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

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

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

Q And inmates in fact made it a condition of these discussions that they be held in front of everybody?

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

MR. McKay: Mr. Schwartz, can we pause for just a moment. The Reporter needs to change his paper.
THE WITNESS: He's not the only one who needs to change something.

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

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

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

A That--

Q Do you know what I mean?

A Yes, I know what you mean. I mean, in a way, if I may say so, you are really asking what the inevitable result of it—that there could be no decision making in that kind of decision making. I don't know. I think—well, you know, I think the close analogy here is foreign policy and foreign relations and a lot of specialists will say that open covenants openly arrived at means that you don't have very many covenants arrived at and that seems, to some extent, the history of the negotiations in Paris and that may be.

Q This was in effect the ultimate in open covenants openly arrived at before television cameras and
everybody having a right to speak and participate.

A Pretty much.

Now, I don't know what went on among the inmates themselves. They--

Q After you left?

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

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

A That's right.

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

A That's right.

Q What happened then?

A I offered to contact Judge Curtin.

Q Judge Curtain is the Federal judge or a Federal judge in Buffalo?

A That's right.

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

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

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

Q Right. Now--

A And I said I would be willing to take and try to contact Judge Motley and Judge Curtain. I know where they are. I know the hotel. And I know how to get in touch with them and I don't know whether it was then or some other time when the state said we will make a plane available for this purpose.
At this time or at some other time there was a question about a sick hostage. I think you told me that it was a man named Klute, I think, who was apparently quite sick and the inmates were quite willing to have him out, but there was, I gather, a dispute among them about whether they wanted another inmate, another guard in exchange. The result of it is that they did not get another guard. I don't know quite why. It was my impression that they gave up that demand and let the man out. They were also very solicitous about getting medicines for the hostages. There was talk about diabetes for some people who needed insulin.

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

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

So, I went out and I managed to reach Judge
Curtain and he said, "Will it be by consent?" And I said, "Yes, it will be a consent order," and he said, "Okay. If it is by consent, then I am willing to sign it."

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

It turned out to be 3:30 because of the perhaps backwardness of some parts of Vermont and the way they run airports.

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

A Yes, that's very important.

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

Q What were you trying to protect the inmates against?

A What we were trying to prevent was physical brutality and reprisals and administrative reprisals of the kind that had been visited on men in Auburn.
Denial of parole, massive losses of good time, a year, a year and a half for being in the yard, that kind of thing.

Let me say something about Auburn. What has been forgotten in a lot of this is that Attica is not the first major prison disturbance involving a threat or harm to personal security. I mentioned earlier that there had been an incident at Auburn on November 2 and 4 and I won't go into the details, but the essence of it was that there was a black solidarity day; the inmates had been permitted to have speeches, had been told there would be no reprisals; those who make the speeches were locked in their cells the following night.

The black solidarity day was on Monday, the 2nd, and the second day was Tuesday, the 3rd. The men were locked in their cells that night and the prison exploded on Wednesday. The inmates took some 40 or 50 hostages. Somebody came from Albany and promised that there would be no reprisals if the hostages were released. The hostages were released and the men at Auburn then were subjected to a truly vicious amount of brutalization, which in some respects still continues at Clinton Prison. Gassings, macings, being locked in their cells and
filthy cells, an escalation on which there were responses by the inmates in the only way they could, such as heaving buckets with feces and things like that and cursing in response and there had been a steady escalation or had been up to April or May at Auburn some 7 or 8 months later and then the administrative reprisals began to take place with, as I say, massive losses of good time, a year, a year and a half. There were men from Auburn at Attica and when we first came into the yard with the press, which was my third trip and Oswald's second, they said to Oswald, "You double crossed us at Attica—at Auburn and we are not going to stand for that again and I think that overhanging the entire incident, the sense of double cross that the press—that the administration could not be trusted; that they had to have some kind of castiron guarantee. We may see some of that at Trenton, New Jersey because there is a feeling there and elsewhere and Oswald admitted on television that there had been a pledge given which was not honored of no reprisals, but he pointed out that he had not been in office at that time.

Q    Now, it was again this background—

A    That's right.

Q    That you left the yard to get a Federal Court
injunction against any physical re-
prisals--
A That's right.
Q And again against any administrative repri-
sals?
A That's right.
Q And is it fair to say that this to give the
inmates some assurance where at Auburn they had only
the word of the state and they expressed the feeling
and Commissioner Oswald, as you said, confirmed it on
TV that that word had been betrayed?
A That's right.
Q So, you had made it clear you thought that
the injunction was not going to afford anybody protec-
tion against criminal charges being brought? You thought
you had?
A I thought I had made it clear or I thought
that somebody had made that clear.
Q And you thought that that injunction would be
acceptable even though it did not cover criminal amnesty?
A Yes. That was my understanding on the basis
of the fact that I was told to go ahead and get what I
could.
Q How did you work out the form of the injuc-
tion?
office and was told I could have access to somebody who had a typewriter. As I indicated, I spoke to Judge Curtain. I asked him where Judge Motley was, if he had seen her, and he said he had seen her somewhere in the lobby, and that she was in fact there and at that point one of the inmates, and I forget in what context, I think it had to do with making sure that the men in C block or the men in segregation, one of the inmates came also to Oswald's office or at least it was Mancusi's office where Oswald was working from, and I prepared—I said to him—I remember quite explicitly now, "I'm going to write this, but I want to write what you tell me. I'm just going to put it in legal language and I want you to read it when I am through." And he told me what he wanted to say and I wrote it down and I put it in legal language. You know, it is hereby now upon the complaint and so on, it is hereby something like that agreed by and between the parties and we wrote it in.

And I then had it typed up and I then gave it to a man again and I said, "I want you to read this carefully again." I seem to remember something in my mind, something about 2 or 3 times reading it. And it was read and I was told it was okay.
Q. This was an inmate who was what you would call an inmate lawyer?

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

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

"Inmates of Attica Correctional Facility, plaintiffs, versus Nelson Rockefeller, Governor, Commissioner of Correction, Oswald, Vincent Mancusi, Warden, defendants.

"Upon the consent of defendants, it is hereby ordered that defendants, their agents and employers are enjoined from taking their physical or other administrative reprisals against any inmates participating in a disturbance at the Attica Correctional Facility on September 9, 1971."

I said employers. I think it really reads employees. I think it actually--our copy is sort of struck over. I think the original probably said employees.

Q. Now, you took this injunction to Vermont?

A. I took this injunction to Vermont, together with a copy of a complaint that had been prepared by one of the inmates. It turned out, much to my grave
embarrassment, that I had only had one page of that complaint, the second one. I had left the first one on a desk somewhere, but we ultimately got the first one and filed it in Court. It is on file in the inmates' of Attica case.

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

A Yes.

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

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

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

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

So, I then got into a plane, for what I thought would be a fairly quick job, and I would be back at 3:00
or 4:00 a.m. We got into the plane with a man who has since gone on to better things, or maybe not, the man who is now the warden at Attica, I think, Ernest Montiana; and it turned out we couldn't get to Rutland, where we were supposed to fly because the Rutland Airport was closed, and the logistics of going to Bennington were too complicated, so instead we went to Albany where we had to wait about 45 minutes for a state trooper to take us over another hour and a half to Manchester where we arrived at 3:30 in the morning, woke up Judge Curtain. He looked it over and asked me where the complaint was. I told him that I didn't have—I suddenly realized at that point I didn't have the first page. I whispered and wondered to myself how many judges I would wake up during this thing and how many I would appear before again and I got into the car and this time, for some reason, we decided to go by way of Glens Falls and drove back to Glens Falls where we got the plane and arrived at Attica at 6:30 with the injunction in hand.

Q Then what did you do?

A I went upstairs and was told—to the office and was told that the next meeting was at 7:00 and either at this time or at some other time I learned that a group of observers, not the group that was
of observers to the negotiations were in the process of being rounded up by Arthur Eve and a few others.

When 7:00 passed and nothing happened, I got very disturbed, as I had indicated earlier, that these deadlines were being passed with no comment.

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

I handed the injunction to one of the men on the security patrol and went back upstairs or did something, I don't recall the details. I really don't recall quite what happened. This must have been about 7:30, I guess, yes. I don't recall quite what happened within the next half hour, but somehow or other I wound up going back to the gate where a member of the patrol handed me the injunction and said, "This thing is worthless."

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

I got kind of startled and I said, "That
doesn't make any difference. Of course, Judge Curtain doesn't have a seal with him. He doesn't walk around with a seal, but that doesn't make a damn bit of difference and if you want, I will get you, as I recall, a God damn seal, as I said it. It doesn't change a thing. It has no legal significance, but if you want it, I will get it."

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

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

A That's right.

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

And I went outside and said, "Why?"
can be appealed."

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

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

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

And I said, I think, "Lou, I think it would be a good thing if you came in." And we--I have for-
gotten whether we talked at that point
or later, and Lou said, "You know, without criminal
amnesty there is nothing. It will fall."

And I said, "Well--"

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

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

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

And then we never did get that seal, because
at some time around this point two things happened:
the inmates came forth and said, "You're trying to attack us; you're planning an attack."

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

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

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

Incidentally, at this time or earlier Vincent showed to my mind the kind of attitude which brought us where we are with the problems we have.

Either then or earlier I asked to talk to one of the inmates on the negotiating—on the patrol while I was outside and Vincent barked out, the way you would bark out, I guess in the Army, the way an old line top sergeant would bark to a rookie, so and so come here. And the voice was so comandeering and so clearly hey, you, so and so, get over here, that it seemed to sum up to me so much of what is true about the relationship between the old line guards and the old line staff and prisoners. And the inmates came out and
said they had had enough talk; there was going to be one more negotiating session. It was going to be serious and that was going to be the end. And I, at this point, felt somehow very very gloomy.

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

Q So this was Friday morning?
A This was Friday morning, so that I had in total had 2 hours sleep over the two days, the two nights that were involved.

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

And I had been quite shaken by this talk about the seal, because what it seemed to me quite clearly was to make a fuss and call the injunction worthless over something which was really trivial, but more than that, not to take my assurance for the fact that it was trivial to assume that I would take a trip to Vermont and that I would double cross them
made it very clear to me that I was relatively no place in this situation.

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

A Yes.

Q Now--

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

The response came back, "No."

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

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

As it happens, I was wrong and I kind of sat there feeling very scared about what was going to happen. I envisaged a blood bath. As a matter of fact, you know, I was rather surprised that no more than 43 lives were taken in the ultimate blood bath. I would have thought far more. And to my surprise Oswald said, "Okay, we will go back in for one more time. I'm going to pull together a committee of press and people," and I said to him, "Do you want me to go in on this one?" Because I felt that he would want only his own
people from his own staff and he said, "Oh, certainly I want you to come in," and I felt oh, my God, because I really had no great desire for it.

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

Q Again, back in the yard with the inmates, with the press and the TV cameras?
A Plus the 3 new people who were there as sort of observers to this to something.

Q That's Mr. Steel--
A Mr. Steel, Mr. Carpenter and Mr. Chandler.

Carpenter and Chandler are two black--I think they are ministers from Rochester.

Q Scott also?
A Then it was--Scott was in place of either Carpenter or Chandler. I don't recall the name.

Q It was Mr. Scott and Mr. Chandler.
A Oh, I see. Okay.

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

Q You were concerned?
A Yes.
So, when we went in again--and this time I think the table was against the wall, against that upper side right wall and we sat down. The legislatures--these new observers, press, and I think from Arthur Eve and myself and from Oswald's staff, Oswald--I don't know. I think that may have been it. I don't think Dunbar came in with him at this point.

Q  And you presented the injunction at this time?

A  Well, they had it.

Q  And what happened?

A  The injunction was the first thing that came up. And one of the inmates said it was worthless because it had a signature by Oswald on it.

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

Q  That was the consent?

A  That was the consent. I said that was the consent by Mr. Oswald. We would not have gotten it except by consent. It is a consent order which is a fairly traditional type of order when the other side agrees and it is no less enforceable than any other order. Well, why does this thing only have Oswald's name on it?
tional Department, including, as it happens, the parole people, are subordinate to him."

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

And at this point I decided that there was just no point to my answering and responding any further.

Q Why?

A I really did not consider that there was anything to discuss here. I considered this frankly largely a speech, not an attempt to really see whether the injunction did or did not have any significance. It was very clear to me that whatever I said would be disbelieved; that my credibility was zero. It was very clear to me that these comments that were made had been made earlier, before I came in; that they had agreed that this was the facts.

On the issue of the seal, again, that was in my mind--I mean, non-lawyers tend to have an exaggerated notion of the significance of the formalities and of sometimes of words.
Q What about criminal am-

A Criminal amnesty, it was never my intention, as I thought I had indicated earlier, that that's what this was going to provide them with. It wasn't intended to provide them with amnesty and for them to say that it didn't have that, I quite agreed. There may be ways of obtaining amnesty, as Tom Wicker indicated. Somehow if we provided amnesty for the state troopers or the National Guardmen at Jackson State and Kent State, one would think that a society like ours could figure it out if it wanted to, but that wasn't what I could do, that wasn't what I could do with this particular piece of paper.

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

A No. That would have been a very, very unlikely thing to happen, I think. Not to my knowledge anyway.

The issue of the day, I think, was a clear ambiguity. I think they were right there, not in the way they interpreted it, but in the fact that it wasn't as clear as it should have been. It was drafted quickly and what the date said--it said on September 9. It was
was supposed to describe and identify the particular disturbance. It was--

Q But that could have been remedied?

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

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

A Well, sure, that was apparent, but what was more apparent to me was that the board change would not be accepted, that they would not believe it would have any meaning. If they felt that the seal was important, if they felt that the signature of Oswald was irrelevant, then my saying that it was, in their eyes we would be "monkeying" with it and it would even
be more worthless, so I felt that at that point to my participating any further and I decided at that point that I would not participate in the negotiations any more; that I could do no good at all.

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

Q Now, after your injunction had been--I shouldn't say your, but after the injunction had been disposed of, did the discussion then center on Commissioner Oswald?

A Yes. He was then subjected to an enormous amount of abuse. I mean, things--what the inmates
apparently felt, and they can tell you better than I, at least what they said, was that, A, he had played with them. He had not given them what they wanted, and, B, he had dawdled and, C, if he couldn't do it, then he wasn't the man they wanted to talk to and from their point of view, as I have thought about it since--

Q Couldn't do what?

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

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

And I think that that was their position.

To my mind it is a perfectly reasonable position and as a result, they said to Oswald, one of them said to him, "Oswald, you want nothing. We want you out of here and you bring back somebody who can," and a lot of this continued quite intensively.
Was it ever made clear to the inmates while you were in the yard that it wasn't simply a question of power, but that the state and whoever was making the decisions for the state was not about to give them criminal amnesty?

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

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

I don't recall that being said.

This may be a failure of memory, I don't remember.

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

A: I don't actually recall that that was actually said, but it certainly seemed to me that that wasn't far below the surface in what they were thinking.

Q: In other words, did you feel that the injunction not only had not settled matters, but that it had widened the gulf of mistrust?

A: That's hard to say. I mean—-I need hardly
say I have to think that, therefore, that would color my answer, but I don't know. I think things--the gulf is so wide and so deep that it may have contributed, but even if it hadn't been there, I don't think any substantial and meaningful differences in my understanding might have been there. I may be wrong about that. I think the people can tell you that better or either inmates or members of the negotiating committee who had contacts with inmates subsequently.

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

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

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

A Yes. This was about 10 minutes after 12.

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

A Oh, yes. I felt very strongly afterward.
When the negotiating committee was pulled together, I mentioned to some of them that as far as I was concerned I thought that the only people—I felt very strongly about this, not only about myself, but about some of the other people who went in, such as the state legislatures. I felt very strongly that the only people who ought to be in there are those chosen either by the inmates or by the state; that there should not be outsiders who really had no business there, who were there for anyone of a number of what seemed to me not terribly good reasons.

Q When you left the yard that last time Friday—
A A lot happened before we left the yard.
Q Do you—
A It's up to you.
Q Yes. Your other observations while you were in that yard. What happened then?
A You see, after they beat on Oswald pretty hard rhetorically—and as I said, he held his cool pretty well, somebody said, "Why don't we keep him here."

And I think this was in the context of getting to a non-imperialist third country. I think at that point I got pretty scared. I think for the first time I got really scared and this continued for
about 10 minutes with a lot of shouting. I said to one of the members of the committee, "You know, you promised us safekeeping," and he said, "You see, I can't control them."

But then one of the men from the patrol--and this is why my position is an ambiguous one, one of the men from the patrol said to me, "You have nothing to worry about. We are going to get you out of here." And I was struck then, as other people I think were struck later on during the takeover by the very strong sense of honor of the prisoners. Some of the prisoners, as you know, I think the evidence is were told to protect the hostages and they did and we were told that we were going to get out no matter what happened and we did. And I think this is something that really--as I have said elsewhere, men can be courageous and responsible and respectful if you give them an opportunity and the power to do that. If you treat them like dogs, they are not going to act like that.

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

A Any what?

Q Votes.

A I think so. I don't remember. Yes, I think there was a vote about whether we should be let
go, I think. I'm not even sure, by the way, about we. There was talk about Oswald and as far as I was concerned, it seemed to me that I would have no choice. If they were going to keep Oswald, I would not leave him there. I think we had never discussed this, but as far as I was concerned, we had all been given the pledge of safekeeping, we would all stay in there no matter what happened.

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

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

Q And that would be your extent of your private discussion in the yard?

A That's right. And as I walked out, several of the men again expressed a great deal of war and affection towards me, despite this business with the injunction.

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

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

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

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

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

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

A  The reason I hesitate is not because I would answer that he did not. It is just I'm trying
to find the right words. I had the impression that he was giving the orders. I also knew that he was on the phone with Albany a good deal and I kept hearing about pressures on him.

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

Q What did he say about pressures on him?
A He said something like "Herman, you can't imagine the pressures on me on this thing."

Q He, at this point at least, was committed to trying to negotiate out the hostages safety?
A I'm convinced of that.

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

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

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

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

I cannot speak with very much knowledge about the negotiating group that went in Friday evening. I was not part of that group, except insofar as I participated with Knustler Saturday morning in helping to supplement the prisoners' demands. I felt that on the basis of what I knew about prisoners' rights and problems certainly very key things had been omitted, such as violating—reimprisoning somebody on parole for trivial violations, a whole range of things and I made about four or five suggestions, which were ultimately incorporated in that list of 28 sub-
So, I can't really speak about that. I don't know about the nature of the relationship and the like. I think it is very dubious when you are dealing with people who are so terribly far apart, in a society as polarized as ours is, because as a prisoner is a microcosm of that society and it was there, it is very hard for anybody, for anybody to serve as a bridge. Both sides have such a deep distrust, hatred, contempt of the other side that somebody who is in the middle is going to get crowded up.

That doesn't mean, however, that in these situations there shouldn't be somebody in the middle or there shouldn't try to be and indeed my guess is that maybe if one were to try to figure out systematically how to handle this--there are two things that I would think are necessary: Time, because I think that was the great crime that was involved here. We are dealing with matters of life and death for a massive number of people and it could have taken longer. We couldn't have done very much worse by waiting then we did. There might have been perhaps a few more injuries inside. I don't discount that. Men perhaps might have gotten panicky or what, I don't know, but 43 lives and God
knows how many injuries, it has got to be awfully bad inside to come near that and we were lucky at that that it wasn't more than 43.

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

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

So, I can't say that it's a mistake that that isn't the way to do it.
Frankly, I don't know that we have any choice. I don't know of any other way short of each side or one side or the other giving in completely, but then you won't have this kind of struggle.

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

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

Q The amnesty?

A Amnesties, reprisals of various kinds, getting rid of Mancusi. You may recall that the negotiations came down in the sense to be two final big ones, on which I think Oswald said he could not, would not or what have you budge. Getting rid of Mancusi, which was really secondary, because I think we all knew that he was finished in one way or another and the amnesty and that's life and death. And--life, death or lengthy prison terms and they knew what had happened in Auburn, so it is life, death, brutalization, prison. All the things that make
Q But you had given to them an injunction which you apparently had some faith in against the last aspect, brutalization?

A Yes.

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

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

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

MR. LIMAN: Mr. McKay?

MR. McKay: Yes.

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

THE WITNESS: No. When I went to talk to the inmates—for two reasons. When I went to talk to the inmates I said I am quite willing to serve as an intermediary to
help in any way that I can. I want to make clear, and probably this was totally unnecessary because they didn't want that anyway--I'm not a negotiator and I will not negotiate for you. I feel very deeply that on matters like this--and I have tried to take that position in my lawsuits, since it is your neck, in this case, literally, you have to do the negotiating and it was--that was unnecessary to say because it was very clear that they didn't want anything more.

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

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

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

THE WITNESS: Yes.

MR. McKay: What role were you playing
at that time when you asked for things that they had not asked for?

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

MR. McKAY: Were you ever asked to join the negotiating team?

THE WITNESS: Oh, you know that was such a pick-up team that--well, if events
on by whom you mean.

MR. McKay: By any of the other negotiators.

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

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

I made some comments at that point in this open meeting. A negotiating drafting team was then chosen of a few people, or 10 or 12 and
I then left to pick up Bobby Seale at about 3:00.

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

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

MR. McKAY: A final judgmental question that you must have asked yourself. In the balance, are you glad or sorry that you went in?
THE WITNESS: I am not sure that I have asked myself that question. I think--no, I'm not sorry. It has cost me something, I think, a credibility with prisoners at Attica, but I think any man who gets involved in trying to work with prisoners inevitability risks that. The problems are so difficult, even apart from Attica's. The amount one can accomplish is so small; the volume of work is so great; the resources are so slim that one will inevitably turn off a fair number who think you haven't done right by them and in this case it hurt more than in any other situation because I felt I had acted in good faith and had worked very hard. I think Assemblyman Eve and I did have something to do with managing to put off the blood bath and give other forces a chance to operate. I don't think I'm sorry and I--whether I would do it again, that's an impossible question to answer. I think I would have to know again what the situation is. I think I might do it differently.

As a matter of fact, I have been asked again, in a different context in a prison
problem, but it hasn't gotten that far. I'm fairly sure I would have much more. I was going to say modest, but I didn't have much high-fluent aspirations about what I could accomplish before. I certainly would go in much more pessimistically about what any one of us could accomplish.

MR. McKay: Mr. Wilbanks, have you a question?

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

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

MR. McKay: Bishop Brodrick?

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

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

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

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

BISHOP BRODRICK: Right.

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

THE WITNESS: Yes.

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

THE WITNESS: That's—you know, that's
very hard to say. I would like to think that the group of lawyers that we told to get that first week had a very high level of organization. We allocated tasks among ourselves fairly well and we did that in about an hour, an hour and-a-half. I frankly do not know what it takes, how much time it takes for that kind of organization to take place. The organization that I would—that I saw involved a security patrol, men on the catwalks, observers with some arms, a table with typewriters and some kind of food supply and some kind of arrangement for--excuse me--a corridor for us to come in and out and some kind of understanding of what they were going to demand.

I thought that was very highly organized. I don't know whether that's the kind of organizational result that could not have been done within a matter of three or four hours. There are natural leaders in the prison system, as in everyone. I'm told there was an election, I have read, in which some men were elected leaders, and it's very possible that that was done fairly quickly and
that those men were given a good deal of responsibility to say this, that and the other thing.

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

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

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

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

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

The man isn't told why. The hearings last a matter of a few minutes and he goes away embittered and angry. Parole conditions that are improved on people range from the
irrational to the outrageous. A man can't get a driver's license. The result of that is one of my clients was on welfare for four months, even though he could have earned about $12,000 a year which was what he had done before because he had been buying walnut and for that you need a car in Central New York. Men have been busted for driving without a license. Men who are narcotic addicts and others, and drunk and alcoholics are not permitted to live with women who are not their wives.

Nevertheless, very often these common-law what have you relationships are the only things that can keep these guys stable. I know of at least two cases of where the men in prison and their women were frightened to death about being busted when they got out for having a relationship. The fact is they work not be busted, but if the parole officer doesn't like them or suspects them of something else, he then will use this or any one of a thousand other trivial items, such as consorting with known criminals when their parents and friends and others have records to bust them. I have
had a young girl 18 years old who was imprisoned of a non-criminal act, running away from home. She was sent back to prison because she didn't get along with her mother and stayed away from home again and that's all in the New York State Parole Law under the guise of benevolence expertise and how to handle people in that kind of situation.

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

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

BISHOP BRODRICK: Is this a physical situation or--

THE WITNESS: Yes.

BISHOP BRODRICK: Or psychological one?

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

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

BISHOP BRODRICK: Thank you.

THE WITNESS: We, of course, dispute that.

MR. McKay: Mr. Marshall?

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

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

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

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

MR. MARSHALL: Now, on the question of the parole system, you stated why you thought the New York State Parole System was no good, but your statement was also a relative
one which suggested that there were some parole systems in other states that were better, at least, maybe not good, but at least better. Could you elaborate on that or is it really your closest acquaintance just with New York State?

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

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

MR. MARSHALL: The reasons granting parole?

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

In South Carolina a man is required
to avoid bad habits.

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

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

MR. MARSHALL: Now, just one final thing.

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

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

THE WITNESS: Well, I have changed my views on certain priorities of the kinds of things I am trying to do, yes. I clearly have done that. I came into this primarily as a civil rights and civil liberties lawyer. My professional interests are largely in the abuse of governmental and private power, particularly in the criminal and related areas; and when I first learned something about prisons in 1965, I came quickly to the conclusion that this was the area where arbitrary power is abused in more than almost anywhere else and nobody is paying any attention to the area and that's why I started to get involved and planned this sabbatical year while I was a visiting professor at Michigan in the winter of '68-'69 and my concern, then, was in terms of legal action to expand rights and the fairly traditional rights that are talked about were those that I was primarily concerned about, due process at disciplinary hearings, First Amendment rights, medical care and the like. I have shifted my priorities, I guess, in
various ways. One of the major ways in which I have shifted it is that I believe, and I have come to believe more, and this is also learning from the civil rights area—from the civil rights area that lawyers like myself who suffer vicariously cannot be the lead edge of any real social change.

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

It is not only the terrible criminal injustice sometimes we have, but the entire system where injustice is so rampant. So, the only meaningful changes are from those who are suffering, not for lawyers or for gay liberation or woman's rights or for black rights or for prisoners. And, therefore, it seems to be the first priority, as far as
I am concerned, is to work in those areas which intend to have something to do with First Amendment rights to organize, rights of expression, rights of what I call transparency, to make sure that the prison is transparent; that if something is happening the community knows about it right away; that they don't have this maxi-maxi thing stuck up in Little Siberia and God knows what is going to happen there where nobody can get there except by incredible feats of endurance, dog sleds and things like that; that we must make it transparent.

We must make sure that the community which pays for it, suffers from--every citizen suffers from riots, knows what is going on at all times. The community at large is not going to change anything. I don't think social change happens that way, but those people who are interested and can work and want to work with the men inside and it's they who must carry the burden for better or for worse, and so the priority that I see is to make it possible for them, with such things as unions, organizations and the like, to have free access to
lawyers, to the press, to outside people, legislators, ministers. That's one major thing.

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

MR. McKAY: Mr. Henix, have you a question?

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

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

THE WITNESS: That's right.
made before this Commission by officers who came before us were that they felt the news medium dealt them a low blow.

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

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

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

I don't think the television cameras distorted it at all. To be perfectly honest, I don't think I ever saw anything that was televised except once when there was a repeat when one inmate was yelling at me with my name underneath it. It's not my impression that the inmate—that the electronic media distorted and the press, I normally, I have
enormous number of gripes about press coverage. The difficulties of understanding, writing, having it rewritten, I mean there are all kinds of processes before it gets into that black print and so much can happen along the way. I read the media fairly closely. I must say I did not have the impression of distortions. I can't think of anything, except that one incident involving me and I will say when I called the next day they printed a story which had some other distortions the other way, but I think on balance, probably gave a pretty fair picture, which, given the confusing circumstances, is probably all we can ask for in that kind of setting.

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

THE WITNESS: Yes. I don't know that. Since it was the first, that might indicate that maybe it did have a lot; maybe there was a sudden shock that "My God, this guy Schwar... he is really just like the rest of them" and that's a possibility. I don't know.
I must confess that in my conversations with Attica inmates subsequently, I have not discussed my credibility or anything like that. I have kind of gone on the assumption that after it was over I felt I had a job that I wanted to keep doing. If they wanted me to do it with them, fine, those who did, those who didn't, there were other lawyers and I have had really very few conversations.

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

MR. HENIX: Thank you.

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

THE WITNESS: You mean before being sentenced?

I don't think so. I think that you
have probably asked me all that I am going to talk about.

MR. MCKAY: Thank you. You have been most cooperative and most helpful indeed.

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

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

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

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

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

We have so advised other individuals who have requested to appear before us in the public hearings and have told them for the
same reasons that we cannot at this time accommodate their wishes.

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

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

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

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

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

STATE OF NEW YORK ) : ss
COUNTY OF NEW YORK)

I, RICHARD GREENSPAN, a Shorthand Reporter
and Notary Public within and for the State of
New York, do hereby certify:

That I reported the continued proceedings
and that such proceedings (pages 495 - 613) is
a true record of the testimony given.

I further certify that I am not related
to any of the parties to this action by blood
or marriage; and that I am in no way interested
in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 21 day of April, 1972.

[Signature]
RICHARD GREENSPAN