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The Chicago Seven and the Sanctuary Eleven: Conspiracy and Spectacle in U.S. Courts

This paper will discuss the extraordinary parallels between two trials: the 1969-1970 Chicago trial of seven (initially eight) anti-Vietnam war activists and the 1985-1986 Tucson, Arizona trial of eleven (initially fourteen) sanctuary activists. In each case, the federal government infiltrated dissident movements, indicted movement leaders on conspiracy and other charges and won convictions. The Chicago verdicts were overturned on appeal, but the sanctuary verdicts were upheld by the U.S. Supreme Court. In each case, defendants used demonstrations, the news media, and the courtroom itself to create a spectacle that embarrassed government officials, mobilized public support and undermined the authority of the verdicts. The similarities in the tactics adopted by each set of defendants are made more striking by the very different ways in which these two groups of defendants positioned themselves with respect to their communities: the Chicago defendants, in different ways and to varying degrees, positioned themselves outside of "the establishment" (see Epstein 1970:120-123); though critical of certain aspects of middle-class U.S. culture (Coutin 1993), Tucson sanctuary defendants emphasized that they were average Americans who belonged to mainline congregations. Examining the parallel ways that the Chicago Seven and the Sanctuary Eleven mocked the legal process suggests that such tactics were made possible by the very configuration of power levelled against defendants.

In stating that the defendants' strategies in these two cases derived from the form of repression they confronted, I do not mean to suggest that the defendants' actions were *determined* by those of the authorities. On the contrary, other defendants in similar cases have acted differently. For example, when tried for encouraging draft resistance, Dr. Spock of baby care fame, acted respectfully toward the court (Epstein 1970:117-118). Moreover, the tactics employed by the Chicago and Tucson defendants were shaped by the experiences that each set of defendants brought to the trial (see Merry 1990). Finally, there were historical connections between the anti-war movement and the sanctuary movement. Nonetheless, while the system of power that the Chicago Seven and the Tucson eleven confronted did not *determine* the form that their protest would take, it did create opportunities for challenging the government (see Foucault 1985, Abu-Lughod 1985, Merry 1990, Starr and Collier 1989, Mather and Yngvesson 1980-81, Thompson 1975). My analysis of these opportunities is based on the sanctuary trial transcripts, the Tucson news

media's coverage of the sanctuary trial, interviews with three sanctuary defense attorneys and four defendants, and post-trial fieldwork in the Tucson, Arizona and the Berkeley, California sanctuary communities. My sources on the Chicago conspiracy trial include written accounts of the trial (Schultz 1972, Epstein 1970), an edited version of the trial transcripts (Clavir and Spitzer 1970), and autobiographies of four of the defendants (Hoffman 1980, Hayden 1988, Seale 1978, and Rubin 1976).

Placing these political movements under covert surveillance, indicting leaders of the movements on conspiracy charges and successfully prosecuting movement members repressed the dissidents in three ways. First, these tactics disrupted movement activities. Surveillance led both anti-war and sanctuary activists to suspect their colleagues of being infiltrators and directed time, energy, and funding away from movement causes. Prosecution removed key movement members from action. Second, the government's tactics deterred potential participants. Through the trials, actual and potential movement participants learned that seeming sympathizers might actually be government agents, that, if convicted, movement members faced fines and imprisonment, and that even an acquittal would subject defendants to the punishment of being on trial (see Eisenstein and Jacobs 1977). Third, the government's decisions to investigate and prosecute movement members defined defendants' actions as crimes. What was at issue in these two trials was less whether a Chicago defendant told protesters to "kill the pigs," or whether a sanctuary defendant drove a Salvadoran into the United States, but rather whether or not such actions constituted crimes. In making this determination, jurors would both shape law and materially construct social reality (Silbey and Sarat 1987, Bourdieu 1987, Geertz 1983).

It may seem surprising that the tactics that disrupted movements also ultimately unified movements, mobilized additional participants, and portrayed the government as criminal, but this is, in fact, what happened in each of these cases. As Merry notes, "[L]aw constructs power and provides a way to challenge that construction" (1990:8). Defendants in the Chicago conspiracy and Tucson sanctuary trials discovered that being the objects of authorities' gazes allowed them to shape the images that this gaze produced. The publicity that displayed the state's powers of observation also gave defendants a forum for promoting their version of events. The conspiracy charges that disrupted movements also unified activists in opposition to a common foe. And the covert surveillance that deterred potential participants also mobilized sympathizers who were outraged over the governments' tactics. To publicize their views, unite their movements, and mobilize their supporters, defendants — with some help from the government — turned their trials into public spectacles.

The Chicago and Tucson defendants' decisions to use their trials to create spectacles should not be understood as a *rejection* of law, but rather a *use* of law. As Lawrence Rosen has

noted, "[T]he substantive and procedural ideas available at a given moment constitute the terms through which events are discussed, shaped, fought over, and fought for" (1989:5, see also Thompson 1975). Both the prosecutor and the defendants in the Chicago conspiracy and Tucson sanctuary trials appealed to the public's respect for the law (Macaulay 1987). Prosecutors suggested to onlookers that their own rights had been violated by individuals who resorted to bringing undocumented immigrants into the country, or organizing massive protests in volatile circumstances. For instance, Thomas Foran, a prosecutor in the Chicago conspiracy trial, argued that "this government provides for an opportunity to change law by law and not by disruptive tactics and not by the grossest kind of attack on the very values of the law itself" (Clavir and Spitzer 1970:162). Defendants countered that onlookers' rights had been violated not by the indicted, but rather by a government that had resorted to recording public speeches, infiltrating worship services, using violence against peaceful protesters and ignoring U.S. immigration laws. The Chicago Seven claimed that the true conspirators were not the defendants but rather the authorities who had sought to prevent anti-war demonstrations by ordering lower level officials to deny organizers' requests for permits. They further accused the Chicago police of having provoked riots by brutally attacking peaceful crowds of protesters. Similarly, sanctuary defendants claimed that undercover agents had performed most of the harboring and transporting of which defendants were accused, and furthermore, that these infiltrators had been alien-smugglers, perjurers, and pimps before they were recruited to work for the INS. In his opening statement, one defense attorney told jurors: "you would also expect in a criminal court like this to actually meet criminals. And you know what? You are going to meet ... criminals and they are going to be Government witnesses" (U.S. v. Aguilar 1986:2827).

To convince onlookers that they were not criminals, the defendants in the Chicago Seven and the Tucson sanctuary trials used a tactic that Mather and Yngvesson have called "expansion" — "mobilizing a vocal public around a particular rephrasing of a case, so that a perspective which may be in conflict with that of the community's power structure acquires some legitimacy" (1980-81:802). In his autobiography, Chicago Seven defendant Tom Hayden summarized this strategy: "The court of public opinion was our only hope.... We wanted to go beyond the narrow terms of the prosecution to the larger picture of what was going on in America that motivated us to take a stand in Chicago and, in turn, what was behind the government's indictment of us" (1988:381). The ability of the defendants to garner media attention was enhanced in each case by the fact that these trials had the potential to dramatize — and perhaps resolve — issues that the public was already debating. Even if the defendants had not sought publicity, by indicting religious workers for aiding the persecuted and by chaining and gagging a Black defendant attempting to represent himself. the government created the potential for spectacle.

To mobilize public opinion, the Chicago defendants structured their courtroom behavior for a larger audience comprised of jurors, courtroom spectators, the press, and the public (see also Santos 1977, Eisenstein and Jacobs 1977, Mather and Yngvesson 1980-81, Arno 1985). The Chicago conspiracy defendants continually interrupted proceedings, calling the judge a racist, asking a government witness if he really believed his testimony, and telling jurors that defendant Bobby Seale was being tortured by court marshals. Chicago defendants also used courtroom theatre, such as draping Viet Cong and U.S. flags over the defense table and doing a somersault outside the courtroom to show that the court was a circus. Pre-indictment political theatre was sometimes reconstructed in the courtroom, such as testimony about the defendants having nominated "Pigasus" — a pig purchased from an Illinois farmer — for president at a convention rally. In addition, defense attorneys put countercultural figures on the witness stand, such as Allen Ginsburg who chanted "hare krishna" for jurors, and courtroom spectators chanted "oink oink" when Bobby Seale called the judge a pig.

Like the Chicago defendants, indicted sanctuary workers and their attorneys directed their courtroom actions and statements not only at the judge and jury but also at spectators and journalists. Sanctuary defendants planned an "educational strategy" that would inform "the public about those issues of international law, human rights, and faith practice that are fundamental to sanctuary but will be concealed from the jury" (Corbett 1986:168). Defense attorneys tried to circumvent the judge's restrictions on admissible defenses, making the trial what one former defendant termed, "an interesting game to see how much we could get in in spite of his [the judge's] restrictions." Much like their predecessors during the Chicago Seven trial, sanctuary trial spectators cheered a defense attorney's closing arguments (Browning 1986), and defendants and their supporters came to court dressed in black on the anniversary of the assassination of four religious workers in El Salvador (A.S.D.F. 1985). However, because they sought to use their own stature as religious people to mobilize mainline U.S. congregations, indicted sanctuary workers were not as confrontational as were Chicago defendants. Unlike the Chicago Seven, indicted sanctuary workers largely remained silent in the courtroom and refrained from using obscene language or insulting the judge.

Courtrooms were sites of only part of the trial spectacle since defendants also made their case in the press, in the streets and in the pulpit. The Chicago defendants held regular press conferences, and, according to defendant Tom Hayden, the trial "develop[ed] a national television audience" (1988:378). In addition to holding press conferences, Tucson sanctuary supporters created a trial hot-line whose number was 1(800)LEV-1933 after Leviticus 19:33, a Bible verse that reads, "when a stranger sojourns with you in your land, you shall not do him wrong." The judges in both trials found the defendants' media success offensive. When

Chicago defendants requested permission to recess the trial for several days to enable Tom Hayden to consult with an attorney in California, the judge responded,

> We should have assurances ... that there will be no speeches made vilifying the Court or you [the prosecutors] or anybody connected with this case. I don't want to be lying in bed peacefully looking at television and suddenly see one of the defendants and hear him characterize me as a blackmailer (Clavir and Spitzer 1970:176).

Similarly, the judge in the Tucson sanctuary trial considered forbidding public statements about evidence that had been declared inadmissible (Turner 1985).

Defendants in Chicago and Tucson also sought to mobilize support through demonstrations. There were protests in Chicago when the trial began (Schultz 1972), when the trial judge issued arrest warrants for four defense attorneys who had helped to prepare the defense but who were not in court at the outset of the trial (Clavir and Spitzer 1970), when a higher court ruled that cameras and recording devices would not be allowed in the building where the trial took place, (Schultz 1972), and when five out of the seven defendants were convicted (Hoffman 1980). Chicago defendants even requested a recess so that they could observe a moratorium against the Vietnam War (Epstein 1970). Similarly, sanctuary defendants and activists organized events to mark significant moments during the trial. For example, at the scene at the sentencing of convicted sanctuary workers:

> The courtroom was jammed with supporters and press, with several hundred people waiting outside in the hot Arizona sun, hoping for a seat at the hearing. The walls outside the courthouse were draped with banners, including one with the Emma Lazarus poem from the base of the Statue of Liberty ("Give me your tired, your poor, your huddled masses yearning to breathe free..."). Across the street from the court, a local sculptor hung a lifesize figure of Jesus Christ on a wooden cross from a traffic light. One of the defendants, Socorro Aguilar, placed a rose in the Christ figure's crown of thorns before entering the courthouse [A.S.D.F. 1986:1].

Finally, sanctuary defendants took advantage of one forum that the Chicago defendants did not, the pulpit. Throughout their trial, Tucson defendants and their supporters held weekly ecumenical prayer services, while around the U.S., sanctuary communities celebrated the opening arguments, verdicts, and sentencing with religious ceremonies. Trial-related services featured bilingual prayers, Central Americans' stories of persecution and flight, biblical texts, songs from Central American Base Christian communities, quotations from such figures as Archbishop Oscar Romero and Anne Frank. The words of traditional hymns took on new meaning in light of the trial. By defining sanctuary as a religious practice, such services affirmed the defendants' claim that they were not criminals. A modified verse from

the Bible, John 8:32, became the defendants' motto: "The truth will set you free ... eventually" (Montini 1986).

By creating a spectacle, the Chicago and Tucson defendants sought to deprive the prosecution of the ability to deter, disrupt, and criminalize defendants and their movements. First, to counter the disruptive effects of the indictments, defendants and their supporters used the trials as an organizing tool. According to Chicago defendant Abbie Hoffman, the government's strategy of intimidating the New Left by indicting movement organizers backfired. Hoffman writes, "[T]he government had openly declared war on the antiwar movement at a time when factional disagreements threatened our ranks. When we really had no idea what to do 'after Chicago,' our enemies in the Justice Department gave us a new issue around which to fuel the national forum on the war" (1980:179). Sanctuary defendants likewise found that factions within the movement united around the trial. Volunteers poured into sanctuary congregations after indictments were issued and the number of publicly-declared sanctuary congregations doubled during the trial. One Berkeley activist reported that the trial "was the best media push we've ever had. It got a lot more people interested in us. It was a great fund-raising gimmick."

Second, to counter deterrence, defendants publicized their determination to continue the activities for which they were indicted, regardless of infiltrators or the threat of future indictments. The Chicago Seven continued to be active in anti-war and countercultural movements during the trial by speaking publicly, denouncing the government, and advocating further resistance. Similarly, after being indicted, one sanctuary defendant invited NBC to film him bringing two refugees across the border to apply for political asylum. Convicted sanctuary workers that had been given suspended sentences even persuaded the judge to modify probation conditions that would have prevented them from associating with anyone engaged in smuggling or transporting illegal aliens.

Finally, by mobilizing support for their interpretation of the law, defendants in the Chicago conspiracy trial and the Tucson sanctuary trial made the verdicts ambiguous. Ostensibly, the government won, at least initially, in both cases. Five of the seven Chicago defendants and eight of the eleven sanctuary defendants were convicted on at least some charges.

However, the fact that the courtroom was not the only place where legal truth was produced made the outcome of these two trials more complex. Even though the verdicts officially delegitimized the defendants' claims, by widely publicizing their rephrasing of the law, defendants affected the esteem in which the verdict was held. For example, post-trial interviews with jurors and spectators indicated that these trials left some observers with a sense that justice had not been done (Schultz 1972). Convicted Chicago and Tucson

defendants further undermined the significance of the verdicts by redefining the legal categories in which they had been situated. From the time that they were indicted, the Chicago defendants adopted the label "the conspiracy," defining this term as "to breathe together" (Hoffman 1980:195). Finally, as Susan Harding (1993) noted in her analysis of the Scopes trial, being portrayed as winning or losing a legal confrontation can be more important than actually winning or losing. Defendants in both cases insisted that, regardless of the outcomes of their trials, they and their movements would be vindicated by history. The Chicago defendants' claim was substantiated by the appeals process, whereas that of convicted sanctuary workers was not. However, since acquittals legitimize the legal process (Thompson 1975) and define individuals' lives within legal categories, albeit the category "not guilty," the Chicago defendants' ultimate victory was as ambiguous as the sanctuary defendants' seeming defeat.

The foregoing analysis of the spectacular tactics employed by defendants in the Chicago conspiracy and Tucson sanctuary trials speaks to a larger debate about the political implications of law. Some have argued that law is intrinsically hegemonic in that it is inextricably linked to dominant groups and power-laden practices. Such researchers have pointed to popular justice movements and legal pluralism as contexts in which "unsaturated" versions of law exist. Others have claimed that law is relatively autonomous of elite institutions and therefore a check on authorities' power. These two perspectives share the assumption that to the extent that law *is* connected to dominant systems and groups, it is oppressive. In contrast, the present cases suggest that it is not necessary for law to be autonomous in order to be counterhegemonic. The fact that legal categories saturate social reality in the United States enabled the Chicago and Tucson defendants to appeal to their own and the public's notions of legal justice. Moreover, the fact that the law is oftentimes a tool of the powerful does not make it exclusively hegemonic. In the two cases analyzed here, it was the *authorities'* use of the law that gave these two sets of defendants an opportunity to promote their interpretations of their own and the authorities' actions. Examining how legal meaning is produced and contested, whether in spectacular trials like the Chicago conspiracy and Tucson sanctuary trials or in more mundane cases and contexts, demonstrates that law creates potentials for both power and resistance. Individuals and groups either realize or undermine these potentials when they negotiate their way through the legal discourses in which they become entangled.

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