

# CHESIMARD: Pathologist backs defense; credibility doubted

By LAWRENCE NAGY

A medical expert testified yesterday Joanne Chesimard had her hands raised when she was shot in the 1973 Turnpike gunbattl; she is accused of starting.

But Dr. David Spain's credibility was attacked in cross examination when he admitted a defense attorney told him of the previous day's testimony by a surgeon who reached a similar conclusion. A sequestration order in Chesimard's New Brunswick murder trial bars prospective witnesses from learning of courtroom testimony either directly or through an attorney.

Dr. Spain, a pathologist at Brookdale Hospital Medical Center in Brooklyn, was the second physician called by defense attorney Lewis Myers to buttress Chesimard's claim that she was unarmed and seated in the front seat of a car — with her hands raised — when

Trooper James Harper shot her on May 2, 1973.

Chesimard is accused of wounding Harper and murdering Trooper Werner Forester in the gunbattle which also took the life of one of her two companions, James Costan.

Dr. Arthur Davidson testified Wednesday that Chesimard could not have been crouched in a firing position when she was wounded, as Harper has testified.

Dr. Spain testified yesterday that Chesimard's gunshot wounds were "consistent" with her claim that Harper shot into the car from the open driver's door while her hands were raised.

The physician said his conclusions were based on X-ray reports and an examination last week of Chesimard's scars from two gunshot wounds. One wound was caused when one of Harper's bullets entered the underside of her right arm, shattered her collar bone and lodg-

ed in her upper chest. Another bullet entered the upper part of the left arm, tumbled through soft tissue and exited through the upper left chest just below the collar bone.

Under questioning by Myers, Dr. Spain illustrated the path the two bullets would have taken by having a female sheriff's officer assume both a crouched firing position and a seated position.

He claimed a bullet would have gone through Chesimard's right arm without striking the collar bone if she was in the crouched firing position. The doctor initially appeared confused when he illustrated the bullet trajectory in the seated position, indicating a shot fired into the car from the passenger's side rather than the driver's side.

Under questioning by Edward Barone, Middlesex County first assistant prosecutor, Dr. Spain insisted it was not necessary for him to view the actual X-ray photographs of Chesimard's

wounds in order to reach his conclusions.

"I'm not an expert on reading X-rays. I rely on a radiologist's report," he said.

Barone read a passage on forensic pathology to Dr. Spain, over objections from Myers that the prosecutor did not identify its source. Barone had what appeared to be a textbook opened in front of him as he read.

The passage claimed that slight errors in tracing trajectories and inexact measurements of wounds could result in erroneous conclusions about the relative positions of victims and assailants.

When Barone asked Dr. Spain if he agreed with the passage, the witness asked if it had come from a textbook by another doctor which Barone was then holding in his hand. Barone then shot back that the textbook was not the source of the quote. He said it came

from a book on pathology Spain had written.

Dr. Spain said he then recognized the quote as coming from his own book.

Earlier, Superior Court Judge Theodore Appleby questioned Dr. Spain outside the presence of the jury after he testified he was told by Myers in a telephone conversation about the testimony Wednesday of Dr. Davidson.

Appleby concluded the sequestration order was violated. He indicated he would not strike Dr. Spain's testimony but said he would consider instructing the jury about the violation in considering the physician's credibility.

Dr. Spain also testified James Costan could have lived from 15 minutes to an hour after he was shot in the chest during the exchange of shots with Harper. The trooper has testified he struck both Chesimard and Costan as they crouched outside their car.

Barone sharply questioned Dr.

Spain's conclusions about Costan, apparently trying to head off a defense claim that Costan could have participated in the execution style-slaying of Trooper Foerster on the other side of the car after he was shot and Harper had fled.

Barone indicated to Dr. Spain that Costan was found dead about 15 minutes after he was wounded. He then asked the doctor if Costan could have had any mobility, despite the gunshot wound which ripped through his lung and liver.

"He could have gotten up and run and by the time 15 minutes were up and he lost blood he could have collapsed and died," Dr. Spain said. He also conceded the injury could have totally immobilized Costan.

During the luncheon recess, some 75 chanting demonstrators marched on behalf of Chesimard in front of the Middlesex County Courthouse, demanding "Free Assata Now." Chesimard is also known as Assata Shakur.