

Excerpts From Report on Prosecution of Attica Rebellion Cases

Following is the text of Bernard S. Meyer's report on the Attica rebellion:

A. Findings

1. There was no intentional cover-up in the conduct of the Attica investigation. There were, however, serious errors of judgment in its conduct. Moreover, there were, immediately after the relaxing assault was over and before the investigation commenced, important omissions on the part of the state police in the gathering of evidence. The combination of those errors and omissions has resulted in an imbalance in the prosecution.
2. Governor Rockefeller's selection of then Deputy Attorney General Robert Fischer, who was head of the Organized Crime Task Force and well qualified by his background to head the criminal investigation, was prompt and appropriate. However, the dual role of the state police (a) in the retaking of the prison, during which 39 men were killed and 89 wounded by law enforcement personnel, and (b) as the investigative arm of O.C.T.F. created for it a possible conflict of interest and for the Attica investigation other problems which Fischer should have dealt with more firmly. Moreover, Rockefeller's remarks immediately after the relaxing in praise of the state police as a group were inappropriate in view of the possibility that the degree of force used by enforcement personnel may have been excessive and of the possible effect of those remarks upon the course of the investigation.
3. The Attica investigation was from the outset woefully understaffed. The responsibility for the inadequacy of the staff rests largely with Fischer, and not with the Executive Chamber or Simonetti.
4. The decision to conduct the investigation sequentially of chronologically rather than topically was a serious error of judgment. Investigation in depth of the later occurring events was thus deferred, which skewed the investigation's inadequate manpower away from possible retarding, rehousing and hindering of prosecution crimes by law enforcement personnel. The Attica investigation should be continued long enough to assure presentation to a grand jury of all such possible crimes.
5. The charge that prosecution of law enforcement personnel for murder or other shooter crimes and for perjury was obstructed by the Attica prosecutor is not sustained by the record. The deficiencies in evidence gathering immediately following the retaking left so little available to the investigation that determination of possible criminal liability in shooter cases became inordinately difficult in all but a few extraordinary cases.
6. The first grand jury returned 42 indictments containing 1,289 counts against 62 inmates, but in the four cases presented to it with respect to law enforcement personnel refused to indict. This one-sidedness was partly the result of the decision to investigate chronologically, which caused cases against inmates to be presented first and over a period of a year, thereby saturating the jury with evidence of inmates' guilt before any law enforcement case was presented, partly the result of partiality and emotion on the part of jurors in considering charges against enforcement personnel who were their friends or neighbors, partly the result of the fact that indictments for "technical" offenses was asked for against inmates but not against law enforcement personnel, and partly the result of legal errors by the prosecution and the presiding judge that may have created tension between the prosecution and the grand jury and confusion of the grand jury members, particularly as to the standard and guiding their decision whether to indict.
7. Investigation of crimes of brutality against inmates which occurred during their rehousing and for several days thereafter was neglected, despite the fact that the area was one requiring a broadscale investigation, quickly mounted, in order to obtain information and identification while memories were fresh. In consequence, available sources of information were not tapped nor has the investigation to date been well organized in the rehousing area. This resulted from the decision to investigate chronologically, from the inadequate staffing of the investigation and from a mistaken and misguided sense of values amounting substantially to indifference.
8. Simonetti conducted a detailed and logical investigation of the possibility that his investigation of possible law enforcement crimes may have been deliberately hindered by the state police, but many steps should have been taken sooner.
9. Simonetti's decisions with respect to the granting of immunity demonstrate in the case of two high-ranking state police officers a lack of good judgment in failing adequately to interview them before putting them before the grand jury, and in a third case involving a state trooper, both the lack of good judgment and an unreasonably lenient view of what should be regarded as a technical crime.
10. The charge that the investigation was switched in August 1974 from shooter cases to possible hindering of the investigation of crimes that the grand jury was recessed in November 1974 in order to frustrate presentation of possible cases against enforcement personnel is not sustained by the evidence. Those decisions were made in good faith, and except as to the brutality area, in the proper exercise of prosecutorial discretion.
11. The evidence does not sustain the charge that certain of Simonetti's actions demonstrate his desire to prevent Bell from effectively investigating the shooter and hindering cases. Some of the actions were entirely proper; others appear to have been motivated more by the strained relationship between Bell and Simonetti than by the concern for the orderly progress of the investigation or were simply the result of poor administration, but, fortunately, it appears that none of the actions resulted in any harm to the investigation.
12. Though Bell's charge of a cover up has proved not well-founded and in some parts was based more on emotion than on fact, a substantial portion of the public shared his misgivings. In bringing the matter to public attention and investigation, he has performed an important public service.