

JAN 24 1975

NYTimes

FRIDAY, JANUARY 24, 1975

TESTIFY ON ATTICA, NEWSMAN IS TOLD

TV Reporter Loses Battle to Avoid Subpoena

By MARY BREASTED

Special to The New York Times

BUFFALO, Jan. 23—A State Supreme Court justice ruled here today that a local television newsman must testify in court about events he witnessed during the Attica prison rebellion in September, 1971.

The reporter, Stewart Dan of WGR-TV, had opposed a prosecution subpoena summoning him to testify during pretrial hearings in a murder case stemming from the prison uprising.

Five men active in the prison rebellion have been charged with involvement in the murders of Kenneth Hess and Barry Schwartz, two inmates found with multiple stab wounds after the rebellion was quashed.

According to the official report of the New York State Special Commission on Attica, Mr. Hess and Mr. Schwartz had incurred the wrath of the rebellion's leaders because they talked to Mr. Dan in the prison yard without authorization from the committee representing the inmates.

The report said that soon after Mr. Schwartz and Mr. Hess had spoken with the reporter, "they were stripped by inmate security guards and led out of the yard" into a prison building. They were not seen again by inmates in the yard, and their bodies were found by the authorities a few days later.

After he lost a legal battle to quash a Wyoming County grand jury's subpoena for his testimony, Mr. Dan testified before the jury, which handed up indictments of the five defendants.

Justice Joseph S. Mattina, who is presiding over the case and who issued today's ruling, said Mr. Dan had waived any privilege of confidentiality he might have had as a newsman when he testified before the grand jury and earlier before the special commission.

Justice Mattina also cited the Court of Appeals ruling that had gone against Mr. Dan on the issue of whether he could be compelled to testify before the grand jury. It said in part:

"The Constitution does not, as it never has, exempt a newsman from performing a citizen's normal duty of appearing and furnishing information relevant to the grand jury's task.

... [While newsmen are not required to divulge the identity of an informant who has supplied them with information, they are required to testify about events that they have observed personally, including the identity of the person whom they observed.]

Justice Mattina's ruling came during a day of wrangling and sometimes sharp exchanges between defense attorneys and prosecutors over matters related to the testimony of Charles H. Crowley, a pretrial witness who startled the courtroom here yesterday with his assertions that he was brutally coerced into cooperating with prosecutors in the case.