

Letters and Statement in Attica Inquiry

Following are the texts of letters by Malcolm H. Bell, a former special assistant assigned to the investigation of possible crimes arising from the Attica prison revolt, and by Robert P. Patterson Jr., an attorney for Mr. Bell, and a statement by Anthony G. Simonetti, a special assistant attorney general who is chief prosecutor in the Attica investigation. The material deleted from Mr. Bell's letter makes reference to particular cases and persons involved in the Attica investigation. The deletions had already been made when the letter was obtained by The New York Times:

Letter by Bell

Dear General Lefkowitz:

I hereby tender my resignation as special assistant attorney general assigned to the Attica investigation. My basic reasons are that the investigation lacks integrity, and I am no longer able to hope that integrity will be restored so long as Anthony G. Simonetti remains in charge.

I

The investigation has developed substantial evidence before the supplemental grand jury and in its files that . . . during the retaking of the prison on September 13, 1971. 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 these . . . cases to the jury.

The investigation has developed substantial additional evidence that . . . thereby indicating the further crimes of . . . Mr. Simonetti has similarly blocked the full development of this evidence.

Moreover, Mr. Simonetti has needlessly, prematurely, and without justification or particular benefit, granted immunity from prosecution to two of the four leading suspects in the . . . case. See Exhibit A hereto. After immunizing . . . over my strong protest as there described, Mr. Simonetti took the even more amazing step of immunizing . . .

II

I joined Mr. Simonetti's staff on Sept. 20, 1973. Prior to that time my experience in criminal law was not great, the longest portion of my 15 years since law school having been spent in the litigation department of Dewey, Ballantine. Earlier this year Mr. Simonetti made me his chief assistant, and I had the privilege of meeting you at that time. Mr. Simonetti left me in charge of the office during his two weeks' vacation last April. Since the supplemental grand jury was empaneled in May, I have presented most of the evidence before it, insofar as I was permitted to. I think that

close to 8,000 pages of the about 9,000 pages of testimony reflect my work. I have spent large amounts of my own time on this job.

Commencing at the end of last August Mr. Simonetti suddenly switched the jury presentation from . . . on which I then estimated to him that at least a month more evidence was required, to . . . which was not yet ready for presentation. Besides creating confusion, Mr. Simonetti increasingly restricted the scope of the questions I was allowed to ask witnesses in the jury. 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. He himself failed or refused (when I asked him) to ask many pertinent questions of the witnesses he examined, most notably . . . whom he said he was immunizing for the information they could provide. He refused to call many witnesses who should have been called. He and [special assistant attorney general] Edward Perry, his current chief assistant, have indicated to the jury . . .

WEDNESDAY, APRIL 9, 1

Dispute

In October Mr. Simonetti asked me to list projects for further investigation during the period of evaluation of the grand jury record. As I continued to do so, however, I received the, to me, unprecedented direction to cease writing all further memoranda for at least eight weeks.

Mr. Simonetti may now claim that he has intended to investigate fully all along, and then go ahead and do so. If he does, that would be a most welcome and surprising benefit from my resignation.

Last Friday, Dec. 6 [1974] I received information from a man I consider reliable that . . . presently in existence and in the custody of . . . The information, if true, is substantively valuable and . . . As a condition of giving this information, the informant required me to agree to protect his identity even from Mr. Simonetti. I provided Mr. Simonetti with the information and dictated a memorandum of it at his direction. He refused to let me proofread the memor or retain a copy, and I have not seen it. That afternoon he suspended me from the office.

Mr. Perry informed me by phone on Saturday [Dec. 7, 1974], that my agreement to receive the information in full confidence violates no law that he is aware of but does violate certain customs. As an apparent afterthought, and possible admission of the weakness of Mr. Simonetti's

position, Mr. Perry phoned me on Monday afternoon to relay Mr. Simonetti's "direct" order to me to break my agreement and identify the informant. All my requests to have my position respected have been for naught.

Meanwhile, at Mr. Perry's request, I had asked the informant if he would release me from my agreement of confidentiality. On Monday he was willing to consider doing so if Mr. Simonetti would be the only additional person to know. Mr. Perry, however, was only willing to say that the "office" would know and protect the informant's identity. When I asked the informant Tuesday morning if that was sufficient, he refused to allow even Mr. Simonetti to know, and signed off. I am afraid the office has thus lost a valuable informant.

The main point about the acts leading to my suspension is that they are not the main point. My acts presented Mr. Simonetti with a choice. He could thank me for the information, follow it up incisively, and encourage me to develop the source. Or he could say that the information provides a fine lead, but don't make an agreement like that again even if it blocks your access to the information. Or he could do as he has done. I am forced to conclude that I have violated some commitment of Mr. Simonetti's to eschew important investigation at this time.

The inmates killed four people and about 60 have been indicted. Law officers killed 39 and none have been indicted. Was all the shooting justified? The evidence makes it plain that it was not.

The investigation to date has done prodigious work,



The New York Times

Malcolm H. Bell, formerly with the Attica special prosecutor's office, made cover-up charge in resignation letter in December.

spite the fact that many independent witnesses observed such crimes. The enclosed pages 427-455 from the McKay Commission report cover testimony by National Guardsmen and troopers about assaults on inmates committed after the prison was under control and, in some cases, while those assaulted lay wounded on stretchers or were receiving medical treatment. These crimes should be relatively easy to prove. Since three and one-half years have now passed, the necessary identifications will be far more difficult and the likelihood of charges being brought for such crimes has been reduced. The fact that the grand jury is now scheduled to sit for 11 more weeks does not alter this situation.

3. The long delay in itself is so extraordinary that I feel that the Governor is entitled to a full explanation and has grounds under S6 of the Executive Law to appoint one or more persons to investigate the management and affairs of the Attica Investigation while the grand juries are still sitting. Such a person or persons should be able to examine the records, including the grand jury minutes, and interview witnesses to determine the reason for the extraordinarily poor record this prosecutorial force has made with respect to this aspect of its duties. Since the deputy attorney general has a duty under S63.8 of the Executive Law

to report to the Governor and, if directed, to persons designated by the Governor, disclosure of grand jury proceedings to such persons should be a part of his "official duties" and permitted under S215.70 of the Penal Law. The Governor should also consider the alternative possibility of taking more direct action pursuant to S67 of the Executive Law, since this would more certainly have the additional effect of allowing his appointee access to the grand jurors themselves.

Whether the reasons for the poor record of the Attica investigation be internal to the investigation force or external to it, the Governor should be aware of those reasons so that such a travesty of justice does not recur.

4. My conclusions with respect to 2 and 3 above are reinforced by reports of a general nature which I have received from persons other than the author of the report as well as my consideration of the report itself.

I believe my services are now complete. I hope you will follow my recommendation.

yours sincerely,
Robert P. Paterson, Jr.

Simonetti Statement

The allegations made by Mr. Bell are entirely false and wholly irresponsible. I will not engage in debate or rhetoric concerning Mr. Bell in any form. He has brought wholly false accusations against me and my office, and I will not dignify his bearing false witness against me.

The Attica investigation has been conducting investigation painstakingly and fairly under my direction. Law, ethics and common fairness prevent me from speaking specifically about the case, but I assure the public that the two grand juries which have sat for approximately three years have considered and continue to date to consider every relevant and material aspect of the case as presented by me and my staff including law enforcement participation at Attica.

Contrary to the impression given by Mr. Bell that his criticism has been ignored, at the direction of Attorney General Lefkowitz and in his company, we conferred with Justice Carmen F. Ball on Dec. 23, 1974, the Justice presiding over the Attica Investigation, and gave him a copy of Mr. Bell's criticisms. On Dec. 27, 1974, Attorney General Lefkowitz turned over a copy of the criticism to Governor Carey.

particularly as to inmate crimes. As to crimes by law officers, however, it is as though Mr. Simonetti has managed to load the bases in every inning, and it is now the bottom of the ninth and he has yet to score a run.

After the Black Panther shootout in Chicago, in which only Fred Hampton and one other were killed, a Federal grand jury charged the Chicago police with misfeasance and nonfeasance, after the local authorities had failed to fault them. It was essentially the same story at Kent State, where only four were killed. The retaking of Attica dwarfs these shootings. "Attica" remains a household word, in spite of the desire of many that it go away. I think that expediency as well as justice and honor compel the Attica investigation to do its job. One Watergate in this decade is enough.

I am sorry, General, to have to burden you with all this. Far more is at stake, however, than my personal future. At stake 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 when they shoot people, and why they keep circumstances of their shootings from coming before juries of citizens afterwards.

My objectives have been to see that all the facts which are necessary for the grand jury's votes report are placed before it, and that equal justice applies to inmates and officers. Mr. Simonetti speaks of letting the chips fall where they may, but since August Mr. Simonetti and I have had dozens of arguments, the nub of which was that I wanted to put evidence before the jury and he wanted not to. His actions convince me that, in his eyes, my objectives are my transgressions.

The jury investigation is described in greater detail in a status memorandum which I am now preparing, subject to the fallibilities of my memory and the absence of records to refer to while I write all this away from the office. I would be happy to discuss anything that would be helpful to you, with Mr. Simonetti present, without him or both. I am available by phone at MA-4-1579 or 203 655-9390.

In conclusion, sir, I would like nothing better than to complete the full investigation before the supplemental grand jury, and participate in any trials thereafter. It is now clear to me, however, that the investigation is being aborted, beyond my power to help. So long as Mr. Simonetti remains in charge of the supplemental grand jury investigation, I do not believe I can be of any further use to it.

Respectfully yours,
MALCOLM C. BELL

Letter by Patterson

March 27, 1975

Dear Mr. Gribetz:

As authorized by you on the telephone, I, as counsel to the author, have now reviewed the report on the Attica investigation sent by him to Governor Carey on January 30, 1975, and should like to advise as follows:

1. I see no purpose to be served in your suggested meeting with Attorney General Lefkowitz and Mr. Simonetti to hear their explanations of the various points and criticisms raised by the report. As you pointed out, a fair evaluation of the different points of view seem highly unlikely without access to the grand jury minutes and other attendant materials, which I am neither authorized to inspect nor, due to my position as counsel, in a position to undertake.

2. The fact remains that three and one-half years have passed since Attica; and although the then Governor, in superseding District Attorney [Louis] James, instructed the Deputy Attorney General, then Robert E. Fischer to investigate and prosecute the crimes committed by and against inmates, not a single noninmate has been charged with a crime against an inmate de-