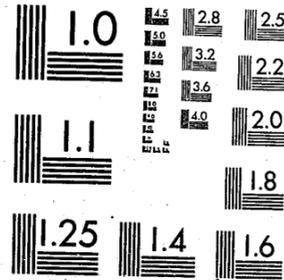


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# FINAL REPORT

NCJRS

OCT 15 1981

ACQUISITIONS

State of New York  
Commission of Correction

On July 11, 1976, something happened at Attica. For an hour, it seemed that the tragedy of 1971 was about to be reenacted. It turned out otherwise, due not to wisdom, sympathy, or intelligence, but to blind luck.

Such an event touches us all. It is necessary that the lessons of 1971 be remembered in the administration of our State's prisons. Inmates, officers, and the public at large are entitled to nothing less.

Accordingly, the Commission of Correction undertook an investigation into some of the events of July 11, hoping to determine what had happened and why. It never did. But it learned other things, perhaps equally useful.

This is the Commission's report.

Stephen Chinlund  
Chairman

Dorothy Wadsworth  
Commissioner

Joseph Wasser  
Commissioner

## Preparation

The Commission's first step was to recruit a staff to conduct the investigation. As special counsel, it sought the services of Irving Younger, the Samuel S. Leibowitz Professor of Trial Techniques at Cornell Law School. Younger accepted the assignment on condition that he receive no compensation and that he be free to select his assistants. The Commission consented, and the investigation began.

Associated in it with Younger were four Cornell law students-- Daniel C. Cohn, John S. Guttman, Jr., Isiah C. Mathews, and Stephen C. Trow. The five of them set out to interview every inmate or officer possessing knowledge of the events of July 11. Visiting the prisons of Attica, Auburn, and Green Haven, they spoke to some sixty inmates and thirty officers.<sup>1</sup> In addition, they reviewed the relevant police and administrative records. They collected whatever physical evidence was available and, when all was ready, asked the Commission to schedule public hearings on the matter.

## Hearings

The hearings went forward on November 22 and 23, 1976, at the Hall of Justice in Rochester, New York. The stenographic transcript and the associated exhibits are available for inspection upon application to the Commission.

<sup>1</sup>A few of the inmates and most of the officers declined to provide information.

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With the cooperation of Commissioner Ward,<sup>2</sup> Superintendent Smith,<sup>3</sup> and their colleagues, subpoenas were served on twenty inmates and twenty-two officers. Each of the former appeared and testified. By arrangement with their counsel, nine of the latter appeared. One testified, denying knowledge of anything of substance. The others, represented both by counsel and by the Executive Director of their union,<sup>4</sup> declined to answer questions. They stated several grounds for their refusal, but chiefly the privilege against self-incrimination.

#### What Is Known

Despite the officers' refusal to testify, it can be stated with reasonable assurance that the following narrative -- based upon the physical evidence, police and administrative records, and, where corroborated, the testimony of inmates -- is true.

Cell 31 of company 37, D block, at the Attica Correctional Facility opens onto a corridor, the opposite side of which is a wall of large windows facing D yard. The door and front enclosure of the cell consist of steel bars set several inches apart. A man in the cell

<sup>2</sup>Commissioner Benjamin Ward, Department of Correctional Services.

<sup>3</sup>Superintendent Harold Smith, Attica Correctional Facility.

<sup>4</sup>New York State Inspection, Security and Law Enforcement Employees, District Council 82, American Federation of State, County and Municipal Employees, AFL-CIO.

<sup>5</sup>It was stipulated that, had the other thirteen officers appeared, they too would have pleaded the privilege against self-incrimination.

or corridor is therefore able to see into the yard, and a man standing in the yard can see into the cell and corridor. Other cells up and down the corridor are similarly arranged. Hence a man moving along the corridor will be observed from the yard as he passes in front of each window, finally disappearing at the end of the corridor in "Times Square," where each corridor intersects with the others.<sup>6</sup>

On the evening of July 11, 1976, cell 31 was assigned to inmate Albert McQueen. Since McQueen was then on keep-lock status,<sup>7</sup> he was physically present in the cell rather than outdoors in D yard, where over one hundred inmates of D block were engaged in various recreational activities.

McQueen was well known at Attica. Thirty-one years old, frequently in trouble with the law, the subject of some three hundred disciplinary proceedings within the prison system, McQueen had been converted to Suni Mohammedanism. His Islamic name was Yusuf Abdul Alim. Other Suni Muslims at Attica regarded him as their Imam, or religious teacher.

The doors to cells at Attica are opened and closed by remote control. At about 8 p.m., McQueen was awakened by a noise. The door of his cell was open. In the corridor were several officers. One of them told McQueen that his cell was to be searched.

Wearing only underwear, McQueen stepped out of his cell and stood in front of the window facing D yard.

<sup>6</sup>Photographs of the cell and the corridors were received in evidence as Exhibits 4 and 5.

<sup>7</sup>"Keep-lock status" is a disciplinary sanction whereby an inmate is confined to his cell.

Within minutes, an argument developed. Sergeant Gene Tiede joined the other officers. The argument now became a quarrel, and suddenly there was violence.

The officers managed to secure McQueen's hands behind his back. They put him on a cart and wheeled him down the corridor toward "Times Square."

All of this was visible in D yard, where many inmates had gathered in front of the windows, shouting in response to what they saw. As the officers wheeled McQueen down the corridor, inmates moved along the windows in D yard so as to retain the officers, the cart, and McQueen in view. Some of them began to throw things at the windows.

McQueen was carted by the officers to SHU,<sup>8</sup> untied, and deposited in a cell. Later medical examination revealed that McQueen had sustained various abrasions, hematomas, swellings, and a fractured jaw.

Officers James Mann and Byron Ball had sustained groin injuries, Officer Thomas Bennett an eye injury, and Sergeant Tiede injuries to his hand and mouth.

While the officers were untying McQueen in SHU, a canister of Federal Streamer, a Mace-like substance, was discharged.

Meanwhile, the inmates in D yard remained restive. In the course of returning to their cells later that night, a riot broke out. Several officers were assaulted and injured. The fighting was contained before it spread to other parts of the prison, and there were no fatalities. These events are beyond the purview of the present report.

<sup>8</sup>"SHU" is the Special Housing Unit, in effect a prison within a prison.

The Inmates' Version

Although differing among themselves in matters of detail, nearly all the inmates are consistent on main points. Their version follows.

A group of officers led by Officer Byron Ball woke up McQueen with the announcement that they wanted to "shake down" his cell. They ordered him into the corridor and proceeded to tear apart his possessions. When the officers threw McQueen's legal files on the floor, he remonstrated. Some inmates in the yard asked McQueen through the window what was happening. McQueen started to answer when an officer warned him to keep quiet. Continuing their search, the officers found two extension cords for a hot plate. Ball said that he would take one because "you are not supposed to have two." McQueen said there was no such rule. Ball replied, "I am taking this one anyway."

Lying on a cabinet in McQueen's cell was his Koran, enclosed in a white cloth case. Ball scratched his private parts and reached for the book. Not wanting him to touch it, McQueen picked it up himself. Ball ordered McQueen to put it down. McQueen said, "You are not supposed to touch my Koran. It is general procedure that Muslims handle their Koran." Ball insisted that McQueen put it down. McQueen offered to take it out of its case and show the officers that there was no contraband concealed in it. Ball replied, "I want you to put that Koran down." McQueen did not. He handed it to the inmate in the adjoining cell.

Ball now ordered two of the other officers to "strip frisk" McQueen. McQueen said that he wanted a sergeant "to explain to me

why all of you came down here and opened my cell." Ball told an officer to "go give Jimmy his message." The officer left, returning with Officer James Mann and two additional officers who carried sticks.

Mann was serving as hall captain. He asked McQueen what was his problem. McQueen said, "I want to see a sergeant to explain why these officers came down to my cell and disrupted my cell and took and threw my legal papers all over the cell."

"I ordered them to come to your cell," Mann replied. Mann and McQueen had a history of trouble.

Mann now summoned Sergeant Tiede, of whom McQueen asked, "Who authorized these officers to come down and shake up my cell like that and then after they had shook down my cell they wanted me to strip frisk?"

Ball and Mann told Tiede that McQueen had refused to give them his Koran. McQueen retrieved the Koran from the inmate in the adjoining cell and began to flip through it page by page. About a third of the way through, Mann said, "I want the book in my hands. I don't want him to show us."

Ball said to Tiede, "Are you going to make him put the book in his [Mann's] hands or not?"

Tiede looked at McQueen, who stepped into his cell. The officers remained in the corridor. As McQueen tried to close the door, Ball stuck his foot in the jamb and ordered McQueen out.

"Come out of my cell for what," asked McQueen. "Because we want you out of your cell," Ball replied.

Tiede looked at his watch and said, "I am going to give you ten seconds to come out of your cell. If you are not out in ten seconds, I am going to take you out."

A crowd of inmates had gathered at the windows in D yard, shouting at the officers to leave McQueen alone.

Ten seconds went by. Tiede said, "Go ahead."

Ball entered the cell. "I am going to give you one more chance," he said. As Ball talked, Tiede entered the cell and edged behind McQueen.

"Come out of your cell," Ball ordered. McQueen said he would not. Suddenly Tiede shoved him toward the other officers, and they all converged on him.

Ball got a lock on McQueen's head. McQueen worked loose and bit Ball's leg. Standing on McQueen's neck, Tiede tied McQueen's arms behind his back with one of the extension cords. Using flexi-cuffs, they secured his feet. Hogtied, McQueen was thrown on a cart face down and wheeled along the corridor. Ball sat on McQueen's back, another officer on his feet. Reaching the end of the corridor, they dumped McQueen on the floor.

Ball punched him in the face. An officer on duty in the corridor yelled, "Not here! Not here! Get him out of here!"

Inmates in the yard shouted, "Stop beating him." Ball said to McQueen, "You got friends out there and they are concerned about you." He took McQueen's head and smashed it down. Then he held it up again and told another officer to "kick that shit [whiskers] out from underneath" McQueen's chin. Someone kicked McQueen in the jaw.

Returning McQueen to the cart, the officers wheeled him to SHU. There, they dumped McQueen on the floor, tore off his underclothes, and continued to beat him. A male nurse held his head while an officer sprayed him with Federal Streamer. Finally they threw him into a cell.

The next day, McQueen was transferred to Meyer Memorial Hospital.

#### The Officers' Version

The officers declined to give the Commission their version of these events. Only one of them answered any questions at all. He claims to have been patrolling D yard at the time but not to have looked at the windows to see what was provoking the inmates to riot. As noted earlier, all of the other officers pleaded their privilege against self-incrimination.

One may, however, glean something of the officers' version from their reports to Superintendent Smith and the state police. The inspection of McQueen's cell was routine, they say. McQueen resisted. They subdued him and took him to SHU. In the struggle, McQueen injured several officers and his jaw became broken. At SHU, someone accidentally discharged a can of Federal Streamer, but none of it struck McQueen.

Finally, it is worth observing that one inmate-witness, Ronald G. Monaghan, may have been prepared to corroborate the officers' version had there been an officers' version to corroborate. Monaghan testified that, from D yard, he saw officers engage in a routine shake-down of McQueen's cell. "One thing led to another, and then the next thing...they were tying him up," Monaghan said. He added later that McQueen had punched the officers.

#### Unanswered Questions

The Commission has been unable to determine what happened. Because of the officers' plea of self-incrimination, only one version of the events of July 11 -- the inmates' -- is known. The truth is usually more complicated than that. The Commission is unwilling to make factual determinations on so incomplete a record.

Had the officers testified, the Commission would have put to them the following questions, and the officers' answers would have supplied the Commission and the public with a sufficient basis to warrant coming to conclusions.

At McQueen's cell. Why did the officers go there? Was it routine to search the cell of an inmate on keep-lock? If it was routine, was it prudent to do so in clear view of a yard full of inmates? If it was not routine, why was the search attempted? Were the officers not aware that conducting the search in the circumstances present here was almost certain to lead to trouble? Is it possible that the officers intended to instigate a riot? Might the officers have thought that an episode of violence at Attica would strengthen their position in bargaining with the State for wage increases?

Did the officers want to examine McQueen's Koran? Is it customary to allow an inmate to handle his Koran himself by flipping through the pages? Did the officers insist upon themselves handling McQueen's Koran? If they did, why?

What precisely made it necessary to subdue McQueen? Who threw the first punch? Who hit whom? Where? How?

Along the corridor on the way to SHU. Was McQueen bound hand and foot? Was he placed on the cart hogtied? If he was, did an officer sit on him or otherwise hold him down? If so, why was it necessary?

Once McQueen was subdued, did the officers hit or kick him? If they did, why? Should an officer ever strike an inmate who has been subdued, whatever the initial justification for the use of force?

At SHU. Was McQueen sprayed with Federal Streamer? If he was not, how did it happen that, as the officers' reports acknowledge, a can of it was discharged?

If only reasonable force was used to subdue McQueen in his cell, and no one hit or kicked him on the way to SHU, how did his jaw come to be broken?

#### The Importance of Answers

There are three chief reasons why the officers' refusal to answer questions is a disservice to the public.

First. It is important that the truth be known.

If the officers struck McQueen unnecessarily or beat and kicked him after he had been subdued, they were guilty of a crime. If McQueen attacked the officers without justification, he was guilty of a crime. Criminals should be prosecuted, whoever they are, and crime should be punished, wherever committed.

Some will argue that the appropriate person to accomplish these ends is the District Attorney, and the appropriate agency to investigate such events is the Grand Jury. It is no affront to the District

Attorney or the Grand Jury to point out, however, that the former owes his election to the votes of a constituency in which the officers and their relatives figure large, and that the latter consists of members drawn from the community of which the officers and their relatives are members. Without meaning to suggest conscious bias on the part of either the District Attorney or the Grand Jury, we do say that an unconscious partiality on their part in favor of their own would not be inconsistent with human nature.

The Commission has no such partiality, simply because its members are allied with neither officers nor inmates. The Commission's only loyalty is to the public at large. Thus the Commission was in a position, as the District Attorney and the Grand Jury were not, to conduct an even-handed inquiry into the events of July 11 and arrive at an accurate view of the truth of the matter. The officers' plea of self-incrimination made this impossible.

Second. It is important that some check or balance counter the otherwise virtually untrammelled power of correctional officers to affect the lives and physical security of the inmates they supervise.

A prison is a closed society of officers in control and inmates subservient. Given the best of intentions, it is impossible for the Superintendent to know what happens at every moment within the walls of his institution. Almost everything lies in the discretion of the officer patrolling the yard, guarding the corridor, searching the cell. Let him be wise, patient, and intelligent, and all will be well. Let him be rash, arrogant, or brutal, and prison becomes a

hell for all who must live or work in it, for officer as much as for inmate. In Lord Acton's celebrated phrase, "Power tends to corrupt, and absolute power corrupts absolutely."

The need, then, is to temper the absolute power of the officer by imposing a check or a balance. That check or balance, we submit, exists in the authority of the Commission to inquire into the conduct of correctional officers. It is therefore to the advantage of all, it is therefore vital to the proper functioning of our prison system, that the Commission's authority have full scope. The officers' refusal to answer the Commission's questions achieved the contrary. It subverted the Commission's authority and left the officers as they were before, unaccountable to anyone for the uses to which they put the power entrusted to them.

Third. It is important that a beginning be made to eliminate unnecessary violence from our State's prisons.

We need hardly rehearse the events of 1971 or refer to other instances, widely reported though not the subject of the present investigation, wherein the relation between correctional officer and inmate has been characterized by violence. Of course, some measure of force is an inevitable concomitant of a prison. But that measure is small. Beyond it, persuasion, education, and good will can do all that need be done.

If the Commission succeeds in bringing about a diminution in the incidence of violence in our prisons, it will have served the public. But the Commission cannot begin to work toward that goal without a full and detailed understanding of the sources and conditions

of prison violence. That understanding exists nowhere but in the experience of officers and inmates. The inmates provided what they could at these hearings. The officers refused. Their position serves only to make the Commission's task more difficult. So long as correctional officers remain adamant in regarding the Commission as their enemy, that long will violence curse our prisons.

#### Recommendations

We said at the outset that, although the Commission never learned what happened on July 11, it did learn other things, perhaps equally useful. Those other lessons are embodied in the following three recommendations.

One. It goes without saying that the officers had a legal right to plead their privilege against self-incrimination. Our criticism of their doing so rests on grounds of policy, not law. If the Commission is ever to carry out its obligation to inquire fully into events such as these, however, it must be empowered to compel the testimony of all witnesses, including officers. The means of compulsion would be a grant of immunity, which assures the witness freedom from prosecution, thereby removing the protection of the privilege against self-incrimination. It lies with the legislature to furnish the Commission this necessary power to grant immunity. That the Commission's statutory charter, Article 3 of the Correction Law, now contains no immunity clause is, in all probability, an oversight, since the statutes creating other commissions with responsibilities similar to ours do contain immunity clauses. E.g., Unconsolidated Laws, section 7507 (New York State Commission of Investigation).

We therefore urge the legislature to amend Article 3 of the Correction Law by adding to it a provision authorizing the Commission to grant immunity to witnesses.

Two. We have said that the officers' plea of self-incrimination, though legal, seriously impedes any attempt to improve the administration of our State's prison system. An officer who pleads the privilege in response to the question whether he kicked a hogtied inmate in the jaw is, we believe, unfit to hold his job. The Supreme Court has decided that the Constitution permits the discharge of a public employee who pleads the privilege against self-incrimination to avoid answering questions about the performance of his official duties. Gardner v. Broderick, 392 U.S. 273 (1968).

We therefore urge the Department of Correctional Services to adopt rules and procedures in accordance with the holding of the Gardner case.

Three. It may be that the violence of July 11 occurred through inadvertence. Perhaps the officers did not realize or did not sufficiently take into account the consequences of their searching the cell of a difficult and well-known inmate in full view of more than a hundred inmates who were at leisure in D yard. Cooler consideration of the circumstances, had there been any, might have persuaded them to leave McQueen undisturbed until later that night, when the other inmates had been returned to their cells. It may also be that much of what followed was due, at least in part, to the officers' security in anonymity. We were struck at the hearings by the frequency of the inmates' statement that "I don't know the officer's name."

We therefore urge Superintendent Smith and the Department of Correctional Services to take steps to train correctional officers, not only in the nature and extent of their powers, but also in the need to exercise those powers prudently, so as to lessen occasions for violence. We also urge the Superintendent and the Department to require all correctional officers to wear badges or tags prominently displaying their name.

#### Afterword

The Grand Jury in Wyoming County conducted two inquiries concerning the events of July 11.

The first involved the episode which is the subject of this report. We have been informed by the District Attorney of Wyoming County that the Grand Jury voted no-true-bill: that is, no one -- neither McQueen nor any officer -- was indicted.

The second involved the episode which followed McQueen's removal to SHU. That episode, as noted earlier, is beyond the purview of this report. The District Attorney informs us that several inmates have been indicted for assault and related crimes. No officer has been indicted.

While of course we express no opinion on the evidence before the Grand Jury or to be presented at trial, it is fair to observe that yet again an outbreak of violence in one of our prisons has eventuated only in the prosecution of inmates. Are correctional officers to be forever immune? Is it not clear that, whatever the details of

the events of July 11, the officers bear some responsibility for what happened? Had they acted more discretely, let alone lawfully, there would have been no violence, no injuries, and no indictments.

It is justice that sends a man to prison, but justice does not stay without the walls when he enters. An inmate is entitled to decent treatment. Any officer who is guilty of violence should be punished just as an inmate is punished. Until that is understood by all to be the principle on which our prison system is administered, we will continue to have Atticas.

**END**