

Ex-Panthers Lose Retrial Motion

By RICHARD PÉREZ-PEÑA

Three former Black Panthers who were convicted of murdering two New York police officers in 1971 are not entitled to a new trial, a Federal judge ruled yesterday, despite his conclusion that important evidence was withheld from the defense and that a prosecution witness had lied.

In a 26-page ruling, Judge Morris E. Lasker of District Court in Manhattan agreed with the claim of Herman Bell, Anthony Bottom and Albert Washington that evidence of ballistics tests was not provided to their lawyers. But the judge said it was not clear that prosecutors in the Manhattan District Attorney's Office knew that the material had been withheld, or that it would have changed the outcome of the case.

The ruling came 18 years to the day after the three men were convicted in the shootings of Officers Joseph A. Piagentini and Waverly M. Jones outside the Colonial Park Houses in Harlem. The May 21, 1971, shooting came at the height of tensions between the Black Panthers and the police.

Lawrence A. Vogelmann, a profes-

sor at Benjamin N. Cardozo School of Law at Yeshiva University, who represented the three men in their petition for a new trial, said that he was encouraged by some of what the judge wrote and that he would appeal.

The judge found that Detective George C. Simmons, a Police Department ballistics expert, committed perjury in the 1975 trial in State Supreme Court in Manhattan. Detective Simmons indicated that only one set of ballistics tests had been performed on the slugs and shells recovered, when there were actually three sets.

The judge wrote that it was likely that Detective Simmons's answers "were deliberate and knowing." Detective Simmons has left the force and could not be reached for comment yesterday.

There is no surviving record of the original Police Department tests. A second set of Police Department tests tied the shells and slugs to a .45-caliber handgun found with the three men when they were arrested. The third set, by the F.B.I., was inconclusive. Although the F.B.I. test results were found in the prosecution's files, prosecutors have submitted sworn statements that they did not knowingly withhold the material.