

## The Chicago Conspiracy Trial as a Jewish Morality Tale

*Pnina Lahav*

[The trial was] a “Jewish morality play.”

—Jerry Rubin, *We Are Everywhere*

I came to wonder whether the judge’s efforts to escape his own Jewishness might not explain some of what went on in that courtroom.

—J. Anthony Lukas, *The Barnyard Epithet  
and Other Obscenities*

The sixties were marked by a massive challenge to the conventional conception of American identity. The civil rights movement, the anti-war movement, students, hippies, and yuppies urged a conceptualization of the struggle as “us against them,” seeking a redefinition of the meaning of identity.<sup>1</sup> As expected, the challenge met serious and massive resistance. The conspiracy trial of the Chicago Seven is one battleground where the titanic confrontation between conservative and radical forces took place.<sup>2</sup> It served as yet another stage upon which the conflict about the deeper meaning of American identity was unfolding.

The Chicago conspiracy trial probably was the result of a sea change in American politics, when the progressive politics of the Great Society gave way to the conservative politics of law and order, amid an escalating war, a swelling antiwar movement, turmoil in universities across the country, and the intensification of black militancy. Shortly after power shifted from the Democrats to the Republicans, President Nixon’s Justice Department assembled and put on trial, together, leaders of the different factions of the protest movement: David Dellinger, a well-known pacifist and leader of the National Mobilization Committee to End the War in Vietnam (MOBE), Tom Hayden and Rennie Davis

of the MOBE and the Students for a Democratic Society (SDS), Abbie Hoffman and Jerry Rubin, representatives of the counterculture and founders of the Yippie movement, and Bobby Seale, chairman of the Black Panther Party.<sup>3</sup> Their indictment stated that they conspired to cross state lines with an intent to incite a riot.<sup>4</sup> A statute hastily enacted by Congress after the assassination of Martin Luther King and never used before was now deployed to quell dissent.<sup>5</sup>

Important issues rooted in the meaning of democracy and the scope of the protections guaranteed by the Bill of Rights leap to mind: how much offensive, high-decibel, potentially disruptive speech should society tolerate? When does speech turn into incitement? How much association are members of a group permitted before they are deemed to have turned themselves into a conspiracy to violate a law? How much responsibility should be assigned to the police, whose *raison d'être* is to maintain order? After the Chicago turmoil the Walker Commission, appointed to investigate the civil unrest, concluded that it was the police, not the citizens, who rioted.<sup>6</sup> Who then should have been prosecuted for offending law and order?<sup>7</sup>

The conspiracy trial highlights other, no less intriguing, issues concerning political trials.<sup>8</sup> Among them is the appearance of too intimate a relationship between the judge, the prosecution, and the security services (in this case, the FBI); the rigid, oftentimes improper trial procedures deployed by the judge against the defendants; the overt hostility of the prosecution to the defendants and what they stood for; the willingness of the defense lawyers to allow the defendants to shape the trial strategy (thereby turning the courtroom into a theater, sometimes into a circus, and fanning the hostility of the judge toward the defendants); the notorious binding and gagging of Bobby Seale, the only black man among the defendants, as he repeatedly demanded his right to choose his own lawyer or, in the alternative, to represent himself; the behavior of the defendants, refusing to rise when the judge entered the courtroom, munching jelly beans in open court, littering the defense table, and occasionally hurling what the *New York Times* politely called "barnyard epithets"; and the staggering contempt sentences against the defendants and their attorneys, ranging from two months to four years.<sup>9</sup>

At the end, the jury acquitted all the defendants of charges of conspiracy. Five were convicted of the individual offense of crossing state lines with intent to incite a riot.<sup>10</sup> The convictions were reversed on appeal. The court of appeals also overturned most of the contempt con-

victions and agreed that the conduct of the prosecution and the judge was so improper as to deny the defendants their constitutional right to a fair trial.<sup>11</sup>

This paper focuses on one of the least discussed aspects of the conspiracy trial: the issue of American-Jewish identity as it unfolded during the 1960s in general, and in 1968–69 in particular.

The question of American-Jewish identity is interesting to me for obvious reasons. I was born and raised in Israel. I do experience a cultural difference between my American-Jewish friends and myself. My mother tongue is Hebrew and theirs English. My history is rooted in the Arab-Israeli conflict and Zionist ideology and theirs in the Founding Fathers, the Civil War, the New Deal, Vietnam. Our sensibilities, associations, intuitions are different. At the same time, the common Jewish ethnicity provides powerful glue. We all share the understanding that Jewishness entails a struggle, a struggle between universalism and particularism, a tension between the wish to be like everyone else and the realization that we are marked as others. For better and for worse, we all share the trauma of the Holocaust. Do we all share the same values and world view? If the Jewish aspect of the Chicago trial proves anything, it is that we don't.

There is more to my interest in American-Jewish identity. American Jews have played a prominent role in the American legal system of this century—as lawyers, legislators, law professors, and judges. One may even go as far as saying that the integration of American Jewry has been the most spectacular success story of America as an immigration society. And yet the Jewish presence in American law has not yet received a thorough exploration.<sup>12</sup> Since Robert Cover's seminal work "Nomos and Narrative," more has been written about Jewish law and its relation to American culture.<sup>13</sup> In this genre, the assertion of American-Jewish identity in law was expressed through the interweaving of Jewish law into the discussion of American law, as "Nomos and Narrative" does. But the examination of the secular American-Jewish identity has not received enough attention. In general, American-Jewish legal scholars prefer to write about other subgroups: African-Americans, Native Americans, women, and gays. The relative dearth of scholarship about the Jewish presence may reflect the enigmatic nature of this inquiry or the perception that the American-Jewish identity is a non-issue. On the other hand, the fact that so many American-Jewish scholars have been at the forefront of the critical search for equality may

mean that their concern is also a subtle vehicle through which to assess the meaning of being a member of the Jewish minority in America. Why this is so is a question that calls for another paper. I am only proposing to encourage a more vigorous dialogue about the meaning of American-Jewish identity in law.

There is also a general reason to pursue this project. It deepens our understanding of the phenomenon of the hyphenated-American identity and its interaction with law. How do these hyphenated identities, mixing Native American attributes and attributes of other cultures—African, Anglo-Saxon, Asian, Indian, Irish, Italian, Jewish—play out in the law? From this perspective, this essay is a case study of the struggle between the politics of ethnic identity and national identity in the arena of the courtroom.

Here are, in a nutshell, the particularly interesting aspects of the Chicago conspiracy trial from the perspective of American-Jewish identity. The trial has a judge (Julius Hoffman), three lawyers (prosecutor Richard Schultz<sup>14</sup> and defense counsels William Kunstler and Leonard Weinglass), and three defendants (Abbie Hoffman, Jerry Rubin and Lee Weiner) representing different strands of American-Jewish identity. I shall focus on three: Judge Hoffman, attorney Kunstler, and defendant Hoffman,<sup>15</sup> one a staunch Republican, wealthy, conservative; the second a civil rights activist with a long record as a fighter for racial equality; the third a philosopher-clown, a self-appointed spokesperson for the counterculture and founder of the Yippie movement. If asked, all three would have probably said, "Jewishness had nothing to do with it."<sup>16</sup> And yet, beneath the heated surface of the politics of the trial lay the question of what it meant to be a Jew in America of the sixties, with an emphasis on the right side of the hyphen: *Jewish-American*.

As Arthur Hertzberg tells it, three major themes fed the crisis of American-Jewish identity at the end of the 1960s. One was the relationship between the Jewish community and the African-American community. A second was the war in Vietnam. A third was the Six Day War. Throughout the twentieth century, American Jews were strong supporters of racial equality and of the black person's quest for full integration into American society. This support, rooted in the common experience of persecution and religious values, was fortified by self-interest. As Hertzberg explains, "By the mid-1950s, [Jews] had made base camp, through their rapid economic rise, for the final assault on

the Mount Everest of elite status in America. Now, through their role in the black revolution, Jews were making their first overt bid for a major place in the American elite. They were announcing themselves as a major force for solving America's worst problem, racial tension."<sup>17</sup> Not every American Jew was supporting the black effort to undo the regime of discrimination, however. The tension in the black-Jewish alliance was simmering for a while, and by the early 1960s it could no longer be ignored.<sup>18</sup> Some blacks were reacting negatively to what they experienced as Jewish patronizing. Jews were beginning to analyze their grievances against African-Americans as well as the ramifications of black equality for Jewish self-interest. The rise of "black power" in the mid-1960s further tested the fragile alliance. Black leaders such as Malcolm X and Stokely Carmichael offered a social analysis that pointed the finger at the Jewish responsibility for some of the black misery. In New York the tension between black demands for more communal participation and for more appointments of public school teachers (many of whom were Jewish and felt threatened by the black demands) erupted into the long 1968 strike.<sup>19</sup> To this, one should add the fact that Jewish stores in the ghettos were the main victims of the riots in the cities. All of the above strained the Jewish-black relationship and encouraged a reassessment of the American-Jewish identity. How should an American Jew think about America's racial problem?<sup>20</sup>

At the same time, domestic opposition to the American involvement in Vietnam was growing. The mainstream Jewish community, which in general supported the position of the United States government in the cold war, was rethinking its view. While some insisted that any criticism of a war involving the Soviet Union was "bad for the Jews" and "bad for Israel," others were increasingly vocal about America's involvement in what they saw as an unjust war.<sup>21</sup> In late 1966, President Johnson reportedly "was disturbed by the lack of support for the Vietnam War in the American Jewish community at a time when he was taking new steps to aid Israel."<sup>22</sup> Within this context, the growing estrangement between the Old and New Left in America, both heavily populated by Jews, and the tension between Jewish members of the New Left were also affecting American-Jewish identity.<sup>23</sup>

Last, but not least, events in the Middle East had a bearing on the self-conception of American-Jews. The Eichmann trial of 1962 put before the world, for the first time, the distinctly Jewish narrative of the Holocaust and the Second World War.<sup>24</sup> Five years later, the Six Day

War jolted the American-Jewish community, repeating the trauma of the Holocaust. Hertzberg explains: “[During] the Nazi years Jews had been too weak, too concerned about themselves, and too trusting of Roosevelt to go to war with major elements of American power and public opinion. In May–June 1967, some atonement was made for those years. The response to the Middle-East crisis was a way of saying that, come what might, Jews would not repeat such conduct . . . the Six-Day War thus united the Jews of America but it also made them somewhat lonelier and even angrier.”<sup>25</sup> Attitudes toward Israel, particularly the question of the legitimacy of retaining the vast territories conquered in 1967, were tied intimately to the first two themes raised above. Many members of the civil rights movement as well as some in the antiwar movement and the New Left sided with the Arab, particularly the Palestinian side, of the Middle East crisis.<sup>26</sup> Their political positions further shook American-Jewish identity by problematizing questions about racism, oppression, equality, and liberty.

How does all this relate to the fact that so many of the participants in the Chicago conspiracy trial were Jewish? On the surface, it does appear as if “Jewishness had nothing to do with it.” Indeed, John Murray Cuddihy, in his *The Ordeal of Civility*, points out that “almost all the media eliminated the Jewish infighting in their accounts of the Trial.”<sup>27</sup> However, despite the compelling universalistic allure of this thesis, it is not persuasive. Enough commentators have referred to the Jewish presence in the trial to indicate that below the surface the Jewish factor had significance and meaning. Helene E. Schwartz, one of the defendants’ appellate defense counsel, while denying the significance of Jewishness in the trial, quoted a Chicago lawyer as saying, “It’s said that every time Julius goes on the bench, he proves that he is not small, not stupid, and not Jewish.”<sup>28</sup> Tom Hayden, in his book *The Trial*, described Judge Hoffman as an “overassimilated Midwestern Jew.”<sup>29</sup> Hayden did not mention the Jewishness of the defendants or the defense counsels. Richard Nixon, on the other hand, who was elected president in 1968, saw Jewishness only on the defendants’ side.<sup>30</sup> He was probably expressing the conservative stereotype that rabble-rousers and leftists (people like Marx, Trotsky, Rosa Luxemburg, Emma Goldman, Julius and Ethel Rosenberg) were Jewish. By and large, each side noticed Jewishness in the other camp, but failed to see it in its own camp. Thus, both the Left and the Right shared the perception that Jewishness was there and that it was somehow negative. No wonder, then, that each

side, if invited to reflect on its own Jewishness, would insist that “Jewishness had nothing to do with it.”<sup>31</sup> The drive to compartmentalize the (private) Jewish self from the (public) American identity was a necessity in a social climate that associated “Jewishness” with the “other.” I argue that because of the peculiarity of the Chicago conspiracy trial, where many of the ordinary rules of decorum were suspended, the ever-present undercurrent of one’s Jewishness surfaced and its meaning was called into question. Thus, the courtroom served as space where different conceptions of American-Jewish identity clashed and informed various conceptions of law.

Judge Julius Hoffman was seventy-four years old when the trial began. He came from a large family and enjoyed a comfortable childhood. He was a short, bald man, who paid close attention to his appearance and was always elegantly and meticulously dressed. In 1928 he married a wealthy divorcee, Eleanor Greenbaum, and remained devoted to her until she died in 1980. Julius and Eleanor did not have children, but Julius took his responsibilities as a stepfather seriously and raised Eleanor’s two sons from her previous marriage as if they were his own. Julius Hoffman graduated from the Northwestern Law School in 1915 and for a while was Dean John H. Wigmore’s research assistant. In 1953 President Dwight D. Eisenhower appointed him to the federal bench. His interest in legal scholarship distinguished him from most judges. Through the 1950s and 1960s, he regularly published reviews of law books and short doctrinal articles.

Julius Hoffman was Jewish, married to a Jewish woman. He was not a religious man, and his stepson William did not recall the celebration of any Jewish holiday, not even Passover, in the family home. Still he epitomized the truth that Jewishness is an ethnic identity not necessarily tied to the observance of any religious commands. Hoffman was a much sought after speaker at Jewish events, a fact that shows that he was both considered Jewish by the Jewish community in Chicago, and that he was willing to play this role. Here is Hoffman in 1963 reflecting upon the meaning of being a Jewish judge in America:

The Jew, by tradition—almost, one might say, by definition—is a scholarly and perceptive man, a humane man, and one to whom justice is very dear. For centuries the hostile governments that imposed physical and social restrictions on the Jew gave him time

to develop his mental gifts. When democracy lowered the barriers the Jew was fully prepared to step out and take the place he was eminently qualified to occupy. It didn't matter that generally he had to be twice as good as others in order to get half as much recognition. Or perhaps it does matter. Perhaps that is one explanation for his excellence, his determination, his durability.

Now granted that being a Jew helps a man to be a good judge . . . it does not make him a judge with a Jewish bias. As a component of a system organized to dispense equal justice, a good judge is neither Jew nor Gentile. He knows the law and his rulings are made in accordance with it apart from any extraneous accident of birth or adherence to any particular theological doctrine. That is what we mean when we say that a man is a good judge. On the other hand, a Jew is always, everywhere, a symbol of his people. Whether or not he represents them officially or acts simply in his capacity as a judge, lawyer, businessman or bus driver, what he does is chalked up for or against the Jews as a whole. When a Jew offends against the law he injures all Jews. When a Jew administers the law excellently he also administers an antidote to anti-Semitism.<sup>32</sup>

In his autobiography, *My Life as a Radical Lawyer*, William Moses Kunstler observed that he and Judge Hoffman shared the same birthday (July 7) as well as German-Jewish origins.<sup>33</sup> Kunstler grew up in a comfortable Jewish home in New York City. His parents, he wrote, "voted for Franklin Delano Roosevelt because they believed his presidency would benefit Jews," and his mother focused mainly on "how local and world events affected the Jews."<sup>34</sup> His mother also urged him to marry a Jewish woman, more specifically, a German-Jewish woman.<sup>35</sup> While he did abide by her wishes and twice married Jewish women, Kunstler experienced awkwardness about the Jewish difference. As a thirteen-year-old he "felt tired of the middle-class Jewish kids" in his neighborhood and joined an interracial gang "comprised of blacks and Hispanics." They called him Yiddle (Yiddish for "little Jew"), and, he wrote, "although I ran with the gang, I never became close friends with any one boy."<sup>36</sup> Kunstler did not reflect on the meaning of this episode. In general, his autobiography does not show great introspection. But what he could have learned was that at precisely the moment when you believe that you have crossed the barrier and joined

“the other” group, that group designates you as “other”—Yiddle among blacks and Hispanics.

At Yale University in the 1930s, where Kunstler pursued his undergraduate education, he encountered anti-Semitism as well as support for Nazism. “The message given by anti-Semitic Yalies was that it was not okay to be different. I ended up feeling uncomfortable and sometimes ashamed of being Jewish. At that age, I wanted acceptance more than anything, so while I don’t recall ever attending synagogue, I sat through many church services . . . [and] several of my sonnets . . . had Christian themes.”<sup>37</sup>

As a young man, Kunstler was not interested in a legal career. After military service during World War II he planned to become a journalist. However, he did end up at Columbia Law School, mainly, as he said, because his parents wanted him to, and out of competition with his younger brother.<sup>38</sup> Kunstler started his career as an attorney with a conventional practice of torts, trusts, and estates. He became bored and restless. The radicalizing moment in his life came with the Rosenberg trial in the early 1950s. At first he ignored the case: “I may have been attempting to distance myself from it like my parents and many other Jews. ‘We need this like a hole in the head,’ my father used to say about the Rosenberg case, implying that Jews did not need such negative publicity. There was enough anti-semitism in the world.”<sup>39</sup> But the case reshaped his attitude toward law and his own role in it. “I was appalled at the death sentences,” he wrote. On the night of the Rosenberg execution Kunstler and his wife were on the road, driving for a short vacation. When they heard the news they “stopped the car and began to cry.” He thought the conviction as well as the execution “wrong and tragic.”<sup>40</sup> Kunstler points out that the judges in the Rosenberg trial were Jewish, and states: “I was certain that their Jewish identity was responsible for the convictions and the executions”; “I believe . . . [that] fear of being identified as a judge following his Jewish affiliation . . . gripped circuit Judge Jerome Frank on the day of the Rosenbergs’ execution [when he refused to grant a stay].”<sup>41</sup> Kunstler concludes with an anguished admission of guilt: “Where were the rest of us Jewish lawyers, myself included? With rare exceptions, we sat around, talking, analyzing, complaining but doing nothing.”<sup>42</sup>

Kunstler yearned to become active. Surely, the Rosenberg trial was not the only factor responsible for his bloom into a “cause lawyer.” He

loved the publicity, the media visibility, the fast pace, and, as he wrote, the different way of looking at the law. Making constitutional arguments in civil rights cases, occasionally getting a judge to invalidate a statute, was very exciting. After the first case in which he won an argument establishing the constitutional right to travel, he wrote: "Let other lawyers draft wills and do real estate closings. I had *changed* the law! I had made a contribution! I felt an enormous thrill and a desire for more of the same."<sup>43</sup> He gradually became more involved in the civil rights movement, first, as he put it, "as a liberal lawyer and then as a radical lawyer."<sup>44</sup> He discovered the excitement of what he called "movement law": "In the past, lawyers, myself included, viewed the law as sacred and inviolate. But movement law considered the legal system as something to be used or changed, in order to gain the political objectives of the clients in a particular case."<sup>45</sup>

Kunstler first met Abbie Hoffman in 1964 in McComb, Mississippi. Abbie arrived there as a civil rights activist working in voter registration. Here is how Kunstler introduced Abbie in his autobiography: "As a liberal northern Jewboy, in the argot of the southern rednecks, Abbie got beaten up a lot."<sup>46</sup> Why did Kunstler choose to recall Abbie in terms used by the "rednecks"? He probably wished to impart the Jewish experience of abuse and the bond it established with southern blacks. The two got to know each other better when Kunstler represented Abbie before the House Un-American Activities Committee in 1965. Abbie and Jerry Rubin (fellow defendant in the conspiracy trial) wanted Kunstler as their defense attorney in Chicago. Out of deference to Black Panther Party chairman Bobby Seale, the Chicago defendants agreed to let Seale's trusted lawyer, Charles R. Garry, head the defense team. But Garry fell ill, Judge Hoffman would not postpone the trial, and Kunstler found himself leading the defense together with cocounsel Leonard Weinglass.<sup>47</sup>

Abbie Hoffman was born Abbott Howard Hoffman in Worcester, Massachusetts, in 1936. In Ukraine, the Hoffmans went by the name Shapoznikov. They acquired the German name Hoffman while they were preparing to emigrate to the United States.<sup>48</sup> The penchant for "better sounding" names is probably what drove John Hoffman, Abbie's father, to name his first-born Abbot rather than Abraham, the name of Abbie's uncle on his mother's side after whom Abbie was named.<sup>49</sup> Abbie graduated from Brandeis University and pursued an M.A. degree in psychology at the University of California, Berkeley,

before joining the civil rights movement in the mid-1960s. He soon became a leading player in the “counterculture,” and on New Year’s Day 1968, with Jerry Rubin and several others, founded the Yippie movement. There is a consensus that “the name came first, then the acronym, that would satisfy literal minded reporters.”<sup>50</sup> Yippie founders claimed that YIP meant Youth International Party. The central premise of the new party was the irreconcilable differences between old and young attitudes and values. A new world order, based on youth culture, they insisted, would eradicate ethnic or national distinctions, and foster love and camaraderie on a universal basis. Yip, however, sounds like Yid (Yiddish for Jew), and Abbie affectionately referred to his movement as one of “Yiddishe Hippies.”<sup>51</sup>

Abbie came to Chicago to hold “A Festival of Life”—in response to the Democratic Convention that he called “A Convention of Death.” When Abbie, perhaps the most flamboyant defendant in the Chicago trial, began his testimony and was asked to identify himself, he said: “My name is Abbie, I am an orphan of America.” By that he portrayed himself as having the very DNA of America, a true son of the nation. To reiterate the lineage, he named the son born to him in 1971 “america,” indeed lowercase, but nevertheless America.<sup>52</sup> Here is Abbie’s description of his biological parents:

My parents were sucked into the social melting pot, where they were to simmer uncomfortably for the next thirty years. . . . Deep down I am sure we felt our parents’ generation was a bunch of cop outs. Six million dead and except for the Warsaw Ghetto hardly a bullet fired in resistance. . . . I was shuttled back and forth between Orthodox yeshiva after school on weekdays and the reform Temple Emanuel on weekends. It was getting me pretty mixed up. Eventually, Teffilin and Torah lessons gave way to dancing classes and discourses (in English) on the nature of life and how good things were in America.<sup>53</sup>

What do the judge, the lawyer, and the defendant have in common? First, they were all born and raised in the United States and identified themselves first and foremost as Americans. They understood the trial to be about the meaning of America, its ideals and its unique promise. We have already seen that Judge Hoffman referred to America as a democracy, where the Jew can prosper and excel. We also know

that he was very attached to his alma mater, Northwestern University. He was an active contributor to the Republican Party, his courtroom was decorated with portraits of Presidents Washington and Lincoln, and a bust of President Eisenhower was on display in his chambers. He was proud to be in their company. He was content with the American system, which brought him wealth, success, and—above all—respect. Consider the following exchange between Judge Hoffman and Tom Hayden at the end of the trial:

*Hayden.* So Your Honor, before your eyes you see the most vital ingredient of your system collapsing because the system does not hold together.

*Judge Hoffman.* Oh, don't be so pessimistic. Our system isn't collapsing. Fellows as smart as you could do awfully well under our system.<sup>54</sup>

Hoffman understood the defendants' aim as one of subverting the core of the American civilization, which he had experienced as good and just. Whatever minor blemishes it had could be corrected through the well-established processes within it. The American "system," albeit somewhat grudgingly, enabled him to distinguish himself. Law—particularly judicial decision-making—was a gratifying way of feeling fulfilled as an American and as a Jew. In his stately courtroom, backed by the Great Seal of the United States, facing an audience bound by the strict rules of decorum, armed with the power to proclaim what the law was, protected by the notion that as the oracle of the law he was anonymous and his religion immaterial, Judge Hoffman felt secure and confident.

Both Kunstler as defense attorney, and Abbie as a defendant rejected Judge Hoffman's conception of America and of the meaning of American law. By 1969 they came to view "the system" as thriving on white racial supremacy, poverty, conceit, and complacency. However, the common bond they shared with Judge Hoffman was their attachment to America. They did not think of themselves as loving America less; rather, they thought of themselves as loving its ideals more. They believed that their attack on the system, particularly during the trial, would precipitate its collapse and facilitate the rebirth of the "true America." They wanted a revolution in its original sense, revolving to the point of origin and the spirit of the Declaration of Independence.

Kunstler perceived his work as defense attorney in the Chicago

conspiracy trial as doing “movement law”—deploying legal doctrines and techniques to shatter the complacency of “the system,” thereby advancing the cause of social justice.<sup>55</sup> But he went further than that. Kunstler admitted that during the trial he came to identify more and more with his clients. If until 1968 he was willing to work within the system (during the 1968 convention week he was vacationing in Europe and later voted for Hubert Humphrey), he now came to join forces with those who would fight it from without. He agreed to subordinate his own judgment of the correct trial strategy to the wish of the defendants to stage a political defense. In the choice of witnesses for the defense, as well as in pursuing several other crucial trial strategies, he did not take a leading role, as he probably should have, given his expertise and experience, but rather deferred to the defendants’ choice.<sup>56</sup> In his exchanges with Judge Hoffman he came to display more and more chutzpah, contributing to the circus atmosphere that overwhelmed the trial.<sup>57</sup>

Abbie Hoffman was one of the strategists of the defense and one of only two defendants to take the witness stand. His challenge to the “system” and the judge representing it was displayed early on when he declared that he would change his first name to “fuck” so that when he came to the witness stand he could identify himself as “fuck Hoffman.”<sup>58</sup> Jerry Rubin referred to the judge as “Abbie’s illegitimate father.”<sup>59</sup> In speeches outside the courtroom, aimed to raise funds for the defense, Abbie led the crowds in chanting “fuck the judge” and “Screw Magoo” (“Magoo was [the defendants’] pet name for Judge Hoffman, who bore an uncanny resemblance to the blind cartoon curmudgeon Mr. Magoo”).<sup>60</sup>

Abbie had his own conception of law. If for Judge Hoffman law was a clear system of rules wrapped in solemn decorum, and for Kunstler law was “movement law,” for the defendant Hoffman law was theater—guerrilla theater, preferably. Here is Abbie speaking to the press as he arrived to stand trial in Chicago: “[The trial] is going to be a combination Scopes trial, revolution in the streets, Woodstock Festival and Peoples Park, all rolled into one.”<sup>61</sup>

At the end of the trial, Judge Hoffman took his revenge by inflicting harsh contempt-of-court sentences on the defendants and their lawyers.<sup>62</sup> He described one of Abbie’s most famous acts during the trial: “On February 6, the defendant Hoffman attempted to hold the court up to ridicule by entering the courtroom in judicial robes . . . he remained in those robes for a considerable period of time before the

jury. Later, he removed the robes, threw them on the floor of the courtroom, and wiped his feet on them."<sup>63</sup> Abbie was delivering a powerful statement. Not only could anyone become the oracle of the law (judicial decision-making was nothing but appearance, determined by dress, not substance), even in the sanctity of the courtroom itself, but the uniform of impartiality and decorum—the judicial robe—was nothing but (to use the Yiddish word) a *shmate* (rag). Judge Hoffman chose to ignore two further aspects of this scene. To their black robes Abbie and Jerry affixed the Jewish yellow star. Underneath his robe, Abbie (but not Jerry, who was caught by surprise) wore a Chicago police shirt. I shall return to these aspects below.

So far I have established the Jewish-American identity of the three and their different conceptions of law. Is there a common thread lurking underneath these radical differences?

I suggest that what unites the three is the rage Jews have felt as they came to realize the gap between theory and practice, American idealism and American reality. All three deeply felt the gap between the promise that "all men are created equal," the hope that this promise of freedom ignites in the heart of every American-Jewish child, and the reality of subtle discrimination and invisible barriers. One may call it the sheer shock of the cognition that their difference had powerful and negative consequences.

Background, age, and life experience made them handle this rage in diverse ways, and their differences affected their attitude toward the law. Judge Hoffman, constructing his self to fit "the system," retreated more and more into appearance, his own and the courtroom's. In this small world, a highly stylized, formalized environment where Jewishness seemed irrelevant, surrounded by Americana, he perceived himself to be in total control. The dignity he enjoyed in the courtroom, artificial and coerced as it was, compensated for whatever indignity he felt as a Jew, always having (in his words) "to be twice as good as others in order to get half as much recognition."<sup>64</sup>

A good illustration of this indignity we find in Jason Epstein's *The Great Conspiracy Trial*. Epstein writes that Judge Hoffman once "admitted that he was 'lucky to be Jewish' since he thus became eligible for appointment to 'the so called Jewish seat on the court.'"<sup>65</sup> This may be interpreted as a statement of ambition and conceit. But there was no small amount of humiliation in the realization that, although a perfectly good American, he was *eligible only* to the particular ethnic seat

on the highest court. The feeling that one is forever confined to the ethnic group into which one had been born must create resentment, especially when one perceives significant disadvantages attached to the affiliation. That Judge Hoffman tried to put the best face on this state of affairs, calling himself lucky, should not detract from the fact that he was facing a formidable barrier.

It is easy to detect rage in Kunstler—his shame of his difference when he was a young boy, the trauma of the Rosenberg trial. He sublimated his rage through identification with the plight of African-Americans and through his work as a radical lawyer. One interesting aspect of his autobiography is the change he underwent as a result of discovering the professional option of cause lawyering. If the first chapters of his autobiography are peppered with references to his Jewish experience, the rest of the book is almost silent on this issue. When he does refer to the Jewish issue, it becomes “extreme sensitivity, almost paranoia, about anti-semitism.”<sup>66</sup>

The civil rights movement was a vehicle through which Jews channeled their yearning for the realization of the American promise and their rage at its failure to be fulfilled. Abbie Hoffman was a committed civil rights activist who considered the Student Nonviolent Coordinating Committee (SNCC) “his family.” When in December 1966 the ideology of black power propelled SNCC to pass a resolution expelling all of its white members, an enraged Abbie published an article in the *Village Voice* expressing his anger and sense of betrayal: “Now I am mad. Emotionally and intellectually I am mad . . . [I feel] the kind of anger one might feel in, say, a love relationship, when after entering honestly you find that your loved one’s been balling with someone else, and what’s worse, enjoying it.”<sup>67</sup> One of his biographers tells us that he said he felt “like a schmuck” and explains, “[T]his was the first time he [Abbie] had used Yiddish in print. In years to come he would introduce Yiddish expressions into the movement at large, injecting a Jewish identity into radical politics.”<sup>68</sup> This was also the time when Abbie turned from political activist into hippie (and later a Yippie): “Indeed, a year after the *Village Voice* article appeared in print, Abbie shed his skin as a civil rights activist and SNCC supporter and emerged as a marijuana-smoking dropout on the Lower East Side. If only other white radicals would become hippies, too, there might be a real movement, he believed.”<sup>69</sup>

Thus viewed, Kunstler chose to sublimate his rage through cause

lawyering; Judge Hoffman by becoming a court Jew; and Abbie Hoffman by playing the court's jester. The trial provided a platform for a (very raucous) dialogue between father, son, and grandson, about the right path a Jew should choose when he joins civil and Gentile society. If the judge were not Jewish, and therefore Kunstler and Abbie could not easily see in him a father figure, and he in them identify his sons, the personal tension that pulsed throughout their relationship might have been contained. The course of the trial under such a scenario might have been different.<sup>70</sup> But Kunstler and Abbie understood Judge Hoffman's vulnerabilities as few Americans could, and the more they pushed his buttons, the more he came to view them as "the enemy."

In the shadows of the Chicago conspiracy trial are other trials related to the history of Jews and Gentiles. I have already alluded to Julius and Ethel Rosenberg. Both Kunstler and Abbie were traumatized by the Rosenberg trial and by the Jewish silence that surrounded it.<sup>71</sup> Judge Hoffman was appointed to the federal bench one month before the Supreme Court refused to stay the execution of the Rosenbergs; one month and six days before their execution. These were tense days for every American Jew. Did Julius Hoffman pause to think that he might be a pawn in the hands of the Eisenhower administration? That his appointment contained a message: there are good Jews and bad Jews? That he, Julius Hoffman, a good Jew, stood in sharp contrast to Julius Rosenberg, the bad Jew? When he placed the bust of President Eisenhower in his chambers, did he question why this president failed to commute the sentence of, or to pardon, Ethel Greenglass Rosenberg, mother of two, whose offense was much less serious than that of her husband? It is not possible to penetrate the walls of silence that enveloped Judge Hoffman's thoughts on the Rosenberg trial. One faint clue may be his inability to remember the name of Kunstler's cocounsel, Leonard Weinglass. *Greenglass* (Ethel's maiden name and the name of her brother, David, who was the principal witness for the prosecution in her trial) is similar to *Weinglass*. Judge Hoffman referred to attorney Weinglass as "Weinrob," "Weinramer," "Weinruss." Somehow, *glass* was an ending he could barely recall.<sup>72</sup>

Kunstler implicitly raised the ghost of the Rosenberg trial, where "the system"—using Jewish judges and Jewish prosecutors—tried, convicted, and executed the Rosenbergs, when he said to Judge Hoffman: "Your honor, you are trying a case deliberately designed to

destroy and kill dissent in the United States . . . and if you want to say to me that this case has nothing to do with the government's attempt to destroy . . . all shades of dissent, you are free to say that."<sup>73</sup>

Abbie Hoffman was much more blatant in his charge of collaboration. When he and Jerry Rubin arrived in court dressed in judicial robes, they had a further surprise for the judge, the spectators, and the media. Underneath Abbie's black robes was the shirt of a Chicago police officer. The message was clear: like Judge Irving R. Kaufman in the Rosenberg trial, Judge Hoffman was a front for the brute powers of the executive. A work of fiction certainly should not be taken as empirical proof of the connection between the Rosenberg trial and the Chicago conspiracy case. And yet in E. L. Doctorow's 1971 novel, *The Book of Daniel*, a monologue connects the two trials in explicit terms, thus bearing testimony to the mysterious ways in which the collective memory of American Jewry has been formed. The monologue is delivered by Artie Sternlicht, a self-absorbed hippie leader (Abbie?) and is directed at Daniel, Doctorow's fictionalized Rosenberg son:

Your folks didn't know shit. The way they handled themselves at their trial was pathetic. I mean they played it by their rules. The government's rules. You know what I mean? Instead of standing up and saying fuck you, do what you want, I can't get an honest trial anyway with you fuckers—they made motions, they pleaded innocent, they spoke only when spoken to, they played the game. All right? The whole frame of reference brought them down because they acted like defendants at a trial. You dig? . . . I won't come on except as a judge of them, a new man, like a new nation with new laws of life. And they will be on trial, not me. You see? They blew the whole goddamn thing!<sup>74</sup>

Charges of collaboration take us to the most painful trauma in Jewish history and to another trial: the Holocaust and the trial of Adolph Eichmann, chief executioner of the Final Solution for the German government of Adolf Hitler. The Eichmann trial took place in Israel in 1962—seven years before the Chicago conspiracy trial. It reached the home of every American Jew. Hannah Arendt's *Eichmann in Jerusalem* launched a violent public controversy, particularly among the Jewish intelligentsia. She pointed an accusing finger at the Jewish leaders of Nazi-occupied Europe: "To a Jew this role of the Jewish leaders in the

destruction of their own people is undoubtedly the darkest chapter of the whole dark story."<sup>75</sup> The Eichmann trial and the Arendt controversy reopened an American-Jewish wound: had American Jews done enough to save their fellow Jews in Europe? Could it be that they ignored the plight and may thereby be perceived as "collaborators" with their government? There is enough evidence to show that the Holocaust and the Eichmann trial were on the mind of the participants of the Chicago conspiracy case.

In 1968 Abbie Hoffman published *Revolution for the Hell of It*, a book he wrote after the events in Chicago, but before his trial, and from which the prosecution quoted extensively for the purpose of proving his subversive intent. On the third page, between a discussion of LSD and Fidel Castro, Abbie wrote:

There are no rules, only images. Only a System has boundaries. Eichmann lives by the rules. Eichmann, machinelike, twitching nervously, pushes at his steel-rimmed glasses, takes his neatly folded handkerchief from the breast pocket of his gray-flannel suit and mops his sweating bald forehead.<sup>76</sup>

The transcript of the Chicago trial is replete with references to the Gestapo, to Hitler, and to the Holocaust. The most poignant is David Dellinger's outburst at Judge Hoffman:

You want us to be like good Germans supporting the evils of our decade and then when we refused to be good Germans and came to Chicago and demonstrated, despite the threats and intimidations 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.

A few minutes later the judge ordered the marshals to take David Dellinger out of the courtroom. A brawl erupted, and Jerry Rubin is reported to have "jumped out of his chair at the defense table and marched rigidly towards the judge's bench, his right arm held stiffly out. 'Heil Hitler, Heil Hitler, Heil Hitler, Heil Hitler, Heil Hitler.' He screamed, 'I hope you are satisfied.'" <sup>77</sup> Abbie added his own spin: "You are a disgrace to the Jews, you would have served Hitler better, dig it."<sup>78</sup> It was shortly thereafter when Abbie Hoffman and Jerry

Rubin appeared in court wearing the judicial robes. In the context of the collective Jewish memory about the Holocaust this incident gains particular power. To their robes Abbie and Jerry attached the yellow star, designed to distinguish Jew from Gentile under Nazi law. The message they were trying to convey to the judge, the jury, and the media was that the judiciary was not immune to totalitarian tendencies and pressures and may well collaborate with the government in denying the humanity of the marginalized and despised.

While Judge Hoffman did not refrain from engaging the defendants and their attorneys in sharp repartees—in fact he mostly insisted on having the last word—he failed to react to any references concerning the Holocaust. The protest movement and the defendants often advanced the idea that civil disobedience to an evil regime was justified. As an example, they used Hitler’s Germany. Judge Hoffman refused to engage. The following exchange concerning civil disobedience occurred during the cross-examination of defense witness Donald Kalish by U.S. Attorney Thomas Foran.

*Foran.* In protest to the war, do you think it is justified?

*Kalish.* In certain situations. My analogy would be back to Germany during the Hitler regime . . .

*Foran.* I asked you specifically in protest to the war. He is not responding to my question.

*The Court.* There was no reference to the late Mr. Hitler.<sup>79</sup>

The phrase “the late Mr. Hitler,” quite odd in any context, was meant to achieve several goals. First, it retained a high level of formality amid the chaotic atmosphere of the trial. Even Hitler was respectfully addressed. It also assisted the judge in maintaining the illusion of a court hermetically closed to outside influence, as if to say that even the identity of “the late Mr. Hitler” was irrelevant in Chicago. “Late” is also a reference to the past, and Judge Hoffman could have been saying that historical events occurring outside America’s shores had nothing to do with the case. But of course Judge Hoffman’s refusal to take judicial notice was absurd, and his reaction only solidified his image as a rote oracle of the law.

The Eichmann trial was present in the Chicago conspiracy trial from yet another angle. In the 1960s the Eichmann trial was the most famed full-fledged trial to combine strong theatrical elements with a

pervasive media presence.<sup>80</sup> It was used by the State of Israel to present to the world the history of European Jewry from the rise of Fascism in the 1920s and 1930s to the death camps of the 1940s, the liberation, and the creation of the Jewish state. Eichmann was the formal defendant, yet with him stood to trial the entire Nazi regime. It was a successful attempt to use the prosecution as a vehicle to commit testimony and events to memory. The trial was also meant to be an educational device about the horrors of the Holocaust and about the duty of resistance.<sup>81</sup>

The Chicago conspiracy defendants and witnesses tried to do exactly that. They wanted the world to realize that the entire protest movement was on trial. Heroes of the counterculture, popular artists, leaders of the civil rights and antiwar movement, rank-and-file activists, scholars, and commentators, trying to explain “the movement” in social and historical terms—all came before the court, committing the 1960s to memory. Allen Ginsberg, Judy Collins, Pete Seeger, Arlo Guthrie, William Styron, Norman Mailer, Jesse Jackson, Ralph Abernathy, Timothy Leary were among those called upon to present “the movement” to the world. Efforts were made—most were unsuccessful because the judge would not permit them—to record the evils committed by the American government at home and abroad. As in the Eichmann trial, the testimonies were not directly relevant to the events stated in the indictment. Rather, they were meant to bring the spirit of the time into the courtroom, to show the entire mosaic, rather than the narrow slice to which the law prefers to confine itself.

At issue was the legitimacy of the rebelliousness of the young against the old, what Tom Hayden called “our identity against theirs.”<sup>82</sup> The quintessential young rebel, repeatedly invoked by Kunstler and Abbie, was Jesus Christ. Jesus was the rebel against the Jewish establishment; his trial and crucifixion were themes that inspired and fascinated these two Jewish men.<sup>83</sup>

Jesus and the Jews, of course, have had a long history. The accusation against the Jew of murdering Christ has been a perennial theme in Christianity and a constant threat to Jews over the centuries.<sup>84</sup> For this reason the trial of Jesus makes Jewish listeners who are attuned to Jewish tradition and history uneasy. At the same time, the image of Jesus as a challenger of the establishment, a social radical and a man made to suffer for his views, has been seductively attractive to Jewish reformers. A Jewish reformer invoking the name of Jesus signals affinity with like-minded Gentile reformers,<sup>85</sup> while at the same time distancing him- or herself from the traditional Jewish consciousness.<sup>86</sup>

Abbie tapped this tradition when he spoke to his followers:

I said (in a speech during convention week): When you march to the amphitheater tomorrow, you should keep in mind a quote from a two-thousand-year-old Yippie with long hair named Jesus who said that when you march into the dens of the wolves you should be as harmless as doves and as cunning as snakes.<sup>87</sup>

The identification with Jesus served several purposes. It depicted Kunstler and Abbie (and possibly most Jewish members of the protest movements at the time) as the savvy citizens of modern American civilization, where Jesus was secularized and could serve as a role model to all conscientious souls, Jews included. From this perspective the reference to Jesus reinforced the notion of a Judeo-Christian civilization and provided a glue that would bind Christian and Jewish members of the movement. Christians identified with the Jewish trauma of the Holocaust, while Jews recognized the universal greatness of Jesus, albeit in a secular and not a theological context.

But the reference to Jesus had another purpose. Here is an exchange between Kunstler and Judge Hoffman, which so impressed Kunstler that he quoted it in his autobiography:

*Judge Hoffman.* This is not a political case as far as I am concerned.

*Kunstler.* Well, Your Honor, as far as some of the rest of us are concerned, it is quite a political case.

*Judge Hoffman.* It is a criminal case. There is an indictment here. I have an indictment right up here. I can't go into politics here in this court.

*Kunstler.* Your Honor, Jesus was accused criminally, too, and we understand really that this was not truly a criminal case in the sense that it is just an ordinary . . .

*Judge Hoffman* (interrupting). I didn't live at that time. I don't know. Some people think I go back that far, but I really didn't.

*Kunstler.* Well, I was assuming Your Honor had read of the incident.<sup>88</sup>

For Kunstler, as he explained in his autobiography, this was a gesture of comic relief, designed to "relieve the intensity of this most serious and awful ordeal."<sup>89</sup> He also reported, "I became something of a comic myself and learned, for the first time, how wit could be used by a trial

lawyer to benefit his client.”<sup>90</sup> Kunstler used his reference to the trial of Jesus as an illustration of this technique, but there was more there. In depicting Jesus as the quintessential victim of an unjust trial, he perforce relegated Judge Hoffman to the role of the evil judge and the evil Jew. In responding, rather smugly, “I was assuming Your Honor had read of the incident,” he depicted Hoffman as the ghetto Jew, unversed in the culture outside of his small Jewish universe or, in the alternative, as someone who was denying the truth. The judge, on the other hand, while sticking to his effort to exclude “irrelevant” materials, was indeed reacting as a Jew. “I didn’t live at that time” could mean, “We Jews have suffered enough as a result of the death of Jesus. Please don’t revive the specter of collective responsibility.” Or, “I am an individual, an American; the ‘sins’ of my ancestors should not be visited upon me.” One may even interpret his joke about his old age as an effort not only to ridicule the claim that the trial represented a generational war, but also to turn this exchange into a merely personal reference, rather than the ominous revival of the historical Christian grievance against the Jews.

The exchange captures a very interesting phenomenon that increased in intensity during the trial. The defendants and their cocounsels<sup>91</sup> subtly portrayed the judge as a Jew, an “other.” In a curious way, and probably unself-consciously, they were acting as Jean-Paul Sartre’s anti-Semites, creating the Jew by “otherizing” him.<sup>92</sup> Judge Hoffman, ever sensitive to appearances, made heroic efforts to retain the public/private distinction and leave his Jewishness outside of the courtroom. Kunstler and Abbie hammered it in. This process came to its peak when Abbie unleashed his anger against the judge, in one of the most famous episodes of the trial:

Your idea of justice is the only obscenity in the room. You schtunk. Vo den? Shanda fur de goyem, huh [You skunk, what more? A shame before the Gentiles].<sup>93</sup>

Again, this statement invites interpretation. Abbie was very angry and speaking from the heart. In the context of the trial, Abbie, the defendant, was speaking, not English, the language all Americans had in common, but rather the language that the Jews had brought with them from Europe. In doing so he exposed the judge, sitting under and protected by the Great American Seal, as a Jew, for all of the United States to watch.

Judge Hoffman understood this very well, even if as an American-German Jew he was not familiar with Yiddish. In his speech about Jewish judges he conceded that a Jewish judge was forever under scrutiny, always representing the collectivity of Jews and always on trial.<sup>94</sup> Nothing could be more painful to Judge Hoffman than being stripped of his judicial authority and exposed before the media as a Jew who has brought shame upon his people.

Julius Hoffman did not conceal his pain. He shared it not with Abbie, but rather with William Kunstler, a fellow German-Jew, an officer of the court, about the same age as his own stepson William, in the context of the discussion about Black Panther leader Bobby Seale:

*Hoffman (to Kunstler).* Even if I were wrong, if I were wrong, even if the many times he called me the vile names he called me—I don't know how it could be proven that a man of my faith was a pig [Seale referred to the judge as "a racist pig, a fascist pig"]; that would be very difficult—but . . . you represent yourself to be a leader at the Bar, and you have practiced in all of these courts that you have mentioned, you have never, never, made an attempt to say something like this to him: "Bobby, hush. Cool it. Sit down now." You let him go on.

*Kunstler.* Your Honor, I am glad your Honor spoke because I suddenly feel nothing but compassion for you. Everything else has dropped away.<sup>95</sup>

In this precious exchange, Hoffman was baring his heart to Kunstler. He was hurt, particularly by the references to his Jewish identity. He had expected Kunstler to defend him—for the sake of the honor of the court, but probably also out of Jewish solidarity. By doing nothing, Kunstler had collaborated in the humiliation of a fellow Jew. Kunstler understood that well; hence his response, "I suddenly feel nothing but compassion for you." As a Jew, on a deep level, he understood what this had been about, even though he would do nothing about it.<sup>96</sup> Viewed from this perspective, the true locus of tension in the trial was between the two German-Jews who found themselves on opposite sides of the divide in America of the late 1960s. John Murray Cuddihy's thesis in *The Ordeal of Civility*, that Judge Hoffman was locked in struggle with Abbie Hoffman, the Eastern European Jew, only partially captures the tension in the trial. Indeed, the judge was very upset about the

uncivil behavior of the defendants and their lawyers, but he reserved his irk and vengeance for the German-Jewish Kunstler. He expected more from Kunstler, who shared his background and social class, and he therefore inflicted upon him the formidable penalty of four years and thirteen days in prison (compared with the eight months he gave Abbie).<sup>97</sup>

The Bobby Seale incident, a major confrontation between a Jewish judge acting in behalf of the American legal system and a black defendant insisting on his constitutional rights,<sup>98</sup> returns us to Arthur Hertzberg's observations about American-Jewish history in the second half of the twentieth century. We have already seen how the Holocaust, identified by Hertzberg as one of the important forces in the shaping of American-Jewish identity in the sixties, featured in the conspiracy trial and in the consciousness of the protest movement. The Seale incident brings into stark relief the complex relationship between blacks and Jews in America of the 1960s. The defendants and their lawyers, veterans of the civil rights movement, were eager to stand behind Seale and display their support for his cause. During that course of identification they came increasingly to view Judge Hoffman, representative of the establishment, as their enemy. They might have seen Judge Hoffman as representative of their parents' generation, willing to extend formal equality to blacks, while at the same time internalizing white America's racist consciousness. Their zealous support of Seale may have been designed not only to emphasize the difference between them and everything that Judge Hoffman stood for, but also to silence the discomfort that they must have been experiencing in view of the Black Panthers' overt hostility to Jews.

The social history of the Black Panthers takes us to the Six Day War of June 1967. That war, from which the Israel emerged glorious and triumphant, was a watershed event for American Jewry.<sup>99</sup> The period before the war, when an isolated and friendless Israel faced lethal threats from its Arab neighbors, brought to the surface the dark anxiety bred by the Holocaust. The stunning victory replaced that anxiety with endless pride and joy, as the "new Jews" of Israel's Defense Forces reenacted before the world the biblical tale of David and Goliath. The "final" defeat of the old stereotype of the meek and helpless Jew encouraged a new assertiveness and political confidence in young American Jews. It should be responsible, at least partially, for their massive participation in the antiwar and counterculture movements. At the same time, the

war exacerbated the already strained relationship between blacks and Jews. Young American Jews were torn between their identification with the heroic "new Jew," on the one hand, and their identification with the underdog, the African American, and by extension, the Palestinian, on the other. Young blacks were torn between their identification with the children of Israel, erstwhile slaves in Egypt, and their resentment of the triumphant white representatives of the imperialist, neocolonialist world. Whereas many in the black community, empathizing with the Arab, particularly the Palestinian cause, came to view Israel as a part of the evil forces of oppression, the Jewish community was beginning to experience a disagreement within itself. Issues of foreign policy and support for Israel mixed with important domestic matters, such as violence in the inner cities, affirmative action, and welfare. Jews began to disagree, in private and in public, and their identity went through yet another transformation. For one willing to use the microscope, the undercurrents of these disagreements can be detected underneath the chaotic surface of the Chicago Conspiracy trial.

The Chicago conspiracy trial may be seen as the triumph of the theory of the melting pot: all of its participants, including its Jewish participants, perceived themselves as Americans first. As I tried to show, they had conflicting visions of what America meant and what the role of law in the American republic has been and should be. The different visions of the Jewish participants were informed, perhaps not exclusively, yet substantially, by their experience as Jews in America and by the way their very different personalities integrated and gave meaning to these experiences. Not only their worldview but also their legal arguments were informed by their Jewishness. This is clearly evident in their reference to major trials in American history (the Rosenberg trial), in European and Israeli history (the Eichmann trial), and in Western consciousness (the trial of Jesus). Similar studies of other subgroups in American society, such as Asian-American, Hispanic-American, and Arab-American, will further complement this work and enrich our understanding of the relationship between law and identity in democracy.

#### NOTES

I wish to thank Austin Sarat, Janet Dolgin, Laura Kalman, Jack Katz, Leora Bilsky, and Tom Hilbink for reading previous drafts and making valuable comments.

1. See generally, Todd Gitlin, *The Sixties: Years of Hope, Days of Rage*, rev. ed. (New York: Bantam, 1993); Arthur Marwick, *The Sixties: Cultural Revolution in Britain, France, Italy, and the United States* (Oxford: Oxford University Press, 1998); Irwin Unger and Debi Unger, eds., *The Times Were a Changin'* (New York: Three Rivers Press, 1998).

2. See, e.g., Tom Hayden, *Trial* (New York: Holt, Rinehart and Winston, 1970), chap. 6, titled "Their Identity on Trial": "Putting our identity on trial caused our prosecutors to expose their own" (49). The trial is sometimes referred to as the Chicago Eight Trial, because the original indictment named eight defendants. It is a conspiracy trial because the indictment charged the eight of a conspiracy. After defendant Bobby Seale's trial was severed, the trial became known as the Chicago Seven Trial. I shall refer to it as the Chicago conspiracy trial, as that name captures better its essence as a political and cultural event.

3. Two academics, John Froines and Lee Weiner, were added to these six leaders, making the number of defendants eight. Froines and Weiner were not as prominent as the other six. Theories about why they were included range from the desire to include people clearly associated with universities to a ploy to provide grounds for partial acquittal that in turn would fortify public perception that the remaining six were justly accused. Larry Sloman, *Steal This Dream* (New York: Doubleday, 1998), 171. David J. Danelsky also suggested that the inclusion of Froines and Weiner "gave some substance to the government's case, for without the count involving incendiary devices, the indictment charged little more than thinking, speaking, and associating—activities generally regarded as protected by the First Amendment." David J. Danelsky, "The Chicago Conspiracy Trial," in *Political Trials*, ed. Theodor L. Becker (Indianapolis: Bobbs-Merrill Co., 1971), 146.

4. *United States v. Dellinger*, 472 F.2d. 340 (1972), cert. denied, 410 U.S. 970 (1973) (following the Seventh Circuit's decision to reverse and remand and the denial of certiorari, the government decided not to press for a retrial).

5. 18 U.S.C. sec. 2102.

6. *Rights in Conflict: Convention Week in Chicago August 25–29, 1968*, A Report Submitted by Daniel Walker (New York: E. P. Dutton, 1968), 5. Some, however, felt that the problem was not low-level police brutality but rather a deliberate order from above to use excessive force. For an analysis of the dilemma of the police see David Farber, *Chicago '68* (Chicago: University of Chicago Press, 1988), 129–32.

7. In March 1969 a grand jury in Chicago indicted eight police officers and the eight demonstrators. The police officers were subsequently acquitted. Exiting attorney general Ramsey Clark, who opposed the prosecution of the demonstrators, called it "politics pure and simple. The eight-to-eight balance makes this clear." Jason Epstein, *The Great Conspiracy Trial* (New York: Random House, 1970), 34.

8. Leora Bilsky, "Political Trials," in *International Encyclopedia of the Social and Behavioral Sciences*, ed. Neil J. Smelser and Paul Baltes (Oxford: Elsevier Science, forthcoming), vol. 3.8 and references therein.

9. See generally Epstein, *The Great Conspiracy Trial*; John Schultz, *Motion Will Be Denied* (New York: William Morrow, 1972); Pnina Lahav, "The Chicago Conspiracy Trial, Character, and Judicial Discretion," *University of Colorado Law Review* 71 (2000): 1327.

10. The five were David Dellinger, Rennie Davis, Tom Hayden, Abbie Hoffman, and Jerry Rubin. John Froines and Lee Weiner were acquitted. *United States v. Dellinger*, 472 F.2d 340 (1972).

11. *In the Matter of David Dellinger*, 461 F.2d 389 (1972); *In the Matter of David Dellinger*, 370 F.Supp. 1304 (1973).

12. Donna E. Artz, "The People's Lawyers: The Predominance of Jews in the Public Interest," *Judaism* 35 (1986): 47; Robert Burt, *Two Jewish Justices: Outcasts in the Promised Land* (Berkeley and Los Angeles: University of California Press, 1988); Marc S. Galanter, "A Vocation for Law? American Jewish Lawyers and Their Antecedents," *Fordham Urban Law Journal* 24 (1999): 1125; Sanford Levinson, "Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity," *Cardozo Law Review* 14 (1993): 1577; Naomi Maya Stolzenberg, "Un-covering the Tradition of Jewish Dissimilation: Frankfurter, Bickel, and Cover on Judicial Review," *Southern California Interdisciplinary Law Journal* 3 (1994): 809.

13. Robert Cover, "Nomos and Narrative," *Harvard Law Review* 97 (1983): 4. For work interweaving Jewish Law into American culture see, e.g., Suzanne Last Stone, "Judaism and Postmodernism," *Cardozo Law Review* 14 (1993): 1681; and, most recently, Joseph Singer, *Edges of the Field: Lessons on the Obligations of Ownership* (Boston: Beacon Press, 2000).

14. The Jewishness of all the participants except for Schultz is a matter of public record. Jerry Rubin, *We Are Everywhere* (New York: Harper and Row, 1971), 74, refers to Schultz's Jewishness and says he was trying to educate Schultz, presumably to remind him of the common Jewish past of oppression and the need to identify with the underdog. The "education" of Schultz, however, amounted to Rubin's periodically "saying to him, loud enough so he'd hear but not loud enough to disrupt the trial, 'Schultz, you would have made a great nazi prosecutor'" (*We Are Everywhere*, 74).

15. There is a consensus in the literature that these three were the outstanding Jewish participants in the trial. I shall weave in the presence of some of the other participants as this essay unfolds.

16. I first came across this reaction (even though the particular phrase was not used) in Helene E. Schwartz, *Lawyering* (New York: Farrar, Straus and Giroux, 1977), 99: "Some said that his rumored discomfort at his own Jewishness accounted for his animosity toward the defendants and their lawyers, a good half of whom were of Jewish background. I never believed this." In many conversations where the issue was raised the first reaction was that Jewishness was an irrelevant or trivial factor in the trial.

17. Arthur Hertzberg, *The Jews in America: Four Centuries of Uneasy Encounter* (New York: Simon and Schuster, 1989), 340.

18. See David Brion Davis, "Jews and Blacks in America," *New York Review of Books*, December 2, 1999, and references there. See also Stuart Svonkin,

*Jews against Prejudice: American Jews and the Fight for Civil Liberties* (New York: Columbia University Press, 1997). I am grateful to Thomas M. Hilbink for referring me to this book.

19. See generally, Janet Dolgin, *Jewish Identity and the JDL* (Princeton: Princeton University Press, 1977).

20. See generally, Arthur Liebman, *Jews and the Left* (New York: John Wiley and Sons, 1979), 564–67.

21. “In a major study of student activism conducted by the American Council of Education during the 1966–1967, a Jewish background was the single most important predictor of participation in anti-war or anti-(college) administration protests” (*ibid.*, 68).

22. Hertzberg, *The Jews in America*, 370.

23. See Liebman, *Jews and the Left*, 576–87.

24. Pnina Lahav, “The Eichmann Trial, the Jewish Question, and the American Jewish Intelligentsia,” *Boston University Law Review* 72 (1992): 601.

25. Hertzberg, *The Jews in America*, 371–73. For an elaborate discussion of the impact of the Holocaust on American Jewry, see Peter Novick, *The Holocaust in American Life* (Boston: Houghton Mifflin Company, 1999), 146–50.

26. Liebman, *Jews and the Left*, 568–76.

27. John Murray Cuddihy, *The Ordeal of Civility: Freud, Marx, Lévi-Strauss, and the Jewish Struggle with Modernity* (New York: Basic Books, 1974), 194. For my analysis of Cuddihy’s thesis, see text accompanying note 98 below.

28. Schwartz, *Lawyering*, 99. Schwartz disclosed her own Jewish sensibilities by referring to a particular argument she developed in the appellate brief as Dayenu: “We ended . . . with the following argument: ‘It may be that any one of the episodes discussed here might not necessarily in and of itself require reversal. However . . . the cumulative prejudicial effect of the trial judge’s behavior requires reversal of appellant’s convictions.’ ‘You may laugh’ I said to Doris, ‘but this part of the brief reminds me of a section in the Passover Seder . . . called Dayenu which is Hebrew for “It is sufficient.” . . . ‘It’s just like the section with the judge,’ I continued . . . ‘If he had only interfered with the presentation of the defense, it would have been sufficient for reversal . . . But he did all these terrible things, and surely there must be a reversal’” (181–82).

29. Hayden, *Trial*, 51. Hayden omitted this vignette in his book *Reunion* (New York: Random House, 1988). Hayden’s own Catholic identity is very evident in the trial, e.g.: “Going upstairs to the jury room on the first day of the trial, we felt like the early Christians being paraded before the Romans” (*Trial*, 77).

30. “‘Aren’t the Chicago Seven all Jews?’ Nixon asked his chief of staff, H. R. Haldeman, as though he assumed that Jews and radicals were one and the same. ‘Davis is a Jew, you know,’ the president continued. When Haldeman explained that Rennie Davis was definitely not a Jew, Nixon retorted, ‘Hoffman, Hoffman’s a Jew.’ There was no dispute there. ‘Abbie Hoffman is and that’s so,’ Haldeman agreed.” Jonah Raskin, *For the Hell of It: The Life and Times of Abbie Hoffman* (Berkeley and Los Angeles: University of California Press, 1996), 201.

31. Two of the Jewish defendants, however, did refer to the Jewish aspect of the trial, but they may have done so in hindsight. See Rubin, *We Are Everywhere*, 74; and Lee Weiner, interviewed in Sloman, *Steal This Dream*: "It was dope-taking, longhaired Jews against these straight-assed goyish guys. . . . It was a Jewish morality play" (187–88).

32. Julius Hoffman, speech before the Jewish Federation Campaign, Dinner in Honor of Jewish Judges, December 12, 1963, Chicago Historical Society, Hoffman Archive, folder 8.

33. William M. Kunstler, *My Life as a Radical Lawyer* (New York: Citadel Press, 1994), 11. See also David J. Langum, *William M. Kunstler: The Most Hated Lawyer in America* (New York: New York University Press, 1999).

34. Kunstler, *My Life*, 56.

35. *Ibid.*, 56, 54.

36. *Ibid.*, 58.

37. *Ibid.*, 67.

38. *Ibid.*, 80, 82.

39. *Ibid.*, 90.

40. *Ibid.*

41. *Ibid.*, 93.

42. *Ibid.*, 94.

43. *Ibid.*, 97; emphasis in the original.

44. *Ibid.*

45. *Ibid.*, 105, and he continues: "Movement law was created and refined in the South by lawyers like me and dozens of others, as we rushed from one civil rights crisis to another, inventing legal remedies as we went, with the goal of desegregation before us at all times."

46. *Ibid.*, 7.

47. *Ibid.*, 14. Tom Hayden, in his autobiography, *Reunion*, omits the fact that Judge Hoffman was Jewish, but does tell us that Charles R. Garry was of Armenian origin (346).

48. "The original family name is Shapoznikoff. My grandfather's brother stole identity papers from a German named Hoffman and fled to America around 1900." Abbie Hoffman, *Soon to Be a Major Motion Picture* (New York: Perigee, 1980), 13.

49. Raskin, *For the Hell of It*, 9. "Johnnie [Abbie's father] wanted to be embraced by gentiles and to move freely in their world" (7).

50. Gitlin, *The Sixties*, 235. Present at the creation were Paul Krassner, Abbie and Anita Hoffman, Jerry Rubin, and Nancy Kurshan. Abbie Hoffman, *Revolution for the Hell of It* (New York: Pocket Books, 1970), 85; Hoffman, *Soon to Be*, 137; Jack Hoffman and Daniel Simon, *Run, Run, Run: The Lives of Abbie Hoffman* (New York: Putnam, 1994), 89.

51. Hoffman, *Soon to Be*, 137. But see also Raskin, interpreting YIP as "suggesting Walt Whitman's 'Barbaric yawp' (*For the Hell of It*, 129). Codefendant and cofounder of the Yippies, Jerry Rubin agreed that Jewishness was an important factor in the understanding of Yippie: "I think we must destroy all sectarian religions to create a common Communist humanity based on a universal moral-

ity. . . . Judaism—as well as Christianity and other religions—have universalized into yippie” (*We Are Everywhere*, 76).

52. According to Raskin, Abbie Hoffman was the first person to be prosecuted under the new federal statute that made it a crime to deface or defile the flag of the United States by wearing a “flag shirt.” Abbie’s attorney, Gerald Lefcourt, explained that in wearing the shirt Abbie was “saying ‘I’m more American than you’” (Raskin, *For the Hell of It*, 178). This episode and Abbie’s appearance in a flag shirt on the *Merv Griffin Show* (which was censored) show Abbie claiming that the American flag (i.e., American culture) was as natural to him as a second skin.

53. Marty Jezer, *Abbie Hoffman American Rebel* (New Brunswick, N.J.: Rutgers University Press, 1992), 204; Farber, *Chicago ’68*, 6.

54. *Contempt: Transcript of the Contempt Citations, Sentences, and Responses of the Chicago Conspiracy 10* (Chicago: Swallow Press, 1971), 112.

55. For an elaboration on cause lawyering, see Austin Sarat and Stuart Scheingold, eds., *Cause Lawyering: Political Commitments and Professional Responsibilities* (New York: Oxford University Press, 1997), 317.

56. “I made an opening statement which focused on the First Amendment. . . . The defendants were furious with me for this opening. They wanted me to talk about Vietnam rather than what was happening to their rights. . . . It became clear to me after I blew it with my opening statement that these defendants wanted to decide for themselves what happened during their trial. They wanted our legal strategies to reflect their political philosophies. After a time, I began to understand their point of view and act on it. Chicago became a proving ground for the political-legal defense” (Kunstler, *My Life*, 19).

57. Judge Hoffman was seventy-four years old and Kunstler fifty years old. Judge Hoffman’s stepson was also named William. Indeed, some of the verbal exchanges between the two were typical of a father-son exchange, with the father trying to whip some manners into the recalcitrant son.

58. Raskin, *For the Hell of It*, 201.

59. Rubin, *We Are Everywhere*, 21.

60. Raskin, *For the Hell of It*, 198.

61. *Ibid.*

62. *In the Matter of David Dellinger*, 461 F.2d 389 (1972). For example, defendant David Dellinger received a sentence of two years, two months, and nine days. Abbie Hoffman received a sentence of eight months. Attorney Kunstler received a sentence of four years and thirteen days. The Court of Appeals for the Seventh Circuit reversed and remanded, holding *inter alia* that Judge Hoffman should have disqualified himself from hearing the contempt proceedings. Most of the charges were later dismissed. *In the Matter of David T. Dellinger*, 370 F. Supp. 1304 (1972).

63. *In the Matter of David Dellinger*, 461 F.2d 389 at 429. For this conduct Judge Hoffman sentenced Abbie to seven days in jail. On remand Judge Gignoux convicted Abbie, holding that this conduct “constituted an actual and material obstruction of the administration of justice.” *In the Matter of David*

*Dellinger*, 379 F. Supp. at 1314. However, Judge Gignoux also ordered that due to extenuating circumstances no sentence should be imposed (1323).

64. See text accompanying note 32.

65. Epstein, *The Great Conspiracy Trial*, 143.

66. Kunstler, *My Life*, 158: "Jack [Ruby] joined the army and was discharged after three years with a good record. But his growing violent outbursts and extreme sensitivity, almost paranoia, about anti-Semitism left those who knew him concerned about his mental stability."

67. Raskin, *For the Hell of It*, 76.

68. *Ibid.*

69. *Ibid.*, 80.

70. Indeed, on appeal before the Seventh Circuit and later in their new trial for contempt before Judge Gignoux, all of the defendants and their lawyers behaved in accordance with convention. One may, however, attribute this change in demeanor to their sober understanding of what was at stake rather than to the personalities of the judges before whom they appeared.

71. Raskin, *For the Hell of It*, 11: "As an adult [Abbie] would resent the fact that neither his teachers nor his parents had told him of the trial and execution in 1953 of Julius and Ethel Rosenberg." Jack Hoffman, Abbie's younger brother writes: "Later, when Ethel and Julius Rosenberg were accused of giving the secrets of the nuclear bomb to the Russians, they were accused not only of treason but, implicitly, of failure to assimilate. Their names were never mentioned in our house, not during the trial, or even later at the time of their execution in 1953. . . . We were Americans and Jews, in that order. Americans first." Hoffman and Simon, *Run, Run, Run*, 27. See also Jack Hoffman's description of the family's distress during the 1960s: "To some people we must have appeared as traitors of the same stripe as Julius and Ethel Rosenberg, whom people still thought of as archcriminals. Jewish acquaintances might say to me, 'what is your fucking crazy brother up to now?!! He's an embarrassment!'" (Hoffman and Simon, *Run, Run, Run*, 127). See also Jerry Rubin's free association concerning the connection between the trial and the Rosenbergs: "[The trial] was in the tradition of Socrates, Jesus . . . the Rosenbergs" (*We Are Everywhere*, 32).

72. In one instance, however, he called him "Fineglass." Another interpretation of Judge Hoffman's failure to remember attorney Leonard Weinglass's name is the disdain he felt toward anyone associated with the defendants or his discomfort with Eastern European Jewish names.

73. Anita Golove Shmukler, "The Chicago Seven Trial: The Rhetoric of Melodrama," Ph.D. diss., Temple University, 1976, 132. As late as 1967, Kunstler was sure that fear motivated American-Jewish judges to rule against defendants charged with national security violations. In the context of Morton Sobell's 1967 failed motion to vacate his conviction, Kunstler observed, "I am convinced that had (federal judge Edwin) Weinfeld not been Jewish, he would have ruled in Sobell's favor" (*My Life*, 93).

74. E. L. Doctorow, *The Book of Daniel* (New York: Penguin, 1996), 151.

75. Hanna Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil*

(New York: Penguin, 1994), 117. The charge of collaboration, however, appeared previously in Ben Hecht, *Perfidy* (New York: Julian Messner, 1961). Arendt does not mention the controversial *Perfidy*, but it is not impossible that her account of the conduct of the Jewish leadership in Eastern Europe during the Holocaust is based on Hecht's polemical book. For a discussion, see Pnina Lahav, "A 'Jewish State . . . to Be Known as the State of Israel': Notes on Israeli Legal Historiography," *Law and History Review* 19 (2001): 387, 420.

76. Hoffman, *Revolution for the Hell of It*, 15. The Eichmann trial was one of the defining events of the 1960s. Adolph Eichmann, chief executioner of Adolph Hitler's plan to murder the Jews, was kidnapped from Argentina and brought to Israel to stand trial. The Israelis put him in a glass booth, opened the courtroom to cameras, provided simultaneous translation into a variety of languages, and proceeded to document Nazi atrocities in all their gruesome details. See Pnina Lahav, *Judgment in Jerusalem: Chief Justice Simon Agranat and the Zionist Century* (Berkeley and Los Angeles: University of California Press, 1997), 146. One of the deepest wounds of Jews was the silence of the world during the Holocaust. Now Israel was trying to heal the wound by asserting the Jewish right to put the perpetrators on trial, for the whole world to watch. Among those who brought the trial to America was philosopher Hannah Arendt. Her book *Eichmann in Jerusalem* was a defining event for many on the New Left, who came to demonstrate in Chicago and sought a different path for America. The demonstrations in Chicago were primarily known for the chant, "The whole world is watching." The reader should decide if the deeper wound at the core of the Eichmann trial was reverberating in that slogan. One thing, however, is clear: many in the protest movement came to see the United States government as a 1960s reincarnation of the Nazi regime (see, e.g., Gitlin, *The Sixties*, 25).

77. Epstein, *The Great Conspiracy Trial*, 410. This scene becomes even more bizarre when one considers the fact that many of the marshals in the courtroom were of Polish descent. The Nazi death camps employed a large number of Polish and Ukrainian guards. The spectacle of Marshal Dobowski following Judge Hoffman's orders to restrain the seemingly persecuted and helpless defendants had an eerie aura about it.

78. *In the Matter of David Dellinger*, 461 F.2d 389 at 428. In another incident he said to the judge: "The Judges in Nazi Germany ordered sterilization, why don't you do that, Judge Hoffman?" (429). In *We Are Everywhere*, Jerry Rubin also discusses his Holocaust trauma: "When I was in Germany recently I felt very Jewish. Stew (Albert) and I freaked out when we saw a German in uniform. . . . We met Danny Cohn-Bendit [*sic*] . . . [and] said . . . 'Hey, we thought the subway conductor was taking us to a concentration camp,' and Danny jumped up and down and shouted, 'Me too! I feel the same way!'" (75).

79. Jules Feiffer, *Pictures at a Prosecution; Drawings and Text from the Chicago Conspiracy Trial* (New York: Grove, 1971), 93.

80. For a penetrating analysis of such political trials, see Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (New Brunswick, N.J.: Transaction, 1997).

81. Shoshana Felman, "Theaters of Justice: Arendt in Jerusalem, the Eichmann Trial, and the Redefinition of Legal Meaning in the Wake of the Holocaust," *Theoretical Inquiries in Law* 1 (2000): 465; Leora Bilsky, "In a Different Voice: Nathan Alterman and Hannah Arendt on the Kastner and Eichmann Trials," *Theoretical Inquiries in Law* 1 (2000): 509.

82. Hayden, *Trial*, chap. 4, "Our Identity on Trial"; chap. 6, "Their Identity on Trial," 29, 49.

83. Leonard Weinglass, Kunstler's cocounsel, relied on the Gospel of Matthew in his closing argument: "Christ said 'I have come here to set sons against fathers, daughters against mothers . . . ' and what he meant was that the new idea he was bringing, and this was a long time before our present generation gap, would set the old generation off from the new generation. That is the Passion according to St. Matthew, but you have to understand Christ, you would have to understand what he meant in order not to interpret that as a violent statement." *The Conspiracy Trial*, ed. Judith Clavir and John Spitzer (Indianapolis: Bobbs-Merrill, 1970), 558. In an interview with the author Mr. Weinglass explained that relying on the Gospel was meant to get to the hearts of the non-Jewish jurors. However, he did concede that invoking Christ may cause discomfort to Jewish listeners inasmuch as it may suggest Jewish responsibility for his death.

84. Jean Paul Sartre, *Anti-Semite and Jew* (New York: Schocken Books, 1995), 67.

85. See, e.g., Benjamin Harshav, *Language in Time of Revolution* (Berkeley and Los Angeles: University of California Press, 1993), 30 n. 13.

86. For example, Hannah Arendt, in her *Eichmann in Jerusalem*, titles her discussion of the alleged collaboration of the Yudenrat with the Nazis as "The Wannsee Conference, or Pontius Pilate" (112). She implies that just as the Jews handed Jesus over to Pilate (presumably knowing full well what consequences would follow), so the Yudenrat handed over the Jews to the Nazis.

87. Clavir and Spitzer, *The Conspiracy Trial*, 365.

88. Kunstler, *My Life*, 26–27.

89. *Ibid.*, 26.

90. *Ibid.*

91. Both Kunstler and Weinglass referred to Jesus in their closing arguments. Kunstler said: "To use these problems by attempting to destroy those who protest against them is probably the most indecent thing that we can do. You can crucify a Jesus . . . you can jail a Eugene Debs or a Bobby Seale . . . but the problems remain" (Clavir and Spitzer, *The Conspiracy Trial*, 567). For Weinglass see the passage quoted in note 83 above from Clavir and Spitzer, *The Conspiracy Trial*, 558. See also <<http://www.law.umkc.edu/faculty/projects/ftrials/Chicago7/Chicago7.html>>.

92. See generally Sartre, *Anti-Semite and Jew*, 84. In a similar fashion, it is arguable that Abbie's Jewish identity was rekindled when SNCC excluded him from their ranks. See text accompanying note 67.

93. *In the Matter of David Dellinger*, 428. In the spirit of political correctness, some interpreted the phrase to mean "Front Man for the WASP Power Struc-

ture" (Rubin, *We Are Everywhere*, 68). The original Yiddish, however, knows no distinction between WASPS and other Gentiles and is built on the premise that every "bad" move of a Jew in the outside world (before the Goyim) is damaging to Jews.

94. Hoffman, speech before the Jewish Federation Campaign.

95. *Contempt*, 209.

96. The compassion expressed by Kunstler did not prevent the judge from imposing on Kunstler a sentence of four years in prison for contempt of court. Nor did it prevent Kunstler, or any of the other members of the defense, from depicting Judge Hoffman in very negative terms.

97. Cuddihy, *The Ordeal of Civility*, 194.

98. See Prina Lahav, "The Chicago Conspiracy Trial: Character and Judicial Discretion," *University of Colorado Law Review* 71 (2000): 331.

99. Novick, *Holocaust in American Life*, 148–49.