

Attica Defense Acts to Call Rockefeller as a Witness

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BUFFALO, March 7—Defense lawyers in the Attica murder trial moved today to subpoena Vice President Rockefeller as a witness.

The lawyers contend that Mr. Rockefeller should testify about statements that he has made asserting that William E. Quinn, the correction officer who died shortly after the prison was overrun by inmates, "was thrown from a window."

The first time that Mr. Rockefeller mentioned Mr. Quinn's being thrown from a prison window was during the uprising, which took place in September, 1971. He mentioned it again last Nov. 22, when he was questioned at his Vice-Presidential confirmation hearing before the House Judiciary Committee at the hearing, Mr. Rockefeller said, "One guard died from a beating and being thrown out the window."

The report of the officer's being thrown from the window had currency during the four-day insurrection. However, it was termed "a manifestly false rumor" in the official report of the New York State Special Commission on Attica, which was disclosed in September, 1972.

Defense lawyers have insisted from the outset of the trial here that Mr. Rockefeller's testimony would be important to the case that they hope to establish for their clients, John Hill and Charles Joseph Parnass. The two defendants, both 24 years old, are charged with murdering Mr. Quinn by hitting him during the first hour of the troubles.

Two weeks ago the defendants' lawyers, including William M. Kunstler and Ramsey Clark, former United States Attorney General, wrote letters to Mr. Rockefeller at four addresses in Washington, New York City and Pocantico Hills, in Westchester County. Mr. Kunstler said today that there had been no response. This afternoon he took the first steps toward obtaining a subpoena.

Four Testify

Technically, all that was done was the filing of an application before Judge Gilbert H. King, the State Supreme Court justice hearing the case. The application asked that argument be set for next Friday on the defense's contention that the Vice President should be compelled to appear here.

"Should the court uphold the lawyers' position, the judge would then issue a certificate to the appropriate court in the District of Columbia, which would then be obligated to issue a subpoena to be served on Mr. Rockefeller, who was Governor at the time of the uprising."

The story of the window is important to the defense, in that it tends to obscure and complicate the prosecution's case, in which, so far, four witnesses have testified that they saw Mr. Hill strike correction officers. No one has yet identified Mr. Parnass as doing anything specified in the charges against him.

In an apparent attempt to parry possible defense introduction of the window issue, Louis I. Aidala, the prosecutor,

today introduced as evidence a window from the prison. It was identified by Robert Houston, the prison's custodial engineer, as being typical in size and design of all windows in the cell blocks. It was 5 feet high and 28 inches wide and was lined with steel bars set 6 inches apart.

The call for Mr. Rockefeller's appearance here seems to be also closely linked with Mr. Kunstler's stated intention to open up this first major trial to stem from the Attica disorders into a broad examination of culpability for what happened during the four September days in which 43 persons were killed.

So far, Justice King has refused to allow Mr. Kunstler and Mr. Clark to question witnesses either about the underlying origins of the riot or the assault by state troopers that ultimately quelled the disturbance.

Still, not a day goes by without Mr. Kunstler attempting to drive a wedge that might introduce testimony on more than just the first hours of the takeover, when Mr. Quinn was injured.

Last Monday, for instance, Mr. Kunstler elicited from Leiland Spear, a former inmate, that he had read three books on the Attica riot, including "Letters From Attica." This volume was a compilation of letters written by Sam Melville, the terrorist bomber who died in the retaking of the prison.

Judge Objects

"Do you know who wrote the introduction to that book," Mr. Kunstler asked.

"Yes, yours truly," answered the witness.

"You mean me, not you?" asked Mr. Kunstler, smiling. The lawyer had been at the prison during the September riot, serving on the negotiating committee that attempted to act as an intermediary between inmates and state officials.

Continuing his questioning, Mr. Kunstler asked Mr. Spear if the accounts of the retaking of the prison reflected his own impressions.

Justice King immediately objected.

"It goes to the subject of the witness's credibility," argued Mr. Kunstler, before withdrawing his question.

In other questioning today, Mr. Kunstler asked William Peacock, a former prisoner who testified to moving the injured Mr. Quinn to safety, whether he realized that eight members of Five Company, Mr. Peacock's prison detail, were eventually killed.

The judge struck the question, again reminding Mr. Kunstler that the events of Sept. 13 were out of bounds.

"Our defense here is being crippled by such rulings," said Mr. Kunstler, who, however, retreated again.

Presumably, then, the attempt to subpoena Mr. Rockefeller, an attempt that is by no means certain of success, may be viewed by the defense as a tactic to broaden the scope of the trial and to rekindle public interest in the Attica prosecutions, a wide array of cases now in various stages of litigation.