

DEPARTMENT OF JUSTICE

CIVIL RIGHTS DIVISION

Enforcement of Court Desegregation Orders

UNIVERSITY OF MISSISSIPPI
Orvil S. Hobson v. Hobson, et al.

Depositions

Depositions - Janca v. McShane

144-41-489

11,851

1 IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
2 DISTRICT OF MISSISSIPPI
3 BILOXI DIVISION

4 CYRIL T. FANECA, JR.

PLAINTIFF

5 VS.

NO. 2604

6 UNITED STATES OF AMERICA, ET AL

DEFENDANTS

7 DEPOSITION OF MR. T. B. BIRDSONG

8 Taken by Defendants
9 Friday, December 21, 1962
10 Witness Room, Post Office Building
11 Jackson, Mississippi

12 APPEARANCES:

13 FOR THE PLAINTIFF:

14 EDWARD L. CATES, ESQ., Attorney at Law, P. O. Box
2005, Jackson, Mississippi

15 CHARLES CLARK, ESQ., Special Assistant Attorney
16 General, Jackson, Mississippi

17 FOR THE DEFENDANTS:

18 CARL EARDLEY, ESQ., Attorney, United States Depart-
19 ment of Justice, Washington, D. C.

20 ROBERT E. HAUBERG, ESQ., United States Attorney,
21 Post Office Building, Jackson, Mississippi

22 E. R. HOLMES, JR., ESQ., Assistant United States
23 Attorney, Post Office Building, Jackson,
24 Mississippi

25 ST. JOHN BARRETT, ESQ., Attorney, United States
Department of Justice, Washington, D. C.

APPEARING FOR THE UNITED STATES OF AMERICA

REPORTING SERVICE
— Meta Nicholson —
836 NORTH JEFFERSON
JACKSON 2, MISSISSIPPI
PHONE FL 8-9688

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MR. EARDLEY:

Let the record show that this is a discovery deposition of Colonel Birdsong being taken pursuant to notice and under Rule 26. I think we are agreed that all persons not definitely needed in this proceeding will be excluded from the room and that the deposition shall be sealed as provided by the rules.

I'm not going to waive examination, reading or signing of Colonel Birdsong. After we have this transcribed I want you to read it and make any corrections that are necessary and then sign it. Where you sign it is immaterial to me, and it doesn't have to be before a Notary or before the officer that swore you, but I do want you to read it over and be sure that it is what you have said. Then it can be certified as provided by the rules.

MR. CATES:

For preservation of the record, we will make objections, of course, throughout which we think are improper, but we do not waive any right of trial and we haven't -- we do not make any objection to -- any objection to any questions or answers thereto.

COLONEL T. B. BIRDSONG

After having been duly sworn by Elizabeth Mathiston, an officer of the Court, testified as follows:

EXAMINATION

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1 BY MR. EARDLEY:

2 Q. Would you state your full name?

3 MR. CLARK:

4 If you are going to go into the merits of the
5 deposition, I would like for the record to show that I am
6 Charles Clark, Special Assistant Attorney General in the
7 State of Mississippi, and I am here in the deposition room
8 representing Colonel Birdsong individually.

9 COLONEL BIRDSONG:

10 A. T. B. Birdsong, Commissioner of Public Safety,
11 Jackson, Mississippi.

12 MR. EARDLEY:

13 Q. And how long have you been the Commissioner of
14 Public Safety?

15 A. Well, that's kind of a hard question. I or-
16 ganized the patrol in 1938, and I was out there until -- 1940,
17 in the Army for eight years, came back to the patrol in '48,
18 out of the patrol again in '56 and back in '61.

19 Q. What are the functions of the office of Public
20 Safety Commissioner?

21 A. You have the several divisions there. You have
22 the Highway Patrol, Bureau of Identification, Investigation,
23 cattle theft, safety responsibility Division, Drivers' License,
24 Division and several other divisions connected with them.

25 Q. Does this office have any control over the local

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1 police?

2 A No, sir.

3 Q Or the sheriffs' offices of the county? Those
4 are not under your command?

5 A No, sir, they are not under my command.

6 Q Is it called the State Highway Patrol?

7 A It is called - yes, sir - Mississippi Highway
8 Safety Patrol.

9 Q To shorten this up, I will refer to it hereafter
10 as "the Patrol".

11 A That's all right.

12 Q Am I correctly informed that this is one of the
13 divisions under your command?

14 A Yes, sir.

15 Q What are the general functions of the State
16 Highway Patrol?

17 A Generally, to patrol the highways for safety,
18 traffic - that's the general function.

19 Q You mean in connection with traffic violations?

20 A Yes, sir.

21 Q Maintaining proper speeds and so forth and so on?

22 A Yes, sir.

23 Q What kind of training do these people receive
24 for that work?

25 A Every applicant must attend a school, not less

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1 than six weeks, not more than three months.

2 Q What are the general subjects covered at the
3 school?

4 A It covers all phases of law enforcement, arrests,
5 procedure, traffic -

6 Q Do you have any training in there which covers
7 riot control?

8 A No, sir, we are not a state police. We are
9 strictly a highway patrol.

10 Q Do you have any training of these men relating
11 to the use of tear gas or tear gas equipment?

12 MR. CATES:

13 We object.

14 MR. EARDLEY:

15 For your assistance, Mr. Cates has a right to
16 make an objection, but he makes it for the record, and then
17 you will proceed to answer the question.

18 A We have some training in riot duty and we have
19 some training in tear gas and projectiles and what have you.

20 Q Is tear gas equipment a part of the equipment
21 of the Patrol?

22 MR. CATES:

23 Excuse me just a moment. Let me have a running
24 objection to this line. It is beyond the allegations of our
25 particular complaint, and for other reasons.

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1 A We have a limited amount of tear gas and pro-
2 jectiles in that under certain sections of our law, on the
3 call of sheriffs and other law enforcement officials, we may
4 aid and assist in law enforcement, and particularly at the call
5 of the Governor.

6 Q Well then, do I understand that tear gas and
7 tear gas masks are part of your equipment?

8 A Masks are not - no, sir.

9 Q Masks are not?

10 A In fact, none of it is in the table of authoriza-
11 tion, if that is what you mean.

12 Q But do you have it on hand somewhere?

13 A We have some.

14 Q You have some?

15 A A very limited amount.

16 Q I gather from certain documents I have seen
17 recently that you are familiar with the attempts to enroll
18 Meredith at the University of Mississippi.

19 MR. CATES:

20 We object.

21 THE WITNESS:

22 Shall I - I'm green at this sort of thing -

23 MR. EARDLEY:

24 I tried to explain, Mr. Cates is making a record.
25 He doesn't represent you in this proceeding. He is represent-
ing his client, Mr. Faneca, and he is going to try to protect

1 his client by making these objections, but once he has made
2 then the record is made and then you go on and answer the
3 question unless your counsel here should instruct you not to.
4 Then we would have to go to the Court and see what the Court
5 would decide.

6 MR. CATES:

7 In further clarification, Colonel, for your
8 benefit, if I object and I direct you not to answer, then
9 there again we would have to go to the Judge for a clarifica-
10 tion on my objection, but until such time as I say that I
11 don't want you to answer, then you go on and answer over my
12 objection. That doesn't mean by this statement that I waive
13 anything. There is nothing implicit in that statement of my
14 objection being improper.

15 MR. EARDLEY: Off the record.

16 Q Who is the head of the Patrol?

17 A Chief Dave Gayden.

18 Q Was he the head of the Patrol in the month of
19 September?

20 A Yes, sir.

21 Q We you personally connected in any way with the
22 various efforts to register Meredith in the month of September?

23 MR. CATES:

24 Object.

25 THE WITNESS:

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1 A. I was on some occasions. I was not on all
2 occasions.

3 MR. EARDLEY:

4 Q. Not on all? So that we all know where I am
5 going. I am going to specifically ask you about certain
6 occasions, and if you had nothing to do with it, it is a
7 good time for me to find it out. The first one is September
8 20th -

9 MR. CLARK:

10 Mr. Eardley, I think it might simplify pro-
11 cedures here for me to say that I will object to all questions
12 directed to Colonel Birdsong that relate to any incidents
13 other than those described in the complaint filed in this
14 lawsuit which are centered on the campus of the University
15 of Mississippi on the night of September 30th, and I will
16 direct Colonel Birdsong not to answer any questions concern-
17 ing any other event not directly related to the complaint's
18 allegations.

19 MR. CATES:

20 Mr. Eardley, for the record also, we object to
21 any testimony by Mr. Birdsong to any events prior to the 30th
22 of September, 1962.

23 MR. EARDLEY:

24 I am going to make a statement for the record,
25 since I might have to come back to complete this deposition.

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1 I want to point out that the incidences which occurred on the
2 20th, 25th, 26th and 27th of September are part of the general
3 subject matter of the suit in question. As you lawyers know
4 well, discovery is not limited to the narrow issues set forth
5 in the complaint. It is only limited to the general subject
6 matter of the suit. The subject matter of this suit is the
7 alleged unlawful presence of the marshals on the campus on
8 September 30th and their alleged misconduct on that day.

9 It is our opinion that in order to understand
10 any alleged misconduct or unlawful conduct of this nature,
11 you've got to go into the background as to what led up to
12 that alleged misconduct. No one would contend that in the
13 event of a crime you must only relate the incidence at the
14 time the crime was committed. Every investigation by dis-
15 covery or otherwise goes back to see what the incidences
16 were and the provocations were that led up to the charge.
17 In this instance we have state police as well as marshals
18 involved on September 30th, and what the relationship was
19 established by the prior incidents, what the expectations of
20 the marshals were based upon the prior relationship is very
21 material to the defense of this lawsuit.

22 Also it is obviously material that if, as we
23 believe we could establish, that the crowds gathered in prior
24 instances, even though there were no marshals present, or only
25 one or two, then we have an argument that the marshals present

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1 on September 30th was not what caused the crowd to gather.

2 Q Now, Colonel Birdsong, were you present on the
3 campus of Ole Miss during the night of September 30th?

4 A Yes, sir.

5 Q In your capacity as Commissioner of Public
6 Safety?

7 A Yes, sir.

8 Q Were you in charge of the State Patrol on that
9 evening?

10 A Yes, sir.

11 Q Was Mr. Gayden there?

12 A Yes, sir.

13 Q Were you giving him instructions as to what was
14 to be done?

15 A Yes, sir.

16 Q Were you acting under instructions from the
17 Governor at that time?

18 A In what respect?

19 Q I mean were you receiving orders from the
20 Governor as to what you were to do?

21 A I received orders prior to going up there what
22 to do.

23 Q What were these orders?

24 A To preserve peace and order.

25 (The Reporter was handed Defendant's Exhibit 1

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1 and same was so marked.)

2 Q Colonel Birdsong, I hand you Defendant's Exhibit 1
3 here for identification and ask you whether that is the order
4 which you referred to a moment ago.

5 MR. CATES:

6 We object to this order in that it is dated the
7 25th of September, covering incidents prior to the allegations
8 of our complaint.

9 MR. CLARK:

10 Colonel, please recall that I have instructed
11 you not to answer any questions that relate to events that
12 transpired prior to September 30, 1962. I don't know what
13 your answer is going to be to his question if you received
14 orders on September 30th. Of course that is not encompassed
15 within my statement to you not testifying.

16 THE WITNESS:

17 This is dated the 25th of September.

18 MR. EARDLEY:

19 Q My question was not whether he received the
20 order on the 30th, but whether on the 30th he was acting under
21 an order.

22 MR. CLARK:

23 That's what I understand.

24 MR. EARDLEY:

25 Q Is this the order?

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1 A I was acting under verbal order from the Governor
2 on that particular day.

3 Q On September 30th? Was this order which is
4 Defendant's Exhibit 1 in effect on that day? Had it been
5 rescinded?

6 A Very frankly, I don't remember when I got that
7 order.

8 Q You don't recall it?

9 A No, sir. I don't remember when I got it.

10 Q Well, are you sure you got it?

11 A Yes, sir.

12 Q But you don't know when you got it?

13 A I don't remember.

14 Q What were the verbal orders which you received
15 on September 30th?

16 A The verbal orders were to preserve the peace.

17 Q Preserve the peace, with no detailed instructions?

18 A No, sir, no particular details.

19 Q Did you give your - let me ask you this directly:

20 Did you communicate to the State Highway Patrolmen, the group
21 of men themselves who were present, did you communicate to
22 them directly or did you do it through Mr. Gayden?

23 A We did it more or less piecemeal for the simple
24 reason that these men came in in small groups, and we had to
25 do it by radio and had to do it by word of mouth.

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1 Q Who did you give your orders to that day and
2 that night, to the chief, Mr. Gayden?

3 A Yes, sir.

4 Q Did you issue any general instructions to him
5 or were they just instructions that went on from time to time
6 as matters developed?

7 A Piecemeal - fragmentary.

8 Q Did you keep any record of these instructions
9 by radio or otherwise?

10 A No, sir, it was impossible.

11 Q So you have no record of the instructions that
12 were given?

13 A No, sir, for the simple reason that our head-
14 quarters was gassed out and we had no way to keep our head-
15 quarters.

16 Q The gassing took place around 8:00 o'clock in
17 the evening, didn't it?

18 A The first, yes.

19 Q What orders did you give before that?

20 A Before 8:00 o'clock?

21 Q Before 8:00 o'clock, before the gassing.

22 A Same thing, to preserve the peace.

23 Q Were there local police and sheriffs there that
24 night?

25 A There were a few.

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1 Q Were they there at your request?

2 A No, sir.

3 Q Did you assert control or command over them?

4 A I had no command function over them whatsoever.

5 Q They did what they wanted?

6 A If they were present. They were possibly under
7 the command of the sheriff of that county.

8 Q You said your instructions you received on
9 September 30th from the Governor were to preserve the peace?

10 A Yes, sir.

11 Q Was he present in person or did you get this by
12 phone?

13 A I got it in person before I left Jackson and
14 went to Oxford.

15 Q And what time was that?

16 A Approximately 11:30 that day.

17 Q 11:30 A. M. - in the morning?

18 A Yes, sir.

19 Q Were you told at that time that Mr. Meredith was
20 coming on the campus?

21 MR. CATES:

22 We object.

23 A It was generally known that he was coming.

24 Q How did you learn of it?

25 MR. CATES:

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1 I would like a continuing objection to this line.

2 MR. EARDLEY:

3 Q How did you personally learn of this?

4 A It was relayed to me by the Governor.

5 Q Were you instructed by the Governor to take the
6 State Patrolmen to the campus?

7 A Yes, sir.

8 Q Did he tell you how many to take?

9 A He said a sizable force, as I remember.

10 Q Well, maybe it would simplify this, Colonel
11 Birdsong, if you would just tell me generally what this con-
12 versation was rather than me trying to pick it out of you.

13 A Well, you have about gotten the sum and sub-
14 stance as far as I could give you. The information was that
15 the subject was coming in there Sunday. I was to proceed up
16 there with what patrolmen we had, and of course we had only
17 220 patrolmen.

18 Q 220?

19 A 220.

20 Q Is that the force you took with you?

21 A No, of course not. We didn't have that many.

22 Q Is that the number in the whole Patrol?

23 A That's right.

24 Q That's all for the State?

25 A Yes, sir.

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1 Q How many did you take with you?

2 A Well, we finally wound up, I think, with, in-
3 cluding your plainclothes men that work in Cattle Theft,
4 your Bureau of Identification and your Auto Theft, and even
5 some of the men in Motor Vehicle Inspection - those are all
6 plainclothes men. We wound up with something like 217 men,
7 about 217 in all.

8 Q In all?

9 A Yes, sir.

10 Q And of that number, approximately how many were
11 in uniform?

12 A I would say around less than 200.

13 Q Less than 200? Well, significantly less or
14 approximately 200? Less than 200 might be one up to 199.

15 A I would say there would be 17 or 18 less, and
16 maybe a few more.

17 Q Anyway, the great majority were in uniform?

18 A Yes.

19 Q And how were they equipped?

20 A They were equipped with obsolete gas masks of a
21 vintage of about World War I and maybe some of them were
22 World War II, and their regular sidcars.

23 Q Did they have billy clubs?

24 A Yes, in their cars they had those.

25 Q And then their pistols?

1 A Yes, sir.

2 Q Automatics.

3 A Not automatics, no, sir.

4 Q Oh, aren't they? Well, when you talked to the
5 Governor - my recollection is you said 11:30 in the morning -

6 A About 11:30 - yes, sir.

7 Q And he told you to take a sizable force up there,
8 and what was your mission?

9 A To preserve the peace.

10 Q Did he tell you that he anticipated trouble?

11 MR. CATES:

12 Objection.

13 THE WITNESS:

14 A No, sir, he didn't.

15 MR. EARDLEY:

16 Q He didn't?

17 A No, sir, he didn't tell me he anticipated any
18 trouble.

19 Q Were you anticipating trouble?

20 A No, sir.

21 Q Why were you taking a sizable force?

22 A Any time in Mississippi - I don't know how to
23 word that, to be honest with you, but I would say that -

24 MR. CATES:

25 Objection.

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1 MR. EARDLEY:

2 Q Any time what?

3 A The subject himself was enough to cause trouble.

4 Q In other words, any time Meredith was to be
5 brought on, you might have trouble?

6 A I would think so, yes, sir. I believe so.

7 Q So that you did anticipate trouble on that day
8 and that is why you brought a sizable force with you?

9 A Now, that's hard to determine. I don't know -
10 I did not know what was coming up there. I had no way of
11 knowing what they were bringing in there in the way of force
12 themselves. I didn't know what they were coming in with.

13 There was no way for me to figure trouble in that way.

14 Q Did you have any conversations with the
15 Governor after 11:30?

16 A Yes, sir.

17 Q What time?

18 A I don't remember, but I talked with the Governor
19 on up to 4:00 or 5:00 o'clock in the morning, Sunday morning.

20 Q Quite frequently?

21 A No, sir, at intervals.

22 Q Telling him what the situation was?

23 A Telling him what the situation was, and he had
24 been advised on one or two occasions that the patrolmen had
25 left the area there and I assured him they had not.

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1 Q Did he alter his instructions in any way?

2 A Sir?

3 Q Did he alter, change, his instructions in any
4 way?

5 MR. CATES:

6 Object here, Mr. Eardley. My clarification to
7 you, if you don't clarify any time prior, subsequent to 8:00
8 P. M. that night, which we have already established is the
9 point of injury to my client. In other words, I think we
10 ought to make that differentiation. That is the basis of my
11 objection.

12 MR. EARDLEY:

13 Q You received certain instructions to take a
14 sizable force up there and preserve the peace.

15 A Yes, sir.

16 Q Were those instructions at any time changed
17 that day or night?

18 A They were not. The only thing that I can say
19 there is that he stressed that we stay there and maintain the
20 peace.

21 Q You know Senator Yarbrough?

22 A Yes, sir.

23 Q And he was present that night, wasn't he?

24 A He came in that night around 6:00 o'clock, I
25 believe.

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1 Q Did you take instructions from him?

2 A Senator Yarbrough, as I remember it, was only
3 up there a short time, oh, possibly an hour or so, so when
4 he left he just told me to take charge.

5 Q I don't think you have answered the question, sir.
6 The question was, did you take instructions from Senator
7 Yarbrough while he was there?

8 A Yes, sir, he was the boss while he was there.
9 He was third in command.

10 Q What instructions did you receive from him?

11 MR. CLARK:

12 Mr. Eardley, I will object to the question
13 until it is further clarified as something directly relating
14 to the situation that is complained of here.

15 MR. EARDLEY:

16 We are only talking now about law and order.
17 I am not talking about anything else today. I am not asking
18 questions that don't relate to the preservation of the peace.

19 MR. CATES:

20 For the record, that would be my identical ob-
21 jection, plus others.

22 MR. EARDLEY:

23 All right, you have got it on the record.

24 Q Now, did you receive any instructions from
25 Senator Yarbrough about preservation of order?

1 MR. CATES:

2 Continuing objection.

3 THE WITNESS:

4 A I can't think of anything in particular. Of
5 course, very frankly, Senator Yarbrough wanted to remove the
6 Patrol.

7 MR. EARDLEY:

8 Q He wanted to remove the Patrol?

9 A Yes, sir.

10 Q Did he instruct you to remove the Patrol?

11 A He didn't instruct me, no, sir.

12 Q Did he instruct anybody in your presence?

13 A He requested from some of the Federal authorities
14 that it be removed.

15 Q Were you taking orders from anybody in the Federal -
16 Federally present?

17 A We worked with them.

18 Q You were cooperating with the Federal authorities?

19 A We worked with them, and the question came up as
20 to the preservation of the peace, which we tried to do. We
21 worked with them, yes, sir.

22 Q Did you know Judge Moore?

23 A Yes, sir.

24 Q Was he present?

25 MR. CATES:

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1 Objection.

2 THE WITNESS:

3 A. He came in a little while before Senator Yar-
4 brough did. He was present just a short time. He wasn't
5 there long that night.

6 MR. EARDLEY:

7 Q. Did you receive any instructions from him with
8 respect to preservation of law and order?

9 A. No, sir, I didn't.

10 MR. CATES:

11 Continuing objection.

12 MR. EARDLEY:

13 Q. Was Senator McClaren there?

14 A. Yes, sir.

15 Q. When did he come and go?

16 A. He came in with Judge Moore.

17 Q. Did you receive any instructions from him?

18 MR. CLARK:

19 You put the same qualification on that question?

20 MR. EARDLEY:

21 The same qualification.

22 MR. CLARK:

23 Instructions from Senator McClaren as to the
24 preservation of law and order, Colonel, is the question.

25 THE WITNESS:

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1 What?

2 **MR. CLARK:**

3 Did you receive any instructions from Senator
4 McClaren as to the preservation of law and order?

5 **THE WITNESS:**

6 From Senator McClaren? No, nothing in particular.

7 **MR. EARDLEY:**

8 Q Now, in order to preserve the peace, which was
9 your instruction from the Governor, did you form a plan of
10 action, and I mean by that did you determine in advance where
11 you would station your men and how many and give instructions
12 to them as to what they were to do?

13 A We did.

14 Q What was your plan?

15 A We established blocks immediately at all
16 entrances to the campus. Approximately as the men arrived
17 they were put on these blocks. When I arrived there, there
18 were just very few men. As I told you in the beginning, they
19 were coming in there in driblets. We established those six
20 blocks at the entrances to prevent any influx of crowds and
21 allow in only authorized personnel.

22 Q About how many men did you have initially when
23 you started these road block operations?

24 A We had eleven.

25 Q Eleven men - in cars, I suppose?

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1

A Yes, sir.

2

Q How many cars?

3

A Approximately six or eight cars.

4

Q So you had -

5

A That was initially.

6

Q Initially - and what time was this?

7

A This was about 1:45.

8

Q Let's jump now to 5:00 o'clock. About how many

9

men did you have at that time?

10

A Something around 100 or possibly over.

11

Q Were they stationed at the road block areas?

12

A At the road blocks and also on the highways to

13

prevent congestion there of vehicles and so forth which

14

would have come piling up.

15

Q But none were around the Lyceum.

16

A Yes, sir, we had a number of men around the Lyceum

17

and in front of the Lyceum Building, and we had the head-

18

quarters at the Gym, which is immediately behind or adjacent

19

to the Lyceum Building. That was our headquarters. As the

20

men would come in they would report to that place for assign-

21

ment. The Chief was there and he would assign them.

22

Q About how many men did you have in front of the

23

Lyceum at 5:00 o'clock?

24

A I would say, oh, 25 or 30.

25

Q How big was the crowd at that point?

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PHONE FL 8-8808

- 1 A At that time there was a very small crowd.
- 2 Q Were they mostly students?
- 3 A I don't know about that.
- 4 Q You don't know who they were?
- 5 A I don't know.
- 6 Q What were the instructions given to the patrolmen
7 who were in front of the Lyceum?
- 8 A To keep the front clear.
- 9 Q To keep the front of the Lyceum clear? Do you
10 recall that marshals arrived some time or other, Federal
11 marshals?
- 12 A Yes, sir.
- 13 Q Where did you meet these people?
- 14 A The marshals?
- 15 Q The marshals.
- 16 A I drove up to the airport.
- 17 Q And how far is that from the campus?
- 18 A Possibly a couple of miles - 2½ miles.
- 19 Q You drove up there to meet them?
- 20 A I drove up there to see what was going on and to
21 aid and assist one of your Federal men to show him where it
22 was.
- 23 Q To show him where the Lyceum Building was?
- 24 A To show him where the Lyceum Building was and
25 where the airport was.

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PHONE FL 9-5868

1 Q Did you have information that the Federal marshals
2 were coming in by air at that airport?

3 A No, sir.

4 Q Did you meet the marshals at the airport?

5 A I did.

6 Q About how many?

7 A Well, there was several 66 trucks, and the mar-
8 shals were standing up in it, and I would say there were 50
9 to 75 to a truck, and there were several trucks and cars in
10 between them, sandwiched in between the trucks.

11 Q How many marshals would you estimate were there?

12 A Well, that would be a little hard to do.

13 Q Well, were there as many as a hundred?

14 A Oh, yes.

15 Q More than that?

16 A I would say so, because if there were just four
17 trucks that would be 75, 150 - I would say three or four
18 hundred.

19 Q Three or four hundred?

20 A Maybe more.

21 Q Did they go to the campus at that time?

22 A Yes, sir.

23 Q Were you with them?

24 A As I drove up there, the road was blocked, and I
25 couldn't go any farther, and I had to seesaw and turn around

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1 there, and then I went on back to the campus.

2 Q Did the marshals follow you?

3 A Yes.

4 Q You led them back to the campus.

5 A No, I didn't lead them. I had of necessity to
6 get back and I was just in front.

7 Q You showed them how to get to the campus, didn't
8 you?

9 A I showed them how to get to the airport. They
10 knew how to get back to the campus.

11 Q When you went back to the campus were the Federal
12 marshals following you in their cars?

13 A They were, yes.

14 Q And were you the lead car?

15 A No, there were several cars ahead of me. I don't
16 know who they were.

17 Q Were they Federal cars or were they State Patrol
18 cars?

19 A There wasn't any Patrol cars. I don't remember
20 now whether there was any Federal cars, but there were several
21 cars in front, but they cut them out. They didn't go inside
22 the gate, those cars that were ahead of me.

23 Q Do you remember Joe Dolan?

24 A Who?

25 Q Joseph Dolan.

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- 1 A What is his capacity?
- 2 Q Deputy Attorney General - Assistant Deputy
- 3 Attorney General.
- 4 A How do you spell his name?
- 5 Q D-O-L-A-N.
- 6 A That's not Doar?
- 7 Q No, no, that's not Doar.
- 8 A No, I don't remember him.
- 9 Q Do you remember the name of the Federal official
- 10 that you met at the airport?
- 11 A After I got to the airport?
- 12 Q Yes.
- 13 A I think McShane was the first man I met up there.
- 14 Q Did you and he plan how the marshals were to go
- 15 to the campus?
- 16 A No, sir, we didn't make any plans. I already had
- 17 to turn around. I was in a position where I had to turn
- 18 around and couldn't go any further, and that automatically
- 19 placed me at the front of the marshals.
- 20 Q What time was this?
- 21 A Let's see. That's kind of hard to think of that.
- 22 Q Well, was it about 4:00 o'clock?
- 23 A It was about 4:30, yes, sir - about 4:00 o'clock.
- 24 Q When the marshals arrived at the Lyceum Building
- 25 what did they do?

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1 A They surrounded it.

2 Q Did McShane have any conversation with you then?

3 A At that time? No, sir, not that I remember.

4 Q Didn't he ask you if it was all right for them to

5 dismount?

6 A Not that I remember.

7 Q You don't recall any conversation?

8 A No, sir.

9 Q I am a little confused about your trip out to the

10 airport. Did somebody go with you or were you alone?

11 A No, I guided a car out there.

12 Q Who was in that car?

13 A I think Mr. Guthman.

14 Q Mr. Guthman?

15 A I believe it was Mr. Guthman.

16 Q And then you came back and these cars came behind

17 you.

18 A Yes.

19 Q Now up to this point, had you observed any signs

20 of violence on the campus at all?

21 A No, sir. The crowd, the students and what have

22 you - the people were gathering, but there wasn't such a big

23 crowd at that time.

24 Q Had you at that time made any plans for action in

25 the event of riots?

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A No, sir.

Q Had you made any plans to bring fire trucks to the campus?

A Will you repeat that.

Q Had you made any plans to bring fire trucks to the campus, to use the hoses?

A I made them?

Q Yes.

A No, sir.

Q By 5:00 o'clock how many men had you on the campus - patrolmen?

A Are you talking about in addition to my road blocks and patrols out on the road and so forth?

Q How many men were on the campus?

A About I would say 50 or 75 or maybe a little more.

Q Of those how many were at the Lyceum Building?

A We had approximately 35 or 40.

Q How big was the crowd?

A The crowd was growing.

Q Did you see any signs of violence at that point?

A No, sir, not at that time.

Q The crowd was peaceful?

A At that time, yes, sir.

Q And the State Patrolmen were in control?

A Pardon?

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1 Q You were in control of the situation - it was not
2 out of hand?

3 A Let me get straight, now. You mean I was in con-
4 trol?

5 Q No, I mean the Patrol. The Patrol itself was able
6 and was handling the crowd, keeping them back, at 6:00 o'clock?

7 A Well, there wasn't much disturbance there. We had
8 just a few men there in between the marshals and the crowd,
9 if that's what you mean.

10 Q But the marshals were toward the building and the
11 State Patrolmen were across the street, weren't they?

12 A Well, they were between them, yes, sir.

13 Q And the crowd was behind the State Patrolmen?

14 A That's right.

15 Q And the patrolmen at that time were keeping the
16 crowd back, isn't that true?

17 A There wasn't but very little trouble there.

18 Q Now, at 7:00 o'clock, had the situation changed?

19 A Of course the crowd was growing.

20 Q Growing all the time.

21 A Yes, sir.

22 Q At 7:00 o'clock how big a crowd would you estimate?

23 A I wouldn't attempt to estimate it.

24 Q You would have no idea?

25 A No, sir.

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1

Q A thousand?

2

A I wouldn't say.

3

Q You don't know. Was it a big crowd or a little crowd?

4

A Big crowd.

5

Q Big crowd of people. Could you tell from looking at them whether they were mostly students?

7

A I couldn't tell.

8

Q At that time were your men still under instructions to keep people off the campus that didn't belong there?

10

A That's right, yes, sir.

11

Q And do you know whether they performed that function?

12

A I am sure that they did.

13

Q At 7:00 o'clock did you observe any acts of violence?

14

A Not that I can recall.

15

Q Was the crowd a good-natured crowd or were they abusing the marshals?

16

A Well, I remember some of them were pitching pennies and possibly thumping cigarettes, and a few cussing.

18

THE REPORTER:

19

What did you say about thumping cigarettes?

20

MR. EARDLEY:

21

Q You mean flipping cigarettes butts at the marshals.

22

A Yes, sir.

23

Q And cussing them out. Was the first evidence of crowd hostility about 7:00 o'clock?

24

25

MR. CATES:

Object to that. I think that is an improper

1 question the way it is formed.

2 THE WITNESS:

3 I am trying to hear. I have got a bad ear here.

4 Will you repeat that again. I didn't get it.

5 MR. EARDLEY:

6 Q You remember you testified - correct me if I am
7 wrong - that the crowd was orderly and you saw no evidence of
8 trouble, but at a certain time, and I am trying to get that
9 time straight again, at 6:00 or 7:00 o'clock, I don't remember
10 which, you did observe that the crowd began to abuse the
11 marshals by vile language and they began to flip cigarette
12 butts at them. Was that 6:00 or 7:00?

13 MR. CLARK:

14 Don't answer yet. My best recollection is that the
15 record does not include the use of the word "violent" language.

16 MR. EARDLEY:

17 I didn't say violent. I said vile - V-I-L-E.

18 MR. CLARK:

19 All right, sir. I misunderstood you.

20 MR. EARDLEY:

21 Q Was it 7:00 o'clock? Was that the time?

22 A I think it was about 7:00.

23 Q And to the best of your recollection, up until 7:00
24 o'clock there were no signs of disorder?

25 A Nothing but - you know - boisterous, everybody

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1 Q In the Gymnasium? Did you have a radio there?

2 A Yes, sir.

3 Q Did you have somebody who was monitoring the radio
4 patrol cars?

5 A Yes, sir.

6 Q Were you also monitoring the sheriffs' patrol cars?

7 A If they happened to be in that area. I don't know
8 about that.

9 Q Don't you keep a record of the monitoring calls?

10 A Ordinarily we do.

11 Q Didn't you that night?

12 A This was a sub-headquarters and the normal head-
13 quarters like Batesville would keep records as required by
14 law.

15 Q Did Batesville keep a record that night?

16 A I would say they did, yes, sir.

17 Q So there is a log?

18 A Yes, sir.

19 Q And this log will show what instructions or con-
20 versations went on between your office in the Gymnasium and
21 the various patrol cars?

22 A Somewhat, if it pertained to that station.

23 Q Who has custody of those records?

24 A The inspector there at Batesville.

25 Q What is the name of the inspector?

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1 A Griffin, L. Y. Griffin.

2 Q Griffin?

3 A Yes, sir.

4 Q He is the inspector of the State Highway Patrol?

5 A Of that District No. 3, yes.

6 Q When the crowd became disorderly in the sense that
7 you described, flipping cigarette butts and using abusive
8 language toward the marshals, did you report that to anyone?

9 MR. CATES:

10 Object. He didn't say that they were disorderly.

11 MR. EARDLEY:

12 Well, I don't know whether he did or not.

13 Q When this happened at 7:00 o'clock, whatever it
14 was, did you report that to anybody?

15 A No.

16 Q You did not? Did you have any conversations with
17 the Governor after 7:00 o'clock?

18 A Several times.

19 MR. CATES:

20 Excuse me. We object, for the record, for any
21 after 8:00 P. M.

22 MR. EARDLEY:

23 Q Was any record made of what those conversations
24 were?

25 A I did not keep them.

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1 Q Was this by telephone or radio?

2 A By telephone.

3 Q To the Governor in Jackson?

4 A Yes, sir.

5 Q Did you have an open wire between -

6 A No, sir.

7 Q Carried on the regular exchange, the regular
8 telephone exchange handled it?

9 A That's right.

10 Q Did you receive between 7:00 and 9:00 o'clock any
11 instructions of any description from the Governor?

12 A Not that I remember.

13 Q You don't remember any? Well then, what were you
14 calling him for, just to give him -

15 A I didn't call him. He called me.

16 Q And what were your conversations generally?

17 A That, he had heard that we had abandoned the
18 blocks up there at one time.

19 Q You mean abandoned the road blocks?

20 A Yes. Maybe I had better put it this way: He called
21 me once or twice about how things were going on up there.

22 Q At what time? Let's get these times straight.

23 A I couldn't tell you.

24 Q Between 7:00 and 9:00, though?

25 A I couldn't tell you. There was so much going on

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1 and so fast that I don't remember about time. I jotted
2 something down, but that's all. I don't remember times.

3 Q When you jotted it down, did you keep that paper?

4 A No, sir.

5 Q Well, if we can't fix the times, maybe you can
6 remember what the conversation was.

7 A Well, as I stated, the only conversation was he
8 wanted to know if we had left the campus or had abandoned the
9 blocks, and I told him we had not.

10 Q Did he instruct you not to abandon the road blocks?

11 A That's right, yes, sir.

12 Q Did he give you any instructions about maintaining
13 law and order in front of the Lyceum at that time?

14 A Well, not -

15 MR. CATES:

16 We object, because we haven't established whether
17 there was any (pause) -

18 MR. EARDLEY:

19 That's your whole case.

20 Q Did you understand the question?

21 A No, I believe you had better repeat it.

22 Q Did he give you any instructions about what to do
23 with respect to the crowd in front of the Lyceum?

24 A No, not in particular, any more than he had in the
25 very beginning.

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1 Q To keep law and order?

2 A Do your best to maintain law and order.

3 Q I would like to have you explain, Colonel, why
4 it was that, if my assumption is correct, that you brought
5 with you tear gas masks but you brought no tear gas equipment.
6 That is, you were not prepared to shoot tear gas, were you?

7 A No.

8 Q But you had tear gas masks?

9 A We had some old antiquated masks that we had placed
10 in our cars, possibly a year or two.

11 Q Do you mean this is part of the equipment you
12 carried around all the time?

13 A Yes, had them in there possibly a year or so.

14 Q Where were these tear gas masks at 7:00 o'clock?

15 A In the cars with the men.

16 Q Were they ever taken out of the cars?

17 A They were taken out of the cars, attempted to use
18 them and found out they could not use them.

19 Q When were they first taken out, when the tear gas
20 was -

21 A After the gas was floating.

22 Q Afterwards?

23 A Yes, sir.

24 Q Now let's move on a little toward the crisis. At
25 7:30, a half hour later, was there any change in the

1 composition or number in the crowd? Was it getting bigger
2 all the time?

3 A It was, yes, sir.

4 Q Was it getting rougher?

5 A I would say it was.

6 Q What were they doing?

7 A I couldn't tell you exactly, because I was in and
8 out of the Lyceum Building, on over to the Gym, at my head-
9 quarters in the Alumni Building, and out at the blocks and
10 all over the place.

11 Q But from about 4:00 o'clock until you left, you
12 were in and out of that - you were around the campus all the
13 time, weren't you?

14 A That's right.

15 Q So that you were in and around the Lyceum crowd
16 frequently during that period, were you not?

17 A I was all over the place.

18 Q Did you see any objects or any missiles of any kind
19 being thrown by the crowd at the marshals?

20 MR. CATES:

21 Clarify the time.

22 MR. BARDLEY:

23 Any time - then I will get the time if he saw it.

24 A I did not.

25 Q You saw no missiles being thrown?

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1 A I did not until the gas went off. Where I was,
2 I did not.

3 Q Where were you from 7:00 to 8:00 o'clock?

4 A I went from my headquarters there at the Alumni
5 Building with the group from Jackson, that is, Senator Yar-
6 brough and those people.

7 Q Who are "those people"?

8 A Well, there was Judge Moore, Senator McClaren,
9 Representative Newman. That's when they went up and pro-
10 tested, you know, that they wanted to relieve the Patrol,
11 that we were of no benefit there, the marshals had taken
12 over, and that we had no duties, in reality, and that we
13 should be relieved, but they didn't see fit to relieve us.

14 Q Just a minute. I want to keep on my subject for
15 a minute. We are talking now about a statement you made
16 that the crowd did become - did change - between 7:00 and
17 7:30. I am trying to develop from you, to the best of your
18 recollection, how this change was manifested. What did they
19 do that made you think they were getting more unruly?

20 A By the sounds, noise, and so forth and so on.

21 Q You mean the shouting?

22 A Shouting.

23 Q Was there constant shouting going on -

24 A - and the buildup - the crowd was getting larger.

25 Q Were they still throwing cigarette butts? Did you

1 see that?

2 A I paid not too much attention to that, but I
3 presume they were.

4 Q Between 7:00 and 8:00 o'clock how much of your
5 time was spent, do you think, in the vicinity of the Lyceum
6 Building?

7 A I have no way of knowing. I wouldn't know.

8 Q Would you say you weren't there at all?

9 A Yes, sir.

10 Q You weren't there at all?

11 A Oh, yes, I was in and out of the place, of course.

12 Q You were there from time to time?

13 A Yes, sir.

14 Q And it is your testimony that on no occasion be-
15 tween 7:00 and 8:00 o'clock did you see anything thrown, other
16 than cigarette butts?

17 A I didn't, no.

18 Q You did not?

19 A No, sir.

20 Q Did you see or were you informed of any person
21 being injured in that period?

22 A During that period?

23 Q Yes.

24 A I don't think so, not that I remember.

25 Q What change, if any, had taken place at 8:00 o'clock?

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1 A. Around 8:00 o'clock we were, this group I named,
2 a little prior to 8:00 o'clock, were in there talking to
3 Mr. Katsenbach in Mr. Clegg's office, and it was discussed
4 about relieving the Patrol, which Mr. Katsenbach objected to.

5 Q. Now this was before the gas was thrown?

6 A. Before the gas was exploded.

7 Q. Who recommended that the Patrol be relieved?

8 A. Senator Yarbrough.

9 Q. Did he give the reason for it?

10 A. He stated that, inasmuch as the Federal authorities
11 had moved in and taken over, that there was no point in the
12 Patrol being there.

13 Q. Well now, according to your earlier testimony,
14 and I want to find out if there was any change, the Federal
15 marshals and let's say the Federal personnel surrounded the
16 Lyceum Building?

17 A. Yes, sir.

18 Q. Now did they change? At 7:30 had there been any
19 change in their location? Were they still around the Lyceum
20 Building?

21 A. They were still there, yes, sir.

22 Q. So insofar as their location was concerned there
23 was no change between the time they arrived at 4:00 and 7:30?

24 A. I don't think so, no, sir.

25 Q. And between 4:00 and 7:30 the State Highway

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1 Patrolmen were controlling the crowd?

2 A I won't say they were controlling it. They were
3 attempting to control it. They were doing the best they could
4 in aiding and assisting them. They were between the marshals
5 and the crowd and doing the best they could to maintain order,
6 and the crowd was orderly at that time.

7 Q What did the marshals do, if anything, to control
8 the crowd prior to the gas throwing?

9 A I don't know that they did anything.

10 Q So that the control of the crowd - what control
11 there was - was being exclusively handled by the State Patrol?

12 A That's about correct, yes, sir.

13 Q When you say that they were controlling them, I
14 think, as best they could - you used some such language -
15 what was going on that made it difficult for you to control
16 them?

17 A There was surging back and forth.

18 Q You mean getting into the space between the State
19 Patrol and the marshals?

20 A That's right.

21 Q And were your men attempting to keep them back?

22 A That's right. Yes, sir, they were.

23 Q Were they being successful?

24 A Yes, sir, at the moment they were.

25 Q Did that situation ever change?

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1 A Yes, sir.

2 Q When did it change?

3 A It changed from the moment - when Mr. Katzenbach
4 asked Senator Yarbrough if he wouldn't go out and reason with
5 the crowd and get them to disperse and so forth and so on.
6 He said he would attempt to, and we walked then, the whole
7 group walked out on the front porch of the Lyceum Building,
8 and as I walked out on the front Marshal McShane came up and
9 asked if I wouldn't aid and assist in getting the crowd back
10 further. They were - I wouldn't say they were exactly in the
11 center of the interval between the sidewalk and where the
12 marshals were, but it was approximately. I told him I would,
13 and about that time Mr. Katzenbach, when he walked out there,
14 some of the marshals had thrown their helmets off and were
15 donning their gas masks at that time, and he told them:
16 "Don't do that, don't do that, we are going to get the crowd
17 back."

18 Q So they took their gas masks off?

19 A Yes, sir.

20 Q Then what happened?

21 A Then we had some men down at the Gym, in front of
22 the Gym and some on each wing of this crowd, in addition to
23 those men that were right in front, so we got every man that
24 we had in that vicinity and put them between the marshals and
25 the crowd, and shoved the crowd back, very slowly, and we had

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1 them on the sidewalk. We had them on the sidewalk and I was
2 right behind Senator Yarbrough and he was appealing to the
3 crowd.

4 Q Was he speaking over a loud speaker?

5 A No, sir.

6 Q How could he be heard if there was a mob shouting?

7 A He couldn't be heard very well except by those
8 people right around him.

9 Q How close was he to the first rank of the crowd?

10 A Right up against them.

11 Q Did the crowd pay any attention to him?

12 A They were listening to him, because they had to
13 move back.

14 Q What did he say?

15 A He told them that - they first thought he was a
16 marshal and he told them, no, that he was raised right up
17 there in Mississippi, forty miles from this place, and to go
18 ahead and disperse and go home. That's about the sum and
19 substance of that.

20 Q Did they disperse and go home?

21 A No, sir.

22 Q When they didn't disperse and go home, what did
23 Senator Yarbrough do?

24 A That's about all he could do. I think he turned
25 and went back in the Lyceum Building, but I preceded him in

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1 there. While I was standing behind him there and we were
2 getting the crowd back, I had one of the marshals come up to
3 me and tell me I had a phone call from Mr. Kennedy, that he
4 wanted me, and I went on and started in and got to the, I
5 don't remember now whether it was to the bottom of the steps
6 to the Lyceum Building or the top of it, somewhere in the
7 interval, when the gas went off.

8 Q Were you there when the marshals put on their
9 masks the second time to fire?

10 A The second time?

11 Q You told me that when you first came out of the
12 building and saw them they were donning their masks and
13 Katzenbach said to take them off.

14 A That's right.

15 Q So they must have put them on a second time. Were
16 you present then?

17 A My back was to them. As I say, I had gotten to
18 the steps when the gas went off.

19 Q So you didn't see them put on their masks?

20 A No, I didn't. I wheeled and of course they had
21 their masks on and they were firing.

22 Q And all this time that you were out there, you
23 saw nothing being thrown at the marshals?

24 A Where I was in the center of that line, I saw
25 nothing, other than as I stated, a few cigarettes and some

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1 pennies and stuff like that - where I was. Now I will say
2 that there was some sort of commotion and I don't know what
3 down on the left end of that line. I don't know what that was.

4 Q Didn't you know, Colonel, that prior to the firing
5 of the gas seven marshals had been hurt?

6 A No, sir.

7 Q You didn't know that?

8 A I did not.

9 Q Now I want you, in order that we have your story
10 clear about what went on just before the gas was fired, let's
11 draw a little picture.

12 A Sir?

13 Q Let's draw a picture.

14 A O. K.

15 Q I hope you are a better drawer than I am.

16 A I am not a good drawer.

17 Q Can you draw?

18 A No, sir.

19 MR. CATES: (off the record discussion)

20 For the record, we will stipulate that this map,
21 Exhibit No. 2, adequately represents the general campus.

22 (The Reporter received and marked the map as
23 Defendant's Exhibit 2.)

24 MR. EARDLEY:

25 Q Now, Colonel, we have you a picture. Now I want