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REPORT ON THE
AUGUST 17, 1980 A-ACADEMIC RIOT
AT STILLWATER PRISON

Submitted by:

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The investigators involved were Patricia Harmon, Tom McGrath, Mel Brown, Cheryll Weium, and Bernice Fields.

PREFACE

On August 17, 1980 in the A Segregation Unit inmate Scott Seelye #100679 was injured while being moved from the Observation Cell to the adjacent Padded Cell. Mr. Seelye suffered a broken nose, a 5% collapse of his left lung, numerous bruises and was hospitalized for four days. The officers involved were Sgt. David Wilmes, his brother Sgt. Mark Wilmes, and Officer Robert Kirchoff.

It is believed that this incident triggered a subsequent riot in the A-Academic cell house at 7:00 p.m. the same evening in which four officers were severely beaten. Thirty-six inmates were charged in Disciplinary Hearings. Criminal charges were brought against eight of these inmates in Washington County District Court.

This report is an attempt to understand those events.

BACKGROUND

To fully understand the Scott Seelye and the related A-Academic incident, it is necessary to comprehend the prior events that contributed to the combusive emotions of that day. On August 16 the day preceeding the riot, two inmates were stabbed and another beaten on the fourthlevel (gallery) of the A-Segregation Unit. Information indicated that Scott Seelye may have been one of the assailants. Racial tension was the suspected motive. None of the victims pressed charges and all three have refused to identify their attackers, consequently no charges have been brought.

It is also necessary to understand the A-Segregation Unit itself. A-Segregation is the prison within the prison. The unit at capacity houses 101 men. It is maintained primarily for the purpose of separating inmates convicted in disciplinary proceedings. Segregation is the maximum punishment for violations of the rules and regulations at the prison. Men incarcerated there are considered the most dangerous in the prison and consistent with the institution's need for security these men have severely restricted privileges, even the space around the tiers is caged to prevent precipitous and involuntary falls. Some men, guards and inmates spend years in this environment.

Sgt. David Wilmes has been on duty in the Segregation Unit for three years. As senior sergeant he supervises operation

of the unit. Some inmates and some staff view Sgt. Wilmes as an aggressive man. Wilmes testified at the hearing that he felt Seelye was challenging him when Seelye took what Wilmes described as a "fighting stance" in the Observation Cell. Sgt. Wilmes is 6'1" and weights 250 pounds.

Scott Seelye has also spent considerable time in Segregation. He was originally committed for aggravated robbery. While in prison he has been convicted of assault three times, disobeying a direct order ten times and interfering with an officer three times. Mr. Seelye believes his punishment has been politically motivated because of his efforts on behalf of Indians. At the time this incident occurred, Mr. Seelye was serving a term in Segregation for disobeying a direct order and inciting to riot. Scott Seelye is a slight man. He weights approximately 140-150 pounds and is 5'9" tall.

There had been a previous aggressive encounter between these men. On July 9, 1980 tensions between Wilmes and Seelye were nearly explosive. At that time there had been a month of floodings in the unit. Flooding occurs when the inmates, to harass the staff, flood the cell hall by either plugging the toilet with a roll of tissue or by breaking the toilet off the wall. When the flooding occurs from plugging toilets it is impossible to tell where the water began. The flooding always begins at night when few staff are on duty to confront the initial flooders.

On the evening of July 9, 1980 Sgts. David Wilmes and Dennis Besaw devised a plan to apprehend flooders. They returned to the prison shortly after ten o'clock and waited for the first watch to go on. Wilmes and Besaw apprehended Scott Seelye and another Indian inmate in the act of flooding. The Indians allege they were flooding to protest the restrictions on Indian inmates' access to religious activities in Segregation.

Sgt. Besaw testified that Wilmes decided to take Seelye to the flag without handcuffs to show the other inmates that Seelye would not fight openly and to intimidate the other inmates who might consider flooding. The regulations specify all inmates must be handcuffed while being transferred. While transferring it is alleged that Wilmes tried to provoke Seelye into fighting. Wilmes testified that after moving Seelye to the flag he stripped Seelye's cell as a punishment for the flooding. "Stripping a cell", he explained, "means throwing all the inmate's personal possessions in the water to be swept away".

AUGUST 17

Sunday, August 17, 1980 Sgt. Wilmes came to the prison at 9 a.m.. He was not officially on duty but had been asked to prepare a report of the previous day's stabbings. He also wanted to relieve tension over the stabbing by moving some inmates to different cells. The first person he contemplated moving according

to his testimony was Scott Seelye. Wilmes moved Seelye to the Observation Cell.

Specific cells in each cell block are designated as Observation Cells, these cells are located in areas that allow the staff to see the inmate at all times. In Segregation there are bright lights fixed to the ceiling outside the Observation Cell to spotlight the movements of the inmate being observed. Wilmes testified that he knew it was derogatory to an inmate to be placed in the Observation Cell because it implies the inmate is "crazy". The Observation Cell is out of the visual range of any inmate.

Policy and Procedure Manual Section 0-8 page 1 specifies:

Observation Status (psychological) - An inmate may be placed in the designated cell for observation or treatment purposes. Placement on Observation Status occurs during normal work hours and is an order from a Staff Psychologist. If a Staff Psychologist is not present, The Watch Lt., upon approval of the Officer of the Day, may order an inmate into Observation Status. The OIC (Officer in Charge) of the relevant unit will be notified by the assigning staff person and the inmate will report to or be escorted to the appropriate Observation Cell.

PROCEDURE

PLACEMENT ON OBSERVATION STATUS

The inmate will be locked in the Observation Cell for a period not to exceed one working day. At the time the inmate is being locked in the cell, the staff person assigning an inmate to Observation Status shall give instructions on care and observation to the unit O.I.C.. The instructions are to be written and include:

1. Reason(s) for placement on Observation;
2. Schedule of Observation;
3. Emergency telephone procedures, if any;
4. Amenities allowed the inmate, i.e., blankets clothing, etc.; and
5. Documentation of notice to Health Services concerning the case.

Testimony did not indicate that the Watch Lieutenant who was present in the prison was ever consulted until the incident was over. Sgt. Wilmes deviated from policy by calling the staff psychologist at her home. He reported that a person, who has never been identified, was concerned that Scott Seelye was depressed and despondent. Wilmes wanted permission to move Seelye to the Observation Cell. Ms. Norma Banks, the psychologist, testified that Wilmes told her that Seelye was depressed and suicidal and talking "crazy" although Wilmes testified that he had not personally observed Seelye.

Ms. Banks offered to come into the prison to examine Seelye but Wilmes protested that an examination could wait until tomorrow. Ms. Banks, relying on Wilmes' judgement approved the move to the Observation Cell and specified that a logged observation was to be made every 15 minutes. Seelye was moved to the Observation Cell at 11 a.m. even though the Watch Lieutenant, Virginia LeVasseur signed an order effective as of 12:15 p.m. officially assigning Seelye. The reason given for the assignment was that Seelye was threatening to commit suicide. There was no testimony that the Lieutenant ever observed Seelye herself or consulted with the Officer in Charge as the regulations specify. The first logged observation of Seelye was not until 1:15. That log is reproduced

below.

OBSERVATION WATCH A-SEG.

| <u>Time</u> | <u>Remarks</u> | <u>Off</u> | <u>Time</u> |
|-------------|-----------------------|------------|-------------|
| 1315 | Sitting on Bunk | | |
| 1330 | " " " | | |
| 1400 | " " " | MBM | |
| 1415 | " " " | MBM | |
| 1430 | Eating Supper | MBM | |
| 1445 | Placed in Padded Cell | MBM | |
| 1545 | Escorted to Hospital | MO | |

Sgt. Wilmes when questioned testified that he moved Seelye to the Observation Cell for two reasons, one, because of the stabbings the previous day, he believed that other inmates on gallery four may have continued the conflict with Seelye over his alleged role and secondly because there was no other place to move him. He also testified that he believed Seelye was on the psychologist's caseload. The Hearing Officers in their deliberations and report did not believe the reasons advanced by Sgt. Wilmes but did not speculate as to what they believed was his real motive.

As the log indicates nothing unusual occurred during Seelye's observation until 2:45 p.m. when Seelye was moved to the Padded Cell. Between 2:30 and 2:45 these events occurred. Officer Robert Kirchoff, Correctional Counselor I, who has been

employed at the prison for fourteen months, began to pass out the food trays. Seelye would have been the first prisoner to be fed because he was in the first cell. The log records Seelye as eating his dinner at 2:30 p.m.

At 2:50 p.m. Kirchoff passed Seelye's cell again. Seelye was communicating to another inmate on an upper gallery. The inmates communicate with each other by yelling when they are locked in their cells. All the officers and inmates who testified said that such yelling was common in the cell hall. Some testified that because of the acoustics the "yelling" was actually just above the volume of normal conversation.

Kirchoff testified he did not recall the nature of the conversation. Seelye testified that he was responding to an inmate directly above him about the reason he was in Observation. Kirchoff asked Seelye to be quiet. Kirchoff testified that he felt that the yelling was disturbing to the watch change ten feet away. He also testified that Seelye was not using abusive language nor had any inmate or member of the watch group complained.

Seelye told the officer to "Suck his Indian dick". The officer testified that he then removed Seelye's food tray because he thought Seelye was going to throw the tray, but he later testified that there was no body language from Seelye that indicated an intention to throw the tray.

Seelye's arm reached out after the tray. Kirchoff does not recall if Seelye's hand was in a fist or not. The officer interpreted the arm as a threatening gesture. Just at that moment Sgts. David and Mark Wilmes emerged from the office next door.

Sgt. Mark Wilmes perceived the scene this way from his incident report:

"Officer Kirchoff was passing supper to inmate Seelye in cell #503 when Seelye became very verbal telling Officer Kirchoff to "suck his dick" and "mother fucker". I also saw inmate Seelye try to hit Officer Kirchoff through the bars. At this time Sgt. Dave Wilmes and I came up to Seelye's cell and told him he was going to be placed in the padded cell. At this time inmate Seelye stepped back to the end of his cell, put his hands up in a fighting gesture, and said, "you mother fuckers will have to take me out!". At this point his cell was opened and Sgt. D. Wilmes, Officer Kirchoff, and myself went in. Seelye had to be physically removed to cell #505."

Sgt. David Wilmes observed Seelye attempt to strike the officer twice in his report:

"On the above date/time I observed inmate Seelye reaching out of his cell #503 and attempt to strike Officer Kirchoff as the officer was passing the evening meal. He (Seelye) called Kirchoff a "cocksucker" and attempted to strike him again. Sgt. Mark Wilmes and myself then proceeded to cell #503 and I informed Seelye that I was moving him to the "padded cell" #505. At this point I ordered Seelye to stick his hands out to be cuffed. He refused, taking a fighting stance, and stating "you will have to take me out motherfuckers". At that point I opened his cell door and went in to cuff him. As I approached him, he hit me on the left side of my head with his right fist. I then grabbed him around his waist and tried to throw him on the bunk to restrain him. At about the time I grabbed him, Sgt. Mark Wilmes and Officer Kirchoff came in to assist in restraining him. At this point, the subject grabbed my hair with both of his hands and started to bite my scalp. The two assisting officers attempted to pull him away. Subject started fighting violently kicking, hitting, and biting.

The incident lasted approximately 30 to 45 seconds when he was finally subdued, handcuffed, and moved to Cell #505.

Scott Seelye testified that he had eaten his dinner and replaced the tray on the bar. The inmate above asked him why he was in observation. As he responded, Kirchoff told him to shut-up. He responded, "Suck my dick". He testified that he never swung at Kirchoff. He says that the Wilmes brothers appeared immediately. Dave Wilmes, he alleges, said, "Get ready, you are going to get it Mr. Seelye.". Then his door was keyed and the three officers entered. He alleged that all three hit him repeatedly and that his head was stomped by Dave Wilmes and Officer Kirchoff.

Reasonable men may always differ so the events until the moment the door was opened may never be accurately recounted. It must be noted, however, that Officer Kirchoff on cross-examination in the Disciplinary Hearing testified that verbal abuse was so common in the cell hall that he did not feel threatened by Seelye's statements to him.

Sgt. David Wilmes testified that Seeley had been yelling to other inmates for several hours and that the incident with Kirchoff was the culmination of an afternoon of irritation. Yet the log of Seeley's activities in the Observation Cell do not mention the yelling at all. If the yelling was such an unusual or irritating occurrence it is strange that it was not noted for later use by the psychologist. Ms. Banks testified that yelling would not have been a sufficient excuse to move an inmate to the Padded Cell.

There was also contradictory testimony as to the policy to be employed in forcibly removing an inmate from his cell. The Policy and Procedure Manual S-3 Security Procedures, pages 6 and 7 Segregation Unit says:

- C. If an inmate refuses to be cuffed for any reason, do not remove him from his cell.
- D. If an inmate is returned to his cell and refuses to have the cuffs removed, leave him cuffed and return thirty minutes later and offer to remove them. If he still refuses, return hourly thereafter and log each offer from the beginning refusal.
- H. Whenever it is necessary to enter a cell to handle an inmate, the Watch Lieutenant or the Segregation Lieutenant will be directly observing.

Dick Craven, Unit Director, however testified that the above regulations apply only to the provision of amenities, although not one word in the surrounding language mentions amenities. He contended that the applicable regulation was S-3 page 16 Forceful Movement of Inmates in Segregation which is produced below:

B. Movement of Inmates

1. All inmates will be cuffed.
2. Cuffs are to be applied and removed through the cell door.
3. Inmates are to go to and return from destination non-stop.
4. Will be escorted one officer per inmate.
5. Two officers on galleries for any movement.
6. Inmates in segregation for assaultive offenses will be escorted in waist chains and cuffs when taken out of the unit, except for visits.

The three officers and Dennis Besaw, the officer who was in

charge of the unit at the time testified that it was and always has been policy and practice of the Segregation Unit for officers to open cells and forcibly remove inmates. The three participant officers also conflict as to whether Seelye was offered an opportunity to be handcuffed.

In the general population where security procedures are more relaxed, this is the policy which applies to removing a man from his cell.

Policy and Procedure Manual C-18 Control Measures/Handling Inmates (Security and Control) Page 3:

PROCEDURE

USE OF RESTRAINTS - When the decision to use restraints is made in moving an inmate, the restraints shall not be removed until the inmate arrives at the destination. Restraints will be used in a progressive manner and to the extent that is necessary to gain control. The attitude of the persons using restraints is illustrated by the statement, "The inmate needing to be restrained is a human. I must control him and do whatever is necessary and no more". The following must be followed when using restraints:

1. A person with the rank of Lieutenant or higher must oversee.
2. Watch Lieutenant and Officer of the Day must be aware of the procedure.
3. Documentation of time, persons involved and person in charge must be accurate and complete.
4. The ranking staff member either ordering or overseeing the restraining action should not involve himself in any physical handling. This should enable him to retain an objective viewpoint.
5. Use of video camera should be made for optimum documentation when possible.

REMOVING A MAN FROM HIS CELL

In the event of a disturbance in a cell, efforts shall be made to quiet the man. If this fails, the Security squad shall be called and the following steps taken for removing the man from his cell:

1. Call the Security Squad and alert them to the situation.
2. Open the cell door and ask the inmate to step out. If he refuses, forcibly remove him. If he resists, he shall be subdued with only the necessary degree of force and then only for as long as it is necessary.

The forceful removal of Scott Seelye raises questions. In the general population and in Segregation an officer with the rank of Lieutenant or higher must oversee the forceful removal of an inmate from his cell. The testimony is clear that no officer of any rank was called to observe the Seelye incident although the officer officially in charge of the Watch, Sgt. Dennis Besaw, was only ten feet away.

In the general population the policy specifies that in the event of a disturbance in a cell the Security Squad should be called to remove a man. All the participant officers in the Seelye incident testified that it would have been too time consuming to call the Security Squad because such moves occur daily in Segregation.

The rules for general population also specify that the ranking staff member ordering or overseeing the restraint of an

inmate not involve himself in the physical handling of the inmate. While that is not specific policy in Segregation it is a wise one and should be adopted. The testimony is uncontradicted that Dave Wilmes, the ranking staff member in the unit, both opened the cell without consultation of others and entered first to facilitate the forcible removal of Scott Seelye.

Finally the regulations suggest that potentially violent incidents be video-taped for optimum documentation. Segregation, the most volatile unit in the prison has no video taping capacity. Nor is there video equipment in the A-Academic Unit.

There is also the question of whether a move was necessary. Officer Kirchoff testified that he did not believe Scott Seelye was out of control at the moment Dave Wilmes arrived to intervene. Sgt. Dave Wilmes believed that Seelye was so out of control that he needed to be removed to the Padded Cell. The Padded Cell was next door to the cell Seelye was in. The Hearing officers questioned the necessity of such a move.

The Padded Cell or Quiet Cell differs from the Observation Cell in that the Padded Cell has no furnishings of any kind. The walls and floor are padded with foam material to prevent any self-destructive activities. It is the one cell that cannot be observed by staff or inmates because the door, normally bars, is covered with a thick metal plate. There is an open space near the top of the door for staff observation.

The Policy and Procedure Manual S-3 page 17 says this about the Padded Cell:

QUIET CELLS

- A. Quiet Cells #505 and #508 are to be used only when all other avenues have been exhausted and the inmate still demonstrates loud and disruptive behavior, or self destructive behavior. The length of time is to be as short as possible. The quiet cell is not to be used for punishment but purely to control and regulate inmate behavior which is disruptive to other inmates.
1. No inmate will be placed in a quiet cell without the authorization of the O.I.C. (Officer in Charge).
 2. Whenever an inmate is placed in a quiet cell, he will be checked every 15 minutes by an officer. All checks on the inmate will be noted on the proper form. That will include the time as well as the signature of the officer.
 3. The Director or his designee must approve detaining an inmate in the quiet cell in excess of 4 hours.
 4. When the inmate is removed from the Quiet Cell, the signed form will be placed in the inmate's file, and a copy will be sent to the Director.

It is clear in this case that there was no adherence to this policy. There was no showing that Seelye's yelling was disruptive to other inmates. No other avenues of control were attempted, the officer in charge was not consulted and the rationale of the move was clearly punitive.

As to the injuries incurred, pictures of Seelye taken after the incident show an extremely bruised inmate although his actual injuries were a broken nose and a 5% collapse of his left lung. The officers admit hitting him several times to subdue him. Dave Wilmes alleged that the reason Seelye was so badly injured

was that all the officers with a combined weight of 700 pounds fell on Seelye as he was being handcuffed. Dave Wilmes suffered bites on his scalp and wore a neck brace for one week. Scott Seelye was hospitalized for four days.

After Seelye was in the Padded Cell at 2:52 the nurse arrived but did not treat him because it is alleged that he was too "excited". The nurse left the unit and did not return until the other inmates created a disturbance demanding that Seelye be taken to the hospital because inmates near the Padded Cell heard Seelye asking for medical attention. The nurse returned to the unit at 3:04 p.m. and Seelye was taken to the Infirmary and later to Saint Paul Ramsey Hospital.

On the way to the hospital Seelye yelled to an inmate who approached him in the hallway that he had been beaten by the officers in Segregation and that he wanted revenge. His words are reputed to be "I want some officers' ass and I want it done tonight". This remark was the basis of Scott Seelye's prosecution for inciting to riot.

The specific charges were disobeying a direct order, resisting placement, verbal abuse, threatening, assault with staff injury and inciting to riot. The maximum penalty could have been an additional two years in Segregation but the Hearing officers thought that the injuries sustained by Seelye should

mitigate further punishment so Seelye was sentenced to only 180 days on all charges and was transferred to the Men's Reformatory at St. Cloud. Seelye was represented by Doug Hall of the Legal Rights Center.

No officers were reprimanded or criminally charged for their actions.

THE CONSPIRACY

At five o'clock on August 17, after Seelye had been taken to the hospital, a number of Indian inmates had a meeting in the yard of the prison. They discussed what was known of the events surrounding the Seelye incident. Many, it is reported, felt that they should do some act to dramatize what they regarded as unfair treatment of Indians at the prison. Their specific allegations were that Indian programs had been cut from the institution budget, such as the AA program for Indians, that Indian Holy men are disrespected, that Indian religious practices are not allowed in their entirety and that those portions allowed are interfered with, that the Pipe Keeper has only limited use of cedar, sage or sweet grass for their ceremonies and that the institution has no sweat lodge that they may use to purify themselves before ceremonies. They further alleged that the Warden has delayed drawing up and implementing an Indian religious program since 1979 and that he is insensitive to Indian concerns. It is believed that the plan to riot was formulated at this time.

A conspiracy to do some act cannot be disputed because almost all non-Indian inmates were absent from the cell block at the time of the riot. Many report that they were warned that some event against the administration would occur at seven o'clock. There is also testimony from the staff that informants warned them that the Indians were going to make some protest at seven.

It is unclear why the administration failed to heed the warnings of the impending disturbance and try some preventive measures. The officers involved testified that some precautionary measures were taken, mainly these appear to be self-help evacuations around seven o'clock by some officers who would normally have been in the cell house. Several officers also removed their valuables for safekeeping. A decision to lock down the cell hall as a means of prevention would have been presented first by the senior officer on duty to the Officer of the Day and up the chain of command to the Warden. Some officers testified that they approached the Senior officer on duty but received no instructions as to their role. Some officers suggested approaching Indian leaders but the final assessment was that no imminent threat to institutional security was presented by the Indian inmates unrest.

SEVEN O'CLOCK P.M. SUNDAY AUGUST 17, 1980

At seven o'clock ten to fifteen Indian inmates ran down the main hallway to the Rotunda area following the noise of a

disturbance from Cell House A. These inmates gathered around the door and apparently attempted to get inside the cell hall to join others inside rioting. They were unsuccessful at entering but they were successful in blocking access to the cell hall long enough to allow those rioting inmates to severely beat the officers inside.

The group of inmates seized at the A hall door were quickly subdued when officers brought out the shotguns and ordered them to lay down and be handcuffed by the B hall door. Ten men were charged with the following crimes for their participation with the group. The maximum sentence for each offense is also listed.

| | | |
|--|---------------------------------|----------------------------------|
| Disobeying a direct order | 90 days segregation maximum | All found guilty |
| Tampering with a security device | 30 days segregation maximum | only one inmate found guilty |
| Aggravated interference with personnel in course of duties | 90-360 days segregation maximum | all found guilty |
| Threatening others | 90 days segregation maximum | all found guilty |
| Disorderly conduct | 90 days segregation maximum | only one inmate found guilty |
| Unlawful assembly | 90 days segregation maximum | all found guilty |
| Inciting to Riot | 180 days | dismissed against all defendants |
| Rioting | 360 days | all found guilty |
| Accessory to hostage taking | 720 days | all found guilty |
| Conspiracy to Riot | 180 days in Segregation | dismissed against all defendants |

The aggregate sentence for each inmate convicted on all Segregation charges was 450 days in Segregation with 90 days suspended for good conduct or incident free behavior. One inmate against whom the charge of physical abuse of an officer was alleged did not receive the good time reduction.

INSIDE A-ACADEMIC CELL HOUSE

The officers who were inside the cell house at the time of the riot report that the actual riot occurred in the following manner. Shortly before seven the officers noted that almost no white or black inmates were in the cell hall, that there was almost no activity around the telephones and that there was a large group of Indian inmates (10-15) around the picnic table in the cell hall. At exactly seven o'clock the group at the picnic table started moving toward the cell hall door leading to the Rotunda. Other inmates who all appeared to be Indian started coming down the stairs from the galleries. The combined group, estimated between 30 and 40 inmates simultaneously attacked the guard at the Sergeant's desk and the officer at the door. The guards were beaten, kicked, and hot water was thrown on one. Makeshift weapons were also used, these included a chair leg with a six inch laundry pin attached, a wall fire extinguisher and numerous clubs fashioned from furniture in the cell hall.

Several of the guards were beaten unconscious, but the most serious injuries appear to have been a fractured nose and possible fractured ribs. Most of the officers suffered superficial scalp lacerations.

Outside the cell hall the inmates trying to get into the unit had been handcuffed and the access to the door cleared. The officers in the Rotunda who had been issued guns moved to the A hall door and fired one shot over the rioting inmates heads. Most of the rioters moved away from the door to the center of the cell hall. One officer concerned about the disappearance of the beaten officers from view entered the cell hall. The officers were being held in the A hall Sergeant's office. The officer issued an order to the rioters to release the officers and return to their cells. As he tried to step into the Sergeant's office the rioters started moving toward the officer and he was ordered out of the area.

Immediately afterward, the rioters capitulated and when ordered to do so again returned to their cells. The wounded officers were rescued and taken to St. Paul Ramsey Hospital for medical attention. No inmates were injured. The unit was secured. The incident lasted approximately five minutes.

THE HEARINGS

Thirty-six inmates were initially charged in this incident. Criminal proceedings were brought against eight persons believed to be participants in the assaults. All others inmates believed to be only active in the riot were charged in prison disciplinary proceedings.

There are two full time hearing officers for the Department

of Corrections but for this incident a third officer was added. All of the hearing officers are career Department of Corrections employees. None of them has any significant legal training. No member of the panel is minority. The hearing office is located on prison property. All of the clerical work of the panel is done by the prison discipline office. The panel members are personal associates of prison officials and guards. All the inmates appeared before the panel in handcuffs and sometimes waist chains. Inmates have understandable difficulty perceiving the panel as impartial. Further, it was the administration position that justice could be served most efficiently by group prosecution of all those involved in the Rotunda and A-hall incidents. All defense attorneys objected to this procedure and the problem threatened to disrupt the hearings until Richard Varco, Special Assistant Attorney General and Harold Hansen, Chief Hearing Officer ably negotiated a compromise that allowed a fair presentation of the State's case while protecting individual due process rights of inmates.

The main problem in the hearings was identification. Strategic areas at the prison are equipped with video cameras that can be activated during a disturbance to record the occurrences. Cell hall A does not have the capacity and the reason it does not has not been advanced by the administration. Identification, consequently depended entirely upon the officers who were attacked.

The identification of the inmates apprehended in the Rotunda

at the cell house door was easily done because those inmates were surrounded in their attempt to enter A-hall. As to the inmates involved in the assault incident there was more confusion. Three of the four guards who were questioned at 7:20 in the Parole Board room stated that the incident happened so fast that they did not know who attacked them. After viewing photographs of suspected inmates, those identified were charged.

The identification process also raises some questions. It became clear during the hearings that the guards who were injured could not possibly have positively identified anyone except their primary attackers. One guard, among the most seriously injured, positively identified two men as among his three primary attackers. Unfortunately, one of the men he identified was not in the prison on the day of the riot and the other man he positively identified was apprehended in the Rotunda group and could not possibly have also been rioting inside the cell hall.

This obviously very sincere man was one of the most active prosecution witnesses. He testified against thirteen inmates. It is fair to say that he did not testify that he saw these inmates engaged in any riotous conduct, his testimony was that he saw the inmates standing around on the flag at the time of the riot. All the inmates except one against whom he testified were convicted. This guard is scheduled to testify against seven other inmates in criminal proceedings. Similar problems are raised by other fleeting identifications.

THE SENTENCES

The sentences imposed were fairly uniform. The men convicted of being participants in the riot received 450 days in Segregation on the following charges:

| | |
|--|----------|
| Disobeying a direct order | 90 days |
| Interference with personnel in course of performing duties | 360 days |
| Threatening others | 90 days |
| Unlawful assembly | 90 days |
| Riot | 360 days |
| Holding hostages | 405 days |

Ninety days of the charge of holding hostages was suspended for 180 days for most defendants on the condition that no new violations occurred while they were in Segregation.

RECOMMENDATIONS

Few work situations can be as stressful as the career of correctional counselor. Violence and verbal abuse are a routine part of the job. In the free world where society permits its guardians to bear arms there are appropriate screening and review mechanisms to insure that the guardians of the peace are psychologically fit to exercise the use of necessary violence and deadly force. For example, the metropolitan police departments require their applicants to be psychologically evaluated by the Minnesota Multi-Phasic Personality Inventory before admittance to the force. There is also a review committee whenever an officer uses a weapon or engages in a questionable act of force.

Correctional officers are armed only with the discretion to recognize or ignore an inmate's act as a violation of institutional rules. There is no appropriate screening safeguard to insure that the persons armed with this discretion are psychologically fit to exercise it. Each institution hires its own personnel. The candidate attends the Correctional Training Academy and upon successful completion enters the prison system. Nowhere in this process is there a psychological screening of candidates to insure that persons with a proclivity for violent, impulsive or anti-social behavior are not drawn to the career of correctional counselor. Nor is there any formal review process for questionable acts of force by a correctional counselor.

The institution in its labor agreement with the union

representing the counselors is permitted to issue verbal reprimands, written reprimands, demotions and suspensions and finally, if warranted by the circumstances, dismiss an officer whose performance consistently falls below acceptable standards.

In the Seelye situation the appropriate rules for placing an inmate in the Observation Cell were not followed; the applicable rules for forcibly removing an inmate from his cell were not used and apparently are never used in Segregation; the applicable rules for placement of an inmate in the Quiet or Padded Cell were bypassed and finally the necessity for the use of force in this situation was questionable and as yet there has been no review of staff behavior by the institution.

Recommendation One

It is recommended that the Department of Corrections begin psychologically screening applicants for positions as correctional counselors to insure that the inmates are protected from the misuse of discretion by the guardians that the state employs.

Recommendation Two

It is suggested that whenever an inmate is injured out of the surveillance of his peers that a committee be convened to review the necessity of the use of force against the inmate.

Recommendation Three

It is never advisable for siblings or married persons to work together in an area where there might be over reaction by one if the other is in physical danger. It is recommended that this practice be changed and that siblings and married persons not be assigned to the same unit at the same time.

The use of video equipment in other parts of the institution has been very effective in identifying participants in violent situations. It is unusual, to say the least, that such equipment is absent in the Segregation Unit, the most volatile area in the prison.

Recommendation Four

It is highly recommended that the Segregation Unit be equipped with video taping equipment as soon as feasible.

As to the identification of inmates involved in violent eruptions there will always be a problem. Usually such incidents occur so swiftly that positive identifications of the acts of all participants is impossible. The problem is compounded when the identifiers are members of the majority racial group and the participants are members of a minority group and they are functioning in situations of stress.

The Indian inmates are a discrete racial group. They are

all housed primarily in the A-Academic Cell Hall. Their primary identification is their "Indianess". During the disciplinary hearings it was very apparent that the guards except for the identifications of their primary assaulters were unable to tell with reasonable certainty which Indian inmates participated in the riot and which Indian inmates did not. This may explain the institution's insistence on group prosecutions.

Recommendation Five

It is recommended that the A-Academic Cell Hall also be equipped with video-tape equipment so that in the event of future incidents justice can be seen to be done.

Violence cannot be condoned as a legitimate expression of grievances. The inmates who injured officers correctly performing their duties should not be excused the consequences of their behavior no matter how legitimate they view their cause. The inmates who were convicted of rioting on August 17 were punished with sentences of over a year in the most punitive part of the prison - the Segregation Unit.

Inmates in Segregation have no incentive for rehabilitative behavior. No inmate in Segregation earns good time. All the personal possessions of these inmates is confiscated and stored until their release. During the confiscation of inmate property after this incident the Indian Holy Pipe was unexplainably broken. The pieces have now disappeared from a locked area accessible only

to staff. An investigation of the disappearance is currently underway by the administration.

It is the responsibility of prison administrators to see that the worst kinds of behavior by inmates and staff are avoided or minimized. That could be done by adherence to the established policies promulgated for fair safe handling of tense situations and a willingness to ameliorate potentially disruptive events.

In this case where everyone in the prison knew that an incident was to occur and did occur at seven o'clock it is inexcusable that no efforts to mediate the Indian grievances was made before persons were injured.

Recommendation Six

It is recommended that the prison administration re-emphasize its policy to talk with leaders of potentially disruptive groups whenever the signals of such situations are observed. Further, that the policy be communicated in writing to all appropriate staff.

The hearing process does not appear impartial despite the constructive influence of Harold Hansen. The hearing office and officers are too closely identified with the prison administration. The evidentiary and procedural questions require more legal training than is currently represented on the panel. There are no minority members of the panel although a significant

percentage of the prison population is composed of minority groups. The possibility is unlikely that there will be minorities on the panel in the near future if the current qualifications for membership are continued. Presently all the panel members are career department employees at the top of their range.

Recommendation Seven

It is recommended that the Department of Corrections begin to use the separate offices of the State Board of Hearing Examiners instead of using long time department employees as examiners in disciplinary hearings.

There are several advantages to using the State Board of Examiners. There are twelve full time attorneys who serve as examiners so that a more informed implementation of the Consent Decree which governs prison discipline hearings could be made. Using the state examiners would eliminate charges of cronyism that can presently be made against the Department of Corrections and finally using the state examiners who otherwise have no connection with the prison would eliminate the appearance of partiality.

Presently the state board is precluded from hearing corrections contested cases by statute.