

1
14
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

thought was forthcoming on his part was that there would be no general grabbing prosecutions against people merely for having taken part in the revolt, merely for having been identified as being in the yard, that sort of thing.

So while that was by no means an amnesty, it seemed to me, and I'm not a lawyer, it seemed to me to be a good deal more than we might have expected from the District Attorney.

Q Were you pleased with the letter you got?

A I was pleased with it. Our group was. The three of us were. We were pleased with it.

I think in retrospect we were a little misled because in the first place it was a little more than we had expected to get.

In the second place, I think that we-- while the other two gentleman were lawyers, nonetheless, all of us had a little bit of an inflated view as to how important the prisoners would regard these concessions.

I thought possibly we had gotten enough in that statement from Mr. James to break the back of the thing. But that was very euphoric on my part, I later learned.

2 referred to said, among other things, and I'll read
3 them?

4 "I deem it to be my obligation to
5 prosecute only when in my judgment there is sub-
6 stantial evidence to link a specific individual
7 with the commission of a specific crime and in
8 this particular instance at Attica, I am un-
9 alterably opposed to the commencement of in-
10 discriminate mass prosecutions of any and all
11 persons who may have been present."

12 A Yes.

13 Q And you understood that under this letter
14 the District Attorney would still be able to prosecute
15 people for specific crimes but you and Mr. Jones and
16 Mr. Tepper felt that you had come away with this with
17 something which might be palatable to the inmates;
18 is that correct?

19 A Yes.

20 Q When you--what was done about negotiating
21 the other demands that the inmates had presented?

22 A Well, other members of our group were
23 working on those various demands as might be.

24 Later on Saturday afternoon in the stewards'
25 room, our executive committee, augmented by several

3 themselves unable to stay away, worked out with
4 Commissioner Oswald and, I believe, Mr. Dunbar, I
5 suppose Warden Mancusi, although I don't really
6 know. They worked out the other points to the extent
7 that they could and what they worked out in the
8 observers' room that afternoon and what we had
9 worked out with Mr. James that morning became what
10 was printed in the newspapers and I think is known
11 as the 28 points now.

12 Q You said that some other observers couldn't
13 stay away from the room at the executive committee.

14 I take it that the executive committee
15 functioned better on paper than it did in practice?

16 A Well, that's right.

17 I recall when we brought back--when Jones
18 and Tepper and I brought back the letter from District
19 Attorney James, we read it there to the whole group in
20 the stewards' room and found to our surprise, certainly
21 my surprise, that the other members of the group,
22 many of the other members weren't as impressed as we
23 were.

24 Mr. Kunstler was not impressed on two
25 grounds. He said that really Mr. James had only
specified what any good prosecutor would specify, that

17
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

kind.

I think that's true in that sense and it was a concession only in that it was a lot better than just that flat, "No amnesty," that we had before.

And, secondly, he feared, if I understood-- well, I think I better let Mr. Kunstler speak as to what he felt about it. He was not as impressed, let's say, with the document, as we were.

Q We have been talking about attitudes of people toward cultural groups, et cetera.

Was your reaction to this letter affected by an opinion you had of what you could expect from an upstate District Attorney?

A I think that's probably so. I found Mr. James that morning a very forthcoming sort of fellow and he was most accommodating to us and I thought that he seemed to be very sympathetic to the plight of the prisoners as we sketched it out to him.

So I thought that those passages in his letter which you have read really had substantive meaning and I attached that--I mean I made that judgment out of my own judgment of Mr. James' character and attitude.

Of course, some of the other fellows hadn't

18 been exposed to that and they didn't have that 455
2 particular background.

3 Also they had, in some cases, a clear legal
4 understanding of the situation. I think, in some
5 cases, a better understanding of what the prisoners
6 were likely to think.

7 All of these attitudes, after we had this
8 considerable discussion about the amnesty, some members
9 felt it was best not even to take the James letter in
10 to the prisoners.

11 I finally raised the point, I said, "Is it
12 going to be better to go back to the prisoners when we
13 do and say we have achieved nothing on the question
14 of amnesty or is it better to go back and say we
15 haven't achieved much but we do have this, which is
16 likely to be better?"

17 And the consensus then was that, indeed,
18 Mr. James' letter was an improvement over just saying
19 we had been unable to work out anything, so I did
20 propose--I think I did, at least it was proposed that
21 we then allow the executive committee to work out
22 the other points which, while not unimportant, were
23 a good deal less complicated than the legal point of
24 amnesty with Mr. Oswald and his officials.

25 So I and Tepper, I recall, and I'm not sure

19 who else left the stewards' room and,

456

2
3 to my surprise, I found out later that practically
4 no one else did.

5 Q So you were the only one who did participate
6 in this?

7 A Yes. No, there were five or six of us who
8 were not in there. Instead of there being a group
9 of five or six hammering out these details, it turned
10 out practically the full group did.

11 It didn't matter in the long run. The
12 amnesty point plus what they worked out that afternoon
13 were the final 28 points.

14 Q Mr. Wicker, how many observers were there
15 in this total group that you have described as being
16 unwieldy in number?

17 A Well, there was never any set number,
18 because from day to day it changed.

19 For instance, there were members who were
20 there on Friday from Buffalo and Rochester who didn't
21 return on Saturday, but came back on Sunday.

22 It was a shifting group at all times, but I
23 think from the time I was there until the end there
24 were never less than 20 around.

25 Q How many were on the executive committee?

A There again, I'd have to have my memory a

2
3 is it was six.

4 Q Was there any effort to obtain a cross-
5 section of the different views held by the observers
6 on this executive committee?

7 A Yes, indeed there was. And it was appointed
8 as something of a representative group. That was
9 the idea.

10 Q Do you remember any of the people who were
11 on the executive committee other than Mr. Kunstler
12 and Assemblyman Eve?

13 A Yes. Clarence Jones was on it. And Herman
14 Badillo, Congressman Herman Badillo.

15 As I recall it, one of the young fellows
16 who was with us representing the Young Lords group
17 from Manhattan. At least those members.

18 Q What about the upstate legislators?

19 A Assemblyman Eve.

20 Q What about the upstate legislators from the
21 rural white communities, did you have any of them
22 on there, Mr. McGowan?

23 A Not on the executive committee, not to my
24 recollection, at least.

25 The list of names exists somewhere. I just
don't happen to remember it at this point.

2
3 place with Commissioner Oswald, you testified there
4 emerged the 28 demands and you had already the letter
5 from District Attorney James.

6 Did the observers ever agree that these
7 were demands that they could support?

8 A Well, no, not in that sense. I don't think
9 you could say the 28 demands--or points, after they
10 had been worked out with Commissioner Oswald and we
11 had the list typed and took it back into the prison,
12 you couldn't say in all fairness that that then
13 represented the unanimous consensus or recommendation
14 of the observer group.

15 It did represent, I think, and I believe
16 everyone would have agreed in this, it represented
17 about the best that we could work out on all of those
18 points in those circumstances, but, for instance, some
19 of our members felt that they could not, in good
20 conscience, themselves recommend to the prisoners
21 anything that limited a thing, an arrangement on
22 amnesty.

23 They were opposed to doing that. They felt
24 that the State should go farther, for example, in that.

25 And so it wouldn't be fair to present the
28 points as being a sort of the unanimous conclusions

think, practically speaking, the best we were able to work out on these given points and some of our group were in substantial disagreement with what we were able to work out.

Q What did you do to make sure that members of the group who were in disagreement with these 28 demands as not being enough wouldn't knock the demands?

A Well, we had a general understanding there to which I think everyone acceded and abided by, that we were going to present these points as being not our recommendations, not our suggested solutions, but as being, starting with the points that the prisoners had, the demands that the prisoners raised with us.

These were the best answers that we could get out of the State at that point. So we could say to the prisoners, in effect, you asked us to see what could be done on the 28 points. Here is what we have been able to do on the 28 points.

It is up to you whether or not this is enough to cause you to make agreement with the State on that basis.

Q You testified that this is the way you were going to present them.

Did you feel at that time that you had

to give?

A We certainly felt that we had gotten as much as the State was prepared to give at that point, because, as is true in any negotiating situation, as we have just seen in the baseball players' strike, for example, what one wouldn't give the one day might give the next.

At that point, when we were confronted with the necessity of going back and telling the prisoners something, when we had already dragged on all day trying to work this out and the prisoners had been expecting us momentarily, we certainly felt at that time, at that given moment we had the best that we could get.

Q What I am getting at is: Was your attitude shaped by the feeling that maybe the State was holding something back in reserve to add to the pot if it became necessary?

A I didn't feel that, no, that they had some strategic negotiating plan, that way. I didn't feel that.

I felt, of course, and I think anybody would, that the longer the whole situation could be held status quo, the more it might be that one side or the

1
24 other would be willing to make concessions 461

2
3 but I never sensed at any time that the State had an
4 overall negotiating strategy of the kind you suggest.
5 They may have done, but I just never senses it if
6 they did.

7 Q Did you feel that the observers had pressed
8 the State as hard as they could that Saturday in the
9 direction of amnesty and other demands?

10 A I felt quite sure of that, because, although,
11 I wasn't in the room when our augmented executive
12 committee was dealing with Commissioner Oswald, I knew
13 Mr. Kunstler and Arthur Eve and other very strong
14 advocates were there and I know that we had, I felt
15 quite certain that we had gotten as forthcoming a
16 statement out of Mr. James as we were going to be able
17 to get, so I was in no intellectual doubt that the 28
18 points we took back to the prisoners on Saturday night
19 was indeed, at that time, the most, the best that we
20 could do.

21 Q Am I correct in my understanding that in
22 addition to getting the letter from District Attorney
23 James, the other negotiators for the observers committee
24 had suggested in getting a commitment from the State
25 that the State would not be a complainant in criminal
property actions against the inmates?

25
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A That's right. That was the
amnesty package.

462

The James letter plus agreement with Commissioner Oswald not to move in administrative ways to punish for property damage and that sort of thing.

MR. LIMAN: We have to pause for a moment to let the reporter change his tape.

Q Mr. Wicker, when this was being negotiated out with Commissioner Oswald, Mr. Seale had not yet arrived as part of the observers group on the scene at Attica; am I correct?

A Bobby Seale?

Q Yes.

A No, he had not.

Q When he arrived, was there discussion with him as to what his position would be on this package that you had worked out with Commissioner Oswald?

A Yes. We waited, in fact, some time for Mr. Seale to arrive there or for his--and for his entrance to the prison to be worked out and so forth, because it was felt by some members of the group that if we could present our package of 28 points to the prisoners with the approval of Bobby Seale and we felt that his name would carry great weight among the prisoners, particularly since so many of them were blacks and

3 join us in saying to the prisoners, this is the best
4 you can get, if he would even go so far as to recom-
5 mend that they accept them, which, of course, it was
6 quite dubious that he would do that, but certainly if
7 he would join with us in the presentation of those
8 points to the prisoners, we thought that that would
9 favorably dispose--might favorably dispose them
10 toward the points, that Bobby Seale's reputation would
11 carry that kind of weight.

12 Q He arrived at about 7:00 o'clock on Saturday
13 night?

14 A Yes.

15 Q Was there discussion about whether or not
16 he should be allowed into the prison, that you were
17 aware of?

18 A Yes. At first the prison authorities were
19 not enthusiastic about that.

20 Q But they let him come into your observers
21 room?

22 A They did, yes. In fact, ultimately, my
23 recollection is, they cooperated. They kept him
24 waiting outside for quite a while. He left.

25 And the State, then persuaded by us of
this, it now seems fairly dubious a scheme that perhaps

1
27 Bobby Seale would be of help in this,

464

2
3 my recollection is the State then sent a police car
4 after Bobby Seale and brought him back and escorted
5 him, in so ultimately they cooperated in it after
6 first being reluctant.

7 Q Did the observers then ask Mr. Seale as
8 to whether he would support these recommendations?

9 A Yes. We went through the whole thing with
10 him and he, like Mr. Kunstler, went immediately to the
11 amnesty point, recognized immediately that that was
12 the key point and stated with considerable deliberation
13 and at some length, stated the James letter and the
14 other parts of the amnesty package--he had a visitor
15 with him.

16 They went off and talked privately about it.
17 They went into a corner and talked privately about
18 this. He talked also in private with several members
19 of our group about it.

20 So he gave a lot of consideration to it.

21 Q And what was his response to the observers
22 group?

23 A His response--here again, now, I really
24 probably should--to the best of my recollection, his
25 response was that he didn't feel that on such short
notice and with such short acquaintance with the problem,

1 that he could go in and associate himself 465

2 with the 28 points as they were set forth there.

3 He felt that in his particular organization
4 that he had to seek the advice and counsel of the
5 leadership of his group, which was on the West Coast
6 in Oakland.

7 That he was not free to operate independently
8 in that sense. And for all those reasons he didn't
9 think that he could associate himself wholeheartedly
10 with those points, certainly not in any way that would
11 leave him in the position of recommending to the
12 prisoners that they accept those points.

13 Q When did you learn that Officer Quinn died?
14 Before you went into the yard Saturday night?

15 A Yes. I learned it at some point that after-
16 noon.

17 Q And what effect did that have on your atti-
18 tude about these demands?

19 A Well, it obviously--that obviously worsened
20 the whole situation, because after that there clearly
21 existed the possibility of a capital charge against
22 someone.

23 Q When you went into the yard Saturday night
24 with the group and these 28 demands, were you optimistic
25 that the inmates would accept the package?

perhaps more so than some of the other members.

I should explain here that when we went in that night it was not my understanding that at that point we were really going to present the 28 points to them. It was a confused evening. Shall I just--

Q Why don't you.

A My understanding was when we went in--you see, we had left the prisoners all day from the time we left there about 3:00, 4:00 o'clock in the morning, all through the day, we had not been back in there.

They were, naturally, quite anxious to know what was going on. They sent out several times to find out where we were. What was happening.

So we felt that sooner or later we had to make an appearance in there. But we waited a good deal longer for Bobby Seals to come.

Then he took the attitude that I described. We felt we couldn't wait any longer. We had to go in and at least apprise the prisoners of what was happening and let them see that we hadn't deserted and so forth, but we didn't feel at that point, it's my recollection, we didn't feel that we should present the whole list of points we worked out and we were still hoping that after Boby Seale had been in touch with his

1 leadership group on the West Coast, that

467

2 possibly he could take a fairly strong position.

3 He hadn't ruled that out. He said he had
4 to consult his group.

5 Q You indicated that the observers group as
6 a whole was not prepared to take the strong position
7 of actually recommending these demands on the merits?
8

9 A That's right.

10 Q What was it that led you to believe that
11 Bobby Seale would be willing to take a more definite
12 position than you as observers was willing to take?

13 A I don't think that anyone felt that he would
14 be likely to go in or could go in and advocate that
15 the prisoners accept these points, because the same fac-
16 tors were still at work there. It wasn't his life
17 that was at stake.

18 So we did hope, I think, that he might
19 associate himself with us in saying that these were
20 the best points that could be worked out and that as
21 the prisoners decided what to do, they had to be aware
22 these were the best points to be worked out.

23 I think on the whole you are quite right
24 to point out, you are quite right if you are suggesting
25 that more was being expected of Bobby Seale than he
could reasonably deliver.

2 an impossible position?

3 A To a very large extent, I think that's true.

4 Q If he went in there and advocated that the
5 inmates end this and then there were prosecutions
6 that followed, that would be a difficult situation?

7 A It was a reciprocal thing. There were
8 members of our group who felt if Mr. Seale could take--
9 could associate himself with those points, short of
10 a recommendation, they would feel that they could
11 more strongly and confidently do so.

12 But I think it's fair to say that probably
13 more was being expected of him there than he could
14 legitimately perform.

15 But you have to remember that by this time
16 we were beginning to feel reasonably desperate about
17 it. Time was passing. We were beginning to grasp at
18 straws and we had great confidence, I must say, in
19 what we thought would be Bobby Seale's effect on the
20 prisoners.

21 So when we went in that night, we went in
22 not, as I recall it, to present the 28 points and
23 argue all that out at that time. We went in merely
24 to show that we were still at work, to make the prisoners
25 aware that Bobby Seale had arrived, to let Seale speak

... if he would.

2
3 Generally, as a holding operation, just
4 hold the fort until we felt a stronger position and
5 Commissioner Oswald at that point exacted a promise
6 from us that everybody who went in would come out
7 at the same time.

8 This resulted in the fact that the night
9 before when we came out one or two of the members of
10 the group had decided to stay in the yard with the
11 prisoners, where they had friends and acquaintances
12 and the Commissioner, I think, felt that there were
13 enough hostages in there already, he didn't want to
14 run the risk of anything like that.

15 This trip in he made us agree that all
16 those who went in would come out together.

17 We went through the accounting of procedure
18 again and to my surprise, and I think to some of the
19 others', I think the effects of Bobby Seale's presence
20 was not nearly so great as we had thought it would be.

21 Here again, I don't mean this in any way any
22 criticism of him. He didn't say it would have any
23 great effect. We had an inflated idea of what it
24 would be.

25 He made a very brief, very cool and certainly
non-inflamatory speech to the prisoners, the gist of

2 them. That he could not as yet make any--couldn't
3 associate himself with any of our work. He had to
4 consult his group on the West Coast.

5 He said that he would try to send word to
6 them of what he thought about these points later that
7 night and he would try to return the next morning.

8 Q When he left after he made this statement,
9 was there disappointment that after inmates had been
10 waiting so long for him, that he stayed only a brief
11 few moments?

12 A Well, I think there was, and as I say, I felt
13 his whole appearance was somewhat anti-climatic.

14 I had expected, for instance, when he was
15 introduced there would be a tremendous ovation so
16 when there wasn't, that, I think, was due to the fact,
17 probably as much as anything else, that by this time
18 the prisoners had been in that yard about three days
19 and the whole thing had begun to wear them down and
20 I think they were just not in a mood to cheer for
21 anybody.

22 In any case, Mr. Seale made his brief remarks
23 and then he and the associates who had come with him
24 there started to leave.

25 I was sitting at the leadership table and

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

State Senator Robert Garcia, both turned to me and said, well, they're leaving and we promised the Commissioner we would all come out together so it's time to go.

Whereupon I would say maybe a third, a half of our group left with Bobby Seale, including me.

In the meantime, unknown to me and unknown to those obviously who were following Bobby Seale out of the prisoner yard, at the other end of the leadership table, and the leadership table, the place where we were meeting with the inmates, was perhaps twice as long as the table behind which the Commission is sitting.

If you were at one end of it you wouldn't necessarily know what was happening at the other end. There was one microphone that was placed at the front and you had to go out from that table to be able to speak to be heard by everybody.

What was happening, I am now going into hearsay from other members of the observers commission. What was happening at the other end of the table from where we were, a group of the prisoners were being very acrimonious with some of our observer group.

They were saying, "Where have you guys been?"

1 You haven't been here all day. You come 472

2 in here--and leaving us out here, you are going to stay here
3 five minutes? You mean there is not going to be any
4 negotiating? You're not going to give us any kind
5 of report? What kind of job do you think you fellows
6 are doing?"

7
8 They were saying those things to people that
9 happened to be leaders in our group, a part of the
10 executive committee. Arthur Eve, Clarence Jones and
11 others.

12 And they made the decision on the spot that
13 whatever we had said to Commissioner Oswald, that the
14 situation was so serious, the prisoners' nerves were
15 so on edge and they were feeling so let down on this
16 point, they felt it was better to go ahead and present
17 the package of the 28 points to the prisoners at that
18 time.

19 They made that decision on the spot.

20 Q Mr. Wicker, one of the observers who stayed
21 in was an attorney by the name of Louis Steele.

22 A Yes.

23 Q Did you meet Louis Steele later that evening
24 and did he tell you what the inmates reception was to
25 the package of 28 demands?

A Yes, he did.

2 siderable length with Clarence Jones, who actually read the
3 document over the loudspeaker.
4

5 Q What did they tell you?

6 A Their judgments coincided precisely that
7 the prisoners' reception of the 28 points was very
8 hostile. In some cases it was even devisive.

9 That the reception in particular of the
10 amnesty package, the letter from Chairman James on
11 which I at one time placed such story was actively
12 hostile.

13 Mr. Jones told me that he even felt in
14 a sense, he felt that he was standing there along
15 reading the document, he felt very nervous about it
16 because the reaction was so hostile.

17 Then both Steele and Jones told me later
18 that they thought that Mr. Kunstler had saved the
19 situation at that point by getting up and making an
20 extremely forceful speech, in their judgment, in which
21 he asserted that while we were not trying to tell the
22 prisoners what to do, nonetheless, this amnesty package
23 we thought was the very best the State was willing
24 to offer at that point.

25 That the prisoners would have to consider
that that probably or might very well be the best that

2 they could hope to get.

474

3 Q And despite these pleas by Mr. Jones and
4 Mr. Kunstler, you were told that the package was
5 rejected by the inmates?

6 A Well, I wasn't there and I don't know to
7 what formal extent they rejected it. Whether there
8 was a show of hands or anything.

9 But the group that--when they came out, as I
10 was told later by everyone who was there, they came
11 out and no doubt that the package had been almost
12 rejected out of hand.

13 Of course, some of the points--that's a
14 little misleading because some of the points the State
15 had agreed, at least on paper, to do what the prisoners
16 had said. So when I say rejected out of hand, I meant
17 that the points that really were still in dispute--

18 Q Did they tell you that the sense of inmates
19 was that they wanted complete amnesty?

20 A Yes.

21 Q Did they tell you that the sense of the inmates
22 was that they wanted Superintendent Mancusi removed?
23 Or was that a lesser demand?

24 A I first became aware of the Mancusi point on
25 Sunday afternoon personally, but there again, it might
have been raised Saturday night, conceivably.

3 wanted to have complete amnesty and knowing what the
4 State's position was, that must have filled you with
5 dispair.

6 A Yes. Knowing that and knowing that the
7 guard, Mr. Quinn, had died that day, I know that on
8 Saturday night after having talked to Louis Steele
9 and others, I felt quite pessimistic.

10 (Continued on page 476.)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

2 about the events of Sunday, the day before the police
3 assault, what the observers and you did that day in an
4 effort to resolve this problem.

5 A It was a very long and confusing day. We had --
6 various times we had sub-groups acting in a particular way.

7 One sub-group went down, I know, and conferred
8 with some of the prisoners at the yard gate, and that sort
9 of thing.

10 We felt, most of us, I think, as we could look
11 out the window and see the activities of the prison, catch
12 the atmosphere as we passed through the corridors and
13 through the grounds where we were permitted to go, we felt
14 that there was -- that the State was getting ready to act
15 very decisively, act forcibly.

16 We could see there seemed to us to be augmented
17 forces there, heavily armed. There were helicopters about.
18 At one stage that day, we began to realize that gas was
19 coming into our room, tear gas or pepper gas or something
20 of the sort.

21 It turned out we thought an attack was beginning
22 then, found out this was an accidental opening of a
23 cannister of gas.

24 There were all kinds of indications to us that an
25 attack was coming, and coming soon, and we felt -- we felt,

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

that attack was going to result in a great deal of bloodshed.

It was going to result in two kinds of bloodshed: one, I don't know anybody in the observer group who didn't feel that the prisoners would, out of necessity, as they would see fit, make good their threat to attack the hostages in case of an attack on them.

And secondly, it seemed quite clear to me that with that many men massed in the prison yard there, a determined attack on them was bound to result in a great loss of life.

Q Let me ask you about this. The inmates had not threatened to kill the hostages if the status quo remained; am I correct?

A Oh, yes. Actually, that was the whole situation, and it was one reason that many of us felt, as I will explain later, many of us felt that there was no need for an armed attack.

We felt that in the four days there that the prisoners by then had had physical control of the hostages, they had established four days of credibility that they weren't going to harm the hostages just to be harming them.

In fact, the political situation dictated that

2
3 were smart enough to know that the one chance they had of
4 getting out of that thing on a negotiated basis was to
5 hold those hostages harmless.

6 If they started killing or harming the hostages,
7 the State would have had no further reason whatever to
8 delay beginning an attack.

9 Q The threat that you described as a credible
10 threat was a threat to kill or harm the hostages if the
11 State attempted a forcible retaking of the prison; am I
12 right?

13 A Exactly.

14 Q You also expressed concern about what would
15 happen in the way of bloodshed if the State made an
16 incursion upon the inmates in that yard.

17 Were you concerned about the mood of the State
18 police force and the correction officers?

19 A Oh, yes. It was very easy to see that they
20 were understandably and quite visibly edgy, jumpy, angry,
21 irritated, frustrated.

22 They had been out there in the surrounding part
23 of the prison yard for the same length of time that the
24 prisoners had been inside, of course.

25 There had been generally bad weather, not
terribly bad weather but not good. They were getting

2
3 the prisoners but probably lousy.

4 They were no doubt fearful. There were rumors
5 going around that the prisoners had large quantities of
6 explosives and weapons, and all that sort of thing.

7 So these fellows were understandably jumpy
8 about what was ahead of them. I think it is fair to say
9 that, as near as I can tell, I didn't see any members of
10 minority groups in the police forces that were gathering
11 there.

12 There was a kind of natural hostility here of
13 the kind we unfortunately see too much of all over our
14 country, in addition to which they were law officers as
15 such, and I think they had a conventional view that the
16 men in the prison were law breakers and that there wasn't
17 a feeling on their part of two equal forces.

18 It was a natural buildup, one had only to sense
19 the atmosphere a little bit. It was a natural buildup to
20 what we thought was going to be a great deal of violence.

21 Q In line with the comment I made at the outset,
22 I was asking you really for your opinion and apprehensions
23 and concerns, and that is what you have been giving to us,
24 about the mood of the armed forces outside.

25 A That is right, and they were quite hostile -- I
don't mean every one of them, because I didn't come in

2 we came in contact with were quite hostile to us. We
3 could feel that.

4 Some of them we presumed had friends and rela-
5 tives among the hostages inside; certainly they knew
6 people that did. They identified with them as fellow law
7 officers, so the situation was just ripe here.

8 You know, it was unquestionable that when and if
9 an armed attack came on the prisoners inside the prison,
10 it was going to be a violent attack, and the final thing,
11 as long as you put it in the terms you have, the final
12 thing that I think I would like to say is that it was
13 incredible to me, the extent to which the attacking forces,
14 the forces that would attack when an attack came, it was
15 incredible to me the extent to which they were armed.

16 Q What kind of arms did you see?

17 A We saw in most cases -- I was never quite clear
18 who was a State trooper and who was a sheriff's officer,
19 but in most cases they had a hand gun. They had some
20 kind of a long gun, whether it be a shotgun or rifle.

21 Tree clubs -- really incredible clubs, and high
22 boots and helmets. They were a very, quite martial-
23 looking array of people.

24 You see, it was quite clear that the prisoners
25 weren't armed to that extent. We saw baseball bats and

2
3 there, on guns, on weapons, to someone like myself, who is
4 not entirely used to surroundings of that kind, was truly
5 shocking.

6 Q You also saw homemade knives in the yard too,
7 didn't you?

8 A I didn't see any homemade knives. From my
9 instant expert's knowledge of prison life since then, I
10 must assume there must have been that sort of thing there.

11 What we saw were clubs, steel pipes and base-
12 ball bats.

13 Q Now, you had a situation in which the State was
14 saying no amnesty and the inmates said that they wanted
15 total amnesty.

16 What did you do about trying to prevent this
17 confrontation that was looming up?

18 A We were moving in several directions but mainly
19 by midday Sunday, I think what most of us felt was the
20 attack was quite imminent and it was coming because we had
21 this deadlock.

22 We weren't able to work out the amnesty and so
23 forth. Hence, about the only thing we could do, we
24 thought, was to try to maintain the status quo, buy time,
25 stall off the attack and hope somewhere along the line
either the prisoners or the State would yield in such a

2
3 In other words, if we could just -- we felt that
4 the hostages were not going to be harmed, that therefore if
5 we could get the State to hold off the attack two, three,
6 four days, who knew what might be worked out during that
7 time.

8 So the emphasis was much more nearly on prevent-
9 ing the attack by Sunday than it was on literally working
10 out an agreement.

11 Q Is it fair to say the emphasis was not on
12 leaning on the inmates to accept what had been offered, but
13 more on trying to get the Governor or somebody else to
14 give you the time?

15 A That is right, because the inmates had no power
16 to carry out an attack. They were there. They were in
17 that sense the passive side in this, and as I say, we were
18 convinced, one will never know now, you can't prove the
19 negative, but we were convinced that they were not going
20 to harm the hostages; that indeed, that was the most
21 self-destructive thing they could have done, so we felt
22 safe operating that way.

23 Q Mr. Wicker, you did make a telephone call to the
24 Governor that day; am I correct?

25 A Yes.

Q What did you say to him?

1
2 several of us had asked the Governor's assistant, Mr.
3 Robert Douglass, who was at the prison throughout this
4 time, we asked him to come in and meet with us, and we
5 made very strong representations to him that we felt the
6 attack was about to go in and that we hoped very much that
7 the Governor, A, would not do that, and B, that the
8 Governor might even come to Attica, and we asked him to get
9 on the phone to the Governor and relay these considera-
10 tions to him as urgently as he might.

11 And Mr. Douglass said then that he would take
12 all that under consideration -- that is, not necessarily
13 that the Governor would take our points under consideration
14 but he, Mr. Douglass, would take it under consideration
15 whether to call the Governor on that basis.

16 So, we found out later that he did, but we
17 weren't entirely certain at that time what he was going
18 to do, nor could we be sure to what extent and with what
19 degree of intensity he might relay our concerns to the
20 Governor, so at a point quite early in the afternoon, I
21 would think it would be about 1 o'clock in the afternoon,
22 when several of us felt that action was really quite
23 imminent there, we decided to call Governor Rockefeller
24 ourselves.

25 We decided that we couldn't leave any avenue of

2 even some members of our group who suggested we leave the
3 prison and charter a plane and go to Tarrytown, where the
4 Governor was, and try to visit him personally.

5 Q What did you ask the Governor to do?

6 A We got him on the telephone at Tarrytown. I
7 spoke to him first. I described the situation to him as
8 best I could, and our apprehensions that the attack was
9 going to be made, and made very shortly, and I hoped that
10 he would prevent that and that he would then come to
11 Attica at the invitation of the observers' group.

12 We made it very clear to him we were not
13 suggesting that he come up there pursuant to any demand
14 by the prisoners nor were we demanding that he come up and
15 talk with the prisoners, nor meet with the prisoners in any
16 way.

17 We were suggesting that he come to Attica at our
18 suggestion to meet with us.

19 Q Had the inmates asked for the Governor -- when
20 you were in there?

21 A In a rhetorical kind of way. It was not one of
22 their formal points or anything of that sort.

23 But I felt, and I made the case to the Governor,
24 tried to make the case to the Governor -- I felt if he
25 would come to Attica, at least two things would transpire.

1
2 prisoners themselves, at least a symbolic gesture to them
3 that the Governor was concerned over what was happening,
4 that he had some concern with their welfare and their
5 fate and their safety, as well as those of the hostages,
6 and that his actual physical presence at Attica would
7 signify that to the prisoners.

8 That was the first thing I thought would happen.

9 And secondly, if he would prevent the attack
10 and come up to Attica and take personal charge that way,
11 we could then just maintain the status quo for one, two,
12 three days, who knew how long, and at the end of that
13 time or at some point while the question of amnesty and
14 other points might not have been negotiable on Sunday,
15 it might have been negotiable on Wednesday.

16 All kinds of developments might have taken place
17 that would have made a settlement possible.

18 Those were the two points I argued very strongly
19 to the Governor. I had a third point in mind that I did
20 not put to him.

21 I hoped that if he would come, it would work
22 that way. I didn't think it would be useful to argue the
23 point to him. I thought if Governor Rockefeller came to
24 Attica, he would very quickly, being an observant man, pick
25 up the same vibrations, the same sensations we had about

2 and anger on the part of these heavily armed men, and the
3 fact that there was bound to be a considerable amount of
4 violence once an attack was carried out, and I thought if
5 the Governor himself personally felt that -- after all, it
6 was the kind of thing you almost had to be steeped in
7 yourself.

8 It couldn't really be conveyed by telephone.

9 Q What was the Governor's response?

10 A The Governor's response was very straightforward.
11 He said that it looked to him as if an impasse had been
12 reached on the amnesty point, that he, Governor Rockefeller,
13 had no, according to his legal authorities, he had no
14 power to grant an amnesty.

15 Even if he did have the power, he didn't think
16 he would do it because it didn't seem to him to be a good
17 thing to do.

18 It would cause disciplinary problems in the other
19 prisons, and besides, he seemed to feel that it was just
20 simply not a good way to proceed, to forgive in advance
21 crimes that might have been committed in some way.

22 He used the phrase to me it would undermine the
23 basic tenets of our society to do that sort of thing.
24 These attitudes on his part were reflected in a published
25 statement he put out that afternoon.

1
2 same thing to me and the point on coming to Attica, he
3 said he didn't think that would do any good.

4 On the point of buying time, he could understand
5 why those of us who were closely involved in it wanted to
6 do that, but he felt that time wasn't going to change the
7 situation, that an impasse had been reached, and while he
8 didn't say therefore I am going to order an attack or
9 anything of that sort, he left me in no doubt that he had
10 rejected our point of view and he clearly was not going to
11 come to Attica.

12 Q Mr. Wicker, when you returned to the yard on
13 Sunday for the last time, did you or any of the other
14 observers urge the inmates to accept the package that was
15 on the table?

16 A I am sorry. Would you repeat that, Mr. Liman?

17 Q I said when you returned to the yard on Sunday
18 afternoon with the other observers for the last time, did
19 you or any of the other observers urge the inmates to
20 accept this package of 28 demands, considering your fears
21 of an imminent attack?

22 A No, I don't think anyone made speeches of
23 advocacy that the prisoners accept the 28 points. I
24 think again it was repeated, particularly the amnesty
25 point, that the most that could then be worked out had

2 in that package that we had presented, and also it was
3 made clear by various speakers that our appeals to the
4 Governor, at least up to that point, had failed, and that
5 he evinced no intention of coming to Attica.

6 But I don't recall that anyone made an advocate
7 speech that in order to avoid an attack that night or the
8 next day, the prisoners are forthwith to accept the 28
9 points.

10 No one made such a speech.

11 Q Do you know whether any observers made warning
12 to the inmates that if they did not accept this package
13 of 28 demands, an attack of the type that you feared would
14 be forthcoming?

15 A Yes, those warnings were given in various ways,
16 but I never felt they were necessary in that sense. You
17 see, the prisoners had radio and television in there.
18 That whole -- that Sunday afternoon session in the prison
19 yard was a very emotional session.

20 The prisoners' entire demeanor, all our
21 relationships with them, the things that we said conveyed
22 the impression -- I don't think anyone in that yard was
23 in any doubt that we, the observer group, were in there
24 for the last time.

25 We felt that -- in other words, it was a

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

don't remember to what extent it was specifically said that the prisoners, you know, the attack is likely to come at any moment now, that was the whole context in which we were meeting, and when we left, many of the fellows who had acquaintances or who had made acquaintances over the three, four days, the partings were very emotional.

Many of the speeches were in the nature of farewell speeches.

Q Mr. Wicker, you know that some of the speeches that were made on Sunday have been criticized as having held out hope to inmates that amnesty and perhaps even asylum might be obtainable.

Would you want to comment on that?

A Yes, I would. I don't think any such speeches were made and I think, generally speaking, the allegations that such speeches were made, those allegations seemed to me to come from sources that want more nearly to justify in the long run than to get at the root of the matter here.

I won't pretend that the activities of our group, under great pressure, under great emotional strain, through a four-day period, a three-day period in my case -- I won't pretend that each and every utterance and each and every thought of each member of our group, particularly

2 wise. That would be foolish on the face of it. Things
3 were said, I think, throughout that period that perhaps
4 might better have been unsaid had wise men had long, quiet
5 hours in which to deliberate what to do.

6 Not every moment of a circumstance like that can
7 be carried out in the cool pursuit of some rational
8 strategy.

9 I think we all did what we thought was best at
10 the given time. I am not aware of any speech that was made
11 that in my judgment ever gave the prisoners any reason
12 whatever to think that they were going to win their
13 struggle.

14 I know of no speech that was made at any time that
15 ever gave them any cause to believe that if they just hang
16 on a little bit longer, they were going to get an amnesty
17 and go home free.

18 I know certainly of no speech of any kind that
19 made the suggestion that they were indeed likely to be
20 flown off to any Third World country.

21 One of the speeches in question I think has to
22 do with whether or not representatives of such a Third
23 World country, unnamed, were anywhere in the vicinity.

24 That speech was made but it was a very far cry
25 from saying that if you fellows will just be brave and bold

2 to the Third World. No such remark was made. It would
3 have been foolish and asinine on the face of it.
4

5 While we had men there who were emotional, they
6 were not men who were foolish and asinine. In my judgment,
7 those who said if somehow the prisoners would have
8 surrendered, would have given up their hold in the D yard,
9 would have turned over the hostages, would have made a
10 peace with the State, if only one or two of the speeches
11 made by the observers had not been made, those people
12 are simply trying to find an answer to what happened on
13 Monday morning at Attica that the facts will not sustain.

14 Q Did you feel at all threatened going into the
15 yard on Sunday?

16 A No.

17 Q Do you think in retrospect that the --

18 A I may say I never felt threatened by the
19 prisoners. When I first went in there, I had my own
20 natural nervousness to overcome, but once I saw what
21 was -- how the place was organized, once I realized the
22 situation that our lives were as much hostage in a way
23 as the hostages, the real hostages, and the worst thing
24 the prisoners could do in their own self-interest was to
25 damage us, once I realized, once I had a fairly good
expousre to their demeanor and manner of conducting

safety.

Q Did you think that these negotiations were so structured that they could produce success?

A No, I think not. If I had it all to do over again and if, as I said a while ago, I had had long, cool, rational moments to think deep thoughts about it all, I think possibly what I would have advocated was that we observers, while we had a telephone before the State cut us off from the outside world, that we might have got on the telephone to men who were far removed from the emotional circumstances that we were in, from the pressure cooker of events there, men who had had some experience either with prisoners or in negotiating circumstances, and have asked them if they could, to have worked up a package, perhaps better than what we could, or merely have tried to present to the prisoners as advocates.

While our role, had we been able to do that, had we thought of doing that, our role could have been one of strictly keeping the peace until we could -- until such an arrangement could have been worked out somewhere else.

Also, I thought in retrospect, at times it seems to me events moved so swiftly, it is very difficult for me to place just blame on anybody for what they did or didn't do, but it did seem to me that the State itself, and I am

1 not talking about the officials of the 493
2 prison who were there, or even Commissioner Oswald who was
3 there, they had enough just actual operating work to do
4 during that time -- it does seem to me in retrospect, the
5 officials of the State itself did not make much effort
6 outside the prison, off in the calm of other locations.

7 It doesn't seem to me they made much effort to
8 work things out on paper in some way and come to us and
9 say would this possibly be something that the prisoners
10 might be interested in.

11 The whole thing was left to us and it was left
12 to us in circumstances which almost foredoomed it to
13 failure.

14 MR. MC KAY: Mr. Wicker, we have to discontinue
15 the hearings today for reasons of studio time, but
16 we certainly hope that you will be able to come back
17 with us at a time we work out in the future to
18 continue this most important and most interesting
19 testimony.

20 Thank you very much for being with us today.

21 The hearing will now recess until tomorrow
22 morning at 10 o'clock.

23 (Time noted: 4:00 p.m.)

24 * * * * *

25

