

NEW YORK STATE SPECIAL COMMISSION ON ATTICA

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In the Matter of the :

Public Hearings :

at :

NEW YORK, NEW YORK :

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Channel 13/WNDT-TV
433 West 53rd Street
New York, New York

April 19, 1972
10:30 a.m.

Before:

ROBERT B. McKAY, Chairman,

MOST REV. EDWIN BRODERICK,

ROBERT L. CARTER,

MRS. AMALIA GUERRERO,

AMOS HENIX,

BURKE MARSHALL,

WALTER N. ROTHSCHILD, JR.,

MRS. DOROTHY WADSWORTH,

WILLIAM WILBANKS,

Commission Members.

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1 Our first witness today is Professor 497

2 Herman Schwartz.

3 Mr. Schwartz, will you stand to be
4 sworn?

5 H E R M A N S C H W A R T Z, having
6 been duly sworn by Mr. McKay, was examined and
7 testified as follows:

8 EXAMINATION BY MR. LIMAN:

9 Q Would you state your full name for the
10 record? And then, Professor Schwartz, I know that
11 you have a statement that you want to make at the out-
12 set.

13 A My name is Herman Schwartz.

14 The statement I want to make at the outset
15 is simply this: in the past and at the present and
16 perhaps in the future I represent and have represented
17 some of the inmates at Attica. I may be involved in
18 some of the criminal defense and I am presently in-
19 volved in some of the civil actions growing out of
20 the matters that you are addressing yourselves to.

21 Consequently, all my testimony will be limi-
22 ted by whatever I consider to be my obligations to
23 my clients, so that nothing I say can in any way
24 interfere with the lawyer-client relationship and
25 in line with that, I am here pursuant to a subpoena,

1 because I do not think it appropriate to 498
2 appear voluntarily, given my position.

3 MR. MCKAY: Thank you. We understand.

4 Q And you also understand that we have estab-
5 lished the ground rule for all witnesses to avoid, to
6 the extent possible, the identification of particular
7 individuals.

8 A Yes, I am aware of that.

9 Q Professor Schwartz, what is your occupation?

10 A I teach law, sporadically, at the State
11 University of New York at Buffalo. My specialty is
12 criminal law.

13 In the last couple of years, it has been
14 the law relating to people in prison.

15 Q Have you, in the past few years, acted as
16 attorney for groups of Attica inmates in various
17 matters?

18 A Yes. About three years ago I had a sab-
19 batical, and I took that as the occasion to start a
20 project on behalf of the American Civil Liberties
21 Union to try to expand prisoners' rights.

22 My sabbatical was -- I extended it this
23 year by taking a formal leave of absence for part of
24 the time, and in the course of that I have represented
25 a great many inmates at Attica.

2 actually visited Attica?

3 A Many times prior to September 1971.

4 Q Do you have any estimate of how many law-
5 suits you had brought prior to September of 1971 on
6 behalf of Attica inmates against various practices
7 at the institution?

8 A It's hard to say. Maybe a dozen. Some were
9 very brief. Some were several growing out of parti-
10 cular incidents, such as the metal shop incident in
11 1970.

12 I would say at least a dozen, or maybe more.

13 Q Just by way of background, could you give
14 some examples of the types of lawsuits you brought and
15 the types of rights you established in these cases?

16 A Let's say the types of rights we are try-
17 ing to establish. We haven't had quite that much suc-
18 cess.

19 I guess the first couple of suits we brought --
20 maybe it can be done chronologically -- had to do with
21 the incidents growing out of the metal shop, where
22 men were thrown in segregation for being involved in
23 a rather brief work stoppage, which was based on an
24 increase in prices at the commissary, and as I recall,
25 no increase in wages. In connection with that, we

1 also -- we challenged the disciplinary pro-
2 cedures. We brought actions to challenge the very,
3 very severe restrictions on reading matter.

4 For men at Attica, that was a class action
5 which was aimed in connection with the whole State,
6 but our clients were at Attica.

7 Clients. We brought actions, successfully,
8 to challenge a bread and water diet for men in segre-
9 gation.

10 One of the major actions that we brought,
11 and became a very important decision, was an action on
12 behalf of men who had been transferred from Auburn to
13 Attica in November or so, 1970, following the Auburn
14 incident, and a great many inmates were thrown into
15 segregation upon immediate receipt at Attica and else-
16 where, and we brought actions to get them released,
17 because they were being held without any charges and
18 that was quite successful.

19 We brought actions challenging -- subsequently
20 challenging the then State's refusal to allow newspaper
21 men to interview inmates.

22 We brought actions in connection with medi-
23 cal care as well. We have covered a very broad range
24 of the normal prisoners' rights, issues as well as
25 some more esoteric items, such as attempting to intro-

2 sentencing in New York, a very, very unsuccessful ef-
3 fort, and various other of the fairly traditional
4 prisoners' rights.

5 Q When you say "we," who are you referring to
6 besides yourself?

7 A We have -- I have an assistant, and it has
8 been on behalf of the American Civil Liberties Union
9 and the New York Civil Liberties Union, so it is not
10 really an individual effort, although I have been the
11 director of the project.

12 Q How old are you, Professor Schwartz?

13 A I was forty, traumatically, just a few
14 months ago.

15 Q When you were thirty-nine, you were at
16 Attica in September?

17 A That's right. I was much younger then in
18 some ways.

19 Q What brought you to Attica on Thursday,
20 September 9?

21 A As I recall, I was in my office that morn-
22 ing at about nine-thirty. The judicial conference,
23 the Second Circuit Judicial Conference in Vermont was
24 about to begin that evening, and I was supposed to
25 attend. I and Judge Jack Weinstein had set up a series

1 of workshops on how Federal judges could
2 handle the volume of pro se prisoners' complaints,
3 those are, complaints filed by the prisoners them-
4 selves.

5 I had been planning to leave about four
6 or five in the afternoon.

7 I received a call from New York, from Bill
8 Kunstler's office, the Center for Constitutional Rights,
9 telling me that there was very serious trouble at
10 Attica. I asked how serious and I was told that on
11 the basis of radio reports, very serious, and I don't
12 recall that it was anything more specific than that.

13 At this point, I wasn't quite sure what to
14 do, whether I should cancel my plans, or what, and I
15 called Albany and, as I recall it, I think I spoke to
16 Walter Dunbar.

17 Q He was --

18 A He was then and is Deputy Commissioner.

19 Q To Commissioner Oswald?

20 A To Commissioner Oswald.

21 He is the number-two man in the State sys-
22 tem. I don't know whether I asked to speak to Oswald
23 or to Dunbar. I don't really recall. I had had what
24 I thought and what I still think was a quite good re-
25 lationship with both of them.

1
2 January of 1971, through a man, Peter Preiser (phone-
3 tic), who was then his acting deputy or something
4 like that, I had made contact with them in order to
5 negotiate some changes in the operation of the New
6 York prison system, which I think has long been consi-
7 dered by those in the field to be a pretty backward
8 one.

9
10 So, he and I, they and I, Oswald, Dunbar
11 and some of Oswald's people and I, had had a lot of
12 contact, both by telephone and personally.

13 We had had some very long meetings, two or
14 three hours, where we had discussed various issues
15 and it looked like it would be a sort of a friendly
16 adversary relationship.

17 We would try to work out what we could on
18 such things as censorship and other things like that.

19 Q You would sue him on the west?

20 A And we would fight on the west, yes.

21 And that was the understanding. He would
22 move as far as he could and we would try to push him
23 and kick him the rest of the way. So, that's why I
24 felt I could comfortably call and say that if I
25 could help in any way, I would be happy to. He thanked
me for my offer and said that if necessary, and useful,

1 they would be in touch with me.

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2 I guess one of my students or somebody else
3 in my office at that time had access to a radio or
4 something like that, but I have forgotten the exact
5 details, but at about eleven-thirty I decided I'd
6 better go out there, not really knowing what I would
7 do out there, not knowing what was to be done out
8 there.

9 We got out there a little after twelve, I
10 guess, about twelve-thirty, because I think I remember
11 hearing the radio news at about noon that Oswald was
12 flying or was going to fly in a State plane, I think
13 it was, to Attica, and that he was leaving at about
14 one. I think that's what we were told.

15 So, I guess we expected him there between
16 two and two-thirty, something like that.

17 Do you want me to continue with the narra-
18 tive?

19 Q Yes.

20 A I got out there and we could see that part
21 of the prison on the right side, I think it was -- I
22 now know or now think that it was the chapel and the
23 education building, I'm not sure which, but there
24 were flames there coming up and, as a matter of fact,
25 while we were watching -- I guess there were flames

1 coming from one and then while we were

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2 watching flames suddenly appeared from another build-
3 ing.

4 The place was fairly heavily packed with
5 State troopers outside and, as I recall, we were --
6 that is, the spectators, and I was in that capacity
7 there, I guess -- were kept very close to the roadway,
8 and I stood around and --

9 Q Was there a big crowd there at that point?

10 A Quite a substantial crowd. I can't recall
11 that, but I remember there were a lot of people there.
12 It wasn't as crowded as it became during the next
13 three days, but there were a substantial number of
14 people.

15 I remember seeing some people who were
16 clearly wives and families of inmates who had come to
17 visit.

18 The Press and radio, television was there,
19 and obviously didn't have anything that they could
20 report because the situation was, at that point I
21 guess, fairly static in terms of news, and so they
22 were buttonholing everybody they could to try to get,
23 I guess, some kind of interesting story. I recall
24 that they talked to some people who were clearly wives
25 of inmates who had come to visit.

1 And they buttonholed me, someone whom 506
2 I knew, Lou Douglas from the CBS affiliate there,
3 and somebody else, and they interviewed me, and that
4 created problems later. They interviewed me in some
5 detail, but I didn't know very much, so it was just
6 sort of talk.

7 Then this lasted about five or ten minutes,
8 something like that --

9 Q What did you say that created problems
10 later?

11 A Well, I didn't -- I would like to think, as
12 I recall, that I didn't say anything that created
13 problems later.

14 After the formal interview was over, one of
15 them said something to me about Mancusi, as I recall
16 it, the superintendent, and I remember making some
17 quite unflattering comments about him, about he seemed
18 to me a fairly rigid, inflexible man who really was
19 out of place in terms of what was happening.

20 You know, my contact over the last year or
21 so -- I don't know what the inmates had been like at
22 Attica prior to recent years, but I do know what they
23 were like within recent years, and by that I mean they
24 were strong men, militant men, with a strong sense of
25 themselves; they were not cowards, they were not beaten,

1 and they would talk back, and they were -- 507

2 they were men.

3 In fact, some of them were very impressive
4 people. I gather this is something of a change, I
5 mean, I don't know that from personal experience, be-
6 cause I remember one of the guards saying to me --
7 if I can digress for a moment -- as I was walking
8 through once, this was sometime in 1971, I have for-
9 gotten which, or maybe even 1970, when I asked him
10 what the job was like, he said, "Well, it used to be
11 a pretty good job here. It was, you know, fairly
12 comfortable. We didn't have too many problems, but
13 for the last year and a half they have been bringing
14 up these guys from New York and it's a much tougher
15 scene now, and it's a much tougher job and a much
16 scarier job."

17 In these conversations, we got into other
18 things, too, and somehow we got into talking about
19 rehabilitation.

20 He said, "Well, rehabilitation, that
21 doesn't mean anything. There is nothing like that
22 here. I understand at Auburn they even have work
23 reliefs," and that in his eyes was a very big deal.

24 As it is, to some extent, certainly on the
25 background of what New York has had, but in his eyes,

1 he did not consider that very much re-
2 habilitation went on there.

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3 In any event, in this off-camera conver-
4 sation I made these unflattering comments about Man-
5 cusi and he said, "Can we quote you on that?"

6 And I said, "I would rather you didn't.
7 I don't really think that my comments about the admini-
8 stration, negative and unflattering comments about
9 the administration at this time could do very much
10 good, and it's only my opinion. I really think that
11 I'd much rather it stayed there with you" and it wasn't
12 used, and Douglas -- I think this was to Douglas, or
13 it may have been to the other one, I don't know."

14 No, I think these comments were to Douglas.
15 I said, "Okay, sure." I have known the local people,
16 the radio and Press people fairly well and it's fairly
17 friendly relationship, and I figured that was that
18 and it may very well be that. He has told me later
19 that nothing -- he never said anything other than
20 that about this conversation, and so the conversation
21 ended and I kept standing around.

22 At about two-ish, shortly after two, but
23 very close to it, maybe five after two or something
24 like that, Oswald suddenly arrived. I think it was
25 the, maybe two-fifteen, and I remember some newspaper

1 men, I think local people, I'm not sure, maybe 509
2 Don Singleton or somebody, I don't know, from the
3 Daily News, asked something about Oswald, I have for-
4 gotten, is he here or what, and I remember saying,
5 "Yes" -- no, it wasn't Singleton, it was somebody
6 else. I said, "Yes, there he is." And Bang, they
7 took off after him.

8 I guess I may have been responsible for
9 some trouble at this point, because it's at this point
10 that he made that somewhat unhappy comment about "Well,
11 I don't know, they seem to want the world," to the
12 Press and went in. And this, like so many things, was
13 thrown up in his face, as I recall, later by the
14 inmates.

15 Q As were some of your words, or alleged
16 words?

17 A Alleged words. I then took out one of my
18 business cards, which I have had to get for this pro-
19 ject. Normally, academic people, I think, don't have
20 business cards, but I have had to get one, so I sent
21 one in with a note "Dear Commissioner. I am out here
22 in case for any reason you want me."

23 I am told that this card never got to him;
24 I gave it to one of the guards outside. I don't know
25 whether it did.

1 Q We received a copy of it from
2 him, so I don't know --

3 A I guess he did get it, yes.

4 I was waiting outside and then there was a
5 mildly ironic touch. The local sheriff from Erie
6 County, a man named Mike Nico (phonetic), who has
7 had his differences with me rather sharply in the past,
8 came out and said, "They want you inside." And I
9 said, "Okay," and I went in and the scene inside was
10 a pretty horrible scene, in the sense that there was
11 tear gas in the air.

12 I was --

13 Q This was in the Administration Building; is
14 that right?

15 A That's right.

16 Q Were you not yet in the area that was under
17 the custody of the inmates?

18 A Clearly not. As you know from the Adminis-
19 tration Building there is a lobby in front where you
20 can go up to the left to the administrators' offices
21 and there is a gate, and when you go through that
22 gate that is really entering the prison proper.

23 Q Yes.

24 I don't really, actually, the condition of
25 the outer lobby, but I recall walking in and there are

1 several stages, there is an electronic or 511
2 electrical gate and from there on in the place was
3 in pretty much of a mess. There was water around.
4 There was tear gas in the air, which I found particu-
5 larly troubling because I was suffering from hay fever
6 at this time, and hay fever gets me in the eyes, and
7 I found this particularly troubling.

8 Q Did you then have a meeting with Commissioner
9 Oswald?

10 A Yes. I met Oswald. He came out to me with
11 Dunbar, and the place was packed with State troopers
12 and correctional officers, with a great deal of
13 armament. It is sort of scary, because I'm not a
14 person who spends much of his time around people with
15 guns and arms and this massive amount of firepower
16 was -- made me in a somewhat funny kind of way some-
17 what apprehensive, but it was kind of ominous, all
18 this kind of stuff ready.

19 Oswald said -- I don't recall the exact
20 details, but he said something to me about "the in-
21 mates have asked to speak to you and whatever you could
22 do, obviously, would be a great help."

23 And I said, "Well, I don't know whatever I
24 can do."

25 Q What did you do?

1
2 over-all?

3 Q Yes. Next.

4 A I -- I walked up this stair past the elec-
5 tric gate, which was open at this time, you come to,
6 I guess, the area that I think has been properly
7 called the DMZ, the demilitarized zone, where there
8 was a closed gate. Beyond this was inmate territory
9 and the inmates were set back from this. I have for-
10 gotten how far back. I think perhaps, I don't recall
11 this, but it may be as far back as that door, which
12 leads into a yard, I think it is.

13 And they were covered with towels, foot-
14 ball helmets and the like, and one of them came for-
15 ward and asked that the State troopers and men with
16 arms move back and that I be allowed to approach the
17 gate alone.

18 And I remember turning around and saying
19 "Please move back," and maybe this is inaccurate, but
20 I seem to remember they kind of sullenly did move
21 back.

22 I had the impression during this entire
23 time that the State troopers and the correctional
24 officers were deeply unhappy about being kept reined;
25 that they wanted to go in and get the hostages out, and

1 they wanted to go in heavy with firepower. 513

2 That may be an unfair judgment, but it seem to me that
3 there was that sense of impatience on their part.

4 Q And the assumption that they wanted to go
5 in with firepower would be based on the fact that they
6 were heavily armed, I take it?

7 A Yes. There may be mutterings or comments.
8 There were certainly some mutterings, as I recall --
9 I don't recall the details -- in my direction, because
10 I guess the people in Attica have, and the guards,
11 for some obvious reason, have developed less than
12 overly friendly feelings toward me, even apart from
13 the incidents at Attica in September.

14 So, one of the inmates came over and he said,
15 "Do you remember me?"

16 And I said, "No."

17 And he said, "I'm so and so."

18 And I said, "Oh, yes, you are one of my
19 clients."

20 This was happening constantly. As I would
21 walk through the yard, a guy would grab me and say,
22 "What have you done for me on my case? How come you
23 haven't done this or that?"

24 I usually didn't have a very good answer,
25 except we had been busy or something. And as I recall,

1 he said to me, "We would like you to come 514
2 in and take our demands and grievances and bring them
3 out to the administration."

4 And I turned -- as I recall, I turned to
5 Oswald and Dunbar, and I guess they had heard this,
6 because they weren't that far back and said that, and
7 there was a reaction, as I recall, on the part of
8 some of them -- I'm kind of fuzzy here, about "No,
9 that wouldn't be permitted." I would not be permitted
10 to go in alone.

11 And I said that I was willing to go in
12 alone.

13 And I said I was willing to go in, with some
14 apprehensiveness, but I have been in -- I know these
15 men fairly well, less well than I thought, and I know
16 the exaggerated, grossly exaggerated fears of prison
17 administrators about security.

18 I mean, they go on the assumption that
19 given any opportunity whatsoever any inmate, even if
20 he is in on a bad check charge, will murder somebody
21 whom he has a chance to, will rape any woman who is
22 within twenty feet.

23 I mean, it really is incredible how security
24 conscious they are about that.

25 They had a rule for a long time that we

1 couldn't have female law students inter- 515
2 viewing some of our clients, for fear of that kind of
3 thing. I knew that was grossly exaggerated.

4 Secondly, I had handled cases for them.
5 I had no expectation that they would harm me, and,
6 thirdly, I had been in A-yard some years back when
7 I was on an advisory committee with Bertram Podell,
8 who is now a congressman, and is in the State Joint
9 Legislative Committee on penal institutions, and
10 Podell had insisted on going into the yard at Attica
11 alone without guards, because he wanted to talk pri-
12 vately with some men who had grievances, and I had
13 gone in with him.

14 We had been immediately surrounded separately
15 by inmates and what was very clear is all they wanted
16 to do was talk, talk to somebody who was friendly,
17 who would indicate some sympathy.

18 So although I was somewhat apprehensive,
19 not terribly, and at that point Arthur Eve showed
20 up, who I think had also been called for -- or knew
21 something, and Arthur said -- I had been very
22 close to Arthur Eve over the years in many ways, not
23 related to prisons, but in other matters, in civil
24 rights matters, generally, in Buffalo and Arthur said
25 "Sure, I will go in. I have no particular concern."

1 He is a State legislator, and he has 516
2 a statutory right to visit prisons at pleasure.

3 I don't know the legal significance of that
4 at a time like this, but it is my impression that the
5 prison administrators have tended to honor that kind
6 of thing generally, although we have a lawsuit on his
7 behalf right now because they haven't honored it in
8 certain situations, and as soon as Arthur said that
9 he was willing to go in, I again said, "That makes it
10 even easier," because I was quite sure that Arthur
11 would be in no danger and if I were with Arthur, I was
12 quite sure that I would be in even less, so that I
13 think I was completely at ease at that point.

14 I assume Oswald must have made the decision
15 because he was in command, very clearly. Mancusi had
16 been shunted over pretty much to the side and I don't
17 have the impression that he had much to do with any
18 decision-making during these three or four days.

19 In fact, I think he had testified that he
20 didn't, and he said things would have been different
21 had he done so. I think he testified before the Pepper
22 Committee to that effect.

23 So, we went in. I think Oswald said, "Okay,
24 let him go." And again, the armed men were pushed
25 back and Arthur and I went in and we were escorted by

2 Q You say security patrol. Do you mean
3 inmates?

4 A The inmate security patrol, that's right.
5 We were taken to the door that led into
6 A-yard. A-yard at this point -- that's right. It's
7 just about there.

8 We walked diagonally across to the door
9 there -- A-yard was quite deserted, but we could see
10 inmates on the catwalks patrolling. We went through
11 that -- yes, that sort of hall way there, which was
12 in pretty messy shape.

13 There were a fair number of things thrown
14 around. It was very wet -- and walked into, I guess
15 what we later found out was a mass of some -- suddenly
16 walked into a mass of some twelve hundred people
17 standing around.

18 Q Were you searched before you went in at
19 all?

20 A Oh, yes.

21 Now, walking through that yard, A-block
22 yard, we were very very closely frisked. Very closely.
23 And I don't recall whether I minded it or not.

24 I had the impressions that the inmates
25 weren't sorry to give others a taste of what they had

2 and the like.

3 This, of course, wasn't a strip search,
4 but it was a very intensive pat down, and that's very
5 interesting, because of how Oswald was treated later,
6 because he did not have such an intensive pat down
7 when he came in which, I think, is some indication of
8 the mood of the inmates that first day, namely, that
9 it wasn't that hostile, certainly to him, but I will
10 get into that in more detail later.

11 MR. MARSHALL: Excuse me. This was
12 just you and Arthur Eve?

13 THE WITNESS: That's right. The two
14 of us.

15 A And we came into the yard, into this mass
16 of people, and a line, as I recall, at this point I
17 think of linked arms forming a corridor for us to
18 walk through, was made, and we walked to a table in
19 the middle of the yard at this point -- that table,
20 that talking table, what have you.

21 Q They called it the negotiating table.

22 A Yes. I'm hesitant to use the word negotia-
23 ting. That table was shifted later on, but for the
24 first three or four trips in, it was in the middle
25 of the yard.

1 And we sat -- we were asked to stand 519

2 up on that table, and I was amazed at this point at
3 what seemed to be a very high level of organization.
4 There were typewriters there, food, or at least juice
5 and liquids were set up and I was given some orange
6 juice, I remember, either before or after, I have
7 forgotten which.

8 I spoke, and they asked me to get up on
9 a table to speak. They gave me some kind of bull horn,
10 and the reason I recall that it was in the center is
11 because it was difficult for me to know -- I was in
12 sort of an arena stage and there were people all
13 around, so it's kind of difficult to know where to
14 face.

15 I remember being told to be pushed in that
16 direction toward the left. I was sort of facing more --
17 well, I talked toward the dead center of the place.
18 And I recall that I was handed a list of some five
19 demands. They were --

20 Q We could perhaps read them.

21 A Yes, I think it would be easier rather than
22 me searching my memory.

23 Q They are headed "From all inmates of
24 Attica Correctional Facility to Richard Nixon and
25 Nelson Rockefeller."

"Sirs: Immediate demand one. We want complete amnesty, meaning freedom for all and from all physical, mental and legal reprisals.

"Two. We want now speedy and safe transportation out of confinement to a non-imperialist country.

"Three. We demand that the federal government intervene so that we will be under direct federal jurisdiction.

"Four. We demand the reconstruction of Attica prison to be done by inmates and/or inmate supervision; and,

"Five, we urgently demand immediate negotiation through" -- and at this, a number of people, including Mr. Kunstler, Mr. Eve, the solidarity prison committee, Mr. Farican (phonetic), Young Lord Party, Black Panther Party, Clarence Jones, Tom Wicker, Richard Roark (phonetic) and the names go on.

There is a final one that says "We intensely demand that all communication will be conducted in our domain, guarantee safe transportation to and from."

A That, obviously, is what I remember pretty much. As I recall, for some reason, I took it on myself, or maybe they asked me to, to comment on these

1 and I recall that with respect to the 521
2 demand of a Federal take-over, I told them that would
3 be very difficult, that there was a lawsuit out at
4 San Quentin seeking that, it would be very difficult.
5 We had tried to do that in connection with the Buffalo
6 police department, and had not been terribly successful.

7 I was the lawyer in that case, or one of
8 the lawyers, but that was certainly something we could
9 try.

10 I don't recall my response on the amnesty
11 issue at all.

12 The non-imperialist country, I don't recall
13 my response to.

14 I do recall that -- and this came out later.
15 I do recall that I must have indicated to them that
16 I thought some of the demands were unrealistic.

17 Q What kind of reaction did you get to telling
18 them that?

19 A Not a terribly hostile reaction, and I
20 did not say -- as I recall, I don't recall saying it
21 expecting a hostile reaction. I was greeted very
22 warmly at this point.

23 I introduced myself, or they introduced
24 me. I made the point that I had been counsel for
25 them in a substantial number of cases, that I had been

1 suing Oswald and others in connection with 522
2 various things, and I don't recall any such reaction,
3 any hostile reaction.

4 In fact, the reaction was probably that it
5 was a fairly constructive suggestion because, not to
6 get too much ahead of the story, when Oswald came in
7 with us on the next trip they read off a list of some
8 fifteen demands, which I think were prefaced by the
9 comment that these were more precise and perhaps more
10 realistic, that there had been a comment that the
11 first five perhaps not so precise and realistic.

12 So, obviously, they had not taken it in
13 a hostile spirit.

14 Q How long did you remain in the yard that
15 first time?

16 A About twenty, twenty-five minutes.

17 I have forgotten the exact detail, but I
18 remember I must have spoken for about five to ten
19 minutes, and Oswald -- Arthur spoke for about five to
20 ten minutes.

21 Q Arthur being Assemblyman Eve?

22 A Yes. Assemblyman Eve, yes.

23 And they told us that they wanted us to
24 take these out, and as I recall to come back in with
25 Oswald, that they wanted to talk to him.

1 Q So you then went out and spoke to 523

2 Oswald?

3 A We then went out and relayed this to Oswald.
4 This, I would guess, must have been, I guess, three-
5 fifteen or three-thirty, or thereabouts, when we went
6 out.

7 I know you have the times down better, and
8 I think it was about there.

9 The initial reaction on the part, as I
10 recall, of the State administrators, I think particu-
11 larly Walter Dunbar, I remember saying, "Absolutely
12 not. Out of the question."

13 Q What was out of the question?

14 A That Oswald would go back in alone or at
15 least without any kind of armed protection. And I
16 think I recall somebody saying that with a hostage
17 like Oswald, the ball game would be over; that the
18 inmates would be completely unreachable at that point,
19 or something to that effect, because they were very
20 worried about obviously Oswald being taken hostage.

21 Q What did Oswald say and do?

22 A Then, as I recall, we all went up to the
23 mezzanine, which is on a level with the catwalk which
24 runs up and down on that diagram.

25 Q That would be the second floor of A block --

1 A That's right.

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2 Q As being on the level with the A catwalk?

3 A And I recall Oswald called out to them
4 that he would meet them in a neutral territory, a
5 neutral area.

6 Q When you say he called out to them, you
7 mean he called out to inmates that were in that yard
8 area?

9 A That's right.

10 And the response was, "No, you're going to--
11 we will talk to you only in our domain."

12 Or something like that, "On a level with us,
13 man to man. You are not going to be talking down to
14 us."

15 And he turned around at that point and my
16 recollection -- although, as I have thought about it
17 more, I am not quite as firm as I was when I spoke
18 to the Committee in private -- was that he said, "Well,
19 we have got to go in."

20 And I interpreted that to mean we have got
21 to go in with the armed force. We have no choice..

22 And I seem even to remember his kind of
23 looking at me as if to say, "See, look, we tried,"
24 and he huddled with Dunbar and the rest and I sort of
25 stood over in a corner with Assemblyman Eve.

1
2 going on, I think I had a conversation with Mancusi,
3 which impressed me -- which probably impressed both
4 of us very negatively.

5 It probably impressed him with my naivete
6 and me with his rigidity.

7 We somehow got to talking about some demands
8 and we were talking about the fact that the Muslims
9 were not permitted to hold religious services by them-
10 selves, but only with an outside minister, and it was
11 difficult to find an outside minister.

12 I said, "For God's sake, why can't you just
13 let them have a room and let them meet and hold their
14 services and have guards outside if you're worried?"

15 And he looked at me as if I were simply
16 out of mind and didn't answer, and turned away.

17 Eve and I -- I have forgotten the sequence
18 here, but Eve and I kept looking at each other and
19 saying, "My God, there is going to be a blood bath.
20 The hostages, you know, will not survive and the in-
21 mates will be just murdered."

22 When I had gone in, I had seen one hos-
23 tage -- by the way, they showed one to me. They sort
24 of stood him up on a table for us to see. I recall
25 that he was an older man and he was dressed in gray

1 prison clothing and he had a blindfold

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2 and it was a very troubling, depressing sight.

3 He looked as if he was on a scaffold, and
4 I seem to recall -- and again, I'm not sure here --
5 that I sort of said to Arthur, or he said to me,
6 "Eve, you know, we really have to try to do something
7 to stop this," and I think we tried -- we said to
8 Oswald, "You know, there are at least thirty-five
9 lives in there that may go," and I don't know whether
10 this was calculated to focus primarily on the hostages,
11 because that was what he would be primarily concerned
12 with or what, but I do recall that's what we mentioned,
13 the hostages, and he looked at us -- again, it's
14 seven months, but in my memory it's that he looked at
15 us and said, "Gee, that's right. Those are men's lives
16 in there."

17 And either then or later, he said, "I'm
18 going to go into the yard."

19 I recall there was some more resistance
20 from some more of his people and he said, "No, I'm
21 going to go in."

22 Q It was clear to you that he was making
23 this decision against the advice of his advisers?

24 A Absolutely clear. No question about that.

25 And we set up a signal, in effect -- we

2 I have always thought that, that he and
3 Tom Wicker were two of the bravest people I have ever
4 come across, because they did not know about the --
5 or at least could not anticipate the very strong
6 sense of honor on the part of the inmates that they
7 had.

8 The inmates knew that they had this sense
9 of honor, but Oswald and Wicker could not and here
10 were two men that if honor were not there were truly
11 risking their lives. I mean in a funny kind of way --

12 Q Why do you say Tom Wicker more than other
13 observers who went in?

14 A Well, let's take Bill Kunstler and myself.
15 I really don't believe that too many governors of the
16 State of New York or otherwise would hesitate to end
17 this in a fairly short manner.

18 Q But what about John Dunn? I mean, there
19 were others who walked in.

20 A Yes, I think those two, anyway, but Wicker
21 was the New York Times, and that is a very, very
22 potent weapon, and, of course, Oswald was his man, was
23 Rockefeller's man, and I guess, yes, maybe some of
24 the others as well, but certainly not Kunstler and me.

25 I mean, that's why we felt we were relatively

2 Q You felt you were expendable?

3 A Exactly. Well, in the eyes of the people
4 who might go in. There were some people who think
5 they would like to have me around for a while, family
6 and friends.

7 And so we went in, went through that door
8 again in A-block, the first one, were frisked, but
9 the interesting thing is that Oswald was frisked, if
10 at all, very lightly.

11 I remember remarking on this mentally,
12 about that, much much less intensively than either
13 Assemblyman Eve or I. We --

14 Q And then you went into D-yard?

15 A We went into D-yard -- I don't recall
16 whether it was this time or later as well, that one
17 of the recurring complaints of the inmates was voiced,
18 which is that there were State troopers on the
19 battlements of this Disneyland kind of castle in
20 the corners, who were pointing their rifles and what
21 seemed like telescopic sights at inmates in a very
22 intimidating way.

23 Q What did the Commissioner do about that?

24 A The Commissioner said he would give orders
25 to have them removed and there seemed to be a problem

2 he was apparently constantly giving orders to have
3 t-em removed. We came in and, as I recall, were wel-
4 comed very warmly.

5 At some point during this time Oswald was
6 told by the inmates that their quarrel was not with
7 him; that it was with local administration and he in-
8 deed told them that he had been there a couple of
9 weeks earlier, in fact, I think, I guess the second
10 of September I guess it was, something like that, the
11 second or third of September, and had talked to them
12 about attempts at reform.

13 He mentioned at this point that he was
14 planning to install telephones, which I was very pleased
15 to hear, because when I had mentioned that possibility
16 to his people in January, I had gotten a somewhat
17 horrified response and that was an indication of how
18 extreme I was.

19 He mentioned that there were many other
20 things that they were planning. And as I recall at
21 this point, which was fairly amiable, they made -- they
22 read the fifteen demands, I think, saying that these
23 were more precise and more realistic, and he commented --
24 as I recall, he said that almost with respect to each
25 one of them he could agree in principle and that they

1 were moving in that direction.

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2 Q These were the so-called fifteen practical
3 proposals --

4 A That's right.

5 Q Which read -- I could just summarize --
6 amplify the New York State minimum wage law to prison
7 industries; allow prisoners to be politically active;
8 give prisoners true religious freedom and end censor-
9 ship of newspapers, magazines, other publications,
10 letters; allow inmates at their own expense to commu-
11 nicate with anyone they please; permit an inmate who
12 has reached his conditional release date to be released
13 without the conditions of parole; cease administrative
14 resentencing of inmates; institute true rehabilita-
15 tive programs; educate the correctional officers on
16 the needs of inmates; provide a healthy diet without
17 as much pork and with more fresh fruits; modernize
18 the inmate educational system; provide a doctor who
19 will examine and treat all inmates who request treat-
20 ment; have an institutional delegation comprised of
21 one inmate from each company authorized to take up
22 grievances with the administration; provide for less
23 cell time and more recreation with better equipment
24 and facilities and remove the inside walls so that there
25 will be one open yard and no more segregation or punish-

1 ment. Those were the fifteen so-called prac- 532
2 tical proposals.

3 A Yes. As I recall, he said he could agree
4 in principle -- I guess he couldn't have said he
5 agreed in principle with all of them, because I re-
6 call one of the points that was made was that there
7 was some things he could not do that required legis-
8 lation.

9 Certainly the requirement that the people
10 be released on conditional release without parole
11 provisions -- I think the statute provides that.

12 Minimum wage, I think he said, was also a
13 statutory matter and I forgot some of the others, but --

14 Q Were these private discussions that Com-
15 missioner Oswald was having in the yard?

16 A No.

17 These were with some kind of bull horn or
18 megaphone. He stood up on a table as we did, Eve --
19 by that I mean Eve and myself, and as I recall this
20 time I think Assemblyman Eve and I were fairly silent.
21 I don't recall saying very much or having any exchanges
22 with anybody at this time. I mean, you know, of any
23 kind.

24 Q Were any inmates also talking to the Com-
25 missioner other than on the bull horn, other than to

1 give him the fifteen practical proposals?

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2 A I really don't recall very much dialogue.
3 I don't recall that at all.

4 Q What happened after the fifteen practical
5 proposals had each been presented; did you then leave
6 the yard?

7 A Well, he responded to them and I think he
8 responded to them in order. I'm not sure about that.
9 I do recall the response and I do recall the reference
10 to the fact that he agreed in principle to a good
11 many things.

12 Q Was the press there at this point?

13 A I was about to say the Press was clearly
14 not there at this time, but it's very clear that some-
15 time during this period they must have said to him,
16 "We want you to come back and with the Press" and, oh
17 yes, they said also that they wanted a couple of port-
18 able radios.

19 Q So, you then left the yard?

20 A So we left the yard --

21 Q To get the Press and the portable radios?

22 A To get the Press and the portable radios.

23 As I recall also, at either this time or
24 another time there was some discussion of some of the
25 men who were hurt. I don't recall very much about that,

1 but I seem to recall -- maybe it was one of 534
2 the other trips -- that there was perhaps some dis-
3 cussion, but I know there was a discussion about
4 switching hostages, which I know was later.

5 Q What happened next that you can recall in
6 terms of the highlights of this?

7 A At that point, Oswald started to go about
8 the business of getting together some newspaper
9 people. I'm not sure at this point whether they gave
10 him a list of people they wanted. They may have.
11 I'm not sure, but anyway, a group was collected to go
12 in, some of the local papers, some of the national
13 papers, and some of the electronic media, as I recall
14 it.

15 And we went in and a table was this time
16 placed in the center of the yard, but as I recall,
17 this had seats added and this was facing, as I recall,--
18 whereas before we had been facing on your diagram
19 the upper right side wall, this table was now in the
20 middle of the yard, parallel to that corridor that
21 we walked through, the one that was all broken up,
22 because I seem to remember facing that.

23 Q And you now had the Press with you?

24 A We now had Press, television and the news-
25 paper and I don't recall any magazine.

visit when the Press and the T.V. people were there?

A At this point, as I recall, the atmosphere changed. It was very clear that to a large extent -- and I think I misunderstood things quite grossly here. To a large extent this was no longer a closed negotiating session. This was no longer, I would guess, even much of a negotiating session. It was very clear that the inmates felt that for the first time -- well, I don't know about for the first time, but anyway they felt that they were finally in a position to tell the world what they were facing, what their problems were, and it's my impression that at this point that was their primary concern, except that I must confess that I -- I think I -- I don't know what their primary concern was. I saw it as a negotiating session. We could now get down to the business of hammering out demands and trying to refine things in the way that I, as -- in a conventional lawyer's way you meet together, you start negotiating.

Q And instead you found that there was a lot of speech making?

A There was a lot of speech making and it confirmed to me, in my judgment later, that the -- what we were really facing here was not a negotiating

1 session such as in the labor-management context 536
2 or anything like that, but between two sovereign en-
3 tities who had a deep hatred and distrust for each
4 other.

5 It seemed to me that the real analogy was
6 between the United States and the North Vietnamese in
7 Paris where there was no trust and very little common
8 ground.

9 If one adds the cultural differences and the
10 racial differences, one sees, I think, that very
11 clearly, failures of communication of massive varieties
12 in which men, like Dunbar, would say, "I don't know
13 what that means." And they would say, "But we told --".
14 Oswald would say, "I don't know what that means," and
15 they would say "Well, we told your man Dunbar what
16 that meant."

17 It was clear there was no understanding.

18 Q What actually happened other than speeches
19 by various inmates during this time? You said you
20 were trying to negotiate. How did you try, and what
21 was the reaction?

22 A As I recall, I don't know whether this was
23 the first thing or not, but I seem to recall that it
24 was the first thing. One of the inmates who was not
25 at the negotiating table. I think, grabbed the micro-

1 phone and said to me -- and this shocked me 537
2 very much. He said to me with great hostility, "You
3 told the people outside that this revolt grew out of
4 petty grievances."

5 Q Allegedly relying on a radio report, the
6 news or a T.V. report?

7 A This came out later, because I said, "Where
8 did you hear that? That couldn't be true, because
9 until I heard what you had to say, I did not know
10 what had precipitated this thing."

11 Then somebody said -- and I don't know who
12 said what at this point, but somebody said, "Well,
13 you said this in an off-camera comment."

14 And I said, "Well, that clearly isn't true,
15 because the only off-camera comment I made was not
16 reported, I'm rather sure."

17 Well, this kind of got fudged over, but
18 it signalled to me a -- well, it signalled to me in
19 retrospect -- I'm not sure whether I realized it at
20 that time, but I was quite startled at this show of
21 hostility toward me.

22 I was really very surprised at that.

23 And then the very fiery orator, their main
24 speaker, Elliott Barkley (phonetic) spoke in a very
25 impassioned and eloquent way -- this was the tall man

1 with the octagonal grainy glasses who was killed 538
2 in the takeover on the 13th, and I don't know whether
3 it was before this or after this or what.

4 When I said something to somebody, it may
5 have been Herbert Blyden, it may have been somebody
6 else, "Can't we get down to the business of specific
7 demands," or something to that effect, and Blyden
8 responded to me -- and the reason I am willing to men-
9 tion his name is because this was on the television
10 and everybody saw it, so I don't think I am disclosing
11 anything. Blyden said to me, "You seem to be here just
12 to make trouble. Maybe we ought to ask you to leave."
13 And I said, "Well, if you want me to leave, fine, I
14 will go."

15 I don't quite know why, but either somebody
16 said "don't go," or I decided not to go, or what, but
17 I didn't go.

18 I think I stayed relatively quiet and I
19 think at this point also there were a lot of attacks
20 on Oswald at this point.

21 Q Now, the first visit, when the T.V. was
22 not there, Oswald had gotten a rather friendly, or
23 at least, not unfriendly, reaction and now, for the
24 first time since he was in the yard, he was being
25 attacked rhetorically?

2 I don't know what your notes indicate, but in any
3 event, this was on television, so my recollection isn't
4 that important, but I do seem to recall at this point
5 that they did turn on him.

6 I think I remember, either at this point
7 or subsequently, they threw up at his face the fact
8 that he had been Chairman of the New York State Parole
9 Board and it was put in the context of "Mr. Oswald,
10 do you know who we are? You have sat on our applica-
11 tions for parole and turned us down and sent us back."

12 And New York State parole, in my judgment,
13 is a very very bad system. I don't think much of
14 parole anyway, but New York State is one of the worst
15 ones. And it had been that way under Mr. Oswald.

16 I daresay I think he has made a better
17 Commissioner of Correctional Services than he did as
18 a Chairman of the Parole Board, and that's one reason
19 why I was somewhat surprised at his willingness to
20 make reforms in the operation of the correctional
21 system, because he had not really been that open to
22 change.

23 In any event, there was a lot of this, a
24 lot of rhetoric. Oswald, I think, replied -- I don't
25 recall --

1 Q Was he shaken? 540

2 A I don't recall. He kept his cool, really,
3 I think, very well, during the entire time.

4 I remember being particularly surprised at
5 how well he kept his composure the last time that he
6 and I were in there, which was Friday noon. I don't
7 recall that he lost his composure, no. I don't know
8 whether he did, but I don't recall that he did.

9 And I think we -- again, we went in on this
10 kind of synchronized watch basis and went out in about
11 twenty or thirty minutes, and I don't recall the occa-
12 sion on which we went out, I mean, why we went out,
13 what we went out for, or what.

14 Q Before you went in each time you would tell
15 the people who were left behind, the administrators
16 and State police, that you would be out by a particular
17 time?

18 A That's right. We did that every single time.

19 Q And you would always try to get out by that
20 time or send a message?

21 A That's right. If, as occasionally happened,
22 such as Friday, we were going to stay later, we sent
23 messages.

24 I was very, very concerned -- apparently
25 nobody else was, but I was -- that whenever one group

1 was out of sight of another key group, such 541
2 as when Oswald and the negotiators were not with the
3 inmates and, therefore, the inmates wouldn't know what
4 was going on, or we or they were with the inmates,
5 and the people outside wouldn't know what was going
6 on, I was very concerned that the group that was not
7 involved would be very concerned about what was happen-
8 ing.

9 For example, I know at one point there was
10 supposed to be a regrouping at seven a.m. Friday
11 morning and I was very concerned that it was very
12 clear that there would not be a meeting at seven a.m.;
13 that probably wouldn't happen until eight or nine, but
14 the inmates didn't know that, and I was very insis-
15 tent.

16 Q You think in retrospect that the impact of
17 these various delays had a detrimental effect on the
18 atmosphere in the yard and the attitude of the inmates?

19 A Yes. I think they contributed because while
20 this was going on there all kinds of other alarms,
21 such as the State troopers being seen on the catwalks.

22 Q And rumors?

23 A And rumors of attacks. Friday morning,
24 some guards being found in some of the tunnels. They
25 turned out to be people who hadn't managed to escape,

1 but the inmates didn't realize that and

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2 fears of attack by the State troopers and fears on
3 the side of others that hostages were being put in a
4 bathroom or being barricaded behind wood with gaso-
5 line poured on the wood.

6 Rumors were flying, obviously, so it seemed
7 to me it was terribly important to try to keep communi-
8 cations as reliable as possible and as constant as
9 possible.

10 Well, we went out at this time -- this was
11 the third time I was in, the second time Oswald was
12 in and the first time the Press were in, and I don't
13 quite recall at this time why we went out and what we
14 were supposed to come back in for. I guess maybe to
15 consider some of the demands or what, because I don't
16 recall that at this point I felt charged with any
17 particular responsibility.

18 It may be that at this point the issue
19 came up of the condition of the men in C-block yard,
20 and the condition of the men in segregation. Maybe
21 at this time something was said about trying to check
22 on that, because the inmates were convinced that the
23 men in segregation -- the three men who had been taken
24 to segregation or whatever the number was --

25 Q Two.

2 of the incident the day before had been seriously
3 brutalized.

4 Q Did you arrange or were arrangements made --

5 A I think arrangements were made for Arthur
6 Eve to see these people and maybe some others, I don't
7 know.

8 Q Did he report back to the inmates in your
9 presence?

10 A He did, but not in my presence, because
11 when he did report back I think it was at a time when
12 I was making preparations to get the injunction signed,
13 and I don't think I went into the yard at that time.

14 So, we went -- a group of us went back in
15 again, maybe it was agreed or something that we would
16 come back in again at a certain time, I have forgotten,
17 it may have been five-thirty or six, the fourth time
18 I went in, and Commissioner Dunbar asked the --

19 Q This was about seven o'clock at night; is
20 that right?

21 A Right. Executive Deputy Commissioner
22 Dunbar asked if he could go in at this time instead
23 of the Commissioner and that was agreed to.

24 Q Who went in this time besides Assemblyman
25 Eve, yourself and Commissioner Dunbar; was this now --

observers?

A We had the Press and at some time during this time some of the local State legislators, apart from Eve, showed up. I think Emery, James Emery, was there at this time. I think maybe he was the only one at this point. I think McGowan may have come later.

Q What happened when you went in the yard this time?

A I think it was -- well, they read the demands again, and I recall Dunbar asking what does this desire for political activity mean? And they tried to explain that to him and it was very clear that there was no communication there at all.

I mean, I think that -- I think -- I don't know, but I think that it was better when Oswald was in there. He seemed to be a more flexible person who could respond more easily than from the little I saw of Mr. Dunbar's response.

Q You say that even though Oswald had had a hard time in the prior visit in the yard?

A Yes, I think so.

I think so. Maybe I'm just speculating, because it's always seemed to me that Mr. Oswald is a more flexible man.

2 this trip into the yard, which was your fourth trip
3 in?

4 A Yes.

5 Q About the possibility of amnesty of some
6 sort or an injunction?

7 A Yes.

8 Now, during this time, and this is one of
9 the major problems that I guess I have had, as well
10 as, I guess, some of the other people who were going
11 in, and, of course, here I had a very severe personal
12 problem, because I was constantly going in with the
13 State negotiators and had gone in right from the
14 beginning, and in fact, the local Buffalo newspapers,
15 one of them, described me as a State negotiator, much
16 to my dismay, because I clearly was not and certainly
17 the State didn't see me that way.

18 And I think that created some problems for
19 me which I think came to the fore in this next visit.

20 During this entire time, a lot of demands
21 were constantly being made, and I must confess I
22 really didn't know at that time what were the key
23 demands. Oswald said to me either the next morning or
24 that night, "I have given them what they wanted --
25 what they wanted to have. I let them have C-block

1 yard. I let them see the men in segregation. 546

2 I got them or I'm going to get them, or whatever it
3 is, the injunction. We are going to have an Omsbudsman
4 type of committee to oversee the injunction. That's
5 it, isn't it, Herman? They should release the hos-
6 tages now; right?"

7 And I think I recall saying something like,
8 "Yes, I think so. I think so."

9 But I'm sure I recall my answer. But it
10 was very clear that this torrent of confusion and
11 rhetoric I was among the more confused people and I
12 daresay I would guess that Oswald and Dunbar were, too.

13 Q You found that even though you had in some
14 capacity as an attorney represented inmates at Attica
15 in the past that in these circumstances you yourself
16 were involved in a failure of communication?

17 A Yes. I think that's very clear, because I
18 think Tom Wicker is right when he wrote that this was --
19 I think it was Wicker -- a truly integrated group.
20 I have rarely come across a group which was so clearly
21 integrated in terms of what I could see of the relation-
22 ship, certainly among the people at the negotiating
23 table. It was very clear, however, that the black
24 and Puerto Rican members were the dominant ones. They
25 were the dominant ones numerically in the prison. I

2 come to something like sixty-five percent, and given
3 the fact that whatever liberation movements we have had
4 in the last ten years have essentially been off-
5 shoots or inspired by the black liberation movement,
6 the black rhetoric and the black style and the black
7 orators, and Puerto Rican, the Spanish, were the domi-
8 nant ones here.

9 Now, I think it's very difficult -- and I
10 think raises fundamental questions of how one goes
11 about trying to achieve social change in a melting pot
12 where the lumps have not really melted, and I am
13 afraid are getting harder and harder as the Kerner
14 Commission predicted would happen.

15 Maybe that's not such a terrible thing, I
16 don't know, but anyway, how one goes about forging
17 unity for social change, it was very clear that there
18 was a massive failure of just sheer verbal communica-
19 tion. I think some of the terms, some of the language
20 used by the orators are, I think, largely those of
21 black people, and white people don't understand a
22 lot of that, particularly not white people who were
23 then two months away from being forty and had lived
24 their lives in law courts, the standard civil rights
25 movement, civil liberties, schools, law firms, and the

2 Q This massive failure of communications
3 which you are talking about surfaced over the injunc-
4 tion, didn't it, or at least it was present over the
5 injunction?

6 A I think so. I am -- I am not sure that
7 it was so much there a failure of communication. I'm
8 not sure.

9 Q Why don't you tell us about the injunction
10 and analyse it?

11 A Yes.

12 You can draw your own conclusion of whether
13 it was that or it was other things.

14 At this time, as I recall, one of the inmates
15 said, "What we need to protect us against reprisals
16 is a Federal Court injunction, and I have drawn up a
17 Federal Court complaint here," inmates of Attica
18 against like Rockefeller or somebody, I have forgotten.

19 "And we got to get an injunction." And I
20 said, I remember saying, that "We may be able to get
21 it, except I think you ought to know that there are
22

23 (Continued on page 549.)
24
25

1 no Federal judges in New York State. The Second Cir-
2 cuit Judicial Conference is taking place and they are
3 all there.

4
5 And they looked to me and said, "That's just
6 not true, we want it signed by Judge Motley and Judge
7 Curtain." They certainly mentioned Judge Motley. I'm
8 not sure if they mentioned Judge Curtain.

9 I said, "Judge Motley has no jurisdiction,"
10 and they said, "We want it signed by Judge Motley and
11 Judge Curtain."

12 I said, "Look, they are just not within 300
13 miles of here."

14 This continued and, of course, I think was
15 an indication of my either declining or feeble credi-
16 bility that this took 4 or 5 minutes and it wasn't
17 until one of the other inmates said he is telling the
18 truth. I was appalled that he took 4 or 5 minutes to
19 say this. I have read it in the law journal.

20 Q He apparently subscribed to the law journal
21 in prison?

22 A Apparently. To the New York law journal.

23 And he said, "There is a conference of Fede-
24 ral judges in Vermont."

25 I said, "Now do you want me to get a state
