

3rd Judge May Be Needed In Scientologists' Trial

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Federal prosecutors suggested yesterday that United States District Court Judge Louis F. Oberdorfer should disqualify himself as the trial judge in the case of nine members of the Church of Scientology because of "an aggravated problem."

The "problem" concerns Oberdorfer's previous service with the government as head of the Justice Department's Tax Division. According to the government, Oberdorfer's government service brought him into contact with the Scientologists in a manner that may raise questions about his impartiality in the case.

The defense has indicated that they intend to make the tax division's conduct during the period that Oberdorfer headed it one of the issues in the case.

If Oberdorfer disqualifies himself, an issue that may be decided as early as Friday when a hearing is scheduled on the matter, he would be the second judge to withdraw.

The trial of the nine persons, charged with conspiring to steal documents from the government, was originally assigned to U.S. District Court Judge George L. Hart Jr. At the request of the defense, however, he withdrew last week because his name appears in a document cited in the indictment charging the nine defendants.

Hart was the target of a "covert data collection" by members of the Church of Scientology after he suggested to an assistant United States attorney in a Freedom of Information Act suit brought by the church that its founder, L. Ron Hubbard, be asked to testify.

Hart said he was not upset to learn that he had been investigated by the group. But he said he could understand that others would not believe he was not upset and that therefore, he would disqualify himself.

Oberdorfer was head of the tax division of the Justice Department from 1961 until 1965, the same time that government lawyers under his direction successfully pressed litigation in the States Court of Claims that denied tax-exempt status to the Church of Scientology.

It was that denial, according to the government's indictment, that led to subsequent infiltration of government agencies and theft of government documents.

Although the prosecutors' memorandum filed yesterday does not expressly ask Oberdorfer to withdraw, that outcome is the clear intent of the facts presented and argument made.

Lawyers on both sides of the case said that the intent of the memoran-

dum was to persuade Oberdorfer to withdraw.

The defense has filed a motion seeking dismissal of the indictment because acts committed by the defendants were the result of "government provocation." This argument, the government said in its memo to Oberdorfer, places him "in the position of deciding whether the defendants' allegation of Judge Oberdorfer's and the tax division's 'outrageous misconduct' (charged by the defense) is admissible as a defense."

The government said that Oberdorfer, in ruling on the motion to dismiss, is placed in "a position of either condemning or clearing (himself) and (his) associates as well as the division (he) headed during the years mentioned. . . ."