Judicial Power at Issue

Long Contempt Term Poses Legal Questions

The longest contempt sentence known to legal experts —the 4 years and 13 days meted out to "Chicago 7" defense attorney William M. Kunstler — has raised new questions about how long a judge, acting summarily and without a jury, can put a man in prison for offending the court.

Kunstler's punishment, and that of the co-counsel and the conspiracy defendants, also raised an ironic possibility as the jury retired for the third night without reaching a verdict: that the defendants might go free on the basic riot conspiracy charge, yet be compelled to serve long jail terms for contempt.

The latest pronouncement from the Supreme Court show that most of the justice are wary of reposing too much power in a single judge.

But the law is in flux and so is the personnel of the Supreme Court. There may be only a 5-to-3 majority today instead of the 7-to-2 majority that said in 1968, through Justice Byron R. White:

"This course of events (years of court and congressional action) demonstrates the unwisdom of vesting the judiciary with completely untrammeled power to punish contempt and make clear the need for effective safeguards against that power's abuse."

The court held in that case that defendants have a constitutional right to a jury trial for alleged contempt when the sentence could be "serious," that is, more than six months in jail. It was cited by Kunstler and his colleague, Leonard Weinglass, but Judge Julius J. Hoffman was unimpressed.

See CONTEMPT, A4, Col. 1

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CONTEMPT, From A1

For one thing, Judge Hoffman took care to make sure that none of the contempt sentences against Kunstler, Weinglass or any of the seven defendants, ran longer than six months. Then he ordered them to run consecutively for a total of four years and 13 days for Kunstler and lesser terms, all more than six months, for the others.

The defendants will contend in their appeal that the judge himself considered their contemptuousness to be a continuing course of conduct, when he decried from the bench their "repeated" and "continuous" abusiveness.

This argument is similar to one already raised on behalf of Bobby Seale, the conspiracy defendant whose case was severed from the rest and who was ordered to serve four years in jail.

A decade ago the high court held in a contempt-of-Congress case that certain short sentences could not be strung together that way.

That is the defendants' constitutional argument. They also have an argument based on Federal rules of criminal procedure. The law sets up two procedures for dealing with alleged contempt, and the defendants say Judge Hoffman used the wrong one when he invoked summary procedure under which the judge acts alone.

The summary procedure, said the Supreme Court in 1965, was designed to cope with a situation where swiftness was "a prerequisite of justice," such as the handling of direct threats to the judge or obstructions to the trial at the instant they occur. The defendants argue that if the judge waits for weeks and months until the trial is over, he no longer has a legal excuse to act alone.

That leaves the alternative procedure, which under the law requires notice of the charges, time to prepare a de-

fense, trial by jury if a "serious" sentence is possible, and the chance to argue for one thing more.

"If the contempt charged involves disrespect to or criticism of a judge," this rule says, "that judge is disqualified from presiding at the trial or hearing except with the defendant's consent."

If the defendants get that far in their argument in the 7th U.S. Circuit Court of Appeals, they are unlikely to consent to a new hearing before Judge Hoffman. But even if they win a new hearing before another judge, their chances of fresh contempt convictions and jail terms are high.

Contempt Ruling Called Attach on All Lawyers

NEW YORK, Feb. 16 (UPI) —Defense attorneys for 13 Black Panthers who have repeatedly disrupted pre-trial proceedings during the last two weeks said today they and their clients would not be affected by the contempt ruling by U.S. District Court Judge Julius Hoffman against the "Chicago Seven" over the weekend.

Gerald Lefcourt, one of the six defense attorneys for the Panthers, said he hoped the long prison terms imposed on lawyers William Kuntsler and Leonard Weinglass, as well as the defendants in the Chicago trial, would be quickly overturned by the courts.

"I really hope the courts see it as what it is, and that is an attack on all lawyers," Lefcourt said.

Lefcourt said the presiding justice in the Panther case, John H. Murtagh, already had threatened them with contempt proceedings for what Murtagh said were "contumacious" disruptions of the proceedings.

"We have the feeling a contempt record was being built against us," Lefcourt said. "I for one will not be changed by it. I will do what I think is necessary to defend my clients."

Associated Press

"Chicago 7" defense attorneys William Kunstler and Leonard I. Weinglass talk to newsmen after visiting their clients, who are being held in jail for contempt of court in the five-month-long Chicago riot-conspiracy trial.

Chicago Jury: Slice of Middle America

2/17/70

By William Chapman
Washington Post Staff Writer

CHICAGO, Feb. 16—The Chicago conspiracy trial jury, which deliberated through a third day without reaching a verdict today, is a conventional slice of Middle America far removed from the world of the seven men whose fates they are determining.

There are two blacks and two with East European origins. Five are housewives. There is a computer operator, a transit company worker, a cafeteria night manager, a nurse's aide, a widow, and an umployed housepainter.

Respectably dressed in conventional suits and dresses, they appear in stark contrast to the defandants, most of whom have advanced college degrees, wear their hair long, and cultivate a style of radical disregard for middle-class proprieties.

"They're worried about our decorum," one of the defendants, Rennie Davis, observed in the courtroom two days before he was sentenced to jail for contempt of court by Judge Julius J. Hoffman.

"They figure we're no angels. But I think there may be five or six favorable to us."

That is a considerably more optimistic estimate than Davis' co-defendants have expressed. They have said they thought two jurors had shown signs of friendliness.

One is a housewife who once was observed carrying a book written by James Baldwin, the Negro author. That was interpreted as a sign she had some familiarity with unconventional language and behavior.

Furthermore, the woman's daughter was quoted as saying at a recent college meeting that her mother had told her the government had not proved a case against the defendants.

The other supposedly favorable juror is a 23-year-old woman computer operator who occasionally seemed amused by the defendants' unruly behavior and who is closest in age to their generation.

The defendants privately have staked their hope on the thought that those two women would hold out for a hung jury, assuming the others are hostile.

The 10 women and two men have been sequestered since Sept. 30, six days after the trial began, and lodged at the nearby Palmer House Hotel. The judge ordered the jurors confined after two had been sent letters containing an ominous message signed "The Black Panthers." At that time, Black Panther leader Bobby G. Seale was a defendant.

The jurors have seen no newspapers or television since the trial started and have been permitted only occasional visits with members of their families while federal marshals stood by. Pinochle, it is reported, is thir favorite evening pastime.

Both the defense and prosecution have made courtroom appeals to what they see as special interests of the jurors. Defense lawyers have shown they are aware of the black jurors with occasional references to the Rev. Martin Luthern King Jr. and by putting on the witness stand such prominent Negroes as Dick Gregory and Julian Bond.

See TRIAL, A4, Col. 8

TRIAL, From A1

U.S. Attorney Thomas Foran, in his summation for the prosecution, spoke disparagingly of "intellectuals" who, he said, frequently lack a special facet of intelligence which he called the "human instinct."

In his final instructions to the jury, Judge Hoffman purposely ordered it to disregard the defendants' unconventional appearance.

The jurors, he said, were not to be "influenced by any possible antagonism you have toward the defendants' dress, hair style, or life style, or their political philosophies."

With the jury unable to reach a verdict in three days of deliberation, the defense's hopes rose moderately. The length of time is taken as a sign that the time of a swift, unanimous vote of conviction has passed.

"I thought they would come in with a verdict yesterday," defense lawyer William M. Kunstler said today.

The jurors quit their deliberations at 5:20 p.m. today and were expected to resume about 9:30 a.m. Tuesday. On Saturday and Sunday they had returned after dinner to hold evening deliberations.

If the jury stays out for a long time, or reports it cannot reach a decision, a controversial question will arise over the judge's response.

He could declare a hung jury. Or he could send them back for more deliberations under what is known in this judicial circuit as the "Allen charge." That is an additional instruction intended to attempt to force the jurors to reach a verdict.

Kunstler today referred to such a procedure as "judicial pressure" and made clear he would argue that it is unconstitutional.

Judge Hoffman has used the charge in some previous cases. Last week he toll reporters he had not decided whether to use it in this case.

According to Jonathan Waltz, a Northwestern University law professor, the U.S. Seventh Circuit Court of Appeals does not look favorably on the use of the "Allen charge."

The Washington Post

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Punishment for Contempt of Court

The power given to a judge to punish persons summarily for obstreperous and contumacious conduct is a power growing out of recognition that courts, as Mr. Justice Frankfurter put it, "must have the power to deal with attempts to disrupt the course of justice." There is no room for doubt that at least some of the defendants in the Chicago conspiracy trial attempted (and with considerable success) to disrupt the course of justice. The conduct of defense attorneys contributed materially to the disruption. So, it must be said, did the conduct of Judge Julius Hoffman who conducted the trial more or less as though he considered his role that of avenging angel.

Defense counsel treated the judge so insultingly and disrespectfully that he might well have been justified at many points in the proceeding if he had sent them to jail at once for contempt. He did not do so, however, apparently believing that the disruption was not so great as to corrupt the administration of justice. But when the trial was over he took his revenge. His summary conviction of the defense lawyers for contempt of court and his savage sentencing of them (a four-year prison term for one of them) leaves little doubt that he was moved by vengefulness.

Having waited until the conspiracy trial was over, Judge Hoffman could quite properly have moved for indictment and prosecution of the offending lawyers before an impartial judge and jury. That would have assured them a fair trial on the basis of the record; and it would have meant sentencing, if they were found guilty of contempt, by a judge who had not been personally affronted and outraged by them.

Many years ago Mr. Justice Holmes said of just such a situation: "I would go as far as any man in favor of the sharpest and most summary enforcement of order in court and obedience to decrees, but when there is no need for immediate action contempts are like any other breach of law and should be dealt with as the law deals with other illegal acts."

Conspiracy prosecutions for political crimes almost invariably result in courtroom circuses. Following the *Dennis* trial for conspiracy to advocate overthrow of the U.S. Government in 1949, the trial judge found five of the attorneys for the defendants guilty of criminal contempt; he sentenced one of them to 30 days in jail, one to four months, and the three others to six months. He was upheld in the Supreme Court. We think Mr. Justice Black was entirely right, however, when he said in dissent: "I believe these petitions were entitled to a jury trial. I believe a jury is all the more necessary to obtain a fair trial when the alleged offense relates to conduct that has personally affronted a judge."

It may be that when cooler heads have a chance to read the record of the trial of "the Chicago 7," they will share the feeling of Mr. Justice Douglas who said about the conviction of the attorneys in the *Dennis* case, "I agree with Mr. Justice Frankfurter that one who reads this record will have difficulty in determining whether members of the bar conspired to drive a judge from the bench or whether the judge used the authority of the bench to whipsaw the lawyers, to taunt and tempt them, and to create for himself the role of the persecuted." A four-year sentence for contempt is, in any case, not so much a judgment as a confession of the judge's own intemperance.