

The Attica Prosecution

Meyer's Report Repeatedly Questions Evenhandedness in Handling of Cases

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By TOM GOLDSTEIN DEC 23 1975

Like so many aspects of the 1971 Attica prison revolt and its aftermath, the Meyer Report on the Attica prosecution has left a series of unanswered questions. The author of the report, Bernard S. Meyer, used such words as "imbalance" and "one-sidedness" to characterize the prosecution that he and his staff of eight lawyers scrutinized for six months. But as strong as these conclusions are, the facts presented in his 130-page report that was released Sunday indicate that even stronger conclusions may have been warranted.

For example, Mr. Meyer noted that "indictment for 'technical' offenses was asked for against inmates but not against law-enforcement personnel"—a finding that suggests that the prosecution has been improperly selective.

At another point in the report Mr. Meyer said that "it is at least questionable that the public interest was served by indictment of inmates for stealing keys or possession of an electric cart."

Coverup Charged

So far 62 inmates have been charged with 1,289 crimes, while only one law enforcement officer has been charged with a crime.

Mr. Meyer was named last April after Malcolm Bell, a former assistant Attica prosecutor, had charged Anthony G. Simonetti, the chief Attica prosecutor, had charged Anthony G. Simonetti, the chief Attica prosecutor, with covering up possible crimes by law enforcement officers. In his report, Mr. Meyer found that these charges were "not well founded" and that there had been "no intentional cover-up in the prosecution."

He praised Mr. Simonetti for having "sought properly to carry out his task." Yet, in the very next sentence, Mr. Meyer cites the prosecutor's "mistakes of judgment," his failure "to appreciate the importance in the interest of evenhanded prosecution of pressing for additional resources" and his "indifference" to investigating charges that inmates had been brutally beaten by law-enforcement officers after the upstate prison was retaken on Sept. 13, 1971.

In the report's major recommendation, Mr. Meyer called

for the appointment of a new special prosecutor to supervise Mr. Simonetti's work and to determine whether indictments should be sought against law enforcement officers who quelled the prison rebellion in which 43 inmates and guards were killed.

'Evidence of Bias' Seen

The task facing Alfred J. Scotti, who was appointed special prosecutor on Sunday, is an enormous one.

As Mr. Meyer notes in his report, members of a grand jury that Mr. Scotti presumably will have to work with have already displayed "evidence of bias" against indicting law enforcement personnel.

Just last Friday, that grand jury and a second one impaneled in April 1974 in Warsaw, N.Y., filed a series of seven "no bills." That means they could not find sufficient evidence to indict four state troopers and three prison guards.

How much fresh evidence Mr. Scotti can develop is problematic. Mr. Meyer said that "it cannot be gainsaid that the failure properly to plan for preservation of evidence and properly to collect it once the retaking [of the prison] had ended has made nearly impossible the prosecution of enforcement officials for any retaking death or gunshot wounding."

Doubt Is Expressed

That leaves open for Mr. Scotti's exploration possible crimes committed by law enforcement officials during the rehousing of inmates and the possibility that some officials hindered the prosecution effort.

But many doubt that even these cases can be successfully brought.

"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 office against inmates," said Robert P. Patterson, who served as Mr. Bell's lawyer.

Mr. Scotti is spending this week familiarizing himself with the evidence and evaluating his staffing needs. In his report, Mr. Meyer said that "with ade-

quate resources" a further investigation could be brought "to a close in a relatively short period of time."

But the amount of evidence is staggering, and right now there are fewer lawyers working on the Attica prosecution than helped Mr. Meyer with his report. Even Mr. Meyer, who has the reputation of being an indefatigable worker, acknowledged that time and budgetary considerations had forced him to restrict portions of his six-month inquiry.

5 Trials Conducted

Mr. Scotti, the former chief assistant district attorney in Manhattan 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.

But of all the indictments against inmates, only five have resulted in completed trials. All but one of those have led to acquittals. The exception was the trial last winter of two inmates charged with the murder of a guard in the first hours of the five-day uprising. One inmate was convicted of attempted assault in the second degree, the lowest possible felony charge.

Eight other defendants have entered pleas of guilty to less-serious crimes than they were originally charged with, and all but seven of the remaining indictments have been dismissed.

The only case now scheduled to go to trial involves 11 inmates, who are individually charged with 34 counts of kidnapping for their role in keeping hostages during the uprising. This trial is scheduled to begin on Jan. 5, and defense lawyers, with fresh ammunition contained in the Meyer report, are expected to raise the defense of selective prosecution as the lawyers have routinely—and unsuccessfully—done in past Attica cases.