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DELAY IS FOUGHT IN PANTHER CASE

Postponement of Hearings Challenged by Defendants

By EDITH EVANS ASBURY

The indefinite postponement of the pretrial hearings of 13 Black Panthers until they sign promises to behave was challenged yesterday as unconstitutional in State Supreme Court in Queens.

Fifteen black lawyers, joining the six lawyers who have been defending the Panthers, applied for a writ of habeas corpus. An order directing a hearing Monday in Supreme Court, 125-01 Queens Boulevard, Kew Gardens was signed by Supreme Court Justice John J. Leahy.

The application was filed in Queens because all of the male defendants are jailed there. One of the women defendants is free on bail and the other is being held in Manhattan, in the Women's House of Detention.

With one exception, the 13 Black Panthers have been in jail since their arrest April 2, 1969, on harges of plotting to bomb pbliuc places, attempted arson and attempted mrder.

This incarceartion, for lack of bail ranging from $50,000 to $100,000, was cited as one of the reasons for the defendants' courtroom behavior, in the petition yesterday.

"Withiout for a moment agreeing that the conduct of any one of the petitioners was in fact contumacious, "the petition states," their acts and statements made during the course of the pretrial hearings were the result of their being harassed, coerced, threatened, beaten, held in bail so high as to be tantamount to no bail at all; incarcerated for a period of 10 months under jail conditions, which, until remedied by order of a Federal court were barbjous, knowing that one of their number was near death as a result of beatings and gross neglect and callousness on the part of the Department of Correction and the courts, and, realizing full well that they were mere pawns in a studied and calculated plan on the part of national and local officials to literally eliminate them for being members of the Black Panther party."

The ill defendant referred to is Lee Berry, an epileptic, whose trial has been severed because of his illness, and who is in Bellevue prison ward in lieu of $100,000 bail.

Justice John M. Murtagh, who has been presiding over pretrial hearings on motions for suppression as evidence of guns seized in the homes of the defendants when they were arrested, halted the hearings a st week.

Since they began Feb. 2, the hearings have been characterized by disturbances among spectators and defendants. The latter kept up a stream of invective, despite frequent admonitions from the judge and the sentencing of two spectators to jail for contempt.

Prof. Leroy D. Clark of New York University Law School, and Prof. Herbert Reid of Howard Law School (currently visiting professor at Boston College Law School) will present oral arguments for the writs in Queens Supreme Court Monday. They are among the 15 black lawyers who signed the petition as "of counsel."

Judicial Precedent at Issue

Three of these lawyers, including Professor Reid, are members of the National Conference of Black lawyers, which held a news conference yesterday at its office, 112 West 120th Street, at which Haywood Burns, national director, and Professor Clark spoke.

Mr. Burns said that the conference "views Judge Murtagh's order with grave concern, not only because of what we take to be the invasion of the rights of these defendants, but also because of its dangers as a judicial precedent which may be applied to other political and unpopular defendants."

Professor Clark characterized the ruling as one "which only hurts the indigent who cannot raise excessively high bail." The ruling, in effect, holds the defendants in contempt, "without the safeguard provided to those who are held in contempt," that is, specification of charges, and an opportunity for defense and appeal.

He also contended that Justice Murtagh's demand for a written promise by the defendants to behave was asking them to admit prior criminal behavior."

"In other words," Professor Clark said, "they have already been found guilty without due process of law as guaranteed by the Constitution and laws of the United States and the State of New York."