

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

1 the assault will be shown completely later on. 2090

2 They also had a number of still photo-
3 graphers, one of whom was located on the roof of
4 C-block and others who went down the catwalks and
5 we will show a selection of this material also.

6 In addition, photographs of activities in
7 the yard were taken by a deputy sheriff from the
8 Monroe County Sheriff's Department and we will
9 show some of the pictures that he took. These are
10 the sources that are presently available to us.
11 The source of the sound that you will hear is the
12 video tape. This is the only source of sound so
13 that when you hear sound you know you are seeing the
14 video tape.

15 The narration is live, that is, it was
16 made at the actual time that the video tape was
17 taken by a State Trooper located at the camera
18 source. Staff members, particularly Roberto
19 Sackett and Robert Potts and myself, made a thorough
20 review of the photographic materials, that is, the
21 still materials and have selected those materials
22 which we believe as Dean McKay said, tell a fair and
23 representative portrait of what happened during the
24 assault. We believe that the materials that have
25 been made available to us are complete and this is

1 based on representations of the Department of 2091
2 the State Troopers and interviews with the photo-
3 graphers as well as our own independent checks.

4 In order to acquaint the viewers with
5 what it is they are about to see, we have prepared
6 an introductory segment to give you a view of the
7 yards and to show you the viewpoints from which the
8 cameras will be operating.

9 We are then going to show the video tape
10 in its entirety uninterrupted and then we will go
11 back and show it again, this time supplemented by
12 the super 8 movie sequences and a selection of the
13 still photographs to supplement what it is that
14 is seen.

15 I would first like to call your attention
16 to the basic chart--I don't know if I can do this
17 successfully with this mike. Again, the major
18 features are the four blocks, A-block, B, C and D.
19 The four yards and the two principal yards that will
20 be concerned with are A-yard, which is where the
21 inmates emerged after the police action, they came
22 out of this door and D-yard where the inmates were
23 before the action started. These are the catwalks.
24 This is the Times Square area with the blockhouse.

25 In order to call to your attention some

1 of the major features of the film, I think you 2092
2 should be aware of the handball backboard which is
3 in here and is one of the more visible landmarks
4 so you can recognize where the cameras are shoot-
5 ing.

6 The negotiation table which is up in this
7 area and a wooden framework over the top of it. This
8 line represents the trench that was dug in the yard.
9 On the catwalks you see the barricades would be at
10 the time of the police action would be in this area
11 on C-catwalk and in this area on A-catwalk.

12 In addition, the--one of the other princi-
13 pal features is this doorway right here which leads
14 out of the D-catwalk into A-yard on from which the
15 inmates will be emerging later on.

16 The first sequence is a sequence that was
17 taken several days previously to the 13th. It was
18 taken on September 9th and it shows a pan of the four
19 yards. It was taken from the roof of C-block and
20 it shows you a complete swing of the inside of the
21 yards. Can we have the first presentation?

22 (Film being shown.)

23 MR. LUXEMBURG: The barricades had not
24 been erected in that segment. Most of the tents that
25 comprised tent city were not erected at this point.

1 Now we would like to show you a
2 view from the A-block side with a pan from Times
3 Square. In other words, the camera will be up
4 here. It pans from Times Square and the blockhouse
5 across D-catwalk and looks into the hostage area,
6 which is approximately in there.

7 This is not the camera location that we will
8 see during the time of the assault but at least you
9 will be able to get a view of what the D-yard looked
10 like from the A-block side.

11 Can we have the second portion, please?

12 (Film being run.)

13 MR. LUXEMBURG: That large white structure
14 that appeared was the basketball--sorry, the handball
15 backboard which was up in this area and then we saw
16 just the tops of the heads in the hostage circle in
17 here. That view was, would have been a view that a
18 .270 rifleman stationed in this area of A-block might
19 have seen.

20 The next shot is a closer up shot from C-
21 block. It was taken late in the afternoon of Sep-
22 tember 12th. At this point the barricades had been
23 erected. The structure over the negotiating table
24 had been erected and most of the tents had been
25 erected and you will see an open area in here in front

1 of the negotiating table.

2 The table itself--you will see the tents
3 are in this area of the yard. Again you will see the
4 broad side of the handball backboard and B-block and
5 ~~the span in the background~~ will be D-block.

6 In the foreground will be this catwalk and
7 eventually you will see a side view of the D-catwalk.
8 So we have that portion run.

9 (Film being run,)

10 MR. LUXEMBURG: Again, the narration on
11 that was the actual narration at the time. That
12 was taken on Sunday afternoon at 4:08.

13 At this point one last thing we would
14 like to show you before we show you the actual
15 video tape, is that on Thursday, again early, before
16 the tents and the barricades had been erected, they
17 took a video tape view through the scope of a .270
18 rifle and I think this will give you a pretty good
19 idea of what it was that one of these rifle--what
20 he was looking at when he looked through his scope and
21 was attempting to line up a potential target. The
22 view is from the V roof. It is a view of activities
23 on B-catwalk and some of the activities in the yard.

24 Again this was before most of the barri-
25 cares and most of the tents had been erected, but I

1 think it will give you an idea of the type 2094A
2 of situation that a rifleman had to face.

3 Can we have that?

4 (The film being run.)
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7 (Continued on page 2095.)
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2 should say that at the start of that the camera
3 was out of focus which created difficulty in
4 seeing the first ten seconds of that segment.
5 Again, the narration was live.

6 The narrator indicated there were 21
7 hostages and as we know there were 38.

8 We are now ready at this point to run
9 the actual video tape of the assault at 9:05 a.m.
10 There is an interruption and then it runs pretty
11 much uninterrupted starting at 9:45 a.m. Are we
12 ready on that.

13 (The video tape is being run).

14 MR. LUXEMBURG: As I said, the
15 narration was the original narration at the time
16 by State Police personnel. The background noise
17 consisting of gun fire, the firing of tear gas
18 projectiles and the helicopter noises.

19 We would like to show now a composite
20 of the video tape, the Super 8 and the still
21 sources. The composite has resulted from the fact
22 that it's very difficult, even after looking at this
23 video tape a number of times to be able to absorb
24 the rather massive amount of activity that
25 occurred in a very short period of time and we

1 felt it would be useful to supple- 2096
2 ment the video tape with the other sources so that
3 the viewer can focus in better on what is happen-
4 ing. We have attempted to present the composit
5 in basically a chronology order.

6 It may be assumed that the Super 8 scenes
7 and the still scenes are occurring basically concurrent
8 with the video tape material that comes either
9 immediately before or immediately after.

10 The video tape is accompanied by the
11 sound track. The Super 8 is silent as are the
12 slides and stills and we are not going to narrate
13 over that. We are going to let it run just as it
14 is.

15 Again, there are different camera
16 sources now. Just to review, the video tape recorder
17 is located here on the roof of A-block. Some of
18 the--one of the still photographers is located on
19 the roof of C-block in approximately this location
20 and we will give you a view in this direction.

21 The Super 8 camera, one of them inside A-block and
22 went out A-catwalk as did one of the other still
23 photographers.

24 Eventually both the Super 8 photographers
25 and the still photographers ended up on the catwalks

1 3 in this area and will be taking 2097
2 scenes of D-yard and of A-yard and of the catwalks
3 from in here and I believe there are some pictures
4 that were taken down in the yard also by photographers
5 that actually went down into the yard.

6 You should try to remember where the
7 camera source is as you see these various segments.

8 I believe we are ready.

9 (Film being run).

10 MR. LIMAN: I would emphasize that the
11 first portion of the presentation was the actual
12 video tape of the State Police as presented to us,
13 that the second portion was the state video tape
14 spliced to include still pictures and Super 8 pic-
15 tures also taken by the State Police, so that it
16 would be more intelligible.

17 The job of making that second presentation
18 really fell to three members of our staff. Mark
19 Luxemburg who did some of the narration, Bob Sackett
20 and Robert Potts.

21 EXAMINATION BY MR. LIMAN:

22 Q Colonel, you have seen the video tape and these
23 films before, not in this form but you have seen the
24 original video tape, is that correct?

25 A That's right.

1 Q In fact, it is the subject 2098

2 and has been the subject of study at the Police Academy,
3 is that correct, analysis and--

4 A It's been viewed a number of times, yes.

5 Q And it's viewed in order to learn things from
6 it?

7 A Well, I would say--

8 Q To derive lessons from it?

9 A Not necessarily lessons. You view something
10 to possibly learn something from it. As to whether
11 it's a lesson or not, that becomes a question as to whether
12 the learning means that you are going to have to give in-
13 structions or whether it's something that you see that
14 you have done and it doesn't necessarily mean it's going
15 to improve things or it's going to be changed.

16 Q One thing that I think strikes almost everybody
17 is that on the original video tape, more than four minutes
18 elapsed during which you hear gun fire before you hear
19 the surrender warning.

20 Can you account for why it should have taken some
21 time to give that surrender warning?

22 A That is the helicopter, the voice from the
23 helicopter?

24 Q Yes.

25 A Yes, I think that what happened is the National

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5 Guard helicopter came up. It flew over, 2099
2 discharged its gas. It ~~then~~ came over again on a second
3 pass. The second National Guard helicopter also then
4 came up and they were dropping some tear gas canisters
5 and our own helicopter that was airborne has to stay
6 outside the perimeter of their flight for safety
7 reasons so you don't have a collision between helicopters.
8

9 So that this is probably why they didn't
10 get in there with their voice recording--rather there
11 was a trooper up there over the PA system for the advice
12 to the inmates to surrender.

13 Q In the interim the shooting took place. Was
14 any consideration given to giving a warning before the
15 National Guard helicopter dropped gas and before any
16 shooting took place?

17 A Well, there was no real PA system that you could
18 get this word out to the inmates. You have to consider
19 an element of surprise. We're concerned with the safety
20 of the hostages and their rescue and as you mentioned
21 before, or brought out the question as to insuring safety
22 as to whether you go in or whether you stay out.

23 Certainly with an element of surprise and a
24 fast movement, you do do something to try to insure the
25 safety and this is what our planning was.

Q Colonel, with all of the efforts at surprise,

6 1 it would take several minutes at least, 2100
2 am I correct, to get through the barricades and to get
3 to the hostage circle?

4 A It did. I believe that it was a matter of
5 three to four minutes before the first rescue man was
6 down in the yard.

7 Q And that was about as fast as you could expect,
8 given the barricade and given the distance that had
9 to be traversed.

10 A Well, I really can't tell you. It's only a
11 matter of, as you say, it's 150 yards or less to get
12 to where you're putting your ladders down but you do
13 have obstacles that you have to remove.

14 You have resistance that has been testified
15 to here that had to be overcome and there naturally was
16 a time element in here that you couldn't say that you
17 would be there in 30 seconds, you would be there in three
18 or four minutes or ten minutes.

19 Q So there couldn't really be as a practical
20 matter very much surprise in this situation?

21 A Well, surprise in the idea that we did move
22 in. Now, I think there was a question, probably in the
23 inmates' minds as to whether we were going to move or
24 whether we were not and I think until we actually did
25 move and then with the gas coming down, there was discharge

7 1 firearms immediately, that this

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2 certainly is an element of surprise and probably an
3 unexpected factor so far as the inmates were concerned,
4 which might do much to reduce the possibility that they
5 are going to take immediate retaliation against hostages.

6 Q Did anybody suggest that perhaps if the
7 inmates knew that you were coming in with force, that
8 they might have capitulated, the very surprise you are
9 talking about may have been counter-productive?

10 A Well, I don't know what was said by any of
11 the negotiating teams, both the inmate negotiators
12 or the correction officials that went in there as to what
13 would happen if they didn't agree to release the hostages.

14 I feel certain that the realization was there
15 that the State Police were present. They knew that there
16 was other law enforcement people there. The guard was
17 not present but they certainly knew about law enforce-
18 ment.

19 A large group of them--this is being carried
20 into the yard by radio, by television which they had. So
21 that certainly some of the views that they had must have
22 given them an idea that the possibility was that State
23 Police were going to come in.

24 Q What did you expect would cause inmates who
25 had threatened to kill hostages if you went in to use

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self-restraint and not kill the

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hostages?

A I don't--

Q Am I clear?

A I didn't quite get you.

Q You knew that inmates had threatened to kill the hostages and you knew you couldn't reach them in time if they were bent on doing that.

What in this plan did you expect would induce to use self-restraint and not kill the hostages if that's what they were bent on doing?

A Well, this is probably a question of mental process on the part of the inmates as to what decision they make when you might say the chips are down.

Now they either got to do it or else they don't.

Q What was going to communicate to them that the chips were down before the gun fire started?

A I think the fact that the helicopter came over and dropped the gas and immediately we moved in, certainly this should have communicated to any one of them that the police action had started.

Q But when you listened to that film it seems as if once the gas drops, gun fire starts and continues for a period of I think we timed it at four minutes.

2 length of the gun fire, it's questionalbe in my mind.
3 I have heard it a number of times. After everything
4 is over, you could still hear occasional sounds which
5 could be the electronic problems or could be the heli-
6 copter that is making this noise.

7 All the noise you hear that sounds like gun
8 fire may not be gun fire, I can't say.

9 Q We know that over 400 rounds were fired by
10 State Police personnel, park personnel and correctional
11 officers so that there would be 400 reports of various
12 forms of gun, shotguns or rifles.

13 A That' right, but 400 rounds can be expended
14 in a matter of 30 seconds if you want to fire that fast.
15 When you have a number of people that are involved here.
16 It's not a couple of dozen people involved.

17 You have 185 State Police that moved in and
18 the total State Police force, 185 that did move in to
19 retake the prison. Although we had a larger number
20 there, this is all that was in there. Plus you do have
21 a number of correction officers who fired so that if you
22 wanted to break it down, you could say if each one fired
23 two shots, bank bank, in five seconds you get 400 shots.

24 Q They were all under the same instructions, not
25 to fire unless some overt hostile act is taken against

10 1 hostages or against them.

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2 A That's right.

3 Q And yet you had all of this shooting. Let
4 me ask you, did you give any consideration--I am not
5 asking these as a personal matter for you because I realize
6 that the major was there, you were there, there were other
7 people in the State Police organization who were involved
8 in this planning.

9 But was consideration given by the State
10 Police or by the correction department or by the governor's
11 staff to the possibility of moving in there without
12 gun and with just batons?

13 A As far as the State Police are concerned, the
14 answer is no.

15 Q As far as the others are concerned, did you ever
16 get a request from the governor or his office or from
17 the correction department to try to move in there without
18 guns?

19 A No, we didn't.

20 Q Did anybody ask you whether or not that was
21 feasible?

22 A No, I don't believe that question was ever
23 posed.

24 Q If it had been posed, sir, what would you have
25 said?

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11 A I would have said, no.

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2 Q Why is that?

3 A Well, you have to be there to actually see
4 what was developing and I think what did develop is the
5 best example of what could have happened if we had gone
6 in with sticks.

7 There was over 1,500 weapons that had been
8 fashioned by inmates, some that were very very deadly.
9 I saw a large number of them and I'm certain that if
10 we went in there with sticks and got into a hand-to-hand
11 combat situation, the loss of life and injury would have
12 been much greater.

13 There is no question in my mind that the
14 inmates had planned or had planned if we came in this
15 way and I think their thinking was that we were coming
16 in this way, that they intended to over power the State
17 Police, whoever they could, that they would then try to
18 take their weapons away from them and then they would
19 have used them for their advantage.

20 Now, in a large crowd of 1,280 odd people
21 that was in there, you have a cloak of--well, just so--
22 it's not a cloak, it's--who can you say did which. In-
23 mates could take positive action and it would be very
24 hard to identify the fact that they did and I'm certain
25 that if we had gone in hoping that they would lay down,

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12 we wouldn't have found it to be so.

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2 Q The same question that you posed of who can
3 say who did which can be posed in reverse to the
4 police in a situation like this, am I correct?

5 A That's very correct.

6 Q With gas masks, without guns which are
7 traceable, that same question can be posed.

8 A Mr. Liman, I think that our follow-up on this
9 incident shows that we're not trying to conceal anything.
10 Immediately following the same day, we had 50 investi-
11 gators brought in, BCI people for the purpose of a full
12 investigation of our own actions.

13 We knew there was a large number of deaths.
14 These were all homicides. We do not take them lightly.
15 We investigated the actions of our own people. We
16 went out and took statements of our own people. We
17 had photographs. There was no concealment. No effort
18 to conceal the actions of our people.

19 Q I want to make it plain that you also cooperated
20 with us and turned over the very material that we have
21 been looking at and other material and you came and
22 spoke to the Commission in private as well as a number of
23 other members of the force and I did not mean to suggest
24 that--

25 A The inference was there in the last remark you

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13 made and I know you didn't intend

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3 it as an inference against the State Police but I am
4 just stating my position that I don't feel the State
5 Police have anything to apologize for.

6 We feel that we had a job to do, that we did
7 it. The confrontation was forced upon us by the inmates
8 who all were in there for crimes that they had committed
9 against society.

10 Many of them heinous, over 18 percent homicides.
11 We are not dealing with a campus disorder or a lot of
12 students, young people or people who were trying to
13 express themselves with a type of disorder where you do
14 go in without the deadly force to take care of the
15 situation.

16 This was entirely a situation--this was an
17 unparalleled situation in the history of the United
18 States.

19 Q Do you feel, Colonel, that if the people had
20 not been in there for crimes, that this was not a prison
21 yard, a maximum security prison, that your men would
22 have used different individual judgment in whether
23 to fire?

24 A We wouldn't have gone in with the gun power
25 that we had. There would be no need for it. We have
found and I don't think that any other police agency has

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14 found that in the ordinary type

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2 of disorder, whatever it might be, that you get the
3 threat against your own safety. You will have--maybe
4 you will have some sticks, you may have some stones.
5 You will have a lot of verbal abuse but you don't
6 have people building deadly weapons to use against you.

7 Q I said you made available material to us
8 but I want to ask another question because we have
9 looked at it and the public has looked at it and now
10 you have looked at it here with us.

11 And are you saying that you feel, having
12 studied all of this material that you would not have
13 done this differently if you had it to do over again?

14 A So far as the State Police action?

15 Q Yes, sir.

16 A We could have exercised--you could exercise
17 better control of the actions of others but as far as
18 the State Police action I feel that we did what we
19 had to do to restore control of the prison and to try
20 to rescue as many hostages as we could with the least
21 loss of life.

22 Q You also are aware that the National
23 Guard prohibits use of Double-0 shot in its riot control
24 shotguns and requires the use of number seven and a half
25 shot.

had it to do over again you would still equip your men with Double-0 shot as the ammunition?

A Yes, sir, I would.

Q And you would do that even though you have seen the spread of these guns and the distances that the ammunition would have to travel?

A We had a situation there where a number of deaths and injuries ensued in the yard where Lieutenant Christian was shot. There is no question in my mind that some of the deaths of the hostages and those of the inmates resulted from our members firing at Lt. Christian's assailant hoping that they would save his life.

Now, you have a situation here where a number of people see what's happening and each one, thinking that he himself is going to be the one to save the Lieutenant's life, fires. We know and I think you know from the statements you have that five of our members did fire trying to strike Lt. Christian's assailant.

Unfortunately, there were people that were in the line of fire. But you only have a split moment to make a decision as to what you are going to do.

Q But you said in the line of fire. If you equip your men with that type of ammunition and if they are shooting at that distance, even if there aim is

1 perfect, aren't they going to hit

2 other people?

3 A It's very possible that they would and in
4 this case that they did but this was a situation where
5 the lieutenant went down that might never happen again.

6 A shotgun is not a long range weapon. Normally
7 it is not used for long range purposes.

8 Q What guns other than the rifles which the
9 men had on the roofs were your people equipped with
10 to provide long range protection from those catwalks
11 to those hostages?

12 A Well, they had their issue revolvers.

13 Q That's just a hand gun and that's not a long
14 range weapon either, is it? It isn't intended for
15 that--

16 A No, you also have to remember that our men were
17 wearing gas masks, for their own protection against
18 gas. Certainly in the wearing of any gas mask, you will
19 have an added problem insofar as your marksmanship is
20 concerned.

21 You going to run into this regardless of
22 what type of weapons that you are going to use.

23 Q Is it fair to say, colonel, that given the
24 location of those hostages and given the limitations
25 of these weapons which the State Police has, that if

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there was any act of assault toward 2111
those hostages, it was virtually inevitable that other
people would be hit by bullets or pellets?

A You lose me just a bit on that question.

A Well, given the ammunition which you had,
given the distance that was involved here, given the
fact that your men had the choice of only revolvers or
shotguns, wasn't it really inevitable that if any inmate
attempted to assail a State Police officer or a hostage
in the yard, that there would be many casualties?

A Well, it's a question where--where the trooper
might be as to where the assailant was, the distance
involved, as to whether there would or would not be.
At 20 and 30 yards you could put the entire nine pellets
into the body of an assailant.

Now, you can take lighter shot, you can take
seven and a half shot, beebie shot, whatever you want,
and you will find this has a much greater spread at
distances of 20 to 30 yards, it can be lethal.

One of those pellets can strike you and kill
you. But now, instead of having nine pellets, you have
possibly anywhere from two to 300 pellets, anyone striking
you at a certain distance is going to kill you just
as much as a rifle or a revolver.

Q Are you suggesting that the seven and a half

18¹ shot, the small pellets have the letal 2112

2 capability, the same lethal capability of Double-0 shot?

3 A According to the distance and the place
4 where you are hit, yes. No question about it.

5 Q From 30 yards or 40 yards or 50 yards, are
6 you saying that a person hit with a Double-0 will not
7 be in worse shape than a person hit with a beebie pellet
8 from the other kind of shot?

9 A Now you are getting into distance 30 to 50
10 yards. I am not a ballistics man and I can't tell you
11 but I do know that a seven and a half or a number six
12 shot will reach out and you will kill a bird with it.
13 You will kill a rabbit.

14 Q Can you kill a man with it?

15 A You possibly can kill a man with it, yes.

16 Q As possible as with the larger ammunition?

17 A Maybe not as possible but you got to remember,
18 you only got nine pellets involved here whereas against
19 you might have 200, whatever it may be in a number six,
20 number seven shot.

21 Q Do you know why the National Guard doesn't
22 permit the use of Double-0 shot?

23 A I do not. I didn't know that they had shot-
24 guns with seven and a half shot. The National Guards-
25 men at Attica had rifles. They may have had shotguns;

19 I didn't see them.

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2 Q If you had to do it over again, would you be
3 using .270's with bullets that were not fully jacketed?

4 A We use the bullets that are available and
5 that is not a full jacketed bullet.

6 Q Availability isn't the question I asked.

7 A Would I use it? Yes. As a police weapon,
8 the bullet we use in it is a most effective police
9 weapon. When a policeman draws his gun, he draws it
10 in the line of duty and he then has the responsibility
11 as to the discharge of the weapon, both that he may have
12 to answer civilly or criminally if he is careless in
13 what he is doing or if he is wrong in what he is doing,
14 but if you draw your weapon to fire and our rules and
15 regulations are very emphatic, our training is, you are
16 responsible for your actions.

17 Now, when you shoot your weapon, you shoot it
18 for a purpose, to defend yourself or another, to possibly
19 effect arrest when all other reasonable means have
20 failed, at which time you may use deadly force.

21 You certainly can always use deadly force
22 when physical force is being used against you or used
23 against another and this is one way to effect the restraint
24 that you have to to stop the action of someone else and
25 this is why police do use revolvers, .38 revolvers.

21 what our job was. That's to protect

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2 life.

3 Q Ten hostages died of State Police or correction
4 officer bullets.

5 A You are talking on the catwalk?

6 Q I am talking on the catwalks and the yard.
7 That's the--

8 A The total hostages.

9 A The total hostages who died and who were not
10 being picked out by State Police officers or correction
11 officer, those were just shots that were either stray or
12 misaimed or for some other reason.

13 Given that toll, I would like you to bear
14 that in mind. You were not asked, you said, for your
15 opinion as to whether you should go in, whether a police
16 action should be undertaken and so I understand that
17 nobody asked you that at the time.

18 I would like your professional opinion on
19 whether in all of the circumstances, including the
20 character of the inmates as you understood that character
21 and you expressed it here, including the threats that
22 were made to the hostages that they would be killed if
23 the police came in, including the various reports that
24 up to then the hostages had not been harmed in the
25 yard while you were staying out, do you think that the

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probability was greater that harm

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would befall to those hostages either from the knives

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of inmates or from the bullets of police if you went

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in on Monday or if you waited several more days?

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A I don't feel that I can give an opinion

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because I don't think anyone can give an opinion.

7

This is a matter of conjecture. I don't think it's

8

a fair question as to what might have happened if you

9

didn't do something.

10

Q What compelled this decision to go in on

11

Monday? And not wait, given the threats that were

12

made that the hostages would be killed if you went in?

13

A Well, it wasn't a compelling decision on our

14

part. We were there from the first day to restore control

15

of the prison when we were asked to do so.

16

We were asked to take the police action

17

to restore control on Monday. We took it.

18

MR. LIMAN: Thank you.

19

MR. McKAY: Colonel Miller, I think

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several members of the Commission have questions.

21

I would like to start with Mr. Rothschild on my

22

left.

23

EXAMINATION BY MR. ROTHSCHILD:

24

Q Col. Miller, I would like to pursue in somewhat

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of a different fashion something that--as I understand

23 1 it, and I think you said it quite

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2 clearly the State Police's job in this was a
3 instrumentality to restore control of the prison.

4 That was their assignment and that's what they did.

5 I think that the ballistic aspects of it
6 get kind of overwhelming a little bit. I think it's
7 a complicated field. The thing that interests me
8 is not that nearly so much as the fact that the assign-
9 ment of restoring order to a penitentiary was probable
10 not something that the State Police has in their order
11 of likely assignments.

12 I don't know if it's ever happened before.
13 It's certainly not a standard equipment job. In the
14 light of that question I would like to ask,--in the light
15 of what took place in Attica, do you think that the
16 State Police is reconsidering or should reconsider
17 or should look at the whole project of this particular
18 combat assignment?

19 We found in the army we ran into certain
20 kinds of resistance that we weren't trained to deal with
21 and we had again to change techniques because jungle
22 fighting was different from open field fighting and what
23 have you. Weaponry was different. The whole approach
24 was different. It would seem to me that, from many
25 of the things you said that perhaps the basic assignment

24 of this kind of think is very 2118
2 different from that of riot control to which Mr. Liman
3 compared it with the National Guard.

4 It's a different kind of participant. It's
5 a different kind of environment. It's a different set
6 of circumstances. My question is has the State Police
7 any plans, or are they pursuing any plans to study the
8 experience of Attica in the light of the fact this
9 really is a different kind of assignment than normally
10 State Policemen and the State Police has been asked
11 to exercise and we do have the right tools and techniques
12 and whether there is a way for many of the reasons that
13 said that made this difficult?

14 A Well, certainly we're interested if we could
15 restore control to do it the most effective way, the
16 most human way. We have been in prison riot situations
17 in the past years. I can think probably of five or six.

18 At Auburn last year we were there but the
19 prisoners capitulated on the--I won't say it was a threat
20 but on the instructions of the warden or the deputy
21 warden, the deputy commissioner that the State Police
22 would move in.

23 We were faced with the same situation. They
24 did capitulate which, as I understand at Attica, they
25 felt they weren't going to capitulate because they

25 gained nothing, as they said, from Auburn.

2119

2 Back in '29 and '30 there were pitched battles
3 the police and inmates at the Auburn prison riots where
4 a number of inmates were killed, where a number of
5 hostages had been killed by the inmates.

6 We had a situation in 1955 in Comstock Prison
7 where there was a large number of inmates that had taken
8 over the prison and in this case we went in and restored
9 control. There were no hostages.

10 The use of non-lethal weapons, which has been
11 a question, not only in this situation but any situation
12 police are faced with is one that there has been a lot
13 of research done on it. There has been a lot of money,
14 federal monies granted for the purchase and development
15 of so-called non-lethal weapons but the results from
16 our observations and from our own research do not
17 show any positive conclusion that you have such a non-
18 lethal weapon to be effective in a circumstance like,
19 for instance, at Attica.

20 There has been a lot of talk about rubber
21 bullets. Over in Island they have been using them
22 and it hasn't done a thing apparently except get the
23 Irishmen a little madder. It has not been effective.

24 They have so-called stun bag, which is like
25 a large bean bag which is discharged from a weapon similar

26 to a gas gun which when somebody 2120

2 gets hit with it, it will inflict quite a bruise.

3 It might slow him down but it doesn't disable him.

4 You can't get into a gas--there has been talk about

5 using a sleeping gas or a happy gas.

6 These things are fine but they are not practical.

7 Situations that the police are faced with are not

8 situations that you see on television on some of these

9 shows. It's very easy to write a script and show how

10 you resolve a situation with a hypothetical weapon that's

11 so effective.

12 This is not true. Certainly we are concerned

13 and we do research any new tool that's available

14 that we can supply our people with.

15 It becomes a question sometimes as to buying

16 the equipment that you are never going to use. This,

17 again, is a budgetary thing and the question of the

18 budget could be resolved but we may never have another

19 Attica.

20

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25

1 Q My question was less Buck Rogersy in a sense.

2 For instance, if in fact you have the obli-
3 gation to restore order, it would seem to me that from
4 what we have heard about Attica there is a reasonable
5 presumption that maybe the enforcers, which is what
6 you are, have to tell the Commisioner of Correction
7 that maybe hostage taking has to be reduced in the first
8 three hours, if you're going to give the maximum oppor-
9 tunity to save the hostages.

10 It is that kind of review I am thinking of,
11 more than just special purpose kind of weapons.

12 A I agree with you--

13 Q I am talking strategically rather than tacti-
14 cally, I think.

15 Q This may be but yet, correction officers in
16 making surveys where there have been hostages will
17 come out and give you a figure that in 95 per cent
18 of the times when you negotiate, you are successful.

19 Now, when you have 38 people involved here
20 and these are your own people, I wouldn't want to be
21 the Commissioner to say, go now or shall I negotiate.

22 This is quite a decision to make. He made
23 his decision and he did try to negotiate for five days.
24 He went far beyond what most people would consider as
25 reasonable in the demands that were made of him that he

1
2 acceded to. And yet, this apparently did not solve 2122
3 the inmate's resolution to still hold out for further
4 demands.

5 So it's quite a question to try to resolve
6 as to when you are going to go in. We as a police
7 organization, feel that we are prepared to do the police
8 job and do it effectively and do it well under any
9 circumstances, but when another person has to make
10 the decision when, in this case with the prison system,
11 this is the correction commissioner's decision, then
12 we wait on his decision.

13 MR. ROTHFELD: Thank you.

14 THE WITNESS: This is State policy.

15 MR. MC KAY: Mr. Wilbanks.

16 EXAMINATION BY MR. WILBANKS:

17 Q Colonel Miller, you were here this morning
18 and heard some of the depositions that were read by some
19 of the troopers that fired their guns at Attica.

20 I am sure you are aware of the law in regard
21 to when a trooper is allowed to fire and you are also
22 aware of the instructions that were given by Major
23 Monahan, they were to fire only if there was an overt
24 hostile act and so forth.

25 Warning shots were not to be made and there
was to be no hand to hand combat and so forth. I don't

1 want to read but one, just as an example. I want 2123
2 to ask your comments on it. This is in regard to the
3 trooper who was coming out one of the catwalks and was
4 asked about his firing. He said he "advanced a few
5 steps closer to the barricade", I am quoting him now.
6 "I believe I stated there were two other subjects stand-
7 ing at the barricade. There were three subjects all
8 together that I observed. I didn't observe these other
9 two subjects outside of the ones that I fired at. I
10 believe they all ducked down behind the barricade and
11 I fired three rounds into the barricade.

12 "Question: Can you tell me why you did that?

13 "Answer: Well, I observed three other subjects,
14 one subject with a weapon, the other subject I
15 couldn't see his hand. He was down behind the
16 barricade so to speak. And I couldn't ascertain
17 whether he had a weapon or not.

18 "Question: Were you firing to make sure they
19 would not come up and assault the troopers?

20 "Answer: Well, I had to go down the side of
21 that barricade."

22 In other words, it seems to me, perhaps I am
23 mistaken in my impression, that he was firing even though
24 persons were down behind the barricade, he couldn't see
25 them, he didn't know if they had a weapon in their hand

1 and he fired because he knew he would have to go 2124
2 around the barricade.

3 From hearing the deposition, do you believe
4 that action was proper?

5 A Well, a deposition is one thing. What actually
6 happened and being there was something else again. Under
7 the law he has a right, if it is in his defense and he
8 has reason to believe--he reasonably believes that he
9 has to take this action to defend himself, he is faced
10 with physical force, deadly physical force and I think
11 he has a reasonable assumption that these people were
12 armed there and could take action against him that could
13 kill him, so under these circumstances I would say
14 legally he would be justified in shooting.

15 Now, whether it was necessary or not, I don't
16 know. I would say legally he was certainly justified.

17 Q Beyond the written deposition I am sure you
18 have statements of your own from the State Police, as
19 to why these individuals fired shots.

20 Did you discuss with individual officers,
21 discuss further with them as to why they fired shots?
22 This would certainly raise a question in the minds of
23 some people so the supervisory personnel come to this
24 individual and have him explain further as to why he
25 fired in the situation? Would this be discussed?

2 that point in the investigation, we now are faced with
3 the fact that we have a grand jury investigation so
4 we feel that these are proper questions for the grand
5 jury to consider rather than ourselves.

6 Judge Fisher has been named as the prosecutor.
7 He has taken over the investigation. He has, in turn,
8 taken other depositions from people and whether he took
9 further depositions from this particular man, I can't
10 say. These facts will be presented to the grand jury
11 and for us then to do an administrative internal type
12 investigation, I don't think that we would be in the
13 best position to try to do this.

14 Q You are leaving that up to the grand jury?

15 A That's right.

16 Just so you are aware so fare as the State
17 Police are concerned, we investigate each and every
18 incident where we have a complaint against personnel,
19 whether it be an alleged verbal abuse, whether it is
20 physical abuse or if there is a discharge of firearm in
21 the course of their duties, we make full investigations.

22 There is written reports. There is adminis-
23 trative action taken if we feel the man was doing his
24 job incorrectly. If it is a matter where there is a
25 death or a serious injury, we go to the District Attorney

1 and we request that these matters be presented 2126
2 to the grand jury, both to protect our man as well as
3 to lay aside any doubt that we are trying to cover
4 up some wrongful actions on our people's part.

5 Q The second question is in a similar vein.
6 I am sure you are aware that regardless of what you
7 consider to be the merits, that there are many persons
8 who believe that the police action in many individual
9 cases was not justified.

10 You are aware a lot of people are skeptical,
11 regardless whether that is correct or not?

12 A There is no question about this. The facts
13 of Attica so far as the police side is concerned have
14 never been brought out until this hearing and we were
15 not in a position to try to rebut anything that was
16 said that was written, that was broadcast because of
17 the fact there is a criminal investigation going on
18 and we are not in a position to try to comment.

19 Q Yes, I understand. Let me go ahead. That
20 was a prelude to my question.

21 We all recognize that some people disbelieve
22 that the action was proper.

23 Regardless of what you might believe about
24 that, let's suppose that what some person might believe
25 is the following:

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believe that, speaking for someone who might be in the audience watching, suppose that they believed that a particular trooper was overly tense, that he was inexperienced as to when he was to shoot, that perhaps he even wanted to pick off someone, let's suppose someone believed that.

Since they did believe that, suppose if in a situation like that, given their view that this trooper that they believed was characterized by the things that I have mentioned, suppose he shot an inmate who was simply standing or sitting or whatever, who was not resisting. Then realizing this was not proper or lawful after that, let's suppose that he said, well, the inmate was running and he had a weapon in his hand.

In other words, he was resisting. Let's suppose that he changed his story. If someone believed that, could you tell persons this afternoon that this type of falsifying--what checks do you have over some type of thing like this occurring; do you get my point?

A I know what you are talking about. The man can make up a story to protect his own interest.

Q I am saying in a sense, what do you have to depend on other than the individual trooper's word that the situation he saw was as he described it?

1
8 A Well, your investigation could disclose 2128
2 a number of things. You're talking hypothetical ques-
3 tions rather than say Attica but let's have Attica
4 out of it.

5 This could happen in any situation where you
6 could have the same question arise and we then would
7 do our best to fully investigate to find out if the
8 trooper is right or if we have some citizen that
9 said the trooper was wrong and we try to definitely
10 determine what actually did happen.

11 If we found that a crime had been committed
12 by a trooper, we are not going to try to cover it up.
13 This then becomes a matter for the grand jury and the
14 District Attorney investigate further.

15 So that if we are talking Attica, then we
16 would have to go into specifics. If you are talking
17 a hypothetical situation, that's the answer I'm giving
18 you.

19 We are concerned, we do investigate and we
20 don't whitewash what has happened so far as our own
21 people are concerned but we do not also believe every
22 allegation that's made against our people but we do
23 investigate every one.

24 MR. MC KAY: Mr. Carter.

25 EXAMINATION BY MR. CARTER:

1 9 Q Colonel Miller, I must confess to more 2129

2 than ordinary shock to learn that our State Troopers
3 use ammunition which our country has banded under
4 the Geneva Convention, as being the type of ammunition
5 which should not be utilized in war. I am always
6 somewhat shocked to find that in the .270's that your
7 indication that apparently that you would use that
8 type of weapon again.

9 I would like your comment on that.

10 Q Well, you say the State Police--your New York
11 State Police.

12 Q Yes.

13 A Why don't you say every police department--

14 Q It doesn't make any difference.

15 A No, you are shocked that police will use this
16 type of weapon.

17 Q I am more than shocked that New York State
18 Police because I am from New York. I think I ought
19 to--that my State ought to have some standards a little
20 bit better than ordinary policemen--ordinary States.

21 A I can't go into the background as far as the
22 military is concerned, and the Geneva Convention, where
23 they did come out with this decision, so all nations
24 are living within the convention will go this way.

25 Q On the grounds that the weapons they were not

1 10 utilizing as I understand it, they were not using 2130
2 weapons that would cause undue human suffering and
3 therefore, the kind of ammunition which you have
4 utilized is one that has been band on that ground.

5 A You also have some advantages from using
6 the weapon, the police type weapon and I don't have a
7 sufficient background probably to comment on that
8 but I'm certain that police departments throughout the
9 country and probably throughout the world do use these
10 type weapons for police purpose, that there is a good
11 reason why they are using them and their comments would
12 probably be just as strong in favor of their use as
13 against the military type weapon.

14 The military type bullet fired from, say
15 a .3006 rifle, which is a military weapon, would probably
16 go through three people here in this room if they were
17 one behind the other, where a .270 will hit someone,
18 it will stop.

19 It will not penetrate. It does not have
20 the penetrating power, whereby it could go through
21 several people and kill three people where the other
22 bullet will only kill the one.

23 That is one point I think that the police
24 feel that this is one reason they want to use it.

25 In war if you can go through ten people, you

1
11 are much further ahead.

2131

2 Q I suppose we can't pursue that further.

3 You had been talking, I think, Colonel,
4 and indicated that the--going into Attica. You emphasized
5 the fact that people involved were deviants who had--
6 were guilty of societal crimes, some of them very
7 huge crimes.

8 But there were men at Attica who were not guilty
9 of any heinous crimes, isn't that so? All the people
10 in Attica weren't psychopaths, were they? All the
11 inmates in there were not those that were charged with
12 murder and homicide--

13 A Mr. Carter, I didn't say to begin with, they
14 were deviants. I said they were charged with crimes
15 serious enough to lodge them in the State Prison.

16 From my experience, I think it is borne out
17 probably through statistics, most first offenders do not
18 get sentenced to State Prisons.

19 Normally they are given some chance of reha-
20 bilitation, maybe it's a lesser sentence, a reduced
21 charge--

22 Q Colonel, I understand that.

23 A I'm not saying that all people there are
24 the worse type of people in society.

25 Q There was another element there too, isn't

1 13 because otherwise they would not be in a state 2133
2 prison.

3 And I don't say that every felony is the
4 most serious type of felony but it is a serious enough
5 type of crime where they can be imprisoned for a number
6 of years and the imprisonment is in a State Prison,
7 not in a county jail.

8 Q I suppose--and I will conclude this. The
9 reason I asked the question was that you had indicated
10 that maybe the police would not have used this kind of
11 ammunition had they been confronted with a different
12 situation. You mentioned the campus riots. And yet
13 at the time I gather that they were called upon to Attica,
14 they used the ammunition which was available.

15 Does the police, if they are called in a
16 particular situation, and they have to use fire power,
17 are they going to make a decision as to what kind of
18 fire power they use based on the situation involved,
19 what kind of weapons they are going to use?

20 A Yes, but I can't quite see the comparison you
21 are trying to draw between the situation at Attica and
22 a campus disturbance. This is two different situations.
23 You may go prepared to the scene of any situation, you
24 may bring in equipment, emergency type equipment including
25 extra fire power and so on.

14 It doesn't necessarily mean you are going to use 2134
2 it. You have it available to meet the needs of a
3 situation.

4 Q Let's take a race riot, which is the situa-
5 tion in which you may have to use fire power where a
6 race riot occurs.

7 A Maybe the best example, I can tell you right
8 now, is the Rochester where we were involved in a race
9 riot situation as you remember back in 1962.

10 It was one of the first ones I think in the
11 country. The State Police went in there and there
12 was no one killed there by the State Police.

13 There was no fire arms used to any extent that
14 I know of. I wasn't there personally. But I did go
15 out later on as an observer and I have talked to people
16 who have been there. We were not faced with a situa-
17 tion where people were trying to attempt to use deadly
18 force against us. There was some force used against
19 us and there was some force that I would say could be
20 considered as deadly but we didn't know who these people
21 were. We didn't consider them as criminals. They were
22 people. Certainly I want you to understand my feelings
23 and the feelings of the State Police, that we are not
24 concerned with a person's color in taking police action
25 against him. We are concerned with the offense that

2 Q Were you aware that the members, on the
3 part of the police force that went into the prison
4 had friends in and around Batavia or from that area?

5 A No, I heard on a number of depositions that
6 were read here today that apparently a couple of the
7 members did have some friends that did work at the
8 institution.

9 Certainly I do know that one of our men, I
10 believe, had his brother in there, if I am not mistaken.

11 Those men going in, and I didn't know about
12 the fellow that knew--the people that knew a correction
13 officer at Attica. If anything, this would be a
14 deterring effect, I think, not only on themselves, but
15 on others of the State Police detail. If we are going
16 in as a group and I say my brother is in there, for
17 God's sake don't shoot because you might kill him, I
18 am going to consider this. So that we don't go in there
19 with any idea that we're going to try to shoot anybody
20 we saw who might be running or just to shoot someone.
21 I mean, if this is the point you are trying to say--

22 Q I am not--

23 A The fact that they knew people there, I don't
24 quite get your point, Mr. Carter.

25 Q The point I am trying to make is a point that

16 I thought you made and that was that the--one of 2136
2 the reasons that you have personally advised against
3 correction officers being allowed to go in as a part
4 of the assault team was by virtue of the fact that
5 there might be reprisals. It seems to me that--

6 A I see what you mean.

7 Q It seems to me that the same consideration
8 would be involved in the men who had friends there or
9 a brother who was in there and what I don't understand
10 is if you were that concerned about the correction offi-
11 cer, why a check wasn't made of your own force to make
12 sure that at least--the kind of objectivity you felt
13 would be necessary for correction officers.

14 Q That was my question.

15 A I understand what you are saying now. I
16 did not know of any relationship or any close friendship
17 that any of our people did have with any of the correc-
18 tion officers. I do feel that our people are better
19 trained, better disciplined and that they could be ob-
20 jective in doing their job.

21 We find this, not in a situation like Attica
22 but in a situation where a man lives in a town and he
23 has to arrest his neighbor.

24 Q I will conclude. The thing that's troubling
25 to me was the kind of thing that Mr. Wilbanks was pur-

17 suing. And I think it is troubling to at least 21
2 some parts of the public.

3 As I understand it, an action such as this,
4 there is no real way that there is any accountability
5 for a person being trigger happy or his taking unnec-
6 essary action, for his making bad judgments. It is
7 all his individual--he is acting individually. Obviously,
8 his own life is on the line at the time. And he is
9 acting individually. It just seems to me there is no
10 way that there is any accountability for his action
11 to any high authority. I find this, personally, I
12 find this very troublesome.

13 A Well, it would not hold alone true in a situa-
14 tion like Attica. It holds alone in a man's performance
15 every day. His accountability. His accountability
16 to his superiors to do the job. Through training and
17 continued in-service training, through trying to give
18 proper instruction and guidance, you hope that you can
19 make a man do the job right and if he makes a mistake,
20 that he is accountable for it and will admit his accoun-
21 tability. A situation like this, which is probably one
22 of the most serious that most police officers could ever
23 get involved in, might be something else again. But
24 your only hope that the training that you have given,
25 the supervision that you are trying to provide for them,

1 18 that they will do the job that they are supposed 2138

2 to do.

3 Probably the military is the greatest example
4 where this can happen.

5 MR. MC KAY: Mrs. Wadsworth.

6 EXAMINATION BY MRS. WADSWORTH:

7 Q Colonel Miller, you said you were not a
8 ballistics expert. And you have also said that you
9 would go in again with a Double-0. In the department
10 who's ultimate responsibility is this kind of decision,
11 where does the buck stop as far as the decision like
12 that is concerned?

13 A You mean in a change in equipment, for instance?

14 Q Yes.

15 A Well, this probably would be the superinten-
16 dent's decision if he wanted to make a policy decision
17 that we will no longer have shotguns, that we will no
18 longer have rifles, whatever change it might be.

19 Now, normally, in the State Police, the
20 superintendent does not exercise his autonomy in this
21 way. There is an Executive Committee. It is the 12
22 top personnel at division headquarters where these
23 matters are discussed at great length. They are re-
24 searched where research is necessary and a recommenda-
25 tion is made to the superintendent and he, in turn,

19 under the power he has as superintendent, then can 2139
2 make a policy change.

3 He generally would follow the recommenda-
4 tions of the Executive Committee, although he is not
5 necessarily, doesn't necessarily have to do so.

6 Q I think in most situations things kind of go
7 along until something makes you initiate some kind of
8 attention to a problem. Is there periodic review of
9 this issue? Would this come up automatically in
10 any way or does it need some kind of crisis to get a
11 review?

12 A No, it doesn't need a crisis. It could come
13 through in the form of say a suggestion that could be
14 initiated by a trooper which then does come up through
15 channels and they all pass over my desk and in turn,
16 I send them out for further investigation.

17 If they appear really worthwhile they are
18 brought into the Executive Committee for discussion.
19 If we feel that it is worthwhile to make a change, we
20 will make a recommendation to the superintendent.

21 If we feel it isn't worthwhile, he will be
22 advised of the Committee's discussion on it but then the
23 Committee will make a recommendation we don't feel it
24 is worthwhile.

25 Q Has this issue surfaced in the last two or

10 three years?

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2 A You mean inso far as the use of fire arms?

3 No, it hasn't.

4 Q My other question goes back to the plan
5 for the assault. The phrase we hear is overt hostile
6 act. That seems to be the best direction as far as
7 the troopers were given as to what they were to look
8 for and that was the key. I assume that there was
9 no particular list of assignments or any particular
10 targets that were being sought out in the assault.

11 I am wondering after you planned that the
12 State Troopers alone would go in, that correction offi-
13 cers were added for identification purpose. Who were
14 they going to identify?

15 A Well, the correction officers for identifi-
16 cation purposes would be to identify correction offi-
17 cers who were being held as hostages. They all had--
18 they had all had their correction clothing taken away
19 from them. They were dressed in prison clothing.
20 We were not familiar with who they were but the correc-
21 tion officers would know them and you might have a
22 situation where you needed a face identification and this
23 is where you wanted a correction officer to say yes, this
24 is Joe Doe, he is a correction officer.

25 Q I guess from seeing the film and sort of a .

1 realistic feeling of timing, it seems a little 2141

2 complicated. To stop and say that's the one. It
3 seems to me it was all very fast and difficult to see
4 clearly in the yard what was going on so I wondered
5 how real was the role of identification which brought
6 correctional officers with arms into the picture.

7 A There was only two correctional officers
8 went in with the rescue team for that identification
9 purpose. This is just, you might say, is an added
10 safeguard. Possibly without them there wouldn't have
11 been any difficulty one way or the other.

12 There is always a possibility that you can use some-
13 one in this capacity for identification because you
14 are not--you do not know just what the situation is
15 that you are going to meet.

16 And it could be that an inmate holding a
17 hostage would try to reverse the roles so he escapes
18 and the hostage would get shot.

19 MRS. WADSWORTH: Thank you.

20 MR. MC KAY: Bishop Broderick.

21 EXAMINATION BY MR. BRODERICK:

22 Q Colonel, would you be willing to share with
23 us your opinion of whether, from your experience, whether
24 this was a well-planned takeover by the inmates? Or
25 is it something that just happened to happen through

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a series of incidents?

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A I personally believe and I have really nothing to support this, that there was some planning behind the inmate takeover.

MR. BRODERICK: Thank you.

MR. MC KAY: Mrs. Guerriero.

EXAMINATION BY MRS. GUERRIERO:

Q Colonel Miller, you said that many things are talked about that should be useful in straightening out a situation of this sort without killing anyone and you mentioned gas was one of the things.

Gas is supposed to do this, that or the other. But they aren't effective, neither are the bullets that don't kill and so forth. If that is the case, why was gas used at this time? Because everybody was very much alive. Nobody was out of commission as it were?

A That's true but gas is a non-lethal weapon that normally--

Q Was this supposed to be--some people have said that gas used was a kind of gas that would make the inmates sort of dead in their ways.

A We had also heard that this was supposedly a much more effective type of gas and we don't use it ourselves, at least we didn't have it. That a man

1 23 getting a doze of this gas no matter how tough he 2143

2 was, for the next ten minutes after he got a doze of
3 gas, you could take him by the lapel and lead him
4 along like a puppy dog without absolutely any resis-
5 tance.

6 Gas, according to how it is used and where
7 it is used, can be most effective or it can be less
8 effective.

9 The use of gas, say in a contained area.
10 For instance if we had a gas grenade in this room
11 here, you could find everybody in here would be affected.
12 But you take the same group and spread them out in the
13 street where there is some wind and you have the same
14 circumstances, only a few would be effected. So that
15 certainly the use of gas is something that you would
16 use. The effectiveness depends on many conditions.
17 Climatic conditions, wind flow and also the actual
18 exposure a person does have to the gas.

19 Q But over there it didn't effect anyone as
20 near as we can see in the movie, everybody was running
21 to go down on their bellies or whatever it is and
22 to be safe, I mean not to be shot.

23 A Well, I agree with you but however even if
24 it didn't have a physical effect, psychologically it could
25 have had a good effect where it overcame some resistance.

Q Do you think that without the gas it 2144

2 would have been more disastrous than with the gas?

3 Don't you think that the gas kept everybody--you didn't

4 know who was who?

5 A No, honestly, I don't.

6 Q Since the idea was to--of course the main
7 idea was to save the hostages.

8 A Yes, but I think that the use of gas, even
9 if it only had a very limited effect, it did give the
10 element of surprise, it did give the element of
11 timing where we then could move in. Without it,
12 there could have been much more resistance.

13 Q I have another question. Since everything
14 done at this time was, of course, in order to save
15 lives. I mean everything that was done to save all the
16 lives, even of course, the--mainly the hostages who
17 were the victims at this point. Why then wasn't the
18 voice or a tape given to the same people who dropped
19 the gas? So that they would immediately know when
20 the gas came and the voice at the same time, put your
21 hands behind your head and you won't be hurt.

22 A That is a good question and I'm not sure
23 whether they were equipped with a public address sys-
24 tem or not. Our helicopter has a public address system.
25 It is equipped with it so that the voice emanates from

25 below the helicopter and then the blades, the pressure 2145
2 of the air will force the sound down.

3 If you don't have a public address system,
4 then you can't use it, either in a plane or helicopter.

5 Q I imagine that's what happened except that
6 all these things should have been thought of so that
7 those people wouldn't have been killed, so many people
8 killed because if they--if these people were told that
9 they weren't going to be hurt, they probably would have
10 done what they did later on.

11 The same circumstances, gas and voice at the
12 same time. As it was, as we said before, it was four,
13 five minutes before the voice kept saying, don't,
14 you know, give yourself up and nobody will be hurt.

15 A Well, it is possible it may have helped. I
16 can't say that. But they did not have the equipment
17 on the helicopter, the National Guard helicopter,
18 so therefore we could not use it. You are in a too
19 confined area to put up two helicopters at the same
20 time because when you are flying around with a heli-
21 copter, you have to have a little air space and that they
22 wouldn't have had within the confines trying to do the
23 job they were trying to do with the gas.

24 Q This is my last question. I don't know,
25 perhaps I wasn't here when Lieutenant Christian was

discussed by anyone but I have been listening from the very beginning of our investigation that the inmates did not have any guns.

How was Lieutenant Christian shot, by an inmate with a gun?

A No. He was struck by a weapon or a bullet from a weapon fired by a member of the State Police.

Q Because I didn't know that. I am asking that just to know because I thought we have heard so much that the inmates did have a lot of dangerous weapons but not guns.

So I wondered why.

A No, the only weapons--the only gun they had was what you call a teargas gun which is a deadly seapon in itself. The shells are quite large. I'm sure that if one was discharged it would go right through a person. It could be fatal. But what happened with Lieutenant Christian, you weren't here yesterday, I was talking to him last night and where he was knocked down by an inmate and another inmate he told me last night stood over him and he thought he had an axe and was ready to hit him on the head with an ace and at that time several troopers fired trying to save his life.

One of the bullets then did strike the Lieute-

2 MRS. GUERRIERO: Thank you.

3 MR. MC KAY: Colonel Miller, you have
4 been most patient in answering our questions.
5 Now it is your turn.

6 Do you wish to make a statement without
7 interruption by us, you are free to do so.

8 Would you like to?

9 THE WITNESS: Thank you very much,
10 Mr. McKay.

11 I think I have tried to express my opinion
12 and tried to give you answers as truthful as I
13 know how and also have voiced my feeling so far
14 as the State Police are concerned.

15 I don't care to make any other state-
16 ment at this time. If at a later date before you
17 adjourn, if I change my thinking, I will be in
18 touch with you or Mr. Liman and ask for the courtesy
19 of giving a prepared statement.

20 MR. MC KAY: We would be very glad to
21 have your comments at any time.

22 Thank you very much for being with us
23 today.

24 (Witness excused.)

25 MR. LIMAN: Dr. Sellick.

1 D R. G E N E W. S E L L I C K, 2148

2 called as a witness and having been first duly sworn
3 by Mr. McKay, was examined and testified as follows:

4 EXAMINATION BY MR. LIMAN:

5 Q Would you state your full name for the record?

6 A Dr. Gene W. Sellick.

7 Q Where do you live, Dr. Sellick?

8 A Attica, New York.

9 Q What is your occupation?

10 A I am a veterinarian.

11 Q Do you perform services, among others, for the
12 Attica correctional facility?

13 A Yes. One of our clients is the prison farm
14 associated with the Attica correctional facility, and I
15 make several calls there a week, treating cows.

16 Q How long have you lived in Attica?

17 A I lived in Attica four and a half years.

18 Q Where did you get your degree?

19 A From Cornell University in 1963.

20 Q So you are not a native of Attica. You have
21 come rather recently?

22 A No, I am not.

23 Q First, just as a general question, before the
24 uprising, what was the attitude in the town toward the
25 prison? How conscious are you of the fact that the prison

1 exists there?

2 A Prior to the uprising, the town's people in
3 general were not that aware of the prison. It was there.
4 It was like another -- it was an industry, essentially.
5 It was a source of jobs. There was no fear on the part of
6 virtually all of the town's people.

7 When an inmate walked off the farm or something,
8 we were notified of it, but most of us had no fear. On
9 several occasions, I have taken my two young sons with me
10 out to the prison farm and they have absolutely no fear of
11 these men out there, so essentially it was an atmosphere
12 of no fear.

13 Q Is the prison the primary industry for Attica?

14 A I would have to say yes, it is the biggest
15 industry in town, yes.

16 Q You went to Attica on September 9th; am I
17 correct?

18 A Yes. I was -- I happened to be at the place
19 having a drink with two of my friends, and we were con-
20 tacted by a member of the State Police from the Troop A
21 Barracks approximately 5:30 in the afternoon of
22 September 9th, and being a member of the Lions Club,
23 we were asked -- well, the question was put to us, "I've
24 got 400 men up there and no way to feed them. Can the
25 Lions Club help me out?"

1 And we said sure, we will do

2150

2 the best we can. And with that, the three of us proceeded
3 to get supplies, organize equipment and call in the other
4 members of the Lions Club, and within an hour we were
5 feeding the State Troopers that were on the scene hamburgers
6 and coffee and doughnuts, this type of thing.

7 Q Did you also feed others in addition?

8 A Our first concern that night, Thursday night, was
9 the State Troopers. When they were taken care of through-
10 out the course of the evening, we served newsmen, we
11 served volunteer firemen, virtually anybody that came by
12 and wanted a hamburger and a cup of coffee or a doughnut,
13 yes.

14 Q Who paid for it?

15 A The Lions Club paid for the supplies.

16 Q How many hours did you spend at this stand?

17 A The total number of hours, I would have to stop
18 and figure the total.

19 Q Was most of your days on Friday, Saturday and
20 Sunday --

21 A I was there every day. It varied from four or
22 five hours to as long as fifteen hours on Sunday.

23 Q Did you mingle with the people there, speak to
24 troopers and correction officers and others who were coming
25 up to be served?

1 A Yes, I did.

2 Q Where was the stand actually located?

3 A On Thursday evening, it was in front of the
4 compound. It was outside of the wall. During the course
5 of the evening, because I -- I suppose because of the
6 logistics of having the troopers come off of their watch,
7 come out through the main gate and out on the lawn to get
8 refreshment, we were asked to move just inside of the
9 gate, the main gate, in front of the administration
10 building, and this is where our stand remained throughout
11 the rest of the uprising.

12 Q Was that a busy area?

13 A This was the main area. Any visitors or anybody
14 that was not on duty, as far as our officers were con-
15 cerned, this is where they congregated, right here.

16 Q Did you have some difficulty in connection with
17 serving one of the observers?

18 A There was an incident that happened on an evening
19 when a member of the Citizens Committee came down to get
20 some coffee and sandwiches, and one of our members got up-
21 set and refused him service.

22 The comment was made that we don't feed the
23 enemy, go get your service with your friends. Just after
24 that, there were several of us that didn't agree with this
25 assessment, and we discussed it, about eight of us

1 discussed it off to the side, and it 2152
2 was decided that one member should go up and apologize
3 to these people, and this fellow did that and took along
4 some coffee and sandwiches, as I recall.

5 Q Who is the observer involved in the incident?

6 A This was Mr. Kunstler and one of his aides
7 that were refused service.

8 Q On Monday morning you engaged in other duties
9 besides feeding people; am I correct?

10 A Yes, I did.

11 Q What did you do on Monday morning?

12 A Well, when it was evident that the assault was
13 imminent, we were instructed by a lieutenant from the
14 correction -- a correctional officer lieutenant that we
15 could leave if we wanted to.

16 When we got this word, myself and some other
17 members of the Lions Club went over to him and asked if it
18 were possible, could we give any assistance.

19 He, knowing me personally, said, "Why don't you
20 go talk with one of the doctors and see if he could use
21 your assistance?"

22 Q This is one of the prison doctors?

23 A One of the prison doctors, yes. We asked him if
24 we could be of any assistance to him and there were two --
25 my colleague and I, there were two of us.

1 He said, "Yes, I would like to 2153
2 have you help me. We are short of medical help. You,
3 with your medical knowledge, could be of assistance to us."

4 We were instructed as to what we could do.

5 Q What in fact did you do that morning?

6 A I was instructed to assist the medic that was
7 stationed at the administration building. My duties were
8 to instruct the ambulance drivers in preparing for the
9 attack, and in other words, to roll up their windows, stay
10 in their cabs, tie down their sleeves so that the effects
11 of the gas would be minimal on them.

12 We parked the ambulances so they would be most
13 convenient and then as the hostages originally came out, we
14 were in the administration hallway and word was given to
15 us as they came out, where the doctors wanted them to go.

16 There were three different hospitals, two of them
17 in Batavia, one of them in Warsaw. The most seriously
18 wounded were to go to Batavia. The less seriously wounded
19 were to be held until the ambulance was full and sent to
20 Warsaw.

21 We passed this information on to the ambulance
22 drivers and instructed them where to go. In addition,
23 we were told -- I was told to assist the medic in
24 administering first aid that we could, that we deemed was
25 necessary.

1 I am talking in terms of
2 applying compresses, this type of thing, which I might add,
3 when the confusion of the thing came about, we did not --
4 we did not have time to administer much first aid. Very
5 little. Our main concern was to get these fellows to the
6 hospital.

7 Q Was there any preparation that you saw for
8 administering first aid to people on the scene?

9 A The primary one, the first one that I saw, and
10 this was a man, the first hostage that came out was a man
11 that did indeed have his throat slit, virtually from ear
12 to ear.

13 Q He was alive?

14 A He was definitely alive. I believe this is the
15 man that required 52 stitches to have the wound closed.
16 There was a compress on it which had been applied by the
17 doctors prior to the time that I -- he got to me.

18 I checked his wound, applied further compresses,
19 got him in an ambulance and got him on his way within
20 minutes from when I saw him.

21 Q How long after the police action started did
22 the National Guard medical units arrive? How long did it
23 take?

24 A It was some time. I would guess it was at
25 least a half hour. All of the hostages were out and

1 accounted for, and some of the inmates were coming out --
2 I mean, they were being brought out to us, and we were
3 still doing this same thing for them.

4 We were told before it started that no one -- no
5 inmates would be brought out until all the hostages were
6 out and accounted for, and this is indeed what did happen.
7 But the inmates were coming out and we were still giving
8 the same service to them before the National Guard arrived.

9 Q Before the National Guard medical units arrived,
10 who was available in the way of doctors to give first aid
11 to people?

12 A To my knowledge, there were two prison doctors
13 available.

14 Q And that was all?

15 A And that was all, to my knowledge.

16 Q You were pressed into service?

17 A I was pressed into -- to administer first aid
18 if I could.

19 Q Was there an incident involving one of the
20 inmates who was brought out?

21 A Well --

22 Q The first one?

23 A Yes, the first inmate I saw had a very severe
24 head wound. He was still conscious, however, which was --
25 which amazes me to this day, and he was on a litter.

1 We spent probably four or five
2 minutes talking to the ambulance driver to take this colored
3 man over to -- initially we tried to talk him into taking
4 him to the hospital. Then we were instructed this could
5 not be, he had to go to the prison hospital.

6 However, we still finally managed to talk the
7 ambulance driver to take this man over to the prison
8 hospital.

9 Q He did not want to take him to the prison
10 hospital?

11 A No, he did not.

12 Q But you managed to get him to the prison
13 hospital?

14 A We got him there, yes.

15 Q Doctor, during these days prior to Monday that
16 you were at Attic and manning this food stand, did you
17 have an opportunity to observe the mood of the State
18 Troopers, the correction officers, in the vicinity of your
19 stand?

20 A Yes, on several occasions I was -- as these men
21 would come and get a cup of coffee or a sandwich, would
22 stand off to the side and three or four of them would be
23 having a conversation, this happened several times a day
24 and you could get a sense of -- a feeling for the mood of
25 the officers that were there, yes.

1 Q When you use the word officers, 2157
2 who are you referring to?

3 A I am referring to the Sheriff's deputies which
4 were there with the riot squads. There were also correc-
5 tional officers there too.

6 Q Doctor, would you tell us in your own words what
7 this mood was and how it developed and what it became?

8 A On Thursday the conversation was of how the State
9 Troopers got there. Many of them came from long distances
10 in short periods of time at very fast speeds, with cars,
11 and they were relating these instances.

12 On Friday, when they were inside of the
13 administration -- of the main gate, the talk was primarily
14 of the injury to the inmates -- to the prison personnel
15 the day before.

16 We knew that Mr. Quinn was seriously injured and
17 this type of thing. I think it was Saturday, I know it
18 was Saturday, later in the evening, Mr. Quinn died and
19 you could sense a dramatic change, I thought, in all of
20 the people that were there. Not just the officers but all
21 of the people, including ourselves.

22 The feeling was that now these inmates were all
23 essentially guilty of murder and what did they have to
24 lose, whereas before they had every reason to negotiate,
25 I think.

And about this same time,

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1 Bobby Seale came to the prison and he also created an
2 atmosphere of tension and apprehension, and after he was
3 there and left, there was indeed a great deal more tension
4 and apprehension on the part of all the officers involved
5 to the point that they knew that -- they sensed that now
6 there probably was not going to be a negotiated settlement,
7 they would probably have to go in. This was on Saturday
8 evening.
9

10 Then Sunday, there was a period of time, I
11 haven't heard it mentioned here today, but they were given,
12 the inmates were given an ultimatum and the time limit was
13 set on it, and for all intents and purposes I thought that
14 everybody was going in that day because equipment was
15 brought in, we were given instructions as to when to leave,
16 there were firearms and so forth, men went in with fire
17 squads, and we thought that Sunday afternoon, that was
18 going to be an assault at that time.

19 Of course, Monday morning this same mood was
20 there. Everybody was tense. Everybody was apprehensive
21 as to what was going to happen.

22 Q What kind of talk was taking place on Sunday
23 interms of epithets and words that were being used by
24 troopers and other officers?

25 A There were some instances where, as these

1 troopers would come off their posts, 2159
2 they were talking about various things that they had seen
3 happen.

4 As I understand it, these men were in C block
5 and I don't know if they were in B block or not, but they
6 could see over to these areas and they could see the in-
7 mates working on their instruments, their weapons back in
8 the machinery shop.

9 There was verbal harassment back and forth when
10 these people were in close contact, I know that. There
11 were some derogatory comments made, some half in jest and
12 some I don't know whether they were in jest or not.

13 One time it was, when are we going to go coon
14 hunting, this type of thing. This did happen.

15 Q Was the word nigger used in conversation around?

16 A I am sure it was used. I don't recall any
17 specific instance where it sticks out in my mind.

18 Q What kind of remarks were being addressed about
19 the observers and Seale and others?

20 A The remarks about Bobby Seale were all deroga-
21 tory. It was a common feeling that this man did nothing
22 but stir up more trouble when he came there.

23 There were some that felt that men such as
24 William Kunstler were actually trying to do a good job.
25 There were others who had no use for the job that he was

1 trying to do.

2 Q Were there a lot of rumors being passed around
3 where the various officers were standing as to what was
4 happening in that yard?

5 A There were rumors to the effect that, again,
6 perhaps in jest but they named some names of inmates and
7 they implied that these were the homosexual leaders, and
8 they made the comments that I bet he is having a ball and
9 so forth and so on.

10 As far as rumors about the inmates -- the
11 hostages, there were no specific rumors. There were
12 many people wondering what went on in there. They had
13 seen the injuries, two correction officers that came out
14 that were sent to hospitals.

15 There were some people who couldn't believe the
16 testimony of Dr. Hanson and some of those that said the
17 inmates were being well cared for --

18 Q You mean that the hostages were being well cared
19 for?

20 A That the hostages were being well cared for. But
21 most people did not question Dr. Hanson, especially those
22 familiar with him.

23 Q Was there a rumor of castration floating around?

24 A We heard some rumors that men had been molested
25 in a sexual manner, yes.

1 Q Was there any discussion about 2161
2 people having particular inmate leaders in the cross hairs
3 of their weapons?

4 A The comment was made by some officers, and to
5 be specific, it was both State troopers and correction
6 officers, I believe -- I am sure of the correction officers
7 anyhow -- where they were on post, they had seen these
8 inmates, leaders on television boasting, showing their
9 bravado, that they had seen, observed these inmate
10 leaders in D yard from their posts, and the comment was
11 made if I get the opportunity, I won't miss. This type
12 of thing.

13 Q What was the kind of conversation that took
14 place after the police action on Monday when you returned
15 to the stand?

16 A First of all, there were a couple of instances
17 that happened. There were many scenes of emotion outside
18 in this area between the main gate and the administration
19 building.

20 One thing I think that I should bring out was
21 that there was great emotion amongst some of the correction
22 officers, and I saw many instances where the leaders,
23 lieutenants, the sergeants of correction -- in the
24 correction officer system, they did their -- what I
25 considered their best to see that these men that were

1 emotionally upset were immediately taken 2162
2 off the prison grounds. They were asked -- they were
3 escort ed out through the main gate and told not -- it was
4 seen to that they did not come back in. This did indeed
5 happen on several occasions.

6 I know of one where the man's brother-in-law
7 was fatally wounded and he virtually went beserk, and
8 they let him out.

9 There were other conversations, I am speaking
10 now of four and five hours later, of relief that it was
11 over. There was sadness that so much loss did occur.

12 There were stories, conversations I overheard
13 where -- one instance of a fire team leader was, shall we
14 say bragging about how accurate one of his men was with a
15 tear gas gun and the fact that he put several rounds
16 through the very tiny windows in Times Square.

17 There was a story that I overheard of a rifleman
18 who had an inmate in his sights that was holding one of
19 the hostages up on the catwalk and this rifleman made the
20 statement that he asked his commanding officer to please
21 let him fire because he had the man, he could disarm the
22 man and kill the man with one shot, and this was within
23 five minutes prior to when the assault took place. The
24 order was not given. He was told to hold his fire.

25 The comment was made in this conversation that

1 he thought this man was probably one of 2163
2 the first, if not the first to fire. Just prior to this
3 he cried, "I could see blood on his knife. My God, he
4 is cutting his throat. Please let me fire."

5 The order still was not to fire. When the order
6 was given, he did just as he said he would.

7 This is as the officer was relating it. He did
8 just as he said he would, he disarmed and killed the man
9 with one shot. This is the story I heard.

10 Q Was there also stories about the use of deer
11 slugs?

12 A There was one incident, two officers were
13 talking and one asked the other, did you see that one on
14 top of the catwalk, and I'm not sure which catwalk it
15 was, what hit that man?

16 Apparently there was an inmate running and he
17 virtually, when he was hit, he was in mid-stride and his
18 legs stopped and he did a complete somersault in the air
19 and hit the top of the catwalk and never moved.

20 This conversation was carried on, the one
21 officer said to the other one, it had to be a deer slug
22 that hit him.

23 Q How has the incident at Attica affected the
24 town, Doctor?

25 A Well, Attica will never quite be the same. For

1 one reason, I think they are more aware 2164
2 of the problems that are up on the hill, shall we say.
3 They are more acutely aware of some of the dangers that
4 the correction officers are facing.

5 They are more acutely aware of the need for
6 prison reform, and there is still today much discussion
7 on what can be done, what should be done.

8 Q Has it polarized the town?

9 A I think it has polarized the town to a certain
10 extent. I think those people who were pretty far right of
11 center to begin with went further right.

12 I think the racist element became more racist.
13 The responsible middle of the road citizens took the
14 viewpoint that what can we do, let's not let these men
15 die there in vain.

16 From this, let's see if we can go forward and
17 accomplish something in the area of prison reform, in the
18 area of rehabilitation.

19 Q Doctor, we gave you a subpoena to come but it
20 caused a rather painful decision on your part to come here
21 and talk about some of the things that you have told us;
22 am I correct?

23 A Yes.

24 Q And you talked it over with a number of people,
25 including correction officers, including one who was a

1 hostage?

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2 A Yes. Well, I am in a position pro-
3 fessionally where if my testimony is misinterpreted, it
4 could hurt me professionally.

5 Q What did **you** tell me last night as to why you
6 decided to come and speak your mind?

7 A Well, my position is this. If my testimony is
8 misinterpreted, I will have to let the chips fall where
9 they may.

10 I am sure it won't put me out of business
11 because if these people want to misinterpret it this way,
12 I really don't want them as friends. It is about that
13 simple.

14 As far as talking with some of these other
15 people, I have in my employ a man who works part time for
16 us, who is a correction officer, has been for twenty some
17 years. He was one of the hostages. I have had great
18 discussions with him and to a man, he and another correc-
19 tion officer who was not a hostage, my friends in the
20 business, in my office, all told me to come down and just
21 tell it like it was and let the chips fall where they
22 may.

23 Q You discussed this with other members of the
24 Lions Club also, who gave you the same advice?

25 A One other member who was closely associated

1 with our effort there, yes. And he told 2166
2 me essentially the same thing. He said if you are going
3 to testify, tell it like it is and let the chips fall.

4 MR. LIMAN: I have no further questions.

5 MR. MC KAY: Mr. Sellick, the members of the
6 Commission have no questions, but I would not want
7 you to understand that is a lack of interest in the
8 fine statement you have made.

9 We are deeply grateful for your coming to say
10 the things you have had to say. We believe it is
11 important.

12 You know under our rules that you have an
13 opportunity to make a statement on your own, not in
14 response to questions.

15 Would you like to do so?

16 THE WITNESS: I don't know if this is the
17 opportunity or not to make a statement. I would just
18 say this, that the people of Attica I think more
19 acutely than much of society are more aware of the
20 need for prison reforms, shall we call it, prison
21 reform in two areas.

22 There has been much discussion about who the
23 leaders were in the uprising and it is an opinion --
24 the opinion has been expressed many times that many
25 of these same leaders were also the leaders of other

1 uprisings in the recent past.

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2 And we don't seem to be able to understand
3 why these men -- why these men were still in Attica,
4 in a position where they could lead another uprising.

5 It is from this discussion we feel that
6 perhaps this idea of separating these men from those
7 who are -- want to be rehabilitated and can be
8 rehabilitated, we think that this should be done as
9 soon as possible.

10 Otherwise, any rehabilitation programs you
11 have are going to be very ineffective, to say the
12 least, I think.

13 And there is another area of reform that
14 many of us have discussed, and that is in the area
15 primarily of public attitude toward people who have
16 been convicted of felonies.

17 We feel that the public attitude has to
18 be changed and changed not only in their minds, but
19 in the form of laws so that these men who have paid
20 their debt to society have an opportunity, through
21 their own efforts, through their own demonstration,
22 conscientious effort, to become first class citizens
23 again.

24 As I undersand it, felons are not, cannot
25 become so-called first class citizens for the rest

1 of their lives because of the laws
2 we have today, and I think that these laws have to be
3 changed so that these men have the opportunity -- I
4 don't say give it to them but I think they should have
5 the opportunity to do this, and if you do this, then
6 your rehabilitation programs can become effective and you
7 can make the job of correction officers much easier
8 because contrary to much opinion, there are, the vast
9 majority of the officers working in Attica do indeed
10 try to do a rehabilitation job.

11 The man who works for us who was a hostage
12 was in charge of the chapel. Not because he is a
13 religious man or anything, but because of his abilities
14 to talk with these people and in twenty years he has
15 been a father to many of these men.

16 But without the inmate's opportunity to
17 become first class citizens again, I think your
18 rehabilitation programs are all worthless unless you
19 can give them that opportunity to do so and, of
20 course, to start with, I don't think that any rehabi-
21 litation program can be effective if they are in
22 a radical, militant atmosphere with some of these men
23 who just are outcasts from society.

24 Those are the main points that I wanted to
25 say. Thank you very much.

1 MR. MC KAY: We appreciate 2169
2 your statement, and thank you very much for your
3 attendance.

4 MR. LIMAN: I think that we may have time
5 for one more witness, Mr. Machicote, if he can be
6 brought down.

7 (Witness excused.)

8 MR. LIMAN: Our next witness, if he arrives,
9 is a Puerto Rican inmate from Attica who is Spanish
10 speaking, who was wounded during the police action
11 and who will testify of the circumstances as it
12 affected him, a person who spoke only Spanish and does
13 not comprehend English.

14 MR. MC CAY: Mr. Machicote, do you understand
15 me?

16 Mr. Roldan, will you translate, please.

17 I S M A E L M A C H I C O T E, having been first
18 duly sworn by Mr. McKay through Paul Roldan, who
19 acted as interpreter, was examined and testified in
20 Spanish, through the interpreter, as follows:

21 EXAMINATION BY MR. SACKETT:

22 Q Mr. Machicote, are you presently an inmate at
23 Attica correctional facility?

24 A Yes.

25 Q Mr. Machicote, with the possibility that you

1 will be continuing your testimony at some 2170

2 other time, I would like to start at this particular
3 moment for you to testify about what happened to you on
4 September 13, 1971 with respect to the police assault.

5 And with that in mind, please tell us what
6 happened to you in D yard when the helicopter dropped the
7 gas.

8 Mr. Roldan, would you please ask the witness to
9 actually get close to the mike so his answers can be
10 heard in his own language.

11 You may now translate to him my question.

12 A I was wounded in the right leg.

13 Q Could you tell us, Mr. Machicote, in your own
14 words, what happened from the time that the helicopter
15 dropped the gas until you were brought to the prison
16 hospital?

17 A I was laying down on the floor and some agents
18 came over and spoke to me in English and told me something
19 in English, but I didn't understand what they were saying.

20 Q Please continue.

21 A They kept talking to me and I didn't know who was
22 talking to me. I looked up and there were two policemen
23 there and I didn't understand what they were saying.

24 Q Yes, please continue.

25 A When they saw that I made no move, they walked

1 back and they shot at me.

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2 Q Mr. Machicote, when the policemen as you
3 described them moved away from you, did you continue to
4 look at them or did you hide your face?

5 A No, when they pointed their guns at me, I hid
6 my face.

7 Q And then what happened?

8 A Then I heard a shot that hit me in the right leg.

9 Q Mr. Machicote, could you please just stand and
10 point to the place where the bullet entered your leg?

11 MR. SACKETT: Let the record indicate he is
12 pointing to the lateral aspect of his right thigh.

13 Q Mr. Machicote, could you then tell us what
14 happened after you got shot?

15 A After they shot me, one of them kicked me about
16 four, five times right in the wound.

17 Q And then what happened?

18 A Then they walked away.

19 Then they came back again and they hit me on
20 the leg. I don't know whether it was with a club or a
21 pipe. I don't know, but I was hit on the leg.

22 Q After that, what happened?

23 A They then came back again and they told me to
24 get up -- that is, he says -- there was nother Puerto
25 Rican inmate there who spoke English and he told me what

1 they were saying. Essentially he told me 2172
2 to get up, that they were saying for me to get up because
3 I couldn't understand, I had to ask the Puerto Rican what
4 they were saying, and then I got up and he helped me.

5 Q Did this other Puerto Rican inmate assist you
6 to get over near the trench by the D tunnel?

7 A Yes, he helped me to the trench.

8 Q Then what happened at the trench?

9 A I told the Puerto Rican inmate to tell one of
10 the troopers that I was wounded so that they would give me
11 some medical attention.

12 Q And did they? Did there come a time when they
13 gave you medical attention? What did the troopers do at
14 that point?

15 A This other Puerto Rican inmate told the troopers
16 that I wanted medical attention, and one of the troopers
17 pulled me by the hand, grabbed me by the wrist and dragged
18 me further away from the Puerto Rican inmate.

19 Q And then what happened after that?

20 A They kept going by and they were picking up
21 other people and no one gave me any medical attention,
22 and then subsequently, two other troopers came over and
23 one of them put his leg on my stomach and pressed down
24 on it.

25 Q You mean the trooper took his -- he placed his

1 boot on your stomach and pressed down-
2 ward? Is that what you are saying?

3 A Yes, and he pressed on my stomach with his boots.

4 Q What happened after that?

5 A I was told by the other Puerto Rican inmate
6 that the troopers were telling him, when you address the
7 troopers, you are to call them yes, sir and no, sir.

8 Q Did there come a time when you were taken into
9 another yard?

10 A Yes, but they took a while before they took me
11 to the next yard.

12 Q Did there come a time when you were taken to the
13 hospital at the prison?

14 A They took me out from that yard, they took me
15 outside and I was -- they took me out to the yard, to
16 another yard outside somewhere, I don't know where outside,
17 and I was left there for a longer time, and then --

18 Q Then what happened?

19 A They kept me there for a while and then they took
20 me to the hospital.

21 Q How much time went by, do you think, from the
22 time that the gas dropped to the time that you were taken
23 to the hospital?

24 A I have no recollection. I don't know.

25 Q But would you say it was more than one hour?

1 A Yes.

2 Q Did anything happen at the hospital, did they
3 take care of your wound?

4 A They kept me there for a while. Then they came
5 by, they put some bandaids -- they bandaged my leg and
6 then they took me to another room.

7 Q Mr. Machicote, did -- speaking of hospitals at
8 Attica, are there any Spanish speaking personnel or people
9 that work at the hospital that would be able to translate
10 for you in case you had to go to the doctor at Attica
11 about any medical problem?

12 A No.

13 Q How long, Mr. Machicote, have you been at
14 Attica Correctional Facility?

15 A About eight months. I am not sure, about eight
16 months or a year.

17 Q Mr. Machicote, what education do you have?

18 A Second year of grammar school.

19 Q Are you from Puerto Rico, Mr. Machicote?

20 A Yes.

21 Q Is that where you were educated?

22 A Yes.

23 Q When did you come to the United States?

24 A I don't remember.

25 Q Mr. Machicote, are you going to school at

1 Attica; is there any program where you
2 could join to be able to learn English?

3 A There were no schools and there is no Spanish
4 instructors so how could I go to school?

5 Q Mr. Machicote, do you have any relatives in New
6 York City?

7 A All my family.

8 Q Do you have any other relatives that are outside
9 of New York City, that may be close to Attica?

10 A Only in New York.

11 Q How many visits have you had at the prison since
12 the time that you have been at Attica?

13 A About three or four times.

14 Q Mr. Machicote, has any of your relatives expressed
15 to you the problem about getting to Attica to visit you
16 since it is approximately 800 miles round trip from New
17 York City?

18 A They have told me that it is quite far and it is
19 very difficult for them to come and visit me, it takes
20 quite a bit of money.

21 They spend a lot of money because -- to go and
22 visit me, because it is too far.

23 MR. SACKETT: At this time I would like to
24 call Mrs. Julie Birrier, who is the sister of Mr.
25 Machicote.

1 Mr. Roldan, maybe you can 2176
2 give that mike to Mrs. Birrier and you use that one.

3 Thank you.

4 Mrs. Birrier, I take it you are the
5 sister of Mr. Machicote?

6 MRS. BIRRIER: Yes, sir.

7 MR. SACKETT: Could you tell us the kind of
8 problems that are involved in visiting your brother
9 at Attica?

10 MRS. BIRRIER: Yes, sir.

11 MR. SACKETT: Just tell us in your own
12 words what the problems are that -- the problems
13 that you have living in New York City and having to
14 go to Attica, that distance from New York City.

15 MRS. BIRRIER: It becomes very difficult
16 for us to get up to Attica. I have to -- we have
17 to pay \$60 to the chauffeur and we have to pay all
18 the tolls, the gas and food, and we leave at Friday,
19 9 p.m., and we don't get to Attica until about
20 10 o'clock the next morning.

21 MR. SACKETT: How much do you think it costs
22 all together each time that you have to go to
23 Attica and return, to visit your brother?

24 MRS. BIRRIER: About \$200.

25 MR. SACKETT: Do you know of any friends of

1 yours that have relatives at Attica that
2 encounter the same problems?

3 MRS. BIRRIER: Yes, sir.

4 MR. SACKETT: Could you tell us about that?

5 MRS. BIRRIER: Another lady who has seven
6 children and is very poor, and she has not been
7 able to visit her husband because she cannot afford
8 the trip.

9 MR. SACKETT: Has this friend asked you to
10 see if she could get a ride in your car when you go?

11 MRS. BIRRIER: Yes, she contacted us and
12 she asked us to let her know if she could ride with
13 us because otherwise she could never visit her
14 husband.

15 MR. SACKETT: Thank you very much, Mrs.
16 Birrier.

17 All right, I think that will conclude the
18 testimony of Mr. Machicote today.

19 MR. MC KAY: Mr. Machicote, the Commission
20 has no questions but we thank you and your sister
21 very much for being with us today.

22 Mr. Roldan, has Mr. Machicote been advised
23 that he has a right to make a statement if he
24 wishes?

25 (Mr. Roldan speaks to the witness in

Spanish,)

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THE WITNESS: I don't have anything to say.

MR. MC KAY: Thank you very much for being
with us.

(Witness excused.)

MR. MC KAY: The hearing will recess
until tomorrow morning at 9 a.m.

(Time noted: 6:40 p.m.)

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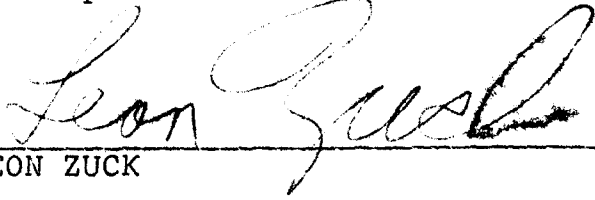
STATE OF NEW YORK)
 : ss
COUNTY OF NEW YORK)

I, LEON ZUCK, a Shorthand Reporter and
Notary Public within and for the State of New
York, do hereby certify:

That I reported the continued proceedings
in the within entitled matter (pages 1828-2178)
and that the within transcript is a true record
of said proceedings.

I further certify that I am not related
to any of the parties to this action by blood
or marriage; and that I am in no way interested
in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 28th day of April 1972.



LEON ZUCK