

2:00 p.m.

1
2
3
4 MR. McKAY: This is the afternoon
5 session of the eleventh day of the public hearings
6 before the New York State Special Commission on
7 Attica.

8 Mr. Liman, will you introduce the subject
9 for this afternoon.

10 MR. LIMAN: We are going to commence this
11 afternoon's session with some testimony which we
12 took in the executive session last night of a
13 member of the State Police; brce who is part of
14 an undercover detail and, therefore, we did not
15 think it appropriate for him to appear publicly.

16 We will read his testimony on the subject
17 of correction officers firing from the third floor
18 of C-block.

19 You will recall from yesterday's testi-
20 mony by Col--by Major Monahan that the policy was
21 that correction officers were not to participate
22 in the assault.

23 We will then have a taped telephone
24 conversation referring to correction officer
25 firings. This tape was made contemporaneously

1
2 with events on the 13th of September 2032
3 and we will then proceed with Col. Miller of the
4 State Police, with a citizen of Attica, with a
5 person who was wounded in the assault and a
6 Dr. Gold, the psychiatrist acting as consultant
7 to the Commission who has interviewed a number
8 of people at Attica, including people who are now
9 in HBZ.

10 Let us begin with the testimony. This
11 is testimony that was taken yesterday of John
12 D. Steinmetz.

13 Mr. Rosenfeld will read Mr. Steinmetz'
14 answers.

15 "Q What is your occupation, Mr.
16 Steinmetz?

17 "A I am a member of the State Police,
18 an investogator.

19 "Q Are you attached to the BCI?

20 "A Bureau of Criminal Investigation,
21 yes, sir.

22 "Q Are you also attached to A Troop?

23 "A A Troop, sir.

24 "Q Did you go to Attica during the period
25 from September 9th through September 13th?

"A I did.

1 "Q Where were you on the 2033
2 morning of September 13th?

3 "A I was the radio communication
4 between General O'Hara and the command post.

5 "Q When were you given this duty?

6 "A That morning.

7 "Q Were you briefed that morning?

8 "A I was briefed.

9 "Q Did you attend the briefing that
10 was given by Major Monahan?

11 "A Yes, I did. Capt. Williams briefed
12 us.

13 "Q Capt. Williams briefed the members
14 of the BCI?

15 "A Yes.

16 "Q When you say you were the radio
17 communication between the command post and
18 General O'Hara, you had a portable radio, is that
19 what you mean?

20 "A Yes, sir.

21 "Q Did you relay his commands or did
22 he speak into your radio?

23 "A I relayed his commands.

24 "Q Where were you stationed?

25 "A I--we were stationed on A-block

1 gallery, on the third gallery of

2034

2 A block, about half way.

3 "Q The third floor of A-block?

4 "A Right.

5 "Q That's the floor that's above the
6 catwalk, rather than on a level with the catwalk?

7 "A Yes, sir.

8 "Q What time did you and General O'Hara
9 arrive there?

10 "A Approximately 9:30.

11 "Q Did you accompany him there?

12 "A No, sir, I met him there.

13 "Q Was he there by the time you got
14 there?

15 "A He was there before I was there.

16 "Q Who else was in this gallery?

17 "A The general, myself and some correc-
18 tion officers.

19 "Q Were the correction officers armed?

20 "A Yes, sir.

21 "Q What were they armed with?

22 "A Shotguns.

23 "Q Were they positioned by the windows?

24 "A They were at the windows, yes, sir.

25 "Q With their guns out the windows?

1 "A Not at the time that we got 2035
2 up there, no, sir.

3 "Q Did there come a point when the guns
4 were pointed out the windows?

5 "A I would assume, yes. I was interested
6 in the activity over here and I--they were on both
7 sides, but I did not actually see the guns pointed
8 out the windows.

9 "Q There were correction officers on
10 both sides of you?

11 "A We were in the center.

12 "Q There were correction officers on
13 both sides of you?

14 "A Yes.

15 "Q You say you were interested in the
16 activities over there, you mean out toward the
17 catwalk?

18 "A Out toward Times Square and in the
19 area of the catwalk here.

20 "Q Who gave the command for the gas
21 drop?

22 "A I can't recall just exactly what
23 was said, but the command post advised that we
24 were committed and General O'Hara advised me to
25 advise them to tell the choppers to start their

1 engines and come over.

2036

2 "Q Who was at the command post?

3 "A Capt. Williams.

4 "Q Now, were you under any instructions,
5 told what the instructions were with respect to
6 correction officers participating in firing?

7 "A No, sir.

8 "Q Did General O'Hara say anything to
9 the correction officers on the gallery in your
10 presence?

11 "A Not while I was up there, no, sir.

12 "Q After General O'Hara gave the command
13 or the--uttered the words that you have just
14 testified to, did the helicopter come over Times
15 Square?

16 "A Yes, sir.

17 "Q What did you see happen?

18 "A I saw the gas drop, the pepper gas
19 drop and spread across the area.

20 "Q Of Times Square?

21 "A Of Times Square and the yard.

22 "Q What happened when you saw that?

23 "A Very shortly after that, the firing
24 started.

25 "Q Was there firing from your gallery?

1 "A I could hear some firing, 2037
2 yes, sir.

3 "Q Can you give me an idea of how sus-
4 tained the firing was from your gallery?

5 "A It was in spurts. Very short spurts,
6 let's say. Not a continuous fire.

7 "Q Were any of the spurts characteristic
8 of an automatic weapon or Thompson submachine gun?

9 "A No, sir.

10 "Q Could you see what the men in the
11 gallery were firing at?

12 "A No, sir, I could not.

13 "Q In order to get to the portion of the
14 gallery where you and the general were, did you
15 have to pass these correction officers who were
16 armed?

17 "A At the time we got there?

18 "Q Yes, sir.

19 "A Yes, sir.

20 "Q Were any instructions given for a
21 cease-fire?

22 "A No, sir.

23 "Q Was any log kept, to your knowledge,
24 of the commander's instructions over this police
25 radio?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

"A Not that I know of, sir. 2038

"Q How long did you stay on that gallery with General O'Hara?

"A After--probably a half hour to 45 minutes.

"Q How long did the firing last?

"A I would guess three to four minutes.

"Q What did you do on the gallery after the firing had stopped?

"A The general said that we would stay there to see if there was any necessity to bring the choppers back for more gas, so we just waited there.

"Q Other than the command which you have testified to, did General O'Hara give any other commands?

"A No, sir. Not that I can recall.

"Q And who made the decision for you to leave the gallery?

"A The general, when he was--when he felt that there was no reason to possibly call the choppers back. Then we both went down.

"Q Were the correction officers still there?

"A It seems to me that they were gone

1 by the time we left.

2039

2 "Q Do you know what kind of weapons they
3 had; were they rifles or shotguns?

4 "A I believe they were shotguns. I
5 did not examine them. They looked like shotguns
6 to me.

7 "Q Where did you go with the general
8 after you left the gallery?

9 "A We walked to the, over to the top
10 of, I guess you call it, A--

11 "Q Catwalk?

12 "A (continuing) --catwalk, over to
13 Times Square and then back out into the building,
14 the administration building.

15 "Q The way you have just described it,
16 it's--

17 "A This way.

18 "Q No, let's get your orientation
19 correctly.

20 "JUDGE WILLIS: This is A-block. This
21 is A-catwalk.

22 "Q What path did you take; you went
23 out on A-catwalk?

24 "A We went out on A-catwalk.

25 "Q You went to Times Square and then

1 just doubled back?

2040

2 "A Yes, we did not go back--we walked
3 part of the ways down C-catwalk and--

4 "Q Returned and then went out--

5 "A Came back to Times Square and walked
6 out--

7 "Q You walked out A-catwalk back to
8 the second floor of A, and then back into the
9 administration building?

10 "A Right.

11 "Q Then did you leave General O'Hara?

12 "A Yes.

13 "Q While you were on that catwalk, was
14 firing still going on?

15 "A No, sir.

16 "Q Did you observe the process of
17 stripping and handling the inmates in A-yard?

18 "A Yes. While we were still there,
19 the inmates were coming into A-yard through the
20 entranceway.

21 "Q Did you see how they were being
22 moved in A-yard?

23 "A They were being moved on their
24 stomachs across A-yard.

25 "Q Did you see what would happen if

1 somebody did not move or raised up? 2041

2 "A I saw that they were--I could hear
3 on the radio that the tunnel entrance or where
4 they were coming out here was getting jammed up
5 and they just kept moving them faster until this
6 whole area was covered.

7 "Q Did you see them being prodded as a
8 way of moving them?
9

10 "A No, sir, I did not.

11 "Q Did you see anybody breaking watches
12 in that yard from where you were standing?

13 "A No, sir.

14 "Q Did you see anybody being struck
15 in that yard?

16 "A I did not, no, sir.

17 "Q Did you hear any of the language
18 that was being used in that yard?

19 "A You couldn't hear it from up there."

20 MR. LIMAN: I think we can conclude
21 with that testimony. I would like to resume on
22 page 11:

23 "Q Did anybody appear to be in
24 command of the correction officers on that third
25 gallery of A-block?

"A At the time I got up there, no, sir.

1 "Q Were you the only trooper 2042
2 up there?

3 "A Yes, sir.

4 "Q Was there any discussion that you
5 overheard about whether or not they were per-
6 mitted to fire?

7 "A No, sir. No discussion.

8 "Q When Capt. Williams briefed you that
9 morning, did he lay out what the plan of the
10 assault was?

11 "A Yes. To some extent. He did not
12 advise as to the operation of the correction
13 officers.

14 "Q Was there anything in the plan, as
15 he explained it, that contemplated the use of
16 firearms by correction officers on the third floor?

17 "A No, sir.

18 "Q And did General O'Hara at any time
19 express any concern or awareness that this was
20 going on?

21 "A Not while I was up there with him.

22 "Q There was no doubt in your mind that
23 there was firing coming from both sides of you on
24 that gallery?

25 "A There was firing up there, yes, sir.

1 "Q Do you wish to make a 2043
2 statement?
3

4 "A No, I do not."

5 MR. LIMAN: We will now play a tape which
6 was made in the afternoon, I believe, of September
7 13th. It constitutes a report by a union official
8 of the correctional service who is present at
9 Attica to the command post in Albany where the
10 Department of Correctional Services made a report
11 of telephone calls coming to the Department from
12 Attica and we have heard the tape and this is a
13 portion which we are going to play because it
14 deals with the subect of the firepower from members
15 of the Department of Correctional Services, correc-
16 tion officers coming out of the third floor of A-
17 block.

18 Can we run it now?

19 "VOICE NO. 1: You must be pretty well
20 filled in by now on all the particulars.

21 "VOICE NO. 2: Yeah, yeah, yeah. We
22 were discussing and I am doing this more for the
23 record because the tape seems to have gone bad.

24 "VOICE NO. 1: I see.

25 "VOICE NO. 2: The latest is that a
conversation with Capt. Wald, when he came up the

1 ladder, he related to Bill that Walt 2044
2 had been saved by somebody who was shooting the
3 guy that had a knife at his throat and Wald said
4 he was saved by the skin of his teeth and thankful
5 to the guy that shot the guy that was holding a
6 knife to his throat.

7 "VOICE NO. 1: Oh, well, there is some
8 real marksmanship in this.

9 "VOICE NO. 2: Yep, yep.

10 "VOICE NO. 1: I saw one inmate that was
11 holding a hostage. I don't know if that was the
12 one that was the one that was holding Walt, but he
13 was shot right in the middle of the neck and
14 right through. That was a fatality right there,
15 one shot.

16 "VOICE NO. 2: Yeah.

17 "VOICE NO. 1: And it was. The State
18 Police really did a tremendous job."

19 "VOICE NO. 2: They must have, yeah.

20 "VOICE NO. 1: Also there was a story
21 of finding a dead body in the yard. It seems that
22 they were, according to Bill, digging trenches in
23 the yard in which they intended to lay with
24 mattresses on top of them against gas.

25 "VOICE NO. 2: That's correct.

1 "VOICE NO. 1: They thought 2045
2 that they could take over the State Police if they
3 buried themselves under the mattresses to get
4 away from the gas. Then when the police came
5 to hope out.

6 "VOICE NO. 2: How come they went in
7 these trenches?

8 "VOICE NO. 1: It happened so fast, the
9 assault was so timely and so well coordinated,
10 they didn't have a chance to get into the trenches.

11 "VOICE NO. 2: Also they said when they
12 were digging the trenches, they came across the
13 body of an inmate who had been buried there four
14 days. Is there a definite confirmation of that?

15 "VOICE NO. 1: Vincent was the one that
16 mentioned it.

17 "VOICE NO. 2: One body or more?

18 "VOICE NO. 1: One. One body. I saw
19 two bodies in the cell block that were possibly
20 there dead a couple days. In cell block D.

21 "VOICE NO. 2: Why would you say,
22 Warren, that they were dead a couple days?

23 "VOICE NO. 1: Well, rigor mortis set
24 in and their pallor, the flies. There was every
25 indication that they were dead a couple days.

1 "VOICE NO. 2: Were they inmates? 2046

2 "VOICE NO. 1: They were inmates and
3 they were practically decapitated. Their cuts
4 were torn open with some kind of a jagged instru-
5 ment, nothing sharp like someone had sawed on
6 their throat. It was very gruesome. And it was
7 in the same company, 42 company, and cell block D.
8 And they were laying right in the cell and they
9 were dead. The eyes, you know, there was no
10 blood, no--you know.

11 "VOICE NO. 2: It's now 1722.

12 "Warren Goren, what else did he see?

13 "VOICE NO. 1: Well--

14 "VOICE NO. 2: Or if you talked to any-
15 body, what did they say? Did you talk to any of
16 the hostages?

17 "VOICE NO. 1: I took one hostage out
18 and he said, 'Boy, I love you.'

19 "VOICE NO. 2: Did he--

20 "VOICE NO. 1: He didn't give any
21 information. He was in shock. You know, he
22 just couldn't give any information.

23 "VOICE NO. 2: What did you see? Point
24 out any things that you seen.

25 "VOICE NO. 1: Relative things. I was

1 standing next to a correction officer 2047
2 with a rifle as---

3 "VOICE NO. 2: Where was that?

4 "VOICE NO. 1: In cell block A on the
5 top tier on the right.

6 "VOICE NO. 2: During the attack?

7 "VOICE NO. 1: At the beginning--before,
8 beginning and after. When the hostages with
9 threats, they had three of them facing the cell
10 block A and when the helicopter came down with
11 the gas, then the inmates started to attempt to
12 cut and then there was a complete fire from all
13 sides. The officer next--they were all laying
14 down now on the crosswalk and the officer next
15 to me was firing into the bodies on the walk
16 and I pushed the rifle away.

17 "And I said, 'Gee, get those targets
18 over there, the leaders with all those, you know,
19 weapons. You got hostages there, you know.'

20 "You know, I think all the display here
21 by the State Police was the coordination and
22 training that they had. If they had to go through
23 two wire barricades to get to a third barricade
24 and what they did, they sent men out with fire-
25 power and then right back of them come in the men

1 with the snips and cut the wire and the 2048
2 more firepower, over the wire and so forth.
3

4 "It was really--it was such a short
5 duration I don't think they ever anticipated that
6 kind of firepower. I think it took them com-
7 pletely--

8 "VOICE NO. 2: By surprise?

9 "VOICE NO. 1: Yes.

10 "VOICE NO. 2: They must have been
11 expecting this all along.

12 "VOICE NO. 1: They were expecting it,
13 but they never expected the firepower that came
14 out. You know, they had barricades and they
15 thought, you know, that was going to do the trick,
16 but it didn't.

17 "When they saw all--when they were
18 mowed down like wheat on that--on top of that
19 crosswalk and there was nothing moving on that
20 walk once the fire, that initial burst.

21 "And that helicopter hovered over and
22 told them, 'Put your hands on your head, give up
23 to the nearest officer,' and mister, they were
24 giving up.

25 "VOICE NO. 2: Of course, there must
have been quite a number of people that were not

1 participants all along. Would you say 2049
2 that?

3 "VOICE NO. 1: Well, yes. Not knowing
4 or seeing, you know, how many--seeing the inside
5 of where they were, that portion of the yard,
6 but there were still brought a few that were
7 trying to be active and so on."

8 MR. LIMAN: That was the tape. As you
9 hear, he said it was made at 1700, so that means
10 around 5:00 o'clock in the afternoon of Monday,
11 September 13th, referring to the events earlier.

12 I should mention in connection with the
13 tape that there was a reference to Vincent saying
14 something. Vincent was Deputy Superintendent
15 Vincent and I think that the remark attributed
16 to him was that there was a body found in the
17 yard and as we have described earlier, that was
18 the body of an inmate who died of gunshot wounds.

19 There were also references there to
20 finding the bodies of inmates in D-block and as
21 we have previously described, those are the
22 bodies of two, of Hess, Schwartz and Privatiera.
23 I don't know which two he was referring to.

24 We are now ready to proceed with our
25 first witness, Col. Miller.

1 MR. MCKAY: While Col. Miller 2050
2 is coming to the stand, I have just been advised
3 by the security corps that we have had our
4 regular bomb threat and I will tell the studio
5 audience and the general public as before that
6 the same search of the premises was made this
7 morning as usual. Nothing was found and all
8 those who have come into the building since that
9 time have had any parcels or brief cases examined.

10 We think it is not a serious threat
11 and we hope you will stay with us.

12 Col. Miller, I guess you at least have
13 decided to stay.

14 COL. MILLER: Yes, I have, Dean.

15 MR. MCKAY: Will you remain standing
16 to be sworn.

17 J O H N C. M I L L E R, called as a witness,
18 being first duly sworn by Mr. McKay, was
19 examined and testified as follows:

20 EXAMINATION BY MR. LIMAN:

21 Q State your full name, for the record.

22 A John C. Miller.

23 Q What is your occupation?

24 A First deputy superintendent, New York State
25 Police.

1 Q Is that the second highest position 2051
2 in the State Police?

3 A It is.

4 Q Who is actually the superintendent of the
5 State Police?

6 A William E. Kirwan is the superintendent.

7 Q I think you will have to adjust the mike.
8 How long have you held this position of
9 second in command of the State Police, sir?

10 A I received this appointment on, I believe,
11 February 24th.

12 Q Of this year?

13 A Yes.

14 Q In September of 1971, what was your position?

15 A Chief inspector.

16 Q Who were the officers superior to you in the
17 department at that time?

18 A Well, the office of the deputy superintendent,
19 field command, was vacant due to retirement. The
20 deputy superintendent, Surdam, in charge of administra-
21 tion. Deputy superintendent Denman, the first deputy
22 superintendent and Mr. Kirwan, the superintendent.

23 Q So there were essentially three people above
24 you in the chain of command at that time?

25 A That's right.

1 Q Colonel, when did you learn of 2052
2 the disturbance at the Attica Correctional Facility?

3 A On the morning of the 9th.

4 Q How long, incidentally, had you been in the
5 State Police?

6 A I finished 32 years this July.

7 Q And had you also been in the U. S. Army?

8 A No, I was in the Navy.

9 Q How many years were you--

10 A Two years.

11 Q You say you learned of the disturbance at
12 Attica on the morning of September 9th and were you
13 given any assignment with respect to it?

14 A Well, not immediately. We were having an
15 executive committee meeting that morning. A regular
16 Thursday morning meeting, when the information came
17 in by telephone to assistant deputy superintendent
18 George Lake and the committee was immediately advised
19 and our meeting was adjourned and in execution in the
20 next matter of a half hour, an hour, I was then
21 instructed to go to Attica along with my deputy chief
22 inspector, Bob Quick.

23 Q Did you then fly there in the same plane as
24 Commissioner Oswald took?

25 A Yes. Arrangements were that there was a

1 State plane available and as it turned out 2053
2 Commissioner Oswald and some of his people were going
3 out and we were on the same plane.

4 Q Were you told that the warden or the super-
5 intendent of the facility had requested the assistance
6 of the State Police?

7 A Well, he had initially requested the assist-
8 ance of Major Monahan, troop commander of Troop A, and
9 then this information, of course, came into division
10 headquarters and because of the apparent nature and
11 the size of the disturbance, divisional personnel were
12 deployed to Attica.

13 Q Was there any plan that you had for being
14 able to get a certain number of people to Attica by
15 certain hours?

16 A Well, we have a mobilization plan whereby,
17 according to what we feel the needs may be, we call
18 the various troopers, advise the troop commander to
19 assemble and move a certain number of people to any
20 scene where we need extra people and in this case all
21 troops, other than Troop T, which is the Thruway
22 Troop, were advised to send a detail of 50 men plus
23 two officers.

24 Q Was your goal to get a hundred men an hour
25 to Attica?

1 A It's a question of mobilizing your 2054
2 people and moving them as fast as possible. We felt
3 that we could move a fairly large contingent of people
4 from the nearby troops and, for instance, Troop E at
5 Canandaigua is the closest troop. Naturally, they
6 could assemble and move out fast and would be the
7 first to arrive and they would be followed possibly
8 by Troop D, which is Oneida, and the other troops
9 would be following along.

10 Q Was there some maximum number of people you
11 were trhing to get to Attica at that point?

12 A Well, no. We were figuring on seven troops,
13 350 people would be moving in, plus the number of men
14 that Major Monahan could assemble from his own troop.

15 Subsequently he had, I think, approximately
16 200 of his people there and--

17 Q So you had approximately 550 men there?

18 A Before the end of that day, yes.

19 Q Colonel, what duties were you assigned to
20 perform at Attica?

21 A Well, I was sent out as the superintendent's
22 representative and to act as the liaison between the
23 situation and the superintendent's office. Also to
24 be there so that if there was any additional assistance
25 needed, if anything of a nature came up where possibly

1 a policy decision would have to be made, that 2055
2 I would be in a position to make it.

3 Q Were you actually in command of the operation?

4 A Well, as the highest ranking State Police
5 officer, I would assume command, assume responsibility.

6 So far as the operation, the deployment of
7 people and the police action that might follow, this
8 was left with Major Monahan.

9 Q Being the commander of Troop A and his
10 jurisdiction?

11 A That's right. He is the troop commander and
12 this is the general policy, the troop commander is
13 not superceded by a staff officer going out.

14 We feel that our troop commanders are
15 experienced, are knowledgeable and do have the ability
16 to handle situations.

17 Q Colonel, what time did you arrive at Attica
18 with Mr. Oswald and Mr. Dunbar?

19 A I would say probably 2:15 to 2:30, in that
20 afternoon.

21 Q At the time you arrived, were the efforts
22 to retake the institution still in process?

23 A I wouldn't say that they were in progress
24 insofar as any movement of people to take police action.

25 act. Certain action had been taken upon the

1 arrival of the first contingent of State 2056
2 Police. Major Monahan's people and correction officers
3 together did manage to retake three cell blocks and
4 also take custody of, I think, 900 inmates and rescued
5 ten guards who had been injured in the initial up-
6 rising.

7 Q Were you told why these efforts had ceased?

8 A Yes. At that time because you had to
9 deploy people for security purposes in the buildings
10 that had been secured, Major Monahan had been waiting
11 for additional State Police to arrive, whereby then he
12 would feel that he had sufficient numbers so that he
13 could move in in an effort then to restore control of
14 the entire facility.

15 Q When you arrived and were awaiting the
16 arrival of additional troops, Commissioner Oswald
17 engaged in negotiations with the inmates; am I correct?

18 A Let me clarify the situation.

19 Upon the arrival of Commissioner Oswald, it
20 then became his decision as to the course of action
21 that would be followed. The commissioner is in charge
22 of the correctional facility.

23 It would be his decision as to what course he
24 desired to follow and upon his arrival there, the
25 State Police were in a support capacity to render what

1 assistance he might request of us.

205

2 Q Did he solicit your opinion on the decision
3 to negotiate with the inmates?

4 A No, sir, he did not.

5 Q Did he consult with you on his decision to
6 enter the yard and speak to the inmates directly?

7 A Well, I wouldn't say that he consulted with
8 me as much as he consulted with his own people. It
9 was discussed and I was present and there was a dis-
10 cussion as to his safety and I said that in my opinion
11 his own people were concerned with his safety if he
12 went in.

13 The commissioner, upon finding that the
14 inmates wanted to talk to him, immediately offered to
15 go into the prison by himself and I know that the
16 deputy commissioner, the superintendent and I think
17 there may have been some other prison officials
18 initially tried to dissuade him from going into the
19 prison because they felt he very likely could be
20 taken as a hostage.

21 So I offered the suggestion that possibly
22 he could go out on top of the A-tunnel, on the cat-
23 walk with a State Police escort, a guard, and he could
24 address the inmates from atop the tunnel and then we
25 would more or less insure his safety.

1
2 But this was offered to the inmates, : 2058
3 some inmates were in the A-tunnel discussing this and
4 they would not consent to any such address, any such
5 proposition. They wanted the commissioner to go
6 directly into the yard, into D-yard where all the
7 inmates were gathered and to have him address them
8 or talk to them there.

9 Q Later that day, after the commissioner had
10 commenced his negotiations and after sufficient police
11 had arrived, did you hav- a conversation with anybody
12 on the Governor's staff about the advisability of
13 negotiations versus an effort at retaking the institu-
14 tion by force?

15 A Well, I wouldn't say I had a discussion as
16 you have stated.

17 Commissioner Oswald had been in initially
18 and he had spoken to the inmates. At that time he
19 had been with Mr. Schwartz and also Assemblyman Eve.

20 When he came out, part of the demands
21 were that he return and address the inmate population
22 again.

23 At this time they wanted five news media
24 present, including a television cameraman and they had
25 made some initial demands to the commissioner with
regards to the hostages and their demands being based

1 upon the safety of the hostages.

2059

2 Subsequently the commissioner did go back
3 in with five new media with Mr. Schwartz and Assembly-
4 man Eve. They were in there for possibly a matter of
5 a half hour or 45 minutes and at that time when he
6 came out, he mentioned that the hostility of the
7 inmate population had seemed to increase, that they
8 did not appear to want to respond to any reason on
9 his part and he felt that the situation was critical
10 and that possibly some--that police action to restore
11 control should be taken.

12 Subsequently he decided to talk to Mr.
13 Whiteman, the Governor's counsel.

14 Following his conversation with Mr. Whiteman,
15 I also spoke with Mr. Whiteman and it wasn't a question
16 of to negotiate or to go in. I just advised that
17 negotiations had began, that news media had been
18 present, that they had taken some photographs.

19 They had apparently recorded certain things
20 that were said while Mr. Oswald was in there and as
21 this was the second negotiating session, the first one
22 being when he went in with Mr. Eve and Mr. Schwartz,
23 and the second with the news media, that in my opinion
24 that negotiations should continue rather than police
25 action because the safety of the hostages was the

1 prime concern of the commissioner at that 2060
2 time.
3

4 Q When were the plans first drawn up, even on
5 a tentative basis, for the police action?

6 A Well, on Thursday when I spoke to Major
7 Monahan, after I had arrived and observed the situa-
8 tion, there was only a--two basic approaches, to go
9 into the prison yard whereby you could hope to re-
10 gain control.

11 This would be going through the A-tunnel
12 and the C-tunnel and also going over the tunnel walk-
13 ways. Going along the tunnel walkways, the catwalks
14 I think is the terminology that's being used. This
15 was a basic approach to get into the prison yard
16 whereby you could hope to gain control of the prison.

17 A This plan never changed insofar as the entry
18 into the prison to regain control.

19 Q Were you trying to gather information during
20 this period from the time you arrived until the time
21 the plan was put into effect as to what kind of
22 resistance or obstacles you might meet?

23 A Naturally, in any police objective or police
24 operation, intelligence serves a very important part
25 in the overall operation and we were interested in
trying to gather intelligence as to the position of the

1 hostages, the position of the inmates and
2 what possibilities we might have to face if we did go
3 in.

4 We did have observers on the roofs of A-
5 block and C-block. We did not have a helicopter then
6 but we had one coming out which we would have used
7 also for observation, for photographs, but the inmates
8 demanded of the commissioner that the observers on the
9 roof tops be removed.

10 They said that they felt this was harass-
11 ment if armed people were on the roofs of the both
12 blocks looking down at them while they were attempting
13 to negotiate.

14 The commissioner then asked that we remove
15 our people from these roof tops, which we did.

16 Our other observations were more or less
17 limited to areas, say the third floor of the galleries
18 of A-block and C-block to see what we could observe
19 from there.

20 Also talking to anyone who went into the
21 prison. For instance, the commissioner, subsequently
22 deputy commissioner went in. Dr. Hanson was in on two
23 occasions.

24 I talked to several of the chaplains that were
25 in the prison yards.

1 Q What information did you have as 2062
2 to what weapons the inmates had?

3 A Initially from observations you could see
4 that the inmates had apparently taken over the athletic
5 equipment. A good number of them were wearing football
6 helmets. They had baseball bats.

7 I know on the first day that I observed a
8 belt, a wrench, something that appeared to be possibly
9 a knife or some sort of a pointed weapon in the belt
10 of another one. They did have some night sticks.

11 We knew that they had two tear gas guns
12 with the long-range tear gas projectiles. These had
13 been seized in the initial uprising. They also did
14 have tear gas grenades.

15 Q Did you have any information that inmates had
16 any kind of firearms other than the tear gas guns?

17 A We had no information that they had any.
18 We didn't have any information that they did not have
19 them, either.

20 Q Did you operate on the assumption that they
21 did have firearms?

22 A No, sir. Other than the tear gas guns.

23 Q When was it that you were told that the
24 decision was made to go in on Monday, all things re-
25 maining the same?

1 A Well, on Sunday the situation 2063
2
3 appeared to be getting critical and there was a ques-
4 tion possibly of police action starting on Sunday but
5 the commissioner continued to negotiate in the hopes
6 that the inmates would release the hostages and accede
7 to the demands rather, accept the demands which he had
8 acceded to.

9 And Sunday evening, to answer your question
10 as to when, on Sunday evening a decision was made by
11 the commissioner that police action would have to be
12 taken on Monday. That he felt that negotiations had
13 finally broken down to the point where there was no
14 value in continuing them consistent with the safety
15 of the hostages who had been in control of the inmates
16 for five days--

17 Q Control of the hostages, you mean?

18 A The inmates had the hostages for five days.
19 Some we knew had been injured, although they had had
20 medical attention.

21 There was a question as to their safety
22 because of the indication that the inmates' tensions
23 were building up to the point where they possibly
24 could take action against the hostages.

25 So that the decision was made on Sunday eve-
ning that police action would start on Monday, although

1 he indicated that he wanted to give them a 2064
2 last offer on Sunday morning, hoping they would accept
3 it so that it would not be necessary to take the
4 police action.

5 Q So that I understand that the reason for
6 deciding to go in was a concern about the safety of the
7 hostages?

8 A The safety of the hostages, yes.

9 Q Did you have a strategy meeting Sunday night
10 in which the decision to go in and the assault plans
11 were described and discussed?

12 A Well, we had, as I said Thursday, we had
13 just basic planning because we didn't know at that
14 time if we were going to move immediately or not.

15 On Friday then I had spoken to the major as to
16 drawing up some written plans with regards to the
17 operation, the police action. And these were drawn
18 up with the various details, the security of the wall,
19 the security of the buildings that we had under control
20 and also the necessary people we felt would be required
21 to move in on the retaking of the yards and the two
22 blocks.

23 Q Was there a discussion of alternatives to
24 going in with guns?

25 A There was never any alternative discussed other

1 than going in with the weapons that we had. 2065

2 Q When you say weapons that you had, what are
3 you referring to, Colonel?

4 A Well, our issue weapon is, of course, your
5 issue revolver. We have issue shotguns, not for
6 every man but all stations are equipped with shotguns.
7 We also have a .270 rifle for the people qualified in
8 its use and we have riflemen, a detail, qualified
9 riflemen in each troop.

10 We also have tear gas that could be used
11 and these are our basic tools that we would use in a
12 situation like this.

13 (Continued on page 2066.)
14
15
16
17
18
19
20
21
22
23
24
25

1 Q I understand that you did not have 2066
2 CS gas, which is what was ultimately used, am I cor-
3 rect?

4 A We ourselves did not have the CS gas. This
5 was a military gas that was brought out by the National
6 Guard and it was--the National Guard helicopters came out
7 to the facility. One of them was equipped with a dis-
8 persal unit whereby this gas could be dispersed through
9 a pipe at the bottom of the helicopter and the blades
10 then would naturally force the gas down and they offered
11 the use of this helicopter with the gas, hoping that this
12 would have the necessary effect where maybe we could re-
13 gain control without any unnecessary use of force.

14 Q So that to that extent, supplies were solicited
15 and procured from outside of the Police Department to
16 the extent that you got a helicopter with CS gas from
17 the National Guard?

18 A Well, the word solicited so much as they were
19 made available and naturally we took advantage of them
20 as well as we also obtained some what they call back
21 disposal, back packs with the dispersal units. Similar
22 to a flame thrower.

23 I think you have seen them where the military
24 has them equipped on the back with the nozzle which shoots
25 flame. These are similar, except they shoot gas out.

1 We did have six of these as well.

2067

2 Q Colonel, you are not an expert on ballistics,
3 I take it?

4 A No.

5 Q But you were here when Mr. Harrison of my
6 staff made a presentation on the properties of the
7 bullets that were used for the .270 rifles and the fact
8 that they are not full jacketed and that they tend to
9 mushroom on entry. Was there any--in the first place,
10 were you aware of that property, Colonel?

11 A Well, I heard part of his testimony. I won't
12 say I heard it completely. I know you asked the ques-
13 tion about a dum dum bullet. The .270 rifle bullet is not
14 a dum dum bullet. I don't care--Mr. Harrison may make an
15 opinion, I don't believe it's so. The bullet that we
16 purchase for use with the .270 rifle is the one that is
17 manufactured, it's the only one manufactured, if you
18 are talking about a solid nose bullet which would not
19 expand, would not break up like the military might use.

20 This is a bullet that we felt would be satis-
21 factory to meet our needs for police purposes.

22 Q The question was whether you understood that
23 this bullet mushroomed?

24 A There is a certain amount of expansion? There
25 is a certain amount of expansion in the bullet, yes.

1 Q Why is it, therefore, that you feel 2068

2 that for police needs you have to use a bullet which
3 expands whereas the military for its use requires
4 bullets that are full jacketed?

5 A Well, in the military concept and you go back
6 to World War II, why did the Japanese use a 25 caliber
7 bullet? And a full jacketed bullet, say for the mili-
8 tary. There have been--it's been advanced that a wounded
9 man requires more men to take care of him than if you
10 kill a man. The Japanese went in with a 25 caliber
11 bullet because they could wound a lot more people than
12 they could kill, but it still took a number of people
13 then to take care of him. If you kill a man, he's gone.
14 No one has to take care of him.

15 Q Is that the policy really, that you could use
16 bullets that kill?

17 A No, no, I am just trying to explain the mili-
18 tary concept as to why maybe they're going into a full
19 jacketed bullet. I don't know, but--

20 Q The full jacketed bullet as I understand it,
21 does not expand and therefore it will leave less of a rup-
22 ture inside certainly than a bullet that is not.

23 A A military type 30-caliber bullet will kill
24 just as much as any other bullet if it's hit in a vital
25 spot. It may not do as much tissue damage. I'm not that

1 familiar enough to say whether a full jacketed 2069

2 bullet will or will not expand a certain degree. I'm
3 certain that if it hits a bone, there will be some ex-
4 pansion in it. This type bullet is not available with the
5 .270 rifle. The .270 rifle is, from what we had--

6 Q So you were wed to your .270 rifles for this
7 action and whatever ammunition was available for the
8 .270 rifles--

9 A The only ammunition available.

10 Q Was what you had to use.

11 Did anybody in civilian control of this opera-
12 tion ever ask you about what kind of guns you were using
13 and what kind of ammunition you were using and what kind
14 of damage they could inflict?

15 A Well, I don't quite understand when you said
16 someone who was in civilian control.

17 Q You've told me that the decision to go into
18 this institution, for the police to actually attempt to
19 retake had to be made by the Commissioner of Corrections.

20 A The Commissioner would make the determination
21 that police action was necessary, at which time the re-
22 quest would come to us and then we would take over, in-
23 sofar as the action from then on until control was re-
24 stored, yes.

25 Q Did the Commissioner ever ask you about the

1 type of ammunition you were using?

2070

2 A No, sir. Not that I remember that he asked me.

3 Q Did anybody on the Governor's staff ever ask
4 you about the type of ammunition and guns you were using?

5 A I can't say whether they said what do you have
6 or what don't you have. Certainly there was some obser-
7 vations probably made by them. They didn't question the
8 type of weapon if this is what you are asking.

9 Q Were they told, for example, that you were
10 going to use shotguns with Double-0 buckshot?

11 A I don't remember that they were told this.

12 Q Did they ask you so far as you recall,
13 what kind of ammunition was going to be used in the
14 shotguns?

15 A I don't remember them asking me that, no.

16 Q Did they at any time solicit your opinion as
17 to what the casualties were likely to be from a thrust
18 into their prison?

19 A No, they did not ask any opinion. And I don't
20 think I would have been able to give an opinion as to
21 what amount of casualties, the number of casualties.
22 You would never know this until actually after the
23 situation happened. Certainly, the fact that someone
24 could be hurt, the fact there was very clear, both by
25 the position of the inmates, the fact that they had been

1 arming themselves for five days, fortifying 2071
2 their positions. I think anyone could realize that this
3 showed that, on the part of the inmates, that they
4 intended to resist.

5 Q I will come back to that in a moment. I want
6 to pick up the statement you made earlier that the de-
7 termining factor in the decision to attempt the retaking
8 of the prison was the safety of the hostages. Do I
9 understand that you were told prior to the decision on
10 Sunday that the hostages were being well treated in the
11 yard? Were you told that?

12 A Well, we were told that from a doctor who had
13 examined them, who was in probably closest contact
14 with them, that from his observations, that they were
15 being treated well under the circumstances. Conditions
16 weren't that good in the prison where they could be given
17 any real good treatment. He had given them medical
18 treatment and he felt that this would sustain them for
19 a period of time.

20 Of course, the length of time I can't answer
21 that either.

22 Q Did you also hear the television broadcast by
23 the hostages on Sunday in which they stated that they were
24 being treated well and not being molested? That was
25 when they appealed for Governor Rockefeller to come.

1 A Well, I didn't see much of any television 2072
2 or hear much of any radio while I was there.

3 Q Was it reported to you that they had been on
4 television and that they had stated that they were not
5 being molested?
6

7 A I didn't hear it. I was going to continue, I
8 did see a brief television on, I think it may have been
9 either Saturday or Sunday night, they had a wrap-up late
10 and I saw part of that where I think a couple of cor-
11 rection officers did speak into television and said that
12 they were being treated well, yes.

13 Q Were you also told that inmates had threatened
14 to kill the hostages if an attempt was made to retake
15 this prison?

16 A I was told that on several occasions, yes.

17 Q Did you take that threat seriously?

18 A Well, I had to consider that they were being
19 truthful in making these threats. They certainly had the
20 weapons or the opportunity to carry out their threats
21 at any time they wanted to.

22 Q You also knew that in addition to having
23 weapons, there were many people in that yard who were
24 there for crimes of violence, including murder, am I
25 correct?

A Yes, sir. And I believe that listening or read-

1 ing one of your first public hearings, 18 per cent 2073.
2 of these people are in there for the crime of homicide.

3 Q So that the threat that if you were to come in,
4 the hostages would be killed, was something which in
5 discussions on Sunday and earlier was given some cre-
6 dence?

7 A It was given definite consideration, yes.

8 Q Did you also understand that the hostages were
9 located in the middle of the yard?

10 A Yes, we had, I think Dr. Hanson was our best
11 source here because initially we did not know the number
12 of hostages. We finally came up with the figure of, I
13 think 38, and we had asked the doctor when he went into
14 the yard to see if he could make a count and he subse-
15 quently reported back that there was the full 38 were
16 within this circle of benches and so apparently all
17 hostages were in the D-yard, yes.

18 Q Did you on Sunday night speak to the Governor?

19 A No.

20 Q Did you speak to any members of his staff?

21 A Well, I would say that I did because Mr. Douglass,
22 Mr. Shapiro were there, Dr. Hurd was there. General
23 O'Hara, Commissioner of General Services was there and I
24 had many opportunities and I know that I did talk to them
25 regularly or at least periodically during every day that

1 I was there that they were there.

2 Q Colonel, who did you understand made the de-
3 cision to retake this institution?

4 A There was no question in my mind, Commissioner
5 Oswald made the decision.

6 Q What do you base that on?

7 A Well, he himself said that others in the
8 Governor's staff who were there that told him it was his
9 decision to make.

10 Q Did he or any member of the staff of the
11 Governor solicit your opinion as to how, if the inmates
12 were serious about killing the hostages if you came in,
13 you could possibly rescue them before the inmates could
14 carry out these threats?

15 A When you say did they solicit my opinion as
16 to whether we could do it or couldn't do it or what the
17 conditions could be?

18 Q Yes, sir.

19 A No, I don't think there was any solicitation of
20 this type of information or opinion. There was a dis-
21 cussion that the possibility was there that some inmates--
22 rather some hostages could be killed or could be in-
23 jured by going in, yes.

24 Q Was there any procedure which you had which in
25 effect could have stopped hostages from being killed by

1 the time you could reach them?

2075

2 A Not to my knowledge. The pocket was there
3 that everyone would have been killed before we got in.

4 Q So that I take it that although even though
5 the purpose of deciding to go in after all these days
6 of wait was to save the hostages, it was always under-
7 stood that the very act of going in could precipitate
8 harm to those hostages?

9 A That is true, but also you had to consider
10 the fact that further delay also could jeopardize the
11 hostages because the inmates' temper at any time could
12 change where suddenly they might take that deadly
13 action against the hostages. Just to show that they
14 meant what they were saying.

15 Q Was there any intelligence which was avail-
16 able to this group at Attica that indicated that the
17 hostages were in any more danger on Sunday than they
18 were on Thursday?

19 A Well, I think the climate, the climate of the
20 inmate population, it had started, you might say, to
21 subside a little bit. Towards Saturday they seemed to be-
22 come more solidified and the same way on Sunday.

23 So that actually there was a serious question
24 to consider whether this could explode and with the result
25 that your hostages and they had the opportunity at any

1 time, could be further jeopardized than what they 2076
2 were. So that you had two things. You could delay and
3 maybe you could gain something or not delay and gain the
4 same thing. I mean, if you delayed you might jeopardize
5 their safety even more so than by going in.

6 It's a question. It's a question. I don't
7 think anyone can answer the question because it could
8 have happened. The opportunity was there for it to have
9 happened.

10 Q The opportunity was there all along.

11 A That's right.

12 Q Was there a feeling that there was more
13 danger to these hostages from consolidation of power in
14 the yard than from disorganization which prevailed at the
15 beginning?

16 A Well, the information that we had was that some
17 of the inmate population wanted to take the reprisal
18 action against the hostages and you had other inmates
19 in there that were more or less of their own security
20 force trying to protect them. So that you had a danger,
21 you had one group of people who more or less appeared
22 to be in control of the situation dictating possibly which
23 way the inmates should go.

24 You had others in there who possible, because
25 of personal reason, wanted to take an unfair advantage

1 over one of the guards. We do know that in any 2077
2 inmate population you have psychotics. You have psycho-
3 paths who over a period of time, you have a tension
4 buildup, they can explode and this potential was there
5 and it was there right from the first day and I don't
6 think that it decreased in the waiting period of five
7 days.

8 Q Did you ever recommend that the Commissioner
9 initiate the police action?

10 A No, sir. I let the Commissioner know that the
11 police action was available and if he wanted it, it
12 was there.

13 Q But at no time did you recommend or suggest
14 to the Commissioner or to the Governor that it was
15 advisable to take police action on Monday?

16 A No, sir.

17 Q As opposed to waiting?

18 A No, sir.

19 Q You did not recommend against waiting further?

20 A I didn't recommend one way or the other.

21 Q Did the plan contemplate the use of correction
22 officers, Colonel?

23 A No, sir, it did not.

24 Q Why was the decision made not to permit correc-
25 tion officers to participate in this action?

1 A On Friday when we started to draw up 2078

2 formal plans and I asked Major Monahan to draw formal
3 plans and he and Supt. Mancusi, I think Capt. Malovich,
4 possibly Capt. Williams were in a room and they were
5 trying to formulate the various details.
6

7 From comments I had heard as to the feelings
8 of the guards towards the inmates and I could appreciate
9 them to a certain degree because their fellow-officers
10 had been injured and others were being held hostages,
11 I felt that we should not include them in the detail go-
12 ing inside the prison and I had spoken to Supt. Mancusi
13 on that date that I talked to Monahan about this and we
14 agreed that we felt that we had sufficient State Police
15 personnel, that to add the correction officers very well
16 could jeopardize the safety of the inmates because in my
17 mind, I felt that possibly once they got in there they
18 might try to take some reprisal action against inmates.

19 Q Did you overhear these comments by correction
20 officers or was this reported to you?

21 A This was reported to me and it's something you
22 could sense from being in the prison.

23 Q Did you make any efforts to ascertain the
24 mood of your own men?

25 A Yes, I did.

 Q What did you do in that direction, sir?

1 A Well, I was out in the front of the

2079

2 Administration Building on many occasions going back
3 and forth. I always took the opportunity to talk to
4 various fellows and sometimes groups of fellows and just
5 discuss, give them some idea of what was going on. That
6 this was a delayed action on our part because of the
7 safety of the hostages. I tried to tell them that this
8 is part of the job, just be patient. Don't get up tight.
9 If we have to take the action, we'll take the action.
10 That we are professionals. If we have to do the job,
11 we'll do the job and we won't in voke personalities.

12 I said that if it was our own people in there
13 you would probably be more than willing to wait. Just be-
14 cause it's correction officers and they want to negotiate
15 for their safety, that is fine.

16 Q Did you sense impatience on the part of your men
17 that led you to make that remark?

18 A No. But it's human nature. You gather 500-odd
19 people out there and I don't care how well trained they
20 are, any situation--I have been in them, I am certain
21 most people in the room. You arrive somewhere and then
22 wait. If you have been in the military, that hurry up
23 and wait was an old adage you heard many times and you
24 do create tension and you create impatience. But I think
25 if you try to discuss this with your people and explain

1 it to them and if they are well trained and
2 our people are well trained, well disciplined, they will
3 recognize the need and they will go along and this is
4 what I was trying to convey to them.

5 Q Colonel, what steps did you take to make sure
6 that orders were given that correction officers were not
7 to participate in the police action?

8 A I told, as I mentioned before, I told Supt.
9 Mancusi on Friday, that we didn't want the correction
10 officers to go in with us. If the police action was
11 going to be taken, the State Police would handle the police
12 action. That we would use his people in a support func-
13 tion only. On Sunday, Mr. Douglass, of the Governor's
14 office, spoke to me and he said that if the police action
15 is to be taken, the Governor, who apparently had been in
16 contact with--was concerned, that the correction officers
17 possibly might be a little more emotional and therefore
18 could get into a reprisal sort of action and that if
19 they were not needed, we shouldn't utilize them in the
20 police action.

21 I told this to Douglass, I had already dis-
22 cussed this with Supt. Mancusi and it would be further
23 discussed with the Commissioner. I don't know if it had
24 been discussed with him at the time that we definitely
25 determined that police action was going to be taken. I

1 believe that on Sunday night I spoke to the 2081

2 Commissioner and the superintendent was there and Supt.
3 Mancusi said that he would give the necessary instruc-
4 tions to his people so they would know that they were
5 not going to be involved in the action in retaking the
6 facility.

7 Q Who controlled entry into the building, Colonel?

8 A This was corrections' responsibility.

9 Q You now know that the correction officers did
10 in fact participate in this action. Was that done with-
11 out authorization?

12 A So far as I am concerned, it was.

13 Q And you have heard testimony--

14 A Pardon me just a second. Participation--

15 Q Shooting from the third floor of A-block,
16 shooting from the roof of C-block.

17 A The shooting from the galleries--

18 Q From A.

19 A From A, it doesn't make any difference. The
20 shooting by correction officers was certainly, from the
21 galleries was certainly not to my knowledge, and I see
22 no need for it but it happened. The officers up there
23 in the A-block and the rifleman, I certainly was not aware
24 of it. It would not have been allowed to happen if I
25 knew it. Certainly I don't believe Major Monahan would

1 have allowed it or any other officer there.

2082

2 The lieutenant made a decision on his own
3 and I think his testimony indicated he made a decision.

4 Q Was there any investigation which the State
5 Police conducted on its own of this affair as to how
6 this could have happened and whether any of your own
7 men were aware that correction officers were partici-
8 pating in this police action?

9 A Well, naturally, we have made quite an in-
10 vestigation on our own on the whole incident.

11 Q Did you initiate any disciplinary action as
12 a result of this?

13 A Against--

14 Q Any correction officers who either authorized
15 correction officers to participate in this or facilitate
16 it in any way?

17 A It wouldn't be up to us to initiate action
18 against another agency's personnel.

19 Q What about your own men who may have facilitated
20 this. Did you take any disciplinary steps against any
21 of your own men in connection with this incident?

22 A It's only recently been brought to my attention
23 insofar as the officer in charge of the roof detail allow-
24 ing a man up there. No, we have not taken any disciplin-
25 ary action.

1 Q I am just asking about past actions.

2083

2 As to whether you had up to now taken any
3 disciplinary steps or conducted any investigation of
4 how this could have happened.

5 A Well, I think we know probably how it happened.
6 The correction officers positioned themselves in a support
7 position and then on their own decided to fire.

8 Q Where were you during the assault itself?

9 A Well, I was in the superintendent's office
10 immediately prior to the assault. In connection with
11 the hostages being brought out by inmates under the cat-
12 walks, I was informed of this by telephone from Capt.
13 Malovich about 9:30.

14 Q Was a request made of you at that time?

15 A There was.

16 Q What was the request?

17 A Capt. Malovich called me on the telephone and
18 advised that a number of hostages had been brought out on
19 the catwalks. They were being held by inmates with
20 weapons against their bodies. I think he said knives at
21 their throats. That verbal threats were heard by the--
22 Capt. Malovich himself heard them. I remember him telling
23 me so. That if you come in we're going to kill them.
24 So the Captain said that our riflemen on the roof with
25 their scopes should be able to get a clear shot at the

1 inmates holding these hotages and then remove

2084

2 that immediate danger to them.

3 I told them no, that this would not be done.

4 I said at the time we are ready to move and we will be
5 ready to move in about 15 minutes, we had a time of about
6 9:45 to go, I said at that time or if it should happen
7 before that time where one of them actually proceeded to
8 cut someone's throat, I said at that time when the police
9 action starts, the riflemen then should shoot the inmates
10 that were threatening the hostages if and when at that
11 time they then took further aggressive hostile action
12 against them.

13 Q It was then left to each trooper to make the
14 determination of whether he saw hostile aggressive action?

15 A I relayed this by telephone back to Capt.
16 Malovich. I believe he then in turn relayed it by radio
17 to the officer in charge of the rifle details and I'm
18 not sure but whether this information also went out
19 over the command post radio as well. To other details.

20 Q Were you aware, Colonel, that no accounting was
21 had of the ammunition issued or even the rifles that
22 were assigned?

23 A Well, we don't issue rifles individually to a
24 man. We don't issue shotguns individually to a man. We
25 don't have that number. They are available for the detail

1 so that a man who was going on duty might take 2085
2 a shotgun from someone who was going off duty. We did
3 not keep an accounting of the weapons by serial numbers
4 to show which man had which weapon. The same would apply
5 to the rifleman details who might go from shift to shift
6 so that you would have people qualified to use these
7 weapons. So far as ammunition, the men are supplied with
8 ammunition for their service revolver and the shotgun
9 ammunition, the rifle ammunition was available in supply
10 trucks that were brought out there. We did not keep an
11 accounting of shell by shell, if a man wanted some extra
12 ammunition, no questions were asked.

13 He took the ammunition and the only thing being
14 when the detail was over, we expected that they would
15 return the ammunition.

16 Q So that you would have no way of knowing how
17 many shots any member of the detail had expended?

18 A No, I wouldn't say that because in our regula-
19 tions, we have a regulation on the discharge of firearms.
20 Every man has to report on the discharge of firearms the
21 number of rounds he fired and the reason he fired it.
22 This is a regular form that we use in the ordinary dis-
23 charge of firearms that you might have in killing a
24 wounded animal or some other details where you did shoot
25 your gun.

1 Q So this would be really up to the in-
2 dividual to be honest about reporting what he had shot,
3 there was no way of checking it?

4 A In this instance there would have been none, no.
5 But we did immediately ask for an accounting from each man
6 who was in the detail who did any firing and took state-
7 ments from them as you know, because you were furnished
8 copies.

9 Q Did you actually see the gas drop?

10 Q We started that before and never got back to
11 it. The police action was going to start at 9:45. So
12 we asked--the helicopter pilots were advised to warm up
13 their engines about 9:35, by 9:40, I think it takes a few
14 minutes to warm up and about 9:45 an order was given for
15 them to start to move out or become airborne.

16 I heard the order--I heard the radio conversa-
17 tion, the helicopters are airborne. At that time I
18 moved out of the administration building down into A-block.
19 I was going through the walkway towards the gate leading
20 into the tunnel going into the yards. My intention was
21 to then go up to the second floor and by the gallery and
22 then to move out myself on the A-block catwalk.

23 As I reached the tunnel entrance, there was a
24 detail of troopers that had not moved out yet. I could
25 hear the helicopter and I couldn't see it. I could hear

1 it. I was inside. I could observe the barricade 2987
2 in the A-tunnel. I saw a flash from the barricade which
3 I figured was the gas gun being fired. I heard gas guns
4 being fired into the barricade and this is all simultaneous
5 event. I went up to the second floor and went to the
6 gallery window by the entrance to the catwalk and then
7 observed the police action start.

8 Q What did you see?

9 A I saw the helicopter coming over. The firing
10 had started as I had started up the stairs. The heli-
11 copter, I believe, was coming over on possibly its second
12 run discharging gas. I saw our people moving out and
13 approach the barricades, start to clear and go through the
14 barricades. I observed a number of people down on the
15 catwalks and our people got through the barricades, moved
16 towards Times Square and ladders were put over and I moved
17 out myself.

18 This happened--I think the ladders were over and
19 the first of the rescue detail were down in the yard in a
20 matter of three to four minutes.

21 Q Colonel, you said that the firing had started
22 before you got to the point where you could look out and
23 it continued, I take it as you were looking out on the
24 catwalk, you could hear the firing?

25 A I did.

1 Q Could you see what people were firing at? 2088

2 A No, I couldn't--I can't say that, what they
3 were firing at. I do know that there were people down.
4 I could see people down on the catwalks. I didn't
5 actually see people firing. The details were moving
6 out. I heard the testimony that firing, they did fire,
7 but I was looking at an overall picture. I was not
8 concentrating on any one individual and I can't say that
9 I saw any shots being fired.

10 Q Did you see any acts of inmate resistance?

11 A No, I did not.

12 Q And you heard the testimony being read of
13 your men. As you panned those catwalks, did you see
14 any inmates trying to assault troopers?

15 A I have no clear picture in my mind of any as-
16 saults being committed by inmates against troopers.

17 Q That would stand out in your mind, wouldn't it?

18 A Not necessarily, no. Then I have no picture in
19 my mind of any troopers assaulting inmates. You know,
20 within this same period. This is in an additional 30
21 seconds or a minute.

22 Q I wasn't suggesting troopers assaulting inmates.
23 You testified you heard shooting and I was asking
24 whether you saw any inmates trying to assault troopers.

25 A I can't say that I did.

1 Q I think this would be an appropriate
2 moment to show the film of the police action and then I
3 would like you to perhaps--perhaps maybe you can comment
4 on it or perhaps we can have questions on it.

5 A I think probably the best thing would be to
6 show the entire thing and not break in.

7 MR. LIMAN: That is what we will do.

8 MR. McKAY: On behalf of the Commission,
9 I wish to make a brief statement before the film
10 begins. The film presentation was prepared by the
11 Commission staff from video tapes, photographs,
12 slides and motion pictures taken by the Division
13 of State Police. We believe that it is a fair
14 representation of this material. Any reproduction,
15 rebroadcast or other use of this tape except for
16 contemporaneous news reports of these hearings is
17 unauthorized without the written permission of the
18 Commission.

19 MR. LIMAN: Mr. Luxemburg.

20 MR. LUXEMBURG: At the time of the re-
21 taking, the State Police had for picture sources a
22 video tape recorder and we will show the entire
23 video tape this afternoon that was taken at the time
24 of the assault. They had two men with Super 8 movie
25 cameras and the material that they took concerning
