

Magee Retrial-- Kidnaping Only

San Quentin convict Ruchell Magee will be retried on a single charge of aggravated kidnaping, Attorney General Evelle J. Younger announced yesterday.

However, Younger said, Magee will not be tried again for murder because the jury that heard his first trial voted 11 to 1 for acquittal on that charge. The same jury voted 11 to 1 for conviction on a charge of simple kidnaping.

The trial, estimated to have cost \$1 million, ended in a hung jury on April 3.

"The absence of the death penalty in California creates the absurd situation in which a murder conviction carries a lesser penalty than an aggravated kidnaping charge," Younger said.

"A kidnaper who seriously injures his victim can get life without possibility of parole, while a murderer can only get straight life."

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Under existing law, Magee, who is already serving a life term, would get another similar sentence if convicted of murder.

He was accused of murder and kidnaping in connection with the Aug. 7, 1970, Marin county courthouse gun battle in which four persons were killed, among them Superior Court Judge Harold Haley.

Angela Davis was acquitted last June 4 of murder,

kidnap and conspiracy in connection with the same bloody episode.

Younger was obviously irritated at the prospect of another Magee trial and complained that Marin county District Attorney Bruce Bales "just abandoned this whole thing and dropped it in our laps."

He said it was uncertain whether Albert Harris Jr. would again act as prosecutor, but added that the senior members of his staff, among them Harris, concurred that the death charge should be dropped.

'WASTE'

Defense attorney Robert Carrow, informed of Younger's decision, said a retrial would be a "waste of the court's time and the taxpayers' money".

He said the first jury rejected by a 12 to 0 vote a charge of aggravated kidnaping and emphasized that the final vote on simple kidnaping was 11 to 1.

"Simple kidnaping is punishable by a sentence of one to 25 years with eligibility for parole in one year. Magee is already serving a life sentence. This is nothing but bureaucratic obstinacy," Carrow said.

Carrow said that sometime this week he will file an appeal claiming a second trial would constitute double jeopardy.

Pretrial motions are

scheduled to be heard by Superior Court Judge John Ertola on May 7 and the new trial has been tentatively set for May 29.

There has been no intimation that the second trial would be moved from San Francisco.