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NEW YORK STATE DEPARTMENT OF CORRECTIONS
THE FORGOTTEN SURVIVORS OF ATTICA
ATTICA TASK FORCE

MINUTES OF HEARING held at Empire State Plaza,
Hearing Room A, Legislative Office Building Albany,
New York commencing July 30, 2002 at 10:10 a.m.

BEFORE: Glenn S. Goord, Commissioner
Arthur O. Eve, Deputy Speaker, NYS
Assembly
Dale M. Volkner, NYS Senator, 59th
District
Jeffrion Abury, Member of Assembly,
35th District

ORIGINAL

1 (The hearing commenced at 10:10
2 a.m.)

3 COMMISSIONER GOORD: Unfortunately,
4 I could hear myself. My name is Glenn Goord. I am
5 the Commissioner of the State Department of
6 Correctional Services. Governor Pataki appointed me
7 Chairman of the Attica Task Force. Joining me this
8 morning are my Task Force colleagues, Senator Dale M.
9 Volker of Depew, who is also Chairman of the Codes
10 Committee, Assemblyman Arthur O. Eve of Buffalo who
11 is Deputy Speaker, will be a little late. And also
12 joining us is Assemblyman Jeffrion L. Aubrey of
13 Queens, Chairman of the Correction Committee. For
14 each of us, I welcome you to the second session of
15 this historic proceedings. For 30 years, the State
16 of New York did not want to hear from the employees,
17 employee hostages, who survived the Attica riot. It
18 also denied a voice to the survivors of the -- of the
19 11 employees killed there.

20 Governor Pataki changed all that
21 last year. He announced the voice that were denied
22 was to be heard, officially and publicly by the
23 Bipartisan Joint Task Force he created on March 13th.
24 He charged this task force with looking into issues

1 of concern to the forgotten victims of Attica. He
2 directed us to advise him in the legislature.

3 Governor Pataki intends that the
4 survivor's and victim's families will be forgotten no
5 longer. Our first hearing was held on May 9th and
6 10th in Rochester. I speak for all of us when I say
7 the testimony we heard was as dramatic as it was
8 informative. Victim witnesses spoke eloquently and
9 emotionally of the pain and devastation that the riot
10 brought upon their loved ones. We thank them for
11 their courage and bravery in coming into a public
12 forum and speaking so frankly and openly with us.

13 Our goal today and tomorrow is to
14 continue to allow each of the Attica victims to tell
15 their stories publicly. We will not ask them to
16 document their stories, only to discuss them. We
17 will be willing to take each victim and survivor at
18 their word. We are not here to interrogate the
19 victims or their survivors. We will only ask
20 questions designed to clarify any point we do not
21 understand. This forum is designed to give victims
22 and their survivors their voice. We will set no time
23 limit on anyone's testimony. We anticipate that each
24 witness will address the five areas of concern;

1 compensation, counseling, a memorial service, access
2 to records and an apology. Many of the victims will
3 testify during these series of hearings, some will
4 not. Those who prefer not to present oral testimony
5 are more than welcome to submit written statements.
6 They will be made as much a part of our official
7 proceedings as our oral testimony presented before
8 us. The -- the Task Force has no preconceived
9 notions as to where it will go. We will hear from
10 the victims and the survivors. During today's
11 proceedings as well as in the future, we will seek
12 the testimony of others, if we believe that their
13 expertise might be relevant to us.

14 At the end of the -- at the -- the
15 end of the process, excuse me, the Task Force will
16 meet the Governor's mandate that we examine the
17 issues of concern to the Attica victims and
18 survivors.

19 We will meet the Governor's
20 expectation that we provide guidance to him and the
21 legislature in helping them to address their
22 concerns. There is no artificial deadline for the
23 conclusion of our work. Only that we proceed with
24 due diligence. We intend to invest the time required

1 to hear from each victim and survivor, plus any
2 others who consider it important in meeting the
3 Governor's mandate.

4 Finally, just a few words to help
5 the hearing run more smoothly today. Would each
6 witness please speak directly into the microphone on
7 the witness table in front of us. I would ask that
8 each witness begin by telling us your name and then
9 spell it as slowly for the benefit of our
10 stenographer. During the course of our testimony,
11 the stenographer may interrupt to ask you to slow
12 down, if you are speaking too fast, for
13 transcription. I think we should now begin our
14 hearings and hear from those testifying today. Mr.
15 Malcolm Bell, could you please proceed?

16 MR. BELL: Thank you very much. My
17 name is Malcolm Bell, M-A-L-C-O-L-M, Bell, B-E-L-L.
18 Can you all hear me okay?

19 UNIDENTIFIED SPEAKER: Yes.

20 UNIDENTIFIED SPEAKER: No.

21 MR. BELL: Is that any better?

22 UNIDENTIFIED SPEAKER: Yes.

23 MR. BELL: Okay. Commission Goord,
24 Senator Volker, Deputy speaker Eve, Assemblyman

1 Aubrey, I thank you for permitting me to speak here
2 today and I hope that what I say will be helpful to
3 you and your task.

4 From September of 1973 until
5 December of '74, I was a Special Assistant Attorney
6 General assigned to the New York State Attica
7 Investigation, that was the name of the special
8 prosecutors office appointed by Governor Rockefeller.
9 He created that office to investigate and prosecute
10 any and all crimes arising out of events at the
11 Attica prison during September 9 to 13, 1971. In
12 April of '74, I was appointed Chief Assistant in that
13 office. My work began in prosecuting inmates that
14 came to the centre on the events of September 13th.
15 And there are four subjects relating to that that I
16 would like to address this morning.

17 The first is how 10 hostages came
18 to be shot dead that day and at least 800 others were
19 seriously injured. Preliminarily, I want to say that
20 no one would have been killed or injured on the 13th
21 if the inmates had not rioted on the 9th, or if the
22 inmates had not rejected the State's terms during the
23 days of negotiation. But the inmates did these
24 things and that left the State with several choices;

1 good and bad, responsible and reckless. The choice
2 they made, as we know, was to take the -- was to
3 retake the prison in an armed assault. So here is
4 how it went:

5 Here is my little diagram, I have a
6 schematic overhead view. I believe if you have
7 copies, they are a little better. As of the morning
8 of the 13th, the State controlled A-block and
9 C-block, the inmates controlled D and B-block. Also
10 the inmates were in D-Yard and there was this thing
11 called the hostage circle where 39 hostages were
12 being held. As matters came to a climax, the state
13 of the inmates moved eight hostages up here to the
14 catwalks. This is A-catwalk and B-catwalk, and right
15 in the center, I am sure you know the Center square.
16 The plan was for our State troopers to go down
17 A-catwalk which is the roof of the tunnel, and the
18 tunnel was not underground. You know, the tunnels
19 were above ground prior, and down C-catwalk, down the
20 A-tunnel -- I am sorry, the C-tunnel merged and that
21 is where I go down and out into D-Yard through
22 C-tunnel and D-tunnel. Meanwhile, leaving behind the
23 A-catwalk detail is the so called rescue detail.
24 This was a bunch of troopers with two or three

1 ladders. They will follow the A-walk detail, roll on
2 to Town square, all on those ladders into D-yard,
3 strike out across C-yard to the hostage circle. You
4 can see this is going to take some time. The
5 courtyards A, C, B, D, there. Just more or less than
6 an 100 yard square, so that rescue detail had to come
7 about 120 - 130 yards below the ladders, still have
8 50-60 or more yards to get to the hostage circle. On
9 A level, we had the stablized snipers, armed with two
10 seventy caliber rifles with telescopic sights high
11 powered rifles. The ammunition is designed to
12 disintegrate once it get to the target so it does not
13 go through, and create a terrible wound to the person
14 it hits. Theoretically, leaving people behind. They
15 rather -- that did not prove true on the morning of
16 the 13th.

17 Most of the Troopers staying down
18 in the catwalks on the were armed with twelve gauge
19 shotguns. Each shotgun -- great -- great. Can you
20 hear me? There we go. The shotguns carried three
21 kinds of ammunition. There was the twelve pellets of
22 buck shot. There were nine pellets of buck shot,
23 those -- all those -- the rifles slug. Just like a
24 civil war mini bomb, we make it and say it is

1 designed to knock down concrete walls. Only you
2 would have to fire several to do that. Each one of
3 those pellets had a lethal range of greater than any
4 distance within the prison, within the area of
5 contention, say three hundred yards. It is about the
6 size of -- each pellet was about the size of a thirty
7 two caliber pistol bullet. Each pellet can kill
8 anybody who is out exposed during the retaking.

9 Governor Rockefeller had issued
10 orders that no Correction Officer was supposed to
11 participate in the retaking, because of the emotions
12 flowing, except for two who were to go out with the
13 catwalk details to identify hostages. They were not
14 to participate in an armed way. There were
15 Correction Officers on the third floor of A-walk.
16 Oh, I am sorry, A-block. They had brought their own
17 weapons or they checked them out of the Attica
18 arsenal, which they should not have done, but were
19 allowed to do. And over here on the third floor of
20 C-block there were some park police, and I do not
21 know why they were there.

22 Okay, that was the set up. That
23 was the plan of retaking as of the morning of the
24 13th when negotiations reached, what was we are told,

1 as an impasse. And I will come to that in a little
2 bit.

3 Now before the troopers went out,
4 they were instructed by Major John Monahan, the troop
5 Commander who was there. He did not want a turkey
6 shoot. He did not want the police shooting fish in a
7 barrel. They were instructed, do not lose control of
8 your weapon, and we do not want any of our men hurt,
9 and you know the law about using your weapons, and
10 all those are fine and unexceptional charges. They
11 are good instructions. They were not unfortunately
12 obeyed. As to the law on using weapons, I think, for
13 people who only know generally what happened and do
14 not know the law, this is somewhat of a surprise.
15 Penal law, Section 35.30 provides, an officer may
16 fire his weapon only if he reasonably believes that
17 the person he shoots is posing an imminent --
18 imminent threat to his own life or someone else's
19 life. And I have distributed to the Task Force the
20 State Police Regulations that amplify this. I
21 apologize for this condition of the copy -- copy, but
22 it is the best I have. And the part you cannot see
23 in the upper right, the best I can tell, does not
24 pertain. And it goes like this "members of the State

1 Police may draw, a member may draw his firearm and/or
2 may fire at an other person after he has exhausted
3 all other reasonable means, when the member
4 reasonably believes that such action is necessary
5 to", and we drop down to the part that pertains "the
6 action is necessary to defend himself or another
7 person from what he reasonably believes to be the use
8 or imminent use of deadly physical force. Fancy way
9 to say basically the same thing, and that is the way
10 it should be.

11 And the last paragraph is worth
12 noting too I think, "in considering the use of
13 firearms, members must keep in mind that the
14 individual member alone is responsible for his act
15 and that he may be required to justify them in a
16 court of law". Now as to firearms, the inmates did
17 not have any guns, and the police knew it.
18 Rockefeller mentioned afterwards that somebody might
19 have been killed in the crossfire. No crossfire.
20 Nobody shooting back. The inmates had hundreds of
21 knives and clubs and other weapons that could be
22 quite deadly in hand to hand combat, which did not
23 occur. There were two tear gas guns. They were used
24 for firing tear gas shells. You broke them open and

1 you put a shell in, you fired -- you broke open,
2 pulled it out. You got hit with one of those in the
3 chest at close range, you would be dead. That was
4 the closest they had to a firearm. Now we come to
5 nine forty-five a.m. on the morning of the 13th. Two
6 helicopters come over at the top of A-block and go
7 along the A-catwalk and B-catwalk. They are dropping
8 tear gas, pepper gas. And it comes down very fast
9 because the rotters push it down very fast. And at
10 the same time State police snipers rose up on A-block
11 and C-block, and started shooting to save the lives
12 of the hostages who were on the catwalks. Down in
13 A-tunnel --

14 UNIDENTIFIED SPEAKER: Just push
15 the button on it. There is a button on it, just push
16 it up.

17 MR. BELL: Troopers come down the
18 A-tunnel. There is tear gas in there. There is a
19 barricade in there. They see nothing to shoot at. I
20 have it on the authority, wall, but one trooper --
21 nobody down in A-tunnel fired his weapon. One
22 trooper said he fired one shot from his pistol.
23 Everybody around him says, it did not happen. But
24 basically there was little or no shooting. Very

1 little or no shooting in A-tunnel. On the A-catwalk,
2 you had a wire barricade and then a barricade of
3 basically junk. And the troopers came down firing
4 their weapons, not in accordance -- no, they were not
5 seeing anybody imminently threatened. C walk, the
6 same. Down in C-tunnel, there was a thing we used to
7 refer to, jokingly perhaps, as "happy hour".
8 Troopers coming down here fired their shot guns
9 incredibly often. It was, as my boss put it, like
10 the English colonials. The first rank of State
11 Troopers would empty their shot guns and fall back so
12 another bunch of troopers could come up and fire
13 their shot guns. That way it was -- we were told
14 later there was a flash of light. We were told later
15 somebody might have fired a gas gun. This gas gun
16 thing is interesting as I will come to. There were
17 only two gas guns, you know, that show up in twelve
18 justifications, more or less. They were -- they
19 suddenly multiplied. Anyway it used to be -- you
20 could walk down the corridor of C block or C --
21 C-tunnel and see all the little pellet marks in the
22 rafters. While I was there, they -- they knew we
23 were interested in that. So, they just happened to
24 fix them.

1 Okay. The rescue detail did come
2 down. They did put down their ladders. They did get
3 over to the hostage circle. The, I think, they --
4 the -- the inmates were quick to surrender. They
5 passed through the A -- the D-tunnel and came out in
6 A-Yard. They were told to strip which I think was a
7 very prudent thing. It was not cold weather. They
8 all had these hundreds of weapons and rather than
9 search all of them, they were told to take off their
10 clothes. They could not have anything hidden. After
11 a time, they were herded into A-tunnel, and driven
12 down A-tunnel, and this was a very notorious part of
13 the retaking. There were troopers and corrections
14 officers on each side of A tunnel whacking them as
15 they went past, hitting them, beating them. When
16 they fell, they get beaten more. They were running
17 barefoot over the glass from the windows that had
18 broken on the ninth, and they were rehoused in
19 A-block and things quieted down, for the most part.

20 The toll -- All told the police and
21 a few prison guards fired their weapons more than
22 four hundred and fifty times. And again, they are
23 only supposed to be shooting if it is necessary to
24 save their own life or somebody else. They let loose

1 at least twenty two hundred bullets and shotgun
2 pellets. Because of the size of the load, you had a
3 lot more bullets and pellets than you had shots
4 fired. They killed ten out of thirty eight hostages.
5 They killed twenty nine out of thirteen hundred
6 inmates. They wounded with gunfire eighty nine
7 others. A hostage was fifteen times, fifteen times
8 more likely than an inmate to be shot dead.

9 The dead on the catwalks, John
10 Monteleone and John D'Arcangelo. John Monteleone was
11 one of the hostages here. He is a correction officer
12 on the third floor who had brought his forty four
13 Ruger Magnum from home to the prison. Was not
14 supposed to be there, was not supposed to be armed.
15 Fired, he said later, at the barricade. Noticing the
16 shoot at the barricade, fired at the barricade. John
17 Monteleone was seventy feet beyond the barricade,
18 took a slug in the chest, killed him. Seventy feet
19 is not like -- missing by seventy feet because a
20 somewhat -- a -- a fairly slight elevation of the
21 muzzle would have missed the -- the barricade, if
22 that indeed was what he was aiming at. But the
23 effect was to kill him. Kill that hostage. Over
24 here is John D'Arcangelo. Like the other hostages,

1 he is dressed in prison clothes. He is blindfolded.
2 But once he pushes his blindfold off, as we believe
3 he did, he looks just like an inmate, if you are
4 sitting up here on C roof with a two seventy rifle.
5 He was shot in the abdomen. The bullet went through,
6 broke his spine and killed him. As nearly as we
7 could determine, he was just -- just lying on the
8 catwalk or perhaps trying to get under the railing to
9 fall down in the D-Yard, as a lot of people were to
10 get out of the line of fire. There was no reason to
11 shoot this man. He should not have been shot. He
12 was a hostage. He obviously could not have been
13 trying to hurt anybody. And yet, such was the temper
14 of the shooters, one of them killed him. Over in the
15 hostage circle, that would be -- we -- we figured
16 that it was the A roof shooters who were firing at
17 the hostage circle. Three of their two seventy
18 bullets killed three hostages in the hostage circle.

19 Shot gun pellets, we believe, were
20 fired from the B-catwalk in what I will describe
21 later as the Christian incident, is the chief
22 explanation we were given for the fact that shotgun
23 pellets killed five of these hostages. Sergeant
24 Edward Cunningham had told Rockefeller beforehand on

1 television, if you do not come to this prison to
2 negotiate, I am dead, and he was with a single pellet
3 through the cheek.

4 On the catwalk, Frank Klein was
5 seriously injured. It took fifty two stitches to
6 close up his throat. His throat was cut very
7 seriously. Ronald Kasowski took thirty stitches to
8 close up his throat and I believe that the injuries
9 were not so deep, but you do not want to have your
10 throat cut that way.

11 It was a hostage we seldom hear
12 about in Fred Miller. He was somewhere in D-Yard.
13 We never have ascertained why the inmates had taken
14 him, some inmates, and stood him up somewhere in
15 D-Yard. We cannot be sure where. And when the
16 retaking began, an inmate hit him on the head with a
17 hammer, punctured his skull and created permanent
18 injury. That was something that should have been
19 prosecuted. I will come to why it was not.

20 Michael Smith is over here on the
21 A-catwalk. There was an inmate behind him, there was
22 an inmate in front of him, Robert Hannigan, holding a
23 spear to his stomach. Trooper up on A roof, we
24 believe, we are not sure who it was, fired a two

1 seventy into Hannigan, killed Hannigan, saved Michael
2 Smith's life. However, a correction officer with a
3 machine gun, and we know it was a correction officer
4 because the inmates -- the police did not have
5 machine guns, fired at Michael Smith (sic) and put
6 four bullets through him. And we are very glad you
7 are here, Michael. A hostage in the hostage circle,
8 Walter Zimoski, a single shotgun pellet went inside,
9 punctured one lung, missed his heart, punctured the
10 other lung. He nearly died, he did not. And he told
11 me afterwards he would never say a word against the
12 State Trooper because they nearly killed him and they
13 also saved him.

14 The McKay report tells us that
15 Robert Curtis, Gordon Nickabauker and Robert Van
16 Durand were also shot. I said in the K because it is
17 pretty reliable, but it is not totally reliable. For
18 instance, they left Michael Smith totally out of
19 their injured. And my view as a prosecutor and the
20 view of my Superior during most of the time I was
21 there was that the first shooting to pick off the
22 inmates who were posing an imminent threat to the
23 lives of these hostages was good shooting, good
24 police work. After that there was almost no

1 justification, almost in no instance was there
2 justification for any of the shooting. And when you
3 have unjustified shooting at human beings, that is
4 criminal. And that I think is one of the reasons for
5 the massive denial that has followed ever since. And
6 then I suggest to you gentlemen, it is your, I hope,
7 job to overcome the denial and to treat the facts
8 objectively.

9 Now, okay. That is the guts of how
10 the hostages were sacrificed, and I want to be
11 specific about some of these sacrifices. In the
12 first place, Attica was a needlessly dangerous place
13 to work. It was overcrowded. Reforms could have
14 been implemented. Russell Oswald, the Commissioner
15 of Corrections did grant twenty eight of the thirty
16 one inmate requests during the negotiations. He said
17 afterwards, he did, and I believe this is how he put
18 it, most of them were right. And a few he'did
19 because he was under pressure from the situation of
20 the riot. And if they had been implemented sooner,
21 it seems obvious to me that tensions would have been
22 less. And everybody seems to have known tension was
23 mounting towards an explosion in the prison. And yet
24 steps were not taken.

1 And I am sort of trespassing on
2 your area, Commissioner Goord, because you know a lot
3 more about prison conduct than I do. But I -- it
4 seems to me that Attica was more dangerous than it
5 needed to be as a workplace in those days. Second,
6 the assault did not have to happen. When it did, it
7 happened at the worst possible time. The inmates
8 were still in good spirits. They had only been
9 rained on for the first time during the previous
10 night. The hostages were not imminently threatened.
11 They were being guarded by black Muslims who took
12 their work very seriously and it protected them. And
13 the police were furious for various reasons that I
14 will come to in a moment.

15 Now what we were told officially
16 was that the negotiations had run out. That there
17 was an impasse. That there was no further -- nothing
18 further could have been said, and I do not believe
19 that. In the first place, just for Nelson
20 Rockefeller to have come and to have talked would
21 have bought time, it would have had the time. The
22 inmates were crying for him. He decided not to come.
23 If he had come and talked, the worst possible time to
24 retake the prison would have passed, and perhaps it

1 could have been talked through. And I would like to
2 suggest a way that it could have been talked through.

3 On Friday morning, the tenth, the
4 Local District Attorney, Lewis James, wrote a letter
5 at the behest of the observers that he would only
6 prosecute inmates for what was done during the riot
7 when there was substantial evidence against a
8 specific individual. And he was opposed to
9 indiscriminate mass prosecutions. And on Saturday
10 evening this letter from James was appended to the
11 State's proposal and the inmates ripped it up. And I
12 cannot believe they focused very strongly on that
13 letter at that point. And shortly thereafter, that
14 same Saturday evening, the inmates learned that
15 Correctional Officer, William Quinn had died. I want
16 to quote briefly from the McKay report on what I
17 believe to be the facts of that. "Amnesty had become
18 a Sine Qua Non of a settlement for the inmates. When
19 it was announced that Correction Officer Quinn had
20 died, there was a sort of loud gasp. The inmates
21 realized that the game had changed. What assurances
22 did they have that there would truly be no mass
23 prosecution or that District Attorney James would be
24 given a free hand with the prosecutions. The one

1 event more than any other that shaped the mood in
2 D-yard and the inmates subsequent view on amnesty was
3 the -- and the twenty eight points was, of course,
4 the death of Officer Quinn. One inmate said that
5 they all knew that they could be prosecuted at least
6 with conspiracy to -- from -- conspiracy to murder.
7 Well, actually they could be more than prosecuted for
8 conspiracy? They could be prosecuted for murder
9 because another felony murder doctrine, a riot is a
10 felony and now there was a homicide resulting from
11 that felony, all thirteen hundred of them were
12 theoretically liable. But, if Rockefeller had come
13 here, I believe, is what he could have said and
14 should have said, and he had a prosecutor, Howard
15 Shipperell, on his staff, the Executive Chamber.

16 He should have said what actually
17 happened, what we actually did. And that is there
18 would be no prosecution, no mass prosecution for
19 murder. What would happen was, if the perpetrators
20 could be identified, they would be prosecuted for
21 murder. That would have cost him nothing because it
22 would have been monstrous to prosecute all thirteen
23 hundred. And my office, rightly I believe,
24 prosecuted two men and convicted one for murder and

1 one for assault because they ran out of evidence.
2 And if they had changed the focus from amnesty, which
3 could not and I do not think should have been given,
4 to prosecute trial discretion, and if Rockefeller and
5 if need be, Louis Lefkowitz, the Attorney General had
6 said, we will do just what -- the individual
7 prosecution. I think, you know, by Wednesday,
8 Thursday, Friday, they could have worked it out or
9 may be sooner. And Mr. Reeve, I want to say in
10 particular, I do not mean this as a criticism of the
11 observers. I think the observers did a wonderful
12 job, did all you could, and I think that the
13 observers are amongst the very few people who come
14 out well in -- in history on -- on what happened at
15 Attica.

16 Now, it was Rockefeller who was the
17 only person at that point, given the intransigence on
18 each side, Rockefeller was the only person who could
19 have saved it, and he did not. And I think you may
20 notice that in subsequent riots at prisons around the
21 country, the Governor always knows to go to them. He
22 will not admit that -- they will not admit that --
23 that they learned from Rockefeller, but that is what
24 happened.

1 Okay. A third way that the -- the
2 hostages were sacrificed. The very decision to
3 assault the prison was a decision to let the inmates
4 kill the hostages, if they wanted to. Am I on?
5 Good. There was no way to save these men in this
6 circle from being killed if the inmates had been bent
7 on killing them. As proof of that, you have the fact
8 these snipers were presumably trying to save them,
9 and yet at a one hundred fifty yards they killed
10 three of them.

11 It took -- I am coming to a little
12 discrepancy in our time -- but it took a long time,
13 minutes, many minutes three, four, five, eight, ten,
14 for these ladders to follow the troop, the assault
15 troopers down the catwalk, put them down and strike
16 off across the yard. So, a conscious decision was
17 made and I think people involved in the decision to
18 retake have admitted, those hostages, you gentlemen,
19 were all dead if the inmates had really been
20 seriously bent on killing you.

21 Ironically, the inmates who took
22 eight hostages and put them on the catwalk, put them
23 within saving distance. And a number of -- a number
24 of hostages were indeed saved by this good shooting.

1 That backfired on the inmates. It backfired on them
2 another way too. They put the hostages up there to
3 detour the assault. But what it did was, it made the
4 people furious because the hostages were being made
5 to shout "I do not want to die". And they -- it was
6 so obvious to the men with their loaded shotguns
7 watching and waiting to go out, that these people
8 were being very seriously abused and very seriously
9 threatened with imminent death.

10 One other thing that I think is
11 kind of ironic too, these snipers were told they were
12 not to shoot at an inmate until he did an overt act.
13 And for goodness sake, if the inmate is holding a
14 knife at a hostage's throat, what more overt act do
15 you want him to do? Cut it? That was ridiculous to
16 me and it was sort of an abundance of trying to be
17 nice afterwards, I am afraid.

18 Okay. Another way that the
19 hostages were sacrificed and three killed, these two
20 seventy rifles that the snipers had to fire at human
21 beings and separate the head of a hostage from the
22 head of an inmate at a one hundred fifty yards had
23 not been zeroed in. You know, you look through a
24 scope, everybody has got to see it a little

1 differently. You ought to go out and test fire at
2 first, so you know what your site picture is and
3 what -- what you are going to hit. It is -- and it
4 seems to me that is very likely, I cannot prove it,
5 but you can use your own common sense on this, that
6 if those rifles had been zeroed in, those hostages
7 might not have been killed. That the bullet intended
8 for an inmate, might have hit an inmate instead of a
9 hostage.

10 Another way that the hostages were
11 sacrificed, they use of the buckshot. I can see that
12 if you are going out with dozens of troopers down
13 catwalks at hundreds of inmates, you might want
14 shotguns in the back row as a fall back to come up
15 and save, if there is really a rush at the troopers
16 from the inmates. But to have shotguns in the
17 forefront and have shotguns, the weapon that you are
18 going to use to try to save the hostages in D-yard, I
19 am not sure of the law of criminal negligence, but
20 certainly morally, it was criminal negligence to use
21 shotguns here. And as a result, five -- five
22 hostages were killed by buckshot in here. The
23 shotgun, as I expect you -- you know, are pretty well
24 aware. The -- this particular model, the -- the

1 buckshot spreads one inch in diameter for every yard
2 it gets away from the muzzle of the gun. So, if you
3 fire here and it is fifty yards, it might have been a
4 little more than fifty yards, you going to have a
5 four foot circle of buckshot. Any body aimed at is
6 going to be missed by some of those pellets. And
7 if -- the over fire, there are inmates back here, you
8 got an eight foot pattern. Just all these lethal
9 pellets going out amongst the human beings . I am
10 very surprised that only thirty nine were killed that
11 morning.

12 Supporting the Christian incident
13 by the way, the Christian incident has it that
14 Lieutenant Joe Christian in the lead on this rescue
15 detail went down the ladder. He has two pistols in
16 his belts to arm the -- in his belt to arm the
17 hostages. He strikes out with his shotgun and these
18 two pistols across the yard. And an inmate gets up,
19 knocks him on the helmet liner, or the helmet, I
20 guess they call it. In the army we call it helmet
21 liner. The plastic helmet. Knocks him to the
22 ground. Bunch of troopers, we are told, on B-walk,
23 let loose with their shotguns to save him. D-walk
24 had troopers on and they did not this. It is kind of

1 odd. And the over fire is what killed the hostages.
2 The only thing is, I talked to two troopers who said
3 they took care of Christian's assailant with their
4 shotgun, his shotgun butt. One -- one trooper says
5 he knocked the guy down with the butt stroke, and the
6 other trooper says, I saw him do it. There may
7 possibly be some reconciliation of this. I am not
8 sure there is, but I give you the mystery.

9 Dr. Michael Baden who re-autopsied
10 the dead inmates, inmate Tommy Hicks is the one who
11 probably administered the blow to Christian's head.
12 He ended up with five shotguns pellets in him .
13 Christian himself ended up with one shotgun pellet in
14 his arm and a rifle slug tunneled out the muscle in
15 one of his calves, and he still limps. Damn lucky,
16 he did not get killed by the fire to save him. Baden
17 suggests that Hick's wounds were such that he might
18 have been shot and then gotten up, and then been
19 knocked down by the shotgun butt. Only thing is none
20 of the troopers say that happened.

21 Okay. Another way that the State
22 Official sacrificed the hostages was not enforcing
23 Rockefeller's -- not enforcing Rockefeller's order
24 that COs not participate. And as I have told you,

1 John D'Arcangelo and John Monteleone died as a result
2 of that. Well, at least Monteleone died as a result
3 of that not being enforced. And Michael Smith was
4 nearly killed.

5 There was a gross failure to
6 supervise the rage that was growing during the four
7 days. These inmates convicted felons, many of them
8 convicted murderers had defied the New York State
9 Police, the elite law enforcement body in New York
10 State from Thursday until Monday morning. If you
11 ever try to argue during a traffic ticket, you know
12 that would not go down very well. Correction Officer
13 Quinn died. That, as we have said, changed
14 everything and it increased the anger. And then the
15 hostages were placed up on the catwalks and made to
16 say "I do not want to die". This had to increase the
17 anger. And we discussed in the Prosecutor's office
18 that there was probably an element of fear by the
19 State Police of the inmates. As somebody put it,
20 what does State Police do? They drive around in a
21 car all day. What inmates do? They pump iron and
22 they lift weights.

23 And I am getting on a delicate
24 subject, but it is an essential part of Attica.

1 There was race issue, White against Black. All the
2 troopers were White. More than fifty percent of the
3 inmates were Black. Racism had been allowed to
4 fester and grow in crescendo form, unchecked
5 throughout out those days of negotiations. The
6 inmates and the troopers were exchanging the worst
7 obscenities. The troopers were adding the "N" word
8 and the hatefulness got so bad that the troopers were
9 unloading shotgun shells, taking the pellets and
10 shooting them with sling shots at the -- at the
11 inmates. I mean, can you imagine anything more petty
12 and angry and just a little barometer of what was
13 going on? That night after the shooting ended,
14 police were heard in local bars bragging, "got me a
15 nigger". Imagine saying that about a fellow human
16 being after you have done a job that is supposed be
17 unpleasant.

18 Dr. Edland at the Medical Examiners
19 Office told me the same thing that the troopers were
20 standing there watching him and Dr. Abbot work and
21 they were using the same racial language, "got me a
22 nigger". And Edland had a Black assistant who was
23 standing there, steaming, getting furious, and Edland
24 finally had to let him go home, just so he did not

1 explode. And we have the graffiti that if you have
2 seen the McKay report, you have seen. On a lock box,
3 tells the story of the riot in very brief form.
4 Attica fell 09/09/71, obscenity you, pig, and then
5 retaken 09/13/71, thirty two dead niggers NYSP. And
6 apart from the hatefulness of that, there is an
7 interesting fact. Thirty-two inmates died. The
8 three of the other inmates killed were White and
9 other inmates that the police shot were White, but in
10 the eyes of the police who wrote that, and apparently
11 was not atypical, they were all Black. Now I do not,
12 this is speaking for myself and you will have your
13 own opinions, no doubt. I do not think you can talk
14 people out of their inner -- inner animosities, but
15 they must be supervised when this sort of thing is
16 building, and say, knock it off and do not talk that
17 way, and if that is the way you feel, keep it to
18 yourself. Because what happened, it was just like a
19 fire that grew hotter and hotter. And I think it is
20 obvious that hostages were not targeted because of
21 racism, because all the hostages and all the shooters
22 were all White. But it does appear to me to be a
23 reason for the volume of the gun fire, and the
24 gunfire did not discriminate. If anything, it

1 discriminated against the hostages. And on the
2 general duty to diffuse the anger again, we have the
3 fact that on Sunday evening, the twelfth, Tom
4 Wickhard, Clarence Jones, Herman Bideo and John Dunn
5 called Rockefeller and said, come to the prison. If
6 you do not come, if there is an assault, there will
7 be a blood bath. It was the duty of the police who
8 were sending these men in with their weapons to know
9 that there was a blood bath. I cannot believe they
10 did not know it. And Rockefeller's Executive Chamber
11 people were there too, and it was incumbent on them
12 to prevent a blood bath. And to give you an idea,
13 just a little example, are we working?

14 Okay in A. In A-tunnel again,
15 Captain George Russell Rooney, I believe he is one of
16 the heroes of Attica. He instructed his men before
17 they went down the tunnel. These men were not
18 organized. These inmates were not organized on the
19 street. They were not organized now. Keep control.
20 And they went down and they did not fire with that
21 one possible exception. That is what everybody
22 should have done, but it did not happen. And as the
23 result, we have the forgotten victims and we have
24 these people who should not have died.

1 My third point is denial. I have
2 to say that I believe, and I think the evidence
3 shows, that New York State has been in a state of
4 denial since the thirteenth of September of '71, and
5 some of this denial is culpable denial. It is called
6 obstruction of justice or hindering prosecution. And
7 some of it is innocent. And again, I believe that
8 the big hurdle that you gentlemen face is to overcome
9 the innocent denial because it is just very hard, it
10 seems, to admit that State messed up here as badly,
11 as it did and yet it did. The first denial came on
12 the thirteenth of September. The Corrections
13 Department public relations man Hoolahan announced,
14 and I think he actually believed, the inmates slashed
15 the throats of the dead hostages. That was reported
16 through the media. That was false. That was not
17 true and there were people in the prison who knew it
18 was not true, and, you know, that was the word that
19 went forth. Secondly, Governor Nelson Rockefeller,
20 who had the ultimate responsibility and would have
21 the ultimate liability if things went wrong,
22 announced that the troopers did a superb job.
23 Unfortunately, that was not true, as I have tried to
24 suggest. He also said that killing the dead hostages

1 was justifiable homicide. That was not true either.
2 That was a denial of what happened. The very fact of
3 the dead and wounded hostages, I believe, is a very
4 painful reminder to many, many people of how badly
5 the State messed up at Attica, and I think that helps
6 to explain why the State has treated them so shabbily
7 ever since. It would be nice to say that they were
8 there. It would be nice to say this did not happen,
9 but unfortunately they were there and it did happen.

10 And then the State Police began,
11 even as the last shots were being fired, to destroy
12 evidence, to fail to collect evidence. It was their
13 duty to collect in order to hide what they had done.
14 They are professionals. It is their job to collect
15 evidence at homicides, not to destroy it. What they
16 did was a monumental admission that they knew they
17 had much to hide. They knew the truth would hurt
18 them, so they tried to cover it up. And the last
19 point I will bring to on this is, they literally
20 tried to bury it.

21 First, there is the rifle
22 accountability. It is standard procedure to record
23 what trooper is issued what rifle. Supposed to be
24 recorded when he takes the rifle from the

1 Quartermaster Truck and when he turns it in. The
2 trooper himself is supposed to keep track of it.
3 There were no records, with very few exceptions. And
4 this is a flat out violation of State Police
5 procedure. And as a result we have three fatal
6 bullets pulled from three dead men. I cannot tell
7 you at this point whether they were inmates or
8 hostages. I suppose this information could be
9 retrieved. But on the issue of covering up, it does
10 not matter. Three bullets pulled from three dead and
11 we cannot -- we know what rifle it came from. We do
12 not know who had that rifle. Another case, what a --
13 two bullets were pulled from one -- two dead men and
14 one from a wounded man, and again those three
15 shootings. We know the rifle, but we do not know who
16 had the rifle.

17 Secondarily, there is a standard
18 discharge -- a discharge of firearms form that the
19 State Police uses. They are supposed to fill them
20 out when they fire their weapon. At whom or what did
21 you fire and why, and incidentally it has a line to
22 put down the serial number of the weapon. The police
23 decided not to use this form and a very high ranking
24 police officer swore under oath that, 'well, we only

1 use that form when a trooper shoots at an animal'. I
2 do not know how many animals you refer to as whom. I
3 think of it as people, and it seems to me it is
4 fairly obvious it is people.

5 Then there were the statements. A
6 few statements of troopers were taken on the
7 thirteenth, a few survived anyway. I do not know how
8 many were actually taken and those few statements
9 contained the serial numbers of some rifles, but then
10 statements were shut down. And on the fifteenth, a
11 whole new BCI team had been brought in and they took
12 statements in longhand. The first ones were typed as
13 a statement should be. I cannot tell you how many
14 evenings I spend deciphering the longhand statements,
15 and I am not sure it was not intended that way, and
16 they did not have the serial numbers. And they had a
17 great deal of what the troopers observed of inmate
18 misconduct before the retaking, which is fine. It is
19 helpful. But there was almost nothing about the
20 retaking, except that a one hundred eleven of these
21 troopers of over two hundred and Correction Officers
22 admitted firing their weapons. One of the questions
23 asked was, did you see members of other departments
24 shoot? Apparently willing to have the troopers

1 implicate Correction Officers. But there was nothing
2 about, did you see other troopers shoot? Even though
3 there was shots going off all around. You cannot
4 have four hundred fifty shots fired in that tight
5 space without people seeing it. The typical
6 statement that admitted the shooting would say, an
7 inmate was running at me with a knife and so I shot
8 him. However, we had photographs, not as many as we
9 should, but we did have photographs, and we have a
10 lots of other witnesses and evidence that nobody was
11 running at anybody with a knife at the locale where
12 that trooper said he fired at the inmate running at
13 him with a knife.

14 A variation on this, an inmate was
15 about to throw a Molotov cocktail. Well, no gasoline
16 bottles went off any where and you think if the
17 inmate was shot, he at least would have dropped it on
18 the pavement, and you would have seen the gas flare
19 up.

20 And then the tear gas guns. The
21 inmates -- the -- the troopers knew about these two
22 tear gas guns. So, the tear gas guns showed up as
23 justification in maybe twelve statements at twelve
24 different locations around the prison. Obviously

1 most of those statements were false. One police, I
2 think was a Sergeant, he admitted me -- to me that he
3 told his men to cover their backsides when they wrote
4 the statements. There was one like worst situation
5 of the statements. The inmates had dug a bunch of
6 foxholes and tunnels around D-yard, and troopers
7 admitted in their first statements, I jumped into the
8 hole and fired my shotgun down the tunnel to make the
9 inmate come out. The only way to come out would be
10 feet -- feet first, if he was in there. I mean, you
11 cannot fire a shotgun down a little tunnel and have
12 anybody survive. So, these statements went back to
13 Police Headquarters in Albany in our fair city and
14 the State Polices' commissioned officers went out and
15 had the troopers make new statements. And the new
16 statements said typically, I fired my shotgun into
17 the ground in front of the hole. And I questioned
18 one of these men, a Major in the State Police, and he
19 said, 'yes, that was to make the chart look
20 justified'.

21 Now, there was a video --- up here
22 on A roof a video is supposed to take everything.
23 And when the Grand Jury first saw it, my Grand Jury,
24 I said, 'why doesn't it show any shots being fired?

1 Why doesn't it show anybody being shot? Well, this
2 continuous video shows the Christian incident, four
3 minutes from the beginning. Tear gas was done at
4 9:45, four minutes later in the video. If you watch
5 the video, you see a bunch of bodies, bunch of people
6 who were standing and they fall from left to right.
7 And you hear this, you hear the gun fire intensify at
8 that right same moment, and that is I supposed, the
9 Christian shooting took place. I have that document,
10 the shooting took place. I am just not sure why, as
11 I will explain because they say that Christian may
12 already have been dead. However we have a lot of
13 evidence, and I will tell you about two of it, that
14 these shots were not fired four minutes into the
15 assault, but eight or nine minutes into the assault.
16 There were two reporters, one from the New York
17 times, Fred Freddy, and one from the Los Angeles
18 Times, who were listening to the police radio outside
19 in the yard in front of the prison, and writing down
20 the times things happened and they -- one of them
21 puts that the -- the call that came out, "trooper
22 down, send help". You know, they were not going to
23 let Christian lie there. They were going to call
24 right away as soon as he went down. And they timed

1 those -- that call for help for Christian at 9.53 and
2 9.54. That is eight and nine minutes into the
3 assault, so there is some pretty good evidence that
4 there is a reason we do not see the shooting on the
5 tape, and that was because it was cut out which
6 brings us to another interesting fact. The State
7 Police should have had a radio log for the radio
8 traffic that these reporters were listening to. It
9 is their job to keep a radio log. Well, we never got
10 a radio log. We got a summary. The summary was made
11 from notes that happened, to have not been available,
12 and it does not mention these times. And it seems
13 pretty clear to me why it does not mention these
14 times.

15 Now the photos, they were just all
16 kinds of missing photos and all kinds of stories from
17 the police who were assigned to use cameras, about
18 how the cameras did not work and they could not
19 operate the cameras effectively. And for one reason
20 or another, we do not have a lot of photos that were
21 assigned to be taken. We do have a bunch of photos
22 from a Sergeant Jerry O'Grady who is not here --. He
23 is up there on C-roof and he is taking photographs,
24 color slides, Kodak color slides, and these are

1 wonderful investigative tools. I had them blown up
2 in 8 by 10s and every time I would see them, I would
3 see something new and the Grand Jury saw stuff I did
4 not. And anyway, there were two homicides that
5 should have showed up on O'Grady's picture. Right
6 here in front of the Times Square there was a scene
7 on A walk was in there who was lying on the pavement,
8 Kenneth Molloy, and two troopers aiming their pistols
9 at him. He was not imminently threatening anybody's
10 life, but the troopers killed him anyway. And then
11 over here was an inmate named James Robinson. He had
12 taken a two seventy bullet in his lungs and he was
13 dying. He was bleeding to death and a trooper came
14 along from C-walk detail with a shotgun, and then
15 from the hole in his neck, Baden says that it was
16 about five --. And trooper just fired the shotgun
17 through his neck and killed him instantly. And we do
18 not see either of those on O'Grady's pictures. Now
19 the State Police had given us their slides. An
20 investigator at my office named Lenny Brown was a
21 very good investigator and he knew that Kodak
22 numbered its pictures. And he peeled back the
23 cardboard that the slides were mounted in, and he saw
24 that there were four slides missing when Kenny Molloy

1 was being executed. Then depending on how the
2 numbering counts, it was one or two slides missing
3 when James Robinson was being executed. Another gap,
4 in the photos was the autopsy photos at Edland and
5 Abbot's autopsies. Edland told me that he usually
6 took all the photos himself or one of his people did.
7 But the State Police were very solicitous and offered
8 to take the photos for him, and he had an
9 unprecedented volume of work that night and so he let
10 them. And somehow those pictures did not get back to
11 Edland. They did not come out. He applied over and
12 over again to get the State Police autopsy photos.
13 And I tell you, from having spent more hours than I
14 care to with the photos of dead men at Attica, are
15 those autopsy photos tell you a lot. He got a few
16 photos back, they being close-up of a bullet wound in
17 the back, a bullet wound in the arm. You could not
18 tell whose it was and that is all that ever happened
19 as far as those photos.

20 Death scenes were not photographed.
21 You know, as I said Tommy Hicks was the indicated
22 assailant of Christian, we do not know were Hicks
23 was. We think he was the one. He was the only one
24 with the five pellets that made it seem likely. But

1 the death scenes were just not photographed. You see
2 plenty of pictures of dead bodies lying on the
3 catwalk, not the -- they are sort of panoramic. They
4 are not right down. They are not the close-ups, from
5 all the angles that you should get for a death scene.
6 Down in the yard there are almost no death scene
7 photos which there should be, because the BCI, the
8 Bureau of Criminal Investigation of the State Police,
9 went right out with the troopers, right behind them,
10 and were take -- should have been -- should have been
11 recording this stuff. And then the death scenes
12 themselves. You always hear, do not move the body
13 until the police get here. Well, the police were
14 there, and the bodies removed before they were
15 measured, photographed, as I say, recording of what
16 weapons may have been near them. And what was done
17 instead was little stakes were put in the ground, but
18 then before the Investigation had much chance to look
19 at the stakes, they were pulled up. So much for the
20 death scenes.

21 Ammunition accountability. Every
22 trooper is required to account for every bullet he
23 has, and this was -- this was not done. Another
24 violation of State Police procedure. And of course,

1 once the trooper did not have to admit how many
2 bullets he had and how many he turned in, he did not
3 have to admit how many times he fired. That is
4 why -- one of the reasons we say that there were just
5 four hundred -- the four hundred fifty shots is on
6 the low side. You are supposed to retrieve and tag
7 for location, the spent shells. That -- that again
8 is standard police procedure and that was not done.
9 The shells were lying there for several days. And
10 you can tell what gun a -- a shell comes from because
11 just like the barrel of the gun leaves the
12 ballistics, a unique ballistics mark on every bullet
13 that passes out, the firing pin that sets off the
14 bullet leaves the unique -- a unique mark on the base
15 of the shell.

16 One example. Am I on? There was
17 an inmate -- two inmates in a little hole under the
18 sidewalk. There is a sidewalk around the edge of the
19 courtyard, and an inmate, inmates had dug a hole
20 there, and there were two inmates in there. One of
21 who is named Ramone Rivera. And some trooper lowered
22 a shotgun into the edge of that hole and fired off a
23 round, and obviously Rivera and the other inmate
24 cowering in their hole were not threatening anybody

1 imminently or otherwise. The load of buckshot went
2 through Rivera's leg. I do not if you ever have seen
3 how big the blood vessels are in there, they are huge
4 in your legs, and Rivera quickly bled to death. And
5 then there was a expended shotgun shell on the lip of
6 that hole. And we had a pretty good idea whose
7 shotgun that might have been because it was a trooper
8 who had turned in a shotgun. So we knew which
9 shotgun it was. He was one of the troopers who
10 emptied his pistol into Molloy in the small world of
11 Attica.

12 And people are out there with a
13 very high ranking BCI detective, and they are about
14 to pick up that shotgun shell, and suddenly the
15 detective says, 'Oh, there is tear gas being
16 picked -- kicked up' which could happen, you know.
17 It was powder and I kicked some up two years later,
18 and did not suffer very badly. Anyway, so somehow
19 because this tear gas was kicked up, the shell was
20 not retrieved and when they came back it was gone.
21 And that could have resulted -- that shell could have
22 resulted in criminal charges against that particular
23 trooper because it would have placed him at scene
24 where this man was shot to death.

1 There were two instances we knew
2 off where weapon were planted next to inmates. You
3 see the photograph of the inmate lying on the ground.
4 You see a subsequent -- we know, in the subsequent
5 photograph, just so beside one, there was another
6 weapon beside the other. One of the troopers
7 detectives told me that he planted the weapon to make
8 it more comprehensible why the man was killed. Well,
9 that is not supposed to happen. Now you may have
10 heard that the bodies of the hostages went out to
11 Edland at midnight. They reached Edland about
12 midnight on the 13th. Why did it take so long?
13 Well, what happened was the police first sent the
14 bodies out to local undertakers. And there was a BCI
15 detective who was not in on the gang and he radioed
16 back to the police at the prison, 'these undertakers
17 cannot handle these autopsies'. They do not have the
18 sewage to handle it, they do not have the x-rays.
19 Very interesting, he said x-rays because x-rays you
20 need for gunshot wounds and where is your slash
21 throats, if -- if this detective knows, on the
22 afternoon of the 13th, that these men were shot dead.
23 So the bodies were all taken back from the local
24 undertakers and then were send out to Edland, and

1 that is why they reached him so late. And he, of
2 course, announced the next day that the hostages had
3 been shot dead, and since the police had the only
4 guns. That meant they and the COs had done it.

5 But the police did not give up.
6 Bodies went back to local undertakers and police
7 recalls the night riders, police drove out in their
8 cars to the local undertakers in at night -- at
9 night. And at least two instances they got two
10 different local undertakers to say, these bodies were
11 not shot. These men were not shot, they were cut.
12 They were -- they were cut -- killed by knives,
13 trying to roll back history and reverse the truth.
14 And Dr. Baden was up here by then, and he heard this
15 on the local radio and he went out to the undertakers
16 house or office and he rolled the body over, and
17 there is a big bullet hole in the back. And the
18 undertaker just looked dumbfounded for a minute, then
19 he said to his wife, we better stop talking to the
20 press.

21 Now what was Baden doing there?
22 After Edland had made his shattering announcement
23 that the hostages had been shot to death, the State,
24 very wisely I think, asked for backup undertakers to

1 make sure whether Edland was right or wrong. And
2 there were two undertakers who came up, Dr. Henry
3 Segal, Senior ME from Westminster County and Dr.
4 Michael Baden who became famous later for a
5 re-autopsy in Kennedy and so on, but he was junior at
6 that time. And the State Police gave Segal the
7 red -- red carpet treatment and talked to him and
8 good buddied him and all, and they had Segal
9 believing that it was an inmate's spear in the
10 stomach that killed John D'Arcangelo. However, Baden
11 performed the actual re-autopsy and confirmed that
12 Edland was right as to D'Arcangelo, and every other
13 hostage that Edland said had been shot to death.

14 Finally, burying. D-yard was
15 filled with tents, lean-tos, benches and when all
16 this shooting went down, bullets went through
17 these -- these things. Another thing that the police
18 did was to go through D-yard firing where there were
19 weapons in the tents. Whether anybody was in there
20 or not, nobody was threatening, but apparently nobody
21 was being killed by that either. Anyway all this
22 stuff was invaluable for the volume of fire and the
23 trajectory, where stuff was coming from and that sort
24 of thing. Police scooped it all up and buried it at

1 the back of the prison. We tried to dig it up years
2 later and it was just gunk, muck, useless. There
3 were some -- there was some talk that troopers had
4 executed inmates, and two examples they give were LD
5 Barkley and Melville, known as the mad bomber. Well,
6 LD Barkley who was prominent in the negotiating
7 phase. He had the microphone and he is a very
8 eloquent young man. He had one two seventy bullet
9 wound in the back, and it was not a straight-on
10 bullet wound. It was a yawing bullet in Baden's
11 words, it went in sideways. That indicated that he
12 could not have been just shot. The bullet must have
13 hit something else, ricocheted, or gone through a
14 body and changed direction and hit him. And it seems
15 morally certain that Barkley was not executed.
16 Melville, on the other hand, he gets out of his
17 bunker to surrender. The BCI detective puts his -- a
18 rifle slug through his chest. I cannot tell you, as
19 I sit here, whether that was an execution or just the
20 one gun fire that -- that happened so much, whether
21 the detective knew he was Sam Melville, a political
22 lefty, or whether the detective just decided to shoot
23 him.

24 There was a lot of perjury by the

1 police. The -- there was a Commissioned Officer on
2 the roof up here in C-block. He swore to me that he
3 did not -- he watched the whole -- he was directing
4 the fire of his snipers. He swore to me that did not
5 see any of the shots fired, although, you know,
6 dozens of shoots were admitted by the A-walk detail,
7 C-walk details, he just swore to me that he had never
8 seen a sort fired during the whole retaking. I was
9 up there with a Sergeant Correction Officer and I
10 said, "what would you say if I told you that an
11 Officer had said he saw no shooting from here as he
12 watched the retaking?" And that Sergeant very sadly
13 said "I would say he was buying a perjury
14 indictment." Well, I tried to indite, but I was not
15 allowed to.

16 Time and again, troopers would deny
17 that they saw anything. It is very easy to deny that
18 you see anything. Especially, did you see anybody
19 shot anybody? Oh, no. The one thing they admitted,
20 the A-walk detail, when they got to Times Square, I
21 asked them, did you see an inmate with his eyes shot
22 out? And they pretty well would admit that, 'yes, we
23 saw that. That was Kenny Molloy. The bullets did
24 not actually penetrate his eye balls. They shattered

1 the bone behind his eye balls, and the splinters
2 shattered his eye balls. Well, you see this -- this
3 man staring eyelessly at the sky and the troopers
4 would admit that. It was kind of safe. Everybody
5 knew it, and they knew that we knew who had shot him.
6 A number of the C-walk detail would say we fired as
7 they were coming. Down the block they would say,
8 there were inmates up on the barricade brandishing
9 weapons, spears and so on. And have I had one of
10 O'Grady's photographs. I had several. And I
11 showed -- I showed this to a Sergeant, and he just
12 looked at it amazed and he said, "why, there is no
13 one there"? There were pictures, as you have
14 probably heard, an inmate named Frank Big Blacksmith
15 was required to lie on a picnic table with a football
16 under his chin in A-yard. And a local Sheriff named
17 Anthony Yesback went around A-yard taking
18 photographs, and he turned them over to the police
19 who turned them over to us. And there were a lot of
20 pictures of what was going on in A-yard, but none of
21 this rather striking, it seemed to me, picture of --
22 of Smith lying there and there were two other inmates
23 lying with shotgun shells balanced on their knees, I
24 believe. No pictures. Well, it seems surprising of

1 all the things you would take, you would not take
2 that.

3 Well, this investigator, Lenny
4 Brown, we needed another set of pictures. So Brown
5 went back to Yesback directly, did not go through the
6 police, got his pictures. And lo and behold, there
7 is a nice color picture of Black and these other two
8 guys lying there just as they were supposed to. So I
9 would ask troopers who said they were in A-yard for
10 forty minutes or an hour, did you ever see anything
11 like this? Guy lying with a football and others with
12 shotgun shells. Oh, no. We did not see that. We
13 did not see that. And then I would pass those --
14 that picture to the Grand Jury and just to let them
15 draw their own conclusions.

16 Now, I will give you an example
17 of -- of good and bad behavior, let us say. There
18 was a Police Sergeant who was with two other troopers
19 in A-yard and they were together, and an inmate
20 jumped up and tried to wrestle the Sergeant. He
21 attacked the Sergeant, so the Sergeant just handed off
22 his shotgun to another trooper and wrestled the
23 inmate to the ground, and nobody got hurt. And I
24 have always admired that Sergeant for doing what a

1 good law officer, I would hope, I would have done if
2 there.

3 That Sergeant then went down the
4 A-tunnel with these two other troopers. And I asked
5 the troopers, did you see a gauntlet? Did you see
6 officers in there striking inmates going past? And
7 those two trooper said, 'no, we did not see anything
8 like that. And that same Sergeant who had showed
9 restraint with the shotgun. Yes, I saw that. Now, I
10 think I have said enough about the State Police cover
11 up to give you an idea of what happened. I do think
12 it is a monumental confession. They knew they had a
13 lot to hide and they did their best to hide it. And
14 I suppose it is natural for perpetrators to try to
15 hide the evidence, but it was also an abuse. And
16 what they have hidden for our purposes today is how
17 they managed to shoot fifteen of the hostages. Now
18 there was a prosecutorial cover up too, in case, the
19 police had not done an adequate job. My -- my
20 investigation was basically programmed to fail from
21 the start, where as the McKay Commission had dozens
22 and dozens of people. They had seventeen lawyers,
23 sixteen investigators, forty three interviews --
24 interviewers and researches, total of seventy six

1 people besides the eight commissioners, just to
2 report to the public on what happened on the --
3 during the -- the riot.

4 My office which was then supposed
5 to prosecute, it had a much bigger job. Not only was
6 it supposed to find out what happened, but it was
7 supposed to get the -- the evidence against
8 individual perpetrators, and get cases against them
9 when they had committed crimes. It started out with
10 one full-time lawyer, one part-time lawyer, nine
11 investigators, and then the help of twelve State
12 Police, who should not have been investigating their
13 own people. They should not have been telling their
14 own people what the prosecutor was doing, but that
15 was the way it went. So, they had far bigger job,
16 the prosecution with small, far smaller staff. And
17 they decided to investigate the riot chronologically,
18 which meant they spent the first two years '
19 investigating, indicting and getting ready to try
20 sixty two inmates on something like twelve hundred
21 criminal charges, and they are always going to get to
22 the police later. Well, that has a superficial logic
23 to it until you consider that they were focused on
24 four homicides and not on thirty nine. And to

1 prosecute or to exonerate the police, they should
2 have done that, and they should have had the staff to
3 do it, but they did not. The reason I got to the
4 investigation in '73 was, I simply answered a blind
5 add for prosecutors. I was tired of civil practice
6 and I wanted to learn about criminal practice, and
7 the best way to learn is a Prosecutors Office. So
8 they hired me and about a dozen others to -- to try
9 inmates. And we -- we -- we started to make a good
10 effort. At that late date, you know, after people
11 had forgotten stuff and people had -- inmates had
12 been released and other people had -- you know, you
13 cannot remember a face that long. I -- it just made
14 no sense to -- to start that late on police and the
15 COs, but that is the way it was done. And -- and it
16 was going pretty well. We convened a new Grand Jury
17 putting evidence in the Grand Jury. They seemed very
18 attentive. Their attendance was marvelous. I talked
19 to them a couple of years later. They were getting
20 it and they were -- they were sorting it out. I saw
21 some, some troopers should be -- nothing should
22 happen and some should be indited.

23 And in the summer of 1974, that is
24 when I tried to indite these three troopers. We took

1 a three week recess and during that recess in August,
2 national politics intruded and Richard Nixon
3 resigned. And Jerry Ford became President and the
4 man he nominated for Vice President was our Governor,
5 Nelson A. Rockefeller, and at that point the lid
6 really came down on the prosecution. They switched
7 from the shooter cases into the State Police cover up
8 which we were not ready to go into. I was forbidden
9 to ask witnesses if they saw anybody shoot anybody
10 for goodness sake. A whole lot of leads were not
11 followed. I could go on and on about this, but I
12 think you get the idea for your purposes of figuring
13 out what to do about the forgotten victims.

14 I have mentioned the intentional
15 cover-up and the innocent cover-up, and again I think
16 the innocent cover-up is a great challenge. It -- it
17 really -- it seems strange to me example, but I guess
18 it is not because it happen. There is -- there is
19 still a lot of people who believe that it was the
20 inmates who killed those ten hostages on thirteenth.
21 Even now, in spite of everything, they believe that,
22 and I do not criticize these people. I just think
23 that, you know, they -- they do not want to know what
24 happened. And then a number of my colleagues were

1 decent honorable men in the Prosecutors Office, but
2 they did not want to admit that the police did
3 something wrong. And to give you an example, the --
4 there were very few inmates in A-yard, and yet some
5 troopers admitted they fired at these inmates in
6 A-yard. And one of my colleagues who was my friend
7 at the time, said, 'well, you know, whose life was
8 that guy imminently threatening?' Well, he said,
9 'that guy could have run back to the doorway in
10 D-tunnel and down D-tunnel and up a mile of the
11 catwalk and trying to hurt a hostage. Well, in that
12 logic, you would justify that shooting everybody. It
13 just made no sense to me. It was his logic.

14 The -- one of the troopers who
15 executed Kenneth Molloy said that, well, as he was
16 lying there on the pavement, he gave a fish kick. I
17 do not know how fish kicks. I think a frog would
18 kick, but fish do not have legs, but anyway he said
19 that. And that trooper said, 'well, to me that meant
20 that he was about to attack me because he wriggled
21 his leg'. To us in the Prosecutors office it meant
22 that the man was still alive, that the troop --
23 trooper had not fired his pistol into a dead man.
24 But the reason I point this out here is that there

1 were other prosecutors in my office who believe that
2 was a sufficient justification for those two guys
3 emptying there pistol into this guy who was lying
4 there, no indication he had a weapon, and he is
5 surrounded by troopers who had weapons. Michael
6 Smith shot four times in the abdomen. When I went to
7 talk to Michael, I was told by our investigator who
8 studied the shooting two years, two and a half years
9 that well, you go up, you come up A-block enter
10 against the concrete of the wall or the -- and it was
11 broken and he had been hit by a fragment.

12 And I get out to the Grand Jury and
13 I am talking to Michael beforehand and he is
14 describing what happened. And I said Michael, 'would
15 you come in the judges robing room with me? And I
16 said, 'would you please lower your pants and show me
17 what you are talking about?' And I looked and he had
18 these four holes, critical, neatly done by a machine
19 gun. These were not the wounds caused by little
20 fragments. And so I went back to my office and I
21 told this investigator, and the investigator told me,
22 'Oh, no. You are wrong. It was fragments'. That is
23 the kind of denial we are talking about. This was a
24 good man and this man did some good work for me, and

1 did some good work for the investigation.

2 Another example, guys in my office.
3 Robinson, bleeding to death with a two seventy that
4 is carved up his lungs, trooper comes along, fires
5 the shotgun through his neck, some pellets pass
6 through, some stay, killed him dead. These other
7 prosecutors are saying, 'well, that is not really a
8 murder because he was about to die anyway'. Well,
9 let us suppose that Lieutenant Christian had been
10 badly hurt and he had gone into the ICU in the
11 hospital and inmate Robinson had come in. And as
12 Christian was receiving the last rites, Robinson had
13 fired the shotgun through his neck. Would that be
14 murder? I mean, we are supposed to have equal
15 justice. Now I know that the -- the trooper himself
16 who fired that shot, he feels very guilty about it
17 because I understand he is no longer a trooper. He
18 has got a civilian job and then you talk to him about
19 Attica, he weeps.

20 Coming to my last point, the
21 forgotten victims. What this State has done to these
22 people, it seems to me as the ultimate denial by the
23 State. You take all these other forms of denial.
24 Denying that these people exist, that they have

1 rights, that they have been mistreated. It is all
2 part of it, it seems to me. And this is the part I
3 ask you to do something right about it.

4 What the State should have done, it
5 seems clear to me, is to thank them, to apologize to
6 them, and I am talking 1971. To make them as whole
7 as it was possible to make them after the death and
8 physical injuries and grief and emotional trauma, the
9 state employees acting on the highest state authority
10 had inflicted on them, and we would not have had to
11 be here. They should have been taken care and they
12 should have had better lives for the last thirty
13 years, those who are still alive. And no matter what
14 you believe about the conduct of the police on the
15 13th, the hardest facts come down to, the State was
16 willing to pay with the lives of the hostages in
17 order to recapture its prison. The State did pay
18 with the lives of ten of them and with grievous
19 physical and psychic wounds to the other hostages, to
20 their widows and wives and children. What the State
21 has not -- what the state has not done is to
22 compensate them in any meaningful way, with honor,
23 praise or money for all that it has taken from them.

24 I'll put it in another way. No

1 matter what you think of this shooting, whether it
2 was grossly excessive, which is what Prosecutor Al
3 Scotty called it, or criminal, which is what I think
4 a lot of it was. 'What a superb job', is what Nelson
5 Rockefeller in his wisdom said. The hard fact is
6 that the State sacrificed these hostages by shooting
7 them. Nobody else shot them. It was just State
8 employees that shot them. The State paid a heavy
9 price to retake Attica. But Nelson Rockefeller, who
10 remained in his estate on Pocantico Hills, down
11 state, did not pay that price. Commissioner Oswald
12 did not pay it. The State police did not pay it. It
13 was the forgotten victims of Attica who paid that
14 price for getting the prison back. The State spent
15 there lives to buy back the prison. So, the State
16 owes their surviving members and there loved ones, it
17 seems to me, an enormous debt. They gave up what
18 they gave up for the people of New York and I think
19 it is time for the people of New York to do what it
20 can for them.

21 What is the price of thirty years
22 interest on gratitude that has not been expressed?
23 The State owes the hostages not only for what it did
24 to them in 1971, but in all these years of neglect.

1 It was my privilege to attend a memorial service last
2 September 13th and a lot of COs from other states
3 came, and they were very surprised that this matter
4 had not been taken care off a long time ago and I
5 think that is a pretty objective indication.

6 Actually, I get a little
7 repetitious here. I am trying to save you. Yes, I
8 just -- I just do not see why we are here thirty
9 years later. This should have been, I mean -- this
10 should have been taken care of before the Watergate
11 scandal broke. This should have been taken care of
12 while the war in Vietnam was still on. It should
13 have been taken care of before Ford became President
14 and Rockefeller became Vice President. And it is
15 ironic that the hostages who were serving the public
16 have received next to nothing, whereas the inmates
17 who were serving time have received several million
18 dollars.

19 The Constitution says that
20 everybody deserves equal justice and I think no one
21 deserves it more than the forgotten victims. And yet
22 I do not believe that the inmates, after the State
23 has treated anybody as shabbily so far, as the
24 forgotten victims. And I think this gives you

1 gentlemen a wonderful opportunity because you and
2 Governor Pataki have the chance to do the right thing
3 at this point. To not be part of the problem, but to
4 be the solution.

5 History is already judging
6 Rockefeller harshly on his roll with Attica and he is
7 gone to his reward. History has not been too kind to
8 Governor Carey who sought to close the book on Attica
9 before it was ready to be closed, because these
10 people had not been apologized to and provided for.

11 And I -- I dare to suggest that how
12 God and history will judge Governor Pataki and you
13 gentlemen is up to you, right now. Will you and the
14 Governor show as much compassion and do as much
15 justice as can still be done for these faithful and
16 long-abused public servants and there loved ones. I
17 would -- I would like to sit here with you, I hate to
18 think you would stick it to them one more time, but
19 that is the danger we are trying to avoid.

20 I -- I just hope that you will do
21 the right thing about these people. They deserve it.
22 I think you will be at peace with your conscience and
23 your sense of justice, if you do the right thing
24 about these people. And -- so I -- I -- I have every

1 confidence you will do your best with it, and I -- I
2 pray that you will do the right thing. Thank you
3 very much.

4 (Applause)

5 COMMISSIONER GOORD: Thank you, Mr.
6 Bell.

7 MR. VOLKER: It is -- it is
8 interesting, Mr. Bell, that you and I meet now after
9 all these years. I mean, you are the inmates guru
10 when I was negotiating for -- and -- and most of the
11 people in this room still do not realize it. I was
12 negotiating to try to help the -- the people in this
13 room. Actually, we were not negotiating for the
14 widows, we were also negotiating with some of the
15 Correction Officers, but we never got any response
16 from the Correction Officers. We never heard
17 anything from them. Well, when I negotiated with
18 the -- the African American people who were
19 negotiating this issue, and it was a race issue.
20 There is no question. I mean, the -- I am sure you
21 know that the leaders of this riot were the leaders
22 of riots all over the state. And in fact in one
23 case, there was a guy from New Jersey who had been a
24 leader of a riot in New Jersey.

1 MR. BELL: I did not know that.

2 MR. VOLKER: Yes, they were. The
3 other thing I just wanted to tell you is, did you --
4 did you have any record of the fact that the, one guy
5 that was shot was shot because he fired a flare gun
6 into the chest of a captain?

7 MR. BELL: A flare gun into the
8 chest of --

9 MR. VOLKER: A Captain of the State
10 Police?

11 MR. BELL: I do not believe that
12 happened.

13 MR. VOLKER: It did happen.

14 MR. BELL: Who was the -- who was
15 the Captain?

16 MR. VOLKER: He was a Captain and
17 that is how the one guy got shot, that you talked
18 about when they chased him. He got shot in the back,
19 in fact.

20 MR. BELL: Oh, LD Barkley?

21 MR. VOLKER: Yes. But anyway, let
22 me -- let me just tell you that the decision for
23 Rockefeller not to come was not made by him. It was
24 made by the person in charge. According to him, it

1 was made because he could not guarantee his safety
2 outside the prison. Because there was -- you have to
3 picture the situation, all right. It -- it was, you
4 had some of the worst criminals in the world inside
5 there, but you also had some extremely bad people
6 outside. That is why they called in assistance.
7 That is why they were park cops, by the way on the --
8 on the wall. They were supposed to be sharp
9 shooters. They were supposed be very good people.
10 Assume, you also recognized that one of the reasons
11 that the camera did not show anything is because
12 they -- that they had tear gas was confusing
13 everybody and it -- it was a mistake. They put too
14 much tear gas in and they realized that. Let -- let
15 me just say to you that I -- it is interesting
16 because you know, your name has been bandied about by
17 Correction Officers as the guy who, you know, who has
18 tried to indite Correction Officers in two prisons
19 completely ignoring the inmates. Did you -- did you
20 attempt to -- to indite any of the inmates who -- who
21 murdered the three people who had -- I -- I know you
22 did with Hill, but that was an easy one. Did you
23 attempt to indite any of those people who, I mean,
24 who is clear who did it?

1 MR. BELL: Well, let me answer
2 that. We had a division of labor. You know, most of
3 the prosecutors were focussed on inditing inmates and
4 trying inmates, and the inmates who killed Hess
5 Schwartz and Peter Terra. I know their efforts to
6 prosecute them. In fact there is even a movie Alan
7 Alda last September, that I thought was a terrible
8 movie. But it showed -- it showed that effort. My
9 assignment, not my choice, my assignment --

10 MR. VOLKER: Yes.

11 MR. BELL: -- which I did welcome
12 because nobody else was doing it, was to try to
13 indite such troopers and Correction Officers who had
14 committed crimes, if any.

15 MR. VOLKER: Uh-huh.

16 MR. BELL: And at that point, sixty
17 two inmates had already been indited and that has
18 been indicated -- let us see. There was one other
19 Prosector, Ned Perry, who was with me in -- on upside
20 down sector also, on the inmates, but not on the --
21 on the officers. But when you have four homicides
22 against thirty nine, it really seems to imbalance.
23 That there this only one and then two other halves,
24 working on this job that is just not been done yet.

1 Rockefeller commissioned the
2 investigation to prosecute any and all crimes. He
3 did not say just prosecute the inmates and I drew
4 the -- the police. And I am -- I am glad I did. I
5 think it was a job that needed doing and if anybody
6 was innocent, I tried to prove that. There was a
7 State Police lawyer from the SPBA who had come out to
8 the Grand jury everyday, and at first he thought I
9 was trying to railroad the police, but afterwards he
10 told me that -- he kept a briefing of the troopers.
11 He said he thought I was trying to do a fair job and
12 that meant a lot to me because he did not have to say
13 it.

14 MR. VOLKER: Well, when the African
15 American, and the only reason I mentioned that
16 because this was, you know, I -- I -- and Arthur and
17 I have because this was to a certain extent, a race
18 issue which was part of the problem here. 'And -- and
19 it was a race issue on reverse because these guys
20 were really haters. That is the people who were
21 leading this riot. They were ready to kill, there is
22 no question. I can tell you that I spoke to some of
23 the hostages afterwards, and at that time, remember
24 this is thirty years ago, they all said we would have

1 been dead anyway. So --

2 MR. BELL: I am sorry.

3 MR. VOLKER: They would have been
4 dead because the inmates were ready, were completely
5 out of control. By the way, the shooting. There
6 were three people around the guy you were talking
7 about before, not two, and the bullet went right
8 through him. I do not know where you get some of
9 this stuff, but it -- it kind of bothers me that --
10 but that is beside the point.

11 MR. BELL: No, I would like to -- I
12 would like --

13 MR. VOLKER: But let me -- let me
14 just say this, Okay. When -- when negotiations went
15 on to try to help these people.

16 MR. BELL: Yes.

17 MR. VOLKER: It went something like
18 this. We will get the State to drop the charges
19 against any -- any troopers or Correction Officers as
20 long as you are willing to drop the charges against
21 any of the hostages, and then all the inmates have
22 got to be reimbursed. And then they will then agree
23 to the -- I said I -- I do not see how I can do that,
24 but I will take this back to people. And several of

1 the -- the widows that I spoke to, particularly Helen
2 Cunningham, said, 'no way'. We refuse to --.

3 MR. BELL: I do not know what you
4 are talking about. I am sorry.

5 MR. VOLKER: Yes, I know you do not
6 know what I am talking about because --

7 MR. BELL: Basically, when did this
8 happen?

9 MR. VOLKER: This happened
10 afterwards. Now I -- I -- I was negotiated with
11 these people. It was a very quiet thing because
12 nobody wanted to -- but anyway that this is the fact.
13 I do not -- and you were the -- you were the guy who
14 they all thought was the greatest guy in the world.
15 Then I said, fine.

16 MR. BELL: Who, which -- who were
17 the ones who thought?

18 MR. VOLKER: These were the people
19 who were talking to us about trying to come up with
20 some sort of a way to settle this thing.

21 MR. BELL: You are talking about
22 the forgotten victims?

23 MR. VOLKER: No. Yes, I was
24 negotiating for them. But the -- the --

1 MR. BELL: You see, I have no
2 knowledge of this.

3 MR. VOLKER: I know you do not. I
4 know you do not because we have never met before.

5 MR. BELL: No.

6 MR. VOLKER: These people, of
7 course, would all say that you were their, sort of
8 their guru. And the only reason I mentioned it this
9 is because, here we are thirty some years later.

10 MR. BELL: Who was saying that I
11 was a guru?

12 MR. VOLKER: The leaders of this
13 group who were a group that were representing the
14 inmates. And --

15 MR. BELL: That is kind of
16 interesting because I do not remember -- recall being
17 a guru to anybody.

18 MR. VOLKER: Well, okay. But
19 yes -- so anyway that is -- you know, I only
20 mentioned this and I know it is -- it is -- it is
21 difficult because this is thirty some years later.
22 And it is all fascinating, but difficult. And there
23 were mistakes made. There is no question.

24 MR. BELL: That has got to.

1 MR. VOLKER: By the way, there were
2 Correction Officers and it was not Rockefeller's
3 order. It was the ordered of the guy who was in
4 charge.

5 MR. BELL: Oswald?

6 MR. VOLKER: And he -- no, not
7 Oswald. Oswald was the one, by the way, that did
8 this, not Herlahan or Hoolahan, and he -- of course,
9 there were a couple of people who did at their --

10 MR. BELL: Hoolahan was the guy who
11 made the announcement to the press and I talked to
12 him about --

13 MR. VOLKER: Well, what happened
14 was because -- he saw Oswald's movement and then
15 he -- and he -- by the way, Tom Wickhard also
16 announced that all the hostages had been killed. And
17 there was a lot of, as I say, a lot of mistrust,
18 unfortunately.

19 MR. BELL: I knew, it was the
20 Times. I did not know it was Wickhard, but that is
21 what everybody thought because it was publicly
22 announced.

23 MR. VOLKER: I know.

24 MR. BELL: And it did not last very

1 long?

2 MR. VOLKER: Yes. It was -- it was
3 very difficult, but, I mean, you know, the people
4 involved, they just had no trust of the
5 investigation, the troopers and the Correction
6 Officers. They felt that potentially they were being
7 railroaded and you realize now, I assume, that -- I
8 assume someone told you that you indited the wrong
9 trooper. Greg Walderich, the guy next to him should
10 have been the one that should have been indited.

11 MR. BELL: I -- I read Walderich's
12 statement and I wanted to indite him because his
13 statement incriminated himself.

14 MR. VOLKER: Who, Walderich?

15 MR. BELL: Yes, yes. I have read
16 his statement now, and may be the trooper next to him
17 also warranted being indited. I do not that one way
18 or the other, but I was a 100 percent sure that
19 Walderich should be indited.

20 MR. VOLKER: Yes, it was the wrong
21 guy.

22 MR. BELL: Based -- based on the
23 handwritten statement that he signed.

24 MR. VOLKER: Yes. No. The guy

1 next to him continued to fire and he -- he should not
2 have, obviously.

3 MR. BELL: Well, he -- sounds like
4 he should have been indicted. Missed him.

5 MR. VOLKER: He should have.
6 Probably, should have.

7 MR. BELL: But it was a good
8 inditement.

9 MR. VOLKER: I do not think so.
10 But --

11 MR. BELL: Well, okay. We disagree
12 on that one. I hope we do not disagree on the
13 ultimate outcome.

14 MR. VOLKER: We certainly do not
15 disagree on the fact that we want to help these
16 people. That -- there has never been anything
17 that -- and we are -- we are trying to do the best we
18 can with this.

19 MR. BELL: I understand.

20 MR. VOLKER: But I would point out
21 to you that when Bobby Seals came in and started
22 screaming, and there was so much going on at the
23 time, at least the troopers, the Correction Officers,
24 all of them believe that if they had not come when

1 they did, they were going to kill everybody. That is
2 all I can tell you.

3 MR. BELL: That -- that is not my
4 information, but I think -- I think we are on an
5 impasse right there.

6 MR. AUBREY: Well, can I -- just
7 a -- a question.

8 MR. BELL: Yes, sir.

9 MR. AUBREY: The fact that there
10 were other than State Police involved in the
11 retaking, did you ever determine how that happened?

12 MR. BELL: Well, it seems very
13 simple. Everybody, every Correction Officer who did
14 not participate said he heard about Rockefeller's
15 order they was not supposed to participate. And
16 everyone who did participate said he did not hear
17 about Rockefeller's order that he should not
18 participate. That is as far as we ever got with it.
19 That whether there was a failure to disseminate the
20 information or whether that somebody wanted to
21 disregard it.

22 MR. AUBREY: But my presumption is
23 someone is -- is responsible for the retaking. There
24 is a -- there is a commander. There is somebody who

1 was in charge.

2 MR. BELL: Yes.

3 MR. AUBREY: And that individual
4 then is responsible for individuals who are
5 completing the retaking. There were being assigned
6 at various places.

7 MR. BELL: Yes.

8 MR. AUBREY: So someone then
9 knows -- has got to know that it is a State Police or
10 Correction Officer or a park police. I mean, there
11 must be some order. This did not happen in five
12 minutes. I mean, the -- that it was -- obviously,
13 there was a plan and individuals were assigned. So,
14 I -- while I can understand someone wanting to be
15 there --

16 MR. BELL: Yes.

17 MR. AUBREY: You understand the
18 difference between, I want to be there and you are
19 assigned.

20 MR. BELL: Yes. Well, State Police
21 were assigned to retake the prison and Major John
22 Monahan, the troop commander of troop A, which is
23 where Attica is, was the troop commander. And to the
24 best of my information, Monahan did not know about

1 these guys on the third floor of shooting. And when
2 Monahan was out close to Time square on the catwalk,
3 he said if I had known Correction Officers were
4 shooting, I would not be out there because I was
5 contemplating retirement. It is a pretty snotty
6 thing to say about the -- correction officers, but
7 that shows the state of ignorance up to that point.

8 MR. AUBREY: In a lot of the
9 testimony we heard the first hearing, talked a lot
10 about how information was given to the victim's
11 families in regard to what happened. Now, you -- you
12 mentioned that there was a public announcement about
13 how hostages were killed. Did you hear any
14 discussion in your investigations in regard to
15 information that might have been given to the family?
16 Did you talk to family members as you did your work?

17 MR. BELL: No, I did not. My focus
18 was on what evidence there was if a crime is
19 committed or justifiable acts. And as far as that
20 aspect, I was never part of the -- I have learned a
21 great deal of about what did and did not happen just
22 in the last two years. But I was -- I was, I guess,
23 oblivious is the right word about that particular
24 phase.

1 MR. EVE: Okay. And the -- Dale
2 has mentioned it, I gather and you have mentioned
3 this that -- that this was, I mean, obviously, it was
4 a clearly a racially charged event.

5 MR. BELL: Yes.

6 MR. EVE: Because of the politics
7 at the time, because of the retaking of that. How --
8 how important did you think that issue played in the
9 manner in which the prison was retaken and the -- the
10 discharge of the weapons?

11 MR. BELL: To halves to the answer.
12 I do not think it had any bearing on the plan of the
13 retaking. As far as the discharge of the firearms, I
14 think it had a great deal to do with the fact that it
15 was just wanton, unjustified. There was no reason
16 for it. No matter how, nobody is going to get in our
17 way, especially if he is Black.

18 MR. BELL: Thank you.

19 MR. EVE: I -- I would like to say
20 that Dale and I are good friends. I want you to know
21 I love this man. We work together for the good of
22 the rest of New York. We disagree on -- on criminal
23 justices and the number varies, but I knew nothing of
24 anybody who was representing the inmates trying to

1 work out a deal. I mean, that was -- I mean, I am
2 hearing this for the first time. I mean, it -- it
3 really -- it -- it bothers me. That is not a
4 legitimate group whom -- other. I -- I do not know
5 who it was they are. They wanted somebody lie --
6 this -- what are they trying to do? I -- I cannot
7 conceive of them doing anything constructive and --
8 and your talking to them, probably feeded their egos
9 or whatever, whoever those individuals were, was
10 wrong. Let me say this thing about Bobby Seals. I
11 remember Bobby screaming and -- and all of that.
12 Bobby was there because the inmates wanted him. They
13 had a list of people they wanted. When I got to that
14 prison after hearing about it on the radio, I went by
15 my office and my secretary drove me out there. And I
16 went in and saw Oswald and that is when I found out
17 that the inmates had requested me, and they requested
18 Tom Wickhard and I think, Bobby Seals and Lewis
19 Ferricon. There were about four or five or six.
20 Oswald will -- will know who they were. And I said
21 to Oswald, 'why didn't you call me? why didn't you
22 call me, you know, when the inmates said they wanted
23 me to come out here? Me, I went, and my secretary
24 who I had asked to get Bobby Seals and Lewis Ferricon

1 there, I found out later paid for Bobby Seales flight
2 out of her -- out of her credit card. She paid for
3 his flight to come from California to the -- the
4 Attica prison. I talked to Louis Ferricon
5 personally, to try to get him to come. The reason
6 why I wanted them to come was to calm people down,
7 try to calm people down. Barkley, I mean, every time
8 he got up and said I want to be sent to an a
9 non-capitalist, imperialistic country, I mean, I used
10 to get angry at him and -- and very upset. Because
11 things what you thought was moving well and then he
12 would make a speech and then you know some people
13 would get upset. And the Commissioner can tell you,
14 there are inmates in our prisons who are -- who have
15 mental health problems and -- and lot of people get
16 upset over any little thing. Ferricon did not come,
17 but Bobby Seals did not play any negative role in
18 what happened.

19 Bill Kunstler to his credit. After
20 the inmate, the guard died on Saturday, we all met.
21 We knew things were getting very, very, very tight
22 with what the state had agreed to do. Kunstler
23 representing us went before the whole yard and said
24 to them, this is the best we can do, this is the best

1 we can get and we recommend you accept it. Okay. I
2 do not know if I would have had the courage to do
3 what Bobby -- what -- what Kunstler did. And that
4 was agreed on by Bobby Seals, by me and by all of the
5 observers in there, John, Dunn and everyone else. We
6 said this is the best you can get. Accept it.
7 Accept it. There were some uproars and so forth.

8 One of the major concerns the
9 inmates had was, if they gave up, would they be
10 beaten, brutalized and some may be killed? And that
11 is why the people who oppose Rockefeller and as he
12 mentioned who called it, and we agreed. I mean, I
13 was not close, but those who had communications, they
14 went and said, 'Governor, please come'. We never
15 expected the Governor, let me make this clear, to
16 come into the prison yard. Anybody would be crazy.
17 Okay. You know, the Corrections Commissioner did not
18 even want to go in there. He did not go in there.
19 And so, all we wanted him to do was fly his plane
20 into the Buffalo Airport, speak into the yard because
21 the inmates had set up a -- a telephone communication
22 system where you could speak on the phone, it could
23 be heard all over the yard. And we wanted him to
24 speak in to the yard from Buffalo to say, I guarantee

1 there would be no physical reprisals or beatens --
2 beatings, if you give up. That was -- five of us had
3 said we would stay in the yard while the State came
4 in and took over. We said we would stay in the yard.
5 Five of us said we would stay in the yard that Sunday
6 night, and so you need to understand this. That
7 Sunday the State sent in a letter to the inmates
8 saying that we had agreed to certain things as the
9 observers committee, which were a total lie. A total
10 lie. Oswald and the Governors' people gave the
11 inmates saying that we had agreed upon certain
12 conditions and the inmates told us very clearly you
13 cannot speak for us. You take our request out, you
14 bring there response back and that is how we
15 function.

16 I was scared to death. I started
17 crying. I said to the guys in the room and I said to
18 Oswald, I said, you have endangered our lives. I
19 said, if we go in there and they kill us, and that
20 gives you the justification for coming in and killing
21 them. Or even if you go in there and you kill them,
22 and they feel that we have betrayed them, some of
23 them will come out and maybe my own family may not be
24 safe. And I started crying. And for the first time,

1 I -- suddenly, I was scared. Scared to death because
2 I saw what the State was willing to do. Sacrifice
3 me, a state legislator. Okay, by lying that we had
4 agreed, and so five of us agreed to go back. Others
5 did not want to go back in there because they were
6 scared as I was scared. And we went back in and when
7 the inmates met us, thank God, a ex-inmate from
8 Attica went with us. A guy named GI. I do not know
9 what his real name is. But he went in there with us
10 and when we went in, they were angry. Some had tears
11 in their eyes and they said why did you betray us?
12 You know, we told you, you could not speak for us.
13 And GI said, 'I have been with brother Eve, as
14 Chairman of that committee, everywhere he has went.
15 And he said, 'I can tell you that is a lie and if you
16 kill them -- if you kill them, that will give the
17 State the right to come in and kill all of you --
18 kill all of you, and -- and they calmed down. They
19 calmed down. They calmed down. We said, 'we were
20 prepared to stay in there with them. We wanted
21 Rockefeller to come and -- and say that -- late that
22 night, Sunday night, the inmates told us to leave.
23 They said, 'we think the State is going to come in
24 and we want you all to live to tell the truth about

1 what happened at -- at Attica'. And they said we
2 want you to leave, and big black head of security was
3 the last person that I talked to and we embraced when
4 I walked out of that room in that tunnel, and went --
5 and went out.

6 Let me say this to you, there was a
7 lot of hostility racially. We had a guard bring us
8 food and just throw it on the table and made various
9 reference to the observers committee. Not just
10 Blacks, but Blacks and White. One reporter and I ate
11 in a restaurant and the waiter -- waitress said that
12 she hoped they would kill all of us. She told us to
13 our face, 'I hope they would kill all of you'. Okay.
14 You know, it was in the community. It was
15 everywhere. Everywhere hostilities -- hostilities.
16 And that is why Oswald said to us very clearly, 'the
17 correction officers will not be allowed to go in'.
18 Okay. He said they will not be allowed to go in. He
19 also said to us that they would use a tear gas that
20 had never been used in this country before. It was
21 used in war, they used that. And he said it would
22 immobilize the inmates immediately. I got the
23 impression this stuff might not come out. And then
24 they would go in and they would bring them out, okay.

1 And we thought from what he said to us that it would
2 be a minimum of problems or probably no shooting,
3 just immobilize.

4 You need to know that the head of
5 the Correction Officers Union that September
6 thirteenth, he came in the room where we were as
7 observers, and we were doing the tear gassing and
8 everything and we laid on the floor, so that we would
9 not get all of the tear gas that came in to the room.
10 But afterwards the correction officer, head of the
11 Correction Union came in and said his men told him
12 that some of the inmates guarding them, the inmates
13 guarding them, pushed them to the ground and fell on
14 top of them. And those were the Muslims who were
15 given the responsibility for guarding and protecting
16 the inmates (sic). That is why I wanted Ferricon
17 there as well because there was a large number of
18 Muslims there. And he said to us the inmates pushed
19 him to the ground, fell on top of him in order to try
20 to save them from being shot and killed.

21 A question I want to ask you, you
22 said at one point 1100 state troopers and
23 Correctional Officers shot there weapons.

24 MR. BELL: A Hundred and eleven.

1 MR. EVE: Oh!, A hundred and
2 eleven.

3 MR. BELL: Yes, that was roughly
4 half.

5 MR. EVE: You were saying here,
6 though many people felt that is a total four thousand
7 rounds. How many rounds do you think were actually
8 shot into the room? From our estimates and what we
9 gathered, I have used the term four thousand rounds
10 of bullets of some sort were shot into that yard and
11 into the tunnels and stuff. How many would you say?

12 MR. BELL: Well, I used the very
13 minimum which is twenty two hundred, but I know it
14 was more. And if somebody said I can prove it was
15 four thousand, I would not argue with him. And we
16 just do not know how many shots were fired. One
17 night investigator Brown and I spend up until around
18 midnight just trying to count the shots that show up
19 on the truncated video tape and it is almost
20 impossible to count them because the way Attica
21 echoes, the first echo sounds like an other shot
22 and --

23 MR. EVE: Yes.

24 MR. BELL: -- the shots were

1 overlapping. It -- there was just no way to find out
2 given the fact the police did not keep track.

3 MR. EVE: Then your assessment is
4 that all of that shooting was not necessary.

5 MR. BELL: Except the first to save
6 Michael Smith's life and the lives of other hostages
7 on the catwalks.

8 MR. EVE: Okay. That -- the sharp
9 shooters should have been the only people shooting
10 someone because they were shooting at an inmate that
11 could potentially kill one of the guards?

12 MR. BELL: That would be true up
13 until the point that Lieutenant Christian got knocked
14 down. At that point, the police should not have been
15 armed with shotguns, they should have had rifles or
16 carbines or something else so they would not be
17 killing all these other people. But that was the
18 next shooting looked justified to me.

19 Now there were a couple of
20 incidents where my colleagues and I disagreed. There
21 were two cases where, one there was an inmate on
22 A-yard and the other in D-yard, in each case he threw
23 something up at the catwalk. It did not hit anybody.
24 It did not hurt anybody. He did not have it any

1 more, so he could not do it again. And I did not
2 think he should have been shot, but that was a
3 question for the Grand Jury, I think. Incidentally,
4 on the tear gas you mentioned --

5 MR. EVE: Yes.

6 MR. BELL: It almost seemed as if
7 there were two kinds of tear gas being used because
8 the first tear gas, and I think the real tear gas,
9 came down and it really pretty well immobilized
10 everybody and there was one case of a trooper who
11 went up to the wire barricade on A-walk and threw his
12 body across it to push it down, so other troopers
13 could go over him, you know, the way the marines do
14 with barbed wire and stuff, and that worked, except
15 that his mask fell off and he had to be helped out of
16 the prison because he was overcome by this tear gas.
17 And yet you read these troopers statements and they
18 say these inmates were running at us with knives and
19 Molotov cocktails as if there was not any tear gas,
20 and that was not true. But it sounded like two tear
21 gases, one that was harmless and one that was not.

22 MR. EVE GOORD: Oswald was very
23 proud of the tear gas they were going to use and how
24 successful it was going to be.

1 MR. BELL: I think it was.

2 MR. EVE: And we felt good about
3 that. Okay. We felt good that this tear gas would
4 eliminate the necessity of -- of shooting or very
5 limited shooting.

6 MR. BELL: It should have.

7 MR. EVE: I want you to know that
8 hostility after the State took over, we were looking
9 out of the room as they were bringing bodies out,
10 and -- and we were in the second and third floor.
11 And we saw the State officers pick up a Black inmate
12 that they thought was dead -- was dead, and he moved
13 his arm. And they raised him up as high as they
14 could and dashed his body to the ground, hopefully,
15 that he would be injured more or he could bleed more.

16 The -- the hostilities were very
17 obvious and you know, Oswald knew that, everybody
18 knew that, especially after Officer Quinn died.
19 And -- and again after -- on Saturday after Quinn's
20 death, we all met, but everybody knew that things
21 would get tighter. And again I repeat, Bill Kunstler
22 represented us in saying to the group, to the
23 inmates, we recommend your accepting this and give
24 up. The only questions left for them was, assurance

1 by the State that there would be no beating, physical
2 reprisal because that same year there was a takeover
3 of a particular area at Auburn State Prison.

4 MR. BELL: Yes.

5 MR. EVE: And there had been some
6 reprisals and beatings. I went there afterwards.
7 Okay. You know, and so I knew, you know, from
8 experience of talking to the inmates at Auburn, you
9 know, and some of them could have been at Attica,
10 transferred. Okay.

11 MR. BELL: Some of them came over
12 from Auburn to Attica.

13 MR. EVE: Yes. It is -- yes, some
14 of them did. So there were the rumors about what
15 happened at Auburn State Prison.

16 And, so naturally people are
17 concerned. Is it going to happen here. You know,
18 are we going to be beaten and -- and brutalized.
19 The -- the State lied so bad, lied so bad. We went
20 out on the catwalks afterwards, and they told us how
21 this one officer's throat was cut and the officer
22 fell to the ground, and they saw him dead and they
23 could not wait any longer. They told us about
24 Officer Smith whose reproductive organs had been cut

1 out and stuck in his mouth. Okay. They told us
2 that, you know. You know, and that is what Big Black
3 was supposed to have done.

4 MR. BELL: Yes.

5 : That is why he was on the
6 table -- on the table. Could you say, why do you
7 have Big Black on that table? They said he cut out
8 Officer Smith's reproductive organs and stuffed them
9 in his mouth. And I said, Jee, that is not the Big
10 Black that I knew in that yard, you know. And they
11 had his butt naked with a football on his neck. And
12 later on I believe, he was told, if you drop that
13 football we will kill you.

14 MR. BELL: Yes, it was more graphic
15 than that. His something head would come off. They
16 had a shotgun at his head. Incidentally, I had not
17 heard about them lifting that inmate up and slamming
18 him down. I wish I could have put that in my Grand
19 Jury.

20 MR EVE: Yes -- yes.

21 MR. BELL: One thing I did hear
22 that was pretty horrible was several times inmates
23 were getting plasma -- blood plasma. Officers would
24 come up and rip the plasma out of their arms. I

1 wondered if that might be a crime.

2 MR. EVE: Yes. The -- the
3 hostility was -- was -- was that -- and -- and the
4 lies -- and -- and the bad thing about the lies. I
5 repeated them at a mass meeting in the Black
6 community because I was convinced that it was the
7 truth. Okay. I accepted it. And I did not find a
8 truth until I was at a rally at the University of
9 Buffalo and the medical examiner's report came out.

10 MR. BELL: Yes.

11 MR. EVE: And only by the grace of
12 God, I did not lose my mind. Or have a nervous
13 breakdown. It was absolutely horrible. I did not
14 think people could lie so graphically and so, you
15 know, very specifically they told us this happened,
16 this happened. An inmate comes with a knife and, you
17 know, and -- and -- and we had to shoot him down.

18 The -- and I want to say to the
19 forgotten victims of Attica, you have to got to talk
20 to your community and let them know the State did
21 make kill the vast majority of the hostages. It was
22 not the Blacks, inmates, because hatred passes on
23 from generation to generation to generation, and your
24 children, your children's children and their children

1 should not look at someone Black and say, because you
2 know, his family or his -- his -- his group killed my
3 grandfather, my father, my uncle, my aunt. You --
4 you -- there need to be some -- some healing and --
5 and -- and believe me, I would like you to get
6 everything you are entitled to. Every last penny
7 that you are entitled to. All of you. And so
8 please, as a born-again Christian of seven years,
9 please reach out to the total community.

10 You mentioned machine guns. This
11 is the first time I heard about machine guns. They
12 actually had machine guns.

13 MR. BELL: AR-15s and Thompsons,
14 and it was an AR-15, we believe, that -- that hit
15 Michael Smith.

16 MR. EVE: So machine guns, you
17 cannot control the directions of bullets from machine
18 guns because, you know, I -- I was in the army and I
19 mean, that this is, you know, you aim here and it
20 goes all around.

21 MR. BELL: That is why it vertical
22 in Michael's abdomen.

23 MR. EVE: Yes. It goes all around.
24 And so in -- and you have this on -- on -- on

1 concrete proof that machine guns were used?

2 MR. BELL: Yes. Yes. The police
3 were using a Bolt-action rifle and pull the bolt
4 back, strip out the shell, move it forward. You
5 cannot get four beautifully lined up shots into one
6 man who was already been hit and is moving as a
7 result of being hit by that bullet. You cannot do it
8 with a rifle. It is a bolt-action.

9 MR. EVE: Concluding, you need to
10 know that I said afterwards, President Nixon
11 supported Rockefeller's action, I believe, that same
12 day. Okay. I say that his Attorney General and the
13 Governor's Attorney General were in conversation with
14 each other. And that -- that was a national
15 political decision to show that we are tough on
16 inmates and prisoners. So do not anybody anywhere in
17 the nation consider taking over a prison or yard or
18 doing anything. Nixon's response was, someone told
19 me that I was ridiculous. But I believe, that
20 frankly I did not have a bad relationship with
21 Rockefeller. Never used to attack him, okay. He was
22 supporter of my starting the EOP program and the ATOP
23 program for kids going to college who were
24 economically and educationally disadvantaged.

1 I really do not believe that he
2 made that decision totally independent. Even though
3 I put a resolution forward to impeach him, and I also
4 testified before Congress that he was not fit to be
5 the Vice President of the United States of America.
6 And I will go to my grave believing that he was
7 influenced very greatly by the President of United
8 States at that time, Richard Nixon.

9 COMMISSIONER GOORD: You know, I --
10 I just have one question. There a lot of lessons
11 that we have learned from that. You -- you implied
12 that one of the lessons learned from Attica is that
13 you catch experiences that governed show up at,
14 right. You are wrong. That is not one of the
15 lessons learned with Attica. One of the lessons
16 learned with Attica is not fully training staff,
17 creating CIU units, search teams. Unfortunately, I
18 have been personally involved in three or four
19 hostage situations since then. Coxsockie where
20 probably along the line requests were made that
21 could -- requests were made possibly for the
22 governor. So it is not -- I do not want anybody to
23 leave this room thinking that one of the lessons
24 learned that -- that standard operating procedures

1 anywhere in this nation is the Governors to show off
2 their defense. We could debate the Attica incident
3 and Rockefeller's response, but that is not one of
4 the lessons learned.

5 MR. BELL: Well, I must stand
6 corrected. It has been just an observation that it
7 had happened time and again in New Mexico and other
8 situations, Governors did go.

9 COMMISSIONER GOORD: I do not know
10 when they went, but it is not standard operating
11 practice. You do not empower people to take our
12 employees hostage and the response being the Governor
13 takes control of that situation because that would
14 put the employees in this system and other systems
15 across this country in jeopardy.

16 MR. BELL: I accept that.

17 COMMISSIONER GOORD: I just wanted
18 to say that because of the magnitude of the situation
19 in Attica, the number of Correctional Officers, the
20 number of inmates who were in that yard, John Dunn
21 and other people who are more qualified than I am and
22 who understood the seriousness of the situation,
23 understood the lies that have been told about us on
24 the observers committee, felt that the Governor%BLA1,4LA2,

1 flying into Buffalo or even talking to the inmates
2 through a telephone communication system, and
3 assuring them that there would be no physical
4 reprisals. There would be no physical reprisals.
5 That -- that, you know, a phone call, a phone call, a
6 phone call could have possibly saved the lives of the
7 hostages and the inmates who were killed.

8 COMMISSIONER GOORD: Thank you,
9 everybody. We are going to take a break. Probably
10 we will be back by 1:30.

11 COMMISSIONER GOORD: Thank you.
12 One thirty, quarter to two, the
13 latest.

14 MR. VOLKER: Yes. Quarter to two
15 may be because I got to go to the --.

16 (A luncheon break was taken.)

17 COMMISSIONER GOORD: Mr. Morris
18 Jacobs please?

19 Good afternoon Mr. Jacobs?
20 Thank you Mr. Jacobs, how are you
21 today?

22 MR. JACOBS: Fine.

23 COMMISSIONER GOORD: It is all
24 yours.

1 MR. JACOBS: M-O-R-R-I-S,
2 J-A-C-O-B-S. I would like to thank Commissioner
3 Goord, Assemblyman Eve, Senator Volker and the
4 Assemblyman Aubrey, for giving me the opportunity to
5 testify.

6 According to a ministerial item
7 buried in the back pages of New York Times, the
8 forgotten victims of Attica seek fare compensation
9 from the state. Over and beyond the fair
10 compensation, a more compelling and underlining
11 aspect requires not so much fairness, but rather a
12 remedial and corrective resolution, as a matter of
13 simple justice considering the unconscionable,
14 unscrupulous and shameless acts of the state
15 involving the Forgotten Victims of Attica. In my
16 considered professional opinion, top officials of the
17 State Insurance Fund, as well as the Rockefeller
18 administration.

19 One, fortunately induced the
20 acceptance of Worker's Compensation in order to avoid
21 liability for intentional Tort.

22 Two, callously manipulated the
23 system to deny optional or -- or obtain the benefits
24 to the widows.

1 Three, targeted the Attica widows,
2 by violating an inflexible rule, which is not to
3 approach widows prior to a hearing without the
4 approval of their attorneys.

5 Five, we are guilty of blatant
6 hypocrisy in initiating and accelerating compensation
7 payments prior to a hearing under the bogus pretense
8 that they were befriending and favoring the Attica
9 widows by expediting payments.

10 Now, I have four. We should have
11 preceded. Intruded on the vulnerable widows within
12 days after the fatalities knowing that the widows
13 were unrepresented by attorneys.

14 Six, purposely failed to advise the
15 widows of the option to sue, despite the fact that
16 ethical considerations under these conditions oblige
17 the State Insurance Fund and other state
18 representatives to act and perform in an honorable
19 fashion.

20 Seven, we are guilty of
21 disingenuous and deceitful testimony that reeked of
22 deliberate misinformation, by indicating that
23 visiting the widows by state insurance personnel
24 shortly after the fatalities was customary as

1 established procedure, in Workers Compensation cases.

2 Eight, attempted to lessen the
3 unfavorable publicity following the disastrous
4 retaking of the prison, with hypocritical gestures
5 such as accelerated and premature payments to widows.

6 Nine, and finally these insensitive
7 bureaucrats who obviously realized that these widows
8 had been victimized by the killing of their husbands,
9 maneuvered to victimize the widows a second time by
10 depriving them of seeking alternative, appropriate,
11 legitimate and reasonable redress and
12 indemnification.

13 Now, considering these preceding
14 inflammatory remarks, one would expect that I should
15 establish my credentials. So, here it goes. In
16 1943, I was hired by the State Insurance Fund, as a
17 clerk. Also, in 1943, I was drafted and served in
18 World War II. I received an honorable discharge and
19 ultimately also received two Purple Hearts and two
20 Bronze Stars. I returned to the State Insurance Fund
21 as a clerk and over a period of many years took many,
22 many promotion exams and fortunately enough, I was
23 able to be -- to get the highest written and oral
24 marks over a period of decades. So, that ultimately

1 I became the Director of Claims, and I was the
2 Director of Claims for a period of about ten years
3 from the mid eighty forties to the mid '95.

4 Going back to 1947, the State of
5 New York instituted a merit award system rewarding
6 employees who submitted suggestions in the
7 enhancement of their agency. I was the very first
8 state employee to receive such a merit award because
9 I submitted a suggestion to enhance the activities of
10 the State Insurance Fund, and the Worker's
11 Compensation Board, and I was presented the award by
12 Governor Dewey. Twenty years later, there was a
13 twentieth anniversary of the Merit Award System,
14 presiding over by Governor Rockefeller, and invited
15 to this luncheon were those employees who had gotten
16 over twenty merit awards as well as the employees who
17 had received the first merit award. And I had
18 already received twenty three merit awards. And all
19 of the suggestions had to do with the Worker's
20 Compensation law, the Worker's Compensation Board and
21 the State Insurance Fund. So, I will submit a
22 document in reference to the twentieth anniversary.

23 In 1995, just after I retired, I
24 was asked to speak at a seminar on worker's

1 compensation at the New York Chamber of Commerce, and
2 my topic was corruption in the Worker's Compensation
3 system and at the Worker's Compensation Board. I was
4 subsequently, shortly thereafter contacted by a
5 reporter for Newsday by the name of Susan Harrigan.
6 She wrote up a report on what I had to say, and it
7 appeared on the front pages of Newsday. That
8 evening, Governor Pataki called up the reporter
9 praising her for a wonderful, wonderful report, and
10 she asked the Governor, are you going to do something
11 about changing the system, and he vowed to do so.
12 And this is a copy of the Newsday article and her
13 conversation with the Governor.

14 Shortly after that article
15 appeared, I was called down to New York Chamber -- to
16 the New York Commission of Investigation to testify
17 before a panel, on the very same subject, including
18 ethics and in the Civil Service system and at the
19 State Insurance Fund and at the Worker's Compensation
20 Board. I testified, I think I made an impression
21 because shortly thereafter, they changed the law in
22 reference to the Worker's Compensation board and the
23 worker's compensation law and an Anthony Cartuchelli,
24 an attorney working for the New York State Commission

1 of Investigation, submitted this report to me. Which
2 I will submit.

3 That is part of my background.
4 Now, I must tell you a bit about the Worker's
5 Compensation Law, the Worker's Compensation Board and
6 the State Insurance Fund. In 1914, the Worker's
7 Compensation law was passed. It created at the same
8 time, two state agencies. The Worker's Compensation
9 Board and the State Insurance Fund. The State
10 Insurance Fund was a carrier, an insurance carrier,
11 but a state agency, which issued Worker's
12 Compensation policies for employers throughout the
13 state. The State Insurance Fund was a carrier of
14 last resort, because many insurance companies in the
15 State of New York refused to issue policies to risky
16 employers. But the State Insurance Fund could not
17 turn any employer away. And the State Insurance Fund
18 as a state agency and an insurance company was made
19 of several departments. Had a Law Department, an
20 Executive Department, Medical Department, Actuarial
21 Department. The largest department was the Claims
22 Department, with approximately fifty percent of the
23 employees. Although we generally did ninety percent
24 of the work.

1 State Insurance Fund also had four
2 branch offices particularly at the time of the riots
3 in 1971. Albany, Buffalo, Rochester and Syracuse.
4 Rochester was the smallest of the branch offices,
5 Albany was the largest of the branch offices. But
6 each of these branch offices were under the direct
7 control of the home office claims department. Each
8 of the offices was run by an individual with the
9 title of Associate Compensation Claims Examiner, a
10 mid level employee, and each branch office reported
11 to the home office claims administration on a daily
12 basis, so that the home office always knew what was
13 going on in the branch office.

14 I will get back to the State Fund.
15 Worker's Compensation Board is a state agency, and
16 the board oversees all Worker's Compensation claims
17 throughout the State of New York, including the State
18 Insurance Fund and many, many, many private carriers
19 and self insurers. The State Insurance Fund issued
20 policies for approximately forty percent of the
21 employers in the State of New York. So it was by far
22 the largest insurance company, Worker's Compensation
23 insurance company in the State of New York.

24 Now in 1971, I was an Associate

1 Compensation Claims Examiner, a mid level Supervisor,
2 heading a few units in the home office. Just as in
3 the branch offices, the Associate Compensation Claims
4 Examiners run the office, handled anywhere from three
5 to five units in 1971. Now, prior to the Attica
6 appraisal, in terms of worker's compensation, nothing
7 like this had ever happened. Matter of fact, the
8 Worker's Compensation law was put in, brought into
9 existence in 1914, because of the triangle fire in
10 1912 which you all must be aware of, where are
11 hundreds of young women perished in flames, jumping
12 out. That led to the Worker's Compensation law.
13 From 1914 to 1971, over and above the riots, from a
14 stand point of Worker's Compensation, this was the
15 most disastrous, horrendous, Worker's Compensation
16 incident in the history of the State of New York.
17 All of the State employees who had been injured, the
18 guards, clerk, there might have been clerks working
19 for the Corrections Department, they were
20 automatically covered by Worker's Compensation.
21 Automatically. All state employees including the
22 Department of Corrections was covered by the State
23 Insurance Fund. There was one policy, policy number
24 24096, which covered all state employees that

1 happened to be the policy that covered the largest
2 number of employees of any policy.

3 In 1971, when the news broke about
4 the riots, and particularly shortly afterwards, when
5 the news came out of the number of guards and state
6 correction employees who were killed and wounded,
7 that was the number one conversation in the State
8 Insurance Fund, particularly in the claims
9 department. So, we speculated what was going to
10 happen particularly to the widows, because of the
11 kind of Worker's Compensation system that we were
12 living with. We speculated. I, as an associated
13 compensation claims examiner, many of my co-employees
14 and my superiors, we were pretty sure that the State
15 of New York would be hit with a number of suits.
16 Why, if they are covered by Worker's Compensation.
17 Well, under Section 11, Worker's Compensation is the
18 prime remedy, except for two exceptions. And the two
19 exceptions are, if the employer does not have
20 Worker's Compensation insurance, the employee can
21 then sue the employer. The other exception is when
22 the employee or the employer is guilty of intentional
23 tort.

24 And a fair example because this was

1 happening time and again. You have a maid, a
2 waitress working in a hotel, she is abused by her
3 employer and severely injured, she automatically
4 would be covered for Worker's Compensation, if she
5 was foolish enough to accept Worker's Compensation
6 payments under those conditions. She hired herself
7 an attorney eventually. He would tell her do not
8 accept Worker's Compensation payments. You are the
9 going to sue the SOB. Okay. And this happened time
10 and time again.

11 So in 1971, it was understood that
12 the state was going to be faced with a host of these
13 suits. Then that was kind of vague from my view
14 point, it was buried in the past, and I went on to
15 higher positions. Although, I do recall during that
16 period of time that the Claims Director who was -- I
17 was on very good terms with, because every time I
18 studied for a promotion exam, I would go into this
19 individual who is the most comprehensively
20 knowledgeable individual in the area of Worker's
21 Compensation. I go into him with a list of questions
22 that I was considering to study for my next promotion
23 exam, and he would sit down with me for an hour or
24 two explaining to me how the law went. And, he told

1 me a good deal about Section 11 and the exceptions to
2 Section 11 and intentional tort. And, I happened to
3 drop in on him during that period of time when we
4 were all convinced that there would be a host of
5 suits against the State of New York. He was rather
6 cryptic. He said, we will be taking care of it. At
7 the time, I did not know what that meant. And
8 frankly, I had no idea to think about it. But it
9 came back to me years later. At any rate, I went off
10 on to so called higher positions, and I became a
11 Director of the Claims Department, the largest
12 department in the State of New York.

13 Now, the way the Worker's
14 Compensation system runs, is that if an individual is
15 injured on the job, he is still living. He normally
16 goes to a physician, he reports the injury to his
17 employer, and two reports are filed within a week or
18 ten days. One by the physician, a medical report
19 indicating the injuries and that had happened on the
20 job, another so called C2 report which is issued by
21 the employer advising the Worker's Compensation Board
22 and the State Insurance Fund, his carrier, that there
23 was an injury on the job. Now, the law requires that
24 if you are going to accept liability, you are to make

1 payments within ten to fourteen days. And in over
2 ninety percent of the cases, there is no problem. We
3 know who to send the checks to. We call up the
4 employer. Employer gives us all the information
5 about the employee and the checks go out on a regular
6 basis. But what did you do when a man is killed on
7 the job? From the insurance company's viewpoint,
8 what can he do? He does not know who to send the
9 payments to, and he is not going to send the payments
10 out for some very good reasons. You have to
11 establish who the widow is and the only one who can
12 officially establish the widow is the Worker's
13 Compensation Board. And, that is established at a
14 Hearing before a Law Judge or a referee, and that
15 Hearing usually occurs anywhere from two to three
16 months after the fatality. Now you might ask
17 yourself, is it not unfair that a widow has to wait
18 two to three months whereas an injured person gets
19 his payments within two weeks or so. On the face of
20 it, it might be unfair. But when you look into it,
21 it is the best for the widows. Because it gives them
22 time to think about what to do. They are in no
23 position, the widows, to determine that their husband
24 was killed though intentional tort. They are in a

1 state of shock. They are heart broken. So it takes
2 them time to recover. But eventually, eventually,
3 they get to an attorney. Now, why do I say
4 eventually. And keep this in mind, over ninety nine
5 percent of all widows appearing at the first hearing
6 before a Law Judge or a referee, over ninety nine
7 percent are represented by attorneys who come with
8 them to the first Hearing. And, if a widow shows up
9 without an attorney, the referee or the law judge
10 would turn to the widow and say, "Madam, to protect
11 yourself, I am going to adjourn this case, and you
12 come back with an attorney". And this is happened
13 time and time again.

14 Now, from the Carrier's viewpoint,
15 it is also from the viewpoint of the Carrier not so
16 much that is going to save money by delaying
17 payments. He wants to make sure that he is going to
18 pay the proper widow. It is not unusual that the
19 widow is not the proper widow. Might have been the
20 common law wife. Could have been the wife who is not
21 properly divorced. You have no idea the number of
22 times when two women come up, and each claim to be
23 the widow. No insurance company wants to make that
24 decision. They leave it to the Worker's Compensation

1 Board. To the Law Judge or referee to sort out the
2 problem. Because, it is the insurance company. They
3 logically and stupidly makes the first payment before
4 a hearing, and then ultimately the proper widow shows
5 up, he is going to be stuck with the second widow
6 despite the fact that they were paying the first
7 widow and he is not going to get any money back from
8 the first widow if the second widow is established as
9 the proper widow.

10 So, there is a very good reason for
11 a delay of two to three months, so that these things
12 can be sorted out. Now what happened the Attica
13 widows? With these ten or so widows? Shortly after
14 the fatalities, some state representatives come by to
15 each of the widow's homes. Now, I see nothing wrong
16 from a personal viewpoint. But actually, when the
17 agency comes by to the widows to extend his
18 condolences. Mayor Giuliani did that constantly,
19 Bloomberg does it today. Other state agencies do
20 this, that is expected. But what is the state
21 insurance fund representative doing, coming along
22 with him to go to the widow? Because we had an
23 inflexible role in the Claims Department, and I mean
24 inflexible. You stay away from the widow who is

1 unrepresented. You have no right to visit the widow.
2 Particularly, if you know that she is unrepresented
3 by an attorney. And you should not even know that.
4 It is not your business to mix in with any widow,
5 because we do not State fund claims department's
6 administration, did not wish to intrude on the widows
7 shortly after the fatalities, and that was
8 despicable. Either you show up. You know one of the
9 three biggest lies in history. I am from the
10 government, and I am here to help you. And we can
11 all start laughing. Because when they came to these
12 widows, of course they extended their solace and
13 their condolences, that is okay. But you had
14 absolutely no right to discuss Worker's Compensation
15 benefits. You knew that there was going to be a
16 probability of intentional tort here. From an
17 honorable fashion, from an ethical viewpoint, these
18 widows should have been advised by these men who
19 showed up, we feel sorry for what you went through,
20 but we would like you to understand that you have
21 options here. You do not necessarily have to accept
22 Worker's Compensation. Because you do have an
23 alternative which is sue -- to sue the State of New
24 York.

1 Now, just consider this. You take
2 a perpetrator who has just committed a crime. He is
3 arrested by the police. He has rights, they read him
4 his Miranda rights. You have got to do this or the
5 other thing, and we are here to protect you, the
6 police say. Quite properly. Did anybody read the
7 rights of these widows during this vulnerable
8 position, during this vulnerable time, just few days
9 after the fatality, and then within two weeks get a
10 first payment of compensation which precluded them
11 from suing the State of New York. Now, how often
12 does that happen? I only worked with the State of
13 New York -- the State Insurance, for fifty years I
14 attended hearings over a period of years. I was
15 aware of thousands of widows cases. I never came
16 across a single instance where payments were made to
17 a widow prior to the hearing. Here you have nine or
18 ten widows who all got Worker's Compensation
19 benefits, surely for not their benefit, that is where
20 the hypocrisy was. Had there not been any hypocrisy,
21 either Commissioner of the Department of Corrections
22 would have pointed out the alternatives to the
23 widows, but he may not know much about Worker's
24 Compensation. But the representative of the State

1 Insurance Fund absolutely knew about the alternatives
2 and the quicker you get to a widow and get a payment
3 out to her, she will have no time to sue you. Again,
4 because she is vulnerable. She is heartbroken, she
5 does not know what to do. And she was not given the
6 two, three months window of opportunity that over
7 ninety nine percent of widows who wait for the first
8 hearing. They were being given a window of
9 opportunity to get representation. That is why over
10 ninety nine percent of widows show up with an
11 attorney. That is where the hypocrisy comes in.
12 That is where the state acted in a despicable
13 fashion. Knowing that if they can get the payments
14 to the widows, there would be no suits. And they
15 were successful in the State of New York, the State
16 Insurance Fund, acting from the State of New York,
17 they were successful where many private employers
18 were unsuccessful.

19 What do I mean by that? You have
20 an individual who is working for a private employer.
21 He has a fight with his boss. So we start
22 investigating. We have to determine if the fight had
23 anything to do with the job. Maybe the boss was
24 hitting on the employees, vice -- or vice versa. So

1 they get into that kind of an altercation. Well, if
2 we find out anything like that, we are not going to
3 accept liability. So what do we do? We file a
4 notice of controversy at the form C7. We, the State
5 Insurance Fund Claims Department are not going to
6 accept liability in this case. And we so advise to
7 Worker's Compensation Board, and we advise the
8 claimant and also the employer, and, would not you
9 know that the employer would be calling up the Claims
10 Department and the State Insurance Fund and
11 frequently enough coming up to me as the head of the
12 department, Mr. Jacobs, would you do me a favor?
13 Would you withdraw your controversy. And, I in a
14 naive way would say, why would you want me to
15 withdraw the controversy? Well, you know, he is
16 liable to sue me. Well, I am very sorry if you are
17 in this fund. He is going to sue you, he is going to
18 sue you. We are not withdrawing our controversy.
19 Private employers are unsuccessful in getting away
20 with that kind of ploy in the State of New York. No
21 problem at all. Get somebody over to the widows, get
22 to them early on. Get to them before they start
23 thinking. Get to them while they are -- while they
24 are still in the state of shock. Promise them that

1 they are going to get Workers Compensation benefits.
2 And, that is exactly what happened. And I saw in one
3 instant for instance a form, when we accept
4 liability, and we send out the first payment, we file
5 what is called a form C6 with the Worker's
6 Compensation Board, and with the claimant, advising
7 the Worker's Comp -- we have accepted liability in
8 this case and the first payment has gone out. But it
9 should never happen. And it had never happened prior
10 to 1971, where any widow got benefits before a
11 hearing except with these widows. Was it accidental?
12 Was it coincidental? No. It was not accidental that
13 they got their benefits so early on. It was not
14 coincidental. It was with malice aforethought,
15 because the state knew that the acceptance of
16 Worker's Compensation would preclude the possibility
17 of a law suit against the State of New York. But how
18 could you expect widows in their state of shock,
19 right after the fatality, to know anything about the
20 Worker's Compensation law? And they hardly have time
21 to get an attorney. None of them did have an
22 attorney except in one instance, and that was a
23 freak -- freakish. One might almost say that it
24 proved the case. So when you look at the system, and

1 the way it happened, this was a miserable thing to
2 happen to these widows. This was no way to treat the
3 widows. The State of New York should not have gone
4 out of its way to advise the widows, we are going to
5 get payments out to you as fast as possible. They
6 make sure to tell the widows, you have an
7 alternative.

8 Or do you think they had said to
9 the widows that you have an alternative, that is a
10 very naive question on my part. Of course, they did
11 not tell the widows because they were there to make
12 sure that the widows would accept early payments and
13 they were paid within two weeks at a fatality, which
14 is extraordinary. You cannot go back from 1914 to
15 1971, and come up with a similar case where a widow
16 received payments before a hearing. That basically
17 is my testimony. Now I am open to questions.

18 MR. VOLKER: Can I have -- with
19 your knowledge of this -- this process. In order to
20 get this unusual set of circumstances to occur --

21 MR. JACOBS: Yeah.

22 MR. VOLKER: -- that is you are
23 getting a representative out, you are getting --
24 within two weeks you are getting a turnaround?

1 MR. JACOBS: Right.

2 MR. VOLKER: Who would have the
3 power to do that?

4 MR. JACOBS: The Director of
5 Claims, and I served it in that capacity for ten
6 years. This was a policy that I inherited, and it
7 went back many, many, many years as a hearing rep in
8 the 1960s, as an associate compensation claims
9 examiner, same level as the head of the Rochester
10 office, we were all aware of the fact. You do not
11 pick up the phone and talk to the widow. You send,
12 do not send -- you do not authorize a payment to the
13 widow. This was an inflexible rule. And I mean
14 inflexible. And had it ever occurred during my
15 administration, I would have brought the person up on
16 charges.

17 MR. VOLKER: Was this -- this
18 inflexible rule, is that a rule that is written?

19 MR. JACOBS: No, it is not written.
20 It does not have to be written. That are many rules
21 that are understood. You do not go out stealing, you
22 do not need to have a rule to that. You do not go
23 around insulting people, you do not have to have a
24 rule for that, and you do to take advantage of widows

1 naivete and vulnerability, you do not have to have a
2 rule for that. I mean a written rule.

3 MR. VOLKER: So -- a written rule,
4 I understand. So, then it would have been someone
5 who was in your position who would have had the
6 authority to violate the rule?

7 MR. JACOBS: He was the only one --

8 MR. VOLKER: The only one.

9 MR. JACOBS: -- who could have
10 overridden the rule --

11 MR. VOLKER: Right.

12 MR. JACOBS: -- because he set the
13 policy. And I inherited that policy. And, I just
14 kept that policy going. And ever since 1971, there
15 has never been an instance of a widow getting
16 payments before a hearing. I would like to see it.

17 MR. VOLKER: Okay. Thank you.

18 GOORD: Could I just ask a
19 question?

20 MR. JACOBS: Surely.

21 GOORD: And this is something we --
22 we have not heard, but what would happen -- let us
23 assume that all the widows did what Mrs. Jones did,
24 and said I refuse to accept anything. And Mrs. Jones

1 believe me, I will get into it, I -- I know her
2 pretty well, or I did know her. Would they have
3 gotten any kind of benefits at all?

4 MR. JACOBS: They would get no
5 benefits since they are making an election. In other
6 words --

7 MR. VOLKER: Yeah.

8 MR. JACOBS: -- if they were
9 intelligent or knowledgeable enough to know the
10 Worker's Compensation system, and how could they be
11 knowledgeable enough when ninety nine percent of the
12 population of the State of New York are not
13 knowledgeable. But if they had not accepted -- had
14 they done what Linda Jones did, freakishly, they
15 would have been in the same position as Ms. Jones and
16 then of course, the State of New York, the
17 Rockefeller Administration would have been faced with
18 ten suits instead of one. And that does not sound
19 politically appetizing.

20 MR. VOLKER: Yeah, there would have
21 been faced with suits by the inmates also. But --

22 MR. JACOBS: Well, I --.

23 MR. VOLKER: -- but, I mean that is
24 a different issue.

1 MR. JACOBS: Yeah.

2 MR. VOLKER: -- I mean --

3 MR. JACOBS: Yeah, a different
4 issue --

5 MR. VOLKER: -- once -- once, they
6 opened it up, that was I think part of the problem.
7 Now, let me ask you another question. Has anybody
8 else in the State of New York, ever been able to
9 maintain an intentional -- I am talking about state
10 employees, were they able to maintain --

11 MR. JACOBS: Of course.

12 MR. VOLKER: Over here?

13 MR. JACOBS: Oh, yes. Over a
14 period -- you go to the citations under Section 11 of
15 the Worker's Compensation Law.

16 MR. VOLKER: Yeah.

17 MR. JACOBS: And they have hundreds
18 of citations of intentional tort --

19 MR. VOLKER: State employees?

20 MR. JACOBS: Including state
21 employees.

22 MR. VOLKER: Yeah. I do not think
23 you will find very many --

24 MR. JACOBS: I did --

1 MR. VOLKER: -- in Jones case, I
2 guess Jones case has never been used as a -- as a
3 citation by -- I mean I am not -- you know, listen, I
4 fought for years, trying to overcome this. I put
5 legislation in to try to develop a lawsuit, all the
6 stuff which -- you know, they have been passed in
7 Senate one time which would -- would have allowed
8 these people to sue --

9 MR. JACOBS: Uh-huh.

10 MR. VOLKER: -- create another
11 law --

12 MR. JACOBS: Especially if they
13 were unrepresented. That was --

14 MR. VOLKER: Well, I mean it had
15 nothing to do with unrepresented. We were -- we were
16 trying to create -- we created a lawsuit that Mr.
17 Tenney and I were working together to come up with
18 that legislation. We could not -- you know, for lots
19 of reasons, we could not get it through the assembly,
20 but one of the arguments was that if we did that,
21 that we would create the possibility of a cause of
22 action for the inmates. I argued that was not true
23 and that would not happen, but that was one of the
24 arguments that went on. But, you know -- you present

1 a -- a very interesting -- you know, something I
2 think that very honestly none of us really -- really
3 thought of, because the understanding on Workers
4 Comp. was, that you started out with the
5 understanding that if you -- if you are employee, you
6 cannot sue. And then you work on from there but --
7 present.

8 MR. JACOBS: How many people are
9 aware of the exceptions of Section 11?

10 MR. VOLKER: No, I understand.

11 MR. JACOBS: And least of all, the
12 widow.

13 MR. VOLKER: Yeah.

14 MR. JACOBS: But an attorney -- a
15 compensation attorney would know that immediately,
16 that is why when the widows come in representing over
17 ninety nine percent by an attorney --

18 MR. VOLKER: Yeah.

19 MR. JACOBS: -- you find attorney
20 after attorney saying to the Law Judge, Your Honor,
21 please adjourn this until we resolve the lawsuit that
22 we have filed, and of course, no payments would be
23 going out after that.

24 COMMISSIONER GOORD: Let me just

1 follow to that. I am -- I am not -- I understand
2 that you have done a great job when you served on --
3 but as we researched the issue. Prior, did you say
4 there are a couple of things I just want to make
5 sure, number one is, it was very unusual if that ever
6 happened that the widows here did not have a hearing.
7 And there are not that much, I have identified how
8 many cases there were prior to '71 or probably after
9 '71, that did not have a hearing --.

10 MR. JACOBS: Wait, wait. If they
11 are going to get benefits, death benefit to widows.

12 COMMISSIONER GOORD: Death
13 benefits.

14 MR. JACOBS: There has to be a
15 hearing.

16 COMMISSIONER GOORD: Okay. There
17 seems to be --

18 COMMISSIONER GOORD: -- another
19 hearing.

20 MR. JACOBS: Right, and at the
21 first hearing --

22 COMMISSIONER GOORD: -- so there
23 are no cases prior to this. I just want to make sure
24 we got prior to 1971 --

1 MR. JACOBS: Yes.

2 COMMISSIONER GOORD: -- or after

3 1971 --

4 MR. JACOBS: Right.

5 COMMISSIONER GOORD: -- were a

6 widow did not have a hearing.

7 MR. JACOBS: Right. And even if
8 they got -- even in these cases, where they got
9 payments before the hearing, there still has to be a
10 hearing, because you have hearings.

11 COMMISSIONER GOORD: So, you are
12 saying even though they accept this case?

13 MR. JACOBS: Yes.

14 COMMISSIONER GOORD: There still
15 should be a hearing?

16 MR. JACOBS: There was a hearing.
17 There has to be a hearing.

18 COMMISSIONER GOORD: So, 'every --

19 MR. JACOBS: In every serious case,
20 there is going to be a hearing. Someone fractures
21 his leg, he gets payments immediately, there is a
22 hearing. The Board wants to make sure he gets proper
23 benefits.

24 COMMISSIONER GOORD: I understood.

1 I just want to make sure I know what you said. The
2 widows
3 that are here today.

4 MR. JACOBS: Yes?

5 COMMISSIONER GOORD: They accepted
6 benefits in a very unusual matter?

7 MR. JACOBS: Right.

8 COMMISSIONER GOORD: Did they have
9 a hearing?

10 MR. JACOBS: Absolutely. They must
11 have had a hearing. But, whether they did or they
12 did not, it did not matter because they got the
13 payments --

14 COMMISSIONER GOORD: No -- no.
15 I understand that you said, they
16 had the hearing?

17 MR. JACOBS: They had to have.

18 MR. AUBREY: -- unusual modern
19 process, getting payment prior to the hearing?

20 MR. JACOBS: Yes.

21 MR. VOLKER: So, --

22 MR. JACOBS: Not only unusual,
23 unprecedented, -- unique.

24 MR. AUBREY: -- 1971, after

1 these --

2 MR. JACOBS: Right.

3 MR. AUBREY: Now, but you do not
4 personally know that the hearings were held or not?

5 MR. JACOBS: Why did the
6 hearings -- were held --

7 MR. AUBREY: I -- I understand
8 that.

9 MR. JACOBS: I do not personally
10 know, because I did not examine any of these
11 particular cases. But it is relevant.

12 MR. AUBREY: I understand your
13 point.

14 MR. JACOBS: It's irrelevant.

15 MR. AUBREY: I was just trying to
16 determine whether this was -- whether or not we knew
17 this.

18 MR. VOLKER: Right.

19 MR. GOORD: Okay.

20 I know, you helped me a lot. Now,
21 let me go back to the issue of intentional tort,
22 chapter 11. Do you know this -- the way you see it,
23 where you told me you -- prior to 1971, that chapter
24 11 is still in existence?

1 MR. JACOBS: Yes, Section 11 --

2 COMMISSIONER GOORD: -- Section 11.

3 MR. JACOBS: Right --

4 -- and is still in position.

5 # MR. EVE: -- is still in

6 position. Which says -- which says what?

7 MR. JACOBS: Basically, its says

8 that when --.

9 COMMISSIONER GOORD: And it goes
10 for state employees --

11 MR. JACOBS: It goes to all
12 employees --

13 MR. VOLKER: Okay.

14 MR. JACOBS: -- including state
15 employees. That if there is an injury on the job,
16 their first remedy -- their only remedy is Workers
17 Compensation Benefits, with two exceptions. One
18 exception as I said previously, if the employers does
19 not have worker's Compensation insurance, so they sue
20 the employer. The second one, you got to go to the
21 citations and you see if there is intentional tort,
22 they have a right to deny the acceptance of Worker's
23 Compensation payments and suing the employer, and
24 this is very common, because there are many, many

1 fights on the job. Many employees who are injured by
2 their employers one way or another, and they will not
3 accept Worker's Compensation, they are going to sue.

4 COMMISSIONER GOORD: But do you
5 think that there are -- they are all working -- do
6 you think there are cases prior to this tragedy?

7 MR. JACOBS: Yes.

8 COMMISSIONER GOORD: Where a
9 employee -- maybe not a death benefit or maybe a
10 death and did not accept Workman's Comp.

11 MR. JACOBS: Yeah.

12 COMMISSIONER GOORD: It was done
13 right. They went to the hearing.

14 MR. JACOBS: Right.

15 COMMISSIONER GOORD: And they sued
16 on intentional tort?

17 MR. JACOBS: Yes. In other words,
18 they knew that this was a case, an exception. That
19 was an intent. The only way they would know by the
20 way.

21 COMMISSIONER GOORD: Now, I
22 understand you made it very clear, the only way they
23 would know is -- ninety nine percent --

24 MR. JACOBS: Right. Because they

1 represent, and they would not even be speaking up.
2 The attorney would do all the talk -- all the talk.

3 MR. AUBREY: Do you think it is
4 unusual that no attorney got to any of these widows
5 prior to the state insurance fund?

6 MR. JACOBS: Well, not quiet --
7 that is why I found it so despicable, because the
8 state acted early on, they visited the widow, offered
9 their condolences, my hearts in the right place.
10 They visited the widows shortly after the fatality.
11 And, then the widows unknowingly, unwittingly
12 accepted the payment that came in. How would the
13 widows know anything about Section 11, or alternative
14 remedies or other options or intentional tort. I
15 will tell you this. Most non comp. attorneys -- most
16 regular attorneys know very little about Worker's
17 Compensation. That is why I have a son-in-law who is
18 an attorney, and when he gets an individual who faces
19 a Worker's Compensation, he does not touch them, he
20 sends it out to a specialist.

21 MR. AUBREY: I know.

22 MR. VOLKER: Do you --

23 MR. AUBREY: I want to see the guy
24 that rules against you.

1 (Laughing)

2 MR. AUBREY: -- you are right.
3 Now, this is -- this is a question of -- to what
4 end -- state pays out millions of dollars --

5 MR. JACOBS: Compared to the
6 budget?

7 MR. AUBREY: Compared to a budget.
8 All kinds of issues. Was the purpose here in your
9 mind, to avoid the sue for publicity sake, or the
10 sue --

11 MR. JACOBS: We have to be
12 realistic. Every politician -- want -- look, I
13 worked as a civil servant and I was interested in
14 being promoted, and I worked very hard. I came out
15 number one on the list, so I could be promoted. Now,
16 any person -- hate the word politician but even
17 Lincoln was a politician, but anyway, when you get
18 a certain position in the political field, obviously
19 you are looking ahead. So, everyone has ambitions.

20 Now, how does it look from the
21 Rockefeller situation with the disastrous way it is
22 handled, this particular re-taking of the prison.
23 Okay, you can hide all the arguments in the world.
24 Did he do it properly, did he do it improperly. But

1 he was not getting any lessons for the way he did.
2 If you read the newspapers throughout the country,
3 probably more evidenced of disgrace rather than
4 grace. All you have to do is recall some of the
5 comments. So, he was a politician. He wanted to be
6 the President. How would it look if ten widows are
7 successful in suing the State of New York, and under
8 what conditions. Not just the fact that they
9 overlooked their rights. No, they were made to
10 overlook their rights. Had these widows been allowed
11 the normal period of two to three months, they all
12 would have been represented. But, he did not allow
13 that. Or the powers-to-be, did not allow it. Get to
14 the widows as fast as possible, and they were very
15 successful. Very successful.

16 MR. EVE: Can you answer a question
17 for me --

18 MR. JACOBS: Sir?

19 MR. EVE: From what you heard this
20 morning of the previous gentleman who testified
21 before us, would you state that the State of New York
22 could be charged with intentional tort, by their
23 actions?

24 MR. JACOBS: There is no question

1 in my mind that there is intentional tort. That --
2 if you fire in a random fashion, in a random fashion
3 and you do not know who you are going to hit. You do
4 not know who you are going to hit. Now, by the way,
5 I am not an attorney.

6 MR. EVE: Okay.

7 MR. JACOBS: But, as I recall, that
8 has already been ruled upon in the Linda Jones case.
9 That there is intentional tort. Now, what was good
10 enough for her, in terms of the intentional tort,
11 automatically would carry over to all the other
12 widows. It has to be. Now, you might agree with the
13 judge or the appellate division or the court of
14 appeals, or whatever, who made that decision about it
15 being intentional tort. But, as I say, I am no
16 attorney. I am not going to argue with the law. And
17 that is the law in this particular case.

18 MR. EVE: Do you believe that
19 because of the other regulations, but the normal
20 procedure in such a case that the hearing would --
21 should have taken place about two months. Do you
22 believe that the visit to the widows, and the way
23 this was done --

24 MR. JACOBS: Yes.

1 MR. EVE: -- was this encouraged
2 from your working in the field, by some people higher
3 up --

4 MR. JACOBS: It could possibly have
5 been --

6 MR. EVE: -- then -- then -- that
7 gentleman and the Rochester Bureau --

8 MR. JACOBS: He was --

9 MR. EVE: -- that --

10 MR. JACOBS: -- put your finger on
11 it.

12 MR. EVE: -- the claims. Okay.
13 Let me -- do you believe he was told --

14 MR. JACOBS: absolutely.

15 MR. EVE: -- they were told what to
16 do?

17 MR. JACOBS: He had no authority to
18 do two things. Either to visit the widows; which was
19 an absolute no -- no -- inflexible rule, is you
20 cannot visit the widows before the hearing. And the
21 other thing is, to issue a payment which came out of
22 his office. Within two weeks, a payment was issued,
23 which came out of his office and he could not have
24 done it without contacting Claims Administration in

1 the home office and being told by the highest level
2 of the Claims Department. You do what you are told.
3 I mean he is a subordinate employee, he is going to
4 follow orders.

5 MR. EVE: And the highest --

6 MR. JACOBS: What kind of claim is
7 that?

8 MR. EVE: The highest level of the
9 Claims Department --

10 MR. JACOBS: Absolutely.

11 MR. EVE: -- who appoints that
12 person?

13 MR. JACOBS: That person, well, I
14 have to answer one way or another. The first
15 Director of Claims was someone called Colonel Saul
16 Singer. Going back to the thirties. His Godfather
17 happened to be Governor Lehman. And Governor Lehman
18 created a new Department -- created a new
19 Department --

20 MR. EVE: That is a surprise.

21 MR. JACOBS: -- I know going back
22 into history. Governor Lehman created a new
23 Department in the state insurance Department --

24 MR. EVE: --.

1 MR. JACOBS: -- and put his godson
2 in charge of it. So, it came from the Governor.

3 MR. EVE: It came from the
4 Governor.

5 MR. JACOBS: His -- his successor
6 did not come from the Governor. He did not have that
7 kind of clout. The Executive Director of the State
8 Insurance Fund, very often is given the option to
9 choose his own Department heads and that went along
10 until I came along. When I was the Assistant
11 Director in the early 1980s, my Claims Director Mr.
12 Bergman, put in his papers. He was resigning or
13 retiring and theoretically I know nothing. I, as the
14 number two individual, should have gone right into
15 his slot. However, I had a subordinate who was a
16 member of the Bronx Democratic Club. And, the
17 Executive Director was a member of the Bronx
18 Democratic Club. And the Executive Director told my
19 subordinate, you are the next Executive Director.
20 Now, how did I get the job? I mean you are -- you
21 are the next claims --

22 MR. JACOBS: -- you are the next
23 Claims Director. So, how did I get the job?

24 MR. EVE: Okay. Thank you.

1 MR. JACOBS: Do you wish to know
2 how I got it? I will tell you.

3 MR. EVE: We are almost afraid to
4 ask. We are almost afraid to ask. This is being
5 taped. Now, I do not --

6 MR. JACOBS: Okay. That is okay.
7 What happened was that a couple of attorneys called
8 me up, and they were were just fine. In a
9 compensation case, that Burton was leaving and when
10 are you taking over? When am I taking over? I said
11 I am not going to take over. My subordinate is going
12 to take over. He says that is utterly ridiculous.
13 Okay. So, one particular attorney who happened to
14 admire me, one way or another, got in touch or he was
15 gotten into touch by Palomino --

16 MR. VOLKER: Fabien Palomino?

17 MR. JACOBS: Fabien Palomino, a
18 personal friend of Governor Coumo.

19 MR. VOLKER: Well, now we know that.

20 MR. JACOBS: And why did he get in
21 touch with this particular attorney? Because they
22 went to the same Law School. And my particular
23 friend, the attorney, was the editor of the Law
24 Journal and he would get articles from Palomino, so

1 they got to know each other. So, when Governor Coumo
2 became Governor, his first appointment was Fabien
3 Palomino, who happened to be the best man in his
4 wedding. I mean this is how you get jobs, of course.
5 At any rate --

6 MR. VOLKER: It is almost as
7 devious as being headed of the Bronx --.

8 MR. JACOBS: You are right. So,
9 what happened was, Fabien Palomino calls up this
10 attorney, he says come on up and sit in my office.
11 He was in the World Trade Centre. And he then came
12 up to the office, they got -- they had lunch
13 together, and then -- Palomino turns to the attorney,
14 he says look, your Field is worker's Compensation,
15 yes. I mean ninety nine percent of my activities are
16 in worker's Compensation. Is there anything I can do
17 for you? He says, yes. You can do something for me.
18 I do business more with the State Insurance and
19 Claims Department than any other Insurance Company in
20 the State of New York, and the current Claims
21 Director is leaving, and I would like to see the
22 number two man Morris Jacobs get the job. And Mr.
23 Palomino said, he has got it. Okay? But the
24 Executive Director did not know that. So, time went

1 along and then I was told, Morris, you better do
2 something, because so and so is going to get your
3 job -- your subordinate. I said, no, I have a good
4 friend, although I never met him -- Palomino.

5 Okay. So, my attorney friend calls
6 up Palomino and says, are you doing anything about
7 Morris Jacobs? That afternoon Palomino was in
8 Albany, he looked in the office where they have
9 appointments and they had put my name -- Morris
10 Jacobs, Director, in -- in the Department of
11 Insurance, instead of the State Insurance funds. He
12 immediately had that switched. He called up the
13 Executive Director of the State Insurance Fund and he
14 said, by the way what are you doing about the next
15 Claims Director? I want you to consider Morris
16 Jacobs. That was the end of it. This is the
17 Governor's office calling, and I got the job.

18 So, there were only two individuals
19 who got jobs through the governors office, one Saul
20 Singer, because he had a godfather who was the
21 Governor. And I, because I had a friend who happened
22 to know Palomino.

23 (Applause)

24 MR GOORD: Answer these very

1 briefly.

2 MR. JACOBS: Have I got time?

3 MR. EVE: Yes. Answer these very
4 briefly for me.

5 MR. JACOBS: Okay.

6 MR. EVE: How are the widows to
7 survive, if they do not get a -- is there some other
8 way that -- say, the officer who was killed, has a
9 wife with ten kids, living almost pay check to pay
10 check --

11 MR. JACOBS: Yes.

12 MR. EVE: -- is there any way that
13 we provide as a State -- is there some kind of
14 interim while they are waiting for a hearing for two
15 months?

16 MR. JACOBS: You mean, while they
17 are waiting for a hearing?

18 MR. EVE: Yeah, while they are
19 waiting for the hearing?

20 MR. JACOBS: That is one of the
21 problems, that the widow has to wait two to three
22 months. Now, there have been many suggestions that
23 the Worker's Compensation Board should set up very
24 early hearings.

1 MR. EVE: Yes.

2 MR. JACOBS: Let us say, within
3 three or four weeks, rather than two, three, four
4 months.

5 MR. EVE: Two or three months.
6 Okay.

7 MR. JACOBS: But, there is a
8 problem here too. It would deny the widows enough
9 opportunity to think of getting themselves an
10 attorney. So, I would think it is a good policy. I
11 have seen law judges do this. Referees do this.
12 When a widow comes in unrepresented, they turn to the
13 widow and say, get yourself an attorney. So, at
14 least he is -- he is knowledgeable enough to protect.

15 MR. EVE: Can you just tell me
16 whether or not the unions have -- because I see some
17 union representatives, and God forbid that this ever
18 happens again --

19 MR. JACOBS: Yes.

20 MR. EVE: -- but, I think the union
21 has to feel -- find some way of developing a fund or
22 whatever, so that if an officer --

23 MR. JACOBS: Yes, union --

24 MR. EVE: -- is killed. That the

1 family will get something to survive.

2 MR. JACOBS: Right. I -- I happen
3 to agree with it.

4 MR. VOLKER: Can I just -- two
5 questions I want to ask you?

6 MR. JACOBS: You can ask three,
7 sir. I would love to answer.

8 MR. VOLKER: Okay. First of all,
9 can I ask -- this is very personal. How old are you,
10 Mr. Jacobs?

11 MR. JACOBS: 81.

12 MR. EVE: 81?

13 : Praise the lord.

14 MR. VOLKER: -- young looking guy.

15 MR. EVE: I would like to grow to
16 look like you.

17 MR. VOLKER: I thought I was the
18 only person in this place that remembers Dewey. And
19 I am serious.

20 MR. JACOBS: Do you know, I was
21 impressed by Governor Dewey.

22 MR. VOLKER: I was too.

23 MR. JACOBS: When he stood up and I
24 stood up -- we were -- I was just as tall as he was.

1 MR. VOLKER: He was my father.

2 MR. JACOBS: Very, very impressed
3 with that. And I -- I stood next to Pataki.

4 MR. VOLKER: I know.

5 MR. JACOBS: He was --

6 MR. VOLKER: I am getting off. I
7 am getting off.

8 But one of the reasons my father,
9 or Dewey loved my father was because my father was
10 5'8". And Dewey wore elevated shoes. He did not
11 want to
12 stand --

13 MR. JACOBS: And he sat on a
14 telephone book.

15 MR. VOLKER: That is right. And he
16 did not want to stand next to people who were taller,
17 so he would always have my father right over next to
18 him. I was just a kid, by the way. That -- but I --
19 I really was. But, I can remember that I looked in
20 awe, but I thought I would tell you that, because
21 when you said Dewey, I laughed, I thought -- Jesus,
22 there is nobody around here to remember Dewey. But I
23 remember that very well.

24 MR. JACOBS: Yes.

1 COMMISSIONER GOORD: Thank you, Mr.
2 Jacobs.

3 MR. JACOBS: Thank you, sirs. It
4 is pleasure to meet you.

5 (Applause)

6 COMMISSIONER GOORD: Nancy Quinn?

7 MS. NEWTON: Yeah, that is fine.

8 MS. NEWTON: There I go. You mean
9 I have to get off of my chair? Thank you, thank you
10 very much. Thank you very much.

11 COMMISSIONER GOORD: Thank you Mr.
12 Jacob.

13 MR. VOLKER: Thank you.

14 MR. JACOBS: Thank you. Thank you.

15
16 MS. NEWTON: Pretty Good. Good
17 afternoon. My name is Nancy Quinn Newton --
18 N-E-W-T-O-N. And my husband was William Quinn. Bill
19 and I met when we were 16 years old, at a local
20 grocery store where he was working as the staff boy
21 after school. He was a very handsome -- he was very
22 handsome with dark black hair and big beautiful blue
23 eyes. His long eyelashes and freckles just melted my
24 heart. I knew at first sight that he was the man I

1 wanted to marry someday. I went to the grocery store
2 every chance I could, just to see him and hoping he
3 could notice me and ask me on a date. He finally
4 asked me out on a date and we dated off and on for
5 several years. Bill was an Eagle Scout, a camp
6 councilor for several years, and an avid fisherman,
7 active in his church, and held a part-time job during
8 the school season. He saved money buy -- to buy his
9 own convertible at 16 years old. He worked at
10 Perrysburg Hospital as an attendant after high
11 school, and later transferred to West Seneca State
12 School for the mentally retarded children, where he
13 also worked as an attendant. Bill was a kind,
14 gentle, caring and loving man, who could be described
15 as an all-American boy. During these years, Bill and
16 I dated. Bill's parents were Albert and Marie Quinn.
17 Marie was a reporter for the Batavia Daily News. Al
18 was a meat cutter at the Attica Correctional
19 Facility. Bill's sister Fran and her husband Bob,
20 lived in Darian Lake. Bob also worked at Attica, as
21 a correctional officer.

22 Bill asked me to marry him and we
23 were married at St. Vincent's Church in Attica, in
24 New York in 1965. I remember that day like

1 yesterday. It was a bright sunny day and the
2 temperature was in the eighties, and remained in the
3 eighties for two weeks while we were on our honeymoon
4 in the Thousand Islands on the St. Lawrence River.
5 During this time, Bill worked at West Seneca State
6 School, where he got very attached to the patients he
7 took care of everyday. He came home one day after
8 work and asked me to meet one of his patients. She
9 was a little girl who had no hair. And all the
10 nurses and attendants pitched in to buy her a wig so
11 she could be just like the other girls at school. We
12 took a ride to the school to meet her. She was a
13 cute little girl and she was so very proud of her new
14 wig. Bill also had other kids he got very close to
15 during this time. Bill came home one night after
16 work very upset. One of the boys he was taking care
17 of, died in his arms and he just could not deal with
18 feeling so helpless. Bill applied to the National
19 Fuel Gas as a pipe fitter because this job would give
20 us good income and much needed medical benefits. It
21 was in Batavia, which was much closer to home. We
22 were enjoying our married life when the opportunity
23 to take the Correction Officer test became available.
24 On November 2nd, 1965, I gave birth to a beautiful

1 baby girl with Billy's black hair and long eyelashes.
2 We named her Deanne. Bill was very excited with our
3 new daughter, Deanne. She only weighed six pounds
4 and was very tiny. She was so tiny that he was
5 afraid if he held her, he might drop her. I assured
6 him he would be all right holding her, and he held
7 her like a fragile little package. You could see the
8 nervousness in his face and the days following, he
9 took an active part in helping me give her a bath,
10 preparing bottles and shopping for groceries. He
11 would rock her to sleep and sing to her. He was a
12 very proud daddy.

13 Before we knew it, we were
14 expecting another baby on October 1967. Bill and I
15 were blessed with a second baby girl, Christine.
16 Christine surprised her father and I with beautiful
17 red hair. During this time, we bought a house in
18 Attica, when we were closer -- where we would be
19 closer to our families. Bill loved his little girls.
20 He read to them before going to bed and we talked
21 about their future often. He even brought them home
22 a dog, Charlie. By this time, Deanne was five years
23 old and Christine was three years old. Bill was
24 hired as a Correction Officer and started his career

1 at Green haven Correctional Facility. He was
2 transferred back to Attica in 1970. My husband
3 worked vacation relief for much of the time he worked
4 at Attica. Bill had enrolled in college, classes at
5 GCC, that would eventually lead to a better job
6 opportunities inside or outside of the prison system.
7 Bill was also a leader in his community. He became
8 the President of the Attica Fire Department at this
9 time and worked endlessly to help the Fire
10 Department.

11 The days and weeks before the riot
12 were filled with reports of unrest by inmates. Bill
13 came home one evening and asked me to gather our
14 household expenses, the check book and any other
15 information. He said I needed to be familiar with
16 these items just in case something was to happen to
17 him. On September 9th, Bill left for work and I took
18 Deanne to school. I heard the prison and fire sirens
19 blowing continuously. I knew immediately something
20 was wrong. I went back into the house and stayed
21 close to the phone, just in case. In a very short
22 time, some time after nine am that day, I received a
23 phone call from someone telling me Bill had been
24 injured and was taken to St. Jerome's Hospital in

1 Batavia. My father-in-law was working at the prison
2 that day too, and we had no way of knowing if he was
3 safe before leaving for the hospital. I called my
4 parents and my neighbors. One of the neighbors took
5 care of getting Deanne out of school. The neighbors
6 kept Deanne and Christine until my parents were able
7 to pick them up and take them to Darian, until I
8 could get home. When Marie and I arrived at the
9 hospital, we were told that they had removed his
10 uniform, cleaned his wounds, cleaned all the blood
11 off of him, so that he -- we did not have to see
12 that. When I saw Bill, he was lying still, with
13 bruising and swelling all over his arms and large
14 bandages over his hands. His head was wrapped in a
15 large white bandage. It was not until later that I
16 realized that his hands were so badly injured in an
17 attempt to protect his head from a beating. The
18 hospital personnel did not know whether he could
19 speak to us or if he could possibly hear us. He was
20 breathing and his heart was beating. But he was
21 unconscious. I held his hand and talked to him the
22 whole time, hoping he would hear me and acknowledge
23 our presence. It was only a short time when the
24 doctors had decided that his head injury was much too

1 severe for him to be in the Batavia Hospital and they
2 transferred him to the Northside Hospital in
3 Rochester. Still at this time, we did not know if
4 Bill was alive. Mr. Andrews, our family friend, took
5 Marie and I to Rochester Hospital, where we stayed
6 for the remaining time with Bill. Later that day, Al
7 arrived at the Rochester Hospital and told us the
8 inmates had helped him escape. He found out about
9 Bill and drove by himself to the hospital. The next
10 couple of days were blurred. Nurses and doctors
11 checking Bill's vital signs and telling us that there
12 was nothing they could do as it would be at least
13 seventy two hours before we would know if he would
14 survive. They warned me, if he survived the severe
15 injuries, he could be in a vegetative state. We sat
16 there minute by minute, hour by hour, holding Bill's
17 hand -- holding my beautiful husband with love.
18 There were no guarantees, he did not speak to me any
19 time or acknowledge my presence. I talked to him and
20 told him the girls were all right and we loved him
21 and he was doing well. He seemed like he was doing
22 better the next day afternoon, so I took the time to
23 go home and check on our girls, and Marie and Al were
24 coming to be with him while I was with our girls. I

1 was taken home, saw our girls, changed my clothes,
2 got back to the hospital about three hours later. I
3 stayed as late as I could, but the staff encouraged
4 me to get some rest. Bill's friend, Charlie, who
5 lived in Rochester -- and he came and got me and I
6 stayed at their home until the next morning.
7 Needless to say, I did not sleep. I cried a lot and
8 I prayed a lot.

9 I was at the hospital again bright
10 and early to be with Bill. There were TVs in the
11 rooms and in the waiting rooms, and all had live riot
12 coverage on all the channels. The TV coverage was
13 horrifying. I could only picture the other families
14 and what they must have been going through, as their
15 loved ones being held hostage.

16 I prayed for them everyday. How
17 could this be happening and why was it happening? I
18 had just got back to the hospital and said 'good bye
19 to Bill's parents when I noticed a large commotion by
20 the hospital staff at Bill's door. An announcement
21 was made for a code blue. Nurses and doctors came
22 running. I went to go in to the room but was told to
23 go to the waiting room. It was only a little while
24 later when one of the staff came out and told me that

1 he had died of his injuries, and told me that there
2 would be an autopsy. I told them I did not want to
3 have an autopsy. But was told it was a homicide case
4 now, and I had no say in this decision. I was alone
5 at the hospital at this time and in shock over his
6 death. I cannot tell you the agony I experienced as
7 I had no idea of the time of the day, what to do
8 next, who to call, where to turn or who even came to
9 get me and take me home that day. The only thing I
10 could think of was what was I going to tell our girls
11 and how to tell the girls before it was on the news.
12 To tell our girls Di, five years old, and Christine,
13 three years old, that their father had died was the
14 most excruciating experience in my whole life. I was
15 shocked -- in shock myself and I do not know how I
16 managed to get through with those next days, weeks,
17 months during that time. I stayed at my parents home
18 for approximately three weeks after Bill's death. I
19 had lost so much weight that my cousin lent me her
20 dress for the funeral, as I could not and would not
21 go shopping to get one. The days before and after
22 the funeral are still blurred. I remember being at
23 the funeral home and the church ceremony and the ride
24 to the cemetery. But quite frankly, most of the

1 pertinent details are gone from my memory.

2 After the funeral, I went home to
3 stay -- after the funeral I went home to stay, only
4 to see one of Bill's uniform shirts and the desk
5 chair in the same place he left it that morning. I
6 went home to an empty house. I had never felt so
7 alone in my whole life. I slept on a cot in the
8 living room for a couple of weeks, because I did not
9 want to sleep in our bed. My parents, my brother,
10 Bill's parents, Bill's sister, Fran and my
11 brother-in-law Bob, Correction Officers' wives, my
12 neighbors, friends, helped me through those horrible
13 empty days. I had my mother call my minister, Fr.
14 Kerr, one afternoon, because I thought like I was out
15 of control and had nowhere to turn and no longer knew
16 what I was going to do. Fr. Kerr came to visit with
17 me and was somehow able to get through to me. I had
18 so many questions. Why? Why me? Why Bill? Why?

19 All during these days were calls
20 from the media asking for interviews, the media
21 asking to take pictures of our girls. Constant phone
22 calls of all kinds. During these days and weeks
23 after Bill's funeral, I visited the funeral home for
24 the other victims of the riot. There were visits to

1 our home by police officers and state officials. The
2 state officials brought papers for me to sign and
3 requested me to give them a copy of our marriage
4 license and the girls certificates -- birth
5 certificates. I signed the papers, because I had no
6 income. I did not know how I was going to keep up --
7 a roof over our heads, food on the table, and pay the
8 everyday expenses. I do remember receiving money to
9 buy a badly needed furnace for our home from a local
10 fund at the Attica state, that was set up from
11 donations to the families. There were promises that
12 the state would take care of us, and not to worry.
13 We -- we would have medical insurance, and an
14 education fund was set up for the children. The
15 Christmas of 1971 was one I will never forget. Our
16 house was filled with sadness instead of holiday joy.
17 I had done the Christmas shopping. On Christmas eve,
18 Bill and I usually bought toys together after the
19 kids go to bed. I was behind in wrapping gifts and
20 was so tired of asking for help. I found this task
21 so overwhelming that I just sat down and cried. I
22 was silently praying that someone would hear me and
23 come to help. A little while later, there was a
24 knock at the door and it was Alice and Teddy Willard,

1 who had stopped to see if there was anything I
2 needed. They knew I was upset as my eyes were red
3 from sobbing. They came in to help me wrap the rest
4 of the presents and put the toys together. I will
5 never forget that night or that Christmas. My
6 neighbors, friends and family helped us through all
7 of these rough times.

8 I knew that this holiday was the
9 first of many celebrations that Bill would never get
10 to see because of the rioting inmates' actions. I
11 was not eating. I had sleep deprivation, nausea and
12 irritability. I really felt awful, and decided to
13 see the doctor. I was told that I was pregnant with
14 our third child, just a few weeks after the funeral.
15 This was a blessing and a dilemma. Now I was going
16 to have a baby with no husband by my side during this
17 special time in our marriage. This baby turned out
18 to be a gift from God to help the girls and I get on
19 with our life. We now had something to look forward
20 to and plans to be made for the future. We talked
21 about what to name the baby, and all the first things
22 they would be helping with after the baby was born.
23 The scary stuff was, how was I going to take care of
24 a new born and two little girls, and I could not even

1 take care of myself. On the evening of May 26th,
2 1972, our third baby girl was born. My father and
3 father-in-law took me to the hospital. They were
4 sitting in the waiting room that evening, as Deanne
5 and Christine were being taken care of by our
6 families. A nurse came out to tell the proud daddy
7 of his new arrival and she noticed they were little
8 older than she had expected to see. But she asked
9 which one was the proud daddy and they both
10 acknowledged. They quickly explained the
11 circumstance and she was very understanding.

12 She made sure they both got to see
13 me, and their new grandchild, Amy Quinn, before they
14 left that night. Bill never got to hold this little
15 gift from God. My third daughter, Amy, born May
16 26th, 1972, only eight months after the riot. When I
17 held Amy for the first time with her huge blue eyes,
18 long eyelashes and dark hair, I knew Bill was with me
19 all through the pregnancy and the delivery. No one
20 could possibly understand the mental anguish I went
21 through those days. Sleepless nights, the constant
22 badgering of the media, the constant coverage of
23 television, radio, newspapers for years. I got an
24 unlisted telephone number. I was a prisoner in my

1 own home. It did not matter if I was tired, scared,
2 feeling sick and emotionally upset. Many nights, I
3 needed help to get the girls calm down. They cried a
4 lot, and so did I. Unless you experience this
5 tragedy, there is no way you could understand
6 whatever we were going through. Going to the grocery
7 store was even an upsetting task. It seemed like
8 everyone was looking at us saying there is the poor
9 little Quinn girls and their mother. No one knew
10 what to say most of the time. So they say nothing.
11 It was a very strange existence.

12 Bill's parents were very helpful
13 during this time with our girls. However, I could
14 see and feel Al's. Al and Bill spent countless hours
15 fishing together. Al would never again fish after
16 the loss of his son. Al did not talk about the riot,
17 nor did he talk about Bill, as it was much too
18 painful for him. His Mom wrote letters to the
19 newspapers concerning the riot. She wrote to the
20 officials many times, with and without replies to her
21 letters. She also did not talk about the riot, and
22 to talk about Bill was also very painful for her
23 also. How many -- how my girls longed to hear
24 stories about their father, but Marie and Al would

1 never talk about Billy. There was never so much as a
2 picture for the girls to see in the house. They were
3 wonderful people, who were so badly traumatized by
4 their son's murder. My girls not only lost their
5 father, but lost their grandparents as well. Only as
6 the girls grew older into their teens and 20s did
7 they demand pictures of Billy. Marie kept all of
8 Billy's belongings in a cardboard -- cardboard box.
9 She eventually gave them to the girls, a big box of
10 memories to sort through, with no words to go with
11 them. Bill's Mom and Dad grew old even faster than
12 expected, as their emotional state deteriorated each
13 and every day. They died without closure to their
14 son's death. The justice system failed to do their
15 jobs, but the inmates responsible for his death were
16 not made accountable for their actions. They were
17 pardoned by the Governor Carey. Bill's parents were
18 robbed of the only son they of -- Bill's parents were
19 robbed of their only son by rioting inmates, and an
20 antiquated prison system.

21 For many weeks prior to this riot,
22 there were signs of unrest. No one took these signs
23 seriously, and address them immediately. What in
24 God's name could they have been thinking? Our

1 Correction Officers are our last line of defense
2 against society's most dangerous criminals. It took
3 us thirty years to talk about this, and I am not
4 about to go away quietly. Many of the officials that
5 made the important decisions are dead now, and not
6 accountable for their actions.

7 When is it going to end? The
8 families existed in poverty, and emotional upheaval.
9 Apparently, it looks to me as if more time, effort,
10 and consideration was used to cover up the riot, than
11 to help the state's own employees and their families.
12 I only hope and pray that no other families will be
13 so forgotten as we have been. I could go on for
14 hours on pain and suffering, but I am not just going
15 to entertain any more of these painful memories. I
16 have endured enough hurt and pain for a lifetime. I
17 have been diagnosed with posttraumatic Stress
18 Disorder. I am trying to stabilize the remaining
19 years of my life. Bill went to work on September
20 9th, and my life has never been the same. The riot
21 was started by inmates, Bill's fatal injuries were
22 inflicted by rioting inmates. The state of New York
23 chose to do nothing prior to the end of the riot,
24 when in fact they had all the reports they needed to

1 lock down this prison and address the problems. My
2 husband was murdered, and forgotten by our prison and
3 judicial system. Bill went to work September 9th,
4 and my life has never been the same. Thank you.

5 COMMISSIONER GOORD: Thank you very
6 much.

7
8 MS. QUINN-SCHRADER: My name is
9 Christine Quinn-Schrader. C-H-R-I-S-T-I-N-E, Quinn
10 Q-U-I-N-N - Schrader, S-C-H-R-A-D-E-R. I am the
11 daughter of William Edward Quinn. William Quinn was
12 murdered during the Attica Prison riot of 1971. In
13 the summer of 1971, I was almost four years old. I
14 had a mother, a father, and a big sister. We lived
15 in a small town near both of my grandparents, aunts
16 and uncles. That summer, my Dad brought home a puppy
17 and we named him Charlie. I was a happy little girl.
18 Dad, Mom, Deanne and I had a peaceful life. We would
19 go to the park, go to church, and play in the
20 backyard for hours. My father was a big, strong,
21 handsome man with giant-like blue eyes, long black
22 eyelashes, and closely trimmed thick black hair. I
23 thought my Dad was Superman.

24 Then one morning the life I knew,

1 would never be the same. On September 9th, 1971,
2 sirens were blowing in Attica, and a neighbor
3 frantically took me to my grandparent's house in
4 Darian. I did not think that I was ever going to go
5 home. I did not see my mother or father for days,
6 and my grandparents did not tell us what was going
7 on. I remember Deanne crying and crying. At my
8 grandparents, I watched men working outside on the
9 telephone lines for days. These of course turned out
10 to be security for our family. I do not recall
11 exactly who told me that Dad was hurt or died, and I
12 do not remember the words used. I do remember
13 Marly's Funeral Home, I remember sitting in a green
14 room and a small black plate in the hall, with the
15 letters Q-U-I-N-N on it. I do not recall the
16 funeral, or where I was during the time. Mom told me
17 that she did not take us to view Dad. I remember my
18 Mom crying a lot and the neighbors, aunts, 'uncles,
19 and grandparents in and out of our house all day and
20 night. I remember Mr. Witcouski, a neighbor, and
21 Uncle Bob helping Dea and I get ready for bed. The
22 after-effects I can describe much more accurately.

23 The following summer, 1972, my
24 sister Amy was born, and there were a lot of diapers

1 to be folded. Mom was very busy caring for Attica --
2 caring for Amy. I remember her calling Acme Grocery
3 Store to tell the clerks that Dea and I were on our
4 way. Dea and I would walk to the store with a list
5 of groceries that Mom needed. When we got there the
6 clerks would help us get all the items we needed and
7 sent us back home with the change. During these
8 trips I learned -- during these trips I learned
9 quickly that Dea and I had become the Quinn girls. I
10 heard people say or whisper, "There are the Quinn
11 girls" all the time. Deanne was a petite little
12 girl, with Dad's big eyes and jet black hair. I was
13 a tall girl with bright red hair. I guess we were
14 easy to pick out of a crowd. In the Fall of 1972, I
15 entered kindergarten, I remember getting ready for
16 school that Fall, and Mom telling my teachers and the
17 school nurse about the terrible accident. I remember
18 telling classmates that my Mommy was at home, but my
19 Daddy was in heaven.

20 I remember leaving the classroom
21 crying, and going to sit in the hall -- and down at
22 the Nurses Station. I remember going to a new
23 church, shortly after Dad was killed. We used to go
24 to St. Vincent's with Grandma and Grandpa Quinn, but

1 then we started going to St. Lukes with Grandma
2 Willard. I remember Fr. Kerr coming to our house for
3 visits, and learning the Lord's Prayer. I thought
4 Fr. Kerr created the prayer especially for Deanne and
5 I. I recited, "Our Father who art in heaven," all
6 over and over again thinking that Dad could hear me.

7 In 1973, my Mom married Wayne, and
8 I got another baby sister. Our little house was
9 becoming very crowded. Dea, Amy and I were all in
10 one room and Rota was in the hallway. We built a
11 larger home in Darian, but that meant I had to change
12 schools. So by 1974, I had turned seven years old,
13 and my little life was so confusing. My father had
14 been murdered, my paternal grandparents make like my
15 father never existed -- barely mentioned his name.

16 I changed churches, and religion,
17 got a second sister, a step-father, a third sister,
18 moved to a new town, a new house, and went to a new
19 school. At my new school, the pain continues all
20 through primary and high school. I am singled out
21 year after year in history and asked if I would like
22 to leave, while they talked about the worst prison
23 massacre in the United States history. So even some
24 children who did not know, all became aware of my

1 situation. During my school years, I remember
2 waiting for social security checks each month to buy
3 new clothes, sneakers, and supplies. I bought my
4 senior prom gown with one of my last checks when I
5 turned 18. In 1985 I started junior college. Not
6 the college of my dream, my only choices were SUNY
7 schools with a Nursing Program -- with a Nursing
8 Program of my choice. I chose Alfred State, and off
9 I went with Mellisa's phone number from the Attica
10 Fund for Education. The fund covered my tuition, but
11 never allotted any money for books, uniforms, or
12 equipment. The first semester, I called Mellisa to
13 ask if there was any more money. I was required to
14 buy over a \$1,000 in books and uniforms, almost 20
15 years ago.

16 Within a couple of days on campus,
17 the Bursar's office sent me a notice that my tuition
18 was not paid, and I would not be able to register for
19 classes. I made my first, but not last trip to the
20 Bursar's office. The Attica word came to the campus
21 under the Tuition Assistance Program. But I always
22 exceeded the typical TAP award and the computer would
23 reject it. So every semester during my
24 under-graduate studies, I had to go to the Bursar's

1 office and explain that it was a special award that I
2 had received because my father was killed in the
3 Attica Prison riot of 1971. This total stranger did
4 not care, and I always had to get the Bursar for
5 approval. Then I would explain this story to him, he
6 would make a few phone calls, and finally approve it
7 for that semester. This went on for eight
8 under-graduate semesters at two SUNY campuses. My
9 sisters and I had never made it through a semester of
10 college without meeting the Bursar. This totalled
11 twelve years of under-graduate studies on six
12 different campuses. Amy and I, both went on to
13 complete graduate degrees without assistance. I
14 called our contact person Melissa to see if there was
15 any excess funds, which she said there was.
16 Unfortunately she was not allowed to give any more
17 education money if you had received your four year
18 stipend. Amy was unborn at the time of the riot and
19 remained the youngest child affected by this tragedy.
20 And excess at that time, supported that many children
21 did not choose to take advantage of the education
22 funding.

23 The excess in funds was never
24 explained to us, or made available for us to further

1 our graduate studies. I do want to thank New York
2 State for helping me pay for some of my education.
3 My father valued higher education and had planned a
4 dream that my sisters and I would attend college. I
5 did my best with the resources available to me to
6 better myself through education. I know my father
7 would be very proud of my accomplishments. Deanne
8 has an Associate Degree and a Bachelor's Degree. I
9 have a Bachelor's and a Master's Degree in Nursing.
10 Amy has multiple degrees in Psychology, Public Health
11 and Nutrition. As you can see, most of our degrees
12 are L.A. Health degrees. I learned a great deal
13 about coping, grieving, and adaptive behaviors, after
14 traumatic events through College. I am still
15 dumbfounded that no one ever offered any counseling
16 to my mother, my sisters, or myself.

17 Children today get counseling for
18 what looks like nonsense in comparison to this
19 trauma. As an adult, I can look back and I can see
20 that each developmental stage that I went through, I
21 grieved the loss over and over again at that
22 developmental level. My grieving was never complete,
23 it seemed. On the first date with my husband, we
24 stopped at his parents home and I was introduced as

1 Christine. I left the house, got in the car, and
2 waited for Scott. His father stopped him briefly to
3 talk, when Scott got into the car, he asked me if my
4 last name was Quinn, and I said, yes, why? His
5 father recognized me from when I was a little girl.
6 He just did not know which Quinn girl I was. But he
7 certainly knew I was one of Billy's daughters. After
8 months of dating Scott, his father told me of his
9 story of being one of the New York State Troopers
10 that stormed the prison. I cannot seem to get away
11 from this trauma.

12 In 1992 I started my career as a
13 Pediatric Nurse Practitioner in Williamsville, New
14 York. I worked at a suburban pediatric practice, and
15 was thriving in my new career. One Pediatrician
16 approaches me after months of working there, and
17 says, was your father Billy Quinn? And I said, yes.
18 I am forty miles from Attica and I still cannot
19 maintain my anonymity.

20 In 1993, Bill's father Albert was
21 terminally ill and dies within two weeks, after a
22 diagnosis of liver cancer. During these two weeks, I
23 feel compelled to take on the role of my father. I
24 stayed with my grandfather in the hospital, arranged

1 for his hospice care, and stayed by his side for two
2 weeks until his death. Everyday before I -- before
3 he died, I begged him to tell me stories about Dad
4 and he would always say -- no. I just wanted to know
5 if he was funny, what food he liked, anything to help
6 me piece together his life. I knew my grandfather
7 and father had a wonderful relationship. They loved
8 spending time hunting and fishing. After my -- after
9 my father's death, Grandpa Quinn never hunted or
10 fished again. He gave all his guns and fishing poles
11 away. I do not know if the memories were just too
12 painful, because he would never talk about it. It
13 was as if Billy was never alive. There was no
14 picture of Billy in their home and never a word
15 spoken. I am not sure if this was their way of
16 coping with the loss, but it was so unhealthy for me
17 as a child. I thought it was a dirty little secret I
18 had to cover up all the time.

19 In 1994, after cooking, cleaning,
20 shopping, and caring for Bill's mother Marie, it was
21 no longer safe for her to be at home, she was
22 admitted to a nursing home for the last five years of
23 her life. Every Tuesday, Thursday, Saturday, and
24 Sunday I visited her to play cards, feed her, walk

1 her, and be with her. Bill's only sister, Fran and I
2 managed her care together, until death came when we
3 were holding her hand. I will never forget aunt
4 Fran's words to grandma, "Its okay to go now, Mom.
5 You have been waiting so long to see Billy, and Dad
6 needs you too." Grandma Quinn took her last breath,
7 and her broken heart finally stopped beating.

8 Throughout my grandparents --
9 grandparents death and dying years, I remember being
10 angry with my father for leaving me here to fill his
11 role as a son. I was never allowed to be just the
12 granddaughter. I always felt that I needed to be my
13 father's stand-in. Before thirty years of age, I
14 have held both my grandmother and grandfathers hand
15 during their aging process, illness, and death. I
16 had to pick out caskets, clothing, and make funeral
17 arrangements with my aunt Fran, while trying to
18 maintain my professional career and care for my own
19 family.

20 In 1995, I married the State
21 Trooper's son. A kind, gentle man who remains very
22 empathetic towards this void in my life. In the time
23 leading up to my wedding, I really had to think
24 seriously what to do with my last name. I had

1 established my professional career as Quinn, it was
2 the only part of Dad that was not taken away from me.
3 From the outside it looked as if I was making a
4 feminist statement. But on the inside I was clinging
5 to the last piece of my father. It is going to get
6 bad now. I knew a time would come when I would feel
7 more ready, and there was a time.

8 On January 6th, 1998, I gave my
9 cherished last name to my newborn son as a first
10 name. My sisters and I all knew that one of us would
11 use Dad's name. But I was the first to have a son.
12 I contemplated William Edward Quinn-Schrader, but
13 thought it could be a very difficult name for a young
14 boy who would most likely be raised about twenty
15 miles from the gates of Attica. I decided that I
16 would just use Quinn as his first name, and I am so
17 pleased and happy with my choice. Now I can say
18 Quinn all day long and not feel sad. I hope to say
19 and hear his name as many times as I needed to hear
20 my fathers name throughout my childhood. From
21 Queensburgh onward I began to use my husband's name.
22 I know my son's name would bring him strength and
23 honor.

24 Other ways I have paid tribute to

1 my father is by attending memorial services at the
2 prison. They last about five minutes and then we are
3 instructed to leave. They are basically cold and
4 impersonal. I remember driving to the prison to
5 write down the words on my fathers monument and I was
6 asked to leave because I was trespassing on state
7 property. Can you imagine.

8 I also visited the Police Officers
9 Hall of Fame in Washington DC. I took three subways
10 and walked for miles to find the memorial. The three
11 foot cement walls with thousands of men and women's
12 name surrounded me. I found my fathers name and was
13 shown to take a small piece of paper, covers dads
14 name and scribble, so my sisters have -- and scribble
15 with the pencil to transpose the name off the cement.
16 I scratched and scratched so my sisters and mother
17 would each have one. Then I just sat down and cried.
18 How in the world was I paying tribute to my father by
19 doing this.

20 It would be decades before I would
21 really begin to understand the severity and the
22 complexity of this massacre. I also understand that
23 I will never know one hundred percent of the
24 circumstances surrounding my father's death. When I

1 learned that the inmates that started the prisoner
2 rio -- riot had filed the suit in the year 2000. I
3 was so outraged -- outraged and betrayed by our
4 judicial system. We all met at the Signature Cafe in
5 Attica, and for the first time in my life I got to
6 meet some of these other families who had also
7 suffered through this horrific event. It was like a
8 support group, only thirty years too late. As the
9 mayor, hostages, troopers and family members spoke, I
10 could not help but cry. The Mayor stated, I had to
11 walk over top of Billy Quinn laying on a mattress
12 covered with blood, holding his head. He had a huge
13 laceration on his head, even if would have survived,
14 he would have been a vegetable. Then the mayor used
15 his arms to show how big the laceration was and where
16 it was on his head. Why was this men stepping over
17 him to punch in. And if dad was so close to the
18 outside while he was not immediately taken to the
19 hospital. To know my father died of head -- head
20 injury from being beaten with board with enough pain.
21 But to learn that he laid there unattended and
22 suffering, is unforgivable. After learning this
23 horrific piece of information, I could not sleep
24 again for weeks. The more information that is

1 uncovered -- uncovered, the more hurtful of the
2 situation becomes. Again I find myself having to
3 re-grieve each and every new piece of information.
4 As well as I will continue to grieve, all the current
5 upcoming events of my life without my father. I do
6 not have scars on my feet from walking on broken
7 glass. Or healed physical injuries from the beating
8 after the prison was retaken. I live with
9 irreparable and I am here waiting my life. I needed
10 my father then and I still need my father now. The
11 inmates took him away and New York state never held
12 them accountable.

13 If I cannot have my father, then I
14 want justice and you can help give this to me. Thank
15 you.

16 COMMISSIONER GOORD: Thank you very
17 much.

18
19 MS. QUINN-MILLER: Okay. My name
20 is Amy Quinn-Miller. Last name M-I-L-L-E-R. I am
21 the youngest daughter of William E. Quinn. Unlike my
22 sisters who have cherished memories of -- with my
23 father, I do not. My situation is unique. I was
24 born eight months after my father was killed in the

1 riot of '71. I have lived my entire life, wonder
2 what my father was like. If I do truly look like him
3 and if he knows how much I miss him. I can remember
4 vividly the day my mother explained that my dad was
5 dead. I was five. It was the summer just a few
6 weeks before going to kindergarten. My mothers
7 intentions were to the prepare me for what others
8 knew that I did not and for questions that they would
9 ask. I remember crying with mom when she told me, my
10 mom was right. Before long I was being asked
11 questions by other children or teachers. Questions
12 like just, why is your last name different than your
13 mom and why is your -- why do not you look like your
14 younger sister. It seems that all of these questions
15 were asked daily. Knowing that my father died doing
16 his job, at a strange sense of pride. So being proud
17 of who I was, I would tell them the tragic story of
18 my fathers death. Beaten by inmates resulting in a
19 fatal head injury. I was the only school age
20 child -- child that knew the meaning of post-mortem.
21 Meaning I was born after my fathers death. My
22 memories are only of stories relating to my father.
23 My mother always told me that after my father was
24 killed, she learned of her pregnancy. Her doctor

1 suggested that she terminate the pregnancy due to the
2 emotional stress. She said she wanted to slap him.
3 On may 26, 1972, I arrived and unlike many babies at
4 birth, my father could not hold me. That opportunity
5 was taken from my dad because it was poorly welded
6 gate at times square that did not protect from
7 rioting inmates.

8 How sad for a young mother and a
9 new baby, not to have their dad. However, my
10 grandfathers were present there to hold me. Also
11 unlike many women, my mother did not have a baby
12 shower before I arrived. She was too scared,
13 something would happen to me. Who could blame her
14 for thinking that way. She thought my dad was just
15 going to work on September 9th 1971 and he would
16 return to my -- to her and my sisters after his
17 shift. A baby shower was given to my mother and I,
18 after I was born, by the Correction Officer's wives.
19 Growing up a few miles away from Attica was not easy.
20 When being introduced at community events or
21 neighborhood parties, it seems as though people were
22 always whispering, she is Billy's youngest. With the
23 look of sadness on every ones face and an awkward
24 silence that always followed.

1 School was also difficult.
2 Whenever we discussed New York State history and
3 Attica riot, I was allowed to leave the room. I put
4 my head down. This only made me feel different than
5 the other kids and that was a type of attention, that
6 caused others to whisper or ask questions. My
7 birthday parties were always a time of sadness for
8 me. I wish every year that my dad could be with me.
9 I wished my father's parents did not always look so
10 sad and avoid questions or discussing my dad.
11 Obviously it was too painful for them. When the
12 inmates killed my father, it took away a life time of
13 happy moments for me and my sisters, my mother and my
14 grand parents.

15 Each September is reminder of the
16 murder of my father. And the news papers and TV news
17 run stories about the Attica riot. Each time
18 mentioning my father as the first guard killed. For
19 thirty years I have been the unborn child according
20 to the media. It has offended me for years, the
21 reporters used this term as if I do not exist today.
22 I have never missed a memorial service held at Attica
23 in September. Even while in college I would drive
24 home on the date to participate.

1 What has been the worst over the
2 past thirty years is the pain and suffering the
3 murder of my father has cause -- caused my mother.
4 When the inmates broke through the gate at Times
5 Square, beat my father fatally, it took away my
6 mothers life long partner, her hopes her dreams and
7 her best friend. As a daughter it is very difficult
8 growing up watching your mother cry, every Christmas,
9 at birthdays, at weddings, at church, and at
10 graduation. Knowing that these tears are reflection
11 of her longing for her husband, her partner in life,
12 my father. Along with these tears, are stress and my
13 recently health problems as result of stifling her
14 emotions due to my fathers death, thirty years ago.

15 However I firmly believe this is
16 just what New York state government and a department
17 of corrections, officials wanted, if you do not talk
18 about it, it will go away well it did not go away.
19 Until February 2000, I only knew what my family had
20 told me about my father. My grand parents does not
21 discussed their son. Most of the information I now
22 have about my father's death and what occurred in
23 September 9th, is from the forgotten victims of
24 Attica members. I have learned a great deal from

1 other Correction Officers. Many of them telling me
2 stories of my father, which I cherish. Just recently
3 while at work, I was unknowingly introduced to
4 someone as Billy's youngest. At work no one knows
5 who I am. An elderly man standing before me looked
6 at me tears in his eyes and he said I am sorry. He
7 was a Correction Officer working at Attica in 1971,
8 and on September 9th, he was working on the farm
9 behind Attica. He told me how many of the old timers
10 knew something was going to happen, so most of them
11 were taking vacation time just to get out of the
12 prison. Unfortunate and my dad covered that vacation
13 time.

14 Stories like these and information
15 learned to the forgotten victims of Attica have told
16 me about specific events leading up to the riot and
17 how my father died due to an old gate in a lack --
18 lack of access to communication. With this new
19 information I have new pain. I have feelings of
20 anger and disgust towards New York state. The wid --
21 the widows and hostages were treated in 1971 was
22 underhanded and wrong. Last September marked the
23 thirtieth anniversary of the Attica prison riot. A
24 sad time for my family and myself. However on this

1 anniversary there was new joy for me. Just two
2 months before and my husband and I have had a baby
3 boy. And like my fathers other grand children, he is
4 named after him. His name is Liam which is Irish for
5 William. I am reminded daily of my father when I
6 look him, he is my son -- into my sons eyes, his big
7 blue eyes and long dark eyelashes like his grandpa.

8 When he is old enough, I will tell
9 him about the Attica riot. How the inmates killed
10 his grand father and he will know he has a grandpa in
11 heaven watching over him. In closing I would like to
12 thank you the task force for giving my family and I a
13 chance to tell a story of the Attica riot, seventy,
14 should have been prevented.

15 The way the widows and hostages
16 were mislead and handled was wrong. You are
17 employees, New York state Correction Officers and
18 their families trusted every thing would be taking
19 care of. The trust was betrayed, this is wrong.
20 Please do the right thing. Thank you.

21 COMMISSIONER GOORD: Thank you very
22 much.

23 MS. QUINN-MILLER: My name is
24 Deanne Quinn-Miller. It is D-E-A-N-N-E Quinn Miller,

1 M-I-L-L-E-R and I am the oldest of the Quinn girls.
2 I was only five years old at the time of my fathers
3 death, but despite my age I remember the events of
4 September 9 to the 13th of 1971. The year that
5 altered my life forever. September 11, is a great
6 tragedy for entire nation but September 11 also
7 represents great personal sadness and tragedy in our
8 own family. That was the day that our father William
9 Edward Quinn died in the Rochester hospital of severe
10 head trauma. The following informations I will
11 testify to, is information that I collected myself
12 pains taking over the past thirty one years by
13 reading and talking to Correction Officers who worked
14 with my dad that day, and were eye witness to his
15 beating.

16 I also met and spoke with inmates
17 that were involved in riot. I have made several
18 trips to New York city to speak with inmates that
19 Brother Richard Clark and Brother Sharif, two of the
20 four inmates that assisted my dad on that fateful day
21 September 9th.

22 I have spoken to the physicians and
23 the nurses at St. Jerome hospital, Batavia that
24 initially treated our dad. This information I have

1 uncovered surrounding my father's death was affirmed,
2 the suspicions but I have regarding New York state
3 liability concerning his injury and his death. My
4 father was only 28 years old at the time of the riot
5 and had been a Correction Officer for little more
6 than a year and a half. He was transferred to Attica
7 from Green Haven. My mother was so excited to have
8 him home again and working in the same facility as my
9 grandfather Robert Quinn, who was then a meat cutter
10 for the prison for some twenty years.

11 Things were going well for our
12 family. Working as a Correction Officer pays him
13 three thousand dollars more than his previous job and
14 gave our family the types of insurance benefits a
15 growing family needed.

16 My father was attending classes in
17 the evening to finish his degree, and we had bought a
18 house on 11 Winter Street. Dad bought Christine and
19 I a dog and our mom was to stay a home mom, and we
20 are living the all American dream. However, the
21 summer before the riot was smoldering at the prison.
22 He told my mom the concerns that he and the other
23 officers shared, regarding the unstableness of the
24 prison and the kinds of talk by inmates of the

1 inevitable riot. Two weeks before the riot my father
2 sat down with our mother and reviewed where he kept
3 the bills and the check book and the insurance
4 policies saying, just in case anything was to happen.
5 Things of course did happen.

6 On September 7th, a private meeting
7 was held with several union officials in
8 superintendent Mancusi's office. The union officials
9 complained that they felt the prison was not safe and
10 asked Mancusi to lock down the prison before
11 something would happen. After a heated discussion,
12 Mancusi dismissed their concerns and assured them
13 that the prison was safe and that they were to run
14 things as normal. This was told to me by Correction
15 Officer Charlie Biggins who attended the meeting and
16 was the unions vice president.

17 This I believe -- this I believe,
18 was the first of a series of serious errors that were
19 made that permitted a full scale riot and eventual
20 wreckless taking the prison on September 13. That
21 morning on September 9th, my father was working seven
22 to three, Vacation Relief, and was posted at Times
23 Squares -- Times Square, at the central hub of the
24 prison where all the hallways including A-Tunnel

1 intersects separated by steel gates. The gates at
2 Times Square facing A-Block tunnel had a weld in it.
3 During the prison's construction, one of the rods
4 that descended into the ceiling was made too short
5 and the prison welded an additional piece of the rod
6 and then covered it with tape and then recovered for
7 the next forty years. No one ever tested that gate
8 to see if the weld was strong enough and many of the
9 older officers knew of that weld. With approximately
10 eighty inmates that were held in A-Tunnel, that began
11 when the riot erupted, with -- with the inmates
12 pushing on the gate, the defective weld broke and the
13 gate fell, leaving my father defenseless. By this
14 time, inmates had baseball bats and two by four's.
15 They demanded the keys from my dad and when refused,
16 they beat him. Other correction officers in Times
17 Square said they saw my father being beaten about the
18 head with a board, and that other inmates had
19 gathered around him and were kicking him. He was
20 beaten so badly that he sustained two open skull
21 fractures and was bleeding from his eyes, nose, and
22 ears. My father laid there for quite some time until
23 four Muslim inmates came back to Times Square to help
24 him. They got a mattress out of A-Block and they

1 dragged it into Times Square and picked up my dad and
2 the four of them carried him down the hallway to the
3 administration building. One of the inmates that I
4 had spoken to said that while he was carrying my dad
5 he slipped on something wet in the floor. He chipped
6 his front tooth when his -- when his face hit the
7 floor, but he assured me that he had not dropped my
8 dad. When the inmates got to the administration
9 building, they said they saw Mancusi and several
10 correction officers that hollered to the inmates to
11 put my dad down and to leave the area. One of the
12 inmates, Brother Richard Clark, tried to tell Mancusi
13 that one of his own was very badly injured and needed
14 prompt medical attention or they feared he might die.
15 Mancusi and prison administrations apparently did not
16 feel that getting a fellow Correction Officer
17 immediate medical attention was necessary. Instead,
18 they were too busy assessing their position of
19 regaining control of the prison. I know this to be
20 true because I have spoken to correction officers who
21 actually had to step over my father to clock in to
22 help assist the other officers in taking back certain
23 blocks in the prison. According to inmate testimony
24 and information from correction officers, my father

1 including the time of his initial injury until the
2 ambulance arrived at the prison and they were allowed
3 to get him, was approximately one hour 45 minutes.
4 Precious time for a person suffering such extreme
5 head injury. The doctors who initially cared for him
6 at St. Jerome's Hospital said there was no treatments
7 options available to the amount of swelling and
8 damage done to the brain so, they immediately
9 transferred him to Roch -- Rochester Hospital and
10 there he lay in a coma for two days before he died
11 early in the afternoon of September 11th.

12 During my father's hospitalization,
13 no one from the State came or called. My uncle Bob
14 was left to call the prison and inform them, my dad
15 had died. The news of my father's death drastically
16 changed the mood of the riot. The inmates knew that
17 New York State, 1971, that the process of committing
18 the felony, which would -- which is what a riot is,
19 and a correction officer is killed, then all those
20 involved in the riot were responsible for the death.
21 In this case, it was over thirteen hundred inmates.

22 The sticking part of negotiation
23 was amnesty. A local judge was summoned to see if
24 they could legally negotiate the amnesty and he

1 stated that he was unable to grant amnesty or
2 negotiate it for the death of a peace officer.

3 Two days later with negotiations at
4 an impasse, the State decided that they would take --
5 retake the prison by force. Ten other correction
6 officers and civilian employees would lay dead. On
7 May eighth, 1975 -- 1975, John Dacajewiah Hill was
8 convicted and found guilty of the murder of our
9 father. He was sentenced to twenty years to life for
10 the killing of a peace officer.

11 Charles Hoblin Pernezle was found
12 guilty in May of 1975 of attempted assault, and was
13 sentenced to a term of up to three years, and we
14 thought finally some justice.

15 Then in 1976, Governor Hugh Carey
16 issued a blanket clemency to all ninety inmates
17 indicted of criminal acts during the riot, including
18 commuting John Hill and pardoned Charles Pérnezle.
19 Hill served less than four years for the murder of my
20 father. The commutation by Governor Carey is
21 unprecedented in the history of the United States
22 judicial system. It has never happened before. It
23 is likely to unhap -- to happen again. This was a
24 deal that they made so that no law enforcement

1 personnel involved in the retaking will brought upon
2 criminal just -- criminal charges, hardly justice at
3 all, and as far as the compensation that my family
4 received, My Mother did accept Workman's
5 Compensation, we received approximately one hundred
6 twelve dollars every two weeks but the State also
7 considers compensation my father's hospital bills and
8 his funeral expense of seven hundred dollars. Her
9 first check arrived just weeks after his death and
10 she believes that she had no comp hearing. I do not
11 care to speak about the thirty years in between now
12 and then, it is much too painful and beyond a normal
13 person's comprehension unless you have lived the
14 loss.

15 My father, my mother, and my
16 sister -- sisters have already given testimony to the
17 enormous loss and the toll it has taken on us.
18 However, I will speak briefly on what gives me
19 strength and pride. I too have kept the Quinn name.
20 And as I grow older, the memories fade and that is
21 all I have left of my dad. Both of my girls, Aubrey
22 Quinn and Cassidy Quinn, were given their
23 grandfather's name so that they can too have a part
24 of their grandfather who they know will never have

1 the privilege to know. It also makes me happy and
2 proud to know that there is a Quinn still working in
3 the Department of Corrections keeping our Correction
4 Officers safe. He is the Department of Corrections
5 canine dog handled by officer Tim Schneider and named
6 after my father. Before I address the five points I
7 would like to thank Governor Pataki for listening to
8 our concerns and developing this task force and to
9 the task force members with your powerful positions
10 may listen and learn from our stories.

11 Concerning the five points. An
12 apology: I feel it is absolutely necessary. It does
13 not cost anything and it goes a long way towards
14 closure. It shows empathy and respect for the
15 families involved and could help restore our faith in
16 New York State's judicial system.

17 The records: Since we have been
18 unable to locate an executive order for the sealing
19 of the records and in fact 1976, the Governor
20 requested that the Attorney General take whatever
21 legal steps are necessary to affect the prompt
22 release of volumes II and III of the McKay
23 Commission. I think they should be found, if they
24 are not already destroyed, and released to the

1 public. As far as all of the documents I would like
2 to see them archived and available to the families
3 and public.

4 Counseling: Most of us suffered
5 from post traumatic stress disorder which is real and
6 intergenerational. Those who wish to take advantage
7 of counseling with a specialist in PTSD should be
8 afforded the right at no cost.

9 The Memorial Service: I personally
10 feel that it is -- this is the most important and
11 always have, we must never forget the men that gave
12 their lives. Commissioner Goord, you have given us
13 your word that as long as you are Commissioner that
14 you will be able to -- we will be able to have our
15 own private ceremony on the grounds every September
16 13th. Our concern is what happens to that promise
17 when you leave the office.

18 Reparations: What is a life worth?
19 A look into the past shows as a straight forward
20 commonly used formula based on life time earnings of
21 one deceased New York State employee killed in a
22 riot. And if the rebuttal is, we just cannot give
23 money away, then develop legislation that creates
24 some means to compensate our families because it --

1 because it is the right, fair, and just thing to do.

2 I would like to close my testimony
3 with a quote from Tom Wicker from the New York Times
4 in January 2000. "In a more lasting sense, the
5 Attica matter is anything but closed. It lives on,
6 settlement or no settlement, a blot on the nation's
7 pride itself. A terrible unadmitted example --
8 unadmitted example of how American justice can go so
9 badly wrong and not just in New York or in 1971,
10 could it have happened in this country, it could
11 because it did and if not admitted, it could happen
12 again. Thank you.

13 COMMISSIONER GOORD: Thank you very
14 much.

15 (Applause)

16 MS. QUINN-MILLER: I don't know who
17 to see.

18 COMMISSIONER GOORD: I do not think
19 it is necessary.

20 MR. VOLKER: Can I just say
21 something, Mrs. Newton. I -- I -- I got to tell you
22 something you -- you -- you have had a really tough
23 time but you are really fortunate to have three girls
24 like this and I mean it, sincerely.

1 MR. EVE: Can I ask you a question.
2 This is -- is essential to it. Do you -- you have
3 any recollection of how soon after the incident that
4 you were visited and asked to sign papers? I am
5 sorry, me too. I am sorry.

6 MS. NEWTON: No, I do not.

7 MR. EVE: You do not?

8 MS. NEWTON: No.

9 MR. EVE: All right.

10 MS. NEWTON: I have my papers
11 somewhere, but I do not know exactly, that was the
12 only way I would be able to tell.

13 MR. EVE: Okay. Thank you. Very
14 much.

15 MR. EVE: Were you ever told about
16 a hearing?

17 MS. NEWTON: That I do not remember
18 either, sir.

19 MR. EVE: To the best of your
20 knowledge, you do not remember that you are eligible
21 to have a hearing to --

22 MS. NEWTON: I do not remember
23 anything like that.

24 MR. EVE: I just added up, when you

1 daughter said one hundred twelve dollars every two
2 weeks, and that is two hundred twenty four a month
3 times twelve and that came up to two thousand six
4 hundred eighty eight dollars, and then that times
5 thirty one years came to about eighty three thousand
6 now. I am sure the compensation --

7 MS. NEWTON: I remarried in 1973,
8 those are for two years, and then I remarried --

9 MR. EVE: 1973, and that was cut
10 off?

11 MS. NEWTON: Yes, yes.

12 MR. EVE: Even though the -- the
13 three of you were -- were still alive?

14 MS. NEWTON: We got social
15 security.

16 MR. EVE: You got social security?

17 MS. QUINN-MILLER: Workman's.

18 Compensation is then canceled, for
19 her when she remarried.

20 MR. EVE: Oh, you -- you are
21 joking!

22 MS. QUINN-MILLER: No, do you want
23 us to get more? No. (Laughing). I do not think you
24 want us to get more..

1 MR. EVE: Let me say that that
2 massacre in '71 was the worst massacre of this
3 century in this country. Nothing was comparable
4 until the massacre of the native Americans in this
5 country in the previous century.

6 Some of the inmates expressed to me
7 that -- that -- that Quinn was a guy that they liked
8 and -- and that I am sure that as you say, the four
9 Muslims came and put him on the mattress and the ones
10 who probably hit him was people who did not know him
11 in anger and frustration and confusion and so forth,
12 but from everything -- you know, the inmates said
13 about him during that period and afterwards, that he
14 treated them fairly and they appreciated that, and so
15 I agree with you, he is in heaven, and there is --
16 there is no question that he is in heaven. May God
17 rest his soul.

18 COMMISSIONER GOORD: Thank you very
19 much.

20 Could I ask you take a 15-minute
21 break. We will start at quarter after four.

22 Thank you every body.

23

24

COMMISSIONER GOORD: Let us go.

1 COMMISSIONER GOORD: Next is
2 Michael and Sherry Smith.

3 MR. SMITH: Thank you Mr. Goord.

4 My name is Michael Smith.

5 S-M-I-T-H. I was the Correction Officer employed at
6 Attica prison and held hostage from September 9th to
7 September 13th, 1971, during the riot. I started as
8 a Correction Officer at the Eastern Correctional
9 Facility on September 3rd, 1970. I was 21 years old.
10 I transferred to Attica in February of '71. I had no
11 formal training before or during my employment as a
12 Correction Officer. I reported to work and was
13 assigned to run two companies of inmates. I was not
14 even given a tour of the facility. I had no idea
15 where the mess hall, commissary, hospital, workshops,
16 or other services were located within the
17 institution. When I asked I was told to just follow
18 the inmates, they know where they are going. It was
19 on-the-job training in the truest sense of the term.
20 I was one of the most junior officers of Attica. As
21 such, I was assigned to Vacation Relief. So, my job
22 assignment changed about every two weeks. Job -- the
23 job assignment change afforded me the opportunity to
24 get to know my way around the facility and meet a lot

1 of the facility staff and inmate population in the
2 process. I developed a good working relationship
3 with both. I always went with the philosophy that if
4 I treated individuals as human beings with respect
5 that I would get the same in return, and it worked
6 for me.

7 I can recall being assigned to
8 Tower duty and being issued an AR-15 as a weapon. I
9 had received no train -- no training and had no idea
10 how to load or operate the fully automatic gun. Much
11 less, what circumstances may dictate its
12 implementation. On September 9th I was assigned to
13 one of the metal shops located on the second floor in
14 a building near the rear of the prison. Lockers were
15 constructed in that workshop. There was a paint
16 booth and civilian instructors' offices were located
17 in the rear of the room.

18 I was in charge of about 30 inmates
19 that morning. The first indication of trouble was
20 the prison siren. commotion could be heard. Inmates
21 in my area flocked to the windows on the south wall
22 of the room, we were in, which over looked the garage
23 area below. Inmates in the garage area could be seen
24 milling around in an unsupervised fashion, taking up

1 such things as baseball bats, helmets or tools or
2 anything that could be used as a weapon. Inmates
3 under my supervision fearing for their own safety,
4 looked for hiding places and weapons to protect
5 themselves. I tried to call the administration
6 building to find out what was going on and report
7 what I observed, but the phones were already out of
8 service. I locked the two French style entry doors
9 in front of the room. I locked the civilian
10 instructors in their offices in the rear of the room.

11 In reference to a tour of the
12 facility or my familiarity with the floor plan, there
13 was a door on the rear of the room that I was not
14 aware of. The door led to a stair way to a door that
15 faced the rear of the prison and was visible from the
16 towers. Had I known of that door, civilians, myself
17 and even inmates could have been led through it to a
18 safe area. After locking the civilians in their
19 offices, I took up a post just inside the entry doors
20 to the room. Rioting inmates broke through a first
21 floor door, gaining access to stairwell leading to
22 the second floor where I was. My keys were taken
23 from me. And they broke into the room, knocking me
24 to the floor and beating me in the process.

1 Two inmates, Don Noble and Karl
2 Rayne came to my defense, covering my body with
3 theirs to protect me. Rioting inmates broke into the
4 civilian instructor's offices, took the civilians
5 hostage and took them to D Yard. Don Noble and Karl
6 Rayne tried to escort me through the tunnel system to
7 the administration building. But when we reached
8 Times Square, they were ordered that all hostages
9 were be -- were to be taken to D Yard. I was taken
10 to D Yard, and remained there until the morning of
11 the 13th.

12 Early spring 1971, Don Noble along
13 with two other inmates, showed me a letter they
14 planned to sent to Commissioner Oswald and the
15 Governor. It may did -- it made reference to issues
16 that they wanted addressed. As I recall, there were
17 about fifteen issues primarily of a humanitarian
18 nature. I reviewed the letter and told -- Noble that
19 in my opinion it was well put together and addressed
20 issues that should be addressed. The reason I am
21 mentioning this is because as I recall the first time
22 I heard a list of demands while being held hostage,
23 the items listed were basically the same as those
24 issues referenced in the letter I had reviewed.

1 While being held hostage, I was
2 interviewed by the news media a couple of times.
3 Sergeant Cunningham was also interviewed. I can
4 recall being asked if I thought Governor Rockefeller,
5 should come to Attica. Everyone seemed to agree on
6 that point. Some of the hostages were physically
7 injured and the inmates as well as the hostages were
8 in fear for their lives. And anyone that was
9 suspected to be in grave danger because of their
10 injuries, was taken out of the facility. The
11 hostages were not necessarily close enough to the
12 negotiators to be able to hear them communicate. But
13 because of the inmates milling around us and
14 discussing the issues, we were very aware of what was
15 going on. Initially, I have been fairly optimistic
16 about the negotiation process. With the news of
17 officer Bill Quinn's death, negotiations broke down.

18 By Sunday -- by Sunday night, there
19 was a general mood or feeling in the hostage area
20 that something bad was going to happen. I think the
21 inmates sensed the same thing. I was never stripped
22 of my clothing. I was a little banged up with the
23 initial chaos when the inmates took control of the
24 facility, but was never stripped and in fact I still

1 had my wallet. On Sunday night, I was able to get a
2 pen from a hostage, and on dollar bills and business
3 cards, that I had in my wallet, I wrote my wife and
4 family a good bye note. Sunday night -- the
5 hostages, were all huddled closely together seated on
6 mattresses on the ground. Our wrists were bound and
7 our ankles were bound, and we leaned against each
8 other for support. That night, probably in some
9 sense of self preservation, I worked my way to the
10 center of the hostage circle thinking my odds would
11 be better there. The guys around me would probably
12 go before I do. Monday morning, the negotiation
13 process came to an end. Inmates in a last -- in a
14 last ditch effort, chose hostages to be taken to the
15 top of the catwalk, an elevated area of the tunnel
16 system on the roof top, to be displayed. Hostages
17 were chosen randomly. Inmates reached into the
18 hostage circle, and whose ever bindings they came up
19 with, were chosen to be taken to the catwalk. I was
20 blindfolded and led to the top of the catwalk.

21 Hostages taken to the catwalk were
22 assigned inmate executioners. I had three. I stood
23 for a while when I got to the top of the catwalk.
24 Eventually they brought me a chair to sit on, and

1 brought me a drink of water and a cigarette. There
2 was an inmate on my right, who held a hand fashioned
3 spear at my chest. Another inmate behind me held a
4 ball-peen hammer as a weapon. And an inmate on my
5 left held a hook shaped knife, like the old tar paper
6 knives, at my throat. The inmate on my left was Don
7 Noble. We had a serious conversation that morning.
8 Don held a knife at my throat and I said, well Don, I
9 am sorry you came to this. And he said that he was
10 also. I said if I make it through this, is there
11 anything I can do for you. He told me who his family
12 was, where they were located and asked me to give
13 them the message that he loved them and was thinking
14 of them. It was a mutual exchange of information.
15 Don asked me if there was anything he could do for
16 me, if he made it through. And I said yes, and told
17 him who my family was and how they could be
18 contacted. I also said when the time comes Don, I
19 want you to make it as quick as possible. I do not
20 want to suffer. Don assured me that he knew what he
21 was doing and that I would not suffer.

22 Shortly thereafter a helicopter
23 came over the wall. I recall inmate speculation that
24 it may be an official helicopter making reference to

1 Rockefeller, coming to Attica. After the first
2 helicopter passed over the yard, a second helicopter,
3 a military type helicopter flew over the wall. It
4 must have been quite low. I remember it quite
5 vividly feeling the concussion of the propellers
6 above me. There was a pop and the gas was dispersed.
7 And simultaneously, the gun fire erupted. The gun
8 fire was unbelievable. There were shotguns. There
9 were large type caliber hand guns. There were
10 rifles. There were automatic weapons. There were
11 small caliber weapons. I was shot. There was a long
12 recovery period. When I was able to travel, a
13 prosecuting attorney asked me to come to the prison
14 to watch films to identify individual inmates. I
15 recall a film vividly that was not fogged and very
16 clear. It was a film of me when I got shot. They
17 had me watch the film frame by frame. In the film
18 you can see the gas coming in to the picture. The
19 fellow to my right, with the spear at my chest draws
20 back his spear and starts down toward my chest when
21 he is hit the first time. It blew him up in the air,
22 high enough, that when they hit him with a second
23 volley, he folded and was blown over the railing and
24 he went down in to the yard below. Don Noble was on

1 my left. He had a hold of my left lapel with his
2 left hand and held a knife at my throat with his
3 right hand. I was still blind folded. Don pulled at
4 me, leaning me of the side of the chair. As I leaned
5 over they shot the inmate behind me. I jerked away
6 from Noble and sat up in -- in the chair. As I did,
7 I got shot and Noble got shot at the same time. We
8 fell like dominoes.

9 The fellow with the spear went over
10 the railing. The man behind me fell dead over my
11 legs. I fell to the catwalk on my left side and
12 Noble lay behind me. He faced the back of my head
13 with his body close to mine. I was shot four times
14 in the abdomen. The entrance wounds were dead
15 center, starting an inch an half below my navel and
16 stopped about a half inch above my penis. The
17 bullets came from an automatic weapon. Probably a
18 two twenty three caliber AR15, which was not State
19 Police issue, but a prison arsenal weapon. The
20 bullets exploded on impact. Each entrance wound is
21 about as bigger round as the end of my thumb. The
22 shrapnel traveling in a downward direction exited
23 around the base of my spine. It took the base of my
24 spine along with it. So now, where my buttocks meet

1 my -- meet the base of my spine, there is nothing but
2 scar tissue. There is another exit wound on left
3 buttock. The largest exit wound runs from near my
4 anal opening along the crease where my buttocks meet
5 my leg. It took out meat intestine leaving a hole
6 about the size of a grape fruit. I was also shot in
7 the right arm by a different caliber weapon. and.

8 As I lay there on my left side, my
9 knees were being drawn towards my chest, and my chest
10 was being drawn down in uncontrollable muscular
11 reaction. The shooting went on. It seemed like
12 forever. I could not believe that I was not getting
13 shot more. I could hear people crying and people
14 screaming and people dying. I pushed my blindfold
15 up. As the shooting subsided, I looked up and saw a
16 state trooper coming toward me. He looked down at me
17 and I looked up at him. He put his shotgun to my
18 head and I thought, I have made it this far and now
19 he is going to blow my head off. Some correction
20 officers that worked at the facility, came in with
21 some of the state troopers to identify personnel.
22 Luckily the state correction officer had followed
23 this trooper, was close behind. When he saw what was
24 happening, he reached down and with his right hand

1 swooped under the barrel of the gun and pushed it up
2 in the air saying, to the trooper, do not shoot, he
3 is one of ours.

4 With that the trooper brought the
5 gun back down over my right ear pointing at --
6 point -- pointing it at point blank range at Don
7 Noble's head. Don said, Mike tell him who I am and
8 what I did for you. So I said to the trooper, do not
9 shoot. His name is Don Noble and he saved my life.
10 The trooper picked up the gun, stepped over both of
11 us and walked on. I laid on the catwalk for what
12 seemed like a long time. Eventually a metal
13 stretcher was brought out and medics put me on the
14 stretcher and transported me by ambulance to a
15 hospital in Batavia. I was conscious through the
16 whole process.

17 I was in the hospital the first
18 time for thirteen weeks from September 13th until
19 December 20th. I had several surgeries including
20 bowel resection and colostomy. I lost approximately
21 100 pounds during my stay in the hospital. There was
22 a long recovery period. I had to learn to walk
23 again. My wife nursed me back to health. I was
24 treated well under the circumstances while held

1 hostage. I got banged up on the first day but there
2 was a lot of chaos on the first day -- it was a riot
3 situation. I was protected. Most hostages, I can
4 recall, had a story of an inmate or inmates
5 protecting them during the riot. Muslims set up a
6 protective perimeter around the hostages in D Yard.
7 I remember hearing one of the Muslim leaders
8 instructing one of their men, that if any inmates
9 tried to break through their perimeter, to kill them
10 or die protecting the hostages.

11 State official Walter Dunbar,
12 reported to the associated press that I had been
13 castrated and my testicles stuffed in my mouth by
14 inmate Frank Smith. It never happened. I do not
15 have any animosity toward inmates. I would not have
16 wanted the job that state troopers or correction
17 officers had.

18 The retaking of the facility was a
19 bungled mess. People that were emotionally charged
20 should not have been involved. People were allowed
21 to bring in their own weapons. Weapons were not
22 signed out. No one was responsible for the rounds
23 they shot. There is a no shooter's report that I am
24 aware of, filled out after the retaking.

1 I thought we have the best system of justice in the
2 world. But in this event, it has been politically
3 manipulated. And that is beyond unfortunate.

4 Worker's Compensation benefits
5 payments started while I was flat on my back in the
6 hospital. I had no idea of what was going on.
7 Because of Worker's Compensation, I was barred from
8 any legal recourse. Worker's Compensation was meant
9 to take care of an accident. This is different. I
10 was injured as a result of an intentional act by my
11 employer. The correction officer who shot me, was an
12 excellent marksman. I was the target. The person
13 who shot me had the option of shooting or not
14 shooting. I was shot deliberately four times in the
15 abdomen, once in the right arm.

16 My injuries were caused by the
17 intentional acts of my employer, the State of New
18 York, Workers Compensation was not intended to cover
19 that. Inmates did not have guns, yet I suffered
20 gunshot wound caused by the state -- by a state law
21 enforcement officers. I filed a civil lawsuit within
22 ninety days after the riot against the State of New
23 York based on tort, yet told by the appellate court I
24 could not do so because I received Workmen's

1 Compensation benefits, so called. Yet Mrs. Jones
2 surviving widow of a civilian employee received over
3 a million dollar settlement because she had the
4 advise of an attorney not to take any checks from the
5 State of New York. When she was -- when she was
6 receiving her attorney's advise, I was lying in bed
7 at St. Jerome Hospital in Batavia fighting for my
8 life. The state never explained to me that I would
9 have the same option that Mrs. Jones had. In fact,
10 none of us received any legal advise concerning our
11 options in the State of New York. That was not a
12 mistake on behalf of the State of New York but an
13 intentional plan to prevent us from seeking full
14 justice for the intentional injuries inflicted upon
15 us.

16 We seek justice. It is not fair or
17 just that families who lost their husbands and
18 fathers during the same event under identical
19 circumstances were barred from legal recourse because
20 of the technicality worker's compensation. I do not
21 have any problem with inmates receiving a settlement.
22 But the New York State awarded millions to inmates
23 for their suffering and not offer or come up with a
24 plan of consideration for the hostages their own

1 employees, is not only bizarre, it is unfathomable.

2 Since the riot, statutes have been
3 enacted providing policemen and firemen with
4 additional benefits if hurt while on the job. Well
5 deserved special consideration and benefits continue
6 to be enacted for the victims of 09/11, victims of a
7 foreign perpetrator attack, while thirty years after
8 the Attica riot, we, the victims of an attack by New
9 York State continue to wait for consideration.

10 In regards to the five points
11 requested by the forgotten victims, the State of New
12 York owes us an apology.

13 To me monetary compensation access
14 to the records, counseling and permission to hold an
15 annual memorial service at the prison, equals that
16 apology.

17 We seek justice, a recognition of
18 what we have gone through and continue to suffer.
19 The State of New York should come up with a
20 settlement fund and appoint a judge to hear
21 individual testimony and disperse awards. In my
22 opinion District Court Judge Michael Koloska maybe a
23 consideration. He is familiar with the riot and it's
24 aftermath. I have spoken with Judge Koloska and he

1 said he would perform this function as a volunteer if
2 both sides agree. Thank you.

3 MR. SMITH: Thank you very much.

4 COMMISSIONER GOORD: Do you have
5 any questions?

6 MR. EVE: Are you speaking? Are
7 you speaking?

8 MS SMITH: I am going to speak.

9 MR. EVE: Go ahead I am sorry.

10 MS SMITH: I am the wife of former
11 correction officer and hostage Michael Smith. On
12 September 9th, 1971, we had been married just shy of
13 13 months. We had -- we had a three-month-old baby
14 girl, Michelle Stephanie, names after her dad,
15 Michael and I had just turned
16 22-years old, my story differs very little from that
17 of the other hostage's wives on that day of September
18 9th. As I knew few people from Attica, I had no
19 knowledge of the prison uprising until I heard it on
20 the radio. We lived approximately thirty miles south
21 of Attica, so I heard no whistles or sirens or so no
22 abnormal amounts of traffic going to and from the
23 prison. The day went by with bits and pieces of news
24 of the angry inmates, setting fires inside the prison

1 and refusing to return to their cells. Little more
2 information was on the evening news. When the 11
3 o'clock news came on, the first person's face on the
4 television screen was that of Michael. At the same
5 time the phone rang and the gentleman identified
6 himself as somebody from the prison and stated he
7 wanted to inform me that the rioting inmates were
8 holding Michael hostage. I thanked him for calling
9 and informed him that in had already been notified by
10 the way of the news media. On Friday, September
11 10th, I had relatives watch our daughter so I could
12 go over to the prison to inquire about Michael. Upon
13 arriving, we were informed we would not get any
14 information but to be assured that the officials were
15 doing all they could to have the hostages released
16 unharmed by the rioting inmates.

17 Late in the afternoon, a correction
18 officer came out of the prison and told me that
19 Michael had been interviewed and would be on the six
20 o'clock news. I had been home to watch the
21 interview. Probably compared to some wives of
22 hostages, I cold feel a sense of relief in knowing
23 that Michael looked well and by hearing his voice, I
24 knew he was surviving the ordeal quite well. Little

1 did I know what survivor he would become in the
2 months ahead. Saturday was spent like Friday, going
3 to the prison, holding a vigil, and learning little
4 from the officials. Going home late in the evening
5 to be with our daughter and wait for morning to come.
6 Sunday was much the same as the previous days. But
7 by Sunday afternoon and into the evening, the things
8 were beginning to take a dramatic turn. People on
9 the outside were tired of not being informed as to
10 what was going on or what plans for peaceful ends
11 were being made. Nobody -- nobody could understand
12 why Governor Rockefeller would not give in to the
13 request to come to Attica.

14 Sunday evening was quite chaotic.
15 It was raining and miserable. I was a scared twenty
16 two-year-old lady, as I listened to an audio tape of
17 a determined twenty two-year-old man, when asked how
18 he felt about the governor coming to Attica replied,
19 'I feel he should come to Attica and get here now'.
20 The officials informed us that Monday morning would
21 bring an end to the riot.

22 I arrived to the prison along with
23 my mother, Michael's parents and brother. I will
24 never forget my feelings with the somber mood of the

1 crowd. The end was here. The helicopters were
2 started, flew over the yard, dropped the gas, then
3 the shooting began. Then the tear gas came over the
4 outside walls and people were being affected. I was
5 taken to a Winnebago Camper used by the news media,
6 to wash my eyes. I will never forget a newsman
7 telling me, 'Don't worry, Mrs. Smith,' they aren't
8 shooting real bullets, they are using rubber
9 bullets'. The men at the front gate started
10 announcing names of hostages that were being
11 released. It seemed to take forever before they
12 said, Mike Smith. I do not recall that they said to
13 which hospital he was being taken, so I left the
14 front of the prison and staff department, as the only
15 person I knew in Attica, to use their phone. I
16 called Wyoming County Hospital and he was not there.
17 I called Genesee Memorial Hospital, it was told he
18 was not there. I called St. Jerome's Hospital and
19 was told they had a Michael Smith. I went to St.
20 Jerome's and was directed to a room at their School
21 of Nursing Facility. No one was allowed into the
22 Hospital. After inquiring to the whereabouts of
23 Michael to several people and not getting any
24 answers, I finally went to the pay phone and called

1 St. Jerome's again, and was told Michael was not
2 there. I again called the other two hospitals, still
3 no Michael Smith. The third time I called St.
4 Jerome's, I was told he was a patient and someone
5 will be forthcoming with information. I arrived at
6 St. Jerome's sometime around eleven a.m.
7 At approximately four o'clock p.m., a nun came to
8 take me to the Intensive Care Waiting Room to meet
9 with a doctor. I asked her what was wrong, she told
10 me Michael was just coming out of surgery, and that
11 he had some internal injuries. When the doctor came
12 to the door and introduced himself, his first words
13 were, 'Your husband is in critical condition. We
14 will be lucky if he lives through the night. He
15 explained the extent of his injuries and the
16 following is a shortened version of his medical
17 reports.

18 Upon arrival, his condition was
19 good. He has a bullet wound in his abdomen. He was
20 at once admitted and kept under observation. He was
21 seen fifteen minutes after the first exam and found
22 that he was developing peritonitis. Blood, urine and
23 feces were seen coming out of the abdominal wound.
24 Arrangements were made for immediate surgery. The

1 wound in the abdomen was completely excised and the
2 abdomen was opened. The peritoneal cavity was full
3 of blood, urine and feces. It was found that the
4 bullets had entered the abdomen about one half inch
5 to the right of the umbilicus. There were four
6 wounds of entry. The bullets after entering the
7 abdomen, seem to have burst into hundreds of small
8 fragments and these fragments were found all over the
9 peritoneal cavity and quite a number of them were
10 embedded in the pelvis and sacrum. The bullet seemed
11 to have traveled downwards posteriorly to the left --
12 and to the left and there was a large wound of exit
13 in the left facial or rectus fossae. There was
14 another small wound of exit in the right gluteal
15 region. The fragments of the bullets had played
16 havoc in the abdomen. There were about twenty
17 perforations in the ileum which were repaired.

18 At two different places, the ileum
19 was completely torn into small pieces. It was found
20 that there were four large complete tears in the
21 sigmoid colon. These tears were meticulously
22 repaired. There was a large tear in the dome of the
23 urinary bladder, measuring about five inches. The
24 floor of the pelvis was badly injured. There was

1 heavy bleeding from the pelvic veins. I am sure the
2 pelvic nerves were badly damaged.

3 At this point the general condition
4 of the patient was critical. During the operation,
5 large numbers of fragments of bullets were found and
6 these were removed. What amazed me was that the
7 fragments looked like twisted pieces of wire. The
8 patient was turned over and the perineal -- perineal
9 wound was examined. It was a large, dirty, irregular
10 shaped wound on the left side of the anus. It -- it
11 could -- a fist could be introduced into this wound.
12 Dead and necrotic tissue was excised from this area
13 and the wound was completely packed. This pack
14 controlled the bleeding and gave support to the
15 pelvic structures. Under ideal conditions, a pelvic
16 wound like this should be repaired. But in this
17 case, there was hardly any peritoneum or muscles left
18 in the floor of the pelvis for repair. There was
19 another small wound of exit in the right gluteal
20 region. The patient had another wound in his right
21 arm. And there was a bullet embedded near the bone.
22 This bullet was removed in July, 1986. Our daughter
23 Michelle always wanted the bullet if it ever had to
24 be removed. Before we could received the bullet

1 after it was excised, Mike had to sign a statement
2 that he would not hold the state of responsibility --
3 excuse me, the State of New York, he would not use
4 that evidence against them. And that was in 1986.
5 During the operation --

6 MR. AUBREY: -- I am sorry. Who --
7 who came to you and made that --

8 MS. SMITH: I am not -- that was --

9 COMMISSIONER GOORD: Is that the
10 hospital?

11 MR. EVE: That was the hospital.

12 MS. SMITH: -- hospital that could
13 not be released until --

14 MR. EVE: The hospital delivered
15 that to you?

16 MR. AUBREY: -- and told you that
17 you could not have it unless the hospital __.

18 MS. SMITH: During the operation,
19 six bottles of blood were given to the patient. The
20 patient was in critical stage and for the next three
21 to four days. He was taken to the operating room a
22 number of times for cleaning and dressing and
23 shrapnel was removed. He developed a lung infection.
24 He had temperatures of one hundred two, and one

1 hundred three every second day, due to infection in
2 the pelvis. After forty weeks, he became depressed,
3 uncooperative, and markedly confused. Lastly, I
4 would say that Michael Smith had a hard time and was
5 very fortunate to come out alive. He suffered severe
6 mental and physical trauma and he will need lots of
7 time to regain his health and adjust himself
8 mentally.

9 I would like to say, that nobody
10 can prepare a wife for what she will see when her
11 husband has been through hours of surgery, and his
12 fighting for his life with every breath he takes.
13 When he came to, he said, 'I begged god to let me see
14 your face one more time. How is our daughter?'
15 Several hours later, a nun came to me because Michael
16 had awoke several times and insisted they give me his
17 wallet, because there was a letter for me. I learnt
18 later -- I later learnt he was afraid he would die
19 and I would never get the good bye letter he wrote to
20 me, our daughter and his family in the hour that
21 rainy Sunday night. After he had made his play --
22 plea for Governor Rockefeller to come to Attica to
23 help resolve the issues and avoid bloodshed. Exactly
24 thirteen weeks or ninety one days after gunfire

1 ended, Michael was on his way home to recuperate and
2 gain strength for his -- for his next surgery.

3 In that thirteenth-week hospital
4 stay, hostages came to visit, inmates sent cards, the
5 BCA came -- the BCI came to question Michael as to
6 the identity of the rioting inmates. As I recall it
7 was the day he was too ill to give much information.
8 It took an official from New York State until the
9 middle of November to show up to the Hospital.

10 Russel Oswald wrote in his book,
11 not until the middle of November, did I feel it was
12 appropriate for me to visit the families. Lieutenant
13 Reiger, who was also a hostage and I visited one of
14 the surviving hostages, a young corrections officer,
15 still in the hospital in Batavia, still in serious
16 condition from bullet wounds. This young man said to
17 us, it is not just me, it is all of us. We have got
18 to bring about a better correctional system for
19 everyone. To this day, I still wonder, why did it
20 take so long for an official of New York State to
21 come and visit and inquire about how Mike might be
22 doing.

23 On Monday, December 20th, ninety
24 one days after the September 13th, Michael came home.

1 He was transported by ambulance, as he could not walk
2 or sit up yet. I had made the rental arrangements
3 for the hospital bed and tripod -- tripod bar, so
4 that he could assist me in lifting him up, an
5 electric Sitz bath and all medical supplies that he
6 needed. Michael weighed one hundred twenty four
7 pounds. I was sent home alone to take care of him,
8 along with a six-month-old baby. Fortunately I had
9 help from his family.

10 There was no contact from New York
11 State as to the well being until his -- excuse me.
12 There was no contact from New York State as to his
13 well being until March 13th, 1972. Exactly six
14 months to the day after September 13th. A Sergeant
15 from Attica called to tell him, sometime when you are
16 cruising by the prison, we need you to stop in and
17 identify some inmates that you maybe saw in the
18 yards, so that we can put them and keep locked.
19 Michael informed then -- informed him that it may
20 take a while to get to Attica, that is that day he
21 finally was strong enough to stand for the first time
22 by himself to take a short shower. Maybe the
23 officials at Attica thought Mike was AWOL, as
24 everyone was to report back to work by the end of six

1 months. Correction officers were under orders which
2 came down from Governor Rockefeller not to take part
3 in the assault. Yet several AR15s were checked out
4 of the Attica arsenal by correction officers on the
5 13th. I recall two men from attorney general Anthony
6 Simonetti's office, and I believe one of them to be
7 Simonetti himself, coming to our home to question
8 Michael about the happenings of the inmates during
9 the riot. The hospital bed was still being used, the
10 Sitz bath was still being used, and they saw his
11 wounds.

12 Yet when Mr. Simonetti met with
13 Malcolm Bell several years later, he told Mr. Bell
14 about Michael. He said Michael was a very sick boy
15 when he met him. He also stated a bullet struck,
16 either a pipe railing or concrete floor of A-Block
17 and disintegrated and the fragments entered Mr.
18 Smith. Mr. Bell saw Michael's wounds and wrote,
19 those wounds could not have been made by a stray shot
20 accidental as everyone had been assuming. Rather
21 someone had most probably aimed and fired a burst at
22 this human being who was not attacking anyone.

23 At the Attica hearings on May 9th,
24 2002, during Mr. Cunningham's testimony, Senator

1 Volker said to Mr. Cunningham, 'let's put this clear,
2 nobody targeted the hostage, nobody did. And most of
3 the people it says were killed through inmates
4 themselves. I want to point out that nobody did.
5 Senator Volker, I beg to differ with that statement.

6 MR. VOLKER: You -- you think that
7 somebody deliberately shot him.

8 MS. SMITH: I most certainly do.

9 On September 30th, 1971, Michael
10 received a letter from Workers Compensation
11 requesting him to fill out a C10 form and return it.
12 Michael was still in Intensive Care fighting for this
13 life. The C10 form is an injury and treatment form.
14 There was also a C9 form stating payment had not been
15 made because loss time exceeds seven days, the full
16 wages being paid by employer during disability. The
17 other reason stated no medical reports received. I
18 was in a panic. My god, who will pay these hospital
19 bills. I filled out the papers and sent them back
20 without the benefit of any legal representation. We
21 filed a lawsuit against the State of New York within
22 the required ninety days after September 13. Michael
23 was still in the hospital bed. We filed a suit as a
24 result of the wrongful, unlawful, willful,

1 intentional and negligent act of the State of New
2 York, its agents, servants and employees for causing
3 claimant to be shot in the body by said,
4 unnecessarily lethal improper and illegal bullets
5 causing serious body -- bodily injury and several
6 mental and severe mental and emotional distress.

7 In 1983, our case was dismissed by
8 the Appellate decision because by claimant acceptance
9 of Worker's Compensation Benefits, we had elected
10 our exclusive remedy. Since then I have wondered if
11 by sending that form back, did I choose Michael's
12 exclusive remedy. When we filed our suit, we asked
13 for damages of one million dollars. That was thirty
14 one years ago. What would that amount to dollars
15 in 2002.

16 On May 10th, 2002, the Buffalo News
17 quotes Senator Volker, "Under the state Constitution,
18 we just cannot give people money. There is a
19 constitutional bar on gifts and loans". The members
20 of the forgotten victims of Attica are not asking for
21 a gift or a loan, we are asking that justice be
22 served and that we -- we receive fair compensation
23 for our mental and physical pain and suffering.

24 Suffering that was caused by the

1 intentional acts of the State of New York and its
2 employees.

3 I would like to see the records
4 opened. There are people who had the need to know
5 what went out inside Attica, the real truth of what
6 happened.

7 Counseling should be available to
8 all victims. Through the years, some of us who had
9 benefits of counseling and other who had not.
10 Posttraumatic stress disorder is real. It is
11 ongoing. People should be able to deal with PTSD
12 through the help of counseling.

13 The memorial service is a -- is
14 special to everyone in our group, thanks to you, Ms.
15 Commission Goord. It is a not a concern for us now.
16 However, we should have consent to hold our annual
17 memorial service in writing.

18 Compensation, what was fair and
19 just for Mrs. Jones should be fair and just for the
20 widows and hostages.

21 Justice and fairness were granted
22 to the inmates. We ask the same considerations be
23 granted to the forgotten victims of Attica.

24 Much has been done to help the

1 victims of the World Trade Center. In press releases
2 from the governors office, September 11th, 2001, has
3 been referred to as an unspeakable tragedy, a time of
4 crisis. The September 11th attacks were the most
5 heinous acts of violence ever committed upon the
6 civilian population in this country. Families have
7 suffered unimaginable pain and loss, and I agree with
8 all of these statements.

9 However, thirty one years does not
10 lessen the pain and mental anguish caused to the
11 victims and families of Attica. Pain and anguish
12 caused by heinous crimes committed against victims by
13 their own employer, New York State.

14 Much help has been offered to the
15 victims of the World Trade Center tragedy. Immediate
16 crisis counseling was initiated to ensure that
17 victims and families members were offered ongoing
18 help from mental health services. An executive order
19 was issued to suspend the law requiring Worker's
20 Compensation claimants to report their injuries or
21 death of a loved one within thirty days for the cases
22 stemming from September 11th attacks.

23 I personally thank the Governor for
24 these acts of compassion and consideration shown to

1 the victims and their families. The forgotten
2 victims of Attica, first met with the Governors
3 office in the fall of 2000, a full year before the
4 World Trade Center tragedy. Almost two years later,
5 we are -- we are still waiting for consideration and
6 justice. It has been a long thirty one years that
7 have somehow gone by quickly. A day never goes by
8 that I do not think of Attica and I thank god for
9 Michael's life. The emotional struggles have been
10 hurdles larger than the physical ones to overcome,
11 and we deal with them by taking one day at time.
12 Thirty one years ago, we had a Governor who refused
13 to come to Attica, refused to show the hostages that
14 their lives were important.

15 Twenty five and half years ago, we
16 had a Governor close the books on Attica. I am
17 hopeful that in 2002, thirty one years after the
18 bloodiest day on American soil in the 20th century,
19 Governor Pataki will bring closure to the victims of
20 Attica. Attica will never leave any of us. I asked
21 that this task force and the Governor -- and Governor
22 Pataki help us to put Attica behind us instead of it
23 always being in front of us. Thank you.

24 (Applause)

1 COMMISSIONER GOORD: Thank you very
2 much.

3 MS. SMITH: Thank you.

4 COMMISSIONER GOORD: Michael and
5 Sherry, thank you very, very much.

6 MR. EVE: Let me -- let me ask you
7 this. You said anyone in grave danger like Michael
8 Smith was taken out of the Institution. Who were the
9 people taken out? You said, anyone in grave danger.
10 The inmates let them go out or took them out?

11 MR. SMITH: The injured -- injured.

12 MR. EVE: Hostages that were
13 injured. The inmates took them out.

14 MR. SMITH: Yes.

15 MR. EVE: How many hostages were
16 injured, from your knowledge?

17 MR. SMITH:: I -- I do not recall
18 that. I know Ken Jennings was taken out, Gordon
19 Kelsey --

20 COMMISSIONER GOORD: -- seven or&t00P
21 eight.

22 MR. SMITH: Yeah. Nine.

23 COMMISSIONER GOORD: Pardon me?

24 MR. SMITH: Nine.

1 MR. EVE: Nine. That -- when --
2 when people say that the inmates wanted to kill
3 the -- the hostages, if they wanted to kill them,
4 they would have let the injured ones stay in the
5 prison yard or stay in the prison. Obviously a
6 significant number of them was involved in helping to
7 get them out I didn't realize that -- I did not
8 realize it was that -- that many -- I -- I
9 remember -- you know, a Quinn was taken out, but I
10 was not aware that there were others --

11 MR. SMITH: Yes.

12 MR. EVE: -- who were also taken
13 out. You need to know that I have never read the
14 McKay report, never opened a book, I have never read
15 Tom Ricker's book. I have never read anything on
16 Attica and will not read anything on Attica. And
17 that -- that is, okay. So, suddenly the hostages and
18 the inmates, both felt something was going to happen.
19 Can you just give some sense to that. I know the
20 inmates thought something was going on and that is
21 why they made us leave Sunday night and not stay in
22 the yard with them because five of us who are
23 prepared to spend the night in there with them, and
24 from there are on in until they gave up because we

1 wanted them to give up but how could the hostages
2 tell that something.

3 MR. SMITH: Our expectations kind
4 of rose and fell with the -- with the negotiations
5 process and how that was moving along, and by Sunday
6 night, in fact ever since the announcement of the
7 death of Officer Bill Quinn.

8 MR. EVE: Quinn.

9 MR. SMITH: Negotiation process
10 went south, and by Sunday night, had come to an
11 impasse, and none was hopeful at that point.

12 MR. EVE: Were you aware that Bill
13 Kunsler had recommended with our support that they
14 accept what the state had given.

15 MR. SMITH: Yes, we were.

16 MR. EVE: You were aware?

17 MR. SMITH: Yes.

18 MR. EVE: On Saturday, Bill Kunsler
19 said to them, representing all of us on the observers
20 Committee.

21 MR. SMITH: -- I recall, it was
22 something to the affect, this is as good as it is
23 going to get --

24 MR. EVE: Yes. This is as a good

1 as it is going to get, and we suggest you give up,
2 okay. And again, I repeat, the only thing that keep
3 them was the fear of physical reprisals, and folks
4 were concerned about that. You mentioned gas and
5 gunfire were both at the same time. So, you mean
6 that they -- as they told us, they were going to drop
7 this gas, it was never been used before in this
8 country. It would immobilize everybody in that yard
9 and they would be just be able to come in and just
10 pick them up, okay and take them out and you are
11 saying that the gas and the guns happened at the same
12 time?

13 MR. SMITH: Yes. I am. As I
14 recall, it almost seemed to me that the path of the
15 gas being dispersed was the signal for the sharp
16 shooters to open fire because it happened
17 simultaneously.

18 MR. EVE: What kind of weapon do
19 you believe, you were shot with?

20 MR. SMITH: An AR15 --

21 MR. EVE: What is that?

22 MR. SMITH: An AR15, that is a
23 machine gun.

24 MR. EVE: A machine gun?

1 MR. SMITH: Yes.

2 MR. EVE: This is the second time I
3 have heard machine gun. So, and again, as I said
4 earlier, you cannot control the -- the direction a
5 machine gun has got -- you can shoot in the general
6 area.

7 MR. SMITH: Uh-huh.

8 MR. EVE: But you really cannot.
9 Now, some of the inmates around you were shot by the
10 sharp shooters?

11 MR. SMITH: Yes.

12 MR. EVE: Okay. You did say and
13 so, the sharp shooters who were effective in doing in
14 what they had to do?

15 MR. SMITH: Yes. They were.

16 MR. EVE____: Wherever they were
17 allowed to do it, and so they could have probably
18 shot even the guy who wanted to help you?

19 MR. SMITH: Uh-huh.

20 MR. EVE: If time had -- had -- the
21 things had sort of broken out so badly?

22 MR. SMITH: Yes.

23 MR. EVE: Okay. What has been your
24 compensation during these years of your recovery --

1 MR. SMITH: Initially -- initially,
2 the State of New York paid my hospital bills, and
3 then I was given a partial medical retirement from
4 the State of New York.

5 MR. EVE: How much was that worth,
6 if you do not mind telling me?

7 MR. SMITH: Initially it was -- it
8 is about half pay.

9 MR. EVE: It is about a half pay?

10 MR. SMITH: And -- yeah, in 1971
11 where you just -- which was -- at the time it was
12 about seventy nine hundred. Somewhere around there.

13 MR. EVE: So -- so you received
14 about seventy nine hundred for -- since 1971?

15 MR. SMITH: No -- no, it was -- it
16 was about half that amount.

17 MR. EVE: About half of that.
18 Okay. While you were recuperating, did you get home
19 health aides or anyone to come?

20 MR. SMITH: No, my wife who had no
21 medical training --

22 MR. EVE: No home health aides no
23 visiting nurse?

24 MR. SMITH: No.

1 MR. EVE____: No -- no, you know,
2 three or four hours a day, somebody --

3 MR. SMITH: No. And in fact
4 Arthur, for the last -- for the last year and half, I
5 have had a problem with depression. I have been in
6 and out of the hospital and I am still currently
7 being treated for depression and the state still has
8 not come up with any offer of counseling or help.

9 MR. EVE: That is -- okay, right.

10 MR. SMITH: Thank you.

11 COMMISSIONER GOORD: Thank you. We
12 will reconvene tomorrow morning at 10 am. Thank you.

13 (The hearing concluded at 5:10
14 p.m.)

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1 STATE OF NEW YORK
2 I, Rickey Farmer, do hereby certify that the
3 foregoing was reported by me, in the cause, at the
4 time and place, and in the presence of counsel, as
5 stated in the caption hereto, at Page 1 hereof; that
6 the foregoing typewritten transcription, consisting
7 of pages number 1 thorough 6, inclusive, was prepared
8 under my supervision and is a true record of all
9 proceedings had at the session to the best of my
10 skill and ability

11 IN WITNESS WHEREOF, I have hereunto
12 subscribed my name, this the 31st day of
13 August, 2002.

14
15 Rickey Farmer a.k.
16 Rickey Farmer
17 State of New York

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20
21
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23
24

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