

Attica: The Official Report of the NYS Special Commission on Attica

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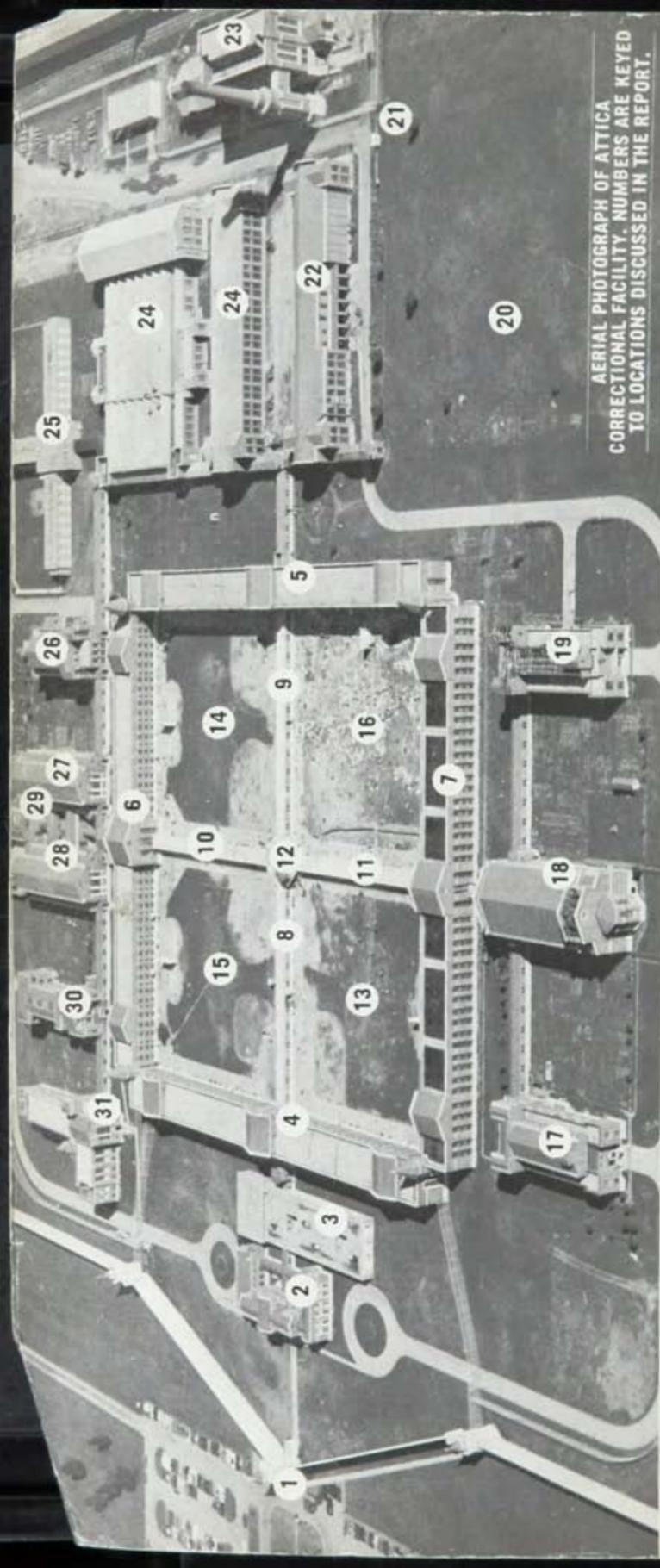
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**AERIAL PHOTOGRAPH OF ATTICA
CORRECTIONAL FACILITY. NUMBERS ARE KEYED
TO LOCATIONS DISCUSSED IN THE REPORT.**

- 1 Front Gate
- 2 Administration Bldg.
- 3 Annex
- 4 A Block
- 5 B Block
- 6 C Block
- 7 D Block
- 8 Catwalk and Tunnel

- 9 B Catwalk and Tunnel
- 10 C Catwalk and Tunnel
- 11 D Catwalk and Tunnel
- 12 Times Square
- 13 A Yard
- 14 B Yard
- 15 C Yard
- 16 D Yard

- 17 School
- 18 Auditorium/Chapel
- 19 State Shop
- 20 Ponderosa
- 21 Coal Shack
- 22 Commissary/Garage
- 23 Powerhouse
- 24 Metal Shops

- 25 E Block
- 26 Laundry
- 27 B Mess
- 28 A Mess
- 29 Kitchen/Bake Shop
- 30 Hospital
- 31 Reception Center and Segregation Cells (RR7)

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ATTICA

The Official Report
of the New York (State)
Special Commission on Attica

Plus 64 pages of
on-the-scene photographs



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ATTICA: THE OFFICIAL REPORT OF THE
NEW YORK STATE SPECIAL COMMISSION ON ATTICA
A Bantam Book / published September 1972

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PRINTED IN THE UNITED STATES OF AMERICA

ATTICA
The Official Report of the
New York State Special Commission on Attica

“Forty-three citizens of New York State died at Attica Correctional Facility between September 9 and 13, 1971. Thirty-nine of that number were killed and more than 80 others were wounded by gunfire during the 15 minutes it took the State Police to retake the prison on September 13. With the exception of Indian massacres in the late 19th century, the State Police assault which ended the four-day prison uprising was the bloodiest one-day encounter between Americans since the Civil War . . .

“The main purpose of the report is to dispel the long-persisting doubts about what actually happened between September 9 and 13, 1971 . . . The principal significance of this report may lie in the fact that it documents in considerable detail every aspect of the life and structure of a major prison, based upon more precise information than has ever before been assembled about any single institution.”

—from the Commission's Preface to
their Official Report

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Preface

Forty-three citizens of New York State died at Attica Correctional Facility between September 9 and 13, 1971. Thirty-nine of that number were killed and more than 80 others were wounded by gunfire during the 15 minutes it took the State Police to retake the prison on September 13. With the exception of Indian massacres in the late 19th century, the State Police assault which ended the four-day prison uprising was the bloodiest one-day encounter between Americans since the Civil War.

The New York State Special Commission on Attica was asked to reconstruct the events of those September days and to determine why they happened. The nine members of the Commission were designated by Chief Judge Stanley Fuld of the New York Court of Appeals and the presiding justices of the four Appellate Division Departments of the New York State judicial system. The appointments were announced in October 1971. Arthur L. Liman was chosen as General Counsel, and he selected a staff which, at its peak, included 36 full-time lawyers, investigators, and other staff members plus a number of consultants and part-time workers. The nature of the undertaking and the methodology of the investigation are described at the beginning of this report. The body of the report describes what it was like to live—and die—at Attica.

The main purpose of the report is to dispel the long-persisting doubts about what actually happened between September 9 and 13, 1971. The Commission is satisfied that the factual statement is accurate and complete.

In addition to fact-finding, we were asked to make judgments about antecedent causes and subsequent occurrences, where objective facts do not necessarily provide answers. While differing interpretations are of course possible about matters as subjective as assessment of responsibility at crucial stages along the way, the Commission is unanimous even on these questions of judgment.

But the facts and the judgments disclose only the tip of the fiery hell that lies below. It is not enough to answer the doubts about the events themselves, or even to fix responsibility for defects of planning and performance. The worrisome reality is that prisons, prisoners, and the problems of both are essentially invisible in the United States. We Americans have made our prisons disappear from sight as if by an act of will. We locate them mostly in places remote from view, and far removed from the homes of the inmates; we emphasize security almost to the exclusion of rehabilitation; and we manage to forget inmates and custodians alike by pretending that the prisoners will not return to our cities and our villages and our farms.

The Attica Correctional Facility in September 1971 was not perceptibly better or worse than the other maximum security prisons which at that time housed nine of every ten adult male offenders in the state system. While conditions at Attica may not have been exactly like those at other prisons in New York State or elsewhere, the problems in that institution at that time are sufficiently representative of the prison universe to justify some generalization. Accordingly, the principal significance of this report may lie in the fact that it documents in considerable detail every aspect of the life and structure of a major prison, based upon more precise information than has ever before been assembled about any single institution. Interviews with the vast majority of inmates, correction officers, and others involved in the daily life of Attica in September 1971 provide a unique opportunity to fix attention upon an entire institution at a particular instant of time. In capturing that moment we have examined state rules and procedures, prison politics, the changing nature of the inmate population, and festering racism—a dangerously volatile mix. That the explosion occurred first at Attica was probably chance. But the elements for replication are all around us. Attica is every prison; and every prison is Attica.

The neglect of our correction system is documented in the report in terms of one major institution in New York State. Other parts of the criminal justice system are similarly neglected. All citizens deplore the rise in crime and the implicit threat to a regime of law and order, but lit-

tle relief has been provided. The need is not for more statements but for more action.¹

The basic facts about the crime problem and the criminal justice system are not in dispute. If crime is big business, so is the criminal justice apparatus. Direct criminal justice expenditures (for police, courts, and corrections) came to \$6.5 billion in 1968-69 for all state and local governments in the United States. Federal costs added nearly a billion dollars more. And the costs rise each year. State and local governments process approximately 5 million offenders a year, and their courts handle at least 3 million cases annually; the Federal courts handle about 40,000 cases each year.

The Committee for Economic Development, in its 1972 study *Reducing Crime and Assuring Justice*, reported that nearly 2 percent of all males over the age of 12 are under correctional restraint at any one time: 300,000 in prisons and 54,000 in juvenile detention facilities; 75,000 in jails awaiting trial; about 900,000 under probationary supervision; and 300,000 on parole after release from confinement.

The social and psychic costs of crime are beyond calculation. In 1969, for example, there were a reported 14,500 murders, 306,000 aggravated assaults, 36,000 forcible rapes, and at least 300,000 robberies. The status quo is intolerable, not just for those who lived and died at Attica, but for the public which pays the price every day in escalating crime rates and mounting budgets. It is a shocking thought that 1 out of every 15 residents of New York City was a victim of crime in 1971, and that countless others live their lives like prisoners behind locked

¹In 1870 the National Congress on Penitentiary and Reformatory Discipline made its famous statement of principles. (See p. 12.) Despite widespread agreement on the soundness of most of the propositions there stated, implementation has been almost non-existent. Half a century later New York's Governor Alfred E. Smith appointed a State Prison Survey Committee whose famed Wickersham Report, in 1922, recommended sweeping reforms that were revolutionary then, as they would be even today. Its introductory statement noted that Governor De Witt Clinton had denounced the prison system more than a hundred years earlier; that Governor Throop had done so in 1830, Governor Marcy in 1834, Governor Seward in 1840, Governor Clark in 1856, Governor Robinson in 1879, and Governor Connell in 1882. In 1919 Governor Hughes had recommended reorganization of the prison system.

doors, fearing to walk the streets, ride the subways, or use the parks.

Although actual crime vastly exceeds that which is reported, the amount of crime officially reported is depressing enough. The Uniform Crime Reports developed by the FBI show that more than 8 million crimes were known to the police in 1970, an increase of about 175 percent over 1960 in the seven index crimes (criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny over \$50, and auto theft). But in more than 60 percent of the reported crimes of violence and in more than 70 percent of the crimes against property there was no arrest.

So crowded are the criminal courts, particularly in the cities, that the calendars are kept manageable only by extensive plea bargaining (the avoidance of trial by pleading guilty to a lesser offense than the original charge). Ultimately, of all reported crimes only about 1 in 12 results in a conviction. Even though most of those convicted are placed on probation and not actually confined, the prisons are overcrowded and inadequately supported.

Prison is the end of the criminal justice line—for inmates, for supervisory personnel, and for members of the public who have conveniently forgotten the institutions to which they abandon their most difficult fellow citizens. But official indifference and public forgetfulness is unacceptable. When society places a person behind walls, it cannot put aside its obligation to try to change and help that individual. Chief Justice Warren E. Burger made the point in an address:

When a sheriff or a marshal takes a man from a courthouse in a prison van and transports him to confinement for two or three or ten years, *this is our act*. We have tolled the bell for him. And whether we like it or not, we have made him our collective responsibility. We are free to do something about him; he is not.

Attica, one of those forgotten institutions, housed more than 2,200 inmates on September 9, 1971. There, as at other institutions, the emphasis was on confinement and security. Despite brave talk about rehabilitation as a prime objective of detention, the shortage of trained personnel and the inadequacy of facilities made rehabilitation an impossible dream. In fact, it is not even clear that it was

then, or is now, a real objective of the American prison system.

At Attica there was no meaningful program of education for those who wished to learn and no rehabilitation program for those who were willing to rejoin society as constructive citizens. Idleness was the principal occupation. Most correction officers were not equipped by training to communicate with their inmate charges, and did not consider it their duty to understand or to resolve inmate problems. It is scarcely surprising that the original uprising developed almost spontaneously out of small misunderstandings only indirectly related to the major grievances that smoldered below the surface.

When the uprising was unexpectedly successful in its initial stages, all ingredients of major disaster were present. Mistrust between inmates and their custodians made good-faith negotiation almost impossible, particularly since the roles of negotiators and observers were never defined. When the officials decided that a negotiated settlement was not possible, the inmates were not told—and perhaps would not have believed—that the state officials intended to retake the institution with guns.

The assault itself was not carefully planned to minimize the loss of life: the choice of weapons and ammunition was based upon ready availability, not upon the logic of the specific situation; no safeguards were established to protect against excessive use of force by those who were authorized to fire; no effective control was imposed to prevent firing by those who were not supposed to participate; no adequate arrangements were made for medical care of the severe casualties that should have been anticipated; and no responsible system was established to prevent vengeful reprisals against inmates after the retaking.

Whatever explanation might be advanced for official failure to deal effectively with an emergency of crisis proportions, no excuse can justify the failure of the American public to demand a better system of criminal justice, from arrest, trial, and sentencing to ultimate release from confinement. Chief Justice Burger has spoken of "correction systems that do not correct" and has warned that "our national trait of impatience has distorted our approach to the problems of prisoners and rehabilitation." But, as he has also observed, time is running out, particularly when we *know* better than we *do*.

When Karl Menninger referred to the "crime of punishment," it was more than a neat turn of phrase. There is no student of the American corrections system who is not critical of that system. The tragedy is that we persist in traveling the same wrong roads despite the fact that there has long been agreement among the experts about measures that should be taken—some that are fundamental, and some merely ameliorative of human misery; some that are expensive, and some not costly at all except in efforts of good will and human kindness.

The Commission was not asked to make recommendations for the restructuring of the prison system in New York State, a task specifically assigned to the Select Committee on Correctional Institutions and Programs, under the chairmanship of Hugh Jones. The second report of that committee on March 15, 1972, included comprehensive and thoughtful recommendations about the philosophy that should guide the entire correction system and more detailed specifications for immediate change. A number of the specific proposals were enacted by the New York State Legislature and approved by Governor Rockefeller in April 1972.

Although this Commission is thus not required to speak to the question of reform, we have found so much that is wrong in respect to matters we were charged to investigate that we cannot rest content with a recital of negatives. We must speak at least some of the affirmatives of prison reform. If the state is to take seriously its stated commitment to rehabilitation, and not custody alone, dramatic innovation is inescapably necessary.

In enunciating the following principles the Commission recognizes that their acceptance and implementation would require far-reaching, indeed radical, changes in the correction system as it now exists. Acceptance of these principles would require a willingness on the part of correction personnel to take risks with the concept of security as now perceived. But the lesson of Attica is that the present system has created more serious threats to security—the frustration and desperation that drive men to rebellion. The Commission believes that the prison system in New York State should be restructured, using the following principles as guidelines.

1. If prisoners are to learn to bear the responsibilities of citizens, they must have all the rights of other citizens

except those that have been specifically taken away by court order. In general, this means that prisoners should retain all rights except that of liberty of person. These include the right to be adequately compensated for work performed, the right to receive and send letters freely, the right to have and express political views, the right to practice a religion or to have none, and the right to be protected against summary punishment by state officials. When released from prison, they should not be saddled with legal disabilities which prevent them from exercising the rights of free men.

2. The confinement associated with the deprivation of liberty of person should be the least that is administratively necessary. If a serious attempt is to be made to prepare prisoners for their return to society, they must not be cut off from all contacts with that society until their time is served. The prisons must no longer be shrouded from public view and closed to the communities in which they are located and whose offenders they house. Implementation of this principle requires a number of actions, including the following: removal of restrictions on the free circulation of literature, newspapers, periodicals, and broadcasts; establishment of regular procedures to assure access of the press to the prisons; and creation of programs which let inmates out of the institution on a controlled basis, such as furloughs and work release.

3. The programs and policies associated with confinement should be directed at elevating and enhancing the dignity, worth, and self-confidence of the inmates, not at debasing and dehumanizing them. This means, among other things, the maximum amount of freedom, consistent with the security of the institution and the well-being of all inmates, for inmates to conduct their own affairs. Social responsibility should be thrust upon them, rather than discouraged as it now is. It may even be that the principle of enhancing human dignity can never be implemented within the walls of huge 19th-century fortresses like Attica. Such an impersonal environment, with the necessary emphasis on keeping more than two thousand men in control and in custody, is hardly conducive to instilling a sense of self-confidence and self-esteem.

4. In order to encourage understanding between inmates and members of the community to which they will eventually return, community groups and outside profes-

sionals should be allowed and encouraged to participate regularly in the life of each correctional facility. Such services as teaching, running prison libraries, leading group therapy sessions, and providing drug rehabilitation and employment counseling would be appropriate. The correction system cannot solve the problems of crime and rehabilitation unaided. It needs public involvement to gain public understanding and support. Since the correction system is ultimately accountable to the public in terms of success or failure, the members of the public should be drawn into an advisory role as much as possible in the shaping of overall policy.

5. The central dynamic of prison life is the relationship between inmates and officers. If correction personnel are to be more than mere custodians, they must be trained and paid in accordance with the difficulty and responsibility of their assignments. Training for correction officers must sensitize them to understand and deal with the new breed of young inmates from the urban ghettos and to understand and control the racism within themselves. Above all, correctional facilities must be staffed by persons motivated to help inmates. Ex-inmates, who might be especially qualified in this respect, can be hired for custodial assignments in the juvenile detention system, but they are denied eligibility to work in the facilities for adults. That disability should be removed.

6. Vocational training and other educational programs should be conducted in accordance with the preceding principles. Among other things, work assignments should not be part of the punishment-reward system except to the extent that compensation is provided for work done. Inmates should be adequately paid for their work, including work that entails training; and consideration should be given to a requirement that inmates pay the reasonable value of the services provided them by the state.

7. Parole is the principal method by which most inmates leave prison. But, as presently operated, parole procedures are unfair, and appear to inmates to be even more inequitable and irrational than they are. For a correctional system to satisfy the principles here enunciated, the grant or denial of parole must be measured by clear and comprehensible standards, disseminated to inmates in advance. The inmate must be told promptly if he has been granted parole and, if not, exactly why not. Once

parole is granted, efforts must be made to see that the inmate is released as promptly as possible, and effective assistance must be available to find him a job. After release, the conditions and restrictions placed upon the parolee must be rationally related to the legitimate purposes of parole; they must not be petty, demeaning, or of such broad sweep that they lend themselves to arbitrary and selective enforcement by parole officers.

The problem of Attica will never be solved if we focus only upon the prisons themselves and ignore what the inmates have gone through before they arrive at Attica. The criminal justice system is at least as great a part of the problem of Attica as the correctional facility itself.

The process of criminal justice will never fulfill either its promises or its obligations until the entire judicial system is purged of racism and is restructured to eliminate the strained and dishonest scenes now played out daily in our courtrooms. Justice is sacrificed to administrative efficiency, and there are no winners. Experiences with the inequities of bail, with plea bargaining, adjournments, overworked defense attorneys, interminable presentence delays, and disparities in sentences imposed for identical offenses leave those who are convicted with a deep sense of disgust and betrayal. If the criminal justice system fails to dispense justice and impose punishment fairly, equally, and swiftly, there can be little hope of rehabilitating the offender after he is processed through that system and deposited in a prison—even a prison remodeled on the principles enunciated above.

We cannot expect even the most dramatic changes inside the prison walls to cure the evils of our criminal justice system, nor of society at large. On the other hand, eradication of those evils would go a long way toward solving the problems of our prisons. In the meantime the public has a right to expect the state to maintain prisons for the protection of society and to demand that those prisons not turn out men more embittered, more antisocial, and more prone to violence than they were when they entered.

Members of the Commission, individually and collectively, are so persuaded of the urgency of these matters that we do not consider ourselves discharged from our original undertaking except in the most literal sense. The larger obligation to continue the search for a better and

a more humane system of criminal justice, from arrest to release after imprisonment, requires the alert attention of every thinking citizen. No aspect of law and order is more urgent than reform of the criminal justice system.

We believe we have done what was asked of the Commission. But we are not satisfied that it is enough. The question we ask ourselves is whether what we say will be taken seriously or simply regarded as another statement of a problem that others should solve. The difficulty with that comfortable view is that there are no others. We are they.

There are some encouraging signs. Significant study, and even some action, is under way in the executive, legislative, and judicial branches of both Federal and state governments. In the private sector, too, there is a new impatience to get on with the task of real reform.

- A National Conference on Corrections, called by President Nixon in December 1971, recommended long-range action, including the establishment of a National Correction Academy for the training of correction personnel.
- The Omnibus Correctional Reform Act, now pending in Congress, would provide a 20-year program to change the direction of the nation's correction system. The main feature of the bill would be to replace the present system of large penal institutions located away from major urban areas with small, community-based correction facilities designed to make rehabilitation a major goal. In New York, the Select Committee on Correctional Institutions and Programs will make further recommendations in the crucial areas of preventive detention, probation, and parole in time for consideration at the 1973 session of the Legislature.
- The courts, Federal and state, have begun to develop a code of prisoners' rights.
- The American Bar Association has blueprinted the needs of the criminal justice system in 17 monographs by the ABA Project on Minimum Standards for Criminal Justice. Now the association has undertaken a major study of correction problems through a Commission on Correctional Facilities and Services chaired by former Governor Richard J. Hughes.
- Prisoners' rights projects have been developed by the Legal Aid Society of New York, the American Civil Liberties Union, and the law schools.

- There is new interest in prison reform within the correction system and by members of the general public. Russell G. Oswald, Commissioner of Corrections for New York State, has long been a leading spokesman for changes to improve and humanize the institutions under his supervision. But it is difficult to move ahead of public comprehension. A number of citizen groups now display interest in prison reform. To capitalize on this in New York State, Commissioner Oswald has initiated a program to stimulate and coordinate activity by interested individuals and groups through Mrs. Margaret Appe, Director of Volunteer Services.

All these efforts, however useful, cannot produce meaningful change without public understanding and support. Unless the cry to "Avenge Attica" can be turned to reforms that will make repetition impossible, all effort will have been in vain.

Change should not be lightly undertaken, but the status quo can no longer be defended. The only way to salvage meaning out of the otherwise senseless killings at Attica is to learn from this experience that our Atticas are failures. The crucial issues remain unresolved; and they will continue unresolved until an aroused public demands something better.

September 13, 1972

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What the Commission Is and What It Did

The New York State Special Commission on Attica was created—and continued to operate—in the midst of a credibility crisis. Appointed and financed by established organs of state government, it was charged with conducting an impartial citizens' investigation of tragic events in which deep mistrust of the government establishment by prison inmates had been a major factor from the beginning. The credibility gap widened when official and press reports about how hostages died proved to be based on unfounded rumor and conjecture. What account of the events at Attica could the public believe after that?

On September 15, 1971, two days after the Attica rebellion was ended and one day after it was disclosed that the hostages had been killed by gunfire, not slashed throats, Governor Nelson Rockefeller announced that Deputy Attorney General Robert E. Fischer would supersede the local District Attorney to "conduct a broad investigation into the events before, during and after the rebellion in the Attica Correctional Facility."¹ At the same time, it was announced that on September 15 the Governor was meeting with legislative leaders in Albany "in an effort to consolidate the many investigations of the rebellion that have been called for."²

The Governor's meeting with legislative leaders the following afternoon ended in a news conference during which Governor Rockefeller and the majority and minority leaders of the New York State Legislature announced that they had asked Chief Judge Stanley H. Fuld of the Court of Appeals and the four presiding justices of the state's Appellate Division to appoint a "citizens' committee" to

¹*New York Times*, September 16, 1971, p. 1, col. 6.

²*New York Times*, September 16, 1971, p. 48, col. 3.

investigate "the events leading up to—during—and following the riot." In a joint statement, they stressed that the "citizens' committee" would be limited to a fact-finding mission and would not have jurisdiction over the criminal aspect of the uprising, which would be left to Mr. Fischer's investigation. The statement indicated, however, that the citizens' panel would be asked to study the Governor's own actions during the uprising.

Judge Fuld and his fellow jurists announced the selection of the nine members of the "citizens' committee" on September 30. The judges charged the panel to "proceed as expeditiously as possible and render its report to the Governor, the Legislature and the public." The nine citizens selected, subsequently to be known officially as the New York State Special Commission on Attica, were:

Robert B. McKay, Chairman of the Commission, Dean of the New York University School of Law;

Edwin B. Broderick, Bishop of the Roman Catholic Diocese of Albany;

Robert L. Carter, a member of the law firm of Poletti Friedin Prashker Feldmann & Gartner in New York City;

Mrs. Amalia R. Guerrero, founder and president of the Society of Friends of Puerto Rico and former member of the New York State Park Commission for the City of New York;

Amos Henix, a former inmate, and currently Executive Director of Reality House, a drug rehabilitation program in Manhattan;

Burke Marshall, Deputy Dean of the Yale University Law School and former head of the Civil Rights Division of the Justice Department;

Walter Rothschild, Chairman of the Board of the New York Urban Coalition and formerly president of Abraham & Straus;

Mrs. Dorothy Wadsworth, an active participant in community projects in Rochester and Monroe County, and now Director of Development at the Rochester Institute of Technology;

William Wilbanks, a doctoral candidate at the School of Criminal Justice, State University of New York at Albany.

The Commission chose as its General Counsel Arthur L. Liman, a member of the firm of Paul Weiss Rifkind

Wharton & Garrison, a New York City trial lawyer with experience as both criminal defense counsel and prosecutor.

How the Commission Got Its Powers

Following its appointment, the proposed Commission and its General Counsel met with the Governor's staff for the purpose of establishing the powers necessary to carry out the Commission's duties. Since the Legislature was not in session, the Commission agreed to accept an executive order signed by the Governor which would formally create the Commission and enumerate its powers.

The first executive order proposed to the Commission would not have required the cooperation of state officials and would have prohibited the Commission from doing anything that would "jeopardize or prejudice the criminal investigations or prosecutions . . . or the rights and privileges of those individuals who may be the subject of such criminal investigations or prosecutions." It would have barred any public hearings and mandated submission of the Commission's report, the transcripts of its private hearings, and any other evidence it gathered to the Supreme Court of Wyoming County, which had jurisdiction over the grand jury investigation, for determination, upon notice to the Attorney General, whether public disclosure would jeopardize the fair consideration of any criminal proceedings or the rights of any accused. The proposed order would also have limited the enforcement of the Commission's subpoena power to Wyoming County.

These restrictions would have compromised the independence of the Commission, subordinated its inquiry to the criminal investigation, and made it impossible for the Commission to report its findings to the public until all criminal cases arising out of Attica were finally adjudicated—perhaps years later. The Commission, therefore, was unable to accept the proposed executive order even though it was determined to proceed in a manner consistent with the rights of the potential defendants and the state in any criminal proceedings. Governor Rockefeller agreed with the Commission that its investigation should be completely independent of, and in no way subordinate to, the criminal investigation being conducted by Deputy Attorney General Fischer.

This principle was embodied in an executive order

which the Governor signed on November 15, 1971. The order mandated the Commission to conduct a full and impartial investigation and render a complete report on "the facts and circumstances leading up to, during and following the events that occurred at Attica Correctional Facility between on or about September 9, 1971 and September 13, 1971." It decreed that "such investigation and report will be in addition to, apart from, and not in lieu of the investigation of criminal acts related to such events now being conducted by Deputy Attorney General Robert E. Fischer." It empowered the Commission "to subpoena and enforce the attendance of witnesses, to administer oaths and examine witnesses under oath and to require the production of any books or papers deemed relevant or material." The order contained no restrictions on the Commission's right to hold public hearings, no geographical limitations on the Commission's operations, and no restraints upon the issuance of its final report. Finally, the order directed all state agencies to give the Commission "every assistance, facility and cooperation which may be necessary or desirable for the accomplishment of [its] duties or purposes."

In light of the above history the Commission continued to encounter mistrust and skepticism throughout its investigation. Correction and law enforcement personnel, who were cooperating with the grand jury investigation, often did not understand why another investigation was necessary. Many inmates did not believe that any state-financed body could be "independent" of the Governor or the prosecution. All wondered whether a panel of citizens with little or no experience in prisons or police operations could understand their problems and fairly judge their actions. Although constantly confronted with reminders of this mistrust, the Commission believes that it has discharged its mandate to determine and report the facts and circumstances of Attica.

The Investigation

On November 23, 1971, the full Commission and its General Counsel paid its first visit to Attica and met with representative groups of inmates and correction officers. By December 10, the Commission had established offices in New York City, Rochester, and Batavia, as well as inside

the prison walls, and had hired the first members of its permanent staff. On that day, it announced its intention to interview some three thousand persons with knowledge of the facts: inmates, correction officers, civilian employees, state policemen, National Guardsmen, sheriffs' deputies, members of the observers' committee, doctors, newsmen, citizens of Attica, and officials of the Department of Correctional Services.

The Commission sought to recruit a staff with diverse backgrounds as well as with the investigative abilities necessary to carry out this undertaking. The staff was fully integrated in terms of race, color, sex, and ethnic background.

At the height of the investigation, in mid-February, the permanent staff of the Commission consisted of 36 persons—18 attorneys from private law firms, government agencies, and other public-service projects, 6 investigators, 2 researchers, and 10 office and clerical personnel. Many had previous investigatory and criminal-law experience, but few had been involved before in the field of corrections. Four were former New York State or New York City police officers and two were graduate students at the School of Criminal Justice in Albany.

The permanent staff was materially assisted by more than 60 per diem and volunteer workers, including 20 attorneys, more than 40 students from the law schools of Columbia, New York University, Syracuse, and Yale, and from the School of Criminal Justice, and several trained investigators working on a per diem basis. The Commission also engaged professional consultants in the fields of communications, penology, sociology, hospital and health services, psychiatry, criminal pathology, and ballistics.

While the Commission from the outset insisted on the right to hold public hearings, it recognized that its power to conduct private hearings and interviews was essential to the success of an investigation in which all of the parties—inmates, correction officers, troopers—could be fearful of criminal, administrative, or social sanctions.

Initially, the staff was divided into teams for preliminary interviews of inmates, correction officers, State Police, National Guardsmen, and observers. At the outset of each of these voluntary interviews, the interviewee was

told about the Commission's mandate, assured that the Commission was not connected with Deputy Attorney General Fischer's investigation or any other prosecutor, state agency, prison authority, or Parole Board. Each interviewee was assured that the sources of information given to the Commission in private interviews would be kept completely confidential and not made available to any other governmental body; and that the Commission intended to hold public hearings and to issue a public report.

Inmates

The largest group of interviewees was inmates, since the Commission set out to see all 2,243 inmates who were at Attica on September 9, 1971. By March 1972, approximately 1,600 inmates had been interviewed and a comprehensive understanding of inmate problems, actions, and experiences, including those during the uprising, had been developed.³ Of the 600 inmates who were not interviewed, the majority had been released from incarceration and could not be located. In addition, approximately 10 percent of the inmates declined to be interviewed.

Each inmate was told he had the right to have a lawyer present and that one would be provided if he did not have one. A few inmates elected to be interviewed with counsel present. Otherwise, inmate interviews were conducted in strict confidence, in private interview rooms, with no one present but the inmate and his interviewer. Spanish-speaking inmates were offered the choice of being interviewed in Spanish by one of several bilingual staff members.

Each inmate was questioned about his background, his attitudes and views on conditions at Attica (and comparisons with other penal institutions in and out of New York State), his perceptions of the mounting tensions at Attica prior to September 1971, his experiences during

³The Commission staff interviewed approximately 900 inmates still incarcerated at Attica, 225 at Greenhaven Correctional Facility, Stormville, New York, 300 at Great Meadow Correctional Facility, Comstock, New York, and 175 at Clinton Correctional Facility and Dannemora State Hospital, Dannemora, New York. A smaller number of inmates were seen at other institutions or had been released from incarceration and were interviewed at their homes or at the Commission's offices.

the uprising, the State Police assault, and thereafter, and his views concerning changes and conditions at Attica since September 1971. Some interviews lasted several hours, with the average inmate interview taking about forty minutes.

Despite the assurances given at the outset of every interview, many inmates in all of the institutions were initially skeptical of the Commission. At Attica, the Commission began to gain acceptance among inmates after staff members made themselves visible around the institution. Dining with inmates in the mess halls—the first time anyone could remember outsiders eating with the inmates—“rapping” with them in the exercise yards, touring the cellblocks and answering their questions, and addressing them over the prison radio in English and Spanish, staff members achieved at least cautious acceptance from most inmates and 90 percent of them cooperated with Commission interviewers.

One body of inmates unwilling to cooperate with the Commission was the group assigned to Housing Block Z (HBZ) and A-6 company on September 13, 1971. This group consisted of approximately 80 inmates suspected by the authorities to have been leaders of the uprising or to have committed particular offenses during the four-day rebellion. Most of them feared the prospect of criminal charges arising from the Wyoming County Grand Jury investigation being conducted by Deputy Attorney General Fischer. Kept together in segregation facilities since September, they had developed a strong spirit of unity.

While the Commission sought on a number of occasions to arrange interviews with these inmates through their attorneys, the fear of criminal charges made cooperation with any investigation impossible.⁴ In the end, only a few of the inmates originally in HBZ were willing to talk to the Commission, although a number granted interviews to the Commission's psychiatric consultant, Dr. Robert Gould. While the Commission would have welcomed the opportunity to hear their explanation of their particular acts during the uprising, it is unreasonable to have ex-

⁴A fair account of the Commission's efforts to reach this group of interviewees was presented by Joseph Lelyveld in the *New York Times*, April 24, 1972, p. 37, col. 8.

pected them to have given such explanations.⁵ There were many other inmates who did cooperate, giving the Commission both eyewitness accounts of the uprising and a thorough understanding of inmate problems.

Correction Officers and Civilian Employees

The Commission's staff interviewed approximately 400 of the 450 correction officers who were on the custodial staff at Attica in September 1971, including most of the supervisory officers, the Captain, Assistant Deputy Superintendent, Deputy Superintendent and Superintendent. Less than a dozen correction officers declined to be interviewed. All but two of those who had been held hostage during the uprising were interviewed; some had not yet returned to work or had resigned and were interviewed at their homes. In addition, 25 correction officers from Auburn Correctional Facility who had come to Attica during the disturbance were interviewed at Auburn.

Correction officers were questioned about their background and training; their comparisons of Attica with other institutions; their observations about the developments in the months before September 1971; their work assignments, orders, movements, observations, and actions between September 8 and September 13, 1971; their perceptions and understandings about what took place in the inmate-controlled areas of the institution; and, finally, their present attitudes about their work and the institution.

Over 30 correction officers who were involved in significant events connected with the uprising were subpoenaed to give testimony in private session. Portions of that testimony are reflected in this report.

The Commission staff also interviewed approximately 50 civilian employees of Attica Correctional Facility, including the supervisors of vocational and educational programs in the institution and all but two of the surviving civilians who had been taken hostage during the uprising.

⁵A number of these inmates testified about their experiences following the assault in a lawsuit brought by their attorneys to enjoin reprisals. Some also testified before a congressional committee investigating Attica and gave interviews to the media concerning conditions at Attica. All of those sources were available to the Commission.

State Police

The Commission staff had originally anticipated interviewing all 550 personnel of the New York State Division of State Police who were on the scene at Attica during the four days of the uprising, including troopers, supervisory officers, investigators, and cameramen. However, after beginning its investigation, the staff quickly determined that many of them did not have any direct knowledge of events inside the institution, nor had they taken part in the assault. Therefore, the staff concentrated its efforts on interviewing the 300 State Police personnel who participated in or had direct knowledge of these matters.

Approximately 270 State Police personnel were interviewed, including 20 commissioned officers. Interviews took place at eight different troop headquarters or zone headquarters all over the state, and at the State Police headquarters in Albany. Approximately 25 percent of those approached for interviews declined to be interviewed or refused to talk about the day of the assault.

State Police personnel were questioned about their previous law enforcement experience and their prior association with the Department of Corrections; their assignments, briefings, orders, movements, and observations on each of the days on which they were on duty at Attica; their observations of the movement, mood, and armament of inmates in D yard and elsewhere in the institution; and their opinions and critique of their commanders, their responsibilities, their actions, and the actions of other departments in connection with the assault and its aftermath.

Pursuant to an agreement by the Commission with the Patrolmen's Benevolent Association (PBA), all interviewees except commissioned officers were informed that they had the right to have a PBA delegate attend the interview with them. Almost all troopers opted to have the PBA delegate in the interview. Troopers were also told that they could have a commissioned officer or attorney present, and approximately 30 requested one of those alternatives.

Approximately 25 troopers who were involved in the assault on September 13, 1971, declined to be interviewed or refused to talk about the events of that day. A number of them, who participated in key events, were subpoenaed

to testify before the Commission in executive session. In addition, approximately 24 supervisory officers and other high-ranking State Police personnel testified before the Commission in executive session.

Sheriffs' Personnel

Pursuant to a mutual assistance agreement, deputies from the sheriffs' offices of nine counties were summoned to Attica on September 9, 1971. Only four of these counties sent deputies inside the walls of the institution. The remaining deputies provided outside security and traffic control. Six members of the Commission's staff interviewed over 100 sheriffs, undersheriffs, and deputies from Wyoming, Niagara, Monroe, Ontario, and Erie counties—almost all the sheriffs' personnel who were inside the walls.

Department of Correctional Services

Commissioner Russell G. Oswald and Deputy Commissioner Walter Dunbar appeared before the Commission in executive session on two separate occasions. Throughout the investigation, both of them granted numerous requests for access to department files and gave instructions to their subordinates which facilitated the Commission's investigation in many ways. In addition, Commission staff members interviewed in Albany approximately 20 employees of the department who had been at the scene at Attica in September 1971 or had been in the department office in close touch with those at the scene.

Observers, Legislators, and the Press

The Commission and its staff attempted to interview persons who were at Attica either as citizen observers or as state legislators. Twenty-four persons in this category were interviewed by the staff or the Commission in private session. Several observers could not be located for interviews. Others did not respond to attempts to contact them.

Commission staff members also interviewed several representatives of the printed and television news media who were in D yard during the four days. Because of the First Amendment problems involved, the Commission determined not to issue subpoenas to the media. Cooperation

was furnished voluntarily in most instances, for which the Commission is grateful.

National Guard

National Guardsmen were interviewed in five armories in Buffalo, Niagara Falls, and Rochester during their regularly scheduled weekend drills. A seven-page questionnaire was first distributed to some 500 guardsmen, covering their training and capabilities for civil disturbance operations, the extent of their preparedness and briefings for the operation, their views of their roles in the operation, and their observations concerning the evacuation of casualties and rehousing of inmates.

Approximately 200 guardsmen, whose responses to the questionnaire indicated firsthand knowledge of material facts, were interviewed personally by the staff. The Judge Advocate of New York State was made available to advise guardsmen during many of the interview sessions. The Commanding General, John C. Baker, and his staff were interviewed personally in their offices in Albany.

Doctors, Wives, and Townspeople

Doctors and other medical personnel who were called to the scene at Attica on September 13, 1971, to treat wounded inmates, residents of the town of Attica, and wives of correction officers and inmates were also interviewed.

The Governor and His Staff

At the outset of the Commission's investigation, Governor Rockefeller and the members of his immediate staff agreed to waive executive privilege and appear before the Commission in private session. Robert R. Douglass, Secretary to the Governor, Michael Whiteman, Counsel to the Governor, Howard Shapiro, First Assistant Counsel, Dr. T. Norman Hurd, Director of State Operations, and A. C. O'Hara, Commissioner of the Office of General Services, were interviewed in a group, in their offices in Albany by the Commission's General Counsel. On April 15, 1972, they testified before the Commission.

On April 5, 1972, Governor Rockefeller met with the Commission at his New York City offices. After making a

statement on the record, he answered questions from the Commission and its general counsel. The transcripts of the testimony of the Governor and his staff were subsequently released to the press and made available to the public.

Documents, Records, Tapes, and Photographs

Throughout the investigation, the Commission was sensitive to the problems created by the simultaneous prosecution of its investigation and that directed by Deputy Attorney General Fischer. At the outset, it was agreed that whatever legal power the two investigative bodies might arguably have to compel production of the interviews and work product of the other, neither would exercise that power. It was agreed, however, that all primary evidence—photographs, tapes, films, autopsy and ballistics reports, weapons and other objects found at Attica after the uprising—which were in the possession of the Fischer investigators by virtue of their earlier appointment and their use of State Police investigators, would be made available to this Commission. In all, the Commission staff amassed over two thousand documents on the correctional system, Attica, the uprising, and the assault.

The Division of State Police was the primary source of documentary and audiovisual material concerning the uprising. The State Police took the position that in view of the grand jury investigation, nothing could be released to the Commission until approved in writing by Deputy Attorney General Fischer.

This led to protracted delays. Eventually, however, the Commission obtained photographs, slides, videotapes, and motion pictures taken from September 9 through September 13, 1971, including films of the assault, ballistics and autopsy reports, and photographs, statements, and reports made by police and correction officers of their actions and observations during the assault, samples of weapons and ammunition used during the assault, access to the collection of inmate weapons found at Attica, and other pertinent documents and materials.⁶

The Commission also obtained voluminous documents

⁶There are still some items under laboratory scrutiny, for which no report has been issued, and others upon which further tests are being made.

and records from the files of the Department of Correctional Services, including:

- Correspondence between the Commissioner's office and both inmates and administrators at Attica;
- The tape of a telephone "hot line" which was kept open between Attica and the department office in Albany during the uprising, and a transcript of that tape;
- Departmental press releases, reports, and bulletins;
- Commissioner Dunbar's personal diary kept during the events at Attica;
- Computer data cards on all inmates at Attica on September 9, 1971, which enabled the Commission to amass statistics on the inmate population.

The "hot-line" transcript is one of the few surviving records of the officials' contemporaneous reactions. According to Deputy Commissioner Wim Van Eekeren, it was intended for the internal use of the department. Its existence was acknowledged to a Commission staff member by a department official in March 1972, four months after the Commission began its work. At key points during a conversation officials instructed Albany headquarters to turn off the tape. Commissioner Van Eekeren stated that the tape was turned off only when personal opinions were expressed, but analysis of the transcript reveals that rule was not always followed.

In addition to the documents and records obtained from Albany, the Commission had access to files kept at Attica, including all routine institutional records and logs kept during the uprising.

New York State National Guard units cooperated with the Commission by producing pertinent records of their operations at Attica and other materials relating to military assistance to civil authorities in civil disturbances.

Professional Consultants and Special Projects

The autopsies of inmates and hostages who died at Attica were conducted by some of the country's most eminent pathologists, including Dr. John Edland, Monroe County Medical Examiner, and Dr. Michael Baden, Assistant Medical Examiner of New York County. Nevertheless, the Commission considered that its mandate required it to engage its own pathologist. Dr. Alan Moritz, Profes-

sor of Pathology and former Director of the Institute of Pathology of Case-Western Reserve University, and former Chairman of the Department of Legal Medicine at Harvard University, was retained. He reviewed the autopsy reports, autopsy photographs, and ballistics reports obtained from the Division of State Police. He met on several occasions with Drs. Edland and Baden and received their full cooperation. Dr. Moritz subsequently rendered his own report which is referred to in this report.

Dr. Robert Gould was retained as psychiatric consultant to the Commission. Dr. Gould, Director of Adolescent Psychiatry and Associate Professor of Clinical Psychiatry at New York University-Bellevue Medical Center in New York City, has worked and written in the field of delinquency and drug rehabilitation. He spent many hours at Attica interviewing inmates, including those confined to HBZ, and correction officers. His report is being made public by the Commission and his findings are incorporated in several sections of this final report.

E. D. Rosenfeld, M.D., a hospital and health services consultant, donated his services to the Commission to examine the inmate health facilities at Attica.⁷ Dr. Rosenfeld visited Attica twice and interviewed the prison doctors, other personnel at the prison hospital, the supervising psychiatrist and dentist, the Director of the DVR program, the Director of Health Services for the Department of Correctional Services, and several inmates. His report is summarized in this report.

H. P. White Laboratories of Bel Air, Maryland, was engaged to provide advice and assistance in analyzing ballistics information and testing weapons. White Laboratories test-fired samples of the weapons used in the State Police assault, helped to prepare exhibits for display at the public hearings reporting the results of those tests, and provided an independent analysis of the capabilities of the various weapons.

Staff attorneys and investigators completed special research projects in the following areas: the Division of Vocational Rehabilitation (DVR); the prison economy, jobs, and wages; inmate disciplinary procedures at Attica;

⁷Dr. Rosenfeld is the father of one of the Commission's Deputy General Counsels.

the state parole system; and classification and assignment procedures.

The Commission was fortunate to have obtained the services of Cornell Capa, a world-renowned photographer and founder and director of the International Fund for Concerned Photography. Mr. Capa, who contributed his services without fee, spent several days at Attica observing and photographing all aspects of prison life. Mr. Capa selected several photographs from among the hundreds of pictures he took for inclusion in a photographic essay at the Commission's public hearings. Many of them are also included in the photograph section of this report.

The Public Hearings

The Commission resolved at the outset to make its initial report to the public in the form of public hearings, presenting the story of Attica through live witnesses who had themselves experienced it. The Commission believed that making available the most pertinent raw testimony and evidence, before its written report, would provoke constructive debate about the issues posed by Attica, and enable the media and the public to evaluate independently the Commission's ultimate conclusions. In order to provide the widest possible public access to the testimony and the data gathered by the staff, the Commission took the unprecedented step of originating its public presentation from television studios. That format enabled the Commission not only to hear witnesses who might have appeared before cameras and microphones in any location, but to show the public documentary, graphic, and other visual materials that could be exhibited only through the facilities of a fully equipped television studio. By holding the hearings in a studio, the Commission lessened the burden on public television, even though the cost to the educational stations was still substantial. The Commission held hearings in the studios of public broadcasting stations WXXI, Channel 21, in Rochester, New York, on April 12, 13, and 14, 1972, and WNET, Channel 13, in New York City, from April 17 through April 28, 1972. The hearings were televised live each afternoon and a program of taped highlights was shown in the evening by many public-broadcasting stations.

During the course of the televised hearings, the Commission presented a cross section of various eyewitnesses, including testimony from 14 inmates and former inmates, 11 present and former correction officers, 4 civilian employees of Attica Correctional Facility, 7 members of the observer team, 4 National Guardsmen, 4 officers of the Division of State Police, 2 doctors who were inside the prison yard both during and after the uprising, a member of the Attica Lions' Club who was on the scene for four days, the wife of a correction officer and the sister of an inmate, former Superintendent Vincent Mancusi, Deputy Commissioner Walter Dunbar, and Commissioner Russell Oswald.

The Commission held an additional public hearing on May 10, 1972, during which any person who felt he had a statement of interest to the Commission was invited to speak. Eight citizens, including former Attica inmates, took the opportunity to testify before the Commission at that session.

About This Report

Following the public hearings, the Commission and its staff began writing the report to present its factual findings and to answer the basic questions presented to it: Why did the uprising happen? How was the prison taken over by the inmates? Why wasn't a peaceful solution achieved? Why did 43 persons die and hundreds of others suffer injuries during the four-day period?

The Commission's report is divided into four sections. The first section describes Attica and the system of which it is a part, giving a picture of what life at Attica is like. The second section is addressed to the conditions and events leading up to the uprising, and tells how the inmates took control on September 9, 1971. The third part is devoted to the negotiations, and the final section covers the assault and its aftermath. Each section begins with a summary setting forth the Commission's conclusions in each area. Each introduction is followed by narrative chapters of the facts developed in the investigation, and on which the Commission's conclusions rest.

Throughout the report, there are references to what witnesses told "the Commission." Those references encompass public testimony, private hearings, and the hun-

dreds of individual interviews conducted by Commission staff members, with or without Commissioners present.

In conducting its public hearings and writing this report, the Commission has been particularly sensitive to the problems created by the use of names. This Commission was not created to prosecute criminal charges or recommend administrative action against any person. Consequently, no names have been used in connection with acts or occurrences which could conceivably subject any person to the threat of criminal prosecution or administrative sanctions. In addition, consistent with the state policy protecting anonymity of persons serving sentences, the names of living inmates have not been used, except where the inmate himself has publicly revealed the information included in the Commission's report or where the individual has become so publicly identified with the events that the story cannot be told without his name. The names of dead persons, however, have been used. Finally, the Commission believes it entirely appropriate to use the names of state employees in supervisory positions, since it is largely their actions that the Commission was created to investigate.

A Word of Appreciation

Throughout its eight-month investigation, the Commission and its staff received the assistance and cooperation of state officials and employees on every level. Administrators in Attica and Albany made themselves available to Commission staff members for interviews and filled repeated requests for documents, books, and records. Two superintendents and their staffs, as well as all the correctional personnel at Attica came to accept the Commission and its staff as part of the fabric of life at the institution.

The Commission and staff members were permitted to come and go at will throughout all parts of the institution, to visit with inmates in their cells and work areas, to accompany correction officers on their rounds at all times of day and night. In addition to Superintendents Vincent J. Mancusi and Ernest Montanye, the Commission's investigation was particularly facilitated by the cooperation of Acting Deputy Superintendent Karl Pfeil, Captain Walter N. Fogg, Sergeant Jack English, and three correction offi-

cers—Harvey Head, Roy Hennenberg, and James Whalen—whose assignment was to escort inmates to Commission interviews but who assisted its staff in innumerable ways.⁸ The mention of those names is not meant to exclude the many other individuals, state employees, correction officers, and inmates whose cooperation and assistance the Commission fully appreciates.

Having requested Chief Judge Fuld and the Presiding Justices of the Appellate Division to name the members of the Commission, the Governor and legislative leaders gave the Commission the freedom and funds to conduct the investigation as it chose.

⁸The Commission expresses the same appreciation to correction officers Colin Kelly and Fred Miles of Greenhaven Correctional Facility, who provided the Commission with the same assistance there.

Part I

What Is Attica?

Summary

On the day the Attica uprising began, with smoke still pouring from parts of the prison destroyed by inmates, Vincent Mancusi, then the superintendent of the correctional facility in western New York State, shook his head in disbelief and asked: "Why are they destroying their home?"

Their home was a complex of barred cells 6 feet wide, 9 feet long, and 7 feet high, in buildings hidden from public view by a solid gray stone wall 30 feet high and 2 feet thick, not very different from, and certainly no worse than, New York State's five other maximum security prisons. But it did not have to be better or worse than the others for it to explode, as it did, in September 1971. For the Atticas of this country have become lethal crucibles in which the most explosive social forces of our society are mixed with the pettiness and degradation of prison life, under intense pressure of maintaining "security."

The titles "correctional facility," "superintendent," "correction officer," and "inmate," which the Legislature bestowed on the prisons, wardens, guards, and prisoners in 1970 were new. But these euphemisms expressed goals that dated back to the founding of the modern prison system in the early 19th century by men who believed that prisons should serve the purpose of turning prisoners into industrious and well-behaved members of society. Prison administrators throughout the country have continued pledging their dedication to the concept of rehabilitation while continuing to run prisons constructed in the style and operated in the manner of the 19th-century walled fortresses. "Security" has continued to be the dominant theme: the fantasy of reform legitimized prisons but the functionalism of custody has perpetuated them.

The rhetoric about rehabilitation could not, however, deceive the men brought together inside the walls: the

inmates, 54 percent black, 37 percent white and 8.7 percent Spanish-speaking, almost 80 percent from the cities' ghettos, and the correction officers, all white and drawn from the rural areas in which we build our prisons.

For inmates, "correction" meant daily degradation and humiliation: being locked in a cell for 14 to 16 hours a day; working for wages that averaged 30 cents a day in jobs with little or no vocational value; having to abide by hundreds of petty rules for which they could see no justification. It meant that all their activities were regulated, standardized, and monitored for them by prison authorities and that their opportunity to exercise free choice was practically nonexistent: their incoming and outgoing mail was read, their radio programs were screened in advance, their reading material was restricted, their movements outside their cells were regulated, they were told when to turn lights out and when to wake up, and even essential toilet needs had to be taken care of in view of patrolling officers. Visits from family and friends took place through a mesh screen and were preceded and followed by strip searches probing every orifice of the inmate's body.

In prison, inmates found the same deprivation that they had encountered on the street: meals were unappetizing and not up to nutritional standards. Clothing was old, ill-fitting, and inadequate. Most inmates could take showers only once a week. State-issued clothing, toilet articles, and other personal items had to be supplemented by purchases at a commissary where prices did not reflect the meager wages inmates were given to spend. To get along in the prison's economy, inmates resorted to "hustling," just as they had in trying to cope with the economic system outside the walls.

The sources of inmate frustration and discontent did not end there: medical care, while adequate to meet acute health needs, was dispensed in a callous, indifferent manner by doctors who feared and despised most of the inmates they treated; inmates were not protected from unwelcome homosexual advances; even the ticket to freedom for most inmates—parole—was burdened with inequities or at least the appearance of inequity.

For officers, "correction" meant a steady but monotonous 40-hour-a-week job, with a pension after 25 years' service. It meant maintaining custody and control over

an inmate population which had increasing numbers of young men, blacks, and Puerto Ricans from the urban ghettos, unwilling to conform to the restrictions of prison life and ready to provoke confrontation, men whom the officers could not understand and were not trained to deal with. It meant keeping the inmates in line, seeing that everything ran smoothly, enforcing the rules. It did not mean, for most officers, helping inmates to solve their problems or to become citizens capable of returning to society. For the correction officers, who were always outnumbered by inmates, there was a legitimate concern about security; but that concern was not served by policies which created frustration and tension far more dangerous than the security risks they were intended to avert.

Above all, for both inmates and officers, "correction" meant an atmosphere charged with racism. Racism was manifested in job assignments, discipline, self-segregation in the inmate mess halls, and in the daily interaction of inmate and officer and among the inmates themselves. There was no escape within the walls from the growing mistrust between white middle America and the residents of urban ghettos. Indeed, at Attica, racial polarity and mistrust were magnified by the constant reminder that the keepers were white and the kept were largely black and Spanish-speaking. The young black inmate tended to see the white officer as the symbol of a racist, oppressive system which put him behind bars. The officer, his perspective shaped by his experience on the job, knew blacks only as belligerent unrepentant criminals. The result was a mutual lack of respect which made communication all but impossible.

In the end, the promise of rehabilitation had become a cruel joke. If anyone was rehabilitated, it was in spite of Attica, not because of it. Statistics show that three-quarters of the men who entered prison in New York State in the sixties had been exposed to the "rehabilitative" experience in prison before. If Attica was a true model, then prisons served no one. Not the inmates, who left them more embittered than before. Not the correction officers, who were locked into the same confinement and asked to perform an undefined job made impossible by the environment. Not the prison officials, who became accomplices in maintaining the fiction that maximum security prisons serve a useful purpose. And not the public, which

requires penal institutions that serve a useful role in the reduction of crime.

The chapters in part I describe the reality of Attica and the state's prison system as the Commission found it. The only bright spots at Attica were two experimental programs available to less than 4 percent of the inmates—the Division of Vocational Rehabilitation (DVR) and work release. These programs showed that when inmates were given responsibility and the opportunity to engage in meaningful activity, rehabilitation was possible.

The guidelines on which the Commission believes the correctional system should be run are enunciated in the Preface. If they are not accepted in some form, the Commission sees no hope.

In less time than it will take to implement those principles, most of the inmates now at Attica will be returned to the streets, and every risk that the prisons have declined to take in affording these men the freedom and opportunity to develop a sense of self-control will be passed to the public. There is no rebuttal to the testimony of one inmate shortly after his release from Attica:

The taxpayers paid thousands of dollars per year to keep me incarcerated. They didn't get anything for their money. It was a waste.

Chapter 1

The Evolution of the New York Prison System

The American prison system as we know it began in New York in the early 19th century. The founders of this system were men of high purpose, who conceived of prisons as more than simple warehouses of convicted criminals. "Reformation" was their goal, and, as rational men, they developed a concept of imprisonment which was consistent with their beliefs concerning the causes of crime in the simple society of that time. The prisons which these reformers built almost 150 years ago to put their theories into practice survive physically throughout the country and conceptually in maximum security prisons like Attica.¹

During the colonial period of our history and in the early years of the nation, long-term imprisonment was not a common form of punishment. Execution was the prescribed penalty for a wide range of offenses, while the less serious offenders faced public punishment, such as pillorying, whipping, and even maiming. Places for long confinement of convicted offenders were simply not necessary. Commonly called the age of enlightenment, the 18th century was one of dramatic challenge to traditional thought and customs, including concepts of punishment. By the beginning of the 19th century, imprisonment had replaced public punishment and execution for most crimes except murder and treason.

The early places of imprisonment ranged from large wood-frame houses in the cities, from which escapes were

¹The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Corrections* (Washington, D.C.: U.S. Government Printing Office, 1967), p. 4, reported, "Sixty-nine prisons opened before 1900 are still in use."

frequent, to an abandoned coppermine which Connecticut adopted as its prison in 1790. The sole objective of these places of confinement was detention. Imprisonment was its own end, and no pretense was made of rehabilitation. Indeed, long-term confinement was itself considered a progressive, humane improvement over the old system of whipping and execution. "A repulsion from the gallows rather than any faith in the penitentiary spurred the late eighteenth century construction. Few people had any clear idea what the structures should look like or how they should be administered. . . .²

In the early 19th century, however, two very definite concepts of imprisonment were introduced in New York and Pennsylvania, including what the structures should look like and how they should be operated. These concepts resulted in the construction of entire institutions intended not only to house convicted criminals, but also to reform them into temperate, industrious, hard-working citizens, and to return them to their societies as new men. With the emphasis upon reformation of the criminal, sentences would be long enough to allow the prison program to have its desired effect.

It was no accident that in Pennsylvania the institution was called a penitentiary, for the inmates were there to do penance. The Pennsylvania authorities, reflecting their deeply moralistic Quaker faith, were convinced that man became a lawbreaker through evil influences and corrupt companions. The key to reforming him lay in separating him from all potential for such wicked association and providing him with a small room and exercise area, totally isolated from the human companionship which had led him astray. After an appropriate period of total isolation and inactivity, he would be allowed small bits of handicraft work and a Bible in his cell. From the Bible and his work, he would learn the superiority of the life of simple faith, diligent toil, and moderate habits. Blindfolded upon arrival, he was led to his cell where the blindfold was removed, and he remained in his cell until he was released, when he was blindfolded again and led out. The solitary cell and its small exercise yard became his entire world. He never saw another inmate, for even the

²David Rothman, *The Discovery of the Asylum* (Boston: Little, Brown, 1971), p. 62.

most fleeting of contacts was considered corrupting. Only in the purity of complete isolation could the corruption be overcome and the restoration of faith and honesty be attained. And in complete isolation he was kept.

The New York authorities proceeded on much the same premise as to the cause of crime, but adopted a slightly different solution in the construction of Auburn State Prison in the early 19th century. New Yorkers felt that the complete isolation of prisoners from arrival to release was too inhuman; it was both unnatural and cruel. Far from reforming men, they felt, such absolute solitude bred insanity and despair. In addition, there was the issue, perhaps more pressing, of expense to the state. Inmates restricted to their cells 24 hours a day contributed nothing to the cost of their own confinement. The state had to provide all food, clothing, supplies, and materials to its prisoners.

If the prisoners were to learn the advantages and satisfactions of hard work and thrift, the New York authorities believed, there could be no better way than to be compelled to work together in harmony. If such a system also offered the potential for inmates to grow and harvest their own vegetables, raise and butcher their own meat, make their own clothes, and manufacture other items for use or sale by the state, such a boon to the state's budget could not reasonably be ignored.

When the doors of Auburn Prison opened in 1819, America had the model and prototype of its maximum security prison. The New York authorities were as devoted as those in Pennsylvania to the idea of keeping prisoners isolated from each other and from the outside world. Prisoners were not even allowed to communicate with their families, except through the prison chaplain. New York's departure from the Pennsylvania system was in the commitment to provide a common work and dining area for inmates. Silence among inmates was strictly enforced, however. The New York officials were deeply committed to the view that a steady, predictable, unrelenting routine of hard work, moderate meals, silent evenings, and restful nights in individual cells would produce men who were, indeed, cured of all vices and excesses.

Because the inmates left their cells each day to work together, the cells in the Auburn-style (or congregate-style, as it came to be called) prison could be made smaller

than those in the Pennsylvania-style penitentiary. The Auburn cells were primarily for sleeping and were not intended to be the prisoner's entire universe. The inmates were awakened early and marched to work for a few hours before breakfast. After lunch they returned to their jobs until time for dinner. After the evening meal, they marched back to their individual cells to relax and reflect and sleep before going back to work the next morning. From sunrise to sunset, their days were occupied by a routine as unalterable as the solar timetable it followed. They did not work on Sundays, and the long weekends were spent in the tiny cells that had not been designed as living quarters. On Sundays they were addressed by a prison chaplain who explained to them the wisdom and virtue of their industry and exhorted them to persevere, as all good Americans persevered, in the life of simple faith and hard work.

Penologists and reformers from throughout Europe came to America to observe the prison systems of Pennsylvania and New York. Nearly every college freshman in America reads Alexis de Tocqueville's account of *Democracy in America*, but few realize that de Tocqueville was in this country as an official emissary of the French government to study the new American prisons. France, England, Scotland, Prussia, and Germany all dispatched men to study these systems, and most European prisons since 1800 have been patterned after the solitary, Pennsylvania system. Of the two systems, de Tocqueville and his companion de Beaumont wrote, ". . . the Philadelphia system produces more honest men, and that of New York more obedient citizens."³

For economic reasons, most American prisons came to be patterned after Auburn and were as much silent factories and involuntary labor pools as they were bleak prisons. Auburn Prison, in fact, turned a profit in the early years of its existence.⁴

It was an article of faith that these prisons would not

³G. A. de Beaumont and A. de Tocqueville, *On the Penitentiary System in the United States and Its Application in France* (Carbondale, Ill.: Southern Illinois University Press, 1964), p. 59.

⁴Elizabeth Benz Croft, "New York State Prisons and Prison Riots from Auburn and Clinton: 1929 to Attica: 1971," unpublished paper prepared for the School of Criminal Justice, State University of New York at Albany, March 30, 1972, p. 15.

only be successful in transforming idle and corrupt men into virtuous laborers, but that they were examples of model communities from which the larger society could benefit as well. The Boston Prison Discipline Society reported that the prison program "would greatly promote order, seriousness, and purity in large families, male and female boarding schools, and colleges."⁵ A chaplain at the Ohio penitentiary proclaimed:

Never, no never shall we see the triumph of peace, of right, of Christianity, until the daily habits of mankind shall undergo a thorough revolution. Could we all be put on prison fare, for the space of two or three generations, the world would ultimately be the better for it. Indeed, [society should] change places with the prisoners, so far as habits are concerned, taking to itself the regularity, and temperance, and sobriety of a good prison. As it is, taking this world and the next together . . . the prisoner has the advantage.⁶

Discipline was regarded as the key to success of the congregate prison, and one rule soon emerged as the key to discipline. That rule was silence, a silence so profound and so pervasive that it became the most awesome and striking feature of the fortresslike prisons of America. From their tour through Auburn, de Beaumont and de Tocqueville wrote:

We felt as if we traversed catacombs; there were a thousand living beings, and yet it was a desert solitude.⁷

In order to maintain silence and order in the movement of large numbers of inmates about the prison, Auburn devised the silent, lockstep shuffle. Inmates stood in line, each with the right foot slightly behind the left and the right arm outstretched with the hand on the right shoulder of the man in front of him. They moved in a shuffle, sliding the left foot forward, then bringing the right foot to its position just behind the left, then the left again, then the right. This awkward locomotion, coupled with the striped uniforms in New York, was considered therapeutic. Prisoners were not in a state of grace

⁵Quoted by Rothman, *op. cit.*, p. 88.

⁶*Ibid.*

⁷De Beaumont and de Tocqueville, *op. cit.*

with society, and their condition was made as graceless as possible, lest they forget their corrupt condition. As the prisoners moved, they were not permitted to hold their heads up, as would befit free men, and their shameful pose with their heads turned to the right and their eyes cast to the floor kept them ever mindful of their low estate and the wickedness that had brought them there. The guard watching such a group shuffling across a prison area could readily spot any unauthorized conversation or activity.

Solitary confinement in a bare cell with one meal a day was introduced as a punishment for breaking the rules. But solitary had the disadvantage of removing prisoners from the labor force necessary to support the institution. Physical punishment, which had a less disruptive effect on inmate labor, was authorized. Soon, the very punishments that prisons were supposed to have eliminated were widely used within the prisons themselves, and the whip was the most common. Water "cures," stocks, "stretchers," and sweatboxes were all widely used in American prisons well into the 20th century. By the 20th century, the old concept of "reformation" had largely disappeared, and most prison administrators viewed the goal of prisons as simply to keep prisoners securely in custody. Indeed, the warden's first assistant, who was responsible for the day-to-day operation of the prison, was known as the "principal keeper."

In New York, as one prison became overcrowded, another was built, always on the Auburn principle. In 1825, Sing Sing was built along the Hudson River north of New York City by a hundred inmates from Auburn who were transported down the Hudson by boat, shackled in irons. When the swelling prison population threatened the silent program and the individual cell policy, additional cellblocks were added to Auburn and Sing Sing. In 1844, the construction of Clinton Prison was authorized.

The construction of all these prisons followed the same basic plan. In fact, prison construction in the United States did not change until well into the 20th century, and even then variations were usually minor and often short-lived. From the beginning the American prison has been a maximum security institution.

As new Auburns were built throughout the country, the severity of the prison routine became the subject of

criticism by a new generation of penal reformers. In 1870, the National Prison Association, at its founding meeting in Cincinnati, reminded the authorities that "reformation, not vindictive suffering, should be the purpose of penal treatment of prisoners." The means toward that end, which the Cincinnati prison congress of 1870 advocated in its Declaration of Principles, included:

The prisoner should be made to realize that his destiny is in his own hands.

* * *

Prison officials should be trained for their jobs.

* * *

Prison discipline should be such as to gain the will of the prisoner and conserve his self-respect.

* * *

The aim of the prison should be made industrious freemen rather than orderly and obedient prisoners.

* * *

A more adequate architecture should be developed, providing sufficiently for air and sunlight, as well as for prison hospitals, school rooms, etc.

* * *

The social training of prisoners should be facilitated through proper association, and the abolition of the silence rules.

* * *

Society at large should be made to realize its responsibility for crime conditions.⁸

At the turn of the century, New York made efforts to actually implement some of the specific proposals of the Cincinnati Congress of 1870. The first such effort was Elmira Reformatory, opened in 1876 for young first offenders. Built on the same architectural principle as Auburn, however, it soon proved to be only another prison in the style of Auburn, but with younger inmates—a maximum security reformatory. In 1911, Great Meadow,

⁸H. E. Barnes and N. K. Teeters, *New Horizons in Criminology* (New York: Prentice-Hall, 1951), pp. 524-25.

a new prison without a wall around it, was built for young first offenders. The striped uniforms and the silent lock-step were discontinued. The rule of silence continued in actual practice in most institutions, but at Great Meadow movies were presented to the inmates once every two weeks. The dining area provided small tables with chairs in order that the young inmates could dine in a more natural atmosphere than that provided by immovable tables and stools in the other prisons.

Due to the overcrowding elsewhere, however, it was not many years before Great Meadow began receiving second offenders and other first offenders who were deemed by the authorities to require close supervision. Discipline tightened at Great Meadow; enforcement of silence appeared in the routine, and a prison factory, like those at Auburn, Sing Sing, and Clinton, was started. By 1928, a wall had been erected around the once medium security prison of Great Meadow, and it was added to the list of adult male maximum security prisons of the state.

The architecture of prisons had become a self-engendering style. The major improvements in the construction of prisons were the introduction of escape-proof cells and unbreakable toilets and washbasins. This escalating process of constructing ever more secure prisons reached its pinnacle in 1931, when the most secure, escape-proof prison ever built opened in the little upstate village of Attica, New York. With such dedication poured into its construction, Attica was, at the time, the most expensive prison ever built. Construction had begun in 1929 and continued into the early years of the depression. Over one hundred years had passed since inmates from Auburn had gone to work to build Sing Sing. In the spring of 1930, the scene was repeated; inmates from Auburn were transported to Attica to assist in its construction.

In the late 1920s there had occurred the first "wave" or widespread outbreak of prison riots in this country.⁹ In July 1929, some 1,600 inmates of Clinton Prison rioted

⁹G. David Garson, "The Disruption of Prison Administration: An Investigation of Alternative Theories of the Relationship among Administrators, Reformers, and Involuntary Social Service Clients," paper prepared for delivery at the 1971 annual meeting of the American Political Science Association, copyright © American Political Science Association 1971, pp. 7, 8.

in protest of overcrowding there; three inmates were killed when the state put down the uprising. In the same year, Auburn Prison exploded when a trusty threw acid into a guard's face, overpowered him, and secured the keys to the prison arsenal. Guns were passed out to several inmates and a general riot ensued in which four inmates escaped. Six shops were burned, the assistant warden was killed, and the prison was wrecked before the prisoners were subdued by rifles, machine guns, and tear gas. Then, as now, New York's immediate response to the uprisings in its prisons was the appointment of official investigators and commissions to determine the causes of the sudden uprisings.

Attica State Prison in New York was to be the solution to the recent problem of prison uprisings and the response to the commissions that investigated them.

When Attica opened, it was widely hailed as the ultimate prison. Its wall alone, enclosing 55 acres, was 30 feet high, extended 12 feet into the ground, and cost \$1,275,000 to erect. The prison contained four separated cellblocks, each of which could house some 500 men in individual cells. The total cost of the prison eventually reached the sum of "approximately \$9,000,000."¹⁰ The *New York Times*, reporting on the recent riots and the new prison under construction, stated on January 22, 1930:

Whatever may be the outcome of that agitation, the immediate and practical answer to the convict revolts has been the new Attica prison.

There has been only one major prison built in New York since Attica, and when Greenhaven was first occupied by the state's prisoners in 1949, it too was but another male, maximum security prison. Built on the same architectural principle and committed to the same theory of turning out law-abiding citizens as all the others, Greenhaven completed the list of New York's prisons for men.

Neither Greenhaven nor any other prison since Auburn, however, has created the interest that Attica did when it was built. Shortly before it opened, Attica was hailed in

¹⁰New York State Department of Correction, "These Are Your New York State Correctional Institutions: Attica State Prison," 1949, p. 5.

the following article, which appeared in the *New York Times* on August 2, 1931:

ATTICA PRISON TO BE CONVICT'S PARADISE

Condemned by the Wickersham Commission for its maintenance of Auburn and Clinton prisons, New York State will have an answer to charges of inhuman penal conditions when the new Wyoming State Prison opens at Attica within the next few months with its full quota of 2,000 convicts. Said to be the last word in modern prison construction, the new unit in the State's penal system will do away with such traditions as convict bunks, mess hall lockstep, bull pens, and even locks and keys.

In their places will be beds with springs and mattresses, a cafeteria with food under glass, recreation rooms and an automatic signal system by which convicts will notify guards of their presence in their cells. Doors will be operated by compressed air, sunlight will stream into cells and every prisoner will have an individual radio.

Perhaps because of the depression economy, perhaps for other reasons as well, no Attica inmate has ever seen the institution described above. When Attica opened, there was no cafeteria with food under glass, no recreation room, no automatic signal system, and no sunlight streaming into the cells. There was, in fact, nothing but another huge, foreboding prison. With the unprecedented emphasis on security visible in every brick and every door, this "last word in modern prison construction," far from doing away with locks and keys, made them the focal point around which all life revolved.

When Attica opened, over 130 years had passed since Auburn Prison was built; the population of New York State had changed vastly; the entire social structure of the nation had been dramatically altered; new laws and social conditions had altered the very nature of crime itself; theories of human behavior had been radically modified by the developing social sciences. In fact, everything had changed—everything but the prisons. They were still being built in the silent congregate style of Auburn.

The New York Prison System in 1971¹¹

All persons convicted of felonies and sentenced to terms of more than one year in prison were committed to one of the facilities operated by the state's Department of Correctional Services. Persons convicted of lesser crimes and those held under custody while awaiting trial were confined in local jails, detention houses, and penitentiaries over which the Department of Correctional Services had no jurisdiction. Persons sentenced to probation were supervised by probation officers responsible to the courts and not to the corrections department. Because of overcrowding in its jails, the city of New York arranged with the state to board approximately 3,000 city prisoners in the state prison system in 1971.

At the beginning of 1971, state correction institutions held 12,210 men and 369 women. Approximately 54.5 percent of these persons were black; 33 percent were white; 12 percent were Spanish-speaking; and 0.5 percent were of other ethnic origin. Approximately 54 percent had been committed or convicted for violent crimes, and 56 percent of all inmates had served prison terms before. Ninety-two percent of the system's institutionalized population were housed in correctional facilities, and 8 percent were in hospitals. In addition, there were some 15,000 persons on parole.

One of the largest and costliest such systems in the country, New York's Department of Correctional Services operated 21 facilities, including prisons, hospitals, reformatories, work camps, and a narcotics rehabilitation center. The department employed over 7,650 people, and its annual budget for fiscal year 1971-72 was more than \$100 million.

But the heart of the system remained the maximum security prisons where prisoners were constantly supervised, and locked in their cells at 5:00 or 6:00 P.M.,¹² and which provided few services other than safekeeping. At the beginning of 1971 approximately 8,250 inmates were housed in the state's six maximum security institutions—Auburn, Attica, Clinton, Great Meadow, Green-

¹¹Except as otherwise indicated, the description of the correction system in 1971 prevailed up to the time of this report.

haven, and Ossining (formerly Sing Sing). Except for Ossining, which was being converted into a testing and assignment center, these prisons were located in rural areas isolated from the cities in which the families of most of the inmates resided. Correction officers, often drawn from the surrounding communities, were almost invariably white, and unfamiliar with the life-styles of the inmates committed to their care.

The state's only minimum security facilities for males were work camps restricted to the young and able-bodied. Only one narcotics treatment center for offenders was maintained by the state; the medium security facility at Coxsackie, in which the housing requirements, the supervision, and hours of activity were more flexible, was limited to inmates under 21; and the medium security facility at Elmira was restricted to inmates under 30. There was only one medium security institution—at Wallkill—for which adult males of all ages were eligible, and its capacity was limited to 500 inmates.¹³

For 90 percent of the adult males committed to the state the only accommodations available were maximum security prisons. In these institutions, first offenders were mingled with men with long criminal careers; young men, for whom there was no place in the medium or minimum security facilities, were housed with older men; inmates who were convicted of property crimes, such as embezzlement, forgery, and cashing bad checks were thrown in with inmates who had a history of violent crimes and sexual aberrations; and men serving short sentences were forced to accommodate themselves to a routine designed for men who would spend the rest of their lives in prison. All lived under the same conditions of constant surveillance and long hours in the cells with little to do and almost nothing to learn. All correctional personnel agreed that many inmates could be trusted with greater freedom, and would benefit from the increased programming possible at medium and minimum security institutions. But the

¹²This is no longer universally true; since the Attica uprising, limited evening recreation programs have been introduced.

¹³There were also medium security accommodations for a limited number of inmates operated within the maximum security prisons at Attica (see pp. 82-90) and at Clinton, where there was a 125-bed diagnostic and treatment center.

state system was saddled with maximum security institutions like Attica, and there were no places available elsewhere.¹⁴

In 1965, efforts to convert the New York system from a purely custodial to a rehabilitative basis began when the Governor appointed a Special Committee to study the treatment of criminal offenders in New York State. Co-chairmen of the Special Committee were the then Commissioner of the Department of Correction, Paul D. McGinnis, and the Chairman of the Board of Parole, Russell G. Oswald.

The Committee concluded that too little was known about the actual effects on recidivism of psychiatric and vocational programs, and that it was imperative that a system be created which would test the effect of different programs on the various types of offenders. While recommending that large-scale changes be made in the system only after "evaluation research," the Committee urged the state to abandon "the ancient concepts of prison and reformatory, and to start working with a new concept: the correctional institution. Only then will we be able to break out of the conceptual bondage that results in what amounts to maximum security for almost all inmates of all ages."¹⁵

One change recommended by the Special Committee to signify this new commitment became effective on July 8, 1970. On that date the names of all the state's maximum security prisons were changed. There were no more prisons; in their places, instead, stood six maximum security "correctional facilities." The prison wardens became "institution superintendents"; the former principal keepers became "deputy superintendents"; and the old-line prison guards awakened that morning to find themselves suddenly "correction officers." No one's job or essential duties changed, only his title. Certainly the institutions themselves

¹⁴All new inmates are delivered to the Department of Correctional Services at one of three receiving institutions serving different areas of the state: Attica, Ossining, and Clinton; while inmates are tested here for the purpose of determining the appropriate institution to serve their sentences, the choice is limited to what is available, or, in almost all cases, the maximum security institution regardless of the results of the inmate's evaluation.

¹⁵*Preliminary Report of the New York State Governor's Special Committee on Criminal Offenders* (New York: June 1968), p. 216.

did not change. No walls crumbled, no bars disappeared, no windows opened. No attitudes were revolutionized by the euphemistic name change, and no prejudices were erased by the simple expedient of switching titles.

To a man spending 14 to 16 hours a day in a cell being "rehabilitated," and having little useful to do with the rest of his hours, it was scarcely any comfort and no reassurance to learn that he was suddenly "an inmate in a correctional facility," instead of a convict in prison.

Less than six months later, another broad organizational change recommended by the Special Committee in 1968 restructured the entire correction system in New York. On January 1, 1971, the former Department of Correction and the Division of Parole were merged into the new Department of Correctional Services, centralizing in one agency the custody of convicted felons from the time they entered prison until they were finally released from all state supervision, including parole. The structural change meant nothing to the 12,000 inmates and patients whom the new department was designed to correct, however.

To fill the new post of Commissioner of Correctional Services, the Governor chose his former parole board chairman and Special Committee Cochairman, Russell G. Oswald.

Russell Oswald's professional career began in his home state of Wisconsin, where he received his baccalaureate degree in liberal arts from the University of Wisconsin. He attended Marquette University Law School and received a J.D. degree there, and later a master's degree in psychiatric social work from Loyola University. He served in Wisconsin as a social work caseworker, later director of county public assistance agencies in the Milwaukee area, and as Police Commissioner of Racine, Wisconsin. In 1948, he was appointed Director of the Wisconsin Bureau of Probation and Parole and, two years later, Director of the state's Division of Corrections. In 1955, he left Wisconsin to become Commissioner of the Department of Correction of the Commonwealth of Massachusetts. In 1957, he accepted a position on the New York State Board of Parole and was elected Board Chairman in 1958. He remained as Chairman of the New York Board of Parole until his appointment on January 1, 1971, as Commissioner of the New York State Department of Correctional Services.

To assist him in the administration of his new department, Oswald appointed Federal Parole Board member Walter Dunbar as his Executive Deputy Commissioner. Dunbar graduated from the University of California at Los Angeles in 1938 and began his career as a correction officer in the California prison system. He later served as an associate warden and then as Deputy Director of the California Department of Corrections from 1955 until 1961. In 1961 he became Director of the California Department of Corrections, a position he held for six years. In 1967 he left the California system to become Chairman of the United States Board of Parole. He was serving as a member of the U.S. Board of Parole when he was offered his current post.

The new Commissioner and his deputy were aware of the difficulties involved in bringing about change in which the physical plant was largely maximum security, and in which all personnel had become accustomed to that style of imprisonment. When he accepted the leadership of the new department, Oswald assessed his professional inheritance, and he was not encouraged by what he saw. In testimony before a congressional committee, Oswald was later to enumerate some of the obstacles confronting him in New York State corrections. They included, he said, a department that had been fiscally starved for years; a departmental administration and group of administrators across the state who had met only infrequently in the past ten years to discuss mutual problems and to plan together; a line correctional staff of over 4,000 officers whose training and preparation had been grossly neglected; inmates, healthy young men, confined to their cells 16 hours a day; long-standing policies of tremendous impact on the daily lives of inmates that had not been reviewed in years; inadequate, outdated methods for diagnosis, classification, and assignment of offenders; and inadequate attention paid to the need to involve the community in the rehabilitative mission of the department.

Oswald's job, as he told this Commission, was "to give the whole system a new flavor." The magnitude of that task is indicated by the remainder of this report.

Chapter 2

A Look at Attica

Attica was built to be the most secure of New York's prisons, and its routine was intended to rehabilitate criminals. In practice, however, maintaining inmates securely became dominant. Rehabilitation gave way to security whenever the prison administration thought the two were in conflict. With an inadequate budget and limited staff, such conflict was inevitable. The prison's staff saw a potential threat to security whenever an inmate was allowed out of his cell.

This chapter describes the population and life for the inmates at Attica at the time of the uprising in September 1971. Life has changed in some respects at Attica since the uprising; some of the changes that have taken place are noted in this chapter and in chapter 19.

Examined separately, many of the inadequacies and frustrations of inmate life may appear insignificant. But their cumulative impact created a dehumanizing environment. There was no meaningful programming, employment training, psychological help, or drug rehabilitation; and there were no real efforts to prepare inmates for society. If inmates were rehabilitated, it was not because of Attica but in spite of it.

In most ways life at Attica in 1971 was still based on the discarded theories of penology described in the first chapter. But inmates reacted to the dated prison methods as contemporary men, and the resulting gulf between them and the imposed life-style produced a setting in which frustrations and tensions flourished.

What It Looks Like¹

Security begins at the gray concrete wall of the prison, which alone cost over \$1 million to build. The wall is 30 feet high, 2 feet thick, and sunk 12 feet into the ground. Spaced along the top are 14 gun towers.

¹See photograph, inside covers.

The wall encloses 53 acres which hold 18 buildings. Five are cellblocks; the rest house various services for the institution and the more than two thousand inmates who were confined there in September 1971.

New inmates and visitors enter the prison through a black metal door in the west wall under one of the gun towers. Like every gate at Attica, it is locked, and like most, manned by a correction officer. Inside the door there is a small area containing a sign-in book and walk-through metal detector which is sensitive enough to detect tinfoil in a cigarette pack.

Beyond, across a lawn divided by a concrete walk, is the administration building. Almost all of the prison's offices are here, and an annex built in 1966 contains the package inspection room, visiting room, and several small interviewing rooms.

The administration building annex leads by one of the many Attica corridors into A block, one of the four main housing blocks. The four blocks, A, B, C, and D, form a square enclosing an open area. Narrow corridors ("tunnels") running from the middle of one block to the block opposite divide the central area into four exercise yards. The tunnels intersect at a juncture called "Times Square." A manned and locked gate bars the way out of each block into the tunnel; there is another locked gate at the Times Square end, a security device intended to permit each block to be sealed off from the others.

Each block, which holds about 500 inmates, is divided into 12 cell groups called "companies." A fifth building constructed in 1966, E block, houses 6 additional inmate companies.² E block is located behind C block, away from the main housing area, and since 1968 has been used for a special program directed by the New York State Division of Vocational Rehabilitation.³

Men live on three floors in each of the four main blocks, and a central hallway divides each floor into two cell areas. Two rows of cells are in each area, and each row houses one company of inmates—41 men in A and B blocks, 42 in C and D.

Rows of cells ("galleries") in A, B, and D blocks are

²The companies are numbered: 1-12 are in A block, 13-24 in B block, 25-36 in C block, 37-48 in D block, and 49-54 in E block.

³See pp. 82-90 for a full discussion of the program.

back to back and separated by a solid wall. Each cell faces barred windows across an 8-foot-wide corridor. In C block, the back of each cell contains a barred window, and inmates face one another across a corridor.⁴

There is a gate or a locked door on every cell, a second gate bars the stairway entrance from each gallery and another seals off the stairway from the main hall.

Outside the square formed by the cellblocks are the service buildings, which are reached by other gates and corridors from the blocks to the nearest building. Many of the buildings are also connected to one another by gates and corridors.

The first building behind C block, toward the left as one enters the prison, serves as both the reception center and the disciplinary housing unit. The first floor is used to process new arrivals and also houses the six inmates who participate in the work-release program.⁵ The second and third floors contain segregation cells, some of which are for psychiatric observation and protection of inmates, others, known as "HBZ" (Housing Block Z), for disciplinary purposes.⁶

The next two buildings down the line behind C block are the hospital and the kitchen-mess-hall complex, which contains separate officer and inmate mess halls, the kitchen, and the bakeshop.

In the laundry building is the bathhouse, where most inmates were allowed showers only once a week,⁷ and the barbershop.

Last in the row is E block, at the northeast corner of the prison.

The two metal trades shops,⁸ the powerhouse, and the maintenance building (which houses the prison garage) are behind B block. Before the uprising, the commissary was on the second floor of the maintenance building, but it was partly destroyed and is now in C block.

At the southeast corner of the prison is a field known as the "Ponderosa." When Attica was constructed, this area was to have been the site of a gymnasium, but the gymnasium was never built.

⁴The individual cells are described on p. 34.

⁵The work-release program is described on p. 91.

⁶HBZ is described in a general treatment of discipline on p. 76.

⁷Since the uprising inmates have two showers per week.

⁸The industry operation is discussed on pp. 38-39.

There are three buildings behind D block, all of which were badly damaged during the uprising: the state shop, where clothing and shoes are issued, which also contains the tailor and shoe shops on the second floor and the carpentry shop on the first; the auditorium-chapel; and the school.

What It Costs

In 1971, the state spent more than \$8 million to keep inmates at Attica.

Most of the money was allocated to security and maintenance. Correction officers' salaries absorbed 62 percent. Less than 5 percent was spent on inmate wages, the \$40 allowance to departing inmates, and outside hospital bills. Food, inmate clothing, and medical supplies claimed 8.5 percent of the budget.

Appendix A contains a detailed breakdown of budgetary expenditures.

The Staff

In September 1971, there were over 500 people who were free to leave Attica every day: the Superintendent, two Deputy Superintendents, a uniformed correctional staff of 398 (supervisors and officers), and 145 civilians. There was one black civilian teacher, no black correction officers, and one Puerto Rican correction officer;⁹ 28 women were employed as secretaries. The organization chart in September 1971 was as follows:

SUPERINTENDENT

CORRECTIONAL STAFF (398)	CIVILIAN STAFF (145)
Deputy Superintendent	Industry (17)
Assistant Deputy Superintendent	Education (13)
Captain	Medicine (15: 5 part-time)
Lieutenants (5)	Religion (3: 1 part-time)
Sergeants (10)	Counseling (6)
Officers (380)	Parole (4)
	Plant Operation and Services (46)
	Clerical (41)

⁹In July 1972, there were 18 black and 2 Spanish-speaking correction officers at Attica as a result of special recruitment efforts.

The Superintendent: In September 1971, Attica's Superintendent was Vincent Mancusi, who had worked his way up through the ranks after 35 years in New York State prisons. He began his career as food manager at Woodbourne Prison in 1936, before more than 40 percent of the inmates in his charge at Attica were born. He also served as a lieutenant and a captain at Clinton, Assistant Deputy Warden at Auburn, and Deputy Superintendent at Elmira Reformatory before coming to Attica in 1965. He holds a B.S. in education from the State University of New York at New Paltz, and an M.A. in correctional administration from St. Lawrence University. Mancusi retired in February 1972, five months after the uprising.

The Superintendent makes the rules and programs for his institution, within the limits of the general policies of the Commissioner of Correctional Services. Within these limits, the Superintendent's attitudes and philosophy have an important influence on the workings and general atmosphere of the institution. The enforcement of the rules and the administration of programs are left to assistants—such as the Deputy Superintendent, the Education Supervisor, and the Business Manager.

The Deputy: The Deputy Superintendent, or "P.K." (principal keeper) as inmates still call him, is in charge of the day-to-day operation of the prison. While he is the immediate head of the custodial staff, most of the routine supervision of officers is delegated to the captains, lieutenants, and sergeants. Unlike the Superintendent, the Deputy sees inmates nearly every day: he conducts disciplinary proceedings,¹⁰ interviews new arrivals, reviews inmate work assignments. When inmates have problems or complaints, they "drop a tab" (note) to the "Dep."

On September 9, 1971, the Deputy Superintendent was Leon Vincent, who holds a B.A. and an M.A. in education from St. Lawrence University. Vincent entered the state correctional system in 1937, 35 years before the uprising. In 1972, he was named Superintendent of Greenhaven Correctional Facility in Stormville, New York.

Supervisory Personnel: The Assistant Deputy Superintendent (Karl Pfeil, on September 9) and ranking correction officers have varied duties in support of the Deputy Superintendent. They allocate staff through the

¹⁰See pp. 77-78 for a description of disciplinary proceedings.

institution, supervise various areas, sit on disciplinary bodies and other committees, and cope with the paperwork.

There were 17 men with the rank of sergeant and above at Attica in September 1971 to direct 380 officers.

The Ranks: Prior to the uprising, only about 57 percent of the correctional staff, or 227 men, were on duty on any given day. One hundred fifty men, two-thirds of the daily complement, worked the day shifts (7:00–3:00, 8:00–4:00, and 9:00–5:00), when most inmates were out of their cells.

About 80 percent of the day shift were involved in custody and supervision—in the blocks, yards, and other buildings. The remaining 20 percent had little or no inmate contact; they had jobs on the wall and gun towers, at the prison's gates, and in offices.

Until 1970, officers had no choice. They worked wherever their supervisors placed them. In April 1970, their union negotiated a change which allowed officers to "bid" for job openings on the basis of seniority, and many experienced officers used the bid system to transfer away from posts involving inmate contact.¹¹

In addition to passing a civil service examination, prospective correction officers had to be between 21 and 37, meet minimum height (5'8"), weight (145 lbs.), vision, and hearing requirements, have a high school or equivalency diploma, and be legally eligible to carry firearms.¹² This served to exclude all ex-inmates.

Officers' salaries ranged from \$9,535 to a maximum of \$11,941 after 15 years. The range for sergeants was \$11,277 to \$14,031, for lieutenants from \$13,244 to \$16,406, and for captains from \$14,720 to \$18,164. Many officers found it necessary to hold another job.

For promotion, evaluations of an officer's performance on the job and his ability to relate to inmates were not considered. Written examinations were the key, and after three years' service, any correction officer could take an exam for sergeant. For each succeeding rank, including

¹¹This and other effects of the 1970 change are discussed in chap. 3.

¹²For appointment as a "correction officer—Spanish-speaking," an applicant only has to be 5'6" and must pass an oral test in conversational Spanish. All other requirements are the same.

superintendent, the examination could be taken only after one year's service at the preceding level.

Those who passed the examinations were placed on civil service lists and offered the first available vacancy anywhere in the state. Generally promotion also meant a transfer to another institution far from home where the officer would bide his time unhappily until he was the senior applicant for an opening at the prison near home and the family he sometimes left behind.

Some correction officers told the Commission that being uprooted, and the fact that moving allowances usually do not cover actual costs, deterred them and others from seeking promotions.

In the 1930s, New York State had a 90-day training course for prison guards. The program was progressive for its time, and older officers spoke highly of it. Between World War II and the late 1950s, however, there was no formal training for officers. More than one-third of the officers at Attica on September 9 began their jobs during that period. Those who started after that were given two weeks' training. Many found it useless.

Officers learned by experience and from other officers; supervisory personnel at Attica drew up their own guidelines which they distributed to rookie officers.

Almost all of Attica's correction officers were interviewed by the Commission, including 30 who met with the Commission's psychiatric consultant. They did not purport to be social workers. Like most civil servants, they had been attracted by the job security and the promise of a pension. As Dr. Robert Gould, the Commission's psychiatric consultant, testified:

Now, this is not . . . the proper motivation for this kind of job, if these inmates are going to have any help. . . . These are really quite decent people, these officers I have met, and I mean no derogation of them, when I say they have no particular skill for the kind of work that they're doing, if indeed rehabilitation is to be the goal and not just custody and safekeeping.

It is not the correction officers' fault that they have not been trained to help inmates, or that there is insufficient educational, vocational, and cultural programming for inmates. Correction officers should not be

blamed for the failure of the prison system, for they, like the inmates, are the victims of years of neglect and inadequate planning.

Civilians: Approximately two-thirds of the 145 civilian employees at Attica on September 9 held jobs directly related to the functioning of the prison: clerical positions, skilled trades, the laundry, the metal industry, the kitchen, and the farm. Inmates were assigned jobs in all of these areas, and the civilians were expected to train and supervise them under the surveillance of correction officers.

The remaining 45 employees—teachers, chaplains, medical personnel, parole officers, and correction counselors—ran what formal counseling, rehabilitation, and training programs existed at the institution. They represented approximately 8 percent of the Attica staff.

The Inmates

There were 2,243 inmates at Attica in September 1971. Statistics maintained by the department show the following:¹³

Race: 54 percent of the population was black, 9 percent Puerto Rican, and 37 percent white. Attica had a slightly larger white population than the 33 percent total in the state correctional system, because of its role as a receiving institution for a predominantly white, rural area.

Age: 40 percent of inmates were under 30 years old.

Crime: 62 percent of the inmates were convicted of violent crimes including homicide, robbery, assault, and rape; 14 percent were convicted of burglary; and 9 percent were convicted of possession or sale, or both, of drugs.

County of Commitment: 77 percent of the inmates were committed from urban areas: 43 percent from New York City and 34 percent from Buffalo, Rochester, and Syracuse.

Education: 80 percent had not completed high school, 16 percent had; an additional 4 percent had gone beyond high school.

Drug Use: 28 percent of the inmates admitted they used drugs when they entered Attica although only 9

¹³All percentages are approximate; exact figures for the total population may be found in appendix B.

percent had been committed there after conviction for possession or sale. The 28 percent figure may be low, because the institution did not attempt to verify inmates' statements. Marijuana was considered a drug in compiling these figures.

Prior Record: Almost 70 percent of the population had served time in a state, Federal, or local prison before coming to Attica. Only 12 percent had no prior police record; the remainder had been arrested but not convicted, or had been given probation after conviction.

Parole and Conditional Release Violators: Approximately 155 inmates, or 7 percent of Attica's population, were serving the balance of interrupted terms, after their parole or conditional release had been revoked for various violations.

Sentences: More than half the inmates had an unspecified minimum sentence which was to be set by the parole board after an initial ten months' incarceration. The term set could not be less than ten months, nor more than one-third of the inmate's maximum sentence. Fifty-five percent of the population had a maximum sentence of 7 years or less.

These figures profile the trends which characterized inmates admitted to state prisons over the preceding five years: the number of black and Spanish-speaking inmates increased; more and more inmates came from urban areas; they were younger, were more likely to admit drug use, and had shorter sentences. These trends are important elements in the themes of several succeeding chapters.

Whatever their background, Attica inmates share one experience in common—they have been through the criminal justice system in the state.

Many blacks, as the National Advisory Commission on Civil Disorders (Kerner Commission) observed, believe that there is a "double standard" of justice and protection for blacks and whites. There are similar inequities between rich and poor. Both white and black inmates thus arrive at Attica convinced that the entire judicial system is hypocritical and unjust.

As members of the lowest income class, most inmates can not afford to make bail after arrest, and they spend months in county or city jails awaiting disposition of their cases. They see others who are accused of similar

or more serious crimes go free on bail. Thus, no matter how serious their crimes, most inmates enter prison conscious that they are being detained before trial not for what they are accused of doing, but because they are poor.

Inmates are further reminded of the relationship between money and justice when they are assigned overworked Legal Aid lawyers or public defenders.

But what makes inmates most cynical about their pre-prison experience is the plea bargaining system. Under this system, criminal defendants are offered the opportunity to plead guilty to a lesser offense if they are willing to forego a trial. Plea-bargaining has become a part of the state criminal justice system, which lacks the personnel to try more than 4,000-5,000 of the 32,000 felony indictments returned each year.

Even though an inmate may receive the benefit of a shorter sentence, the plea-bargaining system is characterized by deception and hypocrisy which divorce the inmate from the reality of his crime.

The New York Joint Legislative Committee on Crime headed by Senator John H. Hughes described the process:

The final climactic act in the plea bargaining procedure is a charade which in itself has aspects of dishonesty which rival the original crime in many instances. The accused is made to assert publicly his guilt on a specific crime, which in many cases he has not committed; in some cases he pleads guilty to a non-existing crime. He must further indicate that he is entering his plea freely, willingly, and voluntarily and that he is *not* doing so because of any promises or considerations made to him.¹⁴

The system also results in unequal sentences for the same conduct, depending on whether the inmate is willing or able to strike a good bargain. In upstate New York, where court calendars make pressures for plea bargaining less intense, sentences tend to be more severe than in New York City. An inmate who commits a property crime, such as burglary, may find himself in a cell next to an inmate who committed a violent crime but who, because

¹⁴*Guilty Plea-Bargaining and Prisoner Attitudes*, Report of the Joint Legislative Committee on Crime, State Senator John H. Hughes, Chairman, pp. 15-16.

of a plea bargain, was permitted to plead to a lesser offense and received a shorter sentence.

The Hughes Committee made a study of prisoner attitudes toward plea bargaining at Attica, Greenhaven, and Ossining prisons and found that almost 90 percent of the inmates surveyed had been solicited to enter a plea bargain. Most were bitter, believing that they did not receive effective legal representation or that the judge did not keep the state's promise of a sentence which had induced them to enter guilty pleas.

As the Hughes Committee observed, the large segment of the prison population who believe they have been "victimized" by the courts or bar "are not likely to accept the efforts of another institution of society, the correction system, in redirecting their attitudes." The Hughes Committee warned that no program of rehabilitation can be effective on a "prisoner who is convinced in his own mind that he is in prison because he is the victim of a mindless, undirected, and corrupt system of justice."

The prison vans brought to Attica men whose experiences in court made them cynical about the system of justice. The experiences that awaited them there only made them even more antisocial.

First Impressions—Reception at Attica

Inmates entered Attica's front gate in leg-irons and shackles, and were processed at the reception building. They exchanged their street clothes for gray prison garb, were searched for contraband, fingerprinted, photographed, assigned a number, given a haircut, and told to fill out forms. They were then taken to one of the cell galleries in A block reserved for incoming inmates; on September 9 there were three such companies.

Once there, inmates received a bar of soap and a roll of toilet paper. They were kept in their cells 24 hours a day—"keeplocked"—until a "P.K.'s interview" with the Deputy Superintendent, usually within two days. The P.K. sought to determine whether the inmate had job skills or interests and any special problems: enemies in Attica or homosexuality. After the interview, inmates were allowed to leave their cells only to go to meals and to the yard.

For a few years prior to November 1970, a rulebook

—printed only in English—was given to new inmates. After that no money was available to print new books. Most of an incoming inmate's orientation was provided by parole violators and recidivists in the reception company who had been there before.

Some interviewing and testing was conducted during the initial reception period. Counselors spoke with new commitments and prepared case analyses, which contained biographical and criminal information and program recommendations. Inmate transfers were accompanied by their case analyses from another institution. A test to determine their academic level was also administered to new inmates; each man was visited by a chaplain; and a complete physical examination was performed. Until the beginning of 1970, when they were discontinued for lack of staff, psychological tests were also given.

These activities did not begin to fill the day. Apart from trips to the mess hall for meals and a few hours in the yard, new inmates spent 18 to 20 hours in their cells every day with only the prison radio station for diversion. Not even the prison library was open to them.

Until they were given an assignment to a job or program, which took four to eight weeks, inmates remained in a reception company. The assignment determined in which block the inmate would live thereafter.

It was the Deputy Superintendent's responsibility to make individual inmate work assignments, with particular emphasis on security. Recommendations for jobs of new inmates and parole violators were made by a seven-member assignment board¹⁵ which met once a week to interview inmates. Transferees were assigned directly by the Deputy Superintendent.

Inmates testing below a fifth-grade reading level were required to go to school. Apart from that, assignment board members were theoretically guided by two criteria: the skills and preferences of the inmate, based on his case analysis and his statements to the board, and job vacancies. In practice, not only were inmates often unaware of the jobs that existed, and thus unable to state a preference, but even the board did not have current

¹⁵Members were the service unit head or his representative, who chaired the meetings, the senior parole officer, the Deputy Superintendent or his designate, the Education Supervisor, and the head of the Office of Vocational Rehabilitation.

information on job vacancies. The Dep, who was free to disregard the board's recommendations, made the final decision.

Since the uprising, a number of changes, largely designed to limit the autonomy of the Deputy Superintendent, have been made in the job assignment procedure. The assignment board is now informed of job openings, and all inmates, including transfers, are interviewed by the board before being placed. While the Deputy Superintendent still reviews the board's decisions, any changes he makes are discussed with a board member. Moreover, the board's new practice is to review an inmate's performance at his assignment at 30- and 60-day intervals.

How Inmates Spent Time

Once among the general population, inmates' lives settled into a routine which varied very little through the entire term of their sentences. They were alone in their cells 14 to 16 hours a day. At the same hours each day, they left their cells for work or school (5 hours for most), recreation in the yard (an average of 1-1½ hours), and for meals (20-40 minutes each). "Call-outs" for weekly showers, commissary trips, packages, visits, sick call, parole officer interviews, or other special appointments were scheduled during the day and interrupted work or school time. On weekends, when most inmates did not work, there was more yard time, with some organized sports, religious services, and, from October to April when it was cold in the yard, an afternoon movie. For many inmates, weekends signaled increased idleness in their cells.

Inmates were not permitted to walk through the institution unescorted without a pass, and as a general rule, they walked in two columns from place to place accompanied by officers who always walked behind them giving voice commands.

On July 4, inmates were permitted to roam from yard to yard. For the remaining 364 days of the year they were limited to their own cellblock's yard; and since men assigned to the same work details lived in the same blocks, inmates could see friends from other blocks only if they were at the mess hall, sick call, commissary, or other central location at the same time. Thus, the security-

conscious administration created five separate prisons within the walls of Attica.

Cell Time: Inmates locked in every evening at 5:50,¹⁶ until breakfast the next morning at 6:30. The original 19th-century therapeutic justification for isolation had long since been discarded; but the routine of solitude still served the needs of economy and security. According to the administrators, there were insufficient officers to assure security for evening programs, and most inmates could not be trusted outside their cells without supervision. Locking inmates up at night was the cheapest way to assure safety.

• Cells at Attica are small cubicles approximately 6 feet wide, 9 feet long, and 7 feet high. A, B, and D block cells have three solid walls and a fourth consisting only of iron bars. The nearest window is across the corridor, 8 feet away. C block cells have a window in the back wall, and a heavy metal door with a small grilled opening; from the inside they seem to afford more privacy. All cells contain a bed, a stool, a small table, a two-drawer metal cabinet, a naked light bulb, earphones for the radio system, a toilet, and a cold-water sink. There is not much room left for a man to move about.

Inmates could talk until the 8:00 P.M. silence bell and then read, write, or study until lights out at 11:00 P.M.;¹⁷ they could also listen to the three-channel radio until midnight.¹⁸ Men with six months' good behavior and sufficient money could apply to the Superintendent for a hobby permit and order crafts material through the mail.

Communication on the galleries was difficult. Cells were side by side and back to back, and inmates could only look down the gallery through mirrors they held outside the bars. Messages and books were delivered hand to hand from cell to cell. In the many idle hours adjoining inmates played chess, checkers, or cards on boards placed

¹⁶Exceptions were inmates who lived in E block and inmates on the night shift in the metal shop who worked without officer supervision. Together they made up less than 5 percent of the population.

¹⁷Until April 29, 1971, lights went out at 10:00 P.M.

¹⁸Radio programming is described in "Communication with the Outside World," p. 54.

on the floor between the cells or they called out moves on numbered boards.

Legal work or cell study programs filled other time but the noise level in the early evening when inmates communicated by shouting across the gallery was distracting. The light bulb had no shade and because of the antiquated wiring system could not be stronger than 60 watts.

In spite of these handicaps, working on their own legal cases was a major occupation for many inmates. Once an inmate's direct appeals from his conviction were exhausted, free legal help was often unavailable. Nevertheless, most inmates kept alive the hope of freedom by filing petitions for writs, often in several courts at a time, which they often prosecuted themselves. In addition, in the wake of recent court decisions on prison conditions, the number of civil lawsuits by inmates concerning their grievances was increasing.

The institution maintained a law library for use by inmates, but its collection was limited.¹⁹ Moreover, inmates had to take turns using it, could not remove the books, and had to copy relevant authorities out longhand. Once back in their cells, inmates spent long hours painstakingly drafting and redrafting their writs.

Several inmates gained considerable skills in legal work and became respected "jailhouse lawyers." These men were much in demand to assist other inmates. One such inmate, who had studied law through correspondence courses, became so proficient that in July 1972 he conducted a trial before a Federal Court jury on a claim he had filed against the detective who had arrested him in 1962, and won a \$7,500 judgment.²⁰

Cells were searched at sporadic intervals for weapons and contraband; it was a reminder to inmates, if they needed one, that privacy is illusory in prison. Officers were directed to "use care and not destroy personal property, [and] . . . not to make a shambles of the cell or misuse items belonging to the inmates."²¹ But as one inmate de-

¹⁹Since the uprising, the law library collection has been updated and expanded as a result of a federal grant to the Department of Correctional Services.

²⁰*New York Times*, July 29, 1972, p. 23, col. 4.

²¹Orientation Material for New Officers, Attica Correctional Facility, p. 6.

scribed a cell search: "They don't have to live there . . . they pull the books off the wall and throw them on the bed and turn the mattress over. When they get done they walk out." For inmates whose cells held all of their carefully preserved possessions, these forays represented a trespass.

Work and Other Programs: Five of the eight or ten hours inmates spent out of their cells each weekday were allotted for work or school; they were in reality primarily opportunities for socializing between inmates.

Part of the problem was caused by unavoidable featherbedding. There were too many inmates for too few jobs and places in school. Men swept and mopped the same already clean section of floor several times a day. Others stood by in the metal shop while one of them used a machine to which three or four were assigned. Most assignments to the school were for a half day and inmates were given a work assignment for the other half. Even so, teachers complained that classes were too large to be effective. Even if an inmate began with some desire to develop work habits, or achieve a sense of ability and accomplishment, he soon fell into the pattern of lethargy which prevailed among the other inmates. Some, but not many, preserved and acquired skills or improved their educational level. Roughly 60 percent of the men at Attica in September 1971 worked at jobs related to the maintenance of the prison; 20 percent worked in the industrial shops; and another 20 percent were divided among the school (12%), vocational classes (5%), and the special Division of Vocational Rehabilitation program housed in E block (3%). Six inmates participated in a work-release program. Wages ranged from 25¢ to \$1.00 per day.²²

In theory, work was not compulsory at Attica. But inmates had the choice of working or being keeplocked without pay until they changed their minds.²³

Institutional Maintenance: Prior to the uprising, about 1,400 men were assigned to jobs which helped maintain the prison. The jobs could have been handled by a small fraction of the assigned inmates, but featherbedding kept

²²The wage structure is described on pp. 49-51.

²³The metal-shop strike, discussed on pp. 128-29, and the institution's reaction to it, illustrates the prison's attitude toward inmates who refused to work.

more inmates busy, at least part of the time. Assignments fell into three categories: "inside," "outside," and "servicing other inmates."

Inside assignments included porters, who performed janitorial duties, and carpenters, electricians, plumbers, masons, painters, roofers, and locksmiths.

Jobs as clerks and messengers ("runners") were among the most coveted positions in the prison, because they carried with them status and privileges. Clerks assisted in record-keeping in the blocks and in the hospital and other offices. They worked closely with officers, with whom they could develop helpful relationships, and had first access to prison scuttlebutt. The prison's six runners had passes and were allowed to move through the institution without an escort.

There were approximately 300 jobs in outside work gangs and at the farm, where some meat (mostly pork), dairy products, and vegetables were produced for the mess halls. All outside jobs were considered desirable assignments except the "grading" companies, which did menial labor inside the walls, such as shoveling snow. The term "grading company" originated when Attica was built and the uprooted land had to be graded and rocks removed. In recent years, the grading companies were often idle and largely reserved for "incurable troublemakers." (See pp. 150-51.)

Other outside work included the grounds crew for the Superintendent's house and utility gangs, which maintained the prison lawns and parking lots outside the walls; the farm crew; the coal gang, which unloaded incoming coal cars; and the disposal detail, which eliminated the institution's trash and waste.

The coal gang was considered one of the best assignments: the officer in charge kept a coffeepot going all day and allowed the inmates to tend their own vegetable patch in the work area. In addition, as one inmate testified: "It's a seven-day-a-week job and that's a help. It gets you out of the cell and it kills time . . . and by and large, it's the best of a bad lot."

Jobs in food service, the commissary, the laundry, and the hospital were also considered among the better assignments. Inmates in the kitchen and mess halls worked seven days a week and were permitted to take extra food back to their cells. The commissary had similar fringe

benefits. Laundry workers had clean clothes as often as they liked, and they could make "contacts" with other inmates to do their laundry.²⁴ Inmates assigned to work in the hospital had the advantage of being able to live in rooms on the hospital's third floor, rather than in cells.

Industry: Approximately 450 inmates—76 percent of them black and Spanish-speaking—worked in the metal shops at Attica assembling shelving, lockers, cabinets, and tables. The professed purpose of prison industry was "to teach inmates occupations and skills and to develop good work habits comparable to and employable in free industry."²⁵ But the supervisor of the industrial shops at Attica was quick to add, "We have to make a profit as well . . . If we don't make a profit, we don't exist. How will we get money for the new equipment?"

Under a state law adopted at the urging of organized labor, goods made in prison can only be sold to the state, state agencies, and municipalities. Revenues from all prison industries in the state were pooled and used to pay the salaries of civilian industrial supervisors and inmates' wages, and to purchase raw materials and new machinery.

Conditions in the metal shops at Attica precluded for all but a few any hope of achieving vocational skills and good work habits. Featherbedding was the main problem; supervisors had no control over the number of men assigned to the shops, and there was work for only 250 of the 450 inmates assigned at the time of the uprising. Nothing close to a normal work day was possible. The four to five work hours were punctuated by lunch and midday count, and call-outs for commissary, showers, packages, lawyers, and other visits.²⁶

The metal shops were also used as a dumping ground when no other jobs were open for incoming inmates, or for inmates who had difficulty in other jobs. Few inmates who heard about the metal shops before being assigned

²⁴This and other "hustles" are described on pp. 52-53.

²⁵Work Rules and Regulations, Division of Industries.

²⁶One exception was the metal-shop night shift, begun in July 1971 in an attempt to make better use of the institution's facilities and offer a more normal working situation to selected inmates. The 41 men worked from 3:30 to 11:30 under the supervision of three civilians, and were paid an additional 10 percent in wages. The program was discontinued after the uprising.

there began with any motivation; once there, they found nothing to encourage them. Most jobs were mechanical and repetitious. Others were also dirty, and a shower was available only once a week, although a few metal-shop inmates who unloaded steel were able to shower almost daily. In the summer, the shops were shut down only when the temperature reached 90° inside. Among inmates, the metal shops were notorious for "bandits" (homosexuals). With half the men idle while the other half manned machines, gambling was widespread.

The industrial supervisor testified that inmates in the metal shop who were self-motivated "could acquire skills that were usable on the outside." However, he could not estimate how many inmates found jobs in related industries on the outside, because the prison had no placement service and made no effort to cultivate outside employers to hire inmates upon release.

Conditions in the metal shop were not the only grievance of inmates working there. They felt that they were being exploited. They saw their labor, compensated at an average rate of 30¢ to 50¢ per day, used to produce profits of \$150,000 in the year prior to the uprising. The cycle of generating profits to buy new machinery and to pay their supervisors was not viewed sympathetically by inmates.

Job Discrimination: Even inmates who had "good" jobs believed there was racial discrimination in job assignments. The Commission's examination of the racial breakdown of inmates in various jobs and the statements of prison officials who made the assignments supports this claim.

Although they constituted only 37 percent of the total population, white inmates constituted 74 percent of the workers in the powerhouse, 67 percent of the clerks, 70 percent of the runners, 62 percent of the help in the officers' mess, and 54 percent in the inmates' mess halls, the commissary, and the farm. White inmates held more than half of the positions in 11 job categories; of these, 10 were considered highly desirable.

In contrast, 76 percent of the inmates in the metal shop and 80 percent of those in the grading companies—both regarded as undesirable jobs—were black and Spanish-speaking, although blacks constituted 54 percent and Spanish-speaking inmates only 9 percent of the Attica

population. None of the clerks, runners, officers' mess, or commissary inmates was Spanish-speaking.

There were, however, some "good" jobs in which blacks predominated, such as the laundry (66 percent black), the superintendents' grounds gang (65 percent black); the coal gang was 35 percent Spanish-speaking.

Attica officials were aware of the charges of racial discrimination, and some acknowledged that it had existed in the past. Deputy Superintendent Leon J. Vincent, however, testified that he had introduced a quota system to ensure racial balance in jobs and that discrimination no longer existed. He explained the underrepresentation of blacks and Spanish-speaking inmates in some jobs: "You have to understand that the black man isn't always the best-qualified man. Let's talk about somebody who can type or someone who might be a bookkeeper. You don't find too many black men that will qualify in these areas."

Such a consideration hardly applied to the officers' mess, where 62 percent of the inmates were white. Moreover, there were approximately 200 black and Spanish-speaking inmates who had high-school education, and none of the jobs at Attica required more than that.

With a view toward assessing the actual workings of the assignment system, the Commission studied files of 22 inmates (1 percent of Attica's population), who came before the assignment board in April or May 1971 and who were still at Attica in March 1972. Of the 7 black inmates in the group,²⁷ 4 were placed in the metal shop, and only 1 was given the assignment he requested. Of the 15 whites, 1 was assigned to the metal shop and another to a half day at school and a half day in the metal shop. Ten were assigned to the area they requested for a full or a half day.

Educational Programs: 12 percent of the inmates were enrolled in the school program, which consisted of five courses ranging from basic reading and arithmetic up to a high-school equivalency course. Inmates who attended classes for a half day were assigned jobs for the other half. There were approximately 30 to 35 inmates en-

²⁷Because Attica receives new commitments and parole violators from the surrounding area, whites are overrepresented in this sample. Most black inmates arrive as transfers from Ossining, and before the uprising, transfers did not appear before the assignment board.

rolled in each class. Attendance averaged two-thirds of enrollment. The education staff also supervised a 14-week program in public speaking and self-confidence by the Dale Carnegie Institute.

The school faculty consisted of an education supervisor and five teachers, one of whom was black. All but one of the teachers were in their twenties or early thirties. All had bachelor's degrees, and some had done graduate work.

All inmates who scored below 5.0 on the Stanford Achievement Test administered during the reception period were compelled to attend school until they reached at least that level.²⁸ Because school was an easy assignment, there were inmates who deliberately scored low on the test in order to be placed there. Others enrolled because they believed it would impress the parole board. Inmates who scored as functionally illiterate, particularly older men, resented forced schooling. The wage paid to students was 25¢ a day, the lowest in the institution,²⁹ discouraging some inmates who would have been interested and increasing the resentment of those who were forced to attend. Like the metal shop, the school was used by the administration as a "dumping ground," since the number of inmates in a class could be increased without an appreciable threat to security.

No class was taught in Spanish, nor was there a course in English as a second language for Spanish-speaking inmates, at least 10 percent of whom were illiterate in English. Such a class had been offered for a time, but by a Spanish-speaking inmate who proved ineffective as a teacher. A few Spanish-speaking inmates were assigned to regular classes with other inmates, "which," an instructor commented, "didn't help me and didn't help them. . . ."

The high-school equivalency course offered by the school was a relatively successful program. While not all of the enrollees took the state-administered examination given at the end of the course, the percentage of those who passed was slightly higher than the statewide percentage of noninmates who took the examination. However, the course was not always given and enrollment was limited.

Summarizing the school program, one teacher testified:

²⁸Schooling is no longer compulsory.

²⁹The wage structure is described on pp. 49-51.

"We were laboring under so many frustrations that there was no way it could be termed adequate."

Independent Study: Cell study and correspondence courses were the only educational opportunities at Attica for inmates not assigned to the school.

About 50 inmates were enrolled in correspondence courses leading to certification—3 or 4 in International Correspondence Schools, and the remainder in Nassey Vocational and Technical School. The cost had to be borne by the inmate and was several times the average annual wage of Attica inmates.

About 500 inmates were enrolled in cost-free cell-study courses, which were offered in a variety of subjects using International Correspondence Schools texts. The program was supervised by one of the teachers; to enroll, an inmate dropped him a "tab" and in return received a textbook. His assignments were corrected by inmate teachers and returned to him. Inmates believed the Parole Board would view cell study as evidence of rehabilitation, and inmate teachers received cigarettes and other bounty from their "students" in exchange for passing marks on written assignments. Four cell-study courses, Afro-American history, Spanish, sociology, and Hebrew, had scheduled weekly meetings in the school.

Vocational Training: 5 percent of Attica's population was involved in vocational training programs. There were 11 courses offered, 5 taught by civilians (silk screen and printing, drafting, barbering, machine shop, and auto mechanics) and 6 by inmate instructors (art, typing, carpentry, typewriter repair, bookbinding, and sheet metal).

Conditions here were better than in most other jobs and classes. The civilian instructors all had previously worked in the trade or industry they taught, classes were small, and instructors made some attempts to assess the capabilities of their students prior to enrollment; the drafting course required a high-school diploma for entrance and the auto mechanics instructor administered a test to new entrants. Several of the classes met for a full day. Because groups were small (the barbering course, at 40, was the largest) the instructors got to know their students and the atmosphere was more relaxed.

Classes were still overcrowded, however; there were sometimes as many as 15 men assigned to the printshop's

two presses, each of which requires only one operator. The typing class had a great many applicants, but could accommodate only 15 men.

Equipment was also a problem. The printing operation was run on presses which had become obsolete after World War II; there were no linotype machines and all print was set by hand.³⁰ For two years the auto mechanic had been unable to obtain gasoline from the institution for the car and truck on which his students practiced; gas was deemed to be a security risk, although the instructor had obtained a lock for the gas tank.

Recreation: Recreation at Attica was limited by Western New York winters, the absence of indoor facilities, a severely restricted budget, and administrative security regulations.

Because there was no gymnasium or dayroom for the 2,000 inmates housed in the four main cellblocks, virtually all their recreation took place in the yards. During each weekday, inmates were free to spend an average of an hour to an hour and a half there;³¹ on weekends the yards were generally open for about six hours, but this time was reduced in bad weather. From November to March, the temperatures were generally subfreezing, with snow covering the ground for much of the period.

Each yard was a square, 100 yards on each side. In one corner was a softball field, in another a television set was mounted on the wall. A cement wall for handball and a basketball court were constructed by inmates in 1971. A few benches and tables for cards, chess, or checkers were placed at the edges of the yards. Homemade weights, fashioned from iron bars and cans filled with cement, were also available.

When the weather was good, the yard was often crowded and chaotic. Baseball players collided with basketball players while attempting to field balls in the

³⁰The printing presses were destroyed by fire during the uprising. The printing instructor told the Commission he had not been consulted regarding the kind of new equipment to be ordered to replace them.

³¹In May 1971, at the suggestion of Acting Deputy Superintendent Pfeil, Commissioner Oswald increased yard time 40 minutes. Officers' shifts were slightly rearranged to maintain the necessary coverage of yard time and supper. Since June 1972, inmates have been permitted to go to the yard two evenings per week.

basketball court. Inmates who were not good athletes found it difficult to get into a game, and had to content themselves with standing around talking, watching television, performing individual exercises, or jogging.

Each block had its own football, softball, basketball, and volleyball teams, and contests between blocks were held on weekends. Bridge and chess tournaments for the prison were held in the school.

The annual recreation budget allotted from commissary profits was used to purchase and replace sports equipment and supplies. It amounted to an annual sum of a little more than \$1 per inmate. There was no trained recreation director on the staff, although Superintendent Mancusi wrote to Albany several times seeking funds for such a position.

Beginning in early 1970, there was a correction officer in charge of recreation, who despite lack of budget, training, and time (he had other duties as an officer) made a number of improvements and changes in facilities and programs, including the construction by inmates of handball and basketball courts in the yards; this was accomplished over the protests by many of his fellow officers that 100 inmates working together at one time constituted a threat to security. Some of his other suggestions—that the Ponderosa be used as an extra football field and that two of the yards be used for sports and two for more quiet recreation—were vetoed for security reasons. A recommendation that four outdoor showers be placed in each yard (at a cost of about \$1,000) for use after strenuous activity was rejected on budgetary grounds.

Movies and Entertainment: Movies were shown to inmates in the auditorium on Saturday and Sunday afternoons from October to April, when it was likely that the weather would leave the yards filled with snow or mud. The movie rental budget, funded from commissary profits, was approximately \$25 per film. Comedies and westerns predominated. Among the films shown in the spring of 1971 were the following: *The Good Guys and the Bad Guys*, *You Can't Win 'Em All*, *One More Time*, *Two Mules for Sister Sarah*, *Rosemary's Baby*, *The Sterile Cuckoo*, and *The Ballad of Cable Hogue*. On Labor Day, less than a week before the uprising, inmates saw *The Computer Wore Tennis Shoes*.

An inmate band, which had 13 members on September

9, often played for the inmates entering and leaving the movies. Performances by outside entertainers, however, were rare; the administration prohibited soliciting for them. In 1971, four groups who volunteered to come gave six performances.

The Necessities of Prison Life

"It is very expensive to live in prison," testified a 23-year-old former inmate. Shelter at Attica was provided free. But to have sufficient clothing, a complete diet, and the necessities for personal hygiene, inmates had to look beyond the provisions supplied by the state. Living standards varied with resources, and inmates whose families could not supply them with money for use in the commissary or with regular packages from home were often forced to augment their allotments by "hustling."

Clothes and Hygiene: Prison uniforms in the first penitentiaries of the early 19th century were intended to be a demeaning and constant reminder to the inmate of his shameful condition. The language of penology changed, but the clothing remained the same—coarse, drab, and ill-fitting. It was used and reissued to inmates until it wore out.

On arrival at Attica, an inmate could retain his underwear and socks (if they were not blue), his shirt (if it was gray or white), and his shoes, if they were not two-toned, zippered, or steel-toed, did not have large buckles, and were not over six inches high. A pair of gray cotton pants and any other necessary items were issued to him. His street clothes could either be held for him, mailed out at his expense, or destroyed, at his option. Within the next few days, each inmate received a hip-length gray coat, three pairs of gray pants, two gray work shirts, three pairs of underwear, six pairs of socks, and a belt. He was issued a pair of prison shoes as soon as he received a job assignment. A pair of pants, two sets of underwear, and three pairs of socks were replaced every six months.

The clothing, made by inmates in the tailor shop, was too hot in the summer and too flimsy for the harsh upstate winters. In 1972, the correction officers' union included in its bargaining points for a new contract the demand that the inmate clothing issue be improved. One sergeant

testified to the Commission: "Clothing has always been a critical thing at Attica. . . . A shirt looks like a reasonable thing to get, yet it's almost impossible to replace. I might add that is true today, seven months after the uprising.

Myriad rules governed inmates' appearance. Shirts and sweaters had to be tucked inside the pants, shirts had to be buttoned except for the top button. Nothing, not even underwear, could be any shade of blue—inmates might attempt escape by impersonating officers whose uniforms and shirts were blue. One inmate told what happened when his family unwittingly sent him underwear and pajamas of light blue: "I could not have those three pair of shorts and one pair of pajamas because I violated security by having blue underwear nobody could see but myself. . . . How can you tell a grown man that he is violating security by wearing a blue pair of shorts? I mean, this is the type of juvenile attitude they treat us. They actually think that we believe that. You know why that rule was made? For harassment and for harassment only."

Some toilet articles were issued to inmates: a comb, toilet paper (one roll a month), soap (one bar a month), and a towel. Toothbrushes, toothpaste, shampoo, razors, and blades were not provided, although the rules required a neat and clean-shaven appearance. Such items, as well as additional soap and toilet paper, were either bought by inmates at the commissary or sent by their families.³²

Maintaining personal cleanliness was a struggle. While inmates in a few jobs could take daily showers, the majority of the population could shower only once a week.³³ The sinks in the cells had only cold water, but two quarts of hot water were distributed to inmates in pails each afternoon or evening. Inmates had to use that water for washing, shaving, cleaning the cell, and rinsing clothes. The prison laundry washed pants and prison-issued shirts and underwear once a week, but each inmate was required to wash his own socks and all nonstate-issue clothing. Depending on the inmate water boy and the correction officer on the gallery, supplemental pails of water could be negotiated by inmates for a price.

³²Since the uprising, each inmate has been provided with toothbrushes, toothpaste, razors, blades, and toilet paper as needed.

³³Since the uprising, inmates have been given twice-weekly showers.

Meals: According to old-timers, Attica was once "the best feeding joint in the state." That was during Harry Joyce's 30 years as supervisor of the prison's food services. Joyce retired in the mid-1960s, and inmates date the deterioration in meals from his departure.

In August 1971, Commissioner Oswald discovered that the 63¢ budgeted for each inmate's daily food was not sufficient to meet the minimum dietary standards set by Federal guidelines. A directive went out from the Commissioner, one month before the uprising, to spend what was necessary to achieve nutritional standards, even if this resulted in a budget deficit.

In his 1971 annual report, Superintendent Mancusi wrote that Attica provided "meals which are tasty, possess eye appeal and contain the necessary nutritional ingredients to provide a balanced diet." The Commission's experience with the Attica food did not fit that description. The ingredients were of good quality, but the preparation rendered some food virtually inedible. The segmented metal trays from which inmates ate were not thoroughly cleaned, and the food placed in them was, at times, half-cooked or cold.

The principal meal was at midday and consisted of meat, potatoes or rice, a vegetable, bread, coffee or tea, and, sometimes, dessert. Menus were heavy in starch. Breakfast, for example, included cereal and bread every morning, fruit occasionally, but never eggs. Supper, which was optional for the inmates, consisted of a light main dish (sometimes only soup), bread, and milk or coffee. Inmates could take uneaten food back to their cells, and many did carry away bread to eat during the 13 hours between supper and breakfast.

Meals were served in the two mess halls located behind C block, each seating 768 men. Inmates were "run" to meals in groups of two companies each, accompanied by one correction officer. A and C blocks went to A mess, B and D blocks to B mess. All inmates were required to attend breakfast (except on weekends) and dinner, which were served in two shifts. Supper usually drew about half the population.

With so many inmates in the mess halls at the same time, officers were particularly security-conscious. Inmates filed by a food counter and picked up their metal trays. They ate in groups of eight at metal tables seated on

immovable metal stools. Tables had to be filled in sequence as men came off the food line. It was forbidden to get up or turn around once seated, and inmates jockeyed in line so that they would end up at the same table as friends. Many inmates, blacks and whites alike, used these maneuvers to effect self-segregation during meals. The entire meal lasted for 20 to 40 minutes and as inmates filed out of the mess hall they dropped their eating utensils into a bin under the watch of an officer. They were usually allowed only a spoon, but never knives.

Muslims had more to contend with than other inmates. Their religion forbade the eating of pork and Attica held its food costs down through frequent recourse to its swineherd for main dishes and cooking fat. On July 7, 1971, Commissioner Oswald issued a bulletin to all correctional institutions citing the language of a recent decision of the Appellate Division of the New York Supreme Court:

Muslims shall be provided whenever possible with meals that are wholly free of pork and pork products, and when that is not practicable then there shall be available at each meal some food free of those substances.³⁴

At the same time, Attica began phasing out its swineherd. But the credibility of these efforts was undermined by general mistrust of the state as well as by rumors that pork products were being described as beef on the menus. Pork and pork products had, in fact, been frequently used, mixed with other meats in loaves, hamburgers and meatballs, or lard for frying and as seasoning in sauces, beans, etc. Muslims were not prepared to trust the claims that such practices had been discontinued. As one young Muslim stated: "If it is not a chicken or if it is not a fish stick, you leave it alone."

Packages: Inmates were allowed to receive monthly packages of up to 15 pounds from persons on their approved correspondence or visiting lists. On five holidays, Christmas, Easter, July 4, Thanksgiving, and Rosh Hashanah, packages could weigh up to 25 pounds and could include special items such as a chicken or a ham. After

³⁴*SaMarion v. McGinnis*, 35 A.D. 2d 684, 314 NYS 2d 715 (4th Dept. 1970).

complaints by the Muslims, corned beef was added to the authorized special items. A variety of foods was permitted as long as they were not packaged in glass containers, which were prohibited for security reasons. The nonfood items carried by the commissary could also be sent to inmates in packages.

When a package arrived, the inmate recipient was called down to the package room just outside of A block, and the parcel was opened in his presence and inspected for contraband. Unauthorized items could be returned to the sender (with the inmate paying costs), contributed to a charitable institution, or otherwise disposed of, at the choice of the inmate.

Approved package items varied from prison to prison, and unexplained inconsistencies frustrated inmates transferred from more permissive institutions. As one inmate explained: "If I was in Clinton today, I could get cigars from home. I smoke cigars. I can't get them in Attica, because I am in Attica."

Besides glass jars, cans over two pounds, pressurized cans, and combs over six inches long or with handles were forbidden at Attica for security reasons, either because they could be turned into weapons or used to conceal contraband.

Changes in the list were made without notice. One inmate recalled: ". . . they had a notice on the package room you couldn't get [packaged iced-tea mix] no more. They didn't notify me. They didn't put no notice in the housing area. I just found it. It's mental harassment. It's a mental thing. They just degrade you. You don't have to put your hands on me to degrade me or upset me."

Wages: In September 1971, all inmates at Attica, except those who refused their assignments or were in disciplinary keeplock or segregation, were paid a wage ranging from 20¢ to \$1.00 a day.³⁵ "Unemployed" inmates—for whom no positions were available—and inmates who were hospitalized or under psychiatric observation were paid 20¢ a day. Those who attended school received 25¢ a day.

³⁵Until October 1, 1970, inmate wages ranged from 6¢ to 29¢ per day. The raise was precipitated by the metal-shop strike, which is discussed in chap. 3.

All other jobs were classified into a statewide four-grade system:

- Grade I "Helpers," janitors, and other unskilled workers, with a wage of 25¢ per day
- Grade II Semiskilled workers and positions carrying some responsibility, with a wage scale of 30¢-50¢ per day
- Grade III Skilled workers, including hospital nurses, with a wage scale of 55¢-75¢ per day.
- Grade IV Supervisory positions such as head nurse and head mechanic, with a wage scale of 80¢-\$1.00 per day

Inmates began at the lowest wage level of the grade to which their job was assigned. Workers in Grades II, III, and IV received 5¢ increments every 6 months until they reached the highest wage for their grade.⁸⁶ Since there was a fixed wage rather than a range in Grade I, an inmate assigned to a Grade I position had to be reassigned to a new job in another grade to increase his earnings. In August 1971 there were 1,005 inmates in Grade I positions, more than in all other wage grades combined.⁸⁷

No money was actually given to inmates; their earnings and money sent to them from the outside were credited to their accounts. Until November 1970, only half their wages could be spent; the rest was accumulated and given to the inmate on his release. Subsequently, the full wages could be spent, subject to a limitation of \$40 per month on all purchases, both at the commissary and by mail order.

The income range for working inmates was \$4.40-\$22.00 a month, and the average monthly wage was \$7.00-\$7.50.

Wages were clearly not used as incentives for rehabilitation. On the contrary, most inmates regarded the wages

⁸⁶There was also a possibility of a "merit" increase of 10¢ a day, on the recommendation of the supervisor. It was not common.

⁸⁷Grade II had 556 positions, 307 of which were in the metal shop; Grade III had 237 positions; and Grade IV, 75. There were 119 students, 252 inmates for whom there were no jobs, and 17 who received no wage.

as degrading; valuing a man's services at 25¢ a day denied him any sense of self-worth.

Commissioner Oswald testified that if inmates were paid the state minimum wage, and charged for room, board, and medical services, they would owe money to the state. But the Commission's psychiatrist stated in his testimony that a realistic wage and payment structure would be therapeutic not only in instilling self-respect, but also in training inmates to handle their own finances—an enterprise at which many had failed on the outside.

Commissary: Most inmates spent whatever they earned at the commissary, and commissary visits, scheduled about once every two weeks, assumed an extraordinary importance.³⁸ Items not issued by the state were purchased then, together with a few personal items to ease the bareness of prison living. Shopping at the commissary provided inmates with one of the very rare opportunities for exercising individual choice.

But there were limitations. Most inmates had little money and some of it went for essentials like toothpaste. The selection was limited, and popular items sometimes sold out.

The commissary sold cigarettes and tobacco, toilet articles, a few clothing items such as sweatshirts, writing materials, vitamins, and food, including bread, coffee, canned meats and vegetables, soup, and candy. Prices were comparable to those on the outside: a 10-ounce jar of instant coffee cost \$1.37, a pack of cigarettes 35¢. But wages averaged only \$7.50 a month and a cigarette smoker who had no other resources could buy little else.³⁹ As one inmate explained:

A man has to have coffee, sugar, toothpaste. And this is an adult. And nobody cares. He walks up there and he has a list in his hand. He gets to the commissary. Maybe they are out of peaches or maybe they are out of sardines. So he has to make that whole list over again, trying to squeeze pennies.

³⁸The commissary visits were scheduled in the order of inmates' admission to the prison. Since the uprising, inmates go to the commissary according to job assignments.

³⁹This reflects the situation after October 1970. Under the previous wage scale monthly earnings ranged from about \$1.32 to \$6.38, of which one-half could not be spent while in prison. Commissary prices were no lower prior to the raise.

Can you imagine how degrading that is? . . . This man worked all week long. He run a punch press or worked on the spot weld or on the shaper, all month long and he made \$3.05 or something . . . And he goes to the commissary. Maybe he can get a jar of coffee. "I better not, I will get a smaller jar of coffee so I can get some sugar. Maybe I can get two packs of cigarettes and a can of Bugler [tobacco]."

He gets up there and maybe they are out of Bugler. He has to go over there and make that list. I seen guys take up that list and tear it up and throw it on the floor.

There were other problems, once an inmate decided how to spend the few dollars he had. Coffee, soup, and many canned foods sold in the commissary were made to be eaten after they were heated or mixed with hot water. Cells had only cold water and heating devices were prohibited. But two improvised devices were in wide use: "droppers"—homemade immersion coils—and stoves made from a hollowed-out brick into which a nichrome wire had been inserted. Possession of such implements was grounds for disciplinary action, but most officers disregarded their use, especially by "well-behaved" inmates. Nevertheless, the rule was in existence and was selectively enforced.

Net commissary profits were limited to 5 percent; in 1970-71 they amounted to approximately \$15,000. Commissary profits were placed in a "recreation fund," two-thirds of which was used to buy tobacco grown at Auburn. This was distributed to inmates willing to roll their own cigarettes.⁴⁰ The remaining third, a little over \$5,000, was divided 18 percent for sports and recreation equipment; six percent for film rental; and six percent, or less than \$1,000, for everything else—law books, musical instruments, televisions, prizes for holiday events, and an annual stage show produced by inmates.

At times, unspent funds were accumulated and used for special purchases, such as the expansion of the radio system from one to three channels in the mid-1960s at a cost of \$30,000.⁴¹

Hustling: For most inmates, "hustling" is a necessary

⁴⁰Two ounces of tobacco, papers, and matches were distributed to each inmate every other week.

⁴¹The radio system is described on p. 54.

and accepted part of daily life on the streets. In general, hustling is activity which either exploits the desires of others, or involves deception or fraud. Few hustles, which range from tapping gas lines to selling drugs, are legal.

Undoubtedly many Attica inmates began their criminal careers by hustling. Sent to Attica for rehabilitation by society, inmates faced the same pressures to hustle inside the walls: "If you are poor and can't get money from home, you have to hustle to make ends meet," said one inmate, and another wrote, "I used to make \$2.50 a month [in prison] and with that money I had to swing everything . . . you had to make some deals to get by."⁴²

One of the most common hustles involved the laundry. To keep personal articles of clothing clean, many inmates "bought a laundry man" with cigarettes, the most common medium of exchange. An inmate testified: "You usually get a contract with one man and you pay him like maybe a carton of cigarettes every month and he will take care of your laundry for you." Similarly, if an inmate needed a new pair of pants between scheduled clothing issues he made a deal with a contact in the tailor shop or through a middleman.

Since most hustles originate with a need, it is not surprising that deals were also made for sex. Denied conjugal visits, heterosexual men turned to other men for sex, and homosexual prostitution and pimping provided some inmates with extra income.

Hand-drawn pornography, known as "short-heist," was popular and, depending on the artist, was a salable commodity.

Moonshine of varying potency was produced all over the institution wherever a small still could be hidden. Chopped potatoes, rice, and various juices were fermented with yeast generally stolen from the bakery. The beverages produced were not extremely high in alcohol content.

A high could also be produced by some of the pills dispensed at sick call, if they were taken in certain ways. Although medication was required to be taken in the presence of the doctor or officer dispensing it, some inmates managed to hide pills under their tongue. Drugs were also said by inmates to enter Attica from the outside, during

⁴²"Inside Attica," *Christianity and Crisis*, May 29, 1972, p. 129.

visits, in packages, and even by means of letters soaked in solutions which were undetectable in the normal censorship procedure.

Communication with the Outside World

Isolation has long been rejected as a means of preparing inmates for return to society. In principle, New York State recognizes that an inmate who has maintained contact with his family and friends, and has kept informed of developments in society, will have a better chance of adjusting on his release. In practice, however, concerns about security in a large institution housing over two thousand inmates, created barriers to all forms of communication with the outside world.

Radio and Television: Inmates were not allowed to have their own radio receivers. Instead, each cell was equipped with earphones which could receive the three channels broadcast from a radio system located in the administration building. The only television sets available to inmates in A, B, C, and D blocks were located in the yards—one in each yard for approximately 500 inmates. E block, which housed the experimental DVR unit, had a television in the recreation room.

All programs transmitted on the radio were subject to the approval of the Superintendent. Programs deemed controversial were avoided. Generally, one channel of the radio system was devoted to the audio portion of selected television programs, another channel to "easy listening music," and the third to sports, rock, and "specialties" such as black and Spanish programming.

The Superintendent refused to permit inmates to receive black-oriented cultural and news programs such as *Soul*, *Black Journal*, and *Express Yourself*. Until March 1971, the Muslim religious program *Muhammad Speaks* was not allowed. With only three channels available, programs oriented to Spanish-speaking inmates were sparse. Four hours of Latin music, primarily from the institution's 18 Spanish records, were played each week. Half of the Latin-oriented programming was presented during the weekend when yard time was increased.

Programs inmates could see on the yard television sets were limited by the yard times. During the week, when yard time ended at 4:50 P.M., the programs on the air

were generally cartoons, game shows, soap operas, and grade B film reruns. On weekends, sports events were shown, but inmates generally had to leave the yard for supper before the games ended. In addition, inmates gathered in the yard corners watching a program contended with competing noise from other yard activities, the glare of the sun, and, in the winter, snow and below-freezing temperatures.

Literature: For many inmates, reading offered the only diversion during long hours in their cells. But acquiring a book or a magazine to read was a discouraging process.

Inmates entering prison were, for reasons of security, required to leave their books and magazines behind. Theoretically, contraband could be concealed in the bindings or between the pages. For the same reason, they could receive books, magazines, or newspapers only from the publisher directly (at their own expense) or from the prison library.

Attica's library, located in the prison school, contained approximately 50,000 volumes in September 1971. School personnel described it as adequate. Inmates did not. Whatever its merits, security considerations barred inmates from going to the library and browsing. Instead, they were required to make their selections from a typed catalog kept by the inmate who distributed the evening hot water.⁴³ Inmates were allowed one book and three magazines a week. The rules required them to list on a request form not less than 30 books or publications in order of preference.

No newspapers were available in the library; the magazines received by the library were *Time*, *Life*, *Ebony*, *Jet*, *Black World*, *Downbeat*, *Atlantic*, *Argosy*, *Popular Science*, *Popular Mechanics*, *Gentlemen's Quarterly*, *National Geographic*, *True*, *Outdoor Life*, *Field and Stream*, *American Home*, and *House Beautiful*. There was only one copy of each issue for over two thousand inmates.

The library had fewer than 20 Spanish books for a Spanish-speaking population of over 150. Black literature was also sparse. Of the 40 books on black thought, history, and culture approved by Commissioner Oswald in

⁴³Since the uprising, inmates have been allowed to visit the library two days a week. They also have been given access to the Wyoming County library, which absorbs the mailing costs of books sent to inmates.

a memo circulated on March 24, 1971, Attica had purchased approximately half by September 9, 1971.

The prison budget did not allow for a trained librarian, although requests for such a position had been made to Albany by the Superintendent. An inmate was in charge of the library, and subject to the approval of the education director, he selected and ordered new books once a year. Funds were allocated from commissary profits. The allocation of popular books regularly requested by inmates allowed the inmate librarian to develop a lucrative hustle.

If an inmate could afford to purchase books, magazines, or newspapers from publishers, his next hurdle was censorship. Prior to March 1971, the director of education was the institution's censor. All publications passed through his hands and his decisions were subject to reversal only by the Superintendent, who rarely concerned himself with the problem. When interviewed by the Commission, he described his procedure:

If while reading the first few pages, I came upon something objectionable, I would read no further. Instead, I would send the book to the dead storage area in the Correspondence Office for delivery to the inmate when he left the institution. I never approved books on psychology, physics, and chemistry, because we wanted to discourage inmates from becoming amateur psychologists or using their chemistry books to make bombs.

Reforms were in progress at the time of the uprising. In March 1971, Commissioner Oswald established a media review committee in each institution, which was to measure incoming material against the standard of whether "this material [is] acceptable for legal mailing in the United States, [is] not obscene and [does] not tend to incite activities posing a threat to prison discipline."

By July 1971, the criteria had been expanded as follows:

1. In general the material should be acceptable for regular mailing in the United States.
2. The publication should not appeal predominantly to prurient, shameful, or morbid interest in nudity, sex, excretion, sadism, or masochism, or go beyond the customary limits of candor in describing or representing such matters. (See Penal Law §235.00.)

3. The publication should not defame, vilify, or incite hatred toward persons because of their race, religion, creed, or national origin.
4. The publication should not advocate the violent overthrow of the existing form of government of the United States or of this state. (See Penal Law §240.15.)
5. The publication should not advocate lawlessness, violence, anarchy, or rebellion against governmental authority or portray such conduct as a commendable activity.
6. The publication should not incite hatred or disobedience toward law enforcement officers or prison personnel.
7. The publication should not depict the use or manufacture of firearms, explosives, and other weapons.
8. The publication should not be of such a nature as to depict, describe, or teach methods and procedures for the acquisition of certain physical manipulations and skills which expertise will, in the opinion of Department authorities, constitute a threat to the safety, welfare, and health of other inmates and employees.

The former censor was designated chairman of the Attica media review committee. One of the other members stated that he rarely called meetings of the Committee; and when he did, he dominated the discussions. The committee spent as much as three months "reviewing" controversial items which had been received by inmates.

The authority of the institutional committee was not absolute. Another reform, implemented at the same time, established a central committee in Albany to review material rejected by the institutional committee. This reform was intended to promote a uniform policy with regard to censorship.

In November 1971, after the uprising, the Albany media review committee began publishing its decisions. In 55 percent of the cases, they reversed decisions made at a prison to reject material.⁴⁵

Since the uprising the department has also circulated a list of acceptable literature containing 360 periodicals,

⁴⁵These changes have led to a reduction in the number of books rejected. In addition, the present chairman of the Attica review committee, has required the concurrence of three of the five committee members before an item of literature is excluded. In April and May 1972, 13 items of literature were found unacceptable by the Attica review committee; 4 of these 13 decisions were overturned by the departmental media review committee in Albany.

including *Black Scholar*, *Playboy*, and the *Amsterdam News*, and 40 books on black studies. Items on the approved list are passed on to inmates without review and inmates can now read approved magazines in the same week or month that they are published.

Some items which do not appear on Albany's approved list are symbolic of prison administrators' apprehensions concerning the increased assertion of their rights by inmates. Attica inmates have been unsuccessful for over two years in gaining approval for the *Fortune News* published by the Fortune Society, a prison reform organization founded and run by ex-inmates. In a lawsuit brought by inmates in 1970, the state argued that *Fortune News* could properly be excluded from prisons, because its articles did not accurately portray prison conditions. The court in *Fortune v. McGinnis*⁴⁶ dismissed this argument, stating:

However distasteful or annoyed or sensitive those criticized may be by what they consider unfair criticisms, half-truths or information, it does not justify a ban of the publication carrying the alleged offending comments. Censorship is utterly foreign to our way of life; it smacks of dictatorship.

But Attica and other institutions continued to withhold selected *Fortune News* issues, including the January 1972 issue, which contained articles critical of New York prison food and describing the retiring Superintendent at Great Meadow as "Little Caesar." The Albany media review committee upheld the prison's decision to exclude this issue, because "it vilifies prison personnel" and "shows poor objective reporting." Albany's reasons for censorship were the same which had been rejected by the court in the *Fortune* opinion two years earlier.

The inmates returned to court in April 1972, and the chairman of the media review committee in Albany stated that *Fortune News* would be placed on the approved list of publications, and that back issues would be distributed to inmates who requested them. But as late as July 1972, the correspondence officer at Attica was refusing to return back issues to the inmates because, he said, he had not been instructed by Albany to do so.

⁴⁶319 F. Supp. 901, 905 (S.D.N.Y. 1970).

Correspondence: Because of Attica's isolation and the fact that inmates were not permitted to make or receive telephone calls, inmates depended more on letters than on visits to maintain contact with their families and friends. Upon entering Attica, inmates signed a "consent" to mail censorship. If they refused to sign, they could not receive or send mail. They were permitted to correspond only with an approved list of relatives and such others as were approved by the Superintendent. As an additional security precaution, all incoming and outgoing mail was censored except letters to or from attorneys, public officials, and judges. These were exempted from censorship as a result of a Federal Court decision.

Regular correspondence was generally limited to members of the inmate's immediate family, with others added to the correspondence list only by special permission. Females under 18 and males under 21 were required to present birth certificates and parental permission before they could be added to the list. Although 26.6 percent of the Puerto Rican and 20.4 percent of the black population of Attica on September 9, 1971, claimed common-law marriage status, neither common-law wives nor children of such unions were recognized as relatives for the purposes of mail or visits until April 1971. At that time, Commissioner Oswald changed the rules, but subject to the approval of the Superintendent, and on proof that the relationship was "sound."

The restrictions led inmates to conceive various ploys, such as having friends use the names of approved relatives when they wrote. A confiscated letter written by an inmate stated:

Darling . . . I know you will be surprised to get this, so read it carefully several times. I had it smuggled out. . . . Here are my instructions, you can write to me, address it like this. . . . When you write be sure that you don't make a mistake and write your name. . . . I have your two pictures. I put them in frames and it's all I have to remember you by.

Incoming and outgoing mail (other than to attorneys, judges, and public officials) was censored by correction officers in the correspondence office. Outgoing letters had to be written on special prison stationery. Each sheet listed, on a detachable legend, the warning that prison censors

could reject the letter for various reasons, including:

It contains criminal or prison news.

Begging for packages or money not allowed.

Correspondence with newspaper or newspaper employee is not permitted.

You did not stick to your subject.

Cannot have a visit with the person named in your letter unless approved by the Superintendent.

Moreover, the inmate's rulebook stated: "Inmates shall confine their correspondence to their own personal matters; institutional matters and other inmates are not to be discussed in letters."⁴⁷ When an outgoing letter was found to violate a guideline, it was returned to the inmate.

When an incoming letter was judged unacceptable—and there were no guidelines given to the senders—it was placed in a file in the correspondence office bearing the inmate's name. The inmate was never informed of the letter's existence, nor was the sender told that it had not reached the inmate. Misunderstandings and anxieties between inmates and their families multiplied when each waited for a reply in ignorance of the withheld letter.

The burden of censorship fell heaviest on Spanish-speaking inmates. Neither of the two censors understood Spanish and until late 1970, English was the only acceptable language for correspondence. On November 25, 1970, incoming letters in foreign languages were allowed, and bilingual inmates were utilized as censors. But no inmate was regularly assigned to this task, and mail in a foreign language, most often Spanish, was put aside for up to two weeks before delivery. Outgoing letters in Spanish were not permitted. Spanish-speaking inmates not literate in English had to use a bilingual inmate as a translator.

Several months after the uprising, Commissioner Oswald took steps to broaden inmates' correspondence rights. The restrictions on the persons with whom an inmate may correspond have been relaxed. The new rules require only that the correspondent is willing to receive mail from the inmate, and in addition the permission of the Super-

⁴⁷Inmate Rulebook, p. 15.

intendent in the case of unrelated minors, married women, codefendants, inmates in other institutions, and parolees.

The Commissioner has also directed that all objectionable incoming letters must be returned to the sender.

Visits: The department was of the view that inmate visits with "family members, desirable friends, business associates, former or prospective employers, state officials, and counsel" were to be encouraged in order to maintain good morale and ease the adjustment of inmates when released. Yet the department riddled this principle with rules based on security considerations of little practical value.

Inmates were allowed, as a matter of right, to receive visits from their wives, children, parents, brothers, sisters, attorneys, and clergymen. All others, including relatives and friends, were required to apply for permission at least ten days before the anticipated date of the visit.

Former inmates could never visit unless they were members of an inmate's immediate family, and then only with the approval of the Superintendent.

Additions to an inmate's approved visiting list were within the discretion of the prison's service unit. If the inmate was regularly receiving visitors, his request for permission to add additional visitors was denied.

For many at Attica, the right to receive visitors was illusory, even when persons were approved. Most inmates were poor and 43 percent came from New York City. There was no direct transportation between New York and Attica. The bus trip from New York to the nearest depot, Batavia, cost \$33.55 round trip and took 9 hours one way. Visitors had to leave Manhattan shortly after midnight to reach the prison by 10:30 in the morning. There was no public transportation between Batavia and the town of Attica, and the 20-minute ride from the bus station to the prison had to be made by taxi at a cost of \$6 each way. A weekend visit from New York could cost over \$100, with 20 hours spent in transit. Because of the hardship, visitors from New York City could see inmates on two successive days.

When visitors did come, the experience was degrading for both visitors and inmate. Before entering and after leaving the visiting room, the inmate was subjected to a strip search designed to uncover contraband. All possible

places of concealment were investigated, including "his mouth, ears, hair, the bottom of his feet, under his arms, around the testicles, and in the rectum."

The visiting room contained a large horseshoe-shaped table with seats on either side. A mesh screen ran along the center of the table, preventing all but minimal physical contact.

Two officers observed from a raised platform at one end of the room.

Prior to 1964, there were no screens. In that year, a mesh screen was erected. In 1966, when the visiting room was moved to its present location in the administration building annex, a new screen with wider mesh was put up.

The purpose of the screen was security, and in particular to prevent the passage of drugs to inmates. However, after the 1966 move, openings in the screen were at least one inch square, and inmates were strip-searched when they left the room. Paradoxically the visiting room in HBZ, the special housing unit for troublesome inmates, had no screen. Thus, the screen was seen by inmates not as a security device, but as another example of senseless harassment and dehumanization.

Many inmates could not bring themselves to receive visitors under these circumstances. Said one:

I have two children and during the entire time I was in Attica . . . I didn't have my children visit me. If they want to see an animal, they can go to the zoo.

In May 1972 major changes were made in the visiting rules at Attica. Inmates may now receive visits from almost anyone without the prior approval of the Superintendent or the service unit. Women, whether married or single, may freely visit married or unmarried inmates. The only restriction is that a married, unrelated female must obtain her spouse's permission before visiting. Attorneys may also be accompanied by third-year law students or investigators. Former inmates who are not family members may now visit after gaining the approval of the Superintendent and their parole officer (if on parole). There is no longer any restriction on the frequency of visits.

The trip to Attica is not shorter or easier, but the visiting room atmosphere has been improved. The screen

has been removed, and inmates may now embrace their visitors at the outset and the conclusion of the visit, and hold hands throughout. Vending machines have been installed. Finally, inmates may examine photos brought by visitors and pass notes, provided they are first read by the officer in charge.

Inmates are still denied, however, the right of a confidential interview with a newsman. A journalist who wishes to interview an inmate must make a written request. If approved, the interview is monitored by a member of the service unit.

Medical Care

The visiting room was not the only place at Attica that had a screen. The prison doctors conducted the daily sick call from behind a mesh screen.⁴⁸

Medical care was one of the primary inmate grievances. In order to evaluate these grievances, the Commission called upon a recognized authority in the field of hospitals and health services, Dr. E. D. Rosenfeld, to examine the prison's health facilities and interview the medical personnel.⁴⁹ The Commission has drawn upon his report for professional evaluations in the following section.

It is not possible to describe medical care adequately in any setting without examining the purposes to be served by the medical program. It was the conclusion

⁴⁸The screen was taken down after September 1971, although Dr. James Bradley, medical director for the department, said the order to remove it had been issued prior to the uprising.

⁴⁹Among the persons interviewed were the following: Selden T. Williams, M.D., physician in charge; Paul G. Sternberg, M.D., associate of Dr. Williams; Roger Van Wallendael, D.D.S., dentist; Mr. Charles Van Boskirk, project director, Division of Vocational Rehabilitation; Mr. Siegel, recently employed pharmacist in the Attica Correctional Facility; Mr. J. Dennis Huff, head nurse; James Bradley, M.D., F.A.C., medical director, Department of Correctional Services, State of New York; and several inmates who had specifically complained to Commission interviewers about medical care at the facility. These inmates were interviewed privately; in addition, their medical and sick-call records were examined separately. Several other inmates' medical records were reviewed without reference to whether or not the inmate had complained about medical care. Finally, several correctional officers who were either on duty at or in the hospital facility and several clerks and other personnel on duty in the hospital facility were also interviewed, but for brief periods of time and not privately.

of the Commission's consultant that the purpose of medical care at Attica was limited to providing relief from pain or acute anguish, correcting pathological processes that may have developed before or while the inmates were serving their terms, and preventing the transmittal of sickness among the prison population.

Chronic physical or emotional disabilities, unless subject to easy correction, which most are not, were generally not assessed, nor were significant attempts made to correct or modify them while the inmate was serving his term. Some correctable problems which would have required physical medicine and rehabilitative facilities and staff, such as complex and difficult orthopedic or other surgical procedures, were simply not treated. Part of this, of course, was due to lack of personnel and time, but much reflected a lack of commitment to attempt restorative efforts or, perhaps, doubt that such efforts might be successful.

Lack of staff time to conduct such programs was a very real constraint, but lack of time was not limited to staff. The mandatory time inmates spent in their cells limited the actual hours during which any prolonged treatment of a medical, dental, psychiatric, or rehabilitative nature could be carried out.

There were four types of services within Attica with three different staff groups, each responsible to a different state agency. The services were: (1) medical, (2) dental, (3) psychiatric, and (4) the Vocational Rehabilitation project (DVR).

Medical: Medical personnel were under the Department of Corrections and were directly responsible to the Superintendent. The staff was headed by two doctors who were also engaged in general practice in nearby communities, Dr. Selden T. Williams, who had been at Attica 22 years, and Dr. Paul G. Sternberg, who joined the staff in 1957. Both spent mornings at Attica Monday through Friday, and attended to private practice in the afternoons while remaining on call for emergencies at Attica. Both doctors enjoyed full civil service ratings and drew full salaries in the \$29,000-\$31,000 range, in addition to their incomes from private practice. Even considering their part-time service, the ratio of doctors to prisoners compares favorably with the norm in rural communities such as Attica.

At full strength, the medical staff also included four nurses,⁵⁰ one full-time pharmacist, a full-time laboratory technician, and a stenographer. Ambulatory care was administered via a daily sick call held in the pharmacy and in-patient care in the 26-bed prison hospital or, occasionally, in Meyer Memorial Hospital or Roswell Park Memorial Institute in Buffalo. The Buffalo hospitals were also used, in some cases, for specialized outpatient diagnosis and therapy.

Although laboratory and other diagnostic facilities were available in the prison, adequate personnel for their effective use were only intermittently available. Inmates and nurses were sometimes utilized when the technician was not on duty but there were times when indicated tests could not be conducted. After the death of the technician who had been employed there for many years, no replacement could be found for over three years. A similar situation occurred when the pharmacist's position became vacant.

The prison kitchen had no facilities for the preparation of special diets. Limited diet care was possible only from the preparation of some foods for patients in the hospital pantry by the nursing staff.

Most inmate contact with the medical services was through sick call, which began at 8:00 or 8:30 A.M. and lasted for 2 to 2½ hours, Monday through Friday. Any inmate who wished to see the doctor identified himself to the officer supervising his company and was taken to the pharmacy instead of to his morning assignment. Average attendance was 100 to 125. No examinations were given at sick call; there was not enough time and neither doctor felt it was necessary. A counter topped by a mesh screen which extended to the ceiling divided the pharmacy in two, and separated the doctor from the inmate. At sick call, the doctors asked the nature of the inmate's complaint and either sent him back to his assignment or to his cell after dispensing whatever medication he thought was appropriate. Only in rare

⁵⁰Prior to March 1972 all nurses were male and were difficult to recruit. Since that time female nurses have been added to the day shift. The layoff of one of the female nurses in July 1972 resulted in an inmate sit-down and hunger strike in which almost three-quarters of the population participated. The nurse was reinstated two days later. (See chap. 19.)

cases, the doctors directed an officer to conduct the man to the examination room. The approach was very businesslike, very direct, and very authoritarian, and usually took but a few seconds. The time and effort necessary to explain, to help provide insight, to gain acceptance, to achieve confidence, were absent. As is often true when the doctor-patient relationship is imposed, not chosen, there was no element of faith and confidence. This was a major complaint by inmates, who further stated that the doctors regularly made disparaging comments, and asked insulting questions, such as "How do you know you have a headache?" or "Pain? I don't see any pain." If an inmate objected to the doctor's disposition of his complaint, he was often threatened with commitment to the psychiatric ward, a threat which Dr. Williams confirmed had been carried out.

Inmates did use sick call to escape a boring job and see friends as well as to get treatment for illness, but the number of such "malingerers" is not known. Both doctors claimed that the majority of those on sick call were not ill and that it was possible in a few seconds by "looking into their eyes" to distinguish these from inmates with valid complaints. They also expressed the opinion that inmates make more demands for medical treatment than they would outside of prison. Inmates, however, complained that the doctors often didn't believe that they were sick and routinely dispensed a few drugs, such as aspirin, for almost all complaints. A few inmates expressed the opinion that the medication they were getting was harmful to them.

To conduct such a sick call, it is manifestly impossible for any doctor to spend more than a few moments with each inmate. Part of this time must be devoted to the process of weeding out those who need medical attention from those who simply desire a repeat of some previous drug or medication or from those who are faking their problems. Institutionalized persons also tend to develop vague symptoms, which though real, cannot be traced to a physical dysfunction, and the pressures under which inmates live give rise to emotionally based disorders. Ulcers and ulcerlike symptoms are common. Little is or can be done for them in this setting except for palliative therapy which most will eventually obtain through this sick-call process. The process nevertheless does provide a

practical mechanism for finding and treating acute, urgent, or new clinical problems.

In fact, there were often as many as 300 to 350 inmates on routine maintenance doses of various drugs, including tranquilizers. At sick call, only sick-call records, and not medical records, were available to the doctor, and his diagnosis was usually based on the inmate's description of the problem and a few moments' observation during the questioning. Specific drugs (sometimes placebos) were routinely dispensed for particular types of complaints and the routineness of the procedure undercut such confidence as inmates might have had.

According to the Commission's consultant, there is a reasonable level of competence on the part of both doctors in their diagnostic and treatment capabilities. Nevertheless, numerous inmates recounted instances of medical neglect which, if true, would suggest either deliberate disinterest or negligence. These stories could not be confirmed but their nature and persistence reveal the distrust with which the doctors were held by many inmates.⁵¹

If an inmate became ill after the daily sick call, he could get treatment by speaking to a correction officer who would call the hospital. A male nurse would examine the inmate in his cell, take corrective action if the problem was minor, or call the doctor. Although the doctors seem to have responded whenever they were called, inmates maintained that to get treatment they had to become ill when the doctor was in prison. This may not have been the fault of the medical personnel, but of officers who did not believe inmate complaints.

Drug-related disorders were frequently brought into the prison by new arrivals, but there was no treatment provided for addicts. Some inmates arrived under the influence of drugs, with withdrawal symptoms, or in an agitated state caused by a recent "cold turkey" experience. No significant assistance was available for them. However, drugs were apparently available within the prison, since inmates often showed up at sick call evidencing drug-related symptoms.

In interviews, both doctors expressed strong negative

⁵¹Dr. Williams suffers from a chronic disability which inhibits facial and oral expressiveness, giving the impression of a flat, disinterested, hard person.

feelings, even antagonism to many of the inmates. They showed an undisguised lack of sympathy for them—not necessarily to all, but generally. The doctors' attitudes are, however, in large measure inevitable. Since the population as a whole is physically healthy, most of the purely physical problems are minor and routine, or among the older, long-term inmates are chronic problems seen over and over again in the same group of inmates. These do not stimulate the interest of physicians; it is hard for any physician to see the same problems day in and day out, year in and year out, and to continue a high level of concern, to perform in other than a routine way. Most of the work required by the prisoner population is of this nature. Occasionally, there are some urgent or acute problems. Trauma occurs, coronary diseases with acute episodes occur, there are a significant number of diabetic inmates and some epileptics. These are given reasonably prompt and good attention. Despite their expressed negativism, both doctors reconsidered decisions to resign after the uprising, when no replacements could be found.

Neither of the prison doctors performed surgery; for many years a general surgeon from a nearby community came regularly to Attica for consultation and surgery. The eventual volume of work and lack of support and inadequate postoperative staff and facilities led to an arrangement whereby residents and attending surgeons from Meyer Memorial Hospital performed minor surgical procedures at the prison hospital, and the more serious cases were taken to that hospital. Although inmates' attitudes toward outside doctors, especially specialists, were more favorable than toward the prison doctors, the arrangement with Meyer Memorial was terminated because of the lack of air conditioning in the prison operating room, inadequate supplies and personnel for diagnostic work and/or postsurgical care. Surgery has since been done only in urgent and emergency situations at Meyer Memorial Hospital.

Treatment at Meyer required the approval of the Superintendent, since the fees involved came from the prison's budget. The availability of a bed in the hospital's prison ward, as well as an attending physician willing to take the patient and a satisfactory arrangement for the payment of fees, were also prerequisites to treatment at

Meyer. All of these matters were not always worked out and frequent delays resulted.

Since Roswell Park Memorial Institute, which has one of the finest programs of cancer care and research in the country, is only 60 miles from Attica, it has become a more or less routine policy to transfer all New York State inmates with cancer to Attica, and for them to be taken to Roswell for treatment, consultation, and outpatient care. If nothing else was feasible, these inmates were hospitalized in the prison for terminal or long-term care.

A major problem inhibiting the provision of adequate care was that inmates' previous medical records were unavailable even when they were transferred from other prisons. There was no uniform, consistent medical record system within the Department of Corrections and no centralized files.

Recruitment of paramedical or allied personnel is difficult at Attica on many counts and plays a role in the essential availability of these services. Factors in the difficulty of recruitment are not only the prison atmosphere or working with inmates, but the isolation of the facility, the noncompetitive salary levels (civil service), the rigidity of routines, the oppressiveness and monotony of the atmosphere, and the lack of backup personnel in the specific jobs. One additional problem with the prison hospital is the staffing demands, which fluctuate greatly and cannot be anticipated. The phenomenon is always true of a small unit. In an effort to provide adequate nursing staff, for the first time female nurses, who are easier to recruit, were employed in the spring of 1972 on the day shift both in the hospital and in the clinic (first floor) to provide direct nursing attention. In long-range terms solutions to such problems will depend on the development of some alternate system for delivery of care in which these essential services are provided for the inmates of Attica by a larger well-staffed medical center or inmates in need of care are transferred to some facility with large enough volume to support more comprehensive staffing patterns. This same observation would apply not only to support personnel but to all types of professional care requirements.

Dental: Two full-time dentists, employed by the Department of Corrections and responsible to the Superin-

tendent, worked for approximately six hours a day, five days a week, and were on call for emergencies. Neither maintained a private practice and dental assistant and technician services were provided by inmates. All inmates were examined on admission and the condition of their mouths found to be generally poor, showing few signs of previous care. Because of the limited time available in the inmates' schedule and the large amount of essential restorative work to be done, little effort was made to save teeth which would require extensive treatment. In addition, like many people, inmates often refused all but emergency help through fear of the pain commonly associated with dentists. There were thus far fewer complaints lodged against the dental services than the medical care.

Psychiatric: Psychiatric services were provided through the staff and budget of the Department of Mental Hygiene, with part-time psychiatrists and psychologists.⁵²

Sixty percent or more of the staff time was spent in evaluating inmates for parole hearings, transfers to facilities such as Dannemora State Hospital, and in response to a myriad of requests from courts and various officials. In addition, staff availability fluctuated over time and in response to budget limitations in the Department of Mental Hygiene and to the exigencies of the winter weather in the area which was often so bad that the psychiatrists would not drive to the institution.

It was impossible for the psychiatrists to provide other than an occasional consultation and direct supervision when a true crisis occurred. Some 40 percent of the inmates had requested appointments but it took months before an inmate could be seen, and most were not seen at all unless a crisis arose. There have been attempts at group therapy, but these were largely frustrated by lack of time and of facilities. A psychiatric or therapeutic milieu in which group psychotherapy was possible did not exist at Attica.

Because of the great need among inmates in the area of operational and emotional distress, the medical department has, over the years, developed a procedure in

⁵²Although this was the organizational structure, the supervisory psychiatrist has never had a visit from, or direct involvement with, officers of that department in 18 years.

sick call which compensates, but in an eventually damaging way, for the lack of psychiatric availability. Inmates whose complaints were such as might seem indicative of mental or emotional disturbances were given tranquilizers and other support and maintenance drugs in the hope that they would carry the inmates as long as possible without serious or repeated episodes of uncontrollable behavior, with their consequent disturbances. Of course, since the earlier stages were not adequately treated, some inmates tended to become worse than they would have otherwise. This in turn led to increasing numbers of highly disturbed inmates which necessitated a closed ward⁵³ which was then no longer available for less disturbed persons, who were then merely continued on drugs.

In substance the Department of Psychiatry at Attica was overwhelmed and preoccupied with meeting purely technical and legal requirements involved in inmate movement in and out of the prison and with emotional disturbances when those got beyond the level which the correction officers and the general medical personnel could adequately handle. It is interesting to note that the buildup of emotional tension, the increased number of emotionally disturbed inmates, and the lack of effective means of defusing the increasing pressures as these were generated were all anticipated and identified by the supervising psychiatrist before the uprising and he had expressed his fears and misgivings about the rising tension and disturbed climate within the prison on several earlier occasions to the prison authorities.

*Vocational Rehabilitation Project:*⁵⁴ The staff of this program—the director, a vocational rehabilitation counselor, two teachers (one academic, one vocational), two part-time psychologists, and a parole officer—were employed by the Division of Vocational Rehabilitation (DVR). The program was instituted in 1967 to utilize behavior modification techniques and intensive medical help for inmates with psychiatric and medical disabilities in a model which would have implications for the overall rehabilitative program within prisons. Much of the medi-

⁵³This was the ward to which the doctors threatened to send inmates who vigorously disputed their dispositions at sick call.

⁵⁴A full discussion of this program can be found on pp. 82-90.

cal and psychiatric capability was to be gained through the cooperation of those departments within Attica and the inability of the psychiatrists to devote a significant amount of time had limited the project to those with physical health-related disabilities. The inmates with such problems included diabetics, epileptics, orthopedically disabled inmates, and paraplegics, all with varying degrees of disability which were either correctable or could be stabilized and the individual hopefully trained for some productive occupation. However, since Attica itself has no physical therapy, recreational therapy, occupational therapy, or other facilities, the program was largely centered at the prison in a workshop setting, which had difficulty in gaining acceptance and support from the prison authorities who viewed the whole approach as too permissive and who did not understand or trust the methodologies being used. The medical services provided for DVR inmates were much broader than those available to the general population; chronic disabilities were treated and efforts made to increase the functional capacity of participants.

However, since the project's budget did not allow it to obtain the anticipated services from outside the system, the dependence on institutional sources for services which the institution had not the capacity to supply limited its operation.

Religion

Before the uprising, religious services were regularly held in the chapel for Catholics, Protestants, Jehovah's Witnesses, Christian Scientists, and Jewish inmates. Only 15 percent of the population attended services on any regular basis, and many did because it provided them with an opportunity to leave their cells and socialize. There were two full-time chaplains, Father Eugene Marcinkiewicz, a Catholic priest, and Reverend Eligius Ranier, a Protestant minister; other clergymen came in on a part-time basis.

Both chaplains, in addition to conducting services for inmates of their respective faiths, provided counseling and personal services to them. These included interviewing new inmates and inmates eligible for parole, super-

vising an Alcoholics Anonymous chapter, conducting a choir, and distributing greeting cards and calendars. The part-time clergymen who came to Attica conducted much more restricted programs.

There was no minister for the Black Muslims. Assistant Deputy Superintendent Pfeil told the Commission that efforts had been made a year before the uprising to secure a minister of the Nation of Islam, but that those contacted had refused to come. Inmates pointed out that their effort was undercut from the beginning by the requirement that the minister not have a criminal record, since many Black Muslims who become ministers have been recruited in prison. The tenets and practices of the religion have enabled many to rehabilitate themselves, often through the example of a minister who had followed the same path at an earlier time.

In March 1971, Dr. Ranier did arrange for a Muslim minister. However, when a dispute arose during the service he discovered that he had secured an Orthodox Muslim minister for a group consisting of about 30 Orthodox Muslims and 200 members of the Nation of Islam.

No meeting place or organized services were provided for Black Muslims and some regularly attended Jewish services as a substitute. Without their own regular services, Muslims gathered in the yard during recreation periods to worship and engage in physical fitness programs, as encouraged by their religion. Orientation material for new officers warned them to be wary of "inmates congregating in large groups," and instructed them to "move over . . . to ascertain what the group is discussing and the reason for the gathering."

The administration and officers never understood the Muslims.⁵⁵ They were never given information about what Muslims believed, and Muslims saw no reason to explain themselves to hostile officers. Officers, ignorant of Muslim beliefs, assumed that a black group which conducted itself with an internal, almost military, discipline and conditioning was committed to violence.

While important Christian and Jewish holidays were observed in the prison, the Islamic holy month of Ramadan,

⁵⁵Efforts to keep the Muslims under surveillance are described in chap. 3.

when Muslims fast from sunrise to sunset, was not recognized. Muslim inmates were required to attend meals, although their religion forbade them to eat.

Rules and Discipline

Rules assume a special prominence in prisons, where adherence to unvarying routines reassures the security-conscious correction staff. In addition, the public expects that serious efforts will be made to encourage the observance by inmates of rules governing their conduct, so that they will observe the law when they return to society. But the rules at Attica were poorly communicated, often petty, senseless, or repressive and they were selectively enforced.

A departmental inmate handbook, containing statewide rules, was printed at Great Meadow in 1961, and revised in 1968. The book stated: "Ignorance of the rules will not be accepted as an excuse for violation," but no rule-books were distributed to Attica inmates after November 1970 and there was no other systematic method adopted for communicating the rules either to inmates or officers.

In addition, each institution had wide discretion to establish its own rules. Additional regulations could be imposed by hall captains, who regulated the inmates' conduct in their blocks.

In theory, officers were required to explain the reason for the rules to inmates but new officers had almost as much difficulty as new inmates in ascertaining what the rules were. As a result, a group of experienced officers prepared an unofficial guide. The document states: "Until you are familiar with what is allowed, tell inmates 'No' when they ask for any special permission."

Inmates often learned the rules only when they broke them. The situation was especially difficult for Spanish-speaking inmates, many of whose knowledge of English was limited. As one testified:

Q. Were you given any indoctrination in Spanish about the rules of the institution?

A. Well, you might call it indoctrination. Every time I violated a rule, a keeplock was indoctrination.

In the absence of generally understood guidelines, correction officers had great discretion in interpreting and

enforcing the rules. Even where rules were clearly defined, the strictness of their enforcement varied from officer to officer, depending on each one's experience, perspective, and personality. For example, some officers insisted that inmates stand at the front of their cells for roll call; others allowed inmates to remain in bed or seated, as long as they were visible. Some allowed quiet talking in line; others did not. Some were rigid and insensitive, others understanding and patient.

Inmates might have adapted to such discrepancies if they had spent the majority of their time under the supervision of one or even several officers. But in August 1968, the organization of correction staff shifts was changed, and officers were no longer assigned to individual companies. Instead, day men were assigned to blocks, night officers wherever they were needed. Moreover, a rotating system of days off resulted in the frequent assignment of relief officers. Inmates had to master the idiosyncrasies not of two or three officers but of dozens during a year. From day to day, they could never be sure what to expect.

The system as it existed made favoritism, discrimination, and harassment by officers easy. The possession of heating droppers was generally permitted, but some men considered troublemakers or who were otherwise disliked were punished when the devices were found in their cells on shakedowns. Inmates widely reported that special searches were made of disfavored inmates' cells, in order to find the same contraband which was ignored when in the possession of others.

The administration was aware of the problems created by rules enforced by men of different personalities. One supervisory officer testified that there were "a few officers who should not be in contact with inmates." An older black inmate, respected by officers, testified that there were three or four officers he considered racist, who "come into work in the morning, and they are going to find what they can do to irritate an inmate." The few officers who bothered could make life miserable for hundreds of inmates simply by enforcing strictly their interpretation of the rules.

Many of the rules were senseless, juvenile, and served no purpose. Inmates at Attica, but not at other prisons, were prohibited from chewing gum, because discarded gum had created a housekeeping problem; they were re-

quired to march to the mess hall and to their jobs with their hands at their sides, to stand up in their cells when they were counted, to avoid loud conversation in the halls, to turn out their lights at a prescribed hour; they could not wear hats indoors, grow a moustache, or have sideburns of more than a prescribed length.

Even where seemingly arbitrary rules had a legitimate basis in security, they were rarely explained to inmates. They found out only the dos and don'ts, not the whys.

Some of the rules seemed transparently hypocritical, such as the prohibition against droppers. Why, inmates reasoned, did the administration sell items in the commissary which required heating, like coffee, tea, and soup, if they expected inmates to observe the prohibition against heating devices?

While officers could, at will, find daily minor infractions by an inmate of the myriad written and unwritten rules at Attica, punishment was inhibited by court decisions and new administrative regulations. Until October 1970, penalties for minor infractions were determined by the Deputy Superintendent, who could keeplock an inmate or send him to solitary confinement in HBZ as punishment, as he saw fit.

A keeplocked inmate was not allowed to leave his cell during the entire time of his keeplock. Meals were brought to him there. If his commissary day came up during a keeplock, he missed it.

HBZ (Housing Block Z) is a special disciplinary housing unit located in the reception building. The cells are similar to those in the main housing blocks, but inmates spent 23 hours a day in HBZ cells. Confined HBZ inmates were not permitted to work or to go to school or to meals, and they could leave their cells only for an hour's solitary recreation in a small, open-roofed room. A prison doctor toured the HBZ galleries daily.

In 1970, a Federal district judge upheld the contention of an Attica inmate that the punishment procedures in New York prisons violated the United States Constitution.⁵⁶ In response, the department adopted new rules which provided an inmate charged with an infraction the opportunity to defend himself.

⁵⁶*Sostre v. Rockefeller*, 312 F. Supp. 863 (S.D.N.Y. 1970), modified *subnom*, *Sostre v. Mc Ginnis* 442 F. 2d 178 (2d Cir. 1971).

The new rules directed officers to "deal with minor infractions that do not involve danger to life, health, security, or property by counseling, warning, and/or reprimand" without reporting them. An officer was authorized, at his discretion, to keeplock an inmate for up to 72 hours, which had to be reported to the Superintendent. The inmate was then scheduled to appear before the adjustment committee at its next meeting.

The adjustment committee was composed of an officer of lieutenant rank or above, a civilian employee, and another officer.⁵⁷ The inmate was called before the committee, but the accusing officer was not; the committee relied instead on the officer's written report. On the basis of the report, the inmate's explanation, and his prior disciplinary record, the committee could choose a number of courses: dismiss the charge, direct the loss of specified privileges for not more than 30 days, keeplock the inmate for up to two weeks, assign him to HBZ for up to one week, recommend a change in the programs or facilities of the institution, defer action for up to three months, or recommend a Superintendent's hearing. During 1970 and 1971, no recommendations were made for changes in the institution's programs or facilities. Of the 3,219 complaints considered in 1971, only 6 were dropped at the hearing. The others resulted in punishment or, when considered more serious, referred to a Superintendent's hearing.

At the Superintendent's hearing, the inmate received a written charge, and a correction officer was appointed to assist him in his defense. If the charge was affirmed, he could be assigned to HBZ for up to 60 days, subject to review by the Correction Commissioner, or he could be deprived of earned "good time" previously subtracted from his sentence.⁵⁸

The new procedures did not satisfy either inmates or officers. The absence of any opportunity to cross-examine the complaining officer deprived the inmate of the sense of fairness and impartiality the procedure was intended to instill. In addition, the inmate could be held in keeplock until the hearing, thus punishing him before "convic-

⁵⁷By union contract, this third position was rotated among all the officers at Attica.

⁵⁸An explanation of "good time" may be found on pp. 92-93.

tion" very much like the detention he had likely experienced before Attica while awaiting a trial which would determine his innocence or guilt.

Officers, who were not allowed to appear at hearings, felt they had little influence on the verdict or punishment, and they believed their authority was undermined. They complained that, frequently, the only punishment given an inmate was the day or two the inmate had already served in keeplock waiting for the hearing. The new procedure also increased the officers' paperwork, and some officers stated that they reacted by overlooking offenses rather than go through the routine.

Protecting the Inmates: In a maximum security prison in which they were allowed no privacy, inmates at Attica were insecure concerning their safety. The Commission found that popular conceptions of homosexual advances and assaults in prison were not exaggerated.

The first weeks at Attica were especially frightening for a young man who had never been in prison. Some were lucky enough to be warned where not to walk alone and what kind of advances to reject. But the unwary or careless often had to choose between a fight or consenting to homosexual acts. Typically, a young inmate would be approached by an older man offering him food, advice, or protection. The inmate who accepted these offers only as friendly gestures to help him get adjusted often found he had made a deal and was expected to reciprocate with sexual favors. The only alternative was to fight and risk the consequences. If he consented, he was likely to be tabbed for the rest of his term as a "homo" by officers and inmates alike and to discover that his only hope of companionship and protection from frequent assault was in continuing submission. Even if an inmate did not choose to submit, the apprehension of being "ripped off" by another inmate or group of inmates was very real for young inmates. Many always carried crude but effective knives fashioned from metal scraps in order to defend themselves.

Officers, who were responsible for the welfare of inmates, could not offer them constant surveillance because of a low officer-inmate ratio. In addition, the officers' negative attitudes toward criminals and blacks created an indifference to what some believed was the normal

sexual conduct of many inmates. One officer stated in a Commission interview that he had witnessed five men sexually assault another inmate. He did nothing to stop it, but assumed without investigation that the activities were consensual.

Some officers said they made efforts to discipline inmates caught in the act of assaulting another inmate. But often it was easier to report both inmates involved instead of attempting to determine who was at fault. As a result, inmates had no confidence in the ability and determination of officers to protect them from assault, just as on the outside many were accustomed to police who offered them no protection. They relied instead on their homemade "shivs," which were carried everywhere at Attica. If an officer was sympathetic to an inmate and believed him to be in danger of homosexual attack, he often would overlook the "shiv" if it had been left where it could be found in a cell search.

The irony was not lost on the inmates. They perceived themselves surrounded by walls and gates, and tightly regimented by a myriad of written and unwritten rules; but when they needed protection, they often had to resort to the same skills that had brought many of them to Attica in the first place.

Racism in Officer-Inmate Interaction

The relationship between officer and inmate was the central dynamic of life at Attica, as it must be in every prison. The civilian staff was inadequate for the task of rehabilitation: the doctors were unsympathetic, the two psychiatrists were booked months in advance, and the civilian teachers and counselors were few in number. By default, the burden of helping inmates with their problems fell on the officers. The Commission engaged Dr. Robert E. Gould to analyze the psychiatric aspect of the officer-inmate relationship, and part of this section draws on his insights.

Most officers perceived themselves as custodians who were there to enforce the rules and to keep the inmates in line, not to help solve their problems. They were not trained to counsel inmates and they generally lacked the motivation to try. Albany may have changed the title of

the position from guard to correction officer, but it did not change the attitude of the men.

Some officers tried to help inmates with prison matters such as straightening out their commissary accounts, or gave advice on family problems. But the relationship between most officers and inmates was characterized by fear, hostility, and mistrust, nurtured by racism.

The relationship was probably inevitable when predominantly poor, urban, black, and Spanish-speaking inmates were placed under the supervision of white officers from rural areas equipped with only three weeks of training. Most whites in society have not met blacks on equal social terms and except for their service in the military, many Attica officers were exposed to blacks only after they were convicted criminals. They began with little or nothing in common, and Attica was not a catalyst which made people want to learn about each other.

Attica also had a history of racial segregation which existed into the 1960s. A black inmate, who grew up in an integrated neighborhood, testified:

I was in Mississippi in the army, in Alabama in the army, and I was all over. I want to tell you something about Attica in 1960. I have never seen so much discrimination in one place in my life.

There were black and white sports teams, different barbers for blacks and whites, and separate ice buckets for black and white inmates on July 4.

Segregation was officially abandoned by the mid-1960s, but, as in the larger society beyond the prison walls, racism still pervades all of Attica in varying degrees. It is manifested by both officers and inmates.

The vast majority of officers denied on direct questioning that they harbored any prejudices against black or Spanish-speaking inmates. They do not view racism as a problem at Attica.

This claim, however, conflicts with a number of objective findings:

1. Statistics and observations of which inmates have the "good" and the "bad" jobs.
2. Unconscious slips (anecdotal material, jokes, use of racist expressions) by officers in general discussions and in answering questions.

3. Specific accounts of biased treatment cited by black and Spanish-speaking inmates, and perhaps most significantly, supported by white inmates.

Many officers have racist feelings they are not consciously aware of. One, for example, said that there was no racism in Attica, not even among the inmates themselves. When asked about the daily phenomenon of voluntary self-segregation that goes on in the mess hall, where tables end up being filled mostly with inmates of one race, his reply was. "How would you like to sit between two coloreds while you were eating?" Another officer, also disclaiming any racist attitudes, was asked why whites were predominant in the "good" jobs such as clerical and hospital posts, while black and Spanish-speaking inmates were very much overrepresented in the "bad" jobs such as duties in the metal shop and grading companies. He answered as follows: "They [black and Spanish-speaking inmates] are better suited for those jobs." And another officer stated: "It is hard to find coloreds who can do good clerical work." There are in fact enough blacks qualified to do the kind of clerical work needed (see p. 000). Moreover, the use of the term "colored," common among correction officers despite the known wish of black men to be called black, conveys some degree of underlying prejudice.

Another position some officers take is discouragement, in active or nondirect ways, of black-white friendships. Several whites who were friendly to one or more blacks were told they would not get certain privileges they wanted while they kept up such friendships. Job discrimination has been used, according to some white inmates, as a penalty for their fraternizing with blacks. They were often called "niggerlover" and were sometimes the target of snide remarks implying that there must be a homosexual basis for the liaison, since there could be no other explanation for such an unnatural relationship.

Racism among Attica officers may be no greater than what is present in society at large, but its effect is more intense at Attica. The prisoner can find no escape from it—there is no way to avoid confrontations and unpleasant experiences when the interaction is so ever-present, and the quarters so close.

There is also racism among inmates, most of whom, reflecting society at large, carry fairly strong prejudices into Attica. Self-segregation is practiced not only in the mess halls, as mentioned, earlier, but in the yards and the E block dayroom as well.

Racist attitudes in the institution were an undeniable factor among the tensions leading to the uprising. Aggressive responses to racial bias are increasingly common outside prison, and this trend exists inside as well. Inmates today feel that they have the right, even as prisoners, to rebel against being further put down on the basis of race.

Racism has always been an unsettling force in this country. The openly rebellious reaction to it developed gradually, but by now must be recognized as an explosive reality, within prison as well as "outside." While it is a microcosm reflecting the forces and emotions of the larger society, the prison actually magnifies and intensifies these forces, because it is so enclosed. In prison there is no possible escape from oppression.

The tensions engendered by this unrelenting confrontation are described in the next chapter, and they culminated in the events of September 1971.

Another Attica: The Division of Vocational Rehabilitation and Work Release

There was another milieu at Attica for the small number of inmates selected to participate in the Division of Vocational Rehabilitation (DVR) and work-release programs.

*Division of Vocational Rehabilitation.*⁵⁹ DVR was a program which not only mouthed the rhetoric of rehabilitation, but actively pursued it. Sixty-five inmates—barely 3 percent of the population—participated in "DVR," which was begun at Attica in 1967. Inmates in the program lived in E block under significantly different conditions from other inmates. Their cells were rooms with locked doors; there was an indoor recreation area as well as an outdoor yard; inmates could be out of their cells in the evening, and they had the use of a kitchen.

⁵⁹The Office of Vocational Rehabilitation of the State Education Department has provided services to disabled men and women since the 1920s; it began its program in New York prisons in 1967.

Even more important than the improved physical surroundings, inmates received educational and vocational training, psychological counseling, and group therapy. By means of a "token economy" system, they were promptly rewarded for active participation in the project's programs. In short, there were a variety of attempts to make DVR a positive therapeutic experience.⁶⁰

The DVR project was initially established to provide rehabilitative services to physically disabled inmates, upgrading their employability, both within the institution (most disabled inmates lived in "idle" companies) and on the street upon release. It was jointly sponsored by the Division of Vocational Rehabilitation of the State Education Department and the Department of Correctional Services, with the financial support of a Federal grant. The program was expected to serve eventually all of the disabled inmates in the state prison system and when the project began in 1967, there were almost 200 such inmates.⁶¹

Attica was chosen for the experiment because E block, built in 1966, was unoccupied and architecturally suitable for the proposed program. It had two floors with cell space for 100 inmates on each floor and was compactly built around a large, airy dayroom on each floor. There was also sufficient basement space for a rehabilitation workshop where work skills and habits could be learned and practiced.

A staff of 18 was assigned to the project. There were eight civilians: the director, a rehabilitation counselor, a guidance counselor, a teacher, a vocational instructor, two half-time psychologists, and a parole officer. The 10 correction officers were permanently assigned to E block.

The basic criterion for admission to DVR was a physical disability which impeded employment. As the project progressed, three additional criteria were established: no

⁶⁰In 1970, the per capita cost for inmates in the general population was \$2,700; the per capita cost for DVR was about three times as much.

⁶¹Once the project began, "full capacity" was reduced to about 75, because the staff found that the central activity and service of the project—the rehabilitation workshop—could handle only about 30 inmates at a time. The DVR school could accommodate approximately another 30; additional inmates would spend much of their time idle, albeit out of their cells in the yard or in the dayroom.

aggressive homosexuality, no excessive hostility toward the institution or society, and a desire for self-help and participation in the available programs.

In September 1971, there were 65 inmates in DVR. Slightly more than 55 percent of them were black, 38.5 percent were white, and 6 percent were Puerto Rican, proportions which approximated those of Attica's general population.

The programs and services provided to DVR inmates reflected a philosophy and methodology which contrasted sharply with the attitudes and programs which prevailed in the rest of Attica:

- Constructive work and the acquisition of work habits were perceived as important goals to achieve, and a rehabilitation workshop was established. Elementary skills were taught and inmates could adjust at their own pace to the physical and emotional demands of a work situation and develop confidence in their own abilities.
- Pathological behavior was not automatically met with hostility and punishment; instead, a comprehensive program of psychological and group counseling was devised for inmates.
- Because offenders often lacked elementary functioning skills (e.g. correct speech), there was an intensive program of remedial education.
- Officers were encouraged to become involved in the treatment of inmates; they participated in community meetings as members of the community.
- In the belief that ultimate security in an institution depended on inmate support of the program—in effect, on inmate solidarity—manifestations of inmate initiative such as the establishment of committees were encouraged.
- A token economy system was created from the conviction that new methods of prompt reward were needed in order to reinforce positively the work skills and attitudes acquired in the project.

Rehabilitation Workshop: Primarily, the DVR project was designed to be an experiment in vocational rehabilitation, and the basement workshop was the focus of the program. The shop supervisor evaluated each inmate's capacity for work as he entered the project, and the inmate could be taught work habits and elementary skills in six different areas. The shop could accommodate about 15 inmates in each of the morning and afternoon ses-

sions. It required 6 to 18 weeks for an inmate to progress through all the steps in the shop's program.

Supervisors in the shop evaluated inmates' potential skills in woodworking, metalworking, silk-screen drawing, typewriter repair, motor mechanics, and architectural drafting. In addition to providing individual help in advancing those skills, the program also included evaluation and training in personal appearance and good work habits, including relations with fellow workers and supervisors, tolerance for sitting, standing, and general frustration, ability to follow instructions and to meet quality standards in production. It was assumed that by evaluating aptitudes, a rehabilitation counselor could place the inmate in a job or training program which he would enjoy and could do adequately, and that by stressing work habits, the shop instructor could enable the inmate to cope with the problems which arise for most people in any job situation.

Although basic skills and self-confidence were stressed in the shop, the program was not designed to produce an expert worker in any of the skills which were taught. An inmate would not be a qualified mechanic when he completed the program, for example. He was given a taste and, hopefully, the confidence to pursue an apprenticeship or advanced training program later on.

DVR inmates interviewed by the Commission were enthusiastic about the shop and its instructor. They believed the instructor had high standards, yet he was patient and established good rapport with those he taught. After their evaluation period, many inmates continued to work in the shop on their own time.

Education—DVR School: Like the prison school, the DVR school had three levels: basic, intermediate, and high school. The curriculum was traditional. Mathematics, English, and history were the basic subjects taught on the high-school level. The school was run by a full-time professional teacher who, like the workshop evaluator, was described by his inmate-students as a patient, dedicated, understanding man who made learning interesting and challenging. In 1971, the school instructor began to experiment with inmate assistant teachers, who were respected by the other inmates. Courses in Arabic and black history were taught by the inmate instructors.

The school's total enrollment hovered around 30 or

40, so that unlike the teachers in the prison school (where the enrollment was ten times that), the DVR teacher could and did get to know his students individually and, after administering initial aptitude and achievement tests upon their admission, could tailor an educational program to their individual needs. Not infrequently, men who tested at the eighth-grade level were ready to take the high-school equivalency exam after a year or two. Eighty percent of the DVR students who took the exam passed it, a rate 20 percent higher than that of the students in the prison school.

Academic education played an important role in DVR apart from the formal school. The teacher ran special debate and essay programs, and DVR inmates were encouraged to take courses and cell study given by the regular prison school. DVR inmates enrolled in college and technical vocational correspondence courses, with books and materials provided by DVR.

The Token Economy: A "token economy" system went into operation in April 1970. Inmates received tokens in exchange for attending the DVR school and for cell study and correspondence courses, for their regular jobs on the block, for their initial participation in the workshop, and for submitting articles to the DVR newspaper. One token was worth 4¢, and an active inmate could average 30 to 50 tokens a week.

Tokens could be spent at the special DVR commissary, open four days a week, where, in addition to the products generally available in the prison commissary, the men could order products from outside stores: ice cream and fresh vegetables (which could be stored in the DVR kitchen)—even cookware. They could also spend their tokens to buy additional recreation time out of their cells. Seventy tokens bought a permanent recreation right every evening from 5:30 to 7:30; for 25 tokens per night, up to ten men could stay in the recreation room out of their cells until 11:00 P.M.

The DVR staff used the tokens as prizes for debate tournaments, essay contests, and sports competition. And, in an effort to encourage negotiation and group behavior, the staff made it more expensive for an inmate to buy extra night recreation time solely for himself, rather than as part of a group of inmates buying the extra privilege.

The system had its advantages and pitfalls. Given the few sources available to them to earn money, it undoubtedly motivated the men to participate in the programs. Attendance at the school and the completion of lessons boomed when the system was introduced. The giving of the tokens encouraged generosity and greater sociability by decreasing petty thievery on the block and by making it possible for the men to contribute to joint projects like a July 4 party. It also gave the men an opportunity to learn to budget their resources, and to save for articles or privileges they valued. At the very least, tokens were insurance against running out of toilet paper before the end of the month.

However, there was also widespread cheating and manipulation of the system, and many participated in the programs for the tokens without understanding or caring about the behavior which won them the tokens. As a result, no tokens were given for participation in group counseling, where attendance by men who wanted tokens but who would not participate actively was discouraged.

Recreation: DVR had the best recreational facilities and opportunities at Attica, and DVR men had many more hours out of their cells to enjoy them. There was an indoor recreation area in a large, cheerful dayroom where the men could play cards, ping-pong, shuffleboard, chess, and checkers, and an outdoor yard where they could do all these things and also play basketball, volleyball, handball, croquet, and horseshoes. DVR inmates were allowed into the recreation areas for two hours in the morning and three hours in the afternoon, if they were not involved in school, in the shop or in a group meeting. Almost everybody was in the recreation area from 5:30 to 7:30, and a few could extend their recreation after supper each night until 11:00 P.M., upon payment of the requisite number of tokens they had earned in the program.

The DVR Newspaper—"The Grapevine": Inmates in DVR published a newspaper on a monthly basis. Many of the articles were informative—such as a detailed series on drugs and drug use, and an article on Liberia. Several issues had a theme, such as a memorial to Martin Luther King, Jr., and Valentine's Day. The paper contained games and quizzes, and some inmates wrote about their backgrounds and early experiences. The paper was typed,

mimeographed, and edited by DVR inmates. There was some censorship by prison officials of articles critical of officers, the institution, or society in general, which accounted for the innocuous tone of most of the articles.

Community Meetings: Every Tuesday all members of the project—inmates, officers, and civilian staff—held a community meeting to discuss ideas for improvements on the block, and to allow any individual to raise a problem which was bothering him.

The meeting gave inmates a forum in which they could speak out without fear of being disciplined for what was said. The problems raised were often personal disputes between inmates or between inmates and officers, and they were often raised in heated fashion. In general, inmates and staff considered the meetings a helpful safety valve which allowed ventilation of built-up resentment and hostilities. As one inmate said: "No matter how much steam came off in the community meetings, inmates and officers were still talking to each other. No one stood in the corner saying, 'let's get this guy.'" Although some officers were not in favor of the meetings, they usually reacted well when challenged by inmates.

The Central Committee and its Subcommittees: In the spring of 1971, a group of respected inmates decided to form a committee to plan the Fourth of July party. Each member chaired a subcommittee which performed different tasks such as arranging for food, planning speeches, and cleaning up. There were nine subcommittees, and almost everyone in DVR served on one. One of the purposes of the committee structure was to break down the divisive influence of the cliques and to involve officers and inmates in a common enterprise (officers sat in on the subcommittee meetings).

The party was a success, and the committee decided against disbanding, since the committee structure worked well and had brought the inmates closer together. Six subcommittees were retained, and the central committee began to function more and more as the central self-governing institution of the DVR inmates. It proposed improvements in the living conditions and reported its proposals to the Tuesday block community meetings. When a man was keeplocked, the committee would try to find out what had happened, why, and how a recurrence could be avoided.

The committee also proposed a "constitution" for the block. It would provide for election of representatives and impose fines for rule infractions, instead of discipline by officers. However, this proposal, as well as the entire concept of a constitution, was rejected by the correction staff.

Psychological and Group Counseling: Two Ph.D. candidates from the psychology department of the State University at Buffalo came to E block two days a week for individual consultation with inmates. They also led several self-help counseling sessions, as did other civilian members of the DVR staff.

Participation in group counseling became mandatory in 1970. Each group of ten inmates was led by a psychologist and a correction officer, but these sessions were abandoned a month or two later in favor of voluntary groups led by a civilian DVR staff member who was considered by the inmates more likely to keep discussions confidential. He proved more successful in creating a rapport with the inmates, who viewed the groups as valuable. One inmate testified:

... the image I had about myself when I first came into this program, it wasn't too good.

In other words, I looked at myself as more or less being nothing, you know, because like there was no form of identity there. But through this program, I have found myself; and I realize now that I am somebody and that I can do something for myself.

From seven to ten men attended group sessions, which were structured around a mutual subject of interest like narcotics, or around general problems of a particularly congenial set of inmates. Over half of the DVR population participated in group counseling. Although results have not been documented, the DVR staff believes that participants achieved fewer rule infractions and increased participation in DVR programs.

Medical Services: DVR added considerably to the medical services available at Attica. Within weeks of admission to the project, each participating inmate was taken to a Buffalo hospital for a complete examination by a specialist in the area of his disability. Inmates became clients of the State Vocational Rehabilitation Agency, and they were eligible for the same medical treatment and financing af-

forded the outside community. For example, DVR paid for any surgery, prosthetic fitting and training, physical therapy, or necessary medical aftercare not available at Attica. Regular treatments of prescribed medication and medical procedures authorized by the outside specialists were left to be performed by the doctors at Attica.⁶²

By May 1971, over \$50,000 had been expended for the outside medical care of DVR project inmates.

Community DVR Services After Release: One of the most important and most coveted services DVR rendered its inmates was the opportunity for continued servicing upon parole or release. The rehabilitation counselor assisted inmates in devising a parole program. He placed them in a job or training program or enrolled them in college courses, for which DVR paid tuition. Equally important, a DVR parolee received continued counseling and assistance after his release—which was considered to be extremely important in the first critical 30 to 90 days after release. The rehabilitation counselor at Attica's DVR program would continue as an inmate counselor if he lived in a town near the prison; otherwise, the inmate's case would be transferred to a community DVR office.

After the Uprising: A number of DVR's programs were modified after the uprising. Night recreation was limited for a time and community meetings were discontinued. However, the principal change occurred in the eligibility requirements.

The project is now considered a prerelease program, and inmates with psychological disabilities, as well as those with physical disabilities, are eligible. Candidates must be less than a year away from possible parole or release, be under 45 years of age, and possess an employment history which demonstrates a willingness to become and stay employed. Moreover, because the project intends to initiate follow-up counseling after release, candidates must generally be from western New York State. Most inmates at Attica who meet all of these standards are white. In order to achieve some racial balance, the residence criterion is modified for black and Puerto Rican inmates, many of whom are from New York City. In August 1972, approximately 50 percent of the DVR population was white.

⁶²An evaluation of the medical care afforded to DVR inmates in the prison hospital may be found on pp. 71-72.

Work Release: A work-release program was instituted on an experimental basis in early 1971, in cooperation with the Stirling Homex Corporation, a prefabricated housing plant in Avon, New York, approximately 50 miles from Attica. The company interviewed and selected participants from a list of about 20 names prepared by the Deputy Superintendent's office. To be eligible, an inmate had to be near the end of his sentence and have a residence within commuting distance of the plant, so that he could continue his employment after discharge. There were six participants in the program in September 1971, and prospects for its expansion were bleak because of the lack of employment opportunities in the area.

Inmates in the program had their own car (provided by the institution) and drove to and from work along a required route. They were paid wages equal to those paid other workers, from which the inmates were allowed \$25 weekly for lunches and other expenses. The balance of their earnings was saved for them until their release.

The men in the work-release program lived on the first floor of the reception building in a large room, where they had a coffeepot, a hot plate, and a television. They were not under the constant supervision of officers, and their complaints were more like those of members of the labor force than of inmates: the car was in poor condition, the plant union was not aggressive enough, they wanted a color television, the wages at the factory should be higher. During the uprising, they left Attica each day for work and returned at night. Several graduates of the initial class continued their jobs at Stirling Homex after release from prison.

Release

An inmate's ticket out of Attica could come in one of three forms—maximum expiration, conditional release, and parole. Of the 1,085 inmates who were released from Attica in 1971, fewer than 20 percent had completed their entire sentences. One-third left under the conditional release program and almost half had been granted parole. Although products of a 19th-century liberal trend designed to encourage rehabilitation, by 1971 conditional release and parole had become by far the greatest source of inmate anxiety and frustration. There were very few

inmates interviewed by the Commission who did not list parole and "CR" among their chief grievances.

Maximum expiration is the simplest, and the most definite form of release. It is release at the expiration of the maximum term of the sentence, undiminished by good time allowances. Although it entails the longest periods of incarceration, release on maximum expiration is preferred by some inmates. Once outside the walls, the state has no further claim on an inmate who has "maxed" out. There are no restrictions, conditions, or rules to be followed and no one to whom the releasee must report.

Conditional release is mandatory release at the end of the maximum sentence less any "good time," which is granted automatically by law at the rate of 10 "good-time" days for each 30 days served. Good time, which can reduce the sentence by up to one-third, can be lost because of disciplinary infractions. Whether an inmate keeps or loses his good time is left to the discretion of the Good Time Allowance Committee.

This committee, composed of the Deputy Superintendent, the head of industry, the Director of Education, and the prison doctor, meets once a month to determine the amount, if any, of good time to be lost by each inmate. Each inmate's disciplinary file is reviewed once every three years, or when he becomes eligible for parole or conditional release. The committee is empowered to restore good time previously lost as the result of superintendent's hearings. By law, the committee must "appraise the entire institutional experience of the inmate" in making its determination.

Determinations made before the inmate is eligible for parole or conditional release are only interim allowances and cannot restore the time lost previously in a disciplinary hearing. The committee's final review evaluates "(1) the attitude of the inmate; (2) the capacity of the inmate; and (3) the efforts made by the inmate within the limits of his capacity."

This determination is reviewed by the Superintendent, who sends it to the Commissioner for ratification or modification. In addition, inmates have the right to appeal to the Commissioner for a review of all decisions concerning good-time allowances.

In practice, most of the good time earned is generally

allowed by the committee and most inmates become eligible for conditional release. Released inmates remain under the supervision of the Division of Parole until the date of their maximum expiration. In order to gain conditional release, an inmate must agree in writing to be governed by the same conditions applicable to parolees. Unlike parole, however, if he is returned to prison for a violation of those conditions, the time he has spent on the street is not counted in computing the time left to be served; he begins again to serve the sentence from the time it was interrupted by his release. Also unlike parolees, all of the good time he had earned prior to release is forfeited and cannot be considered in computing eligibility for any future conditional release or parole.⁶³

These disparities between the penalties for violation of conditional release and parole are rooted in the distinction that conditional release is mandatory and enables inmates who would not be granted parole to be released. Most inmates, however, perceive conditional release as an absolute right which should be granted without the harsh consequences which follow a violation. Indeed, many inmates with shorter sentences told the Commission they preferred to pass up conditional release and await their maximum expiration date, when they could walk out as truly free men.

Parole: In practice, the Parole Board—not the judge—decides how long an inmate will serve time. The conditions upon which parole is granted is an even more serious source of an inmate's discontent than conditional release. Inmates' criticism were echoed by many parole officers and corrections personnel, who agreed that the operation of the parole system was a primary source of tension and bitterness within the walls.

Parole, like the maximum security institution, was an innovation intended as a beneficial reform to promote rehabilitation. Instead, it became an operating evil. The first parole system for adults was adopted at Elmira in 1877, when New York adopted an adult indeterminate sentence law and created a procedure for releasing and supervising paroled inmates. Under the law, offenders could be sentenced to a minimum and maximum term of imprison-

⁶³Correction Law §805.

ment, rather than to a fixed term. After serving the minimum sentence, the inmate became eligible for release on parole, if the Parole Board approved.

Over the years, the powers of the Parole Board under the indeterminate sentence statute have expanded. The greatest increase occurred when the New York Penal Law was overhauled in 1967. Under the new law, sentences for all felonies are indeterminate. The sentencing judge sets the maximum but in all except murder and kidnapping cases may leave it to the Parole Board to establish the minimum.⁶⁴ There has been a growing trend toward giving the Parole Board the discretion, not only to decide how much time an inmate will actually serve, but to determine also when he should be first considered for parole.

When the parole system was in its infancy, the Parole Board consisted of state prison staff members: the Warden, the chaplain, the physician, and the principal keeper. This composition placed the power primarily in the hands of the members of the institution who were presumed to have knowledge of the inmate based on regular contact. Over the years, however, the trend was reversed, and today the board consists of 12 members appointed by the Governor who are not employed in any of the institutions. In 1971, no member of the Parole Board was under 59 years of age; two members were black; and one was Puerto Rican.

The statutory test for parole is whether, in the opinion of the board, there is a reasonable probability that the inmate "will live and remain at liberty without violating the law and that his release is not incompatible with the welfare of society." The determination of the Parole Board on these questions is not reviewable by a court.

A three-man panel of the full board meets at each New York correctional institution monthly to fix minimum sentences (known as "minimum period of incarceration") and to decide whether or not to grant parole to those then eligible. The decision to grant parole must be unanimous among the panel.

Statistics kept by the Parole Board show that approximately two-thirds of the persons released on parole do not return to the New York State prison system within five years, either as parole violators or for new offenses.

⁶⁴Penal Law §70.00 (3)

Based on interviews with inmates, correction officers, and parole officers, and analysis of over 60 parole cases, the Commission believes that many of the criticisms of the parole system are justified. The decisions of the Parole Board are fraught with the appearance of arbitrariness. Even when parole is granted, inmates must often wait in prison for months while searching for jobs and places to live. This is done through the mail, and they are given little assistance in this regard. Once on the street, parolees are subject to numerous petty and meaningless restrictions, and are at the mercy of a parole officer who can act arbitrarily in revoking parole.

Appearance of Arbitrariness: By statute, parole is not granted merely as a reward for good behavior in prison.⁶⁵ The law requires that the parole board consider how the inmate "has responded to the efforts made in prison to improve his mental and moral condition," his "attitude toward society, toward the judge who sentenced him, toward the district attorney who prosecuted him, toward the policeman who arrested him," how he "regards the crime for which he is in prison," and, finally, "his previous criminal career."⁶⁶ Thus, the grant of parole often depends largely on factors over which the inmate no longer has control once he is in prison—his prior criminal record, the nature of the crime for which he was sentenced, his opportunities for employment.

Inmate frustration is probably inherent in any system which can make a determination to deny him freedom, but procedures now in effect in New York have the result of magnifying the frustrations.

The inmate's first contact with the parole system is his interview with the institutional parole officer. These officers are not trained psychologists, though some are social workers. None of those at Attica came from an urban background, nor are any black or Puerto Rican. They see an inmate only infrequently and no real relationship between them and the inmates exists. Their primary function is to assist the Parole Board, rather than to help inmates.

An inmate with no minimum sentence will be interviewed by the parole board 10 months after he enters the

⁶⁵Correction Law §213.

⁶⁶Correction Law §214.

prison, for the purpose of fixing his minimum period of incarceration (MPI). The procedure followed at the MPI hearing is repeated, with even more disquieting effects, at the hearing at which the board decides whether to grant an inmate parole, once he has completed his minimum sentence. The inmate may have waited years for this day. He knows that he can be granted parole or be held for another hearing, which may be as long as two years away. But there is no formalized effort by the parole officer to prepare the inmate for the hearing, other than to tell him to be sincere and not to insist on his innocence.

The average time of the hearing, including the time for reading the inmate's file and deliberation among the three Commissioners present, is 5.9 minutes. The parole folder may have as many as 150 pages of reports on the inmate which he has never seen. Two of the Commissioners often read the files of the inmates next in line while an inmate is questioned by a third Commissioner. Thus, the inmate, after years of anticipation, is left with the impression that nobody was or is really interested in his case or gives it due consideration. The questions are often superficial: "Do you feel you have the capabilities of functioning on the outside as a cook?" If the questions delve more deeply, they often concentrate on the inmate's past crime, rather than on his present condition or plans for the future. No one who worked with the inmate in prison is heard by the board.

The panel reaches a decision immediately after the conclusion of the hearing. The two Commissioners who have been reading other inmates' files generally acquiesce in the recommendation of the Commissioner who has read the file and questioned the inmate under consideration. The legal requirement that all three Commissioners participate in the decision is satisfied only in the most perfunctory way.

The inmate is not advised of the board's decision until after it has left the institution. No explanation is given. He is simply told whether he made it or not.

The Parole Board is often subject to severe criticism by the press when a crime is committed by a parolee, and thus it is reasonable to assume that its judgments on releases tend to be conservative. Yet, during the eight months prior to the uprising at Attica, approximately 54.7

percent of the inmates appearing before the board were granted parole on their initial appearance. Over 56 percent of all inmates appearing before the board (whether initial or later appearance) were paroled. These statistics reflect the typical ratios of the board's decisions in granting parole.

While the board acts favorably in most cases, it engenders hostility because of the inconsistency of its rationale. Some inmates who have had good behavior records in prison are "hit" (denied parole), while others with many infractions are granted parole. Some inmates with a long record of prior offenses may receive parole, while others, including first offenders, may be denied it. Nobody gives the inmate an explanation for these obviously inconsistent decisions or describes in anything more than meaningless generalities the criteria used by the board in arriving at its decisions. Institutional parole officers give inmates pointers on what might subsequently impress the board, such as enrolling in Bible classes. But inmates who follow this advice carefully often find they are hit nevertheless. As a result, inmates are left to speculate among themselves as to the reasons for the board's decisions. Corruption and chance are among the favorite inmate speculations.

The Commission's analysis shows that the board is not likely to grant parole on the first hearing where the inmate was convicted of a violent crime, particularly a sex offense or armed robbery. Yet the practice of making all inmates with the same minimum sentence eligible for parole on the same date creates the expectation that inmates will not be judged solely on the basis of their past records, but also on their prison behavior and current attitudes.

Correction Department officials have replied to criticism of the parole system by pointing to the 54.7 percent of inmates released on their first appearance and the two-thirds of those released who do not return to state prisons within a five-year period. But this ignores the perception of the process as an arbitrary one shared by inmates, correction officers, and parole officers. It is also true that, so long as the Parole Board is charged with predicting whether an inmate is likely to violate the law again, there cannot be any mechanical test. But the need for discretion is not served by a procedure where inmates are given only

cursory consideration and where there is no explanation offered them why they are denied parole or what the criteria are for their being released.

Far from instilling confidence in the Parole Board's sense of justice, the existing procedure merely confirms to inmates, including those receiving favorable decisions, that the system is indeed capricious and demeaning.

Open Date—Own Program Status: The vast majority of inmates who receive a favorable decision concerning parole are placed on "open date—own program" status. This means they receive a specified "open date" after which they can be released if they have a bona fide job offer acceptable to the Parole Board and have found a suitable residence. Frequently the process of finding an acceptable job delays an inmate's release several months past his open date. Those months are a period of great anguish for many inmates, who receive no real help at the prison in finding a job or a future home.⁶⁷

The primary tool available to most inmates in their job hunt is the telephone book. They cull possible jobs from the yellow pages—write the firms—and wait for a reply. Many inmates send hundreds of letters to prospective employers before they are successful in finding a job. Even the most menial job is a ticket out.

If an inmate's search for employment is unsuccessful two months beyond his open date, he is allowed to meet with the parole division's employment officer for counseling and information on specific job openings. Sometimes, but not always, that consultation leads to a job. If six months elapse after an open date, inmates have to reappear before the Parole Board which then decides whether to continue them in open-date status. Usually, two or three inmates per month appear before the board for this purpose and are continued on open date. Some are eventually paroled without a job offer, because of their family's financial support, their previous job experience, or on acceptance into a training program. These circumstances are acceptable to the Parole Board as presenting a "reasonable assurance" that the inmate will soon be self-supporting.

⁶⁷The Department of Correctional Volunteer Services, created in 1972, instituted a project at Attica and other state prisons through which volunteers from the surrounding communities assist inmates about to be released in finding jobs and housing.

After an inmate receives a job offer, it is investigated and confirmed by the Investigation Unit of the Division of Parole. The processes further delay an inmate's release by four to five weeks. Sometimes a job offer is withdrawn after the parole officer informs the prospective employer of the inmate's record or personal history—something he is required by law to do. Many inmates believe parole officers turn down job offers because they "pay too much" or for other arbitrary reasons.

Conditions of Parole: An inmate is released two or three days after notice of his job approval arrives from Albany. Unless he has accumulated money in his personal account he leaves Attica with \$40.00, a new prison-made suit, and a bus ticket to the approved place of his employment. He is required to report to his parole officer within 24 hours to begin his new life on parole.

The parolee is still legally in the custody of the prison's superintendent, and his life is regulated by 15 basic rules promulgated by the Parole Board. If a parolee violates any one of these rules, he can be arrested upon a warrant summarily issued by the Division of Parole, and returned to a state prison until a revocation hearing before the Parole Board is held—often two months after his arrest.

Some of the regulations are innocuous exhortations to lead a "law-abiding," "honest," "upright," and "industrious" life. Others are equally innocuous but are commandments to "abstain from wrongdoing" and to avoid "association with evil companions or any individual with a criminal record." Revocation of parole on these grounds alone is not frequent.

There are, however, certain regulations that affect the parolee's life and are the basis of parole revocation hearings. The inmate is required to be gainfully employed, to meet with his parole officer periodically, usually once or twice a month, and to obtain his parole officer's permission before changing his residence or leaving New York. In the Commission's study of 60 parolees whose parole was revoked, the most common violation is "absconding"—the charge that a parolee has left his residence without permission from his parole officer. This is almost always coupled with the parolee's failure to make his scheduled appointments. It is likely that most "absconding" occurs when the parolee believes his parole will be revoked for another reason, such as a return to drugs or

his failure to work, and so he absconds to avoid being returned to prison.

Another ground for revocation of parole is arrest on any charge of the "suspicion" of his failure to lead a law-abiding life. If the parolee is convicted of a new crime, he can be required to serve the remainder of his original sentence, plus his new one. As an aid in the discovery of any wrongdoing which a parolee may be engaged in, he is required as a condition of parole to consent to search of his body or residence and to visitations at his residence or place of employment, without prior notice, at any time of the day or night.

The Parole Board's regulations also cover the more mundane aspects of life. A parolee is required to "consult" his parole officer before marrying and cannot live with a woman who is not his legal wife. A parolee cannot vote. He is required to "avoid the excessive use of intoxicating beverages" and to abstain completely, if so directed by his parole officer. He cannot obtain a driver's license or own and operate an automobile without his parole officer's consent. Nor can he correspond with friends still in prison, without permission. Some inmates look upon parole regulations as being so restrictive that they feel "being on parole is as bad as being in jail."

The parole regulations in force at the time of the uprising at Attica remain in effect today. But despite their broad scope, parole regulations are enforced sparingly and only about one-third of all parolees return to prison within five years after their initial release. The scope of the restrictions nevertheless leaves the individual parole officer with broad discretion to enforce them or not, as he sees fit. Because of the opportunity for parole officers to act arbitrarily, inmates whose parole is revoked often return to prison embittered men.

Designed to promote rehabilitation through counseling and to ease the transition from prison to society, parole, as it is now administered, has an antitherapeutic effect because the parole officer is expected to act as both a watchdog and as a counselor. The parole officer's supervision and surveillance functions prevent the development of any beneficial relationship with parolees; indeed, any statements a parolee makes to his parole officer may be used against him.

At the time of the uprising at Attica, parole conditions were well known by the inmates. These conditions were a major factor in the pervasive discontent of those who awaited parole with eagerness despite what they knew to be the frustrations. Even a substantial improvement in conditions inside the prison walls will not alleviate anxiety and frustration among inmates unless the system which opens the gates not only is—but appears to be—equitable.

Postparole Restrictions: Even after he has "paid his debt to society" and completed his term of parole, a man who has served time in a state prison continues to be subject to restrictions, and unless pardoned, he cannot vote.

Indeed, the restrictions are so obscure that neither the judges who appointed this Commission nor the Governor who gave it life through an executive order nor the Commission itself realized that one of its members was legally ineligible to serve because he was an ex-convict—the very experience which commended him to the appointing judge.

Sitting in his cell in Attica an inmate knows what the road ahead holds in store. There is nothing in prison that has prepared him for a return to society. He has not been permitted to think for himself since he entered and even his bedtime was regulated. His employment skills, if any, may have disappeared through disuse or through technological advances. He regards his work at Attica to have been an exploitation of his labor. His marriage may have broken up; his sense of injustice has been sharpened by his Parole Board experience; the daily frustrations of prison life and the racism which, if he is black or Puerto Rican, follows him everywhere. To provide himself with the necessities of the half life at Attica he is forced to make deals and hustle in the same way he learned in the streets. Some—perhaps most—have been reinforced in the use of the violence which brought them to Attica in the first place and remained the only effective way in which to ward off homosexual attacks and to assert their manhood.

The inmate will leave prison with \$40.00 and a bus ticket, knowing that he can be returned for any infrac-

tion of the parole rules which appear to regulate every facet of his life almost as strictly as though he had remained in prison. Even when parole is behind him, he still remains a second-class citizen. He cannot be trusted to cast his ballot like a free man, or to work in a restaurant which serves liquor. Such is the system—of which Attica has become the symbol—by which we expect our most troubled fellow citizens to be helped and returned to society as useful citizens.

Part II

Why and How It Happened

Summary

In attempting to answer the first major question presented by its mandate—why did Attica explode—the Commission was presented with no lack of explanations.

Correction personnel and some older inmates tended to take a conspiratorial view of the uprising, calling it the work of left-wing radicals and “troublemakers” among the inmate population and insisting that it was planned in advance. That view was expressed in a report dated October 7, 1971, prepared for Executive Deputy Commissioner Walter Dunbar by a group of parole officers who were assigned to investigate the uprising, essentially by interviewing the hostages. The parole officers’ report concluded that the disturbance was the result of a “long thought-out, well-organized plot, conceived and implemented by a group of hard core radical extremists—mostly from the New York City area.” Writing in the March 31, 1972, issue of *National Review*, a 40-year-old white inmate offered a similar view:

I was there and to my way of thinking there was absolutely no valid reason for the riot, rebellion or whatever the hell you want to call it.

The rebellion was instigated and carried out by no more than 10 per cent of the prison population. They were radical political fanatics. They belonged to the Black Panthers, People’s Liberation Party, Young Lords and Sam Melville’s group of Commie fanatics. . . . They wanted a rebellion for political reasons.¹

No less pat are explanations found in the blossoming literature of the “prisoners’ liberation” movement. Those partisans would be the last to dispute the conclusion that the uprising was spawned “for political reasons.” But they

¹Wiggins, “The Truth About Attica by an Inmate,” *National Review*, March 31, 1972, p. 329.

would glorify the prison rebels as heroes and place the blame squarely on the political and economic system against which the uprising was, in their view, directed. "The realization is growing, especially in the black community," wrote one such advocate, "that prisoners are the real victims of this society. One must look outside the prisons for the criminals." According to that thesis, revolts such as Attica "will recur so long as men and women are put behind bars for disobeying the inhuman laws of the society and struggling against its inequities—that is, as long as capitalism remains intact."²

Contrary to these popular views, the Attica uprising was neither a long-planned revolutionary plot nor a proletarian revolution against the capitalist system. After talking with inmates, correction officers, administrators, observers, and experts, and after much reflection, the Commission has concluded that:

- Rather than being revolutionary conspirators bent only on destruction, the Attica rebels were part of a new breed of younger, more aware inmates, largely black, who came to prison full of deep feelings of alienation and hostility against the established institutions of law and government, enhanced self-esteem, racial pride, and political awareness, and an unwillingness to accept the petty humiliations and racism that characterize prison life.
- Like the urban ghetto disturbances of the 1960s, the Attica uprising was the product of frustrated hopes and unfulfilled expectations, after efforts to bring about meaningful change had failed.
- The uprising began as a spontaneous burst of violent anger and was not planned or organized in advance; the relative ease with which the inmates took control of large areas of the prison was due not to a preconceived plan but to a combination of fortuitous circumstances, including the failure of the central Times Square gate and an outdated communications system which prevented the authorities from quickly mobilizing force to quell the disturbance.
- The highly organized inmate society in D block yard developed spontaneously, after a period of chaos, rather than by prearrangement; in the hours following the initial violence the leaders of political and religious groups with preexisting structures, and inmates who

²Waters, "Why Attica Exploded," *The Militant*, October 1, 1971.

were politically motivated, well versed in the law, or otherwise respected by their peers, emerged as spokesmen and took the lead in organizing the yard and drafting demands.

- In reaching these conclusions concerning the causes of the uprising, the Commission nevertheless condemns the taking of hostages as a means of bringing about changes in society, even where peaceful efforts at reform have failed. Whether carried out in a commercial jetliner, or in a prison, the holding of human lives for ransom is wrong and only leads to more violence and to a backlash that makes change more difficult.

Why It Happened

Attica happened at the end of a summer marked by mounting tensions between inmates and correction officers, but also by rising expectations and improving conditions. Attica was no longer the jim crow institution it was even in the early sixties. Prison discipline had become more relaxed. The courts had responded to inmates' complaints and begun to order limited reforms. And the new Commissioner had liberalized rules and was promising new programs, new facilities, and a new attitude toward inmate problems.

But the new Attica was increasingly populated by a new kind of inmate. Attica, like most of our prisons, had become largely a black and Spanish-speaking ghetto, and the new inmate was shaped by the same experiences, expectations, and frustrations that culminated in eruptions in Watts, Detroit, Newark, and other American cities. The young inmate was conscious of the changes in attitudes in the black and Puerto Rican communities, on the campuses, in the churches, and in the antiwar movement. The increasing militancy of the black liberation movement had touched him. Names like Malcolm X, George Jackson, Eldridge Cleaver, Angela Davis had special meaning to him.

* The new inmate came to Attica bitter and angry as the result of his experiences in the ghetto streets and in the morass of the criminal justice system. Very likely, he already did, or would soon, see himself as a "political prisoner"—a victim, not a criminal. For all its changes, Attica was still a prison, the very symbol of authoritarianism,

and in the summer of 1971, it was caught up in an era of decline and rejection of authority.

Attica's all-white correctional staff from rural western New York State was comfortable with inmates who "knew their place," but unprepared and untrained to deal with the new inmate, much less to understand him. Unused to seeing their authority challenged, officers felt threatened by the new inmate. Viewing the recent relaxation of rules and discipline, the intervention of the courts, and the new programs for inmates, they felt that their authority was being undermined by Albany and that their superiors were not backing them up. The officers became increasingly resentful and insecure. The result was, inevitably, daily confrontations between the new inmate and the old-style officer.

The confrontations were accompanied by increasing societal awareness among inmates and the growth of organizations inside the institution determined to spread the consciousness and try to make changes. Groups such as the Muslims, Black Panthers, and Young Lords gained adherents and held meetings, but quarrels and rivalries among them and their leaders prevented them from coming together in concerted action.

Largely as the result of these groups' efforts, discussion groups began in the exercise yards. By the summer of 1971, an inmate-instructed sociology class in the school had become an informal forum for ideas about effecting change. There was, finally, a series of organized protest efforts at Attica in the months prior to September 1971. Some had moderate success, but others ended only in the discipline of participants. The reaction of the authorities became increasingly one of isolating and transferring suspected "ringleaders" and "troublemakers."

An inmate manifesto setting forth a series of moderate demands, and including a commitment to peaceful change, was sent to the Commissioner and the Governor in July 1971. The Commissioner responded with an acknowledgment and with a visit to Attica early in September. In the intervening eight weeks, tensions at Attica had continued to mount, culminating in a day of protest over the killing of George Jackson at San Quentin, during which few inmates ate at lunch and dinner and many wore black armbands. The inmates had demonstrated their

ability and their willingness to act en masse, and there was now some talk about organizing a prisonwide sit-down strike. When Commissioner Oswald's visit produced nothing more than a taped speech promising future changes and asking for patience, the stage was set. No one really expected a violent take-over of the prison, but few at Attica thought the summer would pass without a major incident.

+ How It Happened

The initial explosion on Thursday, September 9, came in reaction to an incident the previous day which provoked anger and resentment among inmates in two companies in A block. A misunderstanding in the exercise yard on Wednesday afternoon led to an unusually intense confrontation between officers and inmates, during which a lieutenant was struck by an inmate. The officers were forced to back down, but that evening, two inmates were removed from their cells to HBZ, precipitating angry name-calling, hurling of objects from cells, and vows of revenge along the two galleries.

The following morning, uneasiness lingered on in one of the two companies, comprised largely of inmates considered "difficult" by the administration. An inmate who had been locked in his cell for throwing a soup can at an officer the previous evening was released from his cell by fellow inmates. After breakfast, a lieutenant who had been involved in the incident on Wednesday approached the company as it was lined up in A tunnel on its way back from breakfast. He intended to try to persuade the inmates to return to their cells, but as he reached them, he was attacked, and the uprising was underway.

+ After an initial outburst of chaotic violence, rebellious A block inmates regrouped and set upon the locked gate at Times Square, which separated A block from the rest of the institution. A defective weld, unknown to officers and inmates alike, broke and the gate gave way, giving the rioters access to the center square, and the keys which unlocked the gates in three directions. From Times Square, inmates from A block spread throughout the institution with little resistance, attacking officers, taking hostages, destroying property. As the rebellion reached

other areas, some inmates joined in actively, but the majority tried to escape to secure areas, or were simply caught up in the tide.

The authorities were slow in responding, due largely to the absence of a riot control plan, the lack of available manpower, and an antiquated communications system. Connected with other parts of the prison only by single-line telephones, those in the administration building could not appreciate the full extent of the trouble, or summon help, until it was too late. By 10:30 A.M. the inmates had obtained control of four cellblocks and all of the yards and tunnels, and 1,281 inmates had gathered in D yard with over 40 hostages. Only then did the rudiments of organization begin to appear, with leaders of preexisting groups, inmates well versed in law, and other natural leaders among the inmates emerging as spokesmen. Most of those who took an active role in organizing the yard, drafting demands, and, later, negotiating with the state, had not been involved in the initial outbreak of violence and did not join in it when the rioters reached their area of the prison.

Was It Planned?

The Commission has found no evidence that the Attica uprising was planned, either by avowed revolutionaries or anyone else. All of the objective evidence, especially the course the uprising actually took, points in the other direction.

To begin with, although the Commission has been able to document in some detail the growth of inmate organizations and the planning of nonviolent protests at Attica, it has found no indications that these organizations, or other inmates, were considering a take-over of the prison. Many inmates who were aware of and took part in efforts to organize inmates told the Commission that at most there was talk of a prisonwide sit-down strike. The public testimony of one inmate expresses the view of most of them:

Every inmate within the prison thinks about escape and I said to myself, if I knew it was going to be that easy to push them over, I should have tried to take advantage of it. I thought about that and I thought about escape before and since.

I never really thought in my own mind that I would ever escape and I think there were an awful lot of people that for years and years have said, boy, we ought to start a riot and played a little mental game with themselves, boy, if we ever started a riot, we will go into D block, we will take so many hostages. It was just a game playing in their heads. I don't think anybody could really say, well, on such and such a day we're going to do this.

Although correction personnel frequently cited the increasing militancy among inmates, the circulation of radical literature, and the growing influence of political groups among the inmates, they were unable to point to concrete indications of advance planning for a take-over of the prison. Indeed, some supervisors, including Deputy Superintendent Leon Vincent and Assistant Deputy Superintendent Karl Pfeil, told the Commission they believed from their familiarity with the facts that the uprising was spontaneous.

The course the rebellion took on Thursday morning leads to the same conclusion. To begin with, if a take-over was planned, it would not have been planned to commence in an enclosed area, such as A tunnel, where access to the rest of the prison was presumably sealed off by iron gates. The mess halls or exercise yards, where there were concentrations of inmates, were more logical choices. The company which started the violence had just come from the mess hall, where hundreds of other inmates were present, had passed through Times Square, where the keys to four corridor gates were kept, and had seen the Times Square gates locked behind them, all without incident. A planned rebellion, even if the planning were limited to that company, would surely have been touched off before the moment the inmates were confined to A tunnel, with no immediately apparent avenue of escape and no guarantee of access to the rest of the institution.

No one could have anticipated that the Times Square gate would give way. Had it held, as everyone expected it would, the uprising would have been limited to A block and A yard—where at that hour fewer than 300 inmates and 10 correction officers were located. Before the gate broke, the A block rebels called to inmates trapped in other corridors to join in the uprising, but their entreaties fell on deaf ears.

Only after the totally fortuitous failure of the Times Square gate were the rebels able to get the keys to other gates and gain access to the metal shops, where they obtained tools, acetylene torches, and an electric truck for use in breaking through still more gates. Had an uprising been planned, inmates in other areas of the prison would surely have been alerted to begin hostile action before the rioters from A block reached their areas. In fact, however, no violence erupted, no damage was done, and no hostages were taken anywhere in the institution until inmates who had broken into Times Square arrived. Even then, most inmates just did their best to stay out of the way. Significantly, most of the inmates who were later to emerge as leaders and negotiators in D yard were not part of the first wave of violence and destruction.

The rioters did not take over the prison according to any rational plan. After the initial flare-up, before Times Square fell, there was a 10-minute lull during which A block inmates hurriedly gathered sports equipment and broom handles, broke up benches in A yard, and fashioned makeshift masks from bed sheets. During this lull, some inmates retrieved crude weapons from old hiding places. But the quick emergence of homemade weapons is no indication of advance planning, since inmates in prisons everywhere keep such weapons hidden for self-protection or "just in case."

After the violence had subsided and the hostages were taken, the inmates continued for at least an hour to act in a manner inconsistent with the idea that there were any preexisting plans. They raided the commissary and officers' mess in helter-skelter fashion, not at first stockpiling supplies or preserving them for future use. Before the commissary could be completely stripped of food, it was set on fire and destroyed. Once the metal shops were entered and over 20 hostages taken, fires were set and the inmates deserted the shops, leaving behind large quantities of volatile materials, tools, metal scraps, and machines that could be used for making weapons.

When the uprising broke out, only one correction officer and two civilians were on duty in the powerhouse, control of which would include the capacity of cutting off the electricity in the entire institution. Yet, inmates never made a concerted effort to take over the power-

house. Even when they all reached D yard, there was a long period of chaos and internal bickering among inmates before organization emerged.

The lieutenant who had first been struck in A tunnel told the Commission that while he was hiding in an A block cell, he heard an inmate somewhere in A block shout, "Squad 1, go to your area, Squad 2, go to your area." To him, and others at Attica, this was a strong indication of preexisting inmate organization and planning. No similar reports were received from other sources and, in months of investigation, the Commission was never informed of the existence of the inmate "squads."

It is unclear exactly when the remark was heard, but it may well have been a considerable time after the initial flare-up, when the beginnings of inmate organization were emerging. Then, too, it is clear that tightly disciplined organizations, such as the Muslims, did exist at Attica and that they attempted soon after the uprising began to make some order out of the chaos. A group of Muslims, operating in A block, were responsible for protecting and releasing several injured officers that morning. Throughout the four-day uprising, the Muslims were always well disciplined and continued to protect the hostages from harm. The commands overheard by the lieutenant may well have been a part of that discipline. Standing alone, his report does not constitute persuasive evidence that the uprising was planned.

* It is clear, therefore, that the Attica uprising was not planned in advance by a group of militant inmates. To continue to blame the uprising solely on a group of political "radicals" and "revolutionaries" merely perpetuates the dubious policy of isolating and transferring a few suspected "troublemakers" in response to mounting tensions, which prevailed prior to the uprising. It also fails to focus on the real reason why inmates were able to take over Attica so easily: insufficient manpower on the correction staff, lack of a plan for dealing with large-scale uprisings, and a completely inadequate internal communications system. If these failures are not corrected, every flare-up of tensions—and under present prison conditions there will continue to be such incidents—has the potential to become another Attica.

* More fundamentally, if future Atticas are to be avoided, correction personnel must stop looking for individual

scapegoats and concentrate on major efforts to train officers to understand and deal with the new breed of inmates, to eliminate the petty harassments and root out the racist attitudes which these inmates will never tolerate, and accelerate programs to make prisons—as long as they must exist—more humane environments for men to live in.

THE BROWNING FOUNDATION

The Browning Foundation was established in 1954 to support the study of the Negro in America. It was created by the late Dr. J. Morgan Kousser, a leading scholar on the Negro in America. The foundation's primary concern is to support research and scholarship on the Negro in America, and to promote the understanding of the Negro in American history and culture. The foundation has supported a number of important studies and has published a number of books and articles. The foundation's work is directed by a board of trustees, which includes Dr. J. Morgan Kousser and other leading scholars on the Negro in America. The foundation's work is supported by a number of private and public organizations, including the National Endowment for the Humanities and the National Science Foundation. The foundation's work is an important contribution to the understanding of the Negro in America, and to the promotion of a more just and equitable society.

Chapter 3

The Mounting Tensions

The youngest of the inmates at Attica was in his infancy in 1954 when the Supreme Court decided *Brown v. Board of Education*, outlawing racial discrimination in schools. As he grew up, he heard presidents preaching equality of opportunity, New Frontiers, and the Great Society; and he was aware of other decisions of the Supreme Court which recognized the need to give black people the same legal protection afforded to other Americans. Yet, all around him there were poverty, repression, and despair, convincing him that white America was not yet ready to enforce those decrees.

An era of protest began when Mrs. Rosa Parks refused to ride in the back of a bus in Birmingham, Alabama, in 1955 and inspired the successful boycott of Birmingham buses that led to their desegregation. Though court decision after court decision declared unconstitutional discriminatory state laws and practices, black people had to struggle on the streets to gain what they had already won in the courts. Out of this climate, and during the adolescence of the young Attica inmate, came the cry for "black power" as a means of bringing about changes that the institutions of white society refused to accept, and the affirmation that "black is beautiful" as a symbol of the pride that millions of Americans were beginning to take in their identity.

The protest movement of black Americans began with a deep commitment to bring about change within the established institutions of society. The leaders preached nonviolent means and encouraged their followers to refrain from meeting force with force, and to reply, instead, with songs and prayers and renewed efforts to effect changes peacefully.

The casualties of the struggle were well publicized—

the freedom riders who were brutalized when they sought to exercise their constitutional rights of interstate travel in 1961; the dead and wounded from the clash accompanying the enforcement of the court order admitting James Meredith to the University of Mississippi; the four black teen-agers who were killed and 14 injured when a children's bible class was bombed in Birmingham, Alabama; the three young civil rights workers (two of whom were white) murdered in Mississippi by a posse led by local police officers, and the very advocates of nonviolence, Martin Luther King, Jr., and Medgar Evers, shot down in cold blood.

Not only were crimes often committed with impunity against participants in the civil rights cause, but they were often done by men charged with the enforcement of law and encouraged by governors who preached and practiced defiance of court orders before television cameras.

Symbolizing the disillusionment with the early hope of nonviolent change, the Black Panther party was organized in 1966 in a reaction against repeated instances of police brutality in the black community. Having seen white Americans such as the Minutemen and the Klan exercise their constitutional rights to bear arms, the Panthers armed themselves as protection against the police. Law enforcement officials began efforts to suppress the party, and in city after city Panthers died in gun battles with the police. The official explanations of these incidents have often been unsatisfactory. Literally, millions of Americans have never been able to believe the police account of the killing of Fred Hampton in a Chicago raid on the Black Panther party leader's apartment on December 4, 1969.

In 1967, 23 American cities with large black populations erupted in fury and violence. The National Advisory Commission on Civil Disorders—the Kerner Commission—appointed by the President to study the causes, found that the “typical” riot did not occur, and that there was no evidence of any planning or conspiracy behind any riot. Rather, each riot was a sudden and violent eruption of an “explosive mixture which has been accumulating in our cities since the end of World War II.”

That Commission's report showed how pervasive discrimination and segregation, continued black in-migra-

tion, and white exodus had aggravated problems in black ghettos "where segregation and poverty converge on the young to destroy opportunity and enhance failure. Crime, drug addiction, dependency on welfare, and bitterness and resentment against society in general and white society in particular are the result," the Kerner Report said.

The civil rights movement of the previous decade, the Kerner Commission continued, had left a legacy of frustrated hopes, tremendous frustrations of powerlessness, and a climate tending toward approval of violence as a form of protest. The Kerner Commission also found:

A new mood has sprung up among Negroes, particularly among the young, in which self-esteem and enhanced racial pride are replacing apathy and submission to "the system."¹

The American black was not alone in his frustration with the performance of the traditional organs of society. The early student protests at Berkeley blossomed into the seizure of campus buildings and the temporary closing of Columbia University in 1968. The continuing war in Vietnam introduced an entire new wave of protests and backlash, largely by white youth, ending in blood in Chicago and death at Kent State. The toll notwithstanding, the actions on the streets by civil rights proponents, students, and antiwar protesters seemed to many alienated members of society to have accomplished what the democratic processes had not—to have focused attention on the needs for basic change. In virtually every aspect of American life there was declining respect for an authority which seemed incapable of fulfilling promises of democracy and equality.

Attica was not insulated from this changing social mood. Every month new inmates came from New York City, Buffalo, Rochester, and other urban areas, bringing with them the anger, frustration, and alienation engendered by their experiences in the cities. From 1966 to 1970, 73 percent of all inmates received in New York State prisons came from urban areas of the state; 43 percent were under 30; nearly one-third were admitted

¹*Report of the National Advisory Commission on Civil Disorders* (New York: Bantam Books, 1968), p. 11.

drug users; more than 65 percent were black and Puerto Rican. And their sentences were shorter than previously. Almost 82 percent of the inmates at Attica in September 1971 had entered prison since 1965.

The young black inmates of 1971 were products of the conditions the Kerner Commission found in the cities in 1967, and in prisons like Attica they found conditions even more repressive than those they had known on the streets. They were joined by a new breed of white inmates—young, better educated than before, and involved in drugs—and by Spanish-speaking inmates from the urban barrios who were not prepared to accept the situation in which they found themselves.

The natives of Puerto Rico had not known the pervasive racism they encountered in this country. A man who had always viewed himself with pride as a Puerto Rican discovered that in white America he was considered a black man, and that he could expect only the treatment America has always accorded its black citizens.

Outwardly, Puerto Ricans born in this country had largely accepted the roles in which they were cast. Inwardly, they seethed bitterly and suffered silently, just as black Americans had done for nearly a century. The civil rights movement was not lost on the young Puerto Rican community, however, and neither did it fail to leave its impressions upon the young Puerto Rican inmate of the mid-sixties. Just as the Puerto Rican community had begun to assert itself in government and in education and in the cultural life of American society, so the new Puerto Rican inmate began to demand recognition of his problems—for English-language training, for Spanish-language broadcasts and publications, for adequate provisions to interpret the problems of Puerto Ricans to English-speaking staff members, and for simple permission to correspond with their families and loved ones in Spanish, the only language many of them knew.

Along with the demand for respect as a human being came a new demand in the 1960s. Many inmates came to believe that they were "political prisoners," even though they had been convicted of crimes having no political motive or significance. They claimed that responsibility for their actions belonged not to them—but to a society which had failed to provide adequate housing, equal educational opportunities, and an equal op-

portunity to compete in American life. Believing themselves to be the victims, not the aggressors, they claimed that the public should concentrate its efforts on rehabilitation of society and not of them. To them, such prison programming and job training as existed did no more than prepare them for a submissive role in a racist and unfair society.

There were many men in Attica in 1971 who held the view that they were victims of society. They must be distinguished, however, from the small group who, like Samuel Melville, were totally committed to a firm political ideology of revolution. Melville had been convicted of bombing public buildings for political purposes. The bond between these two brands of self-proclaimed political prisoners was their common rejection of established authority and their denunciation as barbaric of the wages, programs, hygiene, medical care, censorship, and other conditions at Attica.

In contrast to this new breed of inmate were the older inmates—black, white, and Spanish-speaking—who had come to accept prison conditions: they made few demands upon the officials, proclaimed at most their innocence, but not society's guilt, kept their frustration and anger to themselves, and accepted the word of the guards as law. Many who were interviewed by the Commission expressed deep antagonism toward younger inmates who were not prepared to "do their own time," and insisted on defying authority.

The older inmate may have remembered when prison conditions were worse, but the improvements made no impression on the younger one. It did not matter to the younger inmate that he was not required to move in a lockstep shuffle; that he was not required to work 12 to 14 hours a day; that he had a makeshift handball court and a basketball hoop and television in his exercise yard; that there was a prison library and commissary for his use. To the young inmate, it was enough that he was still a faceless number in a silent formation of marching men; that he was assigned to meaningless, unpleasant work details for reasons of administrative efficiency having nothing to do with rehabilitation; that for many months of the year his exercise yard was buried in four feet of snow; that he was entitled to only one shower a week in all seasons of the year; that he was

paid, on the average, 25¢ a day for his labor, half of which officials saved for his release, and was expected to buy his own cigarettes and toiletries from his wages; and that he saw a correction staff that did not include one black or Puerto Rican officer and that exhibited the same "remember your place and do as you're told" attitude that his people had been rebelling against for the last decade. The new inmate was not about to submit to these conditions simply because he had been convicted of a crime.

One of the older inmates who had sympathy and understanding for the new ones testified:

Take one of these kids from Bedford-Stuyvesant or somewhere in New York, he gets picked up, what is the first thing that happens to him?

We say there isn't such a thing as brutality but the kid gets beat over the head. By the time he gets old enough to come to Attica, do you think he is going to relate to a man that doesn't even understand his problem at all, his background?

He has never probably been to a ball game in the Yankee Stadium. He never seen the Giants play. He never had anybody to take him. How can [the prison guards] relate to one of these people? They don't know what our problem is.

A younger inmate, who had belonged to the Black Panther party before coming to Attica, and who had converted to Islam while there, made the same point about his fellow inmates:

. . . they are not taking any crap from nobody . . . the message they are trying to get across is, if you treat me like a man, I will respect you as a man.

Q. You feel that manhood is being threatened at Attica?

A. Most definitely. Most definitely. Manhood at Attica is intimidated 24 hours a day, 365 days a year.

Hundreds of inmates confided this same attitude to the Commission. Young black and Spanish-speaking inmates exhibited the "new mood" of enhanced racial and ethnic pride and assertiveness cited by the Kerner Commission in listing the ingredients which, when suppressed, can become explosive.

The Commission discussed the problem of the new inmate and the "political prisoner" with more than 200

of Attica's correction officers. Their responses varied from understanding to racist interpretations of inmates' complaints. But one theme stood out above all others and made any meaningful meeting of minds between inmates and correction officers almost impossible: "These men are not in here for missing Sunday School," said one officer. Another exclaimed, "No one comes here for just playing jacks on the sidewalk." An inmate's very presence at Attica was regarded as sufficient evidence that he had voluntarily forfeited, by his own actions, many of the rights the new inmate insists upon retaining. In speaking of the rights of prisoners, correction officers often turn the question to the rights of their victims. "They cry about their rights," correction officers say, "but what about the rights of their victims? Did they worry about the rights of the man they killed or the woman they raped?" The inmate who refused to regard himself only as a criminal simply could not relate in any meaningful, constructive manner with a prison staff that could not regard him as anything else.

Thus, correction officers frequently found themselves demanding adherence to rules which inmates would not accept. As the number of confrontations increased during this period, so did the intensity. An officer's orders to stop talking, for example, were first questioned, later ignored, and finally ridiculed.

Moreover, inmates challenged one of the oldest codes of the maximum security prison: "Do you *own* time." Inmates demanded the right to gather and form associations for religious and political purposes. Finding strength in numbers, many new inmates joined organizations which stressed ethnic identity, such as the Muslims, the Black Panthers, the Young Lords, and the Five Percenters (a New York City-based offshoot of the Muslims, who consider themselves the anointed "5 percent" qualified to be teachers and ministers of Islam and are generally considered to be more militant and violent than the followers of Elijah Muhammad).

"Now, one inmate's trouble was everybody's trouble," explained one officer. Although not overtly threatened, officers who singled out an inmate for discipline began to find themselves acutely and uncomfortably aware of the hostile glares of many inmates. Instead of retreating from a confrontation, inmates realized they could intimi-

date many officers simply by standing fast. They soon learned that they could communicate their hostility and their resentment and their unacceptance merely by their silent, ominous presence together. The politics of confrontation had come to prison.

At first, correction officers and prison administrators reacted to the defiance of their authority in traditional ways. Inmates who talked back or refused to submit to orders were brought before the Deputy Superintendent, or "P.K.," who until the change in the rules (see p. 77) had had the absolute power to determine a suitable punishment of the inmate. Rarely did the P.K. fail to impose such punishment, for to fail to do so, prison officials believed, would undermine the authority of the complaining officer, and destroy prison discipline.

Before Oswald's appointment there was also a practice in the prison system of transferring inmates considered to be troublemakers from one prison to another. This policy was intended to keep inmates with leadership abilities from developing a following among other inmates. Such inmates were said to "do their bit on wheels" as they were moved with considerable regularity from one prison to another. Finally, prison administrators sought to repress the organizations emerging among inmates, just as police on the outside sought to destroy the Black Panther organization. The history of the reaction by the Correction Department to the Muslim religion provides an illustration.

Rejecting the established religions of white America, many black inmates have become Muslims or members of the Nation of Islam while in prison. This is a religion of their own, in which inmates could find the strength to break the drug/crime cycle in which many of them have been caught. One inmate testified:

I wanted something to take the place of my reason for being there. I needed something to supplement my addition. I needed something to take the place of this and they had no program there that I found that was qualified to give me this. . . .

The Muslims took vows not to return to drugs or crime; to give up cigarettes, and to refrain from eating pork. Black consciousness was stressed. While all members were taught to be respectful toward all other persons,

they were also expected to insist on their rights. Calisthenics were regularly held in the yards to improve physical fitness.

In 1963, although not a member of the religion himself, the black author James Baldwin described the appeal of this faith:

Elijah Muhammad has been able to do what generations of welfare workers and committees and resolutions and reports and housing projects and playgrounds have failed to do: to heal and redeem drunkards and junkies, to convert people who have come out of prison and to keep them out, to make men chaste and women virtuous, and to invest both the male and the female with a pride and a serenity that hang about them like an unfailing light. He has done all these things, which our Christian church has spectacularly failed to do.²

Rather than recognizing in this movement the potential for the very kind of reformation which prisons had miserably failed to achieve, prison administrators directed their energies toward rooting out the participants as "subversives."

Thus, instead of seeking to understand the aspirations of young inmates who joined the Muslims, prison administrators concentrated on identifying and maintaining surveillance over the participants. The Muslim activity at Attica Prison received attention from the officials as early as 1957. Warden Walter B. Martin, M.D., remembered by many inmates as a good warden, wrote to Commissioner Paul McGinnis concerning the presence of four black inmates who had identified themselves with the Nation of Islam. "This 'fad' for *Qu'ran*," he wrote, "has been developing over recent months. I have been trying to puzzle out just what the 'gimmick' is in this matter but haven't solved it yet." The warden complained:

Because I haven't immediately granted permission . . . to buy "Qu'rans," they are now writing you protesting that I am interfering with the freedom of religion and their constitutional right to pursue any line of religious observance that they may choose. If a sufficient number of

²James Baldwin, *The Fire Next Time* (New York: Dial Press, 1963), pp. 64-65.

them join this movement, we probably will be in receipt of requests for the visitation of a Muslim priest.

After receiving a letter from the Commissioner which supported his position, the Warden commented in reply, ". . . I shall do what I can to prevent it [their beliefs] from spreading here at Attica."

By 1960, the Muslim activity had spread rapidly through the prison system. In response, Commissioner McGinnis asked each institution to send him the names of all those who listed their religion as Muslim [this category was later expanded to include those who answered "no religion"]; all those who associated with such groups; any disciplinary reports involving Muslims; and the names, numbers, and future addresses of any Muslims about to leave an institution. In Albany, this information was transcribed onto index cards, annexed to photographs and criminal records, and sent to the State Police to be placed in the subversive file.

The following notations are quotations, with names deleted, from different reports to the Commissioner of Correction, adding inmates to the "Muslim list":

Dear Commissioner:

"A", who was received here by transfer from the Elmira Reformatory and claimed to have no religion.

It has been our experience that inmates claiming no religion usually gravitate into Muslimism after joining the population.

"C" was received from Greenhaven Prison. He claimed his religion to be Protestant but the record card shows a keeplack for taking part in a large aggressive gathering in the yard suspected to be Muslims.

In 1961, it was noted that all the Muslims at Attica "were closely observed during the month of February to ascertain the disposition they made of the pork served to them at the regular meals." The Muslims were then listed by block, with one of the following descriptions next to each name: "Brings ration to cell," "gave ration away," or "refuses ration." Despite these efforts, the Muslim movement flourished throughout the sixties, along with the Panthers, Five Percenters, and Young Lords.

Efforts by young whites to organize a white activist group were only beginning, but they participated in still

a new expression of group consciousness at Attica—"the sociology class." The sociology class was organized in 1971 to discuss a wide range of sociological topics with no particular emphasis on political issues. Gradually these discussions turned to analyses of prison conditions, and the status and rights of prisoners in the institutions and society. Most of the class members were high-school graduates, and some had college experience. The class was led by an inmate, and there was rarely any staff supervision; when an officer or civilian entered, the class usually became silent.

Including inmates from all cellblocks and of all races, the class served as a forum for the interchange of information about what was going on in the institution and among the different groups. Various techniques of protest to effect change in society were studied, but no program for action was ever developed by the class. The class suspended for the summer in early August, and was in recess at the time of the uprising.

The sociology class was not the only forum for inmate discussion in the summer of 1971. In the exercise yards, inmates began to get together in groups to talk about their problems. Some of them, well versed in the law by long experience filing appeals and writs, taught regular classes on criminal law and the growing legal rights of inmates. Younger inmates debated political ideologies and tried to "raise the consciousness" of older, uninterested inmates. The officers watched the growing discussion circles in the yards nervously, but were reluctant to force the issue by trying to break them up.

The efforts to maintain respect for authority by discipline were no more effective than those to curb the growth of organizations and group activities. Many inmates, no longer reconciled to their primary imprisonment, did not view the sanctions of a keeplock or HBZ as a significantly new order of deprivation. Thus, these punishments lost much of their coercive and deterrent effects, particularly when applied to inmates now acting on principle.

In addition, the general challenge to authority included a challenge to the very right of prison authorities to impose additional sanctions. Inmates were more likely to take the matter to court. And the courts did not prove entirely unresponsive to their complaints.

On May 14, 1970, United States District Court Judge Constance B. Motley handed down her decision in the case of *Sostre v. Rockefeller*,³ holding that the prison's internal punishment system did not afford inmates due process, and that prison authorities did not have the authority to censor mail to lawyers and public officials. Punitive damages were assessed against the warden.

The reaction of prison guards to the Sostre decision was immediate and intense. Like the police officers who condemned decisions of the Supreme Court on criminal due process, they took up the cry of "handcuffing the police," and "coddling the criminals." Guards almost universally felt that courts were interfering in matters in which they had no competence. Judges, they felt, knew nothing about either prisons or prisoners, and could not possibly come to an intelligent decision concerning either. The decision was wrong, guards felt, and they—not the judges—would have to live with the consequences.

The reaction of the Correction Department officials in Albany alienated most officers even though the Motley decision was substantially modified on appeal. Changes were immediately instituted to conform with Judge Motley's opinion. Regulations were issued authorizing letters to courts, attorneys, and government officials—referred to as "legal mail"—to be sealed by inmates and mailed without perusal by prison officials. And a complete renovation of the rules relating to disciplinary proceedings and the conditions of custody was undertaken, incorporating the due process requirement mandated by Judge Motley. They became effective on October 19, 1970. The appeal was decided on February 24, 1971, and while the court upheld the right of inmates to procedural due process in serious disciplinary actions, it struck down a number of Judge Motley's specific requirements, permitted officials to read legal mail, and eliminated punitive damages. Albany officials did not attempt to modify the new rules to conform with the less stringent appellate decision. The new rules remained as written.

The new rules on discipline created even more of a sense of helplessness for correction officers. Leon Vincent, who had become Deputy Superintendent at Attica in

³312 F. Supp. 863 (S.D.N.Y. 1970), *modified*, 442 F. 2d 178 (2d Cir. 1971).

1969, was already regarded by officers as a weak disciplinarian. Now the new rules seemed to dilute authority even more, by creating an adjustment committee, and requiring the complaining officers and members of the committee to engage in extensive paper work—for an end result which many officers thought was too often only a “slap on the wrist.” Officers felt that they were not being backed up by the courts, Albany, or the supervisors at Attica. As a result, many told the Commission that they simply ceased to report many incidents which in the past would have meant extended keeplock or segregation for the offender.

The guards' union had already reacted in its own way to the growing problem of maintaining prison discipline and had negotiated a new contract, which went into effect in April 1970. Under the new contract, guards could bid for their own assigned posts according to seniority, taking job assignment responsibilities away from supervisory personnel. The older, more experienced officers quickly began to bid for those posts that involved the least contact with inmates. The lonely night vigil on the wall's gun posts had once been considered a poor assignment and was reserved for new guards. A guard started on the wall and “worked his way inside.” By the autumn of 1970, that trend had been reversed. Older officers only a few years away from retirement sought those posts as well as positions on the night shifts when the inmates were locked in their cells.⁴

Most officers interviewed by the Commission now agree that this movement was disastrous. It left the daily supervision of the inmate population to inexperienced young officers, often no older than the young inmates they confronted. With no supervisory training or experience, they were totally unprepared for the jobs left to them by older officers. The already insistent, unintimidated young inmate population reacted angrily and bitterly to the daily sight of one of their contemporaries, brandishing his nightstick, rapping it sharply on the walls and bars, and barking military orders. Not sure of himself, the young officer was even less likely than his older colleague to attempt to relate to his inmate charges. To the inmates

⁴This trend was accelerated by the fact that the night shift provided \$300 more a year in compensation.

the young officer was not unlike a rookie cop on the beat, no less racist in his attitude than his predecessor, but more unpredictable.

Another basic administrative change made an already difficult communication nearly impossible. In 1968, the work schedule of the correction staff was changed from a five day shift to a six-day shift. Considered a significant improvement in the civil service merit system, the change did away with the former policy of allowing some men to have every weekend off and requiring others to work every weekend. Assignments were made by supervisors previously, and many officers felt that they were handed out favorably to friends and relatives and unfavorably to new officers and reflected personal animosities as well. Under the new system, every officer worked six days and was off two days; then he worked six days again. Over a year, each officer still worked an average of 40 hours a week, but each officer was also assured of one weekend off every six weeks. Concurrently, the institution adopted a policy of assigning officers only to the housing blocks as a whole, rather than to individual companies within the blocks.

The result was that the inmates not only faced inexperienced officers but might face new ones every day. The inmates could never learn what would be expected of them from one day to the next, and the officers could never learn whether an inmate's uncooperative behavior resulted from belligerence, indifference, illness, or some other medical or personal problem. Inmates no longer could adjust to one officer who commanded them, but had to readjust to a succession of officers who changed from day to day. Officers, too, were adversely affected by this change. Likely to work with a different group of inmates each day, the officers had no incentive to attempt to establish any rapport or respect with a group of inmates whom they might not see again for days or weeks. There was neither opportunity nor desire to develop any mutual understanding. An older inmate testified concerning this problem:

. . . Depends on the individual. Depends on how he was that day. If he had got a letter from home the night before saying his wife was pregnant and he [had] been in jail three years, I don't know what he would have done. . . . These things happen to us. We know what happens.

They expect us to be every day the same. I seen a guy,

his mother died in Mississippi. You can't go out of state. And he was the only kid in the family. And I know; he [came and sat]. "What can I do?"

I said, "Go see the chaplain, talk to him."

He said, "What is he going to do?"

The next morning this man lined up—the first thing [the guard] did was hit the stick against the wall, "Line up, get in pairs, be quiet!" That's the first thing you hear when you get out of the cell.

The officer don't know this guy. He don't feel like getting lined up. He is bugged up to start with. Not at the officer. Just in general, you understand what I mean?

The guy says, "Man, go to hell. I don't feel like it."

And that's just what he felt like. Boom, he was locked up. You thought he killed somebody. The way he was treated when he told that officer to go to hell. And he would have told anyone. He would have told me to go to hell. It had nothing to do with the officer. Just at the time he didn't care about anything.

The tensions and conflicts between inmates and guards had increased steadily for years, and inmates were well aware of the successes of organized protests and demonstrations outside the prison walls. Yet there had been no efforts at organized protest by the Attica inmates. That, too, changed in the summer of 1970.

As previously described, the metal shop at Attica was considered by inmates to be the worst assignment at the institution. More than 76 percent of those assigned there were black and Spanish-speaking. In 1970, inmates in the metal shop earned from 6 to 29 cents per day, or from \$1.20 to \$5.80 per month, half of which the institution saved for them until their release. They saw in their assignment to the metal shop, with its sales of over \$1 million, merely another form of exploitation of black labor, and they called it the "slave shop."

A group of inmates approached the shop supervisor and demanded an increase in wages. They were keeplocked in their cells and then transferred to other institutions. In response, on July 29, 1970, some 450 inmates sat down in the metal shop and refused to work. The officers on duty were frightened at first, but inmates reassured them, saying they intended no harm to anyone; they merely wanted to demonstrate the extent of their grievances. There was no violence; the shop was closed; the inmates were re-

turned to their cells; and one at a time they were taken to see the Warden.

On the following day, almost all the inmates again refused to work, striking for higher wages. The prison authorities called in the Commission of Correction, Paul McGinnis, and he talked with two elected representatives from the striking inmates. The Commissioner agreed to increase wages from the previous 6 to 29 cents per day to 25¢ to \$1.00 per day. The Department of Correction subsequently made a department-wide survey of all inmate pay scales and adopted a uniform pay schedule for all correctional facilities. Inmates had successfully introduced nonviolent, organized protest into the prisons and achieved a significant improvement in conditions affecting their lives. However, before the week was out, a number of the organizers of the protest were transferred from Attica to other institutions.

Alarmed by the potential of such activity, prison authorities continued to focus their attention on those they considered "troublemakers" and attributed responsibility for unrest in the prison population to "militants," whose rebellious attitudes were considered to be a dangerous influence on other inmates. The Annual Report from Attica for 1970 stated:

Increased tension among inmates and between inmates and staff has constituted a difficult morale problem. The problem is directly attributable to the increased number of young militants in our population.

Three months after the metal-shop strike at Attica, all activities at Auburn Correctional Facility came to a halt in early November. A dispute between authorities and inmates over permission to hold a Black Solidarity Day with inmate speeches in the yard had evolved into a large-scale sit-down in the yard. One by one, officers were relieved of their keys, nightsticks, and bullhorns and led into the center of the yard. Although repeatedly threatened by angry inmates, they were protected by Muslims. The day ended peacefully. Inmates had demonstrated their ability to "take" their Black Solidarity Day; following a promise of no reprisals by a Deputy Commissioner, they escorted their hostages out of the yard and returned voluntarily to their cells.

Despite the promise of no reprisals, several inmates identified as leaders of the Auburn incident were transferred to Attica and confined in segregation. The transferees took the matter to Federal court, and Federal District Judge John Curtin ruled that they could not be kept in HBZ. The Auburn transferees were released into the general population. Once in the general population, the Auburn transferees immediately began to impress upon Attica inmates the unfairness and duplicity of the system which was supposed to be correcting and rehabilitating them. The promise of no reprisals was the most bitterly denounced example of the system's basic injustice.

Already uneasy and frightened over problems with their own inmates, the correction officers at Attica felt themselves endangered by Judge Curtin's decision. Officers felt the Auburn transferees had started a riot and they were even more angry at what they regarded as the inflammatory rhetoric of the Auburn transferees in the general population. Referring to Judge Curtin's decision, one correction officer at Attica told this Commission, "They should have left those guys in HBZ for a year or two. They can hear you awful good after a year or two up there, just like if you [tear-]gassed them."

The new Commissioner of the reorganized Department of Correctional Services, Russell G. Oswald, inherited this increasing polarization within the state's prisons on January 1, 1971. Oswald was well aware of the problems confronting him. He had been present at a budget meeting with Governor Rockefeller's staff when his predecessor, Commissioner McGinnis, warned of a "bloodbath" in the prisons if money was not made available to alleviate the rapidly deteriorating conditions. His friends and his family urged him not to take the job. Oswald had spent his entire professional life in social work and correctional services, and he recognized in his appointment a commitment to change on the part of the state.

Oswald accepted the position, and shortly after taking office, he made the following statement expressing the need for changing the emphasis of the present system:

It is incomprehensible to expect that an individual will adapt to a normal setting when he is placed for long periods of time in a totally abnormal setting. An atmosphere of community life-style, even though in a confining situation, holds greater promise for successful re-

habilitation and for a more reliable reading as to general expectation of how an individual will react to the problems, pressures and realities of society.

Oswald recognized that the restructuring of the system would take time and money. His first reforms were in procedures already under attack in the courts: he granted mail and visiting privileges to inmates' common-law spouses; revised censorship procedures to permit inmates to correspond privately with attorneys and public officials; and allowed greater accessibility of news media to prisons to increase public knowledge of conditions.

Inmate reaction to those changes varied at Attica. Some of the older inmates saw Oswald as a great reformer. Some younger inmates saw the changes as painless, costless placebos, not unlike those dispensed by the prison doctors, that cured nothing and left the underlying, chronic condition of imprisonment unchanged. Other young inmates saw the possibility of real change and expressed confidence in the new Commissioner.

The correction officers' reactions were more consistent and more bitter. Most of them saw their new Commissioner as a social worker, a do-gooder who was succumbing to outside pressures and pandering to criminals. Instead of taking a firm stand to reverse the tide of prisoners' rights and increased permissiveness, they felt Oswald was encouraging both. The issue of legal mail was the most resented. Inmates had never before been given mail which had not been read first by prison authorities.

The flight of many older officers to posts away from the inmate population had placed increasing demands upon the already understaffed supervisory personnel throughout the institution. Additionally, the new disciplinary procedures took up much of the supervisors' time with hearings and paper work. Many contented themselves with complaining to each other about their declining power to cope with things at Attica; a number of them manifested their concern over security by beginning to leave their wallets at home.⁵ At least one of the sergeants sought the intervention of his state legislator.

In April 1971, Oswald received a letter from Assembly-

⁵The significance of this phenomenon was lost on Assistant Superintendent Vincent, who had stopped carrying his wallet into prisons in 1937.

man Frank Walkley who reported, "Several correction officers at Attica have expressed great concern to me over discipline regarding inmates." The Assemblyman's letter mentioned the manpower shortage, the Curtin decision regarding Auburn transferees, and growing disrespect among inmates. Attica Superintendent Vincent Mancusi echoed the concerns of his staff when he, too, wrote to Oswald in April:

. . . I requested that the position [of lieutenant] be filled on April 15th. This has not been done and I urge that every effort be made to fill this position at the earliest opportunity.

* * *

Further, when the new disciplinary procedures were invoked we were supposed to receive additional help, including supervisors. . . . This was never done.

* * *

The Lieutenant position in question is urgently needed in order to have an officer of the rank of Lieutenant on the night shifts and to aid in maintaining efficient supervision of the custodial staff.

The position was never filled.

The manpower shortage was not confined to supervisory personnel. A survey taken in December 1970 indicated a need for 40 additional correction officers at Attica.

Oswald was neither insensitive nor indifferent to these demands, but he was working in the midst of the worst fiscal crisis in the history of the state. The state of New York had been forced to lay off thousands of state employees, and the Department of Correctional Services was not exempted from this budgetary stringency. At the very time the superintendents were demanding additional personnel to administer their institutions effectively, the state legislature was acting to reduce the annual appropriation for the department's budget.

Oswald went to Governor Rockefeller and expressed his concern that unrest in the prison populations could not be reduced without adequate rehabilitative programs and that such programs could not be instituted without adequate custodial staff to supervise them. The Governor replied that every department of state government was

experiencing the same difficulties and that he was redoubling his efforts to improve the state's financial condition.

With no help in sight, Oswald continued to cling to his plans for reform. On May 11, he responded to Assemblyman Walkley:

It is my feeling that the manpower shortage at Attica is not sufficiently serious at the present time to cause any difficulty in maintaining proper security.

In the same letter he conceded he was much in agreement with correction officers regarding the problem of discipline in the prisons and attributed the problem to the increasing number of "militants" among inmate populations.

Oswald did not consider the manpower shortage at Attica to be his most pressing problem. He had received complaints of inmate unrest and militancy from other institutions. Indeed, he later said that he expected trouble to break out at Great Meadow or Greenhaven if it came at all. Attica was considered the most secure of the six maximum security prisons. The head of the assignment unit at Ossining told the Commission he continued to transfer his "most difficult cases" to Attica during this period. Lulled by the architectural design of Attica, administrators throughout the system refused to believe that so imposing a structure of steel and concrete could be seriously threatened by inmates.

Concerned about their own security, the Attica officers concentrated on the movements and correspondence of inmates they considered to be "troublemakers," searching for behavior that would justify administrative or disciplinary action. On June 16, 1971, a cell search yielded evidence which officers believed warranted a transfer of at least five inmates to another institution. A letter of that date from Superintendent Mancusi to Commissioner Oswald informed him that letters had been found in the cells which "definitely show that their sealed legal correspondence is being used to disseminate information and messages from inmates in Clinton to Attica . . ." and that the five inmates had "apparently formed themselves as a committee" and were "submitting demands which were copied from a similar set of demands used in Folsom in the California Correctional System." The letter concluded:

Therefore, I recommend that these five men be transferred to other maximum security institutions within this department so that they will not be able to continue their organized efforts as a group to promote disruption.

Some two weeks later Oswald heard from the five inmates themselves. On July 2, 1971, they mailed him a letter, enclosing a series of documents they called their "Anti-Oppression Platform," and including a "Manifesto of Demands." The five inmates termed themselves the "Attica Liberation Faction," and claimed to represent "all races and social segments of this prison."

The introduction to their platform contained strident rhetoric such as referring to prisons as "the fascist concentration camps of modern America"; calling the prison system "the authoritative fangs of a coward in power"; and accusing correction personnel of treating inmates as "domesticated animals selected to do their bidding in slave labor and furnished as a personal whipping dog for their sadistic, psychopathic hate." Beneath this harsh rhetoric, however, the entire package was a strikingly reasonable and civil approach to setting their grievances and demands before the Commissioner.

The inmates made no protest of their innocence; they did not demand their release; and they did not attack the larger society as responsible for their previous criminality. Instead, they recognized their "posture as prisoners," and regarded that posture as the basis for prison officials' inability to "[any] longer consider or respect us as human beings." Their demands centered largely on improvement of the conditions of their imprisonment, not the end of that imprisonment itself. Among other things, they demanded legal representation before the Parole Board; improvement in medical care, visiting facilities, food and sanitary conditions in the mess hall, personal hygiene, clothing, recreational facilities, and working conditions in the shops; a uniform set of rules in all prisons; adjustment of commissary prices; and "an end to the segregation of prisoners from the mainline population because of their political beliefs."

They concluded their platform with the following paragraph:

These demands are being presented to you. There is no strike of any kind to protest these demands. We are *trying*

to do this in a democratic fashion. We feel there is no need to dramatize our demands. [Emphasis in original.]

The letter which accompanied their demands contained none of the militant rhetoric:

Hon. Russell G. Oswald
State Office Building
Albany, New York

July 2, 1971

Dear Sir:

Enclosed is a copy of our manifesto of demands. We find it is necessary to forward you said copy in order for you to be aware of our needs and the need for prison reform. We hope that your department don't cause us any hardships in the future because we are informing you of prison conditions.

We are doing this in a democratic manner; and we do hope that you will aid us.

Very truly,
[name omitted]

cc: Gov. Rockefeller

Caught between two contradictory sets of demands from officers and inmates, neither of which was less insistent than the other, Oswald took an unprecedented step and refused to approve Superintendent Mancusi's request to transfer the five inmates. They had, after all, pledged themselves to act in a "democratic manner," and they claimed to represent "all races and social segments" of the inmate population. Besides, Oswald was facing the same problems in all his institutions, and he saw little advantage in continuing to transfer one superintendent's troubles to another. Rebellious inmates had always been punished, and rebellious leaders transferred to break up their following. Oswald stopped both practices.

Although Oswald's decision was regarded as a complete failure by the correction officers, it was not a victory in any sense for the inmates. They did not know of Mancusi's request for transfer of the inmates or of the new Commissioner's reversal of prior policy. The reply they received from Commissioner Oswald merely acknowledged receipt of their manifesto, applauded the commitment to proceed "in a democratic fashion," repeated his desire to improve the system, and promised to be in touch

with the inmates after giving their demands "careful consideration . . . stud[y] and evaluat[ion]. . . ."

The "Attica Liberation Faction" replied by letter dated July 19, 1971, stating in part:

. . . These days the Superintendents of Correctional facilities don't want to hear anything. There is no communication between inmates and guards. . . . We strongly suggest that you consult the inmates because the administrations are only going to tell you what they want you to know and believe. . . . We [Attica Liberation Faction] are in communication with all factional groups in the institution and those inmates who are not associated with any particular group or groups, and we find that all grievances are the same. All petitions sent out have at least the majority of the population approval through communicational watchdog committees in each block.

The letter continued with a list of specific grievances concerning the administrative operation of the institution, including the keeplocking of a 47-year-old inmate and subsequent transfer to an observation cell "as though his sanity is questioned," because he refused to work in the industrial complex due to his ulcers and a nervous condition. "It's terrible, Mr. Oswald," the writer continued, and "we feel that you will correct the ills since it's an immediate problem as opposed to the program that you are striving to set up, which in the process will take a few years." The letter also enclosed two copies of the weekly prison menu, with indications that over half the midday and evening meals were built around pork which Muslims cannot eat.

Before the Commissioner's reply was received, another letter was written from Attica inmates on August 16, complaining, among other things:

The officials here are now beginning to harass systematically those who desire prison reform and have begun to search cells while the men are out, taking petitions, manifesto of demands and locking up men for investigation.

The August letter was generally more insistent than had been the previous ones, but did contain the following assurance:

. . . we will continue to strive for prison reform in a democratic manner.

The inmates were not without reason for their insistence. In addition to more frequent searches of cells, the administration had recently adopted a policy of censoring from newspapers with scissors all articles concerning prison conditions and disturbances, a practice that infuriated inmates who had strained their prison budget to include newspaper subscriptions, only to receive them with entire sections cut out. The prison administration had further announced that winners in traditional Labor Day athletic contests would not be awarded prizes in 1971. Part of the profits from the prison commissary had always been set aside for that purpose, but in 1971 the administration announced that the inmates would have to contribute their own prizes if there were to be any. Within the walls of Attica, that announcement was regarded as a major breach of trust. Many younger inmates believed this to be an attempt to cancel the activities. All these things inmates brought to the attention of Commissioner Oswald in the summer of 1971 and implored his intervention.

On the same day the last of these inmate letters was written to Commissioner Oswald, the Commissioner also wrote his last reply to Attica inmates. His letter sought to assure the inmates that changes had been made in the eight months he had been in office, that other changes were being made, and others were still to come. And for the first time in anyone's memory, a Commissioner of Correction acknowledged to the inmates problems in his own house:

I am sure you realize that complete change cannot be brought about in just a short time, and that no change can be accomplished without the constructive and receptive attitude of administration, staff, employees and, of course, inmates.

* * *

I am certain that there was much apprehension and concern among the new inmate population as to what policy action would be forthcoming under the new Department leadership. Understandably, this same apprehension existed among staff personnel, as well. In such a situation, attitude changes are necessary and we are attempting to re-attitudinize all parties, personnel and inmates alike.

* * *

prisoners ask reasonably

While I regret the time it is taking to respond to your list, I am sure that you would want us to give the most careful thought and study to each item before reaching a decision. I assure you this is being done and you will be hearing from us in the very near future.

The Commissioner's reply may have reflected his feeling, as he later testified, that he had first to satisfy himself that the signers of the manifesto did in fact represent a majority of the inmates. From the inmates' point of view, however, they had acted in the very manner in which the system purported to demand for legitimate redress of grievances; they had pledged themselves to working within the system; they had committed themselves to working in a democratic manner; and they had engaged in no work stoppage or strike or any other concerted action to disrupt the prison programs. They had, instead, collected signatures on petitions demanding simple changes requiring no study or research. In a concerted, peaceful lobbying effort over a period of months, they had been unable to effect even such simple changes as clean trays from which to eat in the mess halls, or more than one shower a week during the hot summer months.

Prior to the summer of 1971, the many inmate organizations at Attica had never been able to come together in any unified action. The Black Panthers and the Muslims had been kept apart by the violent preachings of the former and the deeply religious teachings of the latter. The Muslims' constant grievance over the prevalence of pork in the menu had won little favor with the Young Lords since pork is basic to most Puerto Rican diets. The Five Percenters had eschewed any notion of ever reaching satisfactory living conditions by peaceful requests of an unwilling administration. The Attica Liberation Faction was never larger than the five men who claimed the title, although their grievances were reflective of those of the larger inmate population.

During this period officers learned from their inmate informers that the leaders of the Black Panthers were seeking to unite the various organizations so they could speak with a single voice on the issues of conditions in Attica. A Muslim leader in Attica was staunchly opposed to such a coalition, however, and refused to permit Muslims to associate with Panther meetings in the yard. When inmate informers told officers that the Muslim leader would be

killed for his stand, he was transferred to another institution.

In mid-August, shortly after the transfer of the Muslim leader, officers in one of the exercise yards observed a ceremony that seemed to confirm their worst fears. Standing in a line along one side of the yard, arms folded across their chests, was a group of inmates recognized as Muslims. Facing them was another group, similarly stationed, and recognized as Panthers. Seated and standing around a table between them were leaders of both groups and a number of Young Lords, apparently serving as intermediaries. The officers' apprehensions soared at the prospects of an inmate population unified in its hostility and capable of speaking with a single voice.

Into this atmosphere of frustration and futility came the news of the shooting of George Jackson by prison guards at San Quentin. If officials' explanations of the death of Fred Hampton in Chicago in 1969 were unacceptable to black people in this country, the official account of the death of George Jackson was regarded by Attica inmates as a flagrant insult. California officials claimed that Jackson had attempted to escape with a gun smuggled into him by an attorney and concealed by Jackson in his hair as he left the visiting area.

Every Attica inmate who had ever received a visit in prison believed Jackson must certainly have been subjected to a thorough search before entering and immediately upon leaving the visiting room. Even if a gun could have been concealed in his hair, inmates reasoned, it would certainly not escape detection during such a search. Jackson had been murdered, they concluded, and if officials could get away with it at San Quentin, so could they at Attica. Jackson had expressed in a letter the bitter rage and hopelessness of a man isolated and kept under guard by men he neither knew nor trusted. "Any man who can pass the civil service test today," Jackson had written, "can kill me tomorrow. Any man who passed it yesterday, can kill me today."⁶ Inmates at Attica had no doubt that was exactly what happened.

On August 22, inmates at Attica graphically demonstrated their reaction to the shooting of Jackson. Instead

⁶Jackson, *Blood in My Eye* (New York: Bantam Books, 1972), p. 6.

of the usual banter and conversation of inmates coming out of their cells to line up for the march to breakfast, officers on many companies were greeted by somber inmates who moved silently out of their cells and lined up in rows of twos with a black man at the head of each row; many of them wore black armbands. They marched silently to breakfast where they took their usual places around the tables, but did not eat. Inmate participation at the morning meal was far from universal, and many of those who participated in the fast were unsure of the reason for it. By noon, however, all knew they were observing a day of mourning and protest over the death of George Jackson. For the young correction officers who found themselves in the mess hall with 700 silent, fasting inmates wearing black armbands, the very silence and the mood of unreserved hostility was the most threatening and frightening experience in their memory. "I was scared shitless," one young officer later recalled. The day passed without incident, and the following day was no different from other days.

A week later, apparently believing that Commissioner Oswald was visiting the institution, and knowing visiting officials usually observed sick call, some 300 inmates signed up for sick call on August 30, 1971. They seated themselves throughout the hospital area to call attention to medical care at Attica as one of their major grievances. The Commissioner did not arrive at Attica that day, and the inmates returned to their assigned positions. No disciplinary action was taken against inmates for either the "Jackson Day" or the sick-call strike.

Three days later, Commissioner Oswald did visit Attica, and he talked briefly to inmate leaders. His visit was cut short by news from Albany that his wife had been taken suddenly ill and was being hospitalized. He hurriedly made a taped speech to be played to all inmates over the prison radio after they were all returned to their cells that night. His taped speech contained many of the same promises he had made since taking office. After apologizing for having to leave, he reemphasized the new goals of the department, enumerated changes he felt were necessary, and said it would take time to bring them about.

Inmate reaction to Oswald's taped message on September 2, 1971 varied. However, most inmates were discouraged, since he had been asking for time for nearly

nine months. One inmate testified at the Commission's public hearings concerning Oswald's last effort to reduce the tensions at Attica:

I took my earphones off and all I could hear was earphones hitting the wall and people hollering, "That's a cop-out, that's a cop-out," because he didn't do nothing. All he said was "Well, we would like to do this and we would like to do that." He didn't so much as make one concession, such as giving a man soap or giving a man an extra shower. He did not make any concessions whatsoever.

For the black inmate in Attica, the atmosphere on September 8, 1971, was not unlike that in the cities before the holocausts of Harlem, Watts, Newark, and Detroit. Sit-ins, demonstrations, and petitions had been met with excuses, delays, and repression. Organized, peaceful efforts had been rebuffed or ignored. Inmates and guards alike later commented, "The tension was so thick around here you could cut it with a knife." No organizers were necessary; no plans were required; no leaders needed. As in the cities in 1967, the situation itself was explosive. All that was needed was a spark to set it off.

Chapter 4

The Spark: Wednesday, September 8, 1971

In testimony before the Commission, Lieutenant Richard Maroney described the apprehensions of the correctional staff at Attica on September 8, 1971—the day "it" began:

We were concerned. For some time we had all been concerned about this trouble that was brewing in the prison. You could feel it in the air. . . . You knew something was brewing—but you couldn't tell when it was going to happen. Every night we expected it.

The Incident in A Yard

It was just after 3:30 P.M.—in less than two hours the 2,243 inmates would be locked in their cells for the night. The day had been uneventful, giving every appearance that, like each day that had passed before, its only meaning would be that the inmates of Attica had one day less to serve on their sentences.

The space enclosed by the four major housing blocks at Attica is divided into four outdoor exercise yards, separated from one another by enclosed corridors (called tunnels) which converge at Times Square. Along the roofs of the tunnels run catwalks leading to the second floor of each block and also converging at Times Square.

A block yard on that warm, late summer afternoon was filled with perhaps as many as 400 of the 500 inmates housed in A block. During the summer, many work details and school classes were suspended due to staff vacations, leaving inmates with the choice of going to the yard or spending the whole day in their cells. The football season was about to begin, and the members of the A block team were scrimmaging in the northwest corner of the yard. Supervising the yard from the officers' platform near the door to A tunnel were several correction officers.

At the far end of A yard, near the handball court, inmate Leroy Dewer was enjoying his first day out in the yard since serving seven days' keeplock on charges of insolence, abusive language, and disobeying an order. Dewer and another black inmate were engaged in friendly horseplay, sparring, hitting kneecaps. Dewer, a 23-year-old black from New York City, was serving 0-5 years for second-degree robbery. When he had appeared before the Adjustment Committee on August 31, charged with his 43d offense since coming to prison in September 1967, Dewer had been told that the next time he got into trouble he would be sent to the box or HBZ where inmates are kept in solitary confinement for punishment. He had not forgotten that warning.

On their platform—some 100 yards away—the officers thought they discerned a fight in progress, or one about to begin. One of them called across the yard on the bullhorn, ordering the two inmates to stop. But the officer had confused Dewer with another inmate and was calling Dewer

by the wrong name. Dewer and his friend were continuing their activity, unaware that they were being admonished, when Lieutenant Maroney entered the yard.

Maroney, 61 years old and Attica's senior lieutenant, was looking forward to retirement after 34 years in the department. Maroney, too, could not tell whether the two inmates were "fighting or fooling." When the bullhorn instructions went unheeded, Maroney sent two officers across the yard to summon the two inmates. Dewer went with them to see Lieutenant Maroney, while the other inmate disappeared into the crowd. Already, many inmates in the yard had stopped what they were doing and were anxiously watching the proceedings. Several followed Dewer across the yard, asking what the trouble was.

When Dewer reached the door, Lieutenant Maroney ordered him to go inside and return to his cell. Mindful of the Adjustment Committee's warning, Dewer demanded to know "what for," and tried to explain that it was just friendly horseplay. When Maroney responded by repeating his order, Dewer refused to go inside. Instead, he turned his back and began to walk away. Maroney did not hesitate; a direct order had been ignored. He stepped down from the door stoop and moved toward Dewer, intending to grab him and bring him inside. Instinctively, in a single movement, Dewer spun around, his fists raised. "Come on, old man," he said, and hit Lieutenant Maroney lightly on the chest. Maroney and the other officers kept advancing, as Dewer danced away. Approaching him again and repeating his order, Maroney was again struck by a glancing blow from Dewer. It was the first of several "firsts" that day; few witnesses—inmates or officers—could recall having seen an inmate strike an officer like that, much less a lieutenant.

A large crowd of inmates, blacks and whites, now gathered around and quickly became involved in the incident. Shouts from the group encouraged Dewer to stand his ground and warned the officers to leave Dewer alone.

On his way to A block to fill out a report on the forcible transfer of an inmate from one block to another earlier in the day, Lieutenant Robert Curtiss had noticed Lieutenant Maroney in the yard talking to an inmate who was backing away from him, surrounded by a large crowd. Curtiss, 49, had been at Attica almost continuously since 1949,

and had been a lieutenant for three years. Curtiss had no idea what had been happening, but he now entered the yard and made his way around the circle of inmates, coming up behind Dewer. As he arrived, he heard Dewer say, "I'm not going to get keeplocked for nothing," and other inmates encouraging Dewer to stand firm. There were expressions of fear that Dewer would be beaten if he went in.

Lieutenant Curtiss joined the discussion, attempting to induce Dewer to go inside, but Dewer still refused to move, supported by many inmates in the group. Curtiss assured the inmates that if Dewer went inside willingly, it would be a routine disciplinary case, that neither he nor Maroney would sit on the panel which reviewed the incident, and that Dewer would not be beaten. Some inmates insist that Curtiss also said Dewer would not go to HBZ, but officers on the scene vigorously deny that.

Despite Curtiss's attempts, the inmates remained skeptical and the discussion and argument between the two lieutenants and the group became increasingly heated. Charges were made by inmates that Lieutenant Maroney was a racist; obscenities were used. Inmates in the crowd, as well as Lieutenant Maroney, report hearing shouts such as "If you touch this kid, we'll burn the place down." Officers at the A yard door heard an inmate shout belligerently, "I'm going to get me a blue shirt tomorrow morning."

Finally, Curtiss approached Lieutenant Maroney. "Dick," he said, "we're getting nowhere. Let's drop it. We'll take care of it later." Maroney agreed. "OK," he said, "go back to your posts. It's all over." Then, both Curtiss and Maroney left the crowd and headed for the yard door.

Among the members of the A block football team who had been scrimmaging in the yard was Ray Lamorie, a white 28-year-old from Rochester. Lamorie was serving 0-5 years for robbery. Although he had a reputation among officers as a "troublemaker," Lamorie's record shows only eight disciplinary reports in over two years at Attica. When Lamorie first turned around to see what was going on, Dewer was "squared off," facing Lieutenant Maroney. Lamorie, attired in his football gear, ran over, pushing his way quickly to the center of the circle.

"There's not going to be none of that," Lamorie told the officers, "leave this kid alone."

Some eyewitnesses say that Lamorie tried to hit Lieutenant Maroney, but was restrained by other inmates. Lamorie denies that; he and other witnesses insist he was no more vocal than several other inmates in the crowd. Other inmate witnesses say that Lamorie called Lieutenant Maroney an obscene name. In his testimony, Lieutenant Maroney had no recollection of Lamorie at all. Lieutenant Curtiss also could recall no hostile acts by Lamorie and he testified that the man who rushed Maroney and was restrained was not wearing football gear. Two other officers who were standing on the periphery of the crowd around Lieutenant Maroney, each told the Commission they saw a white inmate shouting obscenities and strenuously attempting to push through the crowd to get at Lieutenant Maroney. One of those officers testified that subsequently in A block he related his observations to a colleague and was asked to go upstairs to 5 company and take a look in 24 cell. He did so and returned to report that the occupant of that cell, Ray Lamorie, was the man he had seen in the yard.

As Lieutenant Maroney went to find Deputy Superintendent Leon Vincent to report the incident, Lieutenant Curtiss stopped at the officers' platform to find out what had happened before he reached the yard. A group of inmates approached and told him that they still believed Dewey would be taken out and beaten. Curtiss again assured them that no harm would come to Dewey, but that he would be subject to disciplinary action for refusing to leave the yard.

Discussion continued for some minutes, but Curtiss, not wanting to draw another crowd, left the yard.

It was no routine incident of trouble that Richard Maroney now had to report to Deputy Superintendent Vincent. In at least three respects, the occurrences in A yard were unlike anything within the memory of inmates, officers, and administrators. First, an inmate had deliberately hit a lieutenant, not once, but twice. Second, the inmate had been supported and encouraged in his defiance of an order by a large crowd of other inmates, both blacks and whites, escalating the incident to the brink of a major confrontation. Third, the officers in the yard had backed off, leaving the inmate in the yard and, in effect,

giving in to the will of the crowd. Neither Curtiss nor Maroney could ever recall having been forced to back off in the face of an inmate's open defiance of an order. It was, said Lieutenant Maroney, an "unusual situation," and Superintendent Mancusi agreed.

How Dewer and Lamorie Wound Up in HBZ

If there is agreement that the situation was unusual, there are sharp differences in recollection and perception as to what was done about it. The only thing on which everyone concurs is that, when September 8 ended, Leroy Dewer and Ray Lamorie were housed in HBZ and their companies were in an uproar. How they got there, who decided to put them there, and why, are questions on which no two witnesses completely agree.

Superintendent Mancusi, Deputy Superintendent Vincent, and Assistant Deputy Superintendent Karl Pfeil were all tied up in a marathon labor-management meeting with the officers' union which had been in progress since 11 A.M. Mancusi was planning to leave on his vacation the following day.

According to Lieutenant Maroney, he called Deputy Superintendent Leon J. Vincent out of the labor-management meeting and reported the incident to him. Vincent thereupon directed Maroney to let the inmates go to supper and then, after evening lockup, to have the inmate who hit him taken to HBZ. Lieutenant Maroney left to find officers to assist him in taking Dewer to HBZ after supper and Vincent returned to the meeting.

Lieutenant Maroney recalls nothing in his conversation with Vincent about taking Ray Lamorie, or any second inmate, to the box. In fact, Maroney still did not know that Lamorie had taken any part in the occurrence. Vincent and Mancusi, however, recalled it differently. They testified that after Maroney reported the incident, they decided to leave the two inmates in the yard and remove them to HBZ after supper. Both Mancusi and Vincent believed that the two inmates to be moved were the two who had been engaged in the initial fighting or horseplay, although it is now clear that Lamorie was not one of them. Both recall that the identity of only one of the two in-

mates was known and that the officers were told "to find out who the other one was."¹

Assistant Deputy Superintendent Karl Pfeil recalls talking that afternoon to both Lieutenant Maroney and another officer who was in A yard. From those conversations, Pfeil understood that Lamorie had tried to hit Lieutenant Maroney, but had been restrained. This had been witnessed by two officers in the yard, but not by Lieutenant Maroney. One officer who had been in the yard testified that when he returned from 5 company and confirmed that Lamorie was the inmate whom he had seen trying to get at Lieutenant Maroney, both Curtiss and Maroney were present. The other yard officer also said he told Lieutenant Maroney what he had seen Lamorie do. At the time, both said a collective decision was made to take Lamorie to HBZ. The sergeant assigned to supervise the removal of Lamorie said his order had come from Lieutenant Maroney directly. Neither Maroney nor Curtiss, however, recalls participating in the decision to take Lamorie to HBZ. Indeed, except for the two yard officers, no one questioned by the Commission could say exactly how it was that Lamorie came to be taken to the box.

Whatever Lamorie may have done to warrant the attention of the two yard officers, most of the supervisors believed he was the inmate who had engaged in horseplay with Dewer and it thus appears that he was sent to the box for something he had not done. This basic misunderstanding persists to this day in published accounts of the events which still refer to Lamorie as the inmate engaged in the scuffle with Dewer.²

Meanwhile, the A block inmates, including Dewer and

¹Superintendent Mancusi testified that it was not unusual to take inmates to HBZ after lockup although he agreed that it was unusual for an officer to be struck by an inmate and then be forced to back off. The incident "illustrated the increase in militancy and increase in tension," Mancusi testified, "but at that time, I was not apprehensive." Vincent, on the other hand, testified that he did not think the situation was "absolutely unusual," since Maroney had been struck only by "a glancing kind of blow which could happen any time there is a fight with three or four people involved."

²E.g., H. Badillo and M. Haynes, *A Bill of No Rights: Attica and the American Prison System* (New York: Outerbridge and Lazard, 1972), p. 35.

Lamorie, had remained in the yard, and had gone to supper without incident. By 5:30 P.M., 3 company, with Dewer, had returned to its cellblock from supper. The mail was distributed by an officer who had been in the yard instead of the regular gallery officer. He looked carefully at each inmate and found his man in cell 19. In that cell, Leroy Dewer had settled down to read. The next thing he knew, Lieutenant Maroney was outside his cell with three correction officers.

The officers picked by Lieutenant Maroney to take Dewer to the box were cautioned to avoid any provocation and told to leave their clubs at the head of the gallery. When they reached Dewer's cell and told him to come along to HBZ, Dewer asked several times if he could first give some books to a friend in another cell. The officers thought Dewer was stalling. As Lieutenant Maroney testified, allowing Dewer to visit another inmate was "not proper procedure." He thought Dewer "was probably trying to pass the word or deliver a message." His request denied, Dewer refused to leave his cell.

At Lieutenant Maroney's command, Dewer's cell was opened, and the officers entered to drag him out. A noisy scuffle ensued inside the cell. Blows were exchanged. Dewer threw a glass jar at an officer, missing him. Cell furniture crashed against the metal walls of the cell. Finally, Dewer, 6'1" and 140 pounds, was carried out of his cell and down the gallery by four correction officers, one holding each of his arms and legs, and was taken to HBZ. Dewer was not touched once he got to HBZ; and he suffered no noticeable injury in the process, nor was he ever unconscious.

The correction officers involved in the incident all say that Dewer was resisting, struggling, and yelling both in his cell and all the way down the gallery, that when his struggling subsided on the way to HBZ, they offered him the opportunity to walk, to which he responded by twisting, kicking, and yelling again, that Dewer was not struck or even prodded at any time, and that they used only such force as was necessary to subdue him.

Locked in their cells, none of the inmates could see what was happening in Dewer's cell. Their perceptions of the situation, therefore, were based on the shouts and commotion they heard, their glimpses of Dewer being carried past them, their views down the gallery through mirrors,

and their beliefs as to how an inmate who had struck an officer would be handled. It is no wonder, therefore, that most inmate perceptions were in sharp contrast with that of the officers, and, indeed, varied from inmate to inmate. Twenty-eight of the 41 inmates on 3 company on September 8 were interviewed, including Dewer. Only 12 of those interviewed were in a position to have seen part of the action directly, as Dewer was taken out and carried past their cells. The remainder had to use mirrors to see down the gallery, or could only hear what was going on.

Of the 28 interviewed, 11 inmates said they saw Dewer being struck by officers as he was carried down the gallery or believed from what they heard and saw that he was beaten in his cell; 5 of them thought Dewer was unconscious when he was carried out. One inmate specifically said Dewer was not struggling, while 2 said he was. Two said he was not talking, 2 said he was talking, pleading with the officers not to hit him and offering to walk, while another said only that he was conscious. Three inmates said Dewer was not beaten. The remainder only said that he was carried out amid a general uproar.

As important as the inmates' perceptions of what befell Dewer on the 3 company gallery were their expectations of what lay in store for him in HBZ. There is a widespread belief among inmates at Attica that when a man is taken to the box, especially if at night, he is brutally beaten on the way, in the elevator going up to HBZ, and in the segregation center itself. Because inmates have no way to verify the facts, rumor becomes a dominant fact of life in prison, and when the rumors are repeated often enough, they are believed.

There is little evidence that such beatings have taken place in HBZ in recent years, although there is apparently some historical basis for the belief.³ But the fact is not as significant as the belief and some inmates fully expected that Dewer would be taken to the box and beaten. As one witness said, "He threw a punch at the lieutenant and, like, you just don't do that." Others, however, recalled hearing Lieutenant Curtiss promise in the yard that noth-

³One correction officer admitted under questioning that the belief was deliberately cultivated by the administration in "an attempt to instill a kind of fear or dread of segregation . . . to try to keep the inmates in line, behavior-wise."

ing would happen to Dewer or had been told of those assurances. Now, they felt that they had been betrayed and they were angry.

The reaction in 3 company to the removal of Dewer reflected this anger. As Dewer was carried out, bottles, jars, and other debris were hurled from cells, accompanied by a torrent of shouts: "Pigs!"; "Leave that kid alone"; "Wait until tomorrow, we're gonna tear this joint up." Repeatedly, indignant inmates referred to what they perceived as the broken promises of that afternoon. Then, after a few minutes, a strange silence came over 3 company. As one inmate witness described it:

At that particular moment everybody became related. . . . It was right then and there, it was a dramatic eclipse between the administration and the inmates. And the people were even afraid to think of what would occur and it was a dramatic experience, you know. Like a lot of guys wouldn't say anything the whole night. A lot of guys didn't sleep.

It was like a member of the family had just died, you know. And nobody would venture a word.

The silence on 3 company was broken some minutes later by sounds of a commotion downstairs on 5 company; another inmate was on his way to HBZ.

Minutes after seeing Dewer on his way to HBZ, Lieutenant Robert Curtiss encountered Sergeant Jack Elmore, who told him his orders were to remove Ray Lamorie from 5 company and take him to the box as well. Curtiss did not know why Lamorie was to be taken, but he was determined that it be done with a minimum of commotion. As Lieutenant Maroney had done earlier, Curtiss ordered Elmore and his detail not to carry their sticks down the gallery, since, said Curtiss, "there was resentment toward the stick." He said to Elmore, "Let's see if we can't get him out without having to go in and drag him out." Curtiss had heard the commotion on 3 company, but he had an additional reason to be apprehensive; he knew 5 company.

It was not an ordinary company. It was a grading company—one which worked irregularly, but always at unpleasant work when it did work. Assignment to 5 company and 19 company, its counterpart in B block, was

often used as a disciplinary measure. Indeed, the members of 5 company on September 8, 1971, included numerous men with long disciplinary histories. More significantly, because it was a repository for men considered to be "troublemakers," there was on 5 company an unusual concentration of that new breed of inmate: young, politically active and aware, avowedly defiant in thought and rhetoric. As Superintendent Mancusi put it, "5 company was a company of difficult personalities." And Leon Vincent called 5 and 19 companies "the last stop before you went to segregation."

There were 40 members of 5 company on September 8, 1971. Five days later, 7 of them were dead and 6 more were being held in HBZ by Attica authorities as suspected leaders of the uprising.

Lieutenant Curtiss stood at the head of 5 company gallery and watched Sergeant Elmore, together with two or three officers, go down to get Lamorie. Ray Lamorie in cell 24 had heard the commotion upstairs when Dewer had been taken out, but he and the other inmates on the gallery had no reason to suspect that he would be next. When Sergeant Elmore reached his cell and Lamorie realized he was being taken to the box as well, he at first refused to go, saying he hadn't done anything. Then, on Elmore's signal, Lamorie's cell was opened, and two correction officers entered. Lamorie picked up his stool and held it as a shield, but quickly realized resistance was futile, put down the stool, and agreed to go. Lamorie walked without resistance and he was subjected to no physical force. When he reached Lieutenant Curtiss at the head of the gallery, he stopped and asked why he was being taken to HBZ. Curtiss was unable to tell him.

No sooner was Lamorie's cell cracked open than a barrage of flying objects—cans, jars, books, pieces of wood—came from cells along the gallery. As in 3 company, the barrage was accompanied by expressions of betrayal, shouts of contempt for the officers, and cries for revenge. Inmates on 5 company also believed Lamorie was in for a beating in HBZ, and that belief was reinforced by the sight of an officer whose name was associated by inmates with the widely accepted myth about HBZ. The fury was abetted by the feeling that Lamorie had done nothing which warranted his removal to the box. Lieutenant Cur-

tiss, at the head of the gallery, heard someone yell, "We'll get you in the morning, motherfuckers." The company was in an uproar.

As the officers escorting Lamorie passed 17 cell, a full soup can was hurled from the cell and struck Officer Tommy Boyle in the head, leaving him with a cut which required several stitches to close. The inmate who had allegedly thrown the can, William Ortiz, was immediately identified by the officers.

Lieutenant Curtiss was seriously concerned. The inmates were demonstrating a "state of fury" unlike any he had seen before. Curtiss immediately went to the labor-management meeting, which was still in progress. First Deputy Vincent, then Superintendent Mancusi were called out. Curtiss expressed fears that the inmates in 5 company might start breaking up the plumbing in their cells. Mancusi returned to the labor-management meeting and ended it. "I've got an acute emergency," he told them, "I need all my staff."

Mancusi went down to the A block area and immediately ordered written reports from every officer on duty. He said he would contact the District Attorney in the morning concerning the injury to Officer Boyle. Meanwhile, Mancusi ordered that Ortiz be keeplocked and brought before the Adjustment Committee the next morning. Ortiz was not sent to HBZ that night because Mancusi "felt that this removing the two men had caused this commotion and . . . there was no sense in causing further commotion at the time."⁴

Concerned about security the following day, Lieutenant Curtiss recommended that the 10-to-6 shift of correction officers be brought in at 7:00 A.M. Deputy Vincent asked "who the hell is going to pay the overtime?" Curtiss then suggested that 3 and 5 companies be fed breakfast in their cells. Vincent turned down that suggestion as well.⁵ According to Curtiss, this decision to let the inmates go to

⁴Leon Vincent disagrees. To him, Ortiz's offense was not serious enough to justify immediate removal to HBZ, unlike the incident in A yard that afternoon.

⁵Vincent recalls the discussion about overtime and admits that Curtiss quoted him accurately, but maintains that Curtiss never suggested to him feeding 3 and 5 companies in their cells. Several inmates in those companies said they were surprised to be let out for breakfast the next morning.

breakfast was practically daring 5 company to start something.

Lieutenant Curtiss left, but he was definitely "very apprehensive about the next day." He went out that night with two other officers he had known a long time. Over drinks, he told them he was afraid the lid was going to blow off in the morning.

Back at Attica, there was much talking on 3 and 5 companies that night. Inmates throughout A block heard it, and the words they heard most frequently were "tomorrow" and "in the morning." By 9:00 P.M., however, Attica had become quiet—at least until the morning.

Chapter 5

The Explosion: A Block, Thursday Morning, September 9

Correction Officer Elmer Huehn, the hall captain in A block, arrived at work on Thursday morning at the usual time. However, Huehn was not wearing his watch and he was carrying only 75¢ in cash—just enough for lunch at the officers' mess. He joined a growing number of correction officers who, fearing that "the lid would blow," had begun leaving their wallets home months before. Huehn had received a telephone call at home the night before from one of the officers who had been in A yard, who told him to expect trouble in A block the next morning.

At roll call, Lieutenant Robert Curtiss recounted the events of the previous day and instructed the officers "to use their most conservative judgment in their dealings with the inmates and to back away from any attempt that an inmate might make to provoke any confrontation." In addition, extra men were assigned to run companies to mess—one company per officer, rather than the usual two companies.

Most inmates in A block went to early breakfast on Thursday morning at 7:30 without incident. Some of them noticed an officer with a gas gun stationed outside the

mess hall—standard procedure since the uprising, but in September 1971, a sign that something was wrong. In accordance with Vincent's decision, 3 company was among those sent to early mess, much to the surprise of many inmates in the company, who expected to be breakfasting in their cells. In A mess hall, the rumor spread that two inmates had been taken to the box and beaten. Early breakfast was over in less than 20 minutes and the inmates dispersed, to their cells, their jobs, or the yards.

Correction Officer Gordon Kelsey had been assigned to 5 company that morning at roll call. Kelsey was a relief officer, with little prior experience in handling 5 company.¹ At approximately 8:20, Officer Kelsey opened the lockbox outside the gallery, which contained the levers of the cell-locking system. Pulling down on the levers, he opened the cells and ordered the men to line up at the head of the gallery for late breakfast. But the lever for cell number 17 remained up; Kelsey had been told that Ortiz was to be keeplocked. Kelsey then went to the head of the gallery, leaving the lockbox open. As 5 company lined up, several inmates demanded to know why Ortiz had been keeplocked. Kelsey told them he did not know, he was just following orders. The inmates began protesting. One said "Well, hell, lock me up too," and started back down the gallery to his cell, followed by several others.

Kelsey and the remaining members of 5 company left the gallery, on the third tier of A block and went to the mess hall. As they passed the open lockbox, an inmate reached in and pulled the lever for 17 cell, freeing Ortiz. Ortiz joined the group who had remained behind, and together they hurried to catch up with the rest. It was another "first"; no one on the staff could remember when an inmate had ever been released from keeplock by other inmates.²

¹Superintendent Mancusi blamed his inability to give experienced officers difficult assignments such as 5 company directly on the seniority job bidding system, described on p. 126. Vincent concurred.

²Leon Vincent maintains that it should never happen. The proper procedure is to lock the gallery gate, unlock the lockbox and trip the levers, relock the lockbox, then unlock the gallery gate to let the inmates out. Had that procedure been followed, Ortiz could not have been released. Common practice, however, was different. Superintendent Mancusi testified that it was "normal practice" for the lockbox to be open as inmates are passing.

Lieutenant Robert Curtiss was in an office in the administration building, engrossed in paper work, including reports from every officer who had witnessed the incidents of the previous day, as ordered by Superintendent Mancusi. He and Assistant Deputy Superintendent Karl Pfeil had personally toured the mess halls and supervised the early mess. They had not seen any incidents and Curtiss was beginning to think that the trouble had passed. As he sat reading reports, Superintendent Mancusi dropped in to ask him how things were going. Just then, Sergeant Jack English, the chart officer, burst in with the news that inmates had let Ortiz out of his cell.

"Get up there and see what's going on," Mancusi ordered, and Curtiss immediately went to A block to consult Elmer Huehn, the A block hall captain. By the time he arrived, 5 company, with Ortiz, was at breakfast. While Curtiss and Huehn stood by, Officer Carl Murray was sent up to 5 company gallery. He returned and reported that Ortiz was definitely not in his cell.

Recollections differ somewhat on what happened next. According to Lieutenant Curtiss, he went back to the administration building to report to the Superintendent, but could not find Mancusi either in his own office or the Deputy Superintendent's office. So he reported to Assistant Deputy Superintendent Pfeil instead. Pfeil's orders were to "get up there and get that company back in their cells. Don't let them get into the yard." In view of his own earlier instructions to avoid any provocation of inmates, Curtiss "did not like the thought" of those orders.

Karl Pfeil recalls the conversation with Curtiss differently. According to Pfeil, it was Curtiss who recommended locking A yard door and returning 5 company to its gallery. Pfeil says he merely approved Curtiss's proposal and ordered him to go back to A block and carry it out.

Superintendent Mancusi relates a third version. He testified it was his decision to let 5 company go to breakfast, to run the whole company back to the cellblock after breakfast, and, when Ortiz was again confined, to release the rest of 5 company to the yard. According to Mancusi, he so instructed Lieutenant Curtiss "and he took it from there."

As Curtiss tells what happened next, he glanced at the clock after leaving Pfeil's office and saw that it was about

8:45. He knew that 5 company was already on its way back from the mess hall and, on the summer schedule in effect, the inmates would expect to go directly into the yard after breakfast. He therefore called Officer Huehn on the telephone and told him to have the door from A tunnel to A yard locked and have the yard officers remain on the other side of the door in the yard. He then called Officer William Quinn in Times Square and told him to lock the gates at the Square immediately after 5 company had passed through. Under normal circumstances during the summer of 1971, the gates to Times Square would have been kept open in at least two directions in order to permit an orderly flow of inmate traffic through the corridors. Once Times Square gate was locked behind 5 company, and the door to A yard was locked, 5 company could move only into A block.

Curtiss then left for A block, intending to meet 5 company in the tunnel and talk with them. As he entered A block, he handed his keys to the officer on duty at the A block gate and told him to keep the gate between A block and the administration building locked and not to open it under any circumstances. As he passed through the gate, Curtiss could see 5 company standing in the corridor at the door to A yard.

As Curtiss approached, the mood of 5 company appeared calm. Captain Frank "Pappy" Wald testified that, moments before, 5 company "walked right past" him on its way back to A block from breakfast. "I could see nothing different than any other morning," he said. "They were normal. Some of them were talking a normal tone."

There had been no way to contact Officer Kelsey, who was escorting 5 company back from breakfast, to tell him the company would be returning to its gallery. Thus, the locked yard door was a surprise to both Kelsey and the inmates in his charge. Expecting to enter A yard, the company stood at the yard door in a double line which stretched half the length of the tunnel to Times Square. There were at least two other A block companies (2 and 9) in A tunnel at the same time. Puzzled, Kelsey began to walk down to the A block office area to get instructions.

Lieutenant Curtiss now took over. He felt that 5 company's movements were limited by the gates and he had confidence in his ability to persuade the inmates to return

to their gallery to "hash out the problem." As he brushed by Kelsey he told him, "Stay here, I know what it's about, I'll take care of it."

Lieutenant Curtiss boldly strode down A tunnel to talk to 5 company, which was still standing in formation at the A yard door. He walked down the right side of the tunnel, intending to take a position where the whole company could hear him. Up to then, the company was quiet and in formation. Now, walking into their midst, was the officer who had assured them the day before that nobody would be hurt. They were unaware that Curtiss played no part in the decision to take Lamorie to the box and that their belief that Lamorie had been roughed upon the way to HBZ was wrong.

As Curtiss walked past the first man he heard "You no good mother," and was struck on the side of his head. Officer Kelsey, still down at A block, heard the shout and turned around just in time to see Curtiss hit the floor. Then everything exploded.

A number of inmates jumped on Curtiss and began to beat him. Officer Kelsey, Officer Huehn, and Officer Raymond Bogart, who had been escorting 2 company, ran to the aid of their superior. Huehn implored the inmates to leave Lieutenant Curtiss alone and got a wicked punch in the jaw for his trouble. Kelsey was also set upon by two inmates and was knocked unconscious. Kelsey does not know how he got there, but the next thing he remembers he was inside Times Square, with the gate locked. Also locked into Times Square were Officer Quinn, who had been on duty in Times Square, and Officer Donald Melven, who had been escorting 9 and 10 companies from breakfast.

Other inmates in the corridor were able momentarily to free Lieutenant Curtiss from his attackers. Someone hoisted Curtiss to his feet and he ran immediately down toward A block, with Officers Huehn on his left and Bogart on his right. The three officers were trailed by a group of 15 or 20 inmates. Other inmates in the corridor just stood by, too stunned to move. Lieutenant Curtiss headed immediately for the telephone in the A block office area, but as he reached for it, the pursuing inmates caught up with him and turned over the table, ripping out telephone lines, and began breaking furniture and equipment. Huehn,

Curtiss, and Bogart were backed up against the gate between A block and the administration building. Someone swung a stick at Curtiss but missed.

All of this could be seen by Correction Officer Carl Murray, who was standing on the balcony connecting the two sides of A block, straddling A tunnel. An inmate spotted Officer Murray on the balcony and demanded the A block keys. Another told Murray to come down from the balcony and bring his club. When he refused, the two inmates climbed up, relieved him of his keys and club and threw the keys from the balcony to other inmates, who started opening A block cell doors. Murray remained on the balcony, shaken, for some time, until he was led to a cell by a group of Muslim inmates.

While the inmates were destroying the A block office area, Curtiss, Huehn, and Bogart were able to escape through a side gate into the 1 company gallery on the ground floor of A block. As they ran through the gate, they were able to lock it, despite the efforts of inmates pushing on it from outside. The three officers, all of them bleeding, ran to the first open cell and barricaded themselves inside with the furniture in the cell. They heard an inmate yell, "The hell with them, we can get them later," and the din of rioting inmates moved off into other A block galleries. The three officers remained in the cell for better than two hours.

The companies of A block who had eaten in early mess had, as usual, gone out into A yard. There were nearly a hundred inmates in the yard. The two officers on duty on the guard platform near the door to A yard were John D'Archangelo and Walter Zymowski. Many inmates noticed a strange silence in the yard. The accustomed boisterous talk and activity was absent. Inmates talked in hushed tones about the events of the night before and wondered if anything would happen. Some had been called to their work details earlier than usual and were at work by 8:30. At about 8:45, Elmer Huehn came to the yard and told Zymowski to lock the door to A tunnel and stay outside—that 5 company was going back to its gallery.

Inmates remaining in A yard heard the commotion in A tunnel and ran to the windows to see what was happening. When they realized what it was, some of them approached the two officers and demanded the keys to the

door. Zymowski said they didn't have the keys. Inmates then attacked the two officers with baseball bats and obtained the keys. The two officers climbed up over the platform and escaped from the yard onto A catwalk above the tunnel. Keys in hand, inmates in the yard quickly unlocked the door to the tunnel and joined those inside. Many inmates in the corridor took the opportunity to escape out into the yard.

In the immediate aftermath, some prison officials were to conclude that the uprising was planned, based in part on a belief that the inmates proceeded to take over the institution without interruption as if on schedule. But from all accounts, there was, after the initial fury, a lull of about ten minutes during which the violence subsided and the rebellious inmates regrouped and equipped themselves. During that time, officers in the area were, seemingly, paralyzed—perhaps too dazed by the initial outbreak to comprehend the full impact of what was happening.

At Times Square, Officer Quinn had locked the gates leading in four directions. Officer Don Almeter had been sent by the B block hall captain, Richard Lewis, to ask Quinn what was happening. Quinn told him it was just a minor disturbance and everything was under control. Almeter returned to B block and repeated Quinn's report to Lewis.

When Officer Kelsey came running up to the Times Square gate, his head bloody, Quinn opened the gate and let him into Times Square. He then relocked the gate behind Kelsey. He also opened the gate from C tunnel and let in Officer Donald Melven, who had been escorting 9 and 10 companies, and had been waiting in C tunnel for stragglers to catch up. But the officers in the Square could not reach the Administration Building on the telephone—the lines were busy. In C tunnel, Officers Paul Rosecrans and Alton Tolbert had drawn up at the Times Square gates with groups of inmates they were escorting back to work from the showers. They were surprised to find the gates locked in all directions and shocked to see Kelsey bleeding.

Many inmates were locked out of Times Square in the C block tunnel. They, too, stood about helplessly—trapped in the tunnel, unable to react in any way. During this time, other inmates were busy scouring A block and A yard, equipping themselves with the trappings of rebellion. From

the yard came football helmets, baseball bats, rakes, and slats of wood ripped from benches. From A block came other sports equipment, mop and broom handles, masks hurriedly fashioned from towels and pillowcases. And from countless hiding places emerged that weird assortment of homemade knives, swords, and other weapons which inmates in prisons everywhere keep hidden.

About 15 minutes after Lieutenant Curtiss hit the floor of A tunnel, a group of 15 to 25 inmates came down A tunnel and approached the Times Square gates. They were armed with clubs, sticks, pipes, pieces of board, and rakes. Many of them were wearing football helmets. They demanded that Officer Quinn open the gate, but he did not. They called to inmates in C tunnel to help open the gate on the other side of Times Square, but no one moved. Inmates in both tunnels backed away.

The group in A tunnel now rushed the gate to Times Square. First, they tried to force the gate with keys which they had taken from A block. When this failed, they began pulling and pushing on the gate. Accounts differ as to how many times they shook the gate, but it was not long before the bolt gave way and the inmates burst into Times Square.

The basic purpose of Times Square, with its heavy gates in four directions, is to permit any one cellblock to be sealed off from the rest of the institution, so that trouble can be contained in one area. On September 9, 1971, the A block gate at Times Square simply failed to do its job.

Sergeant Richard Miller, who was the prison locksmith in September 1971, examined the gate shortly after the end of the uprising and later explained the failure to the Commission. The Times Square gates each consist of a stationary gate and a swinging gate which come together in the center. They are locked by a three-point bolt system, in which the turning of the handle on the movable side of the gate pushes 3/4" steel rods into recesses in the floor and ceiling and slides a bolt horizontally across to the stationary side of the gate. Sergeant Miller's inspection of the A block gate revealed that the rod leading into the ceiling had been broken about 15" from the top at a point where it had been welded together. Sergeant Miller believes the weld dates from the initial construction of Attica, about 1930. It is less than ideal to have a rod which has been welded, but the weakness in A block gate was

compounded by the fact that the weld itself was defective. The two ends had been butt-welded, so that no more than 1/16" of metal held the two ends of the rod together around its circumference. As a result, the rod was incapable of withstanding more than a moderate application of lateral force.

The existence of the defective weld could not have been known to the Attica staff, much less the inmates. The joint had been ground smooth, further weakening it, and had been covered with so many layers of paint over the course of four decades that it was invisible. Because of the shortage of staff at Attica, routine maintenance inspections of the gates had not been made in recent years. As Sergeant Miller testified: "We didn't have the help to spend the amount of time on the locks that should have been spent."

When the weld on the Times Square gate unexpectedly gave way, the three officers inside the square were trapped. The inmates set upon them with the weapons they were carrying and all three went down. Blood spattered and at least two of the officers, including William Quinn, were knocked unconscious. From Quinn, inmates grabbed the keys, unlocked the Times Square gates leading to B, C, and D blocks, and spread out simultaneously in all three directions.

As Times Square fell to the inmates, Officers Rosecrans and Tolbert retreated toward C block. But they were quickly cut off by the inmates in the tunnel and told to get up against the wall and drop their sticks. At the same time, inmates from Times Square entered C tunnel. "This is it," they shouted. Armed with pipes, pieces of chain, and pick handles, wearing football helmets and face masks, they surrounded Rosecrans and Tolbert and led them to Times Square, where they were relieved of their keys and joined the three officers already captive there. They were then ordered to lie down and remove their clothing. While trying to strip, Rosecrans was hit on the head with a chair leg. Rosecrans and Tolbert were made to lie naked in Times Square for what seemed like half an hour. Quinn, Melven, and Kelsey were there, but appeared to be unconscious. Finally, Kelsey and Melven were revived and all four officers were marched down the tunnel to A block and locked in adjoining cells on 2 company.

By now, A block was quiet. The active belligerents had

abandoned it and gone either to the yard or to Times Square. Inmates who had been in their cells were let out and some of them had joined the rioters. Others, remaining behind and trying their best to keep out of the way, saw a strange sight. A group of naked officers, guarded by inmates carrying sticks and rakes, were marching down A tunnel toward A block. The last one was carrying Officer Quinn, still clothed, in his arms. Quinn was laid on the floor near the hall captain's desk, and the other officers were marched into A block. The inmates carrying rakes and sticks disappeared.

The Initial Reaction

When word of the attack on Lieutenant Curtiss in A tunnel reached the administration building, there was little the administration could do but trust in the strength of the Times Square gates until additional help could be found to subdue the inmates in A tunnel. Once those gates fell, however, the shortage of personnel, an antiquated communications system, and the absence of an institution-wide riot control plan combined to render the authorities helpless to prevent the spread of the swelling rebellion.

Sergeant Jack English, as the chart officer that morning, was in charge of making assignments of personnel throughout the institution. At about 8:45, English had received a call from the A block hall captain "that Lieutenant Curtiss was having trouble in the corridor with a company of inmates." He did not describe what kind of trouble, said English, "he merely asked for help."

English's ability to summon help, however, was severely limited. Although prison records indicate that 127 correction officers and supervisors were on duty that morning, they were scattered throughout the institution conducting inmates to their jobs, guarding those who had already begun work, manning wall posts, escorting inmates to civilian hospitals and to the farm, and performing the myriad housekeeping duties incidental to maintaining custody of 2,243 prisoners.

Sergeant English picked up the single-line telephone on his desk which was the central communications instrument for the entire prison. English's desk was linked to similar single-line telephones throughout the institution through an outmoded switchboard. Although his phone was cap-

able of handling only one incoming or outgoing call at a time, it was—in Sergeant English's words—"the sole communications that I had at my disposal, right there." There was no intercom, no public-address system, no two-way radio or walkie-talkie at the prison. Once Sergeant English picked up the phone, no one anywhere at Attica could call him.

English called the hall captains in B and D blocks, who told him all their available officers were already employed and none could be spared. He knew there were no available officers in C and E blocks, but he called them to alert the hall captains to the trouble in A block and advise them to secure their blocks.³ He also tried to reach the metal shops, where 400 inmates and 25 officers and civilians were at work, but the line was busy.

In his office just down the hall from the chart room, Assistant Deputy Superintendent Karl Pfeil was also on the telephone. Immediately after learning "there was big trouble in A block," he called the officers in Times Square, who reported that the gates were secure. He tried other numbers and got busy signals, but was able to get through to the metal shops. He talked with Sergeant Edward Cunningham, who reported that everything was all right. Pfeil later expressed regret that he had not ordered Cunningham to round up the officers and civilians and escape through the back door. Instead, with faith in the Times Square gates, he told him, "Use your judgment, Ed. Try to keep things cool."⁴

Pfeil also spoke with Richard Lewis, the B block hall captain, and subsequently described the conversation:

... he said that his block was secure, that the inmates were milling around in the officers' area, but that no one was attempting to take over. And then—we still had the connection—he said, "Well, they're coming up the corridor now and they have broken through the gates now. And now they are coming toward the desk." And [then] the phone was ripped out.

³Sometime later, the E block hall captain was able to reach Sergeant English again to report that inmates were trying to break down the gates leading to the block and he was afraid they would not hold. English told him to round up his officers and leave through the back door.

⁴Sergeant English testified that if he had been able to reach Cunningham, he could have been alerted to escape. Cunningham was killed in the State Police action on September 13.

Until that moment, everyone in the administration building assumed that Times Square would remain secure and that the disturbance would be confined to A block. Now, however, Pfeil left his office and hurried upstairs to Superintendent Mancusi's office to report, "We have a riot on our hands." Mancusi had been downstairs in the chart office and already knew. But there was nothing that they could do to stop the take-over. Superintendent Mancusi described his sense of helplessness and his reaction as the inmates fanned out from Times Square and swept through the institution:

Calls were received that various parts of the institution had fallen or had been taken by inmates and after these calls were received I immediately knew that I had a major disturbance on my hands and I rushed upstairs and sent the women employees out and proceeded to call the deputy superintendent, to call the State Police, call the various police agencies and the Commissioner's office.⁵

By now calls were beginning to come in from all over the institution with such frequency that telephone communication became, as Sergeant English later put it, "just chaos."

A steam whistle located in the powerhouse, in the extreme rear of the institution, was the only means of sounding a general alarm. Most accounts by correction officers and inmates alike indicate that it was not sounded until approximately 9:15, about one-half hour after the disturbance began. Once again, a single telephone line was the only communications link to the powerhouse, and only the civilian supervisor there was authorized to sound the alarm. When the call finally went through to the powerhouse, the supervisor was at the garage. His assistant went over to the garage to inform him of the call, received instructions to blow the whistle, returned to the powerhouse, and sounded the alarm.

Although the whistle, which could be heard throughout the town of Attica, was used to summon off-duty personnel in the event of trouble in the prison, it was also used to signal escapes. Thus, a common reaction to the whistle

⁵Deputy Superintendent Leon Vincent was not due in until 10:00 A.M. He received Mancusi's call before 9:00 A.M. and was at the prison within five minutes.

among officers and inmates in areas of the institution which the uprising had not yet reached was that another inmate had walked off the prison farm. No one took the whistle as a warning to escape to safety.⁶ The establishment of a whistle code to distinguish between a riot and a walkaway had often been proposed, but no one had done anything about it.

There was an emergency plan at Attica, but it was addressed largely to natural disasters, such as fires. In Superintendent Mancusi's words, it dealt with "primarily . . . areas of access and egress from the various parts of the institution." According to Sergeant English:

There had been a riot plan of sorts, which all supervisory officers were to familiarize themselves with, but it pertained largely to a single area, an isolated area where a disturbance might occur. It didn't provide for an institution-wide problem.

Whatever supervisors such as Sergeant English were aware of, almost all correction officers interviewed by the Commission said that no riot plan of any kind had been communicated to them and the great majority said that no plan ever existed. There had never been any drills for correction officers or any training session on how to handle a prisonwide disturbance. As a result, they were forced to rely on the gates. When Times Square fell, the authorities were, for all practical purposes, paralyzed.

⁶In any event, say most officers, standard procedure, when the whistle is blown, is to secure all gates and await instructions, not to abandon any post.

Chapter 6

The Conflagration Spreads: From Times Square to D Yard

C Block

When Correction Officers Walter Zymowski and John D'Archangelo scrambled up over the officers' platform in A yard and onto A catwalk, they did not know in which direction to run. First they headed toward A block, but very quickly discerned that the violence was concentrated in the area right below them. So they ran across the catwalk back to Times Square and turned left to C block. There, they banged on the door leading from C catwalk into the second floor of C block.

Correction Officer Henry Herrick was at his post on the second tier of C block. He heard the banging about 9:00 A.M., and immediately ran to the door. The two officers, one of them bleeding from a cut on the left side of his neck, pleaded with him to admit them, but he had no key to the locked door. Although Herrick did not know it at the time, the key was in the arsenal in the administration building; no one in C block had that key.

Officer Herrick, who could still have escaped injury by abandoning C block, nevertheless ran downstairs to the C block hall captain's area to try to find the key to the door. Richard Delaney, the C block hall captain, had no idea that anything was amiss. Herrick told him that two officers from A block were trying to get into the door upstairs and that they had told him A block was "lost." Delaney, and Sergeant Gerald Reger, who was on duty with him, could not figure out which of the keys fit the door upstairs. So they gave Herrick the entire bunch and Herrick started back up to the second tier. Among the keys were those to the hall captain's office and lockbox for C block.

Meanwhile, Captain Frank ("Pappy") Wald, the senior uniformed officer at Attica, had been interrupted over coffee in the officers' mess behind C block and was taking a

call in the C block office. Wald had come in to work with his next-door neighbor, Assistant Deputy Superintendent Karl Pfeil, who had briefed him on the events of the previous evening. Wald and Pfeil had supervised both breakfast sessions, which went normally. Wald had stayed in the mess hall area until 3 and 5 companies had both filed past him, without incident.

Wald was 61 years old, with 35 years' experience in the department, 25 of them at Attica. He had spent three years helping to set up the experimental Diagnostic and Treatment Center at Dannemora and had just returned to Attica a year before. He was among the best-liked officers at Attica.

The call for Wald came from A block and its message was "A block just blew up." Wald emerged from the office and looked down C tunnel toward Times Square. What he saw was a crowd of 40-50 inmates running from Times Square toward C block. They were armed with bats and iron pipes; many of them were dressed in football gear or towels wrapped around their heads. Officer Delaney told Wald that he had locked the gate between the end of the tunnel and C block. Confident that the gate would protect them, Wald, Delaney, and Reger stood and watched the inmates approach. Captain Wald described it:

So we locked the C-block gates there and I said to Mr. Delaney . . . "Well, that ought to hold them," but those 40, 50 men hit that gate and I don't think it slowed them down two seconds. The gate bounded in against its hinges —went the wrong way. I was so amazed to see this big iron double gate come in the wrong way.¹

The three officers, Wald, Reger, and Delaney, retreated hastily into the small C block office a few steps inside the gate. They could not lock the door, because the keys had been given to Herrick, so Delaney held it shut while Captain Wald jammed it shut with a piece of heavy wire.

Armed inmates swarmed through the gate, attacked Herrick, who had never made it upstairs, and took his keys. Herrick lay unconscious on the floor for some minutes, seemingly ignored by the inmates who, having taken

¹Sergeant Miller, the locksmith, testified that "if you get enough manpower against any given gate that is constructed by man, it probably can be torn down by man."

his keys, spread out through C block and into the officers' mess beyond it. Some minutes later, Herrick was revived by friendly inmates, who helped him upstairs and secreted him in a washroom on one of the galleries.

Inmates found the three officers and an inmate clerk in the C block office. They tried one key after another, but could not open it. They tried to force open the door, without success. They smashed the glass in the door and poked broom handles through it and through the back of the office, which is protected only by iron bars. They threw anything that came loose through the broken window and the bars. The inmates next tried to burn them out, by tearing up mattresses, setting the pieces on fire, and throwing them into the office. They tried in vain to flood them out with high-pressure fire hoses.

From the blockhouse atop Times Square, inmates had secured two gas guns and a large supply of tear-gas grenades. A grenade was tossed into the small office and exploded. The three officers were now overcome by gas, but the door was jammed shut and they couldn't get out. In Captain Wald's words:

We now were at an impasse. We couldn't get out. There was now about, I would say, 20 young people out there howling.

Reminded me some of Custer's last stand. With their pipes and, of course, if the door had opened I felt quite sure we would immediately be massacred right there in front of the door. Well, as I looked, I finally got up on my feet, I thought if I'm going to die, I best be standing up here. I looked out the back end of this office which was a barred situation, faced the cells, and saw a black inmate that I knew. I said to him, "What kind—" he is an older fellow. I said, "What kind of an outfit are you running here?" I couldn't think of what else to say to him. But he said, "Well, place yourself in my hands," and he said, "You won't get harmed." He said, "Open up the door."

I said, "I can't open up the door. We're locked in here and we don't have the key." And you know, we could hardly see with that darn gas. By this time they had gone over to the metal shop and had procured a cutting torch, an acetylene cutting torch. Of course, one officer was in there with me, he didn't want to give up because he thought sure we would be killed. I told him, I said, "Well, look at the sparks coming through where the lock is." I said, "We have approximately two minutes before

they burn that through and I am going to give up. I am going to accept this man's word."

* * *

And so out we came and he had about four older inmates with him. They gathered around us and escorted us to D yard.

When Herrick did not return with the key to unlock the door from C catwalk, Officers D'Archangelo and Zymowski ran back on the catwalk to the roof of Times Square. There they encountered Officer Dean Wright, who had been on duty in B yard with about 20 inmates waiting for sick call. When windows in B and C corridors began breaking, two inmates in the yard had approached Wright and taken his keys. Wright had fled, climbing up to the catwalk.

At Wright's suggestion, the three officers jumped down from the catwalk into B yard, which was now deserted, and locked themselves into the officers' toilet in the yard, where they were to remain for some five hours.

Directly behind C block is the officers' mess, and to the left is a corridor leading to A mess hall, and to the hospital and reception building beyond, while to the right a corridor leads to B mess hall. There is a gate beyond A mess hall leading to the hospital, and a gate between the hospital corridor and the reception building. On the other side, there is a gate between B mess and E block.

While some inmates were trying to smoke the three officers out of the C block office, and rampaging through C block, others broke into the officers' mess, which they began looting of its food and provisions. Still other inmates turned left at the corridor behind C block only to find the doors to A mess and the gate leading to the hospital both locked.

On the other side of the gate leading to the hospital were seven officers who had been on duty in the mess halls or had come running from the reception building when they heard there was trouble. The inmates demanded that they open the gate, and began shaking it, but the gate held. One of the officers yelled, "Get the gas," and another ran to get two gas guns from a cabinet in the reception building behind still another gate. Under department regulations, a decision to use gas must be made by the Superintendent or his deputy. However, the officers could

not get through to the administration building on the telephone, and finally took it upon themselves to use the gas. Long-range gas projectiles were fired from behind the reception building gate at inmates beyond the A mess gate—a distance of over 50 yards. Inmates at the mess-hall gates attempted to repel the gas with fire hoses, but were eventually forced back toward C block. The mess-hall area and the hospital and reception building were not threatened again.²

Inside the mess halls and the kitchen behind them, a group of some 50 inmates, all from C block, were at work. The officers in the mess halls had been able to get word of the trouble in time to lock the doors and usher the inmate mess-hall crew into the kitchen and storage areas at the rear. Inmates in A mess hall saw the confrontation at the A mess gate, ending in a cloud of tear gas.

A group of white inmates in the mess halls, fearing that a race riot was in progress, "broke out the arsenal" of kitchen knives, stirrers, and other utensils and vats of hot grease. They told the officers and civilians that they intended to protect them from the impending "race riot," and to prevent the expected take-over of the food supplies and kitchen equipment.

Despite the polarization and tension in the mess-hall area, violence did not erupt. Within an hour, a detail of officers came to the back door and led the mess-hall and kitchen crews out. They were kept sitting in a grassy area behind the mess hall for the rest of the day and were finally locked in on C block that night. Many of them returned to the kitchen the next morning and spent the next four days continuously in the kitchen preparing sandwiches to be taken to D yard, and feeding hungry officers and state troopers.

When the trouble broke out, Officer Frank Kline, who had been on duty on the third tier of C block, was able to lock himself inside an officers' room on the third floor.

²Assistant Deputy Superintendent Karl Pfeil maintains that from his window in the administration building he signaled to Lieutenant Maroney across the courtyard in front of the reception building, approving the use of gas as required by the regulations. None of the officers involved has mentioned the presence of a lieutenant and Maroney recalls that Pfeil sent him to supervise the area *after* the gas had been fired because he was worried that the gas was being used excessively.

He remained there until 10:20 A.M., when a group of armed inmates entered the gallery and demanded that the inmates remaining there clear out and go to D yard. Officer Kline refused to come out, and the inmates, after trying to pry the door open with a crowbar, brought up an acetylene torch and jars which looked to Kline like Molotov cocktails. Kline decided to surrender and was taken hostage. He, too, was relieved of his keys, but one inmate prevented others from harming him. He was taken to D yard.

Officer Herrick, hiding on the second tier, was not discovered by inmates that morning, but Officer Paul Krotz, whom Herrick had asked to remain on the second tier when he went down to get the keys, was taken hostage there by three armed inmates wearing football helmets.

Armed inmates swarmed through the galleries, announcing, "We are taking over; are you with us or against us?" On one gallery, inmates decided that they would vote on whether to join them. Although only three voted to go to the yard, the vote was ignored, and the armed inmates surrounded them and ordered them to D yard.

The C block corridor leading toward Times Square in the direction of D block was filled with tear gas. The floor was covered with broken glass and, in some places, blood. The wooden doors on both sides of C tunnel leading into B and C yards were burning. Inmates, wearing rags and wet sheets to protect them against the gas, were using a fire hose to wash the floor down. Others wandered or stood around aimlessly, oblivious to the repeated cries of "Everyone to D yard." In C block, as in each area of the prison, the uprising found eager and willing participants. The large majority of inmates, however, went to D yard either out of confusion or uncertainty, because everyone else was going there, or because they feared for their lives if they did not go. Actual force was rarely necessary. The message was clear: C block was not a safe place to remain; safety lay in joining the growing congregation in D yard.

B Block—the Metal Shops and Commissary

B tunnel leads from Times Square to B block, and the metal shops and commissary beyond. Through that corridor Correction Officer Don Almeter walked back to B

block after his conversation with Quinn at Times Square. He reported to B block hall Captain Richard Lewis that there was just a "minor disturbance" in A block, but Lewis was still skeptical. He ordered Almeter and Officer Don Jennings, also on duty in B block, to lock the gates between the block and the tunnel, and the gates in each gallery.

Behind B block are the buildings which house the metal shops and the commissary. Lewis also told Almeter to lock the gate between B block and the metal shops and stay on the other side. "I think they're rioting," Almeter told Correction Officer Gary Walker, who had been stationed at the metal-shop gates. The two officers stood there for a few minutes, not knowing what else to do, and heard yelling and glass breaking from the direction of A block. Then they saw a group of inmates break through from Times Square and run down the tunnel toward B block. They saw Officer Jennings hit on the head with a club, as the inmates reached B block. The gate from B tunnel into B block, which had been locked at Lewis's direction, was opened by the inmates with a key taken from Times Square. The key was not supposed to fit the gate, but perhaps because of wear and tear, the key in fact opened it. Lewis, Jennings, and Officer James Clute, who had come to B block from the metal shop to investigate, were taken hostage and placed in a washroom in B block for safekeeping, all three men bleeding from wounds received at the hands of inmates.

Gary Walker ran to his post and picked up the telephone. He called the commissary, hurriedly warned Officers Frank Strollo and Ronnie Werner to lock the commissary door. Turning their backs on B block, Walker and Almeter ran down the tunnel, turned left toward the metal shops, and locked still another gate behind them.

In the commissary on the other side of the corridor behind B block Strollo and Werner could hear some squawking over the telephone, but could not make out what Walker was saying. Meanwhile, Correction Officer Dick Fargo had just arrived with a group of 15 inmates on a regular commissary visit. An inmate from E block, who had a pass, ran up the stairs excitedly yelling that the rioters were heading for the commissary. Fargo tried in vain to get the key to the commissary door from Strollo and

Werner and then made a frantic effort to tie it shut with the thong of his club. Before the commissary could be secured, a group of inmates armed with baseball bats and shovels stormed up the stairs and burst through the door by sheer force. Fargo was hit first, then Ronnie Werner was knocked to the floor.

An older black inmate stepped forward to help Werner up. He was immediately stopped by the intruding inmates. "What are you doing? Do you want to be on the floor with him?" shouted someone. The older man stepped back and stood rigidly at attention.

In a matter of minutes, inmates poured into the commissary and began emptying the shelves, especially the large inventory of cigarettes. Strollo and Werner were ordered to strip and Strollo was hit with a club as he hurried to undress. Naked, the two officers were taken to a cell on the first floor of B block.

Fargo, meanwhile, had been able to escape momentarily from the commissary toward B block. He was trapped by a large group of inmates and escaped injury only when one inmate placed himself between Fargo and the crowd and assured them Fargo would be held. Fargo was now taken to a B block cell as well. There the three officers were abandoned by their captors and hidden in cells by other inmates. Fargo, who was still dressed, took off his uniform "for protection." It was not long, however, before Fargo, Strollo, and Werner were discovered and taken to join their fellow hostages in D yard.

The metal shops at Attica are cavernous factories located in two two-story buildings behind B block. Here inmates produce steel lockers, cabinets, and other office furniture for state institutions. The two shops stretch over a hundred yards back toward the rear wall and contain a variety of lathes, presses, paint sprayers, baking ovens, and crating and shipping areas, originally designed to provide work for about 150 men. On September 9, 1971, there were over 350 inmates working in the metal shops, supervised by a staff of 8 correction officers and 12 civilians. Work there had been in progress almost an hour when Times Square fell.

Inmates coming to work in the metal shops heard from others about the events in A block the previous evening. Again, rumor held sway. As one of them testified.

We were told that about 12 officers the night before had gone to two inmates' cells in A block and they beat them bloody and drug them off the gallery to the isolation cells. This is what we were told. This is common procedure.

* * *

Word spread. One guy in B block heard it in the mess hall from someone else. Word spreads.

When Gary Walker and Don Almeter, who had seen the rioting inmates break into B block, reached Metal 2, the larger of the two shops and the second one beyond the gate, Sergeant Edward Cunningham, the officer in charge, was just putting down the telephone. He had been told from "down front" that there was trouble in A block and they might be heading his way. Cunningham ordered that all doors in the shop be locked, gathered some of the officers and civilians in his office, and waited.

In the rear of the metal shop, out of earshot of Sergeant Cunningham, Officer Lynn Johnson was on duty in the crating department. Don Almeter came back through the shop, excited. "I did not know for sure what he was trying to say," Johnson recalls, "but I figured that there was some kind of trouble, so I locked the rear door of the crating department."

The rear door led to a loading platform, and beyond it to an open area protected by a gun tower. Johnson did not realize it at the time, but in locking this door he was sealing off his exit to safety. Johnson then locked up some tools and walked to the front to Sergeant Cunningham's office. Johnson testified:

We stood there for 10, 15 minutes, just doing nothing. Just standing there waiting for word from up front or word from Sergeant Cunningham as to what was happening.

While they were waiting, they heard the whistle blow in the powerhouse behind them. The whistle was the definite signal of big trouble. A few inmates in the shop began yelling and turning over furniture, but most of them just stood there, waiting, just like the officers.

After 15 minutes, the men in Metal 2 heard the sounds of inmates breaking through the shop gates from B block. In seconds, they were at the door. One of them broke

through the glass window in the door, reached inside and unlocked it, and charged in.

At the head of a group of armed and masked inmates was Sam Melville, a member of 5 company, known to the officers as "the mad bomber." Melville, a 36-year-old white, was serving a six-to-eight-year sentence arising out of a well-publicized series of bombings for political purposes of public buildings and military installations in New York City. He was an avowed left-radical of the Weatherman stripe and had been an active participant in political organizing and discussion at Attica since his arrival in 1970.

"All right, Cunningham, let's go," Melville ordered. With that, Cunningham, Walker, Almeter, and Johnson, as well as Correction Officers Carl Valone, Tony Sangiacomo, Anthony Prave, and Dean Stenshorn, and civilians Al Mitzel and John Monteleone, were stripped and made to run down B tunnel to Times Square, and from there to D yard. Inmates formed a gauntlet along the corridors leading to D yard. The hostages were prodded and hit with clubs, baseball bats, and broom handles, and were called names as they ran.

Correction Officer Gene W. ("G. B.") Smith was the only officer on duty downstairs in Metal Shop 1. Sergeant Cunningham called from Metal 2 and said, "Something is happening, lock the doors." As Smith and the civilian employees in Metal 2 were locking the doors, they heard the powerhouse whistle blow. Inmates working in the shop asked what was happening. Smith told them it was probably an escape from the farm.

After 15 minutes, an angry group of inmates began banging at the doors and demanded that they be opened. The inmates working in Metal 1 did not respond, except to usher Officer Smith and two civilian employees into a rear office and lock the door. The inmates outside tried without success to pry open the shop door and finally two of the inmates in the shop commandeered an electric forklift truck. The truck was rammed several times against the door and it finally opened from the inside out. A group of six inmates armed with sticks, clubs, and a shovel entered Metal 2. There was only one white inmate among the group; again, say several witnesses, it was Sam Melville.

Officer G. B. Smith and the civilian employees were by this time barricaded in the rear office of the shop, where

they were being guarded by two black inmates. It was only when the two were physically threatened that they stepped aside. Sam Melville took Smith's keys and ordered the hostages stripped. As they were stripping, they were manhandled and whacked with sticks. Finally, one of the two blacks from Metal 1 stepped in again and said, "Enough, brother." The hitting stopped, and the hostages were not beaten again.

While G. B. Smith, Fred Miller, and Edward Miller were being herded from B block toward Times Square and D yard, two inmates wearing football helmets and swinging clubs rushed upstairs to the finishing shop of Metal 1 where Robert Van Buren, superintendent of the entire metal industry at Attica, Officer Michael Smith, and five other civilians—Elon Werner, Herbert Jones, Ron Kozlowski, Gordon Knickerbocker, and Elmer Hardie—were also taken hostage and run through the gauntlet to D yard. One inmate tried to protect Van Buren, but he was hit in the head, arm, and stomach on his way to D yard.

Although 20 hostages were taken in the metal shops, two civilian employees were able to escape out the back door of Metal 1. And a white-haired foreman was told, "Pop, start walking." In the midst of the turmoil, he was allowed by inmates to make his way unmolested from the shops, through B block and Times Square, and out the front of the institution. He lost only his wallet.

No sooner were the hostages taken out than the metal shops were vandalized. Inmates helped themselves to tools, blowtorches, and other equipment, and broke out the caches of homemade knives which were inevitably hidden throughout the shops. Fires were started in several areas of the shop complex, tripping off the sprinkler system.

Fearing explosions from the volatile materials in the shops, most of the inmates fled into the corridors. There was mass confusion. Some were pressed into service by armed fellow inmates to assist in looting the commissary. Others tried to get back to their cells or other open areas.

Powerhouse, Maintenance Building, and Coal Shack

Behind the metal shops, just inside the rear wall, is the institution's large powerhouse with its imposing smoke stack. Annexed to it on the left is the small maintenance building and to its right, across a circular driveway, is the

coal-gang office where fuel for the powerhouse is received and dispensed. The coal shack borders on a large fenced-off field known as the "Ponderosa," within the sight of armed correction officers in gun towers on the wall. The area was to have been the site of a gymnasium, but in recent years was used for nothing in particular.

Many inmates who were working in the metal shops were able to force open the back doors and escape into these areas, together with the two civilians. Some of them went to the back door of the maintenance building. Civilian employee Mark Eckert opened up the back gate and let them in. By midday on Thursday, Eckert had admitted over 55 inmates and nine civilians. They had come from the metal shops, the shoe shop, the print shop, the coal gang, and the garage. The group spent Thursday night in the maintenance building and were not evacuated until the following morning.

An even larger group of inmates found their way to the Ponderosa. Several times that morning, inmates from D yard approached the group in the Ponderosa and exhorted them to join the uprising. Some of them did go, but in that open area, under the wall tower, the threats had less force. Finally, late Thursday afternoon, the group in the Ponderosa were rounded up by troopers and correction officers and taken to C block.

Sometime after 9:00 A.M.—the whistle had not yet blown—Officer Don Head, who supervised 30-odd inmates on the coal gang, left the coal shack to talk to an officer in a gun tower on the wall. Meanwhile, Correction Officer Roger Dawson had left the powerhouse, where he was on duty, to open a gate and let in a garbage truck. Before Dawson could lock the gate—three inmates—all from 5 company—appeared with clubs and pipes. Brushing by Dawson, they attacked Head. "This is our day, you white motherfucker," they told him. Don Head is a big man, standing over six feet and weighing over 250 pounds. Although his head was bloodied, the three men could not bring him down.

Dawson saw Head in trouble and went to his aid, but the three assailants now left Head alone and went after Dawson. Head, recovering from a daze, ran toward the powerhouse, bent on "finding something that would do some damage." The three inmates pursued Head toward the powerhouse, but now the officer on duty in the gun

tower came out with a rifle and shouted, "Stop or I'll shoot." Seeing the gun pointed at them, the three inmates left and ran back through the powerhouse gate. Head locked the gate behind them. Twenty minutes later, a group of officers, responding to a call from the tower, came in through the coal car gate in back of the coal shack, and took Head and Dawson to the hospital. The coal shack and the powerhouse were secure, and the inmates never took them.

Downstairs in the building which houses the commissary is the facility's garage, civilian Al Robbins was the foreman of the garage, supervising a crew of 24 inmates. One of those inmates was Ernest Hobbs, a 72-year-old black serving a sentence of 15 years to life for grand larceny. Despite his years, Hobbs is strong and tough—a man to be reckoned with.

When a group of inmates from A block stormed through the door of the garage, armed with pipes, shovel handles, and broom handles, and announced, "We're taking over," Hobbs and other inmates working there tried to protect Robbins. But Robbins was struck in the stomach and the back of the head with a pipe and taken captive. "If you hurt him, I'll kill you," Hobbs shouted as Robbins was led away.

Ernest Hobbs's defense efforts were only beginning. The intruders demanded gasoline and oil, and helped themselves to five gallons which were readily available. Hobbs told them they would get more over his dead body and backed up his threat with a menacing look and an iron bar with a hook on the end. Finally an inmate yelled, "Don't bother with that old man—he means what he says, he'll kill you." Cursing, the intruders left, taking all of the inmates in the garage with them—except Ernest Hobbs. They did not return.

E Block and the Laundry

Beyond the corner where B and C blocks meet is E block, the newest building at Attica. It is reached either through a corridor running back from B mess hall, past the laundry building, or a corridor extending from the metal shops behind B block. The two corridors converge at right angles in a foyer from which a single corridor leads through a series of gates to E block. Behind E block

and the laundry building is another open yard adjacent to a gun tower on the wall.

From the metal shops, using the electric truck to batter down gates, a group of rebellious inmates headed toward E block. E block is intentionally out of touch with the nerve center of inmate life. Here are housed selected inmates who are part of the experimental DVR program. Many of those inmates are in DVR by virtue of the fact that they are invalids or in other ways suffer from physical or emotional handicaps. Many of them are older inmates.

A large number of E block inmates from the DVR program were in the dayroom on the ground floor engaged in conversation or card games. Correction Officer Peter Dominiak, the E block hall captain, heard the commotion in the metal shops from a distance and tried to call C block and Times Square. He was unable to get an answer and decided to lock the inmates of E block in their cells.

Correction Officer Jim Conway was posted in the foyer where the corridors from the metal shops and mess halls meet. From his post, Conway could see a crowd of inmates running through B tunnel to the metal shops and knew that the institution was out of control. He stayed at his post, ready to throw the keys to E block out a window as soon as he could be sure that correction officers were on the other side to catch them. Conway just could not understand why no one ever came.

Now inmates were banging down the door at Metal Shop 2, just down the tunnel from E block. Conway decided it was time for him to get out. At this point Dominiak received a call from Superintendent Mancusi, who ordered him to "keep cool." Minutes later, the distant noises turned into loud shouts and the sounds of gates crashing. Dominiak shouted, "Here they come," rounded up the officers and civilians, and took them out through the back door through E yard and out onto the road adjoining the wall. In his haste, Dominiak had left John Redfern, a civilian teacher, behind. Dominiak returned quickly to get Redfern and then disappeared again out the back door.

Inmates who had come from the metal shops crashed through the gates leading to E block with the aid of the forklift truck and iron radiators torn from the walls, only to find that E block was abandoned, except for the in-

mates in their cells. They began to apply sledgehammers to cell doors, freeing a few inmates who were anxious to get out. Soon, however, they discovered that the electric console containing the cell locking system was open. In an instant, the levers were tripped, all of the cell doors in E block were open, and the inmates were rounded up.³ Everyone was herded through the tunnels to D yard. Those too crippled or sick to walk were carried or wheeled out on swivel chairs.

From E block, inmates continued down the mess-hall tunnel to the next building, which houses the laundry on the lower floor and the barbershop upstairs. The inmates, officers, and civilians in the laundry learned there was serious trouble only when they heard glass breaking outside. White inmates working in the laundry, like whites elsewhere in the prison, thought that a race riot was in progress until they saw white inmates among those breaking into the laundry. While the rioters broke a hole in the front wall of the laundry building, most of the laundry crew were led out through the back door into the yard next to E block. The intruding inmates set fire to the laundry, but not before they had taken a large supply of towels, which were to become familiar headgear in D yard. A large number who had fled the metal shops also made their way to the yard near E block. Under a manned gun tower on the wall, they remained there about a half hour, before several inmates came through yelling, "Everybody to D block yard." It was not just a polite invitation; the inmates in the yard moved to D yard.

D Block, the State Shop and the School

D block faces C block across Times Square. At 9:00 A.M., the D block hall captain, Harrison ("Red") Whalen, was sitting in his office with his inmate clerk. Whalen, one of the strictest disciplinarians at Attica, was not well liked by the inmates, especially blacks, who claimed that Whalen was a racist. Correction Officer Larry Lyons was just out-

³The E block officers had tripped the levers locking the cells and had turned off the electric power. But the hall captain had never been instructed how to operate the emergency locking system and did not even have the key which would have made the lockbox inoperable. Thus, all the intruders had to do was turn the the power back on and trip the cell levers.

side the office in the D block hall. Other inmates were in their cells, having come from the commissary. Some were sweeping the galleries. Correction Officer John Stockholm was escorting 41 and 45 companies through D tunnel back to D block from breakfast. Correction Officers Philip K. ("Curly") Watkins and Art Smith were supervising a group of inmates engaged in their usual activities in D yard.

The D block inmates on galleries overlooking A yard, Whalen and Lyons in the hall captain's office, and Stockholm in D tunnel, all heard the noise in A yard and looked out in time to see Officers Zymowski and D'Archangelo climb up the platform and onto the catwalk. Whalen immediately locked the gates to D block, returned to his office, and called the administration building. Whalen's order from "down front" was to get all inmates who would come out of D yard and into their cells in D block. Whalen called Curly Watkins in D yard and told him to sound the bell for "in or out." He sent Officer Lyons up to the second and third tiers and told him to be prepared to supervise the return of inmates to their cells. Stockholm, in D tunnel, could see what was happening in A yard through the corridor windows. The inmates he was escorting crowded to the windows and would not keep moving. Not long afterward, the inmates from A block broke into Times Square, and from there rampaged down D tunnel.

Down D tunnel, Stockholm was hit hard on the head and neck and lost consciousness. He was left on the floor and the inmates ran on to D block. Red Whalen had unlocked the gates to the tunnel, in anticipation of inmates returning to their cells from D yard, and had not been able to relock them. The A block inmates poured through the gates and into D block. Among them was another member of 5 company, Elliot James ("L. D.") Barkley.

Barkley, a tall black from Rochester whose face, voice, and steel-rimmed "granny glasses" would soon be familiar to TV viewers, was 21 years old. With a history of drug use, he had been convicted at the age of 18 as a "youthful offender" for cashing a forged money order in a Rochester drugstore and sentenced to Elmira Reformatory for four years. Barkley had been paroled from Elmira in January 1970, but was returned to prison for parole violation. Barkley had been deeply immersed in political thought, but in September 1971 was not a member of any of the

Digitized from the collections of the New York State Library, Albany, NY.

established groups at Attica. Many inmates had heard his rhetoric at gatherings in the yard, but most had not taken him seriously.

It was just a few short weeks before that Barkley had been transferred from D block to 5 company for disciplinary reasons. Now, on his return to D block, he brought a broomstick down hard on Red Whalen's head.

Whalen went down, bleeding, but was protected by several white D block inmates, including his clerk. They were able to fend off the A block inmates and to place Whalen in the officers' washroom on the first floor of D block.

The intruders now spread out through D block, breaking glass and destroying the locking system. Several of them burst into D yard, announcing that they had taken over. Watkins and Smith were set upon there and hit with broomsticks, clubs, and shovels. Helpless, his arm broken by a blow from behind with a shovel, Watkins surrendered his stick, walked to a bench on the side of the yard, and sat down, in a daze. He saw Art Smith, lying unconscious on the sidewalk, lifted up by inmates and taken into the cellblock. The same inmates tried to persuade Watkins to come into D block as well. Watkins, stunned and in pain, decided he was safer in the yard. He took off his shirt and put on an inmate shirt, but refused to move. Curly Watkins did not know then what D yard was to become and that he was, in effect, the first hostage to reach D yard.

Back in D block, friendly inmates were able to drag John Stockholm, bleeding, up D tunnel and secrete him in a cell on 43 company. Then they went to the yard and brought Smith in, placing him in the next cell. The two officers were dressed in inmates' clothes.

Meanwhile, upstairs on 41 company, Officer Lyons had heard the commotion downstairs. He saw Smith and Watkins jumped in D yard and a gang of inmates spread out through the yard. An older black inmate, who had been in his cell on 41 company, offered to hide Lyons. But Lyons had custody of most of the D block keys, and he was confused as to what he should do. Finally, he locked himself into a cell on 41 company, but to no avail. Rioting inmates came onto the gallery and found Lyons. The older inmate who had offered him protection now escorted him safely to the yard. When his escort returned to 41 com-

pany to lock up his commissary items, he was jumped, called a "pig saver," and hit with clubs, breaking four ribs.

Downstairs, unaware that Lyons, not Whalen, had most of the D block keys, L. D. Barkley was trying to break down the door to the washroom to get again at Whalen. Finally, the door was broken open with sledgehammers and Whalen and the keys which he had were recovered. Badly hurt, Whalen was taken to D yard.

A short corridor behind D block leads directly to the auditorium, which also serves as the prison chapel. A corridor to the left of the auditorium leads to the state shop building, and one to the right, to the school. The tailor shop is on the second floor of the state shop building. A crew of 48 inmates were working in the tailor shop under the direction of Correction Officer John Dryer. Dryer, who was described by one of the tailor-shop inmates as a good officer, had come to A yard to pick up the inmates who worked in the shop at about 8:05 A.M.—earlier than usual.

Sometime after 9:00 A.M., an inmate came up to the tailor shop and said "the joint" was in an uproar. Many of the inmates did not believe it, since such rumors always persisted at Attica. They forgot about it until they heard the whistle about 15 minutes later. The first reaction of the inmates in the tailor shop was to ask Dryer what he wanted to do, although they were curious to find out what was going on. They decided to send one inmate down to look and he came back and reported that hostages were being taken. The tailor shop crew asked Dryer if he wanted them to take him safely out. But Dryer asked to be put in the back room and locked there, since everyone felt it would be over soon. The inmate did as Dryer requested and then left the tailor shop.

Soon afterward, a fire was started in the ground floor of the state shop. When some of the tailor-shop inmates saw the smoke, they quickly returned to the tailor shop to get Dryer out. They found him still locked in the rear room and offered to remove him, but he again declined. Bewildered, the inmates left the state-shop building. The state shop was completely gutted, although not before Dryer was rescued from the burning building by a crew of correction officers.

Inmates from D block rampaged through the auditorium, just behind the block, setting fire to the small altar

area and ripping out the organ pipes for use as weapons.⁴ The roof over the altar was destroyed.

The school building was the last area reached by inmates from D block. Warned by a breathless inmate runner, Correction Officer Fred Reisdorf, who was in charge of the first floor of the school, quickly went to the gate between the school and the chapel. He knew he did not have the key for that gate, but hoped he could lock it with another key. He succeeded, but before he could get back to his post, a band of inmates came from the direction of D block and crowded around the gate. They shouted for Reisdorf to reopen the gate, and one of them said, "We'll get you, you motherfucker."

Reisdorf now rounded up the 55 inmates and 6 civilian employees who were in the school and told the inmates that they had their choice of following him out the back way or staying in the school and taking their chances. By this time, they could hear things breaking and could see smoke billowing out of the tailor shop and the chapel down the corridor. Almost to a man, the inmates went with Reisdorf. Two inmates volunteered to return to the auditorium gate and jam it shut with a crowbar so that it could not be opened even with a key. When the rioters finally did break through into the school, it was deserted. No hostages were taken there.

The Toll

In the space of less than two hours, rebellious Attica inmates had taken 42 officers and civilians hostage, 7 in the Times Square area, 20 in the metal shops, 3 in B block, 5 in C block, 2 in D block, 1 in D yard, 3 in the commissary and 1 in the garage. They subsequently took 8 more.

Lieutenant Curtiss and Officer Huehn and Bogart had been barricaded in the 1 company cell in A block for over two hours. They had tried to signal to officers they could see across the courtyard in the administration building by waving a blue officer's shirt and flashing the light bulb on and off, but they were not noticed. They could hear in-

⁴There is no evidence that the inmates singled out the auditorium-chapel for destruction. They also set fire to other parts of the prison, including the state shop, the commissary, metal shops, and laundry.

mates roaming through the galleries of A block, opening cells and rounding up other inmates. Lieutenant Curtiss remembers hearing someone yell, "Squad 1, go to your area, squad 2 go to your area." At another point he heard a gas gun go off in the hall and for a moment thought that the correction officers were retaking the prison. Otherwise, A block was quiet.

During this time, the only contact the three officers on 1 company had with the outside world was in the person of the young white inmate, Barry Schwartz, who was the A block clerk. With a mop Schwartz cleaned up the blood on the floor outside the cell in which the three officers were locked. He told the officers to be quiet and "maybe they will forget you're here." Schwartz came back several times and told the three officers that the institution was being taken, that inmates were running wild. Finally, he came back and said, "They're headed back this way. You better get ready." Lieutenant Curtiss handed Schwartz his wallet for safekeeping. He got his wallet back some days later, but he never again saw Schwartz, who was killed by inmates during the uprising. (See pp. 283-87.)

Minutes later, a group of inmates with keys came through looking for stragglers and announcing that everyone was to go to D yard. Six of them came down 1 company and found the cell in which Curtiss, Huehn, and Bogart were barricaded. The three officers were ordered to surrender, but they refused. A discussion followed, during which the inmates exhibited a can of gasoline and threatened to burn the three officers out. At last the inmate whom Huehn knew assured them that they meant business but that the three officers would not be harmed if they came out of the cell and went along. Seeing that they had no choice, Officers Huehn and Bogart and Lieutenant Curtiss became hostages. They were blindfolded and led to D yard. The inmate kept his word; none of the three was harmed further.

The same group which found the three officers also discovered a group of six inmates, including Schwartz, who had hoped they could wait it out. Reluctantly, the six inmates went along to D yard. Most reluctant was Barry Schwartz.

Early Thursday afternoon—after C block had been retaken by the authorities—inmates scavenging wood in B yard discovered Wright, Zymowski, and D'Archangelo in

the toilet shack where they had been hiding. Initially, the officers refused to come out, but surrendered when inmates threatened to burn them out. In full view of officers in C block, who had been ordered by a sergeant to take no action, the three were led into D yard.⁵

Art Smith and John Stockholm, who had been hidden in cells in D block on Thursday morning, remained there 24 hours. On Friday morning, the inmates in D yard realized from news reports they were missing two hostages and began looking. The inmates who had hidden Smith and Stockholm reached them first and persuaded them it would be safer to come with them to D yard. They became the last two hostages.

Although 50 hostages were taken that day, 11 were released by the inmates themselves during the first hours of the uprising.

A short time after Curtiss, Huehn, and Bogart locked themselves in A block cell, a group of Muslim inmates appeared on the scene. Their leader, who was later to play a part as a member of the inmate negotiating committee, went forward to the gate separating A block from the administration building. On the other side of the gate was Deputy Superintendent Vincent and a group of officers armed with shotguns. The Muslim leader told them that he had Quinn and that Quinn was badly hurt. He offered to arrange to let Quinn out through the front gate.

Before the gate was locked, the Muslims reappeared and told Vincent, "Wait, we've got some others." They went to the cells in which Officers Melven, Rosecrans, Kelsey, Tolbert, Murray, and Morgan were locked. "When we open these doors," they told them, "you move!" But when the levers were pulled, the officers were afraid to move. It took some persuasive talking and then some pulling on the part of the Muslims before the officers left the cells and went through the front gate to safety. Kelsey and Rosecrans were assisting Melven, who was too dazed to walk.

Four other hostages—Bogart, Clute, Delaney, and Jennings—were released from D yard by inmates early Thursday afternoon, all seriously injured, and rushed to hos-

⁵D'Archangelo died on the catwalks from gunshot wounds during the police assault on September 13.

pitals. In all, 32 Attica employees were injured during the uprising on September 9. The injuries ranged from bruises, cuts, and tear-gas burns to severe lacerations requiring numerous stitches, concussions, and broken bones.⁶ Numerous inmates who had resisted or been in the way of the rebels were also hurt.⁷

Seven correction officers were injured seriously enough to require hospitalization. For one of them, 28-year-old William Quinn, it was too late. He died two days later at Northside General Hospital in Rochester of "severe head injuries," according to the report of the Monroe County Medical Examiner.⁸ Quinn was not thrown from a window or down a flight of stairs, nor did he die of a heart attack. He had been struck on the head when inmates first broke into Times Square.

The first hours of violence on September 9 left many parts of the facility in shambles. In addition to the complete destruction of the state shop and part of the auditorium by fire, there was extensive fire, smoke, and heat damage in the school, metal shops, commissary, and laundry. The upstairs portion of Metal 1 was gutted and the heat was so intense that glass melted in the windows. In B and D blocks the Van Dorn locking systems were destroyed; mattresses and other cell furniture were removed to D yard; plumbing fixtures were broken. Throughout the institution, gates, bars, and door handles were battered and bent beyond repair; glass door panes, windows, and light fixtures were smashed; heavy wooden doors and beams were hacked to pieces. Electrical and telephone wiring was ripped or burned out in many places. As of the date of this report much of the damage has been repaired and reconstruction of destroyed facilities was in progress. By August 1972 The Department of Correctional Services estimated that the full extent of the damage would total over \$2 million.

By 10:30 A.M. on Thursday, September 9, 1971, 1,281

⁶For a listing of employee injuries, see appendix F.

⁷Because no inmates were immediately treated in permanent facilities, it is impossible to determine the exact number or extent of those injuries.

⁸The Commission's pathologist, Dr. Alan Moritz, agrees. He concluded that "Quinn died of extensive blunt injuries of his head and brain" sustained at least two days prior to death.

inmates out of Attica's population of 2,243 had assembled in D block yard. Rebellious inmates controlled, at least nominally, all five cellblocks, the metal shops, the state shop, auditorium, school, and commissary. The only portions of the facility securely under control of the authorities were the administration and reception buildings, the hospital, the mess halls, and the kitchen.

Most important, inmates controlled Times Square, and hence, access to all of the yards and the tunnels which connect them.

Now, some two hours after the initial outburst in A tunnel, the authorities began the first organized efforts to regain a measure of control.

Chapter 7

Attica Regained—Partly

As off-duty correction officers arrived in response to the powerhouse whistle, they were instructed to proceed to the arsenal in the administration building to draw weapons. Before the morning was out, the stock of operable firearms was depleted and, according to Deputy Superintendent Leon Vincent, officers were permitted, in fact encouraged by the administration, to bring in their personal weapons and ammunition. In addition, a supply of ax handles and riot helmets was obtained from a storage area in the rear of the prison.

At first, arriving officers were told to stand by in front of the administration building for an immediate effort to reassert full control. When it became apparent, however, that the inmates had taken almost the entire institution, the retaking was put off to await the arrival of sufficient numbers of State Police.

Major John Monahan, the commander of Troop A of the State Police in nearby Batavia, arrived on the scene at about 10:00 A.M. In addition to summoning 200 police officers from his own troop, Monahan requested that a call go out for troopers from all over the state, with a view toward marshaling a force of 550 men at Attica. Monahan

believed that a contingent of at least 350 troopers was necessary to retake the entire institution without undue danger to his men.

While the State Police forces were being mobilized, small groups of correction officers—later supplemented by the first of the arriving troopers—began limited efforts to recapture parts of the institution. With no master strategy or centralized command, they proceeded cautiously into areas where groups of nonparticipating inmates had gathered or which had been abandoned by the rioters.

Responding to a call from the powerhouse, a contingent of 15 armed correction officers under the command of Sergeant James Cochrane was dispatched along the road running parallel to the inside of the prison wall, to rescue the officer trapped in the tailor shop on the second floor of the burning state-shop building behind D block. The rescue party worked at the bars over the windows with saws, sledgehammers, and pickaxes, and ultimately attempted to pull the bars out with chains and a truck obtained from the garage. Eventually, they were able to force an opening in the bars large enough for the officer to be pulled to safety. The same contingent then led the large group of inmates who had escaped from the school to a secure area of the prison.

Joining another contingent led by Sergeant Jack English, Sergeant Cochrane's group next went from the administration building to the hospital, behind C block, where they evacuated more than a hundred inmates who had been working there or had been on sick call. They left them under armed guard in the yard outside the hospital.¹

The two sergeants next took their contingent to the door near E block, at the intersection of corridors leading to the mess halls and the metal shops, known at Attica as "the ice-cream door."² Holding their weapons ready, the officers cautiously opened the door from the outside, but, seeing armed inmates in the shop corridor, hastily slammed and locked it. The group moved instead to the mess halls, entering A mess through a rear door.

The mess halls and adjacent kitchen and bakery were of immediate concern, since access by rioting inmates to

¹These and 860 other inmates who were apprehended were re-housed in C and E blocks later in the day.

²This was the door through which ice cream was delivered prior to the building of E block in 1966.

food supplies might well encourage prolongation of the uprising. More important, if the kitchen utensils fell into the hands of rioting inmates, they could become instruments of death to the hostages and to the remaining correction officers who, as nearly all of them still believed, would soon be called upon to put down the uprising by force.

The Cochrane-English contingent evacuated the inmate kitchen and mess-hall crews to the hospital yard and secured A mess hall, which was still filled with tear gas from the confrontation which had taken place in the adjacent corridor. Some of them then entered B mess hall from the rear and found it deserted. However, they noticed inmates in the corridor outside the front door intently trying to force open B mess gate with an acetylene torch. One officer shouted to the inmates to leave and then fired a burst from his Thompson submachine gun high into the front wall of the mess hall. The inmates fled, clearing the corridor between C and E blocks, and B mess hall was secured. The officers thereafter passed the Thompson around among them, hoping to cover up the identity of the man who had fired it.

Shooting also erupted during the retaking of C block, which Sergeants English and Cochrane, on their own initiative, determined to attempt shortly before noon. Leaving A mess hall, the group under their command proceeded to the officers' mess, where they freed a colleague who had hidden himself in a storage room, and, turning right, moved down the corridor to C block. There they encountered a young obese inmate clad in a football helmet and carrying a baseball bat and a pail. When the uprising began, he had eagerly joined in looting the officers' mess, filling a pail full of sweets and other foods never available to inmates. He had retired to his cell to eat, while the rebellion moved on to D yard. Now he was returning to the officers' mess for more when he was apprehended and subdued by the advancing officers.

Moving on to the C block galleries, the officers found them virtually deserted. Three or four inmates were found on one of the galleries and were reluctant to move. At least one shot was fired down a gallery in an attempt to flush out any remaining inmates. No one was injured, and Officer Henry Herrick, who had been locked in a washroom by friendly inmates three hours earlier, was

released. When a contingent of troopers arrived at C block shortly thereafter, the block was already secure.

The discharge of firearms in retaking the mess halls and C block remained unknown to the authorities for many months. Deputy Superintendent Leon Vincent and Assistant Deputy Superintendent Karl Pfeil both had no knowledge of the shooting when interviewed in March 1972. And Governor Rockefeller told the Commission that he "was very impressed with the way the State Police with the support of guards had released or freed the first three blocks, 960 inmates, without the use of any fire-power, only with gas and batons or whatever they had."

Once troopers had arrived, a combined group of correction officers and troopers again opened the "ice-cream door." This time little inmate activity was observed in the shop corridors, and after posting guards at the end of the corridor, the group entered E block. There they found only two sick inmates who had been left behind by the intruding rebels. From E block, a portion of the joint contingent proceeded down the shop corridor to the metal shops, which were by now also deserted. They found only heaps of clothing of the officers and civilians who had been stripped and taken hostage hours before. The metal shops were retaken and armed troopers posted there throughout the next four days.

All morning, inmates had ranged through A block while armed correction officers at the gate separating the block from the administration building observed, but took no action. But when a contingent of correction officers from the Auburn Correctional Facility arrived at about noon in response to a call for help, they went directly to the A block gate. Without seeking instructions from anyone, Correction Lieutenant Nelson Steinbaugh, leader of the Auburn group (a former officer at Attica), obtained the keys to the gate. Steinbaugh directed correction officers to cover him, unlocked the gate, and walked across the hall captain's area to the A tunnel gate and locked it, securing the block. Soon afterward, Lieutenant Steinbaugh's group and a squad of state troopers cleared A block and returned to custody about 25 inmates caught there.

Once A and C blocks had been retaken, the officers holding them assumed positions along the galleries, from which they were able to observe inmate activities in the

yards. What they saw was mass confusion. Lieutenant Steinbaugh said there were no indications of concerted activity—inmates were running about in all directions, joking, eating ice cream taken from the officers' mess, and in general acting like a group of pranksters whose lark would soon be over. The supervisory officers in both blocks independently recommended to officials in the administration building that an immediate incursion be made down C and A corridors to retake Times Square. But their recommendations were rejected; they were ordered to hold their positions, but to proceed no further and to avoid confrontations with inmates which might endanger the hostages in D yard.

At about 12:30 P.M., a new group of about 20 troopers and correction officers led by Correction Lieutenant Lamar Clor was sent to the powerhouse to evacuate inmates who had refused to leave. The inmates feared being accused of having participated in the uprising. Lieutenant Clor was able to accomplish his assignment without force only after signing his name to a list of the inmates in the powerhouse, attesting that to his knowledge they had taken no part in the uprising.

Lieutenant Clor's detail next moved to the Ponderosa and escorted the large group of inmates gathered there to E block. Leaving four troopers to guard the Ponderosa, the contingent moved on to the garage, securing it, and from there into the metal-shop corridor in front of the garage, in the direction of B block.

The troopers accompanying Lieutenant Clor carried a two-way radio to the State Police command post in the administration building, but they had temporary trouble keeping in contact. As he proceeded toward B block, Lieutenant Clor sent Sergeant English back to the garage to telephone the administration building. When English reported that they had reached B block, he was told that the group should retreat to the shop corridor. While English was gone, radio communications were reestablished and Lieutenant Clor was given the same order. Clor's detail withdrew from the B block area, eventually taking up a position in the shop corridor, which was maintained as a security post for the duration of the disturbance.

The decision to withdraw from the B block area has engendered bitterness among many correction officers. They believe they could have retaken and held B block with the

manpower then available and that control of B block would have given them an immense tactical advantage over the inmates, if not the strategic position from which a successful retaking of D yard could have been launched. In addition, many correction officers feel that had the authorities been in control of B block, the taking of the three hostages in the B yard toilet shack that afternoon might have been averted.

Many correction officers blame Commissioner Oswald for the decision to withdraw from B block, believing that he had opted to negotiate with inmates, rather than to take vigorous action. However, the Commissioner had not yet arrived at Attica and the decision was in fact made by Major Monahan, who feared that the skeleton force under Lieutenant Clor was too small and once deployed throughout B block, its members could have been overpowered and relieved of their weapons. Thus, the decision was based on the purely tactical ground that the authorities felt that they did not possess sufficient manpower to retake the entire institution and provide security. The number of troopers they considered necessary did not arrive until late afternoon, by which time negotiations had already commenced.

By midafternoon the authorities had reestablished control in those areas which the rebels had deserted. Inmates still held B and D blocks, the exercise yards, and the tunnels and catwalks. They would remain in control of those areas until the following Monday.

Chapter 8

D Yard: The Beginnings

A "Party Atmosphere"

It was 11:00 A.M. and D yard was filled with a milling throng of close to 1,300 men. Inmates roamed the yard, looking for friends, curious as to what was happening. Small groups of inmates stood around, talking quietly among themselves. White inmates clustered together, still

afraid they were in the midst of a race riot. Others partook in the booty of the commissary—cigarettes, candy bars, and other food—which was still being brought out in cartons, wheelbarrows, and garbage cans and heaped in the center of the yard. While some helped themselves to food and cigarettes, in a corner of the yard near Times Square a small group of inmates was experimenting with pills and other drugs taken from medicine chests in B and D blocks. To stragglers first entering the yard, the scene appeared, as one inmate testified, like “something bordering on a party atmosphere.”

The 1,281 inmates who assembled in D yard on September 13 differed in some respects from the total population of Attica. They were slightly younger, had a slightly lower level of education, and included higher percentages of men from urban areas and recent arrivals into the prison system, than the overall population of the institution. There was a 10 percent higher proportion of blacks and Puerto Ricans among the inmates in D yard than there was at Attica as a whole. Blacks constituted 63.8 percent of the D yard population and Puerto Ricans another 9.5 percent.¹

Many inmates report that during that first hour in the yard they were still in a state of shock, unable to comprehend what was happening. For some, the exuberance of unaccustomed freedom was tempered with apprehension—fear that violence would flare up again, violence from other inmates or from the authorities attempting to regain control—and uncertainty about what was going to happen next.

For the last few hostages to enter D yard, however, it was different. Most of them naked, or wearing only underwear, socks, and shoes, they were told to hurry through the door and across the yard toward the far corner.² Inmates shouted at them and prodded them along. As Correction Officer Richard Fargo entered D yard, his watch was ripped from his wrist. As he ran across the yard, he was hit on the head by an inmate wielding a long-handled shovel and another swinging a machinist's hammer, and sank to his knees. The inmate escorting him yanked him

¹The complete statistics on the make-up of the D yard population are presented in appendix B.

²Some senior officers, such as Curtiss and Wald, were never stripped.

up, yelling, "Come on, run." Red Whalen, the D block hall captain who had already been hurt when inmates burst into his block, was hit again with a club as he crossed D yard. In all, for most of the hostages, the first minutes in the yard were no party.

While inmates milled about in utter disorganization, a small group of well-disciplined Muslims kept careful guard over the hostages in the corner of the yard. The Muslims took blankets and sheets from D block cells, and brought them to those hostages who had been stripped and insisted that they "cover their nakedness." They formed a cordon around the hostages, keeping away those bent on still further venting of their pent-up anger. The Muslims had their hands full, as more than a few inmates tried to get at the hostages, shouting, "Kill the pigs."

Pulling Together

There is a breed of men in prison known as "inmate lawyers." These are inmates who have no formal training in the law but who have become knowledgeable about decisions of interest to inmates. They assist other inmates in preparing petitions attacking their convictions, and are generally held in great esteem by the population of the institution. There were several such men at Attica in September 1971, including 38-year-old Roger Champen.

In his cell in D block Champen, known as "Champ," had sat deep in thought while Attica exploded around him.³ Having served 13 of his 20-to-30-year sentence for robbery at Attica, he was widely known and respected not only among inmates of his own race, but among whites as well. For years, he had conducted law classes in the yards and recently attendance had risen. As Champ had sat there, listening and thinking, numerous inmates had run up to his cell asking him what to do. Finally, he had taken his jacket, his watch and cigarettes, and left his cell.

When Champ entered the yard, he saw "hundreds of people milling around." He walked to a corner of the yard, sat down and thought again. At last, he made up his mind and approached the center of the throng. He pushed his way through the crowd and saw that someone had an

³Parts of the following account and the quotes are taken from a letter written by Champen to the Fortune Society on October 17, 1971, and publicly released by the society.

officer's bullhorn. He took the bullhorn and began to address his fellow inmates. As he later wrote:

I could see that if someone did not take command soon the people would be fighting each other, for already arguments were beginning over cartons of cigarettes, etc. As I began to speak everyone stopped what they were doing and moved to where I was standing. Someone placed a table near me and I stood up on it. I spoke for ten minutes and requested that the hostages be brought into the center of the yard, seating the people around them.

Indeed, numerous inmates told the Commission that after about an hour of chaos and disorganization, Champ jumped on a table and called for quiet. Finally, the inmates began to calm down and listen. "We've got to pull ourselves together," Champ told them. Thereupon, he began issuing instructions. One group was dispatched into the cellblocks for blankets and bedding. Another detail completed the orderly stripping of the commissary. Others began breaking up tables and benches for firewood, collecting keys, obtaining water cans from the air-raid shelters.

Moving the hostages into the center of the yard created a major confrontation among inmates. The Muslims had been guarding them closely in the corner, under the television set, and had resolved that they should not be harmed. In fact, several hostages say they were told by their Muslim guards that they were sworn to defend the hostages with their lives. The Muslims were opposed to moving them into the center of the yard. Those in favor of the move argued that only if the hostages were out in plain view and in the center of the inmates would they serve their purpose of preventing an armed assault.

Finally, a compromise was reached. First, five, then the entire group of hostages were moved to an area in the center of the yard. They were blindfolded, their hands were tied, and they were made to sit on the ground. Soon they were given inmate clothing. A circle of benches was placed around them and, inside the circle, a ring of Muslim guards took up positions, facing outward, armed with steel bars, clubs, and homemade spears. There they were to remain until Monday morning.

After the hostages were moved to the center of the yard, one inmate spoke on the bullhorn. "This is not a

race riot. We are all in this together," he said. "There are no white inmates, no black inmates, no Puerto Rican inmates. There are only inmates."

Now, inmate after inmate jumped up on the table and took the bullhorn, extolling brotherhood among inmates and calling for the presentation of demands for reform. The speakers were principally those men to whom other inmates naturally turn for guidance and advice: outstanding athletes, leaders of political groups, men with experience in uprisings at other institutions, and, of course, the "inmate lawyers." After one speaker finished, often an inmate would shout the name of another who was asked to speak. Some, who were approaching parole dates or facing charges connected with other prison disturbances, had to be pushed forward to take the bullhorn. In this way, say many inmates, certain men naturally emerged as "spokesmen."

Each man who spoke that morning insisted he was not a "leader," but merely a "spokesman." Inmates were told that everyone in the yard was a leader.

One of the speakers told the assembly, "This is not a picnic, we've got to get serious," and laid down some strict rules: the hostages were not to be harmed; drugs were forbidden and drugs or syringes were to be surrendered in the center of the yard; homosexual relations, even by consent, would detract from the gravity of the situation and were outlawed; fighting among inmates was prohibited. Inmates recall hearing it said on the bullhorn that the penalty for violation of any of these rules was to be death. Restrictions were also placed on inmates' movements; B and D blocks were declared off limits and no one was allowed to leave D yard without a pass. The pass necessary to leave the yard was precisely the same form used by the institution to allow trusted inmates to move about the prison without escorts. Indeed, a frequent observation of inmates interviewed was that in many respects the inmates' society in D yard was arranged in the same way that the authorities, against whom they were rebelling, ran Attica.

According to many who were there, the cooperation among inmates on rules, treatment of hostages, and organization in the yard was the result of high-level negotiation that morning in the yard, among the leaders of the various factions in the prison. Panthers, Young Lords,

Five Percenters, and Muslims formed an uneasy alliance in D yard that morning. They agreed, for the moment, to put aside their differences and join forces toward a common end. It was a coalition which the Attica authorities said later they had seen in the making and which they had feared for some time prior to September. During their first hours in the yard, inmates said, the leaders of various organizations were vying for authority, jumping on the table, and, in one inmate's words, "playing king of the mountain." Despite the cooperation among the different factions, this rivalry for attention continued throughout the four days, particularly when the television cameramen entered the yard.

The Security Guard

Burying the hatchet of group rivalry permitted another development in the first hours: the formation of a unified internal police force—the "security guard." The first call on the bullhorn for those interested in forming a patrol force brought 50 immediate volunteers. One inmate, a former football player, became "chief of security" and he, in turn, chose several lieutenants. From Thursday morning through Monday, as many as 300 acted as part of the security guard at one time or another, according to many inmate estimates.

The first guards were strictly volunteers. Some inmates said in interviews that they volunteered in order to have better access to cigarettes and food, since one of the guards' first tasks was to set up a kitchen area and guard the food supplies. Others said they volunteered in order to get first choice of the mattresses, blankets, and sheets being thrown down from the cellblocks and piled in the yard. Others admit that they became security guards because they wanted to feel powerful and important or just to be part of what was going on. Finally, some said they volunteered simply in order to avoid boredom. More than one inmate reported that he volunteered to be a security guard but was rejected.

Not long after the security guard went into operation, it became apparent that the makeup of the cadre was almost entirely black. In order to rectify that, Sam Melville and other white inmates were enlisted to recruit whites

into the security guard and a similar effort was made with Spanish-speaking inmates.

Some inmates indicated they acquiesced in requests to join only out of fear, while others said they were surprised that their services were wanted and readily joined. Several told the Commission that they were asked to become security guards and were able to refuse without penalty.

As the days progressed, the role of the security guard expanded and its organization became more sophisticated. From the beginning, the guards roamed through the yard, guarded the two exits from the yard around the clock, and patrolled the catwalks, the tunnels, and Times Square. They watched for and broke up fights among inmates and surrounded the drug supplies to prevent pilfering. On Thursday, they organized a fire detail which doused some of the fires inmates had set in the school, the auditorium, and the officers' platform in D yard itself. Some collected weapons and stockpiled them under blankets, while others set to work making new weapons in the machine shop of the school. Later on Thursday, a "liberating squad" was organized for the announced purpose of "freeing the brothers in C block," after a rumor spread that inmates still housed there were being gassed. The "liberating squad" never went into action.

Later on, the security guards divided into separate squads, designated by colored armbands, to patrol different areas and perform different functions. For example, those on night patrol wore white armbands; red signified guards permitted access to D and B blocks; and there were green armbands for those escorting and protecting the outside observers. In addition to armbands, many security guards wore football helmets or masks made from towels and sheets. And each of them carried some sort of weapon.

One young inmate, who told the Commission he was an active security guard, listed the following as the duties he performed during the four days: preventing looting of cells in D block; standing near A tunnel door to prevent access to A block; protecting a young inmate from homosexual attack; escorting Commissioner Oswald to and from the yard; collecting cigarettes so they could be distributed equitably; bringing blankets into the yard from the blocks; handing water and cigarettes through cell

windows to inmates locked in C block; helping to hook up loudspeakers in preparation for the appearance of the observers; and gathering wood for campfires in the yard.

A significant function of the security guards throughout the four days was to keep the 1,281 inmates within the confines of D block yard. Many inmates told their interviewers they would have left the yard if they had been free to do so, although some of these statements may be prompted by fear of admitting sympathy with the uprising. The fact is that few inmates were willing to try to leave. As one inmate testified, after saying that he would have left the yard if he could have: "I wasn't about to go and try to get out of the yard with the security guard and everything around, so I figured I might as well go around with the crowd and stay alive longer."

Security guards on the catwalks began to construct barricades out of furniture and wire, while another group formed an outer perimeter around the hostages, distinct from the Muslim inner circle.

Another force of inmates, small in comparison with those in the yard, ruled the domain inside B and D blocks and was rarely seen outside in D yard. Many of these inmates were identified with the Five Percenter group and they followed their own leaders, not the "spokesmen" in the yard. Indeed, several inmates who were in D yard said that these men really held the power and that many of the nominal "spokesmen" were under their control.

Medical Attention and Release of Injured Hostages

As the rudimentary inmate society began to take form in D yard, it soon became apparent that it faced a medical problem of major proportions. Hostages and inmates alike had been injured during the initial violence, some of the hostages quite seriously. In addition to traumatic injuries, numerous inmates and hostages required medication for chronic conditions such as diabetes, asthma, and epilepsy. Within the first few hours, a call went over the bullhorn for volunteers with first-aid experience, and the half-dozen inmates who responded set to work tearing up sheets to bandage bleeding hostages. But medical supplies and experienced help were obviously needed.

Soon after Captain Frank "Pappy" Wald entered the

yard as a hostage, inmates came up to him and said, "We need medical help out here and you are the only one who can get it." Wald was taken to the A block gate and shouted down to correction officers in the administration building, describing the hostages' injuries and asking for medication and a doctor.

Frank Stollo, another one of the hostages, also said that he was picked out of the hostage circle Thursday morning for a trip to get medical supplies. Stollo was given shoes and a razor was put to his throat. "If you want to see your kids again, no false moves," he was told. He was taken to C block blindfolded and made to yell to Lieutenant Maroney outside and request medical supplies and an inmate nurse.

Back in the yard, arguments raged among inmates over whether to release injured hostages. Eventually, four injured hostages were released from the yard Thursday morning. An inmate who helped carry one of them from the yard testified how it happened:

We started arguing about—some guys said, "Don't let them out, keep the hurt officers."

Some said, "Let them out."

So it finally wound up to where it was agreed, everybody would take them out. So I carried one officer out, me and about four other fellows carried him out on a stretcher.

He acted like he was suffering from shock. This is what one of the inmates said, that he was in a state of shock.

We had trouble getting him in, even in there to the guards. They were standing there with rifles and the warden, he didn't even offer anyone—"Do you want to stay or do you want to go?" Personally, I went back myself.

He didn't even offer no one. Not even that opportunity.

The inmates' request for medical supplies and an inmate nurse did not go unheeded. The call was answered by Walter C. "Tiny" Swift, a 47-year-old inmate doing a life sentence for first-degree murder. On September 9, 1971, he was the head nurse on the four-to-twelve shift.

When a call came to the prison hospital from the administration building at 10:30 on Thursday morning, asking for a volunteer to take insulin to diabetics in the yard, Swift immediately volunteered. But he decided to take more in his bag than insulin, just in case. When he reached D yard, he saw several officers on stretchers or mat-

tresses, bleeding or in shock. One injured hostage had already been released from the yard. Swift administered pain-killing drugs, but immediately began arguing with the security guards that at least one of the hostages had to be released or he would die. After consultation, the inmates in charge agreed and Swift supervised his evacuation.

Back in the administration building, Assistant Deputy Superintendent Swift found Pfeil and told him he was going back into the yard permanently. Pfeil argued that Swift should not take the risk, but he would not be dissuaded. Tiny Swift returned to the yard at about 11:30 with a supply of drugs and other medicines. He set up a permanent medical aid station in one corner which was to remain active for the next four days.

Swift secured the release of two more injured hostages later in the day after lengthy arguments, first with inmate security guards, then with the committee of "spokesmen." Later that day, Swift was able to secure the release of some inmates who had been injured in the uprising or who had been forced to the yard despite chronic ailments and disabilities.⁴

For the next four days, Swift, assisted by inmate volunteers, remained in the yard treating hostages and inmates, administering medical aid, seeing to it that diabetics received their insulin, dispensing to other inmates their regular medication, and even stitching up several gaping cuts, although he had never sutured a wound in his life before. Swift slept only a few hours during the four days of the uprising.⁵

The medical needs of the inmates and hostages could not be met by an inmate nurse alone. On Thursday evening, and for several hours on each of the two succeeding days, they were treated by Dr. Warren Hanson, a surgeon from Wyoming County Hospital in nearby Warsaw. Hanson had been asked to come to Attica Thursday afternoon to relieve other doctors who, he was told, had been there all day. When Dr. Hanson arrived at the institution, no one seemed to know anything about the physical condition of

⁴Other old or disabled inmates were not released, but were escorted to a gallery in D block and remained there as an "invalid company" throughout most of the four days.

⁵For his services, Swift was granted executive clemency from his life sentence by Governor Rockefeller, and on January 25, 1972, was released on parole.

the hostages in the yard. Dr. Hanson prevailed upon the authorities to allow him in the yard after receiving assurances of safe-conduct from the inmates.

On each of his visits to the yard on Thursday, Friday, and Saturday, Dr. Hanson spent several hours making medical rounds with Tiny Swift, dispensing drugs, changing dressings, and caring for hostages and inmates alike. Dr. Hanson's earnest interest in all his patients made an impression on the inmates, who were accustomed to the impersonal regime of the prison hospital. By Saturday, inmates were requesting Hanson to become the regular physician at the facility.

On all his visits Dr. Hanson carefully checked the condition of the hostages. As he later testified:

After all the rumors I heard, I was quite pleased to find they were in quite good shape. A number of them had wounds and injuries of different kinds, but they were not life-threatening.

Upon leaving the yard on each visit, Dr. Hanson went directly to Superintendent Mancusi's office to report the condition of the hostages to Commissioners Oswald and Dunbar.

"Hanging Back" and the "Immediate Demands"

Despite the variety of activities in the yard Thursday afternoon—the food and blanket details, the organization of the security guard, the medical aid station—a vast group of inmates, probably the majority, took no part. Even considering the natural reluctance of most inmates to admit active participation in activities in the yard, the noninvolvement of a large group is apparent from talking to inmates, hostages, and observers alike. A great many inmates simply kept away from the center of the yard, sat in small clusters near the walls or the handball court, and made their own tents and campfires. As light faded on Thursday afternoon, some of them would leave the turf they had staked out, but only for as long as it took to get mattresses or blankets for themselves and their tentmates, or to use the hastily dug latrine. When, twice a day, a security guard came around with a bullhorn announcing mess call, they would line up at the food station near the center of the yard to receive their rations of juice, sand-

wiches, coffee, and, on one occasion, hot goulash. They would be sure, however, never to leave their tent unguarded. And when observers or negotiators came into the yard, or when an announcement was to be made by the committee, many of them had to be herded toward the negotiating tables by security guards. Some went forward, but maintained afterward that they never paid attention.

The public testimony of one 26-year-old white inmate was typical of the responses of a large number of inmates. He said that he never volunteered to do anything while he was in the yard; that most of the time he sat in a tent with 22 other inmates, whites, blacks, and Puerto Ricans, who "pretty much stayed around to our own selves, you know"; he passed the hours talking and playing cards and did not go near the negotiating table or pay much attention to what was happening; his basic concern was that he wanted to get out of the yard alive. Captain Wald, one of the hostages, aptly described the contrasts among inmates, although his estimates of number may be inaccurate:

There were different groups that were out in the center and of course we couldn't hear what they were saying except that they would get up and make a lot of war talk and then everybody would cheer a little bit, not all, but the group that was around there, and there were quite a number of inmates that got off by themselves, I would imagine they were frightened to be out there and thought probably this was some form of protection.

I had an idea that probably about 200 were running the show out there in one capacity or another and the other thousand were perhaps out there against their will. . . . Hanging back. Quite a number didn't seem to be in it. They were just out there.

However many were "hanging back," a group of about a dozen inmates clearly were not. Once the initial rhetoric had subsided, they threw some tables together and began drafting demands. Inmates with typing ability and those with legal background were enlisted to help. Typewriters appeared from the block offices and from the school.

After much writing, arguing, rewriting, and typing, L. D. Barkley took the bullhorn and addressed the 40 to 50 inmates who had gathered around the table. He read

six "Immediate Demands," addressed to "Richard N. Nixon" and "Nelson Rockefeller":⁶

1. We want Complete Amnesty. Meaning freedom for all and from all physical, mental and legal reprisals.
2. We want now speedy and safe transportation out of confinement, to a Non-Imperialistic country.
3. We demand that Fed. Government intervine, so that we will be under direct Fed. Jurisdiction.
4. We demand the reconstruction of Attica Prison to be done by Inmates and/or inmates supervision.
5. We urgently demand immediate negotiation thru Wm. M. Kunstler, Attorney at Law—588 Ninth Ave., New York City., Assemblyman Arthur O. Eve, of Buffalo, New York. The Solidarity Prison Committee, Minister Farrekhan of M.S. Palante, the Young Lords Party Paper, the Black Panther Party. [Clarence Jones, of Amster News]. Tom Wicker, of the New York Times, Richard Roth from the Courier Express, The Fortune Society., Dave Anderson of the Urban League of Rochester, New York., Blond Eva-Bond Nicap., and Jim Ingram of Democratic Chronicle of Detroit, Mic.
6. We intensely demand that all Communication will be conducted in "OUR" Doman "GUARANTEE ING SAFE TRANSPORTATION TO AND FROM."

The Immediate Demands were approved by acclaim by the assembled group who heard them read. In later interviews, however, inmate reactions to them varied widely. Many said they were completely unaware of the demands, or paid no attention to them. Although inmate attitudes toward the demands for amnesty and transportation to a "Non-Imperialistic country" were to change markedly with later events, the public testimony of one 40-year-old black inmate is typical of the initial reaction of many inmates who shouted acclaim to these first demands:

Well the amnesty was possible at that point, but leaving this country was a little too far out.

But the amnesty at that point could [be achieved] because it was just a matter of property. There was a few

⁶The demands are reprinted here verbatim.

assaults on officers, but they had—it didn't amount to anything. No one was really seriously hurt.

In contrast, the testimony of a 36-year-old white inmate doing 20 years for robbery, captures the essence of the feelings of the uninvolved:

Well, I think the actual expectations, what individual inmates wanted, varied. There were guys in there that all they wanted was more pink ice cream, we will say, and there were guys in there that were concerned about getting cake in the mess hall and there were guys that were deeply concerned about improving the parole system and trying to get fresh minds into the institution; to do something about rehabilitation.

I got the impression myself that there wasn't any real consensus between any more than 50 people. I don't think you could have gotten 50 people that could have agreed on any one point.

Consensus or no consensus, it was that group of Immediate Demands that were presented to Assemblyman Arthur O. Eve and Professor Herman Schwartz, the first two outsiders to enter D yard Thursday afternoon.

Part III

The Negotiations

Summary

The tradition in correctional institutions is not to negotiate with inmates holding hostages. This policy is intended to discourage taking hostages, an ever-present danger in institutions in which sometimes as many as 80 inmates are in the custody of one officer.

Based on this tradition, the staff at Attica expected that the prison would be retaken immediately, regardless of the danger to hostages. Instead Commissioner Oswald negotiated with an informally elected inmate committee for four days, seeking a peaceful solution to the uprising.

The negotiations were not planned—they just developed. When the Commissioner first arrived, the police were not prepared to retake the prison. By the time sufficient assault forces had been summoned, the negotiations were under way and the Commissioner chose to continue them, reluctant to the end to undertake any action which would imperil lives. With little time for deliberation, decisions were made by the Commissioner, against the advice of his aides, to admit the press, to conduct negotiations through citizen observers, to grant some concessions, and to refuse others.

A settlement based on a series of penal reform measures—the 28 Points—was negotiated by the Commissioner with the observers, but was rejected by the inmates on Saturday night because criminal amnesty was not included. With that rejection, the negotiations were, in effect, dead, and the observers placed their remaining hopes in a plea to the Governor to come to Attica. Believing that no purpose would be served by his appearance, the Governor refused. After the inmates rejected a last-minute appeal on Monday morning to accept the 28 Points, Oswald, with the Governor's concurrence, ordered the assault four days, almost to the hour, after the uprising began.

Why did the efforts at peaceful settlement fail? Pursu-

ant to its mandate, the Commission sought the answer in interviews with inmates, observers, state officials, including the Governor and Commissioner Oswald, and others who visited the inmate stronghold in D yard. The Commission also examined notes made by various parties to the negotiations, and listened to recordings and viewed videotapes of some of the speeches by observers, inmates, and hostages in D yard.

In the Commission's judgment, many factors contributed to the failure of the negotiations, including the following:

Negotiating Conditions: There was no effective mechanism to conduct negotiations. Mistrustful of one another, inmates were unwilling to vest their committee with authority to negotiate an agreement or to permit the committee to negotiate on neutral grounds. All negotiations had to be conducted in D yard in front of over 1,200 inmates, hostages, newsmen, and television cameras.

Votes by inmates on their demands and the 28 Points were informal and haphazard at best, with the loudest voices sometimes carrying the greatest weight. Not afforded any opportunity to make decisions for themselves in prison, the inmates had no system for reaching majority decisions.

The Observers' Committee: When Oswald refused to return to D yard after one inmate proposed holding him hostage, direct negotiations between the state and the inmates ended, and the observers were placed in the position of acting as intermediaries between the parties. The observers' committee was not, however, constituted to serve a mediation function. The committee was unwieldy in number—over 30 members—and racked with ideological differences between those who identified completely with the inmates and those who were proponents of the position of the state.

On Saturday night, one of the observers sought to convince the inmates that they should be practical and that the 28 Points were the best offer they would receive from the state. But the observers were unwilling to recommend directly that the inmates accept the 28 Points without amnesty and considered it sufficient to state that the 28 Points were all the concessions that the state would make.

After the inmates rejected a settlement based on the 28 Points on Saturday night, some observers made speeches

in the yard on Sunday holding out hope that amnesty, and perhaps even flight to another country, were still attainable. Some of the observers were seeking to restore their credibility with the inmates because a message delivered by Oswald to the inmates on Sunday had stated that the observers agreed with the state that the inmates should accept the 28 Points and release the hostages. The result was that the inmates were not told by the observers on Sunday that the state was adamant against granting amnesty, and that their choice was between acceptance of the 28 Points and an armed assault.

Mistrust: Agreement in any negotiation requires some measure of mutual trust in the promises made by the other side. By virtue of their experience with the established institutions of society, especially the criminal justice system, many inmates could not accept on faith that, once they released the hostages, the state's promises would be kept. The long intervals between appearances of the observers in the yard added to the suspicion. The 28 Points themselves required inmates to rely for implementation of the reforms on the good faith of authorities whom they mistrusted.

Inmates were fearful of widespread reprisals following the uprising. Promises by Commissioner Oswald that there would be no physical or administrative reprisals, or criminal charges for property damage, were disbelieved, and a federal court injunction consented to by Oswald, barring reprisals, was viewed with skepticism.

In the end, once the possibility of the Governor's coming to Attica had been raised by the observers, many inmates felt that only he could give them acceptable guarantees that the 28 Points would be implemented and that there would be no reprisals.

Amnesty: Although willing to make concessions on administrative sanctions and crimes against property, the state was unwilling to grant amnesty against prosecutions for crimes such as homicide, assault, and kidnapping.

Many inmates were fearful of mass prosecutions which would catch in their dragnet even passive participants in the uprising. These fears were played upon by inmate orators, particularly after the death of Officer William Quinn, who had been struck in Times Square on September 9. Inmates heard rumors and news accounts claiming that Quinn had been thrown out of a window on

top of Times Square—impossible, since all windows at Attica are barred. The rumors were not disavowed by the state and contributed to the suspicion that the state would engage in irresponsible prosecutions. Amnesty thus remained the paramount inmate demand.

The Governor stated that he did not have power under the constitution to grant the inmates amnesty, and that as a matter of principle he would not have granted amnesty even if he could. The Governor, the local district attorney, and other state officials felt that the grant of amnesty would undermine public confidence in constituted authority and set a precedent which would encourage the taking of hostages to gain personal, political, or social objectives. The Commission agrees that complete amnesty for crimes such as assault and homicide should not have been granted in the circumstances of Attica. The Commission believes, however, that prosecution could have been waived for lesser crimes, such as taking hostages without harming them. But that alternative was not sufficiently explored by either side.

Fear of Dissent: Fear of dissent, which pervaded the yard, was also an obstacle to settlement. A majority of inmates told the Commission that they would have been willing to accept the 28 Points, even without the grant of amnesty, but that at the time they were fearful of speaking out against the views on amnesty voiced by inmate spokesmen. This fear was reinforced by the knowledge that some inmates, who were thought to have demonstrated feelings unsympathetic with the uprising, were subject to sanctions by the inmate spokesmen, including "house arrest" in D block and the forced digging of a ditch.

The Deaths of Hess, Schwartz, and Privitera: Three inmates, who had been placed under house arrest by the inmate leadership, were found murdered when the prison was retaken. Those inmate spokesmen with knowledge of these deaths must have been encouraged in their demand for complete amnesty by fear that they would be held accountable for the murders.

The Public Limelight: Prisons have traditionally been off limits to the press. The admission of newsmen and television cameras to D yard not only provided inmates with an unparalleled opportunity to tell the public about prison conditions, but gave them a sense of importance,

dignity, and power. Inmates realized that they could command national attention only as long as they kept the hostages, and that once the uprising ended, they would return to the status of forgotten men, subject to all the humiliations of prison life. That feeling, coupled with their fear of reprisals and mistrust of the state, made it almost impossible to persuade them to give up the limelight and return to anonymity.

Unreality: The sudden freedom, prominence, and power which the events of September 9 thrust upon the inmates, together with the strain of four days of anxious waiting, created an air of unreality in the yard. Many inmates feared that the state would move immediately to retake the prison by force. When the state showed its willingness to negotiate and offered concessions, many inmates gained an inflated view of their own bargaining power. The presence of the television cameras and sympathetic newsmen reinforced the feeling by inmates that there was public support for their position. Was it not reasonable to assume, they thought, that state officials who were willing to offer the 28 Points to free the hostages would ultimately grant all the demands, including amnesty—and perhaps even flight to a third-world country? If those hopes lingered in the inmates' minds, it is no wonder that the prospect of an armed assault in which many of them might die never became real enough to induce them to release the hostages and end their rebellion.

Future Negotiations

As a result of the experience of Attica, and as a deterrent against future riots, many persons have advocated that the state adopt a firm policy against negotiation with inmates holding hostages. Commissioner Oswald told the Commission that he opposes such a policy.

The Commission agrees that prison administrators must have flexibility in responding to prison riots. If dehumanizing prison conditions are permitted to exist, a firm policy against negotiations will not deter uprisings any more than the belief that such a policy already existed deterred the Attica rebellion. As the Kerner Commission warned five years ago, the only effective means of preventing riots is to eliminate the sources of tension in society by making "good the promises of American de-

mocracy to all citizens, urban and rural, white and black, Spanish-surname, American Indian, and every minority group."

If a riot does occur, however, the following principles, derived from the failures at Attica, commend themselves not as rigid rules, but as general guidelines for conducting negotiations.

When to Negotiate: If the prison can be retaken immediately without lethal force, the authorities should do so. Any delay may provide the inmates with the opportunity to produce weapons, including explosives, and once that occurs the option to use nonlethal force to quell the uprising may be lost. Moreover, any delay in retaking a prison provides the opportunity for frustrations and anger to increase on the part of police and correction officers, making reprisals more difficult to prevent. Even when there is an immediate retaking, safeguards against retribution, including the use of outside monitors, must be employed.

In many situations, however, the Commission recognizes that even at the outset the authorities may be unwilling to send unarmed men to confront and subdue rebelling inmates. In these circumstances, the Commission believes that the possibility of a negotiated settlement must be fully explored before using lethal force.

Neutral Ground: The Commission believes that negotiations conducted before hundreds of inmates are not likely to be productive. The state should insist that all negotiations take place on neutral ground between the representatives of the inmates and the state.

The Press: The presence of television cameras and the press has a tendency to encourage rhetoric rather than serious concessions. The Commission believes strongly that prisons must be subject to continuous public scrutiny and that the press has a vital role to play in exposing inhumane conditions. But settlement negotiations during an uprising are not the occasion to exercise that function. To maximize chances of agreement, negotiations must be conducted privately without the presence of the press, but with appropriate briefings to the press.

Observers: The Commission believes that direct negotiations between inmates and the state are preferable to the use of outsiders. However, if outsiders are required in the negotiations, their function and authority must be

clearly defined and agreed upon by them, the state, and the inmates. A large panel cannot function effectively and should be avoided.

Professional mediators are not likely to enjoy the confidence of the alienated segment of society in prison or be able to gain a quick understanding of such inmates. Community action leaders, on the other hand, can play a constructive role, but only if they are prepared to advocate compromise to the inmates and risk the charges of a "sellout" by their own supporters and inmates as well.

Rumors: Rumors can have an inflammatory effect on inmates, state officials, and police officers, making settlement more difficult to achieve, and eroding restraint in the event an assault is necessary. It is essential, therefore, that that state establish a regular procedure for dispelling rumors and providing correct information about the prisons, with provisions for performing that function efficiently in emergency situations.

Clear Warning: Before terminating negotiations, and commencing an assault, the inmates must be made to understand that the alternative to a settlement is an armed assault with guns. Recognizing the possible tactical importance of surprise, the Commission nevertheless feels that the risk to life in an assault is too great to permit negotiations to fail because inmates have a false perception of either their bargaining power or the state's plans.

Mistrust: The state negotiators must be ever mindful that the gulf of mistrust between the inmates and authorities is not easily bridged, and that setbacks in the negotiations are inevitable. Patience is essential.

Where frustrations can find their only outlet in riots, no predetermined formula for negotiation can guarantee success. But the Commission believes that the above principles will at least improve the chances for a peaceful solution.

Chapter 9

The Negotiations Develop, "Iconoclastically"

The area in the tunnel between A block, which had been retaken by the authorities, and the door to A yard, which was inmate-controlled, became a "no-man's-land," dubbed the "DMZ" by the inmates. Across that 50-yard buffer zone, Superintendent Vincent Mancusi late Thursday morning made the first attempt to establish communications with the rebels. But the encounter, as Mancusi recognized in his testimony, only served to widen the gulf:

I had a conversation with about six individuals. Everybody was trying to talk at once. I told them to shut up and let one man tell the story and this was like waving a red flag before a bull and they would have nothing to do with me from that time on.

They informed me that they would only speak to the Commissioner or the Governor. And left.

In fact, by that time, Commissioner Oswald was already preparing to leave for Attica. He had received his first word of the uprising in a telephone call from Mancusi about an hour after the violence had first flared up. He was told that there was "bad trouble in all the major blocks," that hostages had been taken and that efforts were being made to regain control "block by block."

Shortly after noon, the Commissioner, his deputy Walter Dunbar, and Chief Inspector John C. Miller of the Division of State Police boarded a state plane for the flight to Attica. It was the second trip to Attica within a week for Commissioner Oswald and Deputy Commissioner Dunbar. They had returned to Albany from their first visit to Attica with a feeling that the situation at Attica was under control, and that they would have the

time necessary to implement the reforms to which Oswald was philosophically committed. On the plane, Commissioner Oswald thumbed through the letters he had received from Attica inmates following his visit, many of them complimentary, looking for a clue as to what could have gone wrong. "As I read through these letters," Oswald later testified, "I got a feeling that there might very well be enough people in that yard who would believe in me, that we might be able to do some meaningful negotiation."

By 2:00 P.M., when Commissioner Oswald arrived at Attica and took command, the inmates had entrenched themselves in D yard, and were preparing and typing their demands. All efforts at regaining further control of the facility had been suspended by the State Police pending the arrival of additional troopers. The options available to the Commissioner were to do nothing while awaiting the reinforcements or to try in the interim to make contact and negotiate with the rebellious inmates. The opportunity to try the latter presented itself when two volunteers arrived separately on the scene: Professor Herman Schwartz and Assemblyman Arthur O. Eve.

Herman Schwartz, a 39-year-old white attorney, was a professor of law at the University of Buffalo. Professor Schwartz had specialized in recent years in the area of prisoners' rights, and he had represented Attica inmates without compensation in a number of significant lawsuits which successfully challenged prison procedures. Schwartz had discussed reform proposals with Oswald on a number of occasions and characterized their relationship as one of "friendly adversaries." Cancelling an invitation to attend a conference of Federal jurists in Vermont, he hurried to Attica upon hearing of the uprising, and arrived outside the gates at 12:30 P.M.

Schwartz spent almost two hours in the parking lot, watching the smoke and flames rising from the inside walls and talking to reporters. After Oswald had arrived and gone inside, Schwartz passed a note inside offering Oswald his help and, soon thereafter, was admitted to the prison.

Oswald told Schwartz the inmates had heard on a radio in the yard that he was outside and had asked for him. Oswald asked Schwartz to do what he could to help.

Feeling that he was one of the few people trusted by both sides, Schwartz approached the A block gate, asked the armed troopers to step back, and conferred with some of the inmates. They asked him to come into the yard to bring out their list of demands. As Schwartz was discussing that possibility with Oswald and Dunbar, Assemblyman Eve arrived.

Arthur O. Eve, a black assemblyman from nearby Buffalo, had been a persistent advocate of prison reform and a regular speaker at commencement exercises and other programs for inmates at Attica. Assemblyman Eve is the publisher of a weekly newspaper serving the black community in Buffalo. He had corresponded with many Attica inmates and his concern about their grievances was well known. Upon learning of the uprising, Assemblyman Eve had left immediately for Attica.

Schwartz and Eve had to persuade a reluctant Commissioner Oswald, fearful of their safety, to allow them to go into D yard, both stressing that they were well known among inmates and that they did not think they were valuable as hostages. Finally, Oswald approved their request and the two men entered the "DMZ" at about 3:00 P.M.

The First Visit to the Yard—Schwartz and Eve

As Eve and Schwartz entered the no-man's-land, they were the first to experience security measures, developed by the inmates almost instinctively, which were to become routine over the next four days. First, they were subjected to a pat-down search—a needless precaution, but one in which, according to Schwartz, the inmates appeared to delight, since it was modeled after the searches of inmates which are part of prison routine. Schwartz and Eve were then escorted through A yard to D yard, where "security guards," linked arm in arm, formed a passage to a table, then in the center of the yard, and later moved to the corner, which became known as the "negotiating table."

The sight confronting the two men startled them at first. Hundreds of inmates in towels, masks, and helmets lined their path and looked down at them from the catwalks and window ledges. Inmates claiming to be clients

of Professor Schwartz approached him and demanded to know the status of their cases. Schwartz recalls that he was frightened, but that his anxiety was tempered by the realization that the inmates were also frightened.

At the negotiating table, Eve and Schwartz were offered orange juice and then were handed the list of Immediate Demands. (See p. 205.) Many inmates spoke on the bullhorns and Eve hastily jotted down some of their additional demands: that Commissioner Oswald appear in the yard, that any negotiations be covered by television cameras, and that additional radios be brought into the yard so that all the inmates could be kept informed. The inmate spokesmen made clear to Eve and Schwartz, as they would later to Oswald, that there were no "leaders," that negotiations would be held only in D yard, broadcast to the entire body of inmates on a loudspeaker system which the inmates were rigging up, and that no one but the inmates themselves would make any decisions for them.

Professor Schwartz attempted to discuss the merits of the Immediate Demands, indicating that some, such as Federal take-over of Attica and flight from the country, were unrealistic, and suggesting that the inmates prepare some more "practical" demands. But the inmates were in no mood to hear a white lawyer tell them that their demands were impractical, and Schwartz was derided by the crowd. Eve had to jump to his defense, citing Schwartz's record in lawsuits on behalf of inmates.

Eve also took down the names of State Senator John Dunne, United States District Judge Constance Baker Motley, and Congresswoman Shirley Chisholm to be added to the list of outsiders requested in the Immediate Demands. Eve's clear impression was that these persons were wanted "to observe the negotiations between the State and the inmates [and to] subsequently serve as monitors after the whole thing was over . . . [to] ensure that what had been agreed upon would in fact be carried out."

After spending 20 to 25 minutes in the yard, Eve and Schwartz were escorted out to present the inmate demands to Commissioner Oswald. When they reported that the inmates wanted the Commissioner in the yard, both Oswald's and Dunbar's immediate reaction was negative.

Dunbar said, "No, they'll take you hostage, and the whole ball game will be over." Oswald, speaking to inmates through A block gate, offered to meet in "neutral territory"—on the catwalk outside A block. But the inmates refused, as they were to refuse all later demands for negotiations outside of D yard, and demanded that Oswald meet them in D yard. Schwartz recalls that Oswald first indicated that he had no choice but to retake the prison by force, but almost immediately changed his mind, saying, "Those are men's lives in there, I'm going to go into the yard."

Assistant Deputy Superintendent Karl Pfeil was the only correctional employee who spoke in favor of the decision. Out of concern for the hostages, he asked Oswald "as an impassioned plea, perhaps, to try to talk them out rather than use force at that point."

Mancusi and Dunbar, however, continued to protest, but Oswald remained firm in his decision to enter the inmate stronghold with Schwartz and Eve.

Asked at the Commission's public hearing what led him to ignore the advice of his colleagues, Oswald cited his "naïve belief that I could bring about some change."

Whatever his motivation, when he decided to go in, Oswald broke with the tradition of his profession to refuse to negotiate with inmates as long as hostages are held. Before the day was out, he was to depart from other long-accepted norms by admitting the press, television cameras, and outside observers to D yard in an effort to achieve a peaceful solution. "I was doing everything iconoclastically," Oswald testified, "Not by design."¹

¹Judged by the statement published in 1953 by the Committee on Riots of the American Prison Association, not all of Oswald's actions were so unconventional. The statement strongly condemns allowing the press and television or news cameras into the prison during a riot and "question[s] the wisdom of permitting anyone to negotiate with mutinous prisoners who is not well acquainted with prison life." But it is silent on the use of outsiders as observers rather than negotiators, approves the idea of discussions in an "attempt to get the hostages released by peaceful means," and suggests that it is appropriate for a "director of corrections . . . to conduct the discussions himself" if he is "an experienced prison man." Finally, the statement warns: "To say that the emergency force should move in with gas and gunfire, irrespective of risk, would be foolhardy unless the risk to the public and other innocent persons was so great and so imminent as to demand it."

The Second Visit to the Yard—Oswald, Schwartz, and Eve

Oswald, Eve, and Schwartz synchronized their watches with Dunbar and the State Police and entered D yard at about 4:25 P.M. They promised to be back in exactly 20 minutes. Oswald was received respectfully, and, in fact, was given a lighter frisk than Eve and Schwartz. Inmates told Oswald their quarrel was with the Attica administration, not with him. Offered the bullhorn, he asked the inmates to have confidence in his commitment to change.

The Commissioner entered the yard expecting to negotiate, but instead found the inmates far from ready to talk about substantive issues or the release of the hostages. First, Oswald was challenged by one inmate for a statement to a television reporter earlier in the day—a statement he could not recall making.² Other inmates accused Oswald of not treating them as human beings.

As the dialogue continued, the inmates set forth one precondition after another which they demanded be met before negotiations could begin. They demanded that the armed troopers they could see on the rooftops of cell-blocks be removed. By now all the inmates in D yard had heard of the previous day's incident, including the report that Dewey and Lamorie had been beaten, and they insisted that someone—Assemblyman Eve volunteered—be permitted to go to HBZ to ascertain the condition of the two inmates. Rumors were also rampant that the inmates confined to C block were being beaten and gassed, and the rebels wanted to be sure they were unharmed as well. They demanded that, before negotiations began, Oswald agree to supply food and water to the yard and that he send in radios. Finally, in Oswald's own words:

. . . they said they didn't have confidence in me, that they wanted me to go out and come back with news media so that all the world could see what I promised them.

To all of these demands Oswald acceded. At 5:15—50, not 20, minutes after they entered—Oswald, Eve,

²Professor Schwartz says he heard Oswald tell a reporter as he entered the prison that the inmates "want the world."

and Schwartz left the yard. Oswald and Eve first visited Dewer and Lamorie in HBZ, determining that both were in good condition.³ Then Oswald sought out representatives of the media willing to go into the yard. He had no difficulty finding volunteers and by 5:45, he was on his way back into D yard, accompanied by Eve, Schwartz, reporters from the *New York Times* and the *Buffalo Evening News*, and, most important, newsmen and cameramen from Buffalo radio and television stations.

The Third Visit to the Yard—Oswald, Eve, Schwartz, and the Media

Penal institutions have been, as a rule, removed from the public eye. Television and news cameras are rarely permitted inside the walls and, until recently, inmates were prohibited from giving interviews. During prison disturbances, it has always been a cardinal rule that the press remained outside the institution. Now, with the press there to publicize inmate grievances, there was—in Professor Schwartz's words—the first real "explosion of rhetoric." L. D. Barkley stood before the cameras and read a revised version of the Immediate Demands, which he had helped to draft. He added a preamble of his own stating that "the cause of the uprising was not the result of the 'dastardly bushwhacking' of two inmates" (Dewer and Lamorie) but the "oppression" by a "racist" administration, which operated institutions that "serve no useful purpose" except to "enslave and exploit."

Professor Schwartz was bothered by the rhetoric. He had expected the talks to follow the form of a difficult labor negotiation, in which each side began with a hard bargaining position, which would be gradually softened and refined until a settlement was reached. On that assumption, with television cameras on him, Schwartz urged the inmates to get down to something "meaningful." The inmates' response was to accuse Schwartz of being there to make trouble and tell him, "Maybe we ought to ask you to leave."

Professor Schwartz later testified:

³Lamorie showed them a slight scratch on his neck which he said he received "in a little scuffle with a correction officer." Dewer was unharmed.

I saw it as a negotiating session. We could now get down to the business of hammering out demands and trying to refine things in the way that I, in a conventional lawyer's way, you meet together, you start negotiating. [But] there was a lot of speech making and it confirmed to me, in my judgment later, that what we were really facing here was not a negotiating session such as in the labor-management context or anything like that, but between two sovereign entities who had a deep hatred and distrust for each other.

Seemingly uppermost in the inmates' minds was concern over the prospect of administrative reprisals after any negotiated settlement. Oswald came in for attack because of reprisals allegedly taken against participants in the Auburn uprising a year earlier. He testified:

When I told them that we would promise them no administrative reprisals, they said they didn't believe me, and I said why. They said because this was promised at Auburn and it was not kept. I pointed out that I was not at Auburn. That I had heard of this and that the Deputy Commissioner who had made those promises was very much upset about the fact that they had not been kept.

* * *

They asked me why things would be any different this time than Auburn and I said that there was very good reason why it would be different, that this time I was the one who was telling them this and that I was a man of my word and would keep it.

Before leaving the yard, Oswald was presented with a new set of 15 "Practical Proposals"—a response to Professor Schwartz's earlier advice that the Immediate Demands should be supplemented by more practical ones. The new proposals dealt with specific internal conditions which had long been among the grievances voiced by inmates: wages, religious freedom, censorship, parole, medical care, food, education, and recreation. In addition, they proposed the establishment of sensitivity training for correction officers and of elected inmate grievance councils and asked that all inmates be allowed to be "politically active."

Oswald later said that the 15 proposals appeared to him (as did the "July Manifesto") to have been copied from

the so-called "Folsom Demands" drafted by California inmates.⁴ To Professor Schwartz, the new list presented a very limited set of demands, leaving out "a lot of things that would be put in if you were going to have complete penal reform." Schwartz recalls that Oswald responded to each proposal, and told the inmates he agreed "in principle" with most of them.⁵

At 6:45, Oswald, Eve, and Schwartz again left the yard with the 15 Practical Proposals in hand. While Oswald called Albany and spoke with members of the Governor's staff, Walter Dunbar volunteered to go into the yard with Schwartz and Eve to discuss the proposals further.

The Fourth Visit to the Yard—Dunbar, Schwartz, Eve, and Emery⁶

For Dunbar, entering the yard for the first time at 7:30 P.M., the discussions began on the wrong foot. The 15 Proposals were read again and Dunbar asked what was meant by the proposal that inmates be allowed "to be politically active." The inmates said they meant freedom to act in organized groups and Dunbar began to debate that point. In Schwartz's words, "It was very clear that there was no communication there at all.

During this visit to the yard, discussion with the inmates focused for the first time on what were to become the central issues: amnesty and protection against reprisals. Oswald had told the inmates on a previous visit that he had no power to grant criminal amnesty and had been exhorted to "give us what you can."

Now, one of the "inmate lawyers" spoke up. "What we need to protect us against reprisals is a Federal court injunction," he said, "and I have drawn up a Federal court complaint here." He waved a complaint entitled "*Inmates of Attica Prison v. Nelson Rockefeller, Russell Oswald, and Vincent Mancusi*," which, among other things, alleged that the named defendants had "to put it bluntly, treated inmates as dogs, instead of human beings that we are."

⁴See chap. 3.

⁵In fact, most of the fifteen proposals were subsequently embodied in the 28 Points agreed to by Oswald on Saturday.

⁶Assemblyman James L. Emery of Geneseo had arrived and accompanied Dunbar, Schwartz, and Eve on this visit.

Professor Schwartz told the inmates that a Federal court injunction could not restrain criminal prosecutions, but would have to be limited to physical and administrative reprisals. Schwartz also explained that a Federal injunction might be difficult to obtain because all of the Federal judges in the state were at the conference in Vermont. This the inmates refused to believe until another of the inmate lawyers said he had read of the conference in the *New York Law Journal*, to which he subscribed. Nevertheless, Schwartz's suggestion that they accept a state court injunction was resoundingly rejected.

The inmates insisted that Schwartz obtain the injunction from Judge Constance Baker Motley, a black Federal judge in the Southern District of New York who had been the author of a well-known decision expanding the constitutional rights of inmates.⁷ Schwartz told the inmates that Judge Curtin, the Federal judge in Buffalo with jurisdiction over Attica, would have to sign the injunction, but agreed that he would try to get Judge Motley's signature as well. Schwartz departed for the Superintendent's office to draft the injunction.

Arthur Eve had reported in the yard that the inmates in HBZ were well, but the inmates in D yard were not convinced, and they were still concerned about rumors of mistreatment in C block. Consequently, Eve arranged with Oswald to allow Roger Champen, one of the inmate lawyers, to accompany him through C block. From there, Eve and Champen went to the Superintendent's office to work on the proposed injunction. By the time they arrived, Schwartz had consulted with Oswald, who said he would agree to the injunction, and had reached Judge Curtin in Vermont, who said he would sign it.

It was a scene which would not be repeated again: inmate, Commissioner, and professor of law in serious collaboration on a document all of them hoped would satisfy the inmates. Schwartz testified that Champen "told me what he wanted to say and I wrote it down and I put it in legal language." After the form of injunction was typed, Schwartz turned to Champen and said: "I want you to read this carefully again." The inmate lawyer read it through several times and told Schwartz "it was

⁷*Sostre v. Rockefeller* 312 F. Supp. 863 (S.D.N.Y. 1970), modified 317 F. Supp. 1101 (S.D.N.Y. 1971), *aff'd*, 442 F.2d 178 (2d Cir. 1971).

OK." Then Oswald signed his name under the words "Consented to." The injunction read:

Upon the consent of defendants, it is hereby ORDERED that:

Defendants, their agents and employees, are enjoined from taking any physical or other administrative reprisals against any inmates participating in the disturbance at the Attica Correctional Facility on September 9, 1971.

According to the *New York Times*, as Champen left the office to return to D yard, he was offered a cup of coffee, but refused.⁸ Writing later from his cell in HBZ, Champen denied any implication that he was hostile. "In reality I don't drink coffee," he explained.⁹

By 11:30 P.M., Professor Schwartz was climbing on board a state plane at the Batavia airport to fly to Vermont. He expected to be back with the signed injunction by 3:00 or 4:00 A.M. Incoming passengers on the plane, which had just arrived from Albany, were Dr. T. Norman Hurd, Director of State Operations, and A. C. O'Hara, Commissioner of the Office of General Services, who had come to Attica at the request of Governor Rockefeller and as his "personal representatives." O'Hara, a retired general, was formerly Commander of the State National Guard and had worked with the State Police in quelling a civil disturbance in Rochester without bloodshed.¹⁰

The Governor had been informed of the uprising in Washington, D.C., where he was attending a meeting of the President's Advisory Committee on International Intelligence. He was informed at 1:00 P.M. that "the Commissioner was on his way to Attica, that as soon as a sufficient number of State Police had arrived they would restore order at the prison and free the hostages and this was the expected pattern."

The Governor testified that his management philosophy was to "pick good people and back them up" and that in Russell Oswald he had chosen a man in whom he had full confidence. Oswald remained in full command, and Hurd

⁸*New York Times*, October 4, 1971, p. 44, col. 3.

⁹Letter dated October 17, 1971, published by the Fortune Society.

¹⁰Although O'Hara was no longer an active military officer, he is still addressed by his military rank as a sign of respect and, for clarity's sake, will be called General O'Hara throughout this report.

and O'Hara were there only to assist him and keep the Governor informed. The Governor told Oswald that he was "fully supportive" of the course he was pursuing.

When Dr. Hurd and General O'Hara arrived at Attica Thursday night, they found Commissioner Oswald in an optimistic mood. Dr. Hanson had reported that the hostages were not in danger and were being well treated. Communications had been opened and all the inmates' preconditions had been met. They had been assured that Dewey and Lamorie were all right in HBZ and that the inmates in C block were not being abused. The form of injunction had been agreed to and would be signed before morning.

By 5 P.M., sufficient State Police forces had arrived for an attempt to retake Attica and Oswald had been so advised. But by then it seemed clear that discussions with the inmates should continue. Inspector Miller, the highest-ranking State Police officer on the scene, advised the Governor's office that he believed it would be a mistake to terminate discussions and proceed with force.

Although "not by design," the Commissioner's separate decisions to begin talking, to go into D yard himself, to invite outside citizens to participate, and to admit the press, seemed on Thursday night to have created a climate in which a negotiated settlement was not only possible, but likely. As Oswald said to Professor Schwartz before his departure for Vermont, "That's it, isn't it, Herman? They should release the hostages now, right?" "Yes, I think so," Schwartz had replied, "I think so."

In D yard, the inmates completed the first stages of their "tent city" and bedded down for the night. Some gave up mattresses and blankets for use by the hostages. Campfires flickered around the yard. Not everyone slept in a tent; most inmates had not spent the night under an open sky in a long time, and they were enjoying it.

Friday Morning: A Setback

If Thursday night ended on a hopeful note, Friday began on a troubled one. The state plan carrying Professor Schwartz with the injunction was unable to land in Vermont because the Manchester airport was closed, and Schwartz had to be driven in dense fog from Glens Falls, New York, to Manchester, where Judge Curtin was wait-

ing to sign the injunction. Judge Motley told Professor Schwartz she could not countersign the injunction since her jurisdiction did not extend to Attica, unless the Chief Judge of the Second Circuit approved. Professor Schwartz contacted the Chief Judge, who declined to intervene. The line on the form of the injunction left for Judge Motley's signature thus remained blank. The inclement weather kept Schwartz in transit all night.

Assemblyman Eve had returned to his office in Buffalo to begin making efforts to contact the observers whom the inmates had requested, such as attorney William Kunstler, Tom Wicker of the *New York Times*, David Anderson of the Rochester Urban League, and representatives of the Young Lords and Black Panther parties. Neither Eve nor Commissioner Oswald was there when Herman Schwartz, sleepless but still optimistic, returned to Attica injunction in hand at 6:30 A.M.

Oswald had promised the inmates he would return to the yard at 7:00 A.M. When that hour passed with no sign that anyone was going in, Professor Schwartz decided he should at least go to A block gate to report his success in obtaining the injunction. He gave a copy of the injunction to the security guards in the DMZ and explained why Judge Motley's signature was not on it. The inmates asked where Arthur Eve was.

Eve arrived at 8:30 and he and Schwartz immediately returned to A block gate.

"Are you playing games with us?" an inmate asked.

"Why?" said Professor Schwartz.

"This injunction is worthless," he replied, "it doesn't have a seal."

Startled, Professor Schwartz tried to explain that Judge Curtin did not have his seal with him at the conference in Vermont and that the injunction was perfectly valid without a seal. But for inmates who had often experienced dismissal of their writs and petitions on minor procedural or technical grounds, the omission of the seal was important.¹¹ More significantly, it heightened the suspicions of

¹¹Indeed, hundreds of Attica inmates who notified the state after the uprising that they intended to file claims for destruction of personal property were informed by the Attorney General that their claims were rejected because only one copy, rather than all four, had been notarized. The Attorney General later changed his position and permitted filing of the claims.

those inmates who were inclined to believe that one way or another they would be deceived by the authorities.

"OK," Professor Schwartz said finally, "It doesn't make a damn bit of difference, but if you want it, I'll get you a goddamn seal." He left the gate and arranged to have a state trooper take the injunction to Judge Curtin's secretary in Buffalo. Even in a state police car, the round trip would take a couple of hours, delaying still further the resumption of negotiations.

At 8:45 the inmates delivered an oral message at A block gate: Oswald should appear in the yard immediately for "one last meeting," and they "meant business." They also wanted Bobby Seale, chairman of the Black Panther party, added to the list of observers. They had seen armed troopers in formation behind B block and thought they had heard shooting in the D block area. They feared an assault was imminent and wanted an explanation. They were told the delay was to await the return of the injunction from Buffalo with the seal, but again demanded Oswald's immediate appearance in D yard.¹²

Oswald and Dunbar had been disturbed by the noise and interruptions during Thursday's negotiations and decided that it was "impractical to talk in D yard." At 10:06, they sent in a note once again proposing a meeting in the "DMZ," with observers and the news media present and "with guaranteed security for both sides." The note also stated that there had been no shooting in the D block area. Back came the reply: "No good. We will meet only in D block." And at 11:00 A.M., another note came from the inmates, reaffirming: "This is a people issue, not a group, therefore you must bring your observers, etc., to the people."

Professor Schwartz, in his testimony, described what happened next.

¹²The inmates were not the only ones challenging the injunction. While Schwartz was busy arranging for the seal, Tom Soto, of the Prisoners Solidarity Committee in New York City, was telling the press in the parking lot that the injunction was worthless because it could be appealed by the state. Professor Schwartz had to go outside and tell Soto and the press that the injunction was a consent order and could not be appealed. He berated Soto for trying to upset "a very delicate thing."

I somehow got the impression that it was all over, that he Oswald was going to say, "OK, I've had it. We are going to go in and get those hostages."

As it happens, I was wrong and I kind of sat there feeling very scared about what was going to happen. I envisaged a bloodbath. And to my surprise Oswald said, "OK, we will go back in for one more time. I'm going to pull together a committee of press and people," and I said to him, "Do you want me to go in on this one?" Because I felt that he would want only his own people from his own staff and he said, "Oh, certainly I want you to come in" and I felt "Oh, my God!" because I really had no great desire for it.

By this time, there were three new arrivals: Minister Raymond Scott, director of FIGHT, a black community organization in Rochester, the Reverend Marvin Chandler, a black minister from Rochester, and Lewis Steel, an attorney from New York City. Scott and Chandler had gone to Attica on their own, early that morning, at the urging of families and friends of inmates who were worried about their safety. They had agreed to enter the prison as observers at the request of Arthur Eve, but only after Eve had ascertained that both the Commissioner and the inmates approved. Steel, a vice-president of the National Lawyers Guild, had represented the so-called "Auburn Six" in civil actions after the Auburn uprising. He had come to Attica Thursday night at the suggestion of the Guild and the Center for Constitutional Rights (William Kunstler's organization), who urged that a "radical lawyer" should be on the scene. Steel had not entered the prison Thursday night, but returned Friday and was invited inside by Herman Schwartz.¹³ Scott, Chandler, and Steel were invited to accompany Oswald, Schwartz, and Eve into D yard on the condition—imposed by Oswald—that they act strictly as observers and not say anything.

Fifth Visit to the Yard—Oswald, Observers, and Press

"All right, let's see what happens," said Russell Oswald as he headed again for D yard at 11:25, along with the

¹³Steel had discussed the injunction with Schwartz earlier Friday morning and expressed the view that it would not be accepted because it contained no provision for criminal amnesty.

five observers and, according to Herman Schwartz's estimate, a group of over a dozen media people. The inmates had been expecting Oswald since 7:00 A.M. and the long delay fed their natural suspicions that plotting was taking place out of their presence. By 11:30, their mood was angry, and the victims of their wrath were Professor Schwartz and his injunction.

After the group passed through security checks more elaborate than they had been on Thursday, the newcomers were asked to stand up and introduce themselves. L. D. Barkley welcomed them with another impassioned speech, and then attention was turned to the injunction. It was publicly denounced by inmate after inmate. Where was the seal? What was Oswald's signature doing on their court injunction? Why, if a consent was necessary, hadn't Governor Rockefeller signed? The injunction was directed against reprisals for participation in "the disturbance on September 9, 1971"; but, an inmate argued, it was now September 10, and the injunction no longer protected anyone. Professor Schwartz tried in vain to explain that the seal was on its way, that Oswald's signature indicated his consent to the injunction and was sufficient to bind all the defendants.

Then one of the "inmate lawyers" grabbed the microphone and said, "This injunction is garbage. It doesn't give us criminal amnesty, it's limited to only one day, and it doesn't have a seal." With that, in full view of hundreds of assembled inmates, he ceremoniously ripped the injunction in two. Inmates interviewed months afterward recalled vividly the ripping of the injunction and remembered that it lacked a seal, was limited to September 9, and did not cover amnesty. Few knew that one of their respected inmate lawyers had participated in drafting the injunction or remembered that Professor Schwartz had explained at the beginning that it could not grant them criminal amnesty.

Schwartz decided there was no point in trying further to defend the injunction. Its language could easily have been amended to cure the problem of the dates, but it never could have given the inmates what they really wanted—complete amnesty. Professor Schwartz did not speak again and, feeling his effectiveness was ended, decided this would be his last visit to D yard. The injunc-

tion had not only failed to work as Oswald, Eve, and Schwartz all expected, it had backfired. The inmates now viewed it as an act of trickery, further compounding the feeling of mistrust which pervaded the yard.

Looking back on his experience, the attorney and teacher, who had in recent years devoted his career to the cause of prisoners' rights, observed:

. . . it was very clear that there was a massive failure of just sheer verbal communication. I think some of the terms, some of the language used by the orators are, I think, largely those of black people, and white people don't understand a lot of that, particularly not white people who were then two months away from being 40 and they had lived their lives in law courts, the standard civil rights movement, civil liberties, schools, law firms, and the like.

Inmates then turned their fire on Oswald. Oswald later described to his aides the "wild and frenzied crowd" calling him a "liar" and a "racist pig" before the television cameras and press and repeatedly warning him that they were "not fooling" and that they "meant business." Protests were heard that sufficient food and water had not been delivered to the inmates as promised, and demands were shouted by some inmates that prisoners in C block and HBZ be permitted to join the crowd in the yard. The inmates demanded to know what had happened to the observers they had requested. Oswald pointed to Scott, Chandler, and Steel, but they had not been on the inmates' list.

The 15 Practical Proposals were again read and again provoked heated discussion about the genuineness of Oswald's commitment to reform. Lewis Steel recalls that Oswald was, in effect, "on trial," with inmates asking "Why don't you do this?" or "Why haven't you done that?" and Oswald replying "I'm trying" or "I need time" or "only the Legislature can do that."

But the inmates were not about to accept the legal niceties of separation of powers or the political realities of achieving reform. The state of New York had put them in prison and, as they viewed it, the State was obligated to meet their just demands. They were not interested in discussing how the State would do that or whose re-

sponsibility it was. Protesting the limitations of his power, Oswald was told he was "a nothing."

In the midst of the rhetoric and the name-calling, an inmate sitting at the negotiating table grabbed the microphone and suggested keeping Oswald as a hostage. That produced an uproar. Schwartz, Scott, and Oswald all reminded the inmates at the table that they had been guaranteed safe passage and were assured they would get out. "Brothers," said one inmate, "we promised the Commissioner he could come in and leave safely and he will leave safely." Finally, the suggestion to hold Oswald was resoundingly shouted down by the inmates in the yard, but one of the spokesmen told Oswald, "You see, I can't control them. You thought you were the only one with troubles."

As the meeting broke up, Oswald was told there would be no further talks until the observers they had requested arrived. Shaken, Oswald made up his mind not to return to the yard himself, but to place any remaining hopes of a settlement in the hands of the observers.

As they returned from the yard, Steel and Schwartz told Oswald that in their opinion some form of criminal amnesty would have to be granted if there was to be any settlement. Steel said he suggested in the conversation the possibility of limiting prosecutions to serious injuries. Oswald did not recall this suggestion, but in any event he was firm in his conviction that any form of amnesty was out of the question, both as a matter of law and a matter of principle. Thus, if the inmates were truly insistent on the demand for amnesty, a settlement could not be reached. The decision facing Oswald on Friday afternoon, after the inmates had rejected the injunction because it did not provide criminal amnesty, was the same as the one which would confront him on Monday morning when the inmates, having rejected the 28 Points, still insisted on criminal amnesty. Despite his unnerving experience in the yard and the developing impasse over amnesty Oswald chose to continue talking, rather than order an assault Friday afternoon. Asked why, Oswald testified:

Well, because I had a feeling that there were many effective people among those observers, people who could relate to a number of the leaders in the yard and I had a feeling that we had to try because if we went in, there would be a loss of life and this was what I was trying to avoid.

Oswald was far from optimistic at the time. An aide in Albany who spoke to him at 3:45 P.M. on Friday wrote the Commissioner "reports himself as uptight and requests that all of us pray for him and the situation."

The Observers Assemble

Arthur Eve had spent many hours overnight trying to contact the observers requested by the inmates, and his office continued on the job Friday morning. Returning from the yard, Steel, Scott, and Chandler joined in the effort Friday afternoon.

Eve's office was able to reach representatives of the Young Lords party, the Fortune Society, and the Black Panthers,¹⁴ Jim Ingram, a black journalist from Detroit, and Tom Wicker, an editor of the *New York Times* who had recently written a sympathetic column on the death of George Jackson at San Quentin. Chandler telephoned David Anderson of the Rochester Urban League, and Steel took on the job of tracking down William Kunstler, who was on a case in West Palm Beach, Florida. By mid-afternoon Juan ("Fi") Ortiz and Jose ("G. I.") Paris of the Young Lords, David Rothenberg, Mel Rivers, and Ken Jackson of the Fortune Society, and Anderson, Ingram, Wicker, and Kunstler were all on their way to Attica. The Black Panthers told Eve's office that their central committee would have to be consulted.

The Governor's staff was also instrumental in recruiting members of the observer team. Michael Whiteman, the Governor's counsel in Albany, had at first understood that the observers would be only a three-man team.¹⁵ But when he learned from Dr. Hurd at Attica the number and identity of people being invited, he became concerned about the neutrality of some of them and he and Robert Douglass, Secretary to the Governor, began making inquiries. Douglass called Representative Herman Badillo to ask "whom he might be able to recommend that would be acceptable to the Young Lords," and

¹⁴Assemblyman Eve eventually bore the cost of airplane flights arranged through his office for two Young Lords from New York City, as well as for Bobby Seale from California.

¹⁵Whiteman testified that he at first thought the observer panel would be made up only of Arthur Eve, someone to be chosen by Representative Herman Badillo, and "a white minister from Buffalo."

Badillo offered to go himself. Badillo, in turn, invited Alfredo Matthew, superintendent of Community School Board No. 3 on the west side of Manhattan and State Senator Robert Garcia of the Bronx.

Douglass also called the Reverend Wyatt Walker in New York City, an urban affairs adviser to the Governor, to inquire about the Reverend Farrakhan, the Muslim minister requested by the inmates. Walker could not locate Farrakhan,¹⁶ but said he himself was available and Douglass invited him. Clarence Jones, publisher of the *Amsterdam News*, had heard on the radio that the inmates had asked for him, but agreed to go only after receiving a call from Douglass advising him that the Governor would regard his presence as helpful.¹⁷ State Senator John Dunne, chairman of the Senate Committee on Crime and Correction, first sent an assistant to the scene, but then left for Attica himself after calling Whiteman "to confirm the fact that this observer team would be utilized in some way."¹⁸

Commissioner Oswald testified that he had "very little" control over who became an observer and, indeed, many observers just invited themselves. Among them were: William Gaiter and Domingo Rodriguez of BUILD, a Buffalo community organization, who came to Attica with a busload of their group's members and were admitted by Arthur Eve; and Julian Tepper, Tony Fitch, and Dan Skoler, public-interest lawyers from Washington, who came after Oswald yielded to persistent telephoning by Tepper seeking an invitation.¹⁹ In addition, several state legislators came to Attica on their own and were admitted. In that group were Assemblymen Frank Walkley of Castile, James Emery of Geneseo, and Clark Wemple of Schenectady, and Senator Thomas McGowan of Buffalo.

¹⁶Farrakhan had been contacted by the Reverend Marvin Chandler and had told him he could not come, based on instructions from the Honorable Elijah Muhammad.

¹⁷Badillo, Garcia, the Reverend Wyatt Walker, Matthew, and Jones were flown to Batavia in a state plane.

¹⁸Others on the inmates' list, such as Blond Eva Bond, Shirley Chisholm, and Judge Motley, were never contacted or were unavailable.

¹⁹Before leaving Washington, Tepper also called Louis James, District Attorney of Wyoming County, to ask about the possibility of criminal amnesty and received a firm negative response.

All told, by the end of Friday evening, 33 observers had assembled at Attica.

The Observers' Role

The observers were assigned the steward's office on the second floor of the administration building as a conference room. Between 5:00 and 7:00 P.M. on Friday, those who were present met with Oswald, Dunbar, Mancusi, O'Hara, and Hurd and were briefed on what had transpired. Each time a new group arrived there was a rebriefing. Some, like Senator Dunne, received private briefings from the Commissioner.

At the briefings, copies of the Immediate Demands and the 15 Practical Proposals were distributed. There was discussion of the merits of the demands and of the question of amnesty. During the discussions, it became apparent that the committee contained some strong personalities and that there were some marked ideological differences among them.

Some observers were affiliated with organizations, such as the Young Lords, the National Lawyers Guild, and the Center for Constitutional Rights, which represented or were openly identified with inmates and their cause. On the other end of the scale, there were conservative white upstate legislators who identified more with the administration than the inmates and were largely unsympathetic to the inmate complaints. In the middle, there were a number of observers, such as Clarence Jones, Tom Wicker, Senator Dunne, Congressman Badillo, and Senator Garcia, who, despite different shades of opinion, were in agreement that many of the inmates' grievances were justified, but were more concerned with bringing about a peaceful solution on any terms than with seeing the uprising become a catalyst for penal reform.

Oswald made it known that many of the inmates' Practical Proposals were consistent with his own plans for prison reform, and that he would be willing to implement these in order to gain the release of the hostages.

Oswald's acceptance of many of the inmate grievances created an air of optimism for some of the observers. Superintendent Mancusi was not so pleased, however, with what he heard. He was irritated because the discussion

focused on inmate complaints about his institution, and none of the observers expressed concern for the welfare of the hostages. Mancusi testified:

. . . the various demands were read off and Commissioner Oswald was saying yes, yes, yes, and I was sitting there wondering how I could run the institution after this with these demands having been granted . . .

While the gathering observers awaited the arrival of latecomers before entering D yard, they made some effort to define their role. Many of them recognized that Commissioner Oswald's decision to continue negotiations, but not to enter D yard again himself, necessarily meant a fundamental change in the function of the observers. No longer could they act as the inmates (and Eve) had originally contemplated—merely to witness the negotiations and ensure that promises were kept and that there were no reprisals. Now they were the only link between Oswald and the inmates and they would have to take a more active role in the negotiating process. Nevertheless, there were widely varying perceptions of what that role should be.

Clarence Jones understood the role of the observers to be

a bridge or . . . a conduit through which the opinions of the inmates could be expressed to the prison authorities and through which the opinions of the prison authorities could be expressed.

Arthur Eve also understood that "at that particular point, we became somewhat messengers between the inmates and the state."

Other observers saw themselves as advocates for the inmates whose function it was to convince the state to make as many concessions as possible—not simply because hostages' lives were at stake but because the prisoners' position was fundamentally correct.

Senator Dunne testified that he "viewed our role as perhaps part mediator and part representative and spokesmen for the authorities." Michael Whiteman, the Governor's counsel, also saw the observers as mediators:

The role I saw is that they would be in the nature of mediators to be helpful, to try to bridge the communica-

tions gap, to try to interpret one side to the other and perhaps to aid the two sides in coming to a resolution.

Tom Wicker observed that as time went on, the observers were "more and more cast in the role of doing the negotiating ourselves." But the sharp philosophical differences among the observers and the lack of clear definition of their role became a source of discord as they proceeded.

In D yard, there was some elation among inmates at the anticipated arrival of the observers. Political leaders, attorneys, newspapermen, and clergy of national stature were taking an interest in their problems. Many of the names—Eve, Kunstler, Wicker, Badillo—were well known to a large portion of the inmates in the yard. Almost all of them had high hopes that, through the observers, a settlement could be achieved which would improve their lot. Even inmates who said they did not support the leadership and only wanted to get out of the yard admitted that they welcomed the intervention of the observer group.

But, like the observers themselves, very few inmates had a clear conception of exactly what the observers were supposed to do. In interviews, many inmates mentioned only the value of focusing national attention on the plight of Attica inmates. Others said that with such a prestigious observer group present the fear of reprisals was somewhat abated. They felt that, if nothing else, the observer group would oversee the evacuation of the yard and prevent reprisals from occurring. In addition, many inmates thought that the observers would be their mouthpiece for relaying demands to the administration in a sympathetic manner. However, very few inmates viewed the observers as a team of negotiators charged with resolving the conflict. As one inmate testified:

Q. What was your understanding as to what the observers were going to do?

A. Well, more or less to observe any problems and to help enlighten the public . . . the media, the news media, the legislators; these are the people that was sent for, you know, to observe and to get an idea and a picture of what was happening and after having gotten that idea, to give us some type of help.

Q. Did you understand that they were going to negotiate for you?

A. No. No. No one negotiates for us but the inmates. Everyone in that yard was negotiating.

Q. Did you have confidence that they would be able to fulfill the role that you saw for them?

A. Well, there was hope. There was hope.

The observers were able to agree among themselves on one person to be an informal chairman of the group. Arthur Eve, who had been deeply involved from the beginning, was suggested by several new arrivals and his selection was confirmed by an informal show of hands. By 7:00 P.M., the observers decided they had waited long enough. Although key members, such as Kunstler, had not yet arrived, they determined to enter the yard. They planned to introduce themselves to the inmates, show them their demand for observers had been met, and try to find out, some 35 hours after the uprising had begun, what could be done to bring about a peaceful solution.

D Yard: Evolution of the Inmate Society

By Friday evening, the inmate society in D yard had changed markedly since Eve and Schwartz had first entered the yard the previous day. Even the physical appearance of the yard was strikingly different: barricades had been erected on the catwalks and fortifications at the doors to the yard; an L-shaped trench had been started on the outer perimeter, parallel to the catwalks; the number of tents and lean-tos had multiplied; and campfires blazed throughout the yard.

Inmate security had become noticeably tighter since Thursday and the security guards were more numerous. Dr. Warren Hanson, the Warsaw surgeon who was in the yard Thursday, Friday, and Saturday, described the changes:

This was a progressive thing. On Thursday they were sort of lax and loosely combined and there was quite a dramatic difference on Friday.

On Friday the security around the hostages' compound had increased. They had—instead of just having one circle of guards, they changed it into three different circles of guards, and you had to go into each circle on your way into the hostages in the compound.

* * *

The scene between Thursday and Friday had changed drastically and the change from Friday to Saturday was again very drastic.

We got down to the first checkpoint in a tunnel, and they had a couple of extra men on the crew and the frisking was extremely thorough.

They were really rough and went over me like they thought I was hiding diamonds in various body orifices, or something, but they really did a job.

Perhaps the most important change since Thursday afternoon was that the loosely structured group of self-appointed or informally designated "spokesmen," whose membership had varied from hour to hour, had been replaced by an elected committee of representatives of each cellblock.

Inmate recollections vary widely concerning when the block elections were held, how many elections there were, and the circumstances that brought them about. Some inmates insist that there were two separate elections, one on Thursday and another on Friday. Others recall only one election, some placing it on Thursday afternoon and others on Friday. It is understandable that, months later, inmates have lost the ability to place discernible events in sequence on particular days during their time in the yard. Many inmates admitted that Thursday blurred into Friday and Friday into the remaining days until Monday morning.

What appears most likely is that a negotiating committee was "elected," albeit informally, on Thursday by those who were around the tables where the demands were drafted. Inmates who had done most of the talking during the early organizational stages in the yard, those who had participated in other prison riots or had helped draft the July Manifesto, the leaders of various inmate factions, and those with legal knowledge were natural choices. Still others undoubtedly appointed themselves to the committee. In that form, adding and losing members along the way, the committee functioned throughout the day and night on Thursday and into Friday morning.

Several reasons have been given for replacing the loosely constructed committee with elected representatives of each cellblock. Many inmates said that the proposal by one of the original committee members to hold Commissioner Oswald hostage incensed many inmates in the yard

and turned them against the committee. After that, inmates demanded a more representative committee and the existing leadership, realizing it was in jeopardy, called for elections.

Others did not tie the elections to the threat to hold Oswald, but said by Friday, many people became dissatisfied with the kinds of demands and the tone of the rhetoric they were hearing. Some said the original committee was "too radical," while others said the main dissatisfaction came from groups like the Five Percenters, who felt the committee was not going far enough.

According to one inmate who testified, the dissatisfaction arose from the fact that some members of the original committee "wanted to bring their personal, you know, viewpoints that wasn't even related. . . ." The inmate went on, "Whatever came out of it was supposed to be for everybody, not anybody to get his particular point across or to go on an ego trip." Still other inmates said that the elections were held because the feeling arose that the committee, as originally constituted, did not contain enough whites and Puerto Ricans; because the original "spokesmen" decided that they wanted to take the spotlight off themselves, or at least share it; or because Eve and Schwartz had urged it during their first visit to the yard.

Whether for any or all of these reasons, it is clear that early Friday afternoon, the original committee broadcast an announcement (by this time the bullhorn had been replaced by a microphone and amplifiers from the inmate band) that block elections were to be held. Areas of the yard were designated as the meeting places for inmates from each block and security guards went around the yard urging everyone to move to the designated area to vote.

Estimates as to the number who actually participated in the election ran from the public testimony of one inmate that "everyone" voted, to inmates who said that they and those around them did not vote at all and that the delegates were elected by small "cliques" from each block. Many inmates told the Commission that they did not vote.

When the results were in, those who had taken an active role in the negotiations and the drafting of the demands up to that point were easily elected to remain on the committee. As one inmate testified, "I think most

people just acquiesced to whoever was nominated.' However, the block elections did send to the negotiating table several new faces, including the representative of E block whose impassioned welcoming speech to the observers late Friday night would be seen by millions of television viewers.

On Friday afternoon, a security guard detail set to work building a wooden covered pavilion over the negotiating table, which was now located near the wall of D block, and setting up microphones and lights. While they awaited the arrival of the observers, members of the negotiating committee, including those newly elected, circulated through the yard, listening to grievances and suggested demands.

As the observers entered the yard that Friday evening, the mood of the hostages was improved. Around day-break on Friday, they had been awakened by their Muslim guards and allowed to exercise by marching around the hostage circle. During the night, mattresses had been provided for them and they were now allowed to sit on mattresses piled two deep rather than on the ground. Late Friday afternoon, at Dr. Hanson's urging, their blindfolds had been removed, although they were to be replaced when outside observers entered the yard or an inmate got up to speak.

The hostages had been given cigarettes, water, and fruit juice on request and twice during the day on Friday they were given sandwiches and coffee. When the bright sunshine caused some of them to develop a sunburn, the inmates erected a sun shelter over them out of boards and bed sheets. Threats against them from outside the ring of Muslim guards had become less frequent.

Dr. Hanson, returning to the yard to treat the hostages on Friday, described their mood:

Their spirits had gone up tremendously just because they felt reasonably secure, they had survived the terrors of the night and they were still alive and it was a bright, sunny day and they had been fed and they were offered food and cigarettes.

I don't know how many thousands of cartons [the inmates] had taken from the commissary. They were all around the place. So the hostages were very much relieved.

One hostage later said in an interview that the Muslim security guard was "good to us—it was tops," and Captain Wald testified that throughout, the hostages were given "excellent treatment."

By Friday, on Commissioner Oswald's instructions, inmates working in the prison kitchen were making sandwiches and sending them into the yard. Most of the hostages told the Commission that whatever the inmates had to eat, they ate, and if anything, they ate better.

Unlike most inmates, the hostages' hopes for a peaceful settlement were not brightened by the appearance of the observers in the yard Friday evening. They were fearful that personalities such as William Kunstler and the Young Lords could not help but inflame inmate passions and harden their resolve. Their skepticism was to be intensified by the inmate speeches they heard in the yard that night. If nothing else, many of them said, the number and vehemence of verbal threats against the hostages increased that night as the inmates became intoxicated with confidence.

Chapter 10

The Real Negotiations

Although Commissioner Oswald and various observers had been talking with inmates in D yard since Thursday afternoon, the real negotiations were crammed into the 30 hours between 7:00 P.M. Friday when the observers entered the yard to ascertain all the inmate demands and 1:00 A.M. Sunday when the compromise they negotiated with Oswald was rejected by the inmates.

It was still daylight on Friday evening when the observers' committee was ushered through lines of security guards to the negotiating table. Each observer was requested to introduce himself, identify his organizational affiliation, and state why he was there. The statements were brief, expressing the desire to help resolve the situation, to bring about prison reform, and to save lives. All

the observers were warmly received, although some later said that Senator Dunne, whose efforts for prison reform were known, received the largest ovation. The observers were then escorted by security guards to view the hostages.

For the hostages this was the first contact with the observers since the uprising began more than 30 hours earlier. Some observers noted that the hostages looked frightened and that they felt awkward and embarrassed viewing them. There was time only to establish that the hostages were being well treated and that their only complaint was that an agreement for their release had not yet been reached. Having carried out their intention of establishing contact with the inmates, the observers then returned to the administration building to await the remaining observers.

Returning to the steward's room, the observers reported to Oswald and Mancusi that the situation in the yard was stable, and continued their discussion with Oswald of the Practical Proposals.

The observers were unable to tell the Commissioner, however, which of the proposals were critical, or indeed, whether the list of demands was complete.

The Arrival of Kunstler

In the middle of this discussion, William Kunstler, the 52-year-old civil liberties lawyer, arrived at Attica. By the time he entered the steward's room, he had been briefed by Herman Schwartz and Lewis Steel on the injunction and on the demand for amnesty which Steel believed was the key to a settlement. The seriousness of the demand was not underestimated by Kunstler. Oswald recalled that no sooner had Kunstler walked into the room than he observed that amnesty would be the critical issue.

Dr. Hurd, who was present, recalled that he was "jarred" by the "sudden revival" of the amnesty issue which had previously been firmly rejected by the authorities. Moreover, by this time, Oswald had talked to District Attorney James of Wyoming County, who confirmed that he was not prepared to grant criminal amnesty under any circumstances. When Robert Douglass, the Governor's secretary, learned later that evening of Kunstler's state-

ment, he told Dr. Hurd to "make every effort to impress on the observers that amnesty really wasn't a viable issue as we saw it."

With Kunstler's arrival the observers agreed there was need to return to the yard to obtain a complete list of inmate demands and their relative importance and to solicit the inmates' views of how they wanted the observers committee to function. One other issue remained to be settled: the admission of Thomas Soto of the Prisoner Solidarity Committee to the observers' committee. Soto had been outside the institution for most of the day on Friday and had requested virtually every observer to assist him in gaining entry. Commissioner Oswald had consistently denied him admission out of fear that his presence would not be helpful, a view which most observers did not challenge. Kunstler, however, urged that Soto be admitted since a representative of his organization, the Prisoners Solidarity Committee, had been requested by the inmates, and Oswald finally agreed.

The Observers' Committee Returns to the Yard

At approximately 11:30 P.M. the augmented observers' committee entered the yard. The negotiating area was illuminated by the lights of the television crew of WGR-TV in Buffalo; the rest of the yard was shrouded in darkness.

The observers, after introducing themselves again, began the process of sifting out the inmate demands. An inmate spokesman read out the Immediate Demands and the Practical Proposals, and the inmates were asked to signify by cheering their support for the demands which they considered important. Wicker described the process:

... Mr. Kunstler sort of took charge of that process and he would write down what it was that the prisoners were demanding and one of their speakers would make several points and generally discuss it in some detail, perhaps even ask someone from the audience to come up and be graphic about it or anecdotal about why that was a point that was needed.

Then that speaker might call on some other speaker to take over for a while.

For instance, I remember they introduced a man from the metal shop, a worker from the metal shop to make the point about how the metal-shop workers were being sys-

tematically cheated, he said, out of what they earned in the metal shop.

He had facts and figures and he made this allegation and the prisoners obviously understood it. Great cheers went up. . . .

The observers noted that few inmates and almost no whites expressed support of the demand for flight out of the country. But any degree of support was apparently enough to keep a demand alive, for the observers retained flight on the list of demands to be discussed with Oswald.

Amnesty was one of the Immediate Demands, and Wicker recalled that whenever it was raised throughout the four days "the demand was always for total and complete amnesty."

Some of the speeches by inmates were rambling and incoherent; others were moving and eloquent. One inmate speech, widely televised, included these words: "We have come to the conclusion, after close study, after much suffering, after much consideration, that if we cannot live as people, then we will at least try to die like men." After uttering these words, the speaker turned to Kunstler: "Brother Kunstler? What did they do to you in court?" Kunstler stood up and embraced the speaker across the table, to the accompaniment of a roar of approval from the inmates.

As Tom Soto began to speak, he was interrupted by hysterical shouts of "red alert" and inmates insisting that troopers were crawling in to attack, and that inmates were being beaten in C block. The lights, including the TV lights which flooded the negotiating table, were put out by the inmates. The observers were led from the table, and told to stand against the wall, where they were shielded by a line of inmates. One inmate jumped on the negotiating table with a gas gun pointed in the direction of the alleged attack. There was no attack. How the rumor started is not known.

The Blackout

During the blackout some observers, including Eve and Dunne, were requested by inmates to investigate what was happening in C block. As they passed through the administration building, they stopped to report to Oswald on the interruption in the yard, and to urge him to avoid

any provocative action. Oswald was talking separately with some newly arrived observers, including Jim Ingram, Jabarr Kenyatta, and three members of the Fortune Society.

The Fortune Society officials and Ingraham had been requested by the inmates. Kenyatta was a different story. He reached Attica by approaching Ingraham at the Buffalo airport and asking for a ride. Attired in flowing robes, Kenyatta talked his way into the institution, leading some officials and observers to believe that he was a representative of Minister Farrakhan of the 116th Street Muslim mosque in New York City. He led others to believe he was a representative of the Sunni Muslims from a Muslim mosque in Los Angeles. He signed into the institution using a nonexistent Greenwich Village address. Some people thought he was with the Black Nationalist party, and it appears that only Arthur Eve recognized that he had come from the Buffalo area.

Oswald apparently confused him with Charles Kenyatta of New York, who had walked the streets of Harlem with Mayor Lindsay to maintain calm after Martin Luther King's assassination, though the Governor's aides recognized that he was not the same man. The admission of Kenyatta under these circumstances merely points up the helter-skelter growth of the committee on which Oswald was placing his hopes for the negotiation of a peaceful settlement.

After the observers returned from C block, satisfied that there was no assault in preparation, and that inmates were not being beaten, the new observers joined the committee in the yard.

During the blackout, the observers who remained in the yard had witnessed one inmate swinging a bola and shouting how everyone in the yard was doomed to die. He was led away. The observers also provided a captive audience for some inmate orators who seized the microphone and made impassioned speeches which frightened some of the observers.

With the return of all observers, the proceedings resumed, and the microphone was made available to inmates who wished to add demands to those previously read. Among the new demands was one for the removal of Superintendent Mancusi. Several observers, including Kunstler, kept notes of the new points, and listened to determine the extent of support for each item.

As the session was continuing in this manner, one inmate suggested that Kunstler become the inmates' attorney. Kunstler agreed, and delivered an acceptance speech which, according to some of the observers, indicated that amnesty was a negotiable question, and that the inmates were not without bargaining power.

Kenyatta also introduced himself. Inmates, hostages, and some observers alike recall his speech as an exhortation to the inmates to seek revenge against "whitey" and a prediction that Attica was the beginning of a worldwide revolution against imperialism and exploitation. Kenyatta urged the inmates to be willing to die for the cause. At this point, one of the inmate spokesmen grabbed the microphone and admonished him: "I'm not here to die; I want to live. I don't want to hear any more of that kind of talk; we're all brothers."

By dawn, the session had been in progress, with one interruption, for over 5½ hours. The observers had gathered their impressions and taken their notes of the inmates' demands. At approximately 5:00 A.M., all but four of the observers (Kenyatta, Ortiz, Paris, and Soto) left the yard and returned to the administration building.

Dissension Among the Observers

Back in the administration building, the observers, fatigued and emotionally drained, broke into heated argument in the presence of state officials. Some observers accused Kunstler of having jeopardized the unity of the observers' committee and creating a conflict of interest by becoming the inmates' attorney. Others defended him, pointing out that the confidence reposed in him by the inmates would facilitate a settlement and provide a mechanism for advocacy of the inmates' position to the state.

When Kenyatta returned from the yard, he also became the target of the observers' ire. According to an observer, one of them had to be restrained from assaulting Kenyatta. Other observers berated him for playing with lives by his use of rhetoric. This discordant and emotional scene was observed by Oswald's aides as an indication of the disorganization of the observers' committee and the futility of this means of negotiation.

Many observers had also come to the conclusion that the committee, with more than 30 members, was too un-

wieldy to function effectively. The Fortune Society representatives proposed an executive committee of five members. But Soto objected that the nominees did not include any "third-world people." An executive committee of six members, consisting of Eve, Kunstler, Jones, Kenyatta, Dunne, and Badillo was settled upon. The duties and authority of the executive committee were not defined.

At the same time, the observers began the process of developing a package of proposals which hopefully the state and the inmates would accept.

The Visit to District Attorney James

The first step was to explore the possibilities of concessions on criminal amnesty. A subcommittee of Jones, Tepper—both lawyers—and Wicker was appointed to meet with District Attorney James of Wyoming County.

Louis James, 64 years of age and a graduate of Cornell Law School, had practiced law for 36 years in Warsaw, 15 miles from Attica. He had only recently become District Attorney.

The meeting took place at James's house over breakfast. James had told both Tepper and Oswald on Friday that he could not and would not grant criminal amnesty. The subcommittee was unable to persuade him to modify his position. James saw the demand for amnesty as an exercise in coercion; a threat to take lives unless the holders of the hostages were guaranteed freedom from prosecution. As a matter of principle and precedent, he stated that it was improper for him, as the elected prosecutor of the county, even to consider such a bargain.

Once the three members of the subcommittee were satisfied that James's opposition to amnesty was unalterable, they sought to elicit from him an affirmative statement of what he would do with a disclaimer of any vindictive prosecutions. James agreed, and after a wide-ranging philosophical discussion on unrest in society, the observers emerged with a statement signed by James reading as follows:

I have been asked by Messrs. Clarence Jones, Tom Wicker and Julian Tepper, representing the Committee of Observers at Attica Correctional Facility, to express my views as to the possible prosecutions that might arise from recent events at the Facility.

This book contains ____62____ pages of photographs which are not reproduced here. “The photographs in the insert are not part of the Official Report of the Commission. All photographs credited to Cornell Capa were taken by him expressly for The New York State Special Commission on Attica. The photographs not credited to Cornell Capa or Wide World Photos were taken by the New York State Police or the Monroe County Sheriff’s Department and were made public by the Commission.”

First, I deem it to be my duty as a prosecuting attorney to prosecute without fear of favor ALL substantial crimes committed within this county, if sufficient evidence exists to warrant prosecution.

Second, in prosecuting any crime, I do and would endeavor to prosecute fairly and impartially and for the sole purpose of attempting to see that justice is done.

Third, under the circumstances of the present situation at Attica, I deem it to be my obligation to prosecute only when in my judgment there is substantial evidence to link a specific individual with the commission of a specific crime.

Fourth, in this particular instance at Attica, I am unalterably opposed to the commencement of indiscriminate mass prosecutions of any and all persons who may have been present, and to prosecutions brought solely for the sake of vindictive reprisals.

Fifth, in the prosecution of any crime, in this as in every other situation, I would endeavor to prosecute honorably, fairly and impartially, with full regard for the rights of the defendants.

Finally, as a prosecuting attorney, I regard it as my paramount duty to attempt to assure justice, both in the trial itself, the outcome of the trial, and in the possible sentence.

Louis R. James

Wyoming County District Attorney

The observers also suggested that James accompany them into D yard to show his sincerity to the inmates, but he refused, fearing that it would only encourage efforts to force him to compromise his opposition to amnesty.

The Observers Regather

While Wicker, Jones, and Tepper were meeting with James, other observers had returned to their motels for some sleep; still others had remained in the administration building, typing the lists of demands; some of the legislators chatted with Oswald.

By 1:00 P.M., when the subcommittee returned with James's letter, most of the observers had reassembled in the steward's room. Wicker, Jones, and Tepper were elated. Not only did the letter promise no vindictive prosecution, but James had impressed them as a man who would keep his word and had exhibited flexibility they had not expected in a rural prosecutor.

To the surprise of the subcommittee, the reaction of the observers to the letter was far less than enthusiastic. Some of the observers rejected the letter as worthless and argued that any sponsorship of the letter would discredit the observers committee. Kunstler and Steel, trial lawyers, contended that if the committee endorsed the letter, it would be legitimatizing any subsequent prosecutions as "nonvindictive." They argued that the letter was worthless, and should not even be shown to inmates. A majority of the committee, however, felt that the letter had to be shown to the inmates, but that in recognition of Kunstler's and Steel's concern, it should be presented without any endorsement by the observers.

The observers then turned to the list of proposed penal reforms which had been prepared as a result of the all-night session with the inmates. Professor Schwartz, who continued to participate in discussions in the steward's room, added some recommendations for change in the parole system which he believed necessary for meaningful penal reform. This list was then retyped. Even though the demand for transportation out of the country still appeared, the observers decided that it did not have sufficient inmate support to present it to Oswald. In any event, they did not want to run the risk that attention would be diverted from amnesty where some concessions were required.

The time had finally come to negotiate with Commissioner Oswald.

The Negotiations with Oswald

The executive committee of the observers contemplated that it alone would conduct the negotiations with Oswald, and suggested that the other observers leave. But not all did, and when Commissioners Oswald and Dunbar arrived at the steward's room, they were greeted by a large group of observers.

Recollections of what took place over the next two hours between Oswald and the observers are hazy. It is clear that the committee did not raise the demand for flight, or do more than elicit from Oswald his determination not to fire Mancusi under any circumstances.

As expected, the major subject of negotiation was amnesty. Oswald agreed that he would guarantee no ad-

ministrative reprisals, including denial of parole. At the suggestion of Steel, he agreed further that the department would not file any criminal charges for property damage in the uprising.

The bargaining on the other inmate demands was mainly over wording. Oswald assented in principle to the demands, but sought to avoid committing himself to what he had no power to deliver, and to preserve flexibility in structuring reforms. For example, the inmate demand to "modernize the inmate education system, including the establishment of a Latin library" was accepted but left totally devoid of specifics. Another illustration was presented by the inmate proposal for the application of the minimum wage law to prison work. Oswald agreed only that minimum wage standards "will be recommended" for the legislature to enact.¹

The negotiating session continued until 5:00 P.M. and produced 28 Points to which Oswald agreed. The table below sets forth the points as proposed by the observers to the Commissioner and the 28 to which Oswald agreed.

Observers' Proposals

1. Provide adequate food and water and shelter for this group.
2. Replace Superintendent Mancusi immediately.
3. Grant complete administrative and legal amnesty to all persons associated with this matter.

Proposals Acceptable to Commissioner Oswald

1. Provide adequate food, water, and shelter for all inmates.
2. Inmates shall be permitted to return to their cells or to other suitable accommodations or shelter under their own power. The observers' committee shall monitor the implementation of this operation.
3. Grant complete administrative amnesty to all persons associated with this matter. By administrative

¹Oswald stated to the Commission that he told the observers that if the minimum wage was adopted, the inmates would be charged for room and board. Some observers recall this. Mention of this charge was omitted from the 28 Points—obviously for fear of jeopardizing acceptance.

*Observers' Proposals**Proposals Acceptable
to Commissioner Oswald*

amnesty, the state agrees:

a. Not to take any adverse parole actions, administrative proceedings, physical punishment, or other type of harassment such as holding inmates incommunicado, segregating any inmates, or keeping them in isolation or in 24-hour lock-up.

b. The state will grant legal amnesty in regard to all civil actions which could arise from this matter.

c. It is agreed that the State of New York and all its departments, divisions, and subdivisions, including the State Department of Corrections and the Attica Correctional Facility, and its employees and agents shall not file or initiate any criminal complaint or act on complaints in any criminal action of any kind or nature relating to property, property damage, or property-related crimes arising out of the incidents at the Attica Correctional Facility during September 9, 10, 11, 1971.

d. The District Attorney of Wyoming County, New York, has issued and signed the attached letter as of this date.

Observers' Proposals

4. Place this institution under federal jurisdiction.
5. Apply the New York State minimum wage law to all work done by inmates. **STOP SLAVE LABOR.**
6. Allow all New York State prisoners to be politically active, without intimidation or reprisal.
7. Allow true religious freedom.
8. End all censorship of newspaper, magazines, letters, and other publications from publishers.
9. Allow all inmates on their own to communicate with anyone they please.
10. When an inmate reaches conditional release, give him a full release without parole.
11. Institute realistic, effective rehabilitation programs for all inmates according to their offense and personal needs.

Proposals Acceptable to Commissioner Oswald

4. Establish by October 1, 1971, a permanent ombudsman service for the facility staffed by appropriate persons from the neighboring communities.
5. Recommend the application of the New York State minimum wage law standards to all work done by inmates. Every effort will be made to make the records of payments available to inmates.
6. Allow all New York State prisoners to be politically active, without intimidation or reprisal.
7. Allow true religious freedom.
8. End all censorship of newspaper, magazines, and other publications from publishers, unless there is determined by qualified authority which includes the ombudsman that the literature in question presents a clear and present danger to the safety and security of the institution. Institution spot censoring only of letters.
9. All inmates, at their own expense, to communicate with anyone they please.
10. Institute realistic, effective rehabilitation programs for all inmates, according to their offense and personal needs.

Observers' Proposals

12. Modernize the inmate education system.
13. Provide a narcotics treatment program that is effective.
14. Provide adequate legal assistance to all inmates requesting it.
15. Provide a healthy diet; reduce the number of pork dishes; serve fresh fruit daily.
16. Reduce cell time, increase recreation time, and provide better recreation facilities and equipment.
17. Provide adequate medical treatment for every inmate, engage either a Spanish-speaking doctor or interpreters who will accompany Spanish-speaking inmates to medical interviews.
18. Provide a complete Spanish library.
19. Educate all correction officers in the needs of inmates.

Proposals Acceptable to Commissioner Oswald

11. Modernize the inmate education system, including the establishment of a Latin library.
12. Provide an effective narcotics treatment program for all prisoners requesting such treatment.
13. Provide or allow adequate legal assistance to all inmates requesting it or permit them to use inmate legal assistance of their choice in any proceeding whatsoever. In all such proceedings, inmates shall be entitled to appropriate due process of law.
14. Provide a healthy diet; reduce the number of pork dishes; increase fresh fruit daily.
15. Reduce cell time, increase recreation facilities and equipment, hopefully by November 1, 1971.
16. Provide adequate medical treatment for every inmate; engage either a Spanish-speaking doctor or inmate interpreters who will accompany Spanish-speaking inmates to medical interviews. (See point 11 above.)

*Observers' Proposals**Proposals Acceptable
to Commissioner Oswald*

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| <p>20. Institute a program for the employment of significant number of black and and Spanish-speaking officers.</p> <p>21. Establish an inmate grievance delegation comprised of one elected inmate from each company which is authorized to speak to the administration concerning grievances, and develop other procedures for community control of the institution.</p> <p>22. Conduct a grand-jury investigation of the expropriation of inmate funds and the use of profits from the metal and other shops.</p> <p>23. Cease administrative resentencing of inmates returned for parole violation.</p> <p>24. Conduct Menechino hearings in a fair manner.</p> <p>25. Permit other inmates in C block and the box to join this group.</p> <p>26. Arrange flights out of this country to nonimperialist nations for those inmates desiring to leave this country.</p> | <p>17. Institute a program for the recruitment and employment of a significant number of black and Spanish-speaking officers.</p> <p>18. Establish an inmate grievance commission comprised of one elected inmate from each company which is authorized to speak to the administration concerning grievances, and develop other procedures for inmate participation in the operation and decision-making processes of the institution.</p> <p>19. Investigate the alleged expropriation of inmate funds and the use of profits from the metal and other shops.</p> <p>20. The State Commissioner of Correctional Services will recommend that the penal law be changed to cease administrative resentencing of inmates returned for parole violation.</p> <p>21. Recommend that Menechino hearings be held promptly and fairly.</p> |
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*Observers' Proposals**Proposals Acceptable
to Commissioner Oswald*

27. Remove inside walls, making one open yard and no more segregation or punishment.
28. Expansion of work-release program.
29. End approved lists for visiting and correspondence.
30. Remove screens in visitation rooms as soon as possible.
31. Institute parole violation changes—revocation of parole shall not be for vehicle and traffic violation.
32. Due process hearing for all disciplinary proceedings with 30-day maximum.
33. Access to facility for outside dentists and doctors at inmates' expense.
22. Recommend necessary legislation and more adequate funds to expand work-release program.
23. End approved lists for correspondence and visitors.
24. Remove visitation screens as soon as possible.
25. Paroled inmates shall not be charged with parole violations for moving traffic violations or driving without a license, unconnected with any other crime.
26. Institute a 30-day maximum for segregation arising out of any one offense. Every effort should be geared toward restoring the individual to regular housing as soon as possible, consistent with safety regulations.
27. Permit access to outside dentists and doctors at the inmates' own expense within the institution, where possible, and consistent with scheduling problems, medical diagnosis, and health needs.
28. It is expressly understood that members of the observers' committee will be permitted into the Institution on a reasonable

*Observers' Proposals**Proposals Acceptable
to Commissioner Oswald*

basis to determine whether all of the above provisions are being effectively carried out. If questions of adequacy are raised, the matter will be brought to the attention of the Commissioner of Correctional Services for clearance.

Many of the principles embodied in the 28 Points were major advances in penal reform. But the actual language of a number of the Points was deliberately vague, and, in some instances, conditioned on legislative action. Thus, if the 28 Points were to be accepted by the inmates, they would have to trust in the good faith of Oswald and the state to implement the reforms. More important, the inmates would have to accept the risk of criminal prosecution for crimes involving physical injuries and trust the word of a local district attorney that the prosecutions would not be indiscriminate.

Still, the observers who negotiated the 28 Points believed that they were all the concessions that could be obtained, and hoped the inmates would accept them. As William Kunstler testified:

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.

But recommending the Points to the inmates was a more difficult and delicate matter.

Commissioners Oswald and Dunbar left the steward's room believing that the 28 Points were acceptable to the observers and would be recommended to the inmates. But no sooner had the observers gathered together privately than some of them argued that the 28 Points, without amnesty, and with their watered-down language, would not be accepted by the inmates. Some of the observers clearly did not want to accept this risk.

A debate ensued. Some urged that the committee

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should do no more than hand the 28 Points to the inmates without any comment. Others argued that they should be recommended as the basis for an end to the uprising. A compromise emerged: the Points would be presented to the inmates as the best settlement attainable without any recommendation on the merits and it would be left to the inmates to decide independently whether to accept them.

Robert Douglass Arrives

On Saturday afternoon, the Governor requested that either his Secretary, Robert Douglass, or his counsel, Michael Whiteman, join Dr. Hurd and General O'Hara at Attica to assist Oswald with legal advice in the negotiations. Douglass elected to go.

Douglass, age 40, had joined the Governor's staff as counsel in September 1965 and had become Secretary to the Governor on January 1, 1971. He was among the Governor's closest aides. Douglass was accompanied to Attica by Howard Shapiro, age 32, the First Assistant Counsel to the Governor.

By the time Douglass arrived at Attica at 5:00 P.M. Saturday, the 28 Points had been negotiated, except for some wording. Douglass gave Oswald suggestions for revision in language which he considered "provocative and editorial instead of factual." He described the mood of Oswald and others concerning the 28 Points:

After talking to Russ and seeing the demands, I had conversations in the corridor with Herman Badillo, Bobby Garcia, John Dunne, I think maybe I discussed some of the items with Clarence Jones because I wanted to meet him. There was a very high degree of optimism that these items were significant, that there had been a long process of developing the exact points and Russ was very hopeful at that time that this should do it.

Bobby Seale's Welcome

Bobby Seale arrived at Attica at approximately 6:00 P.M. He was kept outside the prison while the Commissioner and the observers debated whether to admit him.

Robert Douglass counseled Oswald against admittance, later explaining:

... when Bobby Seale arrived at the eleventh hour I was concerned and expressed to Russ my concern that here was an unknown ingredient now coming into the picture at a time when I thought the committee appeared to be ready to go in and take the demands and end the uprising.

Some of the observers shared the same reservations. They had fears, based on Seale's reputation, that if admitted to the yard he would advocate that the inmates hold out for more concessions.

On the other hand, many observers hoped that Seale's presence would be constructive, and that his standing with the inmates would enable him to persuade them to accept the 28 Points.

In retrospect, it is difficult to understand how observers who were unwilling to recommend the 28 Points themselves could reasonably expect Bobby Seale to urge acceptance. But the urgency of the situation was such that many were willing to indulge any hope, no matter how unrealistic, that someone else would salvage the negotiations, convince the inmates to accept, and avoid a bloody showdown with the state.

While the discussions concerning Seale were taking place, his presence outside the gate was noted by the media. Now the inmates would undoubtedly learn of his arrival from the television and radio in the yard, and his exclusion could only imperil the hopes of settlement.

Oswald, again contrary to the advice of his aides, decided to admit Seale. He testified:

Almost everyone felt I shouldn't admit him and my inclination was not to admit him too. However, Mr. Kunstler and some of the other people, Mr. Eve and some of the others felt that he might just be the one to make the difference and that since they had asked for someone from the Black Panther party, that we ought to admit Mr. Seale.

Even then, Douglass told Dunne, Garcia, and Badillo that the state would not approve of Seale's entry unless all three publicly announced that the observers had requested him. The three legislators then went outside and held a brief press conference announcing that they were inviting Seale.

By this time, Seale had departed from the institution and the State Police were dispatched to overtake him on the road, and bring him back. It may have been the first time in the experience of the Black Panther party that the flashing light and siren of a police car meant not a confrontation, but the escort usually accorded a person of prominence.

Seale arrived back at Attica at 8:30 P.M. and was briefed in the steward's room. Kunstler told Seale that he hoped that, after reading the 28 Points, he could support them in the yard. Others joined in the plea.

After reading the Points, Seale said that he could not make a recommendation without the approval of the central committee of the panther party. Some observers, including Jones, stated that they would not return to the yard without assurance that Seale would not speak against the Points. A tacit understanding appears to have developed that Seale would not criticize the Points.

The Death of Officer Quinn

While the State Police were escorting Seale back to the prison, the observers learned of the death of Officer Quinn, who had been struck by inmates in Times Square when the uprising began.

The rumors which they heard about his death were inconsistent. Kunstler and others recall that the only explanation they heard was that Quinn had been thrown through a window—a manifestly false rumor since the windows at Attica are barred. Other observers were told that he had been hit on the head with a pipe, or that he had been thrown down a flight of stairs. In whatever manner he was injured, it was clear to the observers that, without amnesty, there would be murder charges—which would subject any inmate already serving a life sentence to a possible death sentence.

Both in the Superintendent's office, where Oswald and the state officials were waiting, and in the steward's room, a new sense of apprehension regarding settlement developed. Douglass telephoned District Attorney James, who agreed that there was no reason for him to announce Quinn's death that night. But the news was already on the radio and television, and, in any event, Kunstler, as

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attorney for the inmates, felt he could not ethically withhold information pertinent to their decision on amnesty.

There was clearly dwindling enthusiasm to return to the yard. The observers' apprehensions were increased when Oswald insisted that they sign releases of any claim against the state for possible injury suffered by them in the yard. Of the 22 observers preparing to enter the yard, 17 signed; the other 5 were overlooked.

The Observers Return to the Yard

At 9:00 P.M., the observers returned to the yard. It was now almost 16 hours since they had last been in direct contact with the inmates. An increase in tension and a decline in morale in the yard were noticeable.

There was confusion on the part of some of the observers as to the very purpose of their visit. Some believed that the understanding was that Seale would be introduced, explain that he was waiting to hear from the Black Panther party on the 28 Points, and that then all of the observers would depart. Others believed that the 28 Points would be read to the inmates with the explanation that they were the best compromise possible.

Arthur Eve spoke first, explaining that the observers had met for hours with Oswald and that the 28 Points represented all of the concessions they could obtain. Then Seale was introduced.

Some observers were surprised that the ovation for Seale was mild and that, in the words of Wicker, "his whole appearance was somewhat anticlimactic." Seale made a brief statement promising to check with the central committee of the Panthers and report back to the inmates. Senator Dunne captured the tone of Seale's words in his testimony:

They were very moderate and he—you know, the best he said was, "Right on. Power to the people," and I understand that's not very inflammatory, but he said to them that he would be with the brothers and that he would make no commitment at that time, and he said to them he would have to speak to Huey and he promised to come back.

Promising to return at seven the next morning. Seale began to leave. A number of the observers, regarding

Seale as their "passport to safety," and having previously agreed that all the observers would depart together, exited with Seale, leaving behind copies of the 28 Points on the negotiating table. This provoked some acrimonious exchanges with inmates who objected, according to Wicker:

... "Where have you guys been? You haven't been here all day. You come in here—and leaving us out here, you are going to stay here five minutes? You mean there is not going to be any negotiating? You're not going to give us any kind of report? What kind of job do you think you fellows are doing?"

Fewer than half of the observers, including Eve, Jones, Steel, Tepper, Fitch, Kenyatta, Soto, and the Young Lords, remained in the yard. Eve recalls that he persuaded Steel and Jones that regardless of the danger, they had to remain since they owed it to the inmates to explain the 28 Points.

Jones then stood up and began a presentation of the Points to the inmates. At the time of the Commission's public hearings, Jones could still recall much of what he said, and many inmates and hostages interviewed by the Commission remembered the eloquence of his efforts to persuade the inmates to accept the 28 Points.

As reconstructed by the Commission from interviews and from shorthand notes kept by an inmate in the yard, Jones began his speech with the statement that he was not a politician but a newspaper editor; that he did not ask to come to Attica but was invited, and that he assumed the inmates had asked for his presence because they believed he could be useful. He noted that politics is the art of the possible, and that the greatest mistake a person can make is not to recognize who has the political power. He stated that the inmates had sent the observers' committee out to get a hundred things and they might be disappointed because the committee only returned with 98. But, he added, the inmates themselves had to decide whether they should reject the 98 simply because the observers were unable to get the 100.

Jones also told the inmates that he had been in and out of the prison and had observed things on the outside which the inmates had not. It was all very well to quote Chairman Mao about power coming out of the barrel of

a gun, he stated, but men outside were the ones with the guns; they were carrying magnums and carbines—and he told them if the situation was not resolved by compromise, the “Kent State psychology” would take over. He added that the men outside were young, tense, and infected with racism, and would like nothing better than an excuse to blow the inmates’ brains out. He concluded by saying he thought that the 28 Points were the basis for a proper settlement and that, while this was ultimately for the inmates to decide, he believed that “from the bottom of his heart” this was the best they could expect to get. He then read the Points.

The inmates listened quietly and intently until Jones reached the point on amnesty and read the District Attorney’s letter. Observers noted that the reaction to that was bitter, derisive, and spontaneous laughter. Jones made no comment on this reaction, but went on to say, “Let’s go on through the whole thing and read the rest of it.”

When he had finished, one of the inmate leaders jumped up on the table, attacked the proposals as “trickery” and ripped up the paper containing the Points. Other inmates joined in, stating that the Points were inadequate and that amnesty was a necessity. “We’ve got the body, but not the head,” one of them shouted. The 28 Points were never submitted to the assembled inmates for a vote.

At this point, Kunstler, who had returned to the yard after escorting Seale out, rose to speak. As he began, one of the other observers said to him: “For God’s sake, tell them the truth.” Kunstler summarized his recollection of his speech for the Commission:

... I had all sorts of quandaries 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.

During the course of his statement, Kunstler also mentioned that Quinn had died and that this meant “a new

ball game," with murder prosecutions possible. Kunstler stated that "there was a sort of loud gasp and I thought I was the first one to tell them that." This news, according to Kunstler, made the issue of amnesty "even stronger with the inmates."

Some of the observers told the Commission that they urged some inmate spokesmen in private to accept the 28 Points. But the mood was negative, and as the observers left the yard, inmate spokesmen told them that they would have to do better. Amnesty had become the sine qua non of a settlement for the inmates. Inmates continued to press for the removal of Mancusi and at least one of the spokesmen was still talking about flight out of the country.

Why did the inmates reject the 28 Points?

To begin with, the observers had decided among themselves that the decision should be left entirely to the inmates, and Kunstler's speech reflected that advice. But none of the observers had given any consideration to how the inmates would go about making a determination. There was no mechanism for orderly decision making in the yard and the observers did not consider it their function to create one. Indeed, Kunstler, the inmates' retained attorney, did no more than suggest that the inmates should talk the matter out and find some method of reaching a consensus, according to fragments of his speech reflected in the shorthand notes of an inmate. If the inmates wanted to tell the state to "shove it," Kunstler continued, that was their business, and he would support them in whatever decision they made.

While Kunstler later spoke of the "Athenian democracy" prevailing in D yard, what the observers actually saw, at least on Saturday night, was a confused and uncertain throng of inmates, easily swayed by the rhetoric of those on the inmates' committee, who were often in discord among themselves. There was no way the 28 Points could have been put to a secret ballot or even an open vote of the entire D yard population. Nor were the members of the committee, who had throughout insisted they were merely "spokesmen," prepared to take upon themselves the formal mantle of decision makers. As a result, the "decision" was never more than the initial emotional gesture of ripping up the 28 Points and various

Not only did the inmates lack a decision-making process, but most of them were reluctant to voice their opinions. Fear of dissenting was a theme running through many of the explanations for the rejection of the 28 Points voiced by inmates in private interviews.

Numerous inmates reported that they agreed with the observers that the 28 Points were the best deal they could get and that they were wholeheartedly in favor of accepting them, but were afraid to say anything for fear of reprisals from other inmates. Even among the inmates guarding the hostages, one of the hostages testified, "quite a few . . . were definitely willing and ready to go along with the 28 Points."

Fear of dissent was not, however, the only factor and certainly does not explain the first negative reactions from the negotiating committee.

Despite Jones's and Kunstler's strong advice that the 28 Points were the best settlement the inmates were likely to get, many inmates said they felt that the negotiation process was still young and, since they had achieved so much so early, there was still the possibility of getting more. As one inmate testified, "Look at Vietnam, they have been negotiating for prisoners of war for how many years."

Another important factor influencing the rejection of the 28 Points was the deep mistrust harbored by many inmates—especially young blacks—of the white establishment, the political system, and anyone associated with them. It is, as noted earlier in this report,² a mistrust born of years of bitterness and frustration experienced in dealing with a system which they view as racist and oppressive. Could these inmates really believe the 28 promises that Commissioner Oswald was making? How could they be sure the Points, many of which were hedged with qualifications, would really be implemented and that they would be protected from reprisals? What assurances did they have that there would truly be no mass prosecutions or that District Attorney James would be given a free hand with the prosecutions? To a significant element in D yard, nothing in the 28 proposals or the way in which they were presented could convince them they were worth releasing the hostages and relinquishing the national lime-

²See chap. 2.

light. For these inmates, something more had to be offered; for at least some of them, that something could be only criminal amnesty.

The one event more than anything else that shaped the mood in D yard and the inmates' subsequent views on amnesty and the 28 Points was, of course, the death of Officer Quinn.

Following Kunstler's announcement of Officer Quinn's death, almost everyone in D yard on Saturday night—inmates, hostages, and observers—singled out the death of Quinn as the turning point. One inmate, who had helped carry out an injured hostage from the yard on Thursday morning, testified that the news of Quinn's death "sent everyone in a panic" and increased the importance of amnesty "because everyone in that yard . . . could be charged with at least conspiracy of murder." He testified that he himself had that fear, "even though I had absolutely nothing to do with it." Lieutenant Robert Curtiss, one of the hostages, said that with the announcement of Quinn's death, "almost a silence fell over the yard and it was very solemn from then on . . . tense and moody." After that, Lieutenant Curtiss testified, "things seemed to hinge on amnesty and this demand for transportation to a neutral or a foreign country."

Many inmates' apprehension over Quinn's death was increased by the news reports that he had been thrown from a window—which their spokesmen ridiculed. Since everyone knew that could not have happened, some inmates were led to speculate that the state had devised an elaborate frame-up.

Despite the strongly expressed views on criminal amnesty in the yard following the announcement of Quinn's death, inmates differed sharply over the importance of amnesty when questioned months later by the Commission. Inmates who were in D yard were asked whether they were personally in favor of holding out for criminal amnesty. Of those who responded, 67.8 percent said they would have been willing to give up the demand for criminal amnesty in order to get out of the yard safely, while 31.2 percent said that they were in favor of holding out on the issue of amnesty—and of that group, almost 20 percent, or 5.6 percent of the total, volunteered that they did not feel the necessity of amnesty for

themselves, but favored the demand because they thought it essential to support their elected spokesmen who they feared would be the targets of criminal prosecutions.³ Almost every inmate interviewed said that the other rejected demand—the removal of Superintendent Mancusi—was not really a stumbling block and would have been given up if an accord could have been achieved on amnesty.

As they left the yard sometime after midnight, some of the observers were urged by inmate spokesmen not to reveal that the 28 Points had been rejected, for fear that an assault would commence immediately. And, while Kunstler had urged the inmates to give further consideration to the 28 Points, virtually all of the observers returned to the administration building with the conviction that the compromise was dead.

Robert Douglass recalled meeting Clarence Jones at his motel at 2:30 A.M. and being told that Jones was “hooted at” and “jeered at” when he presented the 28 proposals, and that “he was discouraged that he hadn’t gotten anywhere with the inmates. After his conversation with Jones, Douglass testified, “it didn’t sound like there was much life left in the 28 demands.”

Chapter 11

Sunday: Clutching at Straws

“It was a very long and confusing day,” testified Tom Wicker, recalling Sunday, September 12. Continuing, Wicker’s testimony captures the mood in the steward’s room that day, as the dwindling group of observers tried

³Computer analysis of the characteristics of inmates who expressed opposing views on the question of amnesty revealed that the group who responded that they were in favor of holding out for amnesty included higher percentages of inmates under 30, those convicted of violent crimes, blacks, and single men, than either the group who responded that they were not in favor of holding out for amnesty or the overall D yard population.

one tactic after another, working against time and hope, trying to forestall an armed assault and somehow salvage an evermore elusive settlement:

We were moving in several directions, but mainly, by midday Sunday, I think what most of us felt was the attack was quite imminent and it was coming, because we had this deadlock, we weren't able to work out the amnesty, and so forth. Hence, about the only thing we could do, we thought, was try to maintain the status quo, buy time, stall off the attack, and hope somewhere along the line either the prisoners or the state would yield in such a way that an agreement might yet be worked out.

Exit Bobby Seale

The observers straggled back to Attica between 8:00 and 9:30 Sunday morning. Many had left the yard with Bobby Seale Saturday night and had not yet heard of the dismal reception accorded the 28 Points. In addition, they hoped that Seale would return with an endorsement of the 28 Points that would lead to a peaceful resolution.

For several of the observers, the day had begun on an ugly note. Stopping for a quick breakfast at a motel in nearby Alexandria, Badillo, Wicker, Matthew, and Garcia encountered Arthur Eve in a heated discussion with the motel owner over the amount of his bill. Eve was objecting to paying for two nights' lodging, since his total stay had been less than 24 hours. When the arriving group suggested Eve join them for breakfast, the proprietress refused to serve them and said, "I hope they kill all of you." Eve took the remark as a racial slur and was to relate the incident to the inmates when he entered the yard that afternoon.¹

Although Bobby Seale was expected in D yard at 7:00 A.M., he was as tardy as most of the others, and showed up in the steward's room at about 8:30. Most of the observers recall that Seale insisted on being readmitted to D yard. Afraid that any remaining hope of a settlement could be dashed by Seale, most of the observers felt that he should not enter D yard unless he was committed to endorsing a settlement based on the 28 Points, and Com-

¹Wicker, on the other hand, interpreted "all of you" to mean observers, not blacks.

missioner Oswald agreed. But Seale was not prepared to reveal in advance what he was going to say and, according to most of the observers, when it became apparent that he would not be allowed to enter the yard on that basis, Seale left.² He did not return to Attica.³

Now that the possibility of a Seale endorsement of the 28 Points had vanished, the observers tried to figure out what to do next. Those remaining were still a widely mixed group—including Dunne, Badillo, Matthews, Kunstler, Wicker, Scott, Eve, and Jones, but also Young Lords Paris and Ortiz, and Kenyatta and Tom Soto. The discussion was free-wheeling and often highly emotional. Tom Wicker, for example, proclaimed that this was “the moment of truth” and Kunstler said they had entered an “Alice in Wonderland” period and were heading for a

²Senator Dunne and Tony Fitch both recalled that William Kunstler was in the steward's room during the discussions with Seale and both later said that Kunstler had left the room with Seale and that the two of them had subsequently conferred with Commissioner Oswald (Fitch and Tepper, “No Time to Talk: Hour by Hour at Attica,” *Christianity and Crisis*, October 18, 1971, p. 213). Kunstler, however, said that Seale called him at his motel and asked to meet him in front of the prison on Sunday morning. Kunstler arrived at 9:00 A.M. to find Seale in a car in the parking lot. According to Kunstler, the two men conferred in the car, where Seale told him the Panther central committee had voted to support the inmates' demand for flight to a nonimperialist country and showed him a prepared statement to that effect. Seale also said he would not endorse the 28 Points. Kunstler testified that he told Seale he would not be admitted to the prison if that was all he was going to say and that Seale gave him the statement and drove away. As the recordings made later in D yard confirm, Kunstler was to tell the inmates that Seale had entered the prison and met with Oswald and the observers and that Oswald had refused to let him enter D yard unless he urged acceptance of the 28 Points—an account Kunstler testified was untrue. Tom Wicker also did not recall that Seale was present on Sunday. Oswald, for his part, admitted Seale must have entered the prison on Sunday, since that is what the guest log shows, but had no recollection of having seen him or met with him. Oswald did receive a call from Seale at 8:15 Sunday evening. Seale told Oswald he wanted to return to Attica and Oswald invited him to do so.

³Apparently, Seale left New York State on Sunday to consult with Panther leaders and then called Oswald and was told to come back. He arrived at the Buffalo airport Monday morning. Professor Herman Schwartz told the Commission he picked Seale up at the airport and they were headed for Attica when they heard of the assault on the car radio. They turned around and went to Professor's Schwartz's home.

"cosmic tragedy." The Young Lords wondered out loud whether the inmates could make their "political point" without a final "shoot-out."

The discussion continued in that vein, but the observers were finally able to agree on two things. first, the inmates had to be brought up to date on what was happening; second, Governor Rockefeller should be urged to come to Attica.

As early as 8:30 A.M. inmates were at A block gate asking for Bobby Seale, who had been expected at 7:00. In addition, the observers thought they detected a significant buildup and movement of law enforcement personnel, indicating to them that an attack might be imminent. They resolved to send a delegation into the yard to explain Seale's departure and to make certain that the inmates fully comprehended that the state would negotiate no further on amnesty or the removal of Mancusi and, in Senator Dunne's words, "there could be no assurance as to what consequences might flow from a continued refusal to either negotiate on neutral ground or release the hostages." However, their request to enter the yard was, for the first time, denied by the authorities. They were not even permitted, for the moment, to approach the "DMZ."

An Appeal to the Governor

Whatever the reason for the new restriction, it confirmed the growing suspicion among the observers' group that an assault was inevitable. That heightened their resolve that hopes of averting bloodshed lay in the attempt to persuade Governor Rockefeller to come to Attica. Discussion in the steward's room turned to an exploration of how that might be accomplished. It is clear that the request for Rockefeller to come originated with the observers, not the inmates, who had not publicly mentioned the Governor since their initial demand on Thursday to meet with him *or* Oswald.

Asked what they thought the Governor's presence would accomplish, most observers said that it would buy time before the assault and perhaps what was non-negotiable on Sunday would become negotiable on Monday or Tuesday. Many, such as Eve, Kunstler, and Wicker, also said they hoped that if the Governor came, it

Wicker's words, "he would very quickly, being an observant man, pick up the same vibrations, the same sensations we had about the buildup of frustration, hostility, and anger on the part of these heavily armed men [the assault forces], and the fact that there was bound to be a considerable amount of violence once an attack was carried out." That realization, they reasoned, might induce the Governor to call off or postpone the assault. Some observers also mentioned that they believed the Governor's presence would be a "symbolic gesture," lending credibility to the 28 Points and showing the inmates that the state was genuinely concerned at the highest level.

The first avenue of approach to the Governor was in the form of a public statement on behalf of the entire group of observers, urging support for the observers' appeal to the Governor to come to Attica. Originally drafted by Clarence Jones and William Kunstler, the statement called upon Rockefeller to come to meet with the observers—not with the inmates. At the urging of several observers, it did not mention the open issues of amnesty and the removal of Mancusi. The statement was unanimously endorsed by all the observers present, including several upstate legislators, and telephoned by Clarence Jones soon after 11:00 A.M. to two radio stations in Harlem for immediate broadcast. Although several observers told the Commission that the word "massacre" had been deleted, as reported in the *New York Times* the following day the statement read:

The committee of observers in Attica Prison is now convinced a massacre of prisoners and guards may take place in this institution. For the sake of our common humanity, we call on every person who hears these words to implore the Governor of this state to come to Attica to consult with the observer committee, so we can spend time and not lives in an attempt to resolve the issues before us. Send the following telegram immediately to Gov. Nelson Rockefeller in New York City: "Please go to Attica Prison to meet with the observers committee."⁴

While the statement was being drafted, the idea was advanced of approaching the Governor through Robert

⁴*New York Times*, September 13, 1971, p. 71, col. 2. The *Times* report said the statement had been brought out of the prison at 2:05 P.M. by Jim Ingram.

Douglass, who had not met with most of the observers since his arrival on Saturday afternoon. By this time, some observers believed that the legislators with access to Oswald and Douglass were not accurately representing the position of the observers committee. Thus, Jose Paris, the Young Lord and former Attica inmate, was delegated to accompany Senator Dunne to request that Douglass meet with the observers in the steward's room. The response was to send Oswald and Dr. Hurd, rather than Douglass. Douglass said he had told Dunne:

"Look, I haven't been involved in these negotiations. Russ has handled these negotiations. Russ and the committee have arrived at the 28 Points. Dr. Hurd is the Director of State Operations and I really don't think that it makes any sense to inject me into this committee observer situation at this stage of the game because I had only arrived on Saturday afternoon."

But the observers believed that Douglass was more influential with the Governor. Hurd found that the observers "were not interested in talking with me or hearing from me." They were affronted that Douglass was unwilling to walk down the corridor to face them. Dr. Hurd went again to the Superintendent's office and Douglass accompanied him back to the steward's room.

The meeting was heated and disorderly with different observers trying to speak at the same time. Senator Dunne testified that it began with Eve outlining the previous night's events and expressing the unanimous opinion of the observers that the Governor should come to meet with them. According to Dunne, Clarence Jones expressed the view that some kind of compromise on amnesty was within the Governor's broad powers and, with Badillo, Kunstler, Jones, Dr. Hurd, and Gaiter all speaking, "We exchanged our views." Douglass asked what the remaining issues were, Dunne testified, and was told by some observers that they were amnesty and the removal of Mancusi. Others said that those were not the issues, that "time was the issue," since "what is not negotiable today might be negotiable tomorrow."

According to Douglas, the atmosphere in the steward's room was "very hostile."

I went into the room and then apparently by pre-arrangement there were half a dozen or so members of the

committee who were selected to direct speeches at me and the discussions that then took place were of this nature. We want the Governor to come here. If he doesn't come here and you retake the prison by use of force there will be bloodshed in the streets of every city in America.

* * *

While they were directing their speeches at me I was standing next to Oswald and a gentleman was pacing around me and there was finger shaking and shouting. . . . Someone then demanded that I get on the phone in the room and request the Governor to come up. I said I'll call the Governor and I will describe the full sense of the meeting, everything you have said, directly to the Governor and I will report back to you. I did this.

Douglass left the room and called the Governor. He told the Governor that "the real issues still were amnesty, asylum, and removal of the superintendent," and the Governor instructed him to draft a statement announcing his decision not to come.⁵ Douglass did not report that decision to the observers, but instead sat down to draft the statement.

A Call to Pocantico Hills

While Douglass was calling the Governor, the observers prevailed upon the authorities to let them make a progress report to the inmates at the A block gate. A subcommittee composed of Eve, Ortiz, Paris, Minister Franklin Florence,⁶ Soto, and Kenyatta conferred with inmates in the "DMZ," informed them of their attempt to bring the Governor to Attica, and showed them a copy of the observers' public statement.⁷

The inmates had several immediate requests. They were still waiting for the day's supply of food to be brought into the yard. They asked specifically for black and Puerto

⁵The contents of that statement and the rationale for the Governor's decision are discussed in chap. 15.

⁶Minister Florence, former President of the Rochester FIGHT organization, had joined the observers' group for the first time on Saturday.

⁷According to Eve, Dunbar, who accompanied the group, refused to allow the observers to give the inmates a copy of the statement to take back to D yard.

Rican reporters to enter the yard, saying that the truth about events in the yard was not being fairly reported by the news media. And they requested that the observers, particularly white observers, be admitted to the yard for the purpose of interviewing hostages to show they were being well treated.

Once again, however, the observers were denied entry to D yard by the authorities. Commissioner Oswald did not recall denying any request, but Commissioner Dunbar told the Commission the observers were not allowed into D yard because it was felt they could not accomplish anything and because of concern for their safety. There are two other plausible explanations.

The first explanation is that an assault was at least being considered for Sunday afternoon, but was later postponed. The authorities, including Oswald, steadfastly deny that any decision for an assault on Sunday had been reached but preparations were visibly underway. Troopers and correction officers were placed on alert for the actual assault. Observers said that from the window of the steward's room they could see gas masks, ladders, portable searchlights, and fire hoses brought inside the walls and troopers lining up and moving in formation. At least one correction officer told the Commission that he had been ordered to man a fire hose for possible use during an assault on Sunday and was later told he was not needed because there would be no assault that day. Finally, Major General John C. Baker, Commander of the National Guard, told the Commission that when he arrived at Attica at 2:00 P.M. on Sunday, he was told an assault was contemplated for that day. He advised the authorities that if National Guard troops were needed, it was too late for them to reach the prison before dark.

The other possible explanation for barring the observers from D yard early Sunday is that Oswald was following the advice of the Governor. Robert Douglass testified:

I told Russ, based on a conversation I had with the Governor, that the Governor was very reluctant on Sunday afternoon to let any more volunteers, press, citizens, observer committee, what-have-you, go back into the prison.

According to many observers, not only did Oswald tell them at 1:00 P.M. that they could not return to D yard,

he showed them a draft of a statement he had prepared, with the assistance of Howard Shapiro, the Governor's assistant counsel, again urging the inmates to release the hostages and negotiate on neutral ground. Some of the observers who recalled seeing the statement early in the afternoon characterized it as an "ultimatum" and said that they persuaded Oswald to withhold sending it to the inmates at that time. Other observers had no recollection of having seen Oswald's statement before it was sent to the yard.

With the entrance to D yard once again barred, and with increasing signs that an assault was imminent, the observers now, at 1:20 P.M. on Sunday, decided to telephone the Governor directly. While the subcommittee of six, plus Kunstler, returned to A block gate to tell the inmates they could not enter the yard, Tom Wicker dialed the Governor's residence at Pocantico Hills. The unlisted number had been produced by Senator John Dunne, the Republican legislative committee chairman from Nassau County.

The call lasted over an hour, during which Wicker, Jones, Badillo, and Dunne each spoke with the Governor. According to Jones, each one "cross-confirmed what the others had said to the Governor—that a massacre was about to take place." Wicker testified that he told Rockefeller that his presence would be "a symbolic gesture" of concern and that he hoped the Governor's trip would give them time during which hard positions might soften, but that he did not mention his feeling that the Governor should observe the demeanor of the assault forces. Jones and Dunne said they told the Governor his presence would give the observers "greater credibility with the inmates" and Jones added that it might "provide us with that additional ingredient that could tip the scales toward the possibility of a peaceful solution." All four stressed that they were asking the Governor to meet with them, not with the inmates, and that he would not have to enter D yard if he came. Senator Dunne added that if the Governor came, the observers would not urge that he yield on the amnesty issue and that he, for one, would vigorously oppose any form of amnesty.

Finally, Badillo made an appeal for more time, urging Rockefeller to consider the political ramifications of sending the troopers in on a Sunday afternoon when people

were home watching their television sets. According to notes kept by Senator Dunne, Badillo told the Governor that he, too, needed more time—to prepare to deal with outbreaks of violence in the urban ghettos in the wake of an assault. “We didn’t ask the Governor,” Jones concluded, “we pleaded. We pleaded in the name of humanity to please come up to Attica to meet with us.”

In his statement to the Commission, Governor Rockefeller described his conversations with the four observers:

They didn’t see, any of them, how any of these last three demands [amnesty, flight, and removal of Mancusi] could be acceded to. They thought we had given everything that we could give, but they didn’t say it. I felt that they did not want to admit defeat in this and see this thing just go back to the Commissioner.

So I said, “Well, what do you think would be accomplished by my presence?” And their answer was, “Well, we don’t know, two things. One, something might happen and two, we could buy time.”

“Well,” I said, “who do you want to buy time from? Are you worried that the prisoners are going to move and kill the hostages or are you worried the state is going to move?” And they said, “No, we’re worried about the state.”

“Well,” I said, “if it’s more time you want, I can give you more time.” “Well,” they said, “your presence here would be a new element and we admit you can’t do any of the things, we know you can’t go beyond the 28 Points agreed to, but maybe if you just come.”

The conversation left Clarence Jones with the impression that the Governor “was faced with a very difficult decision and he was torn.” Senator Dunne, however, understood that the Governor had firmly and finally rejected their plea. In fact, no sooner had he finished talking with the observers in the steward’s room, than the Governor called Douglass in the Superintendent’s office down the hall and, together, they put the finishing touches on the Governor’s press release explaining why he would not come to Attica.

The observers’ appeals were not, however, entirely futile. Following the phone call, Governor Rockefeller directed that any plans to mount an assault on Sunday be canceled and asked Douglass “to make sure Congressman

Badillo knew that we would not take immediate action on Sunday night."

The Last Visit to D Yard

At 2:10 P.M. on Sunday, the subcommittee returned to the steward's room from A block gate, having seen that food was sent into the yard. At precisely that time, according to Commissioner Dunbar's diary, "a large supply of messages from the Commissioner to inmates was delivered to A gate . . . with the response due at 3:00 P.M." Within a few minutes, Commissioner Oswald was in the steward's room, reading his message and informing the observers that he had sent it into the yard. The message read as follows:

As Commissioner of Correctional Services, I have personally met with you several times in areas under your control for the purposes of ensuring the immediate safety of employee hostages, and the safety of all others concerned during the current difficult situation. As you all know, food, clothing, bedding, and water and medical care have been available to you. You have been able to meet with outside observers of your choice and representatives of the news media. A Federal court order was obtained promptly to guarantee that there would be no administrative reprisals; your representatives have been able to ascertain that no mistreatment of inmates has occurred.

I urgently request you to release the hostages unharmed, now, and to accept the recommendations of the committee of outside observers which recommendations were approved by me, and join with me in restoring order to this institution.

Only after these steps are taken am I willing to meet with a five-member committee chosen by you to discuss any grievances you may have and to create a mechanism by which you can be assured that the recommendations I have agreed to are implemented.

All possible efforts have been made to deal fairly with your problems and grievances to resolve the present situation.

All good faith is embodied in the proposed agreement I signed which is in your hands.

It is in the interest of all concerned that you now respond affirmatively to this request.

Whether or not they recalled having seen the statement before, the observers agreed that Oswald's announcement that it had been sent into the yard was met with an angry reaction. Many of them objected strongly to the implication in the second paragraph that the 28 Points had been the "recommendations" of the observers since they had, in their view, only presented the package as the best deal the inmates could get, and had stopped short of urging its acceptance.

Arthur Eve's reaction was the most extreme. He testified:

. . . when I read that, I said to the Commissioner, "You and the Governor have just signed my death warrant."

* * *

And I said, "What you have done is to allow us to come and tell them we were doing one thing and subsequently give them a message which contradicted what we said to them." I said, "You have just set us up to get killed."

* * *

In fact, I broke down and started crying. . . .

Clarence Jones said that he and other observers felt "compromised" by the Commissioner's message and Kunstler testified that he feared when the inmates saw it "we would lose all credibility [and] we would be in grave danger."⁸ Senator Dunne, who himself found the message to be a fair statement, said that Oswald was much abused by other observers because of it.

Commissioner Oswald clearly did not anticipate the hostile reaction. He testified that he did not "clear" his statement with the observers and explained his action to the Commission as follows:

My purpose in sending it in was that after spending hours with this group and being convinced that this was agreeable with all concerned and not certainly the sort of things that I would have written up, that this represented our joint feeling, and that it was a recommendation.

⁸Kunstler maintained, however, that he did not know the message had been sent into D yard until he entered the yard later. Had he known, he testified, "I'm not so sure I would have gone in."

Although the confrontation ended with the Commissioner reiterating his ban on further visits to D yard, Arthur Eve immediately began to rally the observers for a last-ditch attempt to enter the yard. The inmates had asked that someone come and interview the hostages; perhaps that would induce Oswald to change his mind. Eve tried to enlist Senator Dunne and Tom Wicker, who had agreed Saturday night they would not go back in, to join the group which would attempt to go in to interview hostages. According to Dunne, the subcommittee had reported from A block gate "that conditions on the inside were deteriorating" and the inmates had proclaimed their readiness to die. Under the circumstances, Dunne was unwilling to reverse his decision to stay out himself; he agreed, however, that some observers had to go in and tell the inmates what they were facing. Wicker, too, hesitated at first, but then, according to Eve, Clarence Jones said, "Well, if Tom Wicker goes back, I will go with him," and Wicker finally said, "No. Damn it, yes. I'll go in."

Nine observers—Eve, Kunstler, Kenyatta, Ortiz, Paris, Soto, Florence, Wicker, and Jones—now headed for the A block gate, accompanied by two reporters, Rudy Garcia of the *New York Daily News* and Dick Edwards of Jones's *Amsterdam News*, and a television news crew. After what Fitch and Tepper later called "a desperate hallway meeting with Oswald," the group finally, at 3:00 P.M., got permission to enter the yard for the first time on Sunday.

In finally admitting observers to the yard on Sunday, Oswald was rejecting the advice of the Governor. Oswald testified that when Robert Douglass told him the Governor did not think the observers should be admitted,

I asked him whether he was telling me that Governor Rockefeller was replacing me. And he said no, he didn't mean that at all. I said, "Well, I just wanted to be clear on that because I am letting them in."

Before the observers were allowed to go in, however, each of them was required, on the Governor's instructions, to sign an additional release, waiving all claims against the state for injury or death.

The observer group had originally intended to go in on Sunday to interview the hostages and make clear to the inmates that the negotiations were at a standstill and an

assault was planned. As they now recall it, however, another thought was uppermost in their minds as they approached the A block gate for the last time. Before they could make the inmates believe anything they said, they had to do something to explain away Oswald's message and win back what they perceived as their lost credibility.

The inmates in the "DMZ" did nothing to dispel the observers' fears. Having waited all day, they at first refused to allow the group in. Minister Kenyatta then approached the gate and spoke with a Muslim leader in what he told the other observers was Arabic. The inmates relented, but as they escorted the group across the "DMZ" and A yard, they said, "None of you can look us in the eye, why?" They made it clear, say the observers, that Oswald's message was the cause of their new attitude. The observers were told by their escorts that they could no longer promise them safe-conduct out of the yard. For most of the observers, it was their most tense moment at Attica. William Kunstler, the defender of Black Panthers and veteran of the Chicago conspiracy trial, described his feelings at that moment:

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 to go in and make our explanations.

Chapter 12

D Yard: The Changing Moods

As the observers entered D yard Sunday afternoon, a new mood awaited them. The exuberance of the first two days had given way on Saturday to tension and defiance and by Sunday the mood had become one of despair and

fear. Almost symbolically, the bright, warm sunshine had been replaced by clouds and signs of rain. During the long, unexplained waits for the return of the observers both Saturday and Sunday, the inmates could see nothing happening and could only wonder.

Saturday: Tension and Fear

On Saturday night, Dr. Hanson—the Warsaw surgeon who treated inmates and hostages in the yard—had noticed that inmates were “up tighter than a drum.” Some of the hostages complained to him that their viewpoint was not being considered in the negotiations. Hanson suggested that they write out a statement, which he offered to try to transmit to Commissioner Oswald. Wald and Curtiss did so, but the note created a crisis for Dr. Hanson, and resulted in his being detained in the yard for over an hour while the inmates’ committee heatedly debated whether he should be freed at all. Dr. Hanson was released only after having withstood what he described as an “irrational tirade” on the part of one of the inmate spokesmen. Now, for the first time, Dr. Hanson himself felt threatened. “The situation was getting so tense,” he said, “that despite their apparent good intentions toward me, I had no desire to go back in again.”

Dr. Hanson reported his observations to the group in the superintendent’s office—including Commissioner Oswald and Robert Douglass:

I went back up to the Commissioner’s office and told them my impressions of what was happening and that there was sort of a psychological deterioration taking place.

There seemed to be a battle for control . . . [and] it seemed to me that the violent forces were gaining more and more control over the conservatives.

* * *

I stated that there was markedly increased tension and that there was much more fighting going on between the men, much more argumentation, the security was much stricter and it was a peculiar thing that these people were fighting against a regimented society, a structured society that they felt they couldn’t cope with and yet it was amazing in just this little three-day period they set up an arti-

ficial structured society of their own that was absolute tyranny. There was a very small group of men, I don't know the specific number, I suppose somewhere between 12 and 25, maybe, that were really running the whole show and they had their so-called security guards which were really their working officers and the rest of the men in the yard were just peasants. They really had no rights and no voice and no anything.

So, instead of this democracy where everybody had equal vote, they established a dictatorship of their own and it was amazing how fast it came about.

The hostages also felt the change. Although they continued to eat well under the circumstances (they received a hot meal of goulash on Sunday at noon) and they were still protected by their Muslim guards, the hostages felt much less secure than they had in previous days. For one thing, the negotiations had been in progress for three days and no one had consulted them or asked how they were doing or what they thought about the issues under consideration. Then, too, events had undermined the feeling that they were in no immediate danger.

Early Sunday afternoon, a band of 20 black inmates dressed in clerical vestments and other strange costumes taken from the chapel emerged from inside D block and approached the hostage circle. One of them carried a long spear, another wielded a homemade machete with the word "executioner" painted on its blade, and others had bats, clubs, and gas guns. They complained that the Muslim guards were becoming too friendly with their captives and announced that they had come to get the hostages. The Muslims lined up shoulder to shoulder, ready to fight to protect the hostages.

A tense confrontation ensued between the leader of the Muslim group and the leader of the bizarre band. Finally, the intruders backed away. Thereafter many hostages report, their blindfolds were replaced and kept on for long periods of time.

Several times on Saturday and Sunday, inmate security lieutenants would yell "Security alert," and protective precautions in the yard, and the hostage circle in particular, would be tightened. Captain Wald, one of the hostages, described the feeling:

Here were 38 of us and perhaps we were going to die. I think this was on everybody's mind out there. . . . Your hands were tied part of the time. You had the blindfold on. And there isn't anything more miserable than having things happen around you and being blindfolded. They would yell "security," and then back on our eyes would go the blindfold. We would then sit there and you would hear a lot of shouting and a lot of what we interpreted as fighting.

The increased tension and insecurity detected by Dr. Hanson and the hostages were manifested in the harsh discipline meted out in the name of the collective inmate population. There are at least three well-documented instances, described below.

A Trench Is Dug

Seven white inmates from C block stayed together in a tent near the handball court. There they kept to themselves and were left alone by other inmates on Thursday and Friday. Among themselves, they agreed that they did not want to be in the yard and mused about possible avenues of escape. Saturday morning, the youngest among them put a white cloth on a stick on top of the tent.

Later that morning, a group of five black security guards came to the tent and forced all seven inhabitants to approach the committee table. There, all seven were accused of "treason" for flying a "surrender flag" above their tent. The young inmate who had placed the flag tried to explain that the cloth was meant only as a marker to identify his tent, but was told that the seven had been watched all along and were known to be traitors.

There was disagreement among the committee over what to do with the seven inmates. One member suggested locking them in cells in D block, while another insisted that traitors should be executed. An initial decision was made to take the inmates "upstairs," but as they were led off in the direction of D block, they were stopped and put into a tent near the negotiating table under "house arrest." There they sat for two hours, blindfolded, their hands tied behind their backs.

After two hours, security guards returned and told the group they could choose between death and agreeing to

finish digging a large trench in the yard. Although one of the inmates was 55 years old, all seven were sent out into the hot sun and made to dig for several hours, with little rest. They worked under the scrutiny of security guards who constantly subjected them to verbal abuse. They were repeatedly told that they were the worst kind of traitors, because they had turned against their fellow inmates.

The L-shaped trench, which extended along almost the entire length of B catwalk and half the length of D catwalk, was finished near sundown on Saturday. The argument over the fate of the seven inmates resumed. Some wanted to continue to detain them; others again threatened to kill them, charging that they were correction officers in disguise, spying on the inmates. Finally, security guards told the inmates they were being released into population, but that they would still be closely watched. On Sunday night, four of the seven were taken by security guards to D block and locked there. On Monday morning, two of the others, including the young inmate who had hoisted the white flag, were blindfolded, bound, and placed inside Times Square to await the assault. All seven inmates survived the assault.

The Deaths of Schwartz, Hess, and Privitera

Barry Schwartz, white, age 26, was serving a 10-to-20-year sentence for manslaughter, first degree. The clerk of A block, a favored position, he was generally considered by the inmates to be an informant for the administration. On the morning of September 9, Lieutenant Curtiss, before being led away by the inmates, had entrusted Schwartz with his wallet. Schwartz had managed to smuggle the wallet out of the prison by passing it to a chaplain who visited the yard.¹

Kenneth Hess, white, age 22, entered Attica on May 13, 1971, to serve a 0-to-4-year sentence for grand larceny. Generally regarded as a "racist," Hess made it a practice not to associate with blacks and Puerto Ricans. He had

¹Dr. Eligius Ranier, the facility's Protestant chaplain, and Father Eugene Marcinkiewicz, the Catholic Chaplain, entered the yard on Friday afternoon at the inmates' request. They remained for short periods of time, talking with inmates and hostages. During Dr. Ranier's visit, Schwartz handed him Lieutenant Curtiss's wallet.

been transferred to 5 company shortly before the uprising—for involvement in a racial fight, according to one inmate.

It is doubtful that either Hess or Schwartz really wanted to be in the yard. Once there, Schwartz had been pressed into service as a typist for the committee drafting the demands.

Stewart Dan, a television reporter for WGR-TV in Buffalo, had been admitted to D yard on Friday afternoon to cover the negotiations. As he was sitting at the negotiating table, Schwartz and Hess approached him and began talking about the conditions in the prison and describing to him the taking of the facility on Thursday. According to Dan, none of the information they gave him was particularly significant—he had received similar information from other inmates. However, out of habit, Dan was taking notes. Dan maintained that Schwartz and Hess did not hand him any notes or other papers, although many inmates said in interviews that Schwartz and Hess had passed notes to a television reporter, identifying participants in the uprising.

The conversation among Dan, Schwartz, and Hess was interrupted by inmates from the negotiating table. Schwartz and Hess were brought before the table and Stewart Dan was asked to turn over his notes, which he did. Shouts of "Treason" and "Guilty" could be heard by bystanders, including Dan. Schwartz and Hess related accurately the substance of their conversation with Dan, but after a few minutes, they were stripped by inmate security guards and led out of the yard to D block.

Dan inquired about them at the negotiating table and was told that they had been placed in isolation in D block because they had tried publicly to disassociate themselves from the mass of inmates in the yard. Dan was assured that nothing would happen to them and he did not even consider the incident important enough to include in his news report.

The badly mutilated body of Schwartz was found in D block on Monday when the authorities regained the institution, and Hess's body, beginning to decompose, was discovered by correction officers in D block on Tuesday, September 14. Both Schwartz and Hess had been stabbed

numerous times.² Several inmates reported seeing one or both of them back in D yard after Friday night. Available evidence suggests that they were not killed until Saturday or Sunday.

Michael ("Mickey") Privitera, a 37-year-old white from Rochester, was serving a 25-year-to-life sentence for the murder of a police officer. He had spent time in a psychiatric ward at Dannemora State Hospital and although released, was considered by inmates and officers alike to be unstable and dangerous. He proved these qualities in D yard. Privitera had struck Red Whalen on Thursday morning when the hostages were brought into the yard and he had attempted to break through the security guard to reach the hostages, threatening to kill them. Later on Thursday, he assaulted an inmate with a pipe and was brought before the committee and sent to D block. Privitera was permitted to return to the yard, but proceeded almost immediately to assault another inmate. He was again sent to D block, where he was subsequently beaten and stabbed to death. His body was so found by the authorities when they retook the institution on Monday.³

It appears that most inmates did not know of the killings of Hess, Schwartz, and Privitera while they were still in D yard. Large numbers of inmates, however, did see Schwartz and Hess and/or Privitera escorted from the yard, and many inmates were also aware that the diggers of the trench were not volunteers. These, and other instances of enforcement of the committee's authority, were bound to contribute to the growing fear and

²Dr. Alan R. Moritz, the Commission's pathologist, concluded: "Schwartz died of a combination of multiple stab wounds of the chest and abdomen involving the heart, lungs, and abdominal organs, multiple blunt injuries of his head and face, and cut-throat injuries of his neck." Dr. Mortiz also concluded that "Hess died of multiple recent stabbing and cutting injuries." He concluded that Hess had sustained approximately 40 stabbing and cutting wounds of his chest, back, neck, head, and arms. Finally, he concluded that both Schwartz and Hess "received many more injuries than were required to kill" them.

³Dr. Moritz concluded that "Privitera died of a combination of injuries including multiple blunt impacts to the head . . . multiple (approximately 20) stab wounds of the front and back of the torso, and cut-throat injuries of the neck." He concluded that Privitera

tension among inmates in the yard. Undoubtedly, they were a major cause of the widespread reluctance, described earlier, to speak out in favor of a settlement based on the 28 Points.

The Erosion of Stability

By Sunday afternoon, whatever stability had previously existed in the inmate society had begun to erode. The cement holding together the various groups in the yard had begun to crumble, and cracks appeared, often along racial lines. A large number of the inmates interviewed said that the unity and resolve in the yard were disintegrating rapidly by Sunday. What accounted for the changes?

As one inmate explained it:

People were getting restless, you know. The food was low. Everyone was getting short-tempered with each other more or less and it was just a matter of tension just building up, waiting, waiting, waiting, waiting, wondering what the outcome would be.

Indeed, some inmates were beginning to crack under the strain of waiting for something to happen. Dr. Hanson testified that on Saturday he treated a number of inmates who exhibited "psychic or hysterical reactions of various types," including epileptic-form seizures in men who had no history of epilepsy, and catatonic fits. Numerous inmates reported that by Sunday (in the words of one), "a lot of guys were bugging out" and had to be confined in D block cells, and that others were "going crazy," trying to escape from the yard by climbing the cellblock walls.

Then, too, despite the stringent efforts of the security force to prevent fights, homosexuality, and the use of drugs, all of these were on the increase by Saturday afternoon and by Sunday night threatened to get out of hand.

Several inmates reported that the use of drugs in D yard continued after the first euphoric moments on Thursday morning. One inmate admitted that he himself was frequently high during the four days on various pills dispensed as medication.

Many inmates said that fights broke out among inmates throughout the four days, but increased in frequency on

Sunday and Sunday night. Some even reported witnessing stabbings, slashings, and one beating with a hammer, perpetrated by inmates against other inmates. On Saturday and Sunday nights, Tiny Swift treated several inmates for stab and slash wounds. One Puerto Rican had been stabbed three times with a crude weapon, but would not say what had happened to him. A black inmate suffered a slash in the neck as he slept in his tent Sunday night, was treated by Tiny Swift, and lived to show the scar to a Commission interviewer. A third, a white, was stabbed in the chest Sunday night and released from the yard to the prison hospital about 2:00 A.M. Monday.

Many inmates reported that there was consensual homosexual activity inside the tents in the yard, in cells in B and D blocks, and even, at night, through the windows of C block, where other inmates were still housed.

Inmates also reported hearing rumors of homosexual attacks, and in some cases, of witnessing or having been the victim of them. Inmates who organized themselves into groups mentioned protection against homosexual attacks as a primary motivation.

As early as Thursday night, two young inmates were raped at knife point by several other inmates in a wash-room near Times Square. The incident was reported to the security guards, who immediately protected the two inmates and made efforts to find those responsible. Inmates located near the tent where the two inmates were staying said that the security guards, when notified, vowed to kill the culprits if they found them. Although several inmates were well aware of the multiple rapes, no inmate interviewed by the Commission knew whether the perpetrators had been identified or disciplined in the yard; all indications are that they were not.

Sunday: A "Farewell" Session⁴

The inmates' unity was dissipating. Their feelings of fear and insecurity had been heightened by harsh discipline imposed by the committee. There had been long periods of waiting. Optimism had ebbed with the rejection of the 28 Points on Saturday night.

⁴Quotations of remarks in this section are taken from transcripts of tapes made in D yard Sunday, September 12, 1971.

If, for all the foregoing reasons, the mood in D yard when the observers entered on Sunday afternoon was one of farewell, despair, and resignation, it also affected the observers themselves. Clarence Jones testified: "My mood on Sunday was one of such total resignation, of such total despair, that I didn't think that there was anything I could say that had the capacity of having any significant impact on the events as they were taking place in the yard."

Although Jones did not speak, other observers did, and their remarks, as well as those by inmates and hostages, raised hopes anew that total amnesty, and even flight out of the country, remained possible. While the observers felt the mood of despair, they were in no position to appreciate the dissolution of unity among inmates in the yard. Instead, they interpreted the cheers and shouts of "Right on" which greeted the speeches that afternoon as a sign of even greater harmony. That misconception may have, in turn, engendered still more rhetoric, thus only increasing the developing air of unreality in D yard.

Minister Florence spoke first, expressing sympathy for the inmates' cause. He told the inmates that "all of us are prisoners" and that "we are all the same thing in the eyes of Oswald and his kind." Florence continued to cheers of "Right on": "And when I think about you not eating and I think about the way he [Oswald] lied to you and lied to us, the only thing I can say, the only thing I can pray is that we cannot afford to rest until his kind will be brought to an end."

Arthur Eve spoke next, trying to dispel the impression that the observers had approved of the Commissioner's letter urging acceptance of the 28 Points. He called the letter "a typical indication of the bad faith that many of us have had to experience," but assured the inmates that the observers were "united today, more than we have ever been." He told them the Commissioner was "frightened now, because we have insisted that the Governor come here" and had "played this kind of game to try to divide us." Finally, he told them that "the request for clemency, total amnesty, is not unreasonable because of the hostility of the people who serve in these institutions, with no training whatsoever in human dignity."

Not only were there expressions of support for the amnesty demand, but the idea of flight to another country,

which had been absent from the rhetoric since the Immediate Demands were presented on Thursday, was again seriously discussed. After Arthur Eve finished speaking, one of the inmate spokesmen referred to the fact that Eve had bought plane tickets to Attica for the Young Lords and asked how many tickets he would be willing to buy for the inmates who wanted to leave.

"As many as I can," said Arthur O. Eve.

"Out of the country?" asked the inmate.

"Anywhere you want to go," replied the Assemblyman from Buffalo.

A show of hands of those who wanted to leave the country was then called for, and a number of inmates raised their hands.⁵ One of those who raised his hand later testified:

It was a way-out demand, but anything is possible, and I would have left. This is a racist, violent country.

After the show of hands, an inmate spokesman turned to William Kunstler. "Mr. Kunstler," he said, "What's this I hear about foreign countries?" Kunstler's reply was:

There are four third-world and African country people across the street from this prison prepared to provide asylum for everyone that wants to leave this country from this prison.

Testifying before the Commission, Kunstler explained that he had in fact spoken with four members of the Black Panther party, who claimed to be conveying offers of asylum from representatives of African and Asian countries.⁶ However, Kunstler admitted, he had not spoken with representatives of any foreign countries, there was

⁵There is no certainty as to how many inmates raised their hands. The inmate at the microphone called it "almost unanimous," but one observer said it was not more than a hundred and another said there was a "scattered response."

⁶In response to the Commission's questions, Kunstler declined to identify the four countries without their consent. However, in the book coauthored by Representative Badillo, they are identified as Algeria, North Korea, North Vietnam, and Congo-Brazzaville. Badillo and Haynes, *A Bill of No Rights: Attica and the American Prison System* (New York: Outerbridge and Lazard, 1972), p. 87.

no one waiting across the street, and the Panthers' proposals were limited to providing asylum only after inmates had completed their sentences.

Kunstler testified that after he was off the microphone he explained this to a group of inmates who had expressed interest in flight and that when it became clear that the offer was limited to inmates who had been released from prison, the interest quickly dissipated.

None of the observers' statements that afternoon either urged acceptance of the 28 Points or warned clearly of the impending assault. But the observers who were in D yard on Sunday firmly rejected the charge that they encouraged the inmates' intransigence either through their remarks or these omissions. Tom Wicker, who was in the yard on Sunday, testified:

Things were said, I think, throughout that period that perhaps might better have been unsaid had wise men had long, quiet hours in which to deliberate what to do. Not every moment of a circumstance like that can be carried out in the cool pursuit of some rational strategy.

I think we all did what we thought was best at the given time. I am not aware of any speech that was made that in my judgment ever gave the prisoners any reason whatever to think that they were going to win their struggle. I know of no speech that was made at any time that ever gave them any cause to believe that if they would just hang on a little bit longer, they were going to get an amnesty and go home free. I know certainly of no speech of any kind that made the suggestion that they were indeed likely to be flown off to any third-world country.

Despite their explanations, it seems clear that what the observers said, as well as what they did not say, in D yard on Sunday afternoon, could only have reinforced thoughts of obtaining amnesty or transportation out of the country which lingered in the minds of many inmates in the yard, including several on the negotiating committee.

Clarence Jones told the Commission in private session that he did not speak on Sunday because he did not want to engender such false hopes.

The Hostages Speak

The feeling of desperation was beginning to reach the hostages as well. As one of them testified:

Well, at the time, if they would have granted the transportation to a nonimperialistic country, each one of us hostages would have paid one ticket, one airlines ticket for anybody who wants to go. And as far as the amnesty goes, it was a small price to pay for our lives

The hostages were finally given their chance to be heard when Captain Wald, Sergeant Cunningham, and three others were interviewed before microphones and television cameras in the yard on Sunday afternoon. Most of the hostages reported that Sergeant Cunningham was chosen by them as their spokesman, although inmates and the observers have said that the inmate committee or the security guards decided which hostages would be interviewed. Lieutenant Curtiss, some said, was rejected because his face was too bruised. The hostages responded to questions posed by Tom Wicker, Dick Edwards of the *Amsterdam News*, and Rudy Garcia of the *New York News*, and their message was blunt: nothing the inmates were demanding was too high a ransom for their lives.

Each of the hostages interviewed confirmed that all of them had been treated well, expressed sympathy for the inmates' grievances, and indicated that he was speaking voluntarily. There were complaints that no one had shown any interest in their views up to then, and expressions of desire to return to their wives and children.

The observers who entered the yard had hoped to use the hostage interviews as a means of putting pressure on the Governor to reconsider his decision not to come to Attica. Consequently, each hostage was asked if he had anything to say to Governor Rockefeller. The first hostage interviewed replied that all of the hostages had talked it over and agreed that the Governor should "give them complete amnesty." He said also, "I want him to come here now and straighten this mess out." Another hostage echoed those sentiments, suggesting that the Governor "get his ass here now."

Captain Wald, the senior officer at Attica, asked if he had any remarks to address to Governor Rockefeller, said:

Governor, we are here in the yard with quite a group of people and everything that you can do I am highly in support of. We lived for four days under the same con-

ditions they are living in and we are 38 men who understand exactly what they are trying to get for themselves. Now it would seem a shame to waste a group of educated people like this.

Sergeant Cunningham's remarks, which were to be featured on most television news programs that evening, included the following:

One more thing I would like to say to Mr Oswald: I wish you would take any of the men that belong to us off the roof and any of the troopers out of here, because if you get these shaky guys shooting off or getting up in a group or something, someone is going to get excited and then we are all going to pay.

This is not a joke. This is not some kind of a little tea party we have got here. You have read in the papers all these years of the My Lai massacre. That was only 170-odd men. We are going to end up with 1,500 men here, if things don't go right, at least 1,500.

Asked if he would like to direct a message to the Governor, Cunningham replied:

I certainly would. One of the recommendations, if he says no, I'm dead. He must give them clemency. He must give them clemency from criminal prosecution. . . . Anything else other than this is just as good as dropping dead, because these things are what has got to be had and there is no tinkering or none of this stuff. I mean this is cut and dry. That's all there is to it.⁷

Some hostages and other correction officers later expressed the view that the hostages who spoke did not really mean what they said, that either their remarks were coerced by the inmates, or that they had really been spoken in some kind of reverse code, intending to convey exactly the opposite message—that the state should not yield to the inmate demands. However, most of the hostages said that they had definitely portrayed the feelings of the hostages as a group.

Due largely to the public statements in the yard on Sunday, the attention of inmates was focused for the first time on the possibility that Governor Rockefeller would

⁷Eighteen hours later, Sergeant Edward Cunningham was dead, shot by two stray pellets from a State Police shotgun.

come to Attica. His coming had previously been the topic of idle discussion among inmates in the yard, but until Sunday few considered it a serious prospect. Now, many thought, perhaps the Governor's presence would somehow break the impasse. Once that hope was raised, few inmates were willing to accept a settlement based only on the word of Commissioner Oswald.

The majority of inmates interviewed said that Governor Rockefeller should have come at least to the prison—if not into D yard itself—and that his presence would have led to a settlement. Most of the inmates expressing this view said that they had less than total confidence in Commissioner Oswald's ability to implement the 28 Points. Rockefeller's personal endorsement of those proposals on the scene at Attica would have immeasurably increased inmate confidence that they would be enacted, most inmates said. They did not believe that the chief executive of the state and a politician of such prominence could go back on promises he had made publicly. At least one inmate told Commission interviewers that if Rockefeller had come and "seen the human condition" of the inmates, he would certainly have been motivated to implement prison reform. Several inmates also expressed the view that Governor Rockefeller's presence at the scene would have prevented reprisals against inmates after any settlement. Others merely said that Rockefeller's coming and showing his concern for their plight would have broken the deadlock. Those inmates who thought Rockefeller's presence at Attica would have made no difference—a decided minority—said that amnesty was still the key to any settlement and they were convinced that the Governor would never have granted it.

There was also a small group of inmates—including some of the negotiating committee—for whom even the Governor's presence and a grant of amnesty or executive clemency may not have been sufficient. After Sergeant Cunningham's support of the amnesty demand drew cheers from the inmates, one of the committee members took the microphone and announced that he, for one, would not believe any piece of paper purporting to grant executive clemency and that nothing less than flight out of the country would satisfy him and the inmates doing life sentences. He asked the other inmates to support that demand.

One major factor contributing to the escalation of rhetoric Sunday afternoon must surely have been the deaths of Schwartz, Hess, and Privitera. There is no doubt that the inmates' negotiating position had been hardened on Saturday by the knowledge of Quinn's death. The murder of a prison guard was then an offense carrying the death penalty, and members of the negotiating committee—if their own oratory is any indication—feared that they might be implicated. As one inmate testified:

Everyone could be indicted and then the men that were elected as spokesmen, you know, they had nothing to do with it, they were definitely going to be involved in it. They were definitely going to be under prosecution.

The three inmate deaths, while not punishable by death, were bound to have produced similar reaction. Evidence available to the Commission indicates that at least some of the inmates on the negotiating committee knew of the deaths by Sunday afternoon. The conclusion is inescapable, therefore, that at least those members of the committee who knew of the deaths had reason to anticipate prosecution. They could well have feared the possibility that the inference would be drawn that they had ordered the deaths, whether or not they were in fact responsible. That fear, in turn, undoubtedly strengthened their resolve to hold out for amnesty and flight and colored their rhetoric during the final session with the observers on Sunday afternoon, and thereafter.

The Public Limelight

The televised interviews with the hostages and the speeches in D yard Sunday afternoon undoubtedly contributed to the feeling of power and importance which had been growing among the inmates ever since the media had first entered the yard on Thursday. Inmates used to the dismal anonymity of prison life were suddenly freed from their cells and their routine, thrust before microphones and television cameras, and questioned by reporters seemingly eager to tell their stories to the world. Observers with national reputations had put aside important business and rushed to Attica to confer with them. The state had been negotiating with them for four days and had made numerous concessions. Negotiating sessions in

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D yard were attended by all the lights, cameras, and paraphernalia of a national political convention. On the radios and televisions in the yard, they could see and hear themselves as the number one news story.

The feeling of power instilled in the inmates, and especially their spokesmen, by this unaccustomed attention reached its peak on Saturday night and continued into Sunday. Dr. Hanson was struck by this phenomenon when he was in the yard. With the demurrer that his was only "layman's speculation," he testified:

I think there was a tremendous psychological effect of the way the negotiations were handled. I think that these people that are used to being confined in a situation like this and not having their voices heard are all of a sudden thrust on a national television screen and I think this had a tremendous effect. It wound up that they were all role-playing; that the people at the level of security guards were playing their roles and now they had a definite job, they had a position of authority, minor though it was; and I think that the people that were actually leading the rebel prisoners, I think they got in some way a bit of megalomania, where they saw themselves as people with tremendous importance. I think they got the idea that they could bring about vast changes for their people on the outside through the impact on this television screen. I think it got to the point where I don't think that any concessions would probably have precluded some disaster. I think things had to result in some violence in order to satisfy some of these things.

The "Air of Unreality"

These, then, were the factors creating the climate of tension, despair, moodiness, and the increasing "air of unreality" in D yard on Sunday afternoon. The pervasive feeling naturally affected inmate expectations as to what was going to happen next. Inmates were asked whether they thought the uprising would have "petered out" by itself if the assault had not come on Monday. They were also asked whether they expected, if an assault did occur, that the State Police would come in shooting. Inmate responses to these questions reflect, more than anything else, that same "air of unreality."

Inmates said that with the passage of additional time

Digitized from the collections of the New York State Library, Albany, NY.

increased tension and fatigue, the discomforts of sleeping on the ground, the dwindling food supplies, and finally the continuing rain and mist would have made it impossible to hold out much longer. As one inmate put it, everyone was beginning to break down "physically, mentally, and hopefully."

Several inmates reported discussions among small groups in the yard on Sunday night about organizing a counterrevolution the next day. Other groups were talking about getting men together to fight their way out of the yard on Monday if the uprising had not been resolved by then.

Inmates reported conflicting impressions as to whether they had expected an assault with guns. Many inmates had been able to watch the armed strength massing outside the walls on the television set in the yard. Since Friday night, they had been hearing rhetoric about preparing to die if they could not live like men. But neither the state nor the observers ever gave the inmates a clear warning that an assault with lethal weapons was imminent.

Against that background, inmates who were in D yard were asked whether they expected the State Police to come into the yard shooting if an assault was mounted. Almost half of the D yard inmates interviewed—46.8 percent—said they did not expect shooting, that they thought the assault forces would come in with clubs and gas. Even if there had been the clearest kind of warning that guns and live ammunition were to be used, there is reason to doubt whether it would have been believed by a large segment of the inmates in the yard. As one inmate testified:

I was in a state of shock, I will have to say, throughout the thing. . . . I feel detached . . . from the harshness of it—the possibility of being shot at that moment. I felt detached from it. I was just too unreal and so uncomprehensible.

* * *

I am having difficulty in my own mind imagining circumstances under which the administration says, "We're coming in." I'm trying to imagine circumstances that would allow the inmates to believe anything they say.

Even something like that, "We're going to shoot you."

They say so many things time and time again that turn out not to be true and even something like that isn't believed.

But the other half of the D yard inmates, a bare majority, told the Commission they did expect shooting. One black inmate testified:

I think a good majority of them thought they were bluffing, if they came in they would come in with sticks. [But] you read Kent State, Jackson State, go to Martin Luther King, you know what they're going to do. You have given people a license to kill you. People that will kill you. What did you expect? They were going to use their license.

Many other inmates mentioned Kent State, Jackson State, or My Lai in explaining why they expected shooting. "If they're shooting white college students," one said, "they certainly weren't going to spare a group of black convicts."

The unreal atmosphere which prevailed in D yard Sunday night carried on into Monday morning. It is most poignantly illustrated by the inmates' descriptions of the reactions when they saw a small yellow helicopter circling over D yard in the final minutes before the assault. The State Department of Conservation helicopter was sent aloft for reconnaissance—to determine whether there were any large fires burning in the yard—and also, according to assault planners, as a decoy to distract the inmates' attention so that a larger helicopter could sweep in unnoticed to drop pepper gas on the yard.

The helicopter circled long enough for several rumors explaining its purpose to flash through the yard. Many inmates reported hearing that the helicopter had been sent by the Black Panthers or the Young Lords to drop firearms to the inmates for defense of the yard. Others believed that the helicopter was finally bringing Governor Rockefeller to Attica to meet with the inmates. Still other inmates heard it said that the helicopter was going to land in the yard and take those inmates who wished to go to airports for jet flights to nonimperialist countries.

Even inmates who knew full well that the helicopter signaled the beginning of the end had trouble accepting reality. The testimony of a young black inmate is indicative of the state of mind of many inmates—perhaps including

those on the negotiating committee—in those final hours of the Attica rebellion:

A. The helicopter, a small helicopter, came over the yard first and it circled and it went away and it came back again.

Q. What was your response or other inmates' response to this helicopter?

A. They said, "Power to the people," you know, and, "Come on with it." . . . Meaning that if you want to kill us, you know, we're ready to die. If we can't get out of our condition.

Q. What did you expect at that point?

A. We really expected for Rockefeller to intervene, you know, and to assert his authority and have the pressure of the people outside, convince him to come in and grant us amnesty. We really believed we could get amnesty.

By Monday morning, when Commissioner Oswald sent in his final ultimatum urging the inmates to accept the 28 Points and release the hostages, there may well have been no one left in D yard capable of giving his ultimatum a response which would seem rational to anyone who had not spent those four days in the yard.

Chapter 13

The Hidden Price of Delay: Deteriorating Morale

During the four days of the uprising, the area in front of the administration building was crowded with law enforcement personnel. The State Police committed 587 men, nearly one-fifth of its entire force, to Attica. Nine county sheriffs¹ responded to the news of the uprising by sending almost 250 deputies and officers to Attica. Nearby Genesee State Park dispatched a complement of park policemen, and over 300 correction officers, including a

¹From Wyoming, Erie, Niagara, Livingston, Genesee, Monroe, Schuyler, Ontario, and Allegany counties.

group from Auburn, were present, some with firearms from the Attica arsenal, others with personal hunting weapons²

Despite the presence of other law enforcement personnel and correction officers, the state troopers understood that if the order was given to retake the prison, they would lead the assault force. The Division of State Police was founded in 1917 to provide services to rural areas of the state which did not have police forces of their own. The division is headed by a superintendent who is appointed by and reports to the Governor. The original force consisted of 232 men; as of April 1972, the Division had 3,163 troopers and officers. Of these, only 10 were black, 5 Indian, 2 Puerto Rican, 2 Spanish, 1 Filipino, 1 Cuban, and 1 Peruvian. The police force is divided into nine troops, each commanded by a major.

With the exception of the police Bureau of Criminal Investigation, most of the work of the State Police is confined to the rural areas and small communities. The headquarters of the various troopers are in such small towns as Malone, Sidney, Oneida, Canandaigua, Middletown, Loudonville, and Pleasant Valley. The State Police defer jurisdiction in the larger cities to the local police departments, and in the more populous counties to the sheriffs' departments.

Attica was not the first prison uprising in which the police were called to duty. In 1929, there were three prison riots in New York. In the first two, at Clinton and Auburn in July, the violence had subsided by the time the police arrived, and the troopers were able to assist the prison guards in restoring order without further injury. On December 11, 1929, Auburn prison again exploded when a small group of armed inmates took the warden hostage with seven others and killed the deputy warden. One hundred and seventy state police officers were sent to retake the prison. Seven hours after the outbreak, following a four-hour gun battle in which eight inmates were killed and three troopers wounded, the uprising was ended.

In August 1964 the State Police were called upon to restore order during a major civil disturbance by black

²In addition to these 1,100 full-time officers, the National Guard had been ordered to provide military assistance, if necessary.

citizens in Rochester. The police performance left an impression on Governor Rockefeller, who testified:

In Rochester, when the Sheriff and the Mayor and the head of the city police had called to say they lost control, the State Police went up and they had done a superb job, at least from my point of view. They had gone into this area which was abandoned by the local law enforcement officials with no guns, gone in under training of strict discipline, "V" formation. They had withstood all of the attacks, and particularly they found the most distressing the skimming of broken pieces of plate glass, and they were lucky there weren't any fatalities, and they were dubbed "the Cool Ones" by the local community because of the way they controlled themselves in handling this. . . .

The average trooper has almost no contact with blacks and Spanish-speaking groups who live predominantly in cities and suburban areas not patrolled by the State Police. While most troopers were unwilling to discuss their racial attitudes with the Commission, racial prejudice and insensitivity were evident in the language of some troopers at Attica and during informal conversations with the Commission.

The second-highest officer in the Division, Inspector John C. Miller, testifying before the Commission, drew a contrast between the rioters at Rochester and those at Attica. As to the former, he said: "We didn't consider them as criminals. They were people." Individual troopers were equally uninhibited about expressing to the Commission their low opinion of convicted criminals. One trooper described his feelings toward the inmates in D yard as follows:

Yes, there was a natural reaction that most of these people that were there deserved to be there because most of them were three-time losers, and since they are considered hard criminals by the average citizen as well as by the police officer, your emotions are going to be aroused, native emotions.

The uprising of inmates at Attica, all of whom were convicted felons, was bound to test the self-control and professional discipline of the police forces in a way that the Rochester disturbance never did. The four days of

anxious waiting for either a settlement or the order to go in added to the challenge. Each day brought new rumors of atrocities against the hostages, increased resentment toward the inmates for having rebelled, and against state officials for having made concessions to them, and escalating verbal confrontations with inmates in C block and on the catwalks. This tense waiting, which as previously shown had a deteriorating effect on the morale of inmates in the yard, also took its toll on the emotional stability of the law enforcement personnel. The remaining sections of this chapter tell what it was like for the troopers, correction officers, and sheriffs' deputies during those four days.

Thursday

Early Thursday morning, troopers began to arrive from Troop A, headquartered in Batavia, 11 miles from Attica. During the remainder of the day and evening they were joined by troopers from seven other State Police troops across the state, some from more than 300 miles away. Each of these troops sent approximately 50 troopers, in most cases under the command of a captain and a lieutenant. By the end of Thursday, there were 587 State Police officers at Attica.

As the different troops arrived on Thursday, their commanding officers reported for duty to Major John Monahan, the commander of A Troop, who was in charge of the State Police forces at the prison. As the troopers awaited their assignments in the yard in front of the administration building, they relaxed. Mixed with the curiosity about what had happened, the number of hostages taken, the cost of the damage, troopers speculated about how much overtime their assignment to Attica would mean.

Both State Police and correction officers were organized into two shifts: the troopers changing shifts at 6:00 A.M. and 6:00 P.M., the correction officers changing at 8:00 A.M. and 8:00 P.M. Troopers and correction officers, under their separate command structures, were assigned to stand watch over the secure areas of the institution. Troopers witnessed the damage the inmates had caused. Windows and doors were broken. Radiators had been ripped off the walls. There was water standing every-

where. The locking mechanisms in the cellblocks had been destroyed. Heavy gates had been forced. In the industrial shop some of the equipment had been ruined. There were many small fires, and the entire state shop was burning; on Friday its roof collapsed.

Most of the troopers had never been inside Attica before. Aside from the destruction, troopers were impressed with the physical appearance of the prison. Some told the Commission that they wondered: What right did the inmates have to destroy their cells, their school, their place of worship? The cellblocks appeared attractive and in excellent condition—although many cells had been ransacked, it was apparent that the inmates were permitted such amenities as aquariums and thermoses. There were also pictures, numerous books, mementos from home, even razor blades. Troopers told the Commission that it was not how they expected convicted criminals to be treated. They also shared the view that the uprising would not be allowed to last for more than a few hours.

But while the troopers seemed calm, even curious, the attitude of the correction officers was understandably different. Attica was their institution, and their fellow officers had been injured and taken hostage. Many had seen Officer Quinn carried out with a massive head wound.

Information was not available on the condition of the hostages until Dr. Hanson visited the yard late Thursday afternoon. The officers knew that many inmates had been committed for crimes of violence, and were capable of unpredictable flashes of rage. They also were aware that some inmates, deprived of any heterosexual contact during their confinement, engaged in homosexual practices, including acts of rape. Thus, when the discarded clothes of several hostages were found on the floor of the metal shop, many officers assumed the worst, and mentally traded places with the hostages. As one officer testified:

I know if I were caught in that mess, I would rather take the bullet the first day than die four days later after being brutalized or sexually abused or what-have-you. I don't want to go through this strain. Settle it the first day.

The troopers and correction officers were vividly aware of the suffering of the hostages' families. As they left the prison, they passed groups of the parents, sons, daughters,

and other relatives of the hostages who, throughout the four days, maintained their vigil outside the main gate. Returning home, correction officers had to answer anxious questions from their own families about the condition of friends who were hostages.

Commissioner Oswald's presence did nothing to reassure the correction officers. Many regarded him as too permissive, almost proinmate, in the changes he was promoting. He had not risen through the ranks and correction officers could not see how he could understand their problems. Some blamed the uprising on his policies. They believed that they had the capacity to retake the institution, and that negotiating would merely afford the inmates time to organize their defenses. They were disturbed that Oswald was actually talking to the inmates, in their territory, on their terms, and as if they were equals. Word spread that Oswald, at the inmates' request, had ordered the troopers off the roof. In the eyes of the correction officers, he was knuckling under to the inmates.

There was, however, some respect for Commissioner Oswald's courage in walking into the midst of 1,200 rebelling inmates in D yard. And the possibility that Oswald just might succeed in negotiating the release of the hostages was a moderating influence on the attitudes of some correction officers the first day.

Friday

Upon completing their shifts on Thursday, troopers from out of town retired to nearby motels. Some had to try at two and three different motels before they found room. Others who were lucky enough to find a vacancy on their first try had to help strip the beds of linen used by men on an earlier shift. There were numerous incidents of troopers having to sleep two to a bed.

The night shift of troopers had scarcely fallen asleep Friday morning when they were awakened and ordered to return to the prison. Meanwhile, at the prison the day shift was instructed to prepare for a possible assault. Troopers told the Commission that they were not briefed on their specific missions. They believed that when the word was given, they would simply storm the prison. Troopers recall a feeling of uneasy readiness. But the order for the assault was not given.

Instead, within sight of some of the troopers and cor-

rection officers stationed nearby, Commissioner Oswald exchanged messages with inmates at the "DMZ." The troopers armed with shotguns and riot sticks and wearing riot helmets stood ready to rush the inmates on command. The inmates demanded that the troopers get out of sight. They also reprimanded Oswald for being late for the meeting. Oswald apologized to the inmates for keeping them waiting and ordered the troopers back. Many correction officers and troopers told the Commission that they felt Oswald demeaned himself in this exchange with the inmates. Resentment was increasing.

Oswald paid his last visit to the yard late Friday morning. The correction officers and troopers could not overhear the dialogue from their posts, but some correction officers reported hearing Oswald say when he returned that the inmates had behaved like "wild animals" toward him.

When correction officers and troopers returned to their homes, or motels, they were able to see the televised accounts of what happened in the yard. Late on Thursday, the cameramen had brought out film of inmates denouncing the institution and its staff, and of Oswald apologizing to inmates for reprisals against the rioters at Auburn. An impassioned plea by L. D. Barkley denouncing Attica as a "slave camp" and demanding amnesty, flight to a non-imperialistic country, and a Federal receivership for Attica was particularly irritating to the correction officers. They felt that nobody was defending them against attacks which made them appear as sadists.

The films presented on television of Commissioner Oswald's visit to the yard on Friday were even more infuriating to the correction officers and troopers. They showed an inmate tearing up a court injunction and others insulting Oswald with profanity and threatening him with seizure as a hostage. Yet, all that Oswald could do was protest his good faith and promise that conditions at Attica would be improved.

On the open telephone "hot line" between the department in Albany and Attica, an assistant commissioner reported the reaction to the televised encounter between Commissioner Oswald and the inmates:

I was called by a number of people as to "what the hell's really going on with these guys at Attica?" . . . Well,

I think it's a hell of a thing to say, but I think a lot of people, the alleged middle-American types, may be somewhat more strongly offended by the sight of these guys shouting at Russ, too. I must confess to a certain amount of it myself. It's very hard to keep your balance watching that kind of thing.

Many of the correctional and law enforcement personnel at Attica expressed the same attitude to the Commission.

Correction officers on the top floors and roofs of A and C blocks pointed out to troopers those inmates who were known troublemakers. Criminal records were discussed, and everyone was aware that the inmate who had ripped up the injunction before the television cameras was in prison for the murder of two police officers.

Inmates who on Thursday had been timid in approaching the State Police at the windows, now approached them with marked arrogance and self-confidence. The inmates hurled insults and challenges to the State Police. "Come on in here, pigs, and we'll kill all the hostages." "Kill the pigs." Troopers and correction officers hurled back insults and threats.

Troopers and correction officers were alarmed by the sight of inmates strengthening their barricades, patrolling the catwalks with weapons, and engaging in hand-to-hand combat drills. A detail of troopers and correction officers stationed near the metal shops was fired upon with a gas projectile, which narrowly missed a police officer. A correction officer armed with a machine gun seemed rattled by the close call.

Information about what was taking place in the yard was still sketchy and incomplete. Rumors of atrocities, of hostages being beaten and sexually molested, filled in the gaps. The low opinion of the convicted criminals' character held not just by men engaged in law enforcement and corrections work but also by the public at large provided fertile soil for such rumors. Major Monahan noted that the police had almost no means of verifying the stories of atrocities being passed around—they did not even have telescopes and microphones with which to monitor activities in the yard.

Word circulated among correction officers at Attica as well as other prisons that Officer Quinn had died, and that this news had been suppressed by Commissioner Oswald

who was bent on continuing the negotiations. An aide to the Commissioner telephoned Northside General Hospital in Rochester at 6:35 P.M. Friday for the latest information on Quinn's condition. The report: "Wm. Quinn, Corr. Officer, considered slightly improved."

At other institutions, correctional employees could afford to be more concerned with the principle set by the negotiations than with the lives of the strangers held hostage. They considered the precedent dangerous, they wanted the uprising crushed. The Albany desk officer received reports of protests by the correction officer unions at several institutions.

Late Friday evening, William Kunstler arrived at Attica. The troopers, correction officers, and sheriffs' deputies, knowing of the men he had defended, considered him to be a revolutionary agitator. Most could not believe he would play a constructive role in bringing about a settlement and were unable to comprehend why he was allowed to come. There were, however, some correction officers who were willing to give Kunstler a chance, expressing hope that his influence with the inmates would enable him to negotiate the release of the hostages.

As Friday ended, with the observers in the yard, one could see that the hours of waiting, talking, and imagining were eroding the morale of the correction officers, troopers, and sheriffs' deputies. But, as on Thursday, the possibility of a negotiated settlement kept a rein on the men's emotions.

Saturday

On Saturday, the long hours were beginning to tell. The 12-hour shifts were more like 15 hours with travel and preparation. And the absence of anything to do was itself fatiguing.

Rumors continued to circulate. On the stairs leading up to the second floor in A block, correction officers pointed out bloodstains as the blood of William Quinn. One story was that he had been thrown down the stairs; another that his skull had been crushed in the gates at Times Square. Both were untrue. A sick inmate who was released from the yard reported that inmates were building a gallows to hang hostages—another false story. Other rumors of mis-

treatment of the hostages continued to circulate as troopers and correction officers marked time at their stations, or in front of the administration building.

In C block, where inmates were still housed and where troopers and correction officers were stationed, there had been no water or plumbing service since Thursday. The block had never been fully cleaned up following the initial uprising. The discomfort was nearly unbearable, and a stench pervaded the entire block. Blankets and mattresses were damp and mildewed, and to some of the troopers seemed infested with bugs. Uniforms which had been fresh at the beginning of the watch were soiled and uncomfortable by the end. To many troopers and officers it was impossible to breathe or do anything to take their minds off of the long hours of waiting. A few troopers bought or made slingshots and amused themselves by firing at inmates in the yard or at mirrors extended by inmates through the bars of their cells in C block. Troopers in the corridor near the metal shop fired their slingshots at inmates moving past the windows.

Many troopers were convinced that eventually it would be necessary to storm the yard. As they watched the barricades on the catwalks rise higher, and inmates become more brazen, they were certain that the longer the wait, the more difficult and dangerous would be the task of retaking the prison. Gradually, their impatience turned into frustration and frustration edged toward anger.

The exchange of abusive language between inmates on the catwalks and the troopers and correction officers escalated. Some say inmates started it; others, the correction officers and troopers. One trooper explained:

Well, if you get a taunt from one of the prisoners, "I'm going to get you," "We're going to get you when you come in, troopers," the normal reaction is, "We are going to get you when we come in there"—vulgar language back and forth.

On Saturday evening, the media carried the news that all but three of the inmates' demands were accepted in the 28 Points. Many correction officers felt that these concessions undermined their authority and made their jobs more dangerous—that now any time inmates had grievances, they could gain satisfaction by taking hostages. Reports

of frustration and dissatisfaction with the negotiations poured into Albany from other institutions.

At one prison a superintendent was quoted on the hot line as having described the department leadership to a union meeting as "that no-good, fucking Oswald, Dunbar . . ." and urging their replacement by a hard-liner to "salvage the situation." A telegram was then sent by the union local to all institutions urging the resignation of Oswald and Dunbar.

To many correction officers and the troopers, the news media were championing the inmates' cause. They felt that the press was accepting the complaints of convicted criminals at face value without even describing the correction officers' side or exposing the inmates as the dangerous felons they were. Correction officers repeatedly expressed to the Commission their belief that the press is biased against them. The continued spotlight on the inmates' grievances clearly contributed to the frustrations of the correctional and police personnel waiting at Attica.

But all of this was overshadowed by the news of Officer Quinn's death, which rocked Attica, on Saturday evening. Dr. Gene Sellick, a veterinarian who worked at the food stand set up by the Attica Lions Club with its own funds in the administration building yard, recalled the effect of Quinn's death:

I think it was Saturday, I know it was Saturday, later in the evening Mr. Quinn died and you could sense a dramatic change, I thought, in all the people that were there. Not just the officers but all of the people, including ourselves. The feeling was that now these inmates were all essentially guilty of murder and what did they have to lose, whereas before they had every reason to negotiate.

The resentment was compounded by the appearance of Bobby Seale at the prison a few hours after Officer Quinn's death. Commissioner Oswald's decision to admit Seale appeared to troopers and correction officers to be another concession to the same illogic that rewarded inmates with prison reform for taking over a prison and killing a correction officer. In these circumstances, the mere presence of Bobby Seale inflamed the troopers and correction officers.

The increased tension was manifested in C block, where a decision was made to search the cells on Saturday night for any weapons the inmates might be stockpiling for a confrontation. During this search by troopers, one inmate was roughed up. Most state troopers on station at that time claimed not to have any knowledge of the incident. Those who were willing to discuss it claimed that the inmate refused to come out of his cell, and resisted with herculean strength when physically dragged out. Inmates, whose stories about the incident were more consistent, asserted that the inmate did not resist other than to protect himself.

Whatever may have happened in C block, it is clear that by the end of Saturday night many troopers and correction officers were tired, restless, frustrated, and increasingly angry.

Sunday

By Sunday morning, correction officers and troopers knew that the 28 Points, which many felt should not have been offered in the first place, had been rejected by the inmates. To many correction officers and troopers, this was an added indignity, and they were more eager than ever to get the assault over with.

Speaking on the Albany "hot line," one of Commissioner Oswald's aides at Attica described the men as "tense," and their morale as "deteriorating," adding that "something's got to give pretty soon."

With the negotiations a failure, the animosity toward Oswald for having delayed the assault for four days grew—and not just at Attica.

Deputy Commissioner Wim Van Eekeren reported to Walter Dunbar on the hot line that the employees at Greenhaven were "furious," because the hostages were being "humiliated" and these "animals, they call them, are getting an exposure they should never have." He added:

They [the Greenhaven employees] want assurance from [the superintendent] that if anything blew at Greenhaven the department would use every effort to retake the hostages immediately even if it meant that the hostages were killed. They want the inmates mowed down; they said that hostages now have become an important fact in the lives of the inmates and that negotiations will be

under way at other places because of that fact. So that is the sum of what they're alleging.³

These sentiments were becoming widespread at Attica. One trooper testified that troopers, correction officers, and sheriffs' deputies called Kunstler and Seale "no-good commies" as they walked into the prison. This verbal abuse ultimately came to the attention of the officials who told the troopers, "We want no more harassment of the people coming in, whoever they happen to be, and no more verbal abuse."

Aware of the potential explosiveness of the situation, Inspector Miller of the State Police recalled that he sought to calm his men:

I was out in front of the administration building on many occasions going back and forth. I always took the opportunity to talk to various fellows and sometimes groups of fellows and just discuss, give them some idea of what was going on, that this was a delaying action on our part because of the safety of the hostages. I tried to tell them that this is part of a job, just be patient. Don't get uptight. If we have to take the action, we'll take the action. That we are professionals. If we have to do the job, we'll do the job and we won't invoke personalities.

I said that if it was our own people in there you would probably be more than willing to wait. Just because it's correction officers and they want to negotiate for their safety, that is fine. . . .

Most troopers were able to exercise self-control. Assemblyman Eve told the Commission in executive session that the troopers whom he encountered on Sunday behaved like gentlemen. But, like many correction officers, some troopers could not contain their anger.

Lions Club members recalled troopers and correction officers on Sunday asking, "When are we going to go coon hunting?" Some correction officers boasted that if they got the opportunity to shoot, they would not miss some of the inmates they saw showing "bravado" on television. Other spectators, including a trooper, confirmed such talk by some troopers.

Commissioner Oswald told the Commission in executive session:

³Van Eekeren also reported rumors that Kunstler and Seale were "running the show."

It was clear that the correction officers wanted me to go in. At this period they began the constantly insulting behavior toward me that characterized the whole period. For example, I was told by one correctional officer, "Why don't you go home, you son of a bitch, you're not doing anything for us."

On Sunday, a Spanish-speaking inmate in HBZ who had traded abusive comments with a trooper the prior day was taken out of his cell and beaten up by the trooper while other police and correctional personnel stood by.

On Sunday afternoon, the State Police were placed on alert and took assault positions. Governor Rockefeller decided that there would be no assault on Sunday. The pressure of preparing psychologically for an assault only to back down again left men emotionally drained.

Troopers were also becoming concerned about the careless way in which some correction officers and sheriffs' deputies carried their weapons. On Sunday afternoon, a deputy accidentally discharged his shotgun in the air while checking it out. As a force which prided itself in the professional way it handled its weapons, the police were unnerved by this incident.

The atmosphere was further charged by the presence of friends and relatives of the hostages and the arrival of supporters of the prisoners' cause. A reporter described the scene outside the walls where townspeople had gathered:

Steven Smith of Arcade stood in the rain quietly crying and shaking from anger, frustration, and fear. His eldest son, Mike, 23, was a hostage. . . .

. . . Smith began to scream, "What about my son? What about him?"

He shouted that he'd heard all he wanted to hear about the prisoners and negotiations.

"We have to go in and bring those people out. Wet-nursing those convicts won't do it. We have to get our son back or just bomb the hell out of the place—that's all that's left."

Others joined in his outcries: "Brutality!" shouted one man. "I don't give a goddamn."

"I'd like to show them a little brutality," screamed one woman.

The shouts echoed: "Rapists, murderers. Do you want

'em on the street? They're in there because they belong in there."

"Those troopers should have gone in for them."

"I don't want to see anyone die, but it's got to end sometime. . . ."

Outside the prison near the homes of correction officers and prison officials, demonstrators sympathetic to the inmates drove up and down the streets. Mrs. Wald, wife of one of the hostages, recalled:

On Sunday we had one of the worst demonstrations and all they kept screaming was "Kill the pigs, kill the pigs."

Other demonstrators, many with long hair, waited across the street from the prison with signs pledging support to the prisoners' cause, and there were stories that more demonstrators—busloads from the ghettos—were on their way.

By Sunday night, everyone was exhausted. Worse still, many correction officers, troopers, and deputies felt they had been forced to stand by while convicted felons were lionized, pandered to, and offered concessions, despite the destruction and violence that had already claimed one life. They began the four days with hostile and, in some cases, racist attitudes toward the inmates. By Monday morning, when all of their professional discipline was required, their emotional reservoirs had been worn thin by the rumors, disappointments, confrontations, and nerve-racking waiting. They had, as one observer noted, become "visibly edgy, angry, irritated, and frustrated." This was the hidden cost of delay in resolving the uprising.

Chapter 14

The Decisions of the Governor and Commissioner

Shortly after 6:00 P.M. on Sunday, the observers and press left D yard for the last time, and reported to Oswald

that the hostages were in good condition, and that the inmates had a message for him at the "DMZ."

Accompanied by observers, Oswald proceeded to the "DMZ" to receive the inmates' message. But the sight of armed troopers behind Oswald drove the inmates back, and they shouted: "Jones, you already have our answer, you give it to the Commissioner." Clarence Jones delivered the inmates' message: "Commissioner, the next move is up to you. Negotiations will only take place in D block yard."

Oswald responded that there would be no further negotiating in D yard, adding, according to some observers, "I've given everything. I've gotten nothing in return. It seems a little one-sided to me."

Some of the observers asked for an assurance that the state would take no action against the inmates without further time for negotiations. But Oswald replied: "I can give you no more assurances." On that somber note, Oswald departed, promising to meet the observers again at 9:00 P.M.¹

Mancusi's Offer

During the four days, Superintendent Mancusi was essentially relegated to handling administrative details for the operation of the prison, which still had about 900 inmates in custody. He was not even present when the 28 Points, dealing with reform of his prison, were negotiated. Nor was he consulted. It was clear both to Mancusi and the observers that the Commissioner did not seek his advice.

On Friday night the inmates had demanded Mancusi's removal as part of the price of releasing the hostages. The Commissioner had refused. He was not prepared to establish the precedent of permitting the inmates to dictate the choice of superintendent. But Mancusi was tormented by the knowledge that his discharge was one of the issues blocking a settlement.

On Sunday, with the negotiations at a standstill, Mancusi offered his resignation to Oswald, if that would facili-

¹Returning to their room, the observers found that their phone had been cut off, which they interpreted as a confirmation that an assault was planned for no later than Monday morning.

tate the release of the hostages. Mancusi's offer never came to the attention of the observers and was rejected by Oswald on principle.

The Final Meeting with the Observers

Oswald paid his last visit to the steward's room about 9:30 P.M. The session, which lasted over one hour, was marked by recriminations and emotional outbursts, as all present sensed that an assault was imminent, and that they were helpless to prevent it.

The observers again pleaded that only the Governor could break the impasse, and that his presence was imperative. Badillo beseeched Oswald: "We need the day." Oswald asked "What good will another day do? A committee as powerful as this ought to have been able to swing the inmates around." Other observers joined in the plea for more time, saying that they were tired, and needed another day. Eve urged Oswald to telephone the Governor and persuade him to reconsider his refusal to come.

Oswald offered to meet with the inmates in neutral territory if they released the hostages. But the observers pointed out that the inmates had already rejected that proposal. One observer stated that the inmates were prepared to die like men, and "who dies with them is the Commissioner's responsibility."

Many observers remember Oswald saying that he "was going through the tortures of the damned" trying to make up his mind. Wicker injected, "Few of us in this room will ever have to go through what Commissioner Oswald is going through." Kunstler reminded Oswald that "everyone dies if the troopers go in." Oswald replied that "all of us choose life," but that the "pressures" on him were "tremendous," repeating that the inmates had given him nothing in return for his concessions.

Some of the observers now cast about desperately for new ideas. Wicker, for example, suggested that the inmates might be induced to release one hostage each day at 9:00 A.M. in exchange for an hour of negotiations in D yard. Professor Schwartz telephoned to relay his wife's suggestion that the hostages' wives be enlisted to plead for the Governor's appearance.

At the public hearings Kunstler testified that in the midst of this emotion-charged meeting he suggested a compromise on amnesty. According to Kunstler, as he was leaving the yard on Sunday, an inmate spokesman had confided to him that a partial amnesty might be acceptable. Kunstler testified:

I told the Commissioner that the inmates did not insist on Mancusi being removed and that we had been authorized to talk about some other form of amnesty and we talked about commutation. . . . He first said that any sort of commutation or amnesty was illegal and unconstitutional and I talked about the fact that the Canadian Government had flown some 26 people to Cuba in return for James Cross, the British economic adviser from Montreal in October of 1970.

And I discussed the fact that the British had released a suspected Arab terrorist in return for the safety of the hostages on the BOAC airplane down in the desert. And I even think I mentioned the fact that Brazil had released a hundred designated political prisoners for the life of the Swiss Ambassador, as giving him some international examples of yielding of law in the face of emergency.

And then I said that I thought that maybe we could work out a commutation, that the Governor could agree, if he thought amnesty was illegal, that the Governor certainly had the power to commute sentences in the state of New York and agreement that any sentence growing out of Attica for personal injury would be commuted to 5, 10, or 15 years. I think I mentioned all three in the discussion, that might be satisfactory to the inmates and might obviate the need for a bloodbath.

Despite Kunstler's testimony, none of the remarks in the yard which were recorded on tape gave any indication of inmate willingness to compromise on amnesty, and no other observer heard any such offers from the inmates. Indeed, Wicker, who was in the yard on Sunday, testified that the inmates were insistent on complete amnesty throughout.

According to Oswald, the inmates' demand communicated to him by the observers on Sunday night was still for total amnesty. Oswald agreed that Kunstler mentioned the idea of executive clemency, but only as a technical means of providing total amnesty. Oswald testified that

he replied, "This is dishonest. Either it's amnesty or it isn't amnesty."²

The notes of the meeting taken by various persons present do not refer to a compromise proposal of amnesty authorized by the inmates, although they confirm that Kunstler argued, by reference to the Canadian, British, and Brazilian precedents, that the Governor should grant amnesty, and that technically amnesty could be effectuated by the Governor's promises to commute sentences, and grant pardons.

It is clear that if any compromise on amnesty was proposed in the midst of the debate in the steward's room on Sunday night, it was not presented as an inmate proposal or pressed hard. Oswald left the meeting believing that the inmates were still demanding full amnesty. Kunstler recalls Oswald's saying, as he left the room at 10:30 P.M., that he had "a terrible decision to make" and he would have to "make it alone."

Certain that the assault was planned for early Monday morning, some observers requested permission to stay in the steward's room overnight. Oswald agreed, and told the others to return at 9:00 A.M. the next morning.

Eight observers—Scott, Chandler, Tepper, Fitch, Steel, Ortiz, Paris, and Matthew—remained. Senator Dunne returned to Superintendent Mancusi's office, where the assault plans were being discussed. The other observers returned to their motels and homes. All were convinced that only the Governor could avert an assault the next morning.

The Governor's Decisions

Nelson A. Rockefeller began his career in government service almost three decades ago during the administration of Franklin D. Roosevelt. He served as Assistant Secretary of State for Latin American Affairs under Presidents Roosevelt and Truman and as Under Secretary of Health,

²The Sunday night session between the observers and Oswald was recorded by a member of the press, who turned over the original tape to an announcer for New York City radio station WBAI, and copies to Assemblyman Eve. Assemblyman Eve advised the Commission that he could not locate his copies. The announcer at WBAI asserted that she had destroyed her tape rather than permit it to fall into the Commission's hands.

Education, and Welfare and as Special Assistant to the President in the Eisenhower administration. He was elected Governor in 1958 and reelected in 1970 for an unprecedented fourth term.

During his years of public service, Governor Rockefeller developed certain strong views on administration. He testified:

. . . a large part of my experience has been in the development of the policy and administration of government at different levels. After the policies were determined, I have always tried to pick the ablest people to carry out those policies and to administer the programs. Having done so, I've given them my fullest support and backing, followed the operations through topflight staff but I'm always available to the administrators to discuss their programs and problems and to give them the necessary counsel and support.

Russell Oswald had been chairman of the Board of Parole under Governor Rockefeller's predecessor and the Governor continued him in office. In 1970, the Governor chose Oswald to become the first head of the new Department of Correctional Services. In selecting Oswald the Governor had, in his own words, committed the state to a policy of converting the prisons "from custodial to rehabilitative treatment." The American Prison Association had first adopted that standard a century earlier.

The Governor told the Commission in executive session that "one of the things I regret most is my own lack of preception of the tremendous need which existed" in the corrections area, and that had he been aware of the need, he would have taken steps to reform prison conditions years earlier.

The Governor also told the Commission that his efforts at overhauling the prison system in 1971 were hampered by the state's worst fiscal crisis and that Oswald had warned in May 1971 that prison unrest was increasing "fomented and exacerbated by internal and external revolutionary political activities which were increasingly zeroing in on the criminal element in our society."

The Governor viewed the Attica rebellion as another step in an ominous world trend. As he told the Commission:

... one of the most recent and widely used techniques of modern-day revolutionaries has been the taking of political hostages and using the threat to kill them as blackmail to achieve unconditional demands and to gain wide public attention to further their revolutionary ends. I have followed these developments with great interest and considered that, if tolerated, they pose a serious threat to the ability of free government to preserve order and to protect the security of the individual citizen.

Therefore, I firmly believe that a duly elected official sworn to defend the constitution and the laws of the state and the nation would be betraying his trust to the people he serves if he were to sanction or condone such criminal act by negotiating under such circumstances.

In the handling of the Attica uprising, the Governor found that these views conflicted with his belief in delegation of responsibilities to the department heads he had selected. Despite his own convictions against negotiating with the holders of the hostages, the Governor chose not to overrule the man whom he had named and he supported Oswald's decision to attempt a negotiated settlement.

The Governor was in Washington when the uprising began and remained there until Friday, when he returned to his home in Pocantico Hills, New York. He kept in contact with the developments at Attica by telephone, speaking several times a day with Commissioner Oswald, Dr. Hurd, Robert Douglass, and Michael Whiteman. While the Governor sent Hurd, O'Hara, Douglass, and Shapiro (Whiteman's assistant) to Attica, he made it clear that he was not disturbing the chain of command in the negotiations—Oswald was to remain in charge. And Oswald, in fact, made all of the decisions through Sunday afternoon, rejecting in several instances the advice of Robert Douglass. Douglass counseled against admitting Bobby Seale, and against permitting the observers to return to the yard Sunday afternoon (p. 274).

When Oswald informed the Governor that he was prepared to accept the 28 Points, the Governor backed him up with the assurance that he would recommend the legislation contemplated by the Points.

The Governor stood firm, however, on one matter—he told Commissioner Oswald that even if he had the

power to grant amnesty, which he and his counsel agreed he did not have—he would not grant it as a matter of principle. The Governor drew a sharp distinction between amnesty, which he considered a “political” objective not negotiable with the holders of hostages, and penal reform promised in the 28 Points, which he testified Oswald “had in mind anyway.”

The Governor began to take a more direct role in the handling of the situation on Sunday even before the observers called for his appearance. He had supported Oswald’s acceptance of the observers’ role, even though, as he explained to the Commission, he was not clear “what their function was, what their responsibilities were, who they were working for, who they represented, how they were selected, how they were organized, who was their head.” But when the 28 Points were rejected by the inmates the Governor urged Oswald to dismiss the observers, and to advise the inmates directly that amnesty was nonnegotiable. The Governor explained:

. . . it seemed to me that we now had passed the last possible vestige of hope that this uprising was going to be settled on the basis of a desire for prison reform. . . .

Then suddenly on Sunday, the Governor was confronted with the request by the observers that he come to Attica to meet with them. The request was relayed first through Robert Douglass, who advised the Governor that amnesty was still the key issue.

By the time the Governor received a telephone call, shortly after noon on Sunday, from Dunne, Wicker, Badillo, and Jones, he had already concluded that a visit would not serve a useful purpose.³

As a result of the observers’ pleas, the Governor agreed there would be no assault on Sunday, giving the inmates an additional day to accept the Points. But the Governor remained opposed to a trip to Attica.

All the observers, including upstate Republican legislators, joined in the plea for the Governor to meet with them in Attica. Dunne, Wicker, Badillo, and Jones, who telephoned the Governor, had been encouraged by the Governor’s staff to serve as observers. Dunne, also a Re-

³For the observers and the Governor’s versions of the telephone conversation, see pp. 273-77.

publican, was the chairman of the State Senate committee dealing with prisons. Why then did the Governor refuse their unanimous plea to come to Attica?

The Governor's reasons were stated in a public statement drafted on Sunday afternoon by Robert Douglass and approved by the Governor over the telephone. It read, in part:

The key issue at stake, however, is still the demand for total amnesty for any criminal acts which may have occurred. I do not have the constitutional authority to grant such a demand and I would not, even if I had the authority because to do so would undermine the very essence of our free society—the fair and impartial application of the law. In view of the fact that the key issue is total amnesty—in spite of the best efforts of the committee and in spite of Commissioner Oswald's major commitments to the inmates—I do not feel that my physical presence on the site can contribute to a peaceful settlement.

The Governor presented a fuller explanation to the Commission during his interview. He stated that the observers acknowledged that the inmates were still insisting on criminal amnesty as the price of settlement. Their pleas for his visit, the Governor said, all reduced themselves to the proposition that the observers wanted further time. The Governor found this unpersuasive. He pointed out that without coming to Attica he had postponed an assault for 24 hours, and the problem as he saw it was not lack of time to achieve an agreement, but the inmates' continued intransigence on the amnesty issue. In these circumstances, the request by the observers for the Governor's visit appeared to him to be a grasping for straws by men "who did not want to admit defeat."⁴

Moreover, the Governor, with his concern that "revolutionaries" were playing a major role in the Attica uprising, concluded that his visit would be exploited by those "who were not interested in seeing the settlement or seeing a reform," but who wanted to drag this out, preserve the theater for worldwide coverage relating to revolutionary forces."

⁴Wicker acknowledged that it was a grasping at straws, but testified that he believed that any means to postpone the assault and afford more time for negotiations was justified.

Oswald's Pleas

The pleas of the observers for the Governor's appearance at Attica were not without effect upon Commissioner Oswald. He remained reluctant to order the assault.

Following his session with the observers on Sunday evening, Oswald telephoned the Governor. Oswald testified concerning this call:

I suggested that it would seem that it might be appropriate for someone as warm and understanding as Governor Rockefeller to walk that last mile and come, although I went on to express the view that I didn't feel that it was going to be productive.

General O'Hara joined in recommending that the Governor come. According to Oswald, the Governor asked: "Do you feel it will be productive? Will it save lives?" I said, 'I don't believe so.' "

Both Oswald and O'Hara suggested that the Governor could be subject to public criticism if he failed to come. The Governor replied that he was not concerned about his image and that in view of the inmates' insistence on amnesty, he still believed his trip would serve no purpose.

Later Sunday evening, Oswald and the Governor's aides spoke to the Governor again, this time suggesting that he might agree to come and discuss the 28 Points with the inmates only after they had released the hostages and returned to their cells. The Governor rejected that proposal also, as he testified:

Well, when I questioned them as to what that would do, they said it would not be accepted. I said I thought the 28 Points had been turned down flat, so I didn't know what the point of negotiating the details of the 28 Points were if they had already been turned down. Well, then, as Russ, who was, I think, the originator of this idea, felt that, well, that would put me in a better position, that I had offered to come to Attica, but that had no relation. I wasn't trying to posture myself in a good public-relations position. I was trying to do the best I could to save the hostages, save the prisoners, restore order, and preserve our system without undertaking actions which could set a precedent which would go across this country like wild-fire.

The Governor said that he saw the modified proposal as the same grasping at straws as the observers' proposal:

That [the proposal] was from my own people who were then faced with the same problem that the negotiators were, that they had worked very hard and failed and if they said they failed there was nothing more to do, then they in a sense were faced with the responsibility for perhaps the loss of lives. In life it's not easy to face a hard decision, particularly when human lives are involved. It isn't for me, either, but I think that we have to look at these things not only in terms of the immediate, but in terms of the larger implications of what we are doing in our society.

Mr. Douglass agreed with the Governor that a visit would accomplish nothing and "would be counterproductive, as a matter of fact, in terms of the future."

On Monday morning, just before ordering the assault, Oswald again spoke to the Governor. Oswald asked him whether he had thought about the matter again through the night and whether he had reconsidered. The Governor remained firm in his decision not to come to Attica and Oswald, with the Governor's approval, ordered the assault.

The Commission's Views

No one can be sure whether the Governor's presence would have succeeded in producing a settlement that had eluded Oswald and the observers. Present or not, the Governor was unwilling to grant amnesty, the critical inmate demand. Nevertheless, the Governor's decision not to go to Attica has tended to overshadow all other issues as a subject of public debate.

The Commission can readily understand why the Governor was unwilling to go to Attica prior to Commissioner Oswald's request on Sunday evening. The Governor's presence could have undermined Oswald's authority in dealing with the observers and inmates. But when the Governor refused Oswald's request that he come, he was spurning the recommendations of the man on whom he had relied to bring about a peaceful resolution, and departing from his usual policy of giving full support to his appointee.

The Commission does not underestimate the problems that would have faced the Governor had he gone to Attica. The observers stated to the Governor that they were asking only that he meet with them—not with the inmates. But it is probable that the presence of the Governor at Attica would have precipitated a demand by inmates that he enter the yard. The pressure would have been intense, as the Governor's refusal to comply with the request could have been characterized by inmates as indication of bad faith, precluding a peaceful settlement and jeopardizing the lives of the hostages.

Recognizing that the decision was not an easy one for the Governor to make, the Commission nevertheless believes that conditions made it appropriate for the Governor to go to Attica. At the time of the uprising, the Governor realized that the prison system had long been neglected and was in need of major reform. Many of the inmates' grievances were acknowledged to be legitimate by both the Commissioner and the Governor. In such circumstances, where state neglect was a major contributing factor to the uprising, the Commission feels that the Governor should not have committed the state's armed forces against the rebels without first appearing on the scene and satisfying himself that there was no other alternative and that all precautions against excessive force had been taken.

It is possible that, even without a grant of amnesty, the Governor's presence at Attica would have overcome inmate mistrust of the state's commitment to reform, and induced acceptance of the 28 Points. Some inmates have expressed this view to the Commission. But even if a settlement were not achieved, the Commission believes that the presence of the Governor would have had a stabilizing effect on the troopers and correction officers taking part in the assault and rehousing of inmates, many of whom were bitter toward Commissioner Oswald for his negotiations with the inmates, but respectful of the Governor.

Finally, the Commission believes that the Governor should, at the very least, have accepted the "modified proposal" presented to him by his aides late Sunday night—that he offer to go to Attica to negotiate further on the 28 Points if the inmates would first release the hostages and then return to their cells. It is true that the Governor

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and Commissioner Oswald felt there was little chance of inmate acceptance of this proposal. But, it is equally true that the Governor had nothing to lose by making this proposal, which, if accepted by the inmates, could have brought a peaceful end to the uprising. As General O'Hara testified:

. . . my feeling was that if the inmates would release the hostages that there was nothing to be lost by having the Governor come.

By these conclusions the Commission does not mean to suggest that the Governor's failure to appear at Attica was the cause of the deaths and casualties that followed. Full amnesty was the paramount issue at all times and there was no evidence before the Governor that the inmates were prepared to accept less. However, even if one could be certain that the Governor's appearance would not have led to a settlement, the gravity of the situation warranted the Governor's presence before the decision was reached to commence the assault.

In summary, the Commission believes that the Governor should have gone to Attica, not as a matter of duress or because the inmates demanded his presence, but because his responsibilities as the state's chief executive made it appropriate that he be present at the scene of the critical decision involving great risk of loss of life, after Commissioner Oswald had requested him to come.

Amnesty

Amnesty was a subject of debate through the four days. Some observers contended that the Governor had the power to grant amnesty and should have exercised this power not only because hostages' lives were at stake, but because the inmates' uprising was provoked by the state's tolerance of inhumane prison conditions. Others argued that the Governor lacked the power to grant amnesty and that, in any event, a grant of amnesty would establish a dangerous precedent, encouraging the future resolution of grievances by violent means.

While the Governor's counsel had no precedent to guide him, and no time for research, his advice that the Governor lacked the power to grant amnesty is supported by the language of the state constitution. The constitution

empowers the Governor only to grant reprieves, commutations, and pardons "after conviction" and "subject to such regulations as may be provided by law relative to the manner of applying for pardon." This provision contemplates the exercise of the power only after conviction and only in individual cases where the circumstances justify clemency to a convicted person, as opposed to the grant of general amnesty to an entire class of persons before indictment, as demanded by the inmates.⁵

Moreover, under the state constitution the power to decide whether to indict for crimes invested in grand juries, and the power to try the indictments, rests with elected district attorneys. While the Governor may replace a district attorney under certain circumstances, he does not have the power to override a grand jury's decision to return an indictment.

William Kunstler told the Commission that he agreed that the Governor did not have the power to grant amnesty, but that he believed a pledge of commutation of sentences was within the Governor's power, and could have provided amnesty in effect.

Even if the Governor had the power, the Commission agrees that total amnesty should not have been granted in the circumstances of Attica. The uprising at Attica was accompanied by acts of violence resulting in the death of one correction officer and serious injuries to others. Moreover, there was evidence of altercations among inmates in the yard, although the extent was not known. As it turned out, three inmates had been brutally murdered in D block. Total amnesty would have excused all of these crimes.

⁵A similar provision in the Arkansas constitution was interpreted as precluding the Governor from granting general amnesty. *Hutton v. McCleskey*, 132 Ark 391, 200 S.W. 1032 (1918). In New York, the tradition has been for the legislature to pass any measures eliminating disabilities on convicted persons—a form of general amnesty. Much has been written on the power to grant amnesty, from both a historical and a legal standpoint, particularly in connection with the proposals to grant amnesty to draft evaders. See e.g., Kirchheimer, *Policial Justice* (Princeton: Princeton University Press, 1961), pp. 351-418; Freeman, "An Historical Justification and Legal Basis for Amnesty Today," 1971 *Law and the Social Order*, p. 515 (1971); Jones and Raisch, "American Deserters and Draft Evaders: Exile, Punishment or Amnesty?" 13 *Harvard International Law Journal*, p. 88 (1972); Commager, "The Case for Amnesty," *New York Re-*

In these circumstances, the Commission believes that state officials would have undermined public confidence in the rule of law had they excused serious crimes under the threat that there would be additional acts of violence if amnesty were not granted.

The Commission would not, however, have ruled out some concessions on amnesty. For example, inmates could have been assured that they would not be prosecuted as kidnappers for holding hostages if the hostages were released unharmed. The Commission believes that the taking of hostages is not an acceptable means of bringing about improvement in social conditions. But riots are no more likely to be encouraged by the granting of partial amnesty than they have been deterred, in the past, by prosecutions. As the Kerner Commission found, racism and frustration, not premeditation, have been the primary source of recent civil disorders in this country. (See chap. 3.)

Once the District Attorney, Commissioner Oswald, and the Governor made known their opposition to complete amnesty, there was little effort by anyone to refine the amnesty concept. During the negotiation of the 28 Points, Commissioner Oswald agreed not to press criminal property charges. But no one recalls any suggestion during the negotiations of the Points that there be some understanding barring kidnapping and larceny prosecutions.

As noted earlier, William Kunstler testified that he proposed commutation of death sentences and limitations of terms of sentence on Sunday night, but the meeting was chaotic and Oswald had no recollection of such a proposal. In any event, positions had become frozen by then, and in the heat of the ideological arguments, the opportunities for compromise were not fully explored.

Finally, any compromise on amnesty would have required the inmates to show more trust in the state than was evident in their earlier reactions to the injunction and District Attorney James's letter. Even if the District Attorney agreed to a partial amnesty, the grand jury would have been free to reject his advice and return an indictment. And the inmate lawyers were well aware that a pledge of commutation of sentences could possibly have been disaffirmed later by the Governor or his successor on grounds of duress.

As early as Thursday, Professor Schwartz warned the

inmates that amnesty was not a very practical demand, and the power to grant it was dubious. But inmates held to the belief that the Governor possessed this power, and unfortunately by Sunday some of the observers were expressing the same view in their speeches in the yard.

The Commissioner's Decision

On Sunday night, Commissioner Oswald, with the approval of the Governor, decided that the assault would commence the following morning unless the inmates accepted a last ultimatum to release the hostages and accept the 28 Points. Having negotiated for four days to save the hostages, it was only natural for state officials to justify the use of force on the same humanitarian grounds—the need to protect the hostages' lives.

Virtually all state officials said that on Sunday they had the impression that conditions were deteriorating in the yard. Testifying before the Commission, Commissioner Oswald listed 19 separate factors which had influenced his decision. Among them were "the brutality of the takeover"; Dr. Hanson's observations of increased tension on Saturday evening; the threat to take Oswald hostage; the fear expressed by some observers for their own safety following Oswald's Sunday ultimatum; the build up of inmate weapons and defenses; the release from the yard on Sunday night of an inmate with a stab wound; and "the criminal records of those inmates in the yard with whom I was dealing." Oswald referred particularly to a note taken from Tom Soto as he entered the prison Sunday morning, which had apparently been written by an inmate. It read: "Only among ourselves—they have a gun, Molotov cocktail, gas gun, knives, and some other weapons. Destroy this after reading this."⁶

On the other hand, there was also persuasive evidence that the hostages were in good condition, and were not being molested. This was confirmed by hostages themselves on Sunday in televised speeches as well as by the observers and newsmen who saw them.

While the inmates had promised not to harm the

⁶There was no evidence that the inmates had a gun other than the two gas guns they had captured on Thursday.

hostages if the authorities kept their distance, they had threatened to kill them the moment an assault began. No official, including the police commanders, believed the hostages could be saved if the inmates were intent upon killing them, for the distance to the hostage circle from the blocks controlled by the state was over 150 yards. All officials realized that any police action to rescue the hostages would actually present the greatest threat to them. Why then did the state order the assault?

The decision was based upon the belief that basic principles—not just lives—were at stake in the uprising. From the outset, the Governor perceived the Attica uprising as more than a prison riot. The uprising constituted an insurrection against the very authority of the state, and to tolerate it was to concede a loss of sovereignty over the rebels.

The Governor testified that he expected the Commissioner to follow "the usual pattern" of reestablishing order without negotiation. Choosing the unorthodox alternative course, Oswald was, therefore, negotiating not only with inmates, but against time. Sooner or later, the state's paramount interest in restoring order would have to be asserted. That point was really reached on Saturday night, when a settlement based on the 28 Points was rejected by the inmates. Despite the frantic efforts of Sunday, Oswald's attempt to avoid the use of force to end an uprising had, as the Governor testified, "proven to be a failure."

The decision to retake the prison was not a quixotic effort to rescue hostages in the midst of 1,200 inmates; it was a decisive reassertion of the state of its sovereignty and power. While all state officials were concerned about the safety of the hostages, they had finally reached the conclusion that, after four days of negotiations, the need to reassert the authority of the state over the rebels outweighed the risks of an assault.

Many inmates still believed, when the helicopters first appeared over D yard on Monday morning, that the balance of power was controlled by hostages, not guns. They failed to realize that once the state decided that the rebellion was no longer tolerable, the lives of the hostages were expendable.

Officially, the decision to commence the assault was

made by Oswald, as the official in charge of all correctional facilities, and authorized and approved by the Governor. In fact, the decision was inevitable once the negotiations seemed hopeless.

Part IV

The Assault and Its Aftermath

Summary

When the failure of the negotiations left the state with no alternative but to retake the prison by force, officials from the Governor on down expressed concern that the force employed be only the minimum necessary to restore order. But that concern was not translated into effective restraints, and, in fact, the assault of September 13, 1971, and its aftermath were marred by excesses. Thirty-nine persons were killed by gunfire and 80 others suffered gunshot wounds during the assault. One out of every ten persons in D yard that morning was struck by gunfire and more than a quarter of the hostages died of bullet wounds.

But guns were not the only inflictors of pain at Attica that day; in the aftermath of the assault, hundreds of inmates, stripped of their clothing, were brutalized by correction officers, troopers, and sheriffs' deputies. In addition, the suffering of the wounded was needlessly prolonged by an inexcusable failure to make adequate prior arrangements for medical attention. The authorities' indifference to the lawlessness which followed the crushing of the rebellion continued even after the physical pain subsided and was still evident as the Commission completed its investigation and held public hearings.

The tragedy of September 13 is expressed in the testimony of Dr. John Cudmore, a National Guard surgeon who entered Attica twenty minutes after the shooting stopped:

As we sit here today in a well-lit, reasonably well-appointed room with suits and ties on, objectively performing an autopsy on this day, yet we cannot get to the absolute horror of the situation. To people, be they black, yellow, orange, spotted, whatever, whatever uniform they wear, that day tore from them the shreds of their humanity. The veneer of civilization was penetrated.

In the following chapters, the Commission examines the planning of the State Police assault, what took place during the assault, the lack of planning for medical treatment of casualties, the widespread reprisals inflicted upon inmates after the assault, and the reactions of the officials in the aftermath. Realizing, as did Dr. Cudmore, that no objective analysis can adequately capture the horror of that day, the Commission nevertheless sets forth here its conclusions concerning what happened on September 13.

The Assault

Although high-ranking state officials from several agencies were on the scene at Attica, the entire planning of the police action to retake the institution was left to the local State Police troop commander. In devising the tactical plan, he could use only the personnel and equipment available to the State Police and did not have the benefit of advice or review by civilian or military authorities.

The decision to employ lethal force was an inevitable consequence of the decision to retake the prison. In view of the known buildup of inmates' defenses and crude, but deadly weaponry, the State Police never considered mounting an assault without firearms. In fact, after the assault, the State Police recovered over 1,400 weapons, including two tear-gas guns, spears, Molotov cocktails, baseball bats, scissors, knives, razors, wooden and metal bludgeons, and other objects.

The assault planners acknowledged that they did not possess the capability of reaching the hostages in time to save their lives, if the inmates were in fact set upon killing them. Since there could be no certainty of saving the hostages, in reality the first priority in drafting the assault plan was to minimize the risk of injury to the assault forces themselves.

The State Police used the weapons available to them—high-powered rifles with telescopic sights, sidearms, and 12-gauge shotguns. While the rifles and handguns with which the police were equipped were appropriate for their intended use in the assault, the shotguns, loaded with "00" buckshot pellets which would spread at distances exceeding 30 yards and hit unintended targets, created a high risk of injury and death to unresisting inmates and hostages

when discharged in or into the prison yard. The State Police did not have in their arsenal an alternative weapon for use against expected close-range threats from armed inmates. To minimize the risk of inmates seizing guns from troopers, the assault forces were forbidden by their commanders to engage in hand-to-hand combat, leaving them with little alternative but to fire their shotguns whenever they apprehended danger from an inmate.

State Police commanders said they were aware of the increasing tension and hostility among their men and gave instructions concerning the excessive use of firepower. However, the tactical plan left the decision on whether to discharge a weapon to the discretion of each individual trooper. No specific safeguards were developed to avoid hitting hostages and unresisting inmates with the spread and overfire from shotgun blasts.

Preassault briefings were given in large groups and there was no procedure for instructing individual troopers concerning the behavior expected of them. Gas masks inhibited verbal communication and no alternative means, such as hand signals, were developed for transmitting fire and cease-fire orders or other instructions once the assault was under way.

The problems of the assault planners were aggravated on the morning of the assault when inmates, as a final act of bravado, brought eight hostages up onto the catwalks, which were to be the assault force's route to D yard. They held knives to the hostages' throats, shouted threats to kill them, and taunted the waiting troopers. As the assault began, inmates inflicted knife wounds upon four of the hostages, although none died of such wounds.

The Governor had ordered that correction officers, because of their emotional involvement, should be excluded from the assault forces. This order never reached the State Police or correctional supervisors in control of the men and, in fact, correction officers joined assault details and discharged weapons in several areas of the prison. Their gunfire killed at least one inmate and one hostage.

In practice, the deficiencies in the assault plan took their toll in death and injury. The faith of the assault planners in the discretion and restraint of individual troopers proved in many cases to be misplaced. Had the majority of the assault force not acted with restraint, the toll of dead and wounded would undoubtedly have been great.

er. But restraint, unfortunately, was not universal. Individual members of the assault force provided detailed explanations of hostile or threatening inmate activity which, they said, occasioned their fire. However, other accounts and objective evidence—principally photographs—are inconsistent with many of the assault forces' explanations. From an analysis of all the available evidence, the conclusion is inescapable that there was much unnecessary shooting. Troopers shot into tents, trenches, and barricades without looking first. In addition, even where the firing may have been justified—as in the case of a State Police lieutenant assaulted by an inmate in D yard—the use of shotguns loaded with buckshot in the heavily populated spaces of D yard led to the killing and wounding of hostages and of inmates who were not engaged in any hostile activity.

Analysis of the statements and testimony given by the members of the assault force not only leads to the conclusion that there was unnecessary shooting, but also indicates that the statements were in many cases exaggerated, embellished, and even fabricated. The alleged hostile acts of inmates were reconstructed by the men who fired in a degree of detail which was not matched by their descriptions of other occurrences. The acts alleged to have occurred were, in many cases, unsubstantiated by photographs which would have shown them if they had in fact occurred. And at least one trooper admitted to the Commission that the men in his troop encouraged one another to embellish their accounts.

The top-level decision to exclude correction officers from the assault was sound, not only because of doubts about their ability to control their personal feelings, but also because they are not well trained in military maneuvers or in the use of weapons. At Attica, that policy decision was, inexcusably, never translated into direct orders to the men involved.

The troopers' riot-control training is suited primarily to open areas in which rioters can be dispersed by gas and batons. They are ill equipped by training, matériel, and tradition to engage in large-scale missions where gas and batons may not be sufficient and where their normal policy of dispersal is inapplicable. In addition, less than 1/3 of 1 percent of the troopers are black. If the tragedy of Attica is not to be repeated, it is imperative that the New

York State Police adopt definable policies and procedures for quelling serious and large-scale disturbances in enclosed areas. Such procedures must include provisions to ensure that the risk of injury to unresisting persons is minimized, if not eliminated. It is also imperative that the State Police become integrated.

The Commission believes that, except for the most extreme emergencies, a police force cannot be said to be prepared to act until every participant armed with a gun and authorized to use it against other citizens is as fully and completely informed of all instructions, objectives, and goals of the mission as is his commander. Even the best-trained trooper cannot function professionally, however, in an emotionally charged atmosphere in which he cannot distinguish between fact and rumor and in which his personal frustrations and prejudices have been allowed free rein. Training for missions such as Attica must instill not only technical expertise, but tolerance as well.

The State Police used only what weapons they had and there were no nonlethal alternatives. Our advanced society surely possesses the technical capability to develop implements of force which are not also implements of death. Research and development of such nonlethal weaponry is in progress.¹ Attica demands urgent efforts to complete the development of such instruments and deploy them to the domestic peace-keeping forces which require them. The Commission recognizes that domestic upheavals, in prisons and elsewhere, will not always be capable of peaceful resolution. But the avoidance of widespread death and injury is within our capacity.

A final word must be added concerning the exaggerated accounts which troopers gave after the assault to justify the discharge of weapons. Those who fired were never made to feel that absolute candor about what happened was expected of them and, in some cases a lack of candor was encouraged.

The Division of State Police, like many established institutions, has developed a tradition in which members find security, take pride, and defend one another vigorously. Division members too frequently allow their colleagues or

¹See generally, "Nonlethal Weapons for Law Enforcement: Research Needs and Priorities" (A Report to the National Science Foundation by the Security Planning Corporation), March 1972.

the agency itself to become their first concern, instead of the public they serve and the laws they enforce. That sense of camaraderie has closed the State Police to outside scrutiny.

Treatment of the Wounded

The authorities were well aware that the assault might result in a large number of gunshot casualties and in fact publicly expressed relief when it was all over that the toll had not been higher. However, they failed to make adequate provision in advance for the evacuation and treatment of the wounded. When the shooting stopped, leaving over 120 inmates and hostages dead or wounded, there were only ten medical personnel inside the walls, and only two of them were doctors. A National Guard unit capable of evacuating casualties and providing a "holding operation" pending definitive medical treatment had been mobilized, but had not yet reached the facility. Doctors at local hospitals, who could have rushed in with the necessary know-how, professional assistants, and equipment to perform emergency surgery, had not yet been asked to come to Attica.

It was not until after 2:00 P.M., some four hours after the shooting stopped, that emergency surgical procedures began. In the meantime, wounded and dying inmates lay on stretchers in the tiny prison hospital or on the grass outside awaiting treatment, while young National Guardsmen worked feverishly trying to ease their suffering. When the doctors finally did arrive, they were shocked at the conditions prevailing and amazed that they had not been alerted hours prior to the assault. Once there, they performed admirably under the circumstances, and miraculously no one died solely because of the delay in receiving medical attention.

Nevertheless, the agony of the wounded was immeasurably increased by the lack of prompt treatment. Of all of the needless suffering at Attica, this was the most easily avoidable. But no one assumed the responsibility for making the necessary arrangements. The Commission believes that there was no excuse for failure to make arrangements for sufficient doctors, nurses, ambulances, surgical supplies, and drugs, and to develop a swift and efficient procedure for evacuation of casualties from the

prison to nearby hospitals, well before the first shot was fired.

Reprisals

State officials expected physical reprisals against inmates in the aftermath of the rebellion, but did nothing to prevent them. Such reprisals had followed previous prison uprisings and the fear of them was uppermost in the minds of the inmates during the negotiations. A Federal court order consented to by Commissioner Oswald, as well as the 28 Points to which he agreed, contained provisions against reprisals. Once the assault was over, the orderly return of inmates to their cells, without physical and verbal harassment, should have been given priority.

In fact, correction officers and, to a lesser extent, state troopers and sheriffs' deputies, engaged in frequent and systematic acts of retribution against inmates. National Guardsmen and other outside observers, as well as a few troopers and correction officers, confirmed the almost universal inmate descriptions of widespread beatings, proddings, kickings, and verbal abuse of the vilest nature.

Physical reprisals, accompanied by racial and sexual epithets, began as inmates were herded out of D yard to be stripped and searched, continued as the inmates were run through a gauntlet to cells in A block, and did not subside even after they were locked naked three to a cell. Reprisals were especially severe in HBZ, where the suspected leaders of the uprising were taken. There were even some incidents of reprisals on the following days. Eight days after September 13, doctors assigned to make a physical inventory reported finding bruises, lacerations, abrasions, and broken bones among 45 percent of the inmates who had been in D yard.

What has proved most disturbing about the reprisals was the refusal of most persons in authority at Attica that day to acknowledge that they took place or to accept responsibility for them. During the Commission's public hearings, after the occurrence of physical reprisals had been documented by objective eyewitness testimony, Deputy Commissioner Walter Dunbar minimized the extent of the reprisals.

No effective steps were taken on September 13 to see that reprisals did not occur and no satisfactory explanation

tion has been given for that failure. An uprising in which inmates had demanded above all that they be treated as human beings thus ended with their being treated inhumanly. While the Commission can understand the pent-up emotions and frustrations which took hold of correction officers and others producing such behavior, the public has a right to expect that men whose profession it is to uphold order will not permit their emotions to interfere with their responsibilities. Nor are supervisory officials free to look the other way and allow resentment and anger to reign where there is a desperate need for reason and restraint.

Aftermath

Official insensitivity extended beyond the hours following the assault. Rumors of atrocities, which had circulated throughout the four days, were reported as fact by high state officials. Without any authoritative verification, they announced that hostages had died of slit throats and that story was published around the world. When autopsies proved those reports to be false, the first reaction of some officials was to search for ways to question or discredit the medical examiners, rather than to face up to their own mistake.

The families of hostages experienced excruciating delays in learning whether their loved ones were dead or alive. Similarly, days passed before all of the dead inmates were identified and their families notified. When attorneys and doctors attempted to enter the prison in the days following the assault to assist the inmates, they were obstructed at every turn by prison authorities who chose to ignore a Federal court order rather than admit them. It was not until a watchdog panel named by presiding Justice Goldman of the Appellate Division entered the institution on Friday, September 17, that a semblance of normalcy returned.

In the months following the uprising, Attica underwent many changes. Some of the reforms demanded by the inmates in D yard were instituted, although the authorities maintained that they did not feel bound by the 28 Points to which Oswald had agreed. While Attica was changing, the pervasive feeling months later was that nothing had really changed. Memories of the horrors of September

13 faded rapidly and inertia reappeared. Although inmates were allowed to organize a liaison committee for the expression of grievances, they were still given no sense of participation in the decisions affecting their lives. In July 1972, they turned again to the politics of confrontation and the specter of another Attica rose again.

Chapter 15

Planning the Assault

Despite all efforts, tensions continued to build for four days at Attica as two armed camps inside the walls prepared for a confrontation everyone feared and few wanted. Persons outside the walls were already divided over many issues raised by the uprising. But on one issue there was no division—no one doubted the power of the state to retake the prison by force. The only real issue was whether or not the full potential of so much destructive force could be restrained once the order came to proceed against the rioters.

More than three years earlier, the Kerner Commission on Civil Disorders had warned against this very danger. An effective plan to quell a civil disturbance with minimum risk of widespread injury, the warning read, "tells the police command and the men what to do to control the disorder. It includes command and control mechanisms, communication, intelligence, means to combat inflammatory rumors and tactics."¹ For New York State officials at Attica, those words might as well have never been written, for they failed completely in all these respects.

There were responsible state officials at Attica who should have recognized the need for centralizing the state's decision-making, coordinating, and planning functions. Commissioner Oswald took no part in the police planning. Chief Inspector John Miller of the State Police took no cognizance over the activities of correction personnel. Former Major General and then Commissioner A. C. O'Hara of the state's Office of General Services was present at the Governor's request because of his knowl-

¹*Report of the National Advisory Commission on Civil Disorders* (New York: Bantam Books, 1968), p. 486.

edge and experience in multforce projects, but he did not recommend a unified command structure. Major General John C. Baker, commander of the New York Army National Guard and Chief-of-Staff to the Governor, arrived at the prison Sunday afternoon, having been ordered by the Governor to activate such of his units as he believed necessary to assist the civil authorities in Wyoming County. He limited his role to responding to requests for assistance and volunteered no recommendations for consolidating the state's efforts at the highest levels. Robert Douglass, Secretary to the Governor, T. Norman Hurd, Director of State Operations, and Howard Shapiro, First Assistant Counsel to the Governor, were also on hand to give assistance to Commissioner Oswald, but were not involved in planning the assault.

Governor Rockefeller had expressed complete confidence in Commissioner Oswald as the man in charge of operations at the prison and later explained his decision, testifying, "I'm a great believer in backing the people I appoint to handle different situations. I don't believe in trying to second-guess or play their hand over their shoulder." Superintendent William Kirwan of the State Police saw no need for his personal involvement, and he took his usual day off Monday and drove to his lodge on Lake George where he could be reached by phone if he were needed. Not one of these men, all of whom were hoping for a peaceful resolution of the conflict, involved himself with the plans for the only alternative possibility—that the prison would have to be retaken by force.

Consequently, it was not by any process of decision making, but by default, that the entire responsibility for devising an assault plan devolved upon State Police Major John Monahan, the local commander of Troop A in nearby Batavia. And Major Monahan, like the others, offered no recommendations beyond his specific responsibility for overseeing a police action. All other aspects of the re-taking, including medical care for the wounded and the rehousing of inmates, were left to correction personnel.

Monahan had spent 25 years in the New York State Police, the last nine months in Batavia. At age 55, he was looking forward to retiring soon to his home in the Catskills. Major Monahan had commanded the State Police forces at the Woodstock music festival, and he had handled details of policemen at other disturbances. But

the problems confronting him at Attica—how to take into custody over 1,250 armed men and extracted 39 hostages from their midst—were, in his words, “unique.” Those problems were not simplified by the obscure lines of authority that existed among the participating agencies.

In spite of the presence of several of the state’s highest officials in the executive department, the Commissioner of Correctional Services, and high-ranking officers of the State Police, it fell to the two local representatives of police and corrections to attempt to define the respective spheres of responsibility and authority. At 7:25 A.M. on Monday, little more than two hours before the assault, Major Monahan and Attica Superintendent Vincent Mancusi signed a handwritten agreement. It read:

In order to clarify the orders concerning command, a joint operation is being carried on at the Attica Correctional Facility by the Department of Correctional Services and the State Police.

In the event of the need for a custodial decision, command remains with the correctional employees, whereas in the need for command of police matters, such as an assault thrust, the command will rest with the State Police. Each agency will cooperate fully with the other at all times.

The agreement clarified nothing. Of the 1,100 men present, Monahan still commanded exactly 587; Mancusi still commanded 312; and the sheriffs of nine different counties and one park superintendent commanded the remainder. There was no effective commander-in-chief; there were only department heads. No one was responsible for seeing that everything was done, and many things simply were left undone. Such problems, for instance, as control of firepower, evacuation and medical care of injured, returning the inmates to cells, and the notification of the next of kin of fatalities were considered only as they arose, and entirely too late. Months later, corrections and police officials would debate at the Commission’s public hearings what was “a custodial decision” and what was “a police matter” within the meaning of the Monday morning “joint command” agreement.

Succeeding chapters examine in detail the tragic consequences of the command vacuum and undefined spheres of responsibility and authority. This chapter analyzes the

planning for the assault thrust and the assault plan itself, which was developed by Major Monahan.

The Decision to Employ Lethal Force

There were far-reaching consequences in the very selection of the Division of State Police as the agency to plan and carry out the retaking of the prison. The State Police have a long tradition of utmost caution in exposing their men to the risks of their profession. This tradition is manifest in the Division's own instructions in the State Police manual that members shall not fire warning shots and, when they must use their guns, shall shoot to kill. The reasoning behind this policy is quite simple: an assailant dangerous enough to warrant the use of deadly force is too dangerous to be allowed an opportunity to carry out his threat.

Few police officers have had occasion to use their weapons against another human. A significant part of their training is devoted to handling police problems with methods short of firepower. In fact, their riot control plans are all directed toward dispersing crowds in open areas. In such situations, policemen armed with tear gas, equipped with high-powered hoses, and moving in wedge formations with batons, can generally divide and scatter a crowd without firing a shot.

Even though they pride themselves on such traditionally military qualities as neat uniforms and highly polished shoes and accouterments, and they march in formation when present in numbers, the State Police are not a military organization. They are not trained to act in concert in complex, coordinated maneuvers. The trooper's work is largely solitary, alone in his car, patrolling rural sections of the state. Similarly, his superior officers are trained, not to command militarylike units, but to supervise the activities of many individuals on separate assignments. The Superintendent of the State Police explained this difference during an executive session with the Commission:

Our individual trooper is trained to be jack-of-all-trades and is trained to work alone or at least with one other person. We don't have the same constant responsibility as the military. We are not under the constant mission thing. Our situations change in the course of an ordinary day's work. It may be policing an automobile accident. It may

be climbing a mountaintop looking for a downed plane. It may be apprehending a mentally insane deranged person. It may be just giving assistance to a disabled motorist. It may be subduing a mad dog. It may require jumping into water to rescue somebody and these unpredictable situations change the mission concept, every instant of it.

Although large-unit operations are not a normal part of the trooper's work, he is trained in riot control techniques, and the State Police have been used in that capacity before. No one viewed Attica as merely a civil disturbance, however; Attica was a situation where the destructive potential of violence by the rioters went far beyond the capability of police to control with traditional open-area riot control techniques. Explaining why such conventional techniques as tear gas and batons would not suffice, Inspector Miller testified:

We felt that we had a job to do, that we did it. The confrontation was forced upon us by the inmates who all were in there for crimes that they had committed against society. Many of them heinous, over 18 percent homicides. We were not dealing with a campus disorder or a lot of students, young people or people who were trying to express themselves with a type of disorder where you do go in without the deadly force to take care of the situation.

This was entirely an unparalleled situation in the history of the United States.

Major Monahan agreed: "I personally would not ask any of my men to go in and be confronted with an excess of 1,200 people without being properly armed."

Indeed, the police officials had good reason to fear for the safety of their men. The inmates appeared ready both mentally and physically to resist any police action. The police and correction officers had seen sparks flying from a metal grinder in D yard as inmates fashioned knives and swords from scraps of metal. Inmates on the catwalks had defiantly brandished bats, pipes, and mop and broom handles at the authorities. Many of these had been converted into spears by affixing sharpened objects to the ends of them.

Barricades had been erected on A and C catwalks from chain-link fencing, metal furniture, and wood from the ravaged buildings under inmate control. Over the course of four days, these barricades had been constantly im-

proved and moved nearer to the cellblocks, until they were approximately halfway between Times Square and A and C blocks. An inmate electrician was observed wiring the A barricade, and some officials suspected the barricades had also been booby-trapped with impaling poles. Mattresses were carried to the barricades and doused with liquids, believed to be flammables. Near the barricades and in the tunnels, fires could be seen burning in 55-gallon drums.

There was no reason to believe that the inmates had any firearms, except for two gas guns they had taken from Times Square on Thursday, along with 16 tear-gas projectiles. At short range these were lethal weapons. Officials also knew the inmates had several gas grenades, as well as the knowledge and materials to manufacture hundreds of "Molotov cocktails."² In fact, after the assault, police did find hundreds of Molotov cocktails.³

A particular concern was the presence in D yard of Samuel Melville, well known to law enforcement and correction personnel as "the Mad Bomber."⁴ An avowed revolutionary, imprisoned on an arson and assault conviction, Melville was believed capable of constructing large bombs, and he had the materials he needed—electricity, oxygen, acetylene, and dozens of other combustible materials from the prison shops. Inmates had, in fact, constructed a contraption from oxygen and acetylene bottles which was described as a rocket. It proved to be a dud, but it had all the appearances of an explosive device.

An L-shaped trench had been dug in D yard extending from near the midpoint of B tunnel and running along the tunnel to the paved corner near Times Square and then extending along D tunnel almost to D block itself—designed, the officials believed, to impede the advance of a police force. Open pits and holes, resembling "fox holes," could be seen throughout the yard.

During the four days, a variety of unconventional but nonlethal methods were suggested to the police for sub-

²A crude but deadly hand grenade usually made by filling a small glass container with a flammable liquid, e.g., gasoline, and affixing a rag fuse or wick which protrudes from the neck of the bottle. The user ignites the fuse before throwing.

³Police found no evidence, however, that any of these had been detonated during the assault.

⁴See p. 175.

duing the inmates and rescuing the hostages. The Governor himself inquired about the possibility of drugging the inmates' water. The Governor's counsel asked about the feasibility of a supersiren or giant floodlight to incapacitate the inmates; and the possibility of dropping hundreds of gallons of water on the inmates from helicopters was discussed.

But the planners discarded all these ideas as impractical. Some would disable police as well as inmates; none would work quickly or widely enough to incapacitate the 1,200 inmates and eliminate the risk of injury to the hostages and advancing troopers.

The division's nonlethal weaponry consisted of tear gas and nightsticks, plus the helicopters that had been made available by the National Guard and the Conservation Department. The National Guard had a helicopter equipped with a gas disperser which could spray 50 pounds of powdered tear gas into the yard, and the Conservation Department had a helicopter equipped with a 500-gallon water tank. In short, an attempt to retake the prison with nonlethal force really meant sending in a wave of troopers armed only with nightsticks and supported only by tear gas and water.

The tear gas available was CS, first developed in 1928 and adopted by the Army in 1959 to replace CN, the then conventional tear-gas agent since World War I. CS has subsequently been adopted by the National Guard and by many large police forces. A white crystalline powder, CS is insoluble in water and chemically stable at all surface temperatures. It is generally dispersed as an aerosol⁵ from capsules, burning-or-bursting-type grenades, and from bulk irritant agent dispersers. Although physiologically safer than CN, CS is a stronger incapacitating agent. Common effects of CS include extreme burning of the eyes, copious flow of tears, coughing, difficulty in breathing, chest tightness, stinging sensation of the skin, running nose, and dizziness or swimming of the head. Heavy concentrations produce nausea in some individuals. CS is immediately effective, and the onset of incapacitation is described as

⁵Aerosol, as used here, is defined as a solid or a liquid, not micropulverized, but divided into particles small enough to float in the air for extended periods of time. That is, CS is not usually dispersed in a gaseous form, which would be a vapor.

between 20 and 60 seconds. Although CS produces rapid incapacitation of most persons, the effects vary widely according to personal tolerance, dosage, volume of air in which the agent is dispersed, and duration of exposure.

Since neither the accuracy of the gas drop nor the effects of the gas itself can be predicted, tear gas alone could not be expected to disable all the inmates. Consequently, the risk remained that, despite the gas, unarmed police officers, as well as the hostages, could be overpowered and killed or injured by inmates. Out of responsibility to its members and in accordance with its tradition, the Division of State Police was not prepared to accept the risk of a large number of casualties among its own men in order to reduce the likely number of casualties overall, among inmates, hostages, and troopers.

The Commission does not criticize the police for this unwillingness to take serious risks with the lives of police officers. The likelihood of resistance by the inmates was too great to send troopers equipped only with gas and batons to subdue inmates armed with knives, spears, bats, pipes, and Molotov cocktails. The planners of the assault knew or should have known, however, that many of the inmates in D yard were not active participants in the uprising and, as much as the hostages, were in the yard against their wills. Precautions against killing or wounding such persons should have been an integral part of any assault plan.

The Commission believes that when the state commits an armed force against its own citizens, however provocative their conduct, the state has a compelling moral obligation to ensure that such force is suitable for the mission; that it is controlled, restrained, and applied with precision against only the threats which justify its use. Every aspect of such an operation must be considered, reasoned, and deliberate, with the full realization that a failure to meet these obligations can only result in the destruction of the very order the state seeks to preserve by its action.

The Tactical Plan

Major Monahan conceived a plan involving his own forces for retaking the prison, and like all military attack plans, it contained both a plan for physically gaining the

desired territory and a plan for providing fire support for the assault force. Because inmates held B and D blocks, there were only two avenues of approach to D yard available, from A block and from C block, along the tunnels and catwalks leading to Times Square. The plan called for using both approaches.

No explicit warning was to be given of the impending assault. Surprise was considered an important tactical advantage. Senator Dunne testified that when he was first told of the assault plans on Sunday night, they called for the assault to commence on Monday morning without even an ultimatum. It was clear, however, that at a minimum several minutes would be required to cut through the barricades and cross the catwalks and yard to reach the hostages. During that period, there was nothing, but, as Major Monahan testified, "the Good Lord," to prevent the inmates from making good their threats to kill the hostages.

On Sunday night after Senator Dunne, a civilian with no military experience, pointed out the futility of surprise, Commissioner Oswald agreed to deliver an ultimatum to the inmates the next morning. But the belief in the advantages of surprise did not disappear, and the ultimatum was a compromise which contained no warning that there would be an armed assault if the inmates held out.

The first signs of the impending action were to occur moments before the assault when the electricity for the prison was to be cut off to neutralize the threat of an electrified barricade. The assault would be launched by a National Guard helicopter, equipped with a gas disperser and 35 pounds of CS powder. "Jackpot 1," as the first helicopter was code-named, would take off on order; rise vertically above the buildings; and pass directly over D Yard where it would release the CS agent in a huge cloud. The State Police were unfamiliar with this gas; it had been made available to them by the National Guard at the suggestion of General O'Hara. The first helicopter would be backed up, in case of any mechanical malfunction of either the aircraft or the gas disperser, by a second National Guard helicopter following directly in trace of the first. The second helicopter would carry dozens of tear-gas grenades to be dropped into the

yard.⁶ The appearance of the helicopters would be the inmates' first notice that an assault was actually underway.

As the gas was being dropped, troopers on the third floors of A and C blocks were to fire long-range tear-gas projectiles into the barricades on A and C catwalks and at Times Square, while other troopers would fire additional gas projectiles inside A and C tunnels. Troopers were then to move out onto the catwalks and into the tunnels from A and C blocks.

The first two groups onto the catwalks were each to consist of 30 State Policemen under the command of commissioned officers. These catwalk details were to be armed with their regulation sidearms, and in most cases, shotguns. They were to be accompanied by a barricade removal detail of 10 state troopers equipped with bolt cutters, fire extinguishers, rubber gloves, and firemen's pike poles to break through the barricades. Following the assault force onto A catwalk was to come the 25-man rescue detail, carrying shotguns and ladders to descend into D yard. An additional detail of 15 troopers was to move behind the catwalk forces to assist any trooper who fell in the action.

The troopers in the A and C catwalk details were to proceed toward Times Square. There the troopers from A block were to turn right toward D block, spacing themselves at intervals along D catwalk to provide cover with their weapons for troopers entering the yard to rescue the hostages. The troopers from C block were to turn left toward B block, stationing themselves along B catwalk in the same manner. This maneuver would leave troopers ringing D yard with shotguns at the ready, trained on the inmates below.

At the same time the catwalk details moved out, two contingents of 25 State Policemen, equipped with sidearms and several shotguns, were to proceed down the tunnels from the first floors of A and C blocks. Some members of these details were to spill out into A, B, and

⁶This helicopter carried both CS and CN, another and more toxic tear-gas agent. It was equipped with a pair of homemade "bomb bays" carrying the gas grenades. They were designed especially for the occasion by Major Norman Doe, commanding officer of the National Guard helicopter company, and present at Attica in his role as a lieutenant in the Monroe County Sheriff's Department.

C yards and secure the yards. The remainder of these officers were to proceed to Times Square and continue on into B and D tunnels.

With gun cover from troopers on the catwalks, the rescue detail would proceed beyond Times Square onto B and D catwalks, lower their ladders into D yard, and make their way to the hostage area in the middle of the yard, where with the help of two correction officers accompanying them, they would identify and protect the hostages.

When all the hostages had been removed, and after all the yards and catwalks and tunnels had been secured, the plan called for troopers to enter B and D blocks and clear them of inmates.

Just as the rescue detail was to be protected by armed troopers on the catwalks, so the troopers on the catwalks were to be protected by riflemen on the roofs. Four details of troopers, armed with high-powered rifles and telescopic sights, were stationed on the roofs and third floors of A and C blocks.

The riflemen were to be positioned so that the population in D yard would not be directly in their line of fire; in fact, the plan called for the marksmen to provide covering fire only for the troopers advancing on the catwalks. Major Monahan testified that the riflemen were not to fire into the yard unless the rescue detail "ran into trouble and possibly were in the process of being overpowered." At least one of the rifle detail commanders explicitly instructed his men not to fire into D Yard. The initial plan called for rifle fire to be delivered only at the request of one of the assault commanders on the catwalks and to be restricted to inmates on the catwalks whose actions threatened the lives of advancing troopers. They were positioned so that their fire, if it missed or passed through their intended victims, would fall harmlessly into the largely unoccupied A and B yards. The assault planners did not anticipate that inmates would bring hostages to the catwalks, and when this occurred on Monday morning, last-minute instructions had to be given to the riflemen to attempt to protect the hostages. These instructions were to fire at the first sign of an overt, hostile act against a hostage. The decision on whether or not to fire thus passed directly to the riflemen themselves.

The total assault force, including commissioned officers,

was to consist of 211 troopers. Other details of troopers were stationed at various points around the institution to guard against the inmates' fleeing from the cellblock areas. Members of other agencies were to be available for other services and as reserve forces if they were needed. National Guardsmen, correction officers, and sheriff's deputies all were to remain in the area of A block and the administration building, to be immediately available if needed.

The State Police did not have sufficient shotguns or gas masks to equip all its forces, and troopers borrowed shotguns from the sheriff's deputies and 150 gas masks from the National Guard. Some troopers would go onto the catwalks and into the yard with only their handguns.

Only after the National Guard helicopters had completed their mission of dropping the gas would the inmates be given their first instructions to surrender. Then, minutes at best after the assault commenced, a State Police helicopter with a public-address system mounted on it would hover overhead and give the inmates this warning:

Do not harm the hostages. Surrender peacefully. You will not be harmed. Put your hands on top of your head and move to the outside of B and D corridors—sit or lie down.

Although they hoped the inmates would be incapacitated by the gas, the planners still built their plan for controlling them around the inmates' ability to hear, understand, and comply immediately with commands broadcast from a helicopter. The plan contained no procedure for moving the inmates in an orderly manner from D yard into the other yards, where they would have to be stripped and searched before being returned to cells. Here, the lines between the police and correctional responsibility blurred.

There was no provision in any of the instructions for inmates who did not speak English.

The Police Weapons

Weapons available to the State Police were individual sidearms—a .38 caliber revolver was carried by each trooper—and the shoulder weapons kept in their arsenals.

The latter included Winchester Model 70, .270 caliber rifles equipped with telescopic sights and Ithaca Model 37, 12-gauge shotguns.

The rifleman assigned the responsibility of protecting the troopers advancing on the catwalks were to be equipped with the .270 caliber rifle. Ballistically and technically, the Model 70, .270 caliber rifle is highly suitable as a sniper rifle. Bolt operated with a five-round magazine, this rifle is characterized by a relatively flat trajectory and high velocity, up to 3,100 feet per second. It is said by the manufacturer to have sufficient accuracy to hit a target five inches in diameter at distances of 800 to 1,000 yards. It is manufactured primarily as a big-game rifle.

Because the .270 is a commercial hunting rifle, the ammunition made for it is, likewise, commercial hunting ammunition. Thus, the ammunition is not fully jacketed as is small-arms ammunition used by the military. It is tipped, instead, with the unprotected soft lead nose of the bullet itself and tends to expand greatly upon impact. A full-jacketed bullet is encased completely, except for a small opening in the base, precisely to prevent this expansion.

The unjacketed bullet has advantages for hunting purposes, and one of them is described in a manufacturer's brochure advertising the Silvertip bullet:

. . . Its special alloy jacket prevents premature expansion while the bullet penetrates through thick hide and tissue, then deep in vital areas Silvertip mushrooms perfectly and releases tremendous energy that stops them cold.

The State Police regulation issue for the .270 included this Silvertip ammunition, but did not include any fully jacketed ammunition.

American military forces do not use the kind of hunting ammunition described above, as a result of international treaties embodying the principle of "a desire to lessen the inherent evils of warfare as far as within [the signatories'] power, and wishing for . . . the amelioration of the conditions of the wounded in armies in the field,"⁷

⁷Geneva Convention, 1906.

and forbidding the use of "arms, projectiles, or material calculated to cause unnecessary suffering."⁸

At the Commission's public hearings, the State Police defended their choice of the .270 ammunition as appropriate for police purposes and for the assault on Attica's D yard. Deputy Superintendent Miller explained that a bullet which expands upon impact is less likely to pass through its target and hit an innocent person.

As tragic as are the results, the Commission must accept the police explanation. Our society, which can send men to the moon and bring them home again, has not been able to develop a substitute for the bullet. The mutilating nature of the wounds notwithstanding, given the very real dangers involved in the use of high-powered weapons, the Commission cannot criticize the State Police use of expanding, soft-nosed ammunition at Attica, if the result was to reduce the danger of unintended casualties from the rifle fire.

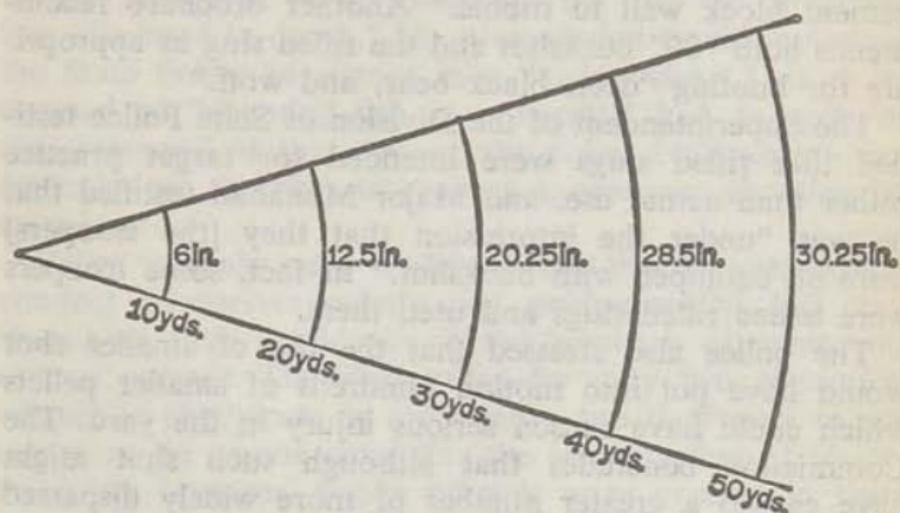
The police explanation for their choice of rifle ammunition, however, is inconsistent with their use of shotguns at distances exceeding 30 yards. The use of hunting rifles to avoid secondary or accidental casualties is, in itself, a reasonable action. That same reasoning, however, certainly does not apply to the use of shotguns and, in fact, should have prohibited the use of shotguns under the conditions at Attica, at least within the expanse of D yard.

The shotguns used by the State Police are widely accepted riot control weapons, and are called by the manufacturer the Ithaca Model 37 Military and Police. A 5-shot, pump action, 12-gauge shotgun, this model is manufactured with a 20-inch bore, full choke, and front bead sight.

Unlike the rifle or the pistol, the shotgun fires a cartridge containing a number of pellets. The pellets range in size from very small shot, called dust, to large buckshot or lead spheres $\frac{1}{3}$ inch in diameter. The State Police use #00 buckshot; each cartridge contains either 9 or 12 such pellets, each approximately 0.33 inch in diameter, or larger in diameter than a .32 caliber bullet, and each a lethal missile. Exiting from the muzzle in a small group, the pellets separate in flight, spreading further apart as

⁸Convention Respecting the Laws and Customs of War on Land, Second International Peace Conference, The Hague, 1907.

the distance increases. Results of ballistics tests conducted by an independent laboratory for the Commission indicate that the gun/ammunition combination employed by the State Police produces the following general pattern spread with "00" buckshot.



(Graph not drawn to scale)

During the tests, all shots were fired at a man-sized silhouette superimposed upon a 48-inch-wide screen. At distances of 40 and 50 yards, not all pellets appeared on the test screen. Consequently, the actual pattern spread at those distances is larger than 4 feet in diameter and could not be measured on a 4-foot-wide screen.

The tests further reveal that at a distance of 50 yards, the gun/ammunition combination employed by the State Police will put between a third and a half of a cartridge's "00" buckshot pellets into a man-sized target when fired under laboratory conditions. When the element of human error is reduced as much as possible, one round of nine-pellet "00" buckshot, fired at a distance of 50 yards, will put into motion three to five lethal pellets which cannot be expected to hit their intended target. It follows that in a crowded, confined area such as D Yard, with human error very much in the equation, such shots will certainly hit unintended victims. The distance from the catwalks to the hostage circle was approximately 50 yards, and other distances within D yard, for which shotgun protection was contemplated exceeded even that.

In addition to the "00" buckshot, the State Police have in their arsenal 12-gauge rifled slugs for use in shotguns. The rifled slug is a single projectile of 1-ounce lead. One ammunition manufacturer suggests the use of rifled slugs for police agencies "in anti-vehicle duty or wherever tremendous shocking power is required, such as reducing a cement block wall to rubble." Another brochure recommends both "00" buckshot and the rifled slug as appropriate for hunting "deer, black bear, and wolf."

The Superintendent of the Division of State Police testified that rifled slugs were intended for target practice rather than actual use, and Major Monahan testified that he was "under the impression that they [the troopers] were all equipped with buckshot." In fact, some troopers were issued rifled slugs and used them.

The police also stressed that the use of smaller shot would have put into motion hundreds of smaller pellets which could have caused serious injury in the yard. The Commission concludes that although such shot might have caused a greater number of more widely dispersed injuries, it is unlikely that injuries from a much smaller shot would have been either as serious or as often fatal as were those caused by "00" buckshot and rifled slugs.

In essence, whatever may be the arguments for the use of "00" buckshot, rifled slugs, and .270 caliber hunting ammunition, it is clear that no consideration whatever was given during the planning to any alternatives. Asked whether any thought was given to using ammunition other than "00" buckshot, Major Monahan testified, "We do not have any, to my knowledge, sir."

In essence, the police used what was available. Although the scatter pattern of buckshot was well known, no efforts were made to obtain carbines or other rifles and no consideration was given to using only the handguns, which every trooper carried, in lieu of the shotguns. The choice of weaponry and ammunition was based upon prior procurement policies, which could not possibly have foreseen the unique situation confronting the police at Attica. Surely, none of the planners could have denied, had he been asked at the time, that the use of shotguns not only increased the risk, but virtually assured the death or serious injury of innocent persons in the congested confines of D yard.

Command and Controls

The weapons with which the State Police were equipped were capable of producing wholesale death and injury, and that fact was not lost on the police planners. When he briefed his detail commanders on Monday morning, Major Monahan later testified, "the use of firepower was discussed in depth." He stressed that he did not want the State Police to engage in a "turkey shoot," or to be accused of "shooting fish in a barrel." Yet, in spite of the awareness of that danger, the police built no internal controls into the plan to prevent unnecessary shooting by troopers.

Police officials were confident that the troopers would conduct themselves calmly and professionally, but they shared no such confidence in the hundreds of correction officers present. The plan called for only two correction officers to participate in the assault, and they were to accompany the rescue detail for the sole purpose of identifying the hostages. Police officials were explicit in their reasons for excluding the correction officers. Deputy Superintendent Miller testified:

From comments I had heard as to the feelings of the guards toward the inmates and I could appreciate them to a certain degree because their fellow officers had been injured and others were being held hostages, I felt that we should not include them in the detail going inside the prison and I had spoken to Superintendent Mancusi on that date that I had talked to Monahan about this and we agreed that we felt that we had sufficient State Police personnel, that to add the correctional officers very well could jeopardize the safety of the inmates in my mind; I felt that possibly once they got in there they might try to take some reprisal action against the inmates.

From his vantage point hundreds of miles away, the Governor expressed the same concern, and on Sunday he asked his secretary Robert Douglass to ensure that correction officers would not be used in the assault. Appearing before the Commission months later, the Governor testified:

I thought it would be a great mistake to have the prison

guards involved in the freeing of prisoners, that it would just be humanly impossible for them not to become involved in reprisals.

While officials expressed concern over the degree of restraint to be reasonably expected of correction personnel, they reposed complete faith in the troopers present. Major Monahan outlined the contrast, as he saw it, between the correction officers and his own men:

I think our mood was completely different than corrections. We had not lost one of our own people, and I heard the expression "being uptight." In my opinion—and I have handled details in other major events—I don't think that our people were uptight. I don't think that this entered into it at all.

Monahan's assessment of his men's state of mind differs markedly from that of most observers and of many of the troopers themselves. (See chap. 13.) Having entrusted the mission to the State Police, however, the officials had no recourse but to rely on State Policemen to carry it out with restraint. They had to hope that the care in the very selection process of state troopers, the intensity of the training program, and the general police experience of the individuals involved would be sufficient to ensure that the troopers would maintain an appropriately detached, professional police attitude despite the tensions and frustrations of the previous four days and the racial overtones of the entire confrontation. On the adequacy of this unspoken assumption lay the only means of avoiding mass casualties, and no state official questioned this premise.

So complete was their faith in all troopers that commanders made no effort to screen their men for the mission. All troopers were considered to be equally available and equally qualified for participation in the assault. The only exception to this practice was the requirement that all men assigned to the rifle details be qualified with the .270 rifle. Assignments were made simply from rosters of personnel present, with no interviews and no regard to the individual's prior military or riot control experience. Some of the troopers had good friends and relatives who were correction officers. Indeed, one of the assaulting troopers

on a catwalk detail was the brother of a hostage in D yard.

Although commissioned officers and detail commanders did receive specific assignments and briefings, there was no procedure established for instructing the individual troopers of the assault forces on the action and behavior expected of them during the assault. In a closed session before the Commission, one trooper described the confusion during the first alert on Friday when he was suddenly told, "We are going now." He testified that the troopers had no idea who their leaders were or what their objectives were to be. "We were just going to storm the prison," he said.

On the day of the assault, Major Monahan did brief the detail commanders shortly before the action began, but they had little time to brief their men in turn. In fact, some of the commanders did not even know who was in their details. There were no smaller units of teams or squads within the various details, some of which contained as many as 50 men. The several commanders had to address their men en masse, and there was no opportunity to make certain that every man understood what was expected of him and his detail. Many were simply reminded that their action was to be governed by the code of conduct established by police regulations.

Every trooper is expected to know the laws and the division's regulations regarding the use of firepower, and the state officials deemed those guidelines sufficient at Attica. These basic rules are contained in the State Police manual, and state, in part:

A member may draw his firearm and/or may fire at another person after he has exhausted all other reasonable means when the member reasonably believes such action is necessary to effect the arrest, or to prevent the escape from custody of a person whom he reasonably believes has committed a felony or an attempt to commit a felony involving the use or attempted use or threatened imminent use of physical force against a person; or the action is necessary to defend himself or another person from what he reasonably believes to be the use of imminent use of deadly physical force.⁹

⁹A complete extract of the State Police regulations governing the use of firearms is contained in appendix C.

The laws of New York and the state police regulations place the responsibility for use of deadly force squarely on the individual trooper. The trooper himself must determine in each individual instance whether or not a sufficient threat exists to warrant the use of deadly force. The test to be applied in every case is his "reasonable belief," that the need for such force exists. Every State Policeman is instructed during training that he must justify to his superiors, and possibly to a grand jury, any use of his gun against another person. But every trooper is equally aware that he must also be prepared to defend himself against criticism if he holds his fire when immediate action could have saved a life or prevented serious injury, or the escape of a dangerous felon.

Consistent with the regulations, the police commanders expected their men to fire only at inmates engaged in overt, hostile acts against hostages and troopers. But there was no discussion or explanation of what constituted an overt, hostile act. That decision, too, was left to the individual trooper. Some troopers told the Commission that the order concerning overt, hostile acts was not even communicated to them.

There was one order which seems to have reached everyone involved in the assault. All troopers were instructed to avoid hand-to-hand combat. The police simply could not take the risk of losing a gun to an inmate in hand-to-hand fighting. But the necessary implication of that order was that physical restraint short of firepower was not available. A trooper who sensed danger from an inmate would have little alternative but to subdue him by shooting. What one trooper might regard as nonthreatening conduct another could—and did—view as dangerous.

No commander assumed or was assigned responsibility for giving commands to fire; no supervisor or superior officer would make that determination. Once the assault began, each trooper was left to use his own discretion in determining whether any particular situation warranted the use of firepower.

Based as it was on complete confidence in the troopers' behavior, the plan made no provision for an easily available check on unnecessary shooting—photographic recording. There were many police photographers present at the prison, but they were not used for that purpose during the

assault. Two of the more experienced police cameramen were not summoned to the prison until early Monday morning, and they were not told of the nature of their assignment before their arrival. Consequently, they did not bring with them the cameras and other equipment that would have been most suitable for the filming of the assault. Another cameraman, though on duty for several days at the prison, was given his photographic assignment shortly before 9 o'clock; but because of his belief that the assault was imminent, he did not retrieve his telephoto lens from his car. The only instruction to the photographers was to photograph "situations of opportunity."

There were two videotape units available; one belonged to the State Police Academy detail and the other was operated by the Niagara Falls Police Department. These units were set up on the roofs of A and C blocks and were intended to make a virtually continuous film of the assault for police archives and possible training purposes. The State Police equipment was new, however, and the cameraman was still becoming familiar with his equipment—his major experience with it had been during the previous four days at the prison. The Niagara Falls police equipment, on the roof of C block, produced superior pictures while it was in use, but no arrangements were made for operating the machine on battery power after the prison power supply was cut off during the assault and, thus, virtually no films of the police action itself were obtained from this camera.

Police officials well knew they would later be called upon to justify their action, and they could have used the photographic equipment they had on hand as a record-keeping device to monitor the police action. There were some difficulties: troopers were wearing identical uniforms and helmets; gas masks concealed their faces; and clouds of gas surrounded them during the early moments of the assault. Nevertheless, advance planning of the photography, taking those difficulties into account, could have resulted in a complete and accurate record of the police action, even to the point of making it possible to identify individual troopers who acted improperly. Some troopers were aware of the presence of police photography details during the assault, and they may have been influenced by them. If all troopers had been advised that their actions

were being recorded on film, that would have provided some check on police conduct. Such a film would have provided a complete and contemporaneous record for subsequent verification of the troopers' own statements. The photography was not planned; the troopers were not told their actions were being filmed; and, consequently, the cameras did not serve the function of inhibiting unnecessary force once the assault began, and the film record which was made is incomplete.

In addition to being unidentifiable personally, the troopers were virtually guaranteed anonymity from subsequent identification by ballistics examinations. No procedures were established for determining individual accountability for either weapons or ammunition. No records were kept of the serial numbers of rifles and shotguns issued to individual troopers, and weapons were passed from hand to hand for four days with no system of accountability. Ammunition was distributed in a similarly casual fashion, by the box or by the handful. No trooper was required to account for each round he received. Indeed, many of them did not even know exactly how many rounds they had when the assault began. Buckshot pellets, furthermore, cannot be traced ballistically to the gun which fired them, and troopers well knew that any unauthorized or unnecessary firing might go undetected. As a result, while each trooper was theoretically accountable by law for his actions, there was no independent means of determining who fired his weapon or of verifying the explanations given by those who later admitted firing.

Just as the plan contained no mechanism for invoking the use of firepower on order, neither did it contain any procedure for halting the fire once it began. Few troopers had radios, and the large details contained no subordinate unit leaders to relay commands. The detail commanders were the only ones in a position to receive orders to cease fire, and it was physically impossible for them to communicate that order to all members of their details. It was, in fact, nearly impossible to communicate even with the man nearest them because the gas masks were not equipped with communication devices, and talking through a gas mask is difficult.

Although vision and speech were impeded by the gas masks, and vision was further restricted by the gas itself,

the plan contained no visual signals as are common to military operations. As it was left to the individual to determine when to shoot, so it was left to him to determine for himself when to stop shooting.

Although the plan called for advancing troopers to be protected by overhead fire from riflemen on the roofs and third floors of A and C blocks, there was no plan for controlling that fire. The roof details had radios, but no specific instructions. Nor was there any prearranged method of lifting their fire or shifting it forward as the troopers advanced into the line of fire. More than one rifleman ceased his fire only when a trooper on the catwalks below walked into view in his telescopic sight. This danger became apparent to Major Monahan only when he stepped out onto A catwalk Monday morning following the assault force, and he immediately ordered the roof details to cease fire.

For guidance in organizing and directing the assault, the police commanders had to rely in part on their combat training and experience in World War II, nearly 30 years ago. The troopers themselves were not prepared, either by training or by tradition, to work in squads or platoons. It was inevitable in these circumstances that there would be different reactions by different troopers to the same set of circumstances and that some men would shoot when others, sensing no threat, would hold their fire. Only with a comprehensive, detailed plan, effectively controlled and supervised, could that unnecessary firing be avoided.

The Forgotten Model

Ironically there was a plan in New York for dealing with civil disorders where nonlethal force was insufficient. The plan, known as Operation Plan Skyhawk, was prepared by the New York State National Guard based on studies of other disturbances throughout the country. While the plan was intended for normal riot conditions, where rioters could be dispersed into open areas, the drafters anticipated that there might be circumstances in which lethal force would have to be involved, and they built into their plan explicit safeguards, missing at Attica, against the unnecessary use of such force.

Among some things, Skyhawk provides:

The primary rule which governs the actions of military forces in assisting state and local authorities to restore law and order is that the commander must, at all times, use only the minimum force required to accomplish his mission.

* * *

When firing ammunition, the marksman should, if possible, aim to wound rather than to kill.

When possible, the use of deadly force shall be preceded by a clear warning to the individual or group that such force is contemplated or imminent.

* * *

... use of deadly force is authorized only where all of the following circumstances are present:

... The risk of death or serious bodily harm to innocent persons is not significantly increased by its use.

* * *

The presence of loaded weapons in the tense situation may invite the application of deadly force in response to provocations which while subject to censure, are not sufficient to justify its use; and it increases the hazard that the improper discharge of a weapon by one or more individuals will lead others to a reflex response on the mistaken assumption that an order to fire has been given. Officers should be clearly instructed, therefore, that they have a personal obligation to withhold permission for loading until circumstances indicate a high probability that deadly force will be imminently necessary and justified. . . . Strong command supervision must be exercised to assure that the loading of weapons is not authorized in a routine, premature, or blanket manner.

Commanders should at all times exercise positive control over the use of weapons. The individual soldier . . . must not only be thoroughly acquainted with the prerequisites for the use of deadly force, but he must also realize that, whenever his unit is operating under the immediate command and control of an officer, that commander will determine whether the firing of live ammunition is necessary.

The New York National Guard's standard operating procedure to support Plan Skyhawk provides, among other things:

Ithaca Model 37, 12-gauge, or Winchester Model 1200 will be assigned at battalion level for issue to Search and Neutralize Teams. The basic load is 10 rounds of 12-gauge #7½ shot. #00 buckshot will NOT be issued in lieu of #7½ shot.

* * *

Chemical.

Agents.

Only CS (O-Chlorobenzalnonitrile) will be used against rioters. CN (Chloracetophenone) will *not* be used except for training purposes and then only when CS is not available.

* * *

The commander of the Task Force or Riot Battalion at the scene of the disturbance will be prepared to issue messages over public address systems. These should be repeated as necessary to insure that all have been warned of the action to follow.

In areas where a language problem exists, provisions must be made for accurate translation.

The existence of the Skyhawk Plan was forgotten at Attica. Even the National Guardsmen who arrived with ammunition carried "00" shot. The State Police officials were not unfamiliar with Skyhawk: General O'Hara was commander of the New York National Guard when Operation Skyhawk was developed, but he testified that Skyhawk was more suited for campus demonstrations than for prison riots, and had "no bearing" on the situation at Attica.

The fact is that the necessity for a definitive command structure and for strong and continuous controls over men with guns had all been foreseen by the professional military men who drafted Skyhawk. The Commission can never determine whether loss of life and injury would have been avoided had the police planners at Attica been aware of and used Skyhawk as their model. All that is certain is that when the time came to reap the benefits of the professional foresight of Skyhawk's authors, their work product lay in its folder in the files of the National Guard in Albany.

The deficiencies in the assault plan were not the result of callous indifference on the part of police officials, nor were they the result of a casual attitude toward the enormous situation confronting them. They were the result,

rather, of assigning a new kind of mission to a force of men that was neither trained nor equipped for the occasion. Over 500 police administrators, local commanders, highway patrolmen, and criminal investigators from all over the state were assembled and asked to plan, develop, and execute a coordinated air/ground assault against over 1,200 armed men in an institution only one of them had ever seen before. The deficiencies in the plan were not perceived—and are still not acknowledged in all instances—by the police commanders or state officials. No one reviewed or questioned the assault plan except superficially. It is doubtful that state leaders even realized that the only prospect for retaking the prison without indiscriminate shooting rested on the individual judgment and self-restraint of 211 tense, frightened, frustrated, angry men and their separate “reasonable beliefs.” Officials have subsequently pointed to the 1,250 survivors of D yard and said they did not do badly. The Commission has considered the 39 dead and scores of wounded and concluded it was not done well.

The next chapter analyzes what happened when the plan was put into operation.

Chapter 16

The Assault

Sunday night was a sleepless night in D yard. Rain fell hard throughout the night, and even the makeshift shelter erected by the inmates for the hostages failed to keep out the downpour.

By dawn, the rain had turned into an intermittent drizzle and the day was gray. As inmates and hostages tried drying themselves over campfires, troopers armed with .270's and shotguns assembled in front of the administration building. The leaders of the various details met with Major Monahan for their assignments, briefing, and warning against a “turkey shoot.”

In Mancusi's office, Oswald prepared his final ultimatum

to the inmates, and instructed correction officers that no more observers were to be admitted to the prison, and those there, with the exception of Senator Dunne, who was in Mancusi's office, were not to be let out of the steward's room.

The Ultimatum

At 7:40 A.M., Oswald, in the presence of Deputy Corrections Commissioner Dunbar and General O'Hara, met some of the inmate spokesmen at the DMZ and delivered the written ultimatum reading as follows:

For four days I have been using every resource available to me to settle peacefully the tragic situation here at Attica. We have met with you. We have granted your requests for food, clothing, bedding, and water, for medical aid, for an immediate court order against administrative reprisals. We have worked with the special citizens committee which you have requested. We have acceded to 28 major demands which you have made and which the citizens' committee has recommended. In spite of these efforts you continue to hold hostages. I am anxious to achieve a peaceful resolution to the situation which now prevails here. I urgently request you to seriously reconsider my earlier appeal that, one, all hostages be released immediately, unharmed, and two, you join with me in restoring order to the facility. I must have your reply to this urgent appeal within the hour. I hope and pray your answer will be in the affirmative.

After the ultimatum was read aloud in the yard, the inmates were asked whether anyone wanted to accept. Over 50 percent of the inmates polled by the Commission stated that they were in favor of accepting the 28 points, and against holding out for amnesty. Yet, on Monday morning, only one inmate spoke in favor of accepting the ultimatum. His dissent was so solitary that a member of the inmates' committee urged that the dissenter not be attacked by other inmates who shouted down the ultimatum.

The inmates' committee was, however, reluctant to report the negative response to Oswald. Near the end of the hour deadline, an inmate spokesman returned to the DMZ to speak to Oswald. According to the Commissioner, the following colloquy took place:

Then this individual came back to the gate and said, "What are you going to do about those demands?"

I said, "I don't understand what you're saying."

He said, "Well, you haven't approved the demands."

I said, "Of course, I've approved the demands."

And he said, "I don't know about that."

I said, "Well, I don't know how you can say that because, after all, Mr. Jones went over in detail these demands with you and we sent several copies of them in there."

And he said, "Well, I don't know what you mean."

Dunbar and Oswald were incredulous, but Dunbar produced a copy of the 28 Points and handed it to the inmate. The inmate asked for another 20 minutes to talk it over; Oswald offered 15 minutes, until 9:00 A.M. Oswald then returned to the command center in Mancusi's office where he remained throughout the day.

What discussions then ensued among the inmate leadership is not completely known. Some inmates have reported hearing voices raised in argument. Whatever the discussion, it ended with a fateful decision on which the inmate population was not consulted, to move some of the hostages to the catwalks in full view of the authorities.

All of the hostages were blindfolded, and some were bound by hands and feet. Eight of the hostages were then removed from the hostage circle—apparently chosen because their feet had not yet been bound, and they were therefore ambulatory. The eight were taken to a trench and told that at the sound of the first shots they would be burned with gasoline. The inmates hoped that the sight of the hostages at the trench would deter the assault. One inmate exclaimed: "This isn't going to work because they are not going to be able to see us." The eight hostages were then led blindfolded to the catwalk where they were fully visible to the police in A and C blocks.

The hostages were spaced in the area near Times Square and A catwalk, facing A and C blocks. Each was held by at least one inmate, most with knives at their throats, or pointed objects at their torsos. They were told that they would be killed when the authorities made their move. One hostage described it:

From there he held me with a blunt instrument like—

I don't know whether it was a nightstick or a two-by-four

or what. Held it in the small of my back and arched my back.

Then he held something to my throat. At that point all I could feel was like the back of his thumb against my throat.

We stood there for a while and then he slid over a crate and had me sit down and he gave me a cigarette and I had just taken one or two drags off the cigarette and this other person came along and took it out of my mouth and told us he did not want smoking up there.

Then we just sat there and then come the time, they were asking, "Are you nervous?" Yeah, I was a little scared, naturally. And he gave me a Tums and he says, "Well, this will do you for now. In a little while it will be all over with anyhow."

While I had the Tums in my mouth, the one behind me started to comb my hair, he told me he wanted me to die pretty.

This same hostage also told the Commission he had asked, "Why me?" and was told, "Because you're white."

If taking the hostages to the catwalk made them more conspicuous, it also made the inmates guarding them more vulnerable. It would have been far safer for the inmates to have remained with the hostages in the hostage circle. The display of the eight hostages on the catwalk can be understood only as an act of bravado intended to deter the authorities from commencing the assault. The belief persisted among the inmates that the authorities would hesitate to risk the lives of their own.

Back in the hostage circle, inmates were also preparing for the assault. Some hostages have reported that they heard inmates tell their Muslim guards that they were being replaced by a new group who described themselves as "soldiers."

The changeover was, however, not complete. Many Muslim guards remained until the end.¹ A number of the hostages in the circle were held with knives at their throats and told they would die if any inmate was shot.

At about 9:00 A.M. Dunbar, who was the only official waiting by A gate for an answer from the inmates, ob-

¹When the troopers arrived they found many Muslim guards still there, and were told by some hostages that these inmates had protected them. Some of these Muslim guards have told the Commission that they succeeded in keeping inmates who wanted to harm the hostages out of the hostage area until the end.

served the first hostages being taken to the catwalk near Times Square with their hands behind their backs. Dunbar testified that at 9:12 inmates shouted at him:

"If you want us, you know what we want. Come and get us"

At 9:22, according to Dunbar, inmates shouted another response down A tunnel to him:

"Come in now with the citizens' committee and Oswald in D block yard."

Dunbar reported this message to the command center, and replied to the inmates:

"Release the hostages now and Commissioner Oswald and the citizen's committee will meet you—with you."

At 9:30, the answer came back from inmates: "Negative, negative."

The ultimatum had been rejected. The last opportunity to halt the assault had now passed.

The Forces Take Their Positions

Following their briefing by Major Monahan early that morning the various group leaders began assembling their troopers and taking their positions. Some had difficulty rounding up their men and did not get in place until as late as 15 minutes before the assault began. Others were in position even before 9:00 A.M. The two rifle teams on the roofs of A and C blocks had to remain out of sight, lying in a prone position behind the low retaining walls on the roofs for almost 45 minutes before the gas was dropped. Most took quick looks at the activity on the catwalk, and their commanding officers also provided them with descriptions of the locations of the hostages and their executioners. As they took up their positions, the team of troopers on the roof of A block was joined by three correction officers, at least one of whom was accepted as part of the rifle team by the State Police lieutenant in command. All three correction officers were armed with personal rifles equipped with scopes.

The catwalk and rescue details of troopers waited in A

and C blocks to move on to the catwalks while beneath them, the tunnel details waited to advance inside A and C tunnels. According to plan, two correction officers were assigned to the rescue detail for the purpose of identifying hostages.

The first objective of the rescue details was to be the barricades which had been erected by inmates on A and C catwalks between the cellblocks and Times Square, about 45 yards from the cellblock doors. The barricade on A catwalk was about 7 feet high and was solidly constructed of chicken wire, chain-link fencing taken from the fence enclosure atop Times Square, and furniture. The C catwalk barricade was only 3 to 4 feet high and had gaps between the pieces of furniture through which a trooper could pass without great difficulty.

On the third floor of A block, one state trooper and approximately 11 correction officers were posed with their guns pointed out of the windows in the direction of D block. Some of the correction officers had shotguns; others were armed with personal rifles or rifles issued from the prison arsenal; one had a submachine gun. The presence of the correction officers was not known to Major Monahan or Inspector Miller.

In addition, three Genesee County Park policemen, armed with shotguns and rifles, stationed themselves at a window in a stairway between the second and third floors of C block.

The troopers and correction officers watched from the cellblock windows and roofs as the eight bound and blindfolded hostages were brought onto the catwalks, and bizarrely garbed inmates paraded the hostages before the loaded guns and shouted taunts to their largely unseen audience.

The eight hostages were spaced along A and B catwalks and on the roof above Times Square, three facing A block and five facing C block. Seven were seated; one kept standing. Beside or behind each hostage stood one or more inmates brandishing weapons. Films show a total of 21 inmates on the catwalks in the immediate vicinity of the hostages just prior to the assault.

Possibly to impress the police and deter the attack, the hostage closest to A block, his head pulled back, was forced to scream over and over again, "I don't want to die." The troopers and correction officers also heard in-

mates declare their willingness to die and their readiness to kill the hostages and advancing troopers. A black liberation flag was unfurled over D catwalk. Although virtually every State Police member addressing himself to the subject claims that he was able to maintain his calm at the sight of the hostages and inmates on the catwalks, there is evidence from some onlookers that it sharpened the emotions of anger, rage, and fear which had been building up for four days.

The transfer of the eight hostages to the catwalks necessitated a change in plans. Now the sharpshooters on the roof had the mission of not only providing covering fire for advancing troopers, but also attempting to prevent the inmates from slashing the throats of the hostages on the catwalk.

Shortly after the eight hostages were brought on the catwalk, a police captain reported to the command post that the riflemen could probably get a clear shot at most of the inmate executioners. He requested instructions. Inspector Miller replied, "Hold your fire until there is an overt act by the executioners against the hostages." It was left to each trooper's judgment to determine whether the overt act occurred, with the knowledge that if he waited too long the hostage he was expected to protect could be killed.

The Gas and the Gunfire

Shortly after 8:45, a yellow helicopter borrowed from the State Conservation Department took off from the side of the prison, and headed toward D yard. This was a decoy, intended to divert the inmates' attention from the gas-laden National Guard helicopter waiting to take off in front of the administration building.

General O'Hara went to the third floor of A block to give the signal for the gas drop. He testified he did not notice the 11 correction officers with their guns pointed out the windows of that gallery. The General picked up his radio set to order the electricity in the prison cut and the National Guard helicopter airborne. But his radio did not work. Finally, a trooper found him and lent him a radio which operated. At 9:44, the General gave the orders: the power was shut off and the National Guard

helicopter rose straight up in front of the administration building, and in a matter of seconds, dropped CS gas on Times Square where the hostages were standing. The time was 9:46 A.M.

As the gas descended,² there was movement by the inmates and hostages on the catwalks, and the riflemen on A and C roofs—troopers and three correction officers—commenced firing. Then troopers and correction officers on the third floor of A and C blocks joined in the firing.

Almost simultaneously, troopers began moving out of A and C blocks onto the catwalks. They too began firing. Beneath them, troopers advanced inside A and C tunnels with heavy firing in C tunnel.

Within about three minutes, the catwalk teams had cut through the barricades and moved on to B and D catwalks overlooking D yard. The rescue detail proceeded behind the A catwalk team to B catwalk, dropped its ladders, descended into D yard, and moved toward the hostage circle, with a lieutenant, Joseph Christian, leading the way in a sprint. Meanwhile, a second National Guard helicopter made passes over D yard, dropping canisters of CN gas.

At 9:50, four minutes into the assault, a State Police helicopter began to circle the yard broadcasting a message to the inmates to surrender, but the shooting continued for at least several more minutes. All told, the inmates were under heavy fire for six minutes, though understandably it seemed longer to many inmates. After that, only an occasional round was expended, primarily from gas guns.

The Toll

When the shooting ceased, 10 hostages and 29 inmates were dead or dying of bullet wounds inflicted by the authorities; 3 hostages and 85 inmates had suffered non-lethal gunshot wounds, and one trooper—Lieutenant Joseph Christian—suffered leg and shoulder wounds from shotguns fired by troopers trying to protect him. No hostages were killed by inmates on September 13. But two

²For discussion of the properties and effects of CS and CN gas, see pp. 347-48.

hostages who survived the assault on the catwalks suffered slash wounds on their necks at the hands of inmates—one requiring 52 stitches, the other 30; two of the hostages who were killed by gunfire on the catwalks also had minor nonlethal knife wounds. Several other hostages were struck with blunt instruments wielded by inmates.

No accounting was kept of the ammunition issued to the police and correction officers, but in statements given after the assault, state troopers acknowledged firing 364 rounds; correction officers, 74 rounds; the Genesee County Parks personnel, 12 rounds. Of these, approximately 230 rounds were "00" buckshot from shotguns, each containing at least 9 lethal pellets. Thus, based on acknowledged rounds fired, it may be concluded that, including "00" pellets, at least 2,200 lethal missiles were discharged from the guns of the authorities that day. Almost 10 percent of all persons in the yard were struck by bullets or shotgun pellets, and 13 of the 38 hostages were killed or wounded by the gunfire.

Of those who died, 8 hostages and 13 inmates were struck in D yard, 2 hostages and 13 inmates on the catwalks, 1 inmate in A yard, and 2 inmates in locations which could not be determined on the available information.

All of the hostages struck in D yard were in the hostage compound in the center of the yard, but inmates were killed or wounded in scattered locations in many parts of the yard. Five hostages and 11 inmates were killed by shotgun fire, 10 inmates and 5 hostages by rifle fire, 1 inmate by revolver fire, 6 inmates by a combination of shotguns and rifles or pistols, and 1 inmate by a firearm which could not be identified ballistically. Most of the wounded were hit in D yard with stray "00" pellets. Three hostages and at least three inmates were killed in D yard by rifle bullets fired from the cellblock.

Appendixes D and E contain a complete breakdown of the 39 persons who died in the assault, including the conclusions of the Commission's pathologist as to the cause of their deaths.

Determining What Happened

There were no disinterested witnesses to the assault, and the inmate and police versions of what occurred are

Digitized from the collections of the New York State Library, Albany, NY.

in sharp conflict. Virtually all State Police officers maintain that the shooting was restrained and directed only at inmates who were specifically endangering the lives of hostages or the police.

This explanation has been accepted by most state officials, including the Governor and Commissioner Oswald who complimented the police on their restraint. Inmates tell it differently, claiming that they were the target of a cold-blooded massacre.

The Commission attempted to reconstruct the period during which the inmates were under fire from the following sources of information and to test the police accounts against other evidence:

Statements of Assault Personnel: In the days following the assault, the State Police Bureau of Criminal Investigation (BCI) interviewed many troopers and correction officers, who were then asked to sign statements describing their activities during the police action, including any instances of firing. At the time that most of these statements were made, everyone knew that all hostages had been killed by gunfire. Indeed, that knowledge seems to have prompted the decision to take these statements.

The written statements made by each trooper to members of the BCI were in lieu of the usual "Discharge of Firearms Report" which each member of the State Police is normally required to submit whenever he discharges his firearm in the course of duty. In this situation, the BCI asked each State Police member to give a statement concerning his activities, his observations of hostages and inmates, and his observations of other persons firing. Moreover, an attempt was made to interview every member of an assault detail, whether he discharged his firearm or not.

Interviews and Testimony of Assault Personnel: Most of the men comprising the main assault forces were interviewed by the Commission staff and a selected number were subpoenaed to give testimony privately before the Commission. The Commission's questioning went into greater detail than the BCI statements, covering precise locations and time sequences, in order to make it possible to determine accurately whether different witnesses were reporting the same or different incidents. However, by the time the Commission was able to conduct its interviews, memories were not only colored by interest but had faded

with time. The Commission also interviewed ranking State Police officers, state officials, and top-level correction personnel concerning the assault.

Autopsy Reports: The Commission had access to autopsy reports and photographs on all dead inmates and hostages. Dr. Alan Moritz, the Commission's pathologist, independently evaluated those reports, met with the medical examiners who prepared them, and rendered his own report to the Commission. This information was useful in establishing not only the causes of 39 deaths, but also the range of possibilities as to each subject's position and activities at the time he was shot.

Ballistics: The Commission obtained copies of reports from the State Police ballistics laboratory concerning projectiles removed from the dead and wounded. Some of these reports were not completed until the late spring of 1972 and others were still forthcoming at the time of this report. The ballistics laboratory received only a small number of fragments removed from wounded inmates; many projectiles were not preserved for analysis.

Inmate Accounts: Among the 1,600 inmates interviewed by the Commission, there were many who had an excellent view of the assault from the windows of cells in C block. The Commission also considered the eyewitness accounts of inmates in the yard and on the catwalks who were the object of the assault.

Photographic Evidence: The main body of objective evidence available to the Commission was the photographic record made by the State Police and other law enforcement agencies. That included both black-and-white and color prints, color slides, 8-mm black-and-white motion pictures, and a sound videotape taken by a State Police unit, using a variable telephoto lens, located on the roof of A block.

The videotape presents a virtually continuous visual and sound record of activities on the catwalks and in the yards beginning about 40 seconds before the gas drop and continuing for about 20 minutes. The videotape and the motion pictures taken from A block were studied repeatedly in slow motion and frame by frame. They were compared with the 35-mm slides taken from the roof of C block, which were of consistently high quality and taken at short regular intervals. These visual aids were invaluable

in reconstructing the sequence of events and in testing eyewitness accounts.

Considering the amount of photographic equipment in use, there are several deficiencies in the photographic record. Two State Police still cameramen operated their equipment incorrectly, resulting in the loss of more than 50 exposures. A third still photographer who was on the catwalks took virtually no pictures of the State Police action. Because of a demand for speed in developing the State Police photographs, the individual rolls were not kept intact and there was no practical way to reconstruct the precise sequence in which all of the photographs were taken. Many photographs missed important identifying details which would have been useful in further analysis.

Relying on the foregoing sources of information, the Commission has been able to reach reasonably certain conclusions about the conduct of the assault and the reaction of the inmates and, in most cases, to explain the large number of deaths and gunshot wounds. What follows is a scene-by-scene analysis of the assault, starting at each stage with the undisputed results of action by the assault forces and proceeding to compare their explanations of what happened with the other evidence available to the Commission.

The Initial Barrage

It is impossible to reconstruct with certainty the exact sequence of events during the first momentous seconds of the assault. To most observers, the gas drop, the commencement of rifle fire, and the falling of inmates and hostages on the catwalks happened almost simultaneously. Five of the State Police riflemen on the roofs reported seeing a definite motion on the part of an inmate "executioner" toward a hostage before they fired. That motion was variously described as a slashing motion across the throat or a thrust toward the torso.

Four of the hostages on the catwalks suffered neck or throat lacerations, two of a substantial nature and two minor. The two who suffered minor wounds were killed by gunfire. Both surviving hostages whose throats were cut, however, reported to the BCI shortly after the assault that

they heard the gunfire a split second before they felt the knives across their throats.

The videotapes are not sufficiently detailed to resolve which came first—the slashing or the shooting; they show action which could have been interpreted as overt acts toward the hostages. As the gas came in contact with the hostages and inmates on A catwalk (where the camera was pointed), both inmates and hostages began to move downward. As the gas came down, several of the “executioners” fell to the catwalk, pulling the hostages down with them. Immediately, but perceptibly after the first downward motion, the first shot rang out and was immediately followed by another and then by a barrage of shots from the roofs and third-floor windows of A and C blocks, which continued virtually unabated for about 50 seconds. It is reasonable to conclude that it was the sudden downward motion of inmates and hostages which touched off the shooting.

Two hostages and nine inmates on the catwalks were hit by bullets fired from A and C blocks and subsequently died. One of the two hostages was struck twice by .270 rifle fire; the other was hit by a bullet from a personal rifle fired by a correction officer from the third floor of A block. In addition, one hostage and at least two inmates were wounded on the catwalks by shots fired from the roofs or third floors of A and C blocks.³

Many of the riflemen, in statements taken by the BCI later on September 13, and in private testimony before the Commission, described in some detail the targets of their shooting. Others, however, were unable to remember how many rounds they fired or exactly what they fired at. Almost all of them acknowledged that their orders were to fire at inmates committing “overt acts” and one trooper said he understood that to mean “a motion to do harm to

³Three of the nine dead inmates were also hit by shotgun pellets and it could not be determined which wound caused their deaths. The precise number of inmates wounded on the catwalks could not be determined because the Commission was unable to interview or obtain the medical records of all wounded inmates. Photographs indicate that, in all, 12 inmates were wounded on the catwalks. The hostage wounded by gunfire on the catwalk suffered a critical injury and was only released from the hospital in April 1972.

one of the hostages."⁴ Rifleman on C roof were apparently assigned specific targets by the lieutenant in charge of the detail, but those on A roof and on the third floor of both cellblocks were not.

The riflemen who said they could recall the details of their firing onto the catwalks reported targets falling roughly into three groups: inmate "executioners" who were seen to slash or stab at the hostages with weapons; inmates running toward or lunging at hostages who were down on the catwalks; and inmates running toward the advancing assault forces on the catwalks.

For example, one trooper testified that he fired four rounds from his .270 rifle onto the catwalks—one at an inmate he saw "lunge forward toward a hostage with a knife-type object in his hand," another at a different inmate who was "trying to stab [a hostage] in the back with a knife-type object," a third at an inmate "running toward the hostages that were crawling away from Times Square" with a "fairly long metallic object" in his hand, and a final round at an inmate in the Times Square area who was "coming up with a knife-type object in his hand and trying to stab one of the crawling hostages." He testified that he stopped firing onto the catwalks when the advancing assault teams came into view in his scope. Another trooper on C roof testified he fired at an inmate on Times Square with "a big blade in his hand" who appeared to be "going toward the troopers who were coming onto the catwalk." A third rifleman claimed, however, that all he could remember for sure was that he had fired at inmates on the catwalks who were moving and that some of them had weapons.

Insofar as the riflemen reported firing at inmate "executioners" slashing or stabbing at hostages or running toward Times Square, their accounts are consistent with the independent evidence. As already noted, the films and videotape show abrupt downward motions by some of the "executioners" as the gas descended, which easily could have been interpreted as hostile acts against hostages. The videotape also shows some inmates moving away from the

⁴A correction officer who joined the A roof detail and heard the instructions to the riflemen categorically denied hearing any mention of "overt acts."

barricade on A catwalk toward Times Square before they were shot. Such movement was also observed by inmates in C block, although they tended to view it as retreat from the advancing assault forces, rather than hostile action toward the hostages.

Insofar as the riflemen claimed to have fired at inmates attacking crawling hostages or running toward the assault forces, their accounts are not supported by the photographic record. It shows that if any hostages crawled at all, it was for only a few feet at most, and that inmates' motions were uniformly *away* from the advancing troopers. Although not continuous, the photographs do not show inmates running or lunging at prostrate hostages. Nor did inmate witnesses in C block report any such incidents. The videotape does show an inmate who stood motionless on the corner of Times Square, about five yards from the nearest hostage, for a full 40 seconds into the assault, before falling. Ballistics reports later revealed that he had been fatally wounded by a single .270 bullet.

The conclusion is inescapable from all of the evidence—including the aggregate of the riflemen's statements—that anyone identifiable as an inmate who moved or remained standing on the catwalks once the shooting began was likely to draw fire. All hostages on the catwalks were blindfolded and had their hands bound, either in front or behind. Most inmates on the catwalks had some kind of head covering, and were either black or Puerto Rican. Troopers had been instructed that all of the hostages were white, so that all blacks were immediately identifiable as inmates. Eyewitnesses in the cellblocks told the Commission that in a matter of seconds everyone on the catwalk went down. And, except for the inmate at Times Square, the films show no one standing on the catwalks after the first 30 seconds of the assault. A union official of the correctional service, describing the assault later in the day over the open "hot line" to Albany, said "they were all mowed down like wheat on top of that crosswalk and there was nothing moving on that walk [after] that initial burst."

One plausible explanation of the shooting from the cellblocks came from the testimony of a trooper who was not part of the rifle details, but who was in one of the assault teams which went out on the catwalks. He testified that despite the specific order that there was to be firing only

at overt acts, it was his clear understanding from conversations with fellow troopers and the circumstances prevailing just prior to the assault that "the initial volley was going to kill everybody on the catwalk." "When I took a look," he said, "the first volley cleaned everybody off their feet."

Viewed this way, it is understandable that the riflemen acted as they did with respect to the activity on the catwalks. The inmates had made explicit threats to kill the hostages and any inmate on the catwalk that morning was inevitably seen as a potential assassin. Consequently, any inmate moving in the direction of the hostages, even if he was merely trying to run for safety, was certain to draw fire.

On the Catwalks

Five inmates died of gunshot wounds from the assault forces which advanced onto the catwalks. Three more slain inmates were struck by shotgun pellets fired by those forces, although they had also been hit by rifle fire. Other inmates were wounded by gunfire from the catwalk details.

The troopers' accounts of what led them to discharge their weapons as they proceeded along the catwalks vary widely. The action at each stage of the advance onto the catwalks must be separately analyzed in order to arrive at a clear picture of what happened.

C Catwalk: Several troopers in the C catwalk detail described having seen a number of projectiles come from behind the barricade, including Molotov cocktails, stones or bricks, and a tear-gas projectile. Several members of the detail reported seeing either two or three inmates standing behind or on top of the barricade waving swords, and one threatening to throw a spear. Two troopers even reported seeing the spear thrown. Two of the lead men in the detail reported firing at one of two inmates standing behind the barricade from a distance of 30 feet, and several other members of the detail said they saw the lead men fire.

Four members of the C catwalk detail reported firing at inmates with weapons running on A catwalk toward Times Square. In a detailed account, a fifth trooper described two inmates, one with a knife in his hand, getting up from the A catwalk and running toward some of the A catwalk

detail who had already passed them. The trooper said he fired a slug at one of them from C catwalk and believed he hit him. He also said that after he had passed the barricade three armed inmates ran from A catwalk into Times Square toward his detail and that he shot the lead man and the others jumped over the railing into A yard.

Despite the inconsistencies among the accounts of the troopers concerning inmates standing behind the barricade, some inmates viewing the action from C block also reported having seen at least one inmate stand up behind the barricade with a weapon in his hand. They said that he was shot down as soon as the action started, but they did not mention having seen anything thrown from behind the barricade. Similarly, several members of the C catwalk detail did not report any inmates standing behind the barricade and one stated unequivocally that he had a good view of the barricade, but saw no resistance from that direction whatever, although members of the detail did fire their shotguns into the barricade. In addition, the photographs taken from C roof do not show inmates standing behind the C catwalk barricade and none of the troopers who came down A catwalk reported seeing such inmates on C catwalk.

The following is clear: although advancing troopers did fire into the barricade on C catwalk, they did not kill anyone behind that barricade. Photographs showed five or possibly six inmates crouching behind the barricade just prior to the assault. Two of them died, but ballistics reports show that each of them died from a single rifle bullet fired from above. However, the evidence, including photographs, also shows that at least two, possibly three, inmates were wounded behind the barricade. Except for one, these inmates could not be identified and, therefore, the weapons which wounded them are unknown. The one inmate wounded there who was identified said that he was struck by a rifle bullet.

The photographs corroborate the accounts of inmates running on A catwalk toward Times Square, but are inconsistent with the stories of inmates reaching Times Square or getting up after being passed by troopers on A catwalk. As the police action began, one inmate ran toward Times Square for about 30 yards and sustained multiple wounds, including rifle, buckshot, and one slug,

before falling fatally wounded some 15 feet short of reaching Times Square. In addition, close study of the videotape indicates that there was inmate movement on A catwalk toward Times Square, but before the A catwalk detail had penetrated the barricade. The videotape camera range, and the presence of the gas, made it impossible to verify whether the inmates were carrying weapons.

A Catwalk: Two troopers on A catwalk each reported firing one shotgun round into the barricade, although no inmate was visible. Another said he fired two rounds into a small opening in the barricade when he noticed a slight movement within the barricade. Some troopers in the A catwalk detail, plus others waiting in A block, reported seeing one or more tear-gas devices thrown or shot from behind the barricade toward the advancing troopers. Two troopers reported seeing a Molotov cocktail thrown from behind the barricade as they approached it and one said that a javelin thrown from behind the barricade narrowly missed him. While many troopers mentioned these thrown objects, none said that they fired in specific response to such incidents.

Two members of the A catwalk detail reported that as they came out the door they fired multiple rounds of "00" buckshot across C yard at inmates fleeing toward Times Square on C catwalk. One trooper said that as he made his way through the A catwalk barricade, an inmate immediately behind it threw a Molotov cocktail, which did not explode, and turned to pick up another. The trooper said he shot the inmate at close range with a slug. Another member of the A catwalk detail reported that as he went through the barricade, he saw an inmate getting up and going for another trooper, but then falling back as though he were shot. The second trooper said he did not know who shot the inmate.

These accounts by members of A catwalk detail are not corroborated by other descriptions and evidence. To begin with, the videotape camera was intermittently focused on the A barricade during the entire time the detail was approaching it. The tape shows the inmates behind the barricade doing no more than attempting to hide behind it or run from the assault force. It does not show anything thrown from behind the barricade, nor did the majority of those in the detail and those watching from A block report

such instances. Both the videotape and the motion-picture film do show, however, several instances of firing by members of the A catwalk detail before they passed through the barricade during the very short period the cameras were focused on them. These rounds are not accounted for in the State Police statements of firing.

The photographic record shows that as the troopers passed through A barricade, there were only two inmates within 10 yards of them. One, lying close to the barricade, had been incapacitated by two rifle wounds and later died, but was not hit by shotgun fire. The other can be seen lying approximately 30 feet behind the barricade in photographs taken before any of the troopers reached the barricade and was photographed in the same location and position by photographers who followed the assault force through the barricade. However, the videotape recorded the same inmate prior to the time he was shot and his movements recorded on videotape clearly indicate that he was shot as he was attempting to retreat from the barricade before members of the A catwalk detail reached it.⁵ The photographic record is supported by the account of the first trooper through the barricade, who did not report any inmate activity of any kind in the immediate vicinity of the barricade.

The report that two armed inmates were shot as they emerged from Times Square and ran toward the advancing troopers is not corroborated by any other evidence. There was a substantial number of troopers from the C catwalk detail in the Times Square area at the time, but none of them reported such an incident. The videotape camera was focused on that section of the A catwalk as the first troopers approached Times Square from the barricade, but the tape shows no inmate movement of any kind.

Finally, the first trooper through A barricade reported that as he came through the barricade he fired a round toward an inmate on C catwalk at the barricade. The inmate was attempting to light a Molotov cocktail. The same trooper said that as he was proceeding to Times Square two inmates "with distorted expressions" emerged

⁵Since that inmate was unidentified, the precise nature of his wounds is not known.

from Times Square, running toward him, both brandishing weapons. There is no way to confirm or refute that report by other evidence.

Times Square: Three inmates were killed in the Times Square area by close-range gunfire from the assault forces advancing on both catwalks. A fourth, whose location cannot be positively fixed, was probably shot on the staircase inside the Times Square blockhouse. In addition, at least four inmates were wounded in the Times Square area.

The accounts of two troopers, one in the A catwalk detail and one in the C catwalk detail, purported to explain the death of one inmate. The trooper on A catwalk reported that a wounded inmate holding a knife started to get up and come toward him and that he drew and fired one round from his sidearm. He said that the inmate fell back onto the catwalk and he turned away, only to hear a member of the C catwalk detail shout, "Look out," and fire two shotgun blasts at the back of the same inmate at close range. The member of the C catwalk detail said that an A catwalk trooper tapped him on the shoulder and yelled, "Look out, he's got a knife," whereupon he fired one shotgun slug at an inmate who was getting up and heading for the back of a third trooper.

A member of the A catwalk detail reported that he entered the Times Square blockhouse and saw two armed inmates coming up the staircase. He said he fired two shotgun rounds at the first inmate, who fell down the stairs, and that another trooper with him also fired a round. No other trooper has acknowledged firing inside the blockhouse, although two said they fired into it from a distance.

The remaining accounts of activity in the Times Square area by the members of the assault forces are not sufficiently detailed to link them with the shooting of any particular inmate. The troopers reported firing 22 rounds from shotguns and sidearms in the Times Square area. In general, they said they fired at armed inmates crawling or running toward the assault forces. One trooper reported that he fired 10 rounds from his shotgun during the entire assault, some in the Times Square area, and described all of his targets as armed inmates "acting in a very hostile manner." He went on to say that the inmates he fired at were "shouting obscenities, throwing

Molotov cocktails at our group, [and] running at our group with pipes, bats, knives, and various other weapons." Another trooper reported firing his shotgun at an inmate standing by the blockhouse, while a third said he fired his revolver at an inmate coming out of the blockhouse with a Molotov cocktail.

The photographic record is inconsistent with trooper accounts of inmates menacing hostages or attacking troopers in the Times Square area once the assault was in progress. Prior to the assault, the photographs show several inmate "executioners" kneeling behind hostages in the Times Square area or on B catwalk just off Times Square. Photographs taken after the gas had cleared, but before the advancing troopers were through the barricades, showed three of the "executioners" lying atop Times Square, all of them alive. A fourth, obscured from these photographs, was still alive at that time, since he was shot at close range and no trooper had yet reached the area. Three of these inmates were in the same location where they were photographed prior to the assault. The one who had changed location had moved in the direction of the blockhouse, apparently seeking cover there. None of them had moved in the direction of the hostages or the advancing troopers. Another set of photographs taken after the troopers had secured the Times Square area shows these four inmates, plus four others, lying atop Times Square, dead or wounded. Again, any movement which had taken place was in the direction of the blockhouse and three of them had not changed location from the previous set of photographs. Based on these photographs, it does not appear that these inmates could have been running at or attacking anyone.

Of the four dead "executioners" found in Times Square, one was shot by a rifleman from the roof, and the other three were shot by the assault forces at close range. Ballistics and autopsy reports show that one of the dead was hit with three full rounds of "00" buckshot from less than 15 feet away. Another dead "executioner" was apparently the inmate whose shooting was reported by the two troopers, one from each catwalk detail. The nature of his wounds is consistent with the troopers' reports that he was hit in the back, with a shotgun slug, either as he was prone or as he was getting up to attack a trooper.

one of the two troopers. However, the photographic record showing his change of location from B catwalk toward safety in the blockhouse is inconsistent with the troopers' account.

The third dead "executioner" suffered multiple wounds, apparently from two separate sidearms, fired at close range, both in front of and behind him. The autopsy report revealed 18 separate puncture wounds and the ballistics laboratory analyzed 13 separate bullet fragments recovered from his body. One trooper standing in C yard said he saw a trooper on Times Square fire his sidearm at an inmate in this location holding a Molotov cocktail in each hand. A second trooper said he saw an inmate shot with a sidearm as he attempted to attack a trooper in an unspecified location. A third testified to having seen another trooper "empty his pistol" at short range into what appeared to be a dead inmate lying on Times Square.

B Catwalk: As the State Police moved from Times Square down B catwalk, they encountered no resistance, dismantled the barricade, and proceeded to B block. Gas was both sprayed and fired into the block and several inmates came out. They were directed to go over the catwalk railing into D yard and did so. So much is undisputed. Some inmates watching from C block, however, have reported seeing troopers on the catwalks firing at the inmates who were attempting to surrender from B block, and seeing other inmates pushed or thrown by troopers from B catwalk down into D yard.

In Commission interviews none of the troopers who were present on B catwalk at the time the inmates came out of B block reported having observed or heard any shotgun fire in that location at that time. One trooper, who declined to be interviewed by the Commission, said in his BCI statement that he saw inmates emerging from B block through the cloud of tear gas and fired at them several times, but was unable to tell the effect of his fire. There is no evidence, however, that any inmates were fatally wounded in that area.

The deaths on the catwalks and in Times Square at the hands of the advancing forces have not been satisfactorily explained by the troopers. The ranking State Police officers viewing the assault from A block said they

did not witness any acts of inmate resistance, except for a tear-gas projectile fired from A barricade, reported by Major Monahan. It is noteworthy that 65 percent of the members of the catwalk details said they did not fire their weapons. However, the objective evidence clearly indicates that some members of the catwalk details who did fire their weapons did so unnecessarily.

A Yard

One inmate was killed by shotgun pellets, and at least three others were wounded in A yard.

Five troopers who went out along A catwalk reported that four prisoners came out of the A tunnel door into A yard and that at least one of them tried to throw something at the troopers on the catwalk. All five troopers said that at least some of these inmates drew fire and fell, but only two acknowledged that they themselves shot at them. One State Police officer waiting in A block reported firing his snub-nosed revolver at one of the inmates who he feared would throw a Molotov cocktail toward the troopers up on the catwalk.

In addition, a BCI investigator on the second floor of A block reported having fired into an inmate-constructed sentry post at the D tunnel door in A yard. Finally, one trooper reported seeing an inmate jump off A catwalk into A yard and begin running toward Times Square. He said he shouted at the inmate to stop, then shot at him with a round of buckshot.

The troopers' accounts varied among themselves. One man said that an inmate in A yard attempted to throw a spear, two others described an attempt to throw a Molotov cocktail, while one man said he saw an object actually thrown. A trooper who fired his shotgun three times stated that some of these inmates were attempting to climb up onto the catwalk. One of the troopers, who did not fire, said that two of the inmates had weapons but that the other two were merely attempting to hide behind the wreckage of a guard's platform.

There is no photographic record of what went on in A yard at the start of the assault. Several inmates, possibly as many as six, ran out the A tunnel door into A yard shortly after the action started. Several of the State Policemen who advanced down A tunnel said they saw six inmates in the tunnel before the assault started, but

found none there when they advanced down the tunnel.

Many police and correctional personnel who saw the inmates in A yard reported no hostile activity on their part. There were no other reports of inmates jumping from A catwalk to A yard or trying to climb from the yard onto the catwalks as the troopers approached—incidents that surely would have attracted attention.

D Yard

The majority of casualties suffered in the State Police assault took place in the inmates' stronghold in D yard. As the assault began, D yard was a confused scene. Most inmates told the Commission that as the gas dropped, they dived for cover behind benches, inside tents, or into trenches and holes which had been dug, or that they threw themselves flat against the ground or against one of the walls. There was, however, activity in the hostage circle. The surviving hostages told the Commission that as the assault commenced, they were made to stand and if they fell or slumped down they were forced to stand again by their "executioners." Some of the hostages reported trying to break away from their captors and crawl under the benches. Photographs taken just after the gas drop show standing figures and signs of movement in the hostage circle which were not visible in other parts of the yard.

Eight hostages and 13 inmates died from gunshot wounds suffered in D yard, and 3 hostages and at least 43 inmates were wounded by gunshot fire there.⁶ In their written statements and in Commission interviews, troopers acknowledged firing 81 rounds into D yard: 61 shotgun rounds, 11 .270 rifle shots, and 9 bullets from sidearms. The firing into D yard emanated from the roofs of the cellblocks, from the catwalks, and from troopers in the yard itself. The circumstances occasioning firing from each of these locations will be examined separately, although it should be noted at the outset that the photo-

⁶The location of approximately 30 of the 85 wounded inmates could not be determined, either because they could not recall their location in interviews, because they had been released from incarceration and could not be located, or because they refused to be interviewed. Projecting the ratio of the known wounded, and considering the photographic evidence of how many were wounded on the catwalks, it seems likely that most of those 30 were wounded in D yard.

graphic record of activity in D yard during the assault is sparse. The videotape camera on A block roof did not have sufficient magnification to pick up identifiable details at that distance, there were many obstacles in the yard which blocked the view; and fully one-third of the yard was obscured by the catwalks. Thus, events in D yard could not be subjected to the same kind of analysis accorded to action on the catwalks.

Firing from the Cellblocks

Major Monahan testified that the original assault plan did not call for the rifleman to fire into D yard at all. All members of the .270 rifle team on A block roof said that they did not fire into D yard and some of them said they had been specifically ordered not to fire into the yards. Riflemen on C block roof, however, reported no such restriction and acknowledged firing 11 .270 rounds into D yard. Most of the C roof riflemen, and the lieutenant in charge of the detail, said they understood that their mission was to protect the hostages wherever located. In addition to the 11 rounds acknowledged by troopers on C block roof, one correction officer told the Commission, but not the BCI, that he fired his rifle once into D yard from A block roof.

Three hostages and at least three inmates were killed in D yard by rifle fire. The four members of the C roof detail who acknowledged firing into the yard all said in statements taken on September 13, 1971, that they shot at inmates running in the yard, either in the direction of the hostage circle or into the general area where they expected the assault forces to be entering the yard. None of them, however, reported firing at an inmate in close proximity to the hostage area, and in Commission interviews, some of them placed their targets in remote corners of the yard. Rifle fire did, however, kill three of the hostages in the yard and wounded a fourth. Since the riflemen who admitted firing into D yard did not report firing into the hostage circle, no satisfactory explanation of those shootings exists.

Of the three inmates killed by rifle fire in the yard, two of them were found dead near B tunnel wall, out of the line of fire of the C roof riflemen. It is theoretically

possible that these two inmates could have been shot while they were on B catwalk and fallen into the yard or while they were elsewhere in D yard and thereafter reached the place where they died. However, the nature of their wounds and the distances involved make both those explanations highly unlikely. Inmates have given the Commission eyewitness accounts of the death of one of the two inmates which indicate that he was not on the catwalk and was shot in D yard close to where he died. What seems most likely is that both inmates were shot by riflemen on A block roof who, having been instructed not to fire into the yard, did not report that they had.

Clearly more rifle shots were fired into D yard than the 11 rounds acknowledged by the troopers on C roof and the 1 round reported by a correction officer on A roof: of the 43 inmates wounded in the yard who were interviewed by the Commission, 19 said they were hit during the initial barrage of shooting, when only those in cellblocks or the roofs were within firing range of the yard.

Firing from the Catwalks

Once the assault forces had secured A and C catwalks and Times Square, they fanned out along B and D catwalks overlooking D yard. Pointing shotguns and sidearms over the railings into the yard, they provided cover for the "rescue details" who descended ladders into the yard and moved toward the hostage circle. Accounts provided by inmates and troopers, confirmed by the audio portion of the videotape, indicate that firing from the catwalks into the yard lasted for several minutes.

Troopers acknowledge firing 31 rounds from shotguns or sidearms from the catwalks into the yard. Members of the catwalk details who acknowledged such firing said they shot at inmates offering resistance to troopers who were proceeding through the yard.

One such incident, recounted by several troopers, drew heavy fire in the direction of the hostage circle. A State Police lieutenant, Joseph Christian, in command of one of the rescue details, was among the first down a ladder and into D yard. Testifying before the Commission, he said that he ran ahead of his men toward the hostage area because he observed an inmate assaulting some of

the hostages. Approaching the hostage area at a considerable distance from the rest of his detail, he was struck on the head by an inmate wielding a club. As he was attacked, troopers on the catwalks (and at least one in the yard) opened fire at his attacker. The inmate was killed, and Lieutenant Christian suffered wounds in the leg and arm.

More than a dozen State Police reported seeing some part of this incident. In addition, a number of inmates and one of the hostages also said they saw an inmate assault a trooper who was approaching the hostage area. There is, however, considerable disagreement concerning the details of the incident. Some said they saw the inmate shot, while others reported that he was knocked down by another trooper with the butt of a shotgun. In fact, a member of Lieutenant Christian's detail told the Commission that he noticed two troopers grappling with the lieutenant's assailant and that he struck the inmate with the butt of his shotgun. In the confusion that prevailed, the same trooper struck three other persons who approached him immediately thereafter. All three turned out to be hostages.

State Police officials relied upon the incident involving Lieutenant Christian to explain the killing of five hostages in the hostage circle by shotgun pellets. They maintained that those hostages were struck by the overrun of shots directed at the lieutenant's assailant.

The State Police explanation that the incident drew fire in the direction of the hostage circle is corroborated by other evidence. The videotape reveals that approximately 30 seconds after the first ladders were put down into the yard there was a barrage of more than 20 rounds of gunfire within three seconds. That timing is consistent with Christian's own account of when he was assaulted. In addition, each of the five hostages killed by shotgun fire was hit by no more than three buckshot pellets and three of them received pellet wounds in widely separated areas of the body, strongly suggesting that they were hit by overfire coming from a considerable distance.

Despite the plausibility of the State Police explanation, there were other incidents of shotgun fire in the yard in the vicinity of the hostage circle, unrelated to the assault on Lieutenant Christian. Any of them could just as easily have produced overfire which struck one

or more of the hostages. There can be no certainty as to how those five hostages died.

Other trooper accounts of targets of shooting from the catwalks include: an inmate who suddenly leaped up from a prone position and began running away from D catwalk, drawing fire from three troopers on that catwalk; an inmate who threw a nightstick at a trooper in the process of removing a "black liberation flag" on a pole affixed to the catwalk railing and was shot twice with the trooper's sidearm; and inmates alleged to have attacked troopers from inside tents and foxholes, who drew shotgun fire from B catwalk.

Many inmates, however, reported seeing other inmates shot from the catwalks while they were doing no more than walking with their hands on their heads, or attempting to determine where they were being directed to go. Inmates also reported an incident involving a black liberation flag, but said two inmates were carrying it in the yard toward the B tunnel door and were shot down from the catwalks for no apparent reason.

Finally, one trooper testified that troopers firing into D yard understood "that anybody who doesn't obey orders gets waxed." He said he walked along D catwalk trying to induce other troopers to stop firing and that, although he saw an inmate leap and run, he saw no acts of inmate resistance in D yard.

Because the photographic record of activity in D yard is sparse, it is impossible to determine precisely what drew fire from the catwalks. It is known, however, that inmates were hit with shotgun pellets in almost every part of the yard with heavy concentrations near B tunnel toward B block and near the door into D tunnel—away from the hostage area. Inmates' own accounts concerning their location when wounded have been relied upon. They are, in most cases, corroborated by the nature and type of the wounds, photographs taken after the yard was secure, showing apparently wounded inmates lying on the ground in many parts of the yard, and the descriptions of the medical personnel and National Guardsmen who entered the yard to evacuate the wounded. From that evidence, it can be concluded that, whatever precipitated the firing from the catwalks, the discharge of shotguns from the catwalks at targets across the yard resulted in

considerable spread and overfire of pellets, and the consequent wounding of many more inmates than were involved in acts which drew the fire.

Firing in the Yard

Troopers who actually descended into D yard acknowledged firing 39 rounds. According to their accounts, 10 rounds were occasioned by specific acts of inmate resistance. These included: an inmate running at another trooper with an upraised weapon, an inmate standing near the hostage circle with a lighted Molotov cocktail in each hand poised to throw them toward the hostage circle, an inmate running toward the hostage circle with a homemade lance, and two instances of inmates running toward the troopers who said they shot them. According to the troopers, all of these instances involved firing from a distance of more than 25 feet, although none of them said he fired in the direction of the hostage circle.

One trooper in the yard also acknowledged firing a round at the inmate who attacked Lieutenant Christian. He said that when he fired he was further into the yard than the lieutenant, so that his fire was away from the hostage circle. However, his description of the incident makes it impossible for him to have been viewing it from that vantage point.

Troopers who were in D yard also acknowledged firing 19 rounds into the air, into the ground, or into tents and trenches, in order, they said, to warn inmates to come out and surrender. One of these troopers said he fired when he saw a tent cover move, but subsequently looked and found the tent was empty. Another trooper stated to the BCI that he had fired 11 rounds in D yard without specifying his targets. In his Commission interview, however, he denied having fired more than one.

Many inmates told the Commission they saw troopers firing "blindly" into trenches and tents, without previous warning. Their reports are corroborated by the observations of orderlies from St. Jerome Hospital in Batavia who were the first medical personnel into the yard and who treated the wounded lieutenant. A trooper looking into the yard from the catwalk testified he saw troopers shooting into tents without looking into them first. "I probably would have felt the same way," he said. "I

don't want to pull it back and find out somebody is going to get into me with a spear."

Inmates also repeatedly said that they tried to follow instructions broadcast from a State Police helicopter to come out with their hands on their heads, but were driven back to cover by new bursts of gunfire. At least one Spanish-speaking inmate testified that he was shot by a trooper in the yard after he was unable to understand the trooper's orders to him.

One inmate bled to death inside one of the deep trenches that had been dug in the yard. He had a gaping wound on his inner thigh caused by a cluster of 8 shotgun pellets, indicating close-range fire.⁷ Another inmate crouching beside him in the same trench said he caught the other pellet from the same load in his heel. The surviving inmate told the Commission that he could see only the boots of a trooper standing above the hole just before a single shot was discharged into the hole which struck both inmates.

Many inmates reported that they were wounded in areas of the yard where troopers reported no incidents of resistance. Major Monahan also testified that he saw no inmate resistance while he was on the catwalks. As with the firing from the catwalks, it must be concluded that the discharge of shotguns in D yard either into the air or at targets some distance away inevitably led to the killing or wounding of inmates who were not involved in any acts of resistance or disobedience.

Were Inmates Singled Out?

As indicated in chapter 13, during the days leading up to the assault, both correction officers and troopers were overheard talking about some of the better-known inmates and expressing hopes for opportunity to take shots at them during the assault. For months after the assault, rumors persisted, both in and outside the institution, that certain inmates had been picked off by the riflemen or had been removed from D yard alive and subsequently assassinated.

⁷This inmate was discovered in the trench only hours later, when rigor mortis had begun, giving rise to rumor that he had been dead for several days and had been buried there by the inmates. The Commission's pathologist has determined that he died of exsanguination from a shotgun wound received on September 13.

One such rumor was given prominence when Assemblyman Arthur O. Eve announced that, during a tour of the catwalks after the assault was over, he saw L. D. Barkley alive in A yard and was therefore shocked to find his name listed among the dead. A report also found its way into the press that inmate Thomas ("Tommy") Hicks, a member of 5 company, and one of the so-called Auburn transferees, had been removed from his cell and shot later in the day. Finally, the shooting of Sam Melville, already a legend among inmates and law enforcement personnel because of his bombing exploits, was attended by charges that he was singled out for death after D yard had been secured.

The Commission thoroughly investigated the deaths of Barkley, Hicks, and Melville and has concluded that none of them was removed from the yard and executed after the assault.

Barkley was struck in the back by a State Police .270 rifle bullet during the first minute of the assault. He was hit and died in the southeast quadrant of D yard, about 20 yards from the hostage circle. Several inmates who knew him well told the Commission that they were with him in the yard and that they saw him hit as he was running toward his tent; a correction officer testified that he saw Barkley through his rifle scope running in D yard toward the hostage circle with what looked like a pipe in his hand.

Several photographs taken in the yard after it was re-taken depict Barkley's body lying in the background, clearly identifiable from the clothing he was wearing. Those photographs confirm that he died where the inmates indicated he fell. In addition, the Commission's pathologist has concluded that the bullet which struck Barkley was almost immediately fatal and was "probably" tumbling or deformed when it hit him, suggesting a ricochet, rather than a direct hit.

There is no doubt about the circumstances of the death of Tommy Hicks. None of the troopers who described the attack upon Lieutenant Christian in the yard attempted to identify the inmate involved. However, several of the inmates who related that incident identified Hicks as the lieutenant's assailant. Hick's body was found in the yard at about the location of the attack on Lieutenant Christian. Autopsy and ballistics reports confirm that Hicks was killed by five pellets from a load of buck-

shot fired from a considerable distance, again consistent with the eyewitness accounts that it was he who attacked Lieutenant Christian and was shot by troopers on the catwalks.

Samuel Melville was killed at least five minutes after the assault began by one rifled slug from a State Police shotgun fired by a BCI investigator standing atop Times Square. The investigator testified that he followed the assault force out onto C catwalk with several other members of the BCI. As he approached Times Square, he said a trooper handed him a shotgun to hold which had been left on the catwalk by another trooper who had descended a ladder into D yard. As he was standing on Times Square, the investigator testified, he saw an inmate in D yard bobbing up and down behind a crudely fashioned bunker made of fertilizer bags against the wall of D catwalk. The BCI agent said he lifted his gas mask and yelled to the inmate to stop his activity in the bunker. The inmate reappeared, he said, with what appeared to be a Molotov cocktail in his right hand. Fearing he would throw the Molotov cocktail, the investigator said he fired one shot from the shotgun, striking the inmate in the chest.

Another member of the BCI from the same unit who was standing next to him corroborated his account. However, neither man was absolutely certain that the inmate was about to throw a Molotov cocktail and neither could say whether it was lit. The investigator who did not fire said that 15 minutes later he went down into D yard to examine the body and could not find a Molotov cocktail near it, although there was a bucket of such devices in the bunker.

State Police photographs show Melville dead in the bunker, which did contain several Molotov cocktails, as well as stockpiles of ingredients for making them. In addition, ballistics and autopsy reports are completely consistent with the investigators' accounts of the shooting. The evidence definitely refutes the numerous reports related by inmates that Melville was seen alive and unharmed in A yard after the assault or that he was alive, but wounded, on a stretcher. Both investigators were attached to a special unit in Buffalo involved in investigating subversive activities. Both men testified that they did not know that the inmate involved was Melville. It is, however, unques-

tioned that Melville was not shot accidentally or during the initial wave of shooting from the roofs or the catwalks. He was shot by a law enforcement officer who admitted aiming at him and stated his belief that he was justified in shooting him.

In analyzing the charges that prominent inmates were singled out, the most significant fact is that, except for Barkley, none of the more than 15 members of the negotiating committee, who had been seen on television for four days, was killed or even wounded.

Firing by Correction Officers

The Governor, Commissioner Oswald, and State Police officials all agreed that correction officers should not participate in the assault. Nevertheless, these orders were not communicated to the rank-and-file correction officers. Indeed, no one acknowledged having been charged with the responsibility for enforcing the ban. In fact, at least 16 correction officers fired weapons from the roof and third floor of A block. Other correction officers followed State Police details onto the catwalks and into the tunnels. In statements given to the State Police after the assault, correction officers acknowledged firing 74 rounds from personal and department rifles, shotguns, and one Thompson submachine gun. These correction officers were responsible for the deaths of one hostage and at least one inmate on A catwalk.⁸ One inmate interviewed by the Commission said that he was on C catwalk and believes he was wounded by gunfire from a correction officer in a window in C block.

At least 11 correction officers fired weapons from the third-floor windows of A block. Testimony of a State Police investigator on duty there and a report on the "hotline" to Albany both confirmed firing by correction officers from that location.

In private interviews, many of the correction officers freely acknowledged that they shot at targets on A catwalk and in A yard and that it had always been their understanding that they were free to provide gun sup-

⁸Available ballistics and autopsy information does not definitely identify any other dead or wounded persons as having been shot by correction officers.

port to the assault forces as they saw fit. In private testimony following the disclosure at the Commission's public hearings that they had fired, correction officers told a uniform story concerning firing from A block.

Most of the correction officers who fired from the third floor of A block had been sent to Attica from Auburn. The Auburn group had been assigned to cover that area throughout the four days. They said they had been told by their lieutenant that from mid-afternoon on Sunday the entire prison was under the command of the State Police. But all of them maintained they were never told that they were not to fire their weapons nor were they aware of any standing regulations governing use of weapons by correction officers.

The officers testified that either on Sunday afternoon, when there was an alert for a possible assault, or on Monday morning, a commissioned State Police officer appeared on the third-floor gallery and instructed them that when the assault commenced they were not to fire into the tunnels or over the heads of the advancing troopers. The correction officers said they inferred from the police officer's instructions that they were expected to fire in other areas. Some said they understood they were to provide gun cover to troopers in A yard, particularly in the area of the inmate-constructed shelter in that yard. Others said they thought they were to cover B catwalk and the entrance to B block, some 200 yards away, while still others mentioned D catwalk as an intended target area. None of the correction officers on the third floor of A block said he conceived his role to include firing at inmates menacing hostages, even though ballistics reports show that one of the hostages on the catwalks was killed by one of their weapons. With the exception of a few reported instances of gas grenades thrown or fired by inmates, these correction officers said they witnessed no acts of inmate resistance. However, on advice of counsel, each correction officer refused to testify whether he actually fired or what he fired at.

Major Monahan, who planned the assault, testified that as he proceeded along A catwalk behind the assault force, he heard shooting emanating from the third floor of A block that he "couldn't attribute to any detail that we [the State Police] had." He said that "shots coming from

count for" prompted him to order that all firing from the cellblocks cease immediately. Asked whether he would have gone out on the catwalk if he thought correction officers would be firing, he replied, "I was contemplating retirement. I definitely wouldn't have gone out there." No State Police supervisory officer interviewed by the Commission has acknowledged instructing correction officers to fire weapons from the third floor of A block.⁹ General A. C. O'Hara, who had been sent to Attica by Governor Rockefeller, observed the assault from the same gallery on the third floor of A block, but stated he did not see the correction officers shooting.

Three correction officers joined the State Police rifle detail on the roof of A block, and reported to the BCI having fired a total of nine rounds. The State Police lieutenant in charge of the detail testified that he selected six troopers for the assignment whom he knew to be qualified .270 riflemen. When the group reached the third floor of A block for a briefing, the lieutenant said, he noticed that one of them had a shotgun, not a .270 rifle. Since that left him one man short, he accepted the offer of a correction officer carrying a personal .270 rifle to join the detail. The lieutenant said that the correction officer expressed a willingness to follow state Police instructions and that he made him part of the team even though he did not know his qualifications as a rifleman. The lieutenant also acknowledged that a second correction officer showed the group out onto the roof. He said, however, that he did not know that officer had fired until the officer himself told him the next day. The lieutenant did not mention the presence of the third officer on the roof.

The five troopers in the A roof detail also said they did not know that correction officers had fired, although some of them recalled that correction officers were on the roof. None of them could explain how they got there.

The Commission has interviewed and taken testimony from two of the three correction officers who fired. It has also examined statements taken from all three by the BCI. All three correction officers stated that they were

⁹A State Police captain who was on duty in A block refused to be interviewed and was away on vacation when police officers were subpoenaed to testify.

on the A block roof carrying rifles with the full knowledge of the State Police officer in command of the detail. One stated that he was selected for the .270 team by the police lieutenant. Another stated that the State Police officer in charge of the roof detail said to him on Sunday, "You with the rifle come with us," and that he merely rejoined the group on Monday without further instructions. The third correction officer testified he was assigned by a correction lieutenant to show the rifle team to the roof and that he positioned himself halfway down the roof from where the troopers were located.

The two correction officers who testified before the Commission both heard the State Police detail commander instruct his men that there would be no indiscriminate firing and that he would tell them when and where to shoot. Both said that they were never told that correction officers had been prohibited from participating in the assault.

The lieutenant who accepted at least one correction officer on his rifle detail said he knew correction officers were not to participate but felt it was within his province as a commissioned officer to accept the correction officer when he found at the last minute he was short of riflemen. Otherwise, supervisory personnel of both the State Police and Department of Correctional Services denied that they knew correction officers were firing during the assault. They maintained that clear orders had been issued that correction officers were not to participate in the assault.

To a man, the correction officers who fired all said they knew of no order prohibiting them from doing so. The correction lieutenant in charge of A block testified that he had never been told correction officers were to be excluded from the assault. He testified, however, that at 3:00 P.M. on Sunday afternoon he was instructed by Deputy Superintendent Vincent that as of that time the State Police were "in command" and that he instructed his men that "henceforth they would take their commands from the troopers in the area." He said that he did not receive any contrary orders until sometime Monday afternoon.

It must be concluded that the top-level decision that correction officers were to take no part in the assault was never translated into orders which reached the officers

of either the correctional service or the State Police who were in direct command. It seems clear that the individual correction officers who took part were never clearly instructed that they were not to do so. Correction officers freely acknowledged to the BCI that they had fired. Yet no supervisory personnel of either the Department of Correctional Services or the Division of State Police have been disciplined or reprimanded for failing to transmit orders that correction officers were not to take part in the assault.

Was There Excessive Force?

It is undeniable that the great majority of the men involved in the assault acted with restraint. Had they not done so, considering the firepower available to them and the lack of controls of their actions, the toll of dead and wounded would have been much greater. It is also clear, however, that in the cellblocks, on the catwalks, and in D yard, there was much unnecessary shooting.

There was no justification for the many instances of shooting into tents, trenches, and barricades without looking. The 21 deaths and more than 50 wounded in D yard cannot all be explained by the incident involving Lieutenant Christian or other hostile acts. Even where there was some provocation, such as in the assault on Lieutenant Christian, the repeated discharge of "00" buckshot pellets into D yard at ranges far exceeding the weapons' intended use unquestionably wounded, and perhaps killed, many inmates who were not engaged in any acts of hostility or resistance whatever. There was clearly indiscriminate firing into congested areas by men who did not value the inmates' lives. Indeed, several witnesses told the Commission they heard troopers bragging later in the day about their exploits on the morning of the assault.

Unfortunately, a different picture emerges from the explanations of those who admitted firing. Their accounts would justify firing, but were, in many cases, unsupported in light of other evidence. The BCI statements of those troopers who fired contain detailed accounts of the alleged actions of inmates just prior to and during the assault. These accounts were much more detailed than parts of the statements concerned with the activities

of the troopers themselves. In fact, the structure of the statements points to a preoccupation with establishing hostile activity on the part of inmates. When those statements are compared with all of the other available evidence, the conclusion is inescapable that many of them were exaggerated, if not fabricated. Indeed, one trooper testified that he and others in his troop were encouraged by their fellow officers to embellish their accounts of inmate activity. Thus, few of those involved in the assault were willing to acknowledge what was obvious from the evidence—that any inmate moving on the catwalks or running in the yard was likely to be shot.

Chapter 17

General Snafu and the Unsung Heroes: How Medical Treatment Was Provided in Spite of It All

The authorities were aware that the assault might end with a heavy toll of gunshot casualties. The police anticipated resistance from inmates who vowed to fight on to death. Troopers were instructed to avoid hand-to-hand combat and to shoot at the first sign of hostile activity. Police armaments were capable of causing widespread casualties. State officials expressed fear that there might be a large number of dead and wounded, and afterward the Governor acknowledged to the press that the results were actually "better" than he thought they might be.

In these circumstances, adequate provision for the evacuation and treatment of the wounded should have been a prerequisite of the decision to commence the assault. Yet when the shooting stopped, leaving over 120 inmates and hostages dead or wounded, the corps of medical personnel at the facility ready to treat casualties consisted of the two prison doctors, two male nurses, and one X-ray technician from the prison hospital, three orderlies

from St. Jerome Hospital in Batavia, and two local veterinarians who had been working at the Lions Club food stand and had volunteered their services minutes before. They were equipped only with small medical bags containing bandages and splints.

There were no surgeons, no medics, no experienced litter carriers at the scene. No field hospital had been set up and the prison hospital had not been prepared to receive casualties. Its one operating room had not been readied for surgery, and none of its permanent patients had been moved to make room for emergency stretcher cases. There were not even any reserves of blood, plasma, or general anesthetics on hand.

National Guard units with five surgeons, trained medics, and medical supplies had been mobilized the night before. But when the shooting stopped, they were still on the road a quarter of a mile away, and proceeding at a slow pace. Doctors at hospitals in Batavia and Warsaw, 10 to 12 miles from Attica, had been placed on disaster alert that morning, but none of them had been called to the institution. And at Meyer Memorial Hospital in Buffalo, which was subsequently to provide the bulk of doctors and medical supplies for the treatment of the wounded inmates, no one had even been alerted that help would be needed.

Surgery on the first wounded inmate did not commence until after 2:00 P.M., some four hours after the shooting stopped. Although wounded hostages had been evacuated to hospital emergency rooms immediately, the first inmate arrived at a hospital outside the walls at 5:30 P.M., 7½ hours after he was shot. Many wounded inmates spent most of the day on Monday, September 13, on stretchers in corridors of the prison, in the E block dayroom, or in cells, waiting to be treated in the Attica hospital facility. Many operations for gunshot wounds were not performed until the next day.

The story of the medical treatment of the wounded inmates, like that of reprisals described in the next chapter, is a study in total lack of planning and concern. And if no additional lives were lost in spite of those circumstances, it is largely due to the efforts of unsung heroes—volunteer doctors and young National Guardsmen on weekend duty—who brought one of the few rays of hu-

The First First Aid

John Kabel and Donald Kirkwood, orderlies and ambulance drivers from St. Jerome Hospital in Batavia, had been at Attica with their ambulance each day since Thursday. They had taken Correction Officer Anthony Sangiacomo, a hostage, to the hospital when he was released by inmates on Saturday evening with symptoms of a heart attack. They knew their services would be needed in some way if the prison was to be retaken by force, although they never anticipated the number of injuries and deaths which they encountered on Monday morning.

When Kabel and Kirkwood arrived at the institution on Monday morning about 8:30, it was apparent from the movement of the police that this was to be the day. They were asked to wait in A block. They brought with them their medical bags containing stethoscopes, bandages, and splints.

Meanwhile, Bill Benedict, another St. Jerome orderly, was at the hospital in Batavia. Shortly after 9:00, a call was issued by the Wyoming County Fire Coordinator's office for all available ambulances to go to Attica. Benedict arrived at the institution about 9:30 and backed his ambulance up to the front of the administration building. There were a dozen other ambulances from local hospitals, fire departments and private ambulance companies. Benedict checked his medical bag, added some sterile dressings, and waited. He was told to put cotton in his nose and ears to protect against tear gas and soon after, he heard the shooting. Minutes later he heard the call, "Medics." He was given a gas mask and ran in through the front gate.

Benedict, Kabel, and Kirkwood were the first medical personnel of any kind onto the catwalks and into the yard after the assault force. Kabel and Kirkwood followed the rescue team of state troopers by less than one minute; Benedict was in the yard only minutes afterward. The three orderlies knew only that the State Police were in charge and all three say they had to use their own judgment on what to do. As they left A block, they could still hear sporadic shooting and saw several dead and wounded inmates lying on the catwalks. They were told by troopers to leave the inmates alone and head for the hostage circle first.

On their way to the yard, Kabel and Kirkwood found hostage Frank Kline on A catwalk. He had a large slash on his throat and was bleeding profusely. The orderlies placed a bandage under his chin and he was carried out by troopers. Then they ran on and down the ladders into D yard. Benedict followed soon after. The three orderlies spent the next minutes applying crude bandages to the wounded hostages, trying to control bleeding. They were not trained to provide any other medical care, and they were not equipped with any pain-killer. All they could do was to tell the wounded to lie still and they would be taken care of. Several hostages were obviously dead, and the orderlies did not bother with them. Both dead and wounded hostages were quickly evacuated from the yard by troopers, fellow hostages, and Lions Club members pressed into service as stretcher bearers. Every hostage still breathing was on an ambulance speeding toward Warsaw or Batavia within 15 minutes after the shooting stopped.¹

While the three orderlies were still bandaging wounded hostages in the hostage circle, all three were called to attend to a wounded police officer. This was Lieutenant Christian. After his wounds were roughly bandaged, the orderlies accompanied the troopers carrying him out of the yard. On his way out, Kirkwood was overcome by gas and passed out.

Kabel and Benedict picked up some more medic bags from the ambulance outside, returned to the yard, and, seeing that the hostages had been evacuated, turned their attention to wounded inmates. Now for the first time, 15 or 20 minutes after the assault, they saw Dr. Williams of the prison hospital working in the yard. Benedict recalls that he then realized that he had not seen another doctor previously, and he was shocked.

Dr. Selden T. Williams and Dr. Paul G. Sternberg, the two regular physicians at the facility, had been at the prison throughout the four days prior to September 13, but they were never asked to make any arrangements for the medical treatment of casualties after an assault.

The medical facility at Attica is reasonably well equipped for the daily treatment of 2,200 inmates and

¹At least one hostage, unharmed, refused treatment and went directly home in a private car.

its operating room is adequate for handling minor elective surgery and occasional acute emergencies. However, the hospital was obviously not equipped or prepared to treat a large number of inmates with gunshot wounds at one time. There was no anesthesia or anesthesiologist; no blood bank or blood plasma; no laboratory or technician for sampling of blood types.

It was standard prison procedure that injured inmates had to be treated at the prison hospital unless prior arrangements were made for admitting and transporting them with sufficient custodial personnel to outside hospitals. "Inmates are inmates until we make arrangements to get them out," Dr. Williams said. No procedure had been set up in advance for the evacuation to outside hospitals of inmates wounded in the assault.

No one had told Dr. Williams there would be an armed assault or what, if anything, he was expected to do in the aftermath of an assault. No one had told him the number of casualties to expect or what type of medication or equipment might be necessary. He had not even been told that the medical units of the National Guard had been called.

When Dr. Williams arrived at the institution about 7:30 on Monday, September 13, he was instructed (he does not recall by whom) to set up a first-aid station in the administration building. He and Dr. Sternberg brought some first-aid supplies to a room in the administration building, but they were totally inadequate for the medical treatment of serious gunshot wounds, and were in fact never used.

While Dr. Williams and Dr. Sternberg waited for the assault to begin at the first-aid station in the administration building, with two male nurses and an X-ray technician from the prison hospital, they were approached by two veterinarians, Dr. Gene Sellick and Dr. Michael Gardner, members of the Attica Lions Club who had been working at the food station inside the walls. The veterinarians had noticed the paucity of medical personnel and asked whether their services could be utilized. Dr. Williams replied, "We need all the help we can get," and enlisted their aid.

The Attica hospital personnel and the two vets said they were told shortly before the assault by an official from the Erie County Department of Health that all of the hostages were to be taken out of the yard before

any inmates were moved.² They decided that the more seriously injured hostages would be taken to St. Jerome and Genesee Memorial Hospitals in Batavia and the rest to Wyoming County Hospital in Warsaw.

Within 20 minutes after the shooting began, Dr. Williams, Dr. Sternberg, the two nurses, the X-ray technician, and one of the veterinarians, Dr. Gardner, donned gas masks and proceeded out across A catwalk and into D yard. Dr. Sellick, the other veterinarian, remained behind to direct waiting ambulances to take injured hostages to nearby hospitals. Dr. Williams assumed that his function was to begin the process of "triage"—a system whereby casualties are divided into three groups: those whose lives probably cannot be saved, those whose wounds are superficial enough to await assistance, and those in need of immediate assistance in order to save their lives. Several inmates lying on the catwalks were "obviously dead," according to Dr. Williams. Once the group reached D yard, they spread out across the yard to begin triage. None of them, however, was carrying any supplies with which to treat the wounded; they could only classify casualties and direct evacuation once stretcher bearers appeared. Dr. Gardner helped a hostage out of the yard and returned with some other Lions Club members and empty stretchers to evacuate wounded hostages.

Doctors Williams and Sternberg remained in the yard only 15 or 20 minutes, soon realizing that the numerous inmate casualties would be headed for the prison hospital and that there had been absolutely no preparation there for treating them. The three hospital employees left with them for the prison hospital.

As soon as they got there, Dr. Williams put in a call to Meyer Memorial Hospital in Buffalo and spoke to Dr. Worthington Schenk, the chief of surgery. He told Dr. Schenk that a great number of inmates would have to be treated for gunshot wounds at the prison hospital

²The Health Department official, David Krieman, told the Commission he went to Attica on Thursday on his own initiative to make sure that civil defense supplies stored there were secure. He said that Dr. Hurd requested that cots and blankets included in those supplies be provided to State Police and sheriffs' deputies. Krieman also recalled distributing medical supplies on Monday to Dr. Williams and others, but said that he was not in charge of making any arrangements for medical care.

and, he says, requested that at least three complete surgical teams, together with anesthetists and anesthesia, a blood bank, chest tubes, X-ray equipment, laboratory technicians, and other emergency equipment, be sent to Attica at once. It was now about 10:30 and Meyer Memorial Hospital was at least an hour's drive away.

National Guard: The Unsung Heroes

When the shooting began, several units of Army National Guard, 600 strong, were in a convoy en route to Attica, about a quarter of a mile away. Because of traffic in the area and State Police roadblocks, the guard convoy was proceeding very slowly. In the front of the convoy was C company of the 50th Medical Battalion, 27th Brigade, from Buffalo, which was trained in disaster relief. The company included about 75 trained medics and 5 surgeons. It was carrying stretchers and supplies for setting up a field hospital. Its capabilities have been described by a senior medical officer as follows:

It has equipment capable of rendering immediate first aid and what we refer to as resuscitation. It does not have the capability of performing major surgery. In a combat situation, effectively what it does is stabilize a wounded individual until he can be evacuated by air or by ground to a fixed medical institution.

The 50th was equipped with "basic chests"—including bandages, intravenous solutions, and antibiotics. It was not carrying a blood bank, although it did have a synthetic plasma substitute. It was equipped with anesthesia equipment, but not the drugs necessary for general anesthesia. It had five military ambulances and four 2½-ton trucks for evacuation of casualties. It could have mobilized several helicopter "air ambulances" for evacuation of casualties, but had not been requested to do so.³

Although the National Guard had been alerted on Thursday, it was only Sunday evening that the unit's

³The pilot of one of the two National Guard helicopters utilized that day told the Commission that his orders were to back up the other helicopter which made the tear-gas drop and to stand by for possible evacuation of casualties to local hospitals. He was never called upon to fulfill the latter function.

commander, Colonel Edwin J. Murphy, had learned that the guard's primary mission would be to provide medical assistance and evacuation. It was not until early Monday morning that Colonel Murphy received instructions from Major General John C. Baker, the commander of all guard units in the state, to place the medical unit at the head of the convoy. Other than that, there had been no briefing. Neither Colonel Murphy nor the medical officers under his command had any idea of exactly what would be required of the National Guard. They expected there would be casualties, but had no conception of the number of casualties or the seriousness of their wounds. They did not know whether there would be gunfire or, if so, of what kind.

When the convoy reached the State Police barricade about a quarter mile from Attica, it was stopped by a National Guard liaison officer who had been at Attica all weekend, and who reported: "They shot the hell out of the place." That was the first time that the guardsmen knew for sure that there would be gunshot wounds. When the first National Guard vehicles entered the institution through the rear gate and rolled up in front of the administration building, only sporadic shooting could still be heard. It was about 10:00 A.M. They were met by General Baker, who told them that they would not have time to establish a hospital tent and emergency clearing station, as planned, and instructed Colonel Murphy to deploy his litter bearers into the yard immediately.

The senior medical officer with the Guard units was Major John C. Cudmore, a surgeon on the staff of Buffalo General Hospital. Cudmore, who was not attached to any of the units called up that day, had been requested by Colonel Murphy to join the operation. As his jeep pulled up in front of the administration building, Cudmore found "a scene of absolute confusion." He saw wounded and dead already being brought from the administration building on civilian ambulance stretchers and loaded into a line of civilian ambulances waiting in the driveway.

Cudmore made sure that the Guard troops were getting their litters and medical equipment out of the vehicles. He then entered the administration building, attempting to find someone in charge to report that the National Guard was there and to get a basic briefing on what

was expected of them. Cudmore saw a "tall authoritative-looking gentleman" to whom he introduced himself and asked what the National Guard could do to help. Cudmore does not know who the man was, but his reply was, "How the hell should I know?"

Cudmore now realized that he would have to fend for himself. As he testified:

We were somewhat at our devices, but on the other hand, our training is aimed at getting us to react in a situation of that nature.

Relying on a vague knowledge of the prison layout gained from studying a newspaper drawing the previous evening, Cudmore, Murphy, and two other Guard officers made their way through A block and A yard and entered D yard.⁴ Cudmore described the scene as follows:

Once I got into D yard, it took about, oh, anywhere up to five minutes to evaluate the situation. It was a rather awesome sight. We went about and had a look as to how many people were there, how badly they were injured, how many were dead.

* * *

Once we were in D yard, it was apparent that we would have to evacuate a large number of people. I returned from D yard to A yard and then ran into one of the liaison officers of the National Guard, who was in possession of a short-wave radio and was able to contact our group headquarters out on the front lawn. I said I would need a large number of litter bearers and that we would have to establish a medical facility somewhere in the area for medical treatment of a large number of patients.

* * *

After making contact with our headquarters outside, we began to have a series of litter bearers coming in through the front door, across A yard, into D yard, and bringing all of the people that were still living out of there.

This took us—again, my time estimates will be quite faulty, but this took us in the neighborhood of 15 to 20 minutes.

Colonel Murphy had intended to have two of his officers keep a careful chronicle of the National Guard's

⁴Cudmore's observations in A yard are reported in chap. 18 of this report.

activities during the day, but had abandoned that thought after one look at the carnage which confronted him in D yard. He turned the two officers over to Major Cudmore and hurried back out front to establish a command post and begin the formation of four-man stretcher teams. The other four doctors from the medical unit were standing inside the administration building attempting to do what they could for the wounded being carried past them. Responding to a radio request, Murphy sent them to the prison hospital.

After Cudmore completed overseeing the evacuation of wounded inmates from D yard, he returned to A yard and treated several wounded inmates who had been herded there after the assault. Some were so severely wounded he was amazed that they had been able to make it to A yard. At one point, Cudmore was impeded in his efforts to treat a wounded inmate by correction officers who told him that the particular inmate was a suspected ringleader and could not be treated immediately.

During the entire time he was in D and A yards, the only other medical personnel Cudmore saw were the white-uniformed orderlies from St. Jerome Hospital. Except for the brief visit of the prison doctors earlier, Dr. Cudmore was the only doctor in the yards that day.

Returning from a brief trip out front to wash his face and clean up, Dr. Cudmore chanced to look to his left into C yard and noticed 8 to 12 severely wounded inmates lying on civilian litters. They had been given first aid, but had been left in C yard unattended. It had been almost an hour since the National Guard arrived, and no one had called these stretcher cases to his attention. Had he not looked to his left at the time, they would have remained in C yard even longer. He now ordered guardsmen to remove these inmates to the prison hospital.

The trained medics of C company of the 50th were soon impressed into first-aid duty in the prison hospital and were replaced as litter bearers by young enlisted men from armor and engineer units whose only medical training was the basic first-aid course given to all members of the armed forces. But no amount of training could have prepared the guardsmen for the job that lay ahead of them that day. They were ordered to stack their arms near the trucks parked nearby and their bayonets were removed from their belts. Upon entering the prison, many

of them had been relieved to learn that they would not be required to participate in the armed assault. "At least, I knew that part was under control," said one man. "I thought there might be waves of prisoners attacking us with spears and things as we came in the gate."

As the National Guardsmen first entered the yards, they were confronted by a scene of mass confusion. Dead and wounded lay everywhere, and many of the guardsmen had no instructions regarding which men to evacuate first. Their vision restricted and their breathing labored through the gas masks, they made their way through the rubble and placed the wounded on litters. Many of them were large men, too badly wounded to help themselves, and too seriously wounded to be pulled or rolled onto stretchers. Each man had to be physically picked up off the ground, placed carefully on a stretcher and carried a distance of more than 300 yards to the prison hospital. Gaping gunshot wounds were something few of the guardsmen had seen before. Although fresh litter teams were deployed as long as the manpower lasted, some guardsmen returned to D yard only minutes after recovering from fits of nausea induced by revulsion or exhaustion. Guard commanders reported seeing even the C company medics choking back vomit as they applied battle dressings.

In addition to carrying stretchers and providing first aid, National Guardsmen backed up the State Police providing security around the perimeter of the prison, spread blankets over wounded inmates lined up on the grass outside the already filled prison hospital, and later in the day cleared the bodies of long-dead inmates off the catwalks. A 19-man Special Forces detail also responded to a request from the State Police to augment security on the catwalks as the stripping and searching operation proceeded in A yard. Many of the guardsmen carried no weapons about the prison; other details had weapons, but no ammunition; only two details of guardsmen were issued ammunition. In any event, of all the uniformed forces at Attica that day, only the National Guard made a physical inventory of ammunition issued and returned and can be certain that not a round of National Guard ammunition was fired.

Despite their efforts to assist the wounded, the guardsmen did not always earn the appreciation of the inmates

they assisted. The guardsmen were wearing green army fatigues and on that day, no one in a service uniform could expect to escape the inmates' rage, no matter what he did. Several times, wounded inmates looked up from their stretchers and cursed the guardsmen as they tried to administer first aid. "We'll get you, you white bastards," one guardsman was told by an inmate whose wounds he had just bandaged. Another guardsman, checking the pulse of a wounded inmate, heard, "Thanks, man, for saving me, because when I get out of here I will kill you." Nevertheless, when the order came late that afternoon to load the vehicles and prepare to move out, it was the medics of C company who requested and received permission to remain behind until their assistance at the prison hospital was no longer needed.

Dr. Cudmore, testifying before the Commission, did not conceal his admiration for the guardsmen's performance:

I had always thought . . . not having any combat experience, that the young troops of the National Guard when they first saw a scene of this sort, would spend half of their time vomiting and the other half being treated themselves. They did not do so. They reacted superbly and carried their mission out very well.

After Dr. Cudmore had rechecked D yard, C yard, and A yard to be sure that there were no other wounded inmates, he went back out front and was startled to learn what time it was. "I expected it to be 5:00 or 6:00 in the afternoon," he said, "because it seems like a relative eternity had gone on inside the institution."

It was, however, only 1:00 P.M., and Cudmore now went over to the prison hospital to check on the treatment of the wounded inmates. National Guard medics and the other four Guard surgeons were already at work there and Dr. Schenk and the surgical teams from Meyer Memorial had just arrived and begun definitive procedures."

At the Prison Hospital

Superintendent Mancusi's log of September 13 indicates that at 11:05 A.M., "medical authorities" were advised to "use [the] hospital to limit and then use E block as

additional hospital space." Eight minutes later, according to Mancusi's log, General Baker of the National Guard was requested to move his surgical teams to the institution hospital as soon as injured employees had been evacuated.

Dr. Worthington Schenk, chief of surgery at Meyer Memorial Hospital, recalls receiving almost simultaneous calls from Superintendent Mancusi and Dr. Williams. Schenk puts the time at 9:30 A.M., before the assault, but Williams says that he did not call until about 10:30 A.M. Whatever the time, according to Dr. Schenk, the message was simply that there was an acute need for medical services at the institution and that Dr. Schenk should come right away.

Schenk took two surgeons from Meyer Memorial with him and arrived at the institution about 11:00 A.M. He realized immediately that he would need several full surgical teams and vastly more equipment, surgical supplies, and drugs than were then available at Attica. He spent the first half hour on the telephone to Meyer Memorial requesting doctors and nurses, surgical equipment, portable operating tables, a blood laboratory and technician, portable X-ray equipment, anesthesia and anesthesiologists. Three of the surgeons who were there with the National Guard unit were on the Meyer staff and Schenk arranged for them to be relieved from their military command and put under his control. In addition to calling the hospital, he called the Buffalo and Rochester Red Cross to request blood and plasma.

Meanwhile, assisted by National Guard medics, Doctor Sternberg began a secondary triage in the hospital corridor and Dr. Williams began the administration of lactate IV solutions and tetanus shots. They were also able to administer demerol for pain and antibiotics from National Guard chests. Civilian and inmate nurses from the hospital staff worked feverishly with the National Guardsmen moving stretchers and assisting in the administration of IV solution and injections.

Although by 11:00 A.M. four surgeons from the National Guard and three from Meyer Memorial had reported to the prison hospital, they were limited essentially to triaging and first-aid treatment, pending the arrival of the additional equipment from Meyer Memorial. It was close to 1:00 P.M. when the equipment and personnel ar-

rived, and it took the doctors another hour, working diligently, to set it up and prepare for the first emergency operation.

Doctors at St. Jerome Hospital and Genesee Memorial Hospital in Batavia had been put on disaster alert early that morning. They were told to prepare for receiving casualties at the hospitals, and some of them did in fact treat wounded hostages when they were received from Attica. At about noon, an official of the State Department of Public Health at Attica called Dr. Emil Kimaid, chief of the disaster relief program at St. Jerome, to request additional personnel. Six doctors and several nurses from St. Jerome and Genesee Memorial left for Attica with additional supplies, arriving shortly before the surgical teams and equipment from Meyer Memorial. They, too, assisted in the task of preparing wounded inmates for surgery and when the equipment arrived from Meyer Memorial, some of them performed operations. All of them worked under the direction of Dr. Schenk and did the best they could under what one of them described as "chaotic circumstances." It is clear that once they arrived the doctors worked, tirelessly, and provided medical care of the highest quality.

When Dr. Murray Andersen arrived from Meyer Memorial at about 1:00 P.M., a large number of inmates had received no treatment whatsoever, except crude bandaging and triage. He also noticed that no written records of any kind were being kept on the nature of inmate wounds and treatment administered. On his own, he began to keep records and still had them in his possession when he was interviewed by the Commission in March. No one had inquired about the records or asked him for copies of them until then. Dr. Andersen's records show that 83 inmates were treated for gunshot wounds on Monday, 20 to 25 of which he considered to be "major wounds."

The doctors' efforts were not welcomed by all at Attica. Most of the doctors interviewed—and many National Guardsmen as well—reported a group of eight or nine wounded inmates lined up in the corridor outside the hospital, guarded closely by correction officers. When the doctors tried to have these men moved inside the hospital for treatment, the correction officers told them that they

were suspected ringleaders and, by the Superintendent's order, could not be moved under any circumstances. Although it was later learned that there was no such order, none of those inmates was given more than first aid and intravenous solution for several hours.

The doctors and National Guardsmen alike reported that correction officers were on the scene in large numbers, but did very little to help the treatment of wounded inmates. The guardsmen and inmate and civilian nurses had their hands full moving stretchers and administering treatment, but few correction officers assisted them. Many of the doctors and National Guardsmen also said that correction officers frequently directed abusive language at wounded inmates and expressed a desire that they should die. For example, one doctor from Meyer Memorial told the Commission that he was admonished by a correction officer, "Don't treat this guy—he castrated a hostage." The transcript of the open telephone "hot line" between Attica and Albany includes a contemporaneous report "of a correction officer going by the stretchers, going on just repeating under his breath, 'Die, you black bastard, die, die, die.'"

Even after the surgical equipment had been set up, space did not allow more than three operations to go on at the same time. As a result, the process of treating wounded inmates was slow and tedious and many inmates were not operated on until the next day. Doctors who returned to the Attica hospital to perform surgery on Tuesday reported discovering fractures and gunshot wounds which had not yet been treated at all.

Several of the doctors said that when bullets, buckshot pellets, and other fragments were removed from wounded inmates, they were labeled and turned over to correction officers or state troopers, who seemed to know what to do with them. An inmate nurse said, however, that many ballistic fragments were not labeled, but were kept by inmate nurses or correction officers as "souvenirs."

Almost all of the surgeons interviewed reported frustrating delays in releasing inmates from the Attica hospital facility and transporting them to Meyer Memorial Hospital in Buffalo. The individual surgeons made the initial determination that a man required intensive care at Meyer Memorial, and these decisions were reviewed by Dr.

Schenk. However, a period of two hours or more elapsed between the time that the final medical decision was made to release the first two inmates and the time they actually departed by ambulance.

One surgeon attributed the long delay to "a general administrative snafu." First, the doctors had to find someone in the administration to authorize and record the release of the inmate to Meyer Memorial. After numerous phone calls, they were told that only Superintendent Mancusi could give that authorization. Each inmate then had to be photographed and fingerprinted before he could go. In order to have an inmate admitted to the intensive care unit at Meyer, the approval of the Erie County Sheriff's office was also necessary. Then, too, regulations requiring that each inmate being transferred be accompanied by two correction officers were adhered to, until it was realized that in the acute emergency there were simply not enough officers available. Finally, an exception was made to allow one correction officer to accompany two wounded inmates on stretchers. Even after the first wounded inmates were loaded on an ambulance, there was a further delay because the inmate count for the entire institution could not be reconciled.

Although Superintendent Mancusi's log indicates that he authorized Dr. Schenk to move two inmates to Meyer Memorial at 1:50 P.M., the first ambulance carrying inmates did not leave Attica until after 4:00 P.M. and, according to a surgeon who remained at Meyer on Monday, it did not arrive until about 5:30 P.M.

In all, 8 inmates were moved to Meyer Memorial Hospital by the end of the day on Monday. One doctor reported that it was his understanding that Superintendent Mancusi had put a limit of 8 on the number of inmates who could be moved. On the following two days, 11 more inmates were transferred to Meyer.

One doctor from Batavia was told by Dr. Schenk that inmates could not be transferred to the much closer hospitals, such as St. Jerome or Genesee Memorial, because there was no contract between the prison and those hospitals for treatment of inmates. He was also told that private ambulances could not be used for inmates because there was no contract and therefore no insurance.

Once surgery began, the procedure at the prison hospital

became more or less routinized. Dr. Schenk described the scene in the hospital later that afternoon as "quiet." Many of the wounded inmates were asleep, under the effects of heavy sedation. Finally, according to Dr. Schenk, there were enough doctors—12 in all—to do whatever could be done in the small facility. Several young doctors who appeared as volunteers on Monday and Tuesday were turned away by the officers at the gate and told that their services were not needed. Although this was unfortunate, said Dr. Schenk, their services really could not have been utilized in the prison hospital, and in the midst of the emergency, there was no way of checking the qualifications of doctors he did not know.

The Doctors' Opinions

Almost every doctor interviewed by the Commission expressed personal chagrin that the medical services had been called in only after the shooting stopped and that no adequate planning had been made beforehand for the evacuation and treatment of casualties. Many of them said that they came to Attica totally unprepared to face the enormity of the situation. None of them were briefed as to what to expect. They were astonished that the large quantities of equipment and supplies they needed had not been stockpiled in advance.

Dr. Schenk, for example, said that if he had been notified two hours before the assault, he could have ordered supplies, brought his surgical teams together, and been at Attica, set up and ready to go when the shooting stopped. Dr. Andersen said that if there had been advance notice, many more operations could have been performed on Monday, alleviating the need to postpone several until Tuesday. Dr. Kimaid agreed that if a call had come to St. Jerome before rather than after the assault, that hospital could also have sent doctors and supplies to the scene ready to move in behind the assault forces. Other doctors from the Batavia hospitals could not understand why regulations could not have been suspended, allowing wounded inmates to be transferred to their hospitals, rather than all the way to Meyer in Buffalo. Dr. Gardner, the veterinarian, who accompanied Dr. Williams to the yard, was shocked that there were no M.D.'s to perform the functions he was

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asked to fulfill immediately after the assault. Most of the doctors were highly critical of the delays in removing casualties from Attica to Meyer Memorial Hospital.

The doctors' feelings are captured by the testimony of Dr. Cudmore:

Q. Doctor, do you feel if there had been more advance notice of what the toll of casualties would be that steps could have been provided to have faster medical aid?

A. Most definitely. As part of the National Guard force in Buffalo there is an air ambulance company or at least there was an air ambulance company at that time. It has large patient-carrying helicopters. We could have evacuated directly from the prison to a local area hospital or directly to a major hospital in Buffalo had we had the time, the knowledge that the assault would cause that many casualties and the permission to evacuate them. Also, if we had had two hours more we could have set up tents. The nationally shown picture of patients lying on the grass alongside of the hospital—along a chain-link fence—it was quite obvious they were still outside. They certainly were. They were outside because there was no place to put them inside.

* * *

If we had known it would have been in the area of 100 to 120 severely injured, we would have been able to take the medical equipment, if not the troops of the medical unit in Buffalo, which was a unit that I commanded until a year ago November and is capable of putting three times the amount of equipment on the ground as the unit that did go.

* * *

... had much forethought been given to the consequence of an assault with weapons, a fixed installation should either have been established or should have been immediately alerted so that they didn't have to rush to get ready also.

The Commission's pathologist, Dr. Allen Moritz, has determined from examination of autopsies, X-rays, and other medical evidence that no inmate died as the result of inadequate or delayed medical treatment. Every inmate who died from gunshot wounds would have died regardless of the treatment given him. Many of the doctors interviewed, however, expressed fears that lives might have

been lost due to the delays in medical treatment. The fact that none was is largely fortuitous, for every doctor agreed that lives could have been lost as a result of the protracted delays.

In addition, many of the wounds suffered by inmates that day resulted in permanent crippling injuries. Pathologists can open dead bodies to determine the cause of death with reasonable certainty; however, available data on wounded inmates does not permit determination of whether injuries could have been minimized by more rapid medical treatment. What is clear, however, is that the lack of planning and the delay in providing treatment to wounded inmates immeasurably magnified the agony at Attica on September 13. Given the magnitude of the force to be used in the assault, and the apprehension of heavy casualties, there simply can be no excuse for the absence of advanced planning for medical care.

The Administrators' Accounting

Most of the top-level administrators interviewed by the Commission were asked who they thought was responsible for seeing to it that medical care was provided for wounded inmates. The responses varied, but all of them can fairly be characterized as passing the buck.

Commissioner Oswald told the Commission in executive session that he believed Dr. Williams, or possibly Dr. James Bradley, the chief of medical services for the Department of Corrections, was in charge of the operation. At that time, he recalled that Dr. Bradley was on the scene on Monday.

When he testified at the Commission's public hearings, Commissioner Oswald's testimony was as follows:

Q. What about medical planning, was there any consideration given to that subject by you personally?

A. I remember discussing it with Mr. Mancusi who would arrange with his doctors, and General O'Hara discussed the use of National Guard medical teams with General Baker.

Q. Was this, as you understood it, left for the National Guard to work out?

A. Yes.

Q. Was it your understanding then that this would be handled either by General Baker or General O'Hara?

A. That's right.

Q. Who did you understand—

A. But we also—I can't recall if it was before or after, but we brought in some 50 doctors from the surrounding areas.

Q. They came in afterward?

A. I believe so.

Q. Were you aware that the hospital at the prison apparently didn't have plasma or plasma substitute?

A. I was not. I wish I were sufficiently gifted so that I would have been able to anticipate all of these things.

Dr. Bradley told the Commission that he was boating on Lake Champlain on Thursday when the riot broke out, and that he immediately went back to his office in Dannemora, and made repeated attempts to contact Correction Department officials in Albany to inquire whether his services were needed. He could never reach anyone who could give him authoritative information, although he says he tried "every possible avenue." Finally, he was told by the Commissioner's secretary that he was not needed. On September 13, Dr. Bradley was in Dannemora, not Attica.

General A. C. O'Hara, Commissioner of the state's Office of General Services, who had been sent to Attica on Friday by the Governor, explained his involvement in the planning for medical care as follows:

Q. The National Guard was assigned a responsibility for medical evacuation here, am I correct, General?

A. I think they were. I didn't give them any assignments.

Q. Were any of you involved in the planning to make sure there would be sufficient medical help at hand?

A. I was, to this extent, that when General Baker outlined the overall plan I asked him if the medical people were available and he assured me they were and that there was something like eight or nine doctors in this medical unit that was present and he has later confirmed that.

* * *

Now, I don't think anybody knew whether or how many casualties there would be. As far as any planning with the prison hospital authorities by the National Guard, I can't tell you what planning went into it because I would have felt that to get into this would have been to have usurped General Baker's prerogatives because he was the commander in chief of the medical unit in the prison.

didn't mean that I could walk in and push him aside and do the planning. I can't tell you what his plans were.

Major John Monahan, the State Police officer who planned the assault, was asked, the same questions:

Q. Who was responsible for providing medical aid to people who were wounded or injured?

A. Well, the facility itself has some medical facilities on the grounds, but in addition to this I believe it was the National Guard who was requested to field a first-aid unit or something. I am not in possession of the complete breakdown.

Q. Now, you were not, in any event, involved in this whole question of providing medical assistance to people who were injured?

A. Other than I knew it was being provided. As far as doing the actual providing, no sir.

Leon Vincent, Deputy Superintendent, said he understood that the primary responsibility for coordinating medical treatment was with Dr. Williams and that the National Guard unit on weekend drill would provide sufficient doctors and ambulances. He said he heard people like O'Hara, Baker, Mancusi, Oswald, and Dunbar discussing this and assumed it was under control.

General John C. Baker, statewide commander of the National Guard, did not arrive at Attica until Sunday afternoon. Although he was made aware of the assault plan during briefings by State Police and Commissioner Oswald, he was not consulted concerning the details of it, except as to the effects of CS gas. General Baker viewed his role and that of the National Guard as one of aid to civil authorities, in this case Commissioner Oswald, to do whatever was asked of them by him.

General Baker told the Commission that the National Guard was never assigned any specific area of responsibility, medical or otherwise. It was prepared to assist in any way necessary—to carry out the assault itself, to act as a backup assault force, to evacuate and treat casualties, or to do nothing at all if it was not needed. General Baker maintains that he was never asked to do the medical planning and that it was due only to his foresight in marshaling his own forces that C company of the 50th was kept on active duty, that Major Cudmore was called

in, and that extra emergency medical supplies and equipment were stockpiled by the guard units. He said:

My mission was an aid to civil authorities. There was a need, which I foresaw, for some medical assistance, and I configured my task force toward that end. As it turned out, I considered my mission as a humanitarian effort.

It was not until after 8:00 A.M. on Monday, when the Guard units were assembled at Camp O'Ryan, that General Baker ordered that the medical company be put in the front of the convoy. According to General Baker, the guard units were not brought to Attica on Sunday evening, or earlier Monday morning, for a number of reasons. Prior to the assault, there were hundreds of correction officers, state troopers, and sheriffs' deputies milling about in front of the administration building. He felt that pouring in hundreds of additional troops and military vehicles, which might never be needed, would only have aggravated the situation and might have impaired efforts at a settlement; the guardsmen had been expecting to go home from weekend drill at 5:00 P.M. on Sunday, and Baker did not want them committed to setting up tents and equipment in the mud and rain if it was not necessary; he wanted the option of contacting his units on the road at the last minute and telling them to turn around and go home. Baker feels it was adequate to have all the Guard units available Monday morning at Camp O'Ryan, 15 miles from Attica, ready to perform whatever mission was required of them.

The explanation of each official that he was not responsible for medical care for the wounded is consistent with the transcript of the telephone "hot line" which was kept open throughout the four days between officials of the Department of Corrections on the scene at Attica and officials in the department office in Albany. Numerous topics were discussed on the "hot line," of both major and minor importance. These included the need for extra riot helmets and gas masks; the need for buses to transport inmates to other institutions; the need for additional leg irons to be used in transporting inmates; the extent of television coverage of the negotiations and the assault. But during the entire four days there was no discussion on the telephone line of providing medical care for wounded inmates. The closest the "hot line" came to be

ing used for medical planning is the following interruption recorded at 12:45 P.M. on September 13:

OPERATOR. I have an emergency call from Meyer Memorial Hospital. Can we get in?

FOSEN. Ah, this is Albany headquarters. We're holding this line open, please.

OPERATOR. Thank you.

It is clear that the medical personnel, and especially the young National Guardsmen who served as medics and litter bearers, performed superbly once they arrived on the scene. Dr. Cudmore's accolade to the National Guardsmen was, if anything, understated. But the delay in bringing them there, and in giving them the equipment they needed to do the job, was the result of a total lack of any real advance planning and, to a lesser extent, of rigid attention to regulations unsuited to enormous medical crisis which existed. The responsibility for providing medical treatment for the wounded was unassigned.

No one thought about medical care for the inmates until it was too late.

Postscript: The Heroes Become Villains

"We had an armor unit there, and we could have gone in with tanks in the lead," a National Guard officer told the Commission. "We didn't, though; we put the ambulances up front, but that doesn't make headlines. So, no one bothered to report what we actually did."

Not only did no one in the news media report what the National Guard actually did at Attica; the Guard's role was carelessly and inaccurately reported. Guardsmen carried stretchers and administered first aid throughout Monday and left their rifles outside. But as guardsmen drove back to Buffalo, they listened to radio reports of the National Guard having participated with the State Police in the bloody assault. The guard convoy's route back to the armory took it through Buffalo's black ghetto. Angry men and women on the streets shook their fists at the guardsmen, called them "pigs," and shouted, "We'll remember Attica."

When guardsmen returned home that night, their families told them of hearing radio reports that they had participated in the armed assault. When a Guard ambulance headed for Meyer Memorial Hospital with a wounded in-

mate, the guardsmen's families had heard on the radio, "There goes an army killer team out now." As long as Attica remained in the headlines, newspaper and magazine stories referred to the assault as a joint State Police and National Guard operation and attributed the deaths to police and National Guard gunfire.

The guardsmen's anger with the misrepresentation of their role was not soothed when they learned that Governor Rockefeller had personally commended the State Police for their action at Attica, but had not mentioned the National Guard for its lifesaving efforts. When every guardsman who had been ordered to active duty at Attica was subsequently awarded the state's Duty in Aid to Civil Authorities medal, some refused to accept it.

The false impression of the National Guard's role at Attica created in the news media was never officially corrected. Five months later, the results of a national Harris poll were published in newspapers across the country, revealing that 65 percent of the American people opposed the use of armed force to quell prison outbreaks, "as at Attica." Published as part of the report was the question which the Harris pollsters had asked. It included the following, stated as fact: "At Attica, in New York, state troopers *and guardsmen* went into the prison and *killed both prisoners and guards being held as hostage.*"⁵

Chapter 18

Returning the Prison to Normalcy

Inmates thought about retribution a great deal during their four days in D yard, and they did what they could to avoid reprisals—while the hostages gave them bargaining power.

On Thursday during negotiations in the yard, Oswald was sharply challenged by inmates crowded around the negotiating table. They claimed that promises against re-

⁵*Rochester Democrat & Chronicle*, February 10, 1972, p. 1A, col. 2 (italics added).

prisals made at Auburn were ignored after the inmates surrendered peacefully. This time it would be different, Oswald assured them. "I was not at Auburn," he said. "You have my word there will be no reprisals." Oswald's word was not good enough for them. They demanded and received a Federal court order on Friday which enjoined state and prison officials from "taking any physical or other administrative reprisals" against inmates. Oswald signed the order to indicate his consent to the terms.

On Saturday, Oswald agreed to the 28 Points (see p. 251ff), the second of which promised that "inmates shall be permitted to return to their cells or to other suitable accommodations or shelter under their own power. The observers' committee shall monitor the implementation of this operation." The third point granted "complete administrative amnesty," including assurances against "physical punishment, or other type of harassment . . ."

The officials' concern with the self-control of correction personnel was reflected in the assault plans which excluded correction officers' participation. As Governor Rockefeller later stated, "It would [have been] a great mistake to have the prison guards involved in the freeing of the [hostages] . . . it would just be humanly impossible for them not to become involved in reprisals." But the correction staff remained responsible for rehousing inmates after the assault, and the Governor's apprehensions became an accurate prophecy.

The untrue rumor that a hostage had been castrated spread throughout the prison after the assault. The belief was widespread that the death threats against hostages had been carried out on the catwalks. At approximately 10:00 A.M., Senator Dunne looked down out of Superintendent Mancusi's second-floor office window, facing the front of the prison from the administration building. He saw a hostage with a bloody cloth around his throat carried to a waiting ambulance, and he noted in his diary, "Hostage out—throat cut."¹

During the hour following the assault, distraught cor-

¹It is not certain which hostage Dunne first saw taken out. But the first hostage to arrive at the ambulances did have a slashed throat, as did another rescued hostage. Both survived. One other hostage, killed by gunfire, had a cut on the back of his neck. Some dead hostages had gunshot wounds in their heads which bled on their faces and necks.

rection personnel hurried in and out of Mancusi's office, which served as the command post, with fresh reports of dead hostages. Senator Dunne also remembered someone had said a dead hostage was found on the catwalk with his testicles cut off and stuffed in his mouth. Schwartz and Privitera's mutilated bodies were found in D block, and at 11:25 A.M. Deputy Superintendent Vincent repeated to Superintendent Mancusi the widely believed but untrue report that some hostages appeared to have been killed before the assault.

A Yard

The uprising was over. After almost 97 hours in D yard, dazed and rain-soaked inmates, hands clasped together behind their necks, walked slowly around collapsed tents and soggy debris toward the door into D tunnel. On the opposite side of the tunnel, another door opened onto four concrete steps leading down into A yard, where four or five inmates were already lying face down after having jumped off D catwalk during the first minutes of the assault.

Inmates started spilling out through the door into A yard from D tunnel about 10:10 A.M. Some were wounded, and many held wet rags to their faces trying to wash pepper gas out of their eyes.

As they stumbled down the steps into A yard, inmates were ordered to drop face down on the grass, wet from Sunday's rain, just beyond the eight-foot-wide concrete apron which ran around the sides of the yard. The area quickly became congested with prone inmates piled one on top of another, and they were ordered to crawl away from the door, noses to the ground, hands locked behind heads, so that room could be made for the thousand or more inmates still in D yard.

Some correction officers and troopers said they punctuated their commands to the inmates with sharp night-stick prods. "We weren't taking any guff," one correction officer recalled later. Commissioner Dunbar testified that the prone position and low crawling were customary security techniques, because inmates had not yet been searched. "As to the handling of the men, it was emphatic and no nonsense," Dunbar noted in his diary of the

Dr. John Cudmore, a National Guard doctor who came into A yard at approximately 10:25 A.M. to help evacuate the wounded, had a different perspective: "The method employed to get them to lie down was to hit them with a club across the knees." In several instances, the doctor testified, "not-too-disguised attempts were made to hit them in the genitalia." The doctor, who observed only correction officers striking inmates as they came out of the tunnel door, saw one inmate tumble down the steps after being hit in the leg with a nightstick. In a subsequent examination, he found the inmate's leg had been broken, either by the blow or the fall onto the concrete apron at the foot of the stairs. "If they weren't struck," the doctor concluded, "it was only through their own ability to avoid it." He did not observe inmates struck with any frequency once they were on the ground; nor did he observe any resistance offered by inmates. "I have not seen a more subdued group," he testified.

An inmate described his early moments on the ground in A yard: "A trooper said, 'Start crawling, you white niggerlover—put your nose to the ground. If it comes up, your head comes off.' So I started crawling," the inmate recounted, and "I went a little ways, then they told us, 'Stop!' All this time you could hear the whacks." The inmate added: "I didn't dare to look . . . you could hear something hitting a body. All the time you hear men groaning low and so much noise. Everything was all confused."

In order to reduce the pile of inmates which quickly developed at the bottom of the A yard steps, other inmates waiting in D yard were cleared away from in front of the D tunnel door and ordered to sit down and wait. Thereafter, only a few at a time were let through the tunnel into A yard. During the lull when the pileup by the steps was being reduced, correction officers and troopers gathered in front and on both sides of the A yard steps. A State Police film, taken at this time of the action in A yard, focused occasionally on the steps. It showed several instances where inmates throwing themselves on the ground were kicked in the head and body by troopers and correction officers. Many inmates were shoved from behind as they started down the steps, causing them to sprawl face forward on the concrete apron.

By 10:45 A.M. the center of A yard was covered with

connected patches of inmates crowded together and lying face down. Troopers, sheriffs' deputies, and correction officers holding nightsticks, rifles, and shotguns stood near each patch. The prone inmates were very still. When a few hundred inmates accumulated on the ground in the yard, inmates lying farthest from the D tunnel door were ordered to stand up and strip off everything—clothes, religious medals, watches, eyeglasses, and false teeth—in preparation for body searches.

According to a trooper, the searches were conducted by several groups comprised of correction officers and sheriffs' deputies, with troopers providing security. The trooper testified that inmates had a "30 percent chance" of avoiding a blow from a nightstick during the course of the search. But, he added, blows were not delivered with a full-arm motion.

"I was lying there, and this trooper comes up," an inmate testified. "He pushed my head down with his foot. 'Get up and get undressed,' he said. So I got undressed, and he told me to take off my watch. I took it off, and he stomped it on the ground. Smashed it." Other inmates and National Guardsmen saw watches tossed in the air and struck with nightsticks; a trooper testified he observed several watches smashed while still on the inmates' wrists.

National Guardsmen in the yard to evacuate the wounded testified they saw correction officers, troopers, and sheriffs' deputies strike inmates with nightsticks during the strip searching. One guardsman said that as he helped carry out an inmate who had been shot in the groin several troopers came over and hit the inmate with nightsticks. The inmate screamed in pain, the guardsman recalled, and a trooper responded: "Fuck you, nigger. You should have gotten it in the head."

After inmates were stripped and searched, they joined the end of a long serpentine line of inmates waiting to be taken to cells. Only the 540 empty cells in A block were available to rehouse the 1,240 inmates and officials made hasty preparations to ready A block. All personal items—clothing, books, toilet articles, hobby kits, pictures, and legal papers—were shoveled out of the cells and heaped in piles against the gallery walls opposite the cells. The next day, inmate work gangs carried out the property to trucks, which took the property to the prison dump where it was

Prior to the assault, Superintendent Mancusi determined that the five signers of the July Manifesto would go to HBZ whenever they were found. Mancusi testified in Federal court that other suspected leaders were picked out on the basis of "information gained from other parties, from direct knowledge, and also from newspaper pictures of the riot."²

During the strip search, correction officers and troopers picked out other inmates they identified as the "executioners," security guards, and negotiators. Inmates segregated as suspected leaders were marked with chalk X's drawn on their backs, and one large inmate, after he was stripped, was ordered to lie down on his back across a recreation table. A football was placed under his chin, and he was told he would be dead if the football fell. Legislators taken on a tour of the catwalks by Dunbar at about 2:00 P.M. saw the inmate, who was still on the table with the football. He was pointed out by Dunbar to the legislators as the one responsible for the rumored castration.

Three or four other inmates picked out as leaders were ordered to lie on their backs in A yard with their knees drawn up, and shotgun shells were balanced on their knees and chests. Some inmates, who said later they were also among those picked out as leaders, lay in an area by the side of A tunnel door. They said some troopers and correction officers on A catwalk above them occasionally flipped down lighted cigarettes on them. Other peace officers spat down on the inmates.³

The 48 inmates separated from the others on Monday were taken to empty HBZ cells and to two designated galleries in A block.

Inmates were also segregated for other reasons. Several hostages said they refused to leave the prison immediately.

²Prison personnel had spent much of the four days prior to the assault trying to identify active riot participants from newspapers, television, and personal observation. They also had available "instant replays" on videotape equipment used throughout the uprising.

³The inmates' statements were corroborated by National Guardsmen present in the yard. In addition, a medical examination of the inmates conducted eight days later noted multiple first-degree burns on buttocks and other parts of the bodies of several inmates. See pp. 441-42.

Instead, they walked through D and A yards identifying inmates who had protected them. An inmate was pointed out by a hostage, who stated he told a nearby correction officer: "Take care of that guy. He protected me and the other men."

A trooper, who wandered into A yard shortly after the assault, testified: "A trooper was helping the sheriffs strip the inmates, and he was cuffing a few—smacking them with his hand and kicking them a little bit. So I threw him the hell out of there." The trooper also saw two "very emotional" correction officers "doing a job—I mean they had nightsticks and they were smacking inmates on the head, hitting them anywhere; sheriffs' deputies were working inmates over, too." He testified that the majority of the law enforcement men occupied in the strip search restrained themselves. But what he did observe caused the trooper to use his police radio and request supervisors for the yard, "because some of the correction guards were getting out of hand, and they were too emotionally involved." His radio message was acknowledged at the other end without comment.

After he sent the first message, the trooper saw one of the same correction officers again strike an inmate on the head with a nightstick. "I said 'OK, knock it off.'" The correction officer replied: "You don't understand what happened. Some of these men were disemboweled, and they were abused sexually." The trooper testified that he then made a second call over his radio, requesting prison officer supervisors "to watch your people."⁴

The trooper does not recall seeing any correction supervisory personnel during the hour or hour and a half he estimated he remained in A yard. He did see a trooper lieutenant, who later reported to his superiors that he had reprimanded some of his men for treating the inmates in

⁴A police radio was in the command post established in Mancusi's office. Because officials had encountered difficulty prior to the assault in receiving transmissions, a trooper followed closely behind assault teams, and he operated another police radio from Times Square. He was ordered to relay any messages he heard to the command post in order to be sure the command post received all of the messages transmitted from different parts of the prison. There was no entry in Mancusi's log to indicate the messages had been received in the command post.

the yard like "cattle." A deputy sheriff also stated to the Commission that he had disciplined several of his men for their behavior in the yard.

As the morning progressed, Dr. Cudmore grew increasingly concerned with the emotional mood of a number of the law enforcement officers in the yard. He saw a young inmate taken out of the snake line and "beaten rather severely with clubs," although, Dr. Cudmore testified, "he did not seem to be taking part in any hostile activity." Later, he was treating the bleeding head of an inmate standing in the snake line, and a correction officer stalked over with his club raised, as if to hit either Cudmore or the inmate. The doctor told the guard: "I've seen enough of that," but "it seemed like I was talking to a wall. There was a semblance of authority," Cudmore testified, "but the state troopers standing around seemed to be in about the same state as the National Guard—of being part of a horrible circumstance and not really being sure what to do about it."

The Gauntlet in A Tunnel

Inmates were first escorted in groups to A block cells by correction officers at approximately 10:30 A.M. It quickly became apparent this procedure would consume too much time. Instead, approximately 15 correction officers and troopers positioned themselves down each side of the tunnel, from the door which opened on A yard to the end of the tunnel at A block. Naked inmates in the serpentine line were motioned from A yard into the tunnel by a correction officer stationed at the door.

One inmate described what he saw when he entered A tunnel from the yard. He looked down the tunnel, the inmate remembered, and his legs started to tremble: "All I saw was correction officers and troopers down both sides of the hallway, and they had clubs in their hands." The tunnel echoed officers' shouts mingled with the bangs of their nightsticks against the brick walls and concrete floor. "I saw an inmate down on the floor at the end of the tunnel," the inmate testified, "just before he got into A block. They were beating him. Another inmate was stopped midway in the tunnel. Then the inmate furthest down in the tunnel was allowed to get up and go into A

block; and the inmate midway in the tunnel started to run. As he ran down, they beat him—whacked him with clubs." Then, he heard the officer at the door say: "Beat it, nigger," and the waiting inmate started to run down the tunnel.

A National Guardsman also described the tunnel: "If a prisoner would take his hands off his head at any time he was running, the officers would circle him and swing from the floor. One black guy, about 20 years old, fell down because he was tripped, and they hit him for what seemed like a couple of minutes. One guard would hit him, step back and let another get a clean shot. By accident, one trooper or guard hit another with his stick. The guard who got hit yelled, 'This is for him hitting me, you black motherfucker,' and he hit the prisoner. At this time they all stepped back and let the guard who got hit accidentally beat the prisoner all by himself. Then he ran the prisoner all the way through the corridor to cellblock [A] and he hit him all along the way."

A few minutes later, the National Guardsman said, the clubbing stopped, "because prison officials were starting to walk around."

Commissioner Oswald had refused Senator Dunne permission to witness the assault, because it was too risky. Later, around 11:00 A.M., Commissioner Dunbar escorted Dunne on an inspection tour of the catwalks and A block. Just as they entered the ground floor of A block from the direction of the administration building, Dunne saw "naked males running [toward him] . . . from A tunnel." He looked past the men into the tunnel and saw "correction officers on either side of the corridor swinging their clubs and striking the men who were running through there." He immediately turned to Dunbar. "Walter, I see something I shouldn't be seeing, and it had better stop right away." Dunbar gave an order immediately, Dunne recalled, and the blows in the tunnel stopped. At the Commission's hearings, Commissioner Dunbar denied any recollection of having seen the gauntlet. After hearing Dunne's testimony, Dunbar said he recalled one incident in A block where a "correction officer whacked a guy with a club." Dunbar testified that he went over and stopped it.

It is possible that the intensity and frequency of the blows in the gauntlet varied at different times and abated when officials walked by on their infrequent tours of A.

block. Some inmates, notably older ones, stated they were not struck when they ran between the lines of law enforcement officers in the tunnel.

After observing A tunnel, Dunbar and Dunne continued their tour on the catwalks, and they saw the inmates balancing shotgun shells and the football. Dunne was told they were suspected inmate leaders, and the shells and football were being used to keep the inmates motionless. "I thought they were dead at first, they were so still," Dunne later observed.

A Block

When inmates reached A block, a waiting row of correction officers on the ground floor diverted the inmates, still running, to cells on the first floor and to stairs leading to the cell galleries on the second and third floors. Troopers and correction officers also stood on the stairways leading to the cells and along all twelve cell galleries in A block.

Troopers who had participated in the assault on the catwalks and D yard were stationed on at least 3 of the 12 tiers in A block. After the action in D yard slackened, one trooper walked back to the area where the hostages had been held. He described what he saw: "I observed three bodies, two of which were atop each other on mattresses, and the other was lying on the ground. All were face up. My thought was that two of the hostages appeared to be dead for quite some time prior to the assault. Near the three bodies I observed what appeared to be a scrotum. After the assault, I helped herd the prisoners into A block cells." Correction officers from Auburn Correctional Facility, scene of the 1970 riot, were among the correction officers stationed along the stairs of A block and in the cell galleries.

Many inmates said they were struck repeatedly before they reached the cells by troopers and correction officers on the stairways wielding nightsticks. One inmate recounted what he saw when a second inmate stopped in front of him at the top of the stairs, just short of the landing leading to the third tier of cells: "All I could see was big troopers and correction officers at the top of the stairway, and they were calling [to the inmate ahead of him], 'Come on nigger, your day ain't over with yet.' They

called him 'cocksucker' and 'white nigger' and all this shit. Anyway, he wouldn't come. He was scared. He had tears coming down his face, and he said, 'No I'm not going to come. You're going to kill me.'

"One of the troopers came over there, grabbed hold of his hair, and yanked him up by one hand—lifted him right off his feet—and threw him down on the floor and started kicking him in the stomach. Finally, they half dragged him and half threw him in the second cell. The minute he got up, I ran right for the [same cell], because I knew if I stayed there, I was going to get hit." A trooper shoved him into the cell and stuck a shotgun in through the bar. The trooper said, according to the inmate, "We're going to come back and kill you."

A correction officer on the second tier in A block that morning testified he saw a trooper pick up a guitar from a pile of inmates' belongings outside a cell and break it over the head of an inmate running by. "It knocked the inmate to his knees," the correction officer said, and the "trooper made a joke out of it." The correction officer was asked by the Commission whether any other peace officer on the gallery said anything to the trooper after the incident: "Not that I know of," he replied. "Most of them laughed."

A guardsman carrying an inmate back to A block from the hospital that afternoon testified: "I was assigned to one stretcher on which there was a large black man. There were gun wounds in his legs and rear end. Four of us, National Guardsmen, carried this man to a central hall, leading off the different cell areas [the ground floor of A block]. In the center of that area there were many, many prison guards.

"A small nonuniformed man [later identified by the inmate as a correction officer] came up to us and asked what was wrong with this particular prisoner, and I told him the inmate had gunshot wounds in the legs. My telling him seemingly went unnoticed. He told us to put the inmate down. [The man then] picked the head end of the stretcher up and dumped [the inmate] onto his feet. The [inmate] fell over onto his shoulder and really bounced off the floor. There was debris and slime water all over the floor.

"Then this nonuniformed man pulled out a Phillips
Digitized from the holdings of the New York State Library Albany, NY.

floor on his back, 'If you don't get moving—if you don't get up on your feet you are going to get this right up your ass.' Then he did stick this man right in the anal area five or six times. And the prisoner, he didn't say a word, but just sort of [got up and] pushed with his legs toward the cellblock this man wanted him to go into.

"I know we should have stopped this man, that it was a criminal act, but it happened so quickly. We were just awed by the fact that the prison guards were standing around and seemingly not even noticing it. By the time the man was gone we couldn't do anything."

HBZ and E Block

By the end of Monday, 28 cells in HBZ were occupied by suspected "executioners," security guards, and negotiators. Other alleged riot leaders were taken to cells in A block. Ultimately, all 50 HBZ cells were occupied by suspected leaders of the uprising; an additional 30 alleged leaders were segregated in A block.

Many of the inmates taken to HBZ on Monday ran naked past correction officers arrayed in a row on the sidewalk in front of the reception building, where the HBZ cells are located. A trooper who passed by the front of the building during the day said he turned his head away after he saw the ferocity with which one inmate was struck by correction officers as he ran the gauntlet.

National Guardsmen standing nearby observed that inmates were stopped outside the reception building and asked their names. When an answer was given them, six or eight correction officers just inside the door replied in a fugue chorus: "You want your amnesty? Well, come and get it," as they yanked inmates through the door and struck them with nightsticks.

Most HBZ cells are located on the third floor of the reception building. Inmates housed in observation cells on the second floor heard other inmates run up the winding stairs to HBZ one at a time, beginning about 11:00 A.M. One inmate ordered to HBZ that day described the process: "I was told to run up the staircase [to HBZ]. There were correction officers spaced out maybe every six or eight feet with clubs, and as I went by the correction officers, they would each hit you with the stick. I was handcuffed, and I slipped a couple of times. I got whacked

pretty good that way. I got to the top of the stairs, and then there were more guards up there. I got a couple of whacks as I ran down the tier to a cell. Someone from the Goldman Panel [a citizens' group which monitored the prison after the riot—see p. 463], was there a week or two later, and he said: 'Well, at least you got medical attention. You are covered with Merthiolate.' It wasn't Merthiolate, it was bruises on my elbows, knees, hips—anything that was sticking out."

Among the injuries suffered by inmates brought to HBZ on Monday, as reported by the Goldman Panel doctors who examined the inmates eight days later, were two fractured ribs, a broken arm, a broken elbow, and assorted abrasions and contusions of various parts of the body and face. However, the inmates had already received medical attention for these injuries.

In the afternoon, a National Guard stretcher team entered the reception building in response to a request telephoned to the prison's hospital. Not knowing exactly where to go, one guardsman opened the door to a room off the corridor on the ground floor. Inside, he testified, were five or six correction officers using nightsticks to beat a naked inmate lying on the floor. The inmate was crying out: "I didn't do it, boss," again and again. One correction officer looked over his shoulder at the guardsmen and told them to stay out. According to the guardsmen, the correction officers came out about a half minute later. The stretcher team walked in and found the inmate already lying on a stretcher. He seemed delirious to them, and he did not know where he was being taken. He continued to moan, "I didn't do it, boss," as they carried him to the hospital. The inmate on the stretcher was the one who had been held with the football under his chin in A yard, after he was accused of castrating a hostage. The Goldman Panel's doctors observed the following injuries on the inmate eight days later: "abrasions both elbows, both buttocks, left upper back, and laceration of scalp on left forehead."

Correction officers assigned to HBZ later testified they did not know until after Monday's rehousing was completed that inmates escorted to HBZ were suspected riot leaders. None was willing to admit knowledge that the inmates sent to HBZ were beaten. One explained how the inmate accused of castrating a hostage received his injury

at HBZ: "I took his name and number in the same fashion as I had taken everybody else's. He was then directed toward the staircase. He was pushed to some extent, because he wasn't responding normally. When he got into the back room of the reception building, he simply went the wrong way and fell. I think there's either three or four steps that lead into the old dormitory on the first floor, and he hit his head either on the door, or the door handle or something at the bottom of the stairs."

Some of the inmates were bewildered when they were singled out for HBZ. One inmate was sitting in a crowd by the trench in D yard waiting to go into A yard. He was pointed out by someone standing above him on the catwalk, taken up on the catwalk, and handcuffed. Later in the morning, he was escorted to HBZ. For four months after the uprising, the inmate asked visiting legislators, Goldman Panel representatives, a private attorney, and finally the correction officer for whom he had worked, to help him discover why he was in HBZ. No one could. "Eventually January 13 came, and I was let out. I am still in the dark as to why I was there." Eight days after he was taken to HBZ, the following injuries were observed on him by Goldman Panel doctors: "ecchymoses [bruises] right arm, left upper thigh, both legs, right upper posterior thigh, right posterior leg."

Another inmate, rehoused on Monday in an A block gallery set aside for suspected active participants, was transferred to HBZ in March 1972. He stated to the Commission that he had not participated in the uprising. But while in D yard, he had answered questions from a television reporter concerning the prison's school, where the inmate had worked as a teacher. He has received a note once a month, explaining that he was being kept in HBZ because he was observed on television during the riot making "disparaging remarks about the educational program of this facility." He was finally released from HBZ on July 8, 1972.

Approximately 40 injured and wounded inmates on stretchers were brought to an area near the reception building and left on the grass in a row until others could be treated and removed from the crowded hospital to other parts of the prison. One National Guard stretcher-bearer testified: "We were just sort of getting a breather, and we heard a sort of chanting or something. I looked

over and saw that one of the prisoners was sitting up on his stretcher and was singing. Somebody yelled to him to be quiet and to lie down. He was just sort of singing to the sky, and he started yelling, 'You're going to kill me, brother.' Then about three or four uniformed prison guards appeared. He stopped singing as soon as they started walking over toward his stretcher. They dumped him up and led him onto the steps of the recreation building, took him into the vestibule, and they just beat the hell out of him with nightsticks. He was on the floor in a fetal position yelling, 'Enough! Enough!' They just kept beating him."

"Occasionally," another guardsman testified, "it seemed that [correction officers] would recognize a prisoner [lying on the stretchers by the recreation building], and they would begin cursing him . . . They would say, 'You fucking nigger, see what black power has gotten you'; things to that effect."

Some wounded inmates were carried on stretchers to the ground-floor recreation room in E block after receiving treatment in the hospital. Only the first few National Guard stretcher-bearers were allowed by correction officers into the recreation room. Correction officers stopped other stretcher teams at the front gate to E block, took over the stretchers, and carried them around a corner out of view. Inmates on the first floor of E block held hand mirrors out of their cells, and said they watched correction officers dump inmates from the stretchers and then beat them with nightsticks. Later, correction officers hung blankets at the end of the galleries to block the inmates' view.

Almost uniformly, inmates interviewed by the Commission stated the physical assaults had been accompanied by base racial profanities. At the least, blacks were "niggers," whites were "niggerlovers" or "white niggers." Whites were berated as racial traitors and accused of sexual attacks on the hostages, all of whom were white. The curses expressed the rage which led some law enforcement officers to beat naked and subdued inmates—or to stand by while others did so.

There were instances when racial allegiances superseded other divisions. White inmate orderlies in the prison's hospital later admitted in confidential interviews that on Monday night they carried the body of a dead black inmate

down a hospital corridor, banging it against the doors to rooms where other wounded black inmates lay, yelling racial curses: "This is what's going to happen to you, nigger." The dead black inmate was rumored to have forced the hostages to commit sodomy during the riot.

When Dr. Cudmore went home Monday night, he tried to explain to his wife what had happened that day. He told her that "for the first time . . . he could understand what happened at My Lai."

Examination by the Goldman Panel Doctors

The physical mistreatment of inmates in the aftermath of the uprising was corroborated by doctors on September 21, eight days after the assault. Goldman Panel members stated that, after observing bruises and other marks of physical reprisals on inmates during their tour of the prison on Friday, they prodded prison officials into arranging for nine volunteer doctors from Buffalo and Rochester to conduct a physical examination of the 1,120 inmates then at Attica.⁵ Among those examined were 700 inmates who had been in D yard during the uprising, representing 55 percent of all D yard inmates. The other 550 inmates in D yard during the riot had been transferred to other prisons by September 21.

The Commission's staff compared the Goldman doctors' reports with a list of inmates who had been in D yard during the uprising and concluded that approximately 45 percent of the D yard inmates examined by the doctors had been subjected to physical reprisals. The Goldman medical reports described a variety of abrasions, burns, contusions, and lacerations on 315 of the 700 D yard inmates. All of the injuries were at least a week old, according to the examining doctors. The Commission's staff excluded from its analysis injuries on knees or elbows, assuming they were acquired by substantially all D yard inmates when crawling across A yard.

According to the report of the doctors, 32 of the 700

⁵The group included black and Spanish-speaking physicians. They were asked to strip and examine each inmate, regardless of whether the inmate complained of an injury. Members of the Panel later told the Commission they believed the examinations would serve not only as a contemporaneous record of the inmates' physical conditions, but also as a deterrent to the reprisals complained of by inmates to the panel.

inmates in D yard suffered injuries to the head or groin, or not less than four abrasions, contusions, or lacerations in other parts of the body. More serious injuries included two fractured ribs, two broken elbows, and a broken arm, deep lacerations of the scalp and neck, and contusions of the groin and testicles.⁶

Other diagnosis notes concerning various inmates made by the examining doctors included "multiple bruises"; "needs X ray for possible rib fracture"; "contusions—scalp, chest"; "lacerations left hip," "shotgun wounds—left lower leg, abrasions both hips, contusions left triceps"; "broken nose, bullet wound right knee, small abrasions of back"; "lacerations, infected skull"; "first-degree burns buttocks, possible fracture little finger."

The findings of the panel's doctors were compared by the Commission with a random sample of 240 reports of interviews with inmates who had been in D yard. One-half of the inmates in the sample stated they had been struck after the assault, and 10 percent said they were not. The remaining 40 percent either refused to talk about reprisals or refused to be interviewed. Overall, approximately 10 percent of all inmates contacted by the Commission refused to be interviewed concerning the uprising, including the 80 alleged leaders.

Many of the 700 D yard inmates also complained to the Goldman Panel doctors of losing their eyeglasses or false teeth during the rehousing process. The Attica clerk informed the Commission in April 1972 that 75 dentures and 310 pairs of glasses lost during the riot had been replaced by the state. There are no existing statistics about whether similar replacements were made for Attica inmates transferred to other prisons after the riot.

Where They Were and What They Were Doing, According to Them

Supervisory officials at Attica did not wield nightsticks on Monday. But they could have prevented their use by

⁶Members of the Goldman Panel told the Commission that the examinations conducted by some of the volunteer doctors were not as thorough as the panel had hoped they would be. In addition, the examinations were made eight days later, when many bruises and cuts would have healed. It would appear therefore, that the statistics prepared on the basis of the doctors' observations are conservative in estimating the extent of reprisals.

angry law enforcement officers, who anesthetized their humanity and became righteous vigilantes. The officials' failure was not satisfactorily explained by their later testimony before the Commission, which contained disturbing contradictions:

- The Commission was told by Oswald and Dunbar that reprisals after prison disturbances were a historic problem, but they testified they had made no plans to prevent them.
- The subject of reprisals "was not discussed," said Robert Douglass, Secretary to Governor Rockefeller. Yet concern with the correction officers' emotional control caused officials to exclude them from the assault plan.
- Dead hostages and untrue atrocity rumors after the assault increased the potential for revenge. Rather than seeking to verify the rumors, officials helped circulate them.
- The gauntlet was witnessed early in the day by officials. Yet correctional officials took no action to stop it. Even when they acknowledged some correction officers had been ordered from the prison on Monday, officials denied it had anything to do with reprisal incidents.
- State officials testified that they did not tour HBZ on Monday. But it was understood the suspected leaders would be taken there as soon after the assault as they were found.
- Each official testified he was confident that correction personnel had been supervised during the rehousing of inmates on Monday. Yet each official pointed down to the next bureaucratic rung in placing the responsibility for supervision.

Commissioner Oswald testified he heard on Monday only that law enforcement officers "were running [inmates] through the tunnel, merely prodding them with their batons on the buttocks [and not] striking them . . . It was much like a fraternity hazing." Oswald's testimony is not borne out by the eye witness account of Senator Dunne, who testified that he and Dunbar had seen the gauntlet of correction officers striking inmates in A tunnel (see p. 434). Dunne testified he was "shocked, disgusted, and horrified" by what he saw. When he returned to Mancusi's office, about an hour later, Dunne testified, he told Robert Douglass, Governor Rockefeller's secretary, about the gauntlet. According to Dunne, Douglass reacted to the gauntlet in the same manner that

Dunne had, and Dunne subsequently overheard Douglass caution Oswald and Dunbar on the importance of avoiding further reprisal incidents.

Although Dunbar confirmed that he had accompanied Senator Dunne on the tour of A block and the catwalks, Dunbar testified he "had no recollection" of having seen the gauntlet which shocked Dunne. Dunbar recalled at the Commission's hearings that he had seen only one incident where a correction officer struck an inmate, which he related to Oswald when Dunbar and Dunne returned to Mancusi's office.

No action was taken by officials in response to Dunne's report.

The officials' inattention to these reports is difficult to understand, because they were aware of the correction staff's emotional mood after the assault. Senator Dunne remembered Superintendent Mancusi had tried to calm a distraught correction sergeant when true reports of hostage deaths and false accounts of atrocities were received in the command post during the hour following the assault. "Pull yourself together," Mancusi said, "you are an example for the others."

At 10:35 A.M., after Mancusi sought to calm the sergeant, his log notes he ordered the sergeant to "restrain correction officers [and not to] let them go inside [the prison] until discipline can be assured." He logged another order at 10:40 A.M. that only corrections personnel who "can maintain self-control and personal discipline will be allowed into the prison. If the supervisor has any doubts of a man's ability to control himself, he should not be permitted in." Again at 11:25 A.M., he recorded an order to Deputy Superintendent Vincent to "screen correction officers for discipline and self-control."

Superintendent Mancusi testified he received no reports of reprisals and that his orders to screen correction officers were only precautionary. "People's emotions were very high. They were worn out, emotionally upset. I wanted to see that no reprisals were made." Mancusi did not observe the rehousing of inmates. He testified he was "directed [by Oswald] to get a gas mask, to stay at [his] desk and transmit orders through the institution by telephone or otherwise." Oswald testified he was sure he did not give Mancusi these orders. Ordered or not,

Mancusi remained at his desk throughout the day, making entries in a log.

Other state officials testified that the possibility of reprisals did not occur to them, although they acknowledged the assault plans excluded correction officers because of a concern with reprisals. "Frankly, I had no reason to expect the correction officers would respond in any way but an honorable one in dealing with the prisoners," Oswald later testified at the Commission's public hearings.

However, in an interview, Wim Van Eekeren, Deputy Commissioner of the Department of Correctional Services, stated he had been instructed by Dunbar prior to the assault to formulate plans which would allow the transfer of the rioting inmates to other prisons immediately after order was restored. According to Van Eekeren, inmates were to be taken from D yard, strip-searched, given new clothing, and loaded on buses. Van Eekeren said Dunbar told him the transfers were necessary in order to eliminate prolonged contact between correction personnel and the rioters. Van Eekeren added that the plans were changed before the assault, because of the proposed "investigation." He did not recall who changed the plans.

Van Eekeren's statements are consistent with various "hot-line" conversations recorded as early as Saturday, in which he was making arrangements for clothing, buses, and accommodations at other prisons for a thousand inmates from Attica. If Commissioner Van Eekeren's recollection is accurate, the one plan which the correction officials did consider for avoiding reprisals was nullified in order to facilitate the interrogations of inmates by criminal investigators.

The Commission believes that the responsibility for upholding the law and precluding vigilante "justice" by law enforcement officers existed at all levels of command at Attica. But when questioned concerning their role in preventing reprisals, state officials inevitably testified that another official bore that responsibility.

Robert Douglass, Secretary to Governor Rockefeller, did not tour the prison after the assault. He later observed: "We had Commissioner Oswald on the scene at the facility. We had his deputy, Walter Dunbar, who

spent a lifetime at this, on the scene at Attica. I had complete confidence that the aftermath of the retaking would be handled appropriately." Commissioners Oswald and Dunbar stated they assumed it was Superintendent Mancusi's responsibility, because, as Oswald testified, "Superintendent Mancusi was . . . still running the correctional officer staff and was still responsible for that part of the operation. We had given orders. We presumed they would be carried out." Oswald did not observe the rehousing, and he remained in Superintendent Mancusi's office most of Monday.

Commissioner Dunbar testified that he was on the catwalks intermittently between 11:00 A.M. and 3:00 P.M., but he did not go into the cell galleries in A block or to HBZ. Dunbar testified that he saw no reprisals during the day, other than one brief incident. Dunbar's diary of the events does not record that incident, but he testified that he asked the Deputy Superintendent and other supervisors "to be sure to supervise those guys in the galleries in A block."

Later in the day, Dunbar repeated to the press and to legislators, whom he conducted on a brief tour, accounts of the hostages' deaths and mutilation, all of which proved untrue. He pointed out to the legislators the naked inmate lying on the table with the football under his chin as the castrator of a hostage. According to two legislators on the tour, Assemblyman Eve and Congressman Badillo, Dunbar told them the "castration" had been filmed from a helicopter, as well as observed through a rifle's telescopic sights. Around 5:00 P.M. on Monday, Dunbar guided the press around the prison and recounted to them the untrue "fact" that some hostages had been killed before the attack, in addition to repeating the "fact" that hostages died from slashed throats. After that tour, Dunbar was quoted in the *New York Times* as having given an account of the death of "Mad Bomber" Sam Melville, which was untrue in almost every detail.⁷ According to Dunne, Oswald told Mancusi at 11:30 A.M. Monday morning "to be certain" of the "fact" that hostages had been killed prior to the attack before the information was released. Only the autopsies could have

⁷*New York Times*, September 14, 1971, p. 29, col. 1. For the Commission's conclusions concerning Melville's death, see pp. 397-

established with certainty the time of the hostages' deaths, but Dunbar did not wait.

Directly below Mancusi in the prison's hierarchy were Deputy Superintendent Vincent and Assistant Deputy Superintendent Pfeil. According to Mancusi, they were responsible for carrying out his orders against reprisals. "Deputy Superintendent Vincent was in charge, and he and Assistant Deputy Pfeil would have supervision of this," Mancusi testified.

Vincent testified he toured the catwalks and the ground floor of A block with Commissioner Dunbar about 10:20 A.M. He saw no mistreatment of inmates. "This wouldn't happen in my presence," he commented later; "I would not tolerate it." A correction officer stationed on the stairs in A block during the rehousing testified, however, that he saw Vincent at the top of the stairs on the second floor of A block about an hour after the assault ended. The correction officer recalled that Vincent yelled a warning concerning reprisals to the officers on the gallery: "He said, not to me but generally to everybody in the area, 'Let's stop'—I don't know this word for word, but it is something to the effect—'the time has come to start treating them like human beings.'" The correction officer said Vincent's warning "slowed down the hitting quite a bit." Vincent also testified that, on Monday, he was not aware of any rumors concerning hostages killed prior to the assault. Yet Mancusi noted in his log that it was Vincent who related to him just such a rumor.

Pfeil went to A yard about 11:00 A.M. and observed the strip searching in A yard for about a half hour. During that time, Pfeil testified, he saw no physical mistreatment of inmates, although he heard some harsh language. Pfeil said he left the yard before the rehousing commenced, because he was asked to identify dead hostages lying in the maintenance building, which had been converted into a morgue. He saw one dead hostage, who had been a close friend, and he left the morgue shaken. About 1:30 P.M., he was given permission to leave the prison by Vincent, and did not return until 6:30 P.M.

Work locations assigned to corrections personnel at roll call on Friday remained unchanged on Monday, and no corrections lieutenant or sergeant was assigned to A yard or to HBZ, where alleged ringleaders were housed af-

ter the uprising. Nor did any official inspect HBZ on Monday. According to Deputy Superintendent Vincent, the one available Attica correction lieutenant was stationed in the area of the powerhouse, and two lieutenants, who had come from Auburn and Sing Sing to assist after the uprising started, were in A block.

The Sing Sing lieutenant spent about only five minutes in A yard and about an hour in A block and in A tunnel. He said he saw only some inmates "prodded" in A tunnel, and he left the prison for the day at around noon, ill from the gas. The Auburn lieutenant testified he spent most of Monday escorting inmates to HBZ, and he saw no reprisals.

There were also ten correction sergeants at Attica on Monday. None were assigned to A yard, HBZ, A tunnel, or A block. A majority of them were interviewed by the Commission. None admitted having seen any acts of reprisal.

A National Guardsman testified in Federal court Thursday, September 16, that he had observed a correction officer dressed in a "police cap, white shirt, and blue pants" hitting inmates outside the reception building on Monday. The uniform described by the guardsman was the standard uniform of correction captains, lieutenants, and sergeants at Attica. The guardsman also testified the same officer was "perhaps the most vicious of all the guards" abusing inmates.

A number of correction officers were ordered to leave the prison or left voluntarily on Monday, but no one could say who ordered them to leave, how many left, when, or where they had been before they were relieved. A correction sergeant stationed in the chart room in the administration building on Monday later provided the Commission with a list of 22 men he said had been excused, "although there may have been others as well." Notations opposite the names purporting to indicate why they were relieved included: "broke down" (five); "emotionally unstable," "aggressive," "incapable," "irrational," "rambling," or "incoherent" (eight); "age or gas" (three); "relative of hostage," "saw bodies" (two); "heart attack" (one); "physically disabled—sent home three times" (one).

Most corrections officers who had participated in the rehousing denied that the emotional state of some officers resulted in reprisals. The documentary evidence and dis-

interested eyewitness testimony of the National Guardsmen is to the contrary.

By Monday morning, most officials at Attica were exhausted. Their will to prevent reprisals after the assault may have failed, because they believed that the inmates' intransigence had prevented a peaceful resolution of the uprising and, instead, resulted in the "murder and mutilation" of hostages. But officials still represented the legal order at Attica, and their subsequent explanations only made it apparent that they had failed to meet their responsibilities. The same officials who ordered the invasion of D yard to restore law and order did nothing to prevent law enforcement officers from violating these same principles in the aftermath.

Finally, having failed in their responsibility to prevent reprisals, correction and police officials took no steps to identify and discipline those involved. Commissioner Oswald testified that he considered reprisals reprehensible, but that he had no investigative staff, and that he was hoping that any evidence of reprisals would be made available to him by the Commission and the Wyoming County grand jury upon the conclusion of their investigations. But the consequence of waiting has been to permit correction officers who engaged in acts of brutality to remain in supervision of inmates.

Monday Night

On Monday night, inmates were counted and recounted, but between four and eight were unaccounted for all night,⁸ and inmates (housed mostly three to a cell in A block) were required to stand at attention at the front of their cells every half hour or so throughout the night for another count.

Many inmates testified that troopers and correction officers harassed them intermittently all night. Several inmates said they saw two people crawling around A yard Monday night and that officers were standing over them holding rifles. These statements were corroborated by an inmate who testified he was taken from his cell to A yard

⁸The third inmate killed before the assault was not found until Tuesday morning. All the other inmates had been in cells, the prison hospital, or Meyer Memorial Hospital throughout the numerous counts.

that night because he had been accused of killing Officer Quinn. He said correction officers held guns to his head as he crawled.

Officials planned to transfer approximately a thousand inmates to other prisons, and Vincent and Pfeil toured C block Monday night seeking inmate volunteers. They also walked through A block, and Pfeil testified he observed "quite a few [inmates who] had bruise marks on their buttocks or backs that would have been left by a stick." Vincent agreed that at least some of the bruises they saw had been acquired in the rehousing, but not all of them. "There had been some infighting in the yard [between inmates], and I don't think these people died without putting up some kind of resistance." Pfeil testified he received reports from correction officers that troopers in the galleries were "Baiting, threatening, haranguing, and harassing" the inmates and, at his suggestion, the troopers were withdrawn from the galleries a few days later. The repeated day and night standing counts continued until Wednesday morning, a correction officer testified. When he came on duty that morning, a prison official at roll call told the officers, "No more. No more harassment. Leave them alone."

Around 2:30 A.M. on Monday, Pfeil was called to the prison's front gate, where he was served by William Hellerstein of the Legal Aid Society with a Federal court order. The order⁹ required admission to the prison "upon demand" of the 33 lawyers named in the order and doctors accompanying Hellerstein. The order stated that its terms were effective as of 10:40 P.M. Monday.

Judge Curtin had signed the order in his living room in Buffalo at about 10:30 P.M. Monday, after hearing the arguments of various lawyers, including Hellerstein and Professor Herman Schwartz, concerning the possibility of reprisals and the fear that suspected leaders would be transferred and "lost" in another prison before they could

⁹The order was a "temporary restraining order," which can be, as it was in this instance, obtained by a plaintiff without the defendant's presence. It is used by a judge to freeze a situation pending a court hearing on the dispute. Judge John T. Curtin scheduled the hearing for 10:30 A.M. Tuesday. Judge Curtin had previously signed the Friday order, demanded by the inmates against administrative reprisals, and Hellerstein believed the Friday order also gave Judge Curtin jurisdiction over the problem on Monday.

be legally advised. Judge Curtin called Attica during the evening and read the proposed order to Superintendent Mancusi, who initially objected, but finally replied that he "could live with it." The judge told Mancusi the lawyers and doctors would leave for Attica that night.

The lawyers and doctors formed a seven-car caravan and began to drive to Attica at approximately 1:00 A.M. Tuesday. They stopped for gas just outside Buffalo, and Hellerstein went into the gas station's bathroom. When he came out, he saw what he estimated were "at least" seven State Police cars around the caravan, and troopers had begun checking passengers' identifications. Hellerstein, a 35-year-old lawyer who wears a full beard, angrily presented the troopers with Judge Curtin's order. It contained a provision which prevented anyone from interfering with the caravan, and Hellerstein demanded an escort to the prison. The troopers refused, but called ahead, and the cars proceeded unmolested to Attica.

According to conversations on the "hot line," between the time of the judge's call to Mancusi and 2:30 A.M. when Hellerstein arrived at the front gate of Attica, a series of telephone calls was exchanged among Attica, Albany headquarters of the Correction Department, members of Governor Rockefeller's staff and personnel from the offices of the State Attorney General and the Wyoming County District Attorney. A "hot-line" conversation at midnight between Commissioner William Baker, acting as the duty officer at Attica, and Commissioner Van Eekeren in Albany concluded with Van Eekeren's instructions that the order should be accepted, but no one was to be allowed into the prison.¹⁰ Van Eekeren, a lawyer, stated later he had understood when he issued them that his instructions violated the court order. But he had felt strongly that prison officials should have the prior op-

¹⁰The advice of most officials contacted that night, as related on the "hot line," was that the order still allowed them to refuse to admit lawyers at other than normal times. However, a minority opinion was expressed. Michael Whiteman, counsel to the Governor, advised that the court order should be complied with until it could be clarified. On Tuesday morning, a lawyer from the Attorney General's office told officers in Albany that the Attorney General "could not advise them not to comply with the court order." Technically, officials were in contempt, and "they would have to use their own judgement."

portunity to assess the prison's condition. He was unaware, he said, that Mancusi had consented to the proposed order when he spoke with Judge Curtin on Monday night.

When Pfeil refused to admit anyone, Hellerstein called Judge Curtin, who suggested that Hellerstein try to reach Oswald or Dunbar by telephone. He failed and spent the rest of the night in a car outside the prison waiting for either one to appear. Neither had by 8:00 A.M. Tuesday, and Hellerstein returned to Buffalo for the court hearing. Other lawyers waiting with Hellerstein saw a large contingent of orange-coated troopers enter the prison about 9:30 A.M.

Transfers from Attica

Transfers to other prisons were planned for 7:00 A.M. Tuesday. According to Vincent, inmates were interrogated in the mess hall about the uprising by the Bureau of Criminal Investigation and then, wearing hand and wrist shackles, were loaded onto buses for Greenhaven and Clinton.

Assistant Deputy Superintendent Pfeil testified he observed correction officers shouting at inmates on Tuesday morning ordering them to run, not walk, as they were taken to interviews. He stopped the practice, he said, and ordered officers "to act in a professional manner." Nine inmates who had been housed in HBZ during the entire period of the uprising were among those transferred to Great Meadow Tuesday morning. They were struck that morning, they said, with nightsticks by approximately 20 troopers and correction officers who had formed a gauntlet in the tunnel between the reception building, where the HBZ cells are located, and the hospital. Other inmates scheduled for later buses said they observed a correction officer in the gauntlet point out certain HBZ inmates for special attention, and ordered them to yell, "I love pigs!" as they ran through the sticks. Inmates transferred to other prisons after 9:00 A.M. on Tuesday stated they were not harassed.

Following the retaking of D yard, 947 inmates were transferred. Goldman Panel members were concerned with the living conditions they observed in the crowded cells, and they rejected the prison officials' estimates

that the transfers would take "a few weeks." Goaded by the panel, officials effected all the transfers in nine days. On Tuesday morning, all the transferees were from C block, where inmates not involved in the uprising had been housed throughout the four days. On Tuesday night, Vincent and Pfeil interrogated inmates in A block to select more men for transfer. Officials wanted to retain all inmates who might have taken an active role in the uprising, in order to expedite the BCI's criminal investigation, and inmates taken to HBZ and to certain galleries of A block after the uprising were not interviewed or transferred. Of the 947 inmates transferred, Great Meadow received 457, Greenhaven 343, and Clinton 147. Blacks accounted for 65.5 percent of the transfers, whites for 25 percent, and Puerto Ricans for 9 percent.

The initial busloads of inmates received a mixed reception at other prisons. At Great Meadow, arriving Attica inmates said they were met by a gauntlet of correction officers who menaced and threatened them, but no blows were reported struck. At Clinton, many Attica transferees were immediately keeplocked upon arrival, and some were not released until after Thanksgiving. The Commission received no reports of any harassment of Attica transferees at Greenhaven.

Many Attica inmates complained they were transferred without the opportunity to take with them any personal property. Nothing was done about the unnecessary destruction of the inmates' property until the Goldman Panel interceded on Friday.

Personal Property

After the assault, A block cells were emptied, and all of the inmates' belongings found in the cells were taken to the prison dump on Tuesday and buried. B and D blocks were sealed by order of Deputy Attorney General Fischer. Correction officers were also assigned to clean "contraband" out of C and E block cells on Tuesday. This resulted in the removal of many personal articles deemed to be "unauthorized," but which had been acquired with the knowledge of prison officials.

On Wednesday, the Goldman Panel was named and, after an initial tour of the prison on Friday, the panel pre-

vailed on prison officials to sort and bag whatever inmates' property had not yet been destroyed. However, officials were firm that "unauthorized" articles would not be returned. At a press conference, Dunbar was asked whether the inmates' property would be returned to them. Dunbar was reported as having replied he was not sure, because inmates had been doing the sorting and bagging, and he did not know how much they had looted.

At the urging of the Goldman Panel, the Correction Department agreed in October 1971 to pay the cost of replacing inmates' legal papers which had been destroyed, but only if the inmate had been housed in A block before the riot. The department maintained that only in A block had legal papers been destroyed as a result of the state's decision to clean out cells after the assault.

In April 1972, six months after the department's agreement with the Goldman Panel, the Commission sought to ascertain how many sets of legal papers had been replaced by the state. The answer was none. Former A block inmates had not yet been notified, but shortly after the Commission's inquiry notices were sent. The Commission was not able to ascertain whether appeal rights of any inmates had been prejudiced by the destruction of their legal papers.

Hundreds of inmates filed claims with the state seeking payment for the personal belongings cleaned out of their cells in A block on Monday. They received in answer a form letter from the Attorney General:

Please be advised that the Notice of Intention to file claim which we received today is not verified and pursuant to the provisions of Rule 3022 of the Civil Practice Law and Rules, we are electing to treat it as a nullity.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

Rule 3022 requires four notarized copies, and the Attica notary (a correction officer) had only notarized one copy. Months later, after strong protests from Legal Aid and other attorneys, the Attorney General's office waived its objection to the form in which the claims were filed.

Chapter 19

The Aftermath

The story of Attica did not end on the morning of September 13, 1971. The aftermath of Attica began with a monstrous credibility gap created when harried prison officials could not wait until they had learned the truth before informing the public what had happened that morning and then tried to dispute the truth with still more rumors. It continued as officials resisted the efforts of lawyers and doctors to gain access to the facility to aid inmates. And it is not over yet, as Attica slowly changes in response to what happened there in September 1971 and its inmates, again becoming impatient, begin stirring anew.

The Credibility Gap

Approximately three hours after D yard fell, Gerald Houlihan, the Correction Department's public information officer, gave newsmen waiting outside the prison the first official account of the assault. In late afternoon, after the inmates had been rehoused, newsmen were taken on a tour of the catwalks and D block and were briefed by Commissioner Dunbar.

The lead article in the *New York Times* on Tuesday morning, September 14, began:

. . . In this worst of recent American prison riots, several of the hostages—prison guards and civilian workers—died when convicts slashed their throats with knives. Others were stabbed and beaten with clubs and lengths of pipes.

Walter Dunbar said that two of the hostages had been killed "before today" and that one had been stabbed and emasculated. Of the remaining seven, five were killed instantaneously by the inmates and two died in the prison hospital . . .

On Tuesday morning, the *Times* reflected editorially:

. . . The deaths of [the hostages] reflect a barbarism wholly alien to our civilized society. Prisoners slashed the

throats of utterly helpless, unarmed guards whom they had held captive through around-the-clock negotiations, in which the inmates held out for an increasingly revolutionary set of demands . . .

The press also questioned State Policemen coming out of the prison. The *New York Daily News* reported that one trooper, with "the agony of witnessing the massacre etched into his sweating face," described how, when the gas was dropped, "those cons didn't wait a second, they just slit throats." The story, headlined, "I saw seven throats cut," also quoted the trooper concerning resistance encountered by the assault forces: "We were hit by gasoline bombs, makeshift spears, rocks, iron bars, sticks, and other missiles. It's a wonder more of us weren't hurt."

Twenty-four hours later, news media had a different story to report: All nine dead hostages were killed at the same time on Monday, and all had died of gunshot wounds.¹

No hostages—alive or dead—had been castrated or sexually molested, although most showed evidence of having been beaten. One surviving hostage had a severe gunshot wound in the groin.

Of the 28 hostages who survived, 2 had slashed throats. One dead hostage also had a cut on the back of his neck, apparently caused by a sharp object.

Three inmates were killed sometime before the assault. They had been stabbed repeatedly and their throats were cut.

Officials' public statements that the hostages had been maimed and murdered, which were issued before the results of the autopsies were known, reflected their apparent eagerness to provide the media with "facts" which would justify an armed assault in which 39 men were killed and over 80 more wounded.

Various factors may have contributed to the credence immediately given to these stories by officials of Attica: hostages held on catwalks with knives at their throats; State Police "mug shots" of dead hostages, whose necks

¹A tenth hostage died on October 9, 1972, from the residual effects of gunshot wounds suffered in the assault. The eleventh fatality, Officer William Quinn, had died on Saturday before the assault from multiple blunt blows to his head.

were covered with blood from gunshot wounds of the head; excited but exaggerated accounts of troopers and correction officers; the discovery of two dead inmates whose throats had been slashed; and the predisposition of the officials to believe inmates would murder the hostages.

Information was given to the press by Dunbar and Houlihan at Attica, and by Assistant Deputy Commissioner Wim Van Eekeren in Albany, who repeated to the press the misinformation he received at various times on Monday from five different correction officials at Attica.

Monday's reports that some hostages had been killed prior to the assault were based only upon the laymen's conclusions of Corrections Department officials. Allen Mills, director of the Corrections Department's industries division, reported from Attica on Monday afternoon over the "hot line": "I have seen pictures of the hostages² and, in my opinion, they have been dead a long time . . . So you can see, in my opinion, they never intended to release them."

Norbert Woods, supervisor of the Corrections Department's parole division, also told Commissioner Van Eekeren on the "hot line": "For the record, several of the hostages—correction officers—appeared to have been dead for some time before the assault."

Van Eekeren replied to Woods: "The record to be released to the press now shows that several of the hostages that were dead have been dead for a long time prior to the assault."

Reports from distraught troopers and correction officers that they had seen a hostage castrated just as the assault was launched found their way to officials at Attica. In reality, the hostage had suffered a serious gunshot wound in the groin, but officials did not wait to verify the reports and Commissioner Dunbar told legislators touring the prison that the "castration" had been filmed from a helicopter.

Many other public officials also spoke out hastily on Monday. Governor Rockefeller's postassault statement referred to "militants who . . . forced a confrontation and

²State Police took color Polaroid "mug shots" of the dead hostages and inmates which, together with fingerprints, were used to identify the dead.

carried out cold-blooded killings . . ." Senator James Buckley of New York commented: "The wanton murder" of the hostages was "an act of barbarism pure and simple . . . punishment of those responsible must be swift and authoritative." A consistent advocate of prisoners' rights, New York City Board of Corrections Chairman William vanden Heuvel, could only say: "When you treat people like animals, you have to expect them to act like animals."

Autopsy Reports

Correction officials' ready acceptance of Monday's rumors stood in contrast to their wary resistance to Tuesday's facts.

During most of Monday, the bodies of 9 dead hostages and 28 dead inmates lay in the prison's maintenance building while the State Police sought to make arrangements for autopsies. At approximately 10:30 P.M. Monday, the bodies were taken out of the prison for autopsies in Batavia, Rochester, and Buffalo. An official at Attica reported to Albany that he had overruled the State Police's plans to take all the bodies out in trucks. Instead, he arranged for hearses to transport the hostages' bodies to the medical examiners.

About midnight, Dr. John F. Edland, the 36-year-old Medical Examiner of Monroe County in Rochester, received 27 bodies for autopsy: 8 hostages and 19 inmates. In anticipation of a long night's work, Dr. Edland had called in his assistant, Dr. George R. Abbott, and several off-duty attendants and secretaries. Guards surrounded the building, and about 40 State Policemen waited in the corridors for the autopsy findings. Dr. Edland remembered that the troopers were in an ugly mood.

Dr. Edland and Dr. Abbott found stab wounds and slashed throats on two of the dead inmates—but not on the eight dead hostages. Some bore the marks of beatings, but all had died of gunshot wounds. One hostage had a cut on the back of his neck. The ninth hostage, autopsied in Batavia by Dr. Muhtseen Veznedaroglu, was also found to have died of gunshot wounds.

The story of the autopsy findings was first obtained by Dick Cooper, a reporter from the *Rochester Times Union* in a conversation with an employee of Dr. Edland's office around noon on Tuesday, and the story he and John

Mahachek, another *Times Union* reporter, filed concerning the autopsies won them Pulitzer prizes.

Later in the afternoon, Edland held a news conference and confirmed the *Times Union's* account.

The first reports of the autopsy findings to reach officials at Attica and in Albany were brushed aside: "We have eyewitness accounts and State Police films," one official assured another over the "hot line." Later in the day, officials at Attica heard reports that the autopsy findings would say hostages were killed by "foreign bodies or projectiles," which news accounts attributed to guns. But Francis Daley, the Department's Budget Director, confidentially told Commissioner Van Eekeren: "The coroner's report will show [the hostages] died of slit throats, and the gunshot wounds were caused by zip guns. Also there are atrocities. It's up to you, Wim, whether you give this to the press." It was given to the press from Albany Tuesday afternoon:

We have eyewitnesses who say the hostages' throats were cut—and we believe their reports . . . We have unconfirmed reports that the prisoners had zip guns. We have not yet seen the coroner's report and have not been able to study it . . . but from our point of view we now note two things: (1) we have eyewitnesses that saw throats cut and (2) there were various types of arms in the possession of the inmates that could have inflicted bullet-type wounds.

Dr. Edland quickly refuted the possibility that zip guns caused the wounds and in fact, the State Police found no zip guns anywhere at Attica. But state officials continued to explore ways to dispute the autopsy reports. Houlihan spoke with Van Eekeren on Tuesday afternoon and said that "foreign projectiles" in the autopsy reports might be consistent with the reports that "many, many bombs, anti-personnel type," had been found in D yard after the assault. Some may have gone off, Houlihan speculated. In addition, Houlihan told Van Eekeren that a "top pathologist was being flown up to check the findings of this clown up here." Troopers were also interviewing hostages, Houlihan said, in order to determine whether they had been dressed in inmates' clothing.

Late Tuesday night, two officials discussed on the "hot line" the State Police investigation of a tip, which one

described as having come from a "friendly Buffalo judge," that Dr. Edland was a "radical left-winger." When told by the Commissioner of the "tip," Dr. Edland was amused by "those jerks." He told the Commission that he was a registered Republican, had been a "gung-ho" lieutenant in the navy, and had voted for Barry Goldwater in the 1964 presidential election.

Dr. Bradley, the Corrections Department's Medical Director, called Dunbar from New York City on Tuesday night and requested permission to bring upstate with him a second "top pathologist" from New York City to review the autopsy reports. Dunbar agreed, if Bradley could assure him the pathologist was "politically clean." Dunbar referred to a possible connection between the pathologist and Mayor Lindsay of New York City. "It's not a medical matter," Dunbar explained, "it's a political-administrative thing." Dunbar also said he had instituted an FBI check of observers' committee members he believed to be "extreme radicals" for "future reference."

The "top pathologists," Dr. Henry Seigal, Medical Examiner of Westchester County, and Dr. Michael Baden, acting chief Medical Examiner of New York County, confirmed the autopsy findings. Before Dr. Edland's findings were confirmed, the director of a funeral home, preparing one hostage's body for burial, said he could find no bullet holes in the body. He was wrong. The autopsy examination had revealed a bullet lodged near the hostage's heart.

Trying to Manage the News

Once it had been established that all nine hostages died from the gunfire of peace officers during the assault, news media pressed defensive officials for explanations. "Go on," Van Eekeren told one reporter in exasperation, "make us the murderers and the other guys Sunday school teachers."

Houlihan responded to press inquiries by saying that, while officials had heard the medical reports, there had been no "formal notification" from the medical examiners. Officials were investigating, he added.

By Tuesday night no doubt remained. Officials finally acknowledged the autopsy findings. At 10:45 P.M. Tuesday, Oswald spoke to newsmen and confirmed the hostages

had been killed by gunshots. Oswald also commented on the earlier accounts of the hostages' deaths: "There may have been unauthorized reports of slashed throats," he said. "But you know I never told you that." He also related that the autopsy reports showed "slash marks on throats and backs of necks, puncture wounds, apparent broken arms, broken faces, and abrasions on nearly every hostage." Oswald told newsmen that the inmates had "dressed all hostages in prison garb to ensure difficulty of identification" between inmates and hostages . . . [the hostages] could very well have been used as shields or forced forward into gunfire," he added.

Harried officials, angry with what they believed was the media's attitude of "siding with the inmates," tried to remind the public of the uprising and the inmates' prior records. Houlihan announced on Tuesday afternoon that five National Guard teams had been dispatched to Attica with mine detectors to search for weapons which might have been buried in D yard by the inmates. He also told Van Eekeren that Robert Douglass, the Governor's Secretary, had advised him to include crimes and sentences on any list of dead inmates released. This would show, one official commented, "what kind of guys we are dealing with."

On Wednesday, Deputy Attorney General Robert E. Fischer, who had been appointed the previous day by Governor Rockefeller to investigate and prosecute crimes committed during the uprising, ordered a blackout on officials' statements. After that, Houlihan referred all press inquiries to Fischer, and Oswald canceled a news conference which had been scheduled at the urging of Robert Douglass to counter unfavorable press treatment of the state's action on Monday.

There were two notable exceptions to the blackout. On Thursday, Deputy Attorney General Fischer held a joint news conference at Attica with Major Monahan of the State Police. They described the assault and released pictures of inmates' weapons found in D yard, including two gas guns, pipes, bats, a sword, knives, scissor halves, screwdrivers, and hammers.

Governor Rockefeller also held a news conference on Thursday. He speculated that hostages may have been caught in a "cross fire," when, as he explained, the troopers converged on the hostages from four different directions.

Governor Rockefeller concluded that, from what he knew, the killing of the hostages was "justifiable homicide."

Identifying the Dead

Prison officials were not able to identify the last 30 dead inmates until Thursday, September 16. It was symbolic of the inmates' anonymity at Attica.

Correction officers were first asked to identify the dead inmates. Some looked at the bodies in the improvised morgue, others examined dead inmates' mug shots. But correction officers disagreed on the identity of most bodies, and on Monday night, and again on Tuesday, a State Police investigator was assigned to walk around the cell-blocks showing "mug" shots to inmates. When tentative identifications were made, the dead inmates' prison records were pulled, in order to compare photographs and fingerprints. It was a slow process, which obviously could have been accomplished earlier if more officers had been assigned to the task.

By 3:00 P.M. on Tuesday, the first 16 dead inmates had been identified and their names were released to the press. Around 1:00 P.M. on Tuesday, officials at Attica received an urgent call from the Intelligence Unit of the New York City Police Department. The police had received information that ten policemen would be killed for each dead inmate. The police requested the names and last known addresses of dead inmates together with the names and addresses of people in the inmates' approved correspondence lists. Officials on the "hot line" discussed assigning several "experienced" men to the job.

By Thursday, all 30 dead inmates had finally been identified. The anxious families of many inmates had spent the intervening days seeking information, and Albany headquarters of the Corrections Department finally publicized a telephone number where families could receive news. A few dead inmates had no next of kin; their bodies were later claimed for burial by the Fortune Society, an organization of ex-inmates.

Although officials had no difficulty in identifying dead hostages, no plans were made in advance of the assault for informing their families of their fate. A few minutes after the assault, Karl Pfeil, Attica's Assistant Deputy Superintendent, went to his office, which overlooked the

front of the administration building where hostages were being carried out to waiting ambulances. Relying on his own observations and the reports of correction officers hurrying in and out of his office, Pfeil began calling hostages' families. He saw Captain Wald, his next-door neighbor, come out alive, and happily called Mrs. Wald. A correction officer told him another hostage had survived, and Pfeil called the hostage's family with the good news. But Pfeil discovered a few hours later that he had been wrong. Around 1:00 P.M. he went to identify dead hostages lying in the Maintenance Building. He saw there the body of the man whose family he had called earlier to report that the man was alive. He called the family again shortly thereafter with the true report. At least one wife of a surviving hostage was twice sent to the wrong local hospital before finally being reunited with her husband.

Monitoring the Prison

Although lawyers had convinced Federal Judge John T. Curtin on Monday night to issue a temporary order requiring the admission of lawyers and doctors to Attica, the judge withdrew his order after a hearing in Buffalo on Tuesday morning. In the succeeding weeks and months, Legal Aid attorneys, Professor Herman Schwartz of the University of Buffalo, and lawyers retained by several inmates' families strenuously pursued Federal and state court actions to protect the inmates' constitutional rights. On December 1, 1971, a Federal Court of Appeals held that evidence of reprisals and harassment in the days following the uprising in September entitled the inmates to an injunction against any recurrence.⁸

Concerned about reports of continuing reprisals, Governor Rockefeller on Tuesday, September 14, asked Justice Goldman, the presiding Justice of the Appellate Division's Fourth Department, to name a panel of impartial observers for the purpose of monitoring the prison.

Five men were named on Wednesday by Justice Goldman: Donald H. Goff, General Secretary of the Correctional Association of New York, Clarence B. Jones, who

⁸*Inmates of Attica Correctional Facility v. Rockefeller*, 453 F. 2d 12 (2d Cir. 1971).

had served on the observers' committee and was Editor-Publisher of the *Amsterdam News*, Austin MacCormick, Executive Director of the Osborne Association, Louis Nunez, National Executive Director of Aspira of America, and Robert P. Patterson, Jr., a member of the New York City law firm of Patterson, Belknap & Webb, who had also previously served as the President of the Legal Aid Society. The panel was asked to safeguard the inmates' constitutional rights, which the panel interpreted to include other human and legal rights. It held its first meeting at the prison on Friday,⁴ and it found a great deal to do in the ensuing two months.

On Tuesday in Federal court, Commissioner Dunbar had testified that arrangements were being made for doctors to examine all 1,281 inmates who had been in D yard. However, when the Goldman Panel toured the prison on Friday, September 17, it found that only those inmates who had complained of injuries had been examined. The panel prevailed on prison officials to arrange another medical examination, because it was concerned that some inmates might have been afraid to come forward. The panel also believed that a record of all inmates' physical conditions would deter the alleged reprisals complained of by the inmates to panel members when they toured the prison.

Upon completion of the Goldman Panel doctors' examinations on September 21, Dr. Bradley, head of medical services of the Corrections Department, Commissioner Dunbar, and Goldman Panel members held a news conference. Dr. Bradley announced that the doctors had found no wounds or bruises that had been inflicted since the inmates' revolt was quelled on the 13th. He did not say, however, that many inmates who had been in D yard complained to the Goldman Panel doctors of physical reprisals and exhibited to the doctors evidence of the reprisals they had suffered during the rehousing. (The findings of the doctors are summarized in the preceding chapter.)

⁴The panel met with state officials and also made a brief tour of Attica. Panel members encountered Legal Aid lawyers at the front gate to Attica, who complained of the inadequate interviewing facilities they had been given by officials. They also briefed the panel on major inmate grievances, speeding the orientation of the panel to the problems it would face.

During its orientation tour of the prison on Friday, the Goldman Panel was told by Deputy Attorney General Fischer that State Police investigators were advising inmates of their constitutional rights to consult legal counsel prior to questioning. After talking to several of the State Policemen conducting the interrogations, it was apparent to the Goldman Panel that adequate warnings were not being given to all inmates. Deputy Attorney General Fischer made his own inquiries after he was advised by the panel, and he reported to the panel that his oral instructions had not been followed. All questioning of inmates was suspended while written instructions advising the inmates of their rights were prepared.

The Goldman Panel also concluded that the state's investigators were concerning themselves solely with possible crimes committed by the inmates. No effort was being made to ascertain the truth of the charges by inmates against law enforcement officers concerning reprisals in the aftermath. After discussions between the panel and Deputy Attorney General Fischer, he agreed to ask the Civil Rights Division of the Justice Department to investigate the inmates' charges. The report subsequently prepared by the Goldman Panel stated, "When no action [by the Justice Department] seemed to be forthcoming, the panel asked the governor to request the Attorney General [of the United States] to order such an investigation. The Governor complied with this request on October 5, 1971. . . . A Justice Department spokesman stated that department lawyers estimated the investigation would take two to three months." In April 1972, the Commission was informed by a Justice Department spokesman that the investigation "was continuing." As of September 1972, no complaint had been filed by the Justice Department nor had any evidence been presented to a Federal grand jury by government lawyers.

The Goldman Panel was able to prompt action in other important areas:

- Transfers to alleviate overcrowding. Panel members were informed by prison officials at a meeting that several weeks would be required in order to reduce each cell's occupancy to one inmate. In A block, three men generally occupied one cell; two inmates slept head to foot on a narrow bed, and the third slept on the floor with a blanket and no mattress. The plan for reducing

the overcrowding in A block, in the words of the panel, "did not seem defensible," and correction officials finally agreed they could achieve one-to-a-cell housing by September 22.

- Personal property. The panel was instrumental in halting the wholesale destruction of inmates' property (see pp. 453-54).
- Parole. The panel found that "some prisoners scheduled for parole were apparently being subjected to administrative charges of an insubstantial nature to prevent improperly their parole." Where it learned of several such cases from inmates, the panel was able to secure an investigation by the Parole Board which ordered the inmates' release.

When it completed its work and issued a report on November 15, 1971, the Goldman Panel remarked:

It is the panel's conclusion that, although the scars of Attica are still self-evident and although the ill-feelings between inmates and correctional officers still smolder, the resumption of normal routine . . . for over 80 percent of the present population marks an end to the traditional period contemplated when the panel was appointed. The danger of harassment of inmates continues, however, and the likelihood of unjust retaliatory and inflammatory acts in parole and other areas still remains . . .

Months Later

This Commission entered Attica shortly after the Goldman Panel left in November 1971, and remained there on an almost daily basis for over five months, until May 1972. During those months, reminders of the uprising were everywhere: the still unrepaired damage to B and D blocks; the construction of new gun towers in the yard to meet the security demands of officers; shotgun pellet marks on the beams in C tunnel, where troopers fired almost 100 rounds; the hate and fan mail received by the Superintendent; the hostility on the faces of some inmates and officers; and the over 60 inmates confined to HBZ and 6 company for their alleged leadership of the uprising.

B and D blocks had been closed for repairs, and the inmate population had been reduced to under 1,200 men through transfers and releases. For those who remained, the half life of Attica had returned to its monotonous

routine; even more cell time was made necessary by the disruptive effect of the construction work. For the inmates confined to HBZ as the Wyoming County grand jury began hearing evidence which could lead to their indictments, each day consisted of 23 hours of cell confinement and 1 of solitary exercise in a small enclosure. They had lived by this routine since the uprising was ended.

There were no signs of reconciliation between the officers and inmates.

Eleven hostages were dead. Another 3 did not return to work, and 1 was still hospitalized by the severe gunshot wounds he received in the assault.

Twenty-eight inmates were dead. For the others, memories of a heavy gunfire barrage in D yard, friends torn open by shotguns and killed by random bullets, beatings, afterward, and the stark racial hatred and curses by law enforcement officers during the aftermath confirmed for many what they had come to expect from the law.

Commissioner Oswald stated after the uprising that he did not consider himself bound by the 28 Points, since the inmates had not released the hostages unharmed. However, he said he would not be deterred from continuing his plans for improvements. Despite vows of reform, appointment of commissions, visits by legislators and special committees, there was no improvement in conditions at Attica for months. There was no new programming to fill the long, idle hours; the menus seemed the same; the only available television sets (except in E block) were in the yards; the hearings before the Parole Board still lasted an average of five minutes; and Attica inmates were released each week with the same stiff, prison-made suit, a bus ticket, and \$40.00. Some inmates released from Attica after the uprising had already begun to return as parole violators.

The improvement of the officer-inmate ratio, which correction officers had been demanding in the months before the uprising, occurred as a consequence of the hiring of new correction officers and the reduction of the inmate population. But officers remained insecure, with the fresh memory that the iron gates did not protect them, and that they could be overpowered and taken hostage at any time.

Many of the correction officers were bitter: toward Oswald for having negotiated with the inmates; toward their superiors for undermining their authority by not backing them up in matters of discipline; toward the Legislature for not appropriating sufficient funds to maintain security; toward the press for siding with the inmates; toward the state's prosecutors because indictments against inmates who participated in the uprising were slow; toward this Commission, which they considered a waste of money; and toward the public for its uncaring apathy concerning prisons and their difficult job. One sergeant captured their mood in April 1972 with his testimony:

Until the voters in New York State or until the legislators decide that it is a necessary thing, that prison reform is necessary and they are willing to pay for it, we're in trouble.

I think all of us felt if nothing else came out of Attica, that moneys would be made available for programming, and new institutions would be built, and up until this point we have seen very little evidence of it.

The families of the dead were forgotten by the state. Some lawsuits were commenced by families of dead inmates, and the dependents of dead hostages had to struggle with the state to maintain hospitalization insurance at the same group rates available to the remainder of the correction officers' families.

A group of the observers' committee met sporadically, in fulfillment of their pledge on the day of the assault not to forget Attica. A package of reforms recommended by a select committee appointed to study the entire state prison system was endorsed by Commissioner Oswald and the Governor and enacted into law in April 1972.

By August 1972, when the Commission paid its last visit to Attica, things had begun to change. On August 1, the inmate population stood at 1,308—731 white, 572 black.⁵ There were 416 correction officers, 19 of whom were black and Spanish-speaking recruits who had commenced work July 1. In the visiting room, the screen had been removed and vending machines had been in-

⁵Attica, unlike the department statewide, does not maintain statistics on the number of Spanish-speaking inmates in the prison population. They are classified as either black or white.

stalled. Visiting children were permitted to sit with inmates during visits and embraces at the beginning and end of visits were sanctioned. Restrictions on correspondence and literature were further relaxed. The first shipment of new well-fitting lightweight olive-green summer clothing had been distributed to inmates and was described by one of them as being "really beautiful." Since early summer, inmates had been able to go to the yard for evening recreation until dark one night in four; there were new color television sets in the yard. Inmates were now permitted two showers per week and were given fresh fruit daily. All but 17 of the inmates who had been in HBZ had been released or dispersed to other prisons throughout the state. And in the yards, the gun towers had been completed and were manned during recreation periods.

Some changes were still to come: a new inmate rule book was on its way; telephone booths for use by inmates to make one collect call per month were in place, but the phones had not yet been installed; new internal communications equipment was still on order; a new commissary had been built, but not yet opened; (when opened, it would offer for the first time soft drinks and commercial electric immersion heaters ["droppers"] for 49¢); Band D blocks and the school had been renovated, but were not yet back in use.

Some things had not changed: 61 percent of the inmates were still earning 35¢ a day or less, and 49 percent still made only 25¢; the prison doctors still conducted sick call in the same manner, but without the screen; as prepared, the food was still, in one inmates words "atrocious"; idleness and rumor were still the dominant facts of inmate life; except for the gun towers, the improvements in physical security demanded by correction officers had not been instituted.

In March 1972, the inmates had been permitted to elect a liaison committee which established a formal channel of communication with the institution concerning grievances and common problems. Superintendent Mancusi had resigned, in part because of his disagreement with this approach, and a new superintendent, Ernest Montanye, formerly the head of the state's minimum security work camps, replaced him. Montanye had met several times with the committee and granted its requests for changes

such as allowing inmates to leave lights and cell radios turned on all night. But the inmate grievance committee, while providing a forum for discussion of complaints, gave inmates no sense of participation in the important decisions affecting their lives. The elected representatives were frustrated in attempts to establish the committee's stature: they even had to struggle to obtain a typewriter to prepare their own constitution and bylaws.

By August 1972, five members of the committee had been transferred from Attica to other institutions, two had been released from prison, and nine had quit, leaving less than half of the original membership. Those who remained found it increasingly difficult to retain the respect of newer and younger inmates. Less patient inmates began asking what had become of the 28 Points to which Oswald had agreed in D yard and talking about their readiness to risk their lives once again if change did not come.

The underlying tension between the inmates' demands for recognition as humans and their captivity behind stone walls and iron bars had surfaced once again.

In July a decision by prison administrators—purely for budgetary reasons—to discharge a new female nurse (who had achieved wide popularity with the inmates) provoked a strike by 900 of the 1,200 inmates. Inmates again demanded that Commissioner Oswald come to Attica and refused to end their strike for four days, even after the nurse was reinstated. The administration's response was to declare a state of emergency and close the prison to outsiders. Lawyers for the inmates, headed by Professor Herman Schwartz, returned to Judge Curtin's court in Buffalo to seek an order reopening the institution.

Thus, the cycle of misunderstanding, protest, and reaction continues, and confrontation remains the only language in which the inmates feel they can call attention to the system. The possibility that the Attica townspeople will again hear the dread sound of the powerhouse whistle is very real.

CHRONOLOGY OF EVENTS

September 8-13, 1971

Wednesday, September 8

- 3:45 P.M. Inmate horseplay in A yard leads to a confrontation between officers and inmates. A lieutenant is struck by an inmate.
- 5:30 P.M. Two inmates identified as involved in A yard incident are removed to HBZ amidst angry reaction of fellow inmates on their galleries. A correction officer is struck in head by a full soup can thrown by an inmate on 5 company.

Thursday, September 9

- 8:20 A.M. Inmate who threw soup can is released from keep-lock by fellow 5 company inmates during lineup for breakfast. Entire company proceeds to breakfast.
- 8:50 A.M. A lieutenant approaches to talk with 5 company in A tunnel as they return from breakfast. He is struck and knocked to the floor by inmates.
- 9:05 A.M. Times Square gate is broken down by inmates. Officer on duty is knocked unconscious. Inmates have access to all four main cellblocks.
- 9:15 A.M. Prison alarm is sounded.
- 10:30 A.M. Twelve hundred eighty-one inmates and 43 hostages assemble in D yard. Inmates are in control of all five cellblocks and six other buildings.
- Mid-afternoon Correctional personnel reestablish control of areas rebelling inmates have deserted. Inmates hold B and D blocks, the exercise yards, and the tunnels and catwalks.
- 2:00 P.M. Commissioner Oswald arrives at Attica.

- 3:00 P.M. Arthur Eve and Herman Schwartz enter D yard to speak with inmates.
- 4:25 P.M. Commissioner Oswald enters D yard with Eve and Schwartz. He speaks with inmates for almost an hour and agrees to their demands for food and water and presence of citizen observers.
- 5:45 P.M. Oswald, Eve, and Schwartz return to yard accompanied by reporters. Inmates present Oswald with "Practical Proposals." They talk for an hour.
- 7:30 P.M. Deputy Commissioner Dunbar and others talk with inmates in D yard. Inmates demand an injunction against reprisals.
- 11:45 P.M. Members of Governor Rockefeller's staff arrive at Attica. Professor Schwartz flies to Vermont to obtain Federal court injunction protecting inmates from reprisals and administrative sanctions.

Friday, September 10

- 11:25 A.M. Oswald, observers, and the press enter D yard with injunction. Inmates question its validity and rip it up.
- 1:00 P.M. Inmates in D yard hold block elections for spokesmen to participate in negotiations.
- 5:00 P.M. Thirty-three observers have assembled at Attica and are briefed by Oswald and other officials.
- 7:00 P.M. Observers pay brief visit to D yard.
- 11:30 P.M. Observers' committee returns to D yard to learn inmates' demands.

Saturday, September 11

- 5:00 A.M. Observers return to administration building and elect six-member executive committee.
- Morning Three observers obtain disclaimer of vindictive prosecutions from Wyoming County District Attorney.
- Afternoon Executive committee of observers negotiates with Oswald. Twenty-eight "Proposals Acceptable to Commissioner Oswald" result. News of Officer William Quinn's death is received.

- 8:30 P.M. Bobby Seale enters Attica.
- 9:00 P.M. Observers enter D yard with 28 Points. Seale makes noncommittal remarks and leaves. Some observers remain for several hours to discuss points with inmates.
- 11:30 P.M. Inmates reject a settlement based on 28 Points.

Sunday, September 12

- 11:00 A.M. Observers' committee issues public appeal to Governor Rockefeller to come to Attica.
- 1:20 P.M. Observers Wicker, Jones, Badillo, and Dunne telephone Governor Rockefeller asking him to meet with them at Attica.
- 2:10 P.M. Commissioner Oswald issues statement to inmates, urging acceptance of 28 Points, requesting release of hostages and proposing negotiations on neutral ground.
- 3:00 P.M. Nine observers enter D yard after signing waivers releasing the state from responsibility for injury or death.
- 6:00 P.M. Oswald speaks briefly to inmates in the DMZ.
- 9:30 P.M. Oswald and observers hold final discussion. Oswald telephones Rockefeller and asks him to come to Attica. Rockefeller reaffirms earlier decision not to come.

Monday, September 13

- 7:40 A.M. Commissioner Oswald's ultimatum is read to inmates in D yard.
- 9:00 A.M. Eight blindfolded hostages are brought up to A and B catwalks. Inmate "executioners" hold knives at their throats or torsos.
- 9:30 A.M. Inmates reject ultimatum.
- 9:46 A.M. Assault on D yard begins with a gas drop.
- 9:50 A.M. State Police helicopter broadcasts surrender announcement to inmates.
- 9:52 A.M. Firing stops. Ten hostages and 29 inmates are
dead or dying.

THE PARTICIPANTS IN THE EVENTS AT ATTICA

- Abbott, George R. (Dr.)—assistant Monroe County medical examiner; helped perform autopsies on dead hostages
- Almeter, Don—Attica correction officer; taken hostage in metal shop 9/9
- Andersen, Murray (Dr.)—surgeon, Meyer Memorial Hospital, Buffalo; assisted in care of wounded after assault
- Anderson, David—Rochester Urban League; observer
- Baden, Michael (Dr.)—Acting Chief Medical Examiner, New York County; confirmed hostage autopsy findings
- Badillo, Herman (Representative)—United States congressman; observer
- Baker, John C. (Maj. Gen.)—Commander, New York Army National Guard; arrived at Attica 9/12 to oversee National Guard operations
- Barkley, Elliot James ("L. D.")—Attica inmate; spokesman during uprising, killed in assault 9/13
- Benedict, Bill—orderly, St. Jerome Hospital, Batavia; one of first medical personnel to enter D yard after assault
- Bogart, Raymond—Attica correction officer; taken hostage in A block, released from D yard 9/9 because of serious injuries
- Boyle, Thomas—Attica correction officer; injured on 5 company 9/8 by soup can thrown by inmate
- Bradley, James (Dr.)—Chief of Medical Services, Department of Correctional Services
- Champen, Roger—Attica inmate; spokesman during uprising
- Chandler, Marvin (Rev.)—Rochester minister; observer
- Christian, Joseph (Lt.)—State Police officer; wounded in D yard by police gunfire 9/13

- Clor, Lamar (Lt.)—Attica correction officer; resecured power-house area 9/9
- Clute, James—Attica correction officer; taken hostage in B block, released from D yard 9/9 because of serious injuries
- Cochrane, James (Sgt.)—Attica correction officer; led patrol which retook parts of institution 9/9
- Conway, James—Attica correction officer; stationed at juncture of mess hall and metal shop corridors 9/9
- Cudmore, John C. (Dr.)—Major, National Guard; senior medical officer with National Guard units at Attica, assisted in care of wounded after assault 9/13
- Cunningham, Edward (Sgt.)—Attica correction officer; taken hostage in metal shop 9/9, killed in assault 9/13
- Curtin, John—United States District Court Judge; signed injunction against administrative reprisals 9/9
- Curtiss, Robert (Lt.)—Attica correction officer; involved in A yard incident 9/8, taken hostage in A block 9/9
- Daley, Francis—Director of Budget and Finance, Department of Correctional Services
- Dan, Stewart—reporter, WGR-TV, Buffalo; spoke with inmates Hess and Schwartz in D yard 9/10
- D'Archangelo, John—Attica correction officer; taken hostage in B yard 9/9, killed in assault 9/13
- Dawson, Roger—Attica correction officer; stationed at power-house and assaulted by inmates 9/9
- Delaney, Richard—Attica correction officer; taken hostage in C block, released from D yard 9/9 because of serious injuries
- Dewer, Leroy—Attica inmate; involved in A yard incident and taken to HBZ 9/8
- Dominiak, Peter—Attica correction officer; E block hall captain 9/9
- Douglass, Robert—Secretary to Governor Rockefeller; arrived at Attica as the Governor's representative 9/11
- Dryer, John—Attica correction officer; supervisor of tailor shop 9/9

Dunbar, Walter—Executive Deputy Commissioner, Department of Correctional Services

Dunne, John—New York State Senator, Nassau County; Chairman of Senate Committee on Crime and Correction; observer

Eckert, Mark—Attica civilian employee; worked in maintenance building 9/9

Edland, John (Dr.)—Monroe County Medical Examiner; performed autopsies on dead hostages, and revealed that they were killed by gunfire

Edwards, Dick—reporter, *Amsterdam News*, entered D yard 9/12

Elmore, Jack (Sgt.)—Attica correction officer; assisted in removal of inmate Lamorie to HBZ 9/8

Emery, James L.—New York State Assemblyman, Geneseo; observer

English, Jack (Sgt.)—Attica correction officer; chart officer, led patrol which retook parts of institution 9/9

Eve, Arthur O.—New York State Assemblyman, Buffalo; observer

Fargo, Richard—Attica correction officer; taken hostage in B block 9/9

Fischer, Robert E.—New York State Deputy Attorney General; appointed by Governor Rockefeller to investigate and prosecute crimes committed during uprising

Fitch, Tony—Washington lawyer; observer

Florence, Franklin (Min.)—former president, FIGHT (Rochester community organization); observer

Fosen, Robert H.—Assistant Deputy Commissioner, Department of Correctional Services

Gaiter, William—member of BUILD (Buffalo community organization); observer

Garcia, Robert—New York State Senator, Bronx; observer

Garcia, Rudy—reporter, *New York Daily News*; entered D yard 9/12

Gardner, Michael (Dr.)—Attica veterinarian; entered D yard after assault and assisted in care of wounded

Goff, Donald H.—General Secretary, Correctional Association of New York; member of Goldman Panel

Goldman, Harry D.—Presiding Justice, Appellate Division, Fourth Department; named impartial observers to monitor Attica 9/14

Hanson, Warren (Dr.)—surgeon, Wyoming County Hospital, Warsaw; provided medical care to inmates and hostages in D yard 9/9–9/11

Hardie, Elmer—Attica civilian employee; taken hostage in metal shop 9/9, killed in assault 9/13

Head, Don—Attica correction officer; coal gang supervisor, assaulted by inmates 9/9

Hellerstein, William—lawyer, Legal Aid Society; served court order on Attica officials 9/14

Herrick, Henry—Attica correction officer; assigned to C block 9/9

Hess, Kenneth—Attica inmate; killed by other inmates during uprising

Hicks, Thomas ("Tommy")—Attica inmate; member of 5 company, killed in assault 9/13

Hobbs, Ernest—Attica inmate; defended garage 9/9

Houlihan, Gerald—Public Information Officer, Department of Correctional Services

Huehn, Elmer—Attica correction officer, A block hall captain; taken hostage in A block 9/9

Hurd, T. Norman (Dr.)—Director of State Operations; arrived at Attica as Governor Rockefeller's representative 9/9

Ingram, James—Detroit journalist; observer

Jackson, Kenneth—officer of Fortune Society; observer

James, Louis—District Attorney, Wyoming County; met with observers 9/11, signed letter promising no indiscriminate prosecutions

- Jennings, Don—Attica correction officer; taken hostage in B block, released from D yard 9/9 because of serious injuries
- Johnson, Lynn—Attica correction officer; taken hostage in metal shop 9/9
- Jones, Clarence—publisher of *Amsterdam News*; observer, member of Goldman Panel
- Jones, Herbert—Attica civilian employee; taken hostage in metal shop 9/9, killed in assault 9/13
- Kabel, John—orderly, St. Jerome Hospital, Batavia; one of the first medical personnel to enter D yard after assault
- Kelsey, Gordon—Attica correction officer; escorting 5 company when uprising broke out, released from A block by Muslim inmates 9/9
- Kenyatta, Jabarr—observer
- Kimaid, Emil (Dr.)—Chief of Disaster Relief Program, St. Jerome Hospital, Batavia; arranged to receive wounded at hospital
- Kirkwood, Donald—orderly, St. Jerome Hospital, Batavia; one of the first medical personnel to enter D yard after assault
- Kirwan, William—Superintendent, New York State Police
- Kline, Frank—Attica correction officer; taken hostage in C block 9/9
- Knickerbocker, Gordon—Attica civilian employee; taken hostage in metal shop 9/9
- Kozlowski, Ronald—Attica civilian employee; taken hostage in metal shop 9/9
- Krotz, Paul—Attica correction officer; taken hostage in C block 9/9
- Kunstler, William—lawyer, Center for Constitutional Rights; observer
- Lamorie, Ray—Attica inmate; taken to HBZ after allegedly taking part in A yard incident 9/8
- Lefkowitz, Louis J.—Attorney General, New York State
- Lewis, Richard—Attica correction officer, B block hall captain; taken hostage in B block 9/9, killed in assault 9/13

- Lyons, Larry—Attica correction officer; taken hostage in D block 9/9
- MacCormick, Austin—Executive Director, Osborne Association; member of Goldman Panel
- McGowan, Thomas—New York State Senator, Buffalo; observer
- Mancusi, Vincent—Superintendent of Attica Correctional Facility in September 1971
- Marcinkiewicz, Eugene (Rev.)—Catholic chaplain at Attica; entered D yard 9/10
- Maroney, Richard (Lt.)—Attica correction officer; involved in A yard incident 9/8
- Matthew, Alfredo—Superintendent, Community School Board No. 3, New York City; observer
- Melven, Donald—Attica correction officer; released from A block by Muslim inmates 9/9
- Melville, Samuel—Attica inmate; notorious as "mad bomber," member of 5 company, killed in assault 9/13
- Miller, Edward—Attica civilian employee; taken hostage in metal shop 9/9
- Miller, Fred—Attica civilian employee; taken hostage in metal shop 9/9
- Miller, John C.—Chief Inspector, New York State Police; ranking State Police officer on scene 9/13
- Mills, Allen—Director, Division of Industries, Department of Correctional Services
- Mitzel, Al—Attica civilian employee; taken hostage in metal shop 9/9
- Monahan, John—Commander, Troop A, New York State Police, Batavia; devised assault plan
- Montanye, Ernest—Superintendent of Attica Correctional Facility since 2/15/72
- Monteleone, John—Attica civilian employee; taken hostage in metal shop 9/9, killed in assault 9/13

- Motley, Constance Baker—United States District Court Judge; requested as observer, author of widely known prison reform decision
- Murray, Carl—Attica correction officer; released from A block by Muslim inmates 9/9
- Nunez, Louis—National Director, Aspira of America; member of Goldman Panel
- O'Hara, A. C. (General)—Commissioner, Office of General Services; arrived at Attica as Governor Rockefeller's representative 9/9
- Ortiz, Juan ("Fi")—member of Young Lords party; observer
- Ortiz, William—Attica inmate; threw soup can which hit officer 9/8, freed from keeplock by other inmates 9/9
- Oswald, Russell G.—Commissioner, Department of Correctional Services
- Paris, Jose ("G. I.")—member of Young Lords party; observer
- Patterson, Robert P., Jr.—lawyer, Patterson, Belknap & Webb, New York City; member of Goldman Panel
- Pfeil, Karl—Assistant Deputy Superintendent, Attica Correctional Facility in September 1971
- Prave, Anthony—Attica correction officer; taken hostage in metal shop 9/9
- Privitera, Michael—Attica inmate; killed by other inmates during uprising
- Quinn, William—Attica correction officer; stationed in Times Square and assaulted by inmates 9/9, died of injuries 9/11
- Ranier, Eligius (Rev.)—Protestant chaplain at Attica, entered D yard 9/10
- Redfern, John—Attica civilian employee; teacher in E block 9/9
- Reger, Gerald (Sgt.)—Attica correction officer; taken hostage in C block 9/9
- Reisdorf, Fred—Attica correction officer; stationed in school 9/9
- Rivers, Mel—officer of Fortune Society; observer

- Robbins, Al—Attica civilian employee; taken hostage in garage 9/9
- Rockefeller, Nelson E.—Governor of New York State
- Rodriguez, Domingo—member of BUILD (Buffalo community organization); observer
- Rosecrans, Paul—Attica correction officer; released from A block by Muslin inmates 9/9
- Rothenberg, David—officer of Fortune Society; observer
- Sangiaco, Anthony—Attica correction officer; taken hostage in metal shop 9/9, released from D yard with heart attack symptoms 9/11
- Schenk, Worthington (Dr.)—Chief of Surgery, Meyer Memorial Hospital, Buffalo; supervised emergency treatment and arranged for evacuation of wounded inmates 9/13
- Schwartz, Barry—Attica inmate; killed by other inmates during uprising
- Schwartz, Herman—Professor of Law, State University of New York at Buffalo; observer
- Scott, Raymond (Min.)—Director, FIGHT (Rochester community organization); observer
- Seale, Bobby—Chairman, Black Panther party; observer
- Seigal, Henry (Dr.)—Medical Examiner, Westchester County; confirmed hostage autopsy findings
- Sellick, Eugene (Dr.)—Attica veterinarian; member of Lions Club group which set up food service for troopers 9/9–9/13, assisted in care of wounded after assault
- Shapiro, Howard—First Assistant Counsel to Governor Rockefeller; arrived at Attica as the Governor's representative 9/11
- Skoler, Dan—Washington lawyer; observer
- Smith, Art—Attica correction officer; taken hostage in D block 9/10
- Smith, Gene W. ("G. B.")—Attica correction officer; taken hostage in metal shop 9/9
- Smith, Michael—Attica correction officer; taken hostage in metal shop 9/9, wounded in assault 9/13

- Soto, Thomas—member of Prisoner Solidarity Committee; observer
- Steel, Lewis—vice-president, National Lawyers Guild; observer
- Steinbaugh, Nelson (Lt.)—supervisor of correction officers sent from Auburn Correctional Facility to assist Attica personnel
- Stenshorn, Dean—Attica correction officer; taken hostage in metal shop 9/9
- Sternberg, Paul G. (Dr.)—prison physician at Attica
- Stockholm, John—Attica correction officer; taken hostage in D block 9/10
- Strollo, Frank—Attica correction officer; taken hostage in commissary 9/9
- Swift, Walter ("Tiny")—Attica inmate; provided medical care to inmates and hostages in D yard during uprising
- Tepper, Julian—Washington lawyer; observer
- Tolbert, Alton—Attica correction officer; taken hostage in C block, released from A block by Muslim inmates 9/9
- Valone, Carl—Attica correction officer; taken hostage in metal shop 9/9, killed in assault 9/13
- Van Buren, Robert—Attica industrial superintendent; taken hostage in metal shop 9/9
- Van Eekeren, Wim—Deputy Commissioner, Department of Correctional Services
- Vincent, Leon J.—Deputy Superintendent, Attica Correctional Facility in September 1971
- Wald, Frank ("Pappy") (Capt.)—senior Attica correction officer; taken hostage in C block 9/9
- Walker, Gary—Attica correction officer; taken hostage in metal shop 9/9
- Walker, Wyatt T. (Rev.)—Urban Affairs adviser to Governor Rockefeller; observer
- Walkley, Frank—New York State Assemblyman, Castile; observer

- Watkins, Philip K. ("Curly")—Attica correction officer; taken hostage in D yard 9/9
- Wemple, Clark—New York State Assemblyman, Schenectady; observer
- Werner, Elon—Attica civilian employee; taken hostage in metal shop 9/9, killed in assault 9/13
- Werner, Ronnie—Attica correction officer; taken hostage in commissary 9/9, killed in assault 9/13
- Whalen, Harrison ("Red")—Attica correction officer, D block hall captain; taken hostage in D block 9/9, died October 1971 of wounds received in 9/13 assault
- Whiteman, Michael—Counsel to Governor Rockefeller
- Wicker, Tom—associate editor and columnist, *New York Times*; observer
- Williams, Selden T. (Dr.)—prison physician at Attica
- Wright, Dean—Attica correction officer; taken hostage in B yard 9/9
- Zymowski, Walter—Attica correction officer; taken hostage in B yard 9/9

Observers

- | | |
|-------------------------------|---------------------------|
| David Anderson | Jose ("G. I.") Paris |
| Representative Herman Badillo | Al Poder |
| Albert Capps | Mel Rivers |
| Reverend Marvin Chandler | Domingo Rodriguez |
| Senator John Dunne | Richard Roth |
| Assemblyman James L. Emery | David Rothenberg |
| Assemblyman Arthur O. Eve | Herman Schwartz |
| Tony Fitch | Minister Raymond Scott |
| Minister Franklin Florence | Bobby Seale |
| William Gaiter | Dan Skoler |
| Senator Robert Garcia | Thomas Soto |
| James Ingram | Lewis Steel |
| Kenneth Jackson | Julian Tepper |
| Clarence Jones | Senator Sidney von Luther |
| Jabarr Kenyatta | Reverend Wyatt T. Walker |
| William Kunstler | Assemblyman Frank Walkley |
| Senator Thomas McGowan | Assemblyman Clark Wemple |
| Alfredo Matthew | Tom Wicker |
| Juan ("Fi") Ortiz | |

Hostages

Don Almeter	Royal Morgan
Raymond Bogart	Carl Murray
James Clute	Anthony Prave
*Edward Cunningham	*William Quinn
Robert Curtiss	Gerald Reger
*John D'Archangelo	Al Robbins
Richard Delaney	Paul Rosecrans
Richard Fargo	Anthony Sangiacomo
*Elmer Hardie	Arthur Smith
Elmer Huehn	Gene W. Smith
Don Jennings	Michael Smith
Lynn Johnson	Dean Stenshorn
*Herbert Jones	John Stockholm
Gordon Kelsey	Frank Strollo
Frank Kline	Alton Tolbert
Gordon Knickerbocker	*Carl Valone
Ronald Kozlowski	Robert Van Buren
Paul Krotz	Frank Wald
*Richard Lewis	Gary Walker
Larry Lyons	Philip K. Watkins
Donald Melven	*Elon Werner
Edward Miller	*Ronnie Werner
Fred Miller	*Harrison Whalen
Al Mitzel	Dean Wright
*John Monteleone	Walter Zymowski

*deceased

Department of Correctional Services Staff

Dr. James Bradley
Francis Daley
Walter Dunbar
Robert H. Fosen
Gerald Houlihan
Allen Mills
Russell G. Oswald
Wim Van Eekeren

Governor Rockefeller's Staff

Robert Douglass
Dr. T. Norman Hurd
General A. C. O'Hara
Howard Shapiro
Michael Whiteman

Appendix A

Attica Expenditures¹ *Fiscal Year 1971-72²*

	AMOUNT	PERCENT
Personal Services	\$5,501,925.00	79.5 (of total budget)
Superintendent's office	143,944.45	2.08
Fiscal and stores	129,470.43	1.87
Supervision of inmates (correction officers)	4,287,857.45	61.98
Medical services	167,125.05	2.42
Clothing and laundry	19,577.61	0.28
Plant operation	219,178.54	3.17
Plant maintenance	58,454.33	0.84
Automobile and truck operation	22,666.37	0.33
Farm and grounds	28,445.13	0.41
Guidance activities	111,970.69	1.62
Religious counseling	34,966.81	0.51
Education director	18,861.56	0.27
Academic and general education	64,570.65	0.93
Vocational education	46,168.32	0.67
Physical and miscellaneous education	0	0
Institutional parole services	100,905.69	1.46

¹\$2.5 million from the construction fund and \$417,289 for emergency equipment was made available as a direct result of the uprising. These funds are not reflected in the figures given in the text.

²Although the fiscal year ended on March 31, expenses incurred prior to that time may be paid until August. The figures in this table represent moneys paid out as of April 28, 1972.

Figures do not include \$912,576 spent by the Division of Industries for the operation of the metal shop. Fuel, equipment, raw material, and wages for civilians and inmates were paid for out of this amount.

	AMOUNT	PERCENT
Other than Personal Services	\$1,416,411.00	20.5%
Supplies and Materials	755,378.42	12.14
Food	(428,558.39)	(6.19)
Fuel	(86,622.41)	(1.25)
Medical supplies	(42,196.16)	(0.69)
Clothing	(114,314.24)	(1.65)
General office supplies	(9,976.23)	(0.14)
Other supplies and materials (toweling, toilet paper, tools)	(158,087.40)	(2.29)
Contractual Services	483,867.75	6.99
Utilities	(106,561.93)	(1.54)
Telephone and telegraph	(21,009.93)	(0.30)
Miscellaneous (inmate wages, outgoing allowances, outside hospital bills)	(342,990.15)	(4.95)
Equipment rentals	1,790.82	
Equipment repairs	1,599.83	
Real-estate rentals	60.00	
		0.19
Postage and shipping	9,855.09	
Uniform allowances for officers	39,550.00	
Equipment Purchases	39,951.94	0.58
Office	(3,862.10)	(0.056)
Medical and dental	(803.75)	(0.012)
Other (maintenance & farm)		
TOTAL	\$6,918,336.00	

Appendix B

Characteristics of Inmates at Attica, 9/9/71 (percents)

RACE

	Total Popula- tion	D-Yard Popula- tion	Spanish- speaking	White	Black
White	36.6	25.3			
Black	54.2	63.8			
Puerto Rican	8.7	9.5			
Other	0.5	0.4			

AGE

	Total	D-Yard	Spanish- speaking	White	Black
60-	2.7	2.1	0.5	5.3	2.2
50-59	7.1	5.5	2.5	8.4	6.8
40-49	17.4	16.0	14.4	17.2	18.2
30-39	33.6	33.8	48.8	30.0	33.7
25-29	22.1	21.7	21.6	23.8	20.8
21-24	14.6	17.6	10.2	14.8	15.2
-21	2.5	3.3	2.0	1.5	3.1

LEVEL OF EDUCATION

	Total	D-Yard	Spanish- speaking	White	Black
Illiterate	2.4	2.6	9.7	0.5	2.5
Elementary school	11.6	13.0	17.4	10.0	11.5
Junior high school	36.7	37.0	44.5	38.1	34.2
Some high school	27.2	27.9	19.1	20.7	33.0
High-school graduate	7.7	6.7	5.1	9.4	7.0
High-school equivalency	8.2	7.4	2.6	12.8	5.9
Beyond high school	4.1	3.5	0.5	5.8	3.8
Not stated	2.1	1.9	1.1	2.7	2.1

COUNTY OF COMMITMENT

	Total Popula- tion	D-Yard Popula- tion	Spanish- speaking	White	Black
New York City	43.8	45.5	85.7	20.3	51.7
Erie (Buffalo)	14.3	15.3	3.6	13.3	16.5
Monroe (Rochester)	13.1	12.1	6.2	13.9	13.6
Onondaga (Syracuse)	6.1	6.9	0.5	7.8	6.0
Other	23.5	20.2	4.0	44.7	12.2

DRUG USE

User	28.0	32.0	45.6	15.1	34.0
Nonuser	71.5	67.5	54.4	84.3	65.5
Unknown	0.5	0.5	0	0.6	0.5

MARITAL STATUS

Never married	41.9	42.1	43.6	42.6	41.0
Married	23.0	21.8	19.5	27.4	20.7
Divorced/annulled	6.0	5.1	2.6	11.7	2.8
Widowed	2.7	2.3	1.5	2.9	2.8
Separated	10.1	10.8	6.2	8.2	12.1
Common-law	16.1	17.8	26.6	7.2	20.4
Unknown	0.2	0.1	0	0	0.2

ADULT CRIMINAL RECORD

Unknown	0.3	0.2	0.5	0.4	0
No prior record	11.7	11.5	11.7	14.8	10.0
No prior conviction	12.3	13.5	12.3	10.8	12.4
Conviction	75.7	74.8	75.5	74.0	77.6
no institutional commitment	(6.0)	(6.3)	(7.8)	(7.0)	(4.9)
local penal institution	(21.0)	(21.7)	(26.8)	(15.7)	(23.5)
state or Federal institution	(48.7)	(46.8)	(36.9)	(51.3)	(49.2)

CRIME FOR WHICH COMMITTED

	Total Popula- tion	D-Yard Popula- tion	Spanish- speaking	White	Black
Murder	20.2	21.7	24.7	12.8	24.5
murder	(6.1)	(6.3)	(6.7)	(5.4)	(6.5)
manslaughter	(14.1)	(15.4)	(18.0)	(7.4)	(18.0)
Homicide (negligent and non-)	3.0	3.0	3.6	3.7	2.6
Robbery	23.7	24.6	22.6	15.5	29.5
Burglary	13.7	12.9	10.7	20.4	9.7
Felonious assault	7.2	7.2	4.6	7.1	7.9
Grand larceny (not auto)	4.6	3.6	2.5	6.0	3.9
Grand Larceny (auto)	1.5	1.0	0.5	2.8	0.8
Rape	2.5	2.5	1.5	3.5	1.9
Other sex offenses	3.4	2.0	2.0	7.0	0.9
Dangerous drugs	8.7	10.2	21.5	4.3	10.1
Forgery	2.9	2.0	0	6.1	1.2
Dangerous weapons offenses	2.6	2.9	2.6	1.3	3.5
All other felonies	3.0	2.7	2.7	4.6	1.2
Misdemeanors	1.8	2.1	0.5	2.5	1.3
Youthful offenders	1.2	1.6	0	2.0	1.0

MINIMUM SENTENCE

2 years	1.9	1.7	1.5	2.3	1.6
3 years	3.7	3.1	3.6	4.0	3.6
4 years	2.2	2.3	3.0	2.6	1.9
5 years	7.2	6.2	4.1	9.5	6.1
7 years	1.4	1.2	2.1	1.4	1.4
10 years	8.2	7.4	8.8	8.1	8.2
15 years	4.2	4.2	1.5	4.7	4.1
20 years	3.5	2.7	2.6	3.6	3.4
30 years	2.4	2.7	3.6	1.7	2.8
40 years	0.9	0.8	0	1.6	0.7
50 years	0.1	0.2	0	0.1	0.3
72 years 6 months	0.4	0.5	0	0.4	0.4
Life or death	9.4	10.0	4.6	12.2	8.1
Unspecified	54.5	57.0	64.6	47.8	57.4

MAXIMUM SENTENCE

Up to	Total Popula- tion	D-Yard Popula- tion	Spanish- speaking	White	Black
3 years	12.6	13.0	21.0	11.1	12.2
4 years	16.9	16.8	20.5	16.4	16.6
5 years	11.4	11.1	11.3	10.8	11.6
7 years	13.7	14.6	10.3	14.1	13.9
10 years	13.1	12.1	9.7	14.6	12.7
15 years	10.4	11.2	10.3	8.5	11.8
20 years	5.4	5.5	3.6	6.0	5.3
30 years	4.2	4.0	3.6	4.4	4.2
40 years	0.9	0.9	0	1.2	1.0
50 years	0.2	0.4	0	0	0.4
80 years	0.7	0.5	0	0.8	0.6
Life or death	10.3	9.8	9.7	11.8	9.6
Other	0.2	0.1	0	0.3	0.1

Appendix C

State Police Regulations Governing Use of Firearms

All members shall be guided by the following instructions concerning the use of firearms.

a. A member may draw his firearm and/or may fire at another person after he has exhausted all other reasonable means when the member reasonably believes such action is necessary to:

(1) Effect the arrest, or to prevent the escape from custody of a person whom he reasonably believes:

(a) Has committed a felony or an attempt to commit a felony involving the use or attempted use or threatened imminent use of physical force against a person; or has committed

(b) Kidnapping, arson, escape in the first degree, burglary in the first degree or any attempt to commit such a crime; or

(c) The offense committed or attempted by such person was a felony and that, in the course of resisting arrest therefor or attempting to escape from custody, such person is armed with a firearm or deadly weapon; or

(2) Regardless of the particular offense which is the subject of the arrest or attempted escape, the action is necessary to defend himself or another person from what he reasonably believes to be the use or imminent use of deadly physical force.

(3) Definitions of terms:

(a) A reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would constitute an offense;

(b) "Deadly Physical Force" means physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury;

(c) "Deadly Weapon" means any loaded weapon

from which a shot, readily capable of producing death or other serious physical injury may be discharged, or a switchblade knife, gravity knife, dagger, billy, blackjack, or metal knuckles.

b. In addition to the preceding instances, firearms may be drawn for cleaning, proper range training, official supervisory inspection, for the destruction of animal life as permitted by law, or for emergency or distress signals (New York State Police Manual Part II, Article 8, Sec. 8.15).

c. A member shall not fire "warning" shots nor shall he fire a weapon at a vehicle, conveyance or other structure unless the occupants of the vehicle, conveyance or other structure fall within the definitions of Paragraph (1), (a), (b), (c), or (2) of this article.

d. Any indiscriminate use of a firearm shall be cause for serious administrative action.

e. In considering the use of firearms, members must keep in mind that the individual member alone is responsible for his acts and that he may be required to justify them in a court of law.

Appendix D

Inmates Killed During Uprising

<i>Name</i>	<i>Cause and Date of Death¹</i>	<i>Location Where Died</i>	<i>Weapon</i>	<i>Origin of Gunfire</i>
1. William Allen	Exsanguination from multiple wounds of head, back, arms, and groin, and destruction of lung tissue. 9/13/71	Prison infirmary	Shotgun, revolver, possibly rifle	Unknown
2. Elliott Barkley	Exsanguination from back and chest wound, and damage to right lung. 9/13/71	Southeast quadrant of D yard	.270	Roof A block
3. John B. Barnes	Exsanguination from back and chest wound, and damage to right lung and aorta. 9/13/71	Behind barricade on C catwalk	.270	Roof or 3d floor C block
4. Bernard Davis	Exsanguination from multiple gunshot wounds of the back thigh and hip, and lacerations lungs, kidneys and intestines. 9/13/71	Inside Times Square wire enclosure	.270 (non-fatal) and shotgun	.270 from room or 3d floor C block, shotgun from close range
5. Allen Durham	Exsanguination from multiple wounds to the back, arms and thigh, and damage to the right lung, kidney, and diaphragm. 9/13/71	Prison infirmary	Shotgun?	Unknown

¹Entries in this column are drawn from the report of the Commission's pathologist, Dr. Alan R. Moritz.

<i>Name</i>	<i>Cause and Date of Death</i>	<i>Location Where Died</i>	<i>Weapon</i>	<i>Origin of Gunfire</i>
6. Willie Fuller	Exsanguination from wounds in upper back and chest, and lacerations of both lungs and heart. 9/13/71	D yard	Shotgun?	Unknown
7. Melvin D. Gray	Exsanguination from wounds in the shoulder and thigh, and damage to left lung and chest. 9/13/71	A catwalk	.270	Probably roof of A block
8. Robert J. Henigan	Exsanguination from wounds to abdomen and back, damage to abdominal organs and lungs. 9/13/71	A catwalk	.270 and shotgun	Unknown
9. Kenneth E. Hess	Exsanguination from multiple wounds of the neck, chest, and back, and damage to the lungs and windpipe. Unknown date of death	D block	Knife	
10. Thomas B. Hicks	Exsanguination from multiple wounds of the head, back, and flank, and perforation of the heart and right lung. 9/13/71	D yard	Shotgun	Catwalks, and possibly D yard
11. Emanuel Johnson	Traumatic shock and severe laceration of the brain. 9/13/71	C catwalk	Unknown	Unknown
12. Charles Lundy	Exsanguination from wound to the chest, and perforation of the heart, aorta, and both lungs. 9/13/71	D yard	.270	Roof of A block
13. William B. McKinney	Multiple wounds to abdomen resulting in infection. 9/15/71	Prison infirmary	Unknown	Unknown

<i>Name</i>	<i>Cause and Date of Death</i>	<i>Location Where Died</i>	<i>Weapon</i>	<i>Origin of Gunfire</i>
14. Lorenzo McNeil	Laceration of the brain. 9/13/71	D yard	Shotgun	Unknown
15. Kenneth B. Malloy	Lacerations of the brain, and destruction of the lungs and heart. 9/13/71	Times Square catwalk	.357 and .38	Times Square catwalk
16. Gidell Martin	Exsanguination from wound of the hip. 9/13/71	Prison infirmary	.270	Unknown
17. Samuel Melville	Exsanguination from wound to the shoulder and damage to the left lung. 9/13/71	D yard	Shotgun	D catwalk
18. Edward R. Menefee	Lacerations of the kidney, stomach, liver, and lung, and infection of the abdomen, heart, and lungs. 9/26/71	Meyer Memorial Hospital	Shotgun	Stairwell in Times Square
19. Jose Mentijo	Exsanguination from multiple wounds to chest, arm, and legs, and damage to the left lung. 9/13/71	A catwalk	.270 and shotgun	Unknown
20. Milton Menyweather	Exsanguination from wound of the back and chest, and destruction of the right lung. 9/13/71	A catwalk	.270	Roof of A block
21. Richard Moore	Lacerations of lung, liver, and intestine, and infection of abdomen and lungs. 9/22/71	Meyer Memorial Hospital	Shotgun	Unknown
22. Carlos Prescott	Exsanguination from wounds of the lower back, left hip, and buttocks, and laceration of internal organs. 9/13/71	A catwalk	.270 and shotgun	Unknown

<i>Name</i>	<i>Cause and Date of Death</i>	<i>Location Where Died</i>	<i>Weapon</i>	<i>Origin of Gunfire</i>
23. Michael Privitera	Exsanguination from multiple wounds of the throat, chest, and back, and damage to the left lung and windpipe. Unknown date of death	D block	Pipe and knife	
24. Raymond Rivera	Exsanguination from multiple wounds of the thigh. 9/13/71	D yard	Shotgun	D yard
25. James B. Robinson	Exsanguination from wounds of the neck and chest, and damage to the right lung. 9/13/71	Times Square catwalk	Shotgun	Times Square catwalk
26. Santiago Santos	Exsanguination from wounds of the chest, and damage to the heart and left lung. 9/13/71	D yard	.270 and shotgun	Unknown
27. Barry J. Schwartz	Exsanguination from wounds to the throat and chest, and damage to the lungs and windpipe. Unknown date of death	D block	Knife	
28. Harold Thomas	Exsanguination from wounds of the back and chest, and partial destruction of left lower lobe of the lung, spleen, left adrenal, and left kidney. 9/13/71	Times Square catwalk	.270	Roof of 3d floor of C block
29. Rafael Vasquez	Exsanguination from wound to the chest, and puncture of the heart. 9/13/71	D yard	.270	Roof of A block

<i>Name</i>	<i>Cause and Date of Death</i>	<i>Location Where Died</i>	<i>Weapon</i>	<i>Origin of Gunfire</i>
30. Melvin Ware	Exsanguination from multiple wounds of the chest and abdomen, and damage to internal organs. 9/13/71	A catwalk	.270 and shotgun	3d floor C block and C catwalk
31. Willie West	Exsanguination from wounds of the back and chest, and damage to the right lung, right kidney, and liver. 9/13/71	Hospital	Shotgun, revolver, and possibly .270	Unknown
32. Alfred Williams	Laceration of the brain. 9/13/71	D yard	Shotgun	Unknown

Appendix E

Correctional Employees Killed During Uprising

<i>Name</i>	<i>Where Taken Hostage</i>	<i>Injuries Received 9/9</i>	<i>Location at Assault 9/13</i>	<i>Cause and Date of Death</i>
Edward Cunningham (sergeant)	Metal Shop 2		Hostage area of D yard	Transaction of cervical spinal cord caused by gunshot wound of head. 9/13/71
John D'Archangelo (correction officer)	B yard		B catwalk	Severing of the spinal cord and laceration of abdominal structures caused by gunshot wound of abdomen. 9/13/71
Elmer Hardie (industrial foreman)	Metal Shop 1		Hostage area of D yard	Laceration of the brain and intracranial bleeding caused by gunshot wound of head. 9/13/71
Herbert Jones (senior account clerk)	Metal Shop 1		Hostage area of D yard	Gunshot wound of head. 9/13/71
Richard Lewis (correction officer)	B block hall	Severe blows to head and back. Gash in head. Forehead cut. Arm broken	Hostage area of D yard	Hemorrhage due to perforation of heart and aorta caused by gunshot wound of back. 9/13/71

Entries in this column are drawn from the report of the Commission's pathologist, Dr. Alan R. Moritz.

<i>Name</i>	<i>Where Taken Hostage</i>	<i>Injuries Received 9/9</i>	<i>Location at Assault 9/13</i>	<i>Cause and Date of Death</i>
John Monteleone (industrial foreman)	Metal Shop 2		A catwalk	Perforation of aorta caused by gunshot wound of chest. 9/13/71
William Quinn (correction officer)	Times Square	Severe blows to head		Blunt injuries of head and brain. 9/11/71
Carl Valone (correction officer)	Metal Shop 2		Hostage area of D yard	Traumatic shock and laceration of the brain caused by gunshot wound of head; internal bleeding from abdominal organs caused by gunshot wound entering chest. 9/13/71
Elon Werner (principal account clerk)	Metal Shop 1		Hostage area of D yard	Internal bleeding from perforation of aorta caused by gunshot wound of chest; laceration of brain caused by gunshot wound of head. 9/13/71
Ronald Werner (correction officer)	Commissary		Hostage area of D yard	Internal bleeding from perforation of aorta caused by gunshot wound of chest. 9/13/71
Harrison Whalen (correction officer)	D block hall	Severe blow to head causing bleeding	Hostage area of D yard	Pneumonia, 10/9/71, residual effects of gunshot wounds to head, spinal cord, and pelvis suffered 9/13/71

Appendix F

Correctional Employees Injured During Uprising

Name	Where Taken Hostage and/or Injured	Injuries Received 9/9	When and Why Released	Location at Assault 9/13	Injuries Received 9/13
Raymond Bogart (correction officer)	Injured—A corridor Taken hostage— A block	Blows to head resulting in severe bleeding and loss of consciousness	9/9 because of serious injuries to head	Location at Assault 9/13	Injuries Received 9/13
James Clute (correction officer)	B block hall	Severe blows to head and back	9/9 because of injuries	Hostage area of D yard	Gunshot wound of back
Robert Curtiss (lieutenant)	A block	Blows to face and back with pipes and sticks	Postassault	Hostage area of D yard	Gunshot wound of back
Roger Dawson (correction officer)	Injured—powerhouse Not taken hostage	Beaten with clubs and pipes	Never taken hostage	Hostage area of D yard	Gunshot wound of back
Richard Delaney (correction officer)	C block hall captain's office	Blows to head; tear-gas burns on neck and in lungs	9/9 because of injuries	Hostage area of D yard	Gunshot wound of back
Richard Fargo (correction officer)	Commissary	Blows to head with stick and bat	Postassault	Hostage area of D yard	Cut in back by inmate executioner
Don Head (correction officer)	Powerhouse	Blows to head resulting in bleeding	Never taken hostage	Hostage area of D yard	Cut in back by inmate executioner

<i>Name</i>	<i>Where Taken Hostage and/or Injured</i>	<i>Injuries Received 9/9</i>	<i>When and Why Released</i>	<i>Location at Assault 9/13</i>	<i>Injuries Received 9/13</i>
Elmer Huehn (correction officer)	A block	Blows to head; face cut	Postassault	Hostage area of D yard	
Don Jennings (correction officer)	B block hall	Blows to head and back resulting in severe head bleeding	9/9 because of injuries		
Gordon Kelsey (correction officer)	Times Square	Blows to head and back; nose cut; thumb broken	9/9 by Muslim inmates		
Frank Kline (correction officer)	C block		Postassault	A catwalk	Cut on left side of throat; 52 stitches required to close gashes
Gordon Knickerbocker (civilian)	Metal Shop 1	Blows to head with gas-gun barrel and 2 x 4	Postassault	Hostage area of D yard	Gunshot wound of head
Ronald Kozlowski (civilian)	Metal Shop 1	Blows to head and hand with board	Postassault	A catwalk	Cut throat; 30 stitches required to close
Paul Krotz (correction officer)	C block	Blows to head with stick	Postassault	Hostage area of D yard	
Larry Lyons (correction officer)	D block	Beaten	Postassault	Hostage area of D yard	
Donald Melven (correction officer)	Times Square	Blows to head resulting in concussion	9/9 by Muslim inmates	Hostage area of D yard	

<i>Name</i>	<i>Where Taken Hostage and/or Injured</i>	<i>Injuries Received 9/9</i>	<i>When and Why Released</i>	<i>Location at Assault 9/13</i>	<i>Injuries Received 9/13</i>
Edward Miller (industrial foreman)	Metal Shop 2		Postassault	Hostage area of D yard	Blows with pipe resulting in fractured skull
Al Mitzel (industrial foreman)	Metal Shop 2		Postassault	Times Square	Bullet fragment in back
Royal Morgan (correction officer)	B corridor	Blows to head and chipped bone in wrist	9/9 by Muslim inmates		
Anthony Prave (correction officer)	Metal Shop 2	Blows with pipes and sticks	Postassault	Hostage area of D yard	Stabbed in side
Gerald Reger (sergeant)	C block hall captain's office	Cuts and scrapes while being pulled from office	Postassault		
Al Robbins (motor equipment repairman)	Garage	Blows with sticks and pipes	Postassault	Hostage area of D yard	
Paul Rosecrans (correction officer)	Times Square	Blow to head with chair leg resulting in serious bleeding	9/9 by Muslim inmates		
Anthony Sangiacomo (correction officer)	Metal Shop 2	Blows with sticks and pipes	9/11 because of heart-attack symptoms		
Arthur Smith (correction officer)	D block	Blows to head; kicked; became unconscious	Postassault	C catwalk	
Michael Smith (correction officer)	Metal Shop 1	Knocked unconscious	Postassault	Catwalk	

<i>Name</i>	<i>Where Taken Hostage and/or Injured</i>	<i>Injuries Received 9/9</i>	<i>When and Why Released</i>	<i>Location at Assault 9/13</i>	<i>Injuries Received 9/13</i>
John Stockholm (correction officer)	D block	Blows to head and neck	Postassault	Times Square	
Frank Strollo (correction officer)	Commissary	Blows with sticks and pipes	Postassault	Hostage area of D yard	
Robert Van Buren (industrial superintendent)	Metal Shop 1	Blows to head, stomach, elbow, and hand with boards and sticks	Postassault	Hostage area of D yard	Gunshot wound of hip
Frank Wald (captain)	C block hall captain's office	Blows with mop handles, clubs, and pipes	Postassault	Hostage area of D yard	Struck in back of head with fragment of homemade bomb; knocked unconscious
Gary Walker (correction officer)	Metal Shop 2	Blows with sticks and pipes	Postassault	Hostage area of D yard	Struck in the back with gun butt
Philip Watkins (correction officer)	D yard	Right arm broken from blow with shovel	Postassault	Hostage area of D yard	
Walter Zymowski (correction officer)	B yard	Knocked to the ground	Postassault	Hostage area of D yard	Struck in chest; knocked unconscious

Appendix G

*Selected Bibliography*¹

American Correctional Association. *Causes, Preventive Measures and Methods of Controlling Riots and Disturbances in Correctional Institutions*. Washington, D.C., 1970 (\$1.75 Pb)

This is a revision of the 1953 position paper of the ACA on prison riots. A survey of academic literature pertaining to prison riots is found in the appendix. Particularly useful is the listing of books and articles dealing with the causes of prison riots.

American Friends Service Committee. *Struggle for Justice, a Report on Crime and Punishment in America*. New York: Hill and Wang, 1971 (\$1.95 Pb)

This work will aid the reader in understanding why many inmates consider themselves "political prisoners." The report examines the inequities and repressive functions of the criminal justice system and maintains that it is used to perpetuate the second-class status of minorities and poor people, to combat differing life-styles, and to silence those who might challenge the status quo. It includes recommendations for a radical restructuring of the criminal justice system.

Barnes, Harry F., and Negley K. Teeters. *New Horizons in Criminology*. 3d ed. Englewood Cliffs, N.J.: Prentice-Hall, 1959 (\$10.95)

This textbook is a useful reference for all topics related to prisons but is especially useful in documenting the history of U.S. prisons through its pictures and research.

California State Board of Corrections. *Coordinated California Corrections, Correctional System Study*. Sacramento: State Printing Office, 1971

This report is the result of a yearlong study of the California correctional apparatus by a group of correction administrators and penologists and presents a model for the future of that state system for both adults and juveniles.

¹This brief bibliography is intended to serve as a guide to further reading in topics discussed in this report. The variety of books selected covers every aspect of prisons and includes works written for both academic and nonacademic readers.

Clark, Ramsey. *Crime in America, Observations on Its Nature, Causes, Prevention and Control*. New York: Simon and Schuster, 1970

Clark, a former Attorney General of the U.S., describes the history of penology as the "saddest chapter in the history of civilization" and suggests reforms for prisons and the entire criminal justice system.

Clemmer, Donald. *The Prison Community*. New York: Holt, Rinehart and Winston, 1968 (\$7.25 Pb)

This classic is a sociological study of a maximum security prison of the 1930s but is still the most comprehensive study done on any prison. The book concentrates on the "unseen environment" of the prison—the inmate subculture—which is a stronger force for evil than the programs are for good. Clemmer maintains that no rehabilitation can occur as long as the subculture remains. This work and Glaser's are the most comprehensive studies of all aspects of prison.

Cohen, Fred. *The Legal Challenge to Corrections: Implications for Manpower and Training*. A consultant's booklet prepared for the Joint Commission on Correctional Manpower and Training. Available for \$1 per copy from the American Correctional Association, College Park, Md.

This work traces and analyzes the recent trend toward the intervention of courts into the operation of prisons. It is written by a lawyer and is intended for the reader with an interest in the legal aspect of penology.

Committee for Economic Development. *Reducing Crime and Assuring Justice*. New York, June 1972

Conrad, John P. *Crime and Its Correction, An International Survey of Attitudes and Practices*. Berkeley: University of California Press, 1970 (\$2.65 Pb)

This work reports on the patterns of correctional practice throughout the world and includes detailed illustrations of science applied to correctional problems.

Engelbarts, Rudolf. *Books in Stir*. Metuchen, N.J.: Scarecrow Press, 1972 (\$5.00)

This is a bibliographic essay about prison libraries and about books written by prisoners and prison employees. A brief summary and evaluation of each book written by a prisoner or prison employee is provided.

Fox, Vernon. *Violence Behind Bars: An Explosive Report on Prison Riots in the U.S.* New York: Vantage Press, 1956

This is an analytical survey of U.S. prison riots.

Garson, G. David. "The Disruption of Prison Administration: An Investigation of Alternative Theories of the Relationship

Among Administrators, Reformers, and Involuntary Social Service Clients," *Law and Society Review*, May 1972

An examination of two theories of riots—(1) rioting as a function of administrative reforms which undermine informal control patterns (view of Gresham Sykes) and (2) rioting as a function of administration reforms and reform movements which raise prisoner expectations beyond system capacities. The two alternate theories are examined from a historical perspective as the author reviews academic, penal, and newspaper sources in the period from 1863 to April 1971. Neither theory is supported by his research as being generally applicable to prison riots.

Glaser, Daniel. *The Effectiveness of a Prison and Parole System*. Abridged ed. Indianapolis: Bobbs-Merrill Company, 1969 (\$3.75 Pb)

This work applies the analytical techniques of social science to the study of the Federal correctional system. It documents the results of a five-year study of the Federal system and is perhaps the best single source with which to begin study of any topic relating to penology. The footnotes are guides to further study for any topic discussed in the book.

Griswold, H. Jack, Mike Misenheimer, Art Powers, and Ed Tromanhauser. *An Eye for an Eye*. New York: Pocket Books, 1970 (95¢ Pb)

A critical look at prisons by four inmates. Written for popular consumption.

Hazelrigg, Lawrence E. (ed.). *Prison Within Society, a Reader in Penology*. Garden City, N.Y.: Anchor Books, 1968 (\$1.95 Pb)

This collection of scholarly studies is intended to serve as a partial remedy to the inadequate flow of information from the research scientist to the correctional practitioner by providing the latter with important studies of the correctional organization.

Irwin, John. *The Felon*. Englewood Cliffs, N.J.: Prentice-Hall, 1970 (\$2.45 Pb)

Irwin is an ex-felon and sociologist and writes of the prison and parole system from the viewpoint of the inmate. He documents the lack of understanding of the felon's problems on the part of those well-intentioned officials who run the system and reveals the sources of a growing sense of injustice among felons. In short, it is a view of the criminal justice system from the viewpoint of an articulate penologist who is also an ex-client of the system.

Johnson, Elmer Hubert. *Crime, Correction and Society*. Homewood, Ill.: Dorsey Press, 1968 (\$10.95)

This textbook has a good index and extensive footnoting.

Johnston, Norman. *The Sociology of Punishment and Correction*. 2d ed. New York: John Wiley and Sons, 1970 (\$8.95 Pb)

This collection of scholarly articles has 75 selections on topics dealing with every aspect of prisons.

Karlen, Delmar. *Anglo-American Criminal Justice*. Oxford: University Press, 1967 (\$10.67)

This book contrasts administration of criminal justice in England and the U.S., from police to prisons, and suggests reform in the U.S. system.

McGinnis, Paul D., and Russell G. Oswald. *Preliminary Report of the Governor's Special Committee on Criminal Offenders*. New York: State of New York, 1968

This report to the governor examines the postadjudicatory treatment system for adults and juveniles on three conceptual levels: (1) theory of the criminal system; (2) organization of the total system for dealing with antisocial behavior; and (3) methodology for prevention of recidivism. The recommendations of this report led to the reorganization of the correction system in New York in 1971.

Manocchio, Anthony J., and Jimmy Dunn. *The Time Game, Two Views of a Prison*. New York: Dell Publishing Co., 1970 (\$2.45 Pb)

While many books give the inmate perspective on prison life, this volume takes several incidents and looks at them from the viewpoint of both the inmate and the prison counselor. Their differing views never come to grips with one another. Each approaches the "time game" with different purposes, values, and goals and each is a player in a game he cannot win. It is useful for those with an academic or nonacademic interest.

Menninger, Karl, M.D. *The Crime of Punishment*. New York: Viking Press, 1966 (\$1.95 Pb)

Menninger, a noted psychiatrist, suggests that the crime of punishment is that punishment aggravates crime. Quick and appropriate penalties are required—not a spirit of vengeance. It is a psychiatric view of the purposes and results of the criminal justice system.

Minton, Robert J., Jr. (ed.). *Inside Prison American Style*. New York: Random House, 1971 (\$1.95 Pb)

This is a compilation of over 60 articles on prison topics, most of which are written by inmates—has a section on racism.

Oswald, Russell G. *Attica—My Story*. New York: Doubleday and Co., 1972 (\$7.95)

Commissioner Oswald's account of the Attica uprising. The

book was unpublished at the time this bibliography was compiled.

Platt, Anthony. *The Politics of Riot Commissions*. New York: Macmillan, 1971. (\$2.95 Pb)

For the reader who wishes to evaluate this Commission and its report, this survey and analysis of past riot commissions and their recommendations will prove useful. Though the riot commissions discussed dealt with civil disorders, much of the analysis is relevant to prison riots.

President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections. Washington, D.C.: U.S. Government Printing Office, 1967 (\$1.25 Pb)

This is perhaps the best single source for one unfamiliar with corrections in the United States to get a statistical and conceptual overview of the present system as well as directions for the future. It presents the "reintegrative" model as the goal toward which correctional institutions should move.

President's Task Force on Prisoner Rehabilitation. Washington, D.C.: U.S. Government Printing Office, 1970 (1-24)

A study which recommends community-based programs.

Rothman, David J. *The Discovery of the Asylum, Social Order and Disorder in the New Republic*. Boston: Little, Brown and Company, 1971 (\$12.50)

This work will appeal to both scholar and layman and traces the history of prisons in the United States within the context of American social history. It should be required reading for students of criminology and penology, sociology, and history.

Sykes, Gresham M. *The Society of Captives, a Study of a Maximum Security Prison*. New York: Atheneum, 1970 (\$1.45 Pb)

Sykes analyzes the social structure of a maximum security institution and sees one prison riot as due to the failure of "reformers" to understand the social system of the prison—it is especially useful for correction officers.

Stark, Rodney. *Police Riots, Collective Violence and Law Enforcement*. Belmont, Calif.: Focus Books, 1968 (\$3.95 Pb)

This work is an excellent beginning for the reader who wishes to study police ideology and its relation to excessive use of force. It is written for the general reader but its extensive footnoting makes it very useful for anyone interested in further research.

Sutherland, Edwin H. *Principles of Criminology*. 7th ed. Philadelphia: J. B. Lippincott Co., 1966 (\$10.95)

This textbook has a good index, extensive footnoting, and a useful bibliography.

Tompkins, Dorothy Campbell (ed.). *The Prison and the Prisoner, a Public Policy Bibliography*. Berkeley, Calif.: Institute of Governmental Studies, 1972 (\$4.00 Pb)

This is the most extensive bibliography available on prisons and prisoners. It covers all subjects relating to prisons and has over 80 sources under "Proposals for Reform of Prisons."

Wilkins, Leslie T. *Evaluation of Penal Measures*. New York: Random House, 1969 (\$2.95 Pb)

This book examines the problems in evaluating treatment programs in prisons. It evaluates studies of recidivism for various programs and suggests improvements in research design. It is useful for anyone interested in correctional research.

Wisconsin Council on Criminal Justice. *The Citizens Study Committee On Offender Rehabilitation, Final Report*. Madison, Wisconsin: 1972

This study was made by a group of scholars and citizens appointed by the governor to study the Wisconsin prison system after the Attica prison riot. It recommends the closing down of Wisconsin's prisons and replacing them with community-based facilities.

More extensive bibliographies are available from:

Department of Justice
Bureau of Prisons Library
Washington, D.C. 20537

(ask for "Corrections: A Bibliography" and available issues of *The Correctional Bookshelf*)

Institute of Governmental Studies
University of California at Berkeley
Berkeley, Calif. 94720

(ask for list and cost of bibliographies on "The Offender," "Prison and the Prisoner," "Bail," etc.)

American Judicature Society
1155 East 60th Street
Chicago, Ill. 60637

(ask for "An Annotated Bibliography on Judicial Intervention and Non-Intervention in Prison Administration," Report No. 33)

Clearinghouse on Prisoners' Rights
Managing Editor
832 Prudential Building
Buffalo, N.Y. 14202

(issues of *Prisoners' Rights Newsletter* cite and discuss

cases dealing with prisoner rights and include bibliographies. On the same topic see: *Record of the Association of the Bar of the City of New York*, March 1972, pp. 188-95, for a bibliography)

Publication lists and/or informational brochures are available from the following sources:

Mrs. Margaret Appe
New York State Department of Correctional Services
New York State Dept. of Correctional Services
Alfred E. Smith Office Building
Albany, N.Y. 12225

(ask for information about how one can become involved as a volunteer worker in New York correctional facilities)

Clearinghouse
National Center for Volunteer Action
1735 I Street
Washington, D.C. 20006

(for information about use of volunteers in corrections)

National Information Center on Volunteers, Inc.
P.O. Box 2150
Boulder, Colo. 80302

(for information about use of volunteers in the criminal justice system)

American Correctional Association
4321 Hartwick Road, Suite L 208
College Park, Md. 20740

(for booklet on prison riots listed in the Bibliography and for publications of the Joint Commission on Correctional Manpower and Training)

Massachusetts Correctional Association
33 Mount Vernon Street
Boston, Mass. 02108

The Correctional Association of New York
135 East 15th Street
New York, N.Y. 10003

(for the report of the Goldman Panel on Attica and other materials)

National Council on Crime and Delinquency
NCCD Center
Paramus, N.J. 07652

(publications available include "A Model Act for the Protection of Rights of Prisoners")

NCCD Research Center
609 Second Street
Davis, Calif. 95616

National Criminal Justice Reference Service
LEAA, Department of Justice
633 Indiana Avenue
Washington, D.C. 20530

(ask for "LEAA Reference List of Documents," which contains a list of publications—most are free in single copies—by several agencies)

Commission on Correctional Facilities and Services
American Bar Association
1705 DeSales Street, N.W.
Washington, D.C. 20036

(this group has several projects and serves as a clearing-house on information about reentry problems of ex-inmates)

International Prisoners Aid Association
436 West Wisconsin Avenue
Milwaukee, Wis. 53203

New York State Select Committee on Correctional
Institutions and Programs
Box 7018, Alfred E. Smith Office Building
Albany, N.Y. 12225

(for the reports of the "Jones Committee"—the body officially mandated to recommend legislation for penal reform in New York State)

Department of Economic and Social Affairs
United Nations
New York, N.Y. 10017

(ask for "Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations," 1958)

Pennsylvania Prison Society
Room 302, Social Service Building
311 South Juniper Street
Philadelphia, Pa. 19107

John Howard Association
Suite 100
650 South Clark Street
Chicago, Ill. 60605

NYC Urban Coalition, Inc.
55 Fifth Avenue
New York, N.Y. 10003

(ask for pamphlet, "How to Regain Your Rights")

Prisoner Solidarity Committee
c/o National Lawyers Guild
23 Cornelia Street
New York, N.Y. 10014

Fortune Society
29 East 22d Street
New York, N.Y. 10010

Committee for the Study of Incarceration
733 15th Street, N.W.
Room 520
Washington, D.C. 20005

Alternatives to Incarceration Project
School of Criminal Justice
1400 Washington Avenue
Albany, N.Y. 12222
(for a bibliography of articles by inmates, observers, etc.,
on the Attica riot—other bibliographical information on
prisons also available)

Katherine Bentis
Executive Director
Roscoe Pound Foundation
20 Garden Street
Cambridge, Mass. 12138
(ask for the report on the 1972 Annual Earl Warren Con-
ference on Advocacy—recommendations of American trial
lawyers on prisons)

American Bar Association
1155 East 60th Street
Chicago, Illinois 60637
(17 volumes on "Standards Relating to" various aspects
of criminal justice administration)

The National Clearinghouse for
Criminal Justice Planning & Architecture
University of Illinois
1102 West Main Street
Urbana, Illinois 61801
(for assistance in planning and design of new correctional
facilities of all types)

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