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HEARINGS CLOSE FOR 13 PANTHERS

Written Briefs Due Before Conspiracy Trial Starts

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The often-stormy pretrial hearings of 13 Black Panthers accused of plotting to bomb public places were adjourned yesterday to permit preparation and submittal by both sides of written briefs.

Supreme Court Justice John M. Murtagh opened yesterday's session with the usual warning to the spectators to behave lest he be forced to take "stern measures." It closed with his declaration that he was ready to begin picking a jury "tomorrow morning" but would accede to the defense lawyers' request for an indefinite adjournment.

Charles T. McKinney, one of the six defense lawyers, informed Justice Murtagh that their questions to jurors would be conditioned on his rulings on the motions and that therefore they were requesting the adjournment "with reluctance."

2 Appeals Rejected

Two of the defense motions were settled by decisions of the Court of Appeals in Albany published yesterday.

In one action, the Court of Appeals affirmed an Appellate Court ruling that the assignment of Justice Murtagh to preside over their pretrial hearings was in accordance with the rules of the Supreme Court. The defense had argued that the New York County system of empowering the District Attorney to move a case in the court of his choice denied them due process of law.

In its other action, the Court of Appeals, in effect, dismissed the defense motion challenging the constitutionality of the grand jury that indicted the Panthers.

The decision was rendered in the *People v. Chestnut, Etc.*, a four-year-old case that also involved Justice Murtagh, Assistant District Attorney Joseph A. Phillips and Sanford Katz, one of the defense lawyers in the Panther case. The court held that the mere absence of minority-group representation on a grand jury did not prove there was intentional discrimination in the procedure by which the jury was selected.

Minority Jurors Sought

In one of the Panther hearings, the defense established through an examination of selection procedures that minority groups were not well represented on the panels. Officials said they were trying to remedy this but were having difficulty persuading minority representatives to serve.

Chief Judge Stanley H. Fuld, writing for the unanimous Court of Appeals, said in the decision published yesterday that under-representation because of unwillingness of minority members to serve was "unfortunate" but did not establish unconstitutional discrimination or indicate that a compulsory system to insure minority representation should replace the present voluntary system in New York County.

The Panther pretrial hearings began Feb. 2. During the first three weeks they were frequently disrupted and adjourned because of unruly be-

havior on the part of both defendants and spectators. Twice Justice Murtagh sentenced unruly spectators to 30 days in jail for contempt, and he cited a third who was, however, let off after apologizing.

The proceedings became so steadily noisy that Justice Murtagh finally halted them on Feb. 25 with the warning that they would not resume until the defendants, all but one held in jail in lieu of high bail, promised to behave.

Hearings Resumed April 7

During the recess, the United States Supreme Court, in another case, *Illinois v. Allen*, held that the trial of an unruly defendant could be held in his absence. The defendants immediately notified Justice Murtagh that they were "ready to stand trial," and the hearings resumed quietly April 7.

The prosecution proposed testing a closed-circuit TV system for relaying the proceedings to the defendants should they misbehave again. Justice Murtagh deferred consideration of this, saying he intended to use "sparingly, intelligently and in moderation" the new "legal tools to maintain order" provided by the Supreme Court.

In recent weeks the spectators became predominantly young white men and women, apparently college students. Occasionally they became restive, sometimes laughing or snickering, but only one—"that bushy-haired man"—was singled out by Justice Murtagh, and he was merely escorted from the courtroom.

The justice criticized the lawyers for both sides for not moving more rapidly to complete the hearings, which have

piled up a transcript of 5,184 pages. These notes, and preliminary motion papers amounting to nearly 1,000 pages, plus wiretap transcripts totaling 1,000 pages, will have to be studied by all of the lawyers and Justice Murtagh before the trial itself begins. Sixty-nine witnesses testified.

Justice Murtagh will not rule on the various defense motions until written briefs have been submitted and the prosecution, consisting of Mr. Phillips and Assistant District Attorney Jeffrey Weinstein, has had a chance to reply with written briefs.

Justice Murtagh also informed lawyers yesterday that he would "grant oral argument if you feel the need."

Unofficial estimates of when the jury selection might begin varied yesterday from Aug. 1 to Labor Day.

Ten of the pretrial hearings concerned motions to suppress evidence, including guns and explosive powder, seized in pre-dawn raids at the apartments of the defendants when they were arrested April 2, 1969. The defense alleged the seizures were illegal because the police had no search warrants.

Other hearings involved confessions allegedly made by the defendants and the possibility that some evidence was gained as a result of illegal wiretaps.

The 13 Panthers facing trial include two women. One of the women, Afeni Shakur, and Richard Moore are free in bail of \$100,000 raised by contributions. The others have been in jail in lieu of high bail since their arrest on April 2, 1969.

Twenty-two Panthers were indicted originally for allegedly taking part in a conspiracy to bomb police stations, department stores, railroad facilities and the Botanical Garden in Bronx Park. They are also charged with attempted murder, attempted arson and possession of dangerous weapons.

Nine of the alleged conspirators are either still at large, in jail in New Jersey, or have their trials severed.