MR. McKay: This is the afternoon

session of the eleventh day of the public hearings

before the New York State Special Commission on

Attica.

Mr. Liman, will you introduce the subject

for this afternoon.

MR. LIMAN: We are going to commence this

afternoon's session with some testimony which we

took in the executive session last night of a

member of the State Police force who is part of

an undercover detail and, therefore, we did not

think it appropriate for him to appear publicly.

We will read his testimony on the subject

of correction officers firing from the third floor

of C-block.

You will recall from yesterday's testi-

mony by Col--by Major Monahan that the policy was

that correction officers were not to participate

in the assault.

We will then have a taped telephone

conversation referring to correction officer

firings. This tape was made contemporarily
with events on the 13th of September 2032 and we will then proceed with Col. Miller of the State Police, with a citizen of Attica, with a person who was wounded in the assault and a Dr. Gold, the psychiatrist acting as consultant to the Commission who has interviewed a number of people at Attica, including people who are now in HBZ.

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

Mr. Rosenfeld will read Mr. Steinmetz' answers.

"Q What is your occupation, Mr. Steinmetz?

"A I am a member of the State Police, an investigator.

"Q Are you attached to the BCI?

"A Bureau of Criminal Investigation, yes, sir.

"Q Are you also attached to A Troop?

"A A Troop, sir.

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

"A I did.
Q Where were you on the morning of September 13th?
A I was the radio communication between General O'Hara and the command post.

Q When were you given this duty?
A That morning.

Q Were you briefed that morning?
A I was briefed.

Q Did you attend the briefing that was given by Major Monahan?
A Yes, I did. Capt. Williams briefed us.

Q Capt. Williams briefed the members of the BCI?
A Yes.

Q When you say you were the radio communication between the command post and General O'Hara, you had a portable radio, is that what you mean?
A Yes, sir.

Q Did you relay his commands or did he speak into your radio?
A I relayed his commands.

Q Where were you stationed?
A I---we were stationed on A-block
gallery, on the third gallery of A block, about half way.

"Q The third floor of A-block?

"A Right.

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

"A Yes, sir.

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

"A Approximately 9:30.

"Q Did you accompany him there?

"A No, sir, I met him there.

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

"A He was there before I was there.

"Q Who else was in this gallery?

"A The general, myself and some correction officers.

"Q Were the correction officers armed?

"A Yes, sir.

"Q What were they armed with?

"A Shotguns.

"Q Were they positioned by the windows?

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

"Q With their guns out the windows?
A Not at the time that we got up there, no, sir.

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

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

Q There were correction officers on both sides of you?

A We were in the center.

Q There were correction officers on both sides of you?

A Yes.

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

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

Q Who gave the command for the gas drop?

A I can't recall just exactly what was said, but the command post advised that we were committed and General O'Hara advised me to advise them to tell the choppers to start their
engines and come over.

"Q Who was at the command post?

"A Capt. Williams.

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

"A No, sir.

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

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

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

"A Yes, sir.

"Q What did you see happen?

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

"Q Of Times Square?

"A Of Times Square and the yard.

"Q What happened when you saw that?

"A Very shortly after that, the firing started.

"Q Was there firing from your gallery?
"A I could hear some firing, yes, sir.

"Q Can you give me an idea of how sustained the firing was from your gallery?

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

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

"A No, sir.

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

"A No, sir, I could not.

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

"A At the time we got there?

"Q Yes, sir.

"A Yes, sir.

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

"A No, sir.

"Q Was any log kept, to your knowledge, of the commander's instructions over this police radio?
A Not that I know of, sir.

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

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

Q How long did the firing last?

A I would guess three to four minutes.

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

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

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

A No, sir. Not that I can recall.

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

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

Q Were the correction officers still there?

A It seems to me that they were gone
by the time we left.

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

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

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

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

"Q Catwalk?

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

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

"A This way.

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

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

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

"A We went out on A-catwalk.

"Q You went to Times Square and then
just doubled back?

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

"Q Returned and then went out--

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

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

"A Right.

"Q Then did you leave General O'Hara?

"A Yes.

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

"A No, sir.

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

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

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

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

"Q Did you see what would happen if
somebody did not move or raised up?

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

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

"A No, sir, I did not.

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

"A No, sir.

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

"A I did not, no, sir.

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

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

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

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

"A At the time I got up there, no, sir.
"Q Were you the only trooper up there?

"A Yes, sir.

"Q Was there any discussion that you overheard about whether or not they were permitted to fire?

"A No, sir. No discussion.

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

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

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

"A No, sir.

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

"A Not while I was up there with him.

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

"A There was firing up there, yes, sir.
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"Q. Do you wish to make a statement?

"A. No, I do not."

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

Can we run it now?

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

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

"VOICE NO. 1: I see.

"VOICE NO. 2: The latest is that a conversation with Capt. Wald, when he came up the
ladder, he related to Bill that Walt had been saved by somebody who was shooting the guy that had a knife at his throat and Wald said he was saved by the skin of his teeth and thankful to the guy that shot the guy that was holding a knife to his throat.

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

"VOICE NO. 2: Yep, yep.

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

"VOICE NO. 2: Yeah.

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

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

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

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

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

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

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

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

"VOICE NO. 2: One body or more?

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

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

"VOICE NO. 1: Well, rigor mortis set in and their pallor, the flies. There was every indication that they were dead a couple days.
"VOICE NO. 2: Were they inmates? 2046

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

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

"Warren Goren, what else did he see?

"VOICE NO. 1: Well--

"VOICE NO. 2: Or if you talked to anybody, what did they say? Did you talk to any of the hostages?

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

"VOICE NO. 2: Did he--

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

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

"VOICE NO. 1: Relative things. I was
standing next to a correction officer with a rifle as--

"VOICE NO. 2: Where was that?

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

"VOICE NO. 2: During the attack?

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

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

"You know, I think all the display here by the State Police was the coordination and training that they had. If they had to go through two wire barricades to get to a third barricade and what they did, they sent men out with fire-power and then right back of them come in the men
with the snips and cut the wire and the more firepower, over the wire and so forth.

"It was really—it was such a short duration I don't think they ever anticipated that kind of firepower. I think it took them completely—

"VOICE NO. 2: By surprise?

"VOICE NO. 1: Yes.

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

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

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

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

"VOICE NO. 2: Of course, there must have been quite a number of people that were not
participants all along. Would you say that?

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

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

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

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

We are now ready to proceed with our first witness, Col. Miller.
MR. McKay: While Col. Miller is coming to the stand, I have just been advised by the security corps that we have had our regular bomb threat and I will tell the studio audience and the general public as before that the same search of the premises was made this morning as usual. Nothing was found and all those who have come into the building since that time have had any parcels or brief cases examined.

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

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

Col. Miller: Yes, I have, Dean.

MR. McKay: Will you remain standing to be sworn.

John C. Miller, called as a witness, being first duly sworn by Mr. McKay, was examined and testified as follows:

EXAMINATION BY MR. LIMAN:

Q State your full name, for the record.
A John C. Miller.

Q What is your occupation?
A First deputy superintendent, New York State Police.
Q Is that the second highest position in the State Police?
A It is.
Q Who is actually the superintendent of the State Police?
A William E. Kirwan is the superintendent.
Q I think you will have to adjust the mike. How long have you held this position of second in command of the State Police, sir?
A I received this appointment on, I believe, February 24th.
Q Of this year?
A Yes.
Q In September of 1971, what was your position?
A Chief inspector.
Q Who were the officers superior to you in the department at that time?
A Well, the office of the deputy superintendent, field command, was vacant due to retirement. The deputy superintendent, Surdam, in charge of administration. Deputy superintendent Denman, the first deputy superintendent and Mr. Kirwan, the superintendent.
Q So there were essentially three people above you in the chain of command at that time?
A That's right.
Colonel, when did you learn of the disturbance at the Attica Correctional Facility?

A On the morning of the 9th.

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

A I finished 32 years this July.

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

A No, I was in the Navy.

Q How many years were you---

A Two years.

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

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

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

A Yes. Arrangements were that there was a
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State plane available and as it turned out Commissioner Oswald and some of his people were going out and we were on the same plane.

Q Were you told that the warden or the superintendent of the facility had requested the assistance of the State Police?

A Well, he had initially requested the assistance of Major Monahan, troop commander of Troop A, and then this information, of course, came into division headquarters and because of the apparent nature and the size of the disturbance, divisional personnel were deployed to Attica.

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

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

Q Was your goal to get a hundred men an hour to Attica?
It's a question of mobilizing your people and moving them as fast as possible. We felt that we could move a fairly large contingent of people from the nearby troops and, for instance, Troop E at Canandaigua is the closest troop. Naturally, they could assemble and move out fast and would be the first to arrive and they would be followed possibly by Troop D, which is Oneida, and the other troops would be following along.

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

A Well, no. We were figuring on seven troops, 350 people would be moving in, plus the number of men that Major Monahan could assemble from his own troop. Subsequently he had, I think, approximately 200 of his people there and--

Q So you had approximately 550 men there?

A Before the end of that day, yes.

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

A Well, I was sent out as the superintendent's representative and to act as the liaison between the situation and the superintendent's office. Also to be there so that if there was any additional assistance needed, if anything of a nature came up where possibly
a policy decision would have to be made, that I would be in a position to make it.

Q Were you actually in command of the operation?
A Well, as the highest ranking State Police officer, I would assume command, assume responsibility.

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

Q Being the commander of Troop A and his jurisdiction?
A That's right. He is the troop commander and this is the general policy, the troop commander is not superceded by a staff officer going out.

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

Q Colonel, what time did you arrive at Attica with Mr. Oswald and Mr. Dunbar?
A I would say probably 2:15 to 2:30, in that afternoon.

Q At the time you arrived, were the efforts to retake the institution still in process?
A I wouldn't say that they were in progress insofar as any movement of people to take police action.

Certain action had been taken upon the
arrived of the first contingent of State Police. Major Monahan's people and correction officers together did manage to retake three cell blocks and also take custody of, I think, 900 inmates and rescued ten guards who had been injured in the initial uprising.

Q Were you told why these efforts had ceased?

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

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

A Let me clarify the situation.

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

It would be his decision as to what course he desired to follow and upon his arrival there, the State Police were in a support capacity to render what
assistance he might request of us.

Q Did he solicit your opinion on the decision
to negotiate with the inmates?
A No, sir, he did not.

Q Did he consult with you on his decision to
enter the yard and speak to the inmates directly?
A Well, I wouldn't say that he consulted with
me as much as he consulted with his own people. It
was discussed and I was present and there was a dis-
cussion as to his safety and I said that in my opinion
his own people were concerned with his safety if he
went in.

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

So I offered the suggestion that possibly
he could go out on top of the A-tunnel, on the cat-
walk with a State Police escort, a guard, and he could
address the inmates from atop the tunnel and then we
would more or less insure his safety.
But this was offered to the inmates, some inmates were in the A-tunnel discussing this and they would not consent to any such address, any such proposition. They wanted the commissioner to go directly into the yard, into D-yard where all the inmates were gathered and to have him address them or talk to them there.

Q Later that day, after the commissioner had commenced his negotiations and after sufficient police had arrived, did you have a conversation with anybody on the Governor's staff about the advisability of negotiations versus an effort at retaking the institution by force?

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

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

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

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

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

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

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

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

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

A Well, on Thursday when I spoke to Major Monahan, after I had arrived and observed the situation, there was only two basic approaches, to go into the prison yard whereby you could hope to regain control.

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

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

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

A Naturally, in any police objective or police operation, intelligence serves a very important part in the overall operation and we were interested in trying to gather intelligence as to the position of the
hostages, the position of the inmates and what possibilities we might have to face if we did go in.

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

They said that they felt this was harassment if armed people were on the roofs of the both blocks looking down at them while they were attempting to negotiate.

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

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

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

I talked to several of the chaplains that were in the prison yards.
Q. What information did you have as to what weapons the inmates had?

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

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

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

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

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

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

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

Q. When was it that you were told that the decision was made to go in on Monday, all things remaining the same?
Well, on Sunday the situation appeared to be getting critical and there was a question possibly of police action starting on Sunday but the commissioner continued to negotiate in the hopes that the inmates would release the hostages and accede to the demands rather, accept the demands which he had acceded to.

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

Q Control of the hostages, you mean?

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

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

So that the decision was made on Sunday evening that police action would start on Monday, although
he indicated that he wanted to give them a last offer on Sunday morning, hoping they would accept it so that it would not be necessary to take the police action.

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

A The safety of the hostages, yes.

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

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

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

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

A There was never any alternative discussed other
than going in with the weapons that we had.

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

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

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

(Continued on page 2066.)
Q I understand that you did not have CS gas, which is what was ultimately used, am I correct?

A We ourselves did not have the CS gas. This was a military gas that was brought out by the National Guard and it was—the National Guard helicopters came out to the facility. One of them was equipped with a dispersal unit whereby this gas could be dispersed through a pipe at the bottom of the helicopter and the blades then would naturally force the gas down and they offered the use of this helicopter with the gas, hoping that this would have the necessary effect where maybe we could regain control without any unnecessary use of force.

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

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

I think you have seen them where the military has them equipped on the back with the nozzle which shoots flame. These are similar, except they shoot gas out.
We did have six of these as well.

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

A No.

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

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

This is a bullet that we felt would be satisfactory to meet our needs for police purposes.

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

A There is a certain amount of expansion? There is a certain amount of expansion in the bullet, yes.
Q    Why is it, therefore, that you feel that for police needs you have to use a bullet which expands whereas the military for its use requires bullets that are full jacketed?

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

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

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

Q    The full jacketed bullet as I understand it, does not expand and therefore it will leave less of a rupture inside certainly than a bullet that is not.

A    A military type 30-caliber bullet will kill just as much as any other bullet if it's hit in a vital spot. It may not do as much tissue damage. I'm not that
familiar enough to say whether a full jacketed 
bullet will or will not expand a certain degree. I'm
certain that if it hits a bone, there will be some ex-
pansion in it. This type bullet is not available with the
.270 rifle. The .270 rifle is, from what we had--

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

A The only ammunition available.

Q Was what you had to use.

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

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

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

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

Q Did the Commissioner ever ask you about the
type of ammunition you were using?

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

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

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

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

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

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

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

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

A  No, they did not ask any opinion. And I don't think I would have been able to give an opinion as to what amount of casualties, the number of casualties. You would never know this until actually after the situation happened. Certainly, the fact that someone could be hurt, the fact there was very clear, both by the position of the inmates, the fact that they had been
arming themselves for five days, fortifying their positions. I think anyone could realize that this showed that, on the part of the inmates, that they intended to resist.

Q I will come back to that in a moment. I want to pick up the statement you made earlier that the determining factor in the decision to attempt the retaking of the prison was the safety of the hostages. Do I understand that you were told prior to the decision on Sunday that the hostages were being well treated in the yard? Were you told that?

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

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

Q Did you also hear the television broadcast by the hostages on Sunday in which they stated that they were being treated well and not being molested? That was when they appealed for Governor Rockefeller to come.
A: Well, I didn't see much of any television or hear much of any radio while I was there.

Q: Was it reported to you that they had been on television and that they had stated that they were not being molested?

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

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

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

Q: Did you take that threat seriously?

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

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

A: Yes, sir. And I believe that listening or read-
ing one of your first public hearings, 18 per cent of these people are in there for the crime of homicide.

Q So that the threat that if you were to come in, the hostages would be killed, was something which in discussions on Sunday and earlier was given some credence?

A It was given definite consideration, yes.

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

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

Q Did you on Sunday night speak to the Governor?

A No.

Q Did you speak to any members of his staff?

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

Q  Colonel, who did you understand made the decision to retake this institution?

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

Q  What do you base that on?

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

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

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

Q  Yes, sir.

A  No, I don't think there was any solicitation of this type of information or opinion. There was a discussion that the possibility was there that some inmates—rather some hostages could be killed or could be injured by going in, yes.

Q  Was there any procedure which you had which in effect could have stopped hostages from being killed by
the time you could reach them?

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

Q  So that I take it that although even thought the purpose of deciding to go in after all these days of wait was to save the hostages, it was always understood that the very act of going in could precipitate harm to those hostages?

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

Q  Was there any intelligence which was available to this group at Attica that indicated that the hostages were in any more danger on Sunday than they were on Thursday?

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

So that actually there was a serious question to consider whether this could explode and with the result that your hostages and they had the opportunity at any
time, could be further jeopardized than what they were. So that you had two things. You could delay and maybe you could gain something or not delay and gain the same thing. I mean, if you delayed you might jeopardize their safety even more so than by going in.

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

Q The opportunity was there all along.

A That's right.

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

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

You had others in there who possible, because of personal reason, wanted to take an unfair advantage
over one of the guards. We do know that in any inmate population you have psychotics. You have psychopaths who over a period of time, you have a tension buildup, they can explode and this potential was there and it was there right from the first day and I don't think that it decreased in the waiting period of five days.

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

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

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

A No, sir.

Q As opposed to waiting?

A No, sir.

Q You did not recommend against waiting further?

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

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

A No, sir, it did not.

Q Why was the decision made not to permit correction officers to participate in this action?
On Friday when we started to draw up formal plans and I asked Major Monahan to draw formal plans and he and Supt. Mancusi, I think Capt. Malovich, possibly Capt. Williams were in a room and they were trying to formulate the various details.

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

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

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

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

A Yes, I did.

Q What did you do in that direction, sir?
A Well, I was out in the front of the Administration Building on many occasions going back and forth. I always took the opportunity to talk to various fellows and sometimes groups of fellows and just discuss, give them some idea of what was going on. That this was a delayed action on our part because of the safety of the hostages. I tried to tell them that this is part of the job, just be patient. Don't get up tight. If we have to take the action, we'll take the action. That we are professionals. If we have to do the job, we'll do the job and we won't invoke personalities.

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

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

A No. But it's human nature. You gather 500-odd people out there and I don't care how well trained they are, any situation--I have been in them, I am certain most people in the room. You arrive somewhere and then wait. If you have been in the military, that hurry up and wait was an old adage you heard many times and you do create tension and you create impatience. But I think if you try to discuss this with your people and explain
it to them and if they are well trained and
our people are well trained, well disciplined, they will
recognize the need and they will go along and this is
what I was trying to convey to them.

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

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

I told this to Douglass, I had already dis-
cussed this with Supt. Mancusi and it would be further
discussed with the Commissioner. I don't know if it had
been discussed with him at the time that we definitely
determined that police action was going to be taken. I
believe that on Sunday night I spoke to the Commissioner and the superintendent was there and Supt. Mancusi said that he would give the necessary instructions to his people so they would know that they were not going to be involved in the action in retaking the facility.

Q Who controlled entry into the building, Colonel?
A This was corrections' responsibility.
Q You now know that the correction officers did in fact participate in this action. Was that done without authorization?
A So far as I am concerned, it was.
Q And you have heard testimony--
A Pardon me just a second. Participation--
Q Shooting from the third floor of A-block, shooting from the roof of C-block.
A The shooting from the galleries--
Q From A.
A From A, it doesn't make any difference. The shooting by correction officers was certainly, from the galleries was certainly not to my knowledge, and I see no need for it but it happened. The officers up there in the A-block and the rifleman, I certainly was not aware of it. It would not have been allowed to happen if I knew it. Certainly I don't believe Major Monahan would
have allowed it or any other officer there.

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

Q Was there any investigation which the State Police conducted on its own of this affair as to how this could have happened and whether any of your own men were aware that correction officers were participating in this police action?

A Well, naturally, we have made quite an investigation on our own on the whole incident.

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

A Against--

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

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

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

A It's only recently been brought to my attention insofar as the officer in charge of the roof detail allowing a man up there. No, we have not taken any disciplinary action.
Q  I am just asking about past actions. As to whether you had up to now taken any disciplinary steps or conducted any investigation of how this could have happened.

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

Q  Where were you during the assault itself?

A  Well, I was in the superintendent's office immediately prior to the assault. In connection with the hostages being brought out by inmates under the catwalks, I was informed of this by telephone from Capt. Malovitch about 9:30.

Q  Was a request made of you at that time?

A  There was.

Q  What was the request?

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

I told them no, that this would not be done. I said at the time we are ready to move and we will be ready to move in about 15 minutes, we had a time of about 9:45 to go, I said at that time or if it should happen before that time where one of them actually proceeded to cut someone's throat, I said at that time when the police action starts, the riflemen then should shoot the inmates that were threatening the hostages if and when at that time they then took further aggressive hostile action against them.

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

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

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

A Well, we don't issue rifles individually to a man. We don't issue shotguns individually to a man. We don't have that number. They are available for the detail
so that a man who was going on duty might take a shotgun from someone who was going off duty. We did not keep an accounting of the weapons by serial numbers to show which man had which weapon. The same would apply to the riflemen details who might go from shift to shift so that you would have people qualified to use these weapons. So far as ammunition, the men are supplied with ammunition for their service revolver and the shotgun ammunition, the rifle ammunition was available in supply trucks that were brought out there. We did not keep an accounting of shell by shell, if a man wanted some extra ammunition, no questions were asked.

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

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

A No, I wouldn't say that because in our regulations, we have a regulation on the discharge of firearms. Every man has to report on the discharge of firearms the number of rounds he fired and the reason he fired it. This is a regular form that we use in the ordinary discharge of firearms that you might have in killing a wounded animal or some other details where you did shoot your gun.
Q So this would be really up to the individual to be honest about reporting what he had shot, there was no way of checking it?

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

Q Did you actually see the gas drop?

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

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

As I reached the tunnel entrance, there was a detail of troopers that had not moved out yet. I could hear the helicopter and I couldn't see it. I could hear
it. I was inside. I could observe the barricade in the A-tunnel. I saw a flash from the barricade which I figured was the gas gun being fired. I heard gas guns being fired into the barricade and this is all simultaneous event. I went up to the second floor and went to the gallery window by the entrance to the catwalk and then observed the police action start.

Q What did you see?

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

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

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

A I did.
Q  Could you see what people were firing at?
A  No, I couldn't--I can't say that, what they
were firing at. I do know that there were people down.
I could see people down on the catwalks. I didn't
actually see people firing. The details were moving
out. I heard the testimony that firing, they did fire,
but I was looking at an overall picture. I was not
concentrating on any one individual and I can't say that
I saw any shots being fired.
Q  Did you see any acts of inmate resistance?
A  No, I did not.
Q  And you heard the testimony being read of
your men. As you panned those catwalks, did you see
any inmates trying to assault troopers?
A  I have no clear picture in my mind of any as-
saults being committed by inmates against troopers.
Q  That would stand out in your mind, wouldn't it?
A  Not necessarily, no. Then I have no picture in
my mind of any troopers assaulting inmates. You know,
within this same period. This is in an additional 30
seconds or a minute.
Q  I wasn't suggesting troopers assaulting inmates.
You testified you heard shooting and I was asking
whether you saw any inmates trying to assault troopers.
A  I can't say that I did.
Q  I think this would be an appropriate moment to show the film of the police action and then I would like you to perhaps--perhaps maybe you can comment on it or perhaps we can have questions on it.

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

MR. LIMAN:  That is what we will do.

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

MR. LIMAN:  Mr. Luxemburg.

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