

One Attica Murder Charge Dismissed

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BUFFALO, March 31—Justice Gilbert H. King of State Supreme Court today struck down the murder charge against Charles Joseph Parnasilice, one of two defendants in the Attica trial here, saying that he would instruct the jury that it could still find Mr. Parnasilice guilty of such lesser crimes as attempted murder, assault and attempted assault.

Justice King made his decision known just before Ramsey Clark, Mr. Parnasilice's lawyer, was to begin his summation. The jury was not then in the courtroom.

Mr. Clark, a former United States Attorney General, who had earlier moved for the dismissal of all charges against his client, angrily directed a portion of his summation to the judge's decision, even though the jury had not been informed of the ruling and would not be until the judge's charge after summations were completed.

"I don't think the judge will charge Charley Joe with murder, be a bag full of other things there, attempt to commit murder. I think it's a trick to turn from murder to attempted murder," Mr. Clark said.

Louis Aidala, the chief prosecutor, objected, saying that Mr. Clark was preempting the judge's prerogative in giving the charge. Judge King, however, was more concerned by Mr. Clark's use of the word "trick,"

and asked the lawyer what he meant by it.

"You don't think it's a trick, you do it; I think it's a trick," Mr. Clark snapped, and resumed his summation.

Speaking without notes, Mr. Clark emphasized that the state had not presented any "credible evidence" to indicate that his client had even been at the scene of the crime, let alone that he had struck Correction Officer William E. Quinn, for whose murder he had been indicted.

For the first time in the hearing of the jury Mr. Clark offered the defense's view that Mr. Parnasilice was brought to trial on flimsy evidence to assure the conviction of his co-defendant, John Hill.

"You have to ask yourself whether Mr. Parnasilice is in this case to give you something to compromise about. Convict one and acquit the other. You can't compromise on things like that," Mr. Clark said.

Mr. Clark, who spoke for nearly two hours, began his statement with folksy homily, hands shoved into the front pockets of his Levis.

From this prologue, Mr. Clark moved to an assessment of the state's case. He recalled that only two of the 24 witnesses had mentioned Mr. Parnasilice by name. The 13th prosecution witness, Thomas Collins, had said that within a day or so after the Attica rebellion began on Sept. 9, 1971, Mr. Parnasilice told him that he had "made sure a guard was dead."

Mr. Clark belittled the value

of this testimony. He noted that at that time Mr. Quinn was still alive in a Rochester hospital. Furthermore he reminded the jury that Mr. Collins had said that he had never taken the defendant's comments seriously.

The major portion of Mr. Clark's address concerned his attempt to refute the testimony of the 14th state witness, Edward Zimmer, the only man to have said he had seen Mr. Parnasilice strike Mr. Quinn. Mr. Zimmer, a former inmate, had said on direct examination by Mr. Aidala that he had seen the slow land "over the shoulders."

Mr. Clark recalled that identification and, picking up the transcript of the trial he noted, "and then there was that one question too many." He glanced at the prosecutor as he read to the jury Mr. Aidala's question and Mr. Zimmer's answer:

Q. When you say over the shoulder, what part of the body are you referring to?
A. The back.

Mr. Clark recalled the testimony of the two doctors presented by the prosecution, both of whom said Mr. Quinn had suffered no injuries on the back.

Mr. Clark concluded his argument with mounting feeling. The lawyer, who has been working on this case ever since he lost the United States Senate election last November, cast his eyes from juror to juror.