

2 MR. CARTER: Thank you very much.

3 (The witness was excused.)

4 MR. LIMAN: Capt. Malovich.

5 ANTHONY MALOVICH, called as a
6 witness, being first duly sworn by Mr. Carter,
7 was examined and testified as follows:

8 EXAMINATION BY MR. LIMAN:

9 Q Captain, would you state your full name,
10 for the record.

11 A My full name is Anthony Thomas Malovich. I
12 am a captain in the New York State Police.

13 Q How long have you been a member of the New
14 York State Police?

15 A Fifteen years on July the 18th of this year.

16 Q How long have you been a captain?

17 A Since January 15th of 1970.

18 Q What troop are you assigned to?

19 A Troop A at Batavia.

20 Q Were you also in the armed services before
21 you became a trooper?

22 A Yes, sir. I served three years in the
23 United States Marine Corps.

24 Q Did you see combat?

25 A In the Korean Conflict, I served 14 months

1 in Korea.

1749

2 Q How many captains are there attached to the
3 8th Battallion, A-Troop?

4 A We have captains, four. One is our BCI
5 captain, which is your Bureau of Criminal Investiga-
6 tions. Three are uniformed captains. We act as
7 assistants to the troop commander.

8 Q Did you have any special duties?

9 A My duties at--just at the time of the Attica
10 incident? Yes, I was acting as the assistant to the
11 troop commander at that point, which would actually be
12 the executive officer.

13 Q Did you report to Attica on September 9th
14 after the trouble began there?

15 A Yes, sir, I did.

16 Q Did you participate in the efforts to retake
17 part of the institution on Thursday?

18 A No, not on Thursday. I did not participate
19 in that at all.

20 Q What was your assignment on Monday, September
21 13th?

22 A On Monday, the 13th of September, I was assigned
23 to command the detail which would be coming into the
24 institution from the C-cell block, which was designated
25 as, for the purposes of this operation, the C-1 detail.

2 to exit from the second floor of C-block and go out
3 onto the C-catwalk?

4 A Yes, sir.

5 Q When were you first told that you were going
6 to have this assignment?

7 A I was first made aware of this assignment
8 on Friday. The second day at the institution.

9 Q At that time how many men were assigned to
10 you for this detail?

11 A We had a detail of 30 people assigned to
12 myself.

13 Q How were those men armed on Friday?

14 A On Friday? On Friday we had--well, the
15 individual service sidearms and we did have one
16 so-called alert on Friday. We had six shotguns with
17 the detail at that time.

18 Q So you had only six shotguns for a 30-man
19 detail?

20 A On Friday, yes.

21 Q Did those armaments increase by Monday?

22 A Monday we had 14 shotguns, plus the service
23 sidearms.

24 Q Did you decide which of the members of your
25 detail were given the shotguns?

2 detail, prior to going in, we had set up, the way I
3 set it up so that one man would be covering another
4 and I tried to distribute the shotguns so that we
5 did not have them all grouped in one area.

6 Q Did you yourself carry a shotgun?

7 A Yes, sir, I did have one.

8 Q How had conditions changed for your mission
9 between Friday, when you were first given it, and
10 Monday?

11 A Well, Monday the picture had changed insofar as
12 what we were going up against and Friday the barricades
13 out on the catwalk were very flimsy. They had not had
14 any great amount of material brought in to the barricades
15 themselves.

16 By Monday the barricades had been built up.
17 They had been fortified so to speak and we now observed
18 inmates armed with weapons, clubs, baseball bats.

19 You could observe what appeared from that
20 distance to be knives in their belts and what have
21 you. We did see several walking about and I saw
22 several, at various times there would usually be one
23 man in the Times Square area with the tear gas gun.

24 Q Now, what was exactly the assignment of your
25 detail?

2 C-cell block from the second floor exit, move out on
3 to the top of the, what has been called the tunnel.
4 From there we were to move to the barricade, clear
5 the barricade which would be done by our barricade
6 removal detail.

7 They were to remove the barricade itself
8 from the top of the ramp. We would continue on to the
9 Times Square area. Upon reaching Times Square, our
10 assignment was to move to the left toward the B-cell
11 block.

12 As we moved along I had certain individuals
13 designated to be positioned along the railing on the
14 top of the catwalk. We would drop these people off
15 and move up to the B-cell block itself at which point
16 another barricade was located.

17 Now, this barricade was in closer proximity
18 to the B-cell block than the one on the C-cell block
19 side was. That was roughly 150 feet out.

20 The one on B was, I would say, approximately
21 30 feet out from the cell block.

22 Q Did you understand that a rescue team was
23 going to be coming in from A-block and going into D-
24 yard?

25 A Yes, sir.

2 off along on B-catwalk supposed to provide gun
3 cover for that rescue team that was in the yard?

4 A They were only instructed to assist where-
5 ever it became necessary. Not to actually--I didn't
6 instruct them to actually provide gun fire cover, as
7 such.

8 Q How were the men armed who were being
9 dropped off along B-catwalk?

10 A The men being dropped along the top of the
11 ramp, being positioned were armed with shotguns.

12 Q What ammunition did your men have?

13 A Double-0 buck.

14 Q Were you briefed on Monday morning?

15 A Yes, sir.

16 Q You participated in the briefing with Major
17 Monahan?

18 A Yes.

19 Q What were the instructions as you recall
20 them, sir?

21 A Well, Major Monahan went over the individual
22 detailed assignments as to what each detail commander
23 was to expect. What he was to tell his people. What
24 the actual mission itself was and then beyond that
25 Major Monahan went into some length in regards to use

1 of firepower, if necessary, and safeguarding 1754
2 lives and so forth.

3 Q What did he say on the subject of use of
4 firepower?

5 A Well, he used the terms that only force
6 used would be that which would be necessary to complete
7 the mission. There would be no indiscriminate shooting.

8 He used the phrase, I believe he said "shoot-
9 ing fish in a barrel," or he didn't want a shooting
10 gallery. Something to that effect.

11 Q Did he also warn against hand-to-hand combat
12 as he testified to today?

13 A Yes, he did. He stated he did not want
14 our men, our troopers to become involved in any hand-
15 to-hand combat, as such.

16 Q Did you brief your detail before they went
17 out?

18 A Yes, sir, I did.

19 I arrived at my jumping-off point, so to speak,
20 at roughly, shortly after 8:00 a.m. At that time I
21 briefed my detail.

22 Q Had you been on alert on Sunday also?

23 A We had also, in addition to the alert I
24 mentioned on Friday, we had been on an alert on Sunday
25 afternoon.

1 Q Actually how many hours sleep did 1755
2 you get Sunday night?

3 A Sunday night? Oh, probably three hours.

4 Q When you briefed your men on Monday morning,
5 what did you say to them?

6 A I briefed them, as I mentioned, as to what our
7 mission was, what we were expected to accomplish. I
8 covered the possibility of meeting resistance at the
9 barricade. I impressed on them that if any resistance
10 were met at the barricades, that we would not do any
11 indiscriminate shooting.

12 I went into the matter generally covering
13 what our regulations say we will and will not do in
14 regard to situations of this sort.

15 Q What did you say?

16 A I said, "Bear in mind that if you are re-
17 quired to use a firearm, you must be covered as the
18 law provides" and at that point I went into some length
19 on the fact that I and several troopers and another
20 officer would be up at the forward part of the group
21 and I did not want any shooting from the rear ranks
22 because there was a strong possibility if someone from
23 the rear did shoot, they would strike one of us, so I
24 said, "Any firepower utilized will only come from the
25 first five men in the ranks, myself and the lieutenant

1 and three other troopers.

1756

2 Q Did you also give them the warning about not
3 engaging in hand-to-hand combat?

4 A I told them that we were not going to search
5 any inmates, we were not going to become involved in
6 any struggles with inmates. I didn't use the term
7 hand-to-hand combat.

8 Q As a practical matter, what is the alternative
9 if you are not going to engage in struggles or in hand-
10 to-hand combat with an inmate, how do you resist an
11 inmate who doesn't have friendly intentions to you but
12 is armed with a club or a knife?

13 A This, I think, would have to depend on the
14 matter at hand at that certain time; depending on how
15 he was armed, what position he was coming at you.

16 There were some inmates who surrendered,
17 there were some who ran, there were some who were going
18 to resist.

19 In each individual instance that I saw, it
20 was different from the other thatn I had noticed.

21 Q Was there any policy that firing would only
22 be at your command or the command of an officer, a
23 commissioned officer?

24 A Yes. I went so far as to advise that the
25 only firing would be done at my command. However,

1 this would not be a steadfast rule because 1757
2 each individual member might be faced with a situation
3 that I would not be aware of.

4 Q In fact, in your detail there was firing that
5 was not at your command; am I correct?

6 A Yes, sir.

7 Q So that it really would be up to the individual
8 trooper as to how he would interpret what kind of
9 force he felt was coming toward him and how he should
10 react to it?

11 A Right. I feel it would be the same as any
12 situation involving a police action whether it be
13 nothing more than a normal patrol.

14 A situation arises, the individual trooper
15 is trained to make decisions, to think for himself
16 and, therefore, he knows the repercussions of making
17 a wrong move and this is something that he will have
18 to determine at his own level at that time.

19 Q With all of this training, why did you feel
20 it was necessary to instruct men who were behind you
21 not to fire when you were in front of them?

22 A Well, I feel that you can be well trained
23 and still further instructions would be necessary. I
24 would call it nothing more than good insurance to
25 possibly forestall something happening.

1 Q Where were you just before the gas 1758
2 dropped?

3 A I was right inside the gateway leading out
4 onto the ramp in the C-cell block, on the second floor.

5 Q What did you see?

6 A Just before the gas dropped?

7 Well, originally as I--after I briefed my
8 detail I was at the gate looking out and I saw numerous
9 inmates at the barricades, back at Times Square and
10 also at the barricades at B-block and toward the A-
11 block side.

12 I know there was a barricade on the D-block
13 side. I could not see that from my position. I could
14 see inmates and just a lot of walking around, scurrying
15 about, what have you.

16 What they were doing behind the barricade
17 on my side I could not observe. However, shortly
18 thereafter, coming up through the Times Square area,
19 up from the tunnel, I observed activity, inmates were
20 coming out and bringing what appeared to be hostages
21 with them.

22 Individuals blindfolded, hands bound and
23 these people were positioned outside the Times Square
24 area and to the rear of the two barricades on the A
25 and the C-block sides.

25
1 Q Were you also watching the barricade? 1759

2 A Yes.

3 Q Was there any activity there?

4 A Well, the actual activity at the barricades,
5 at that point you really could not observe what was
6 going on behind it. It was activity.

7 I would observe, for example, on what I
8 referred to as my barricade that was on the side where
9 my detail went in, there were roughly---at that time I
10 believe seven to eight inmates standing behind it
11 and then there were three or four who appeared to
12 lie down, get up and another one who lie down or kneel
13 down behind him. What they were doing, I do not know.

14 Q Were you given a command to move out?

15 A Yes. The command came over the radio to
16 move out.

17 Q Did you hear the command given to the .270
18 men on the roof?

19 A No, I could not hear that.

20 Q Did you have any understanding as to what
21 their instructions were as to when to fire?

22 A Well, as I observed, I'll have to go back a
23 little here.

24 When the inmates brought the hostages out,
25 I had, upon noting this I had gone back to a telephone

1 inside the cell block and called into the 1760
2 command post, reporting this activity.

3 At that time I talked to Col. Miller and
4 I advised him that we had observed hostages being
5 brought out, what appeared to be hostages with weapons
6 held at their throats and I asked him for further
7 instructions.

8 I was instructed to insure that no action was
9 taken against any inmate holding a hostage unless the
10 inmate made a hostile move toward the hostage.

11 Q Did you pass that instruction on to the men
12 on the roof?

13 A Yes, sir.

14 Q Was there any instruction of what a hostile
15 act would be?

16 A Well, there was probably a very--a little
17 discussion between the officer and the men with the
18 .270 rifles and what that was I wouldn't know.

19 Q But you passed on the command that they
20 should not fire unless there was a hostile act against
21 the hostages?

22 A Yes, sir. This is to the detail on top of
23 the C-cell block on my side.

24 Q Did you see the gas drop?

25 A Yes.

1 Q What did you see happen when the 1761
2 gas dropped?

3 A The helicopter approached from over the A-
4 block side and upon crossing near the Times Square
5 area, the gas began to drop into the D-block area,
6 which would be the compound--well, surrounded by the,
7 on two sides by the D and B-blocks and then by the
8 tunnels on the other.

9 When the gas dropped into that area--I should
10 say the major portion of it dropped into that area, some
11 of it spread out over the Times Square area and
12 generally it filled into the--right around the Times
13 Square area quite heavily and then did drift over
14 into the barricade areas also.

15 Q Did it obscure your vision of what was going
16 on at the Times Square area for a time?

17 A For a brief moment, yes.

18 Q When the drop occurred, did you hear shooting?

19 A The drop occurred and simultaneously with
20 the drop is the way I recall it. The shooting and
21 the drop are, as I said, almost simultaneous.

22 However, I did not--for a brief moment I
23 noted a hostage being held by an inmate on the tunnel
24 leading toward A-block.

25 And at this point as the helicopter came

1 over, the gas was dropping, I saw the inmate, 1762
2 he was holding the hostage in this manner, with his
3 hand on his chin. He sort of raised the hostage up
4 off a stool he was sitting on and he had a weapon in
5 his hand in this manner and the gas dropped and at
6 that moment the rifle fire commenced and I did not
7 observe any more activity--

8 Q Could you see more because of the gas drop
9 other than what you described?

10 A No. I was not--at that point my vision was
11 not obscured by the gas drop. I had turned my eyes
12 back toward what my mission was and we began to move
13 out at that point.

14 Q You did not see what precipitated the firing?

15 A No, I could not see.

16 Q You saw gas dropping and then almost simul-
17 taneously firing began?

18 A Right. Again, I was intent on what my
19 mission was. I was looking toward the barricade, we
20 began to move out and there was firing. I would not
21 say how much or from where it was coming. I heard it.

22 That was about all I can recollect insofar
23 as the gun fire or the gas drop. At this point I'm now
24 looking towards the barricade.

25 Q The firing that you heard, was it rifle firing

1 as opposed to shotgun firing?

1763

2 A I would say it sounded like rifle fire
3 initially. I would say it sounded like rifle fire,
4 yes.

5 Q Were you in the first phalanx of your men
6 moving out?

7 A Yes, I was the first man out the door.

8 Q You approached that barricade?

9 A Yes, sir.

10 Q You had seen inmates behind that barricade
11 earlier?

12 A Right.

13 Q What happened as you approached the barricade?

14 A As we approached the barricade, I was facing
15 Times Square, I was to the left of the tunnel along
16 the railing and my lieutenant was on the right-hand
17 side toward A-block. We had three other troopers
18 who were between us.

19 We started moving toward the barricade. As
20 we stepped out of the doorway there were several
21 objects thrown at us. I recall briefly seeing portions
22 of bricks, an object with a handle on it, whatever it
23 may have been, I do not know at this time.

24 There were tear gas grenades thrown at us
25 from behind the barricade and something did strike my

1 helmet. My helmet was knocked off. I 1764
2 continued on with my men to the barricade.

3 At this point we approached the barricade
4 probably from about, I would say approximately ten
5 to 15 feet away and I noticed two inmates rise up
6 from behind it and began to come up onto the top of
7 the barricaded cell.

8 One was armed with some type of handle, it
9 may have been a shovel handle with a blade-type
10 attachment on the end. The other one had a, which
11 later we found to be a home-made type sword and they
12 were coming towards us over the barricade. The one
13 individual--

14 Q Were they coming over the barricade or
15 just standing behind it?

16 A No, sir. One came up onto it and the one
17 began to clammer over it toward my side of the
18 railing.

19 Q You were on the side--

20 A Towards B-block.

21 Q Towards B-block.

22 A The fellow who was coming over towards me was
23 shouting something and I don't recall the exact words
24 at the time. It was something about kill and so forth.

25 As he came over the barricade, the trooper

2 to him and he was shot by this member.

3 Q The trooper discharged the shotgun at him?

4 A Yes, sir.

5 He fell. At this same time one of the other
6 members, who, I don't know, he fired a shot and the
7 other inmate fell.

8 Q You described one of them as having a sword-
9 type of weapon in his hand.

10 What did the other have?

11 A The one had, as I mentioned, I believe I
12 said the one had a spear-type weapon. It was fashioned
13 from what appeared to be a shovel handle and it had a
14 blade on the end, taped to the end.

15 And the second inmate had a blade approxi-
16 mately two and a half to three feet in length. It had
17 a--wider at the point than at the hilt. And we found
18 that later it had been fashioned apparently somewhere
19 in the metal shop areas.

20 Q So both of these inmates were shot?

21 A Yes, sir.

22 We continued through the barricade and at
23 this point the barricade removal team is attempting to
24 remove the materials which consisted of tables, chairs,
25 timbers, what have you.

2 through the barricade. Some items had been removed.
3 I stepped up onto what I thought was a metal desk.
4 My foot broke through. It turned out to be a pane
5 of glass which had been painted gray from, apparently,
6 one of the shop areas.

7 I had stepped through this. I was momentarily
8 stopped by this. I had to remove my leg from in the
9 midst of this pane of glass.

10 By now several of my men are through the
11 barricade and on the other side of it. As I came
12 through the barricade at this point, I noted three
13 inmates lying behind the barricade. Three individuals.

14 I saw inmates. I assumed them to be inmates
15 at this point. There were two others--well, I should
16 say I could see two pair of feet sticking out from
17 under the edge of the barricade under a blanket.

18 These two, at this point I did not know if
19 they were dead, hiding or whatever. I noticed other
20 inmates running away from the barricade toward the
21 Times Square area. Several were jumping from the top
22 of the ramp down into the yards on either side of the
23 tunnel.

24 Q Was shooting continuing during this period?

25 A There was not the initial burst of gunfire

1 that I heard initially.

1767

2 Now--and, again, I couldn't tell you how
3 many there were. A shot here and there that I could
4 hear. Again, I am intent on what I'm doing and I
5 really couldn't say how much gunfire I did hear or
6 where it came from.

7 At this moment I turned my attention back
8 to the two pair of feet. I had two troopers come up,
9 uncover these individuals. They had their hands in
10 the back of their head and they were pleading surrender.

11 They were brought to their feet. I had two
12 men take them down into the yard area. Had them remove
13 them from the top of the barricade.

14 We continued on to the Times Square area and
15 here there were several persons lying about. One
16 man appeared to be a hostage. He was bound and he was
17 bleeding. There was some blood on him. He appeared
18 to be injured.

19 I don't know whether he was later removed
20 and how he was or whatever. I know there was two
21 troopers stopped to help him and I continued on toward
22 the B-block side of the compound.

23 Q Was there any shooting in the Times Square
24 area when you were there?

25 A There was a, as I approached I noticed what

1 I believed to be members from one of the 1768
2 other details engaged in some activity at the Times
3 Square area.

4 Q By "activity," do you mean shooting guns?

5 A Well, initially I saw the man with a club
6 or ball bat, whatever it was, swinging it and I saw
7 a trooper parry the blow and grab the bat and take it
8 from the individual.

9 Now, there was some shooting in that area.
10 Who or at what, I don't know. I only recall hearing
11 it and seeing a flurry of activity in that area.

12 Q You rounded the corner and went to B?

13 A Continued on toward the B-cell block area,
14 yes.

15 As we moved along, I was positioning my men
16 along the rail as had been predetermined. I approached
17 the barricade at the B-block and there were probably
18 a dozen or so inmates hiding under it, lying down along
19 side the barricade. Obviously, they wanted to surrender.

20 They were told to move into the yard by
21 members of the detail. They went down under the
22 railing and dropped into the yard below.

23 Q Did you hear any shooting when you were on
24 B-catwald?

25 A Yes. Again, I heard shooting, but where it

was coming from or who was doing it or at what 1769

2
3 the individual was shooting at, I had no idea.

4 Q Did one member of your detail tell you
5 later that he had occasion to shoot?

6 A Yes.

7 Q Where did he tell you he was shooting and
8 at what?

9 A My lieutenant told me that he had fired two
10 shots to assist the rescue detail down in the yard,
11 that a member of the State Police had been down on
12 the ground, he was being attacked and he fired two
13 shots to assist him.

14 Q What kind of ammunition did this man have,
15 what did he shoot, a shotgun?

16 A He had a shotgun. He said he fired two shots
17 from his shotgun.

18 Q Were you familiar with what the spread was
19 of Double-0 shot?

20 A I would say I am thoroughly familiar with
21 it. I am not a ballistics expert.

22 Q Was training given in what the spread would
23 be using Double-0 buck?

24 A In our academy I was assigned to the train-
25 ing section at one time. We demonstrated on the range
to our recruits, to our new men coming on just how

each type round will react. In other words, 1770

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3
4 how the shot will spread, what penetration power a
5 .270 will have and so forth.

6 Q You were aware of the case of Double-0 shot
7 that each pelt had lethal capability, I take it?

8 A I would say fairly aware of it, yes.

9 Q And also that the further the distance, the
10 more the spread?

11 A Yes, sir.

12 Q Was there any special instruction given to
13 your men about using their shotguns to shoot at objects
14 at any great distance given the fact that even if your
15 aim was good you were bound, because of the spread,
16 to hit a unintended object?

17 A Well, the only thing along those lines, at
18 the briefing I gave my detail was the fact that you
19 are all aware--I believe the words I used were, "You
20 are all aware of what a firearm will do and use good
21 judgment and caution." I believe words to that effect.
22 I don't recall exactly what I did say.

23 Q Was there--the member of your detail who
24 fired in the yard told you that he fired to protect
25 the member of the rescue mission who was down.

Was there any special instruction given to
the men about protecting their own men, members of

2 A No instructions, as such, except I believe
3 every detail was instructed to cover the man next to
4 you and it was set up so that each man would be covered
5 by another.

6 Insofar as the rescue detail, they had been
7 told to assist where necessary and, again, I don't
8 know where this officer was at the time he fired and
9 whether he was in close proximity to this trooper on
10 the ground or whether he was some distance away. I
11 could not say at that time. I did not ask him his
12 position.

13 (Continued on page 1772.)
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1
2 morning that he thought that state troopers would be
3 less affected by the death of Officer Quinn because
4 he was, I think, to use his words, he was not one of
5 their own. He was not a member of the state police
6 I wonder, putting the converse, whether in the training and
7 just in general practice and living together as a State
8 Police trooper, there is an attitude that develops that
9 if a member of the State Police Force is down in the
10 yard, that you have to use whatever fire power is necessary
11 to protect him, even if there is going to be some
12 spread?

13 A I don't know. I would have to say that this,
14 again, would be up to the individual member, as to what
15 action he would take. It's something that he would have
16 to determine.

17 He knows how he is covered by regulations and
18 by law and it's a matter that the man himself would have
19 to determine.

20 Q You mentioned covered by law. Do you feel that
21 your men really felt that they would be held accountable
22 by law given the fact that there is just no way of tracing
23 pelts to any particular shotgun?

24 A I couldn't speak for each individual. I would
25 be surmising if I said each man felt this. I know--

1 Q Isn't is a matter really of
2 self-discipline and not a fear of the outside law that
3 keeps restraints upon people?

4 A I would think so. I would probably say there
5 are many factors which come into bearing which create
6 this feeling of discipline. The law being one. Many
7 outside factors. Training. Maturity through being on
8 the job, through being involved in different experiences.
9 These all play a great part in it.

10 Q You have no say in what kind of weaponry your
11 men would have. In fact whether it will be a 12-gauge
12 shotgun or Double-0 shot. That was one of the--

13 A Yes, sir, this was one of our issue weapons
14 and it's not a matter of choice. It's what we have been
15 issued. It's what we have. It's what we use.

16 Q And given the circumstances here, do you think
17 that perhaps other ammunition and equipment could have
18 been issued to the men?

19 A This I don't know. I am really not qualified
20 to say. Again, I would be surmising if I went into
21 detail on anything along those lines.

22 Q But you are a captain in the police force and
23 I know that you hesitate to venture opinions but just
24 this one time could se, do you think that you could give
25 us a professional opinion as to whether you think that

ammunition in a situation like this?

A I will answer it in this manner. As I believe you just mentioned, we have issued weapons. We have issued ammunition. This is what is commonly known as a police weapon, the shotgun. The Double-0 Buck is also part of the police ordinance. I have heard talkd in various areas, someone said, "Well why didn't the troopers use tranquilizer guns, why didn't they use sleeping gas, sleeping powder in the water system, what have you."

Well, until such time as these items are perfected for police use, we will be forced to use what we do have.

Q But there are, apart form Buck Rogers types of weapons which may be for the future, there are other forms of ammunition available for shotguns and there are also rifles that are available and people can also use side arms?

A Right.

Q So that just in terms of what is available, maybe not to the State Police but what's on the market--

A It's--I know what you are looking for here but it's difficult to answer because any other type weapon, what do you have? You have in addition to say a .270

14 rifle, you have what is known as a
2 30.06 caliber. You have a .300 caliber. You have 30.30's
3 and anyone of which at close quarters will do the same
4 job.

5 Q But his puts into motion nine lethal pellets which
6 as they progress, spread.

7 A Right.

8 Q So it's really instead of one lethal bullet
9 which may penetrate one person and hit another, you have
10 now nine lethal projectiles and that's what I was getting
11 at.

12 A I see.

13 Q Whether this is a matter which was--it wasn't
14 discussed with you, this is what you were given, I take
15 it?

16 A Right.

17 Q That's what Major Monahan said, even at his
18 level of command, this is what he was given and this is
19 what he had to use. But going beyond it, because this
20 Commission is looking into the future, not just into
21 the past, is this the type of ammunition which the State
22 Police ought to be equipped with when they are involved
23 in a crowd situation such as this with distances between
24 where they are going to be on the catwalk and where the
25 objects of their protection are supposed to be?

2 Well, possibly I can answer that in this manner.
3 The shotgun is basically a close range weapon. It's
4 not intended for any great range. You have various
5 types of shotgun loads. You have commonly known as
6 birdshot.

7 The sizes run I believe anywhere from Double-0
8 Buck up to number two, four, five, six, seven and a half,
9 eight, nine. I believe there is some that go as high as
10 12.

11 These birdshots, starting we will say at
12 number two shot up to number 12 run anywhere in one load
13 from 300 to 1,200 pellets. Well, I would feel at
14 close quarters, say using number four shot with 400 some
15 pellets, I would feel much better about discharging around
16 of nine balls of Double-0 Buck at close range.

17 Q At close range you will be dead with either?

18 A Yes.

19 Q But at distance with Double-0, nine people may
20 be dead whereas with the birdshot you may have a lot
21 of people picking beebees out of their skin.

22 A Again, you could conceivably have many dead
23 persons killed with the finer shot also. Depending
24 where they were hit, how far away they were. Personally,
25 if you had number eight birdshot or number six shot, I

1 wouldn't hesitate to stand 80 yards

1777

2 away from you if you fired at me. But I would not want
3 to be 20 yards away.

4 This would spread out and anyone of these
5 could kill you at 20 yards.

6 Q Whatever the relative merits would be, did
7 anyone weight it in connection with this action?

8 A Not to my knowledge, the simple fact of the
9 matter is we do not have any other shotgun loads except
10 ball or the slug and the buckshot.

11 Q Are you aware that the National Guard issued
12 number nine shot for its emergency situations?

13 A I understand they use it for so-called riot
14 situations. I do not have first-hand knowledge.

15 Q Do you know why the National Guard would prohibit
16 Double-0 and use only number nine and the State Police
17 use only Double-0?

18 A No, sir, I wouldn't.

19 Q Is there anybody that you know of, and I know
20 that you are not at the top level of the command, but
21 is there anybody in the state who coordinates between
22 their various forces so that if one force decides it
23 isn't appropriate to use Double-0 and only number nine
24 should be used, that another doesn't go ahead and have
25 only Double-0?

2 and our organization work closely and maintain liason.
3 I would say further that in a situation such as we
4 faced at Attica, in addition to it being a very unique
5 situation, it was not what you would call a true riot
6 situation.

7 There is a big difference--I was at a riot
8 situation involving a group of college students and there
9 is a vast difference of that sort and what we had going
10 on at Attica.

11 Q When you went out on this mission, did you
12 expect casualties?

13 A Expect to use that word--I would say I felt that
14 we would have some casualties.

15 Q Did you see any acts of inmate resistance?

16 A I saw, in addition to the individuals coming
17 up onto the barricade, the activity at Times Square,
18 I saw in the D-yard, I saw an inmate running toward a
19 trooper with a piece of two by four, whatever it may
20 have been I don't know.

21 Q How far was he from the trooper when you saw
22 him?

23 A I couldn't even say. I know he was running
24 toward him and I did not see what actually happened to
25 him

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and yet you didn't discharge your weapon once, am

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I correct?

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A Yes, sir. I did not.

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Q There are other troopers seeing the same things
that did discharge weapons.

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A Right.

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Q So it really comes down to this question of the
individual judgment of troopers as to whether they
felt that their life was endangered and knowing that they
couldn't engage in hand-to-hand combat, this was the
only resort they had, is that fair?

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A Well, again I would like to say at this point
that each individual situation faced by the various
individuals will be reacted to in a different manner.

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Q Depending in part on the individual?

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A I would say that would be one of the factors.
You could take into consideration who is coming toward
you. What does he have in his hand. How tall is he.
How heavy is he. Is he 30 feet away. Is he five feet
away. These are all matters that would have to be
considered.

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Q We will be presenting some of these situations
to him that led to actually shooting and given the warning
against hand-to-hand combat, merely the situation that

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it was not appropriate, a decision made by the State Police here that it wasn't appropriate, I wonder what you really expected a trooper to do if an inmate was coming toward him with a baseball bat or a two by four or a knife in his hand and was not stopping and was 20 feet away.

Was he supposed to wait, to shoot, to engage in hand-to-hand combat?

A Again, as I mentioned, I believe earlier, this is something the individual would have to determine at his own level. I did see one instance where an inmate was disarmed by the trooper. He took the bat away from him.

Q But in terms of the principle that we have enunciated of being accountable, each trooper being accountable for his own action, if that trooper, seeing the inmate coming toward him with a baseball bat and swinging it, if that trooper had fired, would he have been accountable?

Would you as his commanding officer have felt it was inappropriate for him to have fired?

A Put it this way. I feel he handled the situation very well but again, I was not with him.

Q He used restraint there. If he had not used restraint and had discharged his weapon because we will

1 10 be presenting the testimony tomorrow

1781

2 of that nature, would you have thought it was inappropriate
3 given the instructions that the men were under?

4 A You see, just simply sitting here and bringing
5 it about in that manner I really cannot answer that be-
6 cause, again, you don't make a decision whether it's
7 appropriate or not that quickly.

8 The man making the decision, he makes it in
9 the split second. Right or wrong he has to answer for
10 it.

11 Q That's the point. You keep saying that he has
12 to answer for it and one of the people he has to answer
13 for it to is you, captain, because you are his commanding
14 officer or superior officer.

15 My question was not whether he may have felt
16 that he was justified but you observing it, would you have
17 felt in that instance where you saw the officer disarm
18 the inmate with the baseball bat, if instead of doing
19 that and risking hand-to-hand combat he had discharged
20 his shotgun, would you have thought that was inappropriate?

21 A I will answer that. First I would like to
22 add a little something to that. It worked out well. He
23 disarmed this individual.

24 Take an example of this trooper trying to disarm
25 him, being struck with the bat, knocked down, losing his

11 1 weapon and two or three others being

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2 shot by his weapon.

3 Q In fact it could have been many more because
4 of the spread if the gun was fired toward approaching
5 troopers, it could have wiped out a lot of men.

6 A He could have got any number of men. A man
7 has a weapon with six rounds. He conceivably at least
8 kill six people with it. So at this point it worked
9 out well. So I say terrific, he did a great job.

10 But now, not being with him at that moment
11 and just simply observing it, if he had shot this
12 individual, I would have to say it appears at this moment
13 that he was forced to shoot him.

14 You cannot tell by simply looking at something
15 in a brief glance and make a decision on the spot and say
16 you did a great job.

17 Q In fact a trooper that did that, did not dis-
18 charge his gun, took a risk in disarming the man that
19 the trooper would lose his weapon, as you have pointed
20 out.

21 A Yes.

22 Q And that was one of the risks, that the instruc-
23 tion against hand-to-hand combat was intended to reduce,
24 minimize or eliminate.

25 A Here you have to bear in mind, as I say, I did

12 not talk to this trooper later. I
2 did not talk to the inmate he disarmed. It all depends
3 on many factors I mentioned previously. The size of
4 the individual, how is he holding the bat, how is he coming
5 at you.

6 To go back to the barricade, the man with the
7 spear, I don't think I would have tried to disarm him.
8 This man was handling it as if he knew what he was doing
9 with it. As if he meant to use it.

10 Well, possibly the individual trying to club
11 the trooper, possibly he may have been a slight individual,
12 maybe he didn't appear to mean what he was trying to do.

13 Q From what you saw of everything, captain, were
14 you surprised that over 300 rounds of fire were expended
15 in that yard on that day?

16 A I did not know the exact number of rounds fired.

17 Q We don't know it either for the reasons that
18 we discussed with Major Monahan but at least 300 were
19 admitted to from the various forces involved. Are you
20 surprised?

21 A Well, 300 does seem like a large number. I
22 couldn't say I was surprised. I felt that there couldn't
23 have been 300 fired. I'll put it that way. I don't
24 get too surprised about some matters but I felt that
25 300 was a lot of rounds.

2 weapons when you were out there?

3 A I couldn't say if I heard automatic weapons
4 or not. From the gun fire I heard I could not tell
5 whether it was automatic or simply a hand gun or whatever.

6 Q And you were also under the same instruction
7 and understanding that correction officers were not to
8 participate in the firing, is that correct?

9 A Right.

10 Q You did not know until afterward that correction
11 officers had participated?

12 A After we had removed the people from the barricade
13 on the B-block side, I was assigned to take one detail
14 and go into the building which had been predetermined.

15 Go into the B-block, move toward the D-block
16 area and meet another captain and his detail and clear
17 the two cell blocks. We fired tear gas in there, we cleared
18 the 11 people from the B-block and the other group had
19 13 inmates.

20 These were generally elderly men, several
21 crippled individuals, people who were simply frightened
22 and were hiding. We had no problem. We only expended
23 tear gas in there.

24 When we came back out, I came back out of the
25 B-block entrance way onto the top of the tunnel and I

14 noted correction officers in the yard

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2 and--at this time the inmates were moving back into the
3 A-block area.

4 Q Was there still firing going on when you re-
5 turned from B-block?

6 A No, not at this point.

7 MR.LIMAN: I thank you.

8 EXAMINATION BY MR. CARTER:

9 Q I have just one question, captain. I'm
10 struck by the discussion between you and Mr. Liman about
11 the use of firearms, the firing of the firearms, of
12 judgment.

13 How does one enforce, how is it possible to
14 enforce any order or regulation that men are supposed
15 to use discretion or use restraint in the use of firearms?
16 You never fired your weapon and yet two people who were
17 with you at the time apparently shot and killed two
18 men you saw and yet you fired no weapon.

19 What is the standard, knowing but an individual
20 judgment? How are men going to be held accountable
21 for the use of restraint and this is something I would
22 like to discuss for a moment.

23 A I really don't--I can't picture what you are
24 trying to get at here. The man is held accountable if
25 he does something which, in regards to whether it's firing

15 a weapon or any other matter within

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2 the division of the State Police. We have regulations
3 which he must abide by and he must abide by the laws
4 of the State of New York and the United States.

5 If he violates one of these laws, if he uses
6 poor judgment, then he is brought to task for it. In
7 a situation of this sort where someone is attacking you
8 with a, what I would consider to be a deadly weapon,
9 is there really in that specific instance, where these
10 two men were killed, and again this is a tragedy, two
11 lives were lost but from all appearances these individuals
12 meant to take the lives of someone else so the two
13 members who killed these men apparently felt they were
14 covered by law when they took the action they did.

15 And in a case of this sort I would say it's
16 quite clear as to whether they were right or wrong,
17 generally so.

18 Again, weighing it on a moment's notice. It's
19 hard to weigh anything completely in a brief instant.
20 This is the burden that's placed on the police officer
21 and he lives this throughout his career.

22 He makes a judgment at a moment's notice and
23 right or wrong he has to live with it. He cannot change
24 it.

25 Q I understand that. This is really the, I guess

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the problem that police officers always

seem to me they have to face in reaction to dealing with people who regard themselves, as for example, powerless. Like the inmate or like blacks or like other people, who are an out group.

In a situation of this kind, you were with your men, these men came over the barricades or were men as you, you didn't fire your gun but two other men did.

Under the circumstances the judgment is that they were using the appropriate judgment and you were always using appropriate judgment by not firing. Are the standards individual and single?

A At that point I did not fire but I was being so covered, so to speak, by them. They were protecting me also. I was concerned with my detail and yet I would have to admit that if, say this individual was not stopped and he continued on and no one stopped him and he was going to use the weapon on me, I would have been forced to kill him myself.

It is something that you look back on and you can't say why it happened one way or another due to the variable involved here.

Q But the situation is that--the situation is such that in instances of this kind there is no superior authority that can--that really is in a

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17 position to these men that you have

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2 overstepped the boundaries, the standards.

3 It is an individual judgment that has to be
4 made. There is no way for any accountable in a situation
5 of that other than an individual's conscience, I gather.

6 A I don't know really how to answer that.
7 I think at this point it's more or less a statement
8 of fact that you are telling me, it's not a question
9 any longer.

10 Q Well, it was meant to be a question.

11 A Could you rephrase it initially.

12 Q I really can't. I can't rephrase it. I
13 am just trying to find out from you and I am not pressing
14 you. I think this is a public issue of some importance.
15 It seems to me philosophically in any event in these
16 kinds--in the kinds of situations where judgment
17 has to be utilized by officers where people's lives
18 are at stake and where police authorities have the ques-
19 tion of life or death of other people in their hands.

20 The question that concerns me and I am trying
21 to probe for it is who holds the individual officer
22 accountable in the situation?

23 It seems to me that the question, as Mr. Liman
24 has indicated, I guess maybe that's the answer, it's
25 a purely subjective judgment of the individual.

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A Well, I would say that

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possibly some day society will feel that the role of the police officer should be changed and we may have society where police officers function much differently than the way they do today, I don't know.

But at this point in our society we have a, say, for example, a trooper trained to do a certain job. He knows what his training is. He is guided, again, I know back to the fact he is guided by law and regulation and until such time as the entire picture is changed where be this trooper will not make the decisions himself, I feel we're going to have to live with it.

It's something that--apparently it's a matter of issue. You brought it up and I can see your reasoning here. However, I really don't know how to answer that.

MR. CARTER: Thank you.

EXAMINATION BY MR. HENIX:

Q Captain, a question I wanted to ask you, one of the questions I want to ask you was, what kind of relationship existed between the troopers from Batavia, which is Troop A, and the community of Attica?

A This I really couldn't answer. I don't know. Only through my feelings with people at the correctional facility, I know people at the facility itself. I don't

19 know any of the townspeople.

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2 I met the chief of police previously. A couple
3 of the police officers. I really don't know anyone
4 in the community of Attica itself.

5 Q How about as the captain of Troop A, do you
6 know your men?

7 A Do I know my men?

8 Q Yes.

9 A Again, I don't feel anyone really knows anyone.
10 You can be married to a woman for 20 years and you will
11 never know her completely.

12 Q You know certain things about her. I know a
13 little about mine. At least enough to recognize her
14 and her friends.

15 A I feel this. I feel that I know the men in
16 Troop A as well as any of the officers, if not better
17 in some instances. I was first sergeant previously and
18 as first sergeant you get to know many of the men who
19 were there. We have new ones since then but I do know
20 them quite well.

21 Q Do any, would you know if any of these men
22 have relatives or families that work within the prison
23 in Attica?

24 A I don't know of any who do. I myself have
25 a brother who is a correction officer. He is no

1 longer at Attica. He has been
2 transferred since. I know we had a trooper from Troop
3 E who had a brother who was a hostage.

4 Q Was a hostage?

5 A Yes.

6 Q Was he part of the assault?

7 A He was in a detail. Which one I don't know
8 at this point. I know he was on one of the details.

9 Q Did it occur or was there any discussion made
10 in reference to the fact that he might be emotionally
11 strung-out?

12 A There was nothing I know of because I do not
13 know this man personally or his brother who is a
14 correction officer. I heard of this after the--in
15 fact it was probably two or three days after the 13th
16 that I first heard of it.

17 Q Are there any black members of Troop A in
18 Batavia?

19 A At the time we had one trooper who has since
20 been transferred into the Bureau of Criminal Investiga-
21 tion and we have in Troop A another--two other detectives
22 who are in the Bureau of Criminal Investigation who are
23 black.

24 Q But the one that was transferred, was there
25 any particular reason why he didn't participate in the

2 A No, this I don't know.

3 Q In keeping with my second question, in keeping
4 with the direction of the questioning in reference to
5 the type of shot that was used, Double-0, is it a
6 requirement of the state troopers to become efficient
7 with side arms like--I understand they all had side
8 arms.

9 Do they practice with these weapons?

10 A Yes. In fact we have a practice session so
11 to speak coming up now, we call it a training session,
12 and each individual will report to the range and qualify
13 for one full day with the various weapons.

14 Q So they are rated. If he can't hit the side
15 of a barn, I am sure you would have to dismiss him from
16 the force?

17 A At our academy we have certain requirements
18 insofar as our weapons are involved. They must
19 qualify with a certain score, be proficient in the
20 handling of it and the man who does not qualify in
21 regards to weapons or classroom work, whatever, he is
22 disqualified and he is dropped.

23 Q I understood you very clearly to say of course
24 the weapons that are used within the legal ramification
25 of our society and that of course, a man and a trooper

2 against any hostile action which, of course, makes
3 it possible for him to completely radicate this problem.

4 I am just curious in my mind, thinking of a
5 man who is climbing over a barricade with a spear, what
6 appeared to be a spear, a homemade weapon, that he could
7 have been brought down, I mean, if there were any feelings
8 there, it wasn't just completely destructive, he could
9 have been brought down with a sidearm.

10 You say you were with a company of troopers,
11 enough to protect you.

12 A I think that at that point, a distance of what,
13 seven or eight feet, whatever, makes a small difference
14 whether he is brought down with a sidearm or a shotgun.

15 It would make a lot of difference. I swear
16 to God, I would rather get hit with one of them small
17 pieces than get hit with a Double-0. If the guys aim
18 is a little bad I might end up with one leg.

19 I don't feel there is any requirement that you
20 shoot to kill the individual. I don't feel the regula-
21 tions were meant with this intent.

22 Q I know they are not. What I am really looking
23 at captain, is really I guess what I'm saying is that
24 the emotional nature of that entire situation, you know,
25 I am sure, had a great deal to do with the willingness

2 that Double-0 even though they had sidearms.

3 I mean there was no question when a man got
4 hit with that, anything short of a miracle, he had
5 to die. He just had to. I was really just kind of
6 looking at that aspect of the trooper's responsibility
7 to the public and to himself and to whatever the trooper's
8 representative cause in our prior conversation before
9 this, we got into a thing and I told you that the impression
10 of the troopers as far as the black community, at
11 least the part I was a part of, that they were the
12 Gestapo and I think what you said, that's one of the
13 reasons why they changed the uniform from the type of
14 pants--

15 A I didn't say the State Police as such. I said
16 many Police departments had done away with this because
17 some individuals said it gave a jacket boot effect to the
18 police officer.

19 Q Even though I have to admit that even, you know,
20 driving up the highway and if a trooper stopped me,
21 I was terrified. It could be just a traffic violation
22 but this is the image in the black community of the
23 New York State troopers, that these people are really
24 unfeeling or unsympathetic to the needs or of the
25 black community as such and so based on that, never

1 having any altercation with

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2 troopers, I would actually be up a little tight, much
3 tighter than I would be if a traffic cop stopped
4 me in New York City.

5 A I don't see any reason for that. I cannot
6 do anything to control this feeling but that this
7 feeling should not be. The State Police, as I mentioned
8 previously, in other discussions, nothing is a personal
9 matter.

10 The man is trained that nothing should become
11 personal. He is issuing a traffic ticket or arresting
12 a man for murder, rape, what have you. Each individual
13 is treated in the same manner.

14 As far as the black community, I don't know.
15 We have black members and I didn't know that this feeling
16 was prevalent or that it were restricted to one certain
17 group of individuals or another. Ethnic group or whatever.

18 Q I can assure you that it does exist in the
19 black community. I am hoping that something perhaps
20 could be said at these hearings to dispel some of that
21 fear. But the other question I wanted to ask you, which
22 there were three questions.

23 One of the things that I was sure I heard you
24 say was that you, while proceeding along the top of the
25 tunnels, you noticed an inmate in the yard running across

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25 the yard with what appeared to

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2 be a two by four, something of that tupe and then you
3 lost sight of it. How was that possible?

4 A How was that possible?

5 Q Yes.

6 A Well, again, as I have said several times
7 previously, I was intent on my mission and I saw many
8 things that I saw for an instant or I saw briefly.

9 I did not stop and look at any situation I
10 saw especially in the yard below. I was concerned
11 with the top of the catwalk. With my men. My own
12 position. Anything that happened in the yard was in
13 my detail and I was not really concerned with it at that
14 point.

15 Q Were there other troopers of higher rank that
16 had--were part of say the assault or in any way went
17 into the yard in the same capacity that you went into?

18 A This I don't know. I know there were superiors
19 out in the yard later. When I came from the B-block
20 I saw them on the catwalk and whether they went out
21 with an assault group or not I could not say.

22 Q Because you showed a lot of concern and your
23 men showed a lot of concern for you and I was just
24 surprised that you would see an inmate running with a
25 two by four, I don't know whether he was waving it

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above his head or however, you did

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notice it and you didn't know whether he was approaching on a trooper or hostage or whatever and the responsibility for the troopers was within your hands as a captain.

A I could not at that point, picture roughly a thousand individuals in this one compound and it's quite difficult from the position I was at and from the position I saw this individual to really make any determination as to what was happening.

MR. HENIX: Thank you, sir.

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2 Q I have a brief question in relation to
3 Mr. Carter's question. I want to rephrase it into
4 a concrete example and ask your judgment on this
5 matter.

6 Let's suppose we had a television camera
7 behind you when you were going out on C Catwalk and we
8 recorded everything that took place.

9 And what, if this morning or this afternoon
10 we had a screen up here and all four of us could see
11 it and you could see it. Let's suppose that in this
12 film, first of all, there was an inmate simply standing
13 behind this catwalk with his hands down, perhaps with
14 something in his hands, we don't know.

15 And then after tht he raises up with a spear
16 in his hand and after that he throws the spear.

17 Let's suppose that all three of us were
18 watching this film. You are a supervisor. This is
19 your job.

20 Let's suppose as I see the inmate standing
21 behind the barricade with something in his hand, I
22 don't know what, I, with my toy gun or whatever the train-
23 ing pistol is, I shoot.

24 Let's suppose Mrs. Wadsworth, as he is just
25 about to throw the spear, shoots. We stop it at each

1 point. Let's suppose Mr. Carter says, I'm not sure 1799
2 he is going to throw that spear and he waits, and
3 waits too long and the spear is thrown and Mr. Henix
4 is killed with the spear.

5 You are a supervisor. Would you say that,
6 if you could see the film, we have all seen all the
7 details, would be able to make a judgment if he had
8 seen the film as to whether my action was unlawful
9 and whether Mr. Carter's action was unlawful, would
10 be able to tell us from viewing that film?

11 A To digress a little bit, I went at one time
12 to a training session and part of the training was
13 going through a situation, a mock up situation such
14 as the type you mentioned.

15 You are armed with blanks and this situa-
16 tion arose, it could be a false front of a building,
17 in the doorway would appear someone with what appeared
18 to be a gun.

19 The instructor in the background would, if
20 you hesitate, he would say, you're dead, he shot you.

21 This would be an individual, he would have
22 Dillinger or something wrote on his jacket and he would
23 have a shotgun pointed at you.

24 Another one they had was a small boy, probably
25 8 years old, a large blow up, a picture of him dressed

1 in a cowboy outfit with a toy rifle.

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2 And there were people who went through that
3 and when that picture, this little boy appeared, he
4 would draw his gun and fire the blank.

5 It's very difficult to answer this question.
6 I really can't give you a concrete answer.

7 Q You are a training officer and the film was
8 shown. I thought he was going to kill me, would you
9 say well, that's your individual judgment, sir, and I
10 respect that judgment and that's okay, or would you
11 say to me, that's inappropriate?

12 A In these two instances, Dillinger or the
13 small boy dressed as the cowboy, if you shot the little
14 individual dressed as a cowboy you would probably be
15 told, well, you made a mistake, you did a wrong thing.

16 If you shot Dillinger, he would say great,
17 you did the right thing. Of he didn't shoot, he would
18 say you made a mistake.

19 Again, it is simply here all that is really
20 pointed out in this training exercise was the fact
21 that each individual reacts differently and you have
22 to make the decision on your own level.

23 Q The case is we don't have a TV camera on
24 what happened in the yard. Have you attempted to re-
25 create those circumstances so I can determine--in other

14 words, have you investigated in depth or do you
2 as a general practice, not specifically at Attica,
3 but do you question people in trying to determine
4 whether in fact what an individual officer did under
5 your control, you are a supervisor, do you try to
6 determine if what he did was similar to what I did,
7 what Mrs. Wadsworth did or what Mr. Carter did?

8 Do you try to determine that or is it simply
9 okay, it's your discretion? Can you answer that?

10 A No, we always debrief our people and we criti-
11 que any incident later.

12 Many times you come up with a concrete answer.
13 Many times you don't. It's again, it's how an indivi-
14 dual will look at it. One individual can observe this
15 and say, well, this man did the right thing. Another
16 one will observe the same action and say he did the
17 wrong thing.

18 Q After Attica is over, has there been an effort
19 to draw the persons together who were involved in the
20 assault and discuss the different type of situations
21 they faced and how they reacted and try to evaluate,
22 criticize each other in this respect?

23 A There has been no official discussion of this
24 sort that I know of. However, I'm quite sure, which has
25 happened after the riots at Rochester and other major

1 incidents, there have been dangers of our field 1802
2 officers and our division headquarters officers and
3 this matter is critiqued and completely covered. I
4 think at this point, as you well are aware of, the
5 entire matter concerning Attica is more or less up
6 in the air.

7 MR. WILBANKS: Thank you very much.

8 BY MRS. WADSWORTH:

9 Q Captain, I want to refer back to Mr. Henix's
10 comments about the State Troopers and I think it is
11 only fair for someone to say that there are those of
12 us in rural New York where the trooper is quite
13 different.

14 I think it only fair that this be brought
15 out too in public television. There is, I think, a
16 little of the Canadian Mounties in many people's
17 minds and I think it should be said there is that too.

18 I would like to follow that comment up with
19 a question about the recruiting of the State Troopers.
20 Is there a long waiting list? Are people very anxious
21 to get into the State Troopers these days? Or is it
22 hard to recruit or could you comment on that?

23 A We generally do not have a problem in recruit-
24 ing people. We have an active recruiting program. We
25 have applicants.

1 individuals. The last members we hired graduated
2 from the Academy, I believe, on November 11, 1970.

3 Since that time we have had no new members. We could
4 at this time, I understand we are approximately 300 and
5 some individuals short within the division, to meet
6 our commitments. Due to budgetary problems, we are
7 not hiring anyone at this time.
8

9 However, we hope to in the future. The
10 actual recruitment itself, we do publicize it. We have
11 in the past, I have supervised the candidate examina-
12 tions in various areas. Buffalo, what have you, and
13 there have been--I would say the last one I recall in
14 the Buffalo area, there are close to 2500 original
15 applicants that I know of. I had heard, not definitely,
16 but I heard from our people in division headquarters
17 at the time of the examination, we had 800 some people
18 show up for the actual examination in Buffalo itself.
19 This would be from Buffalo and the Western New York
20 area. We really have no great problem in having people
21 apply.

22 Q Is there any attempt made to recruit from
23 minority groups?

24 A I don't know if you can say it is actually
25 attempting to go into any certain area. However, when

1 our people apply we don't, on the original appli- 1804
2 cation we don't know whether the man is black, white,
3 Indian, Chinese or whatever. When he applies, the
4 application comes in, he receives a card to report
5 for the examination. He takes the exam and it is
6 all coded in a way so that when the examinations are
7 corrected and graded, we don't do it, it is sent out
8 and graded by others.

9 We don't know who is qualified insofar as the
10 written examination although I will add at the time I
11 recall the examination in the Buffalo area was in the
12 Port Authority Building.

13 Of the 800 some persons there, I was quite--
14 I will say I took note of the fact that there were
15 probably not over 15 or 16 black men in the group.

16 MRS. WADSWORTH: Thank you.

17 MR. CARTER: The fact is, Captain,
18 that you are, it is a fact that insofar as blacks
19 and Puerto Ricans are concerned, you are under-
20 represented on the force, isn't that so?

21 THE WITNESS: We have a Puerto Rican.

22 MR. CARTER: One Puerto Rican.

23 THE WITNESS: Is that a little? I don't
24 know.

25 MR. CARTER: You know, I think you know

8¹ our procedure is that if you at this time 1805
2 wish to make any statement of your own without
3 response to questions, you are welcome to do so.

4 THE WITNESS: I would rather not.

5 MR. CARTER: Thank you very much, sir.

6 (Witness excused.)

7 MR. LIMAN: Lieutenant Christian.

8 L T. J O S E P H C H R I S T I A N, called
9 as a witness, having been first duly sworn by
10 Mr. McKay, was examined and testified as follows:

11 MR. LIMAN: Mr. Munisteri.

12 EXAMINATION BY MR. MUNISTERI:

13 Q Will you state your name, please.

14 A Joseph P. Christian.

15 Q You are a member of the New York State
16 Police?

17 A I am.

18 Q What is your rank?

19 A Lieutenant.

20 Q Were you at Attica in that capacity during the
21 disturbance last September?

22 A I was.

23 Q You were there for the whole four days, were
24 you?

25 A Yes, sir.
