

SCOTTI ASKS COURT TO DROP ALL CASES ON ATTICA BUT ONE

He Says 'Lack of Fairness'
in the State's Investigation
'Compels' Dismissals

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INDICTMENT OF 10 ENDED

But Prosecutor Urges Trial
of Escaped Inmate Charged
With Intentional Slaying

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BUFFALO, Feb., 26—The special Attica prosecutor requested today that all but one of the remaining indictments stemming from the 1971 uprising at the state prison be dismissed "in the interests of justice."

"The name 'Attica' should be a symbol, not only of riot and death, but also of the capacity of our system of criminal justice to redress its own wrongs," Alfred J. Scotti, the prosecutor, said in court here. "I, therefore, believe that the amply demonstrated lack of fairness and evenhandedness by the state in the conduct of the Attica investigation compels, in the interests of justice, the dismissal of these pending indictments."

Later in the day, Justice Frank R. Bayger in State Supreme Court granted the dismissal of one indictment charging 10 inmates, who had kept guards as hostages during the four-day uprising, with kidnapping.

A motion to dismiss three other indictments was assigned to State Supreme Court Justice Carman F. Ball, who is expected to issue a ruling soon.

39 Killed

Two indictments charge three inmates with assaulting prison guards. A third indictment charges Gregory Wildridge, a state trooper, with recklessly discharging a shotgun during the retaking of the prison.

Mr. Wildridge is the only state employee to be charged with a crime arising from the prison retaking, in which 29 inmates and 10 guards, held as hostages, were killed.

Altogether, 62 inmates were named in 42 indictments and charged with 1,289 crimes. So far, two inmates have been convicted at trials, and eight other defendants have entered pleas of guilty to less serious crimes than those with which they were originally charged. The other indictments have been dismissed.

Mr. Scotti said that he had refrained from recommending the dismissal of a murder indictment against Mariano Gonzalez, an inmate, "because the interests of justice do not re-

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quire forgoing prosecution of a provable, intentional killing." Mr. Gonzalez, who is charged with killing another inmate, has been a fugitive since last fall.

During his 17-minute address, Mr. Scotti, who was named to oversee the Attica prosecution last December, was especially critical of the state police and of his predecessors who headed the prosecution effort.

He said that he had uncovered evidence that "strongly suggests unjustifiable homicides were committed by individual law enforcement officers" and that "the crime of reckless endangerment was committed by many law enforcement officers during the Attica retaking."

But, he said, "the appallingly deficient investigation by the state has made virtually impossible the development of a legally valid case" against these officers.

He said he had found "flagrant deficiencies in the state police investigation of the retaking." He blamed the Attica prosecution, which was first under the direction of Robert Fischer, then Anthony G. Simonetti, for failing "to perceive these deficiencies at the very outset of the investigation and to take whatever action could have been taken to develop evidence pertaining to these offenses." This failure, the prosecutor said, "contributed to making an effective investigation impossible."

Mr. Scotti's motion to dismiss

the charges interrupted pretrial hearings of the 10 former inmates who had been charged with kidnapping. The defendants and spectators remained silent as Mr. Scotti read his prepared statement in the morning. They broke into a brief cheer after Justice Bayger announced his decision in the afternoon.

"I do not feel jubilant," Roger Champen, one of the defendants said, "I am thankful, but I am not happy."

Ernest Goodman, the lawyer for Bernard Stroble, another defendant, said: "You don't feel joy. It leaves a double taste. It's been so long. You feel O.K."

As Mr. Scotti and his two aides, Irwin Rochman and Lewis Friedman, left the courtroom after the morning session, supporters of the Attica inmates angrily chanted: "Tacaje-weiah," the Indian name of John Hill, who was convicted of murdering a guard last April and is currently the only individual in prison solely as a result of an Attica-related crime. He is serving a 20-year-to-life term in Greenhaven Correctional Facility.

Reviewing convictions, with a view to executive clemency "where warranted," was one portion of the mandate given Mr. Scotti when he was named two months ago by Governor Carey and Attorney General Louis J. Lefkowitz, and that part of his job has not been completed. Mr. Scotti was named after a report by a special state investigator had found that "serious errors in

judgment" had been made in the investigation of the Attica riot.

In a 130-page report, the investigator, Bernard S. Meyer, a former State Supreme Court justice, said: "Clearly the state has dealt unfairly with the inmates and affirmative action is necessary to correct the situation."

Mr. Meyer was named last spring to investigate the Attica prosecution after Malcolm Bell, a former assistant Attica prosecutor, had charged that Mr. Simonetti had covered up possible crimes by law enforcement officers. The Meyer report concluded that Mr. Bell's charges had "proved not well founded."

Today, after Mr. Scotti had made his motion in court, Mr. Bell, in a telephone interview, said: "It's nice to be vindicated. I hope this doesn't lead to sweeping what really happened under some carpet someplace."

Mr. Simonetti was not in court today and could not be reached for comment.

Since the Meyer report was issued, a number of groups and individuals, including Robert B. McKay, who headed the official state inquiry into the causes of the riot, have pressed for the dismissal of all remaining charges.

The Scotti investigation has met opposition in the State Legislature, which has declined to appropriate funds for his work. But Carey administration officials have indicated that the money can probably be found somewhere else.

"I am not concerned at all



Associated Press

Alfred T. Scotti tells of his recommendation at a news session in Buffalo.

with the money," Mr. Scotti said today, during the court recess. "I have a task to do and will do it professionally."

In addition to the motion now before Justice Ball, the remaining murder indictment, and the unfinished portion of Mr. Scotti's mandate, there are other legal actions that suggest the investigation of the 1971 prison riot will not be closed for several years.

In court today, Mr. Scotti said he was reviewing whether indictments should be sought against two law enforcement officers, whom he did not name.

"One matter involves a possible intentional killing by a state trooper and the other matter involves a possible serious destruction of the Attica investigation by a member of the state police," he said.