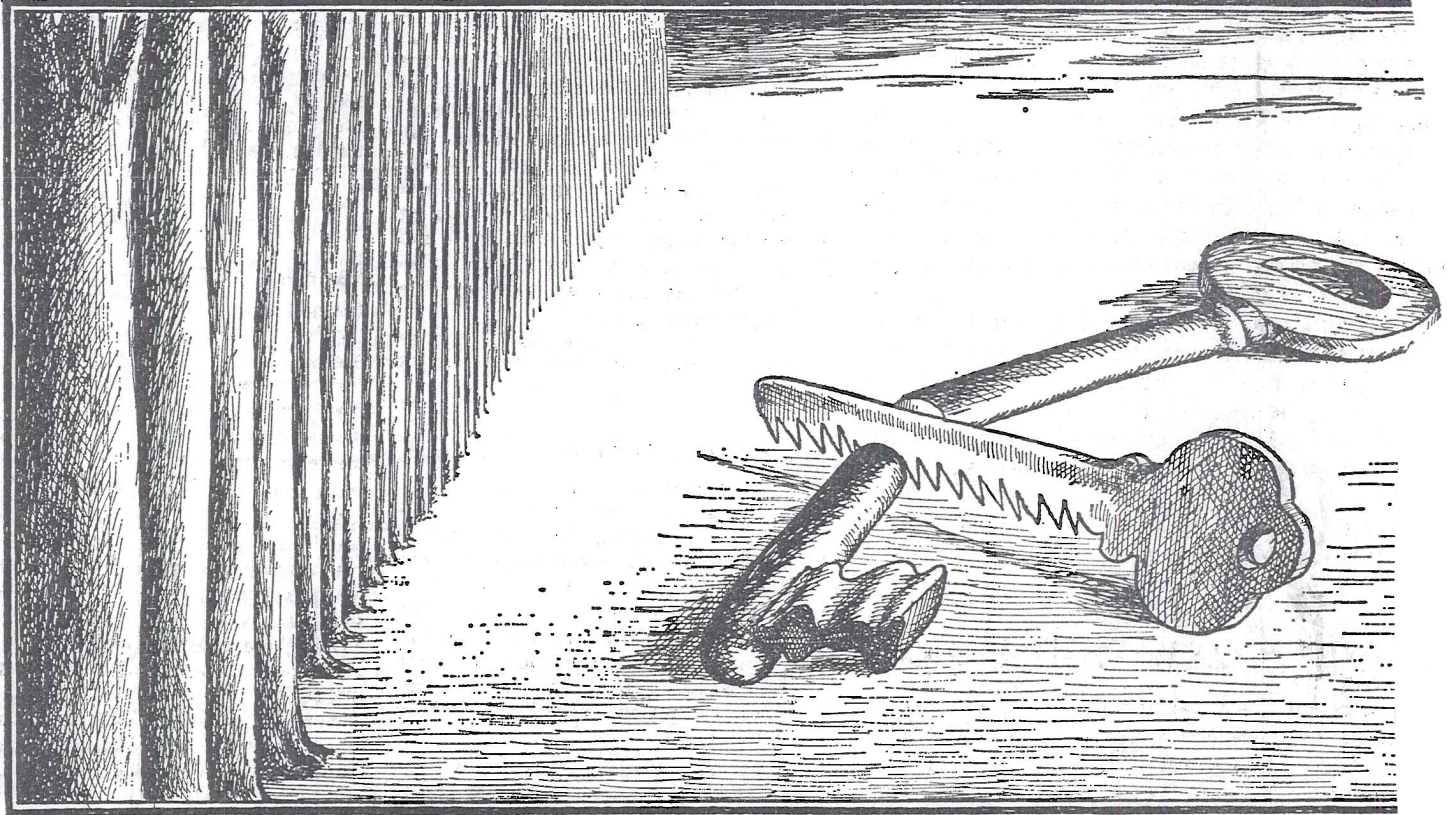


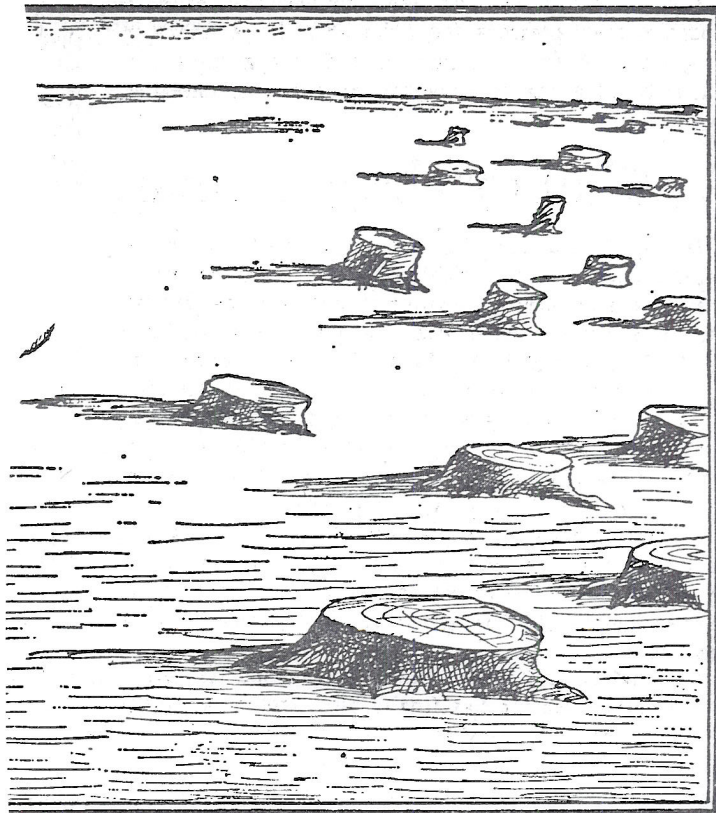
ATTICA  
Wherein the Meyer Attica-Prosecution



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## Report Is Faulted



Eugene Mihaesco

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By Malcolm H. Bell

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Bernard S. Meyer, the special state investigator of the Attica prosecution, asked me if I wanted to make a statement when I was testifying in his offices last spring. I said I thought he had a unique opportunity to restore the faith of a lot of people that non-partisan honor is still possible in government. For me the Meyer Report does not do that.

The report by Mr. Meyer, a former State Supreme Court justice, the first part and conclusions of which were released in December, made substantial progress. It found that the prosecution of crimes at the 1971 riot discriminated in favor of the New York state police and prison guards. It found the prosecution woefully understaffed from the start, too close to the state police, and guilty of bad judgment in focusing on crimes by inmates before crimes by law officers. I charged all this a year ago. Why then am I dissatisfied?

The one-sided prosecution of crimes by inmates had the effect of covering up crimes by officers. It gave Mr. Meyer the choice of calling the head prosecutors, Robert E. Fischer and then Anthony G. Simonetti, knaves or fools.

Either they intended a cover-up or they perpetrated it without knowing what they were doing. He chose, in effect, to call each of them a fool.

He attributed the cover-up to serious errors in judgment, mistakes of law, mismanagement, personality factors and indifference—to anything, in short, except conscious decision. Con-

cluding that the cover-up happened unintentionally, he did not have to decide who directed it.

Actions prove intent. If X consciously shoots Y dead, that is enough to convict X of murder for intentionally killing Y.

The officers at Attica fired over 450 times, hitting 128 people, and killing 10 hostages and 29 inmates. Insofar as those shots were not fired to save someone from an imminent threat of death, they were not justified and were probably criminal.

Then the officers assaulted scores more inmates. The Attica prosecutors had a duty to prosecute these crimes. By constant decisions over a four-year period, they determined not to do that. Intentionally? Mr. Meyer says no.

He rests his charity on three pillars of salt, each of which should dissolve on inspection:

1. Mr. Meyer says that deficiencies in evidence-gathering by the state police at the riot left too little evidence to prosecute any but a few extraordinary shooting crimes. The state police did the opposite of what sound evidence-gathering required.

In addition, the prosecution never questioned hundreds of eyewitnesses about many shootings, and committed many other sins of omission in the pursuit of evidence.

In blaming the state police for the missing evidence, Mr. Meyer may create the false impression that the prosecution does not also bear heavy responsibility. It does not follow, however, that many cases against shooters did not survive.

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As the McKay Commission (the State Special Commission on Attica) Report of 1972 made clear, much film and many photographs remain. Ballistics remains, though it is of limited value since the state police did not record which trooper had which rifle.

Eyewitnesses should be able to say even now whether *anyone* was attacking *anyone* so as to justify the various shootings. Each trooper also gave a written statement within days after the riot, thus identifying many shooters. Insofar as the statements admit shootings that can be shown to be unjustified, at least the felony of reckless endangerment may be provable. A single trooper was finally charged with this crime last fall.

2. Mr. Meyer says that "a mistaken and misguided sense of values amounting substantially to indifference" motivated the prosecution's four-year neglect of the notorious brutality that followed the shootings.

A panel appointed by then Gov. Nelson A. Rockefeller reported only two months after the riot that the prosecution was not concerning itself

with these crimes. How Mr. Meyer can attribute such a glaring dereliction to indifference rather than intention escapes me.

3. Mr. Meyer suggests that the grand juries were too biased to indict officers. A grand jury, however, can only act on the evidence the prosecutor gives it. When Mr. Simonetti put me in charge of giving evidence to the second Attica grand jury in May 1974, he and I agreed to present at least several dozen possible shooting cases before going on to brutality and a possible obstruction of justice by the state police.

Starting the next September, however, he and I had increasing disagreements, the nub of which was that I wanted to give adequate evidence to the grand jury and he did not. The grand jury attended well, asked probing questions after we finished questioning a witness, and sought important witnesses. It is not fair to blame a grand jury for the faults of the prosecution. I have no reason to doubt that that grand jury would have done its job according to its oath if given the chance.

I said in my resignation in December 1974 that my object was to see that all the facts necessary for the grand jury to vote on indictments were placed before it, and that equal justice applied to inmates and officers. That is how the system is supposed to work. I wanted it to work. Apparently my superiors feared the result if it did.

Some people tell me not to waste sympathy on inmates. Sympathy has

nothing to do with it. The inmates of Attica were sentenced to a prison, not a game preserve. It is never open season on humans. The law protects inmates as well as the rest of us from being wantonly shot or bludgeoned. Moreover, almost all inmates get out. How we treat them in prison affects how they treat the rest of us afterward. Humanity, the Constitution and common sense all require equal justice.

Some people want to forget Attica. It is old hat. Who likes to contemplate the police gunning people out of anger, hate or fear? Yet as the riot recedes into history, the full story remains hidden.

Brotherhood failed at Attica. The failure reached bottom when officers shot and beat without justification. It continued while the prosecution pursued inmates yet sheltered officers from answering for their crimes. It continues with Mr. Meyer's conclusion that the prosecutors made the prosecution one-sided unintentionally. The split between the ins and the outs, the good guys and the bad guys, us and them, is alive and well in New York State. Denying the facts will not avoid their repetition.

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*Malcolm H. Bell was assistant Attica prosecutor. After he resigned and charged that his superior, Anthony G. Simonetti, had covered up possible crimes by law enforcement officers who quelled the Attica prison rebellion in September 1971 — Mr. Simonetti denied the charge—Bernard S. Meyer was named to investigate the Attica prosecution.*