

Judge Admits Note to Chicago 7 Jury

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CHICAGO, Dec. 3—Judge Julius J. Hoffman acknowledged today that he twice privately instructed the "Chicago Seven" conspiracy trial jury to keep deliberating after it reported it could not reach a verdict.

Hoffman said he did not bring the jury into the courtroom where defense lawyers could hear his instructions because he feared the jurors would be exposed to disruptions and attempts by defendants to prejudice their judgments.

In a memorandum read from the bench, Hoffman recalled that the entire 4½-month trial had been marked by courtroom disorders.

"... I concluded that if the jury were returned to the courtroom during the deliberations, that there was a very substantial danger of their being exposed to prejudicial statements, courtroom disruptions or violence," he said.

Therefore, he added, he responded to the panel's notices of deadlock through a deputy marshal.

Judge Hoffman's statement did not explain why he failed to inform the defendants' law-

yers about the secret messages to the jury.

He was questioned on that point by the defendants' attorney, Thomas A. Sullivan.

"This is not an argument," the judge snapped, insisting that his statement complied with instructions from the Seventh Circuit Court of Appeals here. Hoffman has made it clear he would not subject himself to questions by defense lawyers.

The judge's comment was the final stage of an unusual hearing ordered to determine what communications were exchanged with the jury last February.

The five convicted defendants contend that the secret messages were improper and that the appellate court should order a mistrial.

The testimony of jurors and six marshals will be sent with Hoffman's statement to the Court of Appeals, where the case already is being appealed on other grounds.

In the case of alleged improper communications with the jury, the appeals court has three options. It could find that Hoffman committed a serious error and order a new trial, that he committed an error but one not serious enough to prejudice the de-

fendants' rights or that he did not err at all.

Five of the Chicago Seven were found guilty last February of crossing state lines with intent to cause a riot at the 1968 Democratic National Convention. Two others were acquitted on that charge and all seven were acquitted of conspiring to start a riot.

After the trial, a magazine writer, John Schultz, disclosed that jurors recalled informing Hoffman they could not reach a verdict early in their deliberations. On the basis of those revelations, the appeals court ordered a hearing that has spanned three weeks.

The defendants argue that communications with the jurors out of their presence violated their rights and prejudiced the jury, "coercing" it to reach a verdict.

The defense cites decisions holding that if a judge communicates improperly with the jury the government has the burden of proving that no prejudice resulted. The government cited a 1968 case in this circuit in which a judge told the jury to continue deliberating after it reached an impasse. The court held the communication was "harmless beyond a reasonable doubt."

However, lawyers here could not recall a case in

which the judge based his action on the possibility that courtroom disruptions might prejudice the jury.

Their had been outbursts by defendants and spectators throughout the trial. Hoffman's rulings and prosecution statements frequently were greeted with hisses and moans. The defendants contended these were spontaneous reactions provoke by what they deemed unfair tactics.

Several raucous outbursts occurred on Feb. 14—the day Hoffman said he received the first hung-jury message. That was the day he began doling long contempt sentences to the defendants an dtheir attorneys. Defendant Jerry Rubin shouted "Hell Hitler," defense lawyer William M. Kunstler burst into sobs, an dthe daughter of defendant David Dellinger was hauled from the courtroom.

On Feb. 14, with the jury out deliberating since noon, the judge said he received, about dinner time, a message that the jurors were deadlocked.

"My first reaction was one of amazement, for I could not recall any other case involving a long and such a complex trial as the one which we had engaged in where a jury reported its inability to agree before its serious deliberations could have commenced."

man said it was his practice to refuse such requests because selective readings of it "would place undue emphasis on the testimony of the witness or witnesses taken out of the context of the entire trial record in excess of 22,000 pages."

He said he did not recall which transcript the jury had requested. Jurors testified they had wanted to read the transcript of speeches given by defendants Rubin and Dellinger.

The defense does not contest the judge's right to refuse access to the transcripts. It does contend that the issue should have been raised in open court where the lawyers could argue about it.

So he told Deputy Marshal Ron Dobroski to instruct the jury to keep deliberating.

On the next day, Hoffman said he was informed that the jury still could not reach a verdict and also wanted to read some of the trial transcript.

"... directed the marshal to tell the jury that it was my order that they continue with their deliberations," he said.

While Hoffman said the messages were exchanged on the first two days of the jury's deliberations, his marshal had placed them on the first and third days. At least two jurors said they came on the second and third days.

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