

LAMONICA MCIVER AND SCHRÖDINGER'S BARAKA

As I noted the other day, Alina Habba rushed to announce the indictment of LaMonica McIver, which names Ras Baraka as Individual-1, at 6:56PM on Tuesday night, an hour before polls closed in the election in which Baraka won the second-most votes. But it took most of a day before the indictment was docketed, meaning most coverage of the indictment relied on Habba's press release. As a result, that coverage didn't point out some of the gaping holes and contradictions in the story AUSA Mark McCarren, which Habba's presser identified as part of a "Special Prosecutions Division," told to get a grand jury to approve the charges (NPR addressed a few of the issues on Wednesday).

Those gaping holes and contradictions surely explain why McIver continues to express confidence she'll be exonerated.

The facts of this case will prove was I was simply doing my job and will expose these proceedings for what they are: a brazen attempt at political intimidation. This indictment is no more justified than the original charges, and is an effort by Trump's administration to dodge accountability for the chaos ICE caused and scare me out of doing the work I was elected to do. But it won't work—I will not be intimidated. The facts are on our side, I'll be entering a plea of not guilty, I'm grateful for the support of my community, and I look forward to my day in court.

The holes in the indictment – about permitting concerns raised by Newark, about GEO Group's ownership of Delaney Hall, about the property lines at the facility, about McIver's completion

of an inspection after she allegedly assaulted several cops – obscure the complexity about who had authority to do what at the facility.

The ways in which DOJ has changed its story about key events will undermine key witnesses, starting with alleged victim Ricky Patel and extending to a guard whose story appears to have changed three times.

And the key disputed facts, about where Mayor Ras Baraka was, when – whom DOJ treats like he is Schrödinger's cat – may blow this entire case out of the water.

The government has told more than six versions of the story about what happened at Delaney Hall on May 9:

- DHS' initial statement
- Alina Habba's initial tweet and early interview comments
- The complaint charging Ras Baraka, sworn out (at uncertain time) by HSI Newark Special Agent in Charge Ricky Patel
- The complaint charging McIver, treating Patel as Victim-1, sworn out by HSI Newark Special Agent Robert Tansey (who presumably reports to Patel)
- The press release from Habba announcing the indictment
- The McIver indictment

In addition, WaPo did a comprehensive analysis of what happened, and Baraka included a detailed timeline in his complaint against Patel and Habba. I've tried to document those competing stories in this table.

Start with several key details that do not

appear in the McIver indictment – and so may not have been shared with the grand jury.

Unlike the complaint Victim-1 Ricky Patel swore out against Ras Baraka, neither the complaint nor the indictment charging LaMonica McIver mention that GEO owns Delaney Hall, the site of the confrontation (see the pink boxes). In the criminal complaint against Baraka, that relationship was a necessary part of claiming that Baraka trespassed on a federal facility, without which DOJ would not and likely does not have jurisdiction.

The Delaney Hall Facility currently operates as a federal immigration facility pursuant to a contract between the GEO Group, Inc., the entity that owns the Delaney Hall Facility, and U.S. Immigration and Customs Enforcement (“ICE”). As a result of this contract, the Delaney Hall Facility has been acquired for the use of the United States and is under the jurisdiction of the United States.

That property relationship underlies several key other aspects of the confrontation that don’t show up in either of the McIver charging documents. First, Newark claims that Delaney Hall is not certified for its current use, over which Newark has actually sued the facility. Once you have even a dispute over the certification of the facility, then the Mayor of Newark has official business at the facility.

The fact that GEO, and not ICE, owns the property goes to whether Baraka was even trespassing at all. In the complaint against Baraka, Patel relied exclusively on the normal restrictions on entry – the chainlink fence, the No Trespassing signs, and the guard – to claim Baraka was trespassing. The problem with that is that at one point, a guard employed by GEO invited Baraka in.

The testimony of the guard (yellow boxes) is

wildly inconsistent, as follows:

- McIver complaint: Baraka was originally told he could not enter but was subsequently admitted because “the guard was under the impression that the Mayor was part of the Congressional delegation”
- McIver indictment: Baraka was originally denied entry when he claimed he was part of the Congressional delegation, but then was let in because the guard was concerned for Baraka’s safety
- Baraka lawsuit: The guard told Baraka he let him in to “calm the crowd”

That inconsistent testimony is important, because according to Baraka, when Patel told him to leave, Baraka told Patel he was invited on to the property, which the government now concedes but which, in real time, Patel disputed. This is, undoubtedly, a big part of the reason why Habba dismissed the complaint against Baraka. Not only is it not clear she had federal jurisdiction over a private facility in Baraka’s city, but when Patel filed the complaint, he at least knew that Baraka claimed to have been invited onto the property by a representative of GEO, and he may well have known that Baraka was right when he charged Baraka.

In other words, Victim-1 in the McIver indictment, Patel, left out key details in his sworn complaint, if not outright lied to a judge when claiming that Baraka was trespassing at all.

And that – the good faith understanding from both Baraka and the members of Congress that Baraka was not trespassing – is important background to the biggest discrepancy between the claims Baraka has made, what WaPo shows, and what Special Prosecutions Division AUSA Mark McCarren appears to have told the grand jury.

In the McIver charging documents (which include no timeline), Patel ordered Baraka to leave, he told him to place his hands behind his back, the members of Congress came out and started to make a stink, Baraka somehow exited out the gate, which is where the key confrontation took place.

Even in that story, there are two key discrepancies. The McIver charging documents call the land outside the gate, vaguely, “the unsecured area of the facility” or “just outside the security gate for the facility.” That is, the McIver documents imply that GEO (though they don’t mention GEO) owns the property both inside and immediately outside the gate. But Baraka calls that area, “public Newark property.” DOJ says GEO owns the land where the confrontation took place. The Mayor of Newark says it’s the city’s public land.

Perhaps the craziest discrepancy – and the reason I’m treating this as Schrödinger’s Baraka – is the description of how Baraka came to leave (green text).

- Baraka complaint: He never left!
- McIver complaint: “the Mayor was then moved outside the gate”
- Habba presser: “the Mayor was escorted outside the secured gate” (in context, suggesting HSI did it)
- McIver indictment: he “was escorted by his security detail”

Both Baraka's lawsuit and the WaPo describe something totally different: he walked out, "arm-in-arm" with Congresswoman Bonnie Watson Coleman (Baraka's lawsuit mentions that first he retrieved her phone from one of her staffers), by all accounts a successful effort by members of Congress to deescalate the situation.

In none of these scenarios was Baraka moved outside the gate by HSI. He left, whether arm-in-arm with Watson Coleman or escorted by his detail, of his own accord.

And then he was arrested.

He was ordered to leave, he left (even though he believed he had been invited by the property owner), and then he was arrested for trespassing.

Those discrepancies would be bad enough. But there's a far bigger one. As the McIver charging documents tell it, the attempted arrest, Baraka's departure, and then the successful arrest were one continuous event: Ricky Patel orders Ras Baraka to leave, attempts to arrest him, is thwarted by McIver, then proceeds outside the gate immediately to conclude the arrest. The effort by members of Congress to deescalate is instead portrayed as the beginning of an effort to thwart the arrest.

WaPo (and Baraka's lawsuit) say it happened in two phases. First HSI ordered Baraka to leave, the members came out from the GEO waiting room, attempted to de-escalate, he left, then the members returned inside only to hear HSI premeditating a plan to arrest him even though he had already left the facility, after which they re-joined Baraka, this time in that area that DOJ claims is the unsecured property of GEO (only they don't tell you it is GEO) and that the Mayor of Newark claims is public property.

For nearly 45 minutes, Baraka remained just inside the secured area, occasionally chatting with members of his security detail, according to time-stamped videos. Then, at around 2:33

p.m., Homeland Security agents exited the building and confronted Baraka. In snippets of the conversation captured in video, agents told Baraka he had to leave because he was not a member of Congress. The three members of Congress joined the discussion as it grew tense.

Minutes later, video shows, an agent took a step toward Baraka, and Watson Coleman can be heard urging calm.

Referencing that moment, the Justice Department's complaint said a Homeland Security agent ordered the mayor to "put his hands behind his back and displayed his handcuffs."

McIver grew animated, calling the agent's intervention "unnecessary" and "ugly." One of the agents can be heard in videos saying: "All right, then. Walk out."

At 2:39 p.m., within moments of that remark, and six minutes after agents first confronted Baraka, he turned and walked away, arm-in-arm with Watson Coleman. The guard reopened the gate, and Baraka exited to an area in front of the facility, recessed from the sidewalk.

With concerns about Baraka's presence seemingly resolved, the three House members returned to the building for a tour, according to interviews with congressional staffers. The mayor remained outside the gate, speaking with reporters and protesters. Inside the building, congressional staffers said, lawmakers saw agents huddled and overheard them discussing plans to arrest the mayor.

Menendez then quickly exited the building and approached the gate, videos show. He spoke to Baraka through the chain-link fence, warning that agents

■ were going to arrest him.

According to Baraka's timeline, five minutes elapsed between the time he left, HSI plotted his arrest, and then everyone came out and had that confrontation. And the members of Congress knew (this detail doesn't make any DOJ documents and it's likely they don't have testimony from any of them) that HSI planned Baraka's arrest *even though he had already left*. Or at least left the secured property, whatever the property status of the land outside the gate.

Here I am 1,700 words into this post, and I haven't even gotten to several other key discrepancies in the documents.

The McIver charging documents mention that McIver was at Delaney Hall "allegedly to conduct a congressional oversight investigation," but they don't provide much detail, aside from Patel's comments distinguishing Baraka from the members, about the legal protection for such things. They certainly don't mention how long DHS kept the members waiting, which Baraka alleges (and WaPo backs) was over an hour. They claim that the Democrats planned a protest, but Baraka says that, instead, McIver invited Baraka for a press conference after the members toured the facility, which would have happened just before 2PM, over 40 minutes before the alleged assaults, if DHS hadn't kept the members waiting.

That is, the McIver charging documents totally obscure her right to be on the premises.

Crazier still, even though both the complaint and indictment claim that McIver was "allegedly" there to conduct an inspection, neither explains that she did, in fact, conduct that inspection, nor do they explain that she did so – she was allowed back inside Delaney Hall – after she allegedly assaulted two different officers outside it.

This is how DOJ describes the second alleged assault: "McIVER pushed past V-2 while using

each of her forearms to forcibly strike V-2 as she returned inside the secured area of Delaney Hall." But then the story just ends. It appears that Special Prosecutions Division AUSA Mark McCarren didn't bother to tell the grand jury that she didn't just *allegedly* show up for an inspection, she did *in fact* conduct that inspection, with the victims' permission, after she allegedly assaulted them.

Maybe I'm skeptical of cops who lie, but if I were in the jury, I'd acquit on all charges in less time than DHS left the members of Congress waiting that day.

Meanwhile, there's unrest in Delaney Hall because – detainees say – they're getting fed shitty food at irregular hours, precisely the kind of problem that oversight from Congress and Newark might have avoided.

Francisco Castillo, a Dominican immigrant who has been held at Delaney Hall since last week, said in a phone interview from the detention center on Tuesday that the facility was so overcrowded when he arrived that some detainees had to sleep on the floor. He said on Tuesday that the crowding issue had been recently resolved.

But he said detainees were being served dismal meals at irregular hours, an issue that was particularly affecting detainees who are diabetic and need to eat at regular times to control their blood sugar levels. He said detainees were often served small cartons of expired milk for breakfast. Dinners were sometimes not served until around 11 p.m., he said.

The living conditions grew so bad, he said, that a group of about 30 detainees had begun drafting a petition detailing the conditions that they could get to the public through their relatives and lawyers.

"Every day is a disaster with the food here," Mr. Castillo, 36, who was detained by ICE at an immigration courthouse in New York City on June 4, said in Spanish.

At about 4:30 p.m. on Thursday, a woman who lives in Elizabeth, N.J., said she got a call from her partner, who has been detained at Delaney Hall since early last month. He was crying, she said, and described rising tension within the facility linked to frustration over food.

To her great credit, McIver remains on the case, issuing the following statement about the rising unrest at the facility.

I am carefully monitoring the situation unfolding at Delaney Hall, and am in contact with local and state law enforcement and officials. I have serious concerns about the reports of abusive circumstances at the facility. Even now, as we are hearing reports from news organizations and advocates on the ground about a lack of food and basic rights for those inside, the administration appears to be stonewalling efforts to learn the truth. My office has reached out to ICE for answers. ICE has not yet provided them.

This case is dogshit, and it looks likely that Mark McCarren only succeeded in getting his indictment by keeping key details from the grand jury. But it may not even survive to trial, because when laid out side by side, there's far more evidence of DHS lying to judges than there is of crimes by Democrats trying to fulfill their jobs as Mayor and Members of Congress.

Update: This was just beginning to be reported when I first posted this post. But four detainees at Delaney Hall escaped through an

external *drywall* wall.