

CHIEF PROSECUTOR ON ATTICA ACCUSED OF JURY COVER-UP

Ex-Aide Says Inquiry of Way State Police Acted During Revolt Lacked Integrity

By M. A. FARBER

A key member of the Attica special prosecutor's office has resigned and charged the chief prosecutor, Anthony G. Simonetti, with covering up possible crimes by law-enforcement officers who put down the rebellion at Attica prison in September, 1971.

The accusation was made by Malcolm H. Bell, who was once Mr. Simonetti's chief assistant. Mr. Bell charged that the inquiry into whether crimes were committed by state troopers and correction officers "lacks integrity" and was being "aborted" by Mr. Simonetti.

Mr. Bell made the statement in his letter of resignation to Attorney General Louis J. Lefkowitz last Dec. 11. A copy of the letter, from which information about certain cases before the grand jury was deleted, has been obtained by The New York Times.

After Mr. Bell concluded that Mr. Lefkowitz did not intend to pursue his charge, he sent a 160-page report on Jan. 30 to Governor Carey.

Lefkowitz to Report

Mr. Carey asked the Attorney General yesterday to submit a written report responding to Mr. Bell's charge. At the same time, Mr. Lefkowitz said he had been exploring the allegation since it was made. He declined to comment on the merit of the charge.

Mr. Simonetti said that the allegation was "both false and shocking" and that "we have held a very open investigation of Attica and we will continue to look at all aspects in a logical and thorough manner." A spokesman for the Governor said that Mr. Lefkowitz had expressed "complete confidence" in Mr. Simonetti following the charge by Mr. Bell.

Before his resignation, Mr. Bell conducted most of the grand jury hearings on possible crimes by state troopers, prison guards and other officials in connection with the Attica rebellion.

Accusations Detailed

Although what he termed "substantial evidence" pointed to crimes by law-enforcement officers during the bloody quelling of the four-day Attica uprising, the 43-year old lawyer wrote to Mr. Lefkowitz that "Mr. Simonetti has repeatedly refused to allow witnesses to be called, questions to be asked, leads to be followed and legal and logical conclusions to be utilized which will allow a fair presentation" of the cases to the grand jury.

The letter indicated that the cases involved not only unwarranted shooting by state troopers and correction officers, but also a failure by senior law-enforcement officers to assure that their men could be held accountable for their actions.

"Was all the shooting justi-

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Sixty-two inmates have been named in 42 indictments for crimes related to the uprising. A law-enforcement officer has been indicted by the two grand juries sitting in Warsaw, near the upstate prison. There have been reports recently, however, that several indictments of state troopers or prison guards are imminent.

In his letter to the Attorney General, Mr. Bell indicated that Mr. Simonetti's troubles with Mr. Simonetti began last August. He said Mr. Simonetti "suddenly switched" the presentation before the grand jury from cases that Mr. Bell estimated needed "a month more evidence" to a case "which was not yet ready for presentation."

Confusion is Cited

"Besides creating confusion, Mr. Simonetti increasingly restricted the scope of the questions I was allowed to ask with respect to the cases," Mr. Bell wrote.

"witnesses in the jury," Mr. Bell said. "It was a fight, for example, even to be allowed to ask witnesses to the retaking whether they saw anyone shoot anyone. Later he increasingly refused to let me question witnesses much or at all, leaving them to be examined superficially by assistants who lacked the knowledge or the will to inquire fully."

Mr. Bell said that Mr. Simonetti "failed or refused (when I asked him) to ask many pertinent questions of the witnesses he examined," and that "he refused to call many witnesses who should have been called."

Mr. Bell said that, over his protests, Mr. Simonetti "needlessly, prematurely and, without proper justification or particular benefit" granted immunity from prosecution to two of the four leading suspects in a case. The two suspects are understood to be high-ranking state police officers.

Mr. Bell also said that while the grand jury record was being evaluated by the office last fall, he was given the "unprecedented direction to cease writing all further memoranda for at least eight weeks."

"One Watergate in this decade is enough," Mr. Bell said in his letter.

"At stake," he said, "is whether the knowable facts of a terrible tragedy will be presented or buried, whether equal justice will apply to inmates and law officers, whether more law officers will hereafter be more careful why they shoot people, and whether they keep the circumstances of their shootings from coming before juries of citizens afterwards."

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"I asked Mr. Bell, who had conducted most of the grand jury hearings on possible crimes by state troopers, prison guards and other officials. The evidence makes it plain that it was not."

"Was all the shooting justified? The evidence makes it plain that it was not," Mr. Bell said.

Mr. Bell, in an interview yesterday, said that a wide variety of alleged crimes by law-enforcement officers—from murder, manslaughter, assault and reckless endangerment to hindering prosecution, perjury and conspiracy—might be proved through an "open and full" investigation.

During the retaking of the Attica prison on Sept. 13, 1971, 39 inmates and hostages were killed and more than 80 were wounded by gunfire from state troopers and correction officers. Earlier in the rebellion three inmates and one guard, William Quinn, were beaten and stabbed to death, all presumably by inmates. John Hill, an inmate, was convicted on Saturday of murdering Mr. Quinn.

Informant Is Shielded

Mr. Bell said yesterday that he was "suspended" by Mr. Simonetti last Dec. 6 after he refused to identify an informant who had demanded anonymity in exchange for information that might have "made liars" out of some grand jury witnesses.

On Dec. 12—a day after resigning from his \$31,000-a-year post as a special assistant attorney general—Mr. Bell requested a meeting with Mr. Lefkowitz to discuss his charge against Mr. Simonetti. The meeting, also attended by Mr. Simonetti, was held on Dec. 17 at the Attorney General's office here at 2 World Trade Center.

Mr. Bell, in the interview yesterday, said he elaborated on his letter to Mr. Lefkowitz during the one-hour meeting. The former prosecutor declined to characterize the Attorney General's reaction; Mr. Simonetti, he said, did not speak.

Mr. Bell said that he expected to hear from Mr. Lefkowitz after the meeting, but that he received only a routine, three-sentence letter on Dec. 27 accepting his resignation.

He then resolved to draw up a report for the Governor and he also sent a copy of the report late in January to Justice Carmen F. Ball of the State Supreme Court, the supervising judge for all cases growing out of the Attica revolt. He says he has not heard from Justice Ball regarding the report.

Mr. Bell said yesterday that his suspension was "the straw that broke my back" after several months of arguing with Mr. Simonetti over the handling of the Attica investigation.

"I ultimately and reluctantly concluded that Simonetti was deliberately blocking the full investigation of material evidence to the grand jury,



The New York Times

Malcolm H. Bell, who resigned from the Attica special prosecutor's office last December.

no so far as it relates to possible crimes by law officers," he said. "And I realized I couldn't be of any further use in the office with Simonetti in charge.

"I would not have taken the steps I have if I thought this was merely a matter of differences of judgment between two lawyers over the proper way to give a grand jury all the evidence it needed to do its job fairly."

Mr. Bell said he had no complaints about the investigation or prosecution of alleged crimes by inmates during the rebellion—he said he knew relatively little about those cases.

He also said he had "no hard and specific evidence that he cover-up of possible law-officer crimes goes beyond Simonetti—I don't want to speculate in the absence of specific evidence."

Mr. Bell, who declined for legal and ethical reasons" to discuss particular cases still before the grand jury prior to his resignation, said that few indictments against state

roppers or prison guards would not convince him that Mr. Simonetti was no longer engaged in a "whitewash".

"I don't know what has happened in the office since I left," Mr. Bell said. "But I have no present reason to think that several indictments would reflect a basic change."

In his letter to Mr. Lefkowitz, Mr. Bell said that "Mr. Simonetti may now claim that he has intended to investigate all along, and then go ahead and do so."

"If he does," he continued, "that would be a most welcome and surprising benefit from my resignation."

From time to time, some persons who felt that the assault on the rebels at Attica used excessive force have warned against a cover-up of any crimes by law-enforcement officers. And some segments of the legal community, civil libertarians and Attica inmates and their sympathizers have been openly critical of the lack of indictments against state troopers and prison guards.

Fischer Headed Inquiry

The criminal investigation of all aspects of the Attica riot and the retaking of the prison was headed by Deputy Attorney General Robert E. Fischer from Sept. 15, 1971, until the end of 1973, when he was elected to the State Supreme Court.

Mr. Fischer, who was also head of the state's Organized Crime Task Force, was named to the Attica post by Gov. Nelson A. Rockefeller. Mr. Simonetti, who had been chief assistant to Mr. Fischer on the Attica investigation, was chosen by Mr. Lefkowitz to succeed Mr. Fischer as chief Attica prosecutor.

The original Attica grand jury, which has handed up all the indictments against inmates, was impaneled on Nov. 1, 1971, and is still sitting intermittently. But it has never been clear how much testimony the jury heard with regard to possible crimes by law-enforcement officers.

In April, 1974, a second Attica grand jury—consisting like the first of residents of Wyoming County, where Attica is situated—was impaneled to consider indictments against non-prisoners.

Technically, either grand jury could return indictments against prisoners or non-prisoners. Some state troopers have maintained that the second grand jury was convened by Mr. Simonetti under pressure from "various groups" who were supposedly disappointed that no law officers were indicted by the first grand jury.

As an Attica prosecutor, Mr. Bell was primarily involved with the investigation of possible crimes by law-enforcement officers. Mr. Bell, who graduated from Harvard College grew up in Brooklyn and graduated from Harvard Law School, was

tion before Mr. Simonetti hired him for the Attica prosecution team in September, 1973.

Most of Mr. Bell's professional experience was gained with the firm of Dewey, Ballantine, Bushby, Palmer & Wood, with which he was associated from 1958 to 1968.

8,500 Pages of Testimony

Between September, 1973, and February, 1974, he helped prepare a case against 10 Attica inmates and worked on pre-trial motions. He was then shifted to analyzing possible cases against law officers and, in the first half of 1974, he served as Mr. Simonetti's chief assistant.

Mr. Bell said that, of 8,500

pages of testimony before the second grand jury before his resignation, he elicited a little more than 7,000 pages.

Last Feb. 18, Mr. Bell—not having heard from the Governor's office—sent a reminder to Mr. Carey about his 160-page report.

Eight days later Mr. Bell attended a forum on the state's prisons at the offices of the Association of the Bar of the City of New York. He was especially interested in the last question, which asked by Robert P. Patterson Jr., who was formerly president of the Legal Aid Society and a member of the panel that was named to help safeguard Attica prisoners' constitutional rights after the revolt. Mr. Patterson asked whether, with regard to any crimes by non-prisoners: "Have we any assurances at all that a large cover-up is not being engaged in, and what can we as a bar association do about it?" Mr. Patterson, who had not talked to Mr. Bell since 1968, was applauded.

The response to the question was provided first by Robert B. McKay, the dean of New York University Law School, who served as chairman of the state's special commission on Attica.

The McKay commission, as it came to be known, had been very critical in its report in 1972 of the use by the police of weaponry and ammunition that "virtually assured the death or serious injury of innocent persons" during the retaking of the prison. It also criticized what it called the lack of planning for the assault, the lack of an adequate photographic record of the assault, the lack of assurances that weapons and bullets could be traced to individual troopers, and the lack of sufficient medical care for the wounded after the attack.

'Brutality' Is Charged

It also said there had also been "unnecessary shooting" by a minority of officers involved in the assault, significant contradictions between statements given to state police investigators and to the commission by state troopers, and a failure by senior law-enforcement officers to prevent repris-

als and "acts of brutality" by their men against prisoners following the assault.

At the bar association meeting, Dean McKay said that Mr. Patterson had asked "a blockbuster of a final question."

"I do not know whether there is a cover-up or not," Mr. McKay said. He added that he was "surprised" that the prosecution had not "been able to build" at least some cases against law-enforcement officers, considering the information in the commission's report.

Mr. McKay called on Steven B. Rosenfeld, a deputy general counsel of the commission who was sitting in the audience.

Mr. Rosenfeld said: "The problem is that it is probably very difficult to get indictments from citizens in Western New York against correctional officers and state troopers from Western New York."

"I don't think it's fair to say that prosecutors have not,

at least in some measure, been trying," Mr. Rosenfeld said. "I don't think they have tried as hard—they didn't try at the same time—but they have been trying."

After the meeting, Mr. Bell spoke to Mr. Patterson. On March 7, Mr. Bell received a

call from Paul Gioia, an assistant counsel to Governor Carey, who said that he and Mr. Gribetz, Mr. Carey's counsel, had read Mr. Bell's report and were "quite concerned" about it.

Mr. Patterson said that he had been retained as Mr. Bell's

attorney shortly after the forum at the bar association. He said that he had then "taken some steps on behalf of my client and in the interest of justice," but he declined to divulge the moves. "It might jeopardize a favorable result from my efforts," he said.