

# U.S. Aide Says Attica Inmates Refused to Help in

By MICHAEL T. KAUFMAN

A Justice Department inquiry into the possible abuse of Attica inmates after the 1971 rebellion at the prison was thwarted because the presumed victims would not cooperate with Federal Bureau of Investigation agents, in the view of the official who directed the inquiry.

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His comments shed light on some of the possible difficulties encountered by the special state prosecutorial panel appointed by then Gov. Nelson A. Rockefeller to investigate crimes committed by inmates, correction officers and the state police.

That effort has come under attack in the last few months as Malcolm H. Bell, a former staff member of the prosecution team, complained to Governor Carey that he had been thwarted in presenting evidence of alleged crimes by law enforcement officers to a grand jury. To date 62 inmates, but no guards or troopers, have been indicted.

## O'Connor Speaks Freely

Since the grand jury is still sitting, Anthony G. Simonetti, the special prosecutor, has declined any public comment. He is further inhibited from commenting now that a special arbiter has been named to review Mr. Bell's charges.

But Mr. O'Connor is not under such constraints, and he spoke freely of the difficulties he said Federal investigators had experienced.

Mr. O'Connor said the Justice Department had become involved soon after the insurrection was quelled on Sept. 13, 1971, when Governor Rockefeller wrote to John N. Mitchell, then Attorney General, asking that the agency investigate charges that inmates had been deprived of their civil rights after the retaking of the prison.

A year earlier the Civil Rights Division had gained the indictment of 12 correction officers who had fired at 200 prisoners who had staged a sitdown strike at an Indiana reformatory.

## Federal Policy

In that instance, said Mr. O'Connor, the department had determined that the state was not prosecuting anyone. In regard to Attica, he said, the department had been assured by the special state prosecutor that his mandate included the exploration of wrongdoing by law enforcement personnel.

"It is the general policy of the department to defer to the states once assured the state is doing its duty," said Mr. O'Connor.

This policy is in part based on the view that it is easier to indict and convict for such

violations of state law as assault than it is for Federal offenses involving the denial of Constitutional rights. It is much harder to prove intent in such Federal trials.

Mr. O'Connor said he remembered meeting with Robert E. Fischer, who preceded Mr. Simonetti as the chief of the state's Attica prosecution.

"Mr. Fischer described his charter and said that he was empowered and in fact would reach the issue of alleged mistreatment of Attica inmates," said Mr. O'Connor. "He said that was not the top priority, which he said was to find who was responsible for the deaths, but he said it was a priority. We were satisfied that the state was fulfilling its responsibility."

## Focus on 30

Nonetheless, even though no Federal grand jury was ever empaneled, Mr. O'Connor said that teams of F.B.I. agents began early in 1972 to interview people specifically on the question of attacks on inmates.

Material was gathered from National Guards troops and others about beatings, an gantlets and the destruction of inmates' personal property including eyeglasses and legal materials.

## Inquiry Into Abuse

On three separate occasions, said Mr. O'Connor, the agents went to the upstate prison, focusing their attention on perhaps 30 inmates who they believed were victims. In each case these inmates refused to talk to the agents, he said.

Some of these presumed victims were themselves subsequently indicted for crimes that took place during the uprising. At the time of the original investigation, lawyers for these men expressed fears that in cooperating they would open themselves to criminal charges.

## Files Consulted

And in fact, during a civil action charging the violation of 5405's rights during the aftermath of the rebellion, these men and other prisoners stood mute, citing their privilege against self-incrimination. For that reason that suit was dismissed by a Federal judge.

After the final attempt by the F.B.I. to interview those considered key inmates, three lawyers from the department tried to talk to them and similarly failed to gain the men's confidence, Mr. O'Connor said.

Two years ago, the inquiry became inactive. Technically, however, it is still open and, according to Mr. O'Connor, its files were consulted as recently

as four weeks ago by investigators from the special state prosecutor's office.

In a recent interview, State Senator John R. Dunne, who was one of the first outsiders to enter the Attica yard after it was retaken, said the F.B.I. agents were the only criminal investigators ever to ask him about reprisal attacks he witnessed at that time.

Mr. Dunne, a Republican of Garden City, L. I., said he had been called before the state

grand jury four or five months after the quelling of the uprising and questioned about events leading up to the assault.

"I'm certain I was not asked about such things as the gantlet," he said.

Senator Dunne had earlier publicly testified before a state commission that he had seen inmates being run through gantlets of corrections officers. He said he had repeated this account to the Federal agents.