

10-12-1973

**Brief of National lawyers Guild as Amicus Curiae in Support of
Petition for Writ of Certiorari**

National Lawyers Guild

IN THE
Supreme Court of the United States

No. 73-473

DANIEL T. TAYLOR III,

Petitioner,

v.

JOHN P. HAYES, Judge, Jefferson Circuit Court,

Respondent.

**BRIEF OF NATIONAL LAWYERS GUILD AS
AMICUS CURIAE IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI**

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INTEREST OF NATIONAL LAWYERS GUILD

The National Lawyers Guild is an association of lawyers, law students and legal workers dedicated to working for a society which more adequately meets the needs of the nation's people. The Guild seeks to place

* Letters from the respective parties consenting to the submission of this amicus have been filed with the Clerk of this Court.

the skills of its members in the service of those who are struggling against oppression, and to further the cause of civil rights and civil liberties. The Guild has often submitted amicus briefs in this Court and other courts throughout the United States where the circumstances or legal issues presented are of broad public importance.

We are particularly interested in this case, for the actions of the Kentucky courts constitute a serious assault on the constitutional and historical right, indeed duty, of an attorney to represent with vigor and skill a black client accused in a hostile southern community of the murder of two white policemen. Moreover, the outcome of this case holds significance for attorneys and defendants far beyond its immediate boundaries. The Guild believes that if the decision of the Court of Appeals of Kentucky is allowed to stand unreviewed by this Court, it will be a signal to those who undertake to represent persons held in disfavor that they in turn may not be provided with dispassionate and careful review of charges which may be lodged against them as a result of their efforts.

REASONS FOR GRANTING THE WRIT

The history of this case is reviewed in detail in the main petition; that statement is adopted herein.

Unless reviewed by this Court, the decision below would seriously erode both substantive limitations and procedural safeguards which this Court has developed to protect vigorous advocates from the ire of an offended local judiciary.

This Court has limited the criminal contempt power in cases of this nature to situations in which an advocate "creates an obstruction which blocks the trial judge in the performance of his judicial duty." In re McConnell, 370 U.S. 230, 236 (1962). See also, In re Little, 404 U.S. 553 (1972). The court below failed to analyze whether the specific conduct of petitioner cited by respondent violated this standard. Instead it opined that petitioner engaged in "planned disruptive tactics" throughout the trial of his client generally and affirmed the judgment against and imprisonment of petitioner without consideration either of the circumstances of the trial or of the specific charges against him. It is significant that several of the charges against petitioner appear similar

to those against other attorneys which were held legally insufficient by the United States Court of Appeals for the Seventh Circuit in In re Dellinger, 461 F.2d 389 (7th Cir. 1972). See also United States v. Meyer, 346 F.Supp. 973 (D.D.C. 1972).

Moreover, the Court did not consider in a meaningful way the significant procedural issues raised by the action of the respondent. The following questions were given either superficial treatment or no consideration at all:

a) whether the question of petitioner's alleged contempt should have been referred for adjudication to an impartial trial judge in accordance with this Court's decisions in Mayberry v. Pennsylvania, 400 U.S. 455 (1971), Johnson v. Mississippi, 403 U.S. 212 (1971), and Offutt v. United States, 348 U.S. 11 (1954). See also United States v. Meyer, 462 F.2d 827 (D.C. Cir. 1972);

b) whether the petitioner should have been given the right to speak in his own defense, however briefly, in conformity with this Court's decision in Groppi v. Leslie, 404 U.S. 496 (1972). We note that the United States Court of Appeals for the Ninth Circuit has recently held that due process requires that an attorney accused of contempt during

a completed trial in which he was counsel be given the opportunity to explain his alleged conduct before he may be adjudged in contempt. See Weiss v. Burr, ___F.2d___, 13 Cr.L.Rep. 2284 (9th Cir., May 21, 1973). The affirmance below appears to be squarely in conflict with the decision of the Ninth Circuit;

c) whether the constitutional right to trial by jury of serious charges of contempt, see Bloom v. Illinois, 391 U.S. 194 (1968) and Baldwin v. New York, 399 U.S. 66 (1970), can be defeated by the joint post-sentencing actions of the trial and appellate courts, the former "correcting" the judgment against petitioner so that no sentence on any one specification exceeded six months, the latter altering the sentences from consecutive to concurrent, contrary to established state law and practice. Compare United States v. Seale, 461 F.2d 345 (7th Cir. 1972).

By the very nature of his calling, the vigorous advocate for an unpopular client may be often placed in a position of conflict with judicial authority. Such clients are tried in highly emotional settings before judges conscious of their self-image due to media coverage. The potential for an allegation by an over-sensitive or personally involved judge runs high in such a situation.

Under these circumstances, when a trial judge does

take it upon himself to impose severe sentences on an attorney, the appellate courts must undertake a full and searching review to insure that a vigorous and independent bar, composed of attorneys willing to represent all segments of our society, will survive. It is precisely because the court below failed to engage in meaningful review, but instead apparently rubber-stamped the conduct of the trial judge toward an attorney he could not personally tolerate, that this case must be reviewed now. This Court must make clear that thorough and impartial review is required in cases of this nature and that vigorous advocacy in difficult trial situations will be protected.

CONCLUSION

For the reasons set forth herein, the writ of certiorari should be granted to review the judgment and opinion of the Court of Appeals of Kentucky.

Of Counsel:
Lewis M. Steel

Dated: New York, New York
October 12, 1973

Respectfully submitted,

James Larson

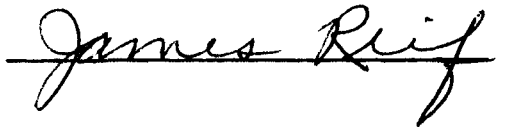
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CERTIFICATE OF SERVICE

This is to certify that three (3) copies of the foregoing Brief of the National Lawyers Guild as Amicus Curiae have been served by airmail, postage prepaid, upon the following:

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A handwritten signature in cursive script, reading "James Rief", is written over a solid horizontal line.