Two get life, one gets probation

S.Q. defendants sentenced

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Guardian Bureau

San Rafael, Calif.

Three San Quentin Six prisoners found guilty of conspiracy, murder or assault were sentenced Oct. 1.

Johnny Larry Spain and Hugo Pinell both received two concurrent life terms; David Johnson was placed on three years probation due to time served awaiting trial. Spain will be eligible for parole in seven years, Pinell in nine years.

Prior to the sentencing, trial judge Henry Broderick ruled on defense motions for new trials, credit for time served, and—in the case of Johnson, for a reduction of charges. The sometimes heated arguments surrounding the motions—which took an unexpected two days—produced only one surprise: Judge Broderick's last minute decision to suspend Johnson's sentence. All other motions were denied.

The case—the longest and most costly in California history—began when a grand jury indicted six San Quentin prisoners—Johnny Larry Spain, Fleeta Drumgo, Willie Tate, Luis Talamantez, Hugo Pinell and David Johnson, along with radical attorney Stephen Bingham—on charges of conspiring to aid George Jackson in a prison escape attempt and murdering three guards and two prisoners during the Aug. 21, 1971 incident that also left Jackson dead.

Three other guards were seriously injured and some of the defendants were also charged with assault. No one was charged with the murder of George Jackson.

After a record-breaking 24 days of deliberation, in late August the jury returned a complex and confusing set of verdicts which many termed a compromise. Although the murder-conspiracy counts were rejected against the other defendants, Johnny Larry Spain was convicted of conspiracy and two counts of murder. He was also acquitted of assault.

David Johnson was convicted of one count of assaulting a guard and Hugo Pinell was found guilty of assaulting two guards. The other defendants were found innocent of all charges.

Attorneys for Spain, Johnson and Pinell immediately filed appeals, asking for new trials on the basis of the unconstitutional chaining and shackling of the defendants and misconduct on the part of the judge, the jurors and the district attorney.

DEFENDANTS SHACKLED, CHAINED

The chaining and shackling was a main focus of arguments before Judge Broderick last week. Defense attorneys became angry when Broderick issued statements "for the record" justifying his use of the chains and shackles during the trial although he had never allowed a hearing where the attorneys could rebut the basis for his decision.

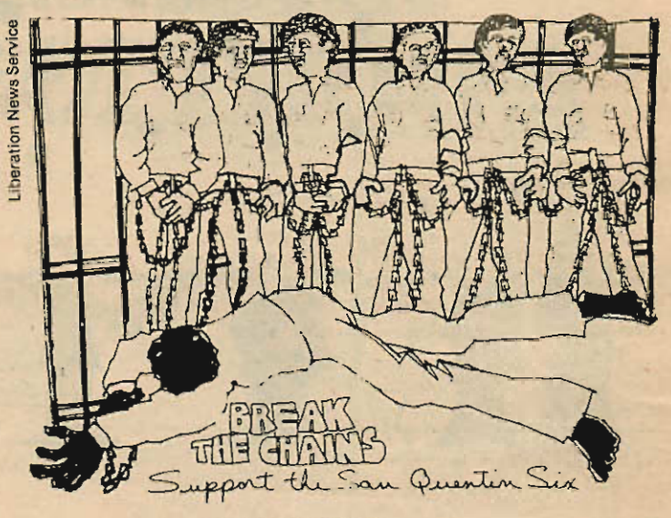
Ignoring the extreme pressure brought to bear on the prisoner-defendants by the very existence of the chains, Broderick cited what he termed their "low tolerance for frustration" in the courtroom. Attorney Charles Garry told the Court he felt that there had been "ample reasons for the conduct of everyone of the defendants in this courtroom" in the incidents cited by Broderick. Johnson's attorney Public Defender Frank Cox later complimented his client on his ability "to withstand frustrations I would find it very difficult to tolerate." And attorney Judd Scott, who assisted Pinell in representing himself throughout the trial, pointed out htat none of the incidents Broderick referred to as indications why Pinell should be chained occurred in the courtroo. One—an incident reported by the prison staff to have occurred between Pinell and his then-court appointed lawyer, had been steadfastly denied by both the lawyer and the defendant.

He denied motions for a new trial based on the shackling although the California Supreme Court had recently overturned the conviction of another prisoner on similar grounds. The judge also denied motions for retrial and lessening of charges.

Pinell's arguments focused on the judge's errors in not disqualifying himself early in the case and his limitations of Pinell's defense. Broderick forbade a number of Pinell's potential witnesses from taking the stand and greatly limited the testimony of others on the basis of "relevance." Broderick also denied Pinell's motion for new trial based on the jurors' inconsistent verdicts.

Motions for a mistrial for Spain focused on misconduct by the judge as well as by the jurors. Spain's attorney, Charles Garry, argued that Broderick allowed irrelevant "prejudicial material" to be presented to the jury.

Garry's arguments for mistrial were also based on jurors' misconduct, especially that of Patricia Fagan. Garry contended that Fagan had purposely lied about her knowledge of and attitudes



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toward the Black Panther Party (BPP).

After the trial it was revealed that a childhood and lifetime friend of Fagan had been robbed, shot and killed in Los Angeles by two men Fagan believed to have been Panthers.

Although Judge Broderick was aware of these facts, he didn't tell the defense because he "didn't think it was important or relevant to this case." Fagan also admitted telling a number of other jurors—with whom she was forbidden to discuss the case during the trial—about her ill feelings toward the Panthers.

Nevertheless, Broderick denied the motions for a mistrial for Johnny Spain, a member of the BPP, along with his motions for credit for time served.

Before he was sentenced, Johnny Spain made an eloquent statement "to the court and to the world," in which he decried the chaining of the defendants and their being judged by a jury which clearly did not constitute their peers.

"In all of history," he began, "no other animal has been chained down the way I'm chained today; the way I've been chained for the last five years... [and for] the duration of this trial."

Stating that the jury was not of his peers, he described his peers as being "people who have a history of slavery... who've been deprived of jobs, clothing, housing... who spent most of their lives hungry and cold and without." His peers, he went on, are those "who have been sent to prisons, graveyards, and more than a few times to madness by rules and laws that they never had a voice in creating... that weren't created to serve their interests... the people who've been plotted against and assassinated like Comrade George Jackson and Dr. Martin Luther King."

JOHNSON GIVEN PROBATION

David Johnson was the last to be sentenced, and his sentencing produced the only surprise of this court session. His attorney, Frank Cox, in addition to motions for a new trial, also declared the district attorney and judge guilty of misconduct. District Attorney Bruce Bales had "inadvertently blundered into" the jury room during jury deliberations, at a crucial moment when they were debating Johnson's guilt or innocence. Although this was reported to the judge, he never informed the defense counsel nor did he in any way admonish the jurors or reprimand the district attorney.

Broderick belittled the incident, saying he didn't consider it important. He denied all of Cox's motions for a new trial and his request to lower Johnson's conviction from one of assault to simple battery. Cox had argued that if the jury properly understood the judge's instructions, that is the verdict they would have rendered.

But on the matter of credit for time served, the Judge did a drastic about-face. Broderick first attempted to sidestep the issue by declaring that he did not have the discretionary power to give Johnson credit for time served. But Cox quickly cited a number of cases showing that the trial judge does have such power.

Using official California statistics, Cox then showed that if not for the new charges, Johnson would have been freed in 1971. All his time since then, Cox pointed out, has been spent merely waiting trial in this case. What's more, the public defender observed, if Johnson had pleaded guilty or been tried and convicted in 1971, his term for the offense would already have been completed.

Broderick, apparently agreeing with the attorney's contention that California law authorized releasing a defendant on probation when the time already served is greater than the sentence to be imposed, placed Johnson on three years probation.

profiteers divert school lunch funds

ly implemented only in York City. First established 68, the program reached eight of corruption this ier.

for the program's administration, did little to prevent or stop the rip-offs. With $1.7 million a day being spent on the program in the city and the ineffective

or destroyed 80,000 sandwiches and 44,000 cartons of milk during the summer. The supplies were wasted, he explained, because the food "was about to

Fred Wright, U.E. News