

Kunstler Assails State's Case in Attica Summation

By MICHAEL T. KAUFMAN
Special to The New York Times

BUFFALO, April 1—For more than five hours today, William M. Kunstler reviewed and dissected the testimony of five prosecution witnesses as he began his summation in the Attica murder trial here.

Mr. Kunstler, who in the previous five weeks of the trial would frequently banter and joke, turned dour and earnest today as he reeled off what he considered to be contradictions and lapses in the testimony of four former inmates and one correction officer.

With varying degrees of certainty the witnesses said they had all seen Mr. Kunstler's client, John Hill, beat a correction officer—identified by some as William Quinn—in the opening hours of the September, 1971, uprising at the State Correctional facility at Attica.

With 18 volumes of trial transcript spread before him at the jury box, Mr. Kunstler characterized the state's case as resting largely on the assertions of "weak men" and "liars," who, he said, "would say anything to get out of Attica, that inhuman place.

He repeatedly expressed sympathy for the former inmates. "They are not evil men, they are merely frightened and weak," he said. "Who can blame them?"

Early Paroles

He strongly stressed the acknowledgments of each of the former-inmate witnesses that they had received paroles very soon after they cooperated with state investigators.

"Remember, we told you at the beginning of this trial that we would prove that the state had selected its witnesses specifically to testify against these

two young men," said Mr. Kunstler, referring to Mr. Hill and his codefendant, Charles Joseph Pernasilice. he said that the court record alone indicated that 15 or 16 men had been identified as hitting Mr. Quinn.

Throughout the day Mr. Kunstler assessed the various eye witnesses as would a professor of literature describing the characters in a drama. Superlatives abounded in his descriptions. For example, of Donald Melven, the Attica guard, he said: "O all the witnesses, he was the most tormented."

The lawyer attributed Mr. Melven's anxiety to a continuing, gnawing reservation about his identification of Mr. Hill. The guard had testified that he had been standing near Mr. Quinn when he saw him hit by a man he later identified from photographs as Mr. Hill.

But Mr. Kunstler reminded the jury of Mr. Melven's admitted doubts about the length of Mr. Hill's hair and of his acknowledged hesitation over the photograph of another inmate.

"If ever there was reasonable doubt staring you in the face, you have it in Mr. Melven's testimony," Mr. Kunstler said.

'A Born Loser'

The lawyer then took up in succession the accounts of what he called "the prosecution's inmates." Of Leland Spear, who had said he had seen Mr. Hill hit an officer at the prison's Times Square checkpoint, he said:

"I think he is one of those men you can always rely on to cooperate with authority. He is a born loser."

Mr. Kunstler reminded the jurors of how, under cross-examination, Mr. Spear had admitted to exaggerating, if not lying, about his employment as

an airplane mechanic.

"Think of this distraught human being, a man who perjured himself for the most human of reasons, to better himself, weak, like so many of the people you saw in Watergate," Mr. Kunstler said.

As for the internal contradictions of Mr. Spear's story, the lawyer said that by the witness's own accounts of his movements, he could not have been at Times Square at the time Mr. Quinn was attacked.

Mr. Kunstler dealt with the next two witnesses in tandem, calling them "the prosecution's Bobby Twins." These were Edward Zimmer and William Rivers, former inmates who had told how they spent the morning together on the day the riot began. Both had said they had seen Mr. Hill strike officers at two separate locations. And in addition, Mr. Zimmer contended he had seen Mr. Pernasilice hit Mr. Quinn at Times Square.

Question of Weapon

Mr. Kunstler said that on many occasions both witnesses had changed details of their accounts during the course of the investigation. He cited, for example, Mr. Rivers's original grand-jury testimony in which he had said that Mr. Hill was armed with a broom or mop handle. At the trial here, Mr. Rivers described the weapon as a "dark tapered piece of wood, like a table leg."

Mr. Kunstler recalled that both men had testified that they had been locked in adjoining cells after the rebellion and had seen each other at the Erie County Prison and at a motel where they were being interrogated.

"They were a package deal," said the lawyer, who maintained that the state needed both men

to support each other's flawed testimony.

"Remember," Mr. Kunstler said, "how Mr. Rivers cooperated with investigators only after he said he realized he had something to sell. All he had to do was say he saw somebody hit somebody and nobody would be able to say he had not."

The defense attorney concluded the first half of his summation with an attack on the testimony of Robert Kopec, a former inmate, who in testifying for the prosecution had said he had seen Mr. Hill strike Mr. Quinn. In addition, Mr. Kopec the attack Mr. Hill had told him in confidence that he thought he had killed a guard.

Contrasting Account

Mr. Kunstler contrasted this account with the testimony of Everett Burkett, a former inmate who was the last defense witness. Mr. Burkett had said that Mr. Kopec had declined to accompany him and Mr. Hill from the recreation yard into the Times Square area. He said that he had spent the day of the riot with Mr. Hill and that the defendant never hit anyone.

The lawyer called Mr. Burkett "a heroic figure" who came forward to tell his story without inducement or promises.

"He stands the most to lose by challenging the prosecution," said Mr. Kunstler of the 27-year-old former drug addict. "Who would you believe?" asked M. Kunstler, portraying Mr. Burkett as a painter who through willpower alone overcame an addiction he picked up in prison.

Mr. Kopec, he said, was a man who after his parole had broken the windows of his father-in-law's house and had stolen a rental car. "Mr. Burkett is worth more than all the Kopecs," said Mr. Kunstler.