

1 after I had come out at 10:00 in the
2 afternoon. Looking back on it you don't really realize
3 how emotionally involved you become with something un-
4 til you consider what you say in the circumstances and
5 I was asked to get together a group of National Guards-
6 men to go up on the catwalks, which I was never up on,
7 to remove the bodies from there and I am afraid my re-
8 sponse would not bear repetition either; that they had
9 created the bodies, they could bloody well remove them.
10 I was not particularly happy with the circumstances at
11 that time.

12 MR. LIMAN: No, Doctor, before you con-
13 clude your testimony and the questions are asked
14 of you by the Commission, I thought that we would
15 put on members of the National Guard now to tell
16 of their experiences and then the Commission can
17 address their questions to each of you and every-
18 body would have a right to make a statement.

19 THE WITNESS: Certainly, sir.

20 MR. McKAY: Will you remain standing to
21 be sworn.

22 Do I understand correctly that we have
23 Mr. O'Day, Mr. Futterman and Mr. Dill?

24 MR. LIMAN: Yes.

25 LOUIS FUTTERMAN, RONALD DILL, and JAMES O'DAY, having

1 been duly sworn by Mr. McKay, testi-
2 fied as follows:

3 MR. LIMAN: For the record, would each
4 of you please state your name? Start with you,
5 Mr. Futterman.

6 MR. FUTTERMAN: Mark Louis Futterman.

7 MR. DILL: Ronald Dill.

8 MR. O'DAY: James O'Day.

9 MR. LIMAN: Mr. Futterman, where do you
10 live, in the Buffalo area?

11 MR. FUTTERMAN: Yes, sir.

12 MR. LIMAN: Is that also true of Messrs.
13 Dill and O'Day?

14 MR. DILL: Yes, sir.

15 MR. O'DAY: Yes, sir.

16 MR. LIMAN: Your ages?

17 MR. O'DAY: 25.

18 MR. DILL: 21.

19 MR. FUTTERMAN: 27.

20 MR. LIMAN: Starting with seniority, Mr.
21 Futterman, you are attached to the National Guard;
22 am I correct?

23 MR. FUTTERMAN: Yes, that's right.

24 MR. LIMAN: What is your position in the
25 National Guard?

1
2 time of the Attica incident, I was in C company
3 of the 50th medical batallion and I was the
4 section sergeant for the ambulance platoon.
5 I was the ambulance platoon sergeant.

6 MR. LIMAN: Mr. Dill?

7 MR. DILL: At the time of Attica--I am
8 a specialist for. I am a medical corpsman.

9 MR. LIMAN: And Mr. O'Day?

10 MR. O'DAY: At the time I was a private
11 first class in the 152 engineers, company B.

12 MR. LIMAN: Mr. O'Day, you were called
13 upon to assist in the evacuation and care of the
14 wounded on that day; am I correct?

15 MR. O'DAY: Yes, sir.

16 MR. LIMAN: Even though that is not part
17 of your normal duties in the National Guard, ex-
18 cept as first aid?

19 MR. O'DAY: Yes, sir.

20 MR. LIMAN: Now, Mr. Futterman, are you
21 involved in the medical field in any way?

22 MR. FUTTERMAN: Yes, I am in my second
23 year of nursing school.

24 MR. LIMAN: Mr. Dill, do you work in the
25 medical field?

1 MR. DILL: Yes, I do.

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2 This year I will be graduating from Erie Community
3 College as a medical technician.

4 MR. LIMAN: Mr. O'Day?

5 MR. O'DAY: No, sir. I am a student at
6 the Conitious (phonetic) College, but I have
7 taught regents biology.

8 MR. LIMAN: Mr. Futterman, what was your
9 assignment at Attica?

10 MR. FUTTERMAN: Initially what my platoon
11 was instructed to do was to evacuate with our am-
12 bulances what were identified to us as hostages
13 to civilian hospitals for treatment.

14 Q How many members were in your platoon?

15 MR. FUTTERMAN: At the time we had approxi-
16 mately 12 men at Attica. We had some others, but
17 they didn't all come with us.

18 Q How long did you remain at Attica that day?

19 MR. FUTTERMAN: Approximately from 10:00
20 until 7:30 or thereabouts. The time is really
21 hard.

22 MR. LIMAN: Were you the man who re-
23 quested permission to stay late to help?

24 MR. FUTTERMAN: Yes, sir.

25 MR. LIMAN: Now, what kind of work did

1 you do at Attica?

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2 MR. FUTTERMAN: Initially what my platoon
3 did was to evacuate the hostages and civilian per-
4 sonnel who needed aid. After that we were rather
5 limited in the number of qualified medics who were
6 there that day. We had--and this is true of the
7 company in general. We had 34 or 40 qualified
8 medics in the medical unit and after the hostages
9 or civilians that we evacuated were moved, I went
10 in with a team of doctors and our prime objective
11 was the catwalk in the Times Square area and I
12 was followed very closely by litter teams and for
13 most of the day I worked between the catwalk and
14 when that was evacuated of wounded, then I helped
15 outside to give any type of emergency first aid
16 that we could to doctors who were evacuating in-
17 mates who were brought out on litters and then
18 after that I moved to the hospital area.

19 MR. LIMAN: Mr. Futterman, you have
20 never been in combat, I take it?

21 MR. FUTTERMAN: No, that's correct.

22 MR. LIMAN: Were any efforts made to
23 interfere with your efforts to render medical
24 assistance to the inmates?

25 MR. FUTTERMAN: Initially when I went

1 to--when I went up on the cat-
2 walk in the Times Square area, I came across one
3 inmate who appeared to be suffering from a suck-
4 ing chest wound. We were taught in the National
5 Guard that if you come across a person with a
6 sucking chest wound you are to make the wound
7 tight, the wound of exit and the wound of entry,
8 so that there could be no lung collapse possible,
9 if it hasn't already occurred. We were told be-
10 fore we went in that we weren't to touch any pri-
11 soners who weren't already stripped and searched.

12 MR. LIMAN: Who told you that?

13 MR. FUTTERMAN: We were told by--I was
14 told by my first sergeant and by the company com-
15 mander, who were told, in my presence, by what
16 appeared to be correctional officers and at the
17 administration building steps. When I reached
18 this man I did try to apply an air tight dressing
19 to the wound and I was stopped by a state trooper
20 pushing me away. But I must say that there was
21 a good reason for it.

22 MR. LIMAN: What was the explanation
23 he gave you?

24 MR. FUTTERMAN: There was no explanation.
25 At first I thought that perhaps it was just that

1 he didn't want anybody touching

2 --as I said--then before they had been searched,
3 the inmates had been searched, but I later found
4 that the person that I was attempting to render
5 first aid to had a hammer.

6 MR. LIMAN: How did you know he had a
7 hammer?

8 MR. FUTTERMAN: It was pointed out to
9 me at the time, a few seconds later.

10 MR. LIMAN: Who pointed out the hammer?

11 MR. FUTTERMAN: The state trooper.

12 MR. LIMAN: Where was the hammer when it
13 was pointed out?

14 MR. FUTTERMAN: It was laying beside the
15 prisoner.

16 MR. LIMAN: Had you seen the hammer when
17 you first went to treat him?

18 MR. FUTTERMAN: No. This--I would like
19 to say that this was the only time I was stopped
20 from treating specific prisoners that I wanted to
21 treat.

22 MR. LIMAN: Now, Mr. Futterman, did you
23 come across 6 or 7 men in the corridor of the hos-
24 pital awaiting treatment?

25 MR. FUTTERMAN: Yes. This was in the

1 afternoon.

2 MR. LIMAN: Would you tell us about
3 that?

4 MR. FUTTERMAN: The men were in an
5 area at the entrance--at the entrance of the hos-
6 pital between the hospital area and E block,
7 right in that area there. They were against the
8 closed wall, the bottom wall. There were approxi-
9 mately 6 or 7 or 8 men on litters and we were told
10 that they had initially been treated with IVs,
11 pressure compresses and blankets and we were told
12 that they were to get no further first aid.

13 MR. LIMAN: Who told you that they were
14 not to get any further first aid?

15 MR. FUTTERMAN: Correctional officers
16 who were guarding the prisoners specifically.

17 MR. LIMAN: Did they tell you what these
18 men had done?

19 MR. FUTTERMAN: They told us that these
20 were the ringleaders--the supposed ringleaders and
21 they were the ones who had emasculated some of the
22 guards and they weren't to be touched until fur-
23 ther notice.

24 MR. LIMAN: Did you see a large black
25 inmate brought into the hospital?

1 MR. FUTTERMAN: Yes, I did. 2258

2 MR. LIMAN: Tell us about that; what his
3 condition was before you--when you first saw him
4 and what his condition was when you next saw him,
5 and where did it take place?

6 MR. FUTTERMAN: On entering the hospital,
7 the room--there was a large room to the left of the
8 double doors opposite a glass guard station it
9 appears to be, and basically what we were doing--
10 the National Guardsmen, medics, what we were doing
11 was moving patients from this holding room into
12 the treatment area, which is where the pointer is
13 indicating right now. As we were walking back and
14 forth, I noticed that this fellow was brought in
15 by a number of guards, a number of correctional
16 officers, and he was walking eventually to the
17 back of the--he was walking under his own power
18 with no visible injuries at that time. He was
19 walked to the back of the area out of my sight.
20 The next time I saw him he was in the holding room.
21 He was bleeding seriously from what appeared to be
22 head wounds and he was being kept until the very
23 last person to be treated. There were three guards
24 standing over him with night sticks prodding him.

25 MR. LIMAN: Were you told what he had

1 done?

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2 MR. FUTTERMAN: Yes. We were told he
3 was specifically the one who had emasculated guards
4 and prompted them to commit acts of sodomy.

5 MR. LIMAN: What was he saying?

6 MR. FUTTERMAN: Nothing. Not a thing.

7 MR. LIMAN: Now, Mr. Dill, did you walk
8 in when this man was being dealt with by correctional
9 officers?

10 MR. DILL: Yes, I did.

11 MR. LIMAN: Could you speak in the micro-
12 phone.

13 MR. DILL: I was working in the hospital
14 that afternoon and I was assigned to get four men
15 to form a litter team and walk through the hallway
16 from the hospital to the HBZ reception center and
17 to pick up--somebody must have called in and told
18 somebody that we were to pick up a prisoner and
19 I got four men and we walked down the long hallway
20 to the reception center and we didn't know where
21 to go, so I was in charge of the litter team and
22 I just picked the first door. As we got into the
23 reception center I turned--coming that way it
24 would be a right turn and I walked into the first
25 doorway just to find somebody to tell me where

1 the prisoner was and as I walked in 2260

2 I got the door a quarter of the way or half-way
3 open and I saw correction officers, 5, 6 or 7--
4 I'm not exact--bending over and beating on some-
5 body that was on the floor and they told me to
6 shut the door, that I wasn't allowed into that
7 room. So, right away I didn't have any authority
8 to say anything--I ran out of the room. I didn't
9 run, I walked out of the room. I waited outside
10 with my litter team. About 30 seconds later they
11 came out and some man said that a correction offi-
12 cer told me that I could go in with my litter team
13 and take the patient and when I walked in he was
14 already on the litter, so we just left the litter
15 that we took over into that room and picked him
16 up, which was the big black man and he did have a
17 laceration of the head and we brought him back to
18 the hospital.

19 MR. LIMAN: What was he saying?

20 MR. DILL: He was, in my opinion, in a
21 state of shock. He was delirious. He was crying
22 emotionally and that's all he kept saying, "I
23 didn't do it, boss."

24 MR. LIMAN: Were there any efforts to
25 interfere with your treating--giving him treatment

1 at the hospital?

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2 MR. DILL: Well, when I got to the hos-
3 pital they were busy in what we called the emer-
4 gency room and so they told us to lay him out in
5 the hall on a stretcher and I went about on my
6 duties in the hospital.

7 MR. LIMAN: Did you see him being
8 guarded in the hospital?

9 MR. DILL: About half an hour later I
10 was told to get into another litter team and we
11 walked into the emergency room and picked the same
12 man up. They wanted him to be taken to X-ray.
13 So I got four guys and we carried him into the
14 hallway that led--X-ray is in the back of the hos-
15 pital, toward the right in a back room. And we
16 picked him up and there was patients scattered
17 all along the halls to X-ray. So we had a hard
18 time taking him to the back of the hospital. And
19 as we got there, there was somebody in X-ray, so
20 we had to set him down in the hallway and at this
21 time a correction officer that was walking with
22 us grabbed one of the National Guardsmen who was
23 just standing in the hallway and told him to guard
24 him and the correction officer took the National
25 Guard--you know, took his hand, because the National

1 Guard had a bayonet on his
2 rifle and told him, "Put the bayonet at his neck,"
3 and told him that if he moved to kill him. The
4 correction officer said this.

5 In the meantime, we stood around him
6 and he was still crying, "I didn't do it, boss,"
7 and a correction officer went and got two state
8 troopers and brought him back--brought the two
9 state troopers back, relieved the National Guards-
10 men and the two state troopers guarded the man.

11 MR. LIMAN: With guns?

12 MR. DILL: No. With night sticks.

13 MR. LIMAN: Mr. O'Day were you given an
14 explanation as to what happened to this man? Did
15 somebody tell you something?

16 MR. O'DAY: I was outside when he walked
17 in on his own power and then without entering the
18 hospital I had heard the rumors that he had cas-
19 trated some of the hostages or whatever it was
20 and then while I was still outside I had heard
21 the rumor that he had accidentally fallen down
22 three flights of stairs or something to that
23 effect.

24 MR. LIMAN: When you say you heard the
25 rumor, who was passing this rumor about that that's

1 how he happened to become in-

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2 jured?

3 MR. O'DAY: I can't really say who I
4 heard it from, sir. Probably--

5 MR. LIMAN: If you're not sure, then
6 let's not go into it.

7 Mr. Futterman, did you see any other
8 acts of mishandling of inmates?

9 MR. FUTTERMAN: Yes. I was working be-
10 tween the--at one point I was working between the
11 entrance to the hospital and the steps of the
12 administration building, helping to guide litter
13 team to the hospital area. At that time I no-
14 ticed that there were a number of men laying on
15 litters in front of the chain link fence, which
16 is in front of the HBZ area. At that time I
17 stopped to look at the people on these litters.
18 I wanted to make sure that they were all seen.
19 Some of them were crying that they hadn't been
20 seen and to the best of my knowledge everyone
21 that I had seen at that time was tagged. By
22 tagged I mean seen by a medic. We put field
23 cards on our patients to make sure that they
24 had been seen. It gives a brief description of
25 what to look for when they reach a hospital area.

1 At that time I heard a commo-
2 tion. So, I turned around and one by one pri-
3 soners were bring brought from the administration
4 building steps up the walkway to the HBZ area and
5 at that time they had been stripped and they were
6 walking or running with their hands behind their
7 heads with correction officers behind them and
8 they were brought to the steps of the HBZ one at
9 a time so that the fellow behind the one who was
10 on the steps couldn't exactly see what was hap-
11 pening. When they reached the steps of the HBZ
12 they were asked what their name was and where
13 they were locked and when they answered that ques-
14 tion 6 or 8 correctional officers directly inside
15 the doors said, "You want your amnesty? Well,
16 come and get it" and at that point they were shown
17 through the doors and beaten severely with clubs,
18 night sticks, and they were beaten out of sight.
19 They were run around the corner of a building, but
20 they were beaten out of sight.

21 MR. LIMAN: Did somebody say anything
22 about stopping it in your presence?

23 MR. FUTTERMAN: Yes. I witnessed about
24 four such incidents in a period of a very few
25 minutes and at that time a man in a white shirt

1 and blue pants came up to the 2265

2 steps and said to the men who were at the door,

3 "You better cool it. There are too many witnesses."

4 MR. LIMAN: Did you also see an incident
5 involving an inmate being brought in E block on
6 a stretcher?

7 MR. FUTTERMAN: Yes.

8 MR. LIMAN: Will you tell us about that?

9 MR. FUTTERMAN: Yes. After a number of
10 inmates were treated, they were put back on guerneys
11 or rolling litters or some type of transportation
12 and moved down the area past the mess halls to the
13 E block and my men told me that when they took them
14 down there initially they were able to take them
15 right into the area. However, after a few teams
16 had gone down there one team returned and told me
17 that they were not allowed to go past the elbow
18 in the corridor there. They told me that as they
19 got to that area the correction officers took the
20 carts and wheeled the inmates around the corner
21 themselves and they heard noises to the effect of
22 "Get off that thing, you son of a bitch," and they
23 heard the cart being dumped and the sound of beat-
24 ings.

25 MR. LIMAN: These were men who were on--

2 were inmates who we had treated already and were
3 being treated to cell blocks.

4 MR. LIMAN: On a wheeling form of stretcher?

5 MR. FUTTERMAN: Right. So I went down
6 at that time myself to see what was happening and
7 initially the teams were allowed to move along
8 that corridor, which was guarded by correction
9 officers and National Guardsmen without an escort.
10 By the time I went down there a correction officer
11 was walking with the litter and the same thing
12 happened that I described before.

13 MR. LIMAN: What did he say?

14 MR. FUTTERMAN: He just said, "You are
15 not allowed to go any further. We will take it
16 from here."

17 MR. LIMAN: Did you hear any of the pri-
18 son doctors express a comment about the wounded?

19 MR. FUTTERMAN: No. Nothing that I
20 can remember right now.

21 MR. LIMAN: Did you hear any of them
22 make any suggestions or express characterizations
23 of the wounded?

24 MR. FUTTERMAN: The prison doctors or
25 our doctors?

2 doctors.

3 MR. FUTTERMAN: Oh, yes. There was one
4 incident which is rather detailed. If you want me
5 to relate it, I will.

6 MR. LIMAN: I want you to relate it as
7 it is.

8 MR. FUTTERMAN: Okay.

9 A black prisoner was brought into the
10 emergency room area, which is the treatment room,
11 and as he was carried in by the National Guard
12 medics--our doctors and members of the Meyer dis-
13 aster team were there already in the room at this
14 time. The doctor said--

15 MR. LIMAN: Say it as it is.

16 MR. FUTTERMAN: The doctor said, "That
17 nigger is a fucker and he should have died in the
18 yard so we won't treat him."

19 MR. LIMAN: I have no further questions
20 of you at the moment, but Mr. Bramlette has ques-
21 tions to pose to Mr. Dill and Mr. O'Day and then
22 we will come back.

23 MR. BRAMLETTE: Thank you.

24 MR. O'Day, you heard Mr. Futterman speak
25 before about the wounded that were out by the wire

1 fence in front of the insti-

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2 tution, and that they had been tagged. Did there
3 come a time in the day when rather than being on
4 the litter team you assisted a prison doctor in
5 accomplishing that tagging?

6 MR. O'DAY: Yes, sir. Early in the
7 day--

8 MR. BRAMLETTE: Could you move the micro-
9 phone? Just turn it a little more.

10 MR. O'DAY: At first I was a litter bearer
11 and then after carrying one prisoner into the hos-
12 pital, whose floors, by the way, were covered with
13 other stretchers, prisoners in which you could
14 hardly step across the floors, we started pulling
15 some of the prisoners outside in front of the wire
16 fence and then as I went back into the--into A
17 yard to pick some more prisoners up, I realized
18 that there were many National Guardsmen around to
19 man the stretchers and so I went over to these
20 prisoners that we laid outside the fence and I
21 started getting blankets for them and just trying
22 to make them feel fairly comfortable. There was
23 a security line very close to these prisoners
24 that were laid outside the fence and as I was try-
25 ing to help these men cover up the--keep them warm,

1 put blankets on him, I was being 2269
2 harassed by the prison guards and the non-uniformed
3 people in this security line. One of the prisoners
4 then told me that it would be a good idea if we
5 got some priorities for the prisoners who were
6 hurt the worst and to see if we could get them
7 in the hospital first.

8 So I went around looking for someone in
9 authority who could accomplish this and where
10 some of the people in the security line just
11 said, "Well, just let them die, don't worry about
12 them." Then I found a man in a white coat and he
13 turned out to be one of the prison doctors and he
14 said he was coming out for that purpose.

15 MR. BRAMLETTE: You began to help him?

16 MR. O'DAY: I stayed with the prison
17 doctor.

18 MR. BRAMLETTE: So you were going around
19 and talking to the prisoners before the doctor got
20 there and expedited his work a little; is that
21 correct?

22 MR. O'DAY: I was giving blankets. I
23 wasn't really talking. The prisoners were saying
24 things to me. I wasn't carrying on conversations
25 with the prisoners. until I started taking them

1 with the doctor.

2 MR. BRAMLETTE: Could you tell me,
3 please--let me get back a moment. What did you
4 mean by your being harassed by correction offi-
5 cers?

6 MR. O'DAY: By the security line. There
7 were some correction officers in this line and some
8 not unifomed people. There was one man who had a
9 wound and he asked for some water. I found out
10 later his wound was a hole in the back, in the
11 spine, and he asked for some water and the people
12 from the security line yelled--I started to get
13 my canteen out and they yelled, they told me not
14 to do it and they told me,"Do you have any salt
15 for his wounds?" And things like that and they
16 were continually telling them that they were go-
17 ing to die.

18 MR. BRAMLETTE: In other words, his
19 other remarks made it clear that the man who said
20 this was not concerned about the fact that you
21 might be doing harm by giving him water?

22 MR. O'DAY: Well, I was confused there.
23 He was asking for water and I was trying to help
24 him and the other people in the line were telling
25 me, you know, let him die and all this and then I

1 heard a familiar voice--who was 2271
2 another National Guardsman--say, "Jim, you better
3 not give him water. You don't know what his wound
4 is," and that sounded reasonable to me, so I
5 just wet his lips.

6 MR. BRAMLETTE: Mr. O'Day, as you went
7 around doing this you were told the names, told
8 the names by some of the inmates, is that correct,
9 who were there wounded?

10 You were subsequently asked not to take
11 those names, but did that occur for a time?

12 MR. O'DAY: As I first went along, I be-
13 came familiar with all of their names because I
14 was taking them. After my job of--I found out
15 their numbers, their names and their injuries.

16 MR. BRAMLETTE: What was the purpose of
17 your taking their names in addition to your help-
18 ing tag the people for the doctor?

19 MR. O'DAY: Well, at first that was it,
20 and after my job of taking--is that what you are
21 referring to?

22 MR. BRAMLETTE: Yes.

23 MR. O'DAY: I had run across one par-
24 ticularly articulate prisoner who was quite afraid
25 because if there was any prisoner who was lying

1 in this line and there was

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2 nothing wrong with him, he was forcibly gotten up
3 off the stretcher and led back to I don't know
4 where and he was shaky because he was trying to
5 explain to me that he had dropped his glasses and
6 they were being led out and without his glasses
7 he is legally blind and that he had been hit on
8 the head as they were trying to move him along
9 and he was just dizzy.

10 MR. BRAMLETTE: So he wanted you to
11 intercede for him with the security people?

12 MR. O'DAY: Well, he was just trying
13 to explain to me with no purpose that that's
14 what happened. Even though he couldn't see
15 there was nothing really wrong with him now.
16 He was shook up. So I told the doctor what
17 was wrong with him and the doctor was not as
18 rough on him.

19 MR. BRAMLETTE: Mr. O'Day, what I was
20 trying to get at was the fact that you saw later
21 a list of names of wounded in the paper and I
22 believe you told me something in your prior talks
23 that you were rather astonished when you read
24 over the list of wounded. Can you just briefly
25 tell me what astonished you?

1
2 I got home, I don't remember the numbers, 42 peo-
3 ple were killed, and then there was a list of the
4 wounded--this is the Buffalo Evening News--of
5 about 100--100 or so, 110 or 20 and of these
6 prisoners that I went through--

7 MR. BRAMLETTE: Who were wounded?

8 MR. O'DAY: Who were wounded, about 30
9 prisoners, about 6 of their names appeared on
10 that list.

11 MR. BRAMLETTE: 6?

12 MR. O'DAY: 6, 7, 8.

13 MR. BRAMLETTE: Out of how many?

14 MR. O'DAY: Perhaps 30.

15 MR. BRAMLETTE: Let me ask you this:
16 while you were in that area subsequently in the
17 afternoon, did there come a time when another
18 man was abused by prison officials?

19 MR. O'DAY: Twice, sir. Once after we
20 had--were taking a break on the cell block side
21 of the chain fence and the prisoners were still
22 lying on their stretchers on the other side of
23 the chain fence--we were just sort of getting a
24 breather and we heard this singing. It was sort
25 of--it was some sort of chanting or something.

1
2 this coming from one of the wounded inmates there?

3 MR. O'DAY: At first it was--you know,
4 it was just there and then I looked over and saw
5 that one of the prisoners was sitting up on the
6 stretcher and was singing this. Then there was
7 some--

8 MR. BRAMLETTE: Now, subsequently--
9 what I would like to do is skip to subsequently
10 what you saw happen subsequently to that man.

11 MR. O'DAY: Okay.

12 MR. BRAMLETTE: He was sitting up on the
13 stretcher crying out, chanting?

14 MR. O'DAY: Right. And somebody yelled
15 to him to be quiet and to lie down and he was just
16 sort of singing to the sky and he started yelling
17 "You're going to have to kill me, brother" or
18 somebody or other and something like that and
19 then about 3 or 4 uniformed prison guards ap-
20 peared and he stopped the singing as soon as they
21 appeared and they started walking over toward
22 his stretcher and as they got closer and closer
23 to him he got up on the stretcher and laid down
24 and as they got to him he was lying down on the
25 stretcher and they dumped him up and let him onto

1 the steps of the reception

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2 building and took him into the vestibule and be-
3 fore the door was closed--like they just beat the
4 hell out of him with night sticks. He was on the
5 floor in a fetal position yelling, "Enough. Enough."
6 And they just kept beating him on the head, on the
7 spine, you know, just beating him.

8 MR. BRAMLETTE: I see.

9 Is there some other incident of violent
10 reprisal that you recall?

11 MR. O'DAY: Yes. Later in the day--later
12 in the day we were--we went back to the hospital
13 and realized that our duties were to take these
14 prisoners who had been treated back to their cell
15 blocks. So I went back into the hospital. We
16 were in the front hall where you mentioned before
17 those 7 or 8 prisoners were who were not allowed
18 to be treated any further. I was assigned to one
19 stretcher in which there was a large black man
20 and both of his hands were bandaged, not tied,
21 but bandaged. He was lying on his stomach naked
22 and there were gun wounds in his legs and rear
23 end.

24 MR. BRAMLETTE: Pellets? Could you tell?

25 MR. O'DAY: They were little holes,

1 about a quarter of an inch
2 wide, and they had black rings around them. I
3 don't know what caused them or anything.

4 Four of us--four of the National Guards-
5 men carried this man--

6 MR. BRAMLETTE: Excuse me, Mr. O'Day.
7 Was he one of the 7; is that your recollection?

8 MR. O'DAY: He was in the front hall of
9 the hospital.

10 MR. BRAMLETTE: I see. Please go on.

11 MR. O'DAY: We carried him back through
12 some hallways across one of the courtyards--let
13 me see. Where is the hospital hallway on there?

14 We carried him down the hospital, down
15 that hallway and then we turned down that hall-
16 way and this is all rubble now and we went to
17 the door in the center there and cut across this
18 courtyard to the door--right--down there and then
19 carried him straight down toward the front. Okay?

20 Now, that's in--in that area there is a
21 central hall, like, leading off to different cell
22 areas. Then we carried him down and back and in
23 the center of that area there are many, many
24 prison guards, uniformed prison guards, and there
25 is also a mezzanine around that area and there

1 were prison guards up on that
2 mezzanine and there were some non-uniformed peo-
3 ple there and a small non-uniformed man came up
4 and asked what was wrong with this particular
5 prisoner and I told him that he had gunshot
6 wounds in the legs and my telling him seemingly
7 went unnoticed. He told us to put him down and
8 we put him down and he picked the head end of
9 the stretcher up and dumped this man onto his
10 feet and the man then fell over onto his shoul-
11 der and really bounced off the floor. There was
12 debris and slime water all over the floor. Then
13 this non-uniformed man came out and pulled out
14 a Phillips screwdriver and the man is lying on
15 the floor on his back with his feet planted on
16 the floor and the man said, "If you don't get
17 moving--if you don't get up on your feet, you
18 are going to get this right up your ass."
19 And then he did stick this man right in the
20 anal area five or six times and the prisoner
21 was lying--he didn't say a word, but just sort
22 of pushed with his legs toward the cell block
23 that this man wanted him to go into.

24 MR. BRAMLETTE: Away from the blows of
25 the screwdriver?

1
2 pushing the man didn't strike with the screw-
3 driver any more, but they just disappeared into
4 that cell block.

5 MR. BRAMLETTE: Were there others there
6 at that time? I don't recall if you mentioned
7 that.

8 MR. O'DAY: There were four National
9 Guardsmen on the stretcher. There were the
10 other prison guards around and there were--well,
11 this man was not in uniform, so that's who was
12 around. I don't know how the National Guard
13 felt. We knew that the civilian authorities
14 were in control and not us. I know that we
15 should have stopped this man, that it was a
16 criminal act, but it happened so quickly and
17 we were just awed by the fact that the prison
18 guards were standing around and seemingly not
19 even noticing it. And by the time the man was
20 gone we couldn't do anything.

21 MR. BRAMLETTE: Thank you, Mr. O'Day.

22 Mr. Dill, I want to ask you if in the
23 course of your working during the day, you saw
24 any instances of mistreatment of inmates.

25 MR. DILL: Yes, I did. I went--I was

1 working in the hospital later

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2 in the afternoon and right along outside along the
3 fence where they kept the prisoners outside on
4 stretchers there was the man that Jim was talking
5 about. I took out a litter team--

6 MR. BRAMLETTE: That's down by the wire
7 fence?

8 MR. DILL: Right. Right there. And I
9 took four men plus myself and we went down to
10 bring another patient into the hospital. And as
11 we walked down we were going to pick this man up
12 and as we were walking down, that's when he started
13 singing and he was--he was singing a song, but
14 he was looking up into the sky and I told the
15 four guys that I had with me not to touch him;
16 that I was going to see if I could get a state
17 trooper or a correction officer to come with us
18 because we didn't want to pick this man up since
19 he was conscious and he was singing--we didn't
20 want to get hurt by the man. So, we looked around
21 and there was nobody--nobody would come to give
22 us assistance with this man, so I figured I would
23 go back to the hospital and tell one of the doc-
24 tors or somebody in charge in the hospital. So,
25 as we were walking back there was--there was be-

1
2 officers sitting on the front stairs of the re-
3 ception center and they were just talking and
4 shooting the breeze and they told this man to
5 shut up; that if he didn't shut up they were
6 going to make him shut up and he kept singing
7 and he got up and he sat on a stretcher. Now,
8 I turned around and I was still about--I was
9 about 20 feet away from and when I saw him he
10 had shotgun wounds of the side of the face and
11 of the upper part of the arm and shoulder. And
12 the correction officers walked toward his litter
13 and he laid back down and as they reached his
14 litter they tipped the litter over, knocked him
15 down on the ground and they walked him into the
16 reception center. So, I went back to the hos-
17 pital and I started working again. This was
18 about an hour later that I saw this man back in
19 the hospital and when I saw him he had gunshot
20 wounds of the lower abdomen, but I am not sure
21 if he had them before he went into the hospital.

22 MR. BRAMLETTE: What about--you say
23 that he was tipped off his litter. Were there
24 other instances of that, where the correction
25 officers at any time instructed you as to how

1 to carry these wounded inmates?

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2 MR. DILL: Yes. In the beginning of
3 the day I was working on some litter teams and
4 we were bringing the litters out of the front
5 door from the lats and we were walking the side-
6 walk to the hospital and as we were walking--
7 we are trained as medical people that you are
8 to bring the patients morale up and you are to
9 be very gentle with an injured person. We were
10 walking through the sidewalk and a correction
11 officer came up behind us and said, "Why are you
12 being so God damn gentle? He's only a nigger.
13 Dump him. You know, bounce him around a little."
14 He could not understand why we were so gentle
15 with these people. This was a correction officer.

16 MR. BRAMLETTE: What about in E block;
17 did you ever go down to there? Were there similar
18 incidents or anything at all like that in E block?

19 MR. DILL: Yes, sir. I was told to
20 take a patient with another guy, another National
21 Guardsman to E block on a roller cart and as we
22 walked down the hallway from the hospital to E
23 block, just--right around there, there are a set
24 of gates by the mess hall and there was a guard
25 at that set of gates and the gates were locked

1 with a chain and as we approached, 2282
2 the guard told us to stop 15 feet before the first
3 set of gates and he unlocked the door, came out
4 and walked with us to the gates and then he told
5 us to stop 15 after we got through the gates.
6 He turned around, walked back to the gates and
7 locked them and then he walked half-way up to
8 the next set of gates, which is just before E
9 block and as we got half-way to there the guards
10 that were at the last set of gates opened the
11 gates and met us and released the other guard
12 and he went back to the first set of gates.
13 Then we proceeded with this guard to the last
14 gate. After we got through he told us to stop
15 15 feet--he locked the gates back and then he
16 told us to stop and they wouldn't let us go
17 around the bend into E block. And he asked what
18 was wrong with the patient on the stretcher and
19 he had shotgun wounds of the buttocks and upper
20 thighs. And they told him that he would have
21 to walk if he wanted to get back to his cell
22 block and he told--well, I told the correction
23 officers to plus the prisoner, that i don't
24 think he was fit to walk to his cell block,
25 but they made him get off the cell block and

1 a correction officer with a

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2 Thompson machine gun walked behind him, told
3 him to put his hands above his head and as they
4 were walking him to the bend that goes to the E
5 block they made him say his name and they wanted
6 to hear it louder and louder. And the louder he
7 got, the more the correction officer said he
8 couldn't hear him. It was just all verbal abuse
9 into E block.

10 MR. BRAMLETTE: I would like to ask you
11 what it was like when you returned to Buffalo from
12 this mission. What was the reception that the
13 National Guard--

14 MR. DILL: Well, on the way back from
15 Attica we heard that there were flight incidents
16 of demonstrations on Lafayette Square on the radio,
17 because we had all had radios in our ambulances
18 that we brought from home and as we were coming
19 back we had to get off the expressway onto Best
20 Street and there were people standing around and
21 we had a police escort through Best Street and
22 as we were driving through--it is the colored
23 section of Buffalo, and as we were driving
24 through, the colored people were standing on
25 the curbs and giving us the fist and, "We will

1 remember Attica." Then after

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2 we got back to the armory our company commander
3 asked for 7 volunteers to come back the next morn-
4 ing because we were all exhausted and he told us
5 we can go right home. He asked for 7 volunteers
6 to come in the following morning to clean up
7 the ambulances and to unload all the medical sup-
8 plies. So I volunteered to come in for the next
9 morning and we were--it was about 9:00 the next
10 morning and we were all working in the yard. We
11 were washing ambulances and the garage is up
12 front on Best Street, right across from the
13 stadium in Buffalo and we had the gates locked.
14 As we were walking from the garage into the
15 armory bringing the vehicles back, there were
16 people, colored people walking on the streets
17 and that's all they were saying, "We will re-
18 member you" and "We will remember Attica." I
19 remember this one incident. There was this
20 one guy walking on the street, colored. He
21 was very highly intoxicated and the gates were
22 locked. He walked up to the front gates and
23 he grabbed the gates and he was shaking them
24 and he said, "We will kill you. We will remember
25 Attica."

1 MR. BRAMLETTE: Did you
2 hear yourself referred to, the National Guards-
3 men, over the radio or in the press?

4 MR. DILL: No, I did not.

5 MR. BRAMLETTE: Did any of you gentle-
6 men?

7 MR. FUTTERMAN: Yes, I did. We heard
8 over the radio that Mr. Kuntsler, after leaving
9 the institution, had gone down into Niagara
10 Square or Lafayette Square, one of the main
11 squares down in downtown Buffalo, and was is-
12 suing statements as the National Guard is
13 shooting at the prisoners and so forth and so
14 on. And this upset us quite a bit since the
15 medics, all of the company C were issued ab-
16 solutely no--

17 MR. BRAMLETTE: I was going to ask
18 you if you were issued any weapons.

19 MR. FUTTERMAN: No. The medics were
20 not issued any weapons at all. We had no side
21 arms, no rifles, no weapons at all, bayonets
22 or anything. The only piece of equipment that
23 we had that would be other than medical sup-
24 plies was our gas masks.

25 MR. BRAMLETTE: Mr. O'Day, were you

1 issued a weapon?

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2 MR. O'DAY: The engineers were given
3 their rifles the night before and we had no
4 bullets and as soon as we went into the court-
5 yard area--outside of the building, all our
6 weapons were stacked and so we did not have
7 any weapons when we were with the prisoners
8 except for that one incident in the hospital
9 where one of the National Guardsmen was told
10 to bring his rifle and stand over this man.
11 It was an unloaded rifle.

12 MR. BRAMLETTE: I want to clear up
13 just a couple of things and then I am finished.

14 Mr. Dill, when you described the man
15 who was taken into the hospital with head wounds,
16 hand wounds and then subsequently you saw him
17 come out and you noticed that he had a shotgun
18 wound, I believe you characterized it, in his
19 stomach, did you not at that time hear any
20 shots?

21 MR. DILL: No, I did not.

22 MR. BRAMLETTE: Very good.

23 Oh, yes, yes. Mr. Futterman, the doc-
24 tor who you described as saying to the black
25 man--saying about the black man, don't treat him,

1 did he have an accent?

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2 MR. FUTTERMAN: Yes, he did.

3 MR. BRAMLETTE: Thank you.

4 MR. LIMAN: One more question, Dr.

5 Cudmore.

6 When you returned to the base, did the
7 colonel address you and give you instructions
8 with respect to--relating to the experiences that
9 the Guard had observed?

10 DR. CUDMORE: Yes, Mr. Liman, he did.

11 MR. LIMAN: What did he say?

12 DR. CUDMORE: We returned to Camp
13 Orion before going back to Buffalo because that
14 would be the last time all the units would be
15 together before going back to their home armories.
16 He held a formation of all of the troops that had
17 been involved. I cannot give you a word by word
18 quotation of what he had said, but the effect of
19 which was, however, that we had seen things to-
20 day that we thought were quite horrible. We had
21 seen things--I think terrible was one of the
22 words that he did use. We were to remember them.
23 He didn't advise telling everyone freely about
24 them throughout the city. However, when asked
25 by appropriate authority we were to respond

1 exactly as to what we have

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2 seen.

3 MR. LIMAN: And you have done so?

4 (Continued on page 2289.)

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1 MR. LIMAN: And you have done so? 2289

2 DR. CUDMORE: Yes. Subsequently, since
3 I have spoken with you--I have always kept my
4 higher headquarters informed as to what I am going
5 to do. I spoke to Albans, Col. Quadget (phonetic),
6 chief of staff to Gen. Baker, requesting any
7 information concerning the hearings. His word
8 relayed was "Go down. Tell it as it was" and
9 that was it. "Tell the absolute truth."

10 MR. LIMAN: Mr. O'Day, you in fact did
11 make a report to various investigative agencies of
12 what you saw; am I correct?

13 MR. O'DAY: Yes, sir. The State Police
14 came to the armory for a report. The FBI asked
15 me for a report.

16 MR. LIMAN: And just to end on a note of
17 what the National Guard's function is, because
18 people may have come in late who are watching
19 this; is it correct that the National Guard's
20 function that day was to provide medical evacuation
21 and assistance and it did not participate in the
22 assault itself?

23 DR. CUDMORE: That is quite so. Although
24 it is also fair to say that we were prepared to take
25 part in whatever activities were required of us.

1 We did not fire at all. In fact, our
2 main body did not get there until after the shooting
3 had been completed.

4 MR. LIMAN: And no National Guardsmen
5 fired his weapon as I understand it?

6 DR. CUDMORE: To my knowledge, the
7 medical troops had no weapons and the rest had no
8 ammunition.

9 MR. LIMAN: Thank you.

10 MR. McKAY: Dr. Cudmore and Messrs.
11 Futterman, Dill and O'Day, several members of
12 the Commission have questions and my particular
13 questions are going to be addressed to you, Dr.
14 Cudmore, but if anyone wants to supplement that
15 answer, of course, he is free to do so.

16 I am interested and concerned about the
17 fact that your alert was so late in coming as to
18 the nature of the mission you would perform. You
19 said in response to Mr. Liman's question that if
20 you had known earlier you might have alerted your
21 helicopter crews which would have assisted in the
22 evacuation. What else would you have been able to
23 do? Would you have been able to take different,
24 more extensive equipment?

25 DR. CUDMORE: Yes. If we had known it

1 would have been in the area of 100
2 to 120 severely injured, we would have been able
3 to take the equipment, if not the troops of the
4 medical unit in Buffalo, which was a unit that
5 I commanded until a year ago November and is
6 capable of putting three times the amount of
7 equipment on the ground and the unit that did go.

8 MR. McKAY: Would that have changed
9 what you did or--

10 DR. CUDMORE: It would have given us a
11 greater volume. Had we had time to do so, I
12 believe it would have been appropriate to use
13 very little of the facilities of the hospital,
14 but in fact to establish our own clearing stations
15 as we were designed to do.

16 MR. McKAY: And you would then have been in
17 a position to ask for more medical personnel to
18 join you?

19 DR. CUDMORE: Yes.

20 MR. McKAY: From the National Guard units?

21 DR. CUDMORE: Right. I also believe
22 that as our units are capable of producing only
23 second echelon medical support, or so-called
24 divisional level support, that had much forethought
25 been given to the consequences of an assault with

1 weapons, a fixed installation should
2 either have been established or should have been
3 immediately alerted so that they didn't have to
4 rush to get ready also.

5 MR. MCKAY: If you had known, if you
6 had anticipated what in fact you encountered,
7 would you then have been inclined to seek more
8 major medical assistance of a type that you were
9 not equipped to provide?

10 DR. CUDMORE: Yes, very definitely.

11 MR. MCKAY: What authority would you
12 have had to seek that assistance?

13 DR. CUDMORE: I would have requested
14 the same as from Gen. Baker as I was effectively
15 his immediate staff officer during this operation.
16 I would have requested through Gen. Baker to
17 provide this.

18 MR. MCKAY: That would have meant civilian
19 medical personnel, I assume?

20 DR. CUDMORE: Yes. The State of New York
21 would then have contacted, as they did contact,
22 Meyer Memorial Hospital, the county hospital, who
23 sent out their emergency surgical teams that day.

24 MR. MCKAY: They were not alerted on
25 Sunday; is that correct?

1 DR. CUDMORE: To my knowledge,
2 they were not.

3 MR. MCKAY: Do you know when they were
4 alerted?

5 DR. CUDMORE: I can only presume when
6 they were alerted because of a related incident.
7 As I am the disaster planner for the general
8 hospital, they were looking for me about 10:00
9 o'clock that morning.

10 MR. MCKAY: Thank you.

11 And medical personnel--

12 MR. ROSENFELD: I might say, Dean
13 McKay, from our investigation and our interviews
14 of civilian personnel, we know they were not
15 alerted until 10 or 10:30 that morning. They
16 didn't arrive until, as Dr. Cudmore said, about
17 12:30.

18 MR. MCKAY: Then you spoke of some other
19 civilian doctors being in the yard, but at the time
20 you did not know who they were.

21 DR. CUDMORE: Correction, Dean. They
22 were medical personnel. I would have judged them
23 to have been trained medical personnel in that they
24 were appropriately applying bandages and going
25 about their job as if they had done it before, but

1 I did not have the feeling that they
2 were physicians.

3 MR. MCKAY: Did you ever find out who
4 they were or where or where they came from?

5 DR. CUDMORE: I heard many opinions.
6 I think perhaps the most valid is that they were
7 civilian ambulance attendants who had been called
8 to the scene. One I know was an ex-marine.

9 MR. MCKAY: But you are not aware of
10 any civilian doctors who were in the yard at
11 the same time?

12 DR. CUDMORE: No.

13 MR. ROSENFELD: From our investigation
14 and interviews with these people, we have determined
15 that the people Dr. Cudmore saw were civilian
16 ambulance drivers from the Saint James Hospital in
17 Batavia and also the one veterinarian, Dr. Gardner,
18 from Attica.

19 MR. MCKAY: There has been testimony
20 from you, Dr. Cudmore, that some of your
21 assistants about the priorities of attention.
22 Were you or was anyone officially told that
23 hostages were to be treated first in all respects
24 before inmates were to be treated at all?

25 DR. CUDMORE: As we were detrucking we

1 impressions from seeing that then.

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2 It appeared that a number of the inmates,
3 as they came through, were at least hustled
4 through pretty substantially and there were clubs
5 that we could see apparently going against them,
6 but it was hard to tell in the film how severely
7 they were being treated. I thought I gathered in
8 your original testimony that you had impressions
9 on it. That was the episode you recall.

10 DR. CUDMORE: Quite so. I tried to
11 put the film clip that I saw last night into a
12 time span. I would judge by the number of people
13 that were lying on the ground it was probably just
14 a little bit before I got to the area, because
15 there were not as many people lying on the ground
16 at that time as there were subsequently, when I
17 got there.

18 Yes, to reiterate what I said pre-
19 viously, they were being brought down the steps,
20 prodded from behind, which was difficult to see
21 because they were coming out of a dark corridor,
22 but as they were gotten to the back of the steps --

23 MR. MCKAY: Excuse me. Just a minute.
24 You had not yet at that time been in D-yard; is
25 that correct?

1 DR. CUDMORE: Right. 2297

2 MR. McKAY: You went in after the
3 clearing of those who could essentially walk
4 out?

5 MR. CUDMORE: Yes. The walking
6 wounded were all out of there. This was only my
7 first trip through into D-yard. As they reached
8 the bottom couple of steps, they would be hit
9 across the legs, or attempts were made to poke
10 them in the genitalia, to get them lying flat on
11 the ground so they could begin crawling across
12 the yard and as I said previously, I witnessed
13 one gentleman hit sufficiently hard across the
14 tibial area and then subsequently saw him with a
15 fracture of that leg. He was walking or running
16 down the steps beforehand and he wasn't walking
17 afterwards, so I presume it was broken in either
18 being struck or the fall afterwards.

19 MR. McKAY: Mr. Wilbanks.

20 MR. WILBANKS: Yes.

21 First, Major Cudmore, how long were you
22 in A-yard that day?

23 DR. CUDMORE: I'm sorry, sir. I
24 cannot give you a specific time element. I
25 entered the place around ten o'clock and I was out

1 by one o'clock in the afternoon, and I 2298
2 would say perhaps two-thirds of my time was spent
3 in A-yard.

4 MR. WILBANKS: Were all the inmates
5 out of A-yard? Was the strip -- the line of
6 stripped inmates, were they out of A-yard by the
7 time you left?

8 DR. CUDMORE: Yes, they were either
9 all out or they were standing up in a column. We
10 couldn't leave before they were all standing up,
11 because as they were standing up you would find
12 one or two were hurt and they had to be evacuated.

13 MR. WILBANKS: We heard some testi-
14 mony that there were smashed watches and people
15 were being beaten during the stripping process.

16 Did you witness this?

17 DR. CUDMORE: That is correct.
18 The two episodes that I spoke of previously, the
19 one when I was bandaging a rather tall black man
20 and another was a light-skinned, but not Caucasian
21 fellow. I witnessed two incidents. I must point
22 out at this time that so much went on that day
23 afterwards, that I attempted to remember specific
24 instances, which you could be relatively sure of
25 and those two instances I would not say were the

1 only ones that went on, but they are 2299
2 two that I remember specifically and could
3 relate.

4 MR. WILBANKS: You don't recall any
5 watches being broken?

6 DR. CUDMORE: Yes.

7 MR. WILBANKS: You recall that?

8 DR. CUDMORE: Yes.

9 MR. WILBANKS: You have mentioned
10 that the troopers exercised some restraint in
11 A-yard. Were any of the troopers doing this
12 smashing of watches, or beating?

13 You didn't testify -- when you talked
14 about the light-skinned man being beaten -- if
15 that was a trooper or a correctional officer or
16 what.

17 DR. CUDMORE: No. I can only speak
18 for what went on in A-yard at that time. I did
19 not see a uniformed State trooper strike an indi-
20 vidual with a club.

21 MR. WILBANKS: So it was correction-
22 al officers who struck the light-skinned man;
23 is that correct?

24 DR. CUDMORE: I believe so. Yes.

25 MR. WILBANKS: And you can't dis-

1 tinguish between trooper and sheriff- 4500
2 and park police? Do you know the difference in
3 the uniforms?

4 DR. CUDMORE: The park people I can
5 usually differentiate from the others. Yes, be-
6 cause there are some county sheriff's departments
7 that wear uniforms that were fairly similar to
8 the troopers. The troopers were all gray uni-
9 forms with the gas mask, and they also have the
10 State crest on the shoulder, which makes them
11 readily identifiable.

12 MR. WILBANKS: Could you give me an
13 idea of the percentage of the inmates in A-yard
14 that were struck; was it isolated, was it one
15 out of ten, one out of fifty?

16 DR. CUDMORE: I would say if they
17 weren't struck, it was only because of their
18 own ability to avoid it. Once they were lying
19 flat, they were not struck in any great percentage.
20 These two were, as I say, isolated instances.
21 There must have been several more. As they would
22 be gotten up, stripped and put in their serpen-
23 tine line before being run back out, several of
24 them were hit. As they would go up the steps
25 from A-yard into the corridor while they were being

1 run out there were people making gestures 2301
2 at them, but I don't think their enthusiasm for
3 beating pretty much abated.

4 MR. WILBANKS: Did you see any resis-
5 tance in A-yard, either verbally or physically?

6 DR. CUDMORE: No. A more subdued
7 crowd or group I have not seen.

8 MR. WILBANKS: Mr. Dill. Did any
9 inmates threaten or resist you?

10 MR. DILL: Well, there was one
11 instance in the hospital. It was in the one hall
12 where those seven people were laid out on stret-
13 chers that we were told we couldn't give medical
14 treatment to. I was assigned -- that's all we can
15 do to them, put compress bandages on and I.V.
16 solutions. My job, for about an hour, was to go
17 down the line every five minutes and check into the
18 I.V. and their vital signs. So, as I was walking
19 I stooped down to check the pulse on this one
20 prisoner here, and it was a colored man, and he
21 looked up at me -- and it really shook me, because
22 I am there to help these people, and he just looked
23 up at me and he said "Thanks, man, for saving me,
24 because when I get out of here I will kill you."

25 MR. WILBANKS: Who stopped you from

1 treating these people?

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2 MR. DILL: The correction officers.

3 MR. WILBANKS: Did any prison
4 officer, any doctor, any medical person, tell
5 you "Don't treat these people?"

6 MR. DILL: No.

7 MR. WILBANKS: Just correction offi-
8 cers?

9 MR. DILL: Yes, sir.

10 MR. WILBANKS: Mr. O'Day. Briefly,
11 you mentioned the screwdriver incident. Were
12 you told why you were to take this fellow to
13 A-block? You were told to take him over there.

14 MR. O'DAY: I was just told that he
15 was going back to his cell.

16 MR. WILBANKS: In the incident in
17 which you related, was there any verbal abuse or
18 any language used in connection with this on the
19 part of either the inmate or the correction offi-
20 cer?

21 MR. O'DAY: The inmate was completely
22 passive. There was no verbal abuse, except the
23 man with the screwdriver who told him he'd better
24 get up on his feet or he is going to get it.

25 MR. McKAY: Bishop Broderick.

1 BISHOP BRODERICK: I think 2303
2 you, Dean, have taken most of my questions.

3 This is Doctor Cudmore. Doctor, how
4 many other medical doctors were out in the yard
5 when you got there?

6 DR. CUDMORE: There were none in the
7 yard. We brought seven with us as National Guard
8 personnel.

9 BISHOP BRODERICK: Were they iden-
10 tified as doctors?

11 You said you had a green uniform on.

12 DR. CUDMORE: The only way you
13 could identify a doctor was by the doctor's in-
14 signia he would wear on his collar. We were
15 wearing the standard National Guard uniform, which
16 is green, plus since Viet-Nam, the brass has been
17 made black, or a subdued brass, and you would
18 have to look pretty close to identify a doctor
19 from an artillery officer or anybody else.

20 BISHOP BRODERICK: The Dean asked a
21 question about priority.

22 We have been hearing that the hostages
23 were given first priority, but as you say, Doctor,
24 when you arrived there most of the hostages were
25 taken to the hospital; is that correct?

1 DR. CUDMORE: I can only 2304

2 give after the fact testimony to that. The
3 hostages were gone and the wounded prisoners were
4 still there, so presumably the hostages were
5 given first priority.

6 BISHOP BRODERICK: So no inmate was
7 neglected really medically speaking?

8 DR. CUDMORE: Medical neglect is a
9 relative term.

10 BISHOP BRODERICK: Let me say, like
11 the Good Samaritan, no one passed anybody by to
12 go someplace else?

13 DR. CUDMORE: While we were there
14 in attendance, no. As Counsel Liman brought out,
15 we could have better prepared for it had we been
16 better informed, so relative medical neglect
17 may have been present, but absolutely at that
18 time, everyone was treated the same as we came
19 upon them.

20 BISHOP BRODERICK: Then the last --
21 one question, Doctor, is about the gas used.

22 Had you had any experience before with
23 this type of gas?

24 DR. CUDMORE: Yes, I had undergone --
25 as the company commander for six years, I had

1 undergone gas training with it. 2305

2 BISHOP BRODERICK: Would this have an
3 effect on the lungs?

4 DR. CUDMORE: Yes.

5 BISHOP BRODERICK: You spoke of a
6 man who died. Was it of pneumonia?

7 DR. CUDMORE: No. He died of pulmo-
8 nary edema, which is fluid in the lungs, which
9 in this case would not have been due to gas, but
10 was more likely due to either a chest wound or to
11 severe shock.

12 BISHOP BRODERICK: If someone has a
13 weakness of the lungs, the gas certainly wouldn't
14 help it, it would agitate it, I assume.

15 DR. CUDMORE: The gas does tend to
16 agitate it.

17 BISHOP BRODERICK: Then I just have a
18 buckshot question here for anyone on the panel.

19 We spoke about watches being broken, the
20 watches mentioned -- the fact that there were
21 some watches broken. Did you see any evidence
22 of eyeglasses being taken, or dentures removed,
23 being asked to be removed?

24 MR. DILL: No, sir.

25 MR. FUTTERMAN: No, I didn't.

1 BISHOP BRODERICK: Thank you. 2306

2 Mr. McKAY: Mr. Wilbanks has another
3 question.

4 MR. WILBANKS: Mr. Dill, you men-
5 tioned that you were standing in the hallway
6 where the seven men were against the wall. Did
7 the condition of those persons, due to the fact
8 that they weren't treated for a substantial
9 period of time, did the condition of any of those
10 persons deteriorate seriously?

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13 (Continued on page 2307.)
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MR. DILL: I can't

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answer that because I am not a doctor.

MR. FUTTERMAN: I would like to answer that. I can't say that because they were not treated their condition deteriorated, but there was one man who did die either while he was being brought to that area or while he was in the area and he was not removed from that area. At the time when we set up the hospital area I was in charge of setting up one room which was to be used as a mooring and we did have three bodies in there at the time that I noticed that this man was dead and he was not allowed to be moved at that time.

MR. McKAY: Dr. Cudmore, did you want to speak to that, too?

DR. CUDMORE: Yes, please. In perhaps more an answer to Rev. Broderick's question on the level of medical care, while in fact we could have done better had we had more time to prepare for it, I think we had to look at this in the context of what the average civilian will get in care if he is going down one of our expressways or one of our parkways in Buffalo and he is in an

1 accident. We treated these people 2308
2 within half an hour to 45 minutes, with the
3 exception of the ones in C yard, those were
4 closer to an hour. It is not unusual in
5 civilian practice to receive people in the
6 hospital who are badly injured whose time of
7 injury was two or three hours before they are
8 brought to the hospital. I have sat on an
9 expressway one night maintaining an area on
10 a fellow who had been in a car accident and
11 it was a good 45 minutes until any civilian
12 ambulance arrived. In contrast to that would
13 be the soldier shot in Viet Nam with his own
14 troopers that could be evacuated and in a
15 fixed medical installation within a half hour.
16 They say within 17 minutes. The medical care
17 that the prisoners got initially and subsequently
18 at Meyer Hospital I would have to say is
19 probably not quite as good as the regular
20 members of the armed forces, but probably
21 better than that you would get if you are in
22 a car accident going home.

23 BISHOP BRODERICK: Doctor, pardon me.

24 I appreciate the answer to my question. The
25 thrust of my question wasn't any kind of neglect

1 medically. It was merely we have 2309
2
3 been hearing that the inmates were completely
4 neglected, were the last men on the priorities
5 and I just wanted to know whether this in
6 effect did happen and you certainly would be
7 able to tell us.

8 DR. CUDMORE: Right. In the 10
9 minutes or whatever the time was between the
10 shooting and the time we got there I can offer
11 no opinion, but subsequent to that, because to
12 be quite frank, you couldn't tell an inmate
13 from a hostage anyway. They were all--they
14 were shot. They were wearing greys, grey
15 sweatshirts and stuff. Unless you had prior
16 knowledge that there were no black hostages,
17 which we didn't have, you know, they had not
18 been described, you would not be able to know.

19 BISHOP BRODERICK: Isn't there a
20 medical phrase judicious neglect or benign
21 neglect or whatever the word is?

22 DR. CUDMORE: I believe that is more
23 a phrase subject to Mr. Moynihan of the Kennedy
24 Administration.

25 BISHOP BRODERICK: I think he
paraphrased judicial neglect which is used

1 sometime in medical circles.

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2 DR. CUDMORE: No. If you have an
3 overwhelming number of injured individuals
4 and you have available supplies, you have
5 available manpower--you put everything you
6 had into treating the most severely wounded
7 one who is on the point of death, you might
8 not only lose him, but lose four or five
9 others whom you could save if you gave them
10 medical treatment.

11 There is in the doctrine of triage
12 a category known as expectant. This is a
13 euphorism obviously. This is someone who is
14 so severely wounded that he cannot be treated
15 at this moment because to do so would deny
16 other people who have a far better chance of
17 survival of that chance.

18 BISHOP BRODERICK: Thank you, doctor.

19 MR. MCKAY: Gentlemen, I think you
20 are aware of our procedures, which means that
21 after you have been generous in answering our
22 questions, and indeed you have been, you have
23 an opportunity, each of you, to make a state-
24 ment about anything that you think the
25 Commission should hear or that the public

1 should know.

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2 Is there any one of you or more of you
3 who would like to make such a statement?

4 MR. FUTTERMAN: I would like to talk
5 on behalf of the feelings of the medics when
6 they returned and subsequently and let the
7 public know exactly how we feel, and I'm sure
8 this goes for the majority of the guard members
9 who were at Attica at the time of this
10 insurrection. It seems that whenever there is
11 an incident which is not quite as pleasant as
12 we would like it to be, for instance the Kent
13 State incident, the National Guard is singled
14 out as a body of fanatics, almost. It seems
15 that the morale of the Guard would be a lot--
16 a lot higher if at certain times more of the
17 truth in the pleasant situations were brought
18 out.

19 The members of my unit, and I presume
20 the members of other units that participated at
21 the Attica uprising were subsequently given
22 metals for meritorious service to the State.
23 These metals were treated with such scorn that
24 half of them weren't even accepted because of
25 what opinion we felt the public would have of

1 what happened at Attica because 2312
2 of selective news reports, which we didn't feel
3 brought us out in a very favorable way and at
4 this point I would like to take this sounding
5 board--I would like to take the opportunity to
6 use this sounding board to just express a
7 desire that more of the beneficial aspects of
8 the National Guard be brought to light. My
9 company alone has given physicals to under-
10 privileged members of the Boy Scout
11 organizations in the five hundreds each year
12 so that they might be able to go to summer camp
13 for two weeks. This is something that's
14 probably known by very few.

15 We also are in the process of
16 developing programs by which we can work in the
17 hospitals to help as much as we can. I'm sure
18 there are other units of the National Guard,
19 such as engineers, who I know at lease once
20 or twice a year go to Camp Ditmar, which is
21 a Boy Scout camp, and use their heavy equipment
22 to aid in either the improvement or the
23 maintenance of facilities of this nature and
24 I would like, as I said before, to take this
25 opportunity to express the feelings of the

1 guardsmen in this area.

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2 MR. McKAY: Thank you.

3 MR. LIMAN: Mr. Futterman, I want to
4 say, having spoken to all of you, that I think
5 by coming here and relating the experiences
6 which were unpleasant which you observed, you
7 have done very well for your unit.

8 MR. FUTTERMAN: Thank you very much
9 for your cooperation, too.

10 MR. McKAY: Dr. Cudmore.

11 DR. CUDMORE: Dean McKay, I am proud
12 to be in the National Guard after listening to
13 my enlisted personnel and also watching their
14 activities that day and subsequently I am even
15 prouder to be so. I think Attica brings to
16 mind several things. The first is the basic
17 inhumanity of man to man, the veneer of
18 civilization as we sit here today in a well-
19 lit, reasonably well appointed room with suits
20 and ties on objectively performing an autopsy
21 on this day, yet cannot get to the absolute
22 horror of the situation, to people, be they
23 black, yellow, orange, spotted, whatever,
24 whatever uniform they wore, that day tore
25 from them the shreads of their humanity. The

1 veneer was penetrated. After seeing 2314
2 that day I went home and sat down and spoke with
3 my wife and I said for the first time being a
4 somewhat dedicated amateur army type, I could
5 understand what may have happened at Mai Lai.
6 I am sure that the prison guard people who were
7 guilty of the euphuism of expressive violence
8 went home to their families that night--

9 MR. McKAY: Hold on, Dr. Cudmore.

10 The reporter is out of paper.

11 DR. CUDMORE: As we were saying, the
12 people who are guards there of the prison went
13 home that night and were perfectly normal
14 individuals. I can only make an appeal to them
15 to realize that if you beat them with clubs,
16 you stab them, whatever side of the moore you
17 are on, they are going to bleed. They are
18 going to die. They leave widows. They leave
19 children. We created an awful aftermath at
20 Attica. Whatever the cause of the rebellion
21 was--and I have no grounds or professional
22 ability to judge it, but the after effect
23 rather than polarizing individuals, rather
24 than having the fellow going up to the fence,
25 to the sergeant and telling him the next day

1 "I am going to kill you if I get 2315
2 a hold of you" has got to make people realize
3 that killing only leads to more killing.
4

5 I would say to the community
6 members who were incarcerated at Attica and
7 their fellow people the system there obviously
8 isn't good when you look at it that day.

9 Another aspect I got was I would in
10 no way ever want to do anything to get in that
11 place as an inmate. Whatever you do, you must
12 realize that people are people regardless of
13 skin, regardless whether they wear a green
14 uniform, a white uniform or sit on a panel
15 judging the actions that took place last fall.

16 I thank you for the opportunity of
17 testifying.

18 MR. McKAY: Dr. Cudmore, you and
19 your associates who have been with us today
20 and others of the National Guard who have
21 testified to our staff have done much to
22 bring to us and we hope in turn to be able to
23 bring to the public the sense of reality that
24 you have conveyed to us. We are most grateful
25 for your being here.

Mr. Futterman or Mr. Dill or Mr. O'Day,

1 do you wish to make a further statement?

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2 MR. DILL: No, I think Mark and Dr.
3 Cudmore said it all.

4 MR. O'DAY: No, thank you.

5 MR. McKAY: We have much appreciated
6 your being with us and the great cooperation
7 you have given in all respects.

8 MR. ROSENFELD: While Mr. Berger
9 is getting set, I may tell the members of
10 the Commission that Mr. Berger has, with the
11 help of some of our part-time people, been
12 actively engaged for many weeks in working on
13 a detailed report of the results of all of our
14 interviewing of inmates, National Guardsmen,
15 correction officers, state troopers, prison
16 officials and medical records in this whole
17 area on which we have been hearing testimony.

18 Mr. Berger, who don't you start out
19 by describing what you did.

20 MR. BERGER: Okay. We have conducted
21 an investigation of the claims by inmates of
22 acts of mistreatment following the assault on
23 September 13. For this purpose we have examined
24 closely a medical inventory which was made on
25 September 21 of Attica inmates, which describes

1 the extent and seriousness of the

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2 injuries.

3 The inventory was conducted at the
4 urging of the Goldman Panel which requested
5 that all inmates still at Attica be examined
6 for post-assault injuries. The Goldman Panel,
7 in connection with Dr. James Bradley, the
8 Medical Director for the Department of
9 Corrections, secured the voluntary services
10 of nine doctors from the Buffalo area to
11 conduct the examinations. These doctors,
12 four of whom were black and three Spanish-
13 speaking, arrived at Attica on the 21st at
14 approximately 9:30 a.m. and were instructed
15 by Dr. Bradley to examine each inmate regard-
16 less of whether he complained of injury.
17 The doctors were accompanied on their rounds
18 by correction officers who acted as guides and
19 secretaries. The doctors examined 1,120 inmates
20 between 10:00 a.m. and 2:00 p.m. They then
21 gathered with Dr. Bradley and reported that
22 all injuries found were a week old.

23 Our analysis of this inventory
24 indicates that 700 of the 1,120 inmates
25 examined were in D yard. Since there were a

1 total of 1,260 inmates in D, the 2318
2 700 represents 55 per cent of the D yard
3 population. The remaining 560 D yard inmates
4 had been transferred to other institutions by
5 this date and were therefore not available
6 for examination.

7 Conversations with two deputy
8 superintendants indicate that the 560
9 transferees were chosen on a random basis.

10 Therefore, it is reasonable to
11 assume that the 700 interviewed is representa-
12 tive of the inmates in D.

13 Upon further examination of these
14 700 reports, we found that 315 reports, or
15 45 per cent, reflected reprisal injuries.
16 We defined reprisal injury as one more serious
17 than abrasions of the knees or elbows since
18 these abrasions appeared on almost every
19 inmate and occurred while the inmates were
20 crawling across A yard.

21 MR. ROSENFELD: Mr. Berger, before
22 you go on, I just want to ask you, this
23 medical inventory was made up on the 21st
24 or 8 days after the 13th?

25 MR. BURGER: That's correct.

1 MR. ROSENFELD: So would 2319

2 you have an opinion that the 45 per cent
3 statistic may be on the conservative side?

4 MR. BURGER: Very definitely.

5 We further concluded that 32 of the
6 700 inmate reprisal reports, or 4.5 per cent,
7 reflected severe reprisal injuries. We de-
8 fined a severe reprisal as either (1) an
9 injury to the head or groin; or (2) at least
10 four abrasions or contusions or lacerations
11 or a combination thereof to various parts of
12 the body. These severe reprisals included
13 fractured ribs, broken arms, lacerations of
14 the scalp and neck and contusions of the
15 groin and of the testicles.

16 In addition, we found that 116 of
17 the 315 injured inmates, or 36 per cent
18 reported the loss of their glasses and/or
19 dentures.

20 And finally, in examining the reports
21 of the 370 D yard inmates who were uninjured, we
22 found that 125 or 32 per cent, also lost their
23 glasses and/or dentures.

24 Thus 440 inmates (315 injured plus
25 125 who lost glasses and/or teeth), or 63

1 per cent of the D yard inmates 2320
2 included in this inventory, suffered an immediate
3 consequence following the assault.

4 To verify the extent of reprisals
5 derived from the medical inventory, we
6 sampled 240 Comm. staff interviews of inmates
7 who were in D yard. We found that 50 per
8 cent of this group reported to us that they
9 were beaten. Another 10 per cent flatly
10 stated that they were never hit. The remaining
11 40 per cent either refused to talk or failed
12 to mention reprisals.

13 We believe that this 50 per cent
14 figure, as I have already stated, Mr.
15 Rosenfeld, is a conservative reflection of
16 the number of inmates who were hit on
17 September 13.

18 MR. ROSENFELD: Before you go on,
19 Mr. Burger, on the question of glasses and
20 dentures, our interviewing of all of these
21 authorities has indicated that glasses and
22 dentures were routinely taken from inmates in
23 A yard and this has been acknowledged by the
24 authorities.

25 MR. BURGER: Oh, surely. Right.

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reprisals.

Regarding the race of inmates who suffered reprisal injuries, we first calculated that at the time of the assault, 73.3 per cent of those inmates in D yard were black and Puerto Rican. However, only 66 per cent of those inmates who appeared from our records to have suffered reprisal injuries were black and Puerto Rican. And, further, only 70 per cent of those severely injured were black and Puerto Rican. Thus we conclude that black and Puerto Rican inmates as a group were not singled out for more extensive beatings in the post-assault period.

Regarding age we have checked the age of each inmate shown by the medical inventory to have been injured and compared the number of injured inmates in each age range with the total number of inmates in each age range in D yard. There was no correlation between the age of the inmate and the likelihood of his being hit. In other words, younger inmates were also not singled out for more extensive reprisals.

1 MR. ROSENFELD: According 2322

2 to the statistics?

3 MR. BURGER: Right.

4 Now for a description of the areas
5 where the beatings took place.

6 D yard. According to our interviews
7 of those who were present in D, the beatings
8 there were not extensive. However, beatings
9 did occur as inmates were being moved towards
10 D tunnel door. Inmates informed that if they
11 offered any resistance to commands they were
12 struck with clubs or gun butts. As one
13 correction officer stated we were not taking
14 any guff.

15 D tunnel. Reports from different
16 sources indicate that troopers and correction
17 officers struck inmates as they were passing
18 through from D to A yard. Correction officers
19 also clubbed inmates found near D-block after
20 the assault.

21 MR. ROSENFELD: This is the area
22 that Dr. Cudmore mentioned in his testimony?

23 MR. BURGER: Exactly.

24 A yard. The beatings in A yard were
25 sporadic but often severe. Participating in

1 the beatings were correction officers, 2323
2 troopers and sheriff's deputies. Inmates
3 informed that they were hit when they entered
4 the yard through D tunnel door, when they
5 were crawling towards the center of the yard
6 and when they were unable to rip their
7 clothes off fast enough to satisfy the
8 correction officer, trooper or sheriff's
9 deputy supervising this operation.

10 MR. ROSENFELD: This is the general
11 consensus of the interviews we had with inmates
12 who were in the yard.

13 MR. BURGER: Exactly.

14 A tunnel in A-block.

15 Our analysis of 1600 inmate inter-
16 views indicates that the greatest number of
17 beatings took place in A tunnel and A-block.
18 Our further analysis reveals that the beatings
19 were especially severe along the galleries and
20 stairways rather than in the tunnel. Although
21 most of the inmates were struck in the back or
22 buttock, a number of inmates received serious
23 reprisal beatings as reflected in their medical
24 inventory reports.

25 HBZ or segregation area. The most

1 severe beatings occurred here.

2324

2 The medical inventory reports for the inmates
3 taken to HBZ indicate that the injuries these
4 inmates suffered include: two fractures of
5 the rib, lacerations of the left eyebrow,
6 lacerations of the nose, thigh and back, a
7 broken arm, a broken elbow, nine abrasions
8 and contusions to various parts of the body
9 and a laceration of the forehead.

10 These beatings were administered by
11 correction officers and they occurred on the
12 circular stairway leading to the 3rd floor of
13 HBZ as well as on the grassy area outside the
14 Reception Building, and have been confirmed
15 by National Guardsmen, troopers, inmates and
16 one correction officer. One trooper informed
17 us that the beatings by a group of correction
18 officers who had found a small gauntlet in front
19 of the Reception Building were so severe that
20 he had to turn his head. This occurred at
21 about 1:00 p.m. September 13.

22 However, the beatings were most intense
23 along the circular stairway leading to HBZ, which
24 is on the third floor or Reception. Inmates
25 housed on the second floor in the Observation

1 Unit reported that HBZ inmates were 2325
2 run up the stairs one at a time beginning
3 about 1:30 p.m. An inmate's presence on the
4 stairs was usually preceded by a yell from the
5 officer stationed on the ground floor that
6 another was coming up. Four or five HBZ correc-
7 tion officers would then position themselves
8 along the stairway. The inmates in
9 Observation on the 2nd floor reported to us
10 that they heard the unmistakable sound of
11 clubs smacking flesh and bones, followed by
12 various inmate cries and moans.

13 Those inmates already housed in HBZ
14 also reported that they heard the beatings
15 on the stairs and witnessed much verbal abuse
16 directed towards the inmates as the officers
17 were dragging them down the gallery to the
18 cells. One officer sprained his wrist in
19 these beatings and reported in his interview
20 with us that he appeared the next day wearing
21 a wrist bandage.

22 Another officer who was involved in
23 the beatings on the ground floor of reception
24 reported that he is still ashamed of his
25 activities at HBZ on that day.

Significantly no Attica . 2326

1
2 lieutenant or deputy superintendent visited
3 HBZ on 9/13 to oversee the operation there.
4 Furthermore, no Correctional Services Depart-
5 ment officials appeared at HBZ that afternoon.
6 The sergeant in charge of HBZ informed that he
7 saw no beatings and remained on the ground
8 floor of the Reception Building.

9
10 E-block. Inmates housed here have
11 informed that they observed incoming inmates
12 being thrown off stretchers and beaten. Other
13 inmates received inadequate medical attention.
14 Most reports mention one officer as enthusias-
15 tically participating in the beatings.

16 Inmates and National Guardsmen also
17 report that correction officers placed blankets
18 over the E-block cell doors, preventing inmates
19 housed therein from further observing the
20 reprisals which continued thereafter in the
21 area surrounding E-block. However, informed
22 that they could, nevertheless, hear the
23 beatings continuing thereafter.

24 The hospital. At the prison hospital
25 inmates report that they were mistreated or
ignored by prison medical personnel. We have

1 also received reports from at 2327
2 least four inmates that an inmate who had
3 been mortally wounded was placed in a room
4 on the second floor of the hospital. A
5 correction officer thereafter locked the door
6 and barred all from entering. The inmate later
7 died. Our pathologist has concluded that this
8 inmate could not have been saved by prompt
9 medical attention.

10 We have also received inmate reports
11 that inmates in the hospital were abused on
12 Saturday and Sunday nights before the assault.

13 MR. ROSENFELD: I also want to say
14 that our pathologist has also stated that
15 except for that one inmate who was mentioned
16 in yesterday's testimony who was found later
17 in a trench underneath the sidewalk in D yard,
18 that except for that inmate none of the
19 inmates who died died because they did not
20 receive prompt medical attention. They all
21 would have died anyway and he is not certain
22 about that one.

23 MR. BURGER: Right.

24 MR. ROSENFELD: These were all
25 irreversible fatal gun shot wounds.

1
2 on the evening of the 13th. We have received
3 inmate accounts similar to that of inmate
4 Perry Ford who testified at these hearings
5 that several inmates were taken out of their
6 cells on the evening of September 13 and led
7 back to A yard where they were made to crawl
8 on their knees with a gun to their head.
9 This could be seen by inmates from the cell
10 galleries that faced A yard.

11 Inmates in A-block informed that
12 they were awakened every half hour that
13 night by correction officers and troopers
14 and told to stand in their cells for the
15 count. Those who refused to stand were
16 threatened and abused.

17 Beatings on the following day, on
18 the 14th. At least nine inmates were beaten
19 on September 14 as they were being taken at
20 approximately 9:00 a.m. from HBZ to be
21 shackled for the bus ride to Great Meadow
22 Correctional Facility at Comstock, New York.
23 This information was obtained from our
24 interviews of those beaten and was verified
25 by HBZ and C-block inmates who were transferred

1 that day but whom escaped injury.

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2 Those who verified the beatings
3 were standing in C corridor and describe a
4 gauntlet of twenty correction officers and
5 troopers lining the area between the
6 reception building and the hospital and were
7 beating those inmates who came through. At
8 least three of those inmates who observed
9 the beatings further informed us that an
10 officer selected the HBZ inmates who should
11 be beaten most severely.

12 Further this officer is said to
13 have made the HBZ inmates yell various epithets,
14 including "I love pigs".

15 A supervisory officer informed us
16 that when he observed officers using excessive
17 force in preparing inmates for transfer to
18 other institutions, he ordered the officers
19 to act in a professional manner. Apparently
20 they did stop since none of the other inmates
21 transferred to Great Meadow that day informed
22 that they were beaten before their departure.

23 Reprisals at other institutions.

24 Inmates who arrived at Great Meadow on
25 September 14 were met by a line of 200 officers

1
2 who menaced the inmates but did not
3 hit them.

4 Those arriving there on the 24th
5 were lined up for role call and instructed
6 to step forward when their name was called
7 and say "here sir." We have been told by
8 a few inmates that those who refused were
9 beaten.

10 At Clinton Correctional Facility
11 a few transferee's heads were shaved upon
12 arrival so that they could be observed more
13 easily. We have received reports of
14 beatings on September 15, the day following
15 the transferees' arrival there. Also inmates
16 related that they were keeplocked for excessive
17 periods of time, one until after Thanksgiving
18 at Clinton for administrative reasons.

19 We received no reports of reprisals
20 from transferees to Green Haven Correctional
21 Facility.

22 MR. ROSENFELD: Mr. Burger, would it
23 be fair to say that the concensus of our
24 interviews with inmates transferred to other
25 institutions is that in any case they were
singled out as being men who came from Attica,

1 whether they were in the yard or not?

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2 MR. BURGER: That's very true. In
3 many cases they were segregated in special
4 housing units and treated quite differently
5 for the first couple of weeks after their
6 arrival.

7 Returning to A yard for some added
8 details, we have received reports from National
9 Guardsmen of correction officers taking off
10 inmate watches, tossing them into the air,
11 and striking them with their clubs, as
12 if they were playing baseball.

13 While inmates were being stripped
14 and paraded through the yard, correction
15 officers identified approximately 48 inmates,
16 most of whom were considered ringleaders,
17 placed them against A tunnel and block walls,
18 marked the backs of some inmates with X's
19 and later led these inmates to HBZ. While
20 these inmates stood against the tunnel walls,
21 they were subjected to a torrent of verbal
22 abuse.

23 Officers also separated about fifteen
24 Black Muslim security guards who had been found
25 in the hostage circle and placed them in a

1 corner at the junction of D tunnel 2332
2 and D-block walls. A state correction official,
3 National Guardsmen and inmates indicate that
4 one of the HBZ designees, a large black man,
5 was ordered to lie on his back across one of
6 the chess/checker tables with a football
7 balanced under his chin and shot gun shells
8 on his knees. Inmates who were crawling
9 along in A yard were then ordered to "look
10 at their leader now."

11 Inmates, National Guardsmen and
12 photos taken by a sheriff's deputy confirm that
13 other inmates placed against yard walls had to
14 balance shot gun shells on their knees and
15 chest while under the threat of physical
16 harm, including death, from the officers if
17 the shells should fall.

18 Inmates also report that other
19 ringleaders were ordered to stand facing the
20 yard walls with their hands separating their
21 buttocks.

22 Finally, inmates and National
23 Guardsmen have informed that persons on the
24 catwalks overlooking the yard dropped cigarette
25 butts, ashes and spittle on some HBZ designees.

1 MR. ROSENFELD: Mr. Burger, 2333

2 would you explain in a little bit more detail
3 what our information is as to the inmates who
4 were marked with X's? How was that done and
5 for what purpose as we understand it?

6 MR. BURGER: The marking was done
7 to identify the ring leaders so that they
8 can later be taken to HBZ.

9 MR. ROSENFELD: What was the marking
10 done with?

11 MR. BURGER: The marking was done
12 with chalk and as far as we know, persons who
13 were marked were solely corrections officers.

14 Finally, inmates and National
15 Guardsmen have informed--The stripping and
16 searching continued until about 3:30 that
17 afternoon. During the course of this operation
18 a sheriff reported that he had to discipline
19 three of his deputies who were "over-excited."

20 Further, an Attica sergeant ordered
21 a number of officers to leave the yard when
22 they became uncontrollable. Lastly, official
23 state reports have confirmed inmate accounts
24 that a state trooper lieutenant walked through
25 the yard reprimanding law enforcement personnel

1 there for treating the inmates 2334

2 "like cattle."

3 Moving again to A tunnel for a
4 description of the gauntlet's origin and
5 composition.

6 A tunnel and A-block. We have been
7 informed that the first inmates who returned
8 to their cells beginning at approximately
9 10:30 a.m. were accompanied by correction
10 officers. However, it soon became apparent
11 that this method of rehousing inmates was
12 too time consuming. It was then decided to
13 line A tunnel and block with correction officers
14 and troopers, to insure that the inmates
15 locked in without incident. From our inter-
16 views with officers and troopers, we have
17 concluded that approximately 15 correction
18 officers and troopers placed themselves at
19 ten-foot intervals along the tunnel. Another
20 10 officers and troopers lined each gallery.
21 One correction officer also stood at A tunnel
22 door regulating the flow of inmate traffic
23 from A yard.

24 The first group of inmates through
25 the gauntlet were met by troopers and correction

1 officers who brandished their
2 clubs and verbally abused the inmates. Soon
3 law enforcement personnel were striking their
4 clubs against the walls rather than brandishing
5 them. Thereafter they began striking the
6 inmates that were involved.

7 MR. ROSENFELD: Mr. Burger, this is
8 again the composit of inmate interviews that
9 you are referring to?

10 MR. BURGER: Not only inmate inter-
11 views, but also interviews with correctional
12 officers who were in the areas and came to the
13 same consensus.

14 MR. ROSENFELD: Would you know more
15 to what was done with the personal property
16 of the inmates?

17 MR. BURGER: Sure.

18 In A-block, after the assault,
19 currection officers and troopers were
20 assigned to empty A-block cells of their
21 contents. All inmate belongings were piled
22 onto the galleries and later taken to the
23 prison dump where they were buried.

24 B and D blocks had been trashed and
25 looted during the takeover and the days

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thereafter. Following the assault, 2336
these blocks were sealed by order of Judge
Fisher. When they were finally reopened,
prison personnel informed that most personal
property, including legal papers, had been
damaged and was thrown away.

Officers informed that they were
assigned to clean out C and E blocks of
contraband on the 14th and thereafter. A
deputy superintendent stated that he observed
these officers completely cleaning out these
cells, destroying legal papers as well as
unauthorized articles. He then ordered the
officers to stop destroying legal papers as
well as other authorized articles.

MR. ROSENFELD: Now, Mr. Burger, in
the course of your preparing this report,
did you have occasion to make some inquiries
about the replacement of legal papers?

MR. BURGER: I did.

MR. ROSENFELD: Would you relate
your experiences to the panel?

MR. BURGER: Right. I was informed
through the Goldman Panel that the Department
of Correction agreed in October 1971 to pay

1 the cost of replacing all legal 2337
2 papers of inmates who had been housed in A-block
3 only before the disturbance. They, the
4 correction officials, limited replacement
5 to A because they believed that only in that
6 block were all legal papers destroyed as a
7 direct result of the State's decision to clean
8 out the cells. Last week I called Albany and
9 inquired how many sets of papers have been
10 replaced. I was informed that none had been.
11 I was surprised at this figure since there were
12 500 men housed in A-block, most of whom had
13 legal papers which was necessary for their
14 appeals.

15 When I asked why none had been
16 replaced, I was informed that the Department of
17 Correction had never notified former A-block
18 inmates that the State would pay the costs and
19 assist in the replacement of papers.

20 I then spoke with the deputy commissioner
21 with responsibility for this area. After I
22 informed him that I was quite concerned with
23 this matter, he agreed to notify all former
24 A-block inmates of the State's willingness
25 to pay the costs of replacement. He sent me

1 a letter to this effect dated 2338
2 three days ago.

3 MR. ROSENFELD: Thank you,
4 Mr. Burger.

5 MR. LIMAN: During the Rochester
6 phase of our hearings we heard testimony
7 both from correction officers and from
8 inmates that they considered the parole
9 system to be arbitrary and that the decisions
10 were never explained to inmates and that it
11 was a great source of frustration and
12 dissatisfaction.

13 That is a fact that has been brought
14 home to the Commission and to the staff in
15 interviewing inmates and in visiting the
16 prison. We decided to make some statistical
17 analysis of the results of the parole system
18 and Joel Cooper, a member of the staff, will
19 present some of these results.

20 MR. MCKAY: Mr. Liman, I think
21 there are some questions of Mr. Burger first
22 before we go to that.

23 Mr. Burger, I want to ask just a
24 general question. It really is reiterative
25 of what you already said about the credibility

1 of the information you have.

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2 Part of what you stated is based upon
3 uncontroverted facts, but much of it is
4 based on interviews that are controverted by
5 much of it. How have you made your selection
6 as to what are the facts as you presented
7 them? I know it is softened always by saying
8 as reported, but how do you make the
9 determination as to what to report?

10 MR. BURGER: Well, almost every
11 incident I reported was verified by at least
12 one other person. I don't think anything
13 that I have told you so far, Dean McKay, is
14 without some support by other persons, either
15 by other inmates or corroborated by troopers,
16 National Guardsmen or correction officers.

17 MR. LIMAN: I think I should add to
18 that by saying that we started with the two
19 basic facts, one the fact that the inventory
20 showed this very substantial amount of bruises,
21 plus there were reports by National Guardsmen
22 and by some correction officers of it having
23 taken place and by other correction officers
24 who said that they didn't see it, but that
25 given the mood it did not surprise them.

From all of this it was 2340

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2 very, one, clear that these injuries did take
3 place in the aftermath and, two, that it was
4 an accepted fact that they had taken place
5 even though individual people could not
6 bring themselves to acknowledge in every case
7 that they had participated. Some did, but
8 many could not bring themselves to acknowledge
9 it.

10
11 We therefore set out to determine
12 where they took place and again in almost
13 all of these instances that Mr. Burger has
14 related it is corroborated by inmates,
15 correction officers, National Guardsmen and
16 others that the severest beatings took place
17 in HBZ and, of course, the medical inventory
18 reflects that, and that the severest--that
19 next to that the injuries were inflicted
20 most severely and in a most sustained basis
21 in A-block and I think that even though, as
22 I said, the question of which particular
23 officer participated in it may be a subject
24 of debate or detail. The fact that the events
25 did take place is well accepted within the
institution.

MR. McKAY: Let me make

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3 my general comment more specific in one
4 instance. As Mr. Liman has just said, as
5 I believe you said, Mr. Burger, the most
6 severe beating in your understanding was in
7 HBZ and you spoke particularly of the circular
8 staircase from the first floor to I believe
9 the third floor, but as I heard your recitation
10 all of the corroboration came from inmates.
11 The only officer who was present or the only
12 correctional official who was present testified
13 that he saw no beatings and knew of no beatings.

14 MR. LIMAN: No.

15 MR. McKAY: I am not disputing the
16 fact at all. I just want to know the basis
17 for your determination that it did occur with
18 the severity you reported.

19 MR. BURGER: Well, the HBZ inmates
20 are then subjected, as I mentioned at the
21 outset, to the medical inventory and this
22 inventory disclosed the injuries I related,
23 the fractured ribs, broken arms, and broken
24 elbows.

25 MR. McKAY: Could we identify that
they occurred after they entered HBZ?

MR. BURGER: We then went

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back to the interviews we had and subjected them for security fully as well as talked to National Guardsmen who were outside HBZ and they said most of them did take place inside and we then had about 35 to 40 inmates housed in observation on the second floor of HBZ and most of those interviews verified the severity of the beatings I described.

MR. LIMAN: Those people were in observation and were not in HBZ at the time.

MR. McKAY: And were not themselves beat by their testimony?

MR. LIMAN: And the other matter that ought to be pointed out and that was pointed out by Mr. Burger in his presentation is that at least one officer who was involved in this area explained to us, without going into detail, what he had done; that he was ashamed of what he had done and that he came after the various rumors of castration and another officer, as we noted, indicated that he sprained his wrist.

MR. McKAY: Thank you. That's helpful to me.

1 Mr. Marshall.

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2 MR. MARSHALL: Maybe I missed this,
3 but will you tell me who took the medical
4 inventory. I don't know who that is.

5 MR. BURGER: There was nine doctors
6 who volunteered to come to Attica on the 21st
7 and of those nine, four were black and three
8 were Spanish speaking. They spent the whole
9 day at Attica going through the blocks
10 examining each inmate and none of the doctors
11 had any connection whatsoever with Attica
12 before they arrived that day.

13 MR. MARSHALL: For whom did they do
14 this?

15 MR. BURGER: They did this at the
16 request of the Goldman Panel and under the
17 auspices and through the cooperation of Mr.--
18 Dr. James Bradley, the chief medical doctor
19 for the Department of Corrections.

20 MR. LIMAN: For the record, the
21 Goldman Panel was presided by the presiding
22 Justice and was headed by Robert Patterson,
23 Jr., who was the former head of Legal Aid
24 Society.

25 MR. MARSHALL: I just can't remember.

1 Were these statistics in the 2344
2
3 Patterson report?

4 MR. BURGER: No. David Schrapman
5 (phonetic) and I went through each report
6 and compiled the figures. I then talked
7 to the doctors about my own feelings, and
8 they verified or agreed that my 45 per cent
9 accurately reflected what they thought, that
10 that was the extent of the reprisals.

11 MR. MARSHALL: Mr. Liman used the
12 term accepted fact and maybe I should address
13 the question to him, but I take it that that's
14 not an accepted fact by everybody, that is it
15 isn't an accepted fact by the superintendent
16 and the commissioner and so forth, or is it?

17 MR. LIMAN: There will be testimony
18 on that. Mr. Mancusi was not permitted out of
19 his room, as we will hear from Mr. Oswald,
20 because he thought it might be a provocation
21 in the light of the demands for his resignation
22 to have Mr. Mancusi in contact with the inmates.
23 I think that as one deputy superintendent,
24 assistant deputy superintendent said to us, he
25 knew the inmates didn't bruise themselves and
that it had taken place. There was also a

1 lieutenant--complaints that--
2 when the word kept coming "try to stop this,
3 we are getting these reports," one of the
4 supervisory personnel said "I can't be every-
5 where." And I think in our investigation, as
6 I said opposed to the question of who did it,
7 you don't find very much in the way of sustained
8 argument that it did not take place. Most
9 people acknowledge it took place and the
10 question is really why did it take place and
11 why--why--why did it take place and why was
12 there not enough supervisory personnel there
13 and other mechanisms to make sure that the
14 reprisals would not happen.

15 MR. MARSHALL: Just one other detail.
16 You started to say what the time of the
17 gauntlet--when it started and when it stopped
18 and then I don't think you ever did.

19 MR. BURGER: Right. The gauntlet
20 began about 10:30 and it was over about 3:30.

21 MR. MARSHALL: It went on for five
22 hours?

23 MR. BURGER: It was not--the gauntlet,
24 meaning the meetings, did not occur throughout
25 that period as I mentioned about the first half

1 hour, 15 minutes there were very 2346
2 little reprisals as then there were quite a
3 few later on as can be verified by a state
4 senator who may testify here on Friday and
5 then they slackened off towards the afternoon
6 and inmates came in more slowly and it ended
7 about 3:30 from all reports.

8 MR. MCKAY: Mrs. Wadsworth.

9 MRS. WADSWORTH: Mr. Burger, you
10 said that the information is more or less
11 accepted, is the word we have used, and Mr.
12 Marshall has defined that further. Was the
13 kind of brutality that you report, was it
14 expected as well as accepted? Was it expected
15 in a prospective with the kind of brutality
16 which might go on at all times in a prison
17 situation; is this--was there anything in the
18 information that you gave which would give us
19 any kind of prospective on this in relation to
20 before the riot?

21 MR. BURGER: Expected by whom?

22 MRS. WADSWORTH: By the inmates.

23 MR. BURGER: The inmates, from what
24 they told us did expect reprisals. In fact,
25 that's what they were quite concerned about

1 beginning at the first meeting 2347
2 with Commissioner Oswald on Thursday afternoon.
3 They were afraid of reprisals--well, as he will
4 testify, they spoke about that with him and
5 they feared them very greatly, but they could
6 not avoid them.

7 MRS. WADSWORTH: Thank you.

8 MR. MCKAY: Bishop Broderick.

9 BISHOP BRODERICK: I have just had a
10 question which the Dean said, namely the amount
11 of your credibility. I can see where we would
12 readily accept the testimony of Dr. Bradley and
13 his medical associates, but I wonder whether we
14 can accept the testimony of one inmate confirm-
15 ing the others or a correctional officer
16 confirming his fellow officer and I think you
17 answered that pretty well. I will accept it.

18 MR. MCKAY: Mr. Wilbanks.

19 MR. WILBANKS: You have a separate
20 breakdown of HBZ reprisals and the terms of
21 the injuries and the severe injuries as you
22 give us for the entire 500?

23 MR. BURGER: Yes. I know there were
24 48 inmates taken to HBZ. Nine of those received
25 severe or serious reprisals.

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MR. WILBANKS: In regard 2348

to race, you mentioned that there was no significant difference.

MR. BURGER: Correct.

MR. WILBANKS: What about the 4.2 per cent with severe reprisal injuries, did you have a breakdown on that?

MR. BURGER: Yes. I think I mentioned that in my testimony. There is no--the severe reprisals do not reflect any greater beatings towards blacks and Puerto Ricans.

MR. McKAY: I think that's all the questions, then.

Do you wish, Mr. Liman, to take a recess now?

MR. LIMAN: Yes. I think we should.

MR. McKAY: We will recess until 2:00 o'clock.

(Luncheon recess taken at 12:43 p.m.)
