

Report on Attica Inquiry Cites Errors in Judgment

Carey Names Scotti Special Prosecutor to Determine if Indictments Should Be Sought Against Law Officials

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By TOM GOLDSTEIN

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A special state investigator has concluded that "serious errors in judgment" were made in the investigation of the bloody 1971 Attica prison riot, and following a recommendation in his report, a new special prosecutor was named yesterday to determine if indictments should be sought against law enforcement officers who took part in the retaking of the prison.

Governor Carey and Attorney General Louis J. Lefkowitz appointed Alfred J. Scotti, former chief assistant district attorney in Manhattan, as the special prosecutor.

Mr. Scotti, who is 71 years old, will also have the authority to review indictments and convictions already obtained against inmates, and he can

recommend the dismissal of indictments or executive clemency if he feels such action is warranted.

The appointment of such a prosecutor was the major recommendation in a 130-page report on the Attica prosecution that was released yesterday.

In the report, the special investigator, Bernard S. Meyer, found that there had been "no

Text of findings in the report appears on Page 30.

intentional cover-up in the prosecution" but that errors in judgment had led to "an imbalance in the prosecution."

Mr. Meyer, a former State Supreme Court justice, was named last spring to investigate the Attica prosecution after Malcolm Bell, a former assistant Attica prosecutor, had charged Anthony G. Simonetti, the chief prosecutor, with covering up possible crimes by law enforcement officers who quelled the prison rebellion, that resulted in the deaths of 43 inmates and guards.

Mr. Meyer, who spent six months investigating the charges at a cost of \$250,000, concluded that Mr. Bell's charges had "proved not well founded," and in some parts were "based more on emotion than on fact." He praised Mr. Bell for performing "an important public service" by bringing "the matter to public attention and investigation."

However, in recommending that a new special prosecutor be named, Mr. Meyer cited Mr. Simonetti's "mistakes in judgment, in the determination of

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priorities, his many changes and revisions in the direction of the investigation, his failure to appreciate the importance in the interest of even-handed prosecution of pressing for additional resources and the indifference" to investigating charges that inmates had been brutally beaten when they were rehoused after the rebellion ended on Sept. 13, 1971.

Mr. Meyer was named by the Governor and Attorney General last April 17, 10 days after The New York Times disclosed Mr. Bell's charges against Mr. Simonetti.

Initially, Mr. Meyer was to submit a report within 30 working days, but he received several extensions, and he finally submitted it on Oct. 27. Since then it has been reviewed by the Governor's office and Attorney General Lefkowitz.

With the appointment of Mr. Scotti, Mr. Simonetti will continue to conduct grand-jury proceedings under way and to supervise the trials and appeals. According to Attorney General Lefkowitz, Mr. Simonetti's work will be "subject to the review" of Mr. Scotti.

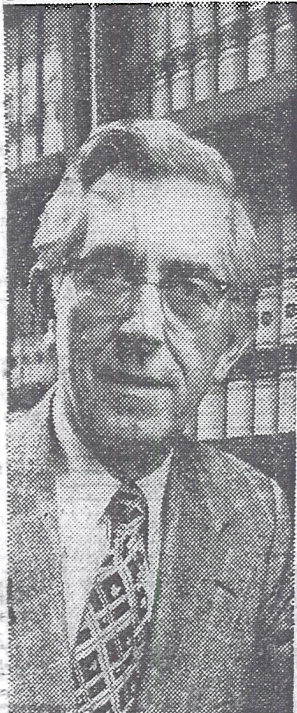
"I welcome it," Mr. Simonetti said yesterday. He thanked Mr. Meyer "for his objectivity leading to his findings clearing my good name and reputation."

Differences Explained

"With regard to those portions of the Meyer report which take issue with questions of judgmental decisions, it should be pointed out that the Meyer investigation dealt with only a portion of the total Attica investigation," Mr. Simonetti said.

"I have devoted many years to the criminal justice field, and it has been my experience that in an investigation of this magnitude, demanding thousands of decisions, it is common that reasonable professional men will honestly differ in matters of judgment."

In a statement issued yesterday, Mr. Bell said: "The Attica investigation was not doing its job of prosecuting crimes by law enforcement officers. I said so. The Meyer report agrees."



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Mr. Bell is now in private law practice and working on a book recounting his experiences as a prosecutor. The book is preliminarily entitled "Turkey Shoot." He said that he strongly dissented from Mr. Meyer's conclusion that there had been no cover-up.

"In this respect, the Meyer report is like a pyramid without a point," he said. "I appreciate that it may be harder for him to see what happened after the fact than it was for me who lived it. Nonetheless, it is like being at a holdup and then being told by the investigator, 'the money's gone and the bodies are here, but there wasn't any holdup.'"

Mr. Bell's lawyer, Robert P. Patterson Jr., said: "In my opinion, the prosecution, whether by intention or by poor administration and serious errors in judgment, as found in the report, has permitted so much time to pass as to render futile any attempt to prosecute successfully any crimes by law enforcement officers against inmates."

The report released yesterday dealt with the Bell-Simonetti feud only in conclusory terms. A detailed discussion of Mr. Bell's charges is contained in two volumes prepared by Mr. Meyer and his staff of eight lawyers that were not released yesterday because they relate to matters now pending before two grand juries investigating the Attica uprising.

'No Bills' Returned

Last Friday, these grand juries filed a series of "no bills" in which they said they could not find sufficient evidence to indict four state troopers and three prison guards. The documents were filed in Warsaw, N.Y., a tiny farming community about 15 miles from the maximum security prison at Attica.

The grand juries have charged 62 inmates in 42 indictments with 1,289 crimes. Only one law enforcement officer has been charged with a crime. Last October, Gregory Wildridge was charged with recklessly discharging a shotgun during the retaking of the prison.

So far, only five cases against inmates have gone to trial, and all but one have resulted in acquittals. The exception was a trial last winter of two inmates charged with the murder of a guard in the first hours of the uprising. One inmate was convicted of murder, and the other was convicted of attempted assault in the second degree.

Eight other defendants have entered pleas of guilty to less serious crimes than those with which they were originally charged. And the indictments remaining have been dismissed. Only seven of the indictments against inmates remain.

In his report, Mr. Meyer said: "Clearly the state has dealt unfairly with the inmates and affirmative action is necessary to correct the situation."

But he said that "amnesty is not the proper solution to Attica-related problems."

Granting amnesty to inmates, he said, "would further perpetuate the harm resulting from the lack of evenhandedness to date and would foreclose the

possibility of trial and thus dilute, if not prevent, the catharsis that the public airing of such charges would bring."

Instead, he recommended the appointment of a special prosecutor.

After reviewing the evidence, Mr. Meyer said that "it is evident from testimony under oath that criminal acts of brutality to inmates occurred during the retaking." This testimony was brought out shortly after the uprising ended when inmates filed a Federal suit asking that their civil rights not be infringed.

Mr. Meyer also noted that "the failure properly to plan for preservation of evidence and properly to collect it once the retaking had ended has made nearly impossible the prosecution of enforcement officials for any retaking death or gunshot wound."

During the retaking, 29 inmates and 10 guards, held as hostages were killed, and 89 were injured.

Other findings by Mr. Meyer included the following:

¶Planning by the state police for the gathering of evidence relating to the retaking was "extraordinarily deficient." In addition, the state police "should have been removed from any role whatsoever in the initial gathering of evidence."

¶Governor Rockefeller's remarks immediately after the retaking in which he praised the state police "when the possibility of the use of criminally excessive force by individual troopers was apparent" were "inappropriate and should not have been made."

¶The Attica investigation was "from the outset woefully understaffed." The responsibility for this "rests largely" with Robert F. Fischer, who was Mr. Simonetti's predecessor and is now a State Supreme Court justice in Binghamton.

¶The decision to conduct the investigation "sequentially or chronologically rather than topically" was a "serious error of judgment which skewed the investigation's inadequate manpower" away from crimes that might have been committed by law enforcement officers at the end of the five-day uprising.

¶The "one-sidedness" of the indictments also resulted from the "partiality and emotion" by grand jurors who were friends and neighbors of the law enforcement officers, the fact that "indictment for 'technical' offenses was asked for against inmates but not against law enforcement personnel" and by legal errors by the prosecution and Carmen Ball, the presiding judge.

¶Mr. Simonetti's decision to grant immunity to two high-ranking state police officers demonstrated "a lack of good judgment" and the grant of immunity to a third trooper



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Alfred J. Scotti

showed "lack of good judgment and an unreasonably lenient view of what should be regarded as a technical crime."

No details of these incidents were given in the report released yesterday, which was devoted mostly to a review of the prosecution under Justice Fischer, who served until the end of 1973. The other volumes of the report will be released after Mr. Scotti has finished his work, Attorney General Lefkowitz said yesterday.

In a seven-page single-spaced letter sent yesterday to the Governor and Attorney General, Justice Fischer disputed many of the factual findings of the Meyer report and said he was "content to have the courts determine" whether he acted "reasonably, competently, and in accordance with the standards of my profession."

The new prosecutor in charge of the Attica investigation, Alfred J. Scotti, has had a long and distinguished career as a prosecutor. For nearly 20 years he served as chief assistant to the late Frank S. Hogan the Manhattan District Attorney.

He is now in private practice and will serve in his new post on a per-diem basis. "I shall make every effort to conclude my new assignment as expeditiously as possible," Mr. Scotti said yesterday. He said he planned to "familiarize" himself this week with the status of the prosecution and come up with a request "for the resources I will need" by the end of the year.

In addition to the appointment of a special prosecutor, the Meyer report contained the following recommendations:

¶Consideration of legislation authorizing the empaneling of statewide or regional grand juries.

¶Expansion of the State Commission of Investigation into a permanent agency with statewide jurisdiction to "investigate and prosecute all crimes resulting from an Attica-type disturbance."

¶Amending the Crime Victims Compensation Law to provide compensation to inmate victims and their dependents since "many injuries resulted simply from indiscriminate gunfire and were not the direct result of criminal conduct by inmates."
