

Jury Opposes Deadly Force to Quell Prison Riots

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By MURRAY SCHUMACH

The Queens grand jury, in a report yesterday on last year's prison rebellion in Long Island City and Kew Gardens, opposed the use of deadly force in putting down such outbreaks, even where there are hostages, except when lives are taken or threatened.

When, as a last resort, deadly force is used, said the grand jurors, it should be "exerted only against the aggressive, wrong-doing inmates who imminently threaten death or serious bodily harm to a hostage or innocent person, and not against a broad class that includes nonparticipating inmates and innocent persons."

Though the report did not mention the outbreak in Attica, where a four-day revolt led to the deaths of 32 prisoners and 10 hostages, persons close to the drafting of the report said its final version had been influ-

enced by the massive assault on the prison by state troopers and prison guards.

In another development yesterday, Governor Rockefeller and the legislative leaders of both parties appointed a 15-member committee to recommend improvements in the state's penal system. The committee will be headed by Hugh R. Jones, president of the State Bar Association.

The Queens grand jury report, a 23-page document, was made public by Queens District Attorney Thomas J. Mackell. In

a news conference at his office, Mr. Mackell said in reply to questions that Governor Rockefeller should have gone to Attica during the talks with prisoners that preceded the armed attack on Sept. 13 in which authorities regained control of the upstate prison.

He said that during similar insurrections in local prisons the presence of Mayor Lindsay had been "salubrious."

Of the recapture of Attica, he said: "I'd rather not judge, but my gut reaction is that the force was excessive. I was shocked at the time."

The grand jury's report noted that in the Long Island City insurrection last October, seven hostages were taken but they were released and the only fatality was a prisoner who had taken an overdose of narcotics.

In arguing against the use

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of deadly force except as a last resort, the grand jurors said:

"Preservation of human life is the apex of values served by the law of crime. Before life may be taken intentionally, the law requires justification that outweighs on the scale of value the human life to be taken."

Turning to prison rebellion in which hostages are taken by the prisoners, the report said:

"When the life of a hostage is imminently threatened and the only way to save that life is to take the life of the aggressor inmate, there is no dispute about justification.

Commenting on how deadly force should be used in quelling prison rebellions, the report said:

"All measures available under the circumstances should be taken to assure that deadly force will be exerted only against the aggressive, wrongdoing inmate who imminently threatens death or serious bodily harm to a hostage or innocent person, and not against a broad class that includes non-participating inmates and innocent persons."

Other Recommendations

Other recommendations in the report, written after the grand jurors had questioned prisoners in the Kew Gardens and Long Island City jails and had also talked to officials, including Representatives Herman Badillo and Shirley Chisholm and William vanden Heuvel, chairman of the New York City Board of Correction, were:

¶ Separation of those found guilty of crime, and awaiting sentence, from those not yet tried.

¶ Separation of those guilty of nonfelonious crimes from more serious offenders, with strong emphasis on rehabilitation programs in institutions for the former.

¶ Administrative machinery in prison that will make it easy to adjust prisoner grievances within the prison framework.

¶ Censorship of mail only under special conditions, and no censorship of mail between prisoner and lawyer or officials about his case.

¶ Use of cottage-type institutions, instead of barred cells, with the separation of homosexuals from other prisoners.

¶ Programs permitting volunteer visitors, with each prison having a coordinator for such visitors.

"A prison," said the report, "need no longer be a monastery of men who are unwilling to be monks."

Mr. Mackell, in reply to questions about the report and the outbreak at Attica, said he favored setting up maximum-security prisons for hardened criminals and prisoners who

were primarily "revolutionaries."

He also urged that prisons housing no more than 1,000 prisoners be built on the periphery of major cities, where most crimes are committed, rather than in isolated areas. This, he said, would make it easier for families to visit prisoners.

When asked whether lives would have been saved at Attica if force had been used at once, instead of spending days talking to prisoners, he replied:

'I Advocate Talk'

"Some advocate going in immediately. I don't advocate that, I advocate talk. In Long Island City they took seven hostages. After talking, they were free."

He qualified this, when asked what should be done if a guard or prisoner was killed:

"If a guard is killed," he said, "the circumstances then require action almost immediately. Once they have taken life, they have gone beyond the pale, and protection of life is required. If prisoners are killed by prisoners, there again they should go in. The preservation of life is a prime requirement."

In considering means of preventing future outbreaks in the city prisons, the report noted that a major cause of the riots here last October had been overcrowding.

Overcrowding at Kew Gardens, said the jurors, was about 75 per cent, with 912 prisoners at that institution. The Long Island City prison, with 330 inmates, was about 30 per cent overcrowded.

"A major cause of overcrowding," said the report, "is the significant number of prisoners—more than one-third—whose cases have long since been disposed of by plea of guilty or verdict, but who are awaiting sentence. The principal reason for nonsentence is that the judge is awaiting a presentence report."

The grand jurors recommended that prisoners in these circumstances be transferred "to a more commodious facility."

Appraising a similar situation that existed in the Queens House of Detention in Kew Gardens, the grand jurors urged an end to "the practice of fixing bail in amounts under \$250." They recommended parole instead in such cases.

"The prisoner's stay (in jail) should be precisely tailored to the necessity of his appearance in court, and nothing beyond that."

The report also suggested that when a prisoner is put into jail, he should receive a list of prison regulations and not be subjected to a process of learning by so-called "dog laws." This refers to a practice of punishing a dog after it has committed a misdeed.