He goes up to the prison every day just to beat prisoners and stuff like this. This does not happen. I want to make this as clear as I possibly can and it's totally wrong and to go along with this brutality thing, the speaker this morning mentioned the atrocities that were committed to inmates upon the resecuring of the prison.

Well, I would have liked to have him be out there in the corner of the yard that morning treating officers and these civilians that were brought over there. Guys covered with blood from the top of their head to their feet. Guys covered—guys with their jaws smashed, broken arms, dislocated shoulders, broken hands, smashed fists.

One officer had his ear literally ripped off the side of this head. If this isn't brutality, what is it?

That's all I got to say.

MR. McKay: Thank you, Mr. Johnson, for being with us.

(The witness was excused.)

MR. LIMAN: Mr. Kunstler.

WILLIAM KUNSTLER, called as a
EXAMINATION BY MR. LIMAN:

Q State your full name, for the record.
A My name is William M. Kunstler.

Q And you are an attorney and you practice in your own city and throughout the country?
A I do.

Q When did you arrive at Attica in September?
A I arrived at Attica at about 10:00 or 10:30 on the night of Friday, September 10, 1971.

Q At whose request did you go to Attica?
A I had received a message from my office in New York, I was in West Palm Beach at the time doing the pretrial work in a case called State versus Chaney and I was informed that I had been requested as an observer by the inmates at Attica Correctional Facility.

Q When you arrived at Attica on Friday, were you either shown or told about the initial five demands and then the 15 practical demands?
A When I arrived in the stewards' room, I guess about 10:30 that night, I was handed by Reverend Wyatt T. Walker a Xerox set of demands. I believe
there were 15 on one page and five on the other.

Q After studying them and talking to the other observers, did you reach a conclusion as to what the key issue would be in this whole matter?

A Well, I was asked by the people in the room. There were a great many, some of whom I knew, some of whom I didn't, what I thought would be the crucial issue and I said I thought that amnesty would be the crucial issue.

Q You entered the yard later that evening?

A Yes, I'd say about an hour later, 11:30, a whole group of us were escorted to the yard.

Q And your purpose in going to the yard was what?

A Well, prior to going there, I had been asked to make the opening statement for the observers or negotiators and I was instructed to do two things.

One was to ask what the final demands were so that we could present them.

And, secondly, to get their advise on how they wanted those demands effectuated.

Q Would you say you were instructed to do this, was this by the observers committee?

A By the observers committee.
Q Did you, in fact, make that opening address to the inmates?

A I did. There came a period when we all were introduced and then after that, I made the statement that I've told to you.

Q Did you then proceed to listen to the inmates as to what their final demands really were?

A Right. We sat at this table at the end of the yard, which was brightly lit and first I think the thing that was done is an inmate read off a statement of demands and there were noises of approval from the large group and then we would write that down and check it as a demand which was a demand.

I remember of all that were read, only one seemed to be turned down and that was one for the extraterritorial transportation to a non-imperialist country and that did not seem to be the majority view.

Q You were making terms as to what demand had the support of the inmates by the voice vote?

A Yes. But there was very little difficulty in that.

Q The only demand that seemed to lack support of any proportion was the demand for transportation out of the country?

A Yes. But I might add that there were a few
inmates who came up to the microphone.

Everyone was permitted to come up that indicated that he wanted to and there were some very specialized demands. I can't remember exactly what they were, which didn't seem to incur any support whatsoever.

Q In any event, when the list was prepared the following day to negotiate with Commissioner Oswald, you observed that the demand for transportation out of the country appeared on it, in any event?

A Well, I don't think it was on the final demand.

Q Not on the ones he agreed to but on the check list of demands that the observers compiled?

A Yes, it may have been. You showed me that in executive session and I agreed that it may have been, but it was not one that any of the observers believed was one that the inmates wanted or at least the majority of the inmates, so it wasn't really presented to Commissioner Oswald.

Q Amnesty was one of the demands which was voted on that first evening, Friday night?

A Yes. There was no question about Amnesty.

Q And there was no question in your mind that this was a demand that had the support of the inmates?

A None whatsoever.
Q  Was there any discussion with the inmates as to how they wanted you to present these demands?

A  No. By the time we got to 5:00 a.m. in the morning, a time which was caused by the fact there was a scare in the middle of the presentation of demands, the lights went out and the observers were placed with their backs to a wall with inmates in front of them to protect them.

I didn't know what was happening, but everyone was quite upset in the yard. And that took an hour or so when the lights went back on, we continued the listening to the demands.

We got out at 5:00 a.m. and we had never asked them or sought the answer to the effectuation.

Q  Did you also become the attorney for the inmates?

A  I did. Very shortly after I came into the yard, someone proposed that I be requested to act as their lawyer. And then it was put to me and I agreed to do so and from that point on I regarded myself as an attorney for the 1500 inmates.

Q  Having accepted that role, what did you regard your function to be with respect to these demands that you had compiled?
A I guess it was just an ordinary lawyer's duty to do the best that I could to obtain for them what they wished in their demands.

Q Did other observers have different views of their functions?

A Yes, there seemed to be essentially three groups in the observers committee. It was much too large a group, to start with.

I noted on the sheet that Wyatt Walker gave me that the inmates had requested only ten or 12. But then there were others who seemed to me to be either people who had dropped in with some interest, like two young lawyers from Washington, certain Assemblymen and State Senators and then there was another group which I understood had been requested by the Governor and had come up at his request.

In fact, I heard that some had been flown up by the Governor. That included, I think, Reverend Walker, Alfredo Madjeus, I think Congressman Badillo was in that list, but I'm not sure. But there was another group, a very definite group.

Q Did this create tension among the observers group, having these disparate factions?

A In the beginning, yes. I think the tension was because no one really knew what their functions
were and what the group was supposed to do, but then other tensions developed as we were going along with some people being rather nebulous in their relationship. Some of the Assemblymen and Senators, going back and forth, speaking to someone, we didn't know to whom and then returning to us, as if they were sort of gadflies between the committee possibly and the Commissioner or the Superintendent.

And then there were others who seemed to me to be there only temporarily, who left rather rapidly.

There was a man from Rochester, I think his name was David Anderson, that came and went. I don't even remember seeing him, but apparently he was there.

Reverend Walker came and went and we suffered a certain attrition after a while, but there definitely were tensions but in the end I think there was a great unanimity among the observers committee as to what was happening and what we hoped would not happen.

Q On Saturday a group of three of the observers, consisting of Mr. Tepper, Clarence Jones and Tom Wicker procured a letter from District Attorney James and did they show that letter to you?

A Yes. We had agreed when we came out of the
yard at 5:00 a.m., I think on Saturday morning, that we would send a committee of three to Louis James, who is the District Attorney of Wyoming County and to see what we could do about the amnesty issue.

And they came back when we all came in about 1:00 o'clock that afternoon, and they had a letter about which they were quite exuberant.

Q I should say, Mr. Kunstler, I am going over only the highlights with you, not only because you have talked with us in executive session but because I think you are now the fifth observer who has testified and so you will have the opportunity to make a statement at the end if we have not covered all of the salient points, although I think we will.

A Thank you, Mr. Liman.

Q What was your reaction to this letter when it came back?

A I was one of the few, maybe even the only one initially who was against showing this letter or divulging its contents to the inmates.

Q Why didn't you want to have that letter read to the inmates or shown to the inmates?

A Well, the other observers or some of them thought that the letter indicated there would be no
prosecutions for conspiracy and that there would essentially be a sort of due process and fair-play standard met.

I think the letter, which was a good letter, but I thought the letter said nothing more or less than any District Attorney should say under the circumstances and I thought that if we told the inmates about the letter and gave it our blessing, it would legitimatize sometimes later prosecutions against them because the observers committee had passed on it and submitted it themselves and make them appear fair even if they were not and it would mislead the inmates that they were getting something which was, in fact, only a recasting of what the normal obligations, unfortunately, not lived up to in many instances, of a prosecutor and for that reason I did not want it shown or discussed with them, but I agreed that we would show it to them or read it to them without any comment passed upon it by the observers.

Q At this time, what was your own conception of what would happen if an agreement was not reached between the State and the inmates?

A I thought a lot of people were going to die.
That was your state of mind throughout these negotiations, I take it?

And I think it was essentially the state, the growing state of mind of the committee, that led to the request for the Governor to come.

Would you describe for us the way in which the negotiations with Mr. Oswald were conducted which led to the 28 demands?

Well, after Tony Fitch, one of the young lawyers, had typed up all our recollections of the demands and we had all looked at them, the Commissioner came in and we went over them with him and he rejected, I remember, the superintendent's dismissal, and he rejected personal injury amnesty but he accepted property damage amnesty. And after he had gone through, adding his qualifying words and there were many qualifying words to the demands. For example, one said a minimum wage and he added the phrase if the Legislature appropriates the necessary funds and so on.

After he had done that it was retyped on 8 x 11 paper. I think it made three or four pages and then we had him sign it and I don't know if any of our people signed it or not.

Was Mr. Oswald alone in these negotiations?

Yes. We never dealt with anyone but the
Commissioner except for those few minutes with Bobby Douglass and Norman Hurd.

Q Were you the principal spokesman for the inmates in these discussions with him?

A I am not sure I was in fact but I regarded myself as their attorney. I sat next to the Commissioner during the discussions, and watched him "X" out and made my own corrections on my own sheet as we discussed it.

Q Did you press as hard as you could to get the demands that the inmates wanted?

A Yes, I think like all the other negotiators, we tried to get as many accepted as possible.

Q Were you in favor of the inmates accepting these 28 demands as a solution to this situation?

A I personally was, but I wasn't going to take the position with them, as I did not, that they should have a recommendation from me as to what they should do. I felt that they would make the final decision, but I must say personally I felt, because of the alternatives, that the demands or the problems should be accepted.

Q How did you feel that this large inmate body was going to make this ultimate decision?

A I didn't know but I had been highly impressed by the inmates and I have used the term Athenian democracy
many times in the past, which probably is the best fitted. I was highly impressed with their organization. I was highly impressed with the leadership and I thought that it would be exhibited to the constituency in the same manner as the original ones were, a vote would be taken and we would be told what to do after the vote was taken.

Q What did you base your interpretation on that this was an Athenian democracy?

A On the first night I noticed, one, that every person that wished to speak could get the microphone. I also noticed that the security line was composed of black and white and Puerto Rican and they were arm in arm. And I also saw the leadership was mixed racially. And from my own understanding of prison life and the little experience I have had in the past, I know this is difficult to attain in an institution, it is deliberately discouraged that there were this kind of unity and I felt from the first flight that things were in hand and that a vote could have been taken, as a union membership vote was taken on any strike issue.

Q Did you understand inmates were not free to leave the yard if they dissented from the decision of the group?

A No, I don't know if that is so, but I had no
knowledge of anything like that at all.

Q Did you have any knowledge of a pass system for inmates to exit through the doors of the yard?
A No, I had no knowledge if that existed.
Q You went into the yard on Saturday and before you went in, Mr. Seale arrived? Am I correct?
A That is correct. Just before we went in, Bobby Seale arrived. I had called him the night before because the observers committee list of the inmates requested a black Panther and I called Panther headquarters in Oakland and asked that either Bobby Seale or Huey Newton come to the institution.
Q Did you speak to Mr. Seale before he went in the yard?
A I think we all met with him in the steward's room.
Q Did you try to persuade him to do something?
A I handed him the list of proposals. I told him exactly what I was later to tell the inmates, I thought that was the best we could get and I asked him if he was prepared to put his own word behind these with the inmates. He read them. He said that he could make no decision on them until he had consulted the hierarchy of the Black Panther Party.
Q Were there any conditions which the observers
attached to Mr. Seale going into the yard with them that night?

A I don't know if they were conditions, but some observers asked that he merely take a neutral position if he wasn't prepared to endorse the proposals and Bobby essentially agreed to that.

Q That he would not knock the proposals?

A He would not knock the proposals. On the other hand, he wouldn't say that he supported them until he had more time to read them and had passed them through his organization.

Q By the time you went into the yard that night, you had learned of the death of Officer Quinn?

A I learned that from Commissioner Oswald.

Q Did Commissioner Oswald or anybody else describe for you the circumstances of his death?

A I think the Commissioner told me and I also heard it from other circumstances that he had been thrown from a second story window and suffered some sort of a skull fracture.

I did not know then that there was no window wider than six inches essentially at Attica.

Q Nobody gave you any other explanation of this event which apparently was published and put over the radio?
A
No, none whatsoever and I believe that that was also the story that the inmates had heard over radio and television.

Q
Even after you learned of Officer Quinn's death and before you went into the yard, am I correct that it was the sense of the observers committee that the 28 demands should be accepted?

A
Yes. Even though I personally felt and I am sure many others did, that the death of Officer Quinn and the existence of the felony murder rule in New York State and the fact that prison personnel who are killed may result in the death penalty for those convicted of that crime could really harden the amnesty issue.

Q
And would it be fair to say that you were in favor of the 28 proposals being accepted because you feared the conditions in terms of a State Police assault after a rejection?

A
The alternatives were so awesome to contemplate that I think every negotiator and certainly myself felt we could not subject them to that kind of an alternative and we hoped they would accept those proposals.

Q
We have heard from a number of the observers that Bobby Seale went into the yard, made a short speech and then he left. Did you leave with him initially when he walked out of the yard?
A I left with him. A small group of us walked out. I think Tom Wicker was in that group with myself and with Bobby. I went with him to his car which was outside and then I came back into D-Yard. I might add, Mr. Liman, that we had an understanding, Bobby and I, that he would call me at 4 a.m., the next morning with whatever the central committee had decided to do about those 28 proposals.

Q When you returned to the yard, were you told that Clarence Jones had read the 28 demands?

A I was told and I also sensed when I walked in that there was something very much amiss in the yard.

Q What did you sense?

A I sensed that there was a great deal of tension on the part of the men. I was told by Louis Steele, I believe, that he had read the proposals and they had been greeted with a lot of coldness and I don't know whether I saw an inmate tear up the proposals or whether I heard they were torn up, but that the inmates were incensed that one and two demands, that is amnesty and the removal of the superintendent, had not been accepted by Commissioner Oswald.

Q Did you then speak to the inmates?

A Someone yelled out my name and said what did I think of the proposals and I started to walk toward the
bullhorn and I passed a man I've always identified as Tom Wicker, but since he was not there, it must have been Louis Steel or someone else who said to me, tell them the truth, Bill.

I must say as I told you in executive session, I had all sorts of quandries as to what to say because the mood was so deep and intense and all of my white, middle class fears and images about prisoners had come to the fore and I guess I was going to say that they were right in tearing them up, but when I got to the microphone, I said pretty much what I have said to you before, that I thought that they were the best they could get, that if they didn't accept them, people were going to die, but that the decision was their decision to make.

Q Mr. Kunstler, when you said your white middle class images and prejudices, were you referring to the fact that you were fearful that if you said the wrong things, the inmates might set upon you?

A I was fearful and I guess it was a very good lesson to me to learn because I found out that the stereotypes were all wrong and that the inmates were dignified and worthy men who were fighting for their very lives and I guess I was just too white and too middle class to understand that.
What kind of reaction did your speech get?

A The tension ebbed appreciably and I knew we were over a hurdle. I felt that and I think many of the other observers did too that were left in there and then we left on a positive note that we would go out and continue to work for the effectuation of those two demands in one way or another.

We were told to continue the negotiation, that they would remain there and not harm the hostages as long as they were left alone and negotiations continued.

Q Your assignment was to try to improve the deal?

A We went out. We didn't know what we were going to do. We certainly were going to talk to someone. We didn't think of the Governor at that moment, at least I didn't, we were certainly going to start to talk to Commissioner Oswald and start to press for those two apparently non-negotiable demands.

Q When you say non-negotiable, non-negotiable on whose side?

A Apparently at that point, although it changed later, the inmates were very firm about those two demands. At least we received no evidence to the contrary.

Q When you spoke to the inmates in the yard, you
mentioned that Officer Quinn had died.

A That's correct. And I got the feeling, Mr. Liman, that they hadn't heard that before because there was a sort of a loud gasp and I thought I was the first one to tell them that.

Q Why did you feel it necessary to tell them that, Mr. Kunstler?

A Because I explained to them that I understood that many of the inmates were insisting on amnesty because they were afraid of criminal prosecution, very similar to criminal prosecution that had come out of other rebellions, Auburn, for example. And also that they might also be worried about the felony murder rule and the death penalty and then I said I can understand that because, as you know, Officer Quinn has died.

Then I heard that gasp. And then I suddenly realized that perhaps they didn't know that but that, of course, made the issue even stronger with them, I'm sure.

Q Did you feel that because you had accepted this role as attorney for a large group of people, that you had to report that fact?

A Yes, but I really didn't think I was telling anything new. I think that I found out that perhaps I was. But I thought it was honest to tell them that and I did.
tell them that, I thought as a lawyer it would be unfair if they were to operate on the amnesty issue without knowing all of the facts but I really didn't believe I was the first to tell them until I heard that gasp.

Q Was there any discussion with the inmates about holding private negotiations as opposed to these public discussions over the loud speaker system?

A No. I didn't hear any. Most of the things I heard were that the constituency had to be consulted and things could not be done which would leave the constituency out of the picture. And that everything had to be more or less cleared with the constituency.

Q I think in fact you told us in executive session that the fear of the constituency problem really made it impossible for the inmates to leave the yard to negotiate privately?

A Yes. There was some talk, of course, by the Commissioner and I think others, that it would be good if they came to a neutral ground. Some members of the inmate negotiating committee, but that was vetoed on the ground that that would be taking them from the constituency and that that would not be politically acceptable.

Q You compared this to a labor negotiation in which generally there is a steering committee and union
representatives who negotiate in some hotel room when the eleventh hour is reached. Did you think that this type of negotiation being conducted out in the open before television cameras and over loud speakers could produce an acceptable result?

A Not as good as a labor union negotiation, which is done exactly as you stated but these were not labor union members. These were desperate men composed of many factions, many racial strains and with a great deal of tension hanging over them that usually a union doesn't have. And therefore, I felt though it might be more expedient one way than another, I thought they had to make that decision, not some white middle class lawyer or any group of negotiators and secondly, I think they knew the tensions and the strains far better than I did and that was their decision, even though it might be as I will be frank to admit, a little more cumbersome to work that way, I came to the conclusion that is the way it had to be.

Q You did not hear from Mr. Seale at 4 a.m. that day, am I correct?

A No, I thought over that, after reading my testimony before you. I think I did receive a call from Bobby or someone else in the middle of the night saying that instead of giving me a message at 4 a.m., that he
would meet me in front of the prison on Sunday morning.

Q What happened Sunday morning?

A I went to the prison early, 9 a.m., I guess, and Bobby was sitting in the car with several other people. I met with him and he said that the central committee had voted only to tell the prisoners they would support a demand for the extra-territorial emigration to a non-imperialistic country and he gave me a statement as to that effect.

That was not one of the demands at that time by the prisoners but that is the statement I got and I told him that I didn't think he would be admitted to the prison if that was what he was going to say, that the administration really wanted him to endorse the proposals and he said that he could not bring himself to do that because the central committee had not authorized him to do that and after that he left.

I took the statement in with me.

Q Did you ever read that statement to the inmates?

A I don't remember. I don't think so. I think I told the inmates the gist of that statement. It may have been that I read it or that someone else read it but I just can't recall.

Q You say that the demand for extra-territorial
asylum was not a demand that had the support of most inmates. Did it still linger around in the rhetoric of some throughout the proceedings?

A It did. There was a group, I estimated a group of some several hundred people who were deeply interested in that type of asylum and people kept talking to me about it whenever there was a free moment. But it was not the demand of the majority and there was a serious discussion about it on Friday night and it was in essence voted down.

Q Were there any members of the spokesmen group or leadership group, however characterized, who were in the group that wanted the extra-territorial asylum?

A Yes. There were several.

Q On Sunday after you saw Mr. Seale, did the observers committee meet to decide what to do about the impasse that was confronting you?

A Yes, we met Sunday morning and by this time our numbers were depleted. I guess 10 or 12 had gone. We had a very emotional meeting in which I thought the committee was finally coming together on several levels and the only thing we could think of to prevent a holocaust because we saw the buildup, we watched the faces on the roopers in the yard, we heard the remarks, we heard them and saw them opening and closing their breeches of their
rifles as we passed by.

Q What kind of remarks are you talking about?

A I heard several remarks that troopers would say to each other as I passed, such as, "There goes the nigger lover," and similar type remarks.

Q You were in particular the butt of remarks, I take it?

A I don't know if in particular, but, you know, the long hair makes me easily recognizable and I think that maybe that is one part of it. But people knew who I was and I heard the comments and you could sense it. You didn't even have to have acute hearing to understand what they were thinking as you passed by. And we all felt the same tension building up. We saw searchlights being brought in that morning and we heard about gas. In fact there had been a slight gas attack on Saturday when through accidental means or something like that, perhaps, some gas had been released and came into the steward's room and we knew things were very tense in the trooper's minds and therefore, we reached the decision that we should call for the Governor to at least come to the institution and see what the men were like, what the troopers were like.

Q This decision that you reached to call for the Governor was a request that was initiated at this point
by the observers committee?

A Right. I think the initial statement came from Clarence Jones. We all supported it and he placed a call to WWRL, I believe, and WLIB in New York, two black stations, and I think that demand for the Governor to come which I think I wrote and Clarence read to the stations was apparently broadcast.

Q Is it fair to say also that there was no prior consultation with the inmates about calling for the Governor before you put out this request for him to come?

A None whatsoever. We did that on our own.

Q What precisely did you hope to accomplish by having the Governor come to Attica?

A Well, I wanted two things and I think I speak for most of the members of the negotiating committee. One, we wanted him to see the troopers. To see the buildup in their emotional state. And that was quite apparent to all of us.

Secondly, we wanted him there because we thought we could negotiate with him, that he was the power and that we should be negotiating with him instead of just Commissioner Oswald because Commissioner Oswald was, to that point, the only person we ever negotiated with.
We also wanted time, Mr. Liman. We thought that a few more days would give us more credibility with the inmates, give them more time to get together and more time to work on this amnesty question and on the question of the superintendent.

Q Did you feel that sooner or later in order to resolve this you would have to deliver something to the inmates by way of further concession on amnesty?

A Well, I thought we would have to do something about it. Whatever it was, we would have to in some way get rid of that death penalty fear and we thought the Governor's presence and if we could talk to him face to face, that we might have been able to convince him that it was better to not have an inflexible position when 1538 lives were at stake.

Q Were you present when Bobby Douglass was summoned into the observers' room?

A Yes. We asked for him to be brought in. I didn't even know he was there in the institution until he came in. And finally he did come in accompanied by Dr. Norman Hurd.

Q And at this point did you try to propose any compromises to him on the amnesty issue?

A No, we just tried to get him to get the Governor to come and he said that the Governor's position is pretty
well fixed and he didn't think it would make any difference what he said to the Governor and that the Governor would not come.

Q You went into the yard that day but before you went in on Sunday, did you have any conversation with Mr. Oswald about a letter that he intended to send to the inmates?

A We did. We were shown a letter by him to the inmates, a Xerox copy as I remember, in which in essence the letter indicated that both the state officials and the negotiating committee agreed that the prisoners would capitulate.

Q Even though you had hoped and in fact were in favor of the inmates accepting the 28 demands, you took exception to that language?

A I took exception because I knew once the inmates saw that, that we would lose all credibility, we would be in grave danger and the implications of it did not reflect our position. So I urged him and many others did not, to send the letter in to the inmates. And I remember him agreeing not to do so.

Q When did you learn that the letter was sent in to the inmates?

A Well, I learned about it when we were in the yard on that last visit. We had passed through this DMZ
area between the authorities and the inmates, and one inmate in A-Yard told us that he had observed that none of us could look him in the eye when we came through the DMZ and we asked why he said that and he said because of this. And he took out the letter issued by the superintendent or the commissioner and showed it to us.

Q Mr. Eve and Mr. Wicker testified that they had learned that the letter was sent in before they went into the yard that day. You apparently were not told this fact.

A No. I knew of the letter going in for the first time when it was shown to me and I have had all sorts of thoughts about why that letter went into the yard.

Q What was your reaction when the letter was shown to you by the inmate?

A I was angered and I was frightened. I was angered because I thought that the commissioner had deliberately risked our lives as well as the inmates' lives and I was frightened because I could see the reaction on the part of the inmates who were in A-Yard at that time.

Q Had you known that that letter had gone in, would you still have gone into the yard?
A  I'm not so sure that I would have gone in.

Q  Apparently Mr. Wicker and Mr. Eve made the decision to go in after seeing the letter and Mr. Eve testified today that in part, one of his reasons for wanting to go in was to re-establish his credibility with the inmates because he felt that the letter had been misleading.

A  I've heard of that and I think it just exhibits the enormous courage of both of those men. I'm not so sure I would have been that brave but I did not know of it and did not learn of it until it was shown to me by one of the brothers in the yard.

Q  And you said that you then were angry and you were frightened. Did you make any efforts to explain your position on the letter?

A  That is one thing you can be certain that we did. We made every effort in the world to indicate that we had urged the letter not to go in, that it did not contain our thinking, that the implications were not as the letter had set forth and I think that we were successful in making our position clear.

Q  Did the letter put you on the defensive at that point?

A  I think the letter put me very much on the
defensive. The reaction of the inmates put me on the defensive and I am not sure if the letter wasn't sent in through ignorance or through a design to effect our deaths and give an excuse for the troopers to go in. I haven't analyzed fully or come to any conclusion on that but I have always felt that there was something terribly wrong with that letter going in and needlessly to have it go in.

Q Well, do you think that that letter had an effect on the speech making by the observers in the yard?

A Well, it had an effect certainly on my attitude. I can't speak for the others. Again, my white middle class fears came to the fore. I had never been in a position where I was completely under the control of another group of men to this extent. And a lot of fears, imaginary or otherwise, went through my mind. I think I was very frightened. I watched the other observers and I think they were equally frightened but we determined just go go in and make our explanations.

Q Mr. Kunstler, there has been a lot of public discussion about your speech that day. There was discussion before you spoke about—by at least one inmate about a possibility of leaving the country and inquiring of another observer whether he could provide them with
tickets to get out. Do you recall that?

A   I do.

Q   And do you recall that one of the inmates asked for a show of hands as to how many inmates would leave the country if asylum was granted?

A   Yes, and there were a number of hands that went in the air.

Q   Then do you recall that this inmate turned to you and posed the question, "Mr. Kunstler, what is this I hear about foreign countries?"

A   That is correct.

Q   And that was the first time that you spoke publicly in the yard that afternoon?

A   That is right.

Q   You were responding to that question?

A   I responded to that question.

Q   And you responded by saying, "There are four third world and African country people across the street from this prison prepared to provide asylum for every one that wants to leave this country from this prison."

What was the basis for making that statement, Mr. Kunstler?

A   Well, Mr. Liman, I had met on Saturday morning at my motel with four people. And you remember in the executive session I did not give their names because I
I have contacted three of them and they have authorized the use of their names and I will use their names from this point on. They were, the four people were members of the Black Panther Party. Their names are Kenhasha, Curtis Powell and Lumumba Shakur and they had informed me that they had received assurances from four non-imperialistic countries that any inmates that were released from prison could start a new life in those countries.

I did not mention that on Saturday at all because the demand for extra-territorial emigration had been dropped on Friday night. When it was posed to me on Sunday, I used the language which I imagine comes from the WBAI tape that you have used. I used that language. It was somewhat inaccurate because I did use the term, I think representatives of four countries and that was in error. What I meant to say, there were four people across the street who had been authorized by four countries to make this statement.

After I had made it, people were sent over to me, it was sort of like a free for all in the yard, free time in essence, and people were sent over to me who said they were interested in that proposal. And I told them that it meant they would have to serve their time and
then start a new life in a new country and that drained away the interest very rapidly of those who came up to me.

Q  Do I understand that the offer that was conveyed to you was that after people had served their time, their sentences in prison, they could find a home in one of these countries rather than they could find a home immediately?

A  Well, it wasn't quite like that. It was a little more general and they didn't make a differentiation between the serving time and not serving time. But the interpretation I had, since the demand had been dropped and it would not be an accepted demand, was that no one was going to be allowed to leave to go to such a country until he had served his time.

I think if they had allowed them to leave without serving their time, they would have accepted that offer certainly, but I didn't think realistically I didn't think that would ever occur. I told them that and I lost my audience immediately.

Q  Did the representatives of the Panther Party who you mentioned identify the countries?

A  They identified the countries to me but for the same reason that I didn't want to mention their names, I don't want to mention the countries unless I have the
agreement of those countries in question.

But they were countries I think you can imagine what countries they would be.

Q Following that statement, Mr. Kunstler, you also added, "I want to say one more word because I think it's important that you know it. Bobby Seale called me at 4 a.m. this morning and said he would be at the prison at 7 o'clock. He came here at 7 o'clock. He met us on the roof where we have been imprisoned—he met us in the room where we have been imprisoned until they let us through to here. Commissioner Oswald said to him that he wanted him to come in here and persuade you to accept conditions which were unacceptable to you. Bobby Seale did not enter this compound today because he would not compromise you."

Do you remember making that statement?

A Yes, I think that is an exact quote.

Q In fact, had Mr. Seale gone in the room that morning, do you recall?

A No. This was all outside the prison and my recollection was about 9 o'clock rather than 7, because I don't think I reached the prison that early, but it was all in a car outside the prison directly in front of the round circular driveway that is in front of the institution.
Q   And so far as you know, he hadn't seen Commissioner Oswald that day?
A   No, he had seen him the night before and the commissioner had made essentially that same statement, that he wanted Bobby Seale to go in there and endorse these proposals. In fact there was a great deal of todo about Bobby coming in in the first place and he had to be stopped by State Troopers finally because he had left the institution and Commissioner Oswald had not yet made up his mind whether to let him in and it was Commissioner Oswald's intent, expressed to be because I was with him when we were calling the State Troopers and worrying what Bobby Seale would do when a bevy of State Troopers stopped him on the road.

He then said he wanted Bobby Seale to lend his support to those proposals.

Q   But he let Bobby Seale in Saturday night even though Bobby Seale was not prepared to support the proposals on Saturday night?
A   That's correct.

Q   Am I correct that you base this statement on your assumption that if Bobby Seale ever told Commissioner Oswald that he was going to go in there and say that the Black Panther Party supported the demand for flight to a non-imperialistic country, Commissioner Oswald would
not have let him in?

A I'm certain he would not have. This was discussed with myself and Bobby Seale. I am positive if he was just going in there to repeat what he told me, that he would not be allowed admission.

Q This statement, like the other statement I read, is not precisely correct. There were inaccuracies in it in the sense that he didn't come into your room and Oswald didn't see him that morning and I wonder whether your speech in the yard on Sunday was affected by your fear and emotions at that time.

A I think that I was quite accurate with the second portion you have read. I think I said that Bobby Seale felt he could not come into the institution if he were coming in solely for the purpose of urging you to accept proposals which you found unacceptable. The part about the third world, I would imagine, was motivated by many aspects. One, I was asked the question so I responded. And two, if there is an inaccuracy and there is in that one, I can see that myself, I think it probably was motivated by a lot of complex factors. Not the least of which was probably fear, among other things.

Q Were other observers getting carried away by the atmosphere of the occasion on Sunday?

A Well, the Sunday meeting was the most difficult
of them all, the most unique, and I think when we were in the yard on Sunday, everyone felt that we were on the edge of a cosmic tragedy and that the forces were going to be unleashed and no one could hold them back and that a lot of these men were going to die in that yard and I think that colored everything.

There was a certain despair. A certain attitude of farewell. A certain stoicism that the inmates were exhibiting. They were making statements also that indicated they had sort of steeled themselves for the inevitable.

I'm not sure that they all believed they would die or that there would be a chance of anyone dying and how this affected each man I don't know, but the general impression was one of despair, stoicism, fear and almost as if we were saying goodbye among friends.

Q  On Saturday night, you and others including the hostages, inmates, all have testified that you urged the inmates--you stated to the inmates that the 28 proposals were the best that they could get. Why did you and the other observers not repeat that admonition on Sunday?

A  Well, I'm not sure that some didn't. I don't remember hearing any. I know I did not. And I think that the purpose of the Sunday visit was totally different.
On Sunday we were in there essentially to record the comments of the hostages. That is mainly what we did, outside of some of these goodbye speeches and in fact the inmates insisted that we bring in certain reporters for that purpose.

A Puerto Rican reporter and Rudy Garcia accompanied us in that day and they wanted a black reporter and I think the editor of the Amsterdam News came in and a black photographer so we came in with some third world reporters and they with Tom Ricker interviewed five or six of the hostages and the messages we wanted to get out was and the only thing we could think of was tell the Governor to come and pleade for more time and the hostages did exactly that.

Q In part you were trying to mobilize public opinion to cause the Governor to come?

A I think I had given up the thought that any negotiations would not be successful on the State's part. I think the inmates were more flexible as later events proved. But I thought the only alternative we had was to just mobilize public opinion just to gain time and to get the Governor to come to the scene.

Q When you were actually in D-Yard on Sunday and talking and listening to speeches over the loud speaker, did any inmate or any person suggest in the speeches
that a compromise on amnesty was possible?

A No. There was no public utterance that I recall about such a possibility.

Q You told us in executive session and I would like you now to state for the record that you had a conversation in private as you were leaving A-Tunnel on the way back to the administration about that possibility?

A Yes, I had a conversation with several inmates, one of whom at least was in my judgment in the leadership capacity and he told me in particular because we walked together down this tunnel that he thought the inmates were prepared to give up on the removal of Superintendent Mancusi and that they were prepared to discuss some alternatives to amnesty.

He didn't spell out the latter. I was to do that later for myself. But he said that we were to go back and continue negotiations and know that the inmates were yielding essentially on what were originally classed as non-negotiable demands.

Q Given this characterization of the society which you have just described as Athenian democracy, did you think that any one leader could speak for this mass of inmates in the yard?

A No, but I thought that this particular man, as well as some others I had met there had good grasp of
what was happening in that prison and also knew the constituency very well and that given enough time, if we could come back with something that made sense and could spend more time with the inmates--we spent far too little--that we could have convinced them and by that time our only credibility might have been up a few notches as well.

(Continued on page 1217.)
You were here for the tail end of the testimony of one of the hostages, Mr. Johnson, in which he stated that he thought many inmates believed that the state was going to come in with clubs.

Did you have any impression as to whether the inmates reconciled themselves to the fact that the state was going to come in with clubs?

A Oh, I don't think there was any question. I never heard anyone say it would only be clubs and we had informed them and they had heard the build-up, they also heard the reporters on TV and radio.

We had informed them there was a definite build-up going on. That was one of the reasons on Saturday night that I urged them essentially to consider that these were the best demands they could get because we reported to them and others did as well, that there was a definite military build-up of monstrous proportions going on outside of that yard.

Q Given that fact, why do you think that the inmates were not prepared to accept the 28 demands? Not all of them, certainly, could have been involved in felony murder charges and other felony charges.

A I think, Mr. Liman, they misjudged their society and it was a tragic misjudgment.

Q In what way?
A They didn't realize that not only were they expendable but the hostages were expendable as well. I don't think, despite all the statements they made, the stoicism that I have indicated, that in their hearts they really believed that the governor would order armed men against unarmed men into that yard and murder them.

Q Do you believe that they thought that as long as they had their hostages there as shields, that the state just would not come in shooting?

A I am certain they believe that. I can't really read their minds. I think they were terribly surprised and shocked when that wave came in on Bloody Monday.

Q Did you feel that the presence of the television camera and media had an impact on the inmates' position?

A Well, I think it gave them a certain peace of mind that nothing would happen, they thought, if the television camera were in there.

There were reports of the state troopers firing rubber bullets from the parapets in order to let the inmates know that they were around and could easily substitute steel jacketed bullets for rubber bullets.

I think they felt that as long as there was a cameraman in there and particularly Rolland Barnes, who is a very brave black cameraman from WZRG in Buffalo,
someone who was a third world person, that they would have some degree of safety. They trusted
the press far more than they trusted the authorities.

Q Did you ever have the impression in the yard
that these inmates who, after all, had been numbers most
of their lives, would find it difficult to yield and yield
the television podium in effect in return for being number
once again?

A Oh, I guess that every human being who has been
a number and even many of us who have not been numbers
but names, is impressed by being on television or has
his ego somewhat titilated by it and I guess some people
who had never been anything in their lives suddenly
found themselves on nation wide television and, of course,
that must have had an effect.

But I don't think that had a paramount effect.
I thought the people that spoke and the people who were
involved that I could see were seriously interested in
changing the conditions of their lives and their sisters
and brothers across the country because, as you remember,
their initial manifesto was to the people of America,
not to the people of the State of New York.

And they were seriously interested in bearing
the lot, I thought, of every inmate of every penal insti-
tution in the United States.
Q Did you feel, at any time, that you had the power to persuade these people by your advocacy to accept the 28 demands as is?

A No. I didn't think I had that power. I thought, one, I was a white man. Two, I was a very middle-class white man. Three, I was part of the system. And four, I wasn't in their jeopardy and I think that the best I could do was to point out my opinion, as I did, about those demands, but that they had to make the decision.

I think one of the falacies about Attica and all prisons is that they are led by outside agitators, that they are not there own men and women.

And I think it proved, to me anyway, that they were directing themselves and that the responsibility was there's and that they were ready to assume it.

Q Did you believe that you had the power to convince them to negotiate in private through small committees?

A I would have like to have tried that, if we had more time. Because I became convinced that it was so unwieldy and a botched-up negotiation with nobody meeting face to face.

But I thought that that would have been most difficult to obtain. This variety of men were held together by a common urge, to better their own conditions.
And I think it was a very tenuous relation—ship built on that one slender thread and I thought to maintain it, they had to work with the entire constituency.

Q. What did you do after your conversation with these inmates in the tunnel about trying to bring about a peaceful resolution?

A. We came back to the steward's room and I think that was the night that Mr. Hardy's son brought us in our supper, if I'm not mistaken of it, he was the son of a hostage who was later killed.

And he was kind and considerate, even knowing the strain he must have been under for the safety of his father, and after that I think Commissioner Oswald came in and the members of the committee that were left tried desperately to get him to again give more time, get a commitment that we would have a few days and to get the governor to come and I spent a great deal of time personally with him.

I told him first about my conversation with the inmates when I left the yard about giving up on Superintendent Mancusi, which was one so-called non-negotiable demand, and secondly, I suggested a form of computation to him, that the governor would indicate that he would commute any death sentence to a certain
number of years and I thought that if that was done in view of what the brother had told me at the gate, that we could have probably had a chance of selling that.

I also went through a lot of history with the Commissioner. I pointed out that when he began to raise the issue of that isn't legal, the lawyers said we can't do that.

I pointed out that the Swiss Ambassador's life had been bought by Brazil at the expense of sending 100 designated political prisoners to Chile.

That James Cross, the economics visitor in Montreal had been released because the Canadian Government was willing to send 26 of his abductors to Cuba. And the fact that the British had released a suspected woman, Arab terrorist in return for the lives of people on the BOAC plane down in the desert.

I said, "When lives are at stake you must be somewhat flexible and isn't it worth this little token of a commutation to save those lives," or words to that effect.

And I thought he was impressed by what I said. I spent ten minutes in a very emotional session with him and I hoped that he would communicate that to someone, that the non-negotiable demands had in effect evanesced.
and that there were no non-negotiable demands in existence and no reason for troopers to go in.

Q What did he say?

A He said he would think about it and many others chimed in that night and when we left that night, we had the understanding there would be no assault that night.

By the way, our phone had been cut off so we knew that something was imminent. As well as we saw with our eyes what was happening in the yard.

And he said we could leave some observers there in the steward's room to be on the premises. And the rest of us went home to our motels, et cetera, and agreed to come back early the next morning.

He would not guarantee what would happen on Monday but he said he had a serious and tragic decision to make. I think those were essentially his words.

Q Mr. Kunstler, I think you told us in executive session that you had some understand, impression that the inmates had their own security force and they had their own justice system.

Did you have any impression as to whether inmates felt free to dissent if they chose to?

A Well, many did dissent, Mr. Liman. If you have some of these tapes, you will see that there was a dissension over the extraterritorial immigration to
a non-imperialist country.

Others would stand up and make demands which the rest would vote down. Everyone seemed to have access to the microphone as far as I could see. The only discipline I saw being asserted was, there was a fight on Friday.

One inmate seemed to go a little beserk and attack another inmate and he was subdued and he was subdued rather gently and he was then taken from the scene and I was told by someone that he would be placed in a cell somewhere and kept out of the way.

He was yelling and shouting and he was physically violent toward another inmate. I saw that happen.

Q On Monday morning you tried to return to the prison?

A Yes, I came there just as the gates closed in my face. That was apparently just before the helicopters took off. I'm not sure whether the small one, the decoy helicopter was not in the air when I got there but the two national guard Choctaws were still on the ground as I recall and I'll never forget that noise of those helicopter blazed because I can never hear it again without associating it with murder in their yard, but I saw them go off.

We imagined the drop was taking place and then
I began to hear what sounded like toy guns because it came from so far away. But must have been those shotguns and other weapons that the troopers were using, either as snipers or on the assault wave and then the door opened up, maybe 15, 20 minutes later and a whole battery of troopers, many of them crying, I guess the gas got under the mask, who were dressed, I think, in operating sort of raincoats, came running out and screaming, "White power, white power."

And then I just watched. Then the Commissioner came out and read a statement that they had saved the lives of a lot of hostages and I don't know whether he said they had found their throats were being cut or not at that time but he read a short statement.

I went up to him and asked that I be permitted to at least see what happened in D-yard and he just said no and turned and went inside the institution.

Q That was the last time that you were at Attica, certainly inside the main prison gate?

A That's right. I stayed there until about 11:30 that day and then I left.

Q As you reflect back on this episode, do you think you said everything that you could say to the administration to get them to stay their hand?

A No, I think we made a lot of mistakes for which
I take responsibility very personally.

Number one, I think we made a terrible blunder in not remaining in the yard throughout. In being there to talk with the prisoners and insisting, perhaps, that the negotiations take place in the yard with state officials.

Number two, we were too big a committee. It was unwieldy, it was politically disorientated and we didn't even really know what our total function was to be.

Number three, and this is something a little different, I guess, I thought that knowing they were going to go in and assault those prisoners, that we owed them a duty as human beings, we have that negotiating committee who were in on Sunday to remain there over night and to try with our own bodies to prevent what happened.

I rather imagine we would have been expendible as anybody else but I feel very personally that I really let them down by leaving and not staying there.

Q As you know, some people feel that the observers' committee felt free only to put pressure on the state to give concession and not on the inmates. How do you respond to that observation?

A Well, I thought all of the demands were demands
that were reasonable. Certainly the 28 were highly reasonable because they were accepted, in essence. The other two I thought were reasonable in view of the relationship with Superintendent Mancusi and the inmates and the question of amnesty which was so crucial and which had been so dramatically illustrated by other indictments in other institutions, particularly Auburn, Long Island and the Tombs.

But I also felt that maybe the inmates would yield on those so-called two non-negotiable items. In fact, there was a discussion I had with one of the inmates on the way out that led to him telling me, I think, that I had a little more freedom at least to talk but we did feel that the, I felt the inmates were right.

Q But the point that I was trying to raise with you is that it is said that whereas you said to the inmates, this is the best we can get, the overseers as a group said to the state, you have to give more, they urged the state to give more never turned to the inmates and urged the inmates to call it a day.

Did anybody do that with the inmates?

A Well, I think when I told them it was the best they could get, I think I laid it on the line that it was to take these or be assaulted. They took that to mean essentially go back and negotiate some more.
that in view of our function that we were sort of a
go-between between two bodies of people. The State
of New York represented by its officials and the prisoners
represented by their negotiating committee.

I'm not sure that we were, with the exception
of myself who was an attorney for them at this point,
I'm not sure we really understood the whole nature of
the function.

We were pressing the state because the state
had the power and only the state could kill and we were
pressing the state and we thought that if we could hold
the state off and got a little more time, maybe we could
work with the inmates, if we could bet back in and nego-
tiate, but we never had that time with them that was
spend other than in these high tension moments I have
described.

Q But even here you use the word pressing when
you talk about the state and working when you talk about
working with the inmates.

I mean, did anybody in the observer group
feel free to press the inmates, to give up the hostages,
accept the 28 demands, come out and negotiate privately
in another part of the prison?

A I don't know if anybody felt free but I felt the
I would never do that. I felt that they had their only bargaining power with those hostages. I was convinced the hostages would be safe. And--if negotiations continued. And I was convinced no one would die in the yard if we could just get some time.

I think if any member of the committee had said, give up the hostages, that that person would then have lacked all value with those inmates.

Q Lastly, I would invite your comment on the position which the governor has stated publicly, which as I understand it is that to engage in negotiation and make concessions over the body of hostages is really to invite the taking of hostages as a means of obtaining relief, even from legitimate demands.

How do you answer that?

A I think it's a terribly immoral and inflexible statement because one, I think it's untrue. I think if they had gone through with the changes in the penal system that these inmates had practically had the state's acceptance, there would have been very few inmate rebellions in the United States.

This would have been a model for the entire country. Secondly, I think it's totally inflexible because it really says, kill everybody rather than take the chance that we can have a fruitful negotiation.
I don't think it's the attitude that Governor Cahill took at Rahway and nobody died at Rahway.

Q But he didn't grant amnesty. Do you believe--

A That was not one of the demands at Rahway.

Q But do you believe that under all circumstances in a situation like this it is better to grant amnesty and save lives than to argue the principle that the governor has stated in his speeches and lose lives?

A I think under all circumstances lives are more paramount than principle.

Q Whatever the demands or however warranted the demands for reform may be that have given rise to the disturbance?

A Yes. And I might say here, Mr. Liman, the inmates had sent these demands in two months earlier in July and they had essentially been ignored.

Q I think you will find when you see our record that we have covered the whole area of efforts at change in Attica and inaction and response.

MR. LIMAN: Thank you and I have no further questions.

EXAMINATION BY MR. McKAY:

Q Mr. Kunstler, Sunday night as I understand your statement, when you went into the yard that final
time, you anticipated that it was the last time that you would see the inmates in that circumstance and that it was a kind of farewell scene.

A I thought only a miracle, Dean McKay, would have averted an onslaught.

Q You really anticipated that there would be an onslaught with armed forces in the near future?

A Yes, sir.

Q You also stated that the inmates somehow did not have that perception, that in their heart of thoughts, they thought that the state finally would not come in with armed forces?

A They had more faith in the system than I did.

Q And yet, you, the one they trusted perhaps above all others, and you, an eloquent man, failed to state that night in any clear way, or in any way at all to the inmates what you thought was the reality?

A Well, they--

Q Should you not have said something to them so they would know what risk they were taking?

A I think they really knew, Dean McKay. What I am speaking about is probably underneath they had this faith. Many of the speakers before me had stated exactly that. Had described the build-up. And had indicated that death was imminent.
Q  On Sunday?

A  On Sunday. And they knew death was imminent. If you listen to the tapes on Sunday, of what people said, what inmates said and what other people said, I thought it was a farewell. There was no question in my mind that they knew and my stressing of it beyond that point, in afterthought you might say yes, you might spell it out a little more. But they knew the power. There was no misunderstanding. We had described the searchlights. They knew about the gas.

Q  They knew the power but as I understood your statement a little earlier, they thought--you thought they thought that that power would not be used.

A  Well, a lot of my thinking on that score comes from later discussions with inmates after the onslaught and my own recreation of the scene in my own mind, and I now come to the conclusion that they did have more faith in the value of the lives of the hostages than the outside people did.

Q  If you had known then what you now perceive, would you have stated something more decisively about the threat?

A  I'm not sure. It's a very delicate position you are in. You are in a negotiating position and you say that I have creditability with them and you are in a
position where the maintenance of that creditability is very poor because I also thought that we had a chance to hold it off and if we still had their confidence.

That's why we spent five hours more or less, from the time we got out after supper on Sunday night, with Oswald until about midnight, because I really believe in one sense that they wouldn't sacrifice the hostages.

I don't think I believed it as strongly as the inmates did but I thought we could convince Oswald because Oswald impressed me as a very frustrated uncertain man who was not his own master but who was deeply disturbed and deeply upset about what was going on around him.

And I thought I could reach Oswald and I thought for a moment we had on Sunday night when we asked him for an assurance that he would not go in and give us a definite time but the moment he said to us that he would not give us a definite time on Monday when we could consider it safe, then I knew that he really had made up his mind or somebody had made up his mind.

I'm not sure he played the final decision. In fact, I'm quite sure he didn't.

Q Then one just highly speculative question. The role of Bobby Seale. If the central committee had
authorized him to speak in behalf of acceptance of the 28 points, do you think then the inmates would have accepted that? Was he that crucial a character?

A I don't know. I first thought he might be. One of the reasons I called him was to have him there. The inmates had asked for him or for a black panther.

On reflection I'm not sure how they would have accepted Bobby Seale's appraisal of the demands. I thought that it was not the panthers or panther philosophy in the yard that was paramount and I maybe even over estimated the influence of Bobby Seale but I'm not sure.

He had one thing that very few of us had, of course. One, he was black. And two, he came out of the militant wing of the movement for black liberation and I thought he might have a lot of creditability but I was just guessing, you know.

I didn't really know and I didn't consult the inmates. They had to take Bobby as they saw him and judge what he said from their own point of view but I thought he could help, and particularly since they asked for him.

MR. McKay: I know that several other members of the Commission have questions. Let me start with Mr. Rothschild.
EXAMINATION BY MR. ROTHSCHILD:

Q Mr. Kunstler, in these discussions as Mr. Liman said there were a number of observers. The role of an observer has really been kind of hard to figure out just what it did end up being.

I think your role even complicates it further. Some said they viewed the observers' role as being an observer of negotiations between the state and the inmates or between the authorities and the inmates.

Is that a role that you viewed at any time?

A I don't know, Mr. Rothschild. I heard the word observer from the beginning. Never negotiator. But observer and we still call ourselves the observers' committee because we meet periodically.

The word observer had no meaning to me at all except to watch and I didn't know what I was supposed to watch or whether they wanted us there just to insure that things remained on even scale. I didn't know what the role was.

Q Do you think that the presence of that large group of people intervening perhaps made any face-to-face negotiation between the parties at issue impossible?

A I think so. I thought when Governor Cahill limited the negotiating committee at Rahway, I think to three, that this was a much wiser move.
Q I wasn't thinking of numbers so much. I was thinking of the fact there was, after all, the Commissioner of Correction, there was leadership of sorts of the inmates. Through no intervention of the observers but the fact remains the observers being present made it possible for the Commissioner of Correction to decide not to go back in the yard and in fact end the face-to-face negotiation there and then and you people then filled the void so in a sense you truncated any meaningful negotiation between the parties, did you not?

A That's assuming the Commissioner would go back in the yard. I thought his statement was he would never go back but he would negotiate if they came out of the yard--

Q Maybe he would have. One side would have had to do something about that point had you not been there to form a third wheel.

A It may be true, that which you say, but I think that the inmates wanted someone there who was not of authority. Someone like Rolland Barnes, the cameraman. But they wanted someone not so much a television recorder but human beings with whom they had some relationship and they put together a very interesting committee of people either whose articles they had read like Wicker and
Roth and whom they had known from the Buffalo area like Eve, or myself whom they had known through the press and they put together a rather unique committee.

We were much too big when it grew, not through their doing but through the state's doing and through volunteers dropping in to a committee of 30. I thought ten, five might have been useful.

Q I think everyone agrees with that. Another aspect of your role in particular. Assuming they weren't observers and they became semi-negotiators or at least many of them described their role, and you did too, I think, as running back and forth between parties, as messengers in a sense with an editorial ability.

How does being a advocate affect that? You were the only one who had a direct client, if you will. You were no longer making any pretense of being a carrier of messages or a middle man. You were positively representing one of the two parties at issue.

Did not this make your role perhaps a little more difficult to fit in with the others?

A Not too much because I accepted that retainer sort of as a creditability gesture. I knew that although I thought the lawyer-client relationship did spring up, which is the reason I won't mention any names of inmates, I knew that that was, I thought, an offer by
the inmates, which I couldn't reject under any circumstances.

If I were to say no, I thought it would have been a slap in the face and--

Q I don't think you could reject it. On the other hand, having taken it--you see my worry is this. I am not a lawyer. I have had more dealings with them all my life than I thought I would but any way, I think the mediation role, if you will accept that as an over general description, involved trying to be certain that there is no breakdown in negotiations.

A mediator whose negotiations break down will not live to try again another day. An advocate is quite prepared, in my experience with advocates, to have negotiations break down if in fact that's a tactic to achieve the end his client thinks he is best served by.

So it is a rather important definition and I think some of the things that transpired later--

A You see, I don't believe, certainly by Sunday, that that was really much of an issue, that status. I think everyone was unanimous in wanting to gain this time and to keep the negotiations going.

That's why we spent so much time Sunday night trying to convince Oswald to talk to the governor about
this commutation proposal, for example.

I think everyone on the committee wanted the negotiations to go on.

MR. McKay: May I interrupt just for a moment for the convenience of our reporter who needs to change his roll.

THE WITNESS: Oh, I'm sorry.

MR. McKay: Please continue.

A I was saying that by Sunday night certainly, and probably by Saturday evening, I don't think the discontinuation between lawyer and negotiator and observer really had much meaning.

I thought we were just a bunch of human beings trying to gain time and thinking of every possible way to alleviate a tragedy, including calling the governor, meeting with Bobby Douglass and Dr. Hurd, talking endlessly with Commissioner Oswald, proposing that it would be non-negotiable demands with essentially negotiable and one had been dropped completely and trying to work out a time sequence, that if we could get more time we were convinced that there would be no death in the yard and we also wanted more time in the yard.

You must remember the Commissioner did not permit us to go into the yard except when he wanted us to and in fact on Sunday one of the reasons we were in
there in the afternoon, even though we had promised to be there at seven in the morning was the fact that we finally incited when two notes came from the inmates, "Where are the observers' committee," we finally insisted on going in and that's when we were forced to sign those general releases I think for the first time if I am not mistaken, the general releases indicating if anything happened to us the State of New York would not be held to our heirs and descendents.

Q Despite the fact what you say I am sure is right that you were involved in more than the client relationship at that point in your own words your client misjudged society. The society, and that's why they didn't understand what was going to happen.

A That's an interpretation that I put on it afterwards.

Q That's what you said though.

A Yes, I agree with that.

Q And if in fact they did, do you view this, since you were their lawyer, as a failure on your part because this was critical to their case, in fact it was fatal to their case.

This is the one thing that it would seem as their advocate couldn't happen.

A Well, I in a way believed the same thing they
did up to a point. I really thought they wouldn't go in with the hostages inside. I didn't have the faith they had, I think, as I have learned afterwards because many that I have met who have been paroled have spoken to me that they really believed they would not come in or if they came in they would only come in with gas or with clubs, even though there were a lot of brave sentiments about dying in the yard.

But in, I think if I had to do it all over again, I would approach it differently. I would tell them that there was no charity in the minds of the government. That government was cruel and bestial and would destroy them if they didn't accept those conditions and that there was no hope in further negotiation.

I think that I would have owed them that if I believe it then as I believe it now. So I think that, you know, I have thought over many things and I wish to God you could go back while 43 people were alive and recast it in the light of what you know now but that isn't possible in life. And you must be responsible for the decisions you make at the moment.

Q Do you think there is any explanation in the difference of the attitudes of the authorities and the observers for the fact that as you said the state has the power, the state also had the responsibility to
restore order in the institution at some point which really the observers didn't have in a direct way. Do you think that in anyway colored the responses that each gave in its own fashion?

A It might have. I don't think that we were oblivious to the fact the state had a responsibility to restore order. State always do when there is a disruption, to put down rebellions is what states try to do, but on the other hand, we thought that since nothing was happening in the yard, the hostages were being taken care of, the sick ones were passed out, they were taking care of the ones that were in there, that since nothing was happening and since time was irrelevant to many of these men, what difference did it make if it went on a week or two weeks, if you could keep the people alive so I guess it came down to just a question of time, pleading for minutes and seconds and hours and I remember Mr. Kenyatta down on his knees on his prayer shawl in the yard, clutching at Oswald's knees and begging for time in the words of the Koran. And that's all we really wanted at the end, was time.

MR. ROTHSCHILD: Mr. Kunstler, I have no further questions. I only want to explain why we don't seem very friendly.

I think those of you that went there and
you in particular as often as you did and at the times you did contribute a tremendous amount to all of us who weren't there and wished it had been involved you did a great deal to try and solve it.

I don't mean it unkind to you directly.

THE WITNESS: No, I think the questions are important. I think they have to be hard questions and hard answers in anything that claims 43 lives and in which any human being has some area of responsibility and I think I have to answer these questions. And you have to ask them.

MR. McKay: Mr. Liman has just advised me that some statistics that we were going to present a little later have a special relevance in the light of the questioning that developed now and that has to do with the perceptions of the inmates at the time we are talking about, Sunday evening, which of them expected shooting at that time and so at the conclusion of this questioning period, we will have some information on that that will bear upon the subject we have also been speculating on.

Mr. Wilbanks, do you have questions?

MR. WILBANKS: Yes.

EXAMINATION BY MR. WILBANKS:
Q In regard to the political structure in the yard we have had several different impressions that have been communicated to us. All the way from absolute tyranny to Athenian democracy. And I want to put this question in a rather hard way because I am sure there are a lot of people that are thinking this and I want to give you an opportunity to respond to it.

I think and I think there is some evidence to point out that there were homosexual rapes in the yard, there were three murders of inmates by inmates, there were many inmates who felt they were not free to leave the yard, they would be punished if they did, there was a punishment detail to dig a trench.

In view of these types of things, how do you explain your statement that this was an Athenian democracy and again, composed of people and I suppose you meant this as a class and not as individuals, that these were—if I understand it as a class statement, that these were dignified and worthy men fighting for their lives. How do you reconcile this?

A Mr. Wilbanks, even in Athens people were punished, people were executed and discipline was asserted. The three murders of which I know nothing except they were apparently of three men who attempted to give the
outside world the impression that they weren't responsible for this, through a television interview but that the other inmates were, might be regarded as an execution.

I understand that there was a trial and so I am not prepared to accept the word murder in respect to them.

As to punishments of digging trenches and what have you, I don't know, I've heard of those things too and I don't know what the cause of the punishment was but I rather imagine there was a discipline in the yard.

This was not a meeting of the AT&T stockholders. This was a meeting of a yard filled with many desperate men, all of a sudden having power, all of a sudden being faced with the confrontation with the state which was in the offing.

And I think out of this desperate nature you emerge with some sort of a, whatever you want to call it, Athenian democracy or whatever term people want to use.

That it had pressures in it, of course. This could not emerge in anything but that but I saw nothing that would indicate to me that people were being coerced or pressured.
I am sure there was a pressure of just being in the group. That was important. But while I was in the yard with the exception of the men who were stopped from fighting and put in a cell, I saw tolerance of all views.

In fact, there were some diametrically opposed views that were stated. So I guess it must have had harsh moments. And undoubtedly did. How they restored order out of any chaos after the initial take-over is a miracle in itself so when I say there were worthy and dignified men, they were in the light in which you saw them.

And I thought they were very much in the position of the Warsaw Ghetto in some degree and having very much the same feelings that they were about to be annihilated.

I think it's hard for me or for you or for anyone on the outside to understand what it must have been in the yard on the take-over, what must have been going through the minds of men.

If there were rapes, they occur in prisons, I know that, because prisons don't permit any sexual contact and yet these terribly abnormal tensions in the prison among heterosexual people and maybe they occurred.

But it is really quite small compared to the
number of men involved and what could have happened in the yard.

And therefore, I felt that they had done a good job, that they were to be commended for keeping some form of order. Whatever the discipline was in that yard.

(Continued on page 1248)
Q  If capital punishment were meted out, would it be your view that this was the advice of the entire yard or perhaps a select group?

A  I don't know. I wasn't there during that proceeding. Apparently it occurred on Friday before I got in but I heard from several people that there had been a trial and that this trial had involved three men who had given a television interview which jeopardized everybody and if you do that, you could bring on the whirlwind by doing it, when others hear about it, particularly under those tense conditions.

I think they committed suicide in essence by doing what they did.

Q  In our second session, Mr. Liman I think, phrased the question this way, that certainly you realize there were a lot of people in the public that didn't really believe there were four Third World countries and we asked you if you would possibly get permission from the people you talked about.

Perhaps I was mistaken. I was under the impression you were going to get names of four countries. It seems to me that if the public doesn't--a certain segment of the public, whoever may differ over the percentages, a segment of the public doesn't believe it, it would not be because we don't believe there were three
persons who came to you, it would be because some-\textsuperscript{1249} one would say, they didn't really believe that the four countries existed.

So what I am really saying is this. Could you respond to--it seems to me the public is really saying what were the countries and not what were the three people who told you this.

If you don't think they were reliable, why would you repeat it in the yard.

A I think they were reliable. I am perfectly willing to check with the representatives of those four countries and then indicate to the Committee, to the Commission, what the names are.

I don't think I even revealed them in the yard, if I am not mistaken. So I would be perfectly willing to do that. If they consent. I did this with the cour Panthers, only three of whom I was able to reach. I think the fourth would probably agree as well.

Since I didn't reach that person, I don't want to reveal the name. I will ask each one of the four countries whether they have any objection to me making public the names of the countries and what they said to these representatives.

Q I think that would be useful.
A  If they will do it, I have no wish to hide them except if they wish it. I just feel a certain obligation, as I did with the Panthers.

Q  This final question has been asked to several people in light of a statement that Mr. Oswald made at the conclusion of the session in Attica.

That is, he said that, sometime during these negotiations, he said something like we have given everything and they have given nothing, referring to the inmates.

You said that you felt the inmates were more flexible than the State. Some people might say the State made 28 concessions. What concessions did the inmates make?

Could you respond to that?

A  I don't think the State made any concessions. I think all the State did was to promise to do what they should have done for a hundred years back. In fact, those were Commissioner Oswald's words, that we're doing now what we should have done a hundred years ago so I thought that all the State was doing was realizing what humane prison treatment should be. The inmates were in a position of power. It was not a negotiation, I thought, essentially from a powerless group to a powerful group.
They had a certain power which were the hostages. And they did their yielding on the two so-called non-negotiable demands. It is such an impossible thing to judge this type of negotiation from retrospect and to do it in all the tensions that existed in that yard, but I thought that realistically the State should have understood what the situation was in the yard and realistically the State should have bargained for the lives and for time and not to talk about who is more flexible than someone else.

I understand that the Governor has refused to put any of these into practice because he said the inmates reneged on their agreement. They didn't come through on their own. That's a pretty tragic way to describe it. It's like a corporate merger. It's really saying we're not going to do what we think is a hundred years overdue because of the technicalities of some failure of negotiations. And I think that would be very sad and very tragic because Attica is not sui generis and Attica will happen again and again and again.

Because I think prisoners understand the source of power in this country and the only source they have is by the destruction of property or the seizure of people or the work stoppages and so on and I think the
time has come to really try to understand why the men in Attica did what they did rather than who went wrong or who should have done this in afterthought.

I think these posed a problem for the American people and I don't think that problem will go away no matter what this Commission or any Commission does about it.

MR. MC KAY: Mr. Marshall?

EXAMINATION BY MR. MARSHALL:

Q Mr. Kunstler, could I clarify what your view is about the amnesty question.

There were, whether you call them mergers or not, there were three inmates that died at other's hands in the prison and then there was Officer Quinn, so there were four deaths and then there was, there were a number of injuries.

In view of that, did you believe then and do you believe now that blanket amnesty could be granted to the people that were in that yard?

A Yes, I do.

I think that it could have been done legally and I certainly thought it should have been done morally. The problem, I guess, is the same problem that the Canadian Government must have had. Do we send 26 confessed kidnappers, a capital crime, to Cuba in return for the
life of a single man. They reached that decision.

I think the statistics would show high here, Mr.

Marshall, that it could have been done and I think
legalities could have been put aside in this instance.

After all they promised amnesty as to the property
damage crimes. It was only the personal injury crimes
that apparently blocked it.

And I thought that putting all of the legali-
ties aside, that it should have been done.

Q Are you acquainted with all the legali-
ties; have you looked into that?

A Yes, I understand that there are some difficul-
ties with amnesty in a sense. There is no doubt
that the District Attorney might have given a form of
amnesty. He refused to do so. There is no doubt
that would probably have been ineffective because he was
superseded anyway and we assumed he would be.

But when the legal difficulties were raised
about blanket amnesty, that the Governor lacked the
power to grant amnesty and I am willing to accept that
as a proposition, a legal proposition, that was why we
proposed commutation because commutation is within his
power.

Q I understand that. That's why I asked about
amnesty first. I understand your point about commuta-
tion, which is a quite different point though.

A That's right.

Q And a much lesser act on the part of the Governor, if he had decided to do it. That is, as I understood your proposal was that he would agree in advance to commute any death sentences that resulted from charges growing out of--

A That's right. I thought there would be no legal question on that. The amnesty, I understand there are legal problems, even though, I think they are not insurmountable. I understand there are legal problems and that's why we changed that to a commutation situation which we thought would pose no legal problems.

Q But, Mr. Kunstler, you did not change that with the inmates, as I understand it?

A The inmates essentially changed it with me because the word I got as I left was that we were permitted now to negotiate on a lesser plan and the person who told me this, I had great respect for and I knew he was in leadership and I took that as the word of the Negotiating Committee, not the inmates en masse, but the 13 who were doing the negotiating for the inmates and he was one of those 13 and I thought if Commissioner Oswald said to me, we are willing to consider that, we could go back in and then have a fighting
chance to get it.

If I had proposed it and I must tell you frankly, I didn't even think of it until I was out of the yard and in the Commissioner's presence that night, because I was just searching for something to fit the last words I had heard when we crossed back into official control, I think, if I had suggested it prior to that time, if I had thought of it and suggested it, then I would have gotten nowhere.

The tensions in the yard were unbearable on the amnesty question and after Quinn's death it became like a stone wall.

The only ray of light was the statement I had leaving and I thought maybe that I could translate that into something with Oswald, but I failed.

Q How do you respond to the question of whether you did or if not, why you didn't, advise your clients of the extraordinary obstacles to the grant of blanket amnesty?

A Well, I took the position on Saturday night that they could not get amnesty, that they had the best they were going to get and there was no amnesty possible and that was a decision I made to phrase it in the way I did because I had a deep sense of the emotions in the yard.
And I calculated in my mind that if I were to have any credibility whatsoever, that I had to run a very gentle course on the amnesty. It was the word I heard everywhere in the yard, was amnesty. It was the word that was the key word long before I got in the yard. And I just wanted to save my credibility and serve a function if I could, and I know that's difficult to explain when you are not in the yard, to people who have not been in the yard, but you make certain mental decisions and you hope that you're right. You pray that you're not wrong.

Q As in the case of my colleagues over here, I am asking these questions because many people are asking them and that's our function.

I think that everything else I had in mind has already been covered.

MR. MC KAY: Mrs. Wadsworth.

EXAMINATION BY MRS. WADSWORTH:

Q Mr. Kunstler, I think that you have probably made the word Athenian democracy something that none of us will forget, a new interpretation, a new way of thinking of that phrase.

You mentioned earlier in your testimony that you were very impressed with it, on your first arrival in the yard of the security force for the Puerto Rican,
the black and white together.

The coalition of people working together for a cause. I would assume that you would feel that this philosophically is a very important thing, the coalition of unique groups working together. It occurred to me as we heard many of the Observers that the Observer Group itself is indeed a coalition of this kind.

Certainly to understand State people who have shared a highly unique experience. Has there been any effort to continue as a group or a core group—you said something and was stopped. Has there been any effort with that kind of shared experience and commitment and feeling to continue as a group toward any kind of reforms?

A Yes, there has been. The Committee has been meeting more or less irregularly. We have another meeting scheduled, I think, in the very near future. Most of the people have come. The only people who have not shown up have been those people who either left early during the negotiations or who were part, I thought, of the Governor's team on the Negotiating Committee.

For example, Alfredo Matthews has never shown up to my knowledge. Even though he stated until the
end, at a Committee meeting but most of the others have.

Tom Wicker, Assemblyman Eve. In fact Assemblyman Evan has been the prime mover in keeping us together and sending out the postcards and having our meetings. We have been one coming up I think late in April and I think that's a very good thing because there is no doubt with all our egos and eccentricities and our different political backgrounds and occupations, there is no doubt, I think, our souls were seared in that experience and while I may talk glibly before a microphone and in the secret recesses of my own mind I relive it and relive it.

I think if we can stay together, maybe some good out of this terrible tragedy can come. Maybe just a little thing. At least we are staying together and we are meeting and we have a Committee that's in existence even though the reason for its existence has vanished, at least the immediate reason.

Q It seems that as a society we are now coming to what should have been a very obvious thought that we are willing to involve people involved in decisions in the decision-making.

Whether this be students or whether it be the elderly, whatever group you want to take, when you now
think of involving them in the decisions. This, of course, we will relate to the prisoners and their part in prison reform.

Do you see your group as a group which might in any way develop the mechanism which would let this input be possible?

A I don't know. It is possible. Our meetings have been somewhat infrequent as of late because everyone is involved somewhere else. But I hope that Assemblyman Eve keeps us moving. He is the prime mover and he, I might add, is one of the finest human beings that I have met and I met him under the strangest of circumstances, and I think a lot of the Puerto Rican members, the members from the Prisoners Solidarity Committee, from the Young Lords and so on, are keenly interested in what's happening to their brothers and sisters behind those bars, and I think the middle class members like myself are learning a great deal about ultimate responsibility in this type of society so it is possible.

I hope it does that. It would be a fine thing if it did.

MRS. WADSWORTH: Thank you.

MR. MC KAY: Mr. Henix?

EXAMINATION BY MR. HENIX:
Mr. Kunstler, I only have one question to ask you. It seems to have been drug across the coals in some way, but I want you to listen and hear the whole question before you respond to it.

Because it is being constantly asked of me in the community in which I come from, and it is not a middle class community. And this is the question that they are asking. Do you know why no inmates who are in the box at Attica as a result of the September incident, are not willing to testify here publicly? If this question would breech any confidence, you do not have to answer.

I haven't spoken to the inmates, but I know from the vibrations I get that there is one, a deep distrust of a Commission appointed by the very person that they believe murdered their brothers in the yard, and that they have such a deep distrust that they will not communicate with any member of this Commission.

There may be other reasons which I don't know but I know they feel that very strongly and I respect that feeling because I have, I must be quite frank, a similar distrust.

Just to follow it up, I can accept that and I think because the Commission has always been in some way put in jeopardy, just our existence, but at the same
time, I also realize that this is one of the only investigations that could get a realistic picture of Attica in front of the public, and it is a question of reality, a basic question, whether what we have been talking about all the time, trusting each other and getting to the point where we can say, well, maybe change is possible and I think those who are not willing to give consideration to the possibility of change don't deserve to see any.

A Mr. Henix, I guess to justify their stand is not really up to either one of us in the last analysis. They have a long history of distrust, a history that was fed by Auburn, Long Island City, the Tombs, San Quentin, Comstock Prison and you just don't overcome that by words. Only deeds will overcome that distrust. And so far it's only been words and--

Q We are trying to make it a little more than that.

A I am testifying despite the fact that my brothers refused to testify because I put it frankly, I think the forum is important, not so much what the Commission does but the forum is important and I think it is important if I am articulate and was there that I say what I saw and give some of the reasons for why I did what I did. That is my reason for being here.
MR. HENIX: Very good.

MR. MC KAY: Bishop Broderick, did you have a question?

EXAMINATION BY MR. BRODERICK:

Q I was interested in your observation of the State Troopers after the assault. I think you said they came out shouting "White Power, White Power." Is that accurate?

A That's correct.

Q Would this be a signal or was it one and were they readily identifiable?

A They were identifiable.

A It was many more than one and when the door opened you could hear it inside. I don't blame, Bishop, the State Troopers. I did in the beginning. I received a letter from the wife of one of the victims, State Troopers, the widow who stated to me that she wanted answers to questions. She couldn't understand why her husband died in the yard and I wrote her a long letter. I brought it here but I think it is useless to read it, in which I stated a lot of things, but I don't really blame those troopers.

For four days there was a build-up. For four days they thought of their colleagues inside, Quinn died, others had been injured. And for four days these
Upstate people who did not number any blacks or Puerto Ricans among them, these Upstate people nurtured in the idea that they are dealing with criminals who have no dignity or worth in our society and criminals who have done the unpardonable, had put in jeopardy their brothers in the yard, that if they were released into that yard they would kill and I really can't find it in my heart to say they are the guilty ones anymore than I think Lieutenant Calley is the guilty one. I think our failure is to go to those really responsible. The man who refused to come to the yard and to look in their faces was the man who killed everyone in the yard and I just don't think you can avoid that.

If he had come as Governor Cahill did under like circumstances and just looked into the faces of the State Troopers, these young men confronted with this terrible, terrible tension and fear and all the racial undertones that filtered through it, if he had looked into their eyes, he might have been moved to say, "Send them away," as Governor Cahill did at Rahway, but he chose to remain at Pocantico Hills and I think that to avoid the direct responsibility to the only man in the State who had the real power, is to transfer it to State Troopers who are as victimized as the hostages who were in turn as victimized as the inmates.
MR. MC KAY: Mr. Kunstler, you made one inadvertent mistake in your identification of the Commission and the appointive authority and I am sure you would want the record to be correct in that respect.

Members of the Commission were not chosen by the Governor, but by Judge Fuld, the Chief Judge of the New York Court of Appeals and the presiding Justices of the four Appellate Divisions.

The Governor did not participate in that decision.

THE WITNESS: But the authority of the Commission comes from the Governor.

MR. MC KAY: In order for us who hold authorization and to have special power, it must in some way come from the State, of course. That is the only State connection we have other than the funding, which comes from the legislature.

THE WITNESS: Putting aside all the strings of authority, it is my feeling that in essence the Commission is appointed, even though I know the presiding Justice of the Appellate Division and the Chief Judge of the Court of Appeals is somewhat involved, is appointed indirectly at
least by the Governor.

MR. MC KAY: The appointments were made by the five judges.

THE WITNESS: I understand that. I have learned to divorce the apparent no strings of authority to look to the source of the appointment, and I think that's the Governor.

MR. MC KAY: Mr. Marshall has one further question.

EXAMINATION BY MR. MARSHALL:

Q This is just a clarification. You identified the people coming out that shouted "White Power" as State Troopers.

A They could have been also the Sheriff's deputies. They all were wearing those orange coats. That's how I remember it best. But I wouldn't swear that they all were State Troopers.

Q The reason I asked the question was that you spoke of the death of a State Trooper and there were no State Trooper deaths, so that must have been a correction officer.

A No, I meant the death of Quinn. I said a colleague. But I meant a colleague in the general sense.

Q I suppose it is important that those institutions, that is, the State Troopers as against the cor-
rection officers, that they not be confused in our record and not lumped together. That's the reason I wanted to--

A You are entirely correct. I used the word colleague to mean someone in the nature of a non-civilian like a correctional officer or a State Trooper but it was William Quinn who was, of course, the dead-man.

MR. MC KAY: Mr. Kunstler, I think you are familiar with our procedure that although you have been very patient in responding to our questions, you would be most welcome, since you have been patient we would be most glad to hear from you on any additional statement you have to make, but I thought in this case if you do want to make a statement you might choose whether you want to make it now or whether you would prefer to wait until we have made this brief statistical presentation of material that is relevant to the discussion. It is your choice.

THE WITNESS: I will leave it up to you. If you think the pattern of the presentation would be more logical to present the statistical material and then follow it by my statement, which is only a page and a half, or whether you would have the
MR. MC KAY: Do you have any comments, Mr. Liman?

MR. LIMAN: I think Mr. Kunstler should read his statement now.

I think it makes sense.

MR. MC KAY. Fine. I hope he will stay for the other information as well.

THE WITNESS: I will. Some of this statement is--will in just a slightly longer form, state some of the things I have said and I don't say it with any feeling against any member of the Commission.

I have indicated my feeling about commissions in general in this area. But I want the statement to be in the record.

Number one, as I have indicated, the Commission must be regarded with suspicion by all because the source of its jurisdiction and power are the very state officials who are charged by the inmates with the slaughter of 40 people on September 13, 1971. There has been a long history of the appointment of investigating commissions by the governmental bodies to look into events in
which those very governmental bodies have been deeply involved.

That history is perhaps julminated by the resent report of the Lord Chief Justice of England which cleared the British Army of any responsibility in the killing of 13 Irish Catholics in Derry. I hope that the time has now passed when the people of this country can have faith in an investigatory scheme in which the perpetrators of the events being investigated in essense appoint the investigators.

Number two, there has been increasing publicity regarding the desperate conditions of life at the Attica Correctional Facilities, as well as in prisons throughout the country. To some extent these conditions have been exposed for many years for all of those who would look at them. At this juncture in our history it is not the knowledge that our penal system is charac-
terized by brutality, racism and sadism, which is critical, but rather it is some understanding of the necessary struggle against these conditions which is now of prime importance.

The struggle of the brothers of Attica as well as inmates in Auburn, the Tombs, Rikers
Island, Alderson, Rahway, San Quentin and hundreds of other jails and prisons says something of profound importance which we must now begin to understand:

That the conditions of life in these institutions are not going to be solely in the hands of the jailers and that the brothers and sisters who form the prison communities are going to do whatever may be necessary in order to be able themselves to have some control over the nature of their lives in these prisons.

Ultimately the thing that state and federal officials apparently refuse to recognize is that the inmates inside Attica could exercise any power whatsoever over their own lives. Prison reform is a respectable topic when discussed in the legislative halls in Albany or in the committee rooms of governmental and non-governmental bodies. It becomes an explosive issue when the inmates themselves seek to obtain that reform for it is then that they are asserting the basic human right of having some control over their own lives.

Thirdly, for some to say that I fed the fires of rebellion at Attica is not only factually false, but also another indication of how
inmates are generally viewed. The assumption in the accusation against me is that the inmates were not capable by themselves of trying to obtain some control over their lives, that they could be manipulated and mislead. It is critical that we disabuse ourselves of such notions regarding our brothers and sisters in jails throughout the country. Recently events should make it obvious to all of us that these inmates are not only capable of determining for themselves how they are going to be able to effect changes in their lives in the jails and prisons of the land, but that they are also committed to taking those steps necessary to carry out any determinations that they reach if society forces them to do so.

That's the end of my statement.

MR. MC KAY: Having known you as long as I have, Bill, I am confident you will not want to make any pre-judgment of the integrity or the fairmindedness of the Commission until you have had an opportunity to see all the evidence on display and to read our final report which, of course, will come out at a later time. As I think you understand the public hearings for the very reasons you suggested, are made to the public so there can
be a sharing of the information that relates to this terrible tragedy.

The Commission has made no conclusions, no judgments at this time. We will, of course, do that in the very near future and I know that you will want to share an objective examination of those conclusions based upon the facts at that time.

THE WITNESS: Dean McKay, I am making no pre-judgment. I was merely airing a suspicion that is probably prevalent in my mind with any such commission, not particularly this one. I hope my suspicions are unfounded.

MR. MC KAY: We are very glad you were willing to come to us today. You have been most helpful. Mr. Liman?

MR. LIMAN: Mr. Rosenfeld has prepared these statistics. They are based again on the interviewing process we have described, 1600 inmates at Attica really reduced itself to those inmates who were in the yard, in D-Yard who submitted to interviews and the questions posed related to those who expected the State to come in shooting and those who did not expect guns but rather expected clubs or other non-lethal force.
Stephen Rosenfeld will present the

statistics as usual.

MR. ROSENFELD: Mr. Liman, again, these
statistics were based upon our interviews with
inmates who were in D-Yard and are a compilation
by our staff, particularly Mrs. Pickman, of the
interviews of those inmates who were asked and
answered the question which the inmate who appeared
before us were asked, and that is what their expecta-
tions were as to the State Police assault.

They were asked, did you expect that if
the police came in, would they come in with fire-
arms, weapons, shooting or did you expect that
they would be coming in with clubs and gas?

Of those inmates that responded to the
question, 46.8 per cent said that they did not
expect shooting. And 53.2 per cent said they did
expect shooting. So that there was a very large
split among the inmates in the yard, slightly more
than half expected that there would be shooting.

Now, we did make an attempt to break
down each of those to see whether there were any
significant patterns of race, age, educational
levels, years in prison, crimes of which the inmates
are convicted and we determined that the differences
in all of these areas were insignificant sta-
tistically and that the split of expectations
as to shooting cut across all of these lines.

MR. MC KAY: Mr. Rosenfeld, of the
1600 or so inmates you have interviewed, how
large a proportion of them responded to these
questions?

THE WITNESS: First of all, Dean McKay,
it was only asked of those who were in the yard.
I think we interviewed something like close to 700
inmates who were in the yard and I think, this is
just from my recollection, about 400 of those re-
responded to the question.

MR. MC KAY: Thank you.

MR. LIMAN: Mr. Rosenfeld, we also pre-
viously presented the statistics on the amnesty
question of how many inmates were in favor of
holding out for amnesty--

MR. MARSHALL: Can I have a question?
Is there any way of evaluating that degree of
shootings? Were the questions phrased in that way?

THE WITNESS: No, Mr. Marshall. There
were, as you know, many interviewers conducting the
interviewing but the question as it appeared on
our interview forms was basically whether they
expected there to be shooting in the yard or whether they expected an assault with non-lethal weapons.

MR. LIMAN: The question was really based on the point that was raised earlier that we wanted to ascertain how many inmates thought that the troopers or whatever the police force was, that was going to be used, would come in with clubs only as they have come in in other penal institutions. Auburn and more recently in New York City.

And since many inmates have knowledge of the force that has been used in other institutions, we wanted to determine how many of them thought that the police were coming in only with clubs and how many realized that there was a real possibility that there would be gun fire and the loss of lives and this figure of roughly 50-50 represented a fairly wide sampling.

Some inmates said they thought that there wouldn't be as much shooting, that the key question that we were interested in is how many of them thought that all that was involved was a billy stick.

MR. ROSENTHAL: I think it ought to be qualified--
MR. MARSHALL: I was really wondering. If I thought that they would come in armed with firearms but they wouldn't use them unless, you know, they were attacked or there was an attack by the inmates or something, would I have answered yes or no?

MR. ROSENTHAL: I see your point. The question was did you expect shooting, not did you expect them to come in carrying weapons.

MR. LIMAN: I think that most inmates that we spoke to who answered that question had the attitude that if they were coming in with guns, they would inevitably be used.

MR. ROSENTHAL: Mr. Liman, the other statistics which were presented the other day, to recapitulate, was we asked the inmates and again, this is from their present view and how they answered the question now based on what their views were then, but we asked them on the question of amnesty whether they would be in favor of amnesty—whether they would be in favor of holding out for amnesty or whether amnesty was something that they were willing to give up in order to get out of the yard safely and just on the question of amnesty, 67.8 per cent of all the inmates interviewed re-
sponded that they did not favor amnesty.

MR. LIMAN: When you say did not favor amnesty, what we mean is they were not in favor of holding out for amnesty. Not that they objected to it per se.

MR. ROSENTHAL: That's right. And 26.6 per cent responded that they were in favor of amnesty and we broke that down more finally, 5.8 per cent of the total or about 1/6th of the group, one fifth of the group that said that they favored amnesty said that it wasn't that they themselves felt they needed a grant of amnesty, that they didn't feel in danger of prosecution themselves but they felt it was important to hold out for amnesty as an expression of support for the elected representatives who they thought were in some jeopardy.

MR. MC KAY: Thank you, Mr. Rosenfeld.

This, I believe, concludes our hearings for today. We will recess at this time then until Monday morning at 10 o'clock.

(Time noted: 5:35 p.m.)
CERTIFICATE

STATE OF NEW YORK )
COUNTY OF NEW YORK)

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

That I reported the continued proceedings
in the within entitled matter (pages to )
and that the within transcript is a true record of
said proceedings.

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 _/ day of April 1972.

LEON ZUCK