1972

Trial and Appellate Practice: Final Examination

William & Mary Law School

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Question 1:

In late August of 1968, while delegates to the Democratic National Convention were arriving in Chicago, a group of several thousand demonstrators gathered in the city's Lincoln Park to protest the Convention, the Vietnam War, and the city's refusal to grant the group a permit to hold rallies and marches during the Convention. The week that followed was marred by violent confrontations between the demonstrators and the city's police. This violence in Chicago provided the impetus for an indictment by a federal grand jury of the defendants in United States v. Dellinger.

The Dellinger case came to trial on September 24, 1969, and continued until February 14, 1970. During the trial the defendants, their counsel, and the presiding judge engaged in numerous heated and vituperative exchanges. As soon as the jury had received its instructions and had retired to deliberate, District Judge Julius J. Hoffman summarily cited the seven defendants and their two attorneys for various instances of criminal contempt. The court, invoking summary powers granted by Rule 42(a) of the Federal Rules of Criminal Procedure (see Appendix to Exam), read contempt specifications taken from the trial record and gave each contemnor an opportunity to address the court solely on the question of punishment.

A separate sentence was imposed for each contempt specification with the terms of imprisonment to run consecutively. The contempt citations represented punishment for alleged misconduct that had occurred over the entire course of the proceedings. The earliest cited instance of alleged contempt took place on the first day of trial, with the last incident occurring five days before the jury retired. Judge Hoffman implied that the contempt citations resulted from the aggregate of the contemnor's actions during the trial. Addressing defense attorney Leonard Weinerglass, the judge said:

"I judge your whole attitude toward the Court. . . . But I am obligated under the law to particularize these items of contempt, which I have."

In each contempt sentence, the Judge certified that the contemptuous conduct had been committed before him while he was holding court."
Each contemnor objected to the District Court's procedure and demanded by motion (1) advance notice of hearing on the contempt charges and on the punishment; (2) a hearing on both the contempt charges and the punishment before a different judge, and (3) a trial of the contempt charges by jury.

The District Court denied all three demands of contemnos and proceeded summarily to impose the contempt sentences.

The contempt sentences imposed were:

<table>
<thead>
<tr>
<th>Defendant</th>
<th>Charges</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bellinger</td>
<td>32 specifications</td>
<td>2 years, 5 months, 16 days</td>
</tr>
<tr>
<td>Davis</td>
<td>23 specifications</td>
<td>2 years, 1 month, 14 days</td>
</tr>
<tr>
<td>Hayden</td>
<td>11 specifications</td>
<td>1 year, 2 months, 14 days</td>
</tr>
<tr>
<td>Hoffman</td>
<td>24 specifications</td>
<td>2 years, 3 months</td>
</tr>
<tr>
<td>Ruben</td>
<td>16 specifications</td>
<td>2 years, 1 month, 23 days</td>
</tr>
<tr>
<td>Weiner</td>
<td>7 specifications</td>
<td>2 months, 18 days</td>
</tr>
<tr>
<td>Proines</td>
<td>10 specifications</td>
<td>5 months, 15 days</td>
</tr>
<tr>
<td>Weinglass (Attorney)</td>
<td>14 specifications</td>
<td>1 year, 8 months, 28 days</td>
</tr>
<tr>
<td>Kunstler (Attorney)</td>
<td>24 specifications</td>
<td>4 years, 13 days</td>
</tr>
</tbody>
</table>

Each of the contemnos appealed each of his contempt sentences to the Court of Appeals, assigning as error the District Court's denial of their motions making the three demands listed above.

How should the Court of Appeals rule on each of these three assignments of error, and why?

**Question 2:**

This suit was instituted by George Guckian and wife, Frances Guckian, plaintiffs, against Mrs. Hugh Fowler, defendant, for damages on account of personal injuries to Mrs. Guckian and property damages to plaintiff's automobile resulting from a collision in Corpus Christi, Texas, on August 2, 1968, between an automobile operated by Mrs. Fowler and the car being driven by Mrs. Guckian.

The basic facts are undisputed. On the afternoon of August 2, 1968, in Corpus Christi, Texas, Mrs. Frances Guckian was operating her automobile on Kostoryz Street in her right-hand lane, travelling generally in a southerly direction, and at its intersection with McArdle Street stopped in obedience to a red signal light. Mrs. Fowler was operating her car in the same direction on Kostoryz Street behind the Guckian vehicle and just prior to the collision changed from an inside lane to the curb or right-hand lane of that street. Mrs. Fowler testified that she did not see the Guckian vehicle until she changed lanes, that she applied her brakes but nevertheless collided with the rear of the Guckian car.
Medical expenses for Mrs. Guckian to the date of trial were undisputedly shown to be in the amount of $1,218.00. It was stipulated the property damages amounted to $153.67. Mrs. Guckian's loss of wages to date of trial amounted to $855.00.

With respect to her injuries, the testimony of Mrs. Guckian reflects in part the following: After the accident on Friday, August 2, 1969, Mrs. Guckian telephoned her husband who took her to the emergency room of the Spohn Hospital, where she was met by Dr. Sterling Martin. She was x-rayed, given a shot and sent home. The next morning (Saturday) she did not go to work because of pain in her neck and back. That night she called Dr. Martin who sent out more pain medicine. The following Tuesday she was sent to the hospital by Dr. Martin and remained there until Friday afternoon. More x-rays were taken and she was given medication for pain. When she was released the doctor did not prescribe treatment other than medication. Mrs. Guckian returned to Dr. Martin and on October 7, 1968, was referred to Dr. George Barnes, an orthopedist. She saw Dr. Barnes sixteen or more times. He treated her neck and low back and prescribed therapy, traction, drugs and medicine. She lost seven weeks' time from her employment at Suburban Foodtown, a grocery supermarket. Her chief complaints at the time of trial were pain in her back, neck, left shoulder and arm, headaches, inability to perform household duties, and in connection with her employment to lift objects and do the same work as before. She said that since the accident she performs work at Suburban Foodtown of a different type which is less strenuous than that done before. The evidence shows that Dr. Martin died on November 8, 1968. Thereafter, on February 20, 1969, Mrs. Guckian went to see Dr. Schulze, former partner or associate of Dr. Martin, complaining of difficulty with her nerves and shortness of breath. She was then hospitalized for a period of about fourteen days until March 4, 1969. Mrs. Guckian also testified concerning her involvement in an automobile accident in March 1968. She said she hit her chin on a little girl's head, cut the inside of her lip and hurt her right hip on a box type purse. She was treated by Dr. Schulze and lost one day's work on account of that accident.

Doctors Schulze and Barnes testified at length on the trial of the case. Dr. Schulze's testimony was given partly by deposition. Dr. Schulze testified in part that on February 20, 1969, Mrs. Guckian complained of substernal chest pain, difficulty in breathing and a burning in the substernal area.
of the chest. He put Mrs. Guckian in the hospital for an evaluation of her pain. After various laboratory procedures and tests, her condition was diagnosed as acute esophagitis, which means irritation of the lower end of the esophagus. He took a history from her but Dr. Schulze said that the automobile accident of August 1962 was not a part of the history for her then illness. However, Dr. Schulze noted that Mrs. Guckian "has been under the care and treatment of Dr. George Barnes recently of a whip lash injury of her neck. This has improved remarkably." Dr. Schulze examined Mrs. Guckian's head and neck and found she had a good range of motion, no stiffness and good flexion. He did not find any tenderness in her neck and shoulder area. He found no complaints as to the low back or the lumbo-sacral area. There was complaint as to the left chest wall. Dr. Schulze refused to give an opinion that the last hospitalization of Mrs. Guckian was caused by the accident or resulting tension and discomfort on account of it, but said it could have been. While Mrs. Guckian was in the hospital the second time, Dr. Schulze advised Dr. Barnes of that fact and of her complaints. Dr. Barnes said he did not need to see Mrs. Guckian and did not do so. Dr. Schulze further testified that Mrs. Guckian was a nervous person and he had treated her for that condition as early as 1967.

Dr. George Barnes' testimony was generally favorable to appellants as to Mrs. Guckian's complaints and conditions and their relationship to the accident. However, he testified that although he knew Mrs. Guckian was in the hospital in February and March 1969, he did not see or examine her. He said he studied her x-rays and felt they were not related to orthopedics.

After the close of the evidence, plaintiffs moved for directed verdict on the issues of liability, asserting in substance that the evidence conclusively established that Mrs. Fowler was negligent (1) in failing to keep a proper lookout, (2) in failing to make proper application of her brakes, and (3) in changing lanes at a time when such could not be done with safety, and that such negligence in each instance was a proximate cause of the collision and injuries to Mrs. Guckian. That motion was overruled, and plaintiff objected and noted exception.

The court of its own motion submitted eight special issues to the jury, the first seven relating to liability and the eighth to damages. The jury, in its answers to the first seven special issues found the defendant not guilty of negligence and answered the damage issue in the amount of $3000.00.
The verdict was returned on June 3, 1969. On June 18, 1969, plaintiff filed motion for a new trial which asserted that the trial court erred in refusing to grant plaintiff's motion for a directed verdict because the three issues of liability, above-mentioned, and the companion issues of proximate cause were conclusively established in plaintiff's favor.

TEX. R. Civ. P. 301. Rule 301 reads in part that "upon motion and reasonable notice the court may . . . disregard any Special Issue Jury Findings that no support in the evidence."

On July 1, 1969, defendant filed "motion to disregard answers to special issues and for judgment" reading as follows:

"I. COMES NOW the defendant, Mrs. Hugh Fowler, and pursuant to the provisions of Rule 301, Texas Rules of Civil Procedure, respectfully moves the Court to disregard the jury's answers to Special Issues Nos. 1, 3 and 5 for the reason that the same are not supported by any evidence.

II. In view of the position taken by the plaintiff in her Motion for Mistrial that under the undisputed evidence and as a matter of law this defendant failed to keep a proper lookout, which was proximate cause of the accident, and failed to make proper application of her brakes, which was a proximate cause of the accident, and changed lanes when such movement could not be made with safety, which was negligence and was a proximate cause of the accident, this defendant respectfully moves the Court to enter judgment for the plaintiff in the total sum of $3,153.47, which is the amount of damages found by the jury in response to Special Issue No. 8, plus the stipulated amount of property damage, and the defendant hereby attaches to this motion and tenders to the Court a form of judgment."

On September 18, 1969, the trial court rendered judgment which among other things, recited that plaintiff's motion for a new trial was overruled and that the motion of defendant to disregard the jury findings on special issues 1, 3 and 5 was granted; that liability of defendant was established as a matter of law; and provided that plaintiffs recover judgment against appellee in the amount of $3,153.47, to all of which plaintiffs objected and noted exceptions.
Plaintiffs also filed "Motion for additur under Rule 301, T.R.C.P." (which according to the transcript was filed on September 22, 1969) which alternatively requested the court in the event plaintiffs' motion for a new trial was overruled and defendant's motion for judgment granted to require an additur so that plaintiffs' total recovery would be $7,277.00. The trial court denied this motion, to which ruling plaintiffs objected and excepted.

The plaintiffs appealed, assigning as errors the following:

1. The Court erred in refusing appellants' (plaintiffs') motion for a directed verdict on the liability issues of appellee's failure to keep a proper lookout, failure to make proper application of her brakes, and changing lanes when such movement could not be made in safety, along with the companion issues of proximate cause in each instance.

2. The Court erred in granting the Defendant's (appellee's) Motion to Disregard Answers to Special Issues for Judgment for the reason that:
   (a) such Motion is in the nature of a confession of judgment after a jury verdict and comes too late; and,
   (b) granting such a Motion severs the indivisible issues of liability and damages; and,
   (c) granting such a Motion forces the Plaintiff to accept the damages found by the jury when entitled to a new trial on all of the issues."

3. The Court erred in accepting the jury verdict as to the amount of plaintiffs' damages and entering judgment thereon, and in overruling appellants' motion for additur.

How should the appellate court rule on each assignment of error, and why?

Question 3:

In Missouri condemnation cases are tried by a jury of twelve, but a verdict may be returned on a vote of three-fourths of the jury, unanimous verdicts not being required by the State Constitution.

The City of Flat River, Missouri, a municipal corporation, instituted a condemnation proceeding against Odessa Edgar to take a portion of her land for the extension of a city street.

The transcript shows that upon voir dire examination, the jury panel was asked the usual question whether any one of them knew of any reason why he couldn't render a fair and impartial verdict; there was no expressed answer.
A twelve-man jury was selected and the case was tried.

A nine-man verdict for $4,000, in favor of the defendant, Edgar, was returned and judgment entered thereon by the Court. The defendant had asked $10,000 for the property taken.

Five days after the judgment, and while the trial court still had jurisdiction over the case, defendant filed a "Motion for a New Trial", based upon the following grounds:

"1. Because two members of the jury were members of a religious sect constitutionally opposed to serving on a jury and had been advised by the leaders of their sect or church not to serve on the jury, and because said jurors refused to take a part in the deliberations and simply remained silent, stating that they would do whatever the majority agreed upon.

"2. The defendant did not know that said jurors belonged to a religious sect, as such, and that they would not take a part in deliberations and help arrive at a verdict, and that the defendant was not negligent in failing to discover that said jurors would refuse to take any part in the deliberations or action toward arriving at a verdict."

At the hearing on the motion the evidence introduced by defendant consisted of the deposition of the foreman of the jury in which he testified.

"Q. Reverend Short, after the case was tried, and the argument to the jury, did the twelve men and women retire to a jury room to deliberate upon the issues as given to you by the Court in its instructions?

A. Yes.

Q. I will ask you, Reverend Short, whether all twelve of the members of that jury participated in the deliberation?

A. No, not really.

Q. Will you state how many did not participate?

A. Two.

Q. Will you tell us what they said if anything concerning their participation?

A. They simply said, "We don't have to take any part in this, do we?" 'We don't have to enter into the deliberations'.

Q. Did they make any statement as to what the rest of you might do, or what could be done?

A. One of them said whatever we did was all right.
Q. Were there some ballots taken?
A. Yes, sir.

Q. Did these two jurors ballot?
A. No.

Q. Did these two jurors participate in any of the discussion or make any statements concerning the matter other than to say that whatever you all did would be all right with them?
A. No.

Q. Was any statement made by either of these two jurors concerning their church, or matters of that kind?
A. No.

Q. Had there been previously in other jury deliberations?
A. Yes.

Q. On previous juries had these same two jurors served when you had also served on the jury?
A. Yes. On one other occasion.

Q. On that occasion did these two jurors take any part in the deliberations?

"A. They took some part in the deliberations before.

Q. Did they make any statement at any time when you were serving with them on a jury concerning their church or activities?
A. Yes, sir. In the previous instance you just referred to."

"Q. What was their statement concerning their church?
A. One said, 'My church doesn't want me to take any part in this anyway.'"

Objections by plaintiff to all questions and answers were appropriately made both upon the taking of the deposition and the reading of the deposition into the record.

How should the Court rule upon plaintiff's motion, and why?

Question 4:

Suit was filed in a United States District Court in Wisconsin by Mrs. Griffin, the beneficiary named in a life insurance policy, against the insurance company issuing the policy. The plaintiff's complaint prayed
judgment in the amount of the indemnity payable under the policy. The policy had been issued by the defendant to the plaintiff's deceased husband.

The insurance policy provided that the indemnity was not payable if the insured's death resulted from "self-destruction, whether sane or insane."

In its answer the defendant alleged the insured, Mr. Griffin, committed suicide, and denied liability under the policy.

The undisputed facts are substantially as follows: The deceased, Clarence S. Griffin, at the time of his death, resided with his family, consisting of his wife and step-daughter 4 1/2 years of age, in the second story of a dwelling house in the city of Superior, Wis., which was occupied on the first floor, partly by William Butler and family and partly by Louis Burgraff and family. The Griffin kitchen was in the front part of the house at the right of the front entrance. From it there was an outside door leading to a back stairway, the foot of which reached to about the location of the door of the Butler kitchen. There was also a door between the Griffin kitchen and their dining room back of such kitchen; also a door connecting such dining room with a bedroom used by the family for sleeping apartments, such room being at the left of the dining room as the latter was approached from the kitchen. There was a commode near the bedroom door inside such room at the right of the entrance, in the drawer of which the deceased customarily kept a revolver when it was not on his person. He always placed it there evenings after his return from his day's labor, if he had carried it during the day. It was a cheap self-cocking revolver called an "American Bull Dog." By reason of some defect in its mechanism, the cylinder would easily turn in either direction when the hammer was down, so that the hammer would rest on a loaded cartridge.

About 9:15 on the evening of December 14, 1894, the Griffin family all being at home, and the women occupants of the lower part of the house having retired for the night, footsteps were heard in the upper kitchen as of some person moving hurriedly across the floor. Immediately thereafter Mrs. Griffin left such kitchen by the back stairway, taking with her, or followed by, the little girl, and closed the door behind her. She ran quickly down such stairway, and in a nervous and excited manner rapped sharply at Mrs. Butler's kitchen door. About the time the circumstances just related were occurring, a person passed from the Griffin dining room into the bedroom and there disturbed some furniture, creating a noise distinctly heard
by those occupying the apartments below, then passed rapidly back from the bedroom through the dining room into the kitchen and to the back door thereof, which he noisily opened and swung it back, apparently, so as to forcibly strike the wall, then crossed the room from the location of such door to a point near the door leading to the front hall, making a noise in his course something like that caused by turning over a chair, which was immediately followed by the report of a pistol in the room, then by a sound as if of a body falling on the floor, and then by human groans and a noise as of the beating of feet on the floor. The report of the pistol and the signal given by Mrs. Griffin of her presence at Mrs. Butler's door occurred at about the same instant. Mrs. Butler responded to such signal by opening her door. Mrs. Griffin, apparently much excited and frightened, inquired for milk for her little girl, then passed into Mrs. Butler's apartments, exclaiming almost immediately that she was afraid her husband had shot himself. She then cried and appeared to be in great mental distress. She made no further mention of desiring milk for the child, but clasped her hands, continued to cry, and again exclaimed, "He shot the revolver and I am afraid he has shot himself." She did not go to her husband then or afterwards till some time the next day and after he had been removed to the hospital. He never regained consciousness and died the next day.

No one was in the Griffin apartments but the deceased from the time Mrs. Griffin left, as related, till about five minutes after the shot was heard, when several persons went there and discovered the following condition of things: The back entrance door to the kitchen was partly open, the dishes were on the table about as they were left at the last meal, a light was in the kitchen, and a chair was partly turned over on the floor. The commode drawers, or one of them, was pulled entirely or partly out. On the side of the room nearly opposite such back door, Griffin lay as if he had fallen backward against the wall, then slid down, leaving his head and shoulders against the wall, and his limbs nearly straight out on the floor towards the center of the room, with his hat on the floor between them. There was a bullet wound in the right side of his head a little above and about midway of a line drawn from the eye to the center of the ear. An upturned chair was a short distance away from him. His hands were by his side and he was moving them and his feet convulsively. His revolver was by him on the floor, partly under his legs and a little towards the
left side, and near it was a revolver case in which it was customarily kept. There was no powder mark on the head. The revolver showed that it had been recently discharged. The man died the next day without having regained consciousness. A post mortem examination was made which revealed the following facts: The bullet passed into the head nearly at right angles with the side. It ranged slightly upward and lodged against the opposite table of the skull and was somewhat flattened. The inner table of the skull where the bullet entered was considerably fractured, pieces of it having been driven into the brain substance, which, on that side of the head, was much lacerated, disorganized and congested with blood. There was no evidence observed of powder, fire or smoke having been projected into the brain, nor any external indication of fire, smoke or powder. The evidence tended to show that the revolver, when discharged, must have been held at least eight inches from the head to account for the absence of discoloration on the surface in the vicinity of the wound, or that it was held firmly against the head. The latter situation at the time the pistol was discharged, while it would account for absence of external evidence, would suggest the presence of internal evidence of fire, powder and smoke having been forced into the brain; but, as before stated, no such evidence was discovered. The man did not die till about 20 hours after he received the wound, and the autopsy was not made till some time after death. The brain substance was very badly lacerated, disorganized and discolored by blood, so as to account, in a measure, for the absence of discoloration by smoke, powder or fire, and of any other evidence of the presence of any foreign substance in the brain, except the bullet and pieces of bone carried in by it, other than the general disorganized condition of the brain substance on the side of the head where such ball entered. There was evidence of experts to the effect that if a pistol be discharged with the muzzle pressed firmly against the head, there may be no evidence of fire, powder or smoke, externally or internally. There was also expert evidence to the contrary, some of it by persons who had never seen such a case. There was evidence of a person to the effect that he had seen just such an occurrence, and that there was no external evidence of fire, powder or smoke. There was also evidence of actual tests made with the revolver which caused the death of Griffin, showing that a shot from it would burn cotton batting.
but slightly if at all more than three or four inches away, but would produce powder marks on tissue paper 12 or 14 inches away. There was no evidence to create even a suspicion that any human agency was concerned in firing the shot which killed Griffin, other than that of himself.

Mrs. Griffin testified that all was calm in the household when she left the room, and that she and her husband had passed a pleasant evening playing cards. There was no evidence of any motive for suicide.

Under the law of Wisconsin the rebuttable legal presumption was that death was not caused by suicide and the burden of proof was on the defendant to satisfy the jury, by a preponderance of the evidence, that Griffin died by suicide.

At the close of the evidence the defendant's counsel moved the Court for a directed verdict, which was denied.

There was a general verdict for the plaintiff rendered by the jury.

Thereupon, counsel for the defendant moved the Court for a judgment notwithstanding the verdict, or, in the alternative, for a new trial, or, in the alternative, for a non-suit.

How should the District Court rule on defendant's motions, and why?

Question 5:

Two treble damage anti-trust suits were filed in the United States District Court for the Northern District of Illinois in 1950.

The Rohlfing case involved 87 plaintiffs, all operators of independent retail shoe repair shops. The claim of these plaintiffs against the six named defendants—manufacturers, wholesalers, and retail mail order houses and chain operators—is identical. The claim asserted in the complaint is a conspiracy between the defendants “to monopolize and to attempt to monopolize” and fix the price of shoe repair supplies sold in interstate commerce in the Chicago area, in violation of the Sherman Act, 15 U.S.C.A. §§ 1-7, 15 note. The allegations also include a price discrimination charge under the Robinson-Patman Act, 15 U.S.C.A. §§ 13, 13a, 13b, 21a.

The Shaffer case involved six plaintiffs, all wholesalers of shoe repair supplies, and six defendants, including manufacturers and wholesalers of such supplies and a retail shoe shop chain operator. The allegations also include charges of monopoly and price fixing under the Sherman Act and price discrimination in violation of the Robinson-Patman Act.
Both complaints pray for injunctive relief, treble damages, and an accounting with respect to the discriminatory price differentials charged. Jury trial was not demanded by any party.

The record indicates that the cases had been burdensome to Judge La Buy, the District Court Judge. In Rohlfing alone, 27 pages of the record are devoted to docket entries reflecting that petitioner had conducted many hearings on preliminary pleas and motions. The original complaint had been twice amended as a result of orders of the court in regard to misjoinders and severance; 14 defendants had been dismissed with prejudice; summary judgment hearings had resulted in a refusal to enter a judgment for some of the defendants on the pleadings; over 50 depositions had been taken; and hearings to compel testimony and require the production and inspection of records were held. It appears that several of the hearings were extended and included not only oral argument but submission of briefs, and resulted in the filing of opinions and memoranda by the District Judge.

It is reasonable to assume that much time would have been saved at the trial had La Buy heard the case because of his familiarity with the litigation. However, Judge La Buy ordered the cases referred to a Master for trial under the authority of Rule 53(b) of the Federal Rules of Civil Procedure. The cases were called on February 23, 1955, on a motion to reset them for trial. All parties were anxious for an early trial. The Judge announced that "it has taken a long time to get this case at issue. I remember hearing more motions, I think, in this case than any case I have ever sat on in this court." The plaintiffs estimated that the trial would take six weeks, whereupon the Judge stated he did not know when he could try the case "if it is going to take this long." He asked if the parties could agree "to have a Master hear" it. The parties ignored this query and at a conference in chambers the next day the Judge entered the orders of reference sua sponte. The orders declared that the court was "confronted with an extremely congested calendar" and that "exception [sic] conditions exist for this reason" requiring the references. The cases were referred to the master "to take evidence and to report the same to this Court, together with his findings of fact and conclusions of law." It was further ordered in each case that "the Master shall commence the trial of this cause" on a certain date and continue with diligence, and that the parties supply security for costs. While the parties
deposited some $8,000 costs, the record discloses that all parties objected to the references and filed motions to vacate them, which were denied.

Upon the refusal by Judge LaBuy to vacate the orders of reference to a master and to hear the cases himself, the parties filed petitions in the Court of Appeals, seeking the issuance of writs of mandamus, or, in the alternative, a mandatory injunction, ordering Judge LaBuy to do so. These applications were grounded on 28 U.S.C. § 1651 (a), the All Writs Act. In his answer to the show cause orders issued by the Court of Appeals, the District Judge amplified the reasons for the references, stating "that the cases were very complicated and complex, that they would take considerable time to try," and that his "calendar was congested."

How should the Court of Appeals rule on the petitions for writs of mandamus or injunction, and why?
Rule 42. Criminal Contempt

(a) Summary Disposition. A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(b) Disposition Upon Notice and Hearing. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment.

Rule 53. MASTERS

(a) Appointment and Compensation. Each district court with the concurrence of a majority of all the judges thereof may appoint one or more standing masters for its district, and the court in which any action is pending may appoint a special master therein. As used in these rules the word "master" includes a referee, an auditor, an examiner, a commissioner, and an assessor. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within
the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) Reference. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.
28 United States Code

§ 1291. Final decisions of district courts

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

§ 1292. Interlocutory decisions

(a) The courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court:

(2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other dispositions of property;

(3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed;

(4) Judgments in civil actions for patent infringement which are final except for accounting.

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.
§ 1551. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in all of their respective jurisdictions agreeable to the usages and principles of law.