

JUDGE MAY REDUCE AN ATTICA CHARGE

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Clark Appeals for Dismissal in Pernalilice's Case on Basis of Evidence

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BUFFALO, March 18—The judge in the Attica murder trial said today that he was considering reducing the charges against one of the two defendants on trial here for the killing of a correction officer at the beginning of the September, 1971, prison rebellion.

Justice Gilbert H. King of State Supreme Court made his comments after Ramsey Clark, the lawyer for the defendant, made an impassioned appeal for the dismissal of the indictment against his client, Charles Joseph Pernalilice.

Mr. Clark, who until today had confined his statements in court to a low-keyed questioning of witnesses, spoke for 20 minutes, outlining what he held was the paucity of evidence against Mr. Pernalilice presented in the three weeks that the prosecution mounted its case.

Only two of the state's 18 witnesses even mentioned Mr. Pernalilice, Mr. Clark said, reviewing the record. One, a former inmate, said he had heard the 21-year-old defendant from Syracuse tell him "he had made sure a guard was dead." Mr. Clark, a former United States Attorney General, emphasized the ambiguity of the remark and reminded the court that the witness himself had said he had not taken it seriously.

Medical Testimony Cited

The other witness, who mentioned Mr. Pernalilice, also a former inmate, said he had seen the defendant strike the correction officer, William E. Quinn, "between the shoulders on the back." Mr. Clark quoted testimony of doctors put on the stand by the state who said that no injuries had been found on the back of Mr. Quinn and that the officer's death on Sept. 11, 1971, two days after the riot started, had come from head injuries.

"There is no evidence that could by any reasonable construction warrant the submission to the jury of a charge of murder or any lesser offense," Mr. Clark told the court.

"I must say that never in 24 years before the bar have I seen any office of prosecution submit in a case of murder such inconsequential, unsubstantial and unimportant

evidence, and I urge you to end the anxiety now and dismiss the charges against Mr. Pernalilice."

The prosecution attempted to rebut Mr. Clark's motion, which was made during a day on which the jury was excused. James Grable, one of the prosecutors, argued that the credibility of the evidence was for the jury to consider.

Proof Requested

Justice King asked whether there was any proof on the record that Mr. Pernalilice had "abetted, solicited, requested, counseled, importuned, or intentionally aided his co-defendant," John Hill.

Mr. Hill speaking in his own behalf, also asked that the charges against Mr. Pernalilice be dropped so that "we can get on with what the state wants to do anyway." He referred to what the defense—out of court—has said was the prosecution's strategy from the outset.

The defense view is that the state is setting up Mr. Pernalilice for an acquittal, thus strengthening the possibility of a conviction against Mr. Hill. The case against Mr. Hill is much stronger than that against Mr. Pernalilice.

Before Mr. Clark made his motion, Mr. Hill's lawyer, William M. Kunstler, moved to dismiss the charges against his client as well. His one-hour-and-15-minute speech disclosed the political overtones with which he regarded the issues at stake.

While Mr. Clark said at the beginning of his comments that he "would argue narrowly on the sufficiency of evidence," Mr. Kunstler attacked the prison and court systems. In fact, out of court, Mr. Kunstler said his motive in the argument was in part to reach beyond the courtroom to stir discussion on the issues raised by Attica

'Just Following Script'

"I have no faith in the system of justice," he said before the judge at one point, "but I'm just following the script." Justice King remonstrated that "these remarks are a distinct attack on this court."

"No, Judge, you take it too personally," Mr. Kunstler answered. "My criticism is so broad, you just take it too personally."

Speaking of the "cataclysm" that took place at Attica, he said:

"For one blinding moment hundreds of men were released. It was a paralyzing moment in history when a man was run down by forces that were suddenly unleashed. It happened without anyone's control. It was a cry against an inhumane system and in its initial moments some people got hurt. This was a moment of rebellion. People got killed at Lexington and Concord, but no one was ever tried. Trying this case is like trying to put the French or American Revolution into a courtroom."