

REQUEST FOR BALLISTICS EXPERT REJECTED

Chesimard defense, judge clash on witness denial

By LAWRENCE NAGY

Joanne Chesimard and her attorneys argued with Superior Court Judge Theodore Appleby yesterday when he refused a request to include an extra ballistics expert among the defense witnesses who will testify in her New Brunswick murder trial.

The sharp exchange began a day of testimony in which a State Police chemist was cross-examined by defense attorney William Kunstler. The forensic chemist, George Hickman, had testified Tuesday that bloodstains from Chesimard's clothing matched the rare blood type of Trooper Werner Foerster, who was killed in a May 2, 1973, Turnpike gunbattle.

Chesimard, 29, is charged with murdering Foerster and wounding Trooper James Harper.

Meanwhile, a majority of the full 10-judge Third U.S. Circuit Court of Appeals in Philadelphia yesterday reversed an earlier ruling by a three-judge panel of the same

court and allowed the trial to proceed on Fridays. Chesimard had objected to the Friday sessions in a federal petition, claiming her observance of the Muslim sabbath on Fridays was protected under First Amendment religious rights.

Appleby decided not to hold a trial session tomorrow, however, after Kunstler told him defense attorneys will petition U.S. Supreme Court Justice William J. Brennan Jr. to delay implementation of the Circuit Court ruling pending a hearing by the high court.

Before the all-white 15-member jury was brought into the courtroom yesterday, Middlesex County First Assistant Prosecutor Edward Barone told Appleby he objected to a request by attorney Lawrence Stern to have another ballistics expert added to the list of defense witnesses.

Barone contended Robert Zimmers, a retired FBI employe, should not be permitted to testify on behalf of Chesimard because defense attorneys missed a Feb. 1 cutoff date for completing their list of witnesses.

Stern said the delay was caused by a lack of defense funds and contended prosecu-

tors have at their disposal "all the experts in the world and unlimited expenses."

Appleby has clashed frequently with defense attorneys concerning availability of funds and deadlines for the submission of court papers and other materials.

"The defense has lost all its credibility as far as money is concerned," Appleby said.

"We must have the opportunity to contradict the sham handling of firearms by the State Police," Stern protested.

"It might be hard to find experts, but you've had a year," Appleby responded.

Kunstler warned Appleby that his refusal to allow the ballistics testimony because of an "artificial rule" could be the basis for reversing a conviction in the case.

Chesimard spoke up after Appleby denied the motion.

"This is a sham. It's not a fair trial," she asserted.

Appleby warned defense attorneys to "keep her quiet."

"You have a warning," the judge told

the defendant. "If this happens again, you'll be removed from the courtroom and watch the trial on television."

During cross-examination, forensic chemist Hickman said he performed more extensive blood tests on pieces of evidence that he had indicated in his testimony Tuesday.

Hickman said he found Type 0 blood on the trigger, trigger guard and hammer of Foerster's service revolver. He testified Tuesday he found blood on the grip and side of the weapon. Type 0 blood matches the blood of James Costan, who was killed in the shootout, and Clark Squire, who is serving a life term in state prison for his role in Foerster's murder.

Hickman also testified under cross-examination he was not certain whether a sample of dirt and blood he classified as Type 0 was recovered from the roadway at the scene of the shootout or from the floor of the Pontiac in which Chesimard, Costan and Squire were riding.