Defense Sums Up in 3d Trial on Policeman's Slaying

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Special to The New York Times

ELIZABETH, Sept. 26—The defense attorney in the third trial of a man accused of wielding a meat cleaver during the slaying of a Plainfield police officer by a mob during rioting in 1967 urged the jurors today to ignore color photographs of the dead officer's wounds and to judge the case on the hard evidence presented.

Thomas R. Ashley, the attorney for George Merritt Jr., said that the photographs and slides of the Patrolmen John Gleason's wounds were intended to inflame the passions of the jurors. He said that the state had not proved the case against his client, whose two previous murder convictions were overturned on appeal.

Mr. Ashley noted that the wounds on the head, shoulders and back of the patrolman were not the type indicative of an attack with a meat cleaver.

"Where is the meat cleaver, where is the hammer?" Mr. Ashley asked.

He noted that more than 20 policemen were on the scene moments after the attack but no weapon was ever found.

"The reason no weapon was ever found is because there never was a weapon," Mr. Ashley said.

"No amount of emotion or appeal to emotion can make the facts any different than they are."

Mr. Merritt and 12 others were arrested following the riots on July 17. Eleven of the defendants were either released or acquitted. One woman, Gail Madden, was convicted of murder in 1968 but the conviction was overturned. She was tried a second time and is serving a life term at Clinton State Prison.

The attack on the officer had come after he shot a black youth.

In his summation, of this trial which is in its third week, Mr. Ashley said that the attack on the patrolman by the mob of about 20 people "is one of the most heinous crimes I can imagine" but asked the six men and 10 women in the jury box to disregard the "gruesome" slides and photographs which "must have certainly affected each and every one of you."

He said that he, too, was affected by the slides.

Mr. Ashley said that the state's prime witness, Donald Frazier of Plainfield, who testified at each of the three trials, was not credible and that other witnesses, including some who had testified for the state in previous trials dealing with the riot, did not corroborate his statements that he had seen Mr. Merritt hit the police officer with a meat cleaver or a hammer.

Mr. Merritt, who was 23 years old at the time, was arrested on Sept. 8, 1967, about a month after Mr. Frazier told the police he had seen him wielding a meat cleaver or a hammer during the attack on the officer.

Mr. Merritt was convicted for the first time in December 1968 and was sentenced to life in prison. In July 1972, that conviction was overturned, according to Mr. Ashley, because of the manner in which the jury was charged.

He was again tried in February 1973, convicted and again sentenced to life. That conviction was overturned in September 1976, Mr. Ashley said, because of the manner of cross-examination by the prosecution. The present trial began on Sept. 12 at the Union County Courthouse here. Mr. Merritt has already spent about seven years in prison.

Against Execution: A Case in Point
MORTON STAVIS
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Letter: On Capital Punishment

Against Execution: A Case in Point

To the Editor:

Your editorial "Possible Guilt, Certain Death" (Dec. 7) points to the decisive argument against the death penalty. Our system of justice, with all its concern for the rights of the accused and allowance of appeals, is simply not reliable enough to merit the finality of death. For example, your readers might ponder the lessons of the George Merritt case in New Jersey.

In 1967, a white police officer was beaten to death by a group of some 25 black persons in the course of a riot in Plainfield that was a response to the officer's having attacked a young black man. George Merritt was convicted in 1968 of first-degree murder. Although at the time that offense was subject to the death penalty, he received a life sentence.

On appeal the New Jersey Supreme Court reversed because of judicial error. On retrial in 1974, he was again convicted. This time the death penalty was not available because of intervening Supreme Court decisions. On retrial in 1977 he was convicted for the third time and again sentenced to life imprisonment. This time the appellate courts of New Jersey refused to intervene.

His case was then taken to the Federal court, where a careful judge permitted a hearing of a few hours that resulted in the unearthing of a police report that had been concealed for 13 years and that very seriously undercut the story told by the only witness who had implicated Merritt. (The state courts had turned down a plea for a similar hearing.)

The Federal judge's decision in 1980 setting aside Merritt's conviction was not appealed nor was he retried, although the state had authority to do so. Merritt, in jail for 10 years, was freed.

Despite widespread knowledge in New Jersey of the Merritt case, last year that state, acting in the context of the Supreme Court's steady retreat from its original position, reinstated the death penalty!

What would the proponents of the death penalty have to say if Merritt had been executed before the discovery of the concealed document? They would argue that it is part of the price that we pay for having an organized society and a judicial system. But we do not have to pay that price, and those who argue for it are never prepared to pay for the inaccuracies of the judicial system when they themselves are involved — they are only arguing that the other person ought to pay.

MORTON STAVIS
New York, Dec. 8, 1983

The writer, president of the Center for Constitutional Rights, was counsel for the third Merritt appeal.