NEW YORK STATE SPECIAL COMMISSION ON ATTICA

In the Matter of the

Public Hearings

at

NEW YORK, NEW YORK

Channel 13/WDNT-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.
Our first witness today is Professor Herman Schwartz.

Mr. Schwartz, will you stand to be sworn?

HERMAN SCHWARTZ, having been duly sworn by Mr. McKay, was examined and testified as follows:

EXAMINATION BY MR. LIMAN:

Q Would you state your full name for the record? And then, Professor Schwartz, I know that you have a statement that you want to make at the outset.

A My name is Herman Schwartz.

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

Consequently, all my testimony will be limited by whatever I consider to be my obligations to my clients, so that nothing I say can in any way interfere with the lawyer-client relationship and in line with that, I am here pursuant to a subpoena,
because I do not think it appropriate to appear voluntarily, given my position.

MR. McKay: Thank you. We understand.

Q And you also understand that we have established the ground rule for all witnesses to avoid, to the extent possible, the identification of particular individuals.

A Yes, I am aware of that.

Q Professor Schwartz, what is your occupation?

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

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

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

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

My sabbatical was -- I extended it this year by taking a formal leave of absence for part of the time, and in the course of that I have represented a great many inmates at Attica.
Q Prior to September, you had actually visited Attica?

A Many times prior to September 1971.

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

A It's hard to say. Maybe a dozen. Some were very brief. Some were several growing out of partic-ular incidents, such as the metal shop incident in 1970.

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

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

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

I guess the first couple of suits we brought -- maybe it can be done chronologically -- had to do with the incidents growing out of the metal shop, where men were thrown in segregation for being involved in a rather brief work stoppage, which was based on an increase in prices at the commissary, and as I recall, no increase in wages. In connection with that, we
also -- we challenged the disciplinary pro-
cedures. We brought actions to challenge the very,
very severe restrictions on reading matter.

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

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

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

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

We brought actions in connection with medi-
cal care as well. We have covered a very broad range
of the normal prisoners' rights, issues as well as
some more esoteric items, such as attempting to intro-
duce the right of counsel at minimum sentencing in New York, a very, very unsuccessful effort, and various other of the fairly traditional prisoners' rights.

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

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

Q How old are you, Professor Schwartz?

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

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

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

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

A As I recall, I was in my office that morning at about nine-thirty. The judicial conference, the Second Circuit Judicial Conference in Vermont was about to begin that evening, and I was supposed to attend. I and Judge Jack Weinstein had set up a series
of workshops on how Federal judges could handle the volume of pro se prisoners' complaints, those are, complaints filed by the prisoners themselves.

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

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

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

Q He was --
A He was then and is Deputy Commissioner.
Q To Commissioner Oswald?
A To Commissioner Oswald.

He is the number-two man in the State system. I don't know whether I asked to speak to Oswald or to Dunbar. I don't really recall. I had had what I thought and what I still think was a quite good relationship with both of them.
As soon as Oswald took office in January of 1971, through a man, Peter Preiser (phonetic), who was then his acting deputy or something like that, I had made contact with them in order to negotiate some changes in the operation of the New York prison system, which I think has long been considered by those in the field to be a pretty backward one.

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

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

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

Q You would sue him on the west?
A And we would fight on the west, yes.

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

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

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

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

Do you want me to continue with the narrative?

Q Yes.

A I got out there and we could see that part of the prison on the right side, I think it was -- I now know or now think that it was the chapel and the education building, I'm not sure which, but there were flames there coming up and, as a matter of fact, while we were watching -- I guess there were flames
coming from one and then while we were watching flames suddenly appeared from another building.

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

Q Was there a big crowd there at that point?
A Quite a substantial crowd. I can't recall that, but I remember there were a lot of people there. It wasn't as crowded as it became during the next three days, but there were a substantial number of people.

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

The Press and radio, television was there, and obviously didn't have anything that they could report because the situation was, at that point I guess, fairly static in terms of news, and so they were buttonholing everybody they could to try to get, I guess, some kind of interesting story. I recall that they talked to some people who were clearly wives of inmates who had come to visit.
And they buttonholed me, someone whom I knew, Lou Douglas from the CBS affiliate there, and somebody else, and they interviewed me, and that created problems later. They interviewed me in some detail, but I didn't know very much, so it was just sort of talk.

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

Q What did you say that created problems later?

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

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

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

they were men.

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

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

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

As it is, to some extent, certainly on the background of what New York has had, but in his eyes,
he did not consider that very much re-
habilitation went on there.

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

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

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

At about two-ish, shortly after two, but
very close to it, maybe five after two or something
like that, Oswald suddenly arrived. I think it was
the, maybe two-fifteen, and I remember some newspaper
men, I think local people, I'm not sure, maybe Don Singleton or somebody, I don't know, from the Daily News, asked something about Oswald, I have forgotten, is he here or what, and I remember saying, "Yes" -- no, it wasn't Singleton, it was somebody else. I said, "Yes, there he is." And Bang, they took off after him.

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

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

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

I am told that this card never got to him; I gave it to one of the guards outside. I don't know whether it did.
We received a copy of it from him, so I don't know --

I guess he did get it, yes.

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

I was --

This was in the Administration Building; is that right?

That's right.

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

Clearly not. As you know from the Administration Building there is a lobby in front where you can go up to the left to the administrators' offices and there is a gate, and when you go through that gate that is really entering the prison proper.

Yes.

I don't really, actually, the condition of the outer lobby, but I recall walking in and there are
several stages, there is an electronic or electrical gate and from there on in the place was in pretty much of a mess. There was water around. There was tear gas in the air, which I found particularly troubling because I was suffering from hay fever at this time, and hay fever gets me in the eyes, and I found this particularly troubling.

Q Did you then have a meeting with Commissioner Oswald?

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

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

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

Q What did you do?
A: I take it you mean next, not over-all?

Q: Yes. Next.

A: I -- I walked up this stair past the electric gate, which was open at this time, you come to, I guess, the area that I think has been properly called the DMZ, the demilitarized zone, where there was a closed gate. Beyond this was inmate territory and the inmates were set back from this. I have forgotten how far back. I think perhaps, I don't recall this, but it may be as far back as that door, which leads into a yard, I think it is.

And they were covered with towels, football helmets and the like, and one of them came forward and asked that the State troopers and men with arms move back and that I be allowed to approach the gate alone.

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

I had the impression during this entire time that the State troopers and the correctional officers were deeply unhappy about being kept reined; that they wanted to go in and get the hostages out, and
they wanted to go in heavy with firepower. 513
That may be an unfair judgment, but it seem to me that there was that sense of impatience on their part.

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

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

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

And I said, "No."

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

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

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

I usually didn't have a very good answer, except we had been busy or something. And as I recall,
he said to me, "We would like you to come in and take our demands and grievances and bring them out to the administration."

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

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

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

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

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

They had a rule for a long time that we
couldn't have female law students inter-
viewing some of our clients, for fear of that kind of thing. I knew that was grossly exaggerated.

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

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

So although I was somewhat apprehensive, not terribly, and at that point Arthur Eve showed up, who I think had also been called for -- or knew something, and Arthur said -- I had been very close to Arthur Eve over the years in many ways, not related to prisons, but in other matters, in civil rights matters, generally, in Buffalo and Arthur said \textquotesingle\textquotesingle Sure, I will go in. I have no particular concern\textquotesingle\textquotesingle.
He is a State legislator, and he has a statutory right to visit prisons at pleasure.

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

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

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

So, we went in. I think Oswald said, "Okay, let him go." And again, the armed men were pushed back and Arthur and I went in and we were escorted by
the security patrol, taken to this door --

Q You say security patrol. Do you mean inmates?

A The inmate security patrol, that's right.

We were taken to the door that led into A-yard. A-yard at this point -- that's right. It's just about there.

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

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

Q Were you searched before you went in at all?

A Oh, yes.

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

I had the impressions that the inmates weren't sorry to give others a taste of what they had
to endure through the various strip searches and the like.

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

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

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

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

Q They called it the negotiating table.

A Yes. I'm hesitant to use the word negotiating. That table was shifted later on, but for the first three or four trips in, it was in the middle of the yard.
And we sat -- we were asked to stand up on that table, and I was amazed at this point at what seemed to be a very high level of organization. There were typewriters there, food, or at least juice and liquids were set up and I was given some orange juice, I remember, either before or after, I have forgotten which.

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

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

Q We could perhaps read them.

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

Q They are headed "From all inmates of Attica Correctional Facility to Richard Nixon and 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
and I recall that with respect to the demand of a Federal take-over, I told them that would be very difficult, that there was a lawsuit out at San Quentin seeking that, it would be very difficult. We had tried to do that in connection with the Buffalo police department, and had not been terribly successful.

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

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

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

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

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

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

I introduced myself, or they introduced me. I made the point that I had been counsel for them in a substantial number of cases, that I had been
suing Oswald and others in connection with various things, and I don't recall any such reaction, any hostile reaction.

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

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

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

A About twenty, twenty-five minutes.

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

Q Arthur being Assemblyman Eve?

A Yes. Assemblyman Eve, yes.

And they told us that they wanted us to take these out, and as I recall to come back in with Oswald, that they wanted to talk to him.
Q So you then went out and spoke to Oswald?

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

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

The initial reaction on the part, as I recall, of the State administrators, I think particularly Walter Dunbar, I remember saying, "Absolutely not. Out of the question."

Q What was out of the question?

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

Q What did Oswald say and do?

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

Q That would be the second floor of A block --
A: That's right.

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

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

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

A: That's right.

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

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

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

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

And I seem even to remember his kind of looking at me as if to say, "See, look, we tried," and he huddled with Dunbar and the rest and I sort of stood over in a corner with Assemblyman Eve.
I remember that while this was going on, I think I had a conversation with Mancusi, which impressed me -- which probably impressed both of us very negatively.

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

We somehow got to talking about some demands and we were talking about the fact that the Muslims were not permitted to hold religious services by themselves, but only with an outside minister, and it was difficult to find an outside minister.

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

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

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

When I had gone in, I had seen one hostage -- by the way, they showed one to me. They sort of stood him up on a table for us to see. I recall that he was an older man and he was dressed in gray
prison clothing and he had a blindfold and it was a very troubling, depressing sight.

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

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

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

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

A Absolutely clear. No question about that.

And we set up a signal, in effect -- we
synchronized our watches and said that we were going to go in or that we would be out in, I think it was twenty minutes.

Q So, when you say "we," this time it would be Commissioner Oswald, Arthur Eve and you?

A Yes. The three of us would go in and the three of us synchronized our watches with Dunbar and the State Police and the others outside. We would be going in -- we would be back in twenty minutes. And the inmates from the inmate security patrol came to the gate, it was opened, and we walked in, the three of us.

Q Was there any discussion of what Commissioner Oswald would do inside once he got there; was there any plans for that?

A Not that I recall, no.

Q So, he was responding to a request from the inmates relayed by you that they wanted to see him in person in the yard?

A That's right.

Q Now, continue.

A I remember seeing as we walked in this sixty-two year old man, somewhat overweight, with, I later found out, a sick wife. I remember saying to him, "Russell I think you must be one of the bravest
men around.”

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

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

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

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

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

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

I mean, that's why we felt we were relatively
Q You felt you were expendable?
A Exactly. Well, in the eyes of the people who might go in. There were some people who think they would like to have me around for a while, family and friends.

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

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

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

Q What did the Commissioner do about that?
A The Commissioner said he would give orders to have them removed and there seemed to be a problem
he was apparently constantly giving orders to have them removed. We came in and, as I recall, were welcomed very warmly.

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

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

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

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

A That's right.

Q Which read -- I could just summarize --

amplify the New York State minimum wage law to prison industries; allow prisoners to be politically active; give prisoners true religious freedom and end censorship of newspapers, magazines, other publications, letters; allow inmates at their own expense to communicate with anyone they please; permit an inmate who has reached his conditional release date to be released without the conditions of parole; cease administrative resentencing of inmates; institute true rehabilitative programs; educate the correctional officers on the needs of inmates; provide a healthy diet without as much pork and with more fresh fruits; modernize the inmate educational system; provide a doctor who will examine and treat all inmates who request treatment; have an institutional delegation comprised of one inmate from each company authorized to take up grievances with the administration; provide for less cell time and more recreation with better equipment and facilities and remove the inside walls so that there will be one open yard and no more segregation or punish-
Those were the fifteen so-called practical proposals.

A Yes. As I recall, he said he could agree in principle -- I guess he couldn't have said he agreed in principle with all of them, because I recall one of the points that was made was that there was some things he could not do that required legislation.

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

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

Q Were these private discussions that Commissioner Oswald was having in the yard?

A No.

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

Q Were any inmates also talking to the Commissioner other than on the bull horn, other than to
give him the fifteen practical proposals?

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

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

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

Q  Was the press there at this point?

A  I was about to say the Press was clearly not there at this time, but it's very clear that sometime during this period they must have said to him, "We want you to come back and with the Press" and, oh yes, they said also that they wanted a couple of portable radios.

Q  So, you then left the yard?

A  So we left the yard --

Q  To get the Press and the portable radios?

A  To get the Press and the portable radios.

As I recall also, at either this time or another time there was some discussion of some of the men who were hurt. I don't recall very much about that,
but I seem to recall -- maybe it was one of the other trips -- that there was perhaps some discussion, but I know there was a discussion about switching hostages, which I know was later.

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

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

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

Q And you now had the Press with you?

A We now had Press, television and the newspaper and I don't recall any magazine.
Q Now, what happened during this 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
session such as in the labor-management context or anything like that, but between two sovereign entities who had a deep hatred and distrust for each other.

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

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

It was clear there was no understanding.

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

A. As I recall, I don't know whether this was the first thing or not, but I seem to recall that it was the first thing. One of the inmates who was not at the negotiating table. I think, grabbed the micro-
phone and said to me -- and this shocked me very much. He said to me with great hostility, "You
told the people outside that this revolt grew out of petty grievances."

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

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

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

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

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

I was really very surprised at that.

And then the very fiery orator, their main speaker, Elliott Barkley (phonetic) spoke in a very impassioned and eloquent way -- this was the tall man
with the octagonal grainy glasses who was killed on the 13th, and I don't know whether it was before this or after this or what.

When I said something to somebody, it may have been Herbert Blyden, it may have been somebody else, "Can't we get down to the business of specific demands," or something to that effect, and Blyden responded to me -- and the reason I am willing to mention his name is because this was on the television and everybody saw it, so I don't think I am disclosing anything. Blyden said to me, "You seem to be here just to make trouble. Maybe we ought to ask you to leave."

And I said, "Well, if you want me to leave, fine, I will go."

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

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

Q Now, the first visit, when the T.V. was not there, Oswald had gotten a rather friendly, or at least, not unfriendly, reaction and now, for the first time since he was in the yard, he was being attacked rhetorically?
I think so. I think -- I mean, I don't know what your notes indicate, but in any event, this was on television, so my recollection isn't that important, but I do seem to recall at this point that they did turn on him.

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

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

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

In any event, there was a lot of this, a lot of rhetoric. Oswald, I think, replied -- I don't recall --
Q Was he shaken?

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

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

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

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

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

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

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

I was very, very concerned -- apparently nobody else was, but I was -- that whenever one group
was out of sight of another key group, such as when Oswald and the negotiators were not with the inmates and, therefore, the inmates wouldn't know what was going on, or we or they were with the inmates, and the people outside wouldn't know what was going on, I was very concerned that the group that was not involved would be very concerned about what was happening.

For example, I know at one point there was supposed to be a regrouping at seven a.m. Friday morning and I was very concerned that it was very clear that there would not be a meeting at seven a.m.; that probably wouldn't happen until eight or nine, but the inmates didn't know that, and I was very insistent.

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

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

Q And rumors?

A And rumors of attacks. Friday morning, some guards being found in some of the tunnels. They turned out to be people who hadn't managed to escape,
but the inmates didn't realize that and 542 fears of attack by the State troopers and fears on the side of others that hostages were being put in a bathroom or being barricaded behind wood with gasoline poured on the wood.

Rumors were flying, obviously, so it seemed to me it was terribly important to try to keep communications as reliable as possible and as constant as possible.

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

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

Q Two.
A Two --- as a result of the incident of the incident the day before had been seriously brutalized.

Q Did you arrange or were arrangements made --

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

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

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

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

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

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

Q Who went in this time besides Assemblyman Eve, yourself and Commissioner Dunbar; was this now --
did you now have some of the additional 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.
Q Now, was there any discussion on this trip into the yard, which was your fourth trip in?

A Yes.

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

A Yes.

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

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

During this entire time, a lot of demands were constantly being made, and I must confess I really didn't know at that time what were the key demands. Oswald said to me either the next morning or that night, "I have given them what they wanted -- what they wanted to have. I let them have C-block
I let them see the men in segregation. I got them or I'm going to get them, or whatever it is, the injunction. We are going to have an Ombudsman type of committee to oversee the injunction. That's it, isn't it, Herman? They should release the hostages now; right?"

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

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

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

A Yes. I think that's very clear, because I think Tom Wicker is right when he wrote that this was -- I think it was Wicker -- a truly integrated group. I have rarely come across a group which was so clearly integrated in terms of what I could see of the relationship, certainly among the people at the negotiating table. It was very clear, however, that the black and Puerto Rican members were the dominant ones. They were the dominant ones numerically in the prison. I
understand your figures of what I have seen come to something like sixty-five percent, and given the fact that whatever liberation movements we have had in the last ten years have essentially been offshoots or inspired by the black liberation movement, the black rhetoric and the black style and the black orators, and Puerto Rican, the Spanish, were the dominant ones here.

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

Maybe that's not such a terrible thing, I don't know, but anyway, how one goes about forging unity for social change, it was very clear that there was a massive failure of just sheer verbal communication. I think some of the terms, some of the language used by the orators are, I think, largely those of black people, and white people don't understand a lot of that, particularly not white people who were then two months away from being forty and had lived their lives in law courts, the standard civil rights movement, civil liberties, schools, law firms, and the
Q This massive failure of communications which you are talking about surfaced over the injunction, didn't it, or at least it was present over the injunction?

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

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

A Yes.

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

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

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

(Continued on page 549.)
no Federal judges in New York State. The Second Circuit Judicial Conference is taking place and they are all there.

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

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

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

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

Q He apparently subscribed to the law journal in prison?

A Apparently. To the New York law journal.

And he said, "There is a conference of Federal judges in Vermont."

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