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Constitutional Law-The Right of Confrontation and the Unruly Defendant

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COMMENTS

CONSTITUTIONAL LAW — THE RIGHT OF CONFRONTATION AND THE UNRULY DEFENDANT*

Hence, today, as in Lincoln's time, a man may ask "whether [this] nation or any nation so conceived and so dedicated can long endure." It cannot endure if the nation falls short on the guarantees of liberty, justice, and equality embodied in our founding documents. But it also cannot endure if we allow our precious heritage of ordered liberty to be ripped apart amid the sound and fury of our time. It cannot endure if in individual cases the claims of social peace and order on the one side and of personal liberty on the other cannot be mutually resolved in the forum designated by the Constitution.[1]

I. Introduction

One of the basic constitutional rights is that of an accused in a criminal proceeding to confront his accusers. This right of confrontation dates from the earliest times in the history of justice when the presence of the accused was an absolute necessity.[2] This right is still considered a valuable safeguard, and the principle that after the indictment there should be nothing done in the accused's absence prevades the entire area of criminal procedure.[3]

The right is secured by the confrontation clause of the sixth amendment to the United States Constitution which provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with witnesses against him . . . ."[4] In *Pointer v. Texas*[5] the Supreme Court made this sixth amendment right applicable to the states by incorporation into the due process clause of the fourteenth amendment.[6] Prior to *Pointer*,

* Illinois v. Allen, 90 S. Ct. 1057 (1970).

1. Illinois v. Allen, 90 S. Ct. 1057, 1063 (1970).
2. *See* Note, *Presence of the Defendant at Rendition of the Verdict in Felony Cases*, 16 Colum. L. Rev. 18 (1916).
3. 21 Am. Jur. 2d *Criminal Law* § 271 (1965).
4. U.S. Const. amend. VI. *Accord*, S.C. Const. art. 1, § 18.
5. 380 U.S. 400 (1965).
6. *Id.*

the Court had held that this right was included in the fourteenth amendment[7] because it was a fundamental right "basic in our system of jurisprudence."[8] By Supreme Court decision, the right of confrontation has been held to be applicable to juvenile proceedings.[9] The right of confrontation has also long been protected by many state constitutions, statutes, and case decisions.[10] This same protection is provided in federal courts by Rule 43 of the Federal Rules of Criminal Procedure:

> The defendant shall be present at the arraignment, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence except as otherwise provided by these rules.[11]

The right of confrontation incorporates two basic purposes.[12] The most important is the accused's right to cross-examine witnesses against him[13] which has been extended to include cross-examination of the witnesses for the defendant.[14] Another purpose still accorded some importance is the supposed psychological advantage gained from forcing the witness to give his testimony fact-to-face with the accused so that the judge and the jury may decide from the demeanor of the witness whether or not his testimony is credible.[15]

Although basically the same everywhere, the procedural aspects of the right of confrontation vary slightly among jurisdictions.[16] There is some controversy among jurisdictions over whether or not the defendant can waive this constitutionally protected right. The majority of state and federal courts prohibit waiver in capital cases,[17] although a very few state courts

7. In Re Oliver, 333 U.S. 257 (1948).
8. *Id.* at 273.
9. In Re Gault, 387 U.S. 1 (1967).
10. 21 AM. JUR. 2d *Criminal Law* § 335 (1965). *See* Murray, *The Power to Expel a Criminal Defendant From His Own Trial: A Comparative View*, 36 U. COLO. L. REV. 171 (1964).
11. FED. R. CRIM. P. 43 (1961). *Accord,* S.C. CIR. CT. R. 35 (1952). This S.C. rule provides, as many American jurisdictions do, for the personal presence of the accused at trial.
12. 21 AM. JUR. 2d *Criminal Law* § 333 (1965). *Accord.* 20 S.C.L. REV. 512 (1968).
13. Pointer v. Texas, 380 U.S. 400 (1965).
14. Gladden v. Lonergan, 201 Or. 163, 269 P.2d 491 (1954).
15. Mattox v. United States, 156 U.S. 237 (1895).
16. Basically, the right of confrontation applies in all capital cases and all felony cases. State v. Atkinson, 40 S.C. 363, 18 S.E. 1021 (1893).
17. *See* Note, *Presence of the Defendant at Rendition of the Verdict in Felony Cases,* 16 COLUM. L. REV. 18, 21-23 (1916).

allow such a waiver.[18] Most jurisdictions do permit waiver in non-capital cases where the accused has voluntarily absented himself from a trial in process.[19] In this context one of the more perplexing problems faced by the courts in this area can be seen: whether or not a defendant may "voluntarily" waive his right to be present through unruly and contumacious conduct during trial proceedings.[20]

While the defendant has the right to be present at and to participate in his trial, this right must be weighed against the duty of the court to preserve order during its proceedings:

> The preservation of order, dignity, and decorum in the court room is one of the duties of the court, to which end it has ample power and in preserving order, dignity and decorum, the court has broad discretion.[21]

A conflict between the accused's right of confrontation and the requirement of order normally arises only when the defendant becomes so disorderly that his expulsion from the courtroom is a necessity in order for the proceedings to continue. This comment will examine which sanctions are available to a judge for the purpose of controlling a contumacious defendant.

II. ILLINOIS V. ALLEN

In *Illinois v. Allen*[22] the dilemma of what to do with an unruly defendant was placed squarely before the United States Supreme Court. Allen had been convicted in Cook County of armed robbery and sentenced to serve ten to thirty years. During the progress of this trial, there were many instances of Allen's obstreperous behavior.[23] He attempted to refuse court appointed counsel, and during the *voir dire* examination of jurors, his abusive language disrupted the proceedings.[24] The defendant again became disorderly after a noon recess,[25] and

18. *Id.*
19. Falk v. United States, 15 App. D.C. 446 (1889).
20. *See* United States v. Davis, 25 Fed. Cas. 773 (No. 14,923) (C.C.S.D.N.Y. 1868); People v. DeSimone, 9 Ill. 2d 522, 138 N.E.2d 556 (1956). These cases upheld "voluntary" waiver through unruly conduct.
21. 23 C.J.S. *Criminal Law* § 961 (1961).
22. 90 S. Ct. 1057 (1970).
23. 413 F.2d 232 (7th Cir. 1969).
24. All this time Allen used abusive language toward the trial judge. He said, "'When I go out for lunchtime, you're [the judge] going to be a corpse here.'" *Id.* at 233.
25. After the recess Allen stated, "'There's not going to be no trial either. I'm going to sit here and you're going to talk and you can bring your shackles out and straight jacket and put them on me and tape my mouth but it will do no good because there's not going to be no trial.'" *Id.* at 233-34.

even during brief appearances for purposes of identification during the state's case-in-chief he used "vile and abusive" language.[26]

Because of such outbursts, the judge was forced to remove Allen from the courtroom during the *voir dire* examination and again during the presentation of the state's case. The judge repeatedly warned the defendant that he would be removed if his improper conduct continued. After assurance of proper conduct, Allen was allowed to return to the trial. He remained present for the rest of the trial which included his defense and the rendition of the verdict.[27]

On appeal, the Illinois Supreme Court affirmed the conviction.[28] The United States Supreme Court denied certiorari[29]; a federal district court subsequently denied a writ of habeas corpus which alleged that Allen had been deprived of his constitutional right of confrontation.[30] On appeal the Seventh Circuit Court of Appeals reversed the federal district court's decision.[31]

The court of appeals rejected the Illinois Supreme Court's contention that there had been a "voluntary" waiver of Allen's right to confrontation.[32] They held that a defendant in a criminal trial has the "unqualified" right to remain present at all stages of his trial.[33] Thus, Allen had been forced to waive a constitutionally protected "absolute" right:

> No conditions may be imposed on the absolute right of a criminal defendant to be present at all stages of the proceedings. The insistence of a defendant that he exercise this right under unreasonable conditions does not amount to a waiver. Such conditions, if insisted upon, should and must be dealt with in a manner that does not compel the relinquishment of his right.[34]

Acknowledging Allen's disruptive behavior, the court of appeals further stated that "[t]he proper course for the trial

26. *Id.*
27. *Id.*
28. People v. Allen, 37 Ill. 2d 167, 226 N.E.2d 1(1967).
29. Allen v. Illinois, 389 U.S. 907 (1967).
30. Allen v. Illinois, 413 F.2d 232 (1969).
31. *Id. See generally* 23 VAND. L. REV. 431 (1970).
32. Allen v. Illinois, 413 F.2d 232, 235 (1969).
33. *Id.*
34. *Id.* at 235. In this decision the court relied upon *Hopt v. Utah,* 110 U.S. 574 (1888), and *Shields v. United States,* 273 U.S. 583 (1923), plus the constitutional mandate of the sixth amendment.

judge was to have restrained the defendant by whatever means necessary, even if those means included his being shackled and gagged."[35]

Upon review of the *Allen* case by the United States Supreme Court, Mr. Justice Black, for the majority, stated:

> [W]e explicitly hold today that a defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive and disrespectful of the court that his trial cannot be carried on with him in the courtroom.[36]

In so ruling, the Court held that the broad dicta of *Hopt v. Utah*[37] and *Lewis v. United States*[38] that a trial cannot proceed in the defendant's absence had been overruled by *Diaz v. United States*.[39] In *Diaz* it was pointed out that both *Lewis* and *Hopt* concerned an accused who was in custody, charged with a capital offense, and sentenced to death. Their absence at certain stages of their trials had not actually been voluntary. In *Diaz* the accused had been charged with a homicide, not capital, and was free on bail. On two occasions, he had voluntarily absented himself from the trial and consented that it proceed in his absence in the presence of his lawyer. None of these cases involved an unruly defendant.

Thus, following the reasoning of "voluntary" waiver in *Diaz*, the *Allen* Court explicitly held that an unruly defendant could be expelled from his own trial. As Mr. Justice Cardozo had

35. Allen v. Illinois, 413 F.2d 232, 235 (1969).
36. Illinois v. Allen, 90 S. Ct. 1057, 1060 (1970).
37. 110 U.S. 574 (1884). The defendant during his trial had failed to object when part of the trial was conducted in his absence. It was held that through his silence he had consented. The Supreme Court disagreed and stated: "That which the law makes essential in proceedings involving the deprivation of life and liberty cannot be dispensed with or affected by the consent of the accused, much less by his mere failure, when on trial and in custody, to object to unauthorized methods." *Id.* at 579.
38. 146 U.S. 370 (1892). In this case the defendant was not able to face the jurors until after they had been chosen. He accepted the manner in which the challenges had been made at the time, and the Supreme Court ruled this was an essential part of the trial, and the prisoner had the right to confront the jurors at this time.
39. 223 U.S. 442 (1912). The Court in *Diaz,* speaking of the defendant, stated that if he voluntarily absented himself from the trial that "this does not nullify what has been done or prevent the completion of the trial, but, on the contrary, operates as a waiver of his right to be present, and leaves the court free to proceed with the trial in like manner and with effect as if he were present." *Id.* at 455.

stated in an earlier decision: "No doubt the privilege may be lost by consent or at times even by misconduct."[40]

III. SANCTIONS A JUDGE MAY USE

In the *Allen* case, the court recognized that there must be some reliable methods by which a judge can control an obstreperous defendant.[41] In a concurring opinion[42] Mr. Justice Brennan quoted a principle first stated in *Falk v. U.S.*[43] In *Falk* the Court of Appeals for the District of Columbia, while affirming a guilty verdict rendered after the accused had fled the jurisdiction, stated:

> It does not seem to us to be consonant with the dictates of common sense that an accused person . . . should be at liberty, whenever he pleases, . . . to break up a trial already commenced. The practical result of such a proposition, if allowed to be law, would be to prevent any trial whatever until the accused person himself should be pleased to permit it . . . . This would be a travesty of justice which could not be tolerated . . . . [W]e do not think that any rule of law or constitutional principle leads us to any conclusion that would be so disasterous as well to the administration of justice as to the true interests of civil liberty . . . .
>
> The question is one of broad public policy, whether an accused person, placed upon trial for crime and protected by all the safeguards with which the humanity of our present criminal law sedulously surrounds him, can with impunity defy the processes of that law, paralyze the proceedings of courts and juries and turn them into a solemn farce, and ultimately compel society, for its own safety, to restrict the operation of the principle of personal liberty. Neither in criminal nor in

40. Snyder v. Massachusetts, 291 U.S. 97, 106 (1938). In this case Snyder and another were sentenced to be put to death for their part in an attempted robbery which had led to a murder. At the trial and on appeal Snyder had claimed that the trial judge's refusal to permit him to be present at a view of the scene of the crime had been a denial of due process of law under the Fourteenth Amendment of the United States Constitution. The Supreme Court granted certiorari. While affirming Snyder's conviction, Mr. Justice Cardozo, who delivered the opinion for the court, stated: "So far as the Fourteenth Amendment is concerned, the presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his absence, and to that extent only." *Id.* at 107-08.

41. Illinois v. Allen, 90 S. Ct. 1057 (1970).

42. *Id.* at 1063-64.

43. Falk v. United States, 15, App. D.C. 446 (1899).

> civil cases will the law allow a person to take advantage of his own wrong.[44]

Working from such a premise, the *Allen* Court decided that there were three constitutionally permissible methods for controlling an obstreperous defendant: (1) binding and gagging the defendant; (2) use of the contempt power; and (3) removal of the defendant. The trial judge, by using the method best suited to the situation, can control the proceedings of a trial.

A. Binding and Gagging

The *Allen* Court felt that binding and gagging the defendant was the least satisfactory method available.[45] Although such a course of action satisfies the requirement of the defendant's presence, it is a repulsive technique and could prejudice the jury toward the defendant.[46] Other disadvantages are that it is repulsive to the very decorum and dignity of judicial proceedings and to the inherent dignity of the human being.[47] The defendant would also be unable to communicate effectively with his attorney, one of the reasons for his presence.[48] The door was, however, left open in *Allen* so that this sanction might be used where necessary in some future situation.[49] This method has been used and is still upheld under some circumstances.

The case of *United States v. Bentvena*[50] involved a conspiracy trial with fourteen defendants. During the trial, two of the defendants were ordered shackled and gagged after one had climbed into the jurors' box and pushed some jurors around and the other had thrown a chair at the Assistant United States Attorney.[51] The judge's action was upheld on the ground that he had not abused his discretion.[52]

In *People v. Kerridge*[53] the defendant had caused several disturbances. He had attempted to leave the courtroom when his case was called and had later attempted to remain undressed in his cell.[54] After having been pronounced competent by a

44. Illinois v. Allen, 90 S. Ct. 1057, 1064 (1970), *quoting from* Diaz v. U.S., 223 U.S. 442, 457-558 (1912) *which quoted from* Falk v. U.S., 15 App. D.C 446, 454, and 460 (1899).
45. 90 S. Ct. at 1061.
46. 21 AM. JUR. 2d *Criminal Law* § 240 (1965).
47. 90 S. Ct. at 1061.
48. 21 AM. JUR. 2d *Criminal Law* § 240 (1965).
49. 90 S. Ct. at 1061.
50. 319 F.2d 916 (2d Cir. 1963).
51. *Id.* at 931.
52. *Id.* at 930.
53. 20 Mich. App. 184, 173 N.W.2d 789 (1969).
54. 173 N.W.2d at 789.

psychiatrist,[55] the defendant was ordered strapped in his chair and was later gagged when he used vile and abusive language.[56] The defendant was freed after a promise of good behavior,[57] and the action of the trial judge was upheld[58] even in the face of a Michigan statute which states that a defendant may not be tried for a felony in his absence.[59]

The trial judge's decision was again upheld in *People v. Reynold*.[60] Here the judge ordered the defendant strapped to his chair because of a series of outbursts which the defendant directed at witnesses proclaiming his innocence.[61]

The case of *Seale v. Hoffman*[62] deals with one of the best known trials concerning the binding and gagging of a defendant.[63] It is better known as the trial of the "Chicago Seven." During this trial Bobby Seale through his abusive and vile language, directed usually toward Judge Julius J. Hoffman, brazenly attempted to make a shambles of the criminal judicial process in an effort to force a mistrial.[64] The record of the trial indicated that on the first instance of gagging only one-half hour's evidence had been taken in one afternoon because of Seale's outbursts.[65] The District Court for the Northern District of Illinois held that the case could be dismissed upon jurisdictional grounds.[66] However the court went on to say:

> While a defendant in a criminal case has an absolute right to be present during his trial, he does not have a right to brazenly make a shambles of the criminal judicial process and attempt to force a mistrial . . . . [T]he record is clear that Seale unequivocally refused to conform his conduct with the minimal requirements of courtroom order and decorum. Instead, he stood in open defiance of the court's authority. No other remedy was available to the trial judge.[67]

55. 173 N.W.2d at 791.
56. *Id.*
57. *Id.*
58. *Id. See also* People v. Duplissey, 380 Mich. 100, 155 N.W.2d 850 (1968); People v. Thomas, 1 Mich. App. 118, 134 N.W.2d 352 (1965).
59. *Id.*
60. 20 Mich. App. 397, 174 N.W.2d 25 (1969).
61. *Id.*
62. 306 F. Supp. 330 (1969).
63. United States v. David T. Dellinger et al., 69 CR 180.
64. 306 F. Supp. 330, 332 (1969).
65. *Id.*
66. *Id.* at 331.
67. *Id.* at 333.

B. Contempt Power

The contempt power is another alternative within the judge's discretion.[68] It is, however, obvious that the contempt power will not always be effective. Citing a defendant for contempt has obvious limitations where he faces capital punishment or a long prison term.[69] This would also be true in the case of a martyr or a defendant wishing to use the courtroom as a forum for expression of a political viewpoint.[70] The contempt power should be used in cases where it will be effective because it satisfies the requirements of procedural due process.[71]

Closely related to the contempt remedy is the judge's power to imprison an unruly defendant for civil contempt until he gives assurances of proper conduct.[72] This also has obvious limitations as a remedy, since the defendant might attempt through a prison sentence to cause the unavailability of a vital witness. Yet, where feasible, it will satisfy the confrontation requirement and prevent the unpleasant necessity of shackling and gagging.[73] In the recent decisions of *Duncan v. Louisiana*[74] and *Cheff v. Schnackenberg*[75] the judge's power to sentence for contempt was limited to six months.[76] Thus, the civil contempt power also would only be effective in certain situations.[77]

C. Removal

Removal of the defendant appears to be the most equitable sanction in many cases. It was ruled in *Allen* that it is within the discretion of the trial judge to exclude a defendant from his own trial after warning him that any more disruptions will result in his expulsion.[78] This is not a new concept; it was

68. 17 AM. JUR. 2d *Contempt* §§ 2, 3, 4 (1965). *Accord,* State v. Weinberg, 229 S.C. 286, 92 S.E.2d 842 (1956).
69. Illinois v. Allen, 90 S. Ct. 1057, 1061 (1970). *See* Note, *Unruly Criminal Defendants Disrupting Court Proceedings: Right of the Court to Remove, Gag, or Shackle Defendants Versus Right of Defendants to be Present at and Participate in Their Trial,* 6 WAKE FOREST INTRA. L. REV. 499 (1970).
70. *Id.*
71. U.S. CONST. amend. VI.
72. Illinois v. Allen, 90 S. Ct. 1057, 1062 (1970).
73. *Id.*
74. 391 U.S. 145 (1968).
75. 384 U.S. 373 (1966).
76. Duncan v. Louisiana, 391 U.S. 145 (1968); Cheff v. Schnackenberg, 384 U.S. 373 (1966).
77. Illinois v. Allen, 90 S. Ct. 1057, 1062 (1970). *See generally,* Comment, *Dealing With Unruly Persons in the Courtroom,* 48 N.C. L. REV. 878, 886-95 (1970).
78. 90 S. Ct. at 1062-63.

initially used by the Supreme Court of Illinois but was later rejected by the court of appeals in the *Allen* case.

Expulsion was also used in an early English case where a defendant on trial for a misdemeanor so misbehaved that she was excluded from her trial.[79] She was then tried, convicted, and sentenced in her absence. This procedure was held to be valid.[80]

Some courts use the rationale of "voluntary" waiver in order to justify the expulsion of the defendant. There are two early cases which appear to support the Supreme Court of Illinois in this reasoning.[81] In *United States v. Davis*[82] the defendant was removed from the courtroom because he insisted on interrupting the district attorney.[83] After holding that an obstreperous defendant could be removed for disrupting the trial, the court stated: "It does not lie in his mouth [the defendant's] to complain of the order which was made necessary by his own misconduct, ..."[84] It was also pointed out that the defendant could have alleviated the situation by manifesting an intention to cease his disturbances.[85]

The defendant in *People v. DeSimone*[86] had caused disorder by directing profane language at the jurors and by destroying an exhibit already accepted into evidence.[87] The court used the "voluntary" absence reasoning and held that his right of confrontation under the Illinois constitution could be waived by such a "voluntary act."[88] In other words, he had knowledge that continued misconduct would result in his removal. By voluntarily continuing the disruptive activity, he "voluntarily" waived his right.

The reasoning of a voluntary waiver because of continued misconduct was the same used by the Illinois Supreme Court[89]

79. Rex v. Mary Browne, 70 J.P. 472 (Eng., Cent. Crim. Ct., Sept. 14, 1906).
80. *Id.*
81. People v. Allen, 37 Ill. 2d 167, 226 N.E.2d 1 (1967). *See* Murray, *The Power to Expel a Criminal Defendant From His Own Trial: A Comparative View*, 36 U. COLO. L. REV. 171, 173-74 (1964).
82. 25 Fed. Cas. 773 (No. 14,923) (C.C.S.D.N.Y. 1868).
83. *Id.*
84. *Id.* at 774.
85. *Id.*
86. 9 Ill. 2d 522, 138 N.E.2d 556 (1956).
87. 138 N.E.2d at 563. The court stated: "The right to appear and defend is not given to a defendant [for] the right to prevent trial . . . ."
88. *Id.*
89. People v. Allen, 37 Ill. 2d 167, 226 N.E.2d 1 (1967).

which was later rejected by the court of appeals.[90] Under the Supreme Court's decision in *Allen*, this is again a proper rationale to use to justify explusion of an unruly defendant.

IV. Political Trials

Mr. Justice Douglas agreed with the majority in *Allen* that "[a] courtroom is a hallowed place where trials must proceed with dignity . . . ."[91] However, he disagreed that *Allen* was a proper case in which "to establish the appropriate guidelines for judicial control."[92]

He gave two types of cases which will or could be directly affected by the guidelines set forth in *Allen*. The first class are those political in nature. (In a footnote he cited examples of trials of a political nature. These included cases involving the Haymarket riot, the Pullman strike, the copper strikes of 1917, the Red Scare, and an agreement to teach Marxism.)[93] Noting that these political cases occur periodically in history, Mr. Justice Douglas felt that there was a danger that the courts might overstep their broad supervisory power and infringe upon the accused's right to confrontation.[94] He felt that problems of this nature should be solved only when a political trial reached the Court; that is, in a factually appropriate case, not on an inadequate record.[95]

The second type of trial mentioned by Mr. Justice Douglas is that created when radicals on the left attempt to destroy the constitutional system by disrupting the orderly judicial process. He stated that the *Allen* guidelines were premature in this instance also.[96]

Mr. Justice Douglas felt that the record of the *Allen* case was inadequate to answer the questions raised by poltical trials and trials "used by minorities to destroy the existing constitutional system." He stated:

> I would not try to provide in this case the guidelines for those two strikingly different types of cases. The

90. Allen v. Illinois, 413 F.2d 232 (7th Cir. 1969).
91. 90 S. Ct. at 1065.
92. *Id.*
93. *Id.* at 1065.
94. *Id.* at 1065-67. He used as an example the trial of William Penn. Penn was tried in London in 1670 on charges of causing a riot while all that he did was preach a sermon on Grace Street after his church had been closed down by the Coventicle Act. At the conclusion of the trial, Penn was acquitted by the jury, but he was jailed for his contemptuous conduct.
95. 90 S. Ct. at 1065.
96. *Id.* at 1067.

> case presented here is the classical criminal case without any political or subversive overtones. It involves a defendant who was a sick person and who may or may not have been insane in the classical sense but who apparently had a diseased mind. And, as I have said, the record is so stale that it is now much too late to find out what the true facts really were.[97]

IV. CONCLUSION

Recently there has been an evident, growing need on the part of the courts of this nation for the sanctions clarified by the *Allen* court. There have been an increasing number of trials which have been disrupted through the contemptuous conduct of unruly defendants, riotous spectators, and others. To give a few examples: In the recent trial of the "Chicago Seven" contemptuous conduct reached a new height; the trial of Black Panthers in New York, with indictments ranging from bombings to possession of unlawful weapons, was disrupted many times by obscene and disruptive language directed toward Justice John Murtagh and which even erupted several times into an open brawl; Justice Murtagh was forced by these actions to suspend the trial. Recently in another Chicago trial, in which eleven students of the University of Illinois were charged in connection with a campus disturbance in May, a circuit courtroom was thrown into turmoil. Police and court officials had to battle the defendants and unruly spectators and finally had to resort to chemical mace to gain control of the situation. The trial was postponed because of possible prejudice, and contempt sentences were handed out.[98]

Many recent examples of courtrooms in turmoil can be gathered from newspaper and magazine accounts. It was because of such situations that the guidelines set forth in *Allen* became a necessity. These sanctions provide a workable frame-

97. *Id.*

98. The most recent trial in which a judge has used the expulsion sanction is that of Charles Manson and his three women followers in the Sharon Tate murder trial. They were ejected twice in one week for singing and shouting insults at the judge. The most recent expulsion came when Mason repeatedly disrupted proceedings after Superior Court Judge Charles H. Older had repeatedly warned him to be quiet. Suddenly Mason dived at the judge with a sharpened pencil shouting "I'm going to fight for my life," and as he was subdued had said "In the name of Christian justice, someone should cut your head off." The three women were ejected along with Manson when they began an unintelligible chant. The defendants were sent to detention rooms where they could listen to the proceedings via loudspeakers. The State (Columbia, S.C.) Oct. 6, 1970, at 1, col. 7.

work within which a judge can preserve the order and dignity of the courtroom in the face of a disruptive defendant. Even though the right of confrontation is an important procedural safeguard, the defendant cannot be allowed to become so disorderly that he destroys the trial proceedings. A society founded in freedom cannot exist if the judicial system upon which it is based cannot survive. The judicial system must be allowed to do justice despite the defendant's conduct. There must be a reasonable balance struck between the needs of an ordered society and the safeguards with which it surrounds the accused.

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