

REPORT ABSOLVING GUARDS IS VOIDED

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Judge Tells City to Press Charges of Brutality in Queens Prison Incident

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By MORRIS KAPLAN

Federal Judge Orrin G. Judd ordered the city yesterday to press charges against prison guards whom his own magistrate had absolved of charges of brutality and using excessive force to quell rioting at the Queens House of Detention 13 months ago.

In refusing to accept the report of United States Magistrate Vincent A. Catoggio, who had labeled the charges "a gigantic hoax and fraud," Judge Judd ordered the city to conduct within six weeks an "independent and impartial investigation and prosecution of charges against correction officers and supervisors."

He directed that a grievance procedure be set up to deal with inmates' complaints and gave the inmates three weeks thereafter to submit their views on the plan. He said, further, that he would maintain jurisdiction of the issues.

At the same time, he denied as unnecessary the inmates' request for an injunction on the ground that there have been no recent allegations of beatings by guards.

Judge Judd issued a 35-page memorandum and order vacating the report of the magistrate

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whom he had assigned to preside at the hearings from May 14 to July 18. In his final 60-page report on July 26, Magistrate Catoggio termed the inmates' charges a "devised brazen fraud based upon fabrication."

Rioting at the prison in Kew Gardens ended on Oct. 4, 1970, two days after inmates had seized control. Damage to the eight-story building was estimated at \$750,000.

The magistrate singled out as the ringleader Ralph Valvano, a drug addict who had spent 10 of his 27 years in prison. He accused Valvano of lying and urging inmates to lie.

He charged, moreover, that Valvano and his cronies had attempted "a colossal hoax" to prevent both the District Attorney's office and the grand jury from taking any action on the riot.

Class Action Filed

Valvano and two fellow inmates, Donald Leroland and Jonathan Williams, had begun a class action for themselves and other inmates seeking relief from the alleged conditions. The Legal Aid Society represented them. Defendants included Commissioner of Correction George M. McGrath, Mayor Lindsay and the warden, John P. Kennedy.

Judge Judd began hearing the suit last November, then named Magistrate Catoggio as a special master to hear the proceeding when it became evident that it would entail prolonged litigation.

Although the findings of a special master are not necessarily binding, the judge's decision was considered unusual. He pointed out that neither he nor the magistrate had had the benefit of a stenographic transcript because the expense became "burdensome," and thus he could not confirm the magistrate's findings.

And he noted that the magistrate had not found that "in absolutely no instance did any correction officer use excessive force."

But he said the court could find that while the inmates had committed extensive damage at the building, "the re-taking of the institution was accompanied and followed by unnecessary and excessive use of force by correction officers."

Lack of Transcript Noted

Commenting on the findings, the judge said:

"Where all the witnesses on one side have been considered untruthful and all the witnesses on the other side have been considered credible, it is almost inevitable that the conclusion is mistaken at least in part, but to separate the acceptable portions of the report

from the unacceptable is impossible without a transcript."

He pointed out that the magistrate had given "considerable weight" to the fact that the plaintiffs' witnesses had prior felony convictions and that many were addicts. He added, however:

"A trial judge knows that the Government frequently relies on convicts and addicts to prove its case and that juries frequently believe their testimony beyond a reasonable doubt . . ."

He noted, also, that 33 inmates had testified that they had been struck by guards and that 59 had required hospital treatment. Only two guards said they were attacked, he added.

Testimony Reviewed

Reviewing the testimony of some inmates, he reported that hospital records corroborated statements that they suffered broken hands and fingers, lacerated scalps and "a puncture wound."

He mentioned Joseph Allen, an inmate who had testified for the defendants and who had pleaded guilty in late October, 1970, to second-degree manslaughter. Allen had been indicted for murder. After his testimony, the judge said, he "was permitted to change his plea to criminally negligent homicide and was sentenced to time served, on the representation of an assistant district attorney that he would be in danger of reprisals in a state prison."

"As memories of the October riots grow dim, the public determination to eliminate the causes of the riots has unfortunately slackened," he said.

He pointed out that the population of the Queens jail was more than 160 per cent of capacity as of Oct. 27.

Examiner Appointed

Since the argument of the motion, he reported, a special prosecutor and a hearing examiner have been appointed for charges against guards at the House of Detention in Long Island City, where hostages were taken during the October riots.

The examiner, Daniel Gutman, is a former Civil Court judge and a former dean of New York Law School. The prosecutor, Stanley Arkin, said yesterday that he hoped

to start the hearings in January.

This procedure, Judge Judd said, appears to indicate awareness by Commissioner McGrath of his responsibilities. "It also suggests," he added, "that charges against correction officers are not in fact handled by the City Department of Investigation, which the city says has power to act."

A spokesman for Commissioner McGrath said that the Department of Correction would

conduct an administrative investigation and review all the circumstances and events that are the subject of the lawsuit, and will take "appropriate action" against correction officers and their superiors "if warranted."

Mr. McGrath's spokesman said the Commissioner "welcomed" the decision of Judge Judd, adding that he was "gratified that the Court found there were no grounds upon which to issue an injunction against

the Department of Correction or any of its employes."

The Commissioner's spokesman also said that it was the view of the city's Corporation Counsel, J. Lee Rankin, that it was "far from clear" that the Court had ordered the Department of Correction to begin disciplinary proceedings and conduct an independent and impartial investigation of the correction officers at Kew Gardens.