

**Faults Trial Judge for Lack of Inquiry**

**Panel Reverses Conviction  
On Issue of Jury Prejudice**

By Martin Fox

The Appellate Division, First Department, last week set aside the burglary conviction of a white defendant in the Bronx because the trial judge failed to determine whether "invidious racial bias and prejudice permeated" deliberations by a jury of blacks and Hispanics resulted in an unfair trial.

The Court ruled in its memorandum decision in *People v. Peter Rukaj* that the allegations of racial bias during deliberations were sufficient to have required the judge to hold an inquiry at that point or consider the claims at a post-trial hearing.

The decision is on page 13, column 3.

All five justices on the panel also agreed that a new trial was needed because of comments by a court officer that if the twelve jurors did not quickly reach a verdict on a Friday they might be "sequestered for the entire weekend or perhaps five or six weeks." Shortly after these comments, the jury returned its unanimous guilty verdict that led to a sentence of one and a half to four years in prison.

One justice, however, dissented on reversal of the issue of racial prejudice, deciding the majority's findings were based on "a tenuous and clearly insufficient factual foundation."

The majority, however, emphatically stated that error had been committed with respect to the refusal to consider a dissident juror's affidavit on a post-trial motion alleging that racial prejudice "permeated" the deliberations. It found that this constituted an "exception" — based upon "improper outside influences on jury deliberations" — to the general rule that "statements by the jurors themselves may not be used to impeach a verdict and the court may not inquire into the mental processes of deliberation."

"When these outside influences impair the impartial assessment of the facts by the jury, and thus constrain defendant's fundamental right to a fair trial, reversal is warranted," the Court held.

**Jury's Note to Judge**

The decision pointed out that supportive of the juror's allegations was a note sent by the jury to the judge during deliberations "indicating that it could not reach a verdict "because of speculations and biased feelings."

"After this note was read," the Court continued, "defense counsel requested a mistrial. The court denied this request and also a request to conduct further inquiry. Instead, the

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**Bronx Jury**

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court further highlighted the racial issue by a supplemental charge which was insufficient to appropriately address the issue."

It added: "At this point, the trial judge should have conducted an inquiry into the nature of the jury's 'speculation and biased feelings.' The court had a clear obligation to respond to the jury note and at that juncture should minimally have questioned the jurors."

The affidavit by the juror, an Hispanic, recited the racial overtones during the deliberations by the jury composed entirely of blacks and other Hispanics. The defendant's attorney was white, while the two arresting officers and the prosecutor were black. The juror referred to what was described as "extremely heated nature of the deliberations," and she was harassed into voting for a conviction.

**Harassment Claim**

"According to her testimony," the majority said in reviewing the case, "the reasons for this harassment appeared to be predicated upon the fact that she didn't 'look at people by color, race or ethnic background,' while other members of the jury repeatedly expressed their prejudice against the defendant and his counsel by virtue of their race and exhorted other jurors to vote for conviction on this basis alone.

"She asserted that comments made to the effect that one juror would not vote for acquittal because, 'I won't let a white man (defense counsel) influence or manipulate me and I won't do it,' and 'We as blacks should not allow "whitey" to win out' "

In determining that a new trial is required because of the failure to hold a post-trial hearing on these claims, the Court ruled that "when the spectre of an outside influence of the jury affecting defendant's fundamental right to a fair trial is raised, it is vital that a hearing or other appropriate inquiry be held to ascertain what actually transpired."

The majority consisted of Justices John Carro, Arnold L. Fein, E. Leo Milonas and Betty Weinberg Ellerin.

**'Erroneous Conclusion'**

In a separate opinion concurring only on the need for a new trial based upon misconduct by the court officer in his comments to the jurors, Justice Leonard H. Sandler said he found no basis for reversal relating to allegations of racial prejudice. He said those grounds cited by his colleagues "embody erroneous legal conclusions reached in part on the basis of an incorrect interpretation of relevant parts of the record."

He criticized the majority for terming "as error the trial judge's adherence to a long-established principle, apparently never before previously departed from by any appellate court in this State, that a jury verdict may not be impeached on the basis of a juror's claims of misconduct during jury deliberations except where those deliberations were affected by external influences."

In sustaining the trial judge's actions in not holding a hearing during the jury deliberations, he wrote that an inquiry had not been requested by the defense and the jury's note "never alleged such racial bias and was almost certainly not intended to convey any such claim." Moreover, he added, even if racial bias was raised in the note, the trial judge's "response recommended (by the majority) would have been improvident under the circumstances, (with) the potential for harm to the deliberative process in the proposed inquiry clearly outweighing any constructive result that could reasonably have been expected."