

## 13 Panthers May Be Tried in Absentia

By EDITH EVANS ASBURY

Unless 13 Black Panthers accused of plotting to bomb public places promise to behave in the courtroom, their trial may proceed without their presence, Supreme Court Justice John M. Murtagh declared yesterday.

Justice Murtagh halted pre-trial hearings in the case on Feb. 25, because of the defendants' unruly behavior, and informed them he would not resume hearings until they promised, in writing, to behave.

Their response to date has been a letter of refusal, an application for release from jail on the ground that the suspension of their pretrial hearings was unconstitutional, and a memorandum to the United States Supreme Court urging it to expedite consideration of an earlier application for reduction of bail.

### One Decision Pending

Queens Supreme Court Justice John J. Leahy has reserved decision on the application for release from jail. It was filed in Queens because that is where the 11 men defendants are being held, in lieu of bail amounting from \$50,000 to \$100,000.

Justice Murtagh's comments yesterday were made at a hearing before him on an application by Joan Bird for reduction of bail. She is being held in lieu of \$100,000 bail in the Manhattan Women's House of Detention.

Like the 11 men defendants, Miss Bird has been in jail since all were arrested last April 2 on charges that include conspiracy to bomb department stores and other public places, attempted arson, attempted

murder and possession of dangerous weapons.

Sanford Katz, attorney for Miss Bird, argued that she was entitled to reduction of bail because her inability to satisfy the present amount necessitated "continued incarceration, constituting cruel and inhuman punishment."

### Defendant Called 'Sheltered'

Mr. Katz described Miss Bird as a "bright, lovely, sensitive, courageous young lady" who had led a "rather sheltered life" as a parochial-school student during the first 20 years of her life. He promised that if released, she would not violate any order of the court, not engage in any antisocial or criminal conduct and would be present in court whenever required.

Assistant District Attorney Joseph A. Phillips conceded that Miss Bird had been less disruptive than other defendant in court. However, he said the Black Panther party had rejected her in favor of Mrs. Afeni Shakur, who, he said, "after she was bailed out, made speeches urging others to get guns or bazookas and do something for the revolution."

Mr. Phillips said he had asked churches that put up bail of \$100,000 to consider Joan Bird instead of Mrs. Shakur, but had been told Mrs. Shakur was the choice of the party. Mrs. Shakur, who had also been in the Women's House of Detention since April 2, 1969, in lieu of \$100,000 bail, was released shortly before the pre-trial hearings began Feb. 2.

### Unruly Hearings Halted

Those hearings were characterized each day by uproarious behavior among spectators and defendants, culminating in

violence and injuries to three officers and two defendants.

Justice Murtagh finally imposed order among spectators after holding three in contempt and sending two to jail for 30 days each.

For a day, the defendants subsided, and even apologized to Justice Murtagh because "someone" had tried to fire-bomb his home over the preceding weekend. Outbursts and insults poured forth again the following day, however, and Justice Murtagh halted the hearings.

Yesterday Justice Murtagh struck down one of the arguments used by 13 members of the National Black Lawyers Conference and two law professors in challenging the constitutionality of his ruling.

They had argued that in signing a promise to behave, the defendants would be making a self-incriminating admission that they had previously been guilty of misconduct.

### An 'Out' Offered

Justice Murtagh declared that the defendants could make the promise "with the provision promise "with the provision that it is no way to be construed as an admission of prior misconduct or an admission of any kind."

However, he asserted, until such promise was forthcoming, neither Miss Bird nor any of the other defendants had a right to release before trial, because they were not "ready to stand trial."

Delaying trial by misbehavior is the same as delaying it by fleeing the city, as two of the defendants did to escape arrest and as one did after being released in \$25,000 bail, Justice Murtagh commented.