

The Attica Uprising Goes on

It has been more than three years since the uprising at the state prison at Attica, New York, more than three years since nearly forty people, most of them prisoners, were killed by the bullets of law-enforcement officials retaking the prison under a fog of tear gas. It was the largest loss of life in the history of prison rebellions in the country. The New York Civil Liberties Union is now on the eve of trial of the first major case to come out of the uprising.

The state of New York has made sure that the memory of that bloody Monday, September 13, 1971, is as red as it was the day after it all happened. Commissions have picked over the facts, and one, the McKay Commission, has produced a distinguished report. Nelson Rockefeller, then the Governor, made sure that the blame would be laid at someone else's door, by channeling the Organized Crime Task Force, nominally a part of the state attorney general's office, into the Attica investigation. He appointed the state's trial court to an additional term so that it could convene a special grand jury and try the cases. Since that time, the Attica investigation has spent more than four million dollars. The grand jury has indicted more than sixty prisoners in more than forty indictments, for all sorts of crimes ranging from sodomy to murder, though it has never so much as criticized a public official.

The legal representation of the inmates has gone through a dozen stages since the rainy September days in 1971 when volunteer lawyers from all over the state converged on the fortress walls of Attica, and began unsystematically to try to collect statements from the hundreds of witnesses. A year later, in the fall of 1972, the grand jury returned its first indictments, and in the following few months the defense began to take shape. Some of the indictments alleged isolated incidents of assaults upon guards and fellow prisoners, and more alleged kidnapping of guards and possession of such weapons as clubs and knives.

The first major act of the defense was to move the indictments out of Wyoming County, where Attica is located. A public opinion survey established overwhelming prejudice in the county, and the cases were moved to nearby Buffalo. From the defense point of view, this was not much better—most of the defendants, and many of the interested lawyers, came from New York City; Erie County, furthermore, is a generally conservative community.

The next major motion was for pretrial discovery—finding out the facts of the prosecution's case. Because the witnesses to the uprising had been so numerous, and the facts, having occurred behind prison walls, were entirely in the control of the state, the defense received more discovery than is customary in New York.

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Trial

Finally, there had been, during the four days of the uprising, four deaths not apparently attributable to the final assault. Three were of inmates who died by stabbing, one was of a guard who died of injuries. Accused of killing the guard are John Hill and Charles Pernalice, who are both part Indian and somewhat resemble one another. (It is their case which is now going to trial with Ramsey Clark, Herman Schwartz and William Kunstler among the defense attorneys.) Three inmates are accused directly of stabbing inmates to death. In addition, other inmates are accused on a "felony murder" theory of having participated in an informal hearing and of ordering two of the inmates later found dead to be locked in their cells because of their antisocial conduct.

The prosecution gave up the names and addresses of some 1,200 persons who were present and might have seen the events. State law did not provide for an order to give the defense the names of the state's witnesses, but the court ordered the prosecution to turn over the names of people who might have been witnesses to a given event, and were *not* prosecution witnesses. (These people were of more interest to the defense in any case.)

In the summer of 1973, a massive study of the Erie County jury pool began. The Fair Jury Project, a superb group of volunteers living on Wheatena in a ramshackle three-story house near the state university, analyzed statistical materials, prepared a motion to the appeals court for an order to pry loose the



September 13, 1971: Attica is retaken.

Wide World

records from the jury commissioner, and finally presented the lawyers with a nearly finished case of jury discrimination. At the hearing in the spring of 1974, the jury clerks, apparently caught unawares, admitted discriminating against women and students, and the hearing judge finally struck nearly the entire pool, some 100,000 names.

Following that, the Fair Jury Project did a public opinion survey of Erie County which showed heavy prejudice against the defendants. The defense moved for another change of venue, which was denied, although it may be renewed when and if fair juries cannot be chosen in Buffalo.

In the fall, the first Attica prosecution went to trial. It was a charge of sodomy by a black inmate against a white, and it was dismissed for lack of corroboration of the sex crimes. Lawyers tried to remember the last time a prisoner had been tried for sodomy, and to guess what a conceivable penalty might have been—to go back to prison, perhaps?

At the first trial, defense counsel sought to get prior statements of prosecution witnesses, and was presented with cards containing a few neatly printed words. It seemed that the prosecution had destroyed many prior statements, and a new lawsuit against the prosecution has been begun based upon that allegation of misconduct.

Finally, a federal action for damages under the civil rights act was filed before the three-year statute of limitations ran out, and Attica Brothers Legal Defense became Attica Brothers Offense/Defense.

Up to this point, the defense of the prosecutions has been conducted without money from the state. Although many of the defense attorneys are appointed by the court, and expect eventually to receive some small payment, the Attica Brothers Legal Offense/Defense has so far been rebuffed. When the AB O/D lawyers moved that they be repaid for some of their work, the judge ruled that the work had been purely voluntary, without expectation of repayment, and could not be reimbursed.

The New York Civil Liberties Union has taken the Hill-Pernasilice case and two others, has done a lot of the work and contributed some of the money for the common defense—particularly for the change of venue and for the Fair Jury Project.

The hardest work has been done by the loose coalition housed at 147 Franklin Street in downtown Buffalo. Some good-hearted legal workers from relatively hospitable climates like California's have spent two hard winters in Buffalo, sticking at the defense of one of the most massive prosecutions in American history. And it has hardly begun—at least one more such winter is before them.