

# The Final Judgment Remains

By Tom Wicker

More than four years after state troopers recaptured part of the Attica Correctional Facility in a hail of indiscriminate gunfire, killing 39 men (including 10 state employees) and wounding 81 others, the state of New York has officially conceded that:

¶The state prosecution resulting from the Attica revolt and the recapture of the prison in September, 1971, has been so warped by "imbalance" and "serious errors in judgment" that a special prosecutor is necessary to determine whether indictments should be brought against law enforcement officers and state officials.

¶The "possibility of the use of criminally excessive force by individual troopers was apparent" soon after the retaking of the prison on Sept. 13, 1971. Yet Gov. Nelson Rockefeller praised the work of the state police at that time, and state police officers were themselves placed in charge of gathering evidence for the state's investigation of the matter—a clear conflict of interest and a task in which they proved "extraordinarily deficient," or something.

¶"It is evident from testimony under oath that criminal acts of brutality to inmates occurred" as they were being rehoused in cellblocks after the bloody end of their revolt.

All of these findings—and others, some equally serious—were made by former State Supreme Court Justice

in Manhattan, to act as special prosecutor. He will have authority not only to seek new indictments, but to review those so far obtained and recommend dismissal or executive clemency, and to supervise the work of the established Attica prosecution force.

The appointment of Mr. Scotti and the sweeping powers given him are comment enough on the state's conduct so far of the Attica investigation. It has been a disgrace to New York, continuing through the administrations of three Governors of two parties (but the same old Attorney General) and even in Mr. Meyer's devastating report and the state's official reaction to it there remains a grudging unwillingness finally to call a spade a spade and act accordingly.

Anthony G. Simonetti, the chief Attica prosecutor, was lambasted by Mr. Meyer for "mistakes in judgment," poor priorities, "changes and revisions in the direction of his investigation," failure to seek proper prosecutorial resources, and—most astonishing of all—"indifference" to investigating charges of brutality by officers against inmates. Yet, Mr. Meyer's report said there had been no "intentional cover-up," which enabled Mr. Simonetti to say that he was glad for findings "clearing my good name and reputation." What could give him a bad reputation as a prosecutor if the Meyer report and the appointment of Mr. Scotti did not?

Yet, the state in its immemorial bureaucratic fashion—that absolute inability to concede official error or wrongdoing that has as much as anything else brought government into its current disrepute—is continuing Mr. Simonetti on his job, even though Mr. Meyer did say in his report that "clearly the state has dealt unfairly with the inmates and affirmative action is necessary to correct the situation."

Despite the powers given him, moreover, Mr. Scotti faces two formidable obstacles in seeking indictments for what Mr. Meyer called "the use of criminally excessive force" by troopers and "acts of brutality" to inmates by corrections officers and others. One is the fact that state police, who had ample reason to focus the investigation as closely as possible on inmates rather than on their own actions, investigated themselves—not surprisingly—in such a way that Mr. Meyer said they had made "nearly impossible the prosecution of enforcement officials."

The other is the reluctance, cited by Mr. Meyer, of the two grand juries presently impaneled in the Attica matter to indict law enforcement and corrections officers. These grand juries sit in rural Wyoming County, where the prison is hidden away; they suffer, in Mr. Meyer's view, from "partiality and emotion on the part of the jurors in considering charges against enforcement personnel who were their friends or neighbors." These juries have indicted only one state trooper and no corrections officers, and just this month they refused to indict four other troopers and three prison guards—but so far they have indicted 62 inmates for 1,289 alleged crimes.

There is no reason to believe even so experienced a prosecutor as Mr. Scotti can make these grand juries do what they don't want to do, particularly if the state police botched, purposely or otherwise, the gathering of evidence against themselves. But if against such odds Mr. Scotti can get indictments for crimes that almost certainly were committed, the real judgment on the original prosecution will finally have been made.

## IN THE NATION

Bernard S. Meyer. He was appointed by Gov. Hugh Carey to investigate charges against the Attica prosecution by Malcolm Bell, an attorney who quit the prosecution team in protest against its one-sidedness. At Mr. Meyer's request, Governor Carey and Attorney General Louis J. Lefkowitz also appointed Alfred J. Scotti, the former chief assistant district attorney