THE LAW

TRIALS

Contempt in Chicago

The conspiracy trial in Chicago is far from over, but it has already prompted troublesome questions about U.S. justice. For one, the new federal antiriot statute on which the charges are based may itself be unconstitutional. Last week U.S. District Judge Julius J. Hoffman raised a whole new set of volatile issues. Incensed at Black Panther Bobby Seale, the defiant defendant whom Hoffman had ordered gagged and manacled to his chair, the 74-year-old judge suddenly declared a mistrial for Seale and found him guilty on 16 charges of contempt of court. Without much further ado, Hoffman sentenced Seale to three months in prison on each count—a total of four years.

The little judge had certainly been provoked. For days Seale's courtroom conduct had ranged from the embarrassing to the outrageous. Hoffman acted, he said, "to ensure that this trial will continue in an atmosphere of dignity." But in handing down what may be the longest contempt sentence in U.S. history, the judge startled lawyers across the country. Many law professors believe that Hoffman not only overreacted but also created constitutional problems that he could have avoided. Sanford Kadish of the University of California at Berkeley termed the sentences "savage, barbarous and vindictive." Stanford's Anthony Amsterdam called them "exceedingly rare and harsh."

Flagrant Examples. The week began with a cease-fire between the judge and Seale. Hoffman allowed the Panther to be unbound, but Seale still insisted upon his right to act as his own counsel. When a California deputy sheriff testified that he had seen Seale board a plane in San Francisco for Chicago, the defendant leaped to his feet and started cross-examining the witness.

Three times, Hoffman asked Seale to be seated; then he called a luncheon recess. After reconvening the court, the judge solemnly read off what he called only the "most flagrant" examples of Seale's misconduct. When he announced that Seale's case would be "severed" from the others, Seale blurted out: "Hey, what are you trying to pull now?" When told that he would be brought to trial again in April, Seale replied: "I demand an immediate trial right now."

According to some lawyers, the way in which Hoffman issued the contempt sentences constituted an evasion of the U.S. Supreme Court's decision last year in *Bloom* v. *Illinois*. In that case, the high court ruled that a man who faces a substantial sentence (six months in federal trials) on a contempt charge has a right to have his case heard by a jury. As critics saw it, Hoffman thought he could avoid the jury requirement in Seale's case by handing down 16 separate sentences—none of them as long as six months.

A judge's contempt power goes back to the early English kings, who gave their judges the right to punish anyone showing disrespect for the laws of the realm. In modern usage, the power is considered vital in helping judges to preserve order. Even so, U.S. courts and legislatures have lately sought to limit "summary contempt"—that is, the judge's awesome right to bring the charge, reach a finding of guilty and sentence the offender.

Stanford's Amsterdam and Berkeley's Kadish agree that the very least Hoffman could have done was to turn over the citations to another judge, who would not have been so vulnerable to charges of bias. Or Hoffman could have allowed Seale a lawyer, provided for formal arraignment, trial by jury and other normal criminal safeguards.

FRAN ORTIZ

DEFENDANT SEALE
From the embarrassing to the outrageous.

Despite Hoffman's disapproval, Seale claims that there was good reason for his courtroom outbursts; the judge, he said, had denied him proper representation at the conspiracy trial. Two weeks before the trial, Seale asked for a delay because his own lawyer, Charles Garry of San Francisco, was about to have gall-bladder surgery. The judge denied the delay on the ground that the defendants had enough other lawyers to represent them. Indeed, in Garry's absence, William Kunstler filed a notice of appearance that enabled him to act as counsel for Seale. Garry says that he advised Seale to insist upon acting as his own lawyer. In fact, the trial was under way before Seale expressly disavowed Kunstler as his attorney and Kunstler announced that he did not represent him.

As chief counsel for the Panthers,

Garry, who is white, had represented Seale previously. "If Hoffman knew anything about the Panthers," says Professor Harry Kalvin Jr. of the University of Chicago Law School, "he would have understood that Garry is the only lawyer that Seale trusts, and therefore that his request for a postponement was not just a stunt to delay the trial." In Garry's absence, adds Professor Abraham Goldstein of Yale Law School, Hoffman should have allowed Seale to act as his own counsel and to personally cross-examine witnesses.

Rules of the Game. At week's end an attorney dispatched by Garry filed a notice of appeal on the contempt charges. Denying a request for bail, Hoffman asserted that the defendant "seeks to destroy the American judicial system." If nothing else, Seale's collision with the judge illustrates a key weakness in U.S. legal process. "This shows that the fragile legal system functions only if everyone is willing to some extent to play the game by the rules," says Professor Yale Kamisar of the University of Michigan Law School. Believing that the game was unjust, Seale refused to play by the rules. And the able but adamant Hoffman has been unable to teach him any respect for the referee.

CRIMINAL LAW

Death by Agitation

While driving in Akron last year, James Nosis, 52, became enraged at a hornblowing motorist who passed his car. At the next stoplight, he challenged the other driver, 65-year-old Charles Ripple, to a fight. Though Ripple and his wife pleaded that he suffered from a heart condition, Nosis pursued them to their suburban home and made menacing gestures in the driveway. After Mrs. Ripple went inside to call the sheriff, her husband collapsed. Less than an hour later, he died of a heart attack.

Was Nosis criminally responsible for Ripple's death? Akron Prosecutor James V. Barbuto could find no precedent for such a prosecution in his state. Words, after all, are not blows. And the early common-law rule was that a man may not be convicted of a killing unless the death was caused by physical contact. Nonetheless, Barbuto charged Nosis with manslaughter.

The prosecutor had a point. Ohio law says that a man may be convicted of manslaughter if he commits an illegal act that could be "reasonably anticipated by an ordinarily prudent person" as likely to cause another's death. Even if Nosis did not strike Ripple, the prosecution argued at the trial, his threats and gestures amounted to an assault. Moreover, since Nosis knew about Ripple's heart condition, he could have reasonably anticipated that the threats were likely to result in death. Nosis was found guilty, and the Ohio Supreme Court has just upheld that verdict by refusing to review his appeal.