

Attica Prisoners Opposing A Double Role in Inquiry

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By JAMES F. CLARITY OCT 6 1971

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BUFFALO, Oct. 5—A lawyer for inmates at the Attica Correctional Facility asked today for a Federal order barring the state's Deputy Attorney General, Robert E. Fischer, from directing simultaneously the investigation of both inmates and state troopers in connection with the uprising at the prison last month.

Herman Schwartz, a lawyer representing a number of the inmates, said Mr. Fischer's continued investigation of both sides would be a violation of the inmates' constitutional rights to equal protection under law.

He argued that the dual role for Mr. Fischer put him in the position of potential prosecutor of the inmates, while the inmates themselves might have charges to make against the troopers. Mr. Fischer was named by Governor Rockefeller to head the state's investigation of the four-day uprising at the maximum security prison in which 10 prison employees and 31 inmates died.

The lawyer said Mr. Fischer had already challenged the credibility of three inmates in the course of a hearing in United States District Court that ended today. Mr. Schwartz did not especially ask the judge, John T. Curtin, to enjoin Mr. Fischer from investigating charges against troopers, but this apparently was his intent.

Judge Curtin said he would give his decision tomorrow on the request, and on others made by Mr. Schwartz. They include enjoining prison guards from physical and mental abuse of the inmates, from the destruction of inmates' legal papers, and installing Federal monitors in the prison to insure the prisoners' safety.

Last week, Judge Curtin refused to order the state to stop its interrogation of all inmates until they had consulted lawyers. That decision now is before the United States Court of Appeals for the Second Circuit in New York.

Last week the Circuit Court refused to grant a temporary injunction against the questioning, and the prisoners have appealed that decision to Associate Justice Thurgood Marshall of the United States Supreme Court.

Today Judge Curtin denied a request by Mr. Schwartz that the six inmates who testified during the hearing be transferred from Attica for their protection against possible reprisals from prison guards. The judge did order the state to furnish him with a copy of the Governor's order placing the investigation under Mr. Fischer.

Assistant Attorney General Joseph Ricotta said he had asked Mr. Fischer's office for the document but had been told the office did not have it. "Maybe it doesn't exist," Mr. Schwartz said.

"Get it from the Governor's office," Judge Curtin told Mr. Ricotta.

An unscheduled witness at the hearing today was Assemblyman Arthur O. Eve, Democrat of Buffalo, who was a member of the observers committee that sought to negotiate an end to the uprising. He repeated statements he had made elsewhere to the effect that state officials had given him false accounts of the revolt and how it was crushed. Mr. Eve, who is black, also said that on a visit to the prison Sept. 24 a guard had called him a "nigger."

Marshall Gets Appeal

WASHINGTON, Oct. 5 (AP)—Lawyers for Attica prison inmates asked Justice Marshall of the Supreme Court today to halt temporarily the state interrogation of prisoners about last month's rebellion.

The plea, filed by William E. Hellerstein and Phyllis S. Banberger of the Legal Aid Society, said prisoners were being beaten with clubs in a "continuing pattern of assaults and threats."

They asked Justice Marshall to end the questioning of inmates by state officials until the Federal Circuit Court in New York decided whether rights were being violated. The court is to hear the dispute on Friday.

The lawyers said the state had given prisoners an opportunity to ask for a lawyer before being questioned, but had not allowed them to bring a lawyer with them or to remain silent during interrogation.

In 1966 the Supreme Court held that the Constitution required the appointment of lawyers to be at a suspect's side when he was being questioned in a criminal investigation. Additionally, the court said in the 5-4 decision, authorities were obligated to the suspect he did not have to reply to any of the questions.

The Legal Aid Society lawyers contended that state officials were violating the 1966 decision and that prisoners were being subjected to "cruel and unusual punishments" prohibited by the Eighth Amendment.