Jury Charge In Deadlock Restricted

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The U.S. Court of Appeals ruled yesterday that federal judges here must abandon the traditional practice of urging a deadlocked jury to resume deliberations and try to hammer out a verdict.

In a 5-4 decision reflecting its deep ideological split, the federal Appellate court sharply restricted the use of the so-called "Allen charge" frequently employed by judges to persuade jurors in the minority to reconsider their view.

Named for the defendant in a case decided by the Supreme Court in 1896, the Allen charge characteristicaly tells the jury that it is their 'duty to decide the case if you can conscieniously do so.'

In the case decided yesterday, the Court of Appeals found the Allen charge given by U.S. District Court Judge Oliver Gasch in September, 1968, so prejudicial as to require reversal of the conviction of Anthony C. Thomas of charges of armed assault and robery.

Thomas, then 18, was convicted of stealing a camera, a radio, a shotgun and $22 in cash from another man's apartment in Washington.

See JURY, A12, Col. 2

JURY, From A1

He was sentenced to an indterminate term at the Lorton Youth Center under the provisions of the federal Youth Corrections Act and released more than two years ago, before his case was even argued on appeal.

But the Apellate Court went further than reversing Thomas's conviction yesterday.

Invoking its seldom-used 'supervisory jurisdiction,' it prohibited judges in the District of Columbia Circuit from future use of any version of the Allen charge to abandon minority jurors to abandon their position.

In a 22-page opinion by Judge Spottswood W. Robinson III, the court suggested that such a charge crosses "the line separating proper guidance from improper coercion" of a jury.

Joining Robinson were Chief Judge David L. Bazelon and Judges J. Skelly Wright, Carl Mcowan and Harold Leventhal, all generally considered members of the Appellate Court's more liberal bloc.

Judge Roger Robb filed a strong dissent, joined in by Judges Edward Allen Tamm, George E. MacKinnon and Malcolm R. Wilkey. All the dissenters except Tamm were named to the bench here by President Nixon.

The Thomas case was originally heard by a three-judge panel of the court in September, 1969, and Robinson filed an opinion similar to yesterday's more than 13 months later.

But the case was reargued *en banc* (before the full nine-judge court) last February at the government's request.

In the Allen charge struck down yesterday, Judge Gasch had urged reconsideration by dissenting jurors in his original charge, even before the jury in the Thomas case reported in a note that it was deadlocked.

After he received the jury note, Gasch went further, saying "I am not going to declare a mistrial, and thereby require a retrial of this case before some other jury."

Instead, he sent the jurors home overnight, suggesting they come back the next morning "with a fresh mind and a night's sleep and seek to reach a verdict about the matter one way or the other."

"I am sure you ladies and gentlemen know we have a substantial backlog of work," Gasch added, "and to spend another day before another jury retrying this case just doesn't make sense to me."

Robinson stressed in yesterday's opinion that the Appellate Court had "no doubt whatever that (Gasch) acted out of the best of motives" and that his coercion of the jury was "unintended."

"We share the trial judge's sensitivity to the need for adjustment of judicial processes to the point of highest efficiency," the majority said. "But while there is need to expedite the work of the courts, this cannot be at the expense of the call of conscience."

Joining the Third and Seventh Circuits (in the Northeast and Midwest), the Appellate Court here said it would permit only a mild version of the Allen charge that was drafted by the American Bar Association in the future.

That version stresses the jurors' "duty to consult with one another and to deliberate with a view to reaching an agreement, if it can be done without violence to individual judgment."

In addition to the Third and Seventh Citeuit courts, the supreme courts of Arizona and Montana have banned the traditional Allen charge.

The appropriateness of the Allen charge is at issue in hundreds of cases now on appeal across the country, including a version adopted by U.S. District Court Judge Julius J. Hoffman in the "Chicago Seven" conspiracy trial.

A source in the U.S. attorney's office here said last night that there is no way of telling whether the Thomas decision will be "devastating or just slightly inconvenient" for government cases.