

How to Control the Court

"I've been called a pig once too often," said New York Supreme Court Justice John M. Murtagh last week. With that he recessed the pretrial hearings of 13 Black Panthers accused of plotting to blow up department stores, police stations and the New York Botanical Garden. Murtagh's ire was understandable. For 13 days the defendants directed streams of verbal vitriol at the bench and the prosecuting attorneys, bringing courtroom proceedings to a virtual standstill. Murtagh's solution: let the Panthers cool off in jail until they agree in writing to follow the traditional rules of courtroom decorum. He may have a long wait.

The shouts and curses and laughter of the Panthers are tactics of confrontation that were developed in the street. As the Chicago Seven ably demonstrated, determined men can disrupt a trial at will. And many defendants' apparent disdain for punishment has rendered the traditional judicial fetters—contempt citations, gags and shackles—largely ineffective.

TV Trial. Obviously a judge has to maintain order in his court, but ordering physical restraints is often futile. Bound and gagged, Bobby Seale still managed to squeal and squirm enough to disrupt the Chicago proceedings. Besides, the sight of a bound prisoner is repugnant to most Americans. And a gag only supports defendants' claims that they are being silenced for their political views. Judge Julius Hoffman finally ordered Seale to jail to await trial alone.

Jurists are now pondering new ways to restrain unruly defendants without violating their constitutional rights. Judge Murtagh's approach is simple but still may prove ineffective. Like Judge Hoffman in Chicago, Murtagh believes that the defendants will eventually play by

the rules if they are punished enough. But the Panthers may well choose to remain in jail while they petition the federal courts for release on constitutional grounds. At the same time, lengthy incarceration will enhance their image as martyrs to judicial prejudice. That image is already well formed; twelve of the 13 have been in jail since last April because they were unable to raise high bail.

To bring order to the court, a committee of lawyers and architects is investigating the use of glass isolation booths in which a defendant can hear the proceedings but not be heard himself. Such a booth was employed in the 1961 trial of Adolf Eichmann. But in that case the Israeli prosecutors used it to protect Eichmann from possible assassination—not as a muzzle. Even so, the booth smacks of suppression like the gag.

Defense Lawyer Louis Nizer has suggested keeping an unruly defendant in his cell and letting him tune in to the trial via television. Other lawyers advocate closed-circuit television coupled with a telephone line to permit the defendant to converse with his lawyer. There may be legal obstacles to such a scheme; the Sixth Amendment gives a defendant the right "to be confronted with the witnesses against him," and the courts have yet to rule if mere television images and telephone lines can provide that confrontation. However, the Seventh Circuit Court of Appeals ruled last summer that the rights of William Allen, who was convicted of robbing a tavern in 1957, had been violated when he was removed from the courtroom because of his unruly behavior. His case, which was argued before the Supreme Court last week, should shed light on the question of physical presence.

Legal Scapegoats. Judges are also worried by the growing belligerence and uncooperative attitudes of defense at-

torneys in political cases. "When lawyers don't play by the rules, a trial doesn't work," warns Second Circuit Appeals Judge Irving Kaufman. But some attorneys are radicals and rebels themselves; they often refuse to act as officers of the court. At times, both in Chicago and in New York, defense lawyers seemed as intent on confrontation as their clients were. This attitude infuriated Judge Hoffman and moved Judge Murtagh to comment critically that "counsel in no way admonishes his client when these outbursts occur." To that, Panther Defense Attorney Gerald Lefcourt retorted: "The judge has been trying to use the lawyers as scapegoats because he has absolutely no control over the defendants."

Ultimately, order in the court rests on the dignity and self-control of the individual judge. Judge Hoffman allowed the Chicago Seven and their lawyers to goad him into displaying an obvious bias in favor of the prosecution. By contrast, Judge Murtagh so far has stoically put up with Panther provocations day after day, and even adjourned the trial just when the defendants wanted to commemorate the birthday of Panther Huey Newton. He had clearly studied the experience of colleagues—like U.S. Court of Appeals Judge Harold R. Medina, who says: "With these disruptive people, the more you kick them around or the more you clear the court, the more unruly they become." Medina speaks from experience. By controlling his temper, he managed to maintain order while presiding over the potentially explosive 1949 trial of eleven Communists determined to disrupt the proceedings.

Whatever methods of control prove best, most judges agree that the current courtroom anarchy cannot be permitted to continue. As Professor Delmar Karlen of the Institute of Judicial Administration put it: "If we don't have control in the courtroom, it is the end of the courts, it is the end of individual liberty, it is the end of government. It is that serious."



MEDINA



EICHMANN



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