

ATTICA Lawyer Defends Rockefeller Against Testifying on Attica

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BUFFALO, March 14—A lawyer representing Nelson A. Rockefeller argued here today that the Vice President should not be compelled to testify in a trial of two men charged with murdering an Attica prison guard because all Mr. Rockefeller knows of the 1971 incident is "hearsay" that would be inadmissible as testimony.

The lawyer, William E. Jackson, urged that a defense motion seeking a subpoena for the Vice President is denied by State Supreme Court Justice Gilbert H. King, who is presiding at the trial, which is now in its third week.

The two defendants, John Hill and Charles Joseph Parnas, have been charged with beating William Quinn, a correction officer who died as a result of injuries he suffered at the beginning of a rebellion at the prison. Their lawyers have maintained that Mr. Rockefeller, who was Governor at the time, should come here to explain his comments last November before the Senate Judiciary Committee when he said that Officer Quinn died after having been beaten and thrown from a window.

The story of the window incident had been reported in the press at the time of the uprising, but it was discredited as a "manifestly false rumor" by a state commission investigating the Attica disorders.

Nonetheless, as today's debate began, William M. Kunstler, Mr. Hill's lawyer, insisted that Mr. Rockefeller's testimony about the window and what he knew if it were essential.

"The defense feels very strongly that it is totally exculpatory, and material," Mr. Kunstler said of the Vice President's proposed testimony. "We are not dealing with a functionary or subordinate, but with a man who was intimately involved with the events at Attica."

In his opening remarks, Mr. Kunstler sought to diminish any possible claim by Mr. Jackson of executive privilege for Mr. Rockefeller. He cited the recent United States Supreme Court decision requiring President Richard M. Nixon to provide tapes under subpoena.

But when it came to be Mr. Jackson's turn, no such claim was made.

In fact Mr. Jackson, a 1941 Yale college classmate of Mr. Kunstler's and a New York lawyer, opened his argument by saying: "What is not at issue is any claim of privilege

or immunity. Equally not at issue is the record of the former Governor; whether he is afraid to appear in public. What is at issue before your honor is whether the rules that apply to any citizen apply as well to this individual who happens to be the Vice President."

Mr. Jackson then proceeded to the heart of his contention. "He is not only not a material witness, he is not a witness at all. Mr. Rockefeller was simply not there. He has no personal knowledge of what occurred. The information he does have is based on statements made by others." He added that such information was "the rankest of hearsay."

Mr. Kunstler said that information received by a chief executive in the performance of his duty should be exempt from the hearsay rule, which precludes witnesses telling of incidents allegedly seen by others.

Through the course of the two-hour debate it became apparent that Mr. Jackson and the prosecution were arguing that Mr. Rockefeller should be treated like everyone else and not be allowed to give hearsay testimony, while Mr. Kunstler was arguing that the Vice President should be treated like everyone else and not be excused from testifying by virtue of his power and eminence.

One motive for the defense's insistence on Mr. Rockefeller's appearance became apparent when Joseph Heath, a defense lawyer, joined with Mr. Kunstler. Mr. Heath, a 28-year-old lawyer admitted to the bar only last Friday, was filling in for Ramsey Clark, as attorney for Mr. Parnas.

Mr. Clark, a former United State Attorney General, could not be in court today because he attended the unveiling of a portrait of Robert F. Kennedy at the Justice Department in Washington. His stand-in Mr. Heath, whose blond hair was in a pony tail and who wore a single gold ear ring, launched into an attack on Mr. Rockefeller's role in regard to Attica.

Part of the defense, he said, is an allegation of "fabrication and cover-up" by the state. "We feel that the indictment in this case and other Attica cases are whitewash of Government."

Justice King interrupted the young lawyer and, as he has throughout the trial, cut off discussion about events that went beyond Mr. Quinn's death. He reserved decision on the motion.