

Panthers' Hostility Poses Dilemma for Judge in N.Y. Trial

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NEW YORK, Jan. 11—In one of the many extraordinary episodes in the Black Panther trial in this city, the presiding justice today implored the audience to stop shouting slogans like "Power to the People" and "Fascist Pig" everytime a defendant provided a cue for doing so.

News Analysis

By packing a small courtroom with police and by threatening to use his power of summary contempt, State Supreme Court Justice John M. Murtagh did succeed in restoring a semblance of order in the pretrial hearing of 13 Black Panthers on bombing conspiracy charge.

But the contempt power provides only a limited answer to the more disturbing question posed in what may be the most disorderly trial in New York history. For Justice Murtagh, the question is whether to hold defense attorneys directly responsible for the behavior of their admittedly revolutionary clients.

In a conference around the bench today, Murtagh accused the Panthers' five lawyers of being "more concerned with disorder occurring than in an orderly trial." The justice pointedly called attention to the Code of Professional Responsibility that now governs members of the Bar Association of New York City.

Canon 16 of the code asserts: "A lawyer should use his best efforts to restrain and prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards courts, judicial officers, jurors, witnesses and suitors. If a client persists in such wrongdoing, the lawyer should terminate his relationship."

The Panther defense lawyers believe that Murtagh intends to use the canon as the basis for taking punitive action, though they insist they cannot control their clients and can only warn them of the consequences of repeated interruptions.

Complaints of a violation of the code go to a six-man grievance committee of the New York Bar Association. After the hearings have been held, the committee can acquit the accused lawyer, admonish him or recommend his suspension or disbarment.

The actual disciplinary action can only be taken by the appellate division of the state Supreme Court.

According to Frank Ford Jr., chairman of a city bar association's committee that is now drafting a revised code of conduct, complaints under Canon 16 are "highly unusual."

"Even in the Communist

trials of the 1940's, the defendants were not so vociferous," said Ford. "The problem seems to be a new one, a product of a more outspoken age in which some young people detest all establishments."

In the eyes of the Panther defense lawyers the remedy for misbehavior suggested by Canon 16—the termination of the client relationship—is unreal and totally unjust since it could deprive the defendants of adequate legal representation in a complicated mass conspiracy trial.

"The question is whether decorum is more important than justice," said one of the defense attorneys, who are all serving without fee.

Defense attorneys insist that much of the Panther hostility is directed personally at Justice Murtagh, who was involved in setting bail figures so high that most of the 13 defendants have spent more than 10 months in jail in lieu of bail.

Yet, the more disinterested spectator can fairly observe that the rebellious defendants would cause difficulty for King Solomon. The Black Panthers express a sense of total alienation based on their own histories of personal privation.

Michael Tabor was being questioned yesterday about his crime record by Assistant District Attorney Joseph Phillips. Tabor is 23, dropped out of school at 14, and was a heroin addict for five years until he joined the Black Panther Party. His answers, given in a deep bass voice and with total self-assurance, went like this:

Q. Is it your testimony that you only used a knife?

A. I never used a knife during the course of these, what you refer to as being crimes.

Q. Well, do you refer to them as crimes?

A. No, I don't.

Q. What do you refer to them as?

A. I refer to crime as being the exploitation of poor people by filthy rich, money mad, avaricious capitalist pigs.

Q. What do you describe the criminal activities I have asked you about?

A. I describe them as being the result and the product of my oppression and my exploitation that instilled in me a profound and desperate need to escape that oppression, and in the course of doing so, I used the drug, heroin, which had the tendency to produce euphoric delusions which served to cloud and obscure my nauseous and disgusting reality. I became a member of the Cloud Nine Society.

At the outset, Tabor was asked how long he had been in prison. He gave his age: 23 years. With an attitude like that, the normal sanctions of the court do not have much effect.