

ATTICA WITNESS HAS SOME DOUBTS

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Officer, Pressed by Defense,
Has 'Slight' Question About
Identification of Defendant
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By MARY BREASTED

A report prepared by two state investigators in 1971 says that Correction Officer Donald Melven, now a key prosecution witness in the first murder trial to stem from the Attica prison rebellion, once "retracted" his identification of a defendant in the case.

The defendant, John Hill, a 22-year-old former Attica inmate, went on trial here last Monday, along with Charles J. Pemaslice, 22, another former Attica inmate, both accused of the murder of Correction Officer William Quinn.

Officer Melven had testified here on Wednesday that he had seen Mr. Hill holding a "two-by-four" and "following through" on a blow to Mr. Quinn's head on the morning of Sept. 9, 1971, when the rebellion began. Today, under cross-examination by the defense, he said he still had a "slight" doubt about his identification of Mr. Hill.

It was during a pause in the cross-examination of Mr. Melven by Mr. Hill's defense attorney, William Kunstler, that the state investigator's report was first mentioned.

Mr. Kunstler, standing in front of State Supreme Court Justice Gilbert H. King and waving a document, blurted out:

"But there was a retraction, your Honor!"

"Objection!" Luis Aidala, the chief prosecuting attorney, exclaimed, jumping to his feet. "That's not a proper remark," he continued. "There wasn't a retraction."

"It was not a proper remark," Justice King said, "and the jury will disregard it."

There followed a brief conference during which, according to the attorneys, the defense asked that the prosecution put the two state investigators, James LoCurto and Frank E. Demler, on the stand to testify about the report.

Without the testimony of those two men, who wrote the report, it may not be introduced as evidence in the trial, but the state is under no obligation to call witnesses at the request of the defense while it is presenting its case. The defense will present its case later and can then call the two investigators.

Their report was written on Oct. 20, 1971, to Anthony Simonetti, the special assistant attorney general in charge of the Attica investigations, after Mr. Melven had been taken to Great Meadow Prison in Comstock, N. Y. to see Mr. Hill to identify him.

Mr. Hill had been transferred to Great Meadow Prison shortly after the Attica prison revolt ended, and Mr. Melven was able to pick Mr. Hill out twice as he passed by in a line of inmates at Great Meadow.

But after returning from there, the investigators' report said: "He [Mr. Melven] later retracted the identification only because inmate Hill did not have a brush[hair] cut at Great Meadow and he felt that the inmate striking Quinn had a brush cut."

During his testimony in the Erie County Courthouse here, Mr. Melven had said that another doubt related to skin blemishes. Repeatedly during five hours of cross-examination yesterday and today, Mr. Kunstler asked Mr. Melven about the differences between the hair and facial blemishes, which Mr. Melven called "marks," on the face of the man he remembered and on the face of Mr. Hill.

"The fact is that you did have some doubt because of the hair and the marks, is it not?" Mr. Kunstler asked at one point.

"At the time," Mr. Melven answered, referring to the time that he had expressed misgivings to the investigators.

"And the fact is that you still have it today, don't you?"

"Slight," Mr. Melven said.