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A Time To Look Ahead

By Tom Wicker

After the bloody suppression of the Attica revolt on Sept. 13, 1971, when 29 inmates and ten of their hostages were killed by New York State Police gunfire, authorities discovered the bodies of three other inmates in Cell Block D. Medical examiners for the New York State Special Commission on Attica reported that the three men had died of multiple stab wounds.

Later, a grand jury indicted five inmates on various charges arising from the deaths of two of the three inmates whose bodies were found in D-block. Last summer, one of those indicted, Bernard Stroble, was acquitted of a murder charge, after Judge Joseph S. Mattina of State Supreme Court had dismissed kidnapping and felony murder charges against him. In October, another inmate indicted in these cases, Eric Thompson, pleaded guilty to a lesser count of coercion in return for the dismissal of murder and kidnapping charges against him.

Last week, Judge Carman F. Ball dismissed kidnapping and felony murder charges against the three other indicted inmates—Roger Champen, Herbert X. Blyden and Frank Smith—after state prosecutors had conceded in a brief that "the proof with respect to these defendants will not differ in any material respect from the proof adduced at the Stroble trial."

That continued the remarkable record of acquittals and dismissals of the Attica indictments—a record which with every entry makes the entire Attica prosecution seem more futile and less necessary. In all, two grand juries have produced indictments with

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over 1,300 criminal counts against 60-odd Attica inmates who participated in the uprising. These charges range from murder to stealing a guard's keys, and here is the summary of their disposition so far:

Eighteen indictments against 27 defendants have been dismissed for insufficient evidence, or other legal reasons. Eight other defendants have pleaded guilty to various charges. Five cases had gone to trial before that of the three men whose indictments were dismissed last week; four resulted in acquittals.

The exception was the trial of two inmates charged with the murder of a guard, William Quinn, in the first moments of the Attica revolt. One was found guilty of murder, the other of a lesser charge; both are appealing. This was by far the most serious of all the Attica indictments, since the murder of a prison guard in New York can result in the death penalty.

That case has been tried. The felony murder cases arising from the deaths of two inmates whose bodies were found in D-block have been dismissed. Charges in the case of the third have been removed to Federal court, at least for the moment. Because these high-priority cases have been disposed of, and because such a dismal record of convictions has been compiled in others, surely the time has come for the State of New York to drop this weak prosecution, which many believe to be vindictive.

There are other reasons. Many of the remaining cases are on kidnapping charges; and charges already dismissed have raised the question whether any kidnappings—by legal definition—took place during the Attica uprising. Although state troopers killed 39 men with indiscriminate gunfire, only one trooper has been indicted on a relatively minor charge; and although abundant evidence exists of violent reprisals against inmates by troopers and guards, no one has been indicted for these brutalities. This is at least a prima facie case of selective prosecution.

Governor Carey, in fact, has in hand a report on a judicial investigation of the prosecution which may confirm that it has been selective rather than impartial. In a time of fiscal crisis, moreover, the state has spent millions already on this dubious prosecution—some estimates run as high as \$10 million—and must spend millions more if all the indictments are to be pressed.

There are several procedures, legal authorities say, by which the Attica prosecutions could be promptly ended. Either Anthony G. Simonetti, the special prosecutor, or Attorney General Louis Lefkowitz could move for dismissal of the remaining indictments. Mr. Carey could ask Mr. Lefkowitz to do so; if he refused, the Governor might be able to cut off prosecution funds. Or he could rescind the executive order under which Gov. Nelson Rockefeller set up the special state prosecution in 1971; that would leave no one to prosecute the indictments.

Finally—and perhaps best—Mr. Carey could announce that he intended to pardon anyone convicted in the Attica cases, including that single scapegoat state trooper, the only non-inmate so far indicted for the state's failures and offenses in September, 1971. That would make further prosecution fruitless, and help turn official attention where it belongs—away from a vengeful concentration on events of more than four years ago, and toward the inhumanities, injustices and inadequacies that caused the Attica uprising and still plague New York prisons.