

2:00 P.M.

FRANCIS JOSEPH HUEN, re-

sumed the stand and testified further as follows:

MR. MCKAY: The New York State Special Commission on Attica is now at the halfway point of the public hearings.

That is, we are now at the afternoon session of the seventh day of the hearings scheduled in Rochester, New York. Judge Willis, who questioned our witness this morning, will recapitulate briefly for those who are joining us now for the first time what has gone so far and then we go on questions by members of the Commission of Mr. Huen.

JUDGE WILLIS: Mr. Huen testified that he was one of the inmates in D-Yard during the days of the Attica incidents of September. He briefly testified as to his impressions of Attica generally, some of his own personal background and impressions of the institution, of his observations on the morning that the uprising took place, his observations in the yard, his observations concerning the inmates, the observers, his obvious feelings and impressions of what was being accomplished and what wasn't being accomplished.

1
2 Mr. Huen would only testify as to these items and
3 that his experiences and his impressions of the as-
4 sault and the activities and what happened after the
5 assault would come at another time in the hearings
6 when we reached that phase of our investigation.

7
8 At this time, Mr. Chairman, if the Com-
9 mission has any questions, I turn him over to you.

10 MR. MCKAY: Thank you. Mr.--Bishop

11 Broderick has questions.

12 BY BISHOP BRODERICK:

13 Q Mr. Huen, amnesty seems to be one of the major
14 issues if not the major issue in the negotiating,
15 negotiations if we can call it that. What was your under-
16 standing of amnesty as you stood there in the yard?

17 A Well, the most far-reaching impression I had
18 was that no amnesty that was granted, this is my per-
19 sonal opinion, that no amnesty that was granted under
20 the conditions of the riot would have been honored by the
21 staff, by the administration or by the legal enforcement
22 people or what have you.

23 Q Do you think everyone in the yard, the in-
24 mates, had clear understanding that amnesty was not
25 a complete abrogation of their sentence, it was merely
no punishment for work done, for any alleged crimes?

1 A I don't think there was any confusion
2 about that.

3 Q No one thought he was going to be able to go
4 free and leave the institution tonight?

5 A No.

6 Q That was pretty clearly understood by the
7 inmates?

8 A Very clearly. In fact you have the differ-
9 ence there between that and the importance that some in-
10 mates felt that the transfer to a non-imperialistic
11 country, there was the difference between the two. Ob-
12 viously you wouldn't have needed the one if you could--

13 Q Of course, if you were transferred to a non-
14 imperialistic country you would be getting complete
15 amnesty, wouldn't you?

16 A Yes.

17 Q That would be outside the walls?

18 A Yes.

19 Q The second question is, I am interested in
20 your reaction to the question, were you free to leave the
21 yard? You did say something about it would be diffi-
22 cult to leave there. I understand that psychologically
23 because you would give the appearance of trying to de-
24 stroy any attempt at unity in the yard--

25 A That was one of the factors.

1
2 Q The impression of disunity or that the
3 inmates had no united front. And it also, I suppose,
4 would in some way give, kind of show that you lacked
5 courage. Here is the question I have. But suppose
6 some inmate felt he did not want any part in that.
7 Maybe it was just out of the basic pure fear, would he
8 be able to get out of there unmolested?

9 A There were some inmates who did leave the
10 yard, very few.

11 Q We heard of a few who left because they were
12 sick. Or they said they were sick.

13 A I know one individual that I saw in the yard
14 the first day who wasn't there the next day. There was
15 quite a bit of conversation about that. Where did he
16 go? He definitely wasn't there.

17 Q Are you asking me?

18 A No, I am saying, this was a question in the
19 minds of inmates in the yard. Where did this guy go.
20 There was quite a bit of discussion about it. There
21 was no doubt in my mind that he did leave the yard.

22 Q That would be like Judge Crater, I suppose.

23 A I am not asking that question of you.

24 Q I would still like to have an answer to the
25 question, could you freely get out of the yard unmolested?

A You are speaking about unmolested--

1 Q By you or the other inmates.

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2 A Divorced from--there was also the question
3 could I have physically left and been accepted by the--

4 Q I am not talking about the psychological--

5 A I am talking about the reaction of the
6 troopers--

7 Q Could you walk out of there and say in effect,
8 "I want to go into my cell, I don't want any part of
9 this?: What would be the walk-through process of
10 leaving the yard back to where you came from?

11 A It would have been difficult.

12 Q Why would it be difficult?

13 A Because there were--there was some inmates
14 who would have felt that you were a traitor, you might
15 say.

16 Q This I would put in the general heading of
17 psychological deterrent but suppose you just wanted to
18 get out of there. Could you get out of there? Would
19 there be anyone who would prevent you from getting out?
20 Would there be any process you would have to go through to
21 get out of that yard?

22 A I am having difficulty with this question be-
23 cause I know that there were individuals in that yard
24 who would have violently disagreed with anyone's right
25 to leave that yard. I know that whether there was one

1 individual or whether there was 50 individuals, 883

2 I'm not really in a position to say .

3 MR. McKAY: How about those who were
4 the keepers of the gates?

5 THE WITNESS: I think that was more of a
6 traffic problem. I don't know, really, what would
7 have happened if an individual had tried to leave--
8 just said, "I am leaving here," and went through
9 that way. I think--

10 Q Let's put it this way: Let's put it very
11 frankly. Were there any security guards at the gate,
12 inmates?

13 A Well, there was what was called a security
14 guard.

15 Q Did they act as security guards?

16 A Well, initially there was a security guard
17 around the negotiating table because it was felt that--

18 Q I mean at the gates, at the exits.

19 A They were the same individuals. It's diffi-
20 cult for me to say whether they were acting as--acting
21 to prevent people from leaving or whether they were just
22 serving as traffic policemen.

23 Q Do you know whether they would ask for a pass to
24 get out?

25 A Yes, sometimes they did.

1 Q Do you know what kind of pass that was?

2 A I never saw one. I don't know. I really
3 can't say. What do you mean by what kind of pass?
4 I'm not sure if I understand that question.
5

6 Q Well, it's our understanding that the past the
7 inmates required from another inmate, it was the same
8 pass that the guards, the correctional officers re-
9 quired.

10 A Oh, in many respects there was a similarity
11 there. It did seem in many respects the inmates were
12 only copying the procedure of the guards.

13 Q This kind of brings out what we heard very
14 eloquently yesterday from Dr. Wa-ren Hanson who said the
15 inmates were playing a role.

16 A In many respects they were.

17 Q What to him was very ironic, the very society
18 they were trying to overthrow, they were using the same
19 structure. That is why I asked.

20 I have no further reason for asking the ques-
21 tion, other than to say that it would appear to me from
22 the testimony I now have, it was very difficult for a
23 person who did not--for an inmate who did not want to
24 be in that yard to get out of there. Not only the
25 psychological deterrents but also of physical prohibitions
that he placed there.

2 and I know that there were inmates inside of the yard
3 who did feel that way. It was difficult to test that
4 because of the other half of the problem which is to be
5 accepted by the troopers who were, I know, behind--or I
6 have heard, I shouldn't say I know from direct knowledge,
7 but I have heard over and over again and I have heard
8 from guards since the riot, that there were a bunch of
9 troopers behind B-Block, not visible to us in the yard
10 but there were men inside of B-Block that were being
11 taunted by them and the troopers threw rocks to the
12 inmates trying to excite them enough to respond in some
13 way to come out from behind, so you would have a physical
14 problem of getting past them or into them without being
15 perhaps shot, certain beat up, so there was that problem
16 also.

17 Q You say that the State Police would in effect
18 prevent anyone from coming in who changed his mind about
19 being there?

20 A Just as Mr. Carpenter testified yesterday, when
21 he had hostages in his hand and brought them down to
22 A-Block, the administration, there was no question, the
23 initial reaction of the staff down there was to drive
24 them back with guns, that he was a threat, and there
25 was always the possibility that you would be considered

1 a threat to the troopers.

2 Now, without that, possibly, some of the men
3 who felt, and I don't know how many these were, but
4 some of the men that felt that they were--would be in
5 danger from the inmates, without the difficulty of pass-
6 ing through the lines, we will say, might easily have
7 slipped, over the wall and over that catwalks and done
8 this. With the necessity of going through the pass
9 as you have been speaking of, they might have felt while
10 they were going through and while they were asked while
11 they were going through, even though the security guards
12 themselves might not have objected, there would have
13 been a certain amount of discussion and maybe some hot-
14 head might have given them a physically hard time.

15 But we don't know because there was that prob-
16 lem of the troopers.

17 BISHOP BRODERICK: Thank you.

18 MR. MCKAY: Mr. Wilbanks.

19 BY MR. WILBANKS:

20 Q You were asked the question about whether there
21 was tyranny or democracy in the yard. You answered that
22 there was confusion. I am a little confused by that
23 answer. It doesn't seem that really answers the ques-
24 tion. Was in fact when it came down to discipline to
25 who was to leave the yard, to who was to dig the trench,

1 was there one group in charge or did everyone
2 have an equal voice? Can you be a little more specific
3 on that?

4 A Well, I think I mentioned before briefly one
5 of the problems in the yard is that you couldn't find a
6 direct leadership. There was an ebb and flow of direc-
7 tion from various people, but you couldn't find a group
8 of people that you could say, well, these are leaders,
9 let's discuss what we think. Let me give you this
10 particular man who is the leader and can initiate cer-
11 tain things, let me talk to him and give him the bene-
12 fit of my opinion. There wasn't anything like that.

13 Q Did the inmates in the yard in general know
14 that discipline was being taken against certain in-
15 mates, that certain inmates were taken away from the
16 yard--

17 A Rumors were rife throughout the whole thing.

18 Q If rumors were rife, that would mean you
19 didn't have a voice in discipline?

20 A It means there were 1200 inmates in that yard
21 who couldn't talk together. As I said before, most
22 of them, even though we had been locked up together,
23 were strangers to each other because of the way Attica is
24 normally operated. So it's--

25 Q But specifically, in a total democracy you

1 would know and have a voice in discipline and 888
2 in votes on this type of thing. You didn't know about
3 it--
4

5 A There were too many things going on that I
6 couldn't possibly know about. There were too many things
7 going on simultaneously. I think you have to under-
8 stand that in a situation like that, it wasn't a pre-
9 organized structure that everybody had a part to play.
10 "Well, I am going to collect votes," or "I am going
11 to speak on certain things." A lot had to be done on
12 faith. You had to just assume that people were doing
13 what you thought was the right thing. Sort of acquiesce
14 to things. Even one of the maddening things about it
15 was, here is a representative that is more or less going
16 to take control of this area, we'll say, a certain point,
17 this business about Algeria, and going to Alheria, right
18 or wrong, let him carry the ball on that. And it would
19 seem the next day that he wouldn't be around talking
20 about it. He wouldn't be interested in it any more.
21 There was a void there.

22 Q Let's take the case of digging the trench. Was
23 that a decision that was made as a detail punishment,
24 was that a decision everybody made including you or
25 was that a decision that two people made or three?

A I don't know. It had happened, whatever

1
2 decision making was involved in that, had already 889
3 happened and I was too far away from it really, to judge,
4 so I really can't say. It wasn't something that the
5 whole 1200 people in the yard decided, well, yes, this
6 is what we think should happen. I really, to this day,
7 don't know exactly what did happen.

8 Q Another brief question. We have heard con-
9 flicting perceptions and I should characterize them as
10 that, as to whether or not in the political structure
11 of the yard, the mood of the yard that either one per-
12 ception was that violent forces were gaining control by
13 Sunday over the more conservative forces, and the other
14 perception was just the opposite, that the more con-
15 servative forces who were against doing anything to the
16 hostages were gaining control. What is your perception?

17 A Well, this is, again, I have the benefit of hind-
18 sight.

19 Q Yes, I know. At that time.

20 A At that time some of the individuals who were
21 more prone to take a violent attitude spoke a little
22 bit more loudly, we will say.

23 Q By Sunday?

24 A Yes. Now, I don't know that they had any
25 more--in fact I have no indication really that there were
any more people who had become violent but simply that

1 some individuals who were violent by nature
2
3 or more violent, we will say, than the rest, becoming
4 weary and emotionally tight and drawn, became more vocal,
5 we will say, but I don't think there was any increase in
6 the number of individuals who were in favor of violence
7 on Friday or on Sunday rather than Friday.

8 MR. WILBANKS: That is all.

9 MR. MCKAY: Mrs. Guerrero.

10 BY MR. GUERRERO:

11 Q Mr. Huen, you were not forced to go to D-Yard
12 as you told us before? You went by yourself to see
13 what was going on, is that so?

14 A Well, I was forced in this respect, that I was
15 locked in within the walls of Attica. Within C-Block.
16 I couldn't leave C-Block. If had had had an oppor-
17 tunity at that time to pass out unmolested by the
18 troopers, I certainly would have done that.

19 Q By the troopers but not by the inmates, you
20 were not forced to be there by the inmates, were you?

21 A I wasn't physically forced, no.

22 Q So in other words, I understood, anyway, that
23 you were shocked about everything that happened.

24 A Right.

25 Q And you were there to find for yourself what
was going on. So that I wonder if you--at least you

2 meditated act, that this was not premeditated, this was
3 not all worked out to have this uprising by the inmates.
4

5 A No, but there are a number of things that you
6 said in that one sentence, I believe, that cover a few
7 areas.

8 Q I said first that you--I thought that you would
9 rather not be there, of course.

10 A I didn't want to be there.

11 Q Then you were forced to be there by the guards
12 because you couldn't go to your own home, right?

13 A Right.

14 Q Now, you were in shock, when you were there and
15 saw what was going on and there was so much confusion
16 and goings on there that I am asking you, did you feel, do
17 you feel that this thing was premeditated, that it was
18 all arranged weeks before that this day or some day soon
19 they were going to go and do this?

20 A It was my--I saw indications of some prior
21 arrangement but let me say this: The closest analogy I
22 could find to that is, I think a lot of us have sat down
23 on Sunday afternoon and watched the football game and
24 perhaps second-guessed you Johnny Unidas. None of us
25 ever think we are going to be out there throwing that
ball around. I think it was something like that. I guess

1 every inmate within the prison, I had this thought, 892
2 every inmate within the prison thinks about escape and
3 I said to myself, if I knew it was going to be that easy
4 to push them over, that is what I--I should have tried
5 to take advantage of. I thought about that and I thought
6 about escape before and since.

7 I never really thought in my own mind that I
8 would ever escape and I think there were an awful lot of
9 people for years and years have said, boy, we ought to
10 start a riot and played a little mental game with them-
11 selves, boy, if we ever started a riot, we will go into
12 D-Block, we will take so many hostages. It was just a
13 game playing in their head. I don't think anybody could
14 really say, well, on such and such a day we're going to
15 do this.

16 Q So it wasn't premeditated that way, except every
17 prisoner, as soon as you walk in the prison, you start
18 to think how you can get out?

19 A It was more or less like that. But I am saying
20 it was an abstract problem in your mind. It wasn't,
21 this is what I am going to do.

22 Q I want to ask if you were talking about the
23 pressures and the weariness of everybody. Do you be-
24 lieve now, of course it is hindsight, that the combined
25 pressure of time, emotions and weariness would have saved

1 the situation for everyone, inmates, hostages
2 and administration if more time had been granted?
3

4 A Well, of course, now we know that it couldn't
5 have been much worse. We know that. There were 43
6 people dead and I don't know how many others are serious-
7 ly hurt and there has been a lot of discomfort. We
8 know that. So it's easy to say now--

9 Q But at that time you--

10 A At that time--at that time--it's too much hind-
11 sight involved really for me to give you an intellectually
12 honest answer, I didn't think at that time, this would
13 be a good idea for them to come in and start shooting
14 everybody up. Certainly I didn't think that.

15 Q I know, but at that time you probably thought
16 everybody was so tired it would be nice if they just let
17 you go back to your own--

18 A We knew that wouldn't happen. I did think
19 that it was inevitable that we would get beat up or
20 individuals would be singled out indiscriminately and
21 Judge Willis asked me not to go into what happened after-
22 wards but my own experiences bore that out.

23 You knew that was going to happen. You also
24 knew it was inevitable so there was a sort of feeling
25 to get things over with, whatever is going to happen,
let it happen. But if you think about should we not do

1 this or should we not invite the repression,
2 you might say and hope that something could be worked
3 out by the people that are outside trying to work things
4 out, everybody would have been in favor of that. Every-
5 body was in favor of that, of course.
6

7 MR. LIMAN: So there is no misimpression
8 for the television audience which has just come on,
9 we asked you not to go into the aftermath at this
10 session but that we are going to be covering the
11 assault and what happened afterward, including to
12 yourself next week and you will be back.

13 THE WITNESS: Yes, I believe that will be
14 Monday .

15 MR. McKAY: That way we hope to assure
16 continuity to the viewing audience.

17 Mr. Huen, let me pursue the question that
18 Mr. Wilbanks asked about division of labor in the
19 yard. Were you ever given an assignment of work
20 to do while you were in the yard?

21 THE WITNESS: I never participated.

22 BY MR. McKAY:

23 Q You said you did construct a tent?

24 A Yes.

25 Q But that was on your own initiative?

A Right.

1 Q Did you ever volunteer to do work that
2 might be necessary to be allocated for the advantage
3 of all?
4

5 A The next day that I was in there, some time
6 in the afternoon, food was being brought from, I believe
7 the commissary. I still had it in my head it would be
8 a good idea to avoid any of this if I possibly can.

9 Someone asked me, made a general statement, they
10 need more guys to bring food down from the commissary.
11 Me and another fellow said, what do you think, maybe we
12 can find a hole down there to get out of this thing.
13 And, of course, things are disorganized, it took a while
14 for things to get together. Somebody said, well, the
15 fellow I was talking to, the fellow I knew well, he
16 said "You're not going to get out anyway. You're not
17 going to be able to get food down there." I am talking
18 about down at B-Block area.

19 So when it was decided that there were enough
20 individuals in that particular--to do that particular
21 job, we didn't press it too much. More or less we gave
22 up on it.

23 Q Would it be fair to say then that a person who
24 did not want to participate in the work assignments or
25 in the general activities in the yard, could pretty well
stay out of the action just by hanging back?

1 A The work, I suppose so. I know I
2 didn't feel I wanted to take any part of that and I
3 didn't. Some others might have felt that way. I don't
4 know.

5 MR. McKAY: Thank you.

6 Mr. Henix?

7
8 BY MR. HENIX:

9 Q I only have one question to ask you, Mr. Huen.

10 I know in most institutions someone reaches
11 the expiration of that parole date or they are right up
12 on their parole date or, you know, they're ready to be
13 released because they have done their time.

14 A Yes.

15 Q What happened to these guys? I would imagine
16 out of 1200 guys at one place there must have been some
17 who was ready--who was actually legally ready to leave
18 according to the law.

19 A Who were caught up in this in D-Block yard?

20 Q What happened to these people?

21 A I don't think--I know there was one individual
22 I seen the first day that was up the following day.
23 His sentence was up the following day. He didn't seem too
24 optimistic about being released, about getting out
25 under these conditions. I don't know what happened to him.
I know that there were a number of individuals in that

1 category that you speak of. I don't know that 897
2 any of them went out until, at least until the 13th.

3 Q Could you describe in any way their atti-
4 tude? I would flip out, man, to find myself caught
5 up in these kind of events and here I am in the peni-
6 tentiary with the possibility of being killed the next
7 day and I should have been going home yesterday.

8 A This one individual I spoke of, like I said,
9 there was a note of unreality in this whole thing and
10 it was just, well, here is something else. It didn't
11 seem to affect them that much. I think that I would
12 have been a lot more upset than he was. But as I am
13 sure you are well aware, there is an awful lot of guys
14 that are convinced, I am sure you had this experience,
15 you talk to guys that have dates, they're going out and
16 yet they're convinced something will happen, I ain't
17 going out.

18 That was more or less this man's attitude.
19 He knew something would happen.

20
21 (Continued on page 898.)
22
23
24
25

1 Q It's always like that?

2 A Yes.

3 Q I was curious about that--

4 A I didn't press it too much because I didn't
5 want to get the guy upset about it. I wanted to ask
6 him, "Man, what's the matter with you? You should be
7 bugged out."

8 I didn't want to upset him. I didn't press
9 it.

10 Q Do you think if one of these individuals said
11 if there was any type of security that surrounded the
12 yard and made it difficult for a man to leave, do you
13 think that the inmates would be inclined to let this
14 guy run his risk, if he said, "Man, I'm going out of
15 here, I'm going home today and I'm supposed to get out
16 of here today and if they shoot me on my way to the
17 gate, they shoot me on my way to the gate"?

18 Do you think the attitude of whatever security
19 forces were there or the men that could restrain them
20 would have done it or would they have been sympathetic?

21 A I should have asked--

22 Q It's a hell of a question to ask, but it seems
23 to me to be a very real one. You know, having--

24 A I know it was real for at least four or five
25 individuals and I can't remember the question coming up.

2 I can't remember anybody that did go out. I

3 can't even remember the question coming up.

4 Q Except this one guy that disappeared.

5 You don't know how he got out?

6 A He wasn't in this category. And there were
7 others. There was this individual that I know that
8 left the yard.

9 I've heard there were other fellows. This
10 guy was here and he got out somewhere. But this is
11 one I know of. There were others, I'm sure.

12 Q Did you ever find in hindsight, did you ever
13 find out how any of these guys did it?

14 A No, I didn't.

15 MR. HENIX: Thank you.

16 MR. McKAY: Mr. Rothschild.

17 MR. ROTHSCHILD: No questions.

18 MR. McKAY: I have just one other question,

19 then.

20 BY MR. McKAY:

21 Q This is just to check my understanding of
22 the testimony of you and of Mr. Wicker.

23 You heard Mr. Wicker, I think.

24 A I heard part of his testimony.

25 Q You heard the part in which he said it was
his perception and that he believed other observers on

1 Sunday night that the general understanding 900
2 in the yard was that the troops would come in the next
3 day and with force.

4 Your perception, if I understand it, was
5 different, that you somehow thought or you believed
6 that others thought that that really would not happen.

7 Did I correctly understand you?

8 A Right. That's pretty accurate. I don't think
9 I could elaborate on that too much.

10 Q If you and others in the yard had really known
11 what some of the outsiders thought they knew that armed
12 force was imminent, would that have changed the vote
13 of the inmates on Sunday night?

14 A I am having difficulty in my own mind imagining
15 circumstances under which the worst--this is what it
16 is: Basically that the administration says, "We're
17 coming in. I'm trying to imagine circumstances that
18 would allow the inmates to believe anything they say.

19 This is what it is. Even something like
20 that, we're going to shoot you. They say so many things
21 time and time again that turn out not to be true and
22 even something like that isn't believed.

23 If it had been--if everyone in the yard had
24 really felt, yes, they are going to come in and they're
25 going to shoot like mad, the way they did, I think

1 possibly the vote would have been different. 901

2
3 Q But you think there was no practical way to
4 persuade those in the yard that that was the case or
5 that that might likely be the case?

6 A I said before I think it--possibly if Governor
7 Rockefeller had come, possibly, and it's only a guess
8 on my part, that I think he would have been listened
9 to a little bit more--not that his credibility is any
10 better, but except he is the las one on the chain of
11 command. Possibly that might have had some good.

12 MR. McKAY: I think you understand, Mr.
13 Huen, if you wish to make a statement of your own,
14 not necessarily in response to any questions
15 been asked of you, you may do so now and, of course,
16 you will have an opportunity to do so next week,
17 if you wish.

18 THE WITNESS: I spoke to Mr. David Parker
19 about coming here in the first place and I just
20 didn't feel that it was a worthwhile project,
21 that your best efforts wouldn't achieve very much
22 and I believe with a little diligence and a little
23 more time to do so I could find reports from bodies
24 just like this that are a hundred years old that
25 would probably come to the same conclusion that
you gentlemen and ladies are going to reach and I

1
2 I was hoping that someone could work

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3 with people that--perhaps this group or perhaps in
4 your recommendations that you would try to get
5 together with people outside of the bureauracy
6 that really are interested and there are many,
7 of helping people that are in jail and helping
8 people that solve these problems and--well, for
9 instance, there are a number of bills I think that
10 illústrate what the situation in Attica is like
11 right now and one of them is a bill fo insure that
12 every man is given a shower once a week.

13 There is a similar bill which would
14 insure that every man is given a clean change of
15 clothes every week.

16 Most inmates are given a clean change of
17 clothes and they are given toiletries and they
18 do get their showers, but it can happen that even
19 this you don't get and there are many legislators
20 that have been dealing with these problems, the
21 practical aspects of these problems that realize
22 that this is where you have to start.

23 That you have to have detailed specific
24 legislation that the Department of Correction has
25 to comply with. It can't evade.

And I do--I would like to say at this

1
2 time, I know I am going to be back, per- 903
3 haps go into these things a little bit further
4 at that time, but I just hope that you people will
5 make and support people like that and open up the
6 doors, get some fresh minds into these places.

7 MR. McKAY: Thank you, Mr. Huen.

8 I am not sure I am entitled to respond
9 to your independent statement, but let me say
10 a few words that I hope will be assurances to you
11 on the points you make that I think are very
12 thoughtful.

13 In the first place, we are very sensitive
14 to the problem of yet another report filed unread
15 on the shelves and that's one of the reasons we
16 wanted to have these public hearings and we believe
17 and are now convinced that to have people like you
18 and others who have been here is a very helpful
19 in making more vivid the problems and the diffi-
20 culties of the prison system. You have been help-
21 ful in that respect.

22 And, on the question of continued sur-
23 veillance, if you have had an opportunity to watch
24 these hearings or watch them in the future, I
25 think you will see that several members of the
Commission or very likely all of us are very much

1
2 concerned with the same thing and we 904
3 will be very much aware of the points you suggested
4 to us.

5 We thank you for your statement and for
6 being with us.

7 (The witness was excused.)

8 MR. LIMAN: We have had testimony over
9 the last few weeks, rather, over the last few days
10 about amnesty from the point of view of inmates
11 and from the point of view of various observers.

12 To complete the equation, this afternoon
13 we are going to hear from Mr. Louis James, the
14 District Attorney of Wyoming County to put forward
15 his point of view on the issue of amnesty which
16 was presented to him by Mrs. Wicker, Tepper and
17 Jones of the observers committee.

18 We will also be hearing from, as our
19 last witness, Mr. Jose G.I. Paris, who was a
20 member of the observers committee, who is a member
21 of the Young Lords group and who has a different
22 perspective on the role of the observers group
23 and on the negotiations.

24 Mr. James.

25 Mr. James will be questioned by Deputy
General Counsel Luxemburg, Marc Luxemburg.

2 a witness, being first duly sworn by Mr.

3 McKay, was examined and testified as follows:

4 THE WITNESS: I hope you have no objec-
5 tions to my bringing a cup of coffee to the table.

6 MR. MCKAY: I have no objections and I
7 hope the studio will not enforce its ordinary
8 rules against that.

9 THE WITNESS: Thank you, sir.

10 I had no lunch on the plane so I really
11 rather need it.

12 EXAMINATION BY MR. LUXEBURG:

13 Q Mr. James, will you state your full name,
14 for the record, please.

15 A Louis R. James.

16 Q How old are you?

17 A I am 64.

18 Q How many years have you lived in Wyoming
19 County?

20 A Approximately 40 years.

21 Q Mr. James, where did you go to college and
22 law school and when did you graduate from law school?

23 A I went to college and took my undergraduate
24 work at Cornell University. Graduated 1930 and was
25 out working a year before I went to law school and I

1 graduated 1934 from the University of
2 Pittsburgh Law School.

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3
4 Q And you were admitted to the Bar in New York
5 at that time?

6 A I was.

7 Q Have you been a practicing lawyer since then?

8 A I have been.

9 Q Have you held any public offices?

10 A A number of small offices. I was a magistrate
11 for a number of years and was executive secretary in
12 my earlier years of the County Civil Service Commission
13 from the time of its inception and I was later chief
14 of the Bureau of Surplus Real Property, the Office of
15 General Services in Albany and resigned and went back
16 to private practice and was elected District Attorney,
17 the term I am now filling.

18 Q When did you become District Attorney?

19 A I became District Attorney on January 1, 1971.

20 Q You were previously a justice of the peace
21 and a village justice in the Town of Warsaw?

22 A Yes, for several years and quite a while
23 prior thereto.

24 Q Have you also represented criminal defendants
25 prior to becoming--

A For a number of years, throughout my practice

1 of law, I practiced about 35 years, I 907

2 would not say that I specialize in criminal work.

3
4 In fact, there is no room for specializing
5 in most any field in a small county like ours, but
6 over the years I have handled a number of criminal
7 cases, usually as an assigned counsel, assigned by
8 the court.

9 That was prior to the time of public defenders.

10 Q I think you told me when I interviewed you
11 that some of your clients unfortunately ended up in
12 Attica.

13 A That is true.

14 Q But I take it that none of them were there at
15 the time of the disturbance last September?

16 A No.

17 Q Mr. James, can you briefly tell us what the
18 duties of a District Attorney are?

19 A The District Attorney is the first--the top
20 law enforcement officer in the county. Primarily his
21 work is to--no, let us not say oversee the investigative
22 work of the police, at least I certainly don't do that.

23 I am not a police officer, but when a case is
24 presented to the District Attorney, he is the next in
25 the chain of command, let's say, in the administrative
chain, processing criminal cases.

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The District Attorney looks over the evidence in the case to determine whether the case is one that is properly prosecutable.

In our State, as you know, my job is to determine whether it is to be presented to the grand jury for a possible indictment because felony cases can only be instituted by indictment.

Q In fact, Mr. James, it's the duty of the District Attorney, isn't it, to prosecute all crimes and offenses that are cognizable in the county?

A Yes. I thought you wanted an answer in more depth. If you wanted a concise answer, that's precisely the answer.

Q You do have some discretion in carrying out this duty as to who to prosecute and the nature of the offenses to be prosecuted?

A Yes, I do have. The law does not compel me to present for prosecution every charge that is laid in my office.

Q And if I may suggest, I take it that the, to put it succinctly, the determining factor would be whether you felt it was in the public interest or in the interest of justice in any given case?

A Precisely. That's the test.

Q Mr. James, can we go to the year 1971, in

2
3 Were there rumors or general knowledge con-
4 cerning the state of affairs at the institution, at
5 the Attica institution during the year 1971?

6 A Yes, definitely.

7 To begin with, Wyoming County is a rural
8 county, a rather tightly knit one shall I say in the
9 sense that we're all friends and neighbors, we all
10 know pretty much the general business of other people.

11 We are very keenly sensitive to general
12 affairs in Attica prison and there were many, many
13 rumors that come about largely from expressions of
14 the guards of the conditions there of extreme unrest
15 such as never had been known before in the history of
16 the old-time guards.

17 The story was that anything could happen.
18 Prisoners were more sullen and--than usual; there was
19 a sense of tenseness that the guards were very clearly
20 aware of and in short, there was a feeling, wide-
21 spread feeling of fear what might happen. Heaven knows
22 what.

23 Q Were you personally involved as District
24 Attorney in anything that happened at Attica prior to
25 September?

A Yes, I was. I think it was in February of the

1 same year.

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2 A case was presented to me--

3 Q Who presented the case to you?

4 A It was presented to me by the union of the
5 prison guards at Attica.

6 One of the guards had been attacked by a
7 prisoner and the guards asked me if I would consider
8 criminal prosecution for assault against the offending
9 inmate.

10 Q Did you speak to Superintendent Mancusi about
11 this?

12 A I had conversations with him about it and
13 Mr. Mancusi, as was his custom, extended a great deal
14 of latitude towards me. He didn't tell me what he
15 thought I should do.

16 He said, "Use your own discretion, Mr. James."

17 Q What was his attitude towards it?

18 A He said, "Here is a case that I am not per-
19 sonally inclined to prosecute. I don't think it's
20 serious enough. However--"

21 Q This is Mr. Mancusi's--

22 A This is Mr. Mancusi's point of view.

23 He said, "However, the other side of the coin
24 is and it is felt very strongly by the guards' union,
25 that perhaps an example should be made and we should--

1 something should be done for the protection 911
2 of guards against similar incidents in the future."
3

4 Now, this was a simple assault, let me say,
5 a misdemeanor assault, no grievous injury and it
6 would have been normally a justice court matter.

7 Q You did present it to the grand jury?

8 A I did, after long consideration. I was
9 reluctant to do so, but I did so largely because I
10 was inclined to think that it should be brought out
11 in the open and that it would not be right, proper
12 and wise for prisoners to believe that they could get
13 away with impunity for any criminal act they might
14 want to perform so, more or less to make an example,
15 I decided not to present the case in justice court
16 but if I am going to try it, bring it on before the
17 grand jury.

18 It was an indictable misdemeanor and I
19 brought it on before the grand jury and got an indict-
20 ment and tried the man in County Court.

21 Q What was the result of that trial?

22 A The result of the trial was an acquittal.

23 Q This inmate that was involved was a black
24 inmate, was he not?

25 A That is true. I don't think that had a thing
to do with the outcome of the case.

1 Q He was accused of assaulting a 912
2 correctional officer?
3

4 A He was accused of assaulting a correctional
5 officer.

6 Q But he was acquitted?

7 A He was acquitted.

8 There were a number of prisoner alleged
9 witnesses, so actual witness, I know, who testified
10 in his behalf.

11 Q Did you have occasion to find out what went
12 into the--

13 A Decision--

14 Q Decision to find him not guilty.

15 A I certainly did, sir. I am very much interested
16 as I am in all cases to know the reasons behind it all
17 if there should be an acquittal.

18 This case I was doubly interested and I did
19 ask--I did question, oh, two of the jurors whom I knew
20 personally afterwards and asked him why they decided
21 as they did and he said, "Well, Mr. James, or Lou,
22 there was conflicting testimony, as you know. We
23 felt that we did have--we could find a reasonable doubt
24 if we wanted to, but we did so largely because we
25 thought this was a matter that should have been handled
through prison disciplinary means and that bringing the

1 case on for trial was sort of like kicking 913
2 a man when he is down.
3

4 "This prisoner is already serving time for
5 another offense and he gets out of line and we're
6 going to stick it to him with more sentence, that
7 that didn't seem quite right.

8 "So our humane decision was, let the prison
9 handle these things in their own way."

10 That is the story and I think it accurately
11 reflected the attitude of the jury.

12 Q Let's now turn to the events of September
13 9th.

14 When did you first learn that there was an
15 uprising at the institution?

16 A I would say within a matter of minutes.

17 Q How did you--

18 A The grape vine. I forgot all the incidents.
19 There were so many sirens that went on. A siren makes
20 me think of moving in upon the prison.

21 I don't recall whether the sirens were
22 sounded when the insurrection first took place and
23 the hostages were seized, but at any rate, the news
24 spread like wild fire and it was common knowledge in
25 the street and people were talking about it in groups,
on the street corners and everywhere.

1
2 Q Was anybody surprised? 914

3 A No. For the reasons I mentioned before,
4 they were looking for trouble.

5 The only surprise about the thing was the
6 magnitude and the speed of what happened.

7 Q Were you called by Mr. Mancusi on Thursday
8 morning?

9 A Let's see, that would have been--

10 Q September 9th. The day it started.

11 A Yes.

12 No-- let's say I don't recall. I can't be
13 certain whether he notified me that there had been a
14 riot.

15 That could have been. My memory is blotted
16 out by other things that are more important.

17 I wouldn't be surprised if I was notified
18 that there was--I am pretty certain that was the case.
19 I believe Superintendent Mancusi did notify me that
20 there had been a riot and hostages had been seized.

21 I asked if there was anything I could do.

22 He said, "No, your services won't be needed
23 now, Mr. James."

24 I said, "If you need me, call me."

25 He said, "We will."

I believe that was it.

1 Q Do you recall any other calls,
 2 either on Thursday or on Friday, from members of the
 3 observers committee, or from Commissioner Oswald?

4 A No. I was previously asked if I recall a
 5 telephone conversation with Commissioner Oswald. I
 6 did not recall that at first for the reasons I mentioned
 7 before. It wasn't anything that would stand in my
 8 mind, but the more I think about it, the more nearly
 9 positive I am that Commissioner Oswald did call me.
 10 I believe this was Thursday or Friday it could have
 11 been.

12 Before, in any event, I met with the members
 13 of the Citizens Observers Committee, which would have
 14 been a Saturday morning.

15 Q Right.

16 A I believe Commissioner Oswald did call to
 17 ascertain my views on an amnesty, general amnesty
 18 against criminal prosecution.

19 I told him I was--it was not in my power to
 20 grant one and I would not be inclined to grant one
 21 anyhow.

22 And, as I recall it--now, mind you, this was
 23 all--this had to have been after negotiations were in
 24 progress and the negotiations had reached the point of
 25 this amnesty question That is what made it necessary

19
1 for Commissioner Oswald to touch base with me 916
2
3 on my views and he expressed to me that this was
4 fundamentally his view, too.

5 Q Did you follow the progress of the negotiations
6 Thursday and Friday?

7 A No. No. I just knew that they were going
8 on and there were rumors and I believe there was a
9 call that came out in the newspapers more or less a
10 running account of it that certain things had been
11 conceded, but then I really got into the thing, all
12 four feet, with my meeting with the members, the
13 Citizens Observers Committee.

14 Q Would you tell us how that came about.

15 A Yes. Julius--

16 Q Julian Tepper?

17 A Yes. Julian Tepper called me Saturday morning.
18 I had not got out of bed yet. Called me at my house
19 and said that it was quite urgent that he and a small
20 group of members of his--of the Citizens Observers
21 Committee should meet with me to ascertain my views on
22 an amnesty against criminal prosecution.

23 He said that negotiations had gone on with
24 the prisoners and had reached the point that the
25 negotiations were hung up on this, primarily on this
one question and it became necessary for them to get my

1 views as the District Attorney of the
2 county on such an amnesty for that reason. For that
3 reason would I meet with them.
4

5 I said I would be happy to. Invited me to
6 breakfast and I said there was no suitable restaurant.
7 You come and have breakfast with me at my house and we
8 can discuss the thing over the breakfast table.

9 Q Then I take it--

10 A They came and we did. We discussed the
11 thing all morning.

12 Q About what time did they arrive, do you think?

13 A They must have arrived not long after the
14 telephone call. I said to come over right away. I
15 think it would have been about 7:30. Between 7:30
16 and 8:00.

17 We had breakfast and they wanted my views and
18 we discussed it in some depth.

19 Q What did you tell them that your views were?

20 A I said that the basic duty of a District
21 Attorney is to prosecute all substantial law in the
22 county. That's my fundamental duty.

23 I can't--I grant that I have some latitude
24 in my own discretion of deciding what cases to present
25 on the grounds of general interests and the interests
of justice, primarily what's in the interests of

1 justice, but I can't grant a blanket

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2 indemnity, an amnesty from prosecution.

3 I don't have the power to and if I had the
4 power to I wouldn't grant it anyhow, because I think
5 that that would be a dereliction of my duty.

6 Q And this is what you told them?

7 A This is what I told them and this led to a
8 further discussion.

9 They said, "Well, now, that's find and good,
10 but how do you feel about prosecutions in general?"

11 I said, "Well, I can't say you go ahead and
12 do your darndest and do your damnedest, commit all
13 the crimes you want and you won't be prosecuted, but
14 I can say that I would want to prosecute fairly, im-
15 partially and I was against any mass prosecution--mass
16 prosecutions just for the sake of reprisal. I'd have
17 to take each case in its own merit and any prosecutions
18 that might occur would be prosecutions for specific
19 crimes that were committed by specific people," and that
20 was that.

21 (Continued on page 919.)

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2 Q In fact, this language that you are telling 919
3 us now is virtually verbatim what was put in your
4 letter--

5 A Exactly right. The upshot of it all was
6 they felt that my position was a fair one, all that
7 could be expected of a prosecutor, and that it might
8 be worthwhile, they hoped it would be, for the purpose
9 of keeping these negotiations alive to describe my views
10 in some depth as I described them to them, would I do
11 it.

12 I said sure, be happy to.

13 Q And you at that time went to your office
14 in Warsaw?

15 A That's correct. First I was asked if I
16 would go back with them to Attica and meet with the
17 prisoners. I refused. I said that would put me in a
18 false light, put me on the defensive. I would have to
19 explain to them and try to justify to them my views
20 and I felt I did not have to do that and I wouldn't
21 do it, but I would be happy to put it in writing so
22 there could be no misunderstanding. They said fine.
23 "I think that would be better, Mr. James. I agree with
24 you."

25 So we went down and I wrote out a draft of
my views and the three gentlemen, very high minded

2 change here, there, a little different phraseology,
3 put things in more layman language and some of them
4 I accepted, some I rejected.

5 And Tom Wicker acted as the typist and he
6 typed it out and that is my written statement that you
7 have--

8 Q You signed it?

9 A I signed it and that expressed my views.

10 Q I think we read some excerpts from it yester-
11 day. You said, "I deem it to be my obligation to
12 prosecute only when in my judgment there is substantial
13 evidence to link a specific individual with the com-
14 mission of a specific crime," and that you are "unal-
15 terably opposed to the commencement of indiscriminate
16 mass prosecutions."

17 A That is my language.

18 Q Were the observers pleased with this letter?

19 A They seemed to be and expressed themselves
20 as very pleased. They further said that they hoped
21 that this might give the prisoners sufficient reassurance
22 that the negotiations could be kept alive and they
23 went back with that in mind but it did not work out
24 that way.

25 Q Mr. James, I would like to explore with you

1
3 a minute this question of why amnesty couldn't be 921
2 given because I think it is a very important one.

3 A Very good.

4 Q Were you told by the observers or by anybody
5 or were you aware of what the actual physical situation
6 was at the institution at this time?

7 A I was aware in a general sort of way with
8 the situation in the prison.

9 Q You knew that 38 State Police were being held
10 hostage by the inmates in a portion of the prison?

11 A I did.

12 Q Were you aware in any way of any crimes that
13 might have been committed or any acts that might--that
14 had to be presented to the Grand Jury up to that time
15 that the observers came to speak to you?

16 A Yes. In a general sort of way, of course I
17 could not name names. I knew that there must have
18 been a great number of prisoners who were guilty of
19 riot. There was some kidnapping, et cetera. There wer
20 obvious crimes that were committee but who did what, I
21 had no idea.

22 Q Assault, I presume?

23 A Yes.

24 Q You knew that one or more of the guards had
25 gone to the hospital?

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A I was aware of that.

Q Now, did you discuss, did the observers at any time attempt to discuss with you specifically crimes that should or should not be prosecuted? Did it get to that level?

A It did not get to that level. It was on a, shall we shall, a philosophic level. What's your attitude as a prosecutor?

Q And it never got to the level, for example, we have heard testimony previously that after the Auburn riot people were prosecuted for theft of keys or things of that nature.

A Theft of what?

Q Theft of the institutional keys and that kind of thing. I take it that the observers did not discuss with you at that time breaking down the categories of crimes that might be involved?

A No, we didn't go into that at all.

Q It was just a general philosophical discussion?

A General philosophical discussion.

Q This question of discretion, when you believe it is not in the public interest or in the interest of justice not to prosecute, you feel that you should--
you have a discretion not to prosecute?

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A I certainly have.

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Q I take it that the appeal for amnesty was in effect an appeal to your discretion not to prosecute inmates who had committed crimes in the specific case?

A It might be called an appeal to my discretion but I didn't view it as much of a sound appeal. In the first place, this was not an appeal, in effect it was a valid demand. You let us off from any criminal prosecution and this was not said but this was implied, everything will come out all right, no harm will be done to the hostages.

Q Now, I take it there are instances, and I take it there have been instances when you have not prosecuted a particular defendant--

A There have been a number of instances.

Q One instance would be a plea bargain?

A Yes.

Q Would you describe briefly what a plea bargain is? I take it this is something that every District Attorney commonly does?

A Yes, and I make liberal use of plea bargaining. That is the acceptance of a plea of guilty in satisfaction of a charge of more serious crime. I do that in a number of cases.

Q A plea of guilty to a lesser crime?

1 6 A A plea of guilty to a lesser crime in

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2 satisfaction of a higher charge.

3 Q I take it that the basis for that is that
4 in order to save the State and yourself the time and
5 expense of a trial, you are willing to accept a--the
6 inmate's or the defendant's plea of guilty to a lesser
7 charge than one that he might--that there is some evi-
8 dence to connect him with a greater charge and you
9 accept a plea to a lesser charge?

10 A That is one of the many basis that is
11 considered. That is one.

12 Q What would others be?

13 A Another basis would be if you felt your
14 case was weak and you have a doggone good chance of
15 losing the case on a trial anyhow, I'm more willing
16 to plea bargain then and a third and very important
17 consideration is the general matter of the interests
18 of justice.

19 For example, in the first batch of cases
20 that I had when I took office with a number of drug
21 cases, the first in the county. I accepted pleas and
22 urged--well, I urged Y.O. treatment in several instances
23 where the people would have been probably entitled to
24 Y.O treatment, Youthful Offender, that is. There were
25 several of the defendants who were young people, just

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3 I was satisfied they weren't drug pushers and we had
4 a solid case of a Class C and Class D felonies in some
5 instances and I took pleas, misdemeanor, drug possession
6 in the interests of justice because I felt these
7 fellows did not deserve a felony record. This is an
8 example I am talking about.

9 Q That would be a different class of--

10 A That;s another instance where--another thing
11 that enteres in when we consider or we take on plea
12 bargaining of a lesser offense.

13 Q In cases where you decided not to prosecute
14 or not to prosecute to the full extent that you might,
15 I take it there is no way that your discretion can be
16 examined or countermanded by some other authority?

17 A No. I know none.

18 Q There is no--once you have determined not to
19 prosecute, that's the--

20 A That's it.

21 Q Now, in the request for amnesty or let's put
22 it this way. In a plea bargain or in other circumstances
23 where you might determine not to prosecute, the pros-
24 pective defendant has something that you would like
25 to obtain, either--something to offer you and you have
something to offer him and there is a mutual agreement

1 on that, that you have the discretion to enter into. 926

2 A That's one way of putting it and a good one.
3 That covers many instances.

4 Q I take it that in the specific instance where
5 the inmates were holding hostages, the inmates had
6 something to offer too and that is in effect the lives
7 of the hostages that they were holding and you had
8 something to offer them, namely, a promise that you
9 would exercise your discretion in their behalf.

10 A Mr. Luxemburg, because the other side, the
11 defendant has something to offer, he could offer, from
12 his standpoint, and I have something, obviously, to
13 offer from mine, that does not automatically create
14 a legitimate plea bargaining situation. Much more
15 was lacking here. The biggest elements were lacking
16 for a plea bargaining situation.

17 Q What elements were there that were lacking?

18 A First of all, this was not an approach to my
19 discretion. This was a not too subtly valid demand.
20 It was tantamount to saying, you let this defendant
21 off or something terrible is going to happen. Maybe
22 your house is going to be blown up. This is a demand
23 for consideration. A demand made under duress.

24 Now, what they were asking for was not a
25 decision that I should let someone off in the interests

1 of justice, decided it on its individual merits. 927

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9 They're asking for a general, blanket moratorium on
3 the enforcement of law. That is not--this is a horse
4 of a different color. It is an entirely different
5 situation. They were asking for something which, as
6 I see it, I cannot give them. I cannot give a blanket--

7
8 Q When you say that there was--well, when you
9 say that there was a blanket moratorium, you mean they
10 were asking for you to exercise your discretion with
11 respect to a large number of crimes and not just one
12 specific crime?

13 A Yes, but it boils down to a moratorium as
14 far as this incident is concerned. We'll forget
15 all the laws that might have been violated in the course
16 of this riot. A suspension of law and law enforcement,
17 in other words, that's what they were asking for
18 in effect.

19 Q It was of a much broader scope than--

20 A A much broader scope and they're asking for
21 something else.

22 Q On the other hand, they were holding 38 per-
23 sons hostage?

24 A True.

25 Q And I take it then that--well, if you allowed
them or if you warned them that the lives of the

1
10 persons were worth suspending the prosecution of 928

2 law, that might have set a bad precedent?

3 A Would you repeat that?

4 Q Did you feel that to allow them an amnesty
5 would set a bad precedent in terms of the holding of
6 hostages?

7 A Oh, yes, definitely so. This is one of the
8 many considerations that entered in. Whenever you allow
9 an amnesty, this is an encouragement to future acts
10 of violence in the same category.

11 Q Was this something that entered into your--

12 A Very much so. We were forced with a situa-
13 tion, either we had to uphold the law here or you might
14 as well forget law enforcement. That's what it boiled
15 down to.

16 Q And if I can attempt to summarize it this
17 way, that the holding of the 38 hostages or that the
18 offer to release the 38 hostages was not sufficient for
19 you to, in view of the very wide-spread failure or
20 nature of the prosecution which they were asking you
21 to abstain from and of the bad precedential value, you
22 felt this was simply too high a price that they were
23 asking?

24 A That's a rather difficult question to answer.
25 I don't feel as though I had made a decision. excuse

2 lives in my hand, that I could reclaim at will.

3 Q You didn't see it that way?

4 A I didn't see it that way as against the
5 other. I didn't put these hostages there and I had
6 no assurance what they would do or would not do. So
7 this wasn't--the element was the one that we have been
8 talking about.

9 Q That you saw they were asking for simply a
10 cessation of the enforcement of the State's laws?

11 A Exactly it.

12 Q Did you discuss your viewpoint with Governor
13 Rockefeller or anybody from his staff?

14 A Not whatever prior to the time the decision
15 was made.

16 Q Did you speak to the Governor or anybody from
17 his staff?

18 A I spoke to the Governor afterwards. I didn't
19 call him. he called me to thank me for the position I
20 had independently taken.

21 Q By afterwards, you mean after the retaking
22 of the--

23 A After the event, that's right.

24 Q Did you speak to Bobby Douglas at any time
25 during Saturday or Sunday of that weekend?

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12 A Who is Bobby Douglas? 930
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3 Q Robert Douglas, I believe he was then the
4 counsel--the Governor's secretary.

5 A Yes, that's right. That's right. Now I
6 recall I did. We talked about it.

7 Q When was that, do you recall?

8 A Well, yes, that was when I was first called
9 to the prison, which would have been Monday morning as
10 soon as it was decided upon to move in on the prisoners,
11 I was called by the prison authorities and informed
12 of the fact and asked to come to the prison right away.

13 Q Excuse me, Mr. James, but--

14 A And on that occasion when I went there, Robert
15 Douglas was there.

16 Q Were you informed of the death of Officer
17 Quinn on Saturday evening?

18 A I don't recall when I was informed of it but
19 it would have had to have been soon after the event.

20 Q That would have been Saturday evening?

21 A Yes.

22 Q Do you recall being called by Mr. Douglas
23 on that occasion?

24 A Not in connection with his death, I don't
25 recall the conversation.

Q Did you have any further contact with the

1
13 observer's group or with anybody concerning the course 931
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3 of the negotiations after the observers left?

4 A No. None whatever.

5 Q And your next contact with it was when the
6 assault had already been underway or was about to
7 begin?

8 A Yes, and then I did not, as I recall, see
9 and speak with any of the members of the citizens
10 observers group who had met with me but I did meet with
11 all the people who were in the command offices, the
12 administration office.

13 Q One final question, Mr. James, before we
14 take take commission questions.

15 Have you ever been asked to prosecute any
16 of the correctional personnel at Attica for assaulting
17 or allegedly assaulting inmates?

18 A No, wait, let's see. I may have had one or
19 two letters from prisoners--no, complaining of ill
20 treatment of one kind or another but I don't recall
21 any complaining of an assault.

22 Q In other words, the ill treatment they were
23 complaining of was not such as was recognizable in a
24 criminal--

25 A That's right. It was not such as would be
recognizable by me as District Attorney anyhow.

3 Mr. James.

4 MR. MC KAY: Mr. Marshall, have you a
5 question?

6 EXAMINATION BY MR. MARSHALL:

7 Q Mr. James, suppose the Governor had asked you
8 to, or ordered you to grant amnesty in the situation,
9 would he have the power to do that?

10 A Frankly, I'm not positive, but I frankly
11 doubt it. I doubt if the Governor has power to do that.
12 He can grant clemency afterwards but he can't grant
13 amnesty, so far as I know, as a lawyer.

14 Q What about the Attorney General of the State?

15 A The same would apply to him.

16 Q Mr. James, you said in answer to a question
17 that there was no way of overruling a decision made
18 by you not to prosecute as against a decision to prose-
19 cute. I think you said that.

20 A In an individual case?

21 Q Yes.

22 A Yes.

23 Q But there is a procedure whereby the Governor
24 can supercede you?

25 A Oh, yes. Very much so. That's inherent in
his executive power and as a matter of fact, I asked

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15 that he do so in the further investigation and 933
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3 prosecution of these crimes. The Governor very under-
4 standingly did so.

5 Q Apart from this, as you understand his re-
6 sponsibilities and his authority, he has no authority
7 to tell you what to do, who to prosecute, who not to
8 prosecute?

9 A That's correct, sir.

10 Q Mr. James, on the matter of plea bargaining
11 that you discussed with Mr. Luxemburg, just in order
12 to make it clear, I will state what I think plea bargaining
13 is and you can either agree with it or not.

14 As I understand that is not a decision not
15 to prosecute and in that sense is not a grant of amnesty
16 at all.

17 A That is exactly correct, sir.

18 Q In fact you do bring a prosecution?

19 A You do.

20 Q And the person pleads guilty and is convicted?

21 A That's right, sir.

22 Q The only question is what is he convicted of?

23 A Right. That is entirely different, as you
24 are implying, from no prosecution at all.

25 Q Now, one final thing, Mr. James. It strikes
me that in listening to you and I understand very clearly

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16 what you said, that there is a gap between your 934
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3 position, it seems to me to be a gap between your
4 position, which I am not quarreling with at all, and
5 what the observers understood your position to be.
6 That is, they went back with this letter and they con-
7 sidered it to be something that the prisoners would
8 accept, at least as being a great step forward.

9 Whereas you have described it, it is your
10 position, as being a refusal to grant any sort of
11 blanket amnesty under duress. Which it was, as you
12 have said, essentially what they were asking.

13 Can you explain why Mr. Wicker and the other
14 observers thought that your letter was a move towards
15 that whereas you rather plainly described it as a re-
16 fusal to move towards that?

17 A Well, it is not a move towards a general
18 amnesty but rather it was in the spirit, moved in
19 the spirit towards an amnesty,

20 In other words, an indication of reasonable-
21 ness and a sense of fairness on my part as against
22 just a hard shell approach to enforcement of the law,
23 period.

24 Q It was the sentence that rejected indiscrimi-
25 nate mass prosecutions, I suppose?

 A Yes.

17 1 Q That could be interpreted that way. 935

2 A Yes. That could be interpreted that way,
3 yes. Like any statement, you could kick it around
4 and read different things into it but I tried to
5 describe what I intended by my words. Mass indiscrimi-
6 nation is just hauling in everybody as a defendant
7 whether you had evidence to link him up definitely
8 with a definite crime before. This is what I meant
9 by mass indiscriminate prosecution. Say the whole
10 doggone bunch of us is guilty of something, we are
11 going to try you for something. That's mass indis-
12 criminate prosecution as I see it.

13 MR. MARSHALL: That's all I have.

14 MR. MC KAY: Mr. Henix?

15 EXAMINATION BY MR. HENIX:

16 Q I feel it unfortunate at this time that I
17 don't have a legal background but, Mr. James, my question
18 is you said that you were from that county I think 40
19 years and--in one way or another, and that the people
20 in that county know each other so well that your lives
21 are actually interwoven into one another?

22 A Yes, I of course meant that in the relative
23 sense. As contrasted with living in the city.

24 Q Right. If you walk down the street, can say
25 hello, how are you today, Mr. Jones and actually know

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it's Mr. Jones.

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A Right. Or Bill.

Q Or whatever. These, some of these people are some of the people I would assume, that have relatives who were being held hostage?

A Yes, sir.

Q You also said even if I could, I would not?

A Yes, I did, and I meant it.

Q I am asking you now not as a professional man but as a human being, a person who is a part of a community, where were your feelings at? I mean, at any point that these people were questioning you, did you take that into consideration that perhaps you would never see any of these people again?

A By "these people", you mean the hostages?

Q The hostages.

A Oh, yes, sure. Sure I thought of that. Very hard.

Q In view of that it would seem kind of hard to understand the part of the statement that says if I could I wouldn't.

A Well, sir, all right, I will try to answer your question a little more fully. First of all, I believe very deeply in the law. The majesty of the law and in fair enforcement of the law, is something

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19 we have to have to live together at all acceptably 937
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3 and to avoid a jungle.

4 Now, my concept of law enforcement, if you
5 want to term it that, is so strong I think that that
6 is paramount to one individual or another as his
7 life may be effect unfortunately.

8 Q Yes, I understand. I guess I had it in
9 the context that if I found myself in that situation
10 with any power at all, outside of asking God and every
11 other responsible person to give me some consideration,
12 I think I would have asked for it. And I remember
13 seeing different officers on TV asking for considera-
14 tions, and of course, I guess it is a difficult question
15 in view of your strong feelings about justice but if
16 you were one of those guys caught up in there, do you
17 think you would have asked for amnesty to be granted?

18 A No, sir, I really honestly don't.

19 Now, I know--I have learned this that several
20 guards have said that they did not want the prison
21 authorities to hold back in suppressing this riot out
22 of consideration for them personally, that their lives
23 weren't that important. There was much more at stake
24 than their own individual lives. There were the lives
25 of all the guards and all these prisoners and I've
told you another thing that's involved, the law which

2 All those things are even more important
3 than what happens to one individual. I don't mean
4 to say that I treat individuals lightly. I believe in
5 the importance of a human being just as you do but
6 there are other things too that are even of transcendent
7 importance, I think.

8 This is the situation here.

9 Q I can take from that statement that if it
10 was you, that you would probably not have asked for--

11 A No, sir. Let me say something else. I will
12 say it right on the line. This business of being a
13 prison guard is a very hazardous occupation.

14 Q I know that.

15 A And any guard who becomes one does so with
16 full knowledge of that situation. He takes his life
17 into his hands every time he goes out into the prison
18 population. The hazard of being seized as a hostage is
19 one of the inherent hazards of his job. That's the
20 same as a soldier. The chances he might get shot is
21 one he accepts as being a soldier.

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1 Q Before this incident, have
2 you ever had to try a person from Attica or in that
3 county during the time that you were the District
4 Attorney for having killed a guard? I know you did not
5 mention an incident where there was a simple assault.

6 A Simple assault.

7 Q But no murders?

8 A No, I have not been a District Attorney that
9 long. No, I have never prosecuted a case of that nature.

10 MR. HENIX: Thank you.

11 MR. McKAY: Mr. Marshall?

12 EXAMINATION BY MR. MARSHALL:

13 Q Mr. James, this is prompted because of your
14 statement about belief in enforcing the law and the
15 majesty of the law and it goes back to Mr. Luxemburg's
16 last question of which was with respect to prosecuting
17 guards.

18 I take it to be that it follows from what you
19 said about how you feel about the law that if a case
20 were brought to your attention that involved an assault
21 of any sort by a guard upon a prisoner, that you would
22 have no hesitation about prosecuting that case?

23 A No, sir. None whatsoever.

24 MR. McKAY: Mrs. Guerrero?

25 EXAMINATION BY MRS. GUERRERO:

1 Q Mr. James, you are so, I mean 940

2 so dedicated to law, of course, which all of us I think
3 are in a sense. Most people are because otherwise
4 we wouldn't have the nation that we have.

5 A Thank you, Ma'am. I try to be.

6 Q Christianity believes in the sacredness of the
7 human person and so does a republican democratic form
8 of government.

9 The sacredness of the human person, should
10 supposedly come first even when people are killing each
11 other in the battles and war which is a ghastly thing and
12 still everybody is concerned about prisoners and about
13 people who have been hurt, killed and so forth.

14 These days we are having a dreadful thing
15 happening all over the world, which is taking hostages.
16 I think it's a very shocking thing because when I think
17 that you could become sometime a hostage sometime even
18 being completely innocent, it's going to disrupt your
19 life, probably destroy you, probably kill you but even
20 before you are killed you probably are definitely des-
21 troyed.

22 So, being a hostage is a very difficult thing.
23 Now, the hostages in this case since these people are
24 living there together all the time, I think that both
25 the prisoners and the guards are in a very difficult

1 situation, both of them to each other.

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2 Now, the hostages were taken as many of these
3 people have said and even guards, in order to bargain
4 for redress of grievances because their life in the
5 prison is so ghastly. That's what they have all said.
6 This is what we're trying to find out.

7 In view of this and knowing that perhaps much
8 more, many, many more people would have been killed
9 because they would have killed many more, everybody
10 says that they are surprised that so few people were
11 killed, you still would not use your, I'm sure moral
12 conviction, and apply your amnesty? Or give them
13 an assurance of amnesty?

14 A I didn't follow the last part of your question,
15 Ma'am.

16 Q That in view of the fact that there would be
17 massive killing and you knew that because the whole thing
18 had been, you know, everybody was there to do this,
19 to retake the prison and so that there might have been
20 even more than 42 people killed and all those injured
21 and many, many more killed because it really was a
22 miracle that more weren't killed.

23 Knowing that and you knew more perhaps than
24 all of us now know, you still, because of your moral con-
25 viction of the law is bigger than the moral conviction

2 A You've got several thoughts here--really,
3 to answer your question I'd have to take it all apart.

4 Let me, in the interests of saving time, attempt
5 it this way. First of all, I had no way of foreseeing
6 what would be the result of all this, the killings that
7 would have taken place. This is hindsight. I had
8 no way of predicting this.

9 There are several ways of viewing this situation.
10 Of course, my job was only to give my answers as a
11 District Attorney, as I have explained, one simple
12 question. We're bargaining, negotiating with the prisoners
13 on their various demands. Here is the one. This is the
14 key one, they say, "How do you feel about that?" That's
15 the only way I entered into it.

16 Now, I was not handling the negotiations. I
17 was not running the prison nor running the show for
18 the state. My own sphere is very limited but if you ask
19 me in terms of human killings, as to what would be the
20 result of my statement, I say that my statement had very
21 little to do with that.

22 The killings were the result of the insurrection
23 in the first place and how that was handled on the part
24 of those who were directly in charge, what they were going
25 to do about it.

1 My own thought is, well, I have

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2 to tell you this because your question leads me to it.
3 This is from the standpoint of saving lives. I have
4 the very strong feeling that lives would have been saved
5 if the prison authorities had moved in much sooner, before
6 this thing blew up and the insurrection got well organized
7 and it would have been in the interests of ultimate
8 justice and the saving of lives to have moved firmly
9 and more quickly.

10 Now, that movement still could have taken
11 place after my statement and as I view it, my little
12 statement as District Attorney would--should have en-
13 couraged an immediate firm stand, brought the thing
14 to a head.

15 So everything I did, I think, was in the
16 interests of saving lives as well as maintain our system
17 of justice. As I see it. This is my problem.

18 EXAMINATION BY MR. WILBANKS:

19 Q Briefly, Mr. James, in a very brief fashion,
20 if the governor or Mr. Oswald asked, not ordered you, to
21 grant amnesty in view of the situation, would you have
22 done so?

23 A Frankly, sir, I don't think so. No. I know
24 I wouldn't. *I would have said I am sorry but I can't*
25 *as I see it.*

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MR. WILBANKS: Thank you. 944

MR. MCKAY: Mr. James, you have been very helpful.

You are entitled under our provision and our rules to make a statement of your own if you wish at this time. Is there something you wish to say?

THE WITNESS: Not really. I think my testimony has covered it and there will be others who have a broader knowledge of the whole situation than I.

MR. MCKAY: Thank you very much for being with us.

(Witness excused).

MR. LIMAN: Our next witness is Jose "G.I." Paris. If we do not finish with him today, we will make arrangements for him to come back to conclude his testimony and he will be questioned by Mr. Sackett, Robert Sackett, my able assistant and deputy counsel.

J O S E P A R I S, called as a witness, being first duly sworn by Mr. McKay, was examined and testified as follows:

THE WITNESS: My word is my bond.

MR. MCKAY: Thank you.
