

# The Great Bathroom Incident

The trial of the Conspiracy 7 continues in Chicago

Fifth Estate Collective

1970

**Editors' Note:** The trial of the Conspiracy 7 continues in Chicago and has turned into even more of a circus as the defense attempts to present its case. They are blocked at every avenue by senile Judge Julius (Magoo) Hoffman, who sustains every prosecution objection and denies every one that comes from the defense table.

The quality of justice is well illustrated by the following testimony between Federal Prosecutor Schultz, Magoo and Defense attorneys William Kunstler and Leonard Weinglass.

SCHULTZ: As I walked back to the counsel table, Your Honor, Mr. Rubin was laughing at me and snickering at me, and I pointed to the bathroom. I did this, Your Honor—

JERRY RUBIN: He said, "Go to the bathroom."

SCHULTZ: Your Honor.

RUBIN:—like it was a victory for you to force us to go to the bathroom.

SCHULTZ: I said that. It was not very professional of me, Your Honor. Apparently, I succumbed a little bit to Mr. Rubin's harassment that started four months ago, a procedure and technique they have been using on authorities and policemen all their lives. They have been trying it on Your Honor and on Mr. Foran and myself, and I did, I succumbed, and I pointed to the bathroom, and that was improper, and I'm sorry, very sorry that I did that...

KUNSTLER: (Defense attorney William Kunstler) I would like to have the record show a motion for a mistrial at this time. Mr. Schultz—

THE COURT: And the record may contain the Court's order denying it, Mr. Kunstler.

KUNSTLER: You haven't even heard my argument.

THE COURT: What did you say?

KUNSTLER: You haven't even heard my argument.

THE COURT: Oh, it has so little basis...

(Len Weinglass, the other defense counsel, opens the afternoon session with a written motion for a mistrial. This time the jury is not in the room.)

WEINGLASS: ..Now, Your Honor, that statement is the basis for the motion for mistrial. The Court, of course, is aware of the fact that if these seven men were on trial for an alleged bank robbery and the prosecution in the course of the trial for that bank robbery referred directly or indirectly to any prior criminal activity in the nature of bank robbery, that would be an automatic ground for a mistrial. Likewise, with these seven men on trial allegedly for inciting to riot, the prosecutor saying in front of the jury—and the jury was in at this time—that these men had all their lives been harassing authorities and policemen has the same effect as the prosecutor in a bank robbery case offering to a jury-his own testimony that these men have engaged in such activities before...

The Court, after Mr. Schultz made that statement, neither admonished Mr. Schultz nor directed the jury to disregard that statement. The prejudice is clear. It hasn't been wiped clean. It's in the mind of the jury. I don't think it can at this stage be eliminated...and is an adequate basis in law for a mistrial.

THE COURT: (leaning forward and yelling) Have you finished your presentation!!!

MR. WEINGLASS: I have not.

THE COURT: I asked a serious question of a lawyer, Mr. Marshall. Will you instruct the defendants at the table not to laugh out loud when I ask their lawyer a question. I shall not ask him any further questions, since I seem to provoke mirth every time I speak.

Mr. Marshal, I wish you would watch that.

(The Marshall tells everyone to be quiet. After a discussion about whether or not Bobby Seale can be called as a witness, Schultz addresses himself to the Great Bathroom Incident.)

MR. SCHULTZ: ...Secondly, with regard to the motion for the mistrial as to my statements. Your Honor, since this trial began in September there have been colloquies, one-way colloquies—I guess they're soliloquies in that case—from the defense table to Mr. Foran and myself.

They have been going on on a daily basis. They have been profane, they have been—as I mentioned before, they have related to our religious—that is—my religious convictions (note: Rennie Davis is alleged to have said that Schultz, a Jew, “would have been a prosecutor for the Nazis.”), they have related to our morals and they have gone on on a regular basis every single day. Some days they are more intense than others. On occasion I have called them to Your Honor's attention; other times we just let them pass. When they become extraordinarily bad, they are brought to Your Honor's attention, which we have done perhaps a dozen times.

Today, as I walked back to the counsel table—this morning as I walked back Rubin was making additional comments to me and I did as I stated to Your Honor, simply pointed to the bathroom, and then HE TOLD ME THAT HE WAS GOING TO DO IT ON ME. That is what he said. Then we—instead of going to the bathroom. That was the colloquy. I said nothing.

(The defense table, all the spectators, and half the marshals are laughing.)

THE COURT: Mr. Marshal, will you maintain order, please, at the table!

MR. SCHULTZ: I said nothing, and I sat down and then Mr. Rubin said what he said to Your Honor and I responded, and in my response I made this reference.

THE COURT: Sit up, Mr. Davis. Sit up!

THE MARSHAL: Nobody is touching him. You shut up too, Mr. Dellinger.

MR. DELLINGER: You don't have to say to shut up.

THE MARSHAL: I have been telling you all day.

(Four marshals surround the defense table. They are no longer laughing.)

MR. SCHULTZ: That little colloquy is typical of what has been happening...That is the device that they use, that is the device they use against authorities and they have been trying it on Your Honor for the last three and a half months and have found it very unsuccessful. They succeeded with me momentarily this morning.

Now the comment that I made I think should be stricken. I think it should be stricken. I want to point out, though, for the record that comment was belated, it should have been said perhaps three months ago out of the presence of the jury...I suggest to Your Honor that what you do very simply is when the jury comes in, very simply instruct them to disregard the colloquy and that we proceed with the trial.

MR. WEINGLASS: ...The Government concedes it was improper, it was wrong, that the jury shouldn't have heard it. But the Government thinks that in spite of all those facts which it concedes, that this jury trial can continue, and I submit it cannot. This is such a highly improper, such a highly prejudicial flagrant disregard of the rules that I don't think this jury, having heard an Assistant United States Attorney proclaim in open court—

THE COURT: Don't re-argue it!

MR. WEINGLASS: —that defendants have been engaged—

THE COURT: You said you were going to take a minute to reply. I am ready to decide this motion and to act appropriately.

MR. WEINGLASS: Your Honor, if I take a few more minutes longer than the minute, I don't think that—

THE COURT: Don't tell me you are going to take a minute and then take five minutes! I want to move along here!

MR. WEINGLASS: May I make a request for another four minutes?

MR. KUNSTLER: It was exactly a minute and a half.

THE COURT: I don't need your help here, Mr. Kunstler. Your associate is making a motion. When I need your help I will call on you.

MR. KUNSTLER: He wasn't keeping the time, Your Honor.

THE COURT: He didn't call on you for help. He didn't even look at you.

MR. KUNSTLER: I sensed his call somehow.

THE COURT: Sometimes your calls are senseless.

THE MARSHAL: Mr. Hoffman—

THE COURT: The motion of the defendants for a mistrial will be denied and in denying that motion let me say that yesterday I entered an order here forbidding the defendants from going out at their pleasure ostensibly to what has been referred to not infrequently by counsel as—"the bathroom." I have never sat in a case where lawyers mention that word as often. I wonder if you, Mr. Marshal, can keep that man quiet while I am speaking! I am trying to decide his lawyer's motion! Please go to him and tell him to keep quiet.

THE MARSHAL: Mr. Dellinger—

THE COURT: Let the record show that after I requested the Marshal to keep Mr. Dellinger quiet he laughed right out again, out loud. The record may so indicate.

MR. DELLINGER: And he is laughing now, too.

THE MARSHAL: And the defendant Hayden, Your Honor.

THE COURT: Mr. Hayden also.

MR. KUNSTLER: Oh, Your Honor, there is a certain amount of humor when talking about a bathroom—

THE COURT: Oh, I know that is your favorite reply.

MR. HOFFMAN: I laughed too.

MR. KUNSTLER: But people can't help it sometimes, Your Honor. You have laughed yourself.

THE COURT: I really have come to believe you can't help yourself. I have come to believe it.

MR. KUNSTLER: But that is true. A whole courtroom of people laugh when I say something and when you say something.

THE COURT: What I am saying is not very funny.

MR. KUNSTLER: I know, but you are so ultra-sensitive to laughter.

THE COURT: Will you sit down and not interrupt the court when a decision is being made?

All I ask from you, sir, is simple manners. I don't reach the question of the law.

MR. KUNSTLER: I know, but Your Honor, when you make a joke and the courtroom laughs, nobody is thrown out.

THE COURT: Just sit down. I have not made any jokes.

MR. KUNSTLER: I know, but you do from time to time.

THE COURT: I asked you to sit down during the rendering of this decision, sir!!

Let the record show that the defendant—rather, the defendants' counsel, Mr. Kunstler, on two occasions here refused to sit down when the Court directed him to sit down.

MR. KUNSTLER: Oh, that's not fair, Your Honor.

MR. WEINGLASS: He sat down, on both occasions, Your Honor. I must object to that.

MR. KUNSTLER: I sat down on both occasions.

THE COURT: (red with rage) I mean right now, in this decision.

MR. KUNSTLER: I sat down.

THE COURT: You did finally, after I urged you.

MR. WEINGLASS: Your Honor, that is not a fair characterization.

THE COURT: Will you sit down!!

MR. WEINGLASS: I think it should be on the record—

THE COURT: I am giving a decision, and if you don't sit down—he has sat down now.

Mr. Marshal, see that Mr. Weinglass remains in his chair while the Court is rendering a decision on this motion made by Mr. Weinglass.

I must go back to where I started.

Yesterday, because it was brought to my attention that the defendants, and several of them, have when it was thought that they were going to what has been referred to as “the bathroom” in this case, went out into conferences in the hall, to other rooms in the courthouse, even to another courtroom, which is contrary to the order of the Court, and because of that, yesterday I entered an order directing that if the defendants had to make use of toilet facilities, they would use the one to my left, over there, where the door is.

This morning Mr. Rubin flagrantly violated the order, got up and started to walk out, and it became necessary for the Marshal to bring him back, and it is more than passing strange that he didn’t use the facilities that were offered to him by the Court.

MR. RUBIN: I have to go to the bathroom.

THE COURT: Let the record show that Mr. Rubin immediately got up and walked into the facilities that were offered him by the court.

Oh, I’ve been through something like this before, but not often, not in the many years on the bench have I seen such a circus behavior.

Now that was, as I say, a flagrant violation of the Court’s orders.

I repeat, I deny the motion for a mistrial, and when the jury comes in, I shall direct the jury to disregard the remarks of Mr. Schultz.

Bring in the jury, Mr. Marshal...

And so it goes. “Teach” Hoffman and his band of stool pigeons, visible manifestations of a ship of state foundering on the rocks of its own contradictions. Julius Hoffman’s conduct would be pitiful or funny if his power were not so absolute; the Bobby Seale severance shows that each time he calls a defendant’s or a lawyer’s name can mean three months in jail.

In school it’s called detention. In court it’s called contempt, which is another way to say preventive detention.

THE COURT will have the last laugh unless he flips out completely and MR. MARSHAL has to drag his screaming, cackling eminence from the top of the desk. Here’s hoping we get the chance to yell, “There goes da Judge.”

Frank Joyce, Conspiracy staff member and frequent Fifth Estate contributor was arrested Jan. 6 during the testimony of Chicago Mayor Richard J. Daley at the Conspiracy trial. Daley’s lies on the stand were so blatant that persons in the courtroom began to boo and hiss.

Da Judge ordered the Marshals to remove those responsible and the pigs moved in and grabbed the closest persons to them. When they tried to drag out a fellow Conspiracy staffer, Frank intervened and got punched several times for his trouble and was accused of interfering with a federal officer, a felony which carries a three year sentence.

He was released on \$200 bond later the same day.

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