

AN END TO TRIALS ON ATTICA URGED

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McKay and Ex-Panel Counsel
Also Ask That No New
Indictments Be Filed
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By M. A. FARBER

The former chairman and chief counsel of the state commission that initially investigated the Attica prison revolt in 1971 both said yesterday that no new indictments arising from the riot should be sought against "correction officers, troopers or inmates."

Robert B. McKay, who was chairman of the State Special Commission on Attica, and Arthur L. Liman, who was the commission's chief counsel, also recommended that all pending indictments be dismissed, with the possible exception of the one remaining murder indictment.

"We believe the time has come to stop these never-ending investigations, closing out this unhappy chapter of our history as quickly and as justly as possible," the two lawyers said in a joint statement.

Three weeks ago, Alfred J. Scotti, former chief assistant district attorney in Manhattan, was named by Governor Carey and Attorney General Louis J. Lefkowitz to determine whether new indictments should be obtained against law enforcement officers who helped quell the revolt at Attica in September 1971.

The 71-year-old former prosecutor was also authorized to review past indictments or convictions against inmates and to recommend the dismissal of indictments or executive clemency if he felt such action was

Continued on Page 10, Column 1

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Continued From Page 1, Col. 7

warranted.

The creation of Mr. Scotti's post as special prosecutor had been recommended by Bernard S. Meyer, who was appointed last spring to investigate a charge by Malcolm H. Bell, a former Attica prosecutor, that crimes by law enforcement officers at Attica might have been covered up.

Mr. Meyer, a former State Supreme Court justice, concluded that there had been "no intentional cover-up in the prosecution" but that "serious errors in judgment" had led to "an imbalance in the prosecution."

Last night Mr. Meyer said he disagreed with the proposal by Mr. McKay and Mr. Liman to stop further indictments. Mr. Meyer said it was important, in terms of possible reform of the penal and corrections systems, to "publicly air" any "official misconduct."

He also said that the two lawyers did not have access to "evidence concerning official acts" that was developed after their work was completed in 1972 and that "the right to a speedy trial runs not from the time of a criminal act but from the time of indictment."

The nine-member "citizens" commission headed by Mr. McKay—it was widely known as the McKay Commission—was named by Stanley H. Fuld, then chief judge of the State Court of Appeals, two weeks after the Attica riot was put down.

Forty-three persons died as a result of the four-day Attica rebellion, including three inmates before the revolt was put down on Sept. 13, 1971. On that day, 29 inmates and 10 guards were killed, and 89 persons were injured, by gunfire from state troopers and correction officers.

Forty-three persons died as a result of the four-day Attica rebellion, including three inmates and one guard who were beaten or stabbed to death before the revolt was put down on Sept. 13, 1971. On that day, 29 inmates and 10 guards were killed, and 89 persons were injured, by gunfire from state troopers and correction officers.

The McKay Commission was very critical in its report in 1972 of the use by law enforce-

ment officers at Attica of weapons and ammunition that "virtually assured the death or serious injury of innocent persons." It also said there had been "unnecessary shooting" by a minority of officers and "acts of brutality" by officers against prisoners following the assault.

Only one law enforcement officer, Gregory Wildridge, has been charged with a crime stemming from the Attica revolt. Last October he was charged with recklessly discharging a shotgun.

Sixty-two inmates were named in 42 indictments relating to 1,289 alleged crimes but there have been only two convictions after trial and only seven indictments against inmates are pending.

Eight inmates have pleaded guilty to less-serious crimes than those with which they were originally charged.

Carey Studies Statement

Mr. McKay and Mr. Liman recalled, in their six-page statement, that Mr. Meyer had recently concluded that "clearly, the state has dealt unfairly with the inmates and affirmative action is necessary to correct the situation."

"We agree," the two lawyers said, "but do not believe that past investigative failures can or should now be corrected by seeking new indictments. Constitutional rights to a speedy trial cannot be secured nearly five years after the events. The only appropriate 'affirmative action' would be to undo existing indictments and examine present convictions for opportunities to exercise mercy."

Although excessive force was used in the retaking of the prison, they asserted, "there is more profit in working for a better future than in agonizing overlong about past errors. In the new year, in which we will reach the fifth anniversary of Attica, it is time to bind the wounds and look ahead."

Mr. McKay, a former dean of the New York University Law School, is now director of the justice program of the Aspen Institute. Mr. Liman is a partner in the law firm of Paul, Weiss, Rifkind, Wharton and Garrison.

A spokesman for the Governor said yesterday that Mr. Carey had received a copy of the statement by Mr. McKay and Mr. Liman and "we have it under study." Mr. Lefkowitz could not be reached for comment.