism (*cover the event, not the condition; the conflict, not the consensus; the fact that "advances the story," not the one that explains it*)" (Gitlin's italics, Gitlin 2003: 122-123) are familiar parts of journalistic practice. As Gitlin (2003) also suggests, however, the political position of the paper is influential in determining the way coverage of an event is framed. The *New York Times's* apparent antipathy to the Panthers meant that Seale's statements to the Judge rather than Judge Hoffman's own

caustic and partisan responses to the defendants provided the main frame of the story.<sup>13</sup>

When the paper did come, usually towards the end of any article on the incident, to provide an explanation for Seale's radical criticisms of the Judge, the explanation was often misleading - emphasising Seale's claim that he wanted the lawyer of his choice, Charles R. Garry, rather than the right to defend himself. Whilst Seale did claim the right to have Garry as his lawyer once Judge Hoffman, prior to the beginning of the trial, had rejected this claim his expressed desire, once the trial had started, was to be able to defend himself (Clavir and Spitzer 1971). This is the way the *New York Times* represented Seale's initial firing of the lawyers and, in Garry's absence, his right to defend himself - part of this passage was quoted above:

The dispute over which lawyers should represent the eight leaders... reached an emotional peak when Bobby Seale, a defendant who is national chairman of the Black Panthers, told the Judge: "If my constitutional rights are denied, I can only say that the judge is a blatant racist." Seale's outburst followed his insistence that only Charles R. Garry, a West Coast lawyer who has often represented Panthers, can represent him here (Lukas 1969a: 1).

A number of things need to be noted here. Firstly, the *Times* describes Seale's statement as "an outburst" despite the fact that his comments were made whilst reading a written statement requesting that he be allowed to defend himself. Although on other occasions during the trial Seale did shout at the Judge in a way which could be described as "an outburst" reading a written statement would not seem to be in the same category. Secondly, what we also notice in Seale's comments is his assertion of his Constitutional rights. This assertion, however, had little or no meaning given the paper's failure to mention that Seale requested the right to defend himself in Garry's absence. This inconsistency continued throughout the *New York Times's* reporting of the incident. On the day when Seale was bound and gagged, the paper was still asserting the reasons for Seale's "outbursts" were that he believed he had "been deprived of his right to counsel of his own choice" because the trial was not delayed (Lukas 1969k).

It would have been much easier for American audiences, who had seen countless examples through film and television of defendants representing themselves, to understand and sympathise with Seale's claim to defend himself than it would have been to sympathise with his delaying the trial merely because he wanted his own lawyer. Accurate representation of the facts would have also illustrated that Seale was not intransigently delaying the trial for his own purposes but was willing compromise for the opportunity to exercise, what many would regard, as a legitimate, if not fundamental, right. The fact that the *New York Times*, unlike for example another American newspaper the *Chicago Sun-Times*, did not investigate the legitimacy of Judge Hoffman's decision to deny Seale the right to defend himself further illustrates the limitation of the *Times's* coverage of the incident. This is particularly the case as the *Sun-Times*, as shall be discussed more later in the article, questioned the legal basis for Hoffman's decision to reject Seale's request to defend himself. The effect of the *New York Times's* coverage then is to place the blame for what occurred in the trial squarely on Seale's apparently unjustified "outbursts," rather than accurately considering the basis of Seale's claim and the legitimacy of Judge Hoffman's decision to deny it.

As a more detailed illustration of the way Seale's apparently threatening "outbursts" and behaviour, described out of the context in which it occurred, was represented in the *New York Times* as the cause of Judge Hoffman's decisions to gag and chain him consider the front-page article which announced Judge Hoffman's decision to the world. The first nine paragraphs of the *Times's* article provide a detailed description of the verbally, and apparently physically aggressive threat which Seale posed to the court thus justifying the Judge's decision to chain and gag him (Lukas 1969k). Seale's behaviour is described without any reference to the basis of his action which formed part of an ongoing protest against the Judge's refusal to allow him to defend himself.

After detailing the Judge's actions in the first paragraph, in the second paragraph the paper describes the reasons for the Judge's actions in the following terms:

Judge Julius J. Hoffman ordered the unusual restraints after Mr. Seale... repeatedly shouted accusations and insults at the Federal district court Judge and the prosecution (Lukas 1969k: 1).

The article continues with a description of Seale being “twice wrestled ... into his seat” by court marshals, thus suggesting the physically threatening nature of his behaviour even though the marshals’ actions occurred only when Seale stood up to assert his right to defend himself. He did not physically threaten anyone as the trial record indicates (Clavir and Spitzer, 1971). These details are followed by further descriptions of his continued “outbursts” against the Judge. These “outbursts” are said to occur despite the repeated attempts to gag and silence Seale. *The Times* states that despite placing “several strips of white adhesive tape... over the gag,” Seale was still able to work the tape loose to assert his right to cross-examine a witness. The threat which Seale and the Panthers posed to law and order, already illustrated by previous *Times* coverage of his actions and those of party members, is once again evidenced by the description of his hostile and threatening actions as the causal basis of the Judge’s decision to restrain him. This description is provided before any analysis of the reasons for Seale’s behaviour is outlined. When these reasons are conveyed they are once again incorrectly stated as Seale’s request for the “right to counsel of his choice.” In case readers of the article were in any doubt about the threat posed by the Panther party the only article printed next to the second part of the story about Seale concerns another party leader being sentenced to 15 years in prison for his involvement in a gunfight with police (Caldwell 1969). The description of Seale’s often shouted “outbursts” and behaviour as the cause of the Judge’s actions are provided instead of what could have been represented as the conflict over Seale’s right to defend himself and his right to cross-examine witnesses who testified against him.

In considering the paper’s coverage of the incident, I am not suggesting that Seale’s behaviour was not disruptive or in many ways outside the normal standards which would be expected in an American Federal court. What I am suggesting is that Seale’s actions did not take place at random but resulted, to a significant extent, from the contempt and lack of impartiality with which Judge Hoffman treated the defendants. Judge Hoffman’s partiality is evidenced by the openly hostile way in which he denied almost every defence motion, the tone in which he dealt with the defence and the contempt for the defendants this reflected. The Judge’s hostility to the defence, as well as being recognised by commentators on the trial (Schultz 1993, Kalven 1070,

Lahav 2005) was also later recognised by the United States federal court of appeal that cited his “deprecatory and often antagonistic attitude toward the defense” as a primary reason for setting aside the guilty verdicts against all of the defendants in the trial (Linder 2002). Legal scholar Prina Lahav, in her excellent work on the legal implications of the trial, also notes that it is likely that Judge Hoffman’s actions in restraining Seale were illegal under international law through the 1955 Geneva Convention on the treatment of offenders (Lahav 2005).<sup>14</sup>

The *New York Times*’s failure to fully acknowledge the degree of partiality in the Judge’s behaviour or to adequately contextualise the reasons for Seale’s conduct reflected both the paper’s desire to defend the justice system within American society as well as its hostility to the Black Panther Party. In this sense the paper acted not unlike Gitlin’s description of the media coverage of the rise and fall of Students for a Democratic Society – as a fun house mirror constantly remaking and distorting the original image (Gitlin 2003).

Further evidence of the paper’s political agenda in the coverage of the Seale incident is provided by the fact that in the time leading up to and including when Seale was bound and gagged there were no quotes from the defendants or their lawyers to provide an alternative explanation of what was going on in the courtroom. The paper’s representation of Seale’s inflammatory comments justifying Hoffman’s actions is thus allowed to stand unchallenged. Compare this with the quotes used from defendant David Dellinger and lawyers Kunstler and Weinglass as well as the supporting quotes from established authorities when the paper covered the arrest of the four lawyers. The evidence this provides of a lack of balance in the paper’s coverage of the Seale incident is added to by the fact that the lawyers’ arrest story went on for only five days whereas the Seale incident developed over a five week period. This failure to acknowledge the defendants’ views occurred despite the articulate opposition, as experienced political figures, that they presented to the media through the daily press conferences held during the duration of the trial. It also occurred despite the fact that, as legal commentators such as Harry Kalven (1970) recognised, Seale’s actions were not deliberately disruptive, as the *New York Times* suggested, but designed solely to assert clearly defensible claims to Constitutional rights. Adding to the lack of balance in the paper’s coverage of the incident is the fact

that no opinion was sought from legal experts on the legality or human rights implications of Judge Hoffman's actions. Given what Kalven (1970) describes as the "terrifying image of American justice" (xix) that the incident presented to the world as well as the obvious resonances of America's slave past - Tom Hayden in a recent interview with me stated that "the chair Seale was chained to looked like an electric chair and the only thing missing from the scene of slavery was the masters whip"- the *Times's* failure to consider the human rights implications of the incident would seem to be a serious omission.

During the whole period covering the lead up to and decision to restrain Seale, only one article containing criticism of the Judge's actions appeared in the *New York Times's* coverage (Lukas 1969c). The failure apart from a few brief quotes to acknowledge and report significant criticisms of Judge Hoffman's actions, would seem to violate the requirement of balance held so dear by the *New York Times* with its claim to act as the "paper of record" and "with all the news fit to print" in the United States. This is particularly the case given the unprecedented and controversial nature of Hoffman's decision to gag and chain Seale and the protests that it led to – which were referred to by the paper only through a picture of demonstrators, not in the text itself (Lukas 1969i). This contrasts sharply with the significant coverage given to protests against the four lawyers' arrest by the Judge, discussed extensively above.

Coverage of opposition and protest to Judge Hoffman's actions would have provided the reader with a more complex and three-dimensional story about how Seale came to be gagged and chained in a Chicago Federal courtroom. Discussion of the basis for the protests that took place could also, however, have led Americans to question the nature of a justice system that could allow a black man who sought the right to defend himself to sit chained and gagged in a white courtroom. Such a representation would have undermined the story the paper had told, in this and earlier coverage, about the evils of the Black Panther Party as well as questioning the operation of the judicial system on which the suppression of the Party was based. Given the *New York Times's* position as America's most prestigious newspaper and the elite readership it had, such representations may not have served the paper's larger interests.

## **“What did the others do?”: A comparison of the *Chicago Sun-Times*’s coverage of the Seale incident**

A brief comparison of the *New York Times*’s coverage of the Seale incident with that of the moderately liberal *Chicago Sun-Times* demonstrates that whilst the limitations of mainstream journalism may have made it difficult to present a full and balanced consideration of the issue it was nevertheless possible, within these constraints, to present a more balanced perspective on the chaining and gagging of Seale than was achieved by the *New York Times*.

Whilst the *Chicago Sun-Times*’s coverage focuses in many of its news stories on Seale’s actions as the basis for Judge Hoffman’s decisions to chain and gag him, it also provides a proper context within which to view Seale’s actions as well giving space to those who criticised the way Seale was treated by the Judge. For example, the paper, unlike the *New York Times*, clearly states throughout that Seale, in the absence of his lawyer Charles Garry, was seeking to defend himself (Gray 1969, Singer 1969a and b). The significance and contested nature of Seale’s claim is also evidenced by a long article under the heading “Constitutional issue” which discusses the legitimacy of Seale’s assertion of his right to act as his own counsel (Singer 1969a). The article quotes from an interview conducted by the paper with Charles Garry as well as a variety of legal experts commenting on Seale’s right to defend himself. It correctly points out, by reference to the views of a legal authority, that it would seem incumbent on Judge Hoffman to examine both Seale’s competency to conduct his own defence as well as ascertain that he understood fully the consequences of any decision to represent himself. It also acknowledges that Judge Hoffman had not fulfilled this requirement thus giving at least some weight to Seale’s later quoted criticisms of the Judge’s actions:

One authority said a judge should determine whether a defendant who is seeking to conduct his own defense is making an intelligent waiver of his right and knows the consequences. It should at least be ascertained, he said, precisely what the defendant has in mind. This does not appear to have been done in the Seale case (Singer 1969a: 52).

Following Judge Hoffman's decision to restrain Seale the paper also examined the legal authority upon which the Judge based his decision to restrain a defendant in the courtroom (Gray 1969). Whilst the paper recognised that the Supreme Court had ruled in the *Allen* case that an unruly defendant could not constitutionally be removed from his own trial the paper at the same time made a point of differentiating the nature of Seale's conduct from that of the defendant in *Allen*:

Recent cases leave little doubt that in certain circumstances a defendant may be bound and gagged without prejudicing his case. They apply, however, to situations in which the defendant either attacked others in the courtroom or tried to escape. None deals directly with the question of whether a defendant should be forcibly restrained for demanding to represent himself (Gray 1969: 18).

The *Sun-Times's* comments are significant and differentiated from that of the *New York Times* both in their clear recognition of the basis of Seale's claims as well as their acknowledgment of the apparent rationality of these claims. They are also important in recognising that there are significant and contentious issues contained in the Judge's actions which warrant at least discussion by a newspaper.

The *Sun-Times* also provided coverage of the, in many cases, authoritative opposition to the Judge's actions. As well as a reasonably balanced half-page article, including photograph, on a Panther rally protesting Seale's treatment (Powers 1969), the paper also has headline articles on the opposition expressed by well known civil rights leaders Jesse Jackson and Julian Bond to Seale's treatment (*Chicago Sun-Times* 1969c, Svare 1969). Both Jackson and Bond were close associates of Martin Luther King, Jr and Jackson continued to lead the Southern Christian Leadership Conference's anti-Poverty program in Chicago. The paper also printed articles on the opposition by Negro lawyers to Seale's treatment, as well as an article quoting a group of 35 lawyers calling for reform of the judicial system following Judge Hoffman's actions in the trial (*Chicago Sun-Times* b and e). The paper also had a front page article which contained Seale's own hand-written justification of his actions in the trial written from his jail cell (*Chicago Sun-Times* d).

All of these things would suggest at least an attempt by the newspaper to provide some balance and objectivity to the coverage of Seale's treatment which does not seem to be present in the *New York Times's* coverage. The fact that the *Sun-Times's* coverage of the Seale incident overcame a significant number of the limitations I have noted in the coverage by the *New York Times* suggests that the limitations of mainstream media in covering marginalised groups (Leff 2005) only partly explain the failure of *the Times's* coverage. How then do we explain the differences in the *Sun-Times's* willingness to provide a more balanced, if not sympathetic, coverage of the chaining and gagging of Bobby Seale than the *New York Times*? As I have suggested throughout the article, the fact that the *New York Times* had close links to the political establishment as well as being read by key liberal opinion leaders in the United States meant that it was much more difficult for the paper to represent, in a balanced way, a member of a group so antithetical to mainstream American opinion as the Black Panther Party. In addition, one can also speculate that the significant number of Jewish readers of the paper, as well as its longstanding Jewish ownership, may have had some influence on the paper's coverage of the Panthers. Whilst Jewish groups had initially been strong supporters of the civil rights movement, the rise of Black Power and the greater focus of the movement on economic exploitation of African Americans had, in the late 1960s, led more radical black organizations into conflict with Jews (Washington 1986). This conflict occurred as blacks charged that Jewish groups supported the civil rights movement but that Jews still used their economic power to exploit African Americans through high rents and prices in the black ghettos in American cities. The conflict in black Jewish relations, which reached a head most famously not long before the trial in the Ocean Hill-Brownsville dispute in New York (Podair 2001), may have been another factor in the paper's coverage of the Black Panther Party and the Seale incident during the trial.

Although it is not possible to fully explain the reasons for the *Sun-Times* coverage without a detailed analysis of the paper, which is not the subject of this study, an additional factor in the more balanced coverage of the Seale incident by the *Chicago Sun-Times* is that youthful *Sun-Times* editor James Hoge was known to be sympathetic to the 60s movement. According to Bill Chapman, who covered the trial for the *Washington Post*, not only was Hoge sympathetic he actually attended a number of the fund raising parties held for the "Chicago 8" during the trial. Whilst the

*Times's* liberal agenda and links to the political establishment meant that it could not do justice to Seale's treatment the *Sun-Times* - subject to the limitations of its Chicago audience - was at least able to provide some balance in its coverage of the Seale incident.

## **Conclusion**

In this paper I have argued that the *New York Times* reported the two incidents in the "Chicago 8" trial differently. This differing coverage was a reflection of the paper's political position and its contrasting attitudes to the two key groups involved in the courtroom disputes. On the one hand the paper provided some criticism of the lawyers' arrest by redefining it as a civil liberties issue consistent with the paper's liberal agenda. This agenda included support for free speech and the right to dissent at the same time as faith in the key institutions of American society. The *New York Times's* antipathy to the defendants' challenge to these institutions did mean, however, that much of the opposition to the lawyers' arrest was expressed through the views and protests of more moderate and respectable sources. On the other hand the paper's liberalism and links to the political establishment, as well as its recognition of its predominantly mainstream white audience, meant that it was unable to adequately represent the injustice of the treatment of such a controversial figure in American society as Black Panther leader Bobby Seale.

The *New York Times's* failure to adequately cover the Seale incident has larger significance. The centrality of the *Times* as a leader in the American media and its important role within the public sphere meant that its failure to provide a balanced coverage of what happened to Seale has implications for the maintenance of democratic institutions in the United States. The fact that a reporter directly observing the events of the trial did not accurately represent the basis of the dispute between Seale and Judge Hoffman nor did the paper provide alternative views of what was happening in the dispute suggests that the *Times's* role "as the paper of record" in America needs to be questioned. The recent controversy over the failure by the *Times* and other leading papers in the United States to adequately question the government's version of events in relation to the weapons of mass destruction in Iraq shows that these issues – concern over the quality media's role in protecting the public against

abuse by state institutions – continue, as they did during the Chicago trial, to have relevance today.

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## **Interviews**

Interview with Bill Claiborne March 4<sup>th</sup>, 2005.

Interview with Tom Hayden March 29<sup>th</sup>, 2005.

Interview with Stew Albert April 6<sup>th</sup>, 2005.

Interview with Frank Joyce May 11th, 2005.

Interview with Gerry Lefcourt May 25<sup>th</sup> 2005.

Interview with Bill Chapman May 30<sup>th</sup>, 2005.

Interview with Ramsey Clark June 10<sup>th</sup> 2005.

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## Endnotes

<sup>1</sup> Frank Joyce, one of the leading staff organisers for the defendants, described the trial as “the first modern celebrity trial” and the public profile of the defendants was certainly such that publicity, independent of the events which occurred in the trial, was guaranteed.

<sup>2</sup> Dellinger and Davis were leaders in the national mobilization to end the war, one of the two main organizations responsible for the demonstrations which took place at the Chicago convention. Dellinger was also the oldest of those charged, having been involved in pacifist organisations going back to the Second World War when he was indicted as one of the Union Seminary eight - eight trainee ministers who had given up their draft exemption to protest the war and had been subsequently jailed. John Froines was at the time an assistant professor of chemistry at the University of Oregon and is now head of the Department of Environmental Health Sciences at UCLA. Lee Weiner was a teaching assistant in sociology at Northwestern University and had worked on the staff of the mobilization during the Chicago convention

<sup>3</sup> Lefcourt was Abbie Hoffman’s lawyer throughout his life and it was his association with Hoffman which triggered his involvement in the Chicago case. Hoffman agreed to Lefcourt’s decision to try the Panther case based on the lack of resources available to the Panther party to defend itself in the New York trial.

<sup>4</sup> According to Gerry Lefcourt the differing response to the challenge to the judge’s ruling reflected the political circumstances of the area in which the challenge was made. In southern California, where Tigar issued his challenge to Judge Hoffman’s ruling, the conservative nature of the area and its judicial representatives meant that the challenge was rejected. In the more liberal areas of Northern California where Roberts and Kennedy were Lefcourt describes the U. S attorney actually supporting the lawyers’ motion to quash the judge’s order. In New York which Lefcourt describes as “eclectic, sharp and a very tough place” Judge Weinfeld, who Lefcourt appeared before, quashed the arrest warrant on Lefcourt giving an undertaking that he would “proceed forthwith to Chicago”

<sup>5</sup> The *New York Times* had originally supported American involvement in the war and it was not until opposition within America, particularly among key opinion makers, started to mount after the Tet offensive that the paper came out strongly against the war. See Hallin (1986).

<sup>6</sup> The two lawyers were held in jail for most of the 26th September. The *New York Times*’ report states that “Later an appeals court released the men on bail.” What the report does not say, however, is that according to Gerry Lefcourt an appeal for bail had already been lodged with Judge Hoffman who had denied it on the grounds that he “did not give bail to contumacious lawyers.” Lefcourt also reported to me that the appeal court granted himself and Michael Tigar bail without any direct appeal from them or any bail hearing. It may thus have been that the appeal judges, concerned with the publicity the incident was receiving, and the criticism from other lawyers decided to act themselves to partly diffuse the issue.

<sup>7</sup> This diminution is further evidenced by the fact that that the criticisms of the judge’s actions are printed on page 21 rather than in the front page section of the story.

<sup>8</sup> The *New York Times* article illustrates the strength of the protest in the following lead paragraph, “Plans were disclosed here yesterday for a *mass demonstration* (my italics) by lawyers in Chicago tomorrow to protest the action of a federal district court judge who jailed two defense attorneys in the conspiracy trial of the ‘Chicago eight’” (Perlmutter 1969: 61).

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<sup>9</sup> Although the article does positively represent the defendants' opposition to the judge's actions, it should be noted that it does only appear on page 61 of the paper thus clearly diminishing the impact that the story has. It also gives a clue to the reluctance of the *New York Times* to too closely align with the defendants' position.

<sup>10</sup> As the quote illustrates the defendants are marginalised by the protest and, by implication, criticised through the phrase "even the most unpopular defendants."

<sup>11</sup> Diamond's account provides a detailed investigation of *the Times*' culture and editorial policy and the effect that it had on the paper. Evidence of Lukas' awareness of *the Times* culture and the limitations it placed on reporters is provided by the famous "Barnyard epithet" incident. One of the defendants, David Dellinger, had his bail revoked by Judge Hoffman near the conclusion of the trial for saying bullshit. Lukas was aware that this word would not be printed in *the Times* and consulted his editor. After rejecting the National editor on duty's suggestion that the word obscenity be used to describe Dellinger's comment, on the grounds that people would think that he had said something much worse, the editor suggested, very cleverly, that they refer to Dellinger's comments as a "barnyard epithet." The phrase was to become part of the iconography of the trial and Lukas used it as the title for his own short book on the case (Lukas 1970).

<sup>12</sup> For a more detailed discussion of the *New York Times*' previous coverage of the Black Panther Party see Sharman (2005).

<sup>13</sup> Judge Hoffman's caustic and often hostile responses to the defendants emerge clearly from a reading of the trial record. Antonio (1972) describes the attempted degradation ceremony going on in the court – the apparently deliberate mispronunciation of names, the constant denial of almost all defence motions and the contempt with which the Judge invariably referred to the defendants and their lawyers.

<sup>14</sup> See also H, Friel and R Falk (2004) for a discussion of the *New York Times*' failure to consider issues of international law in its coverage of foreign affairs. Clearly this is also relevant here in the consideration of Seale's chaining and gagging and the paper's failure to acknowledge the international law implications of this decision. Interestingly Lahav (2005) describes how Judge Hoffman's stepson Professor Thomas J, Campbell, in an interview with her, stated that Judge Hoffman had actually considered putting Seale in a glass booth but had not wanted to draw comparison with the contrivance used so famously in the Eichmann trial.