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Carey Defers a Decision On Attica Trials Inquiry

Says Lefkowitz Should Meet With Lawyer for Ex-Prosecutor NYTimes

By M. A. FARBER

Governor Carey deferred a decision yesterday on a request that he appoint an independent individual or group to investigate the "management and affairs" of the state's prosecution of crimes connected with the Attica prison rebellion of September, 1971.

Instead, the Governor urged a meeting "without delay" between Attorney General Louis J. Lefkowitz and Robert P. Patterson Jr., an attorney for a former key member of the Attica prosecution team. The prosecutor, Malcolm H. Bell, resigned, charging that his chief,



The New York Times
Robert P. Patterson Jr.

month by senior aides to the Governor but was rejected by the lawyer, who is vice president of both the city bar group and the State Bar Association.

Mr. Patterson said then, in a letter to Judah Gribetz, Mr. Carey's counsel, that a meeting would serve "no purpose" because he did not have access to grand jury minutes and other materials that would permit a "fair evaluation" of differing views.

He reaffirmed that position yesterday.

In his letter of resignation Mr. Bell said the Attica investigation of possible crimes "lacks integrity" and was being "aborted" by Mr. Simonetti. Mr. Simonetti vigorously denied the allegation.

Other developments yesterday included the following:

Mr. Lefkowitz said that his report to Mr. Carey would be based on an analysis by Mr. Simonetti of Mr. Bell's report to the Governor plus other materials in Mr. Simonetti's possession. "In effect Simonetti will do the reply to the Gov-

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Anthony G. Simonetti, had covered up possible crimes by law enforcement officers at Attica.

The proposal for an independent inquiry had been made by Mr. Patterson. On Tuesday The New York Times reported that Mr. Bell, who was once Mr. Simonetti's chief assistant, had made the accusation against Mr. Simonetti in his letter of resignation to Attorney General Lefkowitz on Dec. 11.

Mr. Bell detailed his allegations in a 160-page report to the Governor on Jan. 30.

Proposal Backed

Mr. Patterson's proposal for an independent inquiry drew support yesterday from Cyrus Vance, president of the Association of the Bar of the City of New York, and Representative Edward I. Koch, Democrat of Manhattan.

A meeting like that recommended by Mr. Carey was suggested to Mr. Patterson last

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error," the Attorney General said. "I will pass it along."

State Supreme Court Justice Carmen F. Ball, the supervising judge for all Attica cases, said that Mr. Bell's charge and the repercussions from it had "so far" not affected the progress of cases against inmates. "I don't want to make any predictions for the future," he said.

Attorneys for two former Attica inmates who were convicted last Saturday in Buffalo, one of murdering, and one of attempting to assault, William Quinn, a guard, demanded a copy of Mr. Bell's report to Mr. Carey. The lawyers asserted that they had unlawfully been kept unaware of the report during the trial, while Judge Ball had a copy of the document.

Two other prosecutors resigned from the Attica investigation because, they said yesterday, they were unhappy with the way the investigation was proceeding. Neither of the two prosecutors was critical of Mr. Simonetti. But one, Herman Graber, said he had "the feeling that 'someone didn't want the investigation to succeed.'"

Conducted Hearings

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

The original Attica grand jury was empaneled on Nov. 1, 1971, and has handed down all the indictments against inmates. This grand jury, it is understood, also heard some testimony with regard to possible crimes by law enforcement officers.

A second grand jury was empaneled last May, specifically to hear evidence of crimes by law enforcement officers. Mr. Bell elicited more than 7,000 of the approximately 8,500 pages of testimony before this grand jury prior to his resignation.

Mr. Bell said on Monday that he had no quarrel with Mr. Simonetti over the investigation or prosecution of inmate crimes stemming from Attica. He said he knew little about those cases.

In his letter of resignation, Mr. Bell said that, while "substantial evidence" pointed to crimes by law enforcement officers during and after the Attica revolt, Mr. Simonetti had "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.

Accountability an Issue

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.

In an interview, Mr. Bell said 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.

Mr. Simonetti issued a statement yesterday reiterating that Mr. Bell's charge was "entirely false and wholly irresponsible."

"The Attica investigation has been conducting investigation painstakingly and fairly under my direction," he said. "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 to me and my staff including law enforcement participation at Attica."

Mr. Simonetti said that he and Mr. Lefkowitz informed Judge Ball on Dec. 23 of Mr. Bell's charge and that Mr. Lefkowitz had written Governor-elect Carey of the accusation on Dec. 27. Mr. Bell himself sent Judge Ball a copy of his 160-page report on Jan. 30.

No Response at First

Mr. Bell did not receive a response to his report from Mr. Carey's office until after he retained Mr. Patterson on Feb. 28. Nor was he contacted by Mr. Lefkowitz on the subject of his charge after a one-hour meeting with the Attorney General and Mr. Simonetti on Dec. 17.

Mr. Patterson was retained by Mr. Bell after the 43-year-old former Attica prosecutor heard Mr. Patterson ask at a bar association forum on Feb. 26 whether there had been "a large cover-up" of crimes by law enforcement officers at Attica.

During March Mr. Patterson conferred with legal aides to Mr. Carey regarding Mr. Bell's charge. Mr. Patterson, accord-

ing to the letter he sent Mr. Gribetz on March 27, had received permission from the Governor's counsel to read Mr. Bell's report to Mr. Carey.

In the letter, released late Monday by Mr. Patterson, Mr. Patterson indicated that Mr. Gribetz had already agreed that a "fair evaluation of different points of view seem highly unlikely" without an evaluator's having access to secret grand jury minutes and other materials.

Mr. Patterson said some alleged crimes by law enforcement officers would have been "relatively easy to prove" as early as 1971-72, although time had "reduced" the likelihood that charges would be brought.

Delay Held Extraordinary

The attorney, a former president of the Legal Aid Society and a member of the panel appointed in 1971 to safeguard Attica inmates "constitutional rights after the revolt, said that "the long delay in itself is so extraordinary" that the Governor "is entitled to a full explanation."

"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 made aware of those reasons so that such a travesty of justice does not reoccur," Mr. Patterson wrote.

Mr. Vance said that in his support for an independent inquiry, he was "speaking only for myself." Arthur Limas, former counsel of the official state commission that investigated the Attica rebellion — the so-called McKay Commission — said yesterday that commission members were being polled to determine whether they favored an independent inquiry.

In a telegram to Justice Ball, William M. Kunstler and Ramsey Clark yesterday asked that they be given "at once" a copy of Mr. Bell's report.

Mr. Kunstler represented John B. Hill, who was convicted on Saturday of murdering an Attica guard, and Mr. Clark represented Charles Pernasilice, who was convicted of attempted second-degree assault. During the trial, they had argued that inmates, but not law officers, were being prosecuted.

In another case stemming from the Attica revolt, Ernest Goodman, a lawyer for Bernard Stroble, who is charged with murder, asked that Mr. Bell, a Connecticut resident, be subpoenaed to testify at the trial.