

Negroes Charge Bias In Riot Prosecutions

By AUDREY L. FECHT

A three Judge federal tribunal will hear a petition Oct. 6 urging the court to halt the prosecution of criminal cases stemming from the Newark riots.

The petition, filed yesterday in Newark Federal District Court, alleged racial discrimination against Negroes and violations of their constitutional rights on several grounds.

Meanwhile, trials involving 800 defendants arrested during the July outbreaks mainly for looting and weapons violations are scheduled to begin Monday in Essex County Court.

Show Cause Order

U.S. District Court Judge Reynier J. Wortendyke Jr. yesterday granted an order in behalf of 13 Negro plaintiffs in the suit directing Essex Prosecutor Brendan T. Byrne to show cause before the three-judge panel why he should not be restrained from prosecuting the cases.

An application made at the same time for a temporary injunction to prevent the trials from taking place, pending the Oct. 6 hearing was not granted. Judge Wortendyke heard the application in his chambers rather than in court. The three-judge panel has not yet been named.

The American Civil Liberties Union meanwhile stated that the suit was filed in behalf of the Negroes as a class by its New Jersey branch, the National Association for the Advancement of Colored People, the Law Center for Constitutional Rights and the Roger Baldwin Foundation of the ACLU.

Byrne, who was named as the only defendant in the suit, said he had not yet seen the complaint.

However, he added: "I'm always happy to have the American Civil Liberties Union looking over my shoulder because they leave no stone unturned. I know all the courts will look carefully into every legal issue raised."

In regard to the general discrimination allegations Byrne said: "We presented every case arising out of the riots in which a complaint was signed—regard-

less of who signed the complaint, whether the police or citizens."

The federal court suit seeks a permanent injunction to bar the prosecution of indictments returned by two Essex County grand juries between July 12 and July 27. The suit also seeks to bar re-indictments by any other county grand juries unless those juries are "truly representative of the entire adult population of Essex County."

The federal court suit charged that two grand juries which re-

turned more than 500 riot indictments did not have a representative number of Negro members.

Allegations

Other major allegations in the federal suit include:

Grand jurors were required to take an allegedly unconstitutional oath disavowing the violent overthrow of the government.

Massive pretrial publicity and statements by public officials prejudiced the rights of those arrested to a fair grand jury hearing and to a fair trial.

There has been discriminatory and hasty enforcement of the law against Negroes.

The complaint filed in connection with the suit asserted that while Negroes constitute about 30 per cent of the population in the county, their membership on the grand juries which returned the indictments involved only 6 per cent. The complaint also alleged that "deliberate discrimination" against women and against residents of the Central Ward was practiced in the selection of the juries.

Jurors' Oath

The complaint attacked as "inflammatory, vague and unconstitutional" an oath taken by grand jurors in which they state that they do not "advocate or advise the use of force or violence to overthrow the federal or state governments. The oath also states that the jurors are not a member of any organization which advocates the use of force to change the government.

The language of the oath, together with allegedly inflammatory statements by public officials, the complaint asserted, created "substantial prejudice" in the minds of the grand jurors. Cited were statements by Gov. Hughes that the disturbances were a "criminal insurrection" and a comment by Superior Court Judge Lawrence A. Whipple in his charge to the grand jury that "a pattern of lawlessness" was involved.

The complaint alleged that even though there was criminal conduct by white persons during the riots, the Essex prosecutor's program has been directed against Negroes.

Time for Defense

The complaint also charged that because of the great number of indictments returned by the grand juries, defense lawyers assigned to the cases have not had sufficient time to provide all the necessary legal assistance. Byrne, the complaint alleged, nevertheless is "insisting upon immediate trials."

In reply to questions Byrne noted that the court controls the trial list, not the Prosecutor's Office. He added that the trial dates were set and agreed to after conferences with the court, the State Public Defender's Office and his office.

Peter Murray, the state public defender, said individual counsel is best qualified to say whether he is ready to proceed in a given case. Lawyers have been assigned by the Public Defender's Office in all cases where requests were made, Murray said. However, several cases involve lawyers obtained through other sources or lawyers who have been retained by the defendants.

Murray added that his office designated counsel in each case because his agency, which was created only two weeks before start of the riots July 12, did not have sufficient staff members.

Trials Postponed

The trials of two plaintiffs in the suit, LeRoy Jones, author and playwright, and John W.

Smith, the taxi driver whose arrest allegedly sparked the riot, have already been postponed because of pretrial motions, according to the Prosecutor's Office. Jones is charged with carrying a concealed weapon. Smith is accused of assaulting two patrolmen when they arrested him for allegedly "tailgating" their patrol car.

Two other plaintiffs, R. Horace Sharper and Rev. Jan W. Parrott, represent Negroes as a class and are not involved in any pending criminal trials. Other plaintiffs, all Negroes arrested in the riots, are George Johnson, Alexander Hollow, Woodrow A. Howard, Nathar Van Der Veer, Walter R. Spell, Elbert Odum, Barry Wyr Charles McCray and Char Toomer.

Lawyers representing individuals in the suit include Oli Lofton, director of the New Legal Services Project, an anti-poverty agency; Henry M. Suvero, executive director of ACLU in New Jersey and Rob L. Carter, national counsel of the NAACP.

The same attorneys are involved in another suit which seeks to have the federal court appoint a receiver for the Newark Police Department grounds that department is responsible for alleged brutality and prejudice against Negroes.