## When Is Bail Excessive?

When 16 Black Panthers go on trial in Manhattan this week, the official charges will include conspiracy to bomb subways and department stores. Yet a *de facto* trial has already occurred on far cloudier issues. The case is a classic example of how official disregard for procedural rights creates a "political" trial in which truth is the first victim.

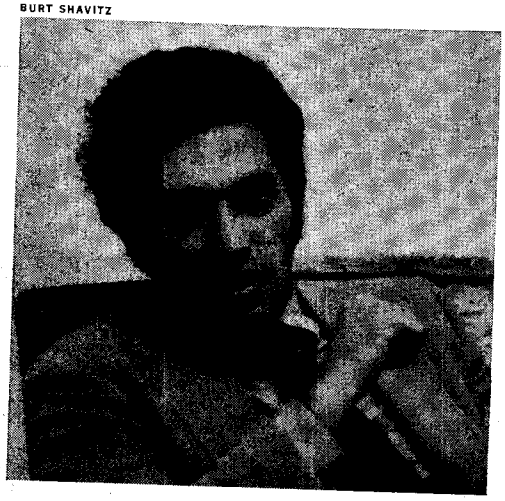
Since their arrest last April, ten of the Panthers have been jailed in lieu of bail so high ($100,000 apiece) that many black New Yorkers now see the defendants as victims of white racism. Some Liberal whites agree. Conductor Leonard Bernstein has dunned his rich friends for the Panther defense fund, and last week an interracial group of ministers tried—and failed—to mortgage their churches to raise the Panthers' bail. While in the eyes of many, the Panthers are automatically guilty, to emotional sympathizers, they will be innocent whatever the trial decides.

The Panthers' defenders simply argue that, no matter what they have done, they are entitled to fair treatment before the law. In one sense, the case is hardly unique. Thousands of defendants linger in U.S. jails awaiting trial because they cannot afford bail. Although the Eighth Amendment bans "excessive" amounts, poor suspects seldom have lawyers with the time and skill for a successful constitutional attack on high bail. And many judges use bail not just to assure that a defendant will show up at his trial, but also to keep suspects regarded as dangerous off the streets.

**No Clear Answer.** What makes the Panthers' case unusual is both the size of their bail and the vigor of their white lawyer, Gerald Lefcourt, who has worked indefatigably to have it reduced. Lefcourt has appealed to 35 judges—all of whom have balked in varying degrees, some on the ground that the Panthers are so dangerous that they must be jailed. Without deciding the point squarely, the Supreme Court in 1951 indicated that danger is not a permissible standard for setting bail. Lefcourt is now asking the Court to spell out its standards more clearly. In any case, no full evidentiary hearing has ever been held to determine how dangerous the New York Panthers are. The judges, in effect, have presumed them guilty before the trial.

One way of clarifying such situations —proposed by the Nixon Administration—would be to legalize "preventive" pretrial detention, imposing it after the safeguard of a full hearing. Other reformers place greater emphasis on speeding trials to shorten the time in which an arrested suspect's rights might be abused or he might commit additional crimes. In view of the nation's chronic court congestion, however, the reformers also urge judges to take more immediate steps, freeing most defendants on reasonable bail and using ways other than jail to assure that they reappear for trial and behave lawfully. Obvious techniques include ordering close surveillance or frequent check-ins with court officers.

BURT SHAVITZ



GERALD LEFCOURT
*Indefatigable from the start.*

**Futile Challenge?** A compelling reason for freeing defendants before trial is their need to help their lawyers build a defense. The New York Panthers had scant chance to do so. When they could not raise bail, they were sent to seven different prisons. All but two were put in maximum security cells; one epileptic Panther, arrested at a Veterans Administration hospital, was not admitted to a prison ward for seven months. All were denied the chance to meet with their lawyers as a group to prepare their joint defense—a particularly key need in conspiracy cases. After nine months, a federal judge ordered the Panthers to be treated like other prisoners, but his ruling did not affect their bail. It can undo neither their punishment nor, ironically, the sympathy that their needless *cause célèbre* has allowed them to attract.