

Ex-Guard at Attica Admits at Trial He

By MICHAEL T. KAUFMAN
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BUFFALO, March 19—A 33-year-old prison guard testified here today that for nearly two years he had falsely accused an inmate of striking an officer who later died because he "wanted to further" himself and obtain a transfer from Attica to a prison closer to his home.

Alton Tolbert, the witness, appeared embarrassed and meek as he told the court here that his original account of seeing an inmate that he recognized, strike Correction Officer William E. Quinn with a shovel was a complete fabrication. Mr. Tolbert, now a correction officer at Elmira, said that, in fact, he had not seen Mr. Quinn at all on the morning of Sept. 9, 1971, when the Attica prison was first taken over by inmates.

Though his testimony was startling, its impact on the mur-

der trial here remains vague. Lawyers for John Hill and Charles Joseph Pernalice, the two defendants charged with the killing of Officer Quinn, have alleged that the state has fabricated its case against them. By calling Mr. Tolbert as their first witness, the defense lawyers sought to identify him with the state prosecution. However, it was the prosecution itself that summoned Mr. Tolbert in June, 1973, and had him sign a document recanting his original story.

Guard Assailed as Witness

Perhaps, because of fears of such an identification by the jury, Louis Aidala, the prosecutor, argued bitterly that under the laws of evidence Mr. Tolbert was not a proper witness and should not be allowed to take the stand. He insisted that the issues on which the guard would testify were collateral to the case on trial.

For his part, William M.

Kunstler, Mr. Hill's lawyer, said the witness, with whom he had never spoken, might provide "exculpatory" testimony, clearing his client. Mr. Aidala said the defense was obliged to vouch for the truthfulness of its own witness. He said that by eliciting the contradictions in the guard's stories the defense would be impeaching its own witness, a practice forbidden by state law.

Finally, Ramsey Clark, Mr. Pernalice's lawyer, rose and declared: "The issue is really pretty clear. The court knows, the prosecution knows, the defense knows that on the 18th of September 1971, a correction officer in the vicinity of Times Square [the prison area where Mr. Quinn was on duty] said he saw a black inmate swing a shovel at Mr. Quinn. It is unconscionable for the jury not to have that information. It is unconscionable for use to have to weave our way through a lot of technical rules."

The trial is being held before Justice Gilbert H. King of State Supreme Court.

Mr. Tolbert laughed nervously when, in response to Mr. Kunstler's questions, he said that on two occasions he told state troopers investigating the Attica disorders that he had seen an inmate named Kenny Orr swing a shovel at Mr. Quinn in Times Square. He said he had gone to the state police to volunteer this information.

'A False Statement'

"I told them a false statement," said the guard, who later conceded that he could not even see Times Square at the time of the outbreak.

Mr. Kunstler asked why he had lied.

"In my own mind I thought I could further myself and possibly get transferred to a prison nearer my home," said the officer, who had been at Attica only three months at the time of the riot. He said that two months after the disorders he was transferred to Elmira Correctional Facility, which is in his home town.

The defense attorney asked

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Falsely Accused a Prisoner

the witness whether he had been suspended by the Department of Correction after he had repudiated his story in June of 1973.

"No," the officer replied softly.

"Were you disciplined?"

"No," Mr. Tolbert answered.

In his cross-examination, Mr. Aidala sought to disassociate the witness from the prosecution's investigation. Raising his voice and scowling in anger he asked the witness whether it was true that as far back as June of 1972, the prosecution had caught him in a lie related to another case. Mr. Tolbert said this was so.

"And is it not true that you were told in words and substance to get out of here after your story was found unworthy," the prosecutor shouted.

Mr. Tolbert answered, "Yes," between gulps of water.

In earlier testimony the name of Kenny Orr had come up. He was identified by one of the prosecution's five former inmate witnesses as being in a cell block where inmates had refused to join the rebellion. In fact, he had been identified as one of several inmates who carried the wounded officer Quinn on a mattress towards safety.