



THE TRIAL OF DR. SPOCK. *By Jessica Mitford. Knopf, 1969. \$5.95.*

Malcolm Burnstein

THE INCOMPREHENSIBILITY of our judicial procedure usually leaves the lay spectator with a feeling of boredom, disbelief, despair or some combination thereof. American trials often reveal heavy overlays of artificiality and theatricality (the Manual of Procedure for military trials is even called "the script" by military lawyers). Miss Mitford, however, has made even the boredom involved in the Spock trial take on an air of the pathetic and the hilarious; and she has exposed its theatricality as another device used to strip the judicial victim of his own humanity. Her insightful reporting is a welcome change from the usual journalistic treatment of judicial procedure, which is often more confusing than the real thing itself. The most serious criticism I can make of the book is that it is perhaps so funny in places as to blunt the basic tragedy in the U.S. government's attempt to jail the world's leading pediatrician for trying to save the lives of the babies raised on his advice.

Dr. Spock and cohorts sought a trial of the legality and morality of the Viet-

Nam war, and for that they were willing to take serious personal risks. But they did not get a trial of the war; the judge and the prosecution simply would not allow it. Moreover, the government resorted to the device of prosecution for conspiracy rather than for the substantive act of counseling draft resistance. Thus it was possible to get a conviction, whether or not the defendants had ever actually counseled or aided resistance to the draft. Under the conspiracy rules, it was necessary only to show that the defendants agreed, even tacitly, to so counsel or aid in the future. In such a tangled web of law the government, with the active aid of the trial judge, removed the war in Viet-Nam so far from the courtroom that the American Revolution and the First Amendment to the Constitution became substantially more important issues.

At best, therefore, the issue of the trial was: should Americans be allowed to engage in political attacks on government policy? As the judge refused to instruct the jury on First Amendment principles, the negative verdict was not surprising.

The conduct of Judge Ford was so outrageously partisan that only the recent antics of Judge Hoffman in the Chicago "conspiracy" trial can remind

us more vividly that in political trials we must expect unfair treatment, and we can only stare in awe at a judge who affords a political defendant and his counsel a modicum of fairness and decency. Miss Mitford has insured Judge Ford his well-earned place in a long line of domestic heresy seekers, inquisitors and xenophobes.

Political trials are strange and wonderful things. Almost certainly the judge and the prosecution will go to any length to keep the defense from raising or explaining the political issues involved—thereby leaving popular prejudice and misconception uncontradicted—and will seek instead to limit the issue to whether or not the defendant in fact did or said some specific thing. In addition to that peculiarity, it happens that in political cases the rulings on procedural matters and the sentencing after conviction almost always differ (and remarkably so) from such rulings in non-political cases. What ordinary "criminal" would be denied a short trial delay to allow his lawyer to recover from a gall-bladder operation? But Bobby Seale was denied precisely that right in the Chicago "conspiracy" trial. And what common disturbing-the-peace or unlawful assembly conviction carries a one year (or *any*) jail sentence, like those given to some of the students recently convicted of nothing more than attending an S.F. State College strike rally earlier this year?

THE SPOCK CASE involved five defendants and five sets of lawyers—some of them, especially the lawyers, trying as hard as possible to disassociate themselves from the others. If there had ever been a "conspiracy" between the defendants in Boston, Miss Mitford makes it clear that it had certainly disappeared by the time of the trial. In fact it was obvious to most observers, and to the Appellate Court, that there was not and never had been any conspiracy between the five defendants, either in the usual *or* the legal meaning of that term.

Essentially, what the government proved was only that some of the defendants took part in or agreed with various demonstrations and public statements opposing the war and encouraging draft resistance. However, the law of conspiracy is so vague and so confusing that it is easy to see how even relatively decent jurors could have been hoodwinked

by the judge and prosecutor into believing that it applied to those acts.

The reversal of the conviction by the Court of Appeals last July was in a way even less satisfying than the rulings of Judge Ford, for two reasons. First, the Appellate Court failed to vindicate the defendants' claim that the legitimacy of the war was a relevant issue. More disappointing, the Court gave little more consideration than did Judge Ford to weighing the conspiracy law against the guarantees of the First Amendment. Although the defendants won the appeal and will apparently never be retried, the government's weapon against political dissidents, the conspiracy prosecution, was hardly scratched, and the Chicago "conspiracy" trial is not likely to be affected at all by the Spock reversal.

All in all, the Spock trial was the finest hour for almost nobody except Miss Mitford. Dr. Spock himself fares best, for he departed least from his characteristic honesty, integrity, candor and humor. Several of the other defendants, particularly Reverend Coffin, were occasionally caught in trying to be both morally honest and legally sophisticated (apparently at the urging of counsel),

and were properly made to look the fool for the attempt. Judge Ford played Judge Ford. The prosecution team was composed of perhaps the worst breed of men, those who fail to see the dishonesty and hypocrisy of their own platitudes and who are thus doomed to continued self-righteousness. One was reminded of Hannah Arendt's description of the "banality of evil."

The various teams of defense lawyers (the absence of a single defense team being an obvious weakness and error) occasionally played into the government's hands in going by the government's rules. It is, of course, easy to criticize a loser, and that is not my intention here. Probably no defense would have won against Judge Ford; but Miss Mitford's description suggests that a more openly political defense might at least have made the loss a little less frustrating.

Malcolm Burnstein is one of the lawyers who successfully defended seven Bay Area activists against conspiracy charges arising from the 1967 Stop the Draft Week demonstrations.

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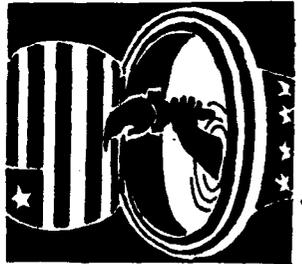
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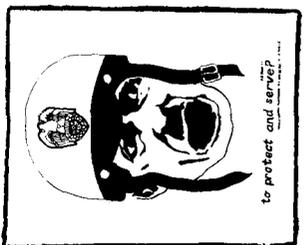
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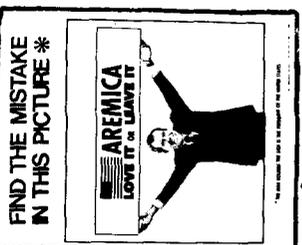
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Norman Mailer: Dialogue with a Non-mayor

Louis Grant

[1]

GRANT HAD BEEN unable to reach Mayor Mailer by phone to tell him he was coming to Gracie Mansion for an interview. Grant figured he knew why: "The phone rang one morning and Mayor Norman Mailer, operating on his own principle of war games and random play, did not pick it up. (It was taken for granted that nothing respectable would come out of the day if the morning began on the phone, and indeed during periods when the Mayor was writing he looked on transactions via telephone as Muslims look upon pig.)"

The last time Grant had seen Mailer was in March, at the National Book Award ceremonies at Lincoln Center. Grant had noticed Mailer there munching on a ladyfinger. The Mayor-to-be was dressed like Edmund Wilson in a dark striped suit and vest. There seemed to be a great deal of extra flesh on his face which, like Plasticine children's clay, could be molded to suit his mood. At the time, his face wore the mock-happy grin with which one accepts slaps on the back from people one does not admire or even care to know. Grant was reminded of something Mailer had written in "Some Children of the Goddess" for Esquire's Literary Prognostication Issue of 1963: "Nobody can live in the world

without shaking the hand of people he despises." But, Grant would have liked to ask, does one have to accept awards from them too? It seemed to Grant that Mailer had begun to do a great deal more of such handshaking than he had done in the past.

Mailer was a curious amalgam of pure genius and pure shit. How could he be so intelligent about others and so stupid about himself? Curiously, for all his crap about navigating the Upper Amazon of the eye, he could only see out, but not in. Otherwise, how could he permit himself to be put in the position of accepting an award for his least and easiest achievement, *The Armies of the Night* (a self-indulgent and flabby book, written from the viewpoint of the literary buffoon), from the same award-givers who had ignored his finest works, *An American Dream* and *Why Are We In Vietnam?* In the very book being honored (which perhaps should have been called *Evening the Score*), Mailer had slapped at this failure in judgment by the Award Committee: "In fact, the last time Mailer had heard of Mitch Goodman was when the latter had led a small group of protesters out of the large hotel banquet hall . . . at the National Book Award festivities in 1967. Mailer had not attended. He had been boycotting the affair for several years—not that it mattered to anyone, but Mailer thought it was the least he could do, since none of

his books had even been considered for an award, let alone given one."

And yet there he was, clasping to his starched shirt the booby prize, an award in the Category of Arts and Letters, telling one of his fustian jokes about why Sartre should not have turned down the Nobel Prize, in order to explain—yes, he knew explanations were in order—why he was accepting a National Book Award. Grant wondered if Mailer had taken seriously his nomination for the Nobel Prize by Eliot Fremont-Smith, the New York Times' daily book reviewer of years past. The Times did a lot of Nobel-nominating. Grant had noticed that reviewer John Lenard had just nominated Nabokov for a Nobel. Perhaps Mailer thought the Times dispensed the Nobel Prizes as well. Mailer seemed somewhat confused. You could see the hatred he felt for the incomprehensible Jerzy Kosinski, who had been allowed to perch—without fanfare, bullshit or bombast, a thin, insubstantial ghost of a man—in the gilded cage of the Fiction Award Mailer himself had coveted. Why then did he accept the award? Because (endearing honesty! good fellowship!) he liked prizes.

If he had ever really resembled a fighter (perhaps he did somewhat back in 1963), Mailer resembled far more the caricature of a fighter in March, 1969. He was the Rocky Graziano of Contemporary Letters, living "in the sarcophagus of his image." (Little did Grant know at the time that he was also the John Lindsay.) Mailer had become a professional celebrity. For some time Grant had wondered when Mailer, like the former greats of all the professions, would begin making television commercials. Grant could envision Mailer selling Halo Shampoo for \$5000 a minute. Perhaps in March that was Grant's vision of the Apocalypse: Norman Mailer pitching Halo Shampoo on NBC. "Want a fuck? Try Halo," says Mailer, sticking his head out from behind the shower curtain. "All us novelists use it." Perhaps now, in view of recent events, Grant had another vision of the Apocalypse: Norman Mailer playing Mayor of New York.

[2]

"I REFUSE TO SAY I'm serious," Mailer told a small crowd at a fund-raising party. He hunched and rolled his shoulders like a fighter, which