Letter from Irving Maghran to Donald Berens

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May 15, 1992

Donald P. Berens, Jr., Esq.
Deputy Assistant Attorney General in Charge
State of New York, Dept. of Law Claims Bureau
409 Justice Building
State Street
Albany, New York 12224

Re: Al-Jundi, et al
vs
Oswald, et al
Civil Action No.: 75-1128

Dear Don:

Regarding the proposed "Questionnaire" I agree with the comments of other defense counsel that the names of the defendants should not be incorporated in question 21. The only evidence during the trial that any defendant struck any inmate at any pertinent time was the testimony of plaintiff Rosenberg that my client, Earl Pfeil, hit him in the face with a chair after he had been locked in a cell in B05. I believe that even that testimony surprised plaintiffs' counsel as in their openings to the jury they commented that there was no claim that any of the defendants actually struck any inmate. To now incorporate the names of the defendants only invites unreliable answers that cannot be verified by you but can be used in argument by the plaintiffs' counsel. The information would only be pertinent if the plaintiff indicated that he was beaten by a New York State Trooper or a correction officer. I would suggest that the question be framed so as to give the plaintiff a checklist of either a New York State Trooper, a correction officer or some other person.

I also agree with the comment of Mr. Effron that the word "assault" be replaced by "retaking" throughout the Questionnaire.

Also, I agree with Mr. Moss's comment that the Questionnaire only applies to inmates that were in D Yard on September 13, 1971.

I also wonder about the need to enumerate the different places where the plaintiffs may have been struck or beaten after the gunfire stopped but before they were placed in a cell. In present form it is an invitation to have the plaintiffs indicate they were beaten at every stage. Would it not be better to simply ask whether they were beaten or struck after the gunfire stopped and before

Letter dated May 15, 1992 from Irving Maghran to Donald Berens providing comments on a proposed questionnaire.

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