

1 He goes up to the prison every 1176  
2 day just to beat prisoners and stuff like this.  
3 This does not happen. I want to make this as  
4 clear as I possibly can and it's totally wrong  
5 and to go along with this brutality thing, the  
6 speaker this morning mentioned the atrocities  
7 that were committed to inmates upon the resecuring  
8 of the prison.  
9

10 Well, I would have liked to have him  
11 be out there in the corner of the yard that  
12 morning treating officers and these civilians  
13 that were brought over there. Guys covered with  
14 blood from the top of their head to their feet.  
15 Guys covered--guys with their jaws smashed,  
16 broken arms, dislocated shoulders, broken hands,  
17 smashed fists.

18 One officer had his ear literally  
19 ripped off the side of this head. If this isn't  
20 brutality, what is it?

21 That's all I got to say.

22 MR. McKAY: Thank you, Mr. Johnson,  
23 for being with us.

24 (The witness was excused.)

25 MR. LIMAN: Mr. Kunstler.

W I L L I A M K U N S T L E R, called as a

1 witness, being first duly sworn by 1177

2 Mr. McKay, was examined and testified as

3 follows:

4 EXAMINATION BY MR. LIMAN:

5 Q State your full name, for the record.

6 A My name is William M. Kunstler.

7 Q And you are an attorney and you practice in  
8 your own city and throughout the country?

9 A I do.

10 Q When did you arrive at Attica in September?

11 A I arrived at Attica at about 10:00 or 10:30  
12 on the night of Friday, September 10, 1971.

13 Q At whose request did you go to Attica?

14 A I had received a message from my office in  
15 New York, I was in West Palm Beach at the time doing  
16 the pretrial work in a case called State versus  
17 Chaney and I was informed that I had been requested as  
18 an observer by the inmates at Attica Correctional  
19 Facility.

20 Q When you arrived at Attica on Friday, were  
21 you either shown or told about the initial five  
22 demands and then the 15 practical demands?

23 A When I arrived in the stewards' room, I  
24 guess about 10:30 that night, I was handed by Reverend  
25 Wyatt T. Walker a Xerox set of demands. I believe

1 there were 15 on one page and five on the 1178  
2 other.

3 Q After studying them and talking to the  
4 other observers, did you reach a conclusion as to  
5 what the key issue would be in this whole matter?  
6

7 A Well, I was asked by the people in the  
8 room. There were a great many, some of whom I knew,  
9 some of whom I didn't, what I thought would be the  
10 crucial issue and I said I thought that amnesty  
11 would be the crucial issue.

12 Q You entered the yard later that evening?

13 A Yes, I'd say about an hour later, 11:30,  
14 a whole group of us were escorted to the yard.

15 Q And your purpose in going to the yard was  
16 what?

17 A Well, prior to going there, I had been  
18 asked to make the opening statement for the observers  
19 or negotiators and I was instructed to do two things.

20 One was to ask what the final demands were  
21 so that we could present them.

22 And, secondly, to get their advise on how  
23 they wanted those demands effectuated.

24 Q Would you say you were instructed to do this,  
25 was this by the observers committee?

A By the observers committee.

---

1 Q Did you, in fact, make that opening 1179  
2 address to the inmates?  
3

4 A I did. There came a period when we all  
5 were introduced and then after that, I made the  
6 statement that I've told to you.

7 Q Did you then proceed to listen to the inmates  
8 as to what their final demands really were?

9 A Right. We sat at this table at the end of  
10 the yard, which was brightly lit and first I think the  
11 thing that was done is an inmate read off a statement  
12 of demands and there were noises of approval from  
13 the large group and then we would write that doen and  
14 check it as a demand which was a demand.

15 I remember of all that were read, only one  
16 seemed to be turned down and that was one for the  
17 extraterritorial transportation to a non-imperialist  
18 country and that did not seem to be the majority view.

19 Q You were making terms as to what demand  
20 had the support of the inmates by the voice vote?

21 A Yes. But there was very little difficulty  
22 in that.

23 Q The only demand that seemed to lack support  
24 of any proportion was the demand for transportation  
25 out of the country?

A Yes. But I might add that there were a few

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32  
1 inmates who came up to the microphone.

1180

2  
3 Everyone was permitted to come up that indicated  
4 that he wanted to and there were some very specialized  
5 demands, I can't remember exactly what they were,  
6 which didn't seem to incur any support whatsoever.

7 Q In any event, when the list was prepared the  
8 following day to negotiate with Commissioner Oswald,  
9 you observed that the demand for transportation out  
10 of the country appeared on it, in any event?

11 A Well, I don't think it was on the final  
12 demand.

13 Q Not on the ones he agreed to but on the  
14 check list of demands that the observers compiled?

15 A Yes, it may have been. You showed me that  
16 in executive session and I agreed that it may have been,  
17 but it was not one that any of the observers believed  
18 was one that the inmates wanted or at least the majority  
19 of the inmates, so it wasn't really presented to  
20 Commissioner Oswald.

21 Q Amnesty was one of the demands which was  
22 voted on that first evening, Friday night?

23 A Yes. There was no question about Amnesty.

24 Q And there was no question in your mind that  
25 this was a demand that had the support of the inmates?

A None whatsoever.

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2 the inmates as to how they wanted you to present these  
3 demands?

4 A No. By the time we got to 5:00 a.m. in the  
5 morning, a time which was caused by the fact there  
6 was a scare in the middle of the presentation of  
7 demands, the lights went out and the observers were  
8 placed with their backs to a wall with inmates in front  
9 of them to protect them.

10 I didn't know what was happening, but everyone  
11 was quite upset in the yard. And that took an hour  
12 or so when the lights went back on, we continued the  
13 listening to the demands.

14 We got out at 5:00 a.m. and we had never asked  
15 them or sought the answer to the effectuation.

16 Q Did you also become the attorney for the  
17 inmates?

18 A I did. Very shortly after I came into the  
19 yard, someone proposed that I be requested to act as  
20 their lawyer. And then it was put to me and I agreed  
21 to do so and from that point on I regarded myself as  
22 an attorney for the 1500 inmates.

23 Q Having accepted that role, what did you  
24 regard your function to be with respect to these demands  
25 that you had compiled?

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1           A     I guess it was just an ordinary           1182  
2 lawyer's duty to do the best that I could to obtain  
3 for them what they wished in their demands.

4           Q     Did other observers have different views  
5 of their functions?

6           A     Yes, there seemed to be essentially three  
7 groups in the observers committee. It was much too  
8 large a group, to start with.

9                     I noted on the sheet that Wyatt Walker gave  
10 me that the inmates had requested only ten or 12.  
11 But then there were others who seemed to me to be  
12 either people who had dropped in with some interest,  
13 like two young lawyers from Washington, certain  
14 Assemblymen and State Senators and then there was  
15 another group which I understood had been requested  
16 by the Governor and had come up at his request.

17                     In fact, I heard that some had been flown  
18 up by the Governor. That included, I think, Reverend  
19 Walker, Alfredo Madjeus, I think Congressman Badillo  
20 was in that list, but I'm not sure. But there was  
21 another group, a very definite group.

22           Q     Did this create tension among the observers  
23 group, having these disparate factions?

24           A     In the beginning, yes. I think the tension  
25 was because no one really knew what their functions

1 were and what the group was supposed to do, 1183  
2 but then other tensions developed as we were going  
3 along with some people being rather nebulous in  
4 their relationship. Some of the Assemblymen and  
5 Senators, going back and forth, speaking to someone,  
6 we didn't know to whom and then returning to us, as  
7 if they were sort of gadflies between the committee  
8 possibly and the Commissioner or the Superintendent.

9 And then there were others who seemed to  
10 me to be there only temporarily, who left rather  
11 rapidly.

12 There was a man from Rochester, I think  
13 his name was David Anderson, that came and went.  
14 I don't even remember seeing him, but apparently he  
15 was there.

16 Reverend Walker came and went and we suffered  
17 a certain attrition after a while, but there definitely  
18 were tensions but in the end I think there was a great  
19 unanimity among the observers committee as to what  
20 was happening and what we hoped would not happen.

21 Q On Saturday a group of three of the observers,  
22 consisting of Mr. Tepper, Clarence Jones and Tom  
23 Wicker procured a letter from District Attorney James  
24 and did they show that letter to you?

25 A Yes. We had agreed when we came out of the

1 yard at 5:00 a.m., I think on Saturday 1184  
2 morning, that we would send a committee of three to  
3 Louis James, who is the District Attorney of Wyoming  
4 County and to see what we could do about the amnesty  
5 issue.

6 And they came back when we all came in  
7 about 1:00 o'clock that afternoon, and they had a  
8 letter about which they were quite exuberant.

9 Q I should say, Mr. Kunstler, I am going over  
10 only the highlights with you, not only because you  
11 have talked with us in executive session but because  
12 I think you are now the fifth observer who has testified  
13 and so you will have the opportunity to make a statement  
14 at the end if we have not covered all of the salient  
15 points, although I think we will.

16 A Thank you, Mr. Liman.

17 Q What was your reaction to this letter when  
18 it came back?

19 A I was one of the few, maybe even the only  
20 one initially who was against showing this letter or  
21 divulging its contents to the inmates.

22 Q Why didn't you want to have that letter read  
23 to the inmates or shown to the inmates?

24 A Well, the other observers or some of them  
25 thought that the letter indicated there would be no

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1 prosecutions for conspiracy and that there  
2 would essentially be a sort of due process and fair-  
3 play standard met.

4 I think the letter, which was a good letter,  
5 but I thought the letter said nothing more or less  
6 than any District Attorney should say under the cir-  
7 cumstances and I thought that if we told the inmates  
8 about the letter and gave it our blessing, it would  
9 legitimatize sometimes later prosecutions against  
10 them because the observers committee had passed on it  
11 and submitted it themselves and make them appear fair  
12 even if they were not and it would mislead the inmates  
13 that they were getting something which was, in fact,  
14 only a recasting of what the normal obligations,  
15 unfortunately, not lived up to in many instances, of a  
16 prosecutor and for that reason I did not want it shown  
17 or discussed with them, but I agreed that we would  
18 show it to them or read it to them without any comment  
19 passed upon it by the observers.

20 Q At this time, what was your own conception of  
21 what would happen if an agreement was not reached  
22 between the State and the inmates?

23 A I thought a lot of people were going to  
24 die.  
25

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1 Q That was your state of mind throughout  
2 these negotiations, I take it?

3 A And I think it was essentially the state, the  
4 growing state of mind of the committee, that led to the  
5 request for the Governor to come.

6 Q Would you describe for us the way in which the  
7 negotiations with Mr. Oswald were conducted which led  
8 to the 28 demands?

9 A Well, after Tony Fitch, one of the young lawyers,  
10 had typed up all our recollections of the demands and  
11 we had all looked at them, the Commissioner came in and  
12 we went over them with him and he rejected, I remember,  
13 the superintendent's dismissal, and he rejected personal  
14 injury amnesty but he accepted property damage amnesty.  
15 And after he had gone through, adding his qualifying  
16 words and there were many qualifying words to the demands.  
17 For example, one said a minimum wage and he added the  
18 phrase if the Legislature appropriates the necessary  
19 funds and so on.

20 After he had done that it was retyped on 8 x 11  
21 paper. I think it made three or four pages and then we  
22 had him sign it and I don't know if any of our people  
23 signed it or not.

24 Q Was Mr. Oswald alone in these negotiations?

25 A Yes. We never dealt with anyone but the

1 Commissioner except for those few minutes with 1187

2 Bobby Douglass and Norman Hurd.

3 Q Were you the principal spokesman for the in-  
4 mates in these discussions with him?

5 A I am not sure I was in fact but I regarded my-  
6 self as their attorney. I sat next to the Commissioner  
7 during the discussions, and watched him "X" out and  
8 made my own corrections on my own sheet as we discussed  
9 it.

10 Q Did you press as hard as you could to get the  
11 demands that the inmates wanted?

12 A Yes, I think like all the other negotiators,  
13 we tried to get as many accepted as possible.

14 Q Were you in favor of the inmates accepting  
15 these 28 demands as a solution to this situation?

16 A I personally was, but I wasn't going to take  
17 the position with them, as I did not, that they should  
18 have a recommendation from me as to what they should do.  
19 I felt that they would make the final decision, but I  
20 must say personally I felt, because of the alternatives,  
21 that the demands or the problems should be accepted.

22 Q How did you feel that this large inmate body  
23 was going to make this ultimate decision?

24 A I didn't know but I had been highly impressed  
25 by the inmates and I have used the term Athenian democracy

1 many times in the past, which probably is the  
2 best fitted. I was highly impressed with their or-  
3 ganization. I was highly impressed with the leader-  
4 ship and I thought that it would be exhibited to the  
5 constituency in the same manner as the original ones  
6 were, a vote would be taken and we would be told what  
7 to do after the vote was taken.

8  
9 Q What did you base your interpretation on that  
10 this was an Athenian democracy?

11 A On the first night I noticed, one, that every  
12 person that wished to speak could get the microphone.  
13 I also noticed that the security line was composed of  
14 black and white and Puerto Rican and they were arm in  
15 arm. And I also saw the leadership was mixed racially.  
16 And from my own understanding of prison life and the  
17 little experience I have had in the past, I know this  
18 is difficult to attain in an institution, it is de-  
19 liberately discouraged that there were this kind of unity  
20 and I felt from the first flight that things were in hand  
21 and that a vote could have been taken, as a union mem-  
22 bership vote was taken on any strike issue.

23 Q Did you understand inmates were not free to  
24 leave the yard if they dissented from the decision of  
25 the group?

A No, I don't know if that is so, but I had no

1 knowledge of anything like that at all.

1189

2 Q Did you have any knowledge of a pass system for  
3 inmates to exit through the doors of the yard?

4 A No, I had no knowledge if that existed.

5 Q You went into the yard on Saturday and before  
6 you went in, Mr. Seale arrived? Am I correct?

7 A That is correct. Just before we went in,  
8 Bobby Seale arrived. I had called him the night before  
9 because the observers committee list of the inmates re-  
10 quested a black Panther and I called Panther headquarters  
11 in Oakland and asked that either Bobby Seale or Huey  
12 Newton come to the institution.

13 Q Did you speak to Mr. Seale before he went in  
14 the yard?

15 A I think we all met with him in the steward's  
16 room.

17 Q Did you try to persuade him to do something?

18 A I handed him the list of proposals. I told  
19 him exactly what I was later to tell the inmates, I  
20 thought that was the best we could get and I asked him if  
21 he was prepared to put his own word behind these with  
22 the inmates. He read them. He said that he could make  
23 no decision on them until he had consulted the hierarchy  
24 of the Black Panther Party.

25 Q Were there any conditions which the observers

1 attached to Mr. Seale going into the yard with  
2 them that night?

1190

3 A I don't know if they were conditions, but  
4 some observers asked that he merely take a neutral posi-  
5 tion if he wasn't prepared to endorse the proposals and  
6 Bobby essentially agreed to that.

7 Q That he would not knock the proposals?

8 A He would not knock the proposals. On the other  
9 hand, he wouldn't say that he supported them until he had  
10 more time to read them and had passed them through his  
11 organization.

12 Q By the time you went into the yard that night,  
13 you had learned of the death of Officer Quinn?

14 A I learned that from Commissioner Oswald.

15 Q Did Commissioner Oswald or anybody else de-  
16 scribe for you the circumstances of his death?

17 A I think the Commissioner told me and I also  
18 heard it from other circumstances that he had been  
19 thrown from a second story window and suffered some sort  
20 of a skull fracture.

21 I did not know then that there was no window  
22 wider than six inches essentially at Attica.

23 Q Nobody gave you any other explanation of this  
24 event which apparently was published and put over the  
25 radio?

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1  
2 A No, none whatsoever and I believe that 119.  
3 that was also the story that the inmates had heard over  
4 radio and television.

5 Q Even after you learned of Officer Quinn's  
6 death and before you went into the yard, am I correct that  
7 it was the sense of the observers committee that the 28  
8 demands should be accepted?

9 A Yes. Even though I personally felt and I am  
10 sure many others did, that the death of Officer Quinn and  
11 the existence of the felony murder rule in New York State  
12 and the fact that prison personnel who are killed may  
13 result in the death penalty for those convicted of that  
14 crime could really harden the amnesty issue.

15 Q And would it be fair to say that you were in  
16 favor of the 28 proposals being accepted because you  
17 feared the conditions in terms of a State Police assault  
18 after a rejection?

19 A The alternatives were so awesome to contemplate  
20 that I think every negotiator and certainly myself  
21 felt we could not subject them to that kind of an alter-  
22 native and we hoped they would accept those proposals.

23 Q We have heard from a number of the observers  
24 that Bobby Seale went into the yard, made a short speech  
25 and then he left. Did you leave with him initially when  
he walked out of the yard?

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1           A     I left with him. A small group of us  
2 walked out. I think Tom Wicker was in that group with  
3 myself and with Bobby. I went with him to his car  
4 which was outside and then I came back into D-Yard. I  
5 might add, Mr. Liman, that we had an understanding,  
6 Bobby and I, that he would call me at 4 a.m., the next  
7 morning with whatever the central committee had decided  
8 to do about those 28 proposals.

9           Q     When you returned to the yard, were you told  
10 that Clarence Jones had read the 28 demands?

11          A     I was told and I also sensed when I walked in  
12 that there was something very much amiss in the yard.

13          Q     What did you sense?

14          A     I sensed that there was a great deal of ten-  
15 sion on the part of the men. I was told by Louis Steele,  
16 I believe, that he had read the proposals and they had  
17 been greeted with a lot of coldness and I don't know  
18 whether I saw an inmate tear up the proposals or whether  
19 I heard they were torn up, but that the inmates were  
20 incensed that one and two demands, that is amnesty and the  
21 removal of the superintendent, had not been accepted by  
22 Commissioner Oswald.

23          Q     Did you then speak to the inmates?

24          A     Someone yelled out my name and said what did I  
25 think of the proposals and I started to walk toward the

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1 bullhorn and I passed a man I've always identi- 1193  
2 fied as Tom Wicker, but since he was not there, it  
3 must have been Louis Steel or someone else who said  
4 to me, tell them the truth, Bill.

5 I must say as I told you in executive session,  
6 I had all sorts of quandries as to what to say because  
7 the mood was so deep and intense and all of my white,  
8 middle class fears and images about prisoners had come  
9 to the fore and I guess I was going to say that they  
10 were right in tearing them up, but when I got to the  
11 microphone, I said pretty much what I have said to you  
12 before, that I thought that they were the best they could  
13 get, that if they didn't accept them, people were going  
14 to die, but that the decision was their decision to  
15 make.

16 Q Mr. Kunstler, when you said your white middle  
17 class images and prejudices, were you referring to the  
18 fact that you were fearful that if you said the wrong  
19 things, the inmates might set upon you?

20 A I was fearful and I guess it was a very good  
21 lesson to me to learn because I found out that the stereo-  
22 types were all wrong and that the inmates were dignified  
23 and worthy men who were fighting for their very lives  
24 and I guess I was just too white and too middle class  
25 to understand that.

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1 Q What kind of reaction did your speech 1194  
2 get?

3 A The tension ebbed appreciably and I knew we  
4 were over a hurdle. I felt that and I think many of  
5 the other observers did too that were left in there and  
6 then we left on a positive note that we would go out and  
7 continue to work for the effectuation of those two de-  
8 mands in one way or another.

9 We were told to continue the negotiation,  
10 that they would remain there and not harm the hostages as  
11 long as they were left alone and negotiations continued.

12 Q Your assignment was to try to improve the deal?

13 A We went out. We didn't know what we were  
14 going to do. We certainly were going to talk to some-  
15 one. We didn't think of the Governor at that moment, at  
16 least I didn't, we were certainly going to start to talk  
17 to Commissioner Oswald and start to press for those  
18 two apparently non-negotiable demands.

19 Q When you say non-negotiable, non-negotiable on  
20 whose side?

21 A Apparently at that point, although it changed  
22 later, the inmates were very firm about those two de-  
23 mands. At least we received no evidence to the con-  
24 trary.

25 Q When you spoke to the inmates in the yard, you

1 mentioned that Officer Quinn had died.

1195

2 A That's correct. And I got the feeling, Mr.  
3 Liman, that they hadn't heard that before because there  
4 was a sort of a loud gasp and I thought I was the first  
5 one to tell them that.

6 Q Why did you feel it necessary to tell them  
7 that, Mr. Kunstler?

8 A Because I explained to them that I understood  
9 that many of the inmates were insisting on amnesty be-  
10 cause they were afraid of criminal prosecution, very  
11 similar to criminal prosecution that had come out of  
12 other rebellions, Auburn, for example. And also that  
13 they might also be worried about the felony murder rule  
14 and the death penalty and then I said I can understand  
15 that because, as you know, Officer Quinn has died.

16 Then I heard that gasp. And then I suddenly  
17 realized that perhaps they didn't know that but that,  
18 of course, made the issue even stronger with them, I'm  
19 sure.

20 Q Did you feel that because you had accepted this  
21 role as attorney for a large group of people, that you  
22 had to report that fact?

23 A Yes, but I really didn't think I was telling any-  
24 thing new. I think that I found out that perhaps I was.  
25 But I thought it was honest to tell them that and I did

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1 tell them that, I thought as a lawyer it would be 1196  
2 unfair if they were to operate on the amnesty issue with-  
3 out knowing all of the facts but I really didn't believe  
4 I was the first to tell them until I heard that gasp.

5 Q Was there any discussion with the inmates  
6 about holding private negotiations as opposed to these  
7 public discussions over the loud speaker system?

8 A No. I didn't hear any. Most of the things I  
9 heard were that the constituency had to be consulted  
10 and things could not be done which would leave the con-  
11 stituency out of the picture. And that everything had to  
12 be more or less cleared with the constituency.

13 Q I think in fact you told us in executive  
14 session that the fear of the constituency problem really  
15 made it impossible for the inmates to leave the yard  
16 to negotiate privately?

17 A Yes. There was some talk, of course, by the  
18 Commissioner and I think others, that it would be good  
19 if they came to a neutral ground. Some members of the  
20 inmate negotiating committee, but that was vetoed on  
21 the ground that that would be taking them from the con-  
22 stituency and that that would not be politically accept-  
23 able.

24 Q You compared this to a labor negotiation in  
25 which generally there is a steering committee and union

1 representatives who negotiate in some hotel 1197  
2 room when the eleventh hour is reached. Did you think  
3 that this type of negotiation being conducted out in the  
4 open before television cameras and over loud speakers  
5 could produce an acceptable result?

6 A Not as good as a labor union negotiation, which  
7 is done exactly as you stated but these were not labor  
8 union members. These were desperate men composed of  
9 many factions, many racial strains and with a great deal  
10 of tension hanging over them that usually a union doesn't  
11 have. And therefore, I felt though it might be more  
12 expedient one way than another, I thought they had to  
13 make that decision, not some white middle class lawyer or  
14 any group of negotiators and secondly, I think they  
15 knew the tensions and the strains far better than I did  
16 and that was their decision, even though it might be as  
17 I will be frank to admit, a little more cumbersome to  
18 work that way, I came to the conclusion that is the way  
19 it had to be.

20 Q You did not hear from Mr. Seale at 4 a.m. that  
21 day, am I correct?

22 A No, I thought over that, after reading my tes-  
23 timony before you. I think I did receive a call from  
24 Bobby or someone else in the middle of the night saying  
25 that instead of giving me a message at 4 a.m., that he

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1 would meet me in front of the prison on Sunday

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2 morning.

3 Q What happened Sunday morning?

4 A I went to the prison early, 9 a.m., I guess,  
5 and Bobby was sitting in the car with several other  
6 people. I met with him and he said that the central  
7 committee had voted only to tell the prisoners they would  
8 support a demand for the extra-territorial emigration  
9 to a non-imperialistic country and he gave me a state-  
10 ment as to that effect.

11 That was not one of the demands at that time  
12 by the prisoners but that is the statement I got and I  
13 told him that I didn't think he would be admitted to  
14 the prison if that was what he was going to say, that the  
15 administration really wanted him to endorse the proposals  
16 and he said that he could not bring himself to do that  
17 because the central committee had not authorized him to  
18 do that and after that he left.

19 I took the statement in with me.

20 Q Did you ever read that statement to the inmates?

21 A I don't remember. I don't think so. I think  
22 I told the inmates the gist of that statement. It may  
23 have been that I read it or that someone else read it but  
24 I just can't recall.

25 Q You say that the demand for extra-territorial

1 asylum was not a demand that had the support of  
2 most inmates. Did it still linger around in the  
3 rhetoric of some throughout the proceedings?

4 A It did. There was a group, I estimated a  
5 group of some several hundred people who were deeply in-  
6 terested in that type of asylum and people kept talking  
7 to me about it whenever there was a free moment. But  
8 it was not the demand of the majority and there was a  
9 serious discussion about it on Friday night and it was  
10 in essence voted down.

11 Q Were there any members of the spokesmen group or  
12 leadership group, however characterized, who were in the  
13 group that wanted the extra-territorial asylum?

14 A Yes. There were several.

15 Q On Sunday after you saw Mr. Seale, did the  
16 observers committee meet to decide what to do about the  
17 impasse that was confronting you?

18 A Yes, we met Sunday morning and by this time our  
19 numbers were depleted. I guess 10 or 12 had gone. We  
20 had a very emotional meeting in which I thought the com-  
21 mittee was finally coming together on several levels and  
22 the only thing we could think of to prevent a holocaust  
23 because we saw the buildup, we watched the faces on the  
24 roopers in the yard, we heard the remarks, we heard them  
25 and saw them opening and closing their breeches of their

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1 rifles as we passed by.

1200

2 Q What kind of remarks are you talking about?

3 A I heard several remarks that troopers would  
4 say to each other as I passed, such as, "There goes the  
5 nigger lover," and similar type remarks.

6 Q You were in particular the butt of remarks, I  
7 take it?

8 A I don't know if in particular, but, you know,  
9 the long hair makes me easily recognizable and I think  
10 that maybe that is one part of it. But people knew who I  
11 was and I heard the comments and you could sense it.

12 You didn't even have to have acute hearing to  
13 understand what they were thinking as you passed by.  
14 And we all felt the same tension building up. We saw  
15 searchlights being brought in that morning and we heard  
16 about gas. In fact there had been a slight gas attack  
17 on Saturday when through accidental means or something  
18 like that, perhaps, some gas had been released and came  
19 into the steward's room and we knew things were very tense  
20 in the trooper's minds and therefore, we reached the  
21 decision that we should call for the Governor to at  
22 least come to the institution and see what the men were  
23 like, what the troopers were like.

24 Q This decision that you reached to call for the  
25 Governor was a request that was initiated at this point

1 by the observers committee?

1201

2 A Right. I think the initial statement came  
3 from Clarence Jones. We all supported it and he placed  
4 a call to WWRL, I believe, and WLIB in New York,  
5 two black stations, and I think that demand for the  
6 Governor to come which I think I wrote and Clarence  
7 read to the stations was apparently broadcast.

8 Q Is it fair to say also that there was no prior  
9 consultation with the inmates about calling for the  
10 Governor before you put out this request for him to  
11 come?

12 A None whatsoever. We did that on our own.

13 Q What precisely did you hope to accomplish  
14 by having the Governor come to Attica?

15 A Well, I wanted two things and I think I speak  
16 for most of the members of the negotiating committee.  
17 One, we wanted him to see the troopers. To see the  
18 buildup in their emotional state. And that was quite  
19 apparent to all of us.

20 Secondly, we wanted him there because we  
21 thought we could negotiate with him, that he was the  
22 power and that we should be negotiating with him instead  
23 of just Commissioner Oswald because Commissioner Oswald  
24 was, to that point, the only person we ever negotiated  
25 with.

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1  
2 thought that a few more days would give us more credi-  
3 bility with the inmates, give them more time to get  
4 together and more time to work on this amnesty question  
5 and on the question of the superintendent.

6 Q Did you feel that sooner or later in order to  
7 resolve this you would have to deliver something to the  
8 inmates by way of further concession on amnesty?

9 A Well, I thought we would have to do something  
10 about it. Whatever it was, we would have to in some  
11 way get rid of that death penalty fear and we thought  
12 the Governor's presence and if we could talk to him face  
13 to face, that we might have been able to convince him  
14 that it was better to not have an inflexible position  
15 when 1538 lives were at stake.

16 Q Were you present when Bobby Douglass was  
17 summoned into the observers' room?

18 A Yes. We asked for him to be brought in. I  
19 didn't even know he was there in the institution until  
20 he came in. And finally he did come in accompanied by  
21 Dr. Norman Hurd.

22 Q And at this point did you try to propose any  
23 compromises to him on the amnesty issue?

24 A No, we just tried to get him to get the Governor  
25 to come and he said that the Governor's position is pretty

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1 well fixed and he didn't think it would make 1203

2 any difference what he said to the Governor and that

3 the Governor would not come.

4 Q You went into the yard that day but before you  
5 went in on Sunday, did you have any conversation with  
6 Mr. Oswald about a letter that he intended to send to the  
7 inmates?

8 A We did. We were shown a letter by him to the  
9 inmates, a Xerox copy as I remember, in which in essence  
10 the letter indicated that both the state officials and  
11 the negotiating committee agreed that the prisoners should  
12 capitulate.

13 Q Even though you had hoped and in fact were in  
14 favor of the inmates accepting the 28 demands, you  
15 took exception to that language?

16 A I took exception because I knew once the in-  
17 mates saw that, that we would lose all credibility, we  
18 would be in grave danger and the implications of it did  
19 not reflect our position. So I urged him and many others  
20 did not, to send the letter in to the inmates. And I  
21 remember him agreeing not to do so.

22 Q When did you learn that the letter was sent in  
23 to the inmates?

24 A Well, I learned about it when we were in the  
25 yard on that last visit. We had passed through this DMZ

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1 area between the authorities and the inmates,  
2 and one inmate in A-Yard told us that he had observed  
3 that none of us could look him in the eye when we came  
4 through the DMZ and we asked why he said that and he  
5 said because of this. And he took out the letter issued  
6 by the superintendent or the commissioner and showed it  
7 to us.

8 Q Mr. Eve and Mr. Wicker testified that they  
9 had learned that the letter was sent in before they went  
10 into the yard that day. You apparently were not told  
11 this fact.

12 A No. I knew of the letter going in for the  
13 first time when it was shown to me and I have had all  
14 sorts of thoughts about why that letter went into the  
15 yard.

16 Q What was your reaction when the letter was shown  
17 to you by the inmate?

18 A I was angered and I was frightened. I was  
19 angered because I thought that the commissioner had de-  
20 liberately risked our lives as well as the inmates'  
21 lives and I was frightened because I could see the re-  
22 action on the part of the inmates who were in A-Yard at  
23 that time.

24 Q Had you known that that letter had gone in,  
25 would you still have gone into the yard?

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1           A     I'm not so sure that I would have  
2  
3 gone in.

4           Q     Apparently Mr. Wicker and Mr. Eve made the  
5 decision to go in after seeing the letter and Mr. Eve  
6 testified today that in part, one of his reasons for  
7 wanting to go in was to re-establish his credibility  
8 with the inmates because he felt that the letter had  
9 been misleading.

10          A     I've heard of that and I think it just exhibits  
11 the enormous courage of both of those men. I'm not so  
12 sure I would have been that brave but I did not know of  
13 it and did not learn of it until it was shown to me by  
14 one of the brothers in the yard.

15          Q     And you said that you then were angry and you  
16 were frightened. Did you make any efforts to explain  
17 your position on the letter?

18          A     That is one thing you can be certain that we  
19 did. We made every effort in the world to indicate that  
20 we had urged the letter not to go in, that it did not con-  
21 tain our thinking, that the implications were not as the  
22 letter had set forth and I think that we were success-  
23 ful in making our position clear.

24          Q     Did the letter put you on the defensive at  
25 that point?

          A     I think the letter put me very much on the

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1 defensive. The reaction of the inmates put me 1206  
2 on the defensive and I am not sure if the letter wasn't  
3 sent in through ignorance or through a design to effect  
4 our deaths and give an excuse for the troopers to go  
5 in. I haven't analyzed fully or come to any conclusion  
6 on that but I have always felt that there was something  
7 terribly wrong with that letter going in and needlessly  
8 to have it go in.

9 Q Well, do you think that that letter had an  
10 effect on the speech making by the observers in the  
11 yard?

12 A Well, it had an effect certainly on my atti-  
13 tude. I can't speak for the others. Again, my white  
14 middle class fears came to the fore. I had never been  
15 in a position where I was completely under the control  
16 of another group of men to this extent. And a lot of  
17 fears, imaginary or otherwise, went through my mind.  
18 I think I was very frightened. I watched the other  
19 observers and I think they were equally frightened but  
20 we determined just go go in and make our explanations.

21 Q Mr. Kunstler, there has been a lot of public  
22 discussion about your speech that day. There was dis-  
23 cussion before you spoke about--by at least one inmate  
24 about a possibility of leaving the country and inquiring  
25 of another observer whether he could provide them with

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1 tickets to get out. Do you recall that? ;207

2 A I do.

3 Q And do you recall that one of the inmates asked  
4 for a show of hands as to how many inmates would leave  
5 the country if asylum was granted?

6 A Yes, and there were a number of hands that went  
7 in the air.

8 Q Then do you recall that this inmate turned to  
9 you and posed the question, "Mr. Kunstler, what is this I  
10 hear about foreign countries?"

11 A That is correct.

12 Q And that was the first time that you spoke  
13 publicly in the yard that afternoon?

14 A That is right.

15 Q You were responding to that question?

16 A I responded to that question.

17 Q And you responded by saying, "There are four  
18 third world and African country people across the street  
19 from this prison prepared to provide asylum for every  
20 one that wants to leave this country from this prison."

21 What was the basis for making that statement,  
22 Mr. Kunstler?

23 A Well, Mr. Liman, I had met on Saturday morning  
24 at my motel with four people. And you remember in the  
25 executive session I did not give their names because I

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1 wanted to consult with them.

2 I have contacted three of them and they have  
3 authorized the use of their names and I will use their  
4 names from this point on. They were, the four people  
5 were members of the Black Panther Party. Their names are  
6 Kenshasha, Curtis Powell and Lumumba Shakur and they had  
7 informed me that they had received assurances from four  
8 non-imperialistic countries that any inmates that were  
9 released from prison could start a new life in those  
10 countries.

11 I did not mention that on Saturday at all be-  
12 cause the demand for extra-territorial emigration had  
13 been dropped on Friday night. When it was posed to me on  
14 Sunday, I used the language which I imagine comes from  
15 the WBAI tape that you have used. I used that language.  
16 It was somewhat inaccurate because I did use the term, I  
17 think representatives of four countries and that was in  
18 error. What I meant to say, there were four people across  
19 the street who had been authorized by four countries to  
20 make this statement.

21 After I had made it, people were sent over to  
22 me, it was sort of like a free for all in the yard, free  
23 time in essence, and people were sent over to me who said  
24 they were interested in that proposal. And I told them  
25 that it meant they would have to serve their time and

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1           then start a new life in a new country and           1209

2           that drained away the interest very rapidly of those  
3           who came up to me.

4           Q     Do I understand that the offer that was con-  
5           veyed to you was that after people had served their  
6           time, their sentences in prison, they could find a home in  
7           one of these countries rather than they could find a  
8           home immediately?

9           A     Well, it wasn't quite like that. It was a  
10          little more general and they didn't make a differentia-  
11          tion between the serving time and not serving time. But  
12          the interpretation I had, since the demand had been  
13          dropped and it would not be an accepted demand, was that  
14          no one was going to be allowed to leave to go to such a  
15          country until he had served his time.

16          I think if they had allowed them to leave with-  
17          out serving their time, they would have accepted that  
18          offer certainly, but I didn't think realistically I  
19          didn't think that would ever occur. I told them that and  
20          I lost my audience immediately.

21          Q     Did the representatives of the Panther Party  
22          who you mentioned identify the countries?

23          A     They identified the countries to me but for the  
24          same reason that I didn't want to mention their names,  
25          I don't want to mention the countries unless I have the

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1 agreement of those countries in question.

2 But they were countries I think you can  
3 imagine what countries they would be.

4 Q Following that statement, Mr. Kunstler, you  
5 also added, "I want to say one more word because I think  
6 it's important that you know it. Bobby Seale called me at  
7 4 a.m. this morning and said he would be at the prison  
8 at 7 o'clock. He came here at 7 o'clock. He met us on  
9 the roof where we have been imprisoned--he met us in the  
10 room where we have been imprisoned until they let us  
11 through to here. Commissioner Oswald said to him that  
12 he wanted him to come in here and persuade you to accept  
13 conditions which were unacceptable to you. Bobby Seale  
14 did not enter this compound today because he would not  
15 compromise you."

16 Do you remember making that statement?

17 A Yes, I think that is an exact quote.

18 Q In fact, had Mr. Seale gone in the room that  
19 morning, do you recall?

20 A No. This was all outside the prison and my  
21 recollection was about 9 o'clock rather than 7, because I  
22 don't think I reached the prison that early, but it was  
23 all in a car outside the prison directly in front of the  
24 round circular driveway that is in front of the institu-  
25 tion.

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1 Q And so far as you know, he hadn't 1211

2 seen Commissioner Oswald that day?

3 A No, he had seen him the night before and the  
4 commissioner had made essentially that same statement,  
5 that he wanted Bobby Seale to go in there and endorse  
6 these proposals. In fact there was a great deal of  
7 todo about Bobby coming in in the first place and he  
8 had to be stopped by State Troopers finally because he  
9 had left the institution and Commissioner Oswald had not  
10 yet made up his mind whether to let him in and it was  
11 Commissioner Oswald's intent, expressed to be because  
12 I was with him when we were calling the State Troopers  
13 and worrying what Bobby Seale would do when a bevy of  
14 State Troopers stopped him on the road.

15 He then said he wanted Bobby Seale to lend his  
16 support to those proposals.

17 Q But he let Bobby Seale in Saturday night  
18 even though Bobby Seale was not prepared to support the  
19 proposals on Saturday night?

20 A That's correct.

21 Q Am I correct that you base this statement on  
22 your assumption that if Bobby Seale ever told Commissioner  
23 Oswald that he was going to go in there and say that  
24 the Black Panther Party supported the demand for flight  
25 to a non-imperialistic country, Commissioner Oswald would

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1 not have let him in?

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2 A I'm certain he would not have. This was  
3 discussed with myself and Bobby Seale. I am positive if  
4 he was just going in there to repeat what he told me,  
5 that he would not be allowed admission.

6 Q This statement, like the other statement I  
7 read, is not precisely correct. There were inaccuracies  
8 in it in the sense that he didn't come into your room and  
9 Oswald didn't see him that morning and I wonder whether  
10 your speech in the yard on Sunday was affected by your  
11 fear and emotions at that time.

12 A I think that I was quite accurate with the  
13 second portion you have read. I think I said that Bobby  
14 Seale felt he could not come into the institution if  
15 he were coming in solely for the purpose of urging you  
16 to accept proposals which you found unacceptable. The  
17 part about the third world, I would imagine, was moti-  
18 vated by many aspects. One, I was asked the question so  
19 I responded. And two, if there is an inaccuracy and there  
20 is in that one, I can see that myself, I think it prob-  
21 ably was motivated by a lot of complex factors. Not the  
22 least of which was probably fear, among other things.

23 Q Were other observers getting carried away by  
24 the atmosphere of the occasion on Sunday?

25 A Well, the Sunday meeting was the most difficult

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1 of them all, the most unique, and I think when 1213  
2 we were in the yard on Sunday, everyone felt that we were  
3 on the edge of a cosmic tragedy and that the forces  
4 were going to be unleashed and no one could hold them  
5 back and that a lot of these men were going to die in  
6 that yard and I think that colored everything.

7  
8 There was a certain despair. A certain atti-  
9 tude of farewell. A certain stoicism that the inmates  
10 were exhibiting. They were making statements also that  
11 indicated they had sort of steeled themselves for the  
12 inevitable.

13 I'm not sure that they all believed they would  
14 die or that there would be a chance of anyone dying and  
15 how this affected each man I don't know, but the general  
16 impression was one of despair, stocism, fear and almost  
17 as if we were saying goodbye among friends.

18 Q On Saturday night, you and others including  
19 the hostages, inmates, all have testified that you  
20 urged the inmates--you stated to the inmates that the 28  
21 proposals were the best that they could get. Why did  
22 you and the other observers not repeat that admonition  
23 on Sunday?

24 A Well, I'm not sure that some didn't. I don't  
25 remember hearing any. I know I did not. And I think that  
the purpose of the Sunday visit was totally different.

1 On Sunday we were in there essentially to 1214  
2 record the comments of the hostages. That is mainly  
3 what we did, outside of some of these goodbye speeches  
4 and in fact the inmates insisted that we bring in  
5 certain reporters for that purpose.

6 A Puerto Rican reporter and Rudy Garcia ac-  
7 companied us in that day and they wanted a black re-  
8 porter and I think the editor of the Amsterdam News  
9 came in and a black photographer so we came in with  
10 some third world reporters and they with Tom Ricker in-  
11 terviewed five or six of the hostages and the messages  
12 we wanted to get out was and the only thing we could  
13 think of was tell the Governor to come and pleade for  
14 more time and the hostages did exactly that.

15 Q In part you were trying to mobilize public  
16 opinion to cause the Governor to come?

17 A I think I had given up the thought that any  
18 negotiations would not be successful on the State's part.  
19 I think the inmates were more flexible as later events  
20 proved. But I thought the only alternative we had was  
21 to just mobilize public opinion just to gain time and to  
22 get the Governor to come to the scene.

23 Q When you were actually in D-Yard on Sunday and  
24 talking and listening to speeches over the loud speaker,  
25 did any inmate or any person suggest in the speeches

1 that a compromise on amnesty was possible? 1215

2 A No. There was no public utterance that I re-  
3 call about such a possibility.

4 Q You told us in executive session and I would  
5 like you now to state for the record that you had a con-  
6 versation in private as you were leaving A-Tunnel on the  
7 way back to the administration about that possibility?

8 A Yes, I had a conversation with several inmates,  
9 one of whom at least was in my judgment in the leader-  
10 ship capacity and he told me in particular because we  
11 walked together down this tunnel that he thought the in-  
12 mates were prepared to give up on the removal of Superin-  
13 tendent Mancusi and that they were prepared to discuss  
14 some alternatives to amnesty.

15 He didn't spell out the latter. I was to do  
16 that later for myself. But he said that we were to go  
17 back and continue negotiations and know that the inmates  
18 were yielding essentially on what were originally classed  
19 as non-negotiable demands.

20 Q Given this characterization of the society which  
21 you have just described as Athenian democracy, did you  
22 think that any one leader could speak for this mass of  
23 inmates in the yard?

24 A No, but I thought that this particular man, as  
25 well as some others I had met there had good grasp of

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1 what was happening in that prison and also knew 1216  
2 the constituency very well and that given enough time,  
3 if we could come back with something that made sense  
4 and could spend more time with the inmates--we spent  
5 far too little--that we could have convinced them and  
6 by that time our only credibility might have been up a  
7 few notches as well.

8  
9 (Continued on page 1217.)  
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2 of the testimony of one of the hostages, Mr. Johnson,  
3 in which he stated that he thought many inmates believed  
4 that the state was going to come in with clubs.

5 Did you hve any impression as to whether the  
6 inmates reconciled themselves to the fact that the  
7 state was going to come in with clubs?

8 A Oh, I don't think there was any question.  
9 I never heard anyone say it would only be clubs and  
10 we had informed them and they had heard the build-up,  
11 they also heard the reporters on TV and radio.

12 We had informed them there was a definite build-  
13 up going on. That was one of the reasons on Saturday  
14 night that I urged them essentially to consider that  
15 these were the best demands they could get because  
16 we reported to them and others did as well, that there was  
17 a definite military build-up of monstrous proportions  
18 going on outside of that yard.

19 Q Given that fact, why do you think that the  
20 inmates were not prepared to accept the 28 demands?  
21 Not all of them, certainly, could have been involved  
22 in felony murder charges and other felony charges.

23 A I think, Mr. Liman, they misjudged their society  
24 and it was a tragic misjudgment.

25 Q In what way?

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1  
2 A They didn't realize that not only 1218  
3 were they expendable but the hostages were expendable  
4 as well. I don't think, despite all the statements  
5 they made, the stoicism that I have indicated, that in  
6 their hearts they really believed that the governor  
7 would order armed men against unarmed men into that  
8 yard and murder them.

9 Q Do you believe that they thought that as long  
10 as they had their hostages there as shields, that the  
11 state just would not come in shooting?

12 A I am certain they believe that. I can't really  
13 read their minds. I think they were terribly surprised  
14 and shocked when that wave came in on Bloody Monday.

15 Q Did you feel that the presence of the television  
16 camera and media had an impact on the inmates' position?

17 A Well, I think it gave them a certain peace of  
18 mind that nothing would happen, they thought, if the  
19 television camera were in there.

20 There were reports of the state troopers firing  
21 rubber bullets from the parapets in order to let the  
22 inmates know that they were around and could easily  
23 substitute steel jacketed bullets for rubber bullets.

24 I think they felt that as long as there was  
25 a cameraman in there and particularly Rolland Barnes,  
who is a very brave black cameraman from WZRG in Buffalo,

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3<sup>1</sup> someone who was a third world person, that 1219

2 they would have some degree of safety. They trusted  
3 the press far more than they trusted the authorities.

4 Q Did you ever have the impression in the yard  
5 that these inmates who, after all, had been numbers most  
6 of their lives, would find it difficult to yield and yield  
7 the television podium in effect in return for being number  
8 once again?

9 A Oh, I guess that every human being who has been  
10 a number and even many of us who have not been numbers  
11 but names, is impressed by being on television or has  
12 his ego somewhat titilated by it and I guess some people  
13 who had never been anything in their lives suddenly  
14 found themselves on nation wide television and, of course,  
15 that must have had an effect.

16 But I don't think that had a paramount effect.  
17 I thought the people that spoke and the people who were  
18 involved that I could see were seriously interested in  
19 changing the conditions of their lives and their sisters  
20 and brothers across the country because, as you remember,  
21 their initial manifesto was to the people of America,  
22 not to the people of the State of New York.

23 And they were seriously interested in bearing  
24 the lot, I thought, of every inmate of every penal insti-  
25 tution in the United States.

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1 Q Did you feel, at any time, that you had 1220  
2 the power to persuade these people by your advocacy  
3 to accept the 28 demands as is?

4 A No. I didn't think I had that power. I thought,  
5 one, I was a white man. Two, I was a very middle-class  
6 white man. Three, I was part of the system. And four,  
7 I wasn't in their jeopardy and I think that the best I  
8 could do was to point out my opinion, as I did, about  
9 those demands, but that they had to make the decision.

10 I think one of the falacies about Attica and  
11 all prisons is that they are led by outside agitators,  
12 that they are not there own men and women.

13 And I think it proved, to me anyway, that they  
14 were directing themselves and that the responsibility  
15 was there's and that they were ready to assume it.

16 Q Did you believe that you had the power to  
17 convince them to negotiate in private through small  
18 committees?

19 A I would have like to have tried that, if we had  
20 more time. Because I became convinced that it was so  
21 unwieldy and a botched-up negotiation with nobody meeting  
22 face to face.

23 But I thought that that would have been most  
24 difficult to obtain. This variety of men were held  
25 together by a common urge, to better their own conditions.

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1 And I think it was a very tenuous relation- 1221  
2 ship built on that one slender thread and I thought  
3 to maintain it, they had to work with the entire  
4 consituency.

5 Q What did you do after your conversation with  
6 these inmates in the tunnel about trying to bring  
7 about a peaceful resolution?

8 A We came back to the steward's room and I think  
9 that was the night that Mr. Hardy's son brought us in  
10 our supper, if I'm not mistaken of it, he was the son  
11 of a hostage who was later killed.

12 And he was kind and considerate, even knowing  
13 the strain he must have been under for the safety of  
14 his father, and after that I think Commissioner Oswald  
15 came in and the members of the committee that were left  
16 tried desperately to get him to again give more time,  
17 get a commitment that we would have a few days and to  
18 get the governor to come and I spent a gread deal of  
19 time personally with him.

20 I told him first about my conversation with  
21 the inmates when I left the yard about giving up on  
22 Superintendent Mancusi, which was one so-called non-  
23 negotiatable demand, and secondly, I suggested a form  
24 of computation to him, that the governor would indicate  
25 that he would commute any deathsentence to a certain

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6 1 number of years and I thought that if 1222  
2 that was done in view of what the brother had told me  
3 at the gate, that we could have probably had a chance  
4 of selling that.

5 I also went through a lot of history with the  
6 Commissioner. I pointed out that when he began to raise  
7 the issue of that isn't legal, the lawyers said we can't  
8 do that.

9 I pointed out that the Swiss Ambassador's life  
10 had been bought by Brazil at the expense of sending  
11 100 designated political prisoners to Chile.

12 That James Cross, the economics visitor  
13 in Montreal had been released because the Canadian  
14 Government was willing to send 26 of his abductors to  
15 Cuba. And the fact that the British had released a  
16 suspected woman, Arab terrorist in return for the lives  
17 of people on the BOAC plane down in the desert.

18 I said, "When lives are at stake you must  
19 be somewhat flexible and isn't it worth this little  
20 token of a commutation to save those lives," or words  
21 to that effect.

22 And I thought he was impressed by what I said.  
23 I spent ten minutes in a very emotional session with him  
24 and I hoped that he would communicate that to someone,  
25 that the non-negotiable demands had in effect evanesced

7 1 and that there were no non-neogtiable demands 1223  
2 in existence and no reason for troopers to go in.

3 Q What didhe say?

4 A He said he would think about it and many others  
5 chimed in that night and when we left that night, we had  
6 the understanding there would be no assault that night.

7 By the way, our phone had been cut off so we  
8 knew that something was imminent. As well as we saw  
9 with our eyes what was happening in the yard.

10 And he said we could leave some observers there  
11 in the steward's room to be on the premises. And the  
12 rest of us went home to our motels, et cetera, and agreed  
13 to come back early the next morning.

14 He would not guarantee what would happen on  
15 Monday but he said he had a serious and tragic decision  
16 to make. I think those were essentially his words.

17 Q Mr. Kunstler, I think you told us in executive  
18 session that you had some understand, impression that  
19 the inmates had their own security force and they had their  
20 own justice system.

21 Did you have any impression as to whether  
22 inmates felt free to dissent if they chose to?

23 A Well, many did dissent, Mr. Liman. If you have  
24 some of these tapes, you will see that there was a  
25 dissension over the extraterritorial immigration to

1  
8 a non-imperialist country.

1224

2 Others would stand up and make demands which  
3 the rest would vote down. Everyone seemed to have  
4 access to the microphone as far as I could see. The  
5 only discipline I saw being asserted was, there was a fight  
6 on Friday.

7 One inmate seemed to go a little beserk and attacked  
8 another inmate and he was subdued and he was subdued  
9 rather gently and he was then taken from the scene and  
10 I was told by someone that he would be placed in a cell  
11 somewhere and kept out of the way.

12 He was yelling and shouting and he was physically  
13 violent toward another inmate. I saw that happen.

14 Q On Monday morning you tried to return to the  
15 prison?

16 A Yes, I came there just as the gates closed in  
17 my face. That was apparently just before the helicopters  
18 took off. I'm not sure whether the small one, the decoy  
19 helicopter was not in the air when I got there but the  
20 two national guard Choctaws were still on the ground as  
21 I recall and I'll never forget that noise of those heli-  
22 copter blades because I can never hear it again without  
23 associating it with murder in the yard, but I saw them  
24 go off.

25 We imagined the drop was taking place and then

---

1 I began to hear what sounded like toy 1225  
2 guns because it came from so far away. But must have  
3 been those shotguns and other weapons that the troopers  
4 were using, either as snipers or on the assault wave and  
5 then the door opened up, maybe 15, 20 minutes later and  
6 a whole battery of troopers, many of them crying, I guess  
7 the gas got under the mask, who were dressed, I think,  
8 in operating sort of raincoats, came running out and  
9 screaming, "White power, white power."

10 And then I just watched. Then the Commissioner  
11 came out and read a statement that they had saved the  
12 lives of a lot of hostages and I don't know whether he  
13 said they had found their throats were being cut or not  
14 at that time but he read a short statement.

15 I went up to him and asked that I be permitted  
16 to at least see what happened in D-yard and he just said  
17 no and turned and went inside the institution.

18 Q That was the last time that you were at Attica,  
19 certainly inside the main prison gate?

20 A That's right. I stayed there until about  
21 11:30 that day and then I left.

22 Q As you reflect back on this episode, do you  
23 think you said everything that you could say to the  
24 administration to get them to stay their hand?

25 A No, I think we made a lot of mistakes for which

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1  
10 I take responsibility very personally.

1226

2  
3 Number one, I think we made a terrible blunder  
4 in not remaining in the yard throughout. In being there  
5 to talk with the prisoners and insisting, perhaps, that  
6 the negotiations take place in the yard with state  
7 officials.

8  
9 Number two, we were too big a committee. It  
10 was unwieldy, it was politically disorientated and we  
11 didn't even really know what our total function was  
12 to be.

13  
14 Number three, and this is something a little  
15 different, I guess, I thought that knowing they were  
16 going to go in and assault those prisoners, that we owed  
17 them a duty as human beings, we have that negotiating  
18 committee who were in on Sunday to remain there over  
19 night and to try with our own bodies to prevent what  
20 happened.

21  
22 I rather imagine we would have been expendible  
23 as anybody else but I feel very personally that I  
24 really let them down by leaving and not staying there.

25  
26 Q As you know, some people feel that the observers'  
27 committee felt free only to put pressure on the state  
28 to give concession and not on the inmates. How do you  
29 respond to that observation?

30  
31 A Well, I thought all of the demands were demands

---

11 that were reasonable. Certainly the 28 1227

2 were highly reasonable because they were accepted, in  
3 essence. The other two I thought were reasonable in  
4 view of the relationship with Superintendent Mancusi  
5 and the inmates and the question of amnesty which was  
6 so crucial and which had been so dramatically illustrated  
7 by other indictments in other institutions, particularly  
8 Auburn, Long Island and the Tombs.

9 But I also felt that maybe the inmates would  
10 yield on those so-called two non-negotiable items.

11 In fact, there was a discussion I had with one of the  
12 inmates on the way out that led to him telling me, I  
13 think, that I had a little more freedom at least to talk  
14 but we did feel that the, I felt the inmates were right.

15 Q But the point that I was trying to raise with  
16 you is that it is said that whereas you said to the  
17 inmates, this is the best we can get, the observers  
18 as a group said to the state, you have to give more,  
19 they urged the state to give more never turned to the  
20 inmates and urged the inmates to call it a day.

21 Did anybody do that with the inmates?

22 A Well, I think when I told them it was the best  
23 they could get, I think I laid it on the line that it  
24 was to take these or be assaulted. They took that  
25 to mean essentially go back and negotiate some more.

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2  
3 that in view of our function that we were sort of a  
4 go-between between two bodies of people. The State  
5 of New York represented by its officials and the prisoners  
6 represented by their negotiating committee.

7 I'm not sure that we were, with the exception  
8 of myself who was an attorney for them at this point,  
9 I'm not sure we really understood the whole nature of  
10 the function.

11 We were pressing the state because the state  
12 had the power and only the state could kill and we were  
13 pressing the state and we thought that if we could hold  
14 the state off and got a little more time, maybe we could  
15 work with the inmates, if we could bet back in and nego-  
16 tiate, but we never had that time with them that was  
17 spend other than in these high tension moments I have  
18 described.

19 Q But even here you use the word pressing when  
20 you talk about the state and working when you talk about  
21 working with the inmates.

22 I mean, did anybody in the observer group  
23 feel free to press the inmates, to give up the hostages,  
24 accept the 28 demands, come out and negotiate privately  
25 in another part of the prison?

A I don't know if anybody felt free but I felt the

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1  
3 I would never do that. I felt that they had 1229  
2 their only bargaining power with those hostages. I  
3 was convinced the hostages would be safe. And--if  
4 negotiations continued. And I was convinced no one  
5 would die in the yard if we could just get some time.

6 I think if any member of the committee had  
7 said, give up the hostages, that that person would then  
8 have lacked all value with those inmates.

9 Q Lastly, I would invite your comment on the posi-  
10 tion which the governor has stated publicly, which  
11 as I understand it is that to engage in negotiation and  
12 make concessions over the body of hostages is really to  
13 invite the taking of hostages as a means of obtaining  
14 relief, even from legitimate demands.

15 How do you answer that?

16 A I think it's a terribly immoral and inflexible  
17 statement because one, I think it's untrue. I think  
18 if they had gone through with the changes in the penal  
19 system that these inmates had practically had the state's  
20 acceptance, there would have been very few inmate rebellions  
21 in the United States.

22 This would have been a model for the entire  
23 country. Secondly, I think it's totally inflexible  
24 because it really says, kill everybody rather than take  
25 the chance that we can have a fruitful negotiation.

---

1  
14 2 that Governor Cahill took at Rahway and nobody died  
3 at Rahway.

4 Q But he didn't grant amnesty. Do you believe--

5 A That was not one of the demands at Rahway.

6 Q But do you believe that under all circumstances  
7 in a situation like this it is better to grant amnesty  
8 and save lives than to argue the principle that the  
9 governor has stated in his speeches and lose lives?

10 A I think under all circumstances lives are more  
11 paramount than principle.

12 Q Whatever the demands or however warranted the  
13 demands for reform may be that have given rise to the  
14 disturbance?

15 A Yes. And I might say here, Mr. Liman, the  
16 inmates had sent these demands in two months earlier  
17 in July and they had essentially been ignored.

18 Q I think you will find when you see our record  
19 that we have covered the whole area of efforts at change  
20 in Attica and inaction and response.

21 MR. LIMAN: Thank you and I have no  
22 further questions.

23 EXAMINATION BY MR. MCKAY:

24 Q Mr. Kunstler, Sunday night as I understand  
25 your statement, when you went into the yard that final

15 time, you anticipated that it was the last 1231

2 time that you would see the inmates in that circumstance  
3 and that it was a kind of farewell scene.

4 A I thought only a miracle, Dean McKay, would  
5 have averted an onslaught.

6 Q You really anticipated that there would be  
7 an onslaught with armed forces in the near future?

8 A Yes, sir.

9 Q You also stated that the inmates somehow did  
10 not have that perception, that in their heart of thoughts,  
11 they thought that the state finally would not come in with  
12 armed forces?

13 A They had more faith in the system than I did.

14 Q And yet, you, the one they trusted perhaps  
15 above all others, and you, an eloquent man, failed to  
16 state that night in any clear way, or in any way at all  
17 to the inmates what you thought was the reality?

18 A Well, they--

19 Q Should you not have said something to them so  
20 they would know what risk they were taking?

21 A I think they really knew, Dean McKay. What  
22 I am speaking about is probably underneath they had  
23 this faith. Many of the speakers before me had stated  
24 exactly that. Had described the build-up. And had  
25 indicated that death was imminent.

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1  
16 Q On Sunday?

1232

2 A On Sunday. And they knew death was imminent.

3 If you listen to the tapes on Sunday, of what people  
4 said, what inmates said and what other people said,  
5 I thought it was a farewell. There was no question  
6 in my mind that they knew and my stressing of it beyond  
7 that point, in afterthought you might say yes, you might  
8 spell it out a little more. But they knew the power.  
9 There was no misunderstanding. We had described the  
10 searchlights. They knew about the gas.

11 Q They knew the power but as I understood your  
12 statement a little earlier, they thought--you thought  
13 they thought that that power would not be used.

14 A Well, a lot of my thinking on that score comes  
15 from later discussions with inmates after the onslaught  
16 and my own recreation of the scene in my own mind, and  
17 I now come to the conclusion that they did have more  
18 faith in the value of the lives of the hostages than  
19 the outside people did.

20 Q If you had known then what you now perceive,  
21 would you have stated something more decisively about the  
22 threat?

23 A I'm not sure. It's a very delicate position  
24 you are in. You are in a negotiating position and you  
25 say that I have credibility with them and you are in a

17<sup>1</sup> position where the maintenance of that 1233  
2 creditability is very poor because I also thought that  
3 we had a chance to hold it off and if we still had  
4 their confidence.

5 That's why we spent five hours more or less,  
6 from the time we got out after supper on Sunday night,  
7 with Oswald until about midnight, because I really believe  
8 in once sense that they wouldn't sacrifice the hostages.

9 I don't think I believed it as strongly as  
10 the inmates did but I thought we could convince Oswald  
11 because Oswald impressed me as a very frustrated uncertain  
12 man who was not his own master but who was deeply dis-  
13 turbed and deeply upset about what was going on around him.

14 And I thought I could reach Oswald and I  
15 thought for a moment we had on Sunday night when we  
16 asked him for an assurance that he would not go in and  
17 give us a definite time but the moment he said to us  
18 that he would not give us a definite time on Monday  
19 when we could consider it safe, then I knew that he  
20 really had made up his mind or somebody had made up  
21 his mind.

22 I'm not sure he played the final decision.  
23 In fact, I'm quite sure he didn't.

24 Q Then one just highly speculative question. The  
25 role of Bobby Seale. If the central committee had

1  
18 authorized him to speak in behalf of 1234

2  
3 acceptance of the 28 points, do you think then the  
4 inmates would have accepted that? Was he that crucial  
5 a character?

6 A I don't know. I first thought he might be.  
7 One of the reasons I called him was to have him there.  
8 The inmates had asked for him or for a black panther.

9 On reflection I'm not sure how they would have  
10 accepted Bobby Seale's appraisal of the demands. I  
11 thought that it was not the panthers or panther philosophy  
12 in the yard that was paramount and I maybe even over  
13 estimated the influence of Bobby Seale but I'm not sure.

14 He had one thing that very few of us had,  
15 of course. One, he was black. And two, he came out of  
16 the militant wing of the movement for black liberation  
17 and I thought he might have a lot of creditability but  
18 I was jut guessing, you know.

19 I didn't really know and I didn't ccnsult  
20 the inmates. They had to take Bobby as they saw him and  
21 judge what he said from their own point of view but I  
22 thought he could help, and particularly since they asked  
23 for him.

24 MR. MCKAY: I know that several other  
25 members of the Commission have questions. Let  
me start with Mr. Rothschild.

1  
2 Q Mr. Kunstler, in these discussions as Mr. Liman  
3 said there were a number of observers. The role of an  
4 observer has really been kind of hard to figure out  
5 just what it did end up being.

6 I think your role even complicates it further.  
7 Some said they viewed the observers' role as being an  
8 observer of negotiations between the state and the  
9 inmates or between the authorities and the inmates.

10 Is that a role that you viewed at any time?

11 A I don't know, Mr. Rothschild. I heard the  
12 word observer from the beginning. Never negotiator. But  
13 observer and we still call ourselves the observers'  
14 committee because we meet periodically.

15 The word observer had no meaning to me at all  
16 except to watch and I didn't know what I was supposed  
17 to watch or whether they wanted us there just to insure  
18 that things remained on even scale. I didn't know  
19 what the role was.

20 Q Do you think that the presence of that large  
21 group of people intervening perhaps made any face-to-face  
22 negotiation between the parties at issue impossible?

23 A I think so. I thought when Governor Cahill  
24 limited the negotiating committee at Rahway, I think  
25 to three, that this was a much wiser move.

so much. I was thinking of the fact there was, after all, the Commissioner of Correction, there was leadership of sorts of the inmates. Through no intervention of the observers but the fact remains the observers being present made it possible for the Commissioner of Correction to decide not to go back in the yard and in fact end the face-to-face negotiation there and then and you people then filled the void so in a sense you truncated any meaningful negotiation between the parties, did you not?

A That's assuming the Commissioner would go back in the yard. I thought his statement was he would never go back but he would negotiate if they came out of the yard--

Q Maybe he would have. One side would have had to do something about that point had you not been there to form a third wheel.

A It may be true, that which you say, but I think that the inmates wanted someone there who was not of authority. Someone like Rolland Barnes, the cameraman. But they wanted someone not so much a television recorder but human beings with whom they had some relationship and they put together a very interesting committee of people either whose articles they had read like Wicker and

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1  
21 Roth and whom they had known from the Buffalo 1237

2  
3 area like Eve, or myself whom they had known through  
4 the press and they put together a rather unique committee.

5 We were much too big when it grew, not through  
6 their doing but through the state's doing and through  
7 volunteers dropping in to a committee of 30. I thought  
8 ten, five might have been useful.

9 Q I think everyone agrees with that. Another  
10 aspect of your role in particular. Assuming they  
11 weren't observers and they became semi-negotiators or  
12 at least many of them described their role, and you did  
13 too, I think, as running back and forth between parties,  
14 as messengers in a sense with an editorial ability.

15 How does being a advocate affect that? You  
16 were the only one who had a direct client, if you will.  
17 You were no longer making any pretense of being a carrier  
18 of messages or a middle man. You were positively  
19 representing one of the two parties at issue.

20 Did not this make your role perhaps a little  
21 more difficult to fit in with the others?

22 A Not too much because I accepted that retainer  
23 sort of as a creditability gesture. I knew that although  
24 I thought the lawyer-client relationship did spring  
25 up, which is the reason I won't mention any names of  
inmates, I knew that that was, I thought, an offer by

1 the inmates, which I couldn't reject

1238

2 under any circumstances.

3 If I were to say no, I thought it would have  
4 been a slap in the face and--

5 Q I don't think you could reject it. On the  
6 other hand, having taken it--you see my worry is this.  
7 I am not a lawyer. I have had more dealings with them  
8 all my life than I thought I would but any way, I think  
9 the mediation role, if you will accept that as an over  
10 general description, involved trying to be certain that  
11 there is no breakdown in negotiations.

12 A mediator whose negotiations break down will  
13 not live to try again another day. An advocate is quite  
14 prepared, in my experience with advocates, to have  
15 negotiations break down if in fact that's a tactic  
16 to achieve the end his client thinks he is best served  
17 by.

18 So it is a rather important definition and  
19 I think some of the things that transpired later--

20 A You see, I don't believe, certainly by Sunday,  
21 that that was really much of an issue, that status.  
22 I think everyone was unanimous in wanting to gain  
23 this time and to keep the negotiations going.

24 That's why we spent so much time Sunday night  
25 trying to convince Oswald to talk to the governor about

1  
3 this commutation proposal, for example.

1239

2 I think everyone on the committee wanted the negotiations  
3 to go on.

4 MR. MCKAY: May I interrupt just  
5 for a moment for the convenience of our reporter  
6 who needs to change his roll.

7 THE WITNESS: Oh, I'm sorry.

8 MR. MCKAY: Please continue.

9 A I was saying that by Sunday night certainly,  
10 and probably by Saturday evening, I don't think the  
11 discontinuation between lawyer and negotiator and observer  
12 really had much meaning.

13 I thought we were just a bunch of human beings  
14 trying to gain time and thinking of every possible way  
15 to alleviate a tragedy, including calling the governor,  
16 meeting with Bobby Douglass and Dr. Hurd, talking end-  
17 lessly with Commissioner Oswald, proposing that it would  
18 be non-negotiable demands with essentially negotiable  
19 and one had been dropped completely and trying to work  
20 out a time sequence, that if we could get more time we  
21 were convinced that there would be no death in the yard  
22 and we also wanted more time in the yard.

23 You must remember the Commissioner did not  
24 permit us to go into the yard except when he wanted  
25 us to and in fact on Sunday one of the reasons we were in

24 1 there in the afternoon, even though we had 1240

2 promised to be there at seven in the morning was the  
3 fact that we finally incited when two notes came from  
4 the inmates, "Where are the observers' committee,"  
5 we finally insisted on going in and that's when we  
6 were forced to sign those general releases I think for  
7 the first time if I am not mistaken, the general releases  
8 indicating if anything happened to us the State of New  
9 York would not be held to our heirs and decendants.

10 Q Despite the fact what you say I am sure is  
11 right that you were involved in more than the client  
12 relationship at that point in your own words your client  
13 misjudged society. The society, and that's why they  
14 didn't understand what was going to happen.

15 A That's an interpretation that I put on it after-  
16 wards.

17 Q That's what you said though.

18 A Yes, I agree with that.

19 Q And if in fact they did, do you view this, since  
20 you were their lawyer, as a failure on your part because  
21 this was critical to their case, in fact it was fatal  
22 to their case.

23 This is the one thing that it would seem as  
24 their advocate couldn't happen.

25 A Well, I in a way believed the same thing they

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1  
25 did up to a point. I really thought they 1241  
2  
3 wouldn't go in with the hostages inside. I didn't have  
4 the faith they had, I think, as I have learned afterwards  
5 because many that I have met who have been paroled have  
6 spoken to me that they really believed they would not  
7 come in or if they came in they would only come in with  
8 gas or with clubs, even though there were a lot of  
9 brave sentiments about dying in the yard.

10 But in, I think if I had to do it all over again,  
11 I would approach it differently. I would tell them  
12 that there was no charity in the minds of the government.  
13 That government was cruel and bestial and would destroy  
14 them if they didn't accept those conditions and that  
15 there was no hope in further negotiation.

16 I think that I would have owed them that if  
17 I believe it then as I believe it now. So I think that,  
18 you know, I have thought over many things and I wish to  
19 God you could go back while 43 people were alive and  
20 recast it in the light of what you know now but that  
21 isn't possible in life. And you must be responsible  
22 for the decisions you make at the moment.

23 Q Do you think there is any explanation in the  
24 difference of the attitudes of the authorities and the  
25 observers for the fact that as you said the state has  
the power, the state also had the responsibility to

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1  
28 restore order in the institution at some 1242

2 point which really the observers didn't have in a direct  
3 way. Do you think that in anyway colored the responses  
4 that each gave in its own fashion?

5 A It might have. I don't think that we were  
6 oblivious to the fact the state had a responsibility  
7 to restore order. State always do when there is a  
8 disruption, to put down rebellions is what states try  
9 to do, but on the other hand, we thought that since  
10 nothing was happening in the yard, the hostages were  
11 being taken care of, the sick ones were passed out, they  
12 were taking care of the ones that were in there, that  
13 since nothing was happening and since time was irrelevant  
14 to many of these men, what difference did it make if  
15 it went on a week or two weeks, if you could keep the  
16 people alive so I guess it came down to just a question  
17 of time, pleading for minutes and seconds and hours and  
18 I remember Mr. Kenyatta down on his knees on his  
19 prayer shawl in the yard, clutching at Oswald's knees  
20 and begging for time in the words of the Koran. And  
21 that's all we really wanted at the end, was time.

22 MR. ROTHSCHILD: Mr. Kunstler, I  
23 have no further questions. I only want to explain  
24 why we don't seem very friendly.

25 I think those of you that went there and

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27<sup>1</sup> you in particular as often as you did 1243

2 and at the times you did contribute a tremendous  
3 amount to all of us who weren't there and wished  
4 it had been involved you did a great deal to try  
5 and solve it.

6 I don't mean it unkind to you directly.

7 THE WITNESS: No, I think the questions  
8 are important. I think they have to be hard ques-  
9 tions and hard answers in anything that claims  
10 43 lives and in which any human being has some area  
11 of responsibility and I think I have to answer these  
12 questions. And you have to ask them.

13 MR. McKAY: Mr. Liman has just  
14 advised me that some statistics that we were going  
15 to present a little later have a special relevance  
16 in the light of the questioning that developed  
17 now and that has to do with the perceptions of the  
18 inmates at the time we are talking about, Sunday  
19 evening, which of them expected shooting at that time  
20 and so at the conclusion of this questioning period,  
21 we will have some information on that that will bear  
22 upon the subject we have also been speculating on.

23 Mr. Wilbanks, do you have questions?

24 MR. WILBANKS: Yes.

25 EXAMINATION BY MR. WILBANKS:

1  
28 2 structure in the yard we have had several different  
3 impressions that have been communicated to us. All  
4 the way from absolute tyranny to Athenian democracy.  
5 And I want to put this question in a rather hard way  
6 because I am sure there are a lot of people that are  
7 thinking this and I want to give you an opportunity to  
8 respond to it.

9 I think and I think there is some evidence to  
10 point out that there were homosexual rapes in the yard,  
11 there were three murders of inmates by inmates, there  
12 were many inmates who felt they were not free to leave  
13 the yard, they would be punished if they did, there  
14 was a punishment detail to dig a trench.

15 In view of these types of things, how do you  
16 explain your statement that this was an Athenian  
17 democracy and again, composed of people and I suppose  
18 you meant this as a class and not as individuals, that  
19 these were--if I understand it as a class statement, that  
20 these were dignified and worthy men fighting for  
21 their lives. How do you reconcile this?

22 A Mr. Wilbanks, even in Athens people were  
23 punished, people were executed and discipline was asserted.  
24 The three murders of which I know nothing except they  
25 were apparently of three men who attempted to give the

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1 29 outside world the impression that they

1245

2 weren't responsible for this, through a television inter-  
3 view but that the other inmates were, might be regarded  
4 as an execution.

5 I understand that there was a trial and so I  
6 am not prepared to accept the word murder in respect  
7 to them.

8 As to punishments of digging trenches and what  
9 have you, I don't know, I've heard of those things too  
10 and I don't know what the cause of the punishment was  
11 but I rather imagine there was a discipline in the  
12 yard.

13 This was not a meeting of the AT&T stockholders.  
14 This was a meeting of a yard filled with many desperate  
15 men, all of a sudden having power, all of a sudden being  
16 faced with the confrontation with the state which was  
17 in the offing.

18 And I think out of this desperate nature you  
19 emerge with some sort of a, whatever you want to call  
20 it, Athenian democracy or whatever term people want to  
21 use.

22 That it had pressures in it, of course. This  
23 could not emerge in anything but that but I saw nothing  
24 that would indicate to me that people were being coerced  
25 or pressured.

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3b  
2 just being in the group. That was important. But  
3 while I was in the yard with the exception of the men  
4 who were stopped from fighting and put in a cell, I  
5 saw tolerance of all views.

6 In fact, there were some diametrically opposed  
7 views that were stated. So I guess it must have had  
8 harsh moments. And undoubtedly did. How they restored  
9 order out of any chaos after the initial take-over is  
10 a miracle in itself so when I say there were worthy  
11 and dignified men, they were in the light in which  
12 you saw them.

13 And I thought they were very much in the posi-  
14 tion of the Warsaw Ghetto in some degree and having very  
15 much the same feelings that they were about to be  
16 annihilated.

17 I think it's hard for me or for you or for  
18 anyone on the outside to understand what it must have  
19 been in the yard on the take-over, what must have been  
20 going through the minds of men.

21 If there were rapes, they occur in prisons,  
22 I know that, because prisons don't permit any sexual  
23 contact and yet these terribly abnormal tensions in the  
24 prison among heterosexual people and maybe they occurred.

25 But it is really quite small compared to the

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number of men involved and what could  
have happened in the yard.

And therefore, I felt that they had done a  
good job, that they were to be commended for keeping  
some form of order. Whatever the discipline was in  
that yard.

(Continued on page 1248)



1 Q If capital punishment were meted out, 1248  
2 would it be your view that this was the advice of the  
3 entire yard or perhaps a select group?

4 A I don't know. I wasn't there during that  
5 proceeding. Apparently it occurred on Friday before I  
6 got in but I heard from several people that there  
7 had been a trial and that this trial had involved  
8 three men who had given a television interview which  
9 jeopardized everybody and if you do that, you could  
10 bring on the whirlwind by doing it, when others hear  
11 about it, particularly under those tense conditions.

12 I think they committed suicide in essence  
13 by doing what they did.

14 Q In our second session, Mr. Liman I think,  
15 phrased the question this way, that certainly you realize  
16 there were a lot of people in the public that didn't  
17 really believe there were four Third World countries  
18 and we asked you if you would possibly get permission  
19 from the people you talked about.

20 Perhaps I was mistaken. I was under the im-  
21 pression you were going to get names of four countries.  
22 It seems to me that if the public doesn't--a certain  
23 segment of the public, whoever may differ over the  
24 percentages, a segment of the public doesn't believe it,  
25 it would not be because we don't believe there were three

12 persons who came to you, it would be because some- 1249  
2 one would say, they didn't really believe that the four  
3 countries existed.

4 So what I am really saying is this. Could  
5 you respond to--it seems to me the public is really  
6 saying what were the countries and not what were the  
7 three people who told you this.

8 If you don't think they were reliable, why  
9 would you repeat it in the yard.

10 A I think they were reliable. I am perfectly  
11 willing to check with the representatives of those four  
12 countries and then indicate to the Committee, to the  
13 Commission, what the names are.

14 I don't think I even revealed them in the  
15 yard, if I am not mistaken. So I would be perfectly  
16 willing to do that. If they consent. I did this with  
17 the cour Panthers, only three of whom I was able to  
18 reach. I think the fourth would probably agree as  
19 well.

20 Since I didn't reach that person, I don't want  
21 to reveal the name. I will ask each one of the four  
22 countries whether they have any objection to me making  
23 public the names of the countries and what they said  
24 to these representatives.

25 Q I think that would be useful.

1 3           A     If they will do it, I have no wish to           1250  
2     hide them except if they wish it. I just feel a  
3     certain obligation, as I did with the Panthers.

4           Q     This final question has been asked to several  
5     people in light of a statement that Mr. Oswald made  
6     at the conclusion of the session in Attica.

7                     That is, he said that, sometime during these  
8     negotiations, he said something like we have given  
9     everything and they have given nothing, referring to  
10    the inmates.

11                    You said that you felt the inmates were more  
12    flexible than the State. Some people might say the  
13    State made 28 concessions. What concessions did the  
14    inmates make?

15                    Could you respond to that?

16           A     I don't think the State made any concessions.  
17    I think all the State did was to promise to do what  
18    they should have done for a hundred years back. In  
19    fact, those were Commissioner Oswald's words, that we're  
20    doing now what we should have done a hundred years ago  
21    so I thought that all the State was doing was realizing  
22    what humane prison treatment should be. The inmates  
23    were in a position of power. It was not a negotiation,  
24    I thought, essentially from a powerless group to a  
25    powerful group.

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1           They had a certain power which were the  
2 hostages. And they did their yielding on the two  
3 so-called non-negotiable demands. It is such an im-  
4 possible thing to judge this type of negotiation from  
5 retrospect and to do it in all the tensions that  
6 existed in that yard, but I thought that realistically  
7 the State should have understood what the situation  
8 was in the yard and realistically the State should  
9 have bargained for the lives and for time and not to  
10 talk about who is more flexible than someone else.

11           I understand that the Governor has refused  
12 to put any of these into practice because he said the  
13 inmates reneged on their agreement. They didn't come  
14 through on their own. That's a pretty tragic way to  
15 describe it. It's like a corporate merger. It's  
16 really saying we're not going to do what we think is a  
17 hundred years overdue because of the technicalities of  
18 some failure of negotiations. And I think that would  
19 be very sad and very tragic because Attica is not sui  
20 generis and Attica will happen again and again and  
21 again.

22           Because I think prisoners understand the source  
23 of power in this country and the only source they have  
24 is by the destruction of property or the seizure of  
25 people or the work stoppages and so on and I think the

1  
5 time has come to really try to understand why the 1252  
2 men in Attica did what they did rather than who went  
3 wrong or who should have done this in afterthought.

4 I think these posed a problem for the American  
5 people and I don't think that problem will go away no  
6 matter what this Commission or any Commission does  
7 about it.

8 MR. MC KAY: Mr. Marshall?

9 EXAMINATION BY MR. MARSHALL:

10 Q Mr. Kunstler, could I clarify what your view  
11 is about the amnesty question.

12 There were, whether you call them mergers or  
13 not, there were three inmates that died at other's  
14 hands in the prison and then there was Officer Quinn,  
15 so there were four deaths and then there was, there  
16 were a number of injuries.

17 In view of that, did you believe then and do  
18 you believe now that blanket amnesty could be granted  
19 to the people that were in that yard?

20 A Yes, I do.

21 I think that it could have been done legally  
22 and I certainly thought it should have been done morally.  
23 The problem, I guess, is the same problem that the Cana-  
24 dian Government must have had. Do we send 26 confessed  
25 kidnappers, a capital crime, to Cuba in return for the

1  
6 life of a single man. They reached that decision. 1253  
2 I think the statistics would show high here, Mr.  
3 Marshall, that it could have been done and I think  
4 legalities could have been put aside in this instance.  
5 After all they promised amnesty as to the property  
6 damage crimes. It was only the personal injury crimes  
7 that apparently blocked it.

8 And I thought that putting all of the legali-  
9 ties aside, that it should have been done.

10 Q Are you acquainted with all the legali-  
11 ties; have you looked into that?

12 A Yes, I understand that there are some difficul-  
13 ties with amnesty in a sense. There is no doubt  
14 that the District Attorney might have given a form of  
15 amnesty. He refused to do so. There is no doubt  
16 that would probably have been ineffective because he was  
17 superseded anyway and we assumed he would be.

18 But when the legal difficultes were raised  
19 about blanket amnesty, that the Governor lacked the  
20 power to grant amnesty and I am willing to accept that  
21 as a proposition, a legal proposition, that was why we  
22 proposed commutation because commutation is within his  
23 power.

24 Q I understand that. That's why I asked about  
25 amnesty first. I understand your point about commuta-

1 7 tion, which is a quite different point though. 1254

2 A That's right.

3 Q And a much lesser act on the part of the  
4 Governor, if he had decided to do it. That is, as I  
5 understood your proposal was that he would agree in  
6 advance to commute any death sentences that resulted  
7 from charges growing out of--

8 A That's right. I thought there would be no  
9 legal question on that. The amnesty, I understand there  
10 are legal problems, even though, I think they are not  
11 insurmountable. I understand there are legal problems  
12 and that's why we changed that to a commutation  
13 situation which we thought would pose no legal problems.

14 Q But, Mr. Kunstler, you did not change that  
15 with the inmates, as I understand it?

16 A The inmates essentially changed it with me  
17 because the word I got as I left was that we were per-  
18 mitted now to negotiate on a lesser plan and the person  
19 who told me this, I had great respect for and I knew  
20 he was in leadership and I took that as the word of  
21 the Negotiating Committee, not the inmates enmasse,  
22 but the 13 who were doing the negotiating for the  
23 inmates and he was one of those 13 and I thought if  
24 Commissioner Oswald said to me, we are willing to con-  
25 sider that, we could go back in and then have a fighting

1 chance to get it.

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2 If I had proposed it and I must tell you  
3 frankly, I didn't even think of it until I was out  
4 of the yard and in the Commissioner's presence that  
5 night, because I was just searching for something to  
6 fit the last words I had heard when we crossed back  
7 into official control, I think, if I had suggested it  
8 prior to that time, if I had thought of it and suggested  
9 it, then I would have gotten nowhere.

10 The tensions in the yard were unbearable on  
11 the amnesty question and after Quinn's death it became  
12 like a stone wall.

13 The only ray of light was the statement I had  
14 leaving and I thought maybe that I could translate  
15 that into something with Oswald, but I failed.

16 Q How do you respond to the question of whether  
17 you did or if not, why you didn't, advise your clients  
18 of the extraordinary obstacles to the grant of blanket  
19 amnesty?

20 A Well, I took the position on Saturday night  
21 that they could not get amnesty, that they had the best  
22 they were going to get and there was no amnesty possible  
23 and that was a decision I made to phrase it in the way  
24 I did because I had a deep sense of the emotions in the  
25 yard.

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1 9           And I calculated in my mind that if I       1256  
2 were to have any credibility whatsoever, that I had  
3 to run a very gentle course on the amnesty. It was  
4 the word I heard everywhere in the yard, was amnesty.  
5 It was the word that was the key word long before I  
6 got in the yard. And I just wanted to save my credi-  
7 bility and serve a function if I could, and I know that's  
8 difficult to explain when you are not in the yard, to  
9 people who have not been in the yard, but you make  
10 certain mental decisions and you hope that you're  
11 right. You pray that you're not wrong.

12           Q     As in the case of my colleagues over here,  
13 I am asking these questions because many people are  
14 asking them and that's our function.

15                     I think that everything else I had in mind  
16 has already been covered.

17                     MR. MC KAY: Mrs. Wadsworth.

18 EXAMINATION BY MRS. WADSWORTH:

19           Q     Mr. Kunstler, I think that you have probably  
20 made the word Athenian democracy something that none  
21 of us will forget, a new interpretation, a new way of  
22 thinking of that phrase.

23                     You mentioned earlier in your testimony that  
24 you were very impressed with it, on your first arrival  
25 in the yard of the security force for the Puerto Rican,

1  
10 the black and white together.

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2           The coalition of people working together  
3 for a cause. I would assume that you would feel that  
4 this philosophically is a very important thing, the  
5 coalition of unique groups working together. It  
6 occurred to me as we heard many of the Observers  
7 that the Observer Group itself is indeed a coalition  
8 of this kind.

9           Certainly to understand State people who have  
10 shared a highly unique experience. Has there been any  
11 effort to continue as a group or a core group--you  
12 said something and was stopped. Has there been any  
13 effort with that kind of shared experience and commit-  
14 ment and feeling to continue as a group toward any kind  
15 of reforms?

16           A     Yes, there has been. The Committee has been  
17 meeting more or less irregularly. We have another  
18 meeting scheduled, I think, in the very near future.  
19 Most of the people have come. The only people who  
20 have not shown up have been those people who either  
21 left early during the negotiations or who were part, I  
22 thought, of the Governor's team on the Negotiating  
23 Committee.

24           For example, Alfredo Matthews has never shown  
25 up to my knowledge. Even though he stated until the

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1 11 end, at a Committee meeting but most of the others 1258  
2 have.

3 Tom Wicker, Assemblyman Eve. In fact Assem-  
4 blyman Even has been the prime mover in keeping us  
5 together and sending out the postcards and having our  
6 meetings. We have been one coming up I think late in  
7 April and I think that's a very good thing because there  
8 is no doubt with all our egos and eccentricities and  
9 our different political backgrounds and occupations,  
10 there is no doubt, I think, our souls were seered in  
11 that experience and while I may talk glibly before a  
12 microphone and in the secret recesses of my own mind  
13 I relive it and relive it.

14 I think if we can stay together, maybe some  
15 good out of this terrible tragedy can come. Maybe just  
16 a little thing. At least we are staying together and  
17 we are meeting and we have a Committee that's in  
18 existence even though the reason for its existence  
19 has vanished, at least the immediate reason.

20 Q It seems that as a society we are now coming  
21 to what should have been a very obvious thought that we  
22 are willing to involve people involved in decisions in  
23 the decision-making.

24 Whether this be students or whether it be the  
25 elderly, whatever group you want to take, when you now

1  
12 think of involving them in the decisions. This, 1259  
2  
3 of course, we will relate to the prisoners and their  
4 part in prison reform.

5 Do you see your group as a group which might  
6 in any way develop the mechanism which would let this  
7 input be possible?

8 A I don't know. It is possible. Our meetings  
9 have been somewhat infrequent as of late because every-  
10 one is involved somewhere else. But I hope that  
11 Assemblyman Eve keeps us moving. He is the prime  
12 mover and he, I might add, is one of the finest human  
13 beings that I have met and I met him under the strangest  
14 of circumstances, and I think a lot of the Puerto  
15 Rican members, the members from the Prisoners Solidarity  
16 Committee, from the Young Lords and so on, are keeply  
17 interested in what's happening to their brothers and  
18 sisters behind those bars, and I think the middle  
19 class members like myself are learning a great deal  
20 about ultimate responsibility in this type of society  
21 so it is possible.

22 I hope it does that. It would be a fine  
23 thing if it did.

24 MRS. WADSWORTH: Thank you.

25 MR. MC KAY: Mr. Henix?

EXAMINATION BY MR. HENIX:

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1  
13 Q Mr. Kunstler, I only have one question to 1260  
2 ask you. It seems to have been drug across the coals  
3 in some way, but I want you to listen and hear the  
4 whole question before you respond to it.

5 Because it is being constantly asked of me  
6 in the community in which I come from, and it is not a  
7 middle class community. And this is the question that  
8 they are asking. Do you know why no inmates who are  
9 in the box at Attica as a result of the September  
10 incident, are not willing to testify here publicly?  
11 If this question would breech any confidence, you do  
12 not have to answer.

13 A I haven't spoken to the inmates, but I know  
14 from the vibrations I get that there is one, a deep  
15 distrust of a Commission appointed by the very person  
16 that they believe murdered their brothers in the yard,  
17 and that they have such a deep distrust that they will  
18 not communicate with any member of this Commission.

19 There may be other reasons which I don't  
20 know but I know they feel that very strongly and I respect  
21 that feeling because I have, I must be quite frank, a  
22 similar distrust.

23 Q Just to follow it up, I can accept that and  
24 I think because the Commission has always been in some  
25 way put in jeopardy, just our existence, but at the same

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1 14 time, I also realize that this is one of the only 1261  
2 investigations that could get a realistic picture of  
3 Attica in front of the public, and it is a question of  
4 reality, a basic question, whether what we have been  
5 talking about all the time, trusting each other and  
6 getting to the point where we can say, well, maybe  
7 change is possible and I think those who are not  
8 willing to give consideration to the possibility of  
9 change don't deserve to see any.

10 A Mr. Henix, I guess to justify their stand is  
11 not really up to either one of us in the last analysis.  
12 They have a long history of distrust, a history that was  
13 fed by Auburn, Long Island City, the Tombs, San Quentin,  
14 Comstock Prison and you just don't overcome that by  
15 words. Only deeds will overcome that distrust. And  
16 so far it's only been words and--

17 Q We are trying to make it a little more than  
18 that.

19 A I am testifying despite the fact that my  
20 brothers refused to testify because I put it frankly,  
21 I think the forum is important, not so much what the  
22 Commission does but the forum is important and I think  
23 it is important if I am articulate and was there that I  
24 say what I saw and give some of the reasons for why I  
25 did what I did. That is my reason for being here.

1  
15 MR. HENIX: Very good.

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2 MR. MC KAY: Bishop Broderick, did you  
3 have a question?

4 EXAMINATION BY MR. BRODERICK:

5 Q I was interested in your observation of the  
6 State Troopers after the assault. I think you said  
7 they came out shouting "White Power, White Power."

8 Is that accurate?

9 A That's correct.

10 Q Would this be a signal or was it one and were  
11 they readily identifiable?

12 A They were identifiable.

13 A It was many more than one and when the door  
14 opened you could hear it inside. I don't blame, Bishop,  
15 the State Troopers. I did in the beginning. I re-  
16 ceived a letter from the wife of one of the victims,  
17 State Troopers, the widow who stated to me that she  
18 wanted answers to questions. She couldn't understand  
19 why her husband died in the yard and I wrote her a  
20 long letter. I brought it here but I think it is use-  
21 less to read it, in which I stated a lot of things, but  
22 I don't really blame those troopers.

23 For four days there was a build-up. For four  
24 days they thought of their colleagues inside, Quinn  
25 died, others had been injured. And for four days these

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1 16 Upstate people who did not number any blacks or 1263

2 Puerto Ricans among them, these Upstate people  
3 nurtured in the idea that they are dealing with criminals  
4 who have no dignity or worth in our society and criminals  
5 who have done the unpardonable, had put in jeopardy  
6 their brothers in the yard, that if they were released  
7 into that yard they would kill and I really can't find  
8 it in my heart to say they are the guilty ones anymore  
9 than I think Lieutenant Calley is the guilty one. I  
10 think our failure is to go to those really responsible.  
11 The man who refused to come to the yard and to look in  
12 their faces was the man who killed everyone in the  
13 yard and I just don't think you can avoid that.

14 If he had come as Governor Cahill did under  
15 like circumstances and just looked into the faces of  
16 the State Troopers, these young men confronted with  
17 this terrible, terrible tension and fear and all the  
18 racial undertones that filtered through it, if he had  
19 looked into their eyes, he might have been moved to  
20 say, "Send them away," as Governor Cahill did at Rahway,  
21 but he chose to remain at Pocantico Hills and I think  
22 that to avoid the direct responsibility to the only  
23 man in the State who had the real power, is to trans-  
24 fer it to State Troopers who are as victimized as the  
25 hostages who were in turn as victimized as the inmates.

2 one inadvertent mistake in your identification  
3 of the Commission and the appointive authority  
4 and I am sure you would want the record to be  
5 correct in that respect.

6 Members of the Commission were not  
7 chosen by the Governor, but by Judge Fuld, the  
8 Chief Judge of the New York Court of Appeals and  
9 the presiding Justices of the four Appellate  
10 Divisions.

11 The Governor did not participate in that  
12 decision.

13 THE WITNESS: But the authority of the  
14 Commission comes from the Governor.

15 MR. MC KAY: In order for us who hold  
16 authorization and to have special power, it must  
17 in some way come from the State, of course. That  
18 is the only State connection we have other than  
19 the funding, which comes from the legislature.

20 THE WITNESS: Putting aside all the  
21 strings of authority, it is my feeling that in  
22 essence the Commission is appointed, even though  
23 I know the presiding Justice of the Appellate  
24 Division and the Chief Judge of the Court of Appeals  
25 is somewhat involved, is appointed indirectly at

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1 least by the Governor.

1265

2 MR. MC KAY: The appointments were made  
3 by the five judges.

4 THE WITNESS: I understand that. I have  
5 learned to divorce the apparent no strings of  
6 authority to look to the source of the appointment,  
7 and I think that's the Governor.

8 MR. MC KAY: Mr. Marshall has one  
9 further question.

10 EXAMINATION BY MR. MARSHALL:

11 Q This is just a clarification. You identified  
12 the people coming out that shouted "White Power" as  
13 State Troopers.

14 A They could have been also the Sheriff's  
15 deputies. They all were wearing those orange coats.  
16 That's how I remember it best. But I wouldn't swear  
17 that they all were State Troopers.

18 Q The reason I asked the question was that you  
19 spoke of the death of a State Trooper and there were  
20 no State Trooper deaths, so that must have been a  
21 correction officer.

22 A No, I meant the death of Quinn. I said a  
23 colleague. But I meant a colleague in the general sense.

24 Q I suppose it is important that those institu-  
25 tions, that is, the State Troopers as against the cor-

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1 rection officers, that they not be confused in our 1266  
2 record and not lumped together. That's the reason  
3 I wanted to--

4 A You are entirely correct. I used the word  
5 colleague to mean someone in the nature of a non-  
6 civilian like a correctional officer or a State Trooper  
7 but it was William Quinn who was, of course, the dead-  
8 man.

9 MR. MC KAY: Mr. Kunstler, I think you  
10 are familiar with our procedure that although  
11 you have been very patient in responding to our  
12 questions, you would be most welcome, since you  
13 have been patient we would be most glad to hear  
14 from you on any additional statement you have to  
15 make, but I thought in this case if you do want  
16 to make a statement you might choose whether you  
17 want to make it now or whether you would prefer  
18 to wait until we have made this brief statistical  
19 presentation of material that is relevant to the  
20 discussion. It is your choice.

21 THE WITNESS: I will leave it up to you.  
22 If you think the pattern of the presentation would  
23 be more logical to present the statistical material  
24 and then follow it by my statement, which is only  
25 a page and a half, or whether you would have the

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1  
20 statement first and then follow it by the statis- 1267  
2 tical, I have no objection.

3 MR. MC KAY: Do you have any comments,  
4 Mr. Liman?

5 MR. LIMAN: I think Mr. Kunstler should  
6 read his statement now.

7 I think it makes sense.

8 MR. MC KAY. Fine. I hope he will stay  
9 for the other information as well.

10 THE WITNESS: I will. Some of this  
11 statement is--will in just a slightly longer form,  
12 state some of the things I have said and I don't  
13 say it with any feeling against any member of the  
14 Commission.

15 I have indicated my feeling about com-  
16 missions in general in this area. But I want  
17 the statement to be in the record.

18 Number one, as I have indicated, the  
19 Commission must be regarded with suspicion by all  
20 because the source of its jurisdiction and power  
21 are the very state officials who are charged by  
22 the inmates with the slaughter of 40 people on  
23 September 13, 1971. There has been a long history  
24 of the appointment of investigating commissions by  
25 the governmental bodies to look into events in

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1  
21 which those very governmental bodies have been 1268  
2 deeply involved.

3 That history is perhaps julminated by  
4 the resent report of the Lord Chief Justice of  
5 England which cleared the British Army of any  
6 responsibility in the killing of 13 Irish Catho-  
7 lics in Derry. I hope that the time has now  
8 passed when the people of this country can have  
9 faith in an investigatory scheme in which the  
10 perpetrators of the events being investigated in  
11 essence appoint the investigators.

12 Number two, there has been increasing  
13 publicity regarding the desperate conditions of  
14 life at the Attica Correctional Facilities, as  
15 well as in prisons throughout the country. To  
16 some extent these conditions have been exposed  
17 for many years for all of those who would look  
18 at them. At this juncture in our history it is  
19 not the knowledge that our penal system is charac-  
20 terized by brutality, racism and sadism, which is  
21 critical, but rather it is some understanding of  
22 the necessary struggle against these conditions  
23 which is now of prime importance.

24 The struggle of the brothers of Attica  
25 as well as inmates in Auburn, the Tombs, Rikers

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2 hundreds of other jails and prisons says some-  
3 thing of profound importance which we must now  
4 begin to understand:

5           That the conditions of life in these  
6 institutions are not going to be solely in the  
7 hands of the jailers and that the brothers and  
8 sisters who form the prison communities are going  
9 to do whatever may be necessary in order to be  
10 able themselves to have some control over the  
11 nature of their lives in these prisons.

12           Ultimately the thing that state and  
13 federal officials apparently refuse to recognize  
14 is that the inmates inside Attica could exercise  
15 any power whatsoever over their own lives. Prison  
16 reform is a respectable topic when discussed in  
17 the legislative halls in Albany or in the committee  
18 rooms of governmental and non-governmental bodies.  
19 It becomes an explosive issue when the inmates  
20 themselves seek to obtain that reform for it is  
21 then that they are asserting the basic human right  
22 of having some control over their own lives.

23           Thirdly, for some to say that I fed  
24 the fires of rebellion at Attica is not only  
25 factually false, but also another indication of how

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1 inmates are generally viewed. The assumption  
2 in the accusation against me is that the inmates  
3 were not capable by themselves of trying to ob-  
4 tain some control over their lives, that they  
5 could be manipulated and misled. It is critical  
6 that we disabuse ourselves of such notions regarding  
7 our brothers and sisters in jails throughout the  
8 country. Recently events should make it obvious  
9 to all of us that these inmates are not only capable  
10 of determining for themselves how they are going  
11 to be able to effect changes in their lives in  
12 the jails and prisons of the land, but that they  
13 are also committed to taking those steps necessary  
14 to carry out any determinations that they reach  
15 if society forces them to do so.

16 That's the end of my statement.

17 MR. MC KAY: Having known you as long  
18 as I have, Bill, I am confident you will not want  
19 to make any pre-judgment of the integrity or the  
20 fairmindedness of the Commission until you have had  
21 an opportunity to see all the evidence on display  
22 and to read our final report which, of course,  
23 will come out at a later time. As I think you  
24 understand the public hearings for the very reasons  
25 you suggested, are made to the public so there can

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2 to this terrible tragedy.

3 The Commission has made no conclusions,  
4 no judgments at this time. We will, of course,  
5 do that in the very near future and I know that  
6 you will want to share an objective examination  
7 of those conclusions based upon the facts at that  
8 time.

9 THE WITNESS: Dean McKay, I am making  
10 no pre-judgment. I was merely airing a suspicion  
11 that is probably prevalent in my mind with any  
12 such commission, not particularly this one. I  
13 hope my suspicions are unfounded.

14 MR. MC KAY: We are very glad you were  
15 willing to come to us today. You have been most  
16 helpful. Mr. Liman?

17 MR. LIMAN: Mr. Rosenfeld has prepared  
18 these statistics. They are based again on the  
19 interviewing process we have described, 1600 inmates  
20 at Attica really reduced itself to those inmates  
21 who were in the yard, in D-Yard who submitted to  
22 interviews and the questions posed related to those  
23 who expected the State to come in shooting and those  
24 who did not expect guns but rather expected clubs  
25 or other non-lethal force.

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1  
2 statistics as usual.

3 MR. ROSENFELD: Mr. Liman, again, these  
4 statistics were based upon our interviews with  
5 inmates who were in D-Yard and are a compilation  
6 by our staff, particularly Mrs. Pickman, of the  
7 interviews of those inmates who were asked and  
8 answered the question which the inmate who appeared  
9 before us were asked, and that is what their expect-  
10 tations were as to the State Police assault.

11 They were asked, did you expect that if  
12 the police came in, would they come in with fire-  
13 arms, weapons, shooting or did you expect that  
14 they would be coming in with clubs and gas?

15 Of those inmates that responded to the  
16 question, 46.8 per cent said that they did not  
17 expect shooting. And 53.2 per cent said they did  
18 expect shooting. So that there was a very large  
19 split among the inmates in the yard, slightly more  
20 than half expected that there would be shooting.

21 Now, we did make an attempt to break  
22 down each of those to see whether there were any  
23 significant patterns of race, age, educational  
24 levels, years in prison, crimes of which the inmates  
25 are convicted and we determined that the differences

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1 in all of these areas were insignificant sta-  
2 tistically and that the split of expectations  
3 as to shooting cut across all of these lines.

4 MR. MC KAY: Mr. Rosenfeld, of the  
5 1600 or so inmates you have interviewed, how  
6 large a proportion of them responded to these  
7 questions?

8 THE WITNESS: First of all, Dean McKay,  
9 it was only asked of those who were in the yard.  
10 I think we interviewed something like close to 700  
11 inmates who were in the yard and I think, this is  
12 just from my recollection, about 400 of those re-  
13 sponded to the question.

14 MR. MC KAY: Thank you.

15 MR. LIMAN: Mr. Rosenfeld, we also pre-  
16 viously presented the statistics on the amnesty  
17 question of how many inmates were in favor of  
18 holding out for amnesty--

19 MR. MARSHALL: Can I have a question?  
20 Is there any way of evaluating that degree of  
21 shootings? Were the questions phrased in that way?

22 THE WITNESS: No, Mr. Marshall. There  
23 were, as you know, many interviewers conducting the  
24 interviewing but the question as it appeared on  
25 our interview forms was basically whether they

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1 27 expected there to be shooting in the yard 1274

2 or whether they expected an assault with non-  
3 lethal weapons.

4 MR. LIMAN: The question was really  
5 based on the point that was raised earlier that  
6 we wanted to ascertain how many inmates thought  
7 that the troopers or whatever the police force  
8 was, that was going to be used, would come in  
9 with clubs only as they have come in in other  
10 penal institutions. Auburn and more recently  
11 in New York City.

12 And since many inmates have knowledge  
13 of the force that has been used in other insti-  
14 tutions, we wanted to determine how many of them  
15 thought that the police were coming in only with  
16 clubs and how many realized that there was a  
17 real possibility that there would be gun fire  
18 and the loss of lives and this figure of roughly  
19 50-50 represented a fairly wide sampling.

20 Some inmates said they thought that there  
21 wouldn't be as much shooting, that the key question  
22 that we were interested in is how many of them thought  
23 that all that was involved was a billy stick.

24 MR. ROSENTHAL: I think it ought to be  
25 qualified--

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MR. MARSHALL: I was really wonder- 1275

ing. If I thought that they would come in armed with firearms but they wouldn't use them unless, you know, they were attacked or there was an attack by the inmates or something, would I have answered yes or no?

MR. ROSENTHAL: I see your point. The question was did you expect shooting, not did you expect them to come in carrying weapons.

MR. LIMAN: I think that most inmates that we spoke to who answered that question had the attitude that if they were coming in with guns, they would inevitably be used.

MR. ROSENTHAL: Mr. Liman, the other statistics which were presented the other day, to recapitulate, was we asked the inmates and again, this is from their present view and how they answered the question now based on what their views were then, but we asked them on the question of amnesty whether they would be in favor of amnesty-- whether they would be in favor of holding out for amnesty or whether amnesty was something that they were willing to give up in order to get out of the yard safely and just on the question of amnesty, 67.8 per cent of all the inmates interviewed re-

1 29 sponded that they did not favor amnesty.

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2 26:--

3 MR. LIMAN: When you say did not favor  
4 amnesty, what we mean is they were not in favor  
5 of holding out for amnesty. Not that they objected  
6 to it per se.

7 MR. ROSENTHAL: That's right. And 26.6  
8 per cent responded that they were in favor of amnesty  
9 and we broke that down more finally, 5.8 per cent  
10 of the total or about 1/6th of the group, one  
11 fifth of the group that said that they favored  
12 amnesty said that it wasn't that they themselves  
13 felt they needed a grant of amnesty, that they  
14 didn't feel in danger of prosecution themselves but  
15 they felt it was important to hold out for amnesty  
16 as an expression of support for the elected  
17 representatives who they thought were in some  
18 jeopardy.

19 MR. MC KAY: Thank you, Mr. Rosenfeld.

20 This, I believe, concludes our hearings  
21 for today. We will recess at this time then until  
22 Monday morning at 10 o'clock.

23 (Time noted: 5:35 p.m.)  
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