

Mistrial Asked

Magee's Lawyer Assails Judge

The State Court of Appeal was asked yesterday to declare a mistrial in the Ruchell Magee murder-kidnaping case.

Defense attorney Robert Carrow filed a petition with the court claiming that Superior Court Judge Morton Colvin has kept the jury deliberating eight days, despite its "unequivocal statements with respect to their deadlock."

JURY

At 5:05 p.m., an hour after Carrow filed his motion, the jury returned to the courtroom and — for the third time — reported it was deadlocked.

"The jury is deadlocked," Judge Colvin read from a note handed him.

The he said:

"I have one question of you — can you point to any question of the law that is troubling you without telling me which way you are leaning?"

He instructed the jury to go to the jury room again and prepare a written answer to his question.

The jury took a two-hour dinner, deliberated for another hour-and-a-half, and then presented Judge Colvin with a long, confusing question dealing, apparently, with the judge's instructions to the jury.

Attorneys were mystified by it. And Judge Colvin himself sent the jury members to their hotel rooms for the night, explaining that he would give them an answer when court reconvenes today.

A second question read

simply:

"Dear Judge Colvin: What is the legal meaning of presumption of innocence and the burden of proof?"

Carrow had asked for a writ of mandate "commanding" Judge Colvin to declare the mistrial or participate in a hearing on why one hasn't been declared.

NOTES

Carrow noted that the jury twice — on March 28 and April 1 — sent notes to Judge Colvin saying it could not reach a verdict.

On Sunday, Carrow charged Judge Colvin is trying to "force a verdict" — a charge the judge flatly denied.

By Judge Colvin's order, the petition said, the jury has been sequestered since January 5, when it began hearing the prosecution case that Magee kidnaped and killed a Marin county judge during the August 1970 Marin Civic Center shootout.

The jury—last reported deadlocked 11-1 on the kidnap charge and 11-1 on the murder charge—deliberated for 7½ hours yesterday.

It twice returned to the courtroom and asked Judge Colvin if the kidnaping and murder charges represented separate offenses. Judge Colvin twice replied that each charge must be decided separately "under the applicable law."

By the time it was sequestered for the night, the jury had put in more than 55 hours of deliberation.

There was no indication yesterday whether Sunday's split still remained, nor whether the majority favored a verdict of acquittal or guilty.