

# Kunstler Criticizes Libertarian Position in Attica Trial

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BUFFALO, March 5—William M. Kunstler, the lawyer long associated with libertarian positions, surprised a court here today by arguing that juries had the right to draw whatever inferences they liked from a witness's assertion of his lawyer-client privilege and, indeed, of Fifth Amendment protection against self incrimination.

The lawyer's statement came on the eighth day of the Attica murder trial in which a correction officer pointed out one of the two defendants as the inmate who struck him with a 2-by-4 as he was being held hostage in the opening hours of the 1971 prison uprising.

Mr. Kunstler's views on privilege, however, came during the concluding interrogation of another prosecution witness, William Rivers, an Attica parolee. In earlier questioning today and yesterday, Mr. Kunstler had elicited from Mr. Rivers his acknowledgment that he had not volunteered any information to state investigators during the first three times they had questioned him.

## Probing Possible Deal

Mr. Rivers had also told the court that it was not until he had obtained a lawyer that he told state agents that he had seen John Hill, one of the defendants, strike guards. He also conceded that his coming forward had been in part motivated by hope of abating release or early parole.

In his questioning, Mr. Kunstler appeared to be probing the possibility that the state investigators had offered some sort of deal in return for Mr. Rivers's testimony. At one point Mr. Kunstler asked the witness what he had discussed with his lawyer.

From the bench, State Su-

preme Court Justice Gilbert A. King told the witness that the confidentiality of such conversations were protected.

"I don't think that the privilege should exist when we have so much at stake," Mr. Kunstler answered.

"Mr. Kunstler, that's the law and you know it," said the judge, a short, bald, soft-spoken man.

"I know that's the law, but we're dealing with something more serious," Mr. Kunstler rejoined.

He then turned to the witness and asked: "In the interest of truth are you willing to waive to get at what went on between you and your lawyer?"

## Refuses to Discuss

"No, I will not discuss what went on between me and my lawyer," answered the stocky 30-year-old Ithaca mechanic.

"Even if it might help these two young men," asked the lawyer, gesturing to the defendants, John Hill and Charles Joseph Pernaillice.

There was no answer. The witness sat staring for one minute and then another. There was total quiet and Mr. Kunstler stood tense at his lectern.

Later he confided out of court that he had to keep biting his tongue to restrain himself from filling the dramatic silence.

Finally, Mr. Rivers said he wanted time to think and a short recess was held. He returned to say that without consulting his attorney "I would have to say no."

Then, Louis Aidala, the prosecutor, asked the judge to instruct the jury not to draw inferences from the assertion of the privilege, which has ancient roots in common law.

Mr. Kunstler rose to object, saying he knew of no law that obligated the judge to make

such an admonition. In sharp colloquy with the judge, he even said that he knew of nothing in regard to such instruction when witnesses claimed Fifth Amendment prerogatives.

"You're getting yourself in quicksand," said the judge, adding, "I'll tell the jury now that Mr. Rivers had the right to assert that privilege and that no inference be drawn from that assertion."

During the lunch recess, Mr. Kunstler and his associates dis-

## A U.S. Specialist Gets High State Labor Post

Dr. George S. Roukis, a specialist in wage standards and equal employment opportunity for the Federal Government, has been named executive deputy labor commissioner, the second highest post in the state's department of labor. It pays \$45,382 a year.

Commissioner Louis L. Levine announced the appointment of Dr. Roukis yesterday calling him an "expert in the area of civil rights employment". Dr. Roukis will assume the post tomorrow.

Since 1973 the 41-year-old labor specialist has been deputy assistant secretary for the Employment Standards Administration of the United States Department of Labor. Prior to that he taught labor relations and economics at the Farmingdale, L.I., campus of the State University of New York and had served as deputy labor commissioner of Suffolk County. He lives with his wife, Marie, and three children in New Hyde Park, L.I.

cussed the issue. When they returned, the question of waiving was again put to the witness, this time by Mr. Aidala. Mr. Rivers, who had in the meantime telephoned his attorney, said: "When I came to this courtroom I was going to talk about it and now I don't want to."

With the questioning of the witness over and with the jury out of the courtroom, Ramsey Clark, who is representing Mr. Pernaillice, refined some of the arguments that Mr. Kunstler had made in the heat of debate about the lawyer-client privilege.

Mr. Clark, former United States Attorney General, moved that the judge strike all of Mr. Rivers's testimony on the ground that by invoking the privilege the defendants were denied their constitutional right under the Sixth Amendment to confront their accusers.

"He can keep it," Mr. Clark said referring to the privilege, "but we should not be burdened with his testimony."

## Judge Denies Motion

Justice King denied this motion, but reserved decision on another move to strike the testimony, based on the claim that Mr. Rivers had never identified the guards he saw being struck by Mr. Hill.

The judge has similarly reserved decision on a motion to nullify the testimony of an earlier inmate-witness, Leland Spear, which was made on the same ground.

The trial's ninth witness, Correction Officer Royal T. Morgan, who followed Mr. Rivers to the stand, did make definite identification of Mr. Hill as the man who struck him twice with 2-by-4. Under questioning by John W. Gra-

ble, another prosecutor, Mr. Morgan, a burly bearded man, said Mr. Hill had told him he would "rearrange" his face before hitting him on the morning of Sept. 9, 1971.

The officer said further that he had seen Mr. Hill among the group of men who encircled a fallen and bleeding correction officer. The witness said that he and an inmate then moved that officer toward a safe position. He identified the wounded man as William Quinn.

Mr. Quinn died two days later in a hospital of injuries suffered in the initial seizure. The defendants here are charged with his murder.

Mr. Quinn was the first of 43 men who died during the four days in which the prison first fell to inmates and was then retaken by the state police. He is the only officer whose death has been attributed to inmates.