

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INMATES OF ATTICA CORRECTIONAL FACILITY,
PETER BUTLER, RICHARD X CLARK, ROGER
CHAMPEN, GARY R. HAYNES, LAWRENCE KILLE-
BREW, DAVID R. SMITH, FRANK SMITH,
EDWARD DINGLE, ROBERT L. ROBINSON, on
behalf of themselves and all other
persons similarly situated; WAYNE TRIMMER,
Inmate of Green Haven Correctional
Facility, on behalf of himself and all
other inmates similarly situated;
ELIZABETH DURHAM, individually and as the
mother of ALLEN DURHAM; ARTHUR O. EVE,
individually, and as Assemblyman;

Plaintiffs,

- against -

NELSON A. ROCKEFELLER, individually and
as Governor of the State of New York;
RUSSELL G. OSWALD, individually and as
Commissioner of Correctional Services of
the State of New York; WALTER E. DUNBAR,
individually and as Executive Deputy
Commissioner of the Department of
Correctional Services of the State of
New York; VINCENT R. MANCUSI, individually
and as Superintendent of Attica Correctional
Facility; HENRY WILLIAMS, individually
and as a Captain of the State Police of
New York; JOHN DOE and RICHARD ROE,
individually and as officers of the State
of New York; ROBERT E. FISCHER, individually,
as Special Prosecutor and as Deputy
Attorney General; LOUIS LEFKOWITZ,
individually and as Attorney General of
New York; JUDGE CARMAN F. BALL, individually
and as a judge of the State Supreme Court;
H. KENNETH SCHROEDER, JR., individually and
as United States Attorney for the Western
District of New York; EDMUND MAXWELL,
individually and as United States Magistrate
for the Western District of New York; HARRY
D. GOLDMAN, individually and as Presiding
Justice of the Appellate Division, Supreme
Court, Fourth Department; LOUIS JAMES,
individually and as District Attorney of
Wyoming County,

Defendants.

INDEX NO. 71 CIV 5571

COMPLAINT- CLASS
ACTION

Plaintiffs, by their attorneys, as and for their
complaint, allege that:

I. PRELIMINARY STATEMENT

1. This is a class action brought on behalf of inmates present at Attica Correctional Facility (hereinafter "Attica") on September 13, 1971 and other plaintiffs named herein, pursuant to 42 U.S.C. §1983, to compel the State of New York to institute criminal prosecutions against Nelson A. Rockefeller, Russell G. Oswald, Vincent R. Mancusi, Walter E. Dunbar, certain State Police, certain Corrections Officers and any other state officers who, on or about September 13, 1971, and continuing until the date of the filing of this complaint, committed, conspired to commit, or aided and abetted in the commission of crimes against inmates and guards at Attica, including murder, manslaughter, assault, menacing, reckless endangerment, and larceny. The duty upon the State of New York to prosecute the aforesaid defendants and other state officers guilty of crimes at Attica was annunciated in Inmates of Attica Correctional Facility v. Rockefeller, Docket Nos. 71-1931, 71-1994 (December 1, 1971) (Mansfield, J.).

Plaintiffs herein, in order to protect their civil rights, request this Court to require the State of New York to submit a plan for the independent and impartial investigation and prosecution of charges against defendants herein and other state officers who committed crimes against inmates and guards at Attica. The relief sought in this respect is comparable to that granted by Judge Judd in Valvano v. McGrath, 70 Civ. 1390 (E.D.N.Y., Nov. 11, 1971).

2. This action also seeks to compel federal prosecutions of the defendants and other state officers who, on or about September 13, 1971, and continuing until the date of the filing of this complaint, violated the criminal laws of the United States, 18 U.S.C. §§241 and 242, by depriving the inmates and guards at Attica of life, liberty and property without due process of law. This action seeks and order pursuant to 42 U.S.C. §§1987 and 1989 requiring the United States Magistrate and the United States Attor-

ney for the Western District of New York to investigate, arrest and institute prosecutions against the defendants and other state officers who committed federal crimes against the inmates and guards at Attica.

3. This action also seeks a declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring that Nelson A. Rockefeller, Russell G. Oswald, Vincent R. Mancusi and Walter E. Dunbar are unfit to administer Attica and other prisons in New York State because, in administering the prison system and, particularly, in quelling the Attica uprising, they violated or aided and abetted in the violation of the civil rights of inmates and guards, in contravention of the Constitution and of 42 U.S.C. §§1983, 1985 and 1986. Further, this action seeks to permanently enjoin defendant Rockefeller and other defendants named herein from administering Attica and other State Prisons because of their continuing mistreatment of inmates, and requests that the New York State prison system be placed in Federal Receivership to protect inmates from further violations of their civil rights.

II. JURISDICTION

4. Jurisdiction is conferred on this Court by 28 U.S.C. §§1343(3) and 1361.

III. VENUE

5. This action is brought in the Southern District of New York pursuant to 28 U.S.C. §§1391(b) and 1392(a).

IV. CLASS ACTION ALLEGATIONS

6. Plaintiff inmates at Attica and other state prisons bring this action on their own behalf, and on behalf of all other persons similarly situated pursuant to Rule 23(b)(2), Federal Rules of Civil Procedure. Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class.

7. Plaintiffs represent a class of inmates who were present at Attica prior to and during the events of September 9-14, 1971. This class contains over 2,000 people. The number of people in the class is so numerous as to make joinder impracticable. This class contains two subclasses: those inmates still incarcerated at Attica and those inmates transferred after the uprising from Attica to Green Haven Correctional Facility.

8. Plaintiffs can fairly and adequately protect the interests of the class. Plaintiffs are represented by attorneys at the Center for Constitutional Rights who have experience in the area of constitutional litigation. Plaintiffs know of no conflicts of interest among members of the class.

9. Plaintiffs' claims are typical of the claims of the class. There are questions of law and fact common to the class, to wit: whether certain defendants committed crimes against inmates at Attica; whether these defendants and other state officers should be prosecuted for those crimes; and whether defendants Rockefeller, Oswald, Dunbar and Mancusi are fit to administer Attica and other state prisons.

10. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members. A class action is superior to other available means for the fair and efficient adjudication of the controversy. Plaintiffs know of no interest of members of the classes in individually controlling separate actions. Plaintiffs know of no difficulties likely to be encountered in the management of a class action.

V. PARTIES

A. Plaintiffs

11. Plaintiffs Roger Champen, Peter Butler, Richard X. Clark, Gary R. Haynes, Lawrence Killebrew, Robert L. Robinson, David R. Smith, Edward Dingle, and Frank Smith are citizens of the United States presently imprisoned at Attica. They had crimes committed against them by certain of the defendants and other officers of

the State of New York. They sue on behalf of themselves and other inmates similarly situated.

12. Plaintiff Wayne Trimmer is a citizen of the United States presently incarcerated at Green Haven Correctional Facility. He was at Attica when the events alleged in this complaint occurred and was subjected to the criminal conduct of the defendants and other state officers. He sues on behalf of himself and other inmates transferred from Attica to Green Haven.

13. Plaintiff Ms. Elizabeth Durham is a citizen of the United States. Ms. Durham sues individually and on behalf of her deceased son, Allen Durham, a citizen of the United States, who was murdered at Attica by reason of the wrongful actions of defendant Nelson A. Rockefeller and other state officers. She sues to compel prosecution of those defendants responsible for the murder of her son.

14. Plaintiff Arthur O. Eve, a New York State Assemblyman, is a citizen of the United States, residing in Buffalo, New York. He sues individually, as a member of the State Assembly and as a member of the State Subcommittee on Prisons, to compel prosecution of the defendants and other state officers responsible for the commission of crimes at Attica.

B. Defendants

15. Defendant Nelson A. Rockefeller is the Governor of the State of New York. He is a citizen of the United States and a resident of Westchester County, New York. He is sued individually and as Governor.

16. Defendant Russell G. Oswald is the Commissioner of Correctional Services for the State of New York. He is a citizen of the United States with offices in Albany, New York. He is sued individually and as Commissioner.

17. Defendant Walter E. Dunbar is Executive Deputy Commissioner of the State Department of Correctional Services. He is a citizen of the United States with offices in Albany, New York. He is sued individually and as Deputy Commissioner.

18. Defendant Vincent Mancusi is the Superintendent of Attica. He is a citizen of the United States and a resident of Wyoming County, New York. He is sued individually and as Superintendent.

19. Defendant Henry Williams is a Captain in the New York State Police. He is a citizen of the United States with offices in Batavia, New York. He is sued individually and in his capacity as an officer. He is also sued as a representative of all members of the New York State Police who took part in the Attica massacre.

20. Defendant Louis James is the District Attorney of Wyoming County. He is a citizen of the United States with offices in Wyoming County. He is sued individually and in his capacity as District Attorney.

21. Defendant Robert E. Fischer is a Deputy Attorney General of the State of New York, appointed by Nelson A. Rockefeller as a special prosecutor. He is a citizen of the United States with temporary offices at Attica. He is sued individually and as special prosecutor.

22. Defendant Carman F. Ball is a judge of the New York State Supreme Court. He is a citizen of the United States and is now presiding over the Special Term of the Supreme Court in Wyoming County. He is sued individually and in his capacity as Judge.

23. Defendant H. Kenneth Schroeder, Jr. is the United States Attorney for the Western District of New York. He is a citizen of the United States with offices in Erie County. He is sued individually and in his capacity as United States Attorney.

24. Defendant Edmund Maxwell is a United States Magistrate for the Western District of New York. He is a citizen of the United States with offices in Erie County. He is sued individually and in his capacity as Magistrate.

25. Defendants John Doe and Richard Roe are New York State Police, Correction Officers, Troopers, or Sheriffs and Deputy Sheriffs. They were present at the time the acts complained of herein took place. They are sued individually, in their capacity as officers of the State of New York, and as representatives of all state officers involved in the Attica massacre.

26. Defendant Louis Lefkowitz is the Attorney General of the State of New York with offices in New York City. He is required under state law to remove from office and prosecute those state officers who have committed criminal acts. He is sued individually and in his capacity as Attorney General.

27. Defendant Harry D. Goldman, Presiding Justice of the Appellate Division, Supreme Court, Fourth Department, is responsible for the administration of the state court system in the town of Attica and Wyoming County. He is sued individually and as Presiding Justice.

VI. CAUSES OF ACTION

A. Treatment of Inmates Prior to the Uprising.

28. Attica Correctional Facility, located in Attica, New York, is a maximum security prison, administered by the New York State Department of Correctional Services.

29. Defendant Nelson A. Rockefeller, Governor of the State of New York, is charged with the responsibility of overseeing the administration of New York State Prisons and has the duty of appointing the Commissioner of Correctional Services.

30. Russell G. Oswald, Commissioner of Correctional Services, and Walter Dunbar, Deputy Commissioner, are responsible for the management of the Department of Correctional Services. They formulate the policies and regulations by and under which the State Prisons are administered.

31. Vincent Mancusi, Superintendent of Attica, is responsible for the daily operations of Attica.

32. The aforesaid defendants have for many years, up to and including the present, intentionally subjected the plaintiffs at Attica and other State Prisons to cruel and inhuman treatment that bears no rational relationship to the purposes of incarceration, the protection of society and rehabilitation of the inmates.

This cruel and inhuman treatment includes physical abuse, beatings and tear gassing by guard; allowance of only one shower per week; failure to provide hot water in cells; a paucity of toilet paper and razors, poor preparation of meals as well as meals of pork in violation of many inmates' religious principles, inadequate library facilities; promulgating rules and regulations against the discussion of legal problems, deficient medical facilities, a lack of recreational facilities; a lack of occupational training, and the failure to make any meaningful efforts toward rehabilitation.

33. Defendants Rockefeller, Oswald, Dunbar and Mancusi

have intentionally subjected the plaintiff inmates to racial discrimination and inhuman isolation from their family, friends and lawyers.

Specifically, and in furtherance of this aim, they have:

a) confined the plaintiff inmates, 85% of whom are Black and Puerto Rican, to Attica which is located in an all white community,

b) employed only white Correction Officers, these officers physically abuse inmates and treat them in a racially discriminatory manner;

c) confined the inmates to Attica, a prison located over 400 miles from New York City where a majority of the inmates live,

d) intentionally confined the plaintiff inmates to Attica, a prison located in an isolated community, so that they are free to abuse the inmates without fear of detection and re-crimination; and

e) paid inmates wages ranging from 25¢ to 76¢ a day to work under unsatisfactory conditions, while the State of New York makes exorbitant profits from the inmates labor.

B. Attempts By Inmates to Change Conditions

34. In August of 1970, plaintiff inmates and the classes they represent, in an attempt to peacefully redress the inhumane conditions at Attica, went on a sitdown strike and refused to work until conditions improved. At the same time, the inmates filed a suit in the United States District Court for the Western District of New York claiming numerous violations of their civil rights by the defendants and their agents. Judge Henderson denied the inmates any relief, dismissed the suit and expressed anger at the inmates' refusal to work.

35. Next, the inmates at Attica formulated a petition in

July of 1971, listing 27 demands for improving prison conditions. The petition included requests for religious freedom, non-censorship of reading material, adequate medical treatment, and effective drug and other rehabilitation programs. The petition was signed by five inmates in whom the inmates of the prison had vested the power of negotiation regarding the settlement of the demands. The petition included a statement that no strike of any kind was contemplated in support of the demands, that the inmates wanted to negotiate in a democratic fashion and that there was no need to dramatize their demands. This petition was mailed to defendant Oswald and other defendants in July 1971. Defendant Oswald acknowledged receipt of the petition by a letter dated August 16, 1971, and promised to look into the conditions at Attica, but he and the other defendants made no effort to negotiate with the inmates or to implement any of the 27 demands. Thus, conditions at Attica remained the same. In fact, inmates who signed the petition subjected themselves to reprisals, as admitted by defendant Mancusi, who testified that the signers were being placed in segregation as fomentors of the uprising on September 9, 1971.

Plaintiffs, also, had no reason to trust any promises made by defendant Oswald or other defendants. Many inmates were veterans of the Auburn uprising where the State, after making many promises, did not, as even defendant Oswald acknowledged, carry them out. The inmates wanted concrete improvements in their conditions as they had been promised, but which were not forthcoming.

C. The Spontaneous Uprising

36. Many of the inmates, frustrated by the lack of any judicial or administrative action, and as a spontaneous reaction to the beating of prisoners by guards on September 9, 1971, took control of "D" Block and Yard at Attica. The inmates who signed

the petition were not part of the spontaneous uprising. Defendants, by failing to implement the inmates' reasonable demands and by continuing to allow guards to beat inmates, sparked and are responsible for the spontaneous takeover of the prison. The inmates took over the yard with the minimum force necessary. They immediately released eleven hostages because of concern for their health and requested a doctor to examine the remaining hostages. The inmates requested medical records for the remaining hostages to determine if there were histories of heart attacks or other conditions that might possibly cause complications to guards during confinement. Each hostage was assigned a personal guard to protect him from possible harm. The hostages were treated well, slept on double mattresses and had twice as much to eat as the inmates. At no time were any knives or other sharp instruments placed at the throats of any of the hostages. Any weapons they possessed were of the type that could only be employed in close combat, such as sticks and bats.

37. A few hours after taking control of the prison yard the inmates issued a list of 28 demands. These demands were similar to those previously sent, in July of 1971, to defendant Oswald and others. Defendant Oswald recognized the reasonableness of the demands, but, at first, refused to grant any of them. When members of the negotiating committee, who were citizens chosen by the inmates to negotiate with prison authorities, prevailed upon Oswald to grant many of the demands, he did so, but only in a narrowed form and even this was questionable, as the defendant most able to implement the demands, the defendant Governor Rockefeller, never agreed to any of them.

38. The defendants' unreasonableness and intransigence was highlighted by their treatment of the issue of amnesty for the plaintiff inmates. The inmates had employed, as was previously set forth, a number of means to get the State to implement what even defendant Oswald called reasonable demands. Instead of

recognizing their own fault in failing to respond to peaceful demands to improve conditions, defendants Rockefeller, James and Oswald unreasonably insisted upon reserving the right to prosecute those inmates who spontaneously arose in reaction to the inhuman conditions at Attica.

39. The granting of amnesty would have meant a peaceful end to the prison takeover. Knowing this, the defendants chose, by a flat denial of any form of amnesty, not to end the takeover peacefully, and instead chose a course of conduct which they knew would kill and injure scores of inmates and guards.

D. Governor Rockefeller Refuses to Come to Attica.

40. The inmates at all times remained flexible as to the amnesty demand. Despite this known flexibility, the defendants refused to react moderately, and unreasonably halted the negotiations prior to having explored all possible solutions. The continuance of negotiations for a few days would have saved numerous lives.

41. On Sunday, September 12, 1971, the inmates and the citizens committee made a formal request for Governor Rockefeller to come to Attica and meet with the Committee. The members of the Committee and the inmates felt that Rockefeller's presence would have meant a peaceful end to the takeover. But the Governor had already planned the brutal recapture of Attica, and, consonant with that plan, he criminally refused to exercise the option, going to Attica, that would have avoided the massacre. His insistence on remaining at his Westchester estate proved to be a significant contribution to the ensuing death and destruction.

E. Plan For Massive Lethal Attack

42. Defendants Rockefeller, Oswald, Mancusi, Williams and others, whose identity is presently unknown, formulated the

plan to storm Attica with a massive, indiscriminate and lethal use of power that they knew had to result in the murdering and wounding of scores of innocent inmates and guards. This massive use of force was employed against unarmed inmates. Such a lethal use of force was excessive and in violation of the laws of the State of New York and the United States.

The plan defendants formulated included the following men, weapons and ammunition:

a) Over one thousand fully armed men participated, including State Troopers, State Police, Sheriffs, Deputy Sheriffs, National Guardsmen and Correction Officers,

b) State Police marksmen armed with .270 caliber rifles and sniperscopes lined the roofs of cellblocks "C" and "A"; other State Police had 12 guage pump shotguns loaded with heavy shells:

c) Additional weapons employed and indiscriminately used included .45 caliber submachine guns; .357 magnum revolvers; .385 special revolvers; M-14'S; AR-15 Army rifles; concussion grenades; CS gas launchers; bazookas; and three foot riot clubs;

d) Defendants intentionally ordered the use of bullets that would cause wounds far more serious than were necessary. Sharpshooters used .270 caliber expanding bullets that rip wide holes in human bodies, and the shells used in the shotguns contained 10 to 12 .32 caliber pellets, each pellet capable of killing a man. As shotgun blasts spread out indiscriminately, many inmates were unnecessarily killed or injured.

F. The Assault

43. The assault began with a massive and indiscriminate hail of bullets and buckshot. At the same time, about 10:00 A.M., on Monday, September 13, 1971, a helicopter began dropping tear gas into "D" Yard. Next, a force of armed State Police and

Correction Officers broke into "D" Yard indiscriminately firing their weapons and another force fired weapons from the catwalk overlooking "D" Yard.

44. During the first few minutes of the barrage the inmates had no chance to surrender; they were killed or wounded indiscriminately. And, as is demonstrated below, even after many surrendered they were maliciously gunned down.

45. As a result of this massive, lethal and indiscriminate attack nine hostages and thirty-two inmates were killed, most of them in the initial barrage. Hundreds of inmates were wounded. This massive assault against unarmed men constituted a criminal use of excessive force by officers of the State of New York.

46. Many of the inmates were killed and wounded not only as a result of the massive initial barrage but because of intentional acts of violence carried out by State Police, Troopers and Correction Officers. Examples of some of these wanton killings and woundings follows:

a) Sharpshooters on the walls, with Correction Officers assisting, picked off many of the alleged leaders. For example, 15 out of the 45 men in 5 Company, "A" Block, where the uprising began, were killed. Former leaders of the Auburn uprising were singled out by these sharpshooters and killed. These included inmates Hicks, Eliot, Plummer and Thomas;

b) Troopers and State Police knocked down tents in "D" Yard where inmates were hiding and fired weapons into the fallen canvas;

c) Inmates Buckley, Taylor and Thomas were killed by State Police and Troopers after untying hostages at the Troopers' directions,

d) Inmate Willie West was killed by a Trooper after he had surrendered and had his hands over his head;

e) An inmate was seen by one of the survivors standing unarmed with 5 or 6 other men holding a Black Power flag. He was

killed;

f) Within a few minutes of the gassing, inmates Baines and Fuller were picked up by Troopers from the ground and killed by the firing of numerous shots into their bodies at close range;

g) Inmate Sam Melville was seen 20 minutes before the attack, unarmed and not holding any bombs. He was later seen alive by an inmate in "D" Yard where he was forced to crawl. Soon after this, he was killed by officers of the State of New York;

h) Inmate Hicks was seen alive after the assault in "D" Yard, he was then seen alive on the ground in "A" Yard with his hands on the back of his head. He was then killed by officers of the State of New York;

i) Inmate L. D. Barkley was seen walking from "D" Yard to "A" Yard after the assault, he was then seen alive lying on the ground in "A" Yard. He was also seen alive one hour after the assault by Assembly Arthur O. Eve. Soon after this he was killed by officers of the State of New York;

j) Inmates McKinley and Davis were killed by officers of the State of New York;

k) Surviving inmates saw Troopers shoot point blank at inmates, they saw fellow inmates lined up against the wall and shot through the head, they saw an inmate's head pushed through a glass window at the hospital, and they saw inmates killed after they were forced to beg for their lives;

l) Surviving inmates can identify Correction Officer Graham as the State officer who murdered an inmate described as black and with a mole on the side of his face.

m) Inmate Lawrence Killebrew was, without provocation, shot three times in the chest by State officers. Inmate Robert L. Robinson was, without provocation, shot in the thigh by State officers. Inmate Lewis Soles was, without provocation, shot in the arm by State officers

47. Plaintiffs further allege that the acts heretofore set forth constituted murder and pre-meditated murder by Troopers, Police and Correction Officers.

G. Post Assault Beatings

48. Immediately after the assault, and for over a week thereafter, inmates were severely beaten, tortured, threatened, harassed and verbally abused by State Troopers and Correction Officers. The Second Circuit, in granting an injunction against such beating and harassment, described the brutality of the State Officers immediately after the assault as follows:

By contrast, in support of plaintiffs' Eighth Amendment claims, detailed evidence was furnished by plaintiffs to the effect that beginning immediately after the State's recapture of Attica on the morning of September 13 and continuing at least until September 16, guards, State Troopers and correctional personnel had engaged in cruel and inhuman abuse of numerous inmates. Injured prisoners, some on stretchers, were struck, prodded or beaten with sticks, belts, bats or other weapons. Others were forced to strip and run naked through gauntlets of guards armed with clubs which they used to strike the bodies of the inmates as they passed. Some were dragged on the ground, some marked with an "X" on their backs some spat upon or burned with matches, and others poked in the genitals or arms with sticks. According to the testimony of the inmates, bloody or wounded inmates were apparently not spared in this orgy of brutality.

There was testimony that hand in hand with the physical violence upon the inmates went threats of death or further brutality. Correctional officers, addressing inmates as "niggers" or "coons," threatened to "get rid of" them or shoot or kill them. In at least one instance, the testimony ran, a guard pointed a gun at an inmate's head, telling him that he was going to die and started clicking the trigger, following which the inmate was kicked and beaten. On some nights a group of guards visited the cell area and threatened inmates with death, pointing guns or sticks into cells. Several of the witnesses had personally complained to members of the Goldman Panel and to public figures visiting Attica (e.g., Congressman Rangel, Senator Dunne and Assemblyman Eve). Inmates of Attica Correctional Facility v. Rockefeller, supra, 748-49.

49. State officers beat scores of inmates as they crawled or walked into "A" Yard after the initial assault.

a) Inmates Gary Haynes, Brightman, L. D. Barkley, Jerry Rosenberg and Frank Smith were beaten after they surrendered;

b) Bernard Davis, after being shot, had his wound beaten, his wrists broken and was black-jacked by State officers;

c) State officers stuck a gun barrel into inmate Sam Green's wound.

50. After the inmates were in "A" Yard they were forced to run naked through a gauntlet of about fifty Correction Officers, State Police and Troopers who beat them with rubber truncheons, sticks, straps and bats.

a) Inmates Roger Champen, Frank Lott and Herbert Blyden were forced to run this gauntlet and so testified in federal court,

b) Defendants Oswald and Mancusi were present at the gauntlet and made no effort to stop it;

c) During the week following the assault inmates were beaten, gassed and forced to walk barefoot over glass.

51. Inmates can identify many of the State officers responsible for the beatings. These State officers include Deputy Wardens Vincent and Pfail; Correction Officers Brady, Rice, Flynn, Casey, Koralski, Charles Miller, Dawson, Whalen, Wirtz, Smith, Ryan, Reddick and McCollough; and Correction Counselors Baker, Green and McAnulty. Correction Counselor Baker, with a bat and pistol, whipped over 200 inmates going through the "A" Block Yard down to "A" Block.

52. Many of the beatings that took place after the assault were the fault of Defendant Dunbar who, by his lying and irresponsible statements, fanned the State Troopers and Correction Officers into excesses. Within an hour after the assault, Dunbar falsely claimed that nine hostages had had their throats cut. The fact was that all were killed by the State's own bullets. Defendant Dunbar also related the story that a hostage had been castrated --

a story that was wholly false.

These statements by defendant Dunbar were recklessly or intentionally made for the purpose of or having the effect of the hatred of guards against prisoners.

53. Harassment, beatings, verbal abuse and threats against inmates lives continue to this day and will continue unless the State officers responsible for the massacre at Attica are removed and criminally prosecuted.

H. Inmates Property Stolen and Destroyed

54. State Troopers and Correction Officers on September 13, 1971, immediately after the assault, stole, converted or destroyed the personal possessions of the inmates who were in "D" Yard. These state officers converted, for their personal use, the watches, rings and other valuables of the inmates, and maliciously destroyed their glasses and teeth.

55. State Troopers and Correction Officers also maliciously took from the inmates' cells all property, including law books, legal papers, photographs and items of clothing. This property was destroyed by State officers and much of it, still in usable condition, was used as landfill.

56. The inmates, in an attempt to get compensation for their losses, have filed "Notices of Intention to File Claims" with the New York Court of Claims. Over 500 such claims have been filed. Plaintiff Lawrence W. Killbrew's claim includes, for example, the following items:

- 1 pair brown work boots
- 10 pictures
- 1 soap dish
- 1 Dictionary
- 1 blue bed spread
- 2 personal pillow cases
- 1 rug
- 1 hand grips
- 1 stretch rope
- 1 can opener
- 1 pair of black rubbers

57. Officers of the State of New York have, by stealing, converting and destroying the aforementioned property, violated the criminal laws of the State of New York and have violated the United States Constitution by taking property without due process of law.

I. Lack of Medical Care After the Assault

58. The number of deaths, the seriousness of the injuries, and the pain and suffering of the inmates was dramatically increased by defendants and their agents who criminally and maliciously denied medical assistance to over 400 inmates wounded during the assault.

a) The method used to sort out the wounded at Attica was "triage." Doctors employed at Attica tagged those most critically ill; they were left to die. The least critically ill were left until a later time. Those between these extremes were treated. There was no need to use this method as numerous volunteer doctors were available.

b) Volunteer doctors from Meyers Hospital notified defendants herein on Monday, September 13, 1971, that at least 40 men who were seriously wounded required immediate treatment in the Buffalo Hospital. The men were not transferred. However, all of the volunteer doctors were asked to leave the prison late Monday night. They left behind at least 40 men in serious need of medical attention.

c) Early Tuesday morning at 2:30 a.m. a group of 20 doctors and nurses arrived at Attica Correctional Facility. The medical team had a federal court order allowing them immediate access to the prison. Armed State Troopers, on directions of the defendants herein, disregarded this order and refused to admit the group. At 1:15 p.m. Tuesday afternoon, the prison announced that a western State alert had gone out for doctors. Again, the doctors who had been waiting outside the prison gates since 2:30 a.m. early Tuesday morning were refused permission to enter. Later on that Tuesday, four more prison patients were transferred to Meyer Hospital. By the time the prison officials released the fifth it was too late. He died, becoming one of the many deaths directly linked with the lack of medical care.

d) On September 17, 1971, scores of prisoners were still suffering from broken limbs, others had had bullets in them since Monday the 13th, and others were being beaten. In spite of this, teams of black doctors and nurses from Howard University were barred from the prison.

J. Defendant Rockefeller and Other Defendants Named Herein Attempt to Cover Their Criminal Culpability for the Attica Massacre

59. Despite the facts that defendants herein have committed or aided and abetted in the commission of numerous crimes,

there is no state official investigating or instituting prosecution against these defendants. Defendant Rockefeller and other defendants named herein, by various stratagems, have insulated themselves from any investigation or prosecution for their part in the criminal acts heretofore alleged.

60. The first act in this scheme was defendants' open and blatant refusal to obey the federal court order that allowed the admission of doctors and lawyers to Attica on Tuesday morning, the 14th of September. This contemptuous conduct by the defendants not only made it impossible for people outside to determine the extent of the massacre, but, as previously alleged, aggravated the injuries of the inmates and allowed the brutality of the Corrections Officers to continue unchecked.

61. Defendant Rockefeller's next step to insulate himself and the defendants from criminal liability was to hand-pick Deputy Attorney General Robert E. Fischer to begin an immediate investigation of the crimes committed at Attica. Defendant Fischer has only concerned himself with the crimes committed by inmates and has not investigated, nor does he intend to investigate, any crimes committed by state officers.

a) The fact that he was appointed by Defendant Rockefeller makes it impossible for him to neutrally investigate the criminal actions of defendant Rockefeller and those state officers who conspired with him.

b) One of defendant Fischer's first acts was the appointment of Defendant Williams, the State Trooper in charge of the massacre, as his Chief of Investigations. This indicates that defendant Fischer does not intend to investigate or prosecute state officers.

c) Defendant Fischer, as he himself admits, is not in a position to neutrally investigate and prosecute both inmates and defendants. Fear of reprisals and self-incrimination prevents inmates from reporting crimes to defendant Fischer or his investigators, particularly when defendant Fischer is working closely with the state officers responsible for the massacre.

d) Defendant Fischer's statement that he has not had any inmates report to him acts of brutality on the part of state officers is impossible to believe in light of the facts in this complaint, and impugns defendant Fischer's good faith in carrying out neutral investigations and prosecutions of anyone.

e) Defendant Fischer's manner of conducting some of the interrogations of inmates had indicated that he or his agents are willing to employ brutality in their investigation. The Second Circuit described this brutality as follows:

In support of plaintiffs' allegations of unconstitutional interrogations of prisoners, the sole testimony was that of an inmate Charles Colvin and of Superintendent Mancusi. Colvin, who is serving a term of from 3 to 10 years for manslaughter, testified that on September 13 he was beaten and questioned by correction officers with respect to the events of September 9-13, and that on September 15 he was taken from his cell to a room in the administration building where, after being threatened by two or three people dressed in "BCI" (Bureau of Criminal Investigation) clothes, he signed a "piece of paper" or "a pad" without reading it or knowing what was on it. He further testified that although he was due to be released on October 6, 1971, he had been stripped of 180 days good time without any hearing after he pleaded not guilty to a charge of possession of an officer's night stick.

62. Defendant Fischer has not only been appointed to investigate all crimes committed at Attica but he has been appointed prosecutor for all crimes committed at Attica. This effectively means that no prosecutions will be instituted in the State of New York against any of the state officers responsible for the massacre and brutality at Attica. This follows because:

a) Defendant Fischer, as indicated, is not concerning himself with the crimes committed by State officers and will, therefore, not be prosecuting any state officers.

b) Defendant Wyoming County District Attorney Louis James, the only other state officer able to prosecute defendants herein, has been precluded from doing so by the appointment of defendant Fischer. Under New York State law and the order appointing Fischer, when a deputy attorney general investigates and prosecutes a matter, the local district attorney is precluded from taking any action regarding that matter. Defendant James, therefore, can only work under the instructions of the deputy attorney

general. The order appointing Fischer broadly covers all matters pertaining to Attica. Thus, even though Fischer is not investigating or prosecuting the crimes of the defendants, defendant James is precluded from doing so.

Even without this legal disability, defendant James is too prejudiced to investigate and prosecute the defendants. He was in close contact with Rockefeller regarding the refusal to grant amnesty to the inmates and had indicated during the takeover his intention to prosecute inmates.

63. The situation as it now stands is that no one in the State of New York is investigating or prosecuting those defendants responsible for the numerous crimes heretofore described. Unless these defendants and their agents are immediately investigated and prosecuted, the violation of plaintiff inmates' civil rights and the rights of the classes they represent will continue.

64. Defendant Rockefeller, in a further step to protect himself from criminal liability, requested the Civil Rights Division of the Justice Department to investigate alleged mistreatment of inmates. Thus far, as indicated by the Second Circuit opinion at 759, the Civil Rights Division has made little or no effort to bring charges against any state officers involved in the massacre. The opinion states:

As for the suggestion of help from the Civil Rights Division we are not advised that any steps have been taken to implement the Attorney General's direction other than to dispatch agents of the Federal Bureau of Investigation to interview some of the prisoners. Inmates of Attica v. Rockefeller, supra at 759.

65. Furthermore, defendant Schroeder, United States Attorney for the Eastern District, and defendant Maxwell, United States Magistrate for the Western District, have not arrested, investigated, or instituted prosecutions against any of the state officers involved in the Attica massacre. Although State officers have committed numerous violations of federal criminal laws, these federal officials, by not instituting prosecutions, have failed to carry out the duties placed upon them by 42 U.S.C. §§ 1987 and 1989.

VII. REMEDIES

66. As the facts heretofore alleged indicate, there is no adequate remedy at law in either the state courts of New York or in the federal courts. The invocation of the powers of a federal court of equity are required to protect the fundamental federal constitutional rights of the plaintiffs and the classes they represent.

67. Furthermore, this Court has the authority, and is required under the facts set forth in this complaint, to take action pursuant to 42 U.S.C. § 1983, 1987 and 1989 to implement and enforce equitable relief against the acts of the defendants here charged.

The facts set forth in this complaint reveal widespread criminal conduct by the defendants which has infringed upon the civil rights of the plaintiffs. The above statutes place upon the federal judiciary a duty and responsibility to enforce the laws guaranteeing to the plaintiffs their civil rights.

68. No previous application for the relief sought herein has been made to this or any other court.

VIII. PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray:

a) That this Court issue an order requiring the State to submit a plan for the independent and impartial investigation and prosecution of the defendants named herein and those defendants unknown who are guilty of committing, conspiring to commit or aiding and abetting in the commission of the crimes heretofore set forth. The Court is further requested to insure the appointment of an impartial state prosecutor and state judge who will prosecute the defendants forthwith.

b) That this Court issue an order pursuant to 42 U.S.C. §§ 1987 and 1989 requiring the United States Magistrate and the United States Attorney for the Western District of New York to investigate, arrest and institute prosecutions against the named defendants named herein and those unknown who have violated the criminal laws of the United States, to wit 18 U.S.C.

§§ 241 and 242.

c) That this Court declare the defendants Rockefeller, Oswald, Dunbar, Mancusi and others named herein unfit to administer Attica Correctional Facility and the prison system of New York, that this Court permanently enjoin them from administering said system and that this Court place Attica and the New York State System into federal receivership.

d) That this Court grant plaintiffs their costs in this action;

e) That this Court grant such other and further relief as the court may deem just and proper.

Respectfully submitted,

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