TUESDAY, MARCH 3, 1970

Panthers Cite Murtagh's Arrest In '51 on Neglect-of-Duty Charge

By LAWRENCE VAN GELDER

The reference yesterday by the 13 Black Panther defendants to Supreme Court Justice John M. Murtagh as a "judge who has admitted, in fact, been indicted and arrested for ignoring 'police' graft and corruption" relates to events in 1951 and 1952.

In May, 1951, Mr. Murtagh, then the Chief City Magistrate, was arrested in Kings County Court after the Kings County District Attorney charged him with "neglect of duty" during Mr. Murtagh's service as Commissioner of Investigation in the administration of Mayor William O'Dwyer.

Mr. Murtagh was accused of failing to report to the Mayor flagrant instances of systematic police graft from bookmakers. The complaint asserted he was bound by law to do so. Mr. Murtagh never formally answered the complaint, but he denied the charge—a misdemeanor—and challenged the legality of the action on jurisdictional grounds.

Criminal Action Invalidated

In October, 1951, the Court of Appeals invalidated the criminal information filed by the Kings County District Attorney on the jurisdictional ground that the alleged crime could be committed only where the duty was required to be performed — in New York County, not in Kings County.

But the case wos not ended. It was transferred to Manhattan, where Frank S. Hogan, then as now, was the District Attorney.

A grand jury investigated for two and a half months and rendered a 40-page report that was critical of Mr. Murtagh but concluded that the charge against him "cannot be sustained."

Mr. Murtagh refrained from comment when the report was issued.

The report, which referred to Mr. Murtagh as the defendant, said in part:

"Our conclusion that there was no concealment of information by the defendant from the Mayor and that his manner of oral reporting fulfilled the statutory requirements by no means imports a belief on our part that the police investigation conducted by the defendant was satisfactory or that his failure to submit written reports to the Mayor should not be criticized."

The report also said: "The defendant's explanation that this was a continuing investigation of a sort which did not require written reports to the Mayor does not satisfy us. On the contrary, we are moved to speculate whether avoidance of the written word was not deliberately employed, under the Mayor's guidance, out of fear that recorded criticisms might prove embarrassing to O'Dwyer and his administration."

Mr. O'Dwyer, who appointed Mr. Murtagh to the bench, resigned te mayoralty in September, 1950, and at the time of the grand jury investigation was Ambassador to Mexico. The report criticized Mr. O'Dwyer for failing to appear as a witness before the grand jury.

Testimony before the grand jury adduced the information that 45 high-ranking officials and 300 rank-and-file member of the Police Department's plainclothes division had been examined by Mr. Murtagh and his investigators about their knowledge of bookmaking operations and gamblers.

Memorandums on these interrogations were prepared, according to the report, which noted:

"Strangely and unaccountably, all of these memoranda, more than 100 in number, appeared to have vanished in thin air.

"Neither the defendant or any member of his staff has been able to explain the mystery of the missing memoranda."

No Evidence Against Defendant

The grand jury stressed that there was "no evidence that the defendant had anything to do" with the disappearance of documents from the file. It was noted that in 1951, the previous year, the Kings County District Attorney, Miles F. McDonald, was able to have the material retranscribed from the original stenographic notebooks, kept in the Commissioner of Investigation's office.

Mr. Murtagh, who was regarded as a protége of Mr. O'Dwyer, served in the $10,000-a-year post of Commissioner of Investigation from January, 1946, through February, 1950 when he was named Chief Magistrate, a position that carried a salary of $15,000 a year.

In March, 1951, he and Mr. O'Dwyer testified before the Senate Crime Investigating Committee at the United States Court House here. Mr. Murtagh told the committee about his investigation of gambling and said that "analysis indicated widespread corruption" in the Police Department. He said his investigation did not turn up any evidence of a bookmaking operation run by Harry Gross in Brooklyn.

Gross was convicted and sent to jail for four years.

Kings County District Attorney McDonald's investigation of the Gross empire, which was undertaken in 1950, led ultimately to the indictment of 77 policemen, the resignation of hundreds more and the suicides of three.