

# Attica Hearings Are Under Way

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BUFFALO—For the last two weeks in the Erie County Courthouse here, pretrial hearings have been going on in the first major case to stem from the Attica prison rebellion of September, 1971, which resulted in the loss of 43 lives.

The case, known to prosecutors and defense lawyers as "Indictment No. 1," concerns the murder of Correction Officer William Quinn, who died of head injuries two days after the state prison uprising began.

In December, 1972, two former Attica inmates were indicted in the murder—the first of 42 indictments that were to be handed up by the special grand jury empaneled to investigate the rebellion and its aftermath. Altogether 62 inmates were charged with riot-related crimes, ranging from kidnapping to sexual abuse.

The pretrial hearings, held at the behest of the defendants, are to determine whether the state used proper procedures in selecting and preparing its eyewitnesses for the trial. They are known to lawyers as "Wade hearings," for a landmark Supreme Court ruling in 1967 that set standards for eyewitness identification of suspects.

Prosecutors have told defense attorneys that 11 of its murder witnesses will testify.

## Killed by Inmates

State Supreme Court Justice Gilbert H. King, who is presiding at the hearings, has allowed defense attorneys to cross-examine witnesses extensively. To date, only two of the 11 have taken the stand.

Although 11 correction officers died during the riot or its aftermath, Officer Quinn was the only one to die at the hands of inmates. The others died in the assault on the prison that was finally made by the state police to end the uprising.

Officer Quinn was fatally injured on the morning of Sept. 9, 1971, when the rioting started and rebels broke through a massive gate at the central guard post of the prison, where the guard was stationed, a point known to the inmates as "Times Square."

## Pretrial Sessions in 3d Week, Still on 'Indictment No. 1'

The New York State Special Commission on Attica later reported that it was the lawyer William M. Kunstler—one of the group of observers sent into the prison grounds at the request of the rebel inmates—who in a speech on Sept. 11, 1971, to the rebels that was intended to persuade them to accept a settlement proposal inadvertently revealed that Officer Quinn had died that day in a nearby hospital.

Although the commission attributed no hostile motive to Mr. Kunstler in this, it concluded that his telling them of the guard's death probably did more to harden their demand for amnesty than any other single factor after the uprising started.

Now Mr. Kunstler sits in a third-floor courtroom in the Erie County Court House here beside his client, John Hill, a 22-year-old American Indian who has been charged with the murder of Officer Quinn.

The seat on the other side of Mr. Hill is occupied by Charles J. Pernalice, 22, another Indian, who has also been charged with the murder. And beside him sits his lawyer, Ramsey Clark, who, as United States Attorney General in the late nineteen-sixties had authority over some of the cases



Associated Press

William Quinn, a correction officer, who was murdered at Attica two days after uprising began.

involving black militants and white radicals that led to Mr. Kunstler's prominence as a defense attorney.

Behind them in the spectators' section sit the relatives of the two defendants, some of whom live in or near Buffalo. Others are members of the Attica Brothers Legal Defense organization, which has its headquarters here, and one is an Indian spiritual leader named Mad Bear, who wears a feather headdress in court.

In a concession that seemed designed to head off confrontations, Justice King has allowed the Indian spectators to remain seated as he enters and leaves the courtroom, although all others—except the two defendants—are required to stand.

He made this decision after at first barring all the Indian spectators from the trial one day two weeks ago when they refused him that traditional show of respect.

The luxuriously paneled and carpeted courtroom over which Justice King presides is full of historical echoes and ironies that go far beyond the current proceedings.

Mr. Kunstler, with a watchband of Indian jewelry and an Indian-fashioned silver belt buckle, reflects the history of the dissident left, which made Attica a catchword for what its members see as the injustices of "the system."

The stringent security precautions—all spectators without press passes are subjected to metal-detector friskings and their bags are searched as they enter and leave—are a reminder of the seizure of hostages at gunpoint at the trial of the late George Jackson, another inmate charged with the killing of a prison guard, at the Marin County Courthouse in San Rafael, Calif.

And finally, there has been frequent mention of Attica at the Washington hearings on the confirmation of Nelson A. Rockefeller to be Vice President. As Governor of New York at the time of the Attica rebellion he had the ultimate authority to decide how and at what point to end it.

## Judge Is Cautious

As if conscious of the trial's historical significance, Justice King is weighing every aspect of the case with extreme caution. He is not averse to reversing his own rulings when convinced he has gone astray.

He is as stern with the leading prosecutor, Luis Aidalla, when he thinks it necessary as he is quick to put down what he regards as Mr. Kunstler's extravagant expressions of outrage. Last Monday he first raised his voice to quiet Mr. Kunstler who had been calling some state-provided identification photographs "a fraud" then later told Mr. Aidalla he had "serious reservations" about the acceptability of the pictures. The next morning he ruled the pictures admissible for the purpose of the hearing.

Although defense attorneys stand little chance of disqualifying any of the eyewitnesses at this stage, they have attempted to get as much information from them as possible about the government's case. In fact, one day Mr. Aidalla remarked with exasperation: "I hope we are not going to have two trials, a pretrial and a trial."

He and the other assistant special state attorneys general handling the case contend that the hearings will do little to weaken their position because, they say, the eyewitnesses will stand firm on their memories of events. It is the defense strategy to try to prove fallibility of those memories. This has already been indicated in motion papers, which include contentions that other witnesses not being called in the hearings saw inmates other than their clients hitting Officer Quinn.

The ultimate defense strategy will be to make the trial jury wonder whether anyone can fairly say when or by whom—in all the confusion—the fatal blows were struck.