

1 judge and in a reflection of what
2 inmates and I dare say a good many of us lawyers feel
3 about the response that prisoners get from state judges
4 generally, this was a clearly fall step. They did not
5 want a state judge. They had no expectation that they
6 could get anything from a state judge, only the Federal
7 Courts.

8 Q Were all of these discussions again taking
9 place in the public?

10 A Yes. All of this--everything was before the
11 cameras. Everything was before the microphones and
12 individuals from--individual inmates who were not at
13 the negotiating table could at any time come to the
14 table and grab a microphone and speak.

15 Q And inmates in fact made it a condition of
16 these discussions that they be held in front of every-
17 body?

18 A Yes. I don't know when they said it, either
19 at this time or some other time, but they said very
20 clearly, "Look, we are not a negotiating committee. We
21 are at most spokesmen. We are all a negotiating com-
22 mittee and this is a true democracy and it was."

23 MR. McKAY: Mr. Schwartz, can we pause
24 for just a moment. The Reporter needs to change
25 his paper.

1
2 the only one who needs to change something.

3 Q Mr. Schwartz, when you say it was a true
4 democracy, tell us what you mean by that.

5 A Well, maybe I spoke too soon. I'm not sure
6 I know what I meant. I do know that decision making
7 was not by a representative group. Decision making,
8 or at least participation of that decision making really
9 was open to anybody who was nearby.

10 Q But was the result of it that there really
11 was no decision making?

12 A That--

13 Q Do you know what I mean?

14 A Yes, I know what you mean. I mean, in a way,
15 if I may say so, you are really asking what the inevit-
16 able result of it--that there could be no decision mak-
17 ing in that kind of decision making. I don't know. I
18 think--well, you know, I think the close analogy here
19 is foreign policy and foreign relations and a lot of
20 specialists will say that open covenants openly arrived
21 at means that you don't have very many covenants ar-
22 rived at and that seems, to some extent, the history
23 of the negotiations in Paris and that may be.

24 Q This was in effect the ultimate in open cov-
25 enants openly arrived at before television cameras and

2 and participate.

3 A Pretty much.

4 Now, I don't know what went on among the in-
5 mates themselves. They--

6 Q After you left?

7 A After we left. There was a television camera
8 there for much of the time. A local newsman was there
9 almost all the time, but there may have what we would
10 call caucusing or agreements of some kind on strategy,
11 I don't know this.

12 Q But in any event, you are saying there was a
13 discussion as to whether there was in fact a Federal
14 judge in New York--

15 A That's right.

16 Q And ultimately an inmate came to your defense
17 and confirmed the fact that all the Federal judges were
18 off in Manchester, Vermont at the Judicial Conference?

19 A That's right.

20 Q What happened then?

21 A I offered to contact Judge Curtin.

22 Q Judge Curtin is the Federal judge or a Fede-
23 ral judge in Buffalo?

24 A That's right.

25 Q And he has handed down decisions involving

A Yes.

Q And we had actually cases pending before Judge Curtain at that time and by coincidence I knew that Judge Curtain would be there and where I could reach him because I had called him the night before when we were thinking of driving there and had discussed driving arrangements with him and so it was sort of natural for me to think of contacting Judge Curtain and this kind of setting. And they said, "Yes, but we want Judge Motley." Obviously because of Judge Motley's decision in the Martin Sostre case back in July 1970.

Q That was a case involving an Attica inmate in which Judge Motley had ruled in favor of the inmates on certain rights?

A Yes. Except that at that time this grew out of Greenhaven. Sostre had been at Attica on a prior conviction.

Q Right. Now--

A And I said I would be willing to take and try to contact Judge Motley and Judge Curtain. I know where they are. I know the hotel. And I know how to get in touch with them and I don't know whether it was then or some other time when the state said we will make a plane available for this purpose.

1
2 other time there was a question about a sick hostage.
3 I think you told me that it was a man named Klute, I
4 think, who was apparently quite sick and the inmates
5 were quite willing to have him out, but there was, I
6 gather, a dispute among them about whether they wanted
7 another inmate, another guard in exchange. The result
8 of it is that they did not get another guard. I don't
9 know quite why. It was my impression that they gave
0 up that demand and let the man out. They were also
1 very solicitous about getting medicines for the hos-
2 tages. There was talk about diabetes for some people
3 who needed insulin.

4 My impression, by the way, and it was an im-
5 pression that was never changed, is they treated the
6 hostages, given the setting, even better than they
7 treated themselves. There were some mattresses which
8 they gave to hostages and didn't keep for themselves.

9 All in all, I--it was a remarkable display,
0 I think, of what perhaps in my world I would call gen-
1 tlemanliness and courtesy to a full. Far more courteous
2 than the inmates were treated after the uprising, I
3 would say, when the shoe was quite a bit on the other
4 foot.

5 So, I went out and I managed to reach Judge

1 Curtain and he said, "Will it be by
2 consent?" And I said, "Yes, it will be a consent
3 order," and he said, "Okay. If it is by consent, then
4 I am willing to sign it."

5 And I said, "I will get there probably at
6 about 1:00 a.m."

7 It turned out to be 3:30 because of the per-
8 haps backwardness of some parts of Vermont and the way
9 they run airports.

10 Q What did you understand this injunction was
11 going to do before you left the yard?

12 A Yes, that's very important.

13 It was made very clear, I thought, certainly
14 by me, insofar as I had anything to do with it, that
15 criminal amnesty was not available in this form by an
16 injunction from a Federal judge; that Oswald couldn't
17 give it. I didn't know about Rockefeller, but a piece
18 of paper signed by Oswald--consented to by Oswald,
19 signed by a Federal judge could not give them criminal
20 amnesty from criminal charges.

21 Q What were you trying to protect the inmates
22 against?

23 A What we were trying to prevent was physical
24 brutality and reprisals and administrative reprisals of
25 the kind that had been visited on men in Auburn.

1
2 ters like that?

3 A Denial of parole, massive losses of good time,
4 a year, a year and a half for being in the yard, that
5 kind of thing.

6 Let me say something about Auburn. What has
7 been forgotten in a lot of this is that Attica is not
8 the first major prison disturbance involving a threat
9 or harm to personal security. I mentioned earlier that
10 there had been an incident at Auburn on November 2 and
11 4 and I won't go into the details, but the essence of
12 it was that there was a black solidarity day; the in-
13 mates had been permitted to have speeches, had been
14 told there would be no reprisals; those who make the
15 speeches were locked in their cells the following night.
16 The black solidarity day was on Monday, the 2nd, and
17 the second day was Tuesday, the 3rd. The men were locked
18 in their cells that night and the prison exploded on
19 Wednesday. The inmates took some 40 or 50 hostages.
20 Somebody came from Albany and promised that there would
21 be no reprisals if the hostages were released. The
22 hostages were released and the men at Auburn then were
23 subjected to a truly vicious amount of brutalization,
24 which in some respects still continues at Clinton Pri-
25 son. Gassings, macings, being locked in their cells and

2 there were responses by the inmates in the only way
3 they could, such as heaving buckets with feces and
4 things like that and cursing in response and there
5 had been a steady escalation or had been up to April
6 or May at Auburn some 7 or 8 months later and then the
7 administrative reprisals began to take place with, as
8 I say, massive losses of good time, a year, a year and
9 a half. There were men from Auburn at Attica and when
10 we first came into the yard with the press, which was
11 my third trip and Oswald's second, they said to Oswald,
12 "You double crossed us at Attica--at Auburn and we are
13 not going to stand for that again and I think that over-
14 hanging the entire incident, the sense of double cross
15 that the press--that the administration could not be
16 trusted; that they had to have some kind of castiron
17 guarantee. We may see some of that at Trenton, New
18 Jersey because there is a feeling there and elsewhere
19 and Oswald admitted on television that there had been
20 a pledge given which was not honored of no reprisals,
21 but he pointed out that he had not been in office at
22 that time.

23 Q Now, it was again this background--

24 A That's right.

25 Q That you left the yard to get a Federal Court

2 prisals--

3 A That's right.

4 Q And again against any administrative repri-
5 sals?

6 A That's right.

7 Q And is it fair to say that this to give the
8 inmates some assurance where at Auburn they had only
9 the word of the state and they expressed the feeling
10 and Commissioner Oswald, as you said, confirmed it on
11 TV that that word had been betrayed?

12 A That's right.

13 Q So, you had made it clear you thought that
14 the injunction was not going to afford anybody protec-
15 tion against criminal charges being brought? You thought
16 you had?

17 A I thought I had made it clear or I thought
18 that somebody had made that clear.

19 Q And you thought that that injunction would be
20 acceptable even though it did not cover criminal amnesty?

21 A Yes. That was my understanding on the basis
22 of the fact that I was told to go ahead and get what I
23 could.

24 Q How did you work out the form of the injunct-
25 tion?

2 office and was told I could have access to somebody who
3 had a typewriter. As I indicated, I spoke to Judge
4 Curtain. I asked him where Judge Motley was, if he had
5 seen her, and he said he had seen her somewhere in the
6 lobby, and that she was in fact there and at that point
7 one of the inmates, and I forget in what context, I
8 think it had to do with making sure that the men in C
9 block or the men in segregation, one of the inmates
10 came also to Oswald's office or at least it was Man-
11 cusi's office where Oswald was working from, and I
12 prepared--I said to him--I remember quite explicitly
13 now, "I'm going to write this, but I want to write
14 what you tell me. I'm just going to put it in legal
15 language and I want you to read it when I am through."
16 And he told me what he wanted to say and I wrote it
17 down and I put it in legal language. You know, it is
18 hereby now upon the complaint and so on, it is hereby
19 something like that agreed by and between the parties
20 and we wrote it in.

21 And I then had it typed up and I then gave
22 it to a man again and I said, "I want you to read this
23 carefully again." I seem to remember something in my
24 mind, something about 2 or 3 times reading it. And it
25 was read and I was told it was okay.

1 Q This was an inmate who was
2 what you would call an inmate lawyer?

3 A I would rather not say anything that would
4 in any way identify him in any respect.

5 Q But in any event, the injunction, as it was
6 agreed upon, approved then and as it was ultimately
7 signed, read as follows:

8 "Inmates of Attica Correctional Facility,
9 plaintiffs, versus Nelson Rockefeller, Governor, Com-
10 missioner of Correction, Oswald, Vincent Mancusi, War-
11 den, defendants.

12 "Upon the consent of defendants, it is here-
13 by ordered that defendants, their agents and employers
14 are enjoined from taking their physical or other adminis-
15 trative reprisals against any inmates participating in
16 a disturbance at the Attica Correctional Facility on
17 September 9, 1971."

18 I said employers. I think it really reads
19 employees. I think it actually--our copy is sort of
20 struck over. I think the original probably said em-
21 ployees.

22 Q Now, you took this injunction to Vermont?

23 A I took this injunction to Vermont, together
24 with a copy of a complaint that had been prepared by
25 one of the inmates. It turned out, much to my grave

2 one page of that complaint, the second one. I had left
3 the first one on a desk somewhere, but we ultimately got
4 the first one and filed it in Court. It is on file in
5 the inmates' of Attica case.

6 Q Now, you flew to Vermont in a state plane?

7 A Yes.

8 Well, what happened is that I was driven there
9 --I must have left at about 11:00. I arrived at Batavia
10 Airport at about 11:30. I contacted Judge Motley and
11 she said she could not sign it, it was not within her
12 jurisdiction.

13 Q Not being within her jurisdiction means that
14 she is a judge in the southern district of New York and
15 Attica is in the western district?

16 A That's right. She said it would have no value
17 whatsoever and as a Federal judge she would not perform
18 a worthless act--and I would guess particularly ordering
19 something, knowing she had no jurisdiction. She said
20 that if the chief judge said it was okay, that might
21 make a difference.

22 My efforts in that respect were unsuccessful.
23 He did not think it was appropriate.

24 So, I then got into a plane, for what I thought
25 would be a fairly quick job, and I would be back at 3:00

1 or 4:00 a.m. We got into the plane

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2 with a man who has since gone on to better things, or
3 maybe not, the man who is now the warden at Attica, I
4 think, Ernest Montiana; and it turned out we couldn't
5 get to Rutland, where we were supposed to fly because
6 the Rutland Airport was closed, and the logistics of
7 going to Bennington were too complicated, so instead
8 we went to Albany where we had to wait about 45 minutes
9 for a state trooper to take us over another hour and
10 a half to Manchester where we arrived at 3:30 in the
11 morning, woke up Judge Curtain. He looked it over and
12 asked me where the complaint was. I told him that I
13 didn't have--I suddenly realized at that point I didn't
14 have the first page. I whispered and wondered to my-
15 self how many judges I would wake up during this thing
16 and how many I would appear before again and I got into
17 the car and this time, for some reason, we decided to
18 go by way of Glens Falls and drove back to Glens Falls
19 where we got the plane and arrived at Attica at 6:30
20 with the injunction in hand.

21 Q Then what did you do?

22 A I went upstairs and was told--to the office
23 and was told that the next meeting was at 7:00 and
24 either at this time or at some other time I learned
25 that a group of observers, not the group that was

2 of observers to the negotiations were in the process
3 of being rounded up by Arthur Eve and a few others.
4 When 7:00 passed and nothing happened, I got very dis-
5 turbed, as I had indicated earlier, that these dead-
6 lines were being passed with no comment.

7 So, I went down to the gate and called to
8 the men that I had the injunction and had copies made.

9 I handed the injunction to one of the men on
10 the security patrol and went back upstairs or did some-
11 thing, I don't recall the details. I really don't re-
12 call quite what happened. This must have been about
13 7:30, I guess, yes. I don't recall quite what happened
14 within the next half hour, but somehow or other I wound
15 up going back to the gate where a member of the patrol
16 handed me the injunction and said, "This thing is worth-
17 less."

18 And I said, "Well, I already explained to you
19 --not knowing what he had in mind--I already explained
20 to you that we couldn't get Judge Motley's signature
21 and--I explained that as soon as I handed the document
22 --he said it doesn't have Judge Motley's signature. I
23 thought that would be the only problem. He said, "That's
24 not it. It doesn't have a seal."

25 I got kind of startled and I said, "That

2 course, Judge Curtain doesn't have a seal with him.
3 He doesn't walk around with a seal, but that doesn't
4 make a damn bit of difference and if you want, I will
5 get you, as I recall, a God damn seal, as I said it.
6 It doesn't change a thing. It has no legal signifi-
7 cance, but if you want it, I will get it."

8 Now, this must have been somewhere between
9 8:00 and 9:00 because I called Judge Curtain's secre-
10 tary and she was in the office. So, it must have been
11 between 8:30 and 9:00 and she said, "Oh, of course,
12 bring it over and we will take it into the clerk's
13 office and he will give it the seal and that will be
14 that."

15 Q So, at this point you thought that the only
16 infirmity with your injunction was that it was missing
17 the seal?

18 A That's right.

19 So, I went back downstairs and I--Arthur Eve
20 had arrived and was, I think, looking to round up some
21 observers and I think at this time I was told that a
22 man named Tom Soto was outside, connected with the pri-
23 son solidarity committe, and that he was saying that
24 the injunction was worthless.

25 And I went outside and said, "Why?"

7

2 can be appealed."

3 I said, "That's nonsense, and I'm outraged be-
4 cause here we have a very delicate thing and you are
5 about to ruin it. You cannot be appealed. It's by
6 consent. Technically that--it just wouldn't happen.
7 They might repudiate it in some way or other, but it
8 can't be appealed and there is no indication that they
9 going to repudiate it," and I asked him if he had spo-
10 ken to a lawyer and he said, no, he had not and I saw
11 Louis Steel, whom I have known over the years, and who
12 was a friend of mine and I walked up to Lou and I said,
13 "Lou, I think it would be good if you come in."

14 Q He was one of the observers also who became
15 an observer?

16 A Ultimately. But he was one of the observers--
17 there were sort of two groups of observers. There was
18 first the group that came in before Friday noon, or at
19 Friday noon and then--which was sort of the ad hoc group
20 holed together to watch the negotiations and then there
21 was the group that came in, that was requested in that
22 list, that initial list of demands by the inmates. The
23 two merged subsequently.

24 And I said, I think, "Lou, I think it would
25 be a good thing if you came in." And we--I have for-

1 gotten whether we talked at that point
2 or later, and Lou said, "You know, without criminal
3 amnesty there is nothing. It will fall."

4 And I said, "Well--"

5 No, I think he said this--I really don't re-
6 call whether he said this then or afterwards, but it
7 was very clear that in his mind there was no question
8 that without criminal amnesty, nothing will happen and
9 I recall saying, "Well, that may be, but that's not the
10 impressions that we got."

11 And this is what I mean, there may have been
12 this quite massive failure of communication. And I
13 went back in and I--at this time the inmates said they
14 would not negotiate any more orally, it would have to
15 be by notes placed on the bars.

16 I don't know the reason for that. They may
17 have given us a reason and I may have forgotten it.
18 So, I put a note there--actually, I may have put this
19 note before I went outside, that we were sending some-
20 body to Buffalo with the injunction to get a seal and
21 that it would be two hours. We would have it back by
22 11:00 because it takes about an hour to get from Buf-
23 falo to Attica.

24 And then we never did get that seal, because
25 at some time around this point two things happened:

1 the inmates came forth and said,

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2 "You're trying to attack us; you're planning an attack."

3 And this, I think, was partly, not wholly,
4 but perhaps partly, the result of--I think this was
5 9:00 and there hadn't been communication, 8:30 or a
6 quarter of 9.

7 "You're planning an attack by the state
8 troopers. We see the state troopers marching around
9 in back and there are correctional officers in the
10 tunnels."

11 Deputy Vincent, I think, was called over and
12 he said, "That isn't true."

13 Incidentally, at this time or earlier Vin-
14 cent showed to my mind the kind of attitude which brought
15 us where we are with the problems we have.

16 Either then or earlier I asked to talk to one
17 of the inmates on the negotiating--on the patrol while
18 I was outside and Vincent barked out, the way you would
19 bark out, I guess in the Army, the way an old line top
20 sergeant would bark to a rookie, so and so come here.
21 And the voice was so comandeering and so clearly hey,
22 you, so and so, get over here, that it seemed to sum
23 up to me so much of what is true about the relation-
24 ship between the old line guards and the old line
25 staff and prisoners. And the inmates came out and

1 said they had had enough talk; there
2 was going to be one more negotiating session. It was
3 going to be serious and that was going to be the end.
4 And I, at this point, felt somehow very very gloomy.

5 I think for the first time since I had been
6 going in I felt there was something very ominous and
7 I must say it may have been partly because I was very
8 tired. Just be coincidence I had had insomnia the
9 night before that night--

10 Q So this was Friday morning?

11 A This was Friday morning, so that I had in to-
12 tal had 2 hours sleep over the two days, the two nights
13 that were involved.

14 So that that may have contributed, but I felt
15 very apprehensive at this point and I must say that if
16 somebody had said to me, "You don't have to go in on
17 this trip," I would have been quite willing to pass up
18 that one.

19 And I had been quite shaken by this talk
20 about the seal, because what it seemed to me quite
21 clearly was to make a fuss and call the injunction
22 worthless over something which was really trivial,
23 but more than that, not to take my assurance for the
24 fact that it was trivial to assume that I would take
25 a trip to Vermont and that I would double cross them

1 made it very clear to me that I was

2 relatively no place in this situation.

3 Q This was another example of this pervasive
4 mistrust that you talked about before?

5 A Yes.

6 Q Now--

7 A And, so, Oswald said, "Okay, we will go in
8 on neutral territory."

9 The response came back, "No."

10 He then gave them 3, as I recall, alternate
11 places, as I recall, to go back and meet and again the
12 response came back, "No."

13 And I somehow got the impression that it was
14 all over, that he was going to say, "Okay, I have had
15 it. We are going to go in and get those hostages."

16 As it happens, I was wrong and I kind of sat
17 there feeling very scared about what was going to hap-
18 pen. I envisaged a blood bath. As a matter of fact,
19 you know, I was rather surprised that no more than 43
20 lives were taken in the ultimate blood bath. I would
21 have thought far more. And to my surprise Oswald said,
22 "Okay, we will go back in for one more time. I'm go-
23 ing to pull together a committee of press and people,"
24 and I said to him, "Do you want me to go in on this
25 one?" Because I felt that he would want only his own

1 people from his own staff and he said,

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2 "Oh, certainly I want you to come in," and I felt oh,
3 my God, because I really had no great desire for it.

4 So, about--I have forgotten whether the num-
5 ber was 14 or 16 or 12 or something went back in, a
6 fairly substantial number of press.

7 Q Again, back in the yard with the inmates,
8 with the press and the TV cameras?

9 A Plus the 3 new people who were there as sort
10 of observers to this to something.

11 Q That's Mr. Steel--

12 A Mr. Steel, Mr. Carpenter and Mr. Chandler.
13 Carpenter and Chandler are two black--I think they are
14 ministers from Rochester.

15 Q Scott also?

16 A Then it was--Scott was in place of either Car-
17 penter or Chandler. I don't recall the name.

18 Q It was Mr. Scott and Mr. Chandler.

19 A Oh, I see. Okay.

20 We went in--there was also at this point--
21 we, I think, asked again quite specifically for a
22 guarantee of safekeeping, a very specific guarantee of
23 this type.

24 Q You were concerned?

25 A Yes.

1
2 --and this time I think the table was against the wall,
3 against that upper side right wall and we sat down.
4 The legislatures--these new observers, press, and I
5 think from Arthur Eve and myself and from Oswald's
6 staff, Oswald--I don't know. I think that may have
7 been it. I don't think Dunbar came in with him at
8 this point.

9 Q And you presented the injunction at this
10 time?

11 A Well, they had it.

12 Q And what happened?

13 A The injunction was the first thing that came
14 up. And one of the inmates said it was worthless be-
15 cause it had a signature by Oswald on it.

16 He said, "What kind of Court order is this
17 that has the signature on it?"

18 Q That was the consent?

19 A That was the consent. I said that was the
20 consent by Mr. Oswald. We would not have gotten it
21 except by consent. It is a consent order which is a
22 fairly traditional type of order when the other side
23 agrees and it is no less enforceable than any other
24 order. Well, why does this thing only have Oswald's
25 name on it?

2 tional Department, including, as it happens, the parole
3 people, are subordinate to him."

4 Well, a lot of these questions were asked
5 and then one of the other inmates stood up and grabbed
6 the microphone and said, "This injunction is garbage.
7 It doesn't give us criminal amnesty. It's limited to
8 only one day and it doesn't have a seal."

9 And at this point I decided that there was
10 just no point to my answering and responding any fur-
11 ther.

12 Q Why?

13 A I really did not consider that there was any-
14 thing to discuss here. I considered this frankly largely
15 a speech, not an attempt to really see whether the in-
16 junction did or did not have any significance. It was
17 very clear to me that whatever I said would be dis-
18 believed; that my credibility was zero. It was very
19 clear to me that these comments that were made had
20 been made earlier, before I came in; that they had
21 agreed that this was the facts.

22 On the issue of the seal, again, that was
3 in my mind--I mean, non-lawyers tend to have an ex-
4 aggerated notion of the significance of the formali-
5 ties and of sometimes of words.

1 Q What about criminal am-
2 nesty?

3 A Criminal amnesty, it was never my intention,
4 as I thought I had indicated earlier, that that's what
5 this was going to provide them with. It wasn't inten-
6 ded to provide them with amnesty and for them to say
7 that it didn't have that, I quite agreed. There may
8 be ways of obtaining amnesty, as Tom Wicker indicated.
9 Somehow if we provided amnesty for the state troopers
10 or the National Guardmen at Jackson State and Kent
11 State, one would think that a society like ours could
12 figure it out if it wanted to, but that wasn't what I
13 could do, that wasn't what I could do with this par-
14 ticular piece of paper.

15 Q Did anybody--did any inmates, including the
16 one who had reviewed the paper before, come to your
17 defense in that yard?

18 A No. That would have been a very, very un-
19 likely thing to happen, I think. Not to my knowledge
20 anyway.

21 The issue of the day, I think, was a clear
22 ambiguity. I think they were right there, not in the
23 way they interpreted it, but in the fact that it wasn't
24 as clear as it should have been. It was drafted quickly
25 and what the date said--it said on September 9. It was

1 was supposed to describe and identify
2 the particular disturbance. It was--

3 Q But that could have been remedied?

4 A What I was going to say was that that could
5 have been remedied on the spot and Judge Curtain, I'm
6 sure, would have ratified it by simply writing in the
7 words "beginning on" and if were in a negotiation with
8 another lawyer, we would immediately have said, "Of
9 course, let's fix that right away. We will give the
10 judge a call to make sure he agrees." Of course, he
11 would agree if the parties consent and that would have
12 been taken care--I mean, this is the kind of thing
13 that happens all the time in negotiations, particularly
14 when you are drafting on the spot.

15 Q But here it became apparent to you, did it
16 not, that without the criminal amnesty your wording
17 changes in this injunction were not going to settle
18 anything?

19 A Well, sure, that was apparent, but what was
20 more apparent to me was that the board change would
21 not be accepted, that they would not believe it would
22 have any meaning. If they felt that the seal was im-
23 portant, if they felt that the signature of Oswald
24 was irrelevant, then my saying that it was, in their
25 eyes we would be "monkeying" with it and it would even

1 be more worthless, so I felt that
2 at that point to my participating any further and I
3 decided at that point that I would not participate in
4 the negotiations any more; that I could do no good at
5 all.

6 Clearly the state didn't trust me, because
7 they knew where my sympathies lay and that before this
8 had began and after it was over I would be fighting
9 with them and they probably figured that any Court
10 action that came out of this thing, I would be deeply
11 involved in, as I was, and it was clear that the in-
12 mates had lost confidence in me, and actually the role
13 I did play subsequently, as I think about it, was that
14 insofar as I think Oswald did retain some confidence
15 in me, I think I may have had some influence, some
16 moderating influence in the councils of the state. I
17 think they saw me as a sincere adversary, but some-
18 body who would not lie to them and was interested in
19 saving life, everybody's life.

20 Q Now, after your injunction had been--I
21 shouldn't say your, but after the injunction had been
22 disposed of, did the discussion then center on Com-
23 missioner Oswald?

24 A Yes. He was then subjected to an enormous
25 amount of abuse. I mean, things--what the inmates

1 apparently felt, and they can tell

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2 you better than I, at least what they said, was that,
3 A, he had played with them. He had not given them what
4 they wanted, and, B, he had dawdled and, C, if he couldn't
5 do it, then he wasn't the man they wanted to talk to and
6 from their point of view, as I have thought about it
7 since--

8 Q Couldn't do what?

9 A If he couldn't give them criminal amnesty, if
10 he couldn't give them minimum wages, and he said things
11 like, "That's not my fault, that's the legislature's."

12 I felt they were right. My feeling was that
13 in their position I would have said, "Now, look, some-
14 how you and the body, the State of New York whom you
15 represent, figure out a way to get us in here and I
16 am not worried about your problems of separations of
17 powers, to put in in lawyer's talk, you people, whether
18 it's you or somebody else, you got to give us what we
19 are entitled to."

20 And I think that that was their position.

21 To my mind it is a perfectly reasonable po-
22 sition and as a result, they said to Oswald, one of them
23 said to him, "Oswald, you want nothing. We want you
24 out of here and you bring back somebody who can," and a
25 lot of this continued quite intensively.

2 the inmates while you were in the yard that it wasn't
3 simply a question of power, but that the state and who-
4 ever was making the decisions for the state was not
5 about to give them criminal amnesty?

6 A I don't recall any such clear indications from
7 Oswald. I seem to recall Oswald saying primarily, "Look,
8 that's not something I can control. That's something
9 for prosecutor people, and the like."

10 I don't recall his saying that, and I think
11 Rockefeller said, "I can't and I wouldn't if I could."
12 I don't recall that being said.

13 This may be a failure of memory, I don't re-
14 member.

15 Q Now, on this matter of injunctions, was the
16 reaction to the injunction in the yard that it was an
17 act of trickery?

18 A I don't actually recall that that was actu-
19 ally said, but it certainly seemed to me that that
20 wasn't far below the surface in what they were think-
21 ing.

22 Q In other words, did you feel that the in-
23 junction not only had not settled matters, but that
24 it had widened the gulf of mistrust?

25 A That's hard to say. I mean--I need hardly

2 that would color my answer, but I don't know. I think
3 things--the gulf is so wide and so deep that it may
4 have contributed, but even if it hadn't been there, I
5 don't think any substantial and meaningful differences
6 in my understanding might have been there. I may be
7 wrong about that. I think the people can tell you
8 that better or either inmates or members of the nego-
9 tiating committee who had contacts with inmates sub-
10 sequently.

11 Q All right, as you know, listened to the TV
12 tapes of this and there were a lot of comments about
13 the fact that the injunction really wasn't simply in-
14 advertently unprotective of what they wanted protec-
15 tion, but that it was deliberately so. And I wonder
16 whether you got that sense being in that yard.

17 A Let me say I don't remember when I got that
18 sense. I may very well have and certainly it was very
19 clear in my mind that I could do no good going back in.

20 Q Now, you made a decision at that point that
21 you were just not going to go back in the yard again.

22 A Yes. This was about 10 minutes after 12.

23 Q You held to that decision and did not go in
24 that yard?

25 A Oh, yes. I felt very strongly afterward.

2 pulled together, I mentioned to some of them that as
3 far as I was concerned I thought that the only people--
4 I felt very strongly about this, not only about my-
5 self, but about some of the other people who went in,
6 such as the state legislatures. I felt very strongly
7 that the only people who ought to be in there are those
8 chosen either by the inmates or by the state; that there
9 should not be outsiders who really had no business there,
10 who were there for anyone of a number of what seemed to
11 me not terribly good reasons.

12 Q When you left the yard that last time Friday--

13 A A lot happened before we left the yard.

14 Q Do you--

15 A It's up to you.

16 Q Yes. Your other observations while you were
17 in that yard. What happened then?

18 A You see, after they beat on Oswald pretty
19 hard rhetorically--and as I said, he held his cool
20 pretty well, somebody said, "Why don't we keep him
21 here."

22 And I think this was in the context of
23 getting to a non-imperialist third country. I think
24 at that point I got pretty scared. I think for the
25 first time I got really scared and this continued for

1 about 10 minues with a lot of shout-
2 ing. I said to one of the members of the committee,
3 "You know, you promised us safekeeping," and he said,
4 "You see, I can't control them."

5 But then one of the men from the patrol--
6 and this is why my position is an ambiguous one, one
7 of the men from the patrol said to me, "You have no-
8 thing to worry about. We are going to get you out of
9 here." And I was struck then, as other people I think
10 were struck later on during the takeover by the very
11 strong sense of honor of the prisoners. Some of the
12 prisoners, as you know, I think the evidence is were
13 told to protect the hostages and they did and we were
14 told that we were going to get out no matter what hap-
15 pened and we did. And I think this is something that
16 really--as I have said elsewhere, men can be courageous
17 and responsible and respectful if you give them an
18 opportunity and the power to do that. If you treat
19 them like dogs, they are not going to act like that.

20 Q Were there any votes when you were in the
21 yard?

22 A Any what?

23 Q Votes.

24 A I think so. I don't remember. Yes, I
25 think there was a vote about whether we should be let

1 go, I think. I'm not even sure, by
2 the way, about we. There was talk about Oswald and as
3 far as I was concerned, it seemed to me that I would
4 have no choice. If they were going to keep Oswald, I
5 would not leave him there. I think we had never dis-
6 cussed this, but as far as I was concerned, we had all
7 been given the pledge of safekeeping, we would all
8 stay in there no matter what happened.

9 Q Were you and the commissioner able to roam
10 through the yard?

11 A No. I only--only as I walked--I was kind of
12 hustled on all of these trips back and forth, though
13 men would stop me and talk to me for a few minutes.

14 Q And that would be your extent of your pri-
15 vate discussion in the yard?

16 A That's right. And as I walked out, several
17 of the men again expressed a great deal of war-
18 and affection towards me, despite this business w h
19 the injunction.

20 Q Now, during--except for your first visit in
21 the yard, did you or the commissioner ever stop and
22 talk to the hostages?

23 A No. I never spoke--as I recall, I never spoke
24 to them. I think the commissioner may have. I seem
25 to recall this, but you would have to ask him. I don't
know.

2 know.

3 Q What was your mood about the chances of
4 success of a peaceful resolution when you left the
5 yard the last time Friday?

6 A Pretty bad. I mean, I was--I felt that,
7 again--again, Oswald surprised me, I will say.
8 Again I felt that it was all over and the blood
9 would flow and then I was rather surprised when
10 somebody from Oswald's--working with Oswald came
11 to me and said, "Does anybody know how to get a
12 hold of Bill Knustler?"

13 And we made some telephone calls, because I
14 knew how to get a hold of Bill, or at least how to
15 *get a hold of somebody who knew where he would be and*
16 it turned out that they were gathering the negotiators
17 and at that point I talked to Steel and to, I guess
18 it was Chandler and to Eve and I said, "I think that
19 as far as I am concerned, I should not continue to
20 go in; that I am discredited and whatever I can do
21 on the outside, I will do, but nothing more."

22 Q Did Commissioner Oswald seem pretty well
23 in command of the situation at this point?

24 A The reason I hesitate is not because I
25 would answer that he did not. It is just I'm trying

1
2 to find the right words. I had the 583
3 impression that he was giving the orders. I also
4 knew that he was on the phone with Albany a good
5 deal and I kept hearing about pressures on him.

6 Now, the nature of those pressures, whom they
7 were from, what kind, I was not told.

8 Q What did he say about pressures on him?

9 A He said something like "Herman, you
10 can't imagine the pressures on me on this thing."

11 Q He, at this point at least, was committed
12 to trying to negotiate out the hostages safety?

13 A I'm convinced of that.

14 Q Now--

15 A Wait a minute. I think not only the
16 hostages' safety, but the safety of everybody in
17 there. I think that's too easy to dichotomize
18 this. I asked one of the state troopers whether
19 it was possible to go in and rescue the hostages
20 without a substantial or some loss of life and I
21 was told "No."

22 Q What day was that?

23 A It was Thursday or Friday. I think so.
24 It may have been Saturday, but it was while I was
25 there and so I knew very well that somebody was
going to die and I would guess a lot of people

1 were going to die.
2

3 Q Now, you have talked about 584
4 this massive failure of communication and the
5 great mistrust. Bearing all of those factors in
6 mind, and your great experience, not only during
7 those few days, but more importantly in dealing
8 with prisoners' rights; I wonder if you could comment
9 on the utility of using outside negotiators the way
10 they turned out to be used at Attica.

11 A I don't know--that's terribly hard. I
12 don't want to evade your question. I will try to
13 answer it.

14 I cannot speak with very much knowledge about
15 the negotiating group that went in Friday evening.
16 I was not part of that group, except insofar as I
17 participated with Knustler Saturday morning in
18 helping to supplement the prisoners' demands. I
19 felt that on the basis of what I knew about
20 prisoners' rights and problems certainly very key
21 things had been omitted, such as violating--
22 reimprisoning somebody on parole for trivial
23 violations, a whole range of things and I made
24 about four or five suggestions, which were
25 ultimately incorporated in that list of 28 sub-
~~sequently~~

1 So, I can't really speak about that. 585

2 I don't know about the nature of the relationship
3 and the like. I think it is very dubious when
4 you are dealing with people who are so terribly far
5 apart, in a society as polarized as ours is, because
6 as a prisoner is a microcosm of that society and it
7 was there, it is very hard for anybody, for anybody
8 to serve as a bridge. Both sides have such a deep
9 distrust, hatred, contempt of the other side that
10 somebody who is in the middle is going to get
11 crowded up.

12 That doesn't mean, however, that in these
13 situations there shouldn't be somebody in the middle
14 or there shouldn't try to be and indeed my guess is
15 that maybe if one were to try to figure out
16 systematically how to handle this--there are two
17 things that I would think are necessary: Time,
18 because I think that was the great crime that was
19 involved here. We are dealing with matters of
20 life and death for a massive number of people and
21 it could have taken longer. We couldn't have done
22 very much worse by waiting then we did. There might
23 have been perhaps a few more injuries inside. I
24 don't discount that. Men perhaps might have gotten
25 panicky or what, I don't know, but 43 lives and God

1 knows how many injuries, it has got to 586

2 be awfully bad inside to come near that and we were
3 lucky at that that it wasn't more than 43.

4 So that one thing I think you need is time and
5 I think another thing you need are relays of
6 negotiators, perhaps trusted by both sides, if one
7 can find them, so that as one loses credibility,
8 and they will, maybe others can come in.

9 Maybe that might work, because it was very clear
10 that I think there was a rise in hope the minute a
11 new group came in. Those of us who had tried to do
12 something to mediate the first 24 hours were clearly
13 used up and that's really the word. We were used up.
14 There was nothing much more we could do, except for
15 one man, Arthur Eve, because I think Arthur Eve had
16 the confidence of both sides all the way and so it
17 seems to me that if you can find a few people and
18 develop those all the way, I don't know, maybe Tom
19 Wicker did too. Maybe one or two others did, too.
20 Or maybe if that group had been given more time,
21 it might have been able to do something, but they
22 weren't given that time and so we will never really
23 know.

24 So, I can't say that it's a mistake that that
25 isn't the way to do it.

2 any choice. I don't know of any other way short
3 of each side or one side or the other giving in
4 completely, but then you won't have this kind of
5 struggle.
6

7 Q Did you feel that there was give on the
8 inmates side from your own experiences?

9 A Not very much. On the other hand, I think
10 you have got to realize what you are asking them to
11 give. For the inmates it was truly a matter of life
12 or death and those were the issues that the big
13 battle was about.

14 Q The amnesty?

15 A Amnesties, reprisals of various kinds,
16 getting rid of Mancusi. You may recall that the
17 negotiations came down in the sense to be two
18 final big ones, on which I think Oswald said he
19 could not, would not or what have you budge.
20 Getting rid of Mancusi, which was really
21 secondary, because I think we all knew that he
22 was finished in one way or another and the
23 amnesty and that's life and death. And--life,
24 death or lengthy prison terms and they knew what
25 had happened in Auburn, so it is life, death,
brutalization, prison. All the things that make

2
3 Q But you had given to them an injunction
4 which you apparently had some faith in against the
5 last aspect, brutalization?

6 A Yes.

7 Q And what was the life and death that was
8 at stake that some people could get very heavy raps?

9 A Yes. Or could get killed in the fire
10 power thing, because that was also in their thinking,
11 or could get terribly brutalized, because frankly,
12 let's not kid ourselves, we know we are suffering
13 this right now with the Attica hearings. I don't
14 want to pre-judge anything that is going on before
15 Judge Kirkin, but it is our contention, as lawyers
16 for the inmates, that despite the injunction,
17 despite our efforts, men inside are being brutalized
18 and so, despite the fact that we would have had
19 some kind of ombudsman committee and the like,
20 and even despite the presence of the Goldman panel,
21 a Federal Appellate Court confirmed a Federal
22 District Court finding, it reversed it on the
23 appropriate relief and ordered relief to be
24 issued, but all of those Courts found that despite
25 the presence of the Goldman panel, which had the
run of the place, men had been brutalized, so

1 that's what we are talking about

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2 insofar as they are concerned. Insofar as the
3 State is concerned, what were we talking about?
4 These men were going to be imprisoned for a long
5 period of time, many of them. I don't want to
6 get into that issue, but when you say--as some
7 have said to me, "Weren't the inmates being
8 unreasonable?" I think the answer is "Yes," but
9 look what they were being asked to give and they
10 had one trump card and one trump card only. Let's
11 not forget that, the hostages. Once they gave
12 that, they had nothing and they faced all of
13 those other things which all the injunctions in
14 the world could not have prevented them against.

15 MR. LIMAN: Mr. McKay?

16 MR. MCKAY: Yes.

17 Professor Schwartz, on Thursday you
18 played a distinctive, indeed a unique role and
19 I guess Friday morning also. You did not, at
20 any time, consider yourself one of the
21 negotiators, I gather; is that correct?

22 THE WITNESS: No. When I went to
23 talk to the inmates--for two reasons. When
24 I went to talk to the inmates I said I am
25 quite willing to serve as an intermediary to

1 help in any way that I can. I want 590
2 to make clear, and probably this was
3 totally unnecessary because they didn't want
4 that anyway--I'm not a negotiator and I will
5 not negotiate for you. I feel very deeply that
6 on matters like this--and I have tried to take
7 that position in my lawsuits, since it is
8 your neck, in this case, literally, you have
9 to do the negotiating and it was--that was
10 unnecessary to say because it was very clear
11 that they didn't want anything more.

12 I was to serve as a courier, as an
13 assistant, as an intermediary, nothing more,
14 but the negotiating would clearly be by the
15 inmates.

16 So far as the States are concerned,
17 frankly, they wouldn't even have any--I think
18 they wouldn't have any legal power. Oswald
19 was in charge.

20 MR. McKAY: At a later time, however,
21 as you have mentioned, on Saturday, you did
22 suggest new positions that the inmates might
23 ask for?

24 THE WITNESS: Yes.

25 MR. McKAY: What role were you playing

1 at that time when you asked for 591
2 things that they had not asked for?
3

4 THE WITNESS: Well, I am, by
5 commitment and time concentration at the
6 moment a prison rights lawyer. Saturday
7 morning I felt, for the first time, that this
8 thing could be resolved and I sort of felt that
9 the danger of blood shed was over. There was a
10 sense of what turned out to be basically
11 euphoria Saturday morning after the meeting
12 with the new negotiators the night before.
13 And I had breakfast with Bill Knustler and
14 he shared this and some how we all shared this.
15 And I felt that at that point I would fall back
16 into my normal role of somebody trying to improve
17 the prison situation; that this somehow had
18 moved out of the life and death situation and
19 that I should therefore try to make sure that
20 whatever negotiating there was should include
21 those remedies and rights which I consider
22 are desperately needed in our prison system.

23 MR. MCKAY: Were you ever asked to
24 join the negotiating team?

25 THE WITNESS: Oh, you know that was
such a pick-up team that--well, if events

1
2 on by whom you mean.

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3 MR. MCKAY: By any of the other
4 negotiators.

5 THE WITNESS: No, but it was kind of
6 assumed by a few whom I talked to that I would
7 help them, but I see--my situation there wasn't
8 long enough with the other negotiators. I left
9 the prison at about 3:00 in the afternoon on
10 Friday or 4:00 or something like that, or maybe
11 5:00. I went home, showered, and then went to
12 the airport at 8:00 to pick up Knustler.
13 I met with him and briefed him, drove in, met
14 with the negotiators, but pretty much sat there
15 during this discussion.

16 The next morning when I came out we
17 weren't allowed in, nobody was allowed in. They
18 had tightened up security very, very much and
19 nobody was allowed in until 12. At about 12 or
20 12:30 the negotiators met, with myself among
21 them, and discussed the deal that three of them
22 were able to work out with Lewis James, the
23 DA locally.

24 I made some comments at that point in
25 this open meeting. A negotiating drafting team
was then chosen of a few people, or 10 or 12 and

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I then left to pick up Bobby Seale 593
at about 3:00.

So there was never really much of an occasion to ask me to be involved very much. At that time the negotiators had been in only one time, the night before, and I was never in a position to participate, but as I say, it wasn't the way it works. As I remember, I mentioned to Knustler at one point that I had made the decision not to go in, did he think that was appropriate and he said "Oh, I don't think it makes very much difference. I think if you want to come in, there wouldn't be any problem" and I said "Under those circumstances, I would just stay out because I don't think I can contribute anything."

I guess maybe I had some misgivings that Mr. Liman mentioned a minute ago, that I would be seen as somebody who had tried to duke them and, therefore, my involvement might add that kind of undesirable element.

MR. McKAY: A final judgmental question that you must have asked yourself. In the balance, are you glad or sorry that you went in?

THE WITNESS: I am not sure 594

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3 that I have asked myself that question. I think--
4 no, I'm not sorry. It has cost me something,
5 I think, a credibility with prisoners at Attica,
6 but I think any man who gets involved in trying
7 to work with prisoners inevitability risks
8 that. The problems are so difficult, even
9 apart from Attica's. The amount one can
10 accomplish is so small; the volume of work is
11 so great; the resources are so slim that one
12 will inevitably turn off a fair number who
13 think you haven't done right by them and in
14 this case it hurt more than in any other
15 situation because I felt I had acted in good
16 faith and had worked very hard. I think
17 Assemblyman Eve and I did have something to
18 do with managing to put off the blood bath
19 and give other forces a chance to operate.
20 I don't think I'm sorry and I--whether I
21 would do it again, that's an impossible
22 question to answer. I think I would have
23 to know again what the situation is. I
24 think I might do it differently.

25
As a matter of fact, I have been
asked again, in a different context in a prison

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2 problem, but it hasn't gotten that 595
3 far. I'm fairly sure I would have much more.
4 I was going to say modest, but I didn't have
5 much high-fluent aspirations about what I
6 could accomplish before. I certainly would go
7 in much more pessimistically about what any
8 one of us could accomplish.

9 MR. MCKAY: Mr. Wilbanks, have you
10 a question?

11 MR. WILBANKS: You described your
12 relationship with Mr. Oswald as being fairly
13 good. Could you compare that relationship
14 with that of his predecessor, Mr. McGuinness?

15 THE WITNESS: I had no relationship
16 with Mr. McGinnis. I never met him. I
17 never talked to him. I talked to one of his
18 assistants, a man named Came, and that was a
19 very sticky conversation. He is a very tough
20 man. New York has been cursed with a series
21 of very poor prison administrators, without
22 mentioning anything about the present
23 administration, and I think it's fair to say
24 that Mr. McGinnis has been one of the poor
25 ones. He ran a very, very rough, tight ship
and one which made Attica, Auburn, places like

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2 that a virtual inevitability.

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3 MR. McKAY: Bishop Brodrick?

4 BISHOP BRODRICK: Professor, I have
5 some reflections on your observations and then
6 some observations on your reflections.

7 You attested to the sense of honor
8 among the inmates, which was good to hear.
9 You said you thought that more men would have
10 been killed; you said that it could have taken
11 longer and you boiled down the issues to that
12 of life and death.

13 I think that would be your reason--
14 life and death?

15 THE WITNESS: Life and death, long
16 liberty--you know, long imprisonment or very
17 serious physical injury, that kind of thing.

18 BISHOP BRODRICK: Right.

19 Then you observed that on the first
20 day you went in there there was a high level
21 of organization. Were you surprised at that?

22 THE WITNESS: Yes.

23 BISHOP BRODRICK: Would this
24 indicate anything do you think? Did it just
25 happen or was it planned?

THE WITNESS: That's--you know, that's

1 very hard to say. I would like 597
2
3 to think that the group of lawyers that we
4 told to get that first week had a very high
5 level of organization. We allocated tasks
6 among ourselves fairly well and we did that
7 in about an hour, an hour and-a-half. I
8 frankly do not know what it takes, how much
9 time it takes for that kind of organization
10 to take place. The organization that I would--
11 that I saw involved a security patrol, men on
12 the catwalks, observers with some arms, a table
13 with typewriters and some kind of food supply
14 and some kind of arrangement for--excuse me--
15 a corridor for us to come in and out and some
16 kind of understanding of what they were going
17 to demand.

18 I thought that was very highly
19 organized. I don't know whether that's the
20 kind of organizational result that could not
21 have been done within a matter of three or
22 four hours. There are natural leaders in the
23 prison system, as in everyone. I'm told
24 there was an election, I have read, in which
25 some men were elected leaders, and it's very
possible that that was done fairly quickly and

1 that those men were given a good 598
2 deal of responsibility to say this, that
3 and the other thing.
4

5 So, to me the level of organization
6 really implies virtually nothing about what
7 was planned or not.

8 BISHOP BRODRICK: Then you observed
9 that you don't believe in any parole system,
10 is that it, and a New York State system is a
11 bad system?

12 THE WITNESS: Yes. Very. Do you
13 want an amplification of that or do you want
14 just the Ex Cathedra judgment?

15 BISHOP BRODRICK: I don't want the
16 Ex Cathedra judgment, but would you want to
17 say something?

18 THE WITNESS: I think the New York
19 State parole system, pure and simple, operates
20 under a fraudulent mask of benevolence expertise.
21 Problems are granted or denied on reasons that
22 nobody can make any sense out of.

23 The man isn't told why. The hearings
24 last a matter of a few minutes and he goes
25 away embittered and angry. Parole conditions
that are improved on people range from the

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2 irrational to the outrageous. A man 599
3 can't get a driver's license. The result of
4 that is one of my clients was on welfare for
5 four months, even though he could have earned
6 about \$12,000 a year which was what he had done
7 before because he had been buying walnut and
8 for that you need a car in Central New York.
9 Men have been busted for driving without a
10 license. Men who are narcotic addicts and
11 others, and drunk and alcoholics are not per-
12 mitted to live with women who are not their
13 wives.

14 Nevertheless, very often these common-
15 law what have you relationships are the only
16 things that can keep these guys stable. I know
17 of at least two cases of where the men in
18 prison and their women were frightened to death
19 about being busted when they got out for having
20 a relationship. The fact is they work not be
21 busted, but if the parole officer doesn't like
22 them or suspects them of something else, he
23 then will use this or any one of a thousand
24 other trivial items, such as consorting with
25 known criminals when their parents and friends
and others have records to bust them. I have

1 had a young girl 18 years old who 600
2 was imprisoned of a non-criminal act, running
3 away from home. She was sent back to prison
4 because she didn't get along with her mother
5 and stayed away from home again and that's
6 all in the New York State Parole Law under
7 the guise of benevolence expertise and how to
8 handle people in that kind of situation.
9

10 BISHOP BRODRICK: Then you did say
11 that men inside are being brutalized, are being
12 brutalized meaning today?

13 THE WITNESS: Yes. Beatings, verbal
14 abuses and the like.

15 BISHOP BRODRICK: Is this a physical
16 situation or--

17 THE WITNESS: Yes.

18 BISHOP BRODRICK: Or psychological
19 one?

20 THE WITNESS: No. No. Both. The
21 State has admitted, which isn't an admission,
22 that physical force has been used on inmates.
23 They claim it was provoked, but on five or
24 six of the cases that we have in court on
25 which we are seeking to enforce the injunction,
I think five or six there is an admission on--

1 maybe admission is the wrong word. 601

2
3 There is an agreement that force was used, but
4 they claim that it was reasonable and provoked
5 under the circumstances.

6 BISHOP BRODRICK: Thank you.

7 THE WITNESS: We, of course, dispute
8 that.

9 MR. McKAY: Mr. Marshall?

10 MR. MARSHALL: On the last subject,
11 Mr. Schwartz, the incidents of brutalization
12 you were referring to are all in court?

13 THE WITNESS: Yes. They are all in
14 enforcement of the injunction that was entered
15 by the District Court upon Order of the Court
16 of Appeals.

17 MR. MARSHALL: I just wanted to make
18 sure that there weren't others.

19 THE WITNESS: Yes. In fact, hearings
20 have been scheduled for next Tuesday at Attica,
21 but there are some show cause orders tomorrow,
22 returnable Friday, raising some problems.

23 MR. MARSHALL: Now, on the question
24 of the parole system, you stated why you
25 thought the New York State Parole System was
no good, but your statement was also a relative

1 one which suggested that there were 602
2
3 some parole systems in other states that were
4 better, at least, maybe not good, but at least
5 better. Could you elaborate on that or is it
6 really your closest acquaintance just with
7 New York State?

8 THE WITNESS: My closest acquaintance
9 is with New York and the Federal system. I am
10 familiar only on the basis of inmate complaints
11 in letters with other systems and, therefore,
12 I am really not familiar at all.

13 I do know that only four states give
14 reasons, one of them by Court order in New
15 Jersey, the Monks case. I know--

16 MR. MARSHALL: The reasons granting
17 parole?

18 THE WITNESS: For denial of parole.
19 I do know that the parole conditions that I
20 have described are very prevalent. In fact,
21 a man from the Reader's Digest, who is doing
22 a story on this, called me a couple of weeks
23 ago and told me that in Arizona a man on
24 parole cannot enter into an installment
25 contract.

In South Carolina a man is required

1
2 to avoid bad habits.

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3 There is an article, a recent
4 article in the Journal of Crime and Delinquency
5 which summarizes parole conditions throughout
6 the country that I am familiar with, and it is
7 my impression that New York parole, from this
8 very hasty sketch, in terms of the grant
9 process and the rest--oh, I also know something
10 about the California system, because Kayhill
11 Foot, who is making a study of that system
12 appeared at a club of which I am a member and
13 talked with us about two or three hours about
14 it and that's just as bad.

15 The only good thing about California,
16 because of money problems they have cut down
17 on the amount of supervision, so they cut off
18 the waste of both money and human energies.

19 MR. MARSHALL: Now, just one final
20 thing.

21 You have described yourself, I think
22 this morning as a white liberal and your work
23 and interest in reform in the prisons.

24 Are there pre-conceptions that you
25 had before this that are destroyed now and
do you still think the same things are important

1
2 that you thought were important

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3 before?

4 THE WITNESS: Well, I have changed
5 my views on certain priorities of the kinds
6 of things I am trying to do, yes. I clearly
7 have done that. I came into this primarily
8 as a civil rights and civil liberties lawyer.
9 My professional interests are largely in the
10 abuse of governmental and private power,
11 particularly in the criminal and related areas;
12 and when I first learned something about prisons
13 in 1965, I came quickly to the conclusion that
14 this was the area where arbitrary power is
15 abused in more than almost anywhere else and
16 nobody is paying any attention to the area and
17 that's why I started to get involved and planned
18 this sabbatical year while I was a visiting
19 professor at Michigan in the winter of '68-'69
20 and my concern, then, was in terms of legal
21 action to expand rights and the fairly
22 traditional rights that are talked about were
23 those that I was primarily concerned about,
24 due process at disciplinary hearings, First
25 Amendment rights, medical care and the like.
I have shifted my priorities, I guess, in

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in which I have shifted it is that I believe,
and I have come to believe more, and this is
also learning from the civil rights area--
from the civil rights area that lawyers like
myself who suffer vicariously cannot be the
lead edge of any real social change.

Prisons, after all, are not legal
problems, they are social problems. They are
a part of the overall black problem and Spanish
problem in America today. They are simply in
some ways the most cancerous part, but they
are really a part of the whole thing. They
started with the kid in the ghetto being
hustled and frisked when he is five years old
and then the terrible schools and everything
else.

It is not only the terrible criminal
injustice sometimes we have, but the entire
system where injustice is so rampant. So, the
only meaningful changes are from those who
are suffering, not for lawyers or for gay
liberation or woman's rights or for black
rights or for prisoners. And, therefore,
it seems to be the first priority, as far as

1 I am concerned, is to work in those 606
2 areas which intend to have something to do with
3 First Amendment rights to organize, rights of
4 expression, rights of what I call transparency,
5 to make sure that the prison is transparent;
6 that if something is happening the community
7 knows about it right away; that they don't
8 have this maxi-maxi thing stuck up in Little
9 Siberia and God knows what is going to happen
10 there where nobody can get there except by
11 incredible feats of endurance, dog sleds and
12 things like that; that we must make it
13 transparent.
14

15 We must make sure that the community
16 which pays for it, suffers from--every citizen
17 suffers from riots, knows what is going on at
18 all times. The community at large is not
19 going to change anything. I don't think social
20 change happens that way, but those people who
21 are interested and can work and want to work
22 with the men inside and it's they who must
23 carry the burden for better or for worse, and
24 so the priority that I see is to make it possible
25 for them, with such things as unions, organiza-
tions and the like, to have free access to

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1 lawyers, to the press, to outside 607
2 people, legislators, ministers. That's one
3 major thing.
4

5 The other major area, as far as I am
6 concerned, is to get people out of there.
7 Bail reform projects, which abolish money bail,
8 striking at our barbarious system where young
9 people are sent away for petty crimes for four
10 years when adults would not be but theories
11 of rehabilitation. We don't rehabilitate.
12 We don't even try to do what we can do. That
13 kind of thing it seems to me is the other top
14 priority. I don't think I had that in mind
15 when I first started.

16 MR. MCKAY: Mr. Henix, have you a
17 question?

18 MR. HENIX: I had two questions, but
19 I think the answer to the second one was in
20 your last statement.

21 But I wanted to go back a little
22 ways where you mentioned that there was at
23 least one other occurrence where the news
24 medium in this case, radio, reported on
25 statements or a statement you did not make.

THE WITNESS: That's right.

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3 made before this Commission by officers who
4 came before us were that they felt the news
5 medium dealt them a low blow.

6 Have you read any of the news
7 reports? If so, do you think, A, the picture
8 that was reported by these mediums was in fact
9 a distortion of what took place; if so, and
10 what--in what ways were they distorted?

11 THE WITNESS: With so many of my
12 friends here from the news media, that's a
13 very difficult question for me to answer.

14 Let me say I don't think--I think
15 I disagree with the guards. I think what
16 happened to me twice, once in the written
17 media and once orally is just part of the
18 price we pay. It's far better than secrecy.

19 I don't think the television cameras
20 distorted it at all. To be perfectly honest,
21 I don't think I ever saw anything that was
22 televised except once when there was a repeat
23 when one inmate was yelling at me with my
24 name underneath it. It's not my impression
25 that the inmate--that the electronic media
distorted and the press, I--normally, I have

2 enormous number of gripes about press 609
3 coverage. The difficulties of understanding,
4 writing, having it rewritten, I mean there
5 are all kinds of processes before it gets into
6 that black print and so much can happen along
7 the way. I read the media fairly closely. I
8 must say I did not have the impression of dis-
9 tortions. I can't think of anything, except
10 that one incident involving me and I will say
11 when I called the next day they printed a
12 story which had some other distortions the
13 other way, but I think on balance, probably
14 gave a pretty fair picture, which, given the
15 confusing circumstances, is probably all we
16 can ask for in that kind of setting.

17 MR. HENIX: Do you think that that
18 one incident by radio had anything to do with
19 destroying your credibility with the inmates?

20 THE WITNESS: Yes. I don't know
21 that. Since it was the first, that might
22 indicate that maybe it did have a lot; maybe
23 there was a sudden shock that "My God, this
24 guy Schwartz, he is really just like the rest
25 of them" and that's a possibility. I don't
know.

2 conversations with Attica inmates subsequently,
3 I have not discussed my credibility or anything
4 like that. I have kind of gone on the assump-
5 tion that after it was over I felt I had a job
6 that I wanted to keep doing. If they wanted
7 me to do it with them, fine, those who did,
8 those who didn't, there were other lawyers and
9 I have had really very few conversations.

10
11 References have been made to me about
12 my loss of credibility in that contention and I
13 have said what I said here. That's the breaks
14 of the game.

15 MR. HENIX: Thank you.

16 MR. McKAY: Mr. Schwartz, you have
17 been very helpful to us indeed. You opened
18 with an original brief statement, your own,
19 and you have generously shared your views in
20 a number of respects. You are entitled, under
21 our procedures, to make a further statement,
22 if you wish, if there is something else you
23 want the Commission or the public to know.

24 THE WITNESS: You mean before being
25 sentenced?

I don't think so. I think that you

1
2 have probably asked me all that I 611
3 am going to talk about.

4 MR. McKAY: Thank you. You have
5 been most cooperative and most helpful indeed.

6 I now have a brief statement that I
7 would like to make on behalf of the Commission
8 arising out of the questions that were
9 presented to us yesterday.

10 Following yesterday's session in
11 which we were informed that Richard Clark,
12 a former inmate, wished to make an appearance
13 before the Commission, our counsel, Mr. Liman,
14 contacted his attorney and ascertained that
15 Mr. Clark wished merely to read a prepared
16 statement on behalf of a number of inmates in
17 the HBZ at Attica.

18 We have now been advised that such a
19 statement would not be under oath and that Mr.
20 Clark is unwilling to submit to any questioning
21 by the Commission or members of its staff.
22 This is, of course, consistent with the
23 position previously taken by Mr. Clark and
24 other inmates in HBZ who, on advise of counsel,
25 have refused to be questioned by the Commission
or its staff.

and we respect it.

However, as we announced at the outset of our hearings, all witnesses appearing before us at the hearing are asked, required to submit to questioning on facts pertinent to the conditions at Attica in September.

We also stated at the beginning and have repeated since then that following the presentation of the testimony we would afford all interested parties an opportunity to make a statement in writing about any matter that they thought should be called to the attention of the Commission and that at the conclusion of the hearings now scheduled this week and next week, we would afford an additional opportunity for oral presentation of statements of any character about the events or other attitudes at Attica and that, of course, is available to Mr. Clark, as to all other persons.

We have so advised other individuals who have requested to appear before us in the public hearings and have told them for the

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2 same reasons that we cannot at this 613
3 time accomodate their wishes.

4 We believe, in addition, in this
5 case that it would be not only an unwarranted
6 departure from our rules, but irresponsible
7 on our part to afford Mr. Clark or any other
8 people a privileged forum to read an
9 unverified and unsworn statement without the
10 opportunity for interrogation by any person.

11 Therefore, we must decline the
12 opportunity to accept his testimony at this
13 time before the Commission in this forum.

14 He will, of course, have another
15 opportunity to make a statement to us.

16 The session will now be recessed
17 until this afternoon at 2:00.

18 (Luncheon recess taken at 12:45 p.m.)
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