

ROCKEFELLER LAYS HOSTAGES' DEATHS TO TROOPERS' FIRE

But Fischer, at Attica, Says
He Doesn't Know Who Fired
How Many Shots or Why

SEP 17 1971
JUDGES TO NAME PANEL

Citizen Unit to Investigate
Riot—Recount Shows 30,
Not 32, Inmates Slain

NY Times
By WILLIAM E. FARRELL

Special to The New York Times

ALBANY, Sept. 16—Governor Rockefeller said today that he believed the nine hostages slain in the Attica prison uprising had been killed in a crossfire of troopers' bullets after the decision on Monday to wrench the facility from control of prisoners.

In Attica, however, Deputy Attorney General Robert E. Fischer, appointed by Mr. Rockefeller yesterday to investigate the events at the prison, said he did not know who had fired the fatal shots, nor how many shots had been fired, nor why they had been fired.

Tonight the State Department of Correctional Services revised the number of deaths downward, from 42 to 40. Of them, 30 were inmates and 10 hostages. A spokesman for the department said the miscount could have resulted from counting the bodies of two inmates twice. He said that 28 of the 30 inmates had been identified so far.

Sees No Conflict

Mr. Rockefeller, informed of Mr. Fischer's statements, said at a later news conference, "I don't see any conflict there." He explained afterward that Mr. Fischer's statements reflected his background as a prosecutor and the caution of a lawyer.

At that later news conference, held in the Capitol, Mr. Rockefeller announced that Chief Judge Stanley H. Fuld of the Court of Appeals and the four presiding justices of the four departments of the state's Appellate Division had been called upon to appoint a citizens' committee to investigate "the events leading up to — during—and following the riot."

With Mr. Rockefeller were the men who had joined him in making the call—Attorney General Louis J. Lefkowitz and the legislative leaders of both parties, Senate Majority Leader Earl Brydges, Republican of Niagara Falls; Assembly Speaker Perry B. Duryea, Republican of Montauk; Senate Minority Leader Joseph Zaretzki, Democrat of Manhattan, and Assembly Minority Leader Stanley Steingut, Democrat of Brooklyn.

In a joint statement, the Governor and the leaders stressed

Continued on Page 31, Column 6

Continued From Page 1, Col. 1

that the committee to be chosen by the judges would be a fact-finding committee and would not have jurisdiction over the criminal aspect of the uprising, which is Mr. Fisher's jurisdiction.

At his earlier news conference in the Capitol, Mr. Rockefeller said that he did not think "there was any indiscriminate shooting" by the state's assault force but that "I think the hostages who died of gun wounds were caught in a cross fire."

The Governor came here to meet late this afternoon with legislative leaders of both parties about the selection of what

he described as a broad-based, "totally representative" committee to study every aspect of the Attica uprising, including his own moves, such as his sanctioning the deployment of state troopers to retake the prison.

A good portion of the Governor's comments were devoted to a reiteration of why he did what he did during the Attica crisis, which began last Thursday.

Again, he defended his Commissioner of Correction, Russell G. Oswald, calling him "a gutsy guy" who had tried by every peaceable means to meet prisoner demands and to avoid bloodshed to the hostages.

Again, he defended his decision not to respond to a citizen committee's plea, when negotiations crumbled, to go personally to Attica to "buy time," saying it would not have served a useful purpose.

And again, he asserted that he had acted correctly in sanctioning the use of force to regain the prison.

Discussing the deaths of nine of the hostages, the Governor said the situation had been so perilous at the prison that it was "extraordinary 28 men were saved under these circumstances."

"The problem," the Governor said, "was could any of these lives be saved."

Formidable Options Noted

He recalled that the decision was made to take the prison by force after several hostages, variously estimated at from four to eight, were shown with prisoners holding knives to their throats.

The instructions given the first wave of troopers, he said, were "to shoot the executioners who stood with knives at the throats of the hostages—to shoot the minute the gas was down." This was a reference to the cover of tear gas dropped by helicopter as a prelude to the state's invasion of the prison.

The troopers were faced with formidable obstacles in their attempts to save the hostages, the Governor said.

To get to the area where the hostages were confined, he said, they had "to storm the top of the passageways where the barricades had been built leading to the area known as Times Square in the middle of the courtyard."

There were four different lines of assault forces in the area, he said, all of them converging on the place where the hostages were detained.

There were shots from shot-

* Hostages (Ferretti, 17 Sep)

38 guards and civilian workers

- 10 killed: (28)

Inmates (this story)

30 killed

guns, rifles and pistols, the Governor said, adding that the prisoners had weapons such as knives and spears but they "didn't have guns."

They had tear gas guns but not guns," Mr. Rockefeller said.

The Governor, asked if the deaths of the hostages legally constituted justifiable homicide, said that such a query was out of his depth since he was not a lawyer.

Then he was asked if he believed "morally" these deaths constituted justifiable homicide, in light of the decision to save all of the hostages.

"If you're talking morally, I certainly do," the Governor replied, adding that under the circumstances the troopers had achieved "an almost impossible task."

Asked why, if the prisoners had no guns, there was so much gunfire within the prison walls, the Governor said the troopers had to overcome barricades on the passageways.

"They had to break through barricade after barricade manned by prisoners," he said.

Favors One Investigation

At the Marine Air Terminal near La Guardia Airport this morning the Governor, about to depart for Albany, said he hoped the investigation of the Attica tragedy would include representation from "all elements of the community" and that "hopefully there can be one definitive impartial investigation."

Asked if it was suitable for him to be involved in setting up such a panel, in light of his own involvement, Mr. Rockefeller said:

"There has to be an involvement of government in this, but with impartial observers, impartial investigators doing the job. Of course the criminal side has got to be investigated by people who are competent to handle criminal affairs."

That aspect is being handled by Deputy Attorney General Fischer, an appointee of both the Governor and Attorney General Louis J. Lefkowitz.

Asked if the 28 concessions agreed by the state would be implemented at Attica, the Governor said since the hostages had not been released "the agreement never became valid."

"Now they have to be considered in the light of the overall situation and a careful analysis of what measures should be taken," the Governor said.

Mr. Rockefeller, without specifying, did say there would be some reforms at Attica.

a Uprising Is Largely Noncommittal at B



AS PRISON WAS ASSAULTED: State Police photograph, released yesterday in Attica, N. Y., shows "a helicopter dropping gas on the yard area as part of the effort to secure the facility." At the left is a smokestack.