September 17, 1971

University of Michigan Law School

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We offer you, our loyal readers, an abbreviated version of the RES GESTAE this week, and beg your indulgence.

The largest part of our staff energies during the past week have been devoted to a survey of events at the Attica prison in New York State. We plan for the early part of next week a bonus supplement issue which will include extensive faculty comment on the Attica tragedy and hopefully will shed some light on this emotion-charged issue. WATCH FOR IT!

--The Editors

Interview Sign-Up Sheets

A. Sign-up sheets become initially available at 3:30 p.m. one week to the day in advance of the scheduled interviews.

B. Sign-up procedure begins at 3:30 p.m. in Room 218.

C. Thereafter, the sign-up sheets remain on the counter in Room 200.

D. Do not schedule consecutive interviews.

Data Sheets & Resumes

A. Data sheets and resumes must be turned into the Placement Office by September 22. Turn in one copy (without transcript) for your permanent file and up to 20 copies (with transcript) for your storage file. Each time you sign up for an interview a copy of your resume or data sheet will be pulled for the recruiter.

It should be emphasized that if you wish to add your name, cancel or change a time on an interviewing schedule it must be done by noon of the day before the interviews. This also holds true for turning in additional data sheets and resumes.

If you have any questions about the above, feel free to stop by the Placement Office.

POLICIES - PLACEMENT

Sign-up Session Last year we had students enter the sign-up session who were scheduling appointments for friends who were also in the classroom. In other words, the first student who got the desired schedule would sign himself up and also his many friends. This, of course, was not fair to the other students in the room who were waiting their turn.

(continued on page 2)
If anyone does this again this year, all students involved will be dropped from the schedule. If it happens a second time involving any or all of the same students, they will be prohibited from using the Placement Office for the remainder of the recruiting season.

There is, however, one exception to this policy. If a student has a class during the sign-up period, he or she can have a friend sign up for him. This fact must be noted with the Placement Office prior to the sign-up period.

Standby List If you are on a standby list, it is your responsibility to check with the Placement Office to see if you can be worked into a schedule. A notice will be posted on a section of the first floor board if we are trying to contact you. You then follow whatever instructions are at the top of the notice. We may try to contact you as much as four days prior to an interview or the day of the interview so you should check the board continuously.

Many interviewers have scheduled only one or two days in Ann Arbor, and those representing some of the more popular firms may find themselves unable to see all those wishing to talk with them. When a situation develops where there are a number of students on the "waiting list" for a particular firm, the Placement Office will call the problem to the attention of the interviewer and be guided by his selection of those he wishes to see. In some instances this may result in the interviewer's decision to limit, in accordance with his own criteria, the students he will interview.

Interviews Interviews will be conducted in the carrels in Room 200 of Hutchins Hall. When you have scheduled an interview, it is your responsibility to keep the appointment and be on time. Failure to do so undoubtedly eliminates your chances of getting a job with the particular employer, and prevents another student from having the opportunity to be considered. If you miss an interview without good excuse, the office may deny you the opportunity for further interviews at the school.

"Speaking constitutionally, I spend most of my time in the pursuit of happiness and let live and liberty take care of themselves."

Friday evening, September 17, from 8:30 to midnight, there will be a mixer-dance in the Lawyers Club. A good seven-man band is offered; beer will be free. There is no charge for law students who present their Lawyers Club I.D.'s; others will be charged a nominal 25 cents. All students are encouraged to come; bring your dates, girlfriends, and wives.
THE INTERNATIONAL LAW SOCIETY:

is composed of University of Michigan foreign and American law students interested in international law;

has bi-weekly informal dinner meetings in the faculty dining room featuring guest speakers from the University and elsewhere discussing topics of international interest;

sponsors University of Michigan Law School students' participation in the annual Jessup International Moot Court Competition;

is sponsoring an open meeting Wednesday, September 22, at 6:30 p.m. in the Lawyer's Club Lounge, featuring a panel of Professors John Jackson and Alfred Conard of the economics department speaking on the International Trade and Monetary Implications of Nixon's Economic Policies (panel moderator will be law professor Eric Stein);

will have a dinner with the speakers that night at 5:45 p.m. in the Faculty Dining Room, (sign up outside H.H. room 100);

invites all interested people to attend.

The Law Club Intramural Gold and Blue teams captured First and Eighth place, respectively, in the Intramural Graduate Division final standings, for 1970-71. The Gold Team accumulated 1604 All-Year points from the 16 events they entered. The Blue Team gathered 764 All-Year points from their 11 events. Second place in the graduate division went to Delta Sigma Delta "A" with 1421 points from 16 sports. The Law School fraternities Phi Alpha Delta and Phi Delta Phi took sixth and thirteenth, while the Law Club-Chatreuse and Law Club Imposters took twelfth and twentieth out of thirty places.

Graduation of Paul Teich has opened a place on Student Government Council. Petitioning for the position will soon begin and any law student is eligible. Any questions should be directed to Jerry Rosenblatt, one of three law student members of SGC.

Res Gestae is open for submissions from any member of the law school. Any copy, articles, announcements, etc. must be submitted by Tuesday noon for inclusion in the Friday issue. All material may be left with the receptionist, Janice Ebright, on the ninth floor of the Legal Research building.

Bulletin...Virginia Davis Nordin, Associate Director of the Institute for Continuing Legal Education, has just been named Chairperson of the University of Michigan Commission on Women by President Robbin Fleming.
GRIDDIE GOODIES:

Well, last week's Kick-off fell rather short of expectations, but of course, opening game jitters are to be expected. The predictions handed in were so poor that I felt that it would be demeaning to give the coveted GRIDDIE GOODIE GUY of the WEEK AWARD to anyone. Instead I went over to Dominic's and told him that I had won. He graciously presented me with a pat on the back and a sub in the mouth. After sampling what I had previously referred to as the prize of the week, I can assure you that in the future I will choose to demean the award rather than to conceal the real "winner."

Actually, my predictions were as poor as the rest of the enlightened readers. Perhaps I should go back to choosing Albion, Central, and Slippery Rock as my predecessors use to do! A sign of the times was apparent from the fact that no one mentioned that Grambling was not playing Alcorn A&M (as I posted) but instead played Morgan State on TV. This is indicative of:

1) Student apathy, or  
2) Student stupidity, or  
3) Student timidity, or  
4) the inability of the student to renew his TV Guide prescription due to the increased cost of tuition.

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Tie Breaker: Score

Detroit

Minnesota
In response to the incidents at Attica, we have asked several professors to comment. Except for Professor Israel, who declined to respond at this time, their statements follow.

September 20, 1971
ATTICA, U.S.A. 1971--The animals at Attica are back in their cages.

Thanks to the heroic efforts of a heavily armed and armored army of rescuers, which blasted its way into the prison Tuesday, the principles of democracy and freedom have been preserved, and the rule of law and order has returned to this lovely small town.

The lives of 28 hostages miraculously were saved by the rescuers.

The rescuers fought bravely and compassionately against the totally reckless and totally brutal revolutionaries who had audaciously seized control of the prison.

Happily, the prisoners were unarmed except for an absurd collection of ludicrously primitive and ineffectual weapons. Their disrespectful and uncooperative attitude, however, required the death of 31 prisoners and the serious injury of many others.

Nine guards carelessly exposed themselves to the precise crossfire of the rescuers and unavoidably were killed.

Governor Rockefeller, State Commissioner of Correction Oswald and the rescuers themselves have been widely praised for their courage and humanity in taking an honorable stand against the cowardly depravity of the criminals.

The forthright decisiveness of these leaders shall not be forgotten. Compare it with the moral weakness of the prisoners who promised to kill the hostages if attacked, but who failed to do so and without explanation!

Praise has also come for the ingenuity demonstrated by prison officials in attempts to put the blame for the hostages' death on the prisoners. And many have applauded Governor Rockefeller for not degrading himself in refusing, wisely, to meet with the prisoners. Such attention from the Governor, many say, would have had the disturbing effect of dignifying these base, sub-human creatures.

Experts are convinced that criminal justice in this wonderful country has passed a great milestone--a turning point. The prison system has been saved, Commissioner Oswald believes. Many foresee a marvelous new era of respect for law and order, and a new kind of prison capable of coping with the "new breed of convicts" who have no regard for their innocent victims.

The present public cry for more effective rehabilitation of prisoners promises greater attempts in the future to sternly re-mold criminals into useful citizens with severe penalties being imposed on those who refuse to be rehabilitated.
When you start talking about what "causes" -- and how we can prevent -- widespread social explosions, you find that people tend to reflect their own particular attitudes, value judgments and "biases," if you want to call them that. This has been going on for a long, long time. The great legal philosopher Morris Cohen has pointed out that many people starting with essentially the same fund of information -- but applying different value judgments -- have attributed the decline and fall of the Roman Empire to such diverse factors as the exhaustion of the soil, the corruption of the rulers, the rise of Christianity, spots on the sun, ad infinitum. He also said that the facts we dislike we call theories and the theories we cherish we call facts.

I, for one, would begin with prison attitudes and conditions. Some 15 or 20 years ago, Dr. Ralph Banay, once the chief psychiatrist at Sing Sing prison, maintained that if society kept these people in cages permanently, as it does dangerous animals, it would at least be acting more consistently than it is now. He also said that prisons "make and install time-bombs" in the personalities of those confined there. Sometimes, as in Attica, prisoners "explode" inside prisons, but almost always, after release, they "explode" individually outside -- against the society that has imprisoned them, degraded them, dehumanized them.

Others, however, (including some high-ranking New York "correctional" officials), are attributing the events at Attica Prison to an easing of discipline and softer treatment of unruly prisoners. They are saying that prison guards don't have the freedom to beat up inmates on the spot as they did in the good old days. That we haven't been sufficiently restricting their reading material, their letter-writing. Many of these same people, I suspect, "blamed"the Detroit and Newark civil disorders of 1967 on undue "permissiveness," etc.
Other people look for -- and find -- you usually manage to find what you want to find in these situations -- conspirators, "outside agitators," etc. Governor Agnew captured the headlines in 1967 by asserting that the Newark and Detroit "riots" were caused by the same conspirators -- but neither he nor anybody else ever came up with any solid evidence to this effect. This week Governor Reagan is saying that the "same revolutionaries who had been active on campuses now are fomenting trouble in prisons." He is looking for, and finding, "some similarities" between the recent San Quentin escape attempt and the Attica tragedy -- and blaming both on the "new revolutionaries." Governor Rockefeller has also talked about the "highly organized, revolutionary tactics of militants" (although many of the observers let inside Attica prison during the recent uprising thought the people there were rather disorganized) and hinted not so subtly that "outside forces" played a significant role.

It may also be said that in the wake of these social explosions, people refuse to see what they don't want to see--even if it's staring them in the face. For example, the reaction of a number of state troopers and guards to the Medical Examiner's report that the hostages had died of gunshot wounds in the assault was dismay, disbelief -- and considerable profanity. According to the Times (Thurs., Sept. 16), "some contended that the Medical Examiner's report was erroneous or 'fixed' in a conspiracy that they did not yet understand."

To many people and, I think, most officials, the "conspiracy" or "outside agitation" theories are comforting and reassuring: If only these troublemakers would go away, things would get back to normal. Nothing is fundamentally wrong with what we've been doing. (But I venture to say that nearly everything is. No "correction," no "rehabilitation," no humanness. No long range goals. The guards will try to stop the prisoners from rioting and from killing each other (but not sexually exploiting and otherwise abusing each other); and the guards are determined to make the prisoners submit to, and acknowledge, their almost total power over them; and to "break the spirit," if they have to--and they want to, but they are having increasing difficulties figuring out how to do so. Security. That's about all).

Whatever sense of urgency there was about prison reform may be lost in the concern for tighter security and the pressures for
harder-nosed attitudes and measures. This is a very serious problem. Afterall, Commissioner Oswald was regarded as a progressive and, the argument is likely to run, look what happened? The reaction to Attica will be more guards, more machine guns, more tear gas, more helicopters. I am less sure about what else.

More specifically the growing movement for "prisoner's rights" may well be checked. Courts generally have taken a "hands off" attitude about prison matters. They have been quite reluctant to "intervene" in prison disciplinary procedures. But recently there has been some judicial intervention. Now, whatever small measure of dignity and privacy prisoners were gaining, albeit slowly, may be lost. Now, when, for example, a question of mail censorship or accessibility to books or religious freedom arises, a government lawyer, I'm afraid, will be able to argue more persuasively than ever that the courts should not interfere with those entrusted with the awesome responsibility of preventing other "Atticas."

For example, an unidentified official "high in the New York Department of Corrections" was recently quoted by the N.Y. Daily News (Wednesday, Sept. 15) as saying:

"The reason [these prisoners] grow strong in solitary may well be that they know that society itself is going to react very weakly in the final analysis. They grow strong because they believe that in the end there's going to be a great deal of sympathy for them... So what we've got to do with these guys is to make them understand that if they pull anything like a riot, anything violent, they're going to feel a lot of pain. A whole lot of pain."

The writer (Donald Singleton), apparently on the basis of his interviews with various "correctional" officials and advisors to the Governor, then comments:

"Physical pain is old-fashioned. To hurt is ideologue, you attach him on the ideological level.

"You control his communication with other ideologues.

"You restrict his reading material.

"You stop his letter-wrting, so there are no more books like George Jackson's 'Soledad Brother'.
"You put him in solitary confinement, where he cannot speak to anyone.

"You fight him in the courts as bitterly as he fights the system.

"You never let him get into a position where he can attack a guard -- which means no exercise, no movies, no Christmas parties."

[At this point R.G. queried: "But, isn't there an equally strong understanding, probably growing out of the urban riot experience, that there are real grievances expressed in this way which need to be remedied? That is, if anything was learned from the riots, at least in the communities that did riot, it was that they got some government action on the problems, perhaps not too effective action, but at least action nominally directed at the problems. Social programs did develop after the '67-'68 series of disorders. And, it was fairly clear, after the Tombs prison riot in New York City, that some of the underlying grievances in prisons are also valid. Couldn't Attica conceivably be viewed as further underscoring the seriousness of these grievances? After all, Attica was supposed to have been a typical prison with no unusual activity].

One thing was unusual. Attica was supposed to be a more secure prison than most, indeed, supposedly a riot-proof fortress, and that's a point that's not likely to be lost.

But, returning to your question, there undoubtedly is some of that realization. Still, large segments of our country bitterly resent this business of "rewarding" rioters and are determined to see that it's stopped. Before Attica Prison was stormed, there was mounting criticism of Governor Rockefeller, Commissioner Oswald, and others for being too conciliatory, for feeding the "growing arrogance" of the prisoners, for waiting too long. Middle Americans are more "fed up" now than they were in '67. And they are a good deal less happy about their leaders dealing with and "rewarding" rioting black prisoners than about "rewarding" blacks who "riot" outside the prison walls.

[R.G. asked about the autopsy reports for the dead hostages which indicated they died of gunshot wounds instead of slit throats]
as had been the original official rendition. We observed that this conflict was reminiscent of the first official position taken on the Newark riots that there was extensive sniper fire resulting in the deaths of some guardsmen; later it was discovered that the troops were caught in their own cross-fire, shooting at one another.]

Well, one of the disturbing things, again, not unrelated to this search for a conspiracy and outside agitators, is that if they [the authorities] can be so damn wrong on a relatively simple, objective thing like the cause of death, what about more complex and less measurable things like the "causes" of these uprisings? They've created a credibility gap of enormous proportions. It's another reason not to take seriously their talk about outside agitators, conspirators, and revolutionaries. But it's much more difficult to disprove.

That raises another issue: the degree to which officials have much greater access to the mass media, at least initially. I wonder how many people read the stories about most major events after the first wave of reporting. The first wave was that throats were cut. For example, there was a major story by one State Police Sergeant who said he saw "execution squads" slit throats of seven hostages. That was carried in Tuesday's New York Daily News.

You noticed that at first Rockefeller said the convicts carried out the cold-blooded killings they had threatened. Now, you can see [referring to the article in the News] that it's not even stated as "apparently," or "we have reason to think" or "we believe"; it's stated as undisputed fact. When the medical examiner found no evidence of that at all--examination of the bodies showed that all died of gunshot wounds--then the officials countered, "well they might have been killed by zipguns" or "I don't want to comment on that because I haven't had an official verification of that," or "I am bringing in a national expert, an 'independent' doctor to see what really happened." (Note the attack, by implication, on the medical examiner's integrity and objectivity).

Fortunately, the initial official version of the hostages' death was refuted within hours. Fortunately, these claims could be refuted by hard medical evidence. But many first day and second day headline stories cannot be. The first reports on the
Detroit civil disorder of 1967 were most favorable to the National Guard and the police -- and the Recorders Court judges who, subsequent studies indicated, had thrown away the Constitution in order to get, and keep, thousands of blacks "off the streets." Only weeks later did we start getting reports about how trigger-happy and generally unprofessional were the Guards and the police. And only months later did the general public learn (if still interested) of the extent to which the courts, and the criminal justice system generally collapsed. But the attention span of many readers is quite limited. Many, I suspect, only read and remember, the headline stories of the first few days. Look at Wednesday's (Sept. 15) Detroit Free Press. The lead story on the first page is about Alax Karrass being cut by the Detroit Lions. The reports on the Attica tragedy are still on page one, but they are already "second fiddle" to the news about Karras.

Legally, technically, it may not matter whether the troopers and police shot the hostages or the prisoners slashed their throats. As you know, under general principles of causation, the prisoners are criminally liable for the death of the hostages, because after all, when you take hostages in these circumstances, it's foreseeable and probable that they will be killed by other law enforcement officials. But emotionally--politically--how the hostages died makes quite a difference.

Of course, things took a decided, and perhaps irredeemable, turn for the worst when that first guard (Quinn) died of injuries. It's one thing to grant amnesty for property damage, but it's politically impossible to do so for the slaying of a prison guard (I'm assuming that's what did happen). Politics aside, I don't see how you can grant amnesty for criminal homicide. The scope of the criminal liability is something else. Technically, hundreds of prisoners might be criminally liable for the death of Quinn. Many, many prisoners might be said to have "recklessly engaged in conduct which creates a grave risk of death to another person" and thereby caused the death of a prison guard, which is murder punishable by death under New York law. Prosecutors, however, frequently, exercise great discretion here--the reach of the felony-murder, conspiracy and "causation" rules. But I don't see how you can grant total amnesty, how you can excuse even those "directly", immediately responsible for Quinn's death. The repugnance toward murder and other homicides, as [Judge] Cardozo has observed, is due in considerable measure to "the ignominy that has been attached to them through the sanctions of the criminal law" and "if the ignominy were withdrawn the horror might be dimmed."
And to paraphrase what [Professor Herbert] Wechsler said a number of years ago, to the average man, himself burdened by passions and frustrations and beset by temptations, exculpation for the slaying of Quinn would bespeak a weakness in the criminal law. I am aware that you may argue, as did several of my students this week, that in a sense we have granted amnesty over the years to prison officials and guards for the deaths they have "caused"--and to the Guardsmen and police for the deaths they, too, "caused" in Newark, Detroit, Kent State, Jackson State, etc. But to the general public, at least those fact situations were more complicated and confused. Unless we've been misled by the authorities again, the slaying of Quinn is a more clean-cut case of homicide. More stark and dramatic--and so would be the failure to proceed against his "killers."

Nor, to move to a narrower front, can we overlook the impact of "total amnesty" for the slaying of Quinn on other prisons and future prison outbreaks. The view that "total amnesty" for Quinn's death might encourage, or shall we say lighten the inhibitions against, killing other guards at other prisons is certainly a defensible and plausible one.

It hardly follows, however, that the John Wayne cavalry charge on the Attica prison was justified. Surely if any tactics were likely to provoke the prisoners into killing the hostages, or to cause their death by the "rescuing army",--and inflict maximum casualties on the prisoners themselves who, after all, are "people", too--it was the very kind of massive attack that actually took place. Maybe it is my bias, but I just can't believe these John Wayne stories about sharpshooters blowing the arms off prisoners about to "execute" their hostages.

Even when the final charge began, the prisoners had minutes in which to kill their hostages--and only needed seconds. From what I can gather, they did not slay their hostages because in the last analysis they chose not to do so.

Politics aside, I don't see why a less massive and more discriminating attack wasn't tried. I don't see why the authorities didn't wait longer. I don't see, for example, why they didn't try to "starve out" the prisoners. It is difficult to avoid the conclusion that the decision to storm the prison when and how it was done was essentially a political one--and a politically attractive one. Forget about what you and your classmates and friends
think. We aren't the Middle Americans who bought the Nixon-Mitchell "law and order" pitch. That the prisoners didn't in fact slash the throats of their hostages no doubt "hurt" Rockefeller somewhat—hurt him a good deal in a few quarters—but overall he gained political points. Not everywhere, of course, but in the hearts and minds of many more Americans that we care to think and want to believe. He attained that tough, firm, no-more-nonsense image. He had been under considerable criticism for letting his prison officials "deal" with the "cons" at all. There was growing impatience with his failure to take a stand, and "get it over with." His physical presence might have been the "symbol of concern" that changed the tone and turned the tide, but politically it was too risky. Waiting a few more days might have enabled "cooler heads" to prevail inside the prison walls, but this was by no means certain, and again, politically it was too risky.

[Professor Kamisar teaches criminal law at the University and is a well-known expert in the field of police practices.—Editor's Note]
My first reaction to the killing was sparked by a question of my wife's, which was: why was it necessary to use guns to subdue the prisoners and save the lives of the hostages in this situation, assuming the decision had been made to subdue. She said that she, of course, did not want to second-guess the governor and the whole panoply of law-enforcement officers, but that it seemed to her, as a complete outsider, law enforcement must have access to the chemical-warfare technology that we've heard so much about. Gases must have been developed which are much more sophisticated than tear gas, ways of instantly incapacitating a person which are much less lethal than guns. She asked why couldn't the police have turned out the lights during the night, have helicopters fly over for a long time without doing anything, and then lay down a blanket of some gas which would instantly put everyone to sleep. There are other gases as well, which one hears about from time to time, that double up everyone in laughter or that turn off aggressive instincts.

Actually, that seemed to me to be a perfectly logical question and such perceptions often come from people totally outside the decision making process. But it was a question that was raised on the National Crime Commission when I was working on it.

Given the kind of science and technology we have and the kind of science which the Pentagon is making use of all the time, how is it that law enforcement is still back in the late nineteenth century, using deer rifles and shot gun blasts? One answer, I think, is that people just never think about things like this. They never think about them partly because they don't care; they don't care whether a suspect is shot down; they don't care whether a convict is shot down. But, in this case surprisingly they didn't care even with hostages in there.

The Crime Commission did in fact set up something called a Task Force on Science and Technology. That task force funded a half-million dollar research effort into ways in which technology could be brought to bear on law enforcement and specifically ways in which police could be equipped with non-lethal subduing devices. Now as I recall, the outcome of that specific research was not entirely successful.

There were problems for instance in developing a tranquilizer which worked quickly enough to assure that the policeman who used it would not be shot back by an armed suspect during the period
of seconds in which the drug took effect. That is a problem connected with the use of such weapons in particular circumstances, specifically in circumstances where the person you are subduing has a gun. That wasn't the case here, at Attica. Because, as I read the newspapers, the convicts didn't have guns.

The research was not successful partly, I imagine, because of lack of access to military research which at that time was highly secret. But a lot has happened since then. It might well be possible now to get access to, for peaceful domestic purposes, some military research which is going by the board as we close down chemical warfare arsenals.

To the questions asked—why can't some of these advanced scientific techniques cut down on the slaughter and the agony always associated with domestic law enforcement—rather unsatisfactory answers were gotten in the Commission's short lifetime. But, afterwards, really nothing very much has been done about it. The application of science and technology to law enforcement has mainly taken the form of increasing the use of radios by patrol-men, increasing street lighting and things of that sort, but it has not moved to a very sophisticated level. And, I suppose, the overall lesson is the absence of institutional drive and sophistication in the law enforcement system as a whole. We can trace this out in the administration of the lower courts which operate wholly without modern management techniques or computers. We can trace it out in the operations of the police and, of course, in all the operations of the correctional system.

So my first reaction to the killing was that it really didn't have to happen. Even people not privy to, for instance, the work of the National Crime Commission can think of an alternative scenario, i.e. drop a quick acting sleeping gas at night so that individual people detailed to kill their hostages probably wouldn't notice people dropping down and wouldn't act fast enough to kill any substantial number of the hostages before the gas took effect.

There may be obvious technical answers to this: that the only way you can drop a gas is in exploding canisters, or that there were lights everywhere. But, it seems clear to me that none of these questions were asked and none were answered; there is just no indication of anyone thinking of anything but guns as a last resort. Guns or, what you might call complete capitulation in negotiating, and there does lie something in between. I don't know that I make my point but I think it is an important one. I am just appalled, just appalled, to see
people storming in with shotguns where I feel certain there are a large number of military plans carefully worked out for the subduing of towns or military installations without bloodshed.

[Here R.G. mentioned the use by British troops in the disturbances in Ireland of rubber bullets which strike their human targets with non-lethal force, presumably just knocking the man down.]

In response to your question, I can certainly conceive of the authorities responding along this line: this was too serious a matter on which to run an experiment with the use of the rubber bullets; what if we go in and find that they do knock a man down; then where would we be, the hostages would be killed? The answer is: that may very well be true in this case, but the response demonstrates that you're not running experiments outside and that you're not trying to find viable alternatives before the crises emerge.

My second reaction, which is less specific, I suppose, was that not only what happened at Attica but what was said by the inmates during the course of the negotiations (much of which rang very true to any kind of experience I have had inside prisons), should serve as a reminder that the use of prisons is a very recent experiment. I don't think that we fully realize that.

As I understand my correctional history, it was the United States which introduced prisons into the criminal justice system. It introduced them in a big way, really, toward the end of the nineteenth century, certainly after what you might call the Benthamite revolution which took place in the 20's, 30's and 40's in England and here. Originally, I believe, they were places in which everyone was sentenced to a term of solitary confinement, not for the purpose of punishment, but for the purpose of letting them meditate on their sins in the Quaker or religious fashion. The notion of warehousing people in institutions in which they lived as an isolated community is really a product of the last eighty or a hundred years which is not a very long time as far as the criminal justice system goes. Before that, we had death or mutilation, or corporal punishment or acquittal through jury nullification, or transportation, or flight to Australia, America, or the colonies generally, or the West, to the frontier in other words, or some kind of civil penalty was exacted from the malefactor. There is no reason to assume that prisons should succeed; they may be just a try that failed.

I think that what happened at Attica also highlights an American peculiarity in the use of the prison system. That is the use of very long sentences which, although we don't like to acknowledge it, certainly have a destructive impact on the individuals subjected to them.
Such sentences do not just lead them to lose hope, but actually change them in the course of incarceration. Other Western jurisdictions are apparently able to use their prisons with a good deal more success--measured by recidivism and problems in internal administration--with not just marginally but very substantially and strikingly lower average sentences. There is a question whether there is a difference for a man between a two year sentence and a ten year sentence. The additional eight years may really have nothing to do with him. He's a different man.

[R.G. questioned if Professor Vining was comparing the American prison system to European models. He agreed that he was. So R.G. asked whether or not a reason for the failure of our penal system was, in part, one unique for its severity in America, namely racism. We pointed out that the television coverage of Attica revealed a remarkably high level of political consciousness among the black prisoners who make up the predominant group of inmates.]

I agree with you that that contributed to the problem, but not quite in the way in which the inmates say it contributes. As I heard them over the television, and as I heard Bobby Seale, the equation being made was between the black inmates in Attica and political prisoners, persons who have been accused and tried on trumped up charges for political and racial reasons, I have some trouble with that equation.

I think it is the fact that there are dangerous people in every community. Black or white they have to be handled, or else they destroy too many innocent lives. I don't mean just by killing. One heavy burglary of a person living on the margin--for instance, a female domestic worker raising two children alone--virtually destroys what makes life possible.

In riding around with police I have been in such tenements just after burglaries and have felt in my gut what the consequences of the crime were. The effect on the victim can be disastrous, and burglaries aren't even violent crimes. So black or white the people who do this sort of thing are going to have to be dealt with in some way.

But I do think race is a contributing factor in the sense that the large number of poor, black, illiterate, violent prisoners who feel greatly aggrieved by what's happened to them and not at all contrite and who have become demonstrably (at least statistically if not in individual cases, because unfortunately the way we run our criminal justice system we don't know very much about individual cases) more and more violent and dangerous with each brush with the criminal justice system is a fact that tells us something. I think what it points us to is the
admission that a principal cause of crime is the operation of the criminal justice system itself. I do not mean to belittle the importance of racial discrimination, poverty, illiteracy, absence of education, and the rest, the importance of those factors to crime. However, the fact is that the enormous majority of the poor and the black and the discriminated against, the illiterate and the uneducated are not violent and are not criminal. The hard fact is that proportionately more of such people are exposed to contact with the criminal justice system and experience its "correction" and the kind of empty shams that go for trials when you're not protected by private money and private counsel.

The persons who experience these things are understandably desocialized, and I think the evidence that I've seen shows a relationship between contact with criminal justice and crime rather than showing a causal relationship between poverty or race and crime. Now I'm sure I could be called or challenged on that. It might be shown for instance that the statistical techniques used are the same in each case, but the work of people like Ohlin and Cloward on the development of delinquent careers, for instance, is based on more than statistics.

There is also, I think an intuitive validity to a causal connection between the kind of criminal justice system we have and the crimes of violence or intolerable behavior of persons who have been exposed to it more than once. That intuitive connection is the reaction that we all have when we actually see the criminal justice system in operation.

I should summarize this by just saying that this is a message which is politically very unpalatable because it challenges the integrity and competence of a very large number of either dedicated or powerful people, the corrections establishment, probation officers, the judges who run the courts, the prosecutors, and all the rest, even the organized bar. It's much easier to say that the true cause of crime is poverty, race and educational deprivation so let's focus on poverty and race and education. Well, of course we should be focusing on poverty and race and education, but it is quite unlikely that we will make a dent in those problems in much less than a generation or two generations even with the most serious and massive of Great Society programs, which of course we don't have now. Such an approach, while it helps drum up support for various social programs, I think has the consequence of diverting attention from the kind of reform work which might have pay-offs in the immediate short run.
After all, the criminal justice system is a controlled system. It is under conscious control, whereas the social systems which produce discrimination and racial problems and the cultural and financial systems which produce educational problems and poverty are not limited systems and are not under conscious control. This many of us hoped would be one of the principal messages of the National Crime Commission Report. That is to say that the criminal justice system itself was a cause of crime and should be reformed for that reason and not just because it is obviously unfair and sleazy. I don't think that message got across, in part because of a good deal of quite sincere language in the report about the importance of focusing on poverty and race and housing and education, quite sincere because the Commissioners really believed that these are the root causes of crime.

[Here R.G. inquired, "Then, you're saying that, in our fascination with the possibilities of remedying "root causes" and of achieving utopian solutions, we have lost sight of the problems which are immediately crushing in upon us, those problems which we can treat most directly with the available resources?"]

Yes, that's it precisely.

Now there is one final point that should be made after all of this, after making the points that the prison is an experiment and that the criminal justice system as a whole, which includes the way that the police and courts act as well as the way that the various social service systems attached to the police and possibly the courts act or fail to act, that that system is at fault. There is the problem of alternatives. Now, we can think of a good many alternatives to the way in which we handle and treat people initially, at the initial stages of criminal justice system. By that I mean both initial stages of a case and the initial stages of a delinquent career. There are all sorts of ways in which prosecutors and police can make use of social resources to prevent the development of violent careers. Very enlightened ones among them do this in a kind of ad hoc way. We can think of viable alternatives there. But, when it comes to the correctional system, I have to confess that there are not viable alternatives sitting around. Death, flight to the frontier, transportation, and jury nullification or acquittal really are not present alternatives.

The alternative which has had its heyday, I suppose in the relatively recent past, has been the suggestion that persons convicted of crime should be treated essentially as sick and remolded in their behavioral characteristics. As far as violent convicts are concerned there is also the suggestion of using mind and
personality-changing drugs. My problem with that alternative is one that my own classes in criminal law have seen rather clearly themselves, which is that the other side of that coin is treating convicts as non-persons, as persons without autonomy and moral responsibility. I thought one of the most eloquent statements by the convicts that I saw on television, was made by the man with the wire-rimmed glasses, if you recall. He said that "our main demand is not to be treated like animals anymore but to be treated like men." The medical alternative does not treat convicts like men.

[Professor Vining teaches criminal law at the University, and from 1964-1966 was a member of the Office of Criminal Justice in the Department of Justice and then was Assistant to the Executive Director of the National Crime Commission.--Editor's Note]
[R.G.: Professor Chambers, do you think the decision to attack Attica prison was proper?]
Chambers: I don't think so. I've been trying to think of what circumstances would, in my view, have justified the attack. The only justification which occurs to me, given the kinds of events that were going on generally, is if the prison officials were reasonably certain that many hostages or inmates were already being killed inside that there were simply going to be mass slaughter, and thus that attacking did not substantially increase the likelihood of a heavy loss. The decision should be evaluated not merely with a view to the possible loss of hostages' lives but also of prisoners, whose lives I personally cherish no less greatly than the lives of the hostages they held.

And now what we are gathering from the newspapers is that the hostages were not in fact dead at the time of the attack. I suppose what we cannot know is what the belief of Oswald was as to what was happening inside. But I would really want very certain knowledge of slaughter inside before attacking. In the riots in the cities during '67 and '68, those cities that ended up being judged by most people to have handled the situation badly were those that acted too quickly on rumors.

[R.G.: Do you think that, even assuming hostages had been killed, it still would have then been necessary to determine that more lives of prisoners and hostages would be saved than lost by an attack, in order to justify it?]

Chambers: I feel that the worth of an inmate's life is the same and should be considered the same as one guard's life. If you feel that way, then you conceivably might let the prisoners slay every guard without attacking on the view that far more lives might still be lost by attacking and, beyond that, on the view that not all prisoners would have been involved in the guard slayings.

[R.G.: This raises the question of a conspiracy theory whether all the prisoners do share the guilt of those who actually participated in the killings. Of the thousand or so prisoners in the yard, do you think all of them are morally or legally conspirators?]
Chambers: As to the law, I was trying to think, as law professors are wont to do, whether they might all be held liable for first degree murder. There are all kinds of theories: conspiracy and felony murder and others that might permit you to hold them. But as to any one given inmate, I would certainly be willing to try to defend him on the ground that the fact that he was in there shouting assent is no indication of what his real state of mind was. I would have been hard pressed as a dissenter under those circumstances to have expressed my disagreement.
[R.G.: From the point of view of the deterrent effect of the attack--I think it was justified by its supporters largely on that basis--do you think it will prove an effective deterrent for other prisons and other prisoners?]
Chambers: I don't know. The many, many deaths in Detroit during Detroit's riot in '67 certainly appeared to have had no impact on the black citizens involved in the outbreaks in Washington and Chicago in the spring of '68 after King's death. It seems to me--and this was true of the cities--that as long as the conditions remain about the same in these prisons, the chances of riots remain high. On the other hand, I suppose if the officials had not intervened and had granted amnesty, so that there were no sanctions taken against any inmate for having participated in the riot, I suppose it might have had the impact of encouraging outbreaks elsewhere. The reason you can't make any such statement is that so far as I know, there have been no major riots in any institution after which amnesty was in fact granted.

[R.G.: Do you think that the demand for amnesty was an unreasonable demand--that it was impossible or unadvised for the Governor or the prison officials to grant it?]
Chambers: Well, a decision either way would have been wrong. You can't win when you're boxed like that. If you grant amnesty, you might have saved a lot of lives at that moment, especially if you really looked into it and decided that if you didn't grant amnesty many of the hostages would have been killed. On the other hand, if you do grant amnesty, you may just be deferring deaths that would occur, it might be feared, in later riots and in the seizing of other prisons. And either way you make the decision, you're likely to be considered to have acted improperly.

[R.G.: Can the prisoners be prosecuted for murder under the New York Code even if the hostages were shot by the attacking police?]
Chambers: As I read the New York Code, there are two different theories that New York State could use to try to convict the prisoners who were holding the hostages of murder, even though the hostages were shot by the attackers. But neither of the theories seems to me very persuasive. New York provides for holding a person for murder if, "Under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person and thereby causes the death of another person."

The "reckless" conduct that the prisoners engaged in was seizing the institution, that surely created grave risks of death to people, and through it somebody died. But I'm not sure at all that that conduct evinced "depraved indifference to human life." Indeed, it was their own understandable concern for the quality of their own lives that led the inmates to revolt. I don't regard that as depraved. Maybe a jury in Attica would.
The other theory is rather like felony murder, but the felony murder rule under New York's new statute, though it applies to killings resulting from kidnapping, also requires that the killing be by the person who kidnaps or another participant. It would not seem to apply to a situation where the police kill somebody in the course of trying to interrupt the offense. So my answer is, as I would read the statute, the prisoners probably shouldn't be held for murder, but they might be.

[R.G.: How long do you think State Corrections Commissioner Oswald could have afforded to wait before taking some action?]
Chambers: Forever. The need for showing you're going to be tough and insistent on law and order seems to me of minimal importance at that time. We've had a lot of prison riots in this country, and many of them have been handled without loss of lives by waiting the inmates out. The practice of waiting them out has not to my knowledge led to an accelerating incidence of riots in other prisons.

[R.G.: What would happen if you had waited and there was the death of another hostage suggesting a kind of one-a-day formula until you would do something?]
Chambers: I don't know. The trouble is you're asking me to be dispassionate and a rational planner about something that is just very difficult to know how you would react. The problem is that at that moment, if the prisoners are making it fairly clear that one hostage is going to die every day, the Director of the Corrections Department is being put in the position in which, by letting the insurrection continue, he feels personally responsible for bringing about another death every day. Under such circumstances, he might understandably convince himself, "Maybe there's some chance; I can break in there, do it fast and seize everybody, there won't be much more loss of life." Oswald, I imagine, hoped that they could seize the place without killing very many people. I just don't know what I'd do.

[R.G.: Would it make any difference if fellow prisoners instead of guards were being killed inside the prison?]
Chambers: The sum of my point is that if I thought there were lives being lost inside on a regular basis and I had the power to intervene, it wouldn't make any difference to me whose life it was--I would find intervention a very, very strong temptation which would be difficult to resist. That may be one reason among many why no one would hire me to run their corrections department. But we don't have any indication that such slaughter was in fact going on inside the prison before the attack and that is what makes Oswald's decision so troublesome to me. One life had been lost, but it was irretrievable at that point. This was the life of the guard who died of wounds received during the initial seizing of the prison and his death was no indication that the inmates were planning more.
[R.G.: Do you think anything can be done at present to prevent similar situations?]
Chambers: I don't know what you mean by "at present." I think one thing that we're learning is that these giant institutions, wholly apart from their inadequacy as places for rehabilitation, also make little sense for purposes of control. Those who run Jackson prison are presently trying to sell to the legislature a plan to break up that institution into smaller institutions by fencing it off in different ways and let the units run themselves. In talking to us dogooders, they justify the plan largely from a treatment point of view since you can really work more effectively with smaller units. But I think they also feel it has great importance from a control point of view.

The short term solutions are uncertain. I'm fascinated and terrified by San Quentin's policy, that I was reminded of at the time of the Jackson killing, that the guards are instructed to shoot to kill any inmate holding a hostage, even at the risk of killing the hostage. It's a double-edged sword. In advance, as a policy that all the inmates know, it may reduce the number of hostages who ever get seized and held. It may deter people from trying to start a riot in the first place. On the other hand, once the person's been seized, you're really forced to risk his life—and the person who gets seized may often be a somebody who has really never had an opportunity to make a judgment as to whether he wanted to submit to that kind of a rule. Visitors would not know the rule, and if a visitor was to be seized, the fact that his or her life would be forfeited in order to put down a riot is not easy for me to stomach.

I'm concerned about prison riots for the same reason I was concerned about city riots. That is only in small part because of the lives that were lost. I don't like to see the loss of lives, but we kill twenty times as many on the roads every day. What concerns me most is the nature of those institutions and the circumstances that have led our nation to lock so many people away.

[R.G.: Do you think there's any ground for the prosecution of Oswald or the attackers?]
Chambers: That's also a law professor's question. You can get to first base on a murder theory quite easily. Oswald ordered his men to attack, and kill if necessary and kill they did. The question is not whether an intentional killing occurred, but whether there was a defense to it. The defense is normally seen in terms of a law enforcement officer's right to prevent a felony in commission. There's some New York law directly on point about the circumstances in which law enforcement officers are permitted to use force. But even when they use force, I would suppose that they have to use it with care. It doesn't give them a blanket license to blow up the entire town of Attica with an atomic bomb in order to stop the riot. They must do it in some way reasonably calcu-
lated to keep the loss of lives to a minimum.

But I don't think criminal responsibility is the answer to any of this, you understand. The criminal laws are a decidedly trivial aspect of this whole problem. We'll have some trials probably now—not of Oswald, of course—but to look at the events of the last two days in terms of what prosecutions could result, are interesting lawyer's fun and games and the kind of thing I confess that I drag first year students through, but they're really not the heart of it by any means.

[R.G.: Do you have any other thoughts about the Attica situation?] Chambers: Well, I'm struck by the responses in the newspaper in the last couple of days. Today's Times has a long article about the number of important people calling for prison reform in light of Attica. Indeed, some black members of Congress—including Shirley Chisholm and Ronald Dellums of Oakland, California—issued a statement saying that Attica dramatized the need for prison reform "towards a system of rehabilitation." Well, there isn't any doubt in my mind that prison reform is needed.

I haven't ever been to Attica, but I've seen some other maximum security prisons here and in other states and they're far more degrading of the human spirit than is easily imagined. Nevertheless, I'm a little surprised at Dellums calling for a system of rehabilitation when what that system really means is that we should concentrate our efforts towards shaping these people in our own images, when neither Dellums or I think that that image is a very satisfactory one. I am very perplexed as to the best answer. What should a society do when it knows that many of those who commit violent antisocial acts do so because of defect in the structure of society that have far too long been tolerated?

[Professor Chambers teaches criminal law at the University and is pursuing a current interest in the area of prisoners' rights.—Editor's Note]