

ANOTHER HEARING TO RESUME HERE

Murtagh Holds Motion by 13 Defendants Contains Vow to Behave in Courtroom

By EDITH EVANS ASBURY

Thirteen Black Panthers accused of plotting to bomb public places here notified Supreme Court Justice John M. Murtagh yesterday that they were "ready to stand trial," and set April 7 for resumption of pretrial hearings.

In granting the motion, Justice Murtagh informed the defense lawyers that, so far as he was concerned, it contained an "acceptable" promise to observe judicial law prohibiting disorderly conduct in the courtroom.

He had halted the Manhattan hearings on Feb. 25 because of unruly courtroom behavior by the defendants and had said at the time that he would not resume the hearings until the defendants promised in writing to behave. This they have refused to do.

Halt in Hearings Upheld

Yesterday Gerald Lefcourt, one of the six defense attorneys who presented the defendants' oral motion to resume, protested that they had not authorized a promise to behave, but Justice Murtagh ended the session by saying:

"I have handed down a 20-page opinion strongly endorsing Justice Murtagh's handling of the case and dismissing the defendants' petition that challenged Justice Murtagh's right to halt the hearings.

The habeas corpus petition had been brought in Queens because the eleven men defendants were in prison there in lieu of bail ranging from \$50,000 to \$100,000. Two women defendants, one of whom has been released, had been held in Manhattan in lieu of \$100,000 bail.

The National Conference of Black Lawyers had joined in the Queens petition, which was

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argued orally by two law professors, Leroy D. Clark of New York University and Herbert Reid of Howard University. The NAACP Legal Defense Fund, Inc., had intervened as friend of the court.

Justice Leahy declared that his reading of the record of the hearings "shocked the very conscience of the Court."

'Vile' Behavior Cited

"The conduct and language of the petitioners . . . the unending vilification heaped upon the Court, the almost uninterrupted flow of vile, demeaning, vicious, base and threatening language shouted by the petitioners in open court must be unparalleled in court history," he wrote.

"It is very apparent from an examination of the minutes of the pretrial hearings that these defendants, with the knowledge and silent acquiescence of their counsel, indulged in a course of conduct for the sole purpose of disrupting this trial, with the ultimate view of depriving the People of the State of New York of trying these defendants for the crime which it is alleged they have committed," Justice Leahy asserted.

Defense lawyers had argued that Justice Murtagh had deprived the defendants of their right to a speedy trial and had violated their constitutional protection against self-incrimination by making their promise to behave a condition for resuming the hearings.

"In view of the atrocious, unprecedented conduct of the petitioners," Justice Leahy wrote, "this Court finds Justice Murtagh's request for a statement as to the petitioners' intentions for their future conduct

to be very reasonable and to give the Court the opportunity to proceed expeditiously, for petitioners' benefit, with the trial "without necessitating some other time-consuming method."

The defendants' lawyers had also argued that the Murtagh "formula" for quieting the courtroom discriminated against poor defendants unable to make bail. Wealthy persons free in bail would simply stay home under an order indefinitely halting a trial, the lawyers maintained.

Justice Leahy declared that this argument overlooked "the absolutely clear-cut, statutory and inherent authority and power of the court to remand to jail defendants on bail in order to curtail interference with the expeditious trial of the case."

Justice Leahy commented that "despite the persistently deplorable conduct of the petitioners, the record indicates that Justice Murtagh conducted the proceedings in the highest traditions of the law, in order to give a fair, orderly and speedy trial to the petitioners, and he certainly evinced the finest sense of judicious temperament."

Murtagh Reads the Law

Justice Murtagh's icy calm, maintained throughout proceedings that included fistfights, screams from spectators and personal insults to him from the defendants, cracked a little yesterday, and his voice rose angrily, during argument with defense lawyers over whether the defendants had promised to behave.

He repeatedly read, with slow, sharp enunciation, the section of the Judiciary Law forbidding courtroom disturbances.

He also suggested to Mr. Lefcourt that "instead of disagreeing with the law, you learn the law and interpret it to your clients."

Mr. Lefcourt insisted that he was not authorized by his clients to make a commitment concerning that section of the Judiciary Law, "and I don't see the relevance."

"Perhaps if you read Judge Leahy's opinion, you would see the relevance," Justice Murtagh said.

The lawyers were reading copies of the opinion as the hearing began yesterday in Justice Murtagh's court. It had been handed down in Queens shortly before noon.

'Regret' by Justice

That hearing before Justice Murtagh was set last Tuesday after the Justice summoned the lawyers and invited them to persuade their clients to move for resumption of the pretrial proceedings.

Yesterday, when he received the motion and granted it, Justice Murtagh commented: "My only regret is that counsel could not have persuaded the defendants at an earlier time."

A week earlier Justice Murtagh had warned the lawyers that unless the defendants promised to behave, the trial might proceed in their absence.

Subsequently Assistant District Attorney Joseph A. Phillips petitioned for resumption of the hearings, asking that closed-circuit television be used to relay the proceedings to the Panthers outside the courtroom, if necessary.

Mr. Phillips said yesterday out of court that arrangements for possible use of this method of trial were still going forward.

Confrontation Issue Raised

Mr. Lefcourt opposed Mr. Phillips's motion, asserting that it would violate the defendants' constitutional right to confront their accusers; that it would

prejudice the jury against them and deprive them of close contact with their lawyers.

The United States Supreme Court is considering a case concerning this right to confrontation, and both Mr. Phillips and Justice Murtagh have said they "eagerly await" the decision, which is expected to set guidelines.

The most vociferous defendant, Richard Moore, also known as Analye Dahruba, was freed last week when \$100,000 bail was posted by contributors, including Abbie Hoffman, the Yippie leader.

Mrs. Afeni Shakur was also released, just before the hearings began Feb. 2, when her \$100,000 bail was posted by a group of churches.

The defendants were arrested April 2 during pre-dawn raids that the police say disclosed they had dangerous weapons and ammunition in their homes.