

Ex-Attica Prosecutor Says Evidence Was Denied Him

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By M. A. FARBER APR 11 1975

Malcolm H. Bell, the former Attica prosecutor who has charged his superior with covering up possible crimes by law enforcement officers, told Governor Carey in his confidential report that he had been blocked from obtaining audiotapes and pictures of the assault on the prison in 1971.

This was one of a number of major items in the 160-page report that came to light for the first time yesterday as the controversy over Mr. Bell's charge continued to develop.

The Governor's counsel met for an hour yesterday with Charles D. Breitel, the state's chief judge, to discuss whether any action was warranted by the state's judiciary to resolve the allegation of a cover-up.

A spokesman for Mr. Carey said it would be "inappropriate" to disclose the conversation between Judge Breitel and Judah Gribetz, the Governor's counsel.

Mr. Carey rescheduled a meeting on the charge of a cover-up with Attorney General Louis J. Lefkowitz on Monday. This session, according to

Continued on Page 44, Column 3

Continued From Page 1, Col. 3

the Governor's spokesman, was supposed to have been held here yesterday but was postponed after Mr. Lefkowitz informed the Governor that he was ill.

Last night the Attorney General's wife said that Mr. Lefkowitz was not ill yesterday and was delivering a lecture in the evening at the New School for Social Research.

Mr. Bell, according to sources familiar with the contents of the report, said he had needed the tapes and pictures to help determine whether crimes were committed by state troopers and correction officers when the prison rebellion was put down on Sept. 13, 1971.

In the report, Mr. Bell expressed concern that some of the videotapes of the assault taken by the state police might have been altered before they were turned over to the prosecution, the sources said.

Mr. Bell also provided the Governor with a list of dozens of persons whom he wanted to question in the Attica investigation but whose names, he said, were rejected by Anthony G. Simonetti, the chief prosecutor.

Request Rejected

Other developments yesterday included the following:

Mr. Bell's attorney, Robert P. Patterson Jr., rejected a request by the Governor for a meeting "without delay" between Mr. Lefkowitz and Mr. Patterson. In a letter to Mr. Gribetz, Mr. Patterson again urged Mr. Carey to appoint "a person of outstanding character and standing at the bar" to investigate Mr. Bell's charge.

In Buffalo, a State Supreme Court justice scheduled arguments for today on a motion to dismiss an indictment against Bernard Stroble, an Attica inmate accused of murdering two other inmates during the uprising. Attorneys for Mr. Stroble contended that Mr. Bell's charge demonstrated unconstitutional, selective enforcement of the law.

The report, which is said to contain 71 pages of supporting documents, was sent to Mr. Carey by Mr. Bell on Jan. 30, six weeks after Mr. Bell resigned from the Attica prosecution staff.

In his letter of resignation to Mr. Lefkowitz on Dec. 11, Mr. Bell charged that the Attica investigation, insofar as it related to possible crimes by law enforcement officers, "lacks integrity" and was being "aborted" by Mr. Simonetti.

Conducted Hearings

Mr. Bell, who was once Mr. Simonetti's chief assistant, had conducted most of the grand jury hearings on possible crimes by state troopers, correction officers or other state authorities. The charge by Mr. Bell was first reported in The New York Times last Tuesday.

Mr. Simonetti has vigorously denied the charge by Mr. Bell. The chief prosecutor is preparing a detailed reply to the allegation at the request of the Governor. After Mr. Bell made the accusation in his letter of resignation, the Attorney General, who appointed Mr. Simonetti, expressed "complete confidence" in the chief prosecutor.

During the retaking of Attica prison, 39 inmates and hostages were killed and more than 80 were wounded by gunfire from state troopers and correction officers. Four persons died in

the revolt before the storming of the upstate prison.

Sixty-two inmates have been named in 42 indictments for crimes stemming from the revolt. No law officer has been indicted by either of the two grand juries sitting in Warsaw.

Mr. Carey directed Mr. Gribetz on Wednesday to meet with Judge Breitel. A spokesman for the Governor said yesterday that the conversation had been "confined to relationships among the branches."

"For reasons that obtain to the judicial process it is inappropriate to discuss the conversation publicly, he said.

Jurists Puzzled

Some lawyers, judges and law professors said they were puzzled about why Mr. Carey had sent Mr. Gribetz to meet with the state's chief judge. Under state law, they generally agreed, senior judicial officials have no statutory role to play in resolving a charge such as that made by Mr. Bell. But they said that if a special prosecutor were named to look into the charge and the Governor ordered an extraordinary term of the State Supreme Court and the impaneling of a special grand jury, the court system would presumably comply.

State Supreme Court Justice Carmen F. Ball, the supervising judge for all cases growing out of the Attica revolt, declined to say yesterday whether he might initiate an investigation of Mr. Bell's allegation.

It was believed, however, that Judge Ball might respond to any request for information from the Attica grand jury regarding the charge. The judge, who received a copy of Mr. Bell's report to the Governor from Mr. Bell in early February, said he had not been contacted by Mr. Gribetz.

Judge Ball was also informed of the nature of Mr. Bell's charge by Mr. Lefkowitz on Dec. 23.

2 Officials Immunized

In his letter of resignation, Mr. Bell asserted that, over his "strong protest," Mr. Simonetti had immunized two high-ranking state police officers.

In the report to Mr. Carey—drawn up by Mr. Bell after he concluded that Mr. Lefkowitz did not intend to pursue his charge—Mr. Bell referred again to the immunizations, sources said. The former prosecutor said he would have preferred not to bring the officials, who were suspects in the

investigation, before the grand jury unless they signed waivers of immunity.

As a prosecutor, Mr. Bell had access to the video tapes of the storming of Attica that were made by the state police. In the report, however, he maintained that he had asked Mr. Simonetti for blow-ups of the tape and had been refused, the sources said.

Mr. Bell also noted that the first minutes of the assault seemed to have been edited on the videotapes, as compared with a close account of the assault that appeared in The New York Times on Sept. 14, 1971.