

1 you to take my pen here and draw a dotted line indicating the
2 location of the marshals, and this is immediately prior to
3 the gas firing. I also want you to draw a straight line in-
4 dicating where your people were located at that time, and
5 then I want you to draw a group of circles indicating where
6 the crowd was located at that time. Can you do that for me?

7 A. I don't believe I am competent to do that.

8 Q. Well, you know the Lyceum Building here? You
9 know the Grove -

10 A. Yes, sir, I can describe it, but I don't believe I
11 could attempt to -

12 Q. Well, you see the Lyceum here on this drawing?
13 It's right here (indicating).

14 A. Is this it?

15 Q. That's it. Now where were the marshals just before
16 the firing?

17 A. Well, I don't - - what part is this?

18 Q. This is the Grove.

19 A. Well then, this thing is backwards, isn't it, or not?

20 Q. Here is a circle, you see. I have never been there
21 so I can't tell you what's in this circle, but apparently it's
22 a traffic circle. Is that what it is?

23 MR. CATES:

24 Yes.

25 MR. HARDLEY:

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1 Q And then off from the traffic circle is what they
2 call a "Grove". I suppose these are trees. Here is the
3 Lyceum Building and your Gymnasium is right up here (indi-
4 cating).

5 A Yes, sir.

6 Q So now are you clear?

7 A I think so.

8 Q All right. Now, where were the marshals?

9 A If this is the Lyceum Building, they were around
10 the front.

11 Q Well now, let's just draw the line for you, shall I?

12 MR. CATES:

13 Let him draw it.

14 MR. EARDLEY:

15 I will be very happy to have him draw it.

16 A Well, the marshals were right in front of the
17 Lyceum Building here.

18 Q Right across the front?

19 A And they were across the side and they were across
20 the back, and across this side - surrounded it.

21 Q They surrounded it, and where were the State
22 Patrolmen?

23 A The patrolmen were between - stationed along in
24 here, extending over about like that.

25 Q Wavy lines will be fine.

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1 A Back up in here (indicating) -

2 Q You started here. You want to go like that with
3 a wavy line.

4 A I'm a little bit too far up in there, I believe,
5 from the sidewalk. There was a sidewalk there. I don't know
6 where the sidewalk was.

7 Q There was a sidewalk on the circle?

8 A Yes, right there in front of the circle.

9 Q And were they on the sidewalk?

10 A The crowd was on the curb and the patrolmen were
11 right -

12 Q Were the patrolmen in the street or on the sidewalk?

13 A In the street, right at the edge of the sidewalk.

14 Q How many were there?

15 A At what time?

16 Q Just before the firing.

17 A I would say there was anywhere from 75, possibly
18 a little more.

19 Q In front of the Lyceum Building?

20 A I want to be straight about this thing. As I told
21 you, we had just a token force there at the beginning.

22 Q I'm talking now about just before the firing, how
23 many marshals were there?

24 A Just before the firing there were approximately
25 75 or 80, or something like that.

Q Were they standing in a straight line?

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1 A No, sir, they were curved in there. That's the
2 reason I have that that way.

3 Q They were following the contour of the curve, is
4 that it?

5 A That's right.

6 Q And how far apart were they spread?

7 A Oh, four or five feet apart.

8 Q So there was one every four or five feet?

9 A Some of them were shoulder to shoulder.

10 Q Now, where was the crowd?

11 A The crowd was back in here and in the grove.

12 Q In the circle and in the grove?

13 A That's right, and over on this wing and over on
14 this wing.

15 Q You mean to the - I don't know where this direction
16 is -

17 A On both sides.

18 Q On both sides of the Lyceum Building?

19 A Yes, sir.

20 Q Is it your testimony that there was nobody between
21 the marshals and the State Patrolmen just before the firing,
22 that that was an empty cleared space?

23 A Give me that again.

24 Q Just before the firing, was this road which was
25 between the marshals and the State Patrolmen clear?

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1 A Yes, sir.

2 Q No other persons were in there?

3 A As far as I could see, there was not within my
4 line of vision.

5 Q Do you know when the gas firing took place?

6 A Do I know what?

7 Q What time the gas firing took place?

8 A I would say between around 8:00 or 8:15.

9 Q And at that time, just before that, is the time
10 that you observed no people between the patrolmen and the
11 marshals?

12 A That's right. I qualify that: Where I was.

13 Q Where you were. And where were you? Mark your
14 initial "B" wherever you were.

15 A I was somewhere along right in here.

16 Q That's the road. Were you on the road?

17 A Right up to the sidewalk.

18 Q Did you have any discussions with any of your
19 superiors, and I am not too clear as to who your superiors
20 were at that time? Senator Yarbrough was in control, I guess.

21 A Yes.

22 Q You weren't taking orders from anybody else, though,
23 apparently.

24 A No, not at that time.

25 Q Did you have any discussion with anybody around

1 8:00 o'clock or between 7:30 and 8:00 about dispersing this
2 crowd?

3 A Yes, with Mr. Katzenbach and with your Chief Mar-
4 shal McShane.

5 Q And what did they tell you?

6 A They asked me to move the crowd back.

7 Q At that time what did they tell you?

8 A They told me the crowd was getting very close and
9 wanted to know if I could help them move them back, and I
10 said I would.

11 Q They didn't tell you anything about the injuries
12 to the marshals?

13 A No, sir, I don't remember that they even mentioned
14 injuries at that time, before the gas went off. I don't re-
15 member an occasion.

16 Q Where was the crowd at the time that Mr. Katzenbach
17 asked you to push them back?

18 A They were not quite in the center of the street
19 between the Lyceum Building and the sidewalk, but they were
20 approximately somewhere in that vicinity.

21 Q Was it a solid mass of people up to that point?

22 A Well, it was a wavy line. It wasn't any straight
23 line, it was a wavy line all the way through there.

24 Q Where were your State Patrolmen at that time?

25 A They were between the marshals and the crowd.

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1 Q And what was the distance between the State Patrol-
2 men and the Marshals?

3 A At the time we tried to move them? Half way be-
4 tween the street and the front of the Lyceum Building.

5 Q How far is that? I don't know.

6 A I don't know how wide that street is. I'd say -
7 I don't know whether I could guess it or not. It's a pretty
8 wide street - it will hold two cars. It will hold three cars.

9 Q At that time, three cars?

10 A The width of three cars, I would say.

11 Q About 20 feet?

12 A About 20 feet.

13 Q So the crowd was about 10 feet from the marshals.

14 A They were about 12 or 15 feet, I would say. That's
15 a guess, purely a guess.

16 Q And what was the crowd doing at that time? Were
17 they shouting?

18 A Shouting -

19 Q Were they threatening?

20 A Well, doing anything a crowd could do.

21 Q At that time did you think the crowd was becoming
22 disorderly?

23 A They were boisterous, yes.

24 Q What, in your experience and training, is the
25 customary way of controlling a crowd that is boisterous?

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1 A I'm not competent to answer that on an occasion
2 like this.

3 Q This was your first experience with that kind of
4 situation?

5 A In that situation, it was certainly. There were
6 so many things happening there that I wouldn't be competent
7 to say what I would do in those cases.

8 Q Well, I know, but - well - Was this the first
9 large crowd of that sort that you had experienced before?

10 A No.

11 Q No?

12 A No.

13 Q Well then, what was your technical opinion as
14 Commissioner of Public Safety as to how such a crowd should
15 be handled?

16 A I don't have any opinion - me with 50 or 75 men,
17 I wouldn't have any opinion about what I could do.

18 Q Are there various ways to disperse a crowd?

19 A I would think so.

20 Q What are those ways?

21 A I don't think I am competent to answer that.

22 Q Who in your chain of command was competent to de-
23 cide what methods should be used to control the crowd?

24 A I don't think it was my responsibility there with
25 the limited number of men I had. I think it was the marshals'

1 responsibility.

2 Q In other words, did you second Senator Yarbrough
3 in his suggestion that the State Patrol be withdrawn?

4 A No, sir.

5 Q You did not?

6 A I had nothing to do with that.

7 Q At that time was it your opinion that your men
8 could control this crowd?

9 A We could help, and we did help. We did everything
10 within our power to prevent violence.

11 Q Does this mean that you could help, meaning that
12 you thought the marshals should also help control the crowd?

13 A I thought it was suggested..

14 Q But they weren't controlling the crowd, were they?

15 MR. CLARK:

16 Mr. Eardley, may I make one suggestion, please, sir.
17 I would like for Colonel Birdsong to be allowed to complete
18 his full answer before another question is asked.

19 MR. EARDLEY:

20 I'm sorry. I didn't mean to interrupt. Colonel,
21 you know I am a fast talker, so if I cut you off, for heaven's
22 sakes say: "Wait a minute, I want to finish." You have every
23 right and I want you to give me the fullest account of this, so
24 don't hesitate to interrupt me and say that you haven't
25 finished.

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1 Q At this point, was it your opinion that the State
2 Patrol needed the help of the marshals to control that crowd?

3 A This is prior to the gas?

4 Q Prior to the gas.

5 A Prior to the gas going off, in my own opinion, had
6 they not shot that gas we could have inched that crowd back
7 to the center of the grove, which was our purpose. We were
8 going to attempt to do that, and I believe that had they not
9 fired the gas that we may have been successful. We may not,
10 but we were willing to try it.

11 Q You were going to make an effort.

12 A We were going to make an effort.

13 Q Had you communicated to anyone your decision to
14 make an effort to push the crowd back?

15 A I did it verbally right there in front of everybody.
16 Everybody heard it.

17 Q Who was there at this time?

18 A All the patrolmen.

19 Q Was McShane present?

20 A Yes, sir.

21 Q He heard you say it?

22 A I don't say he heard me, but he was there.

23 Q How did you communicate to the patrolmen your
24 order to get this crowd pushed back?

25 A By several of my plainclothes men that were standing

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1 on the porch of the Lyceum Building. I told them and by
2 word of mouth I signaled and told them to get every man avail-
3 able between the marshals and the crowd, which we did. They
4 responded very rapidly.

5 Q As Public Safety Commissioner, had you known at
6 that time that several marshals had been hurt and had you
7 known that they were throwing objects, would you still have
8 believed that this crowd was under control?

9 MR. CATES:

10 I object to that because he didn't know.

11 MR. EARDLEY:

12 I am asking him as an expert.

13 A I don't believe I am qualified to answer that.

14 Q You can't answer that?

15 A I don't believe I am.

16 Q Did you have a conversation with Mr. Katzenbach
17 about 6:30 with respect to re-establishing road blocks?

18 A Re-establishing road blocks?

19 Q Was there ever a time up until 9:00 o'clock that
20 you didn't have road blocks?

21 A As far as I know there was never a time after they
22 were first established around 1:00 or 2:00 o'clock.

23 Q That they weren't there?

24 A That they weren't there. They were never removed
25 officially if they were removed at all, and I have no

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1 intimation they were removed.

2 Q Do you recall any conversation with Mr. Katzenbach
3 about establishing road blocks?

4 A I don't remember any specific conversation with
5 him. I had several conversations with him during the night.
6 Now wait - after 10:00 or 11:00 o'clock I did have a conver-
7 sation with Mr. Katzenbach.

8 MR. CATES:

9 We object to anything at 10:00 or 11:00 o'clock.

10 MR. EARDLEY:

11 Q And what was that conversation?

12 MR. CATES:

13 A continuing objection to that.

14 THE WITNESS:

15 A He wanted us to do what we could do to quell this
16 riot. I told him I had 75 men and there was nothing that we
17 could do.

18 MR. EARDLEY:

19 Q There was nothing you could do?

20 A No, sir. He wanted to know then if we had lights
21 and I told him we did not. It was dark as pitch and we were
22 not trained as state police to handle the situation. We didn't
23 have the equipment to do it, and with 75 men I told him it was
24 impossible, that we could not do it.

25 Q Was there a large crowd there?

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1 A Yes, there was a large crowd there. We did tell
2 him this, if he would quit firing that gas we would attempt to,
3 but he shook his head and wouldn't agree to it.

4 Q Where did this conversation take place?

5 A This took place inside the Lyceum Building.

6 Q Did the State Highway Patrol remain on duty there
7 throughout the night?

8 A On the blocks, yes.

9 Q And these blocks were men stationed in cars at
10 the intersections?

11 A They were on foot. The cars were there but they
12 were on foot there, and of course they would relieve them-
13 selves by some of them sitting in cars and some of them on
14 the ground.

15 Q What were their instructions? What were they
16 supposed to do?

17 A To keep out all unauthorized persons and search
18 the cars for weapons and contraband and so forth and so on.

19 Q Did they do this?

20 A They did.

21 Q Did they make any arrests?

22 A No, sir.

23 Q Did your State Highway Patrol make any arrests at
24 all during the day or night?

25 A As far as I know, they did not. We did confiscate

1 a lot of weapons and we turned away a lot of cars.

2 Q You mean you found weapons in cars that were

3 trying to get into the campus?

4 A Yes, we did.

5 Q What were they, guns?

6 A Guns.

7 Q Anything else?

8 A I don't remember anything except guns.

9 Q How many guns did you confiscate?

10 A I don't have a list with me. I don't know if I

11 have a list, but —

12 MR. CLARK:

13 We object to the question insofar as it being

14 relevant and material to this lawsuit or containing any in-

15 formation which could lead to the discovery of relevant or

16 material facts, and I instruct Colonel Birdsong not to answer

17 the question.

18 MR. EARDLEY:

19 Q Well, I gather from your answer to the question

20 about withdrawal that your men did withdraw from the Lyceum

21 area.

22 A They did. They were gassed off. They were gassed

23 off on two occasions. They were gassed off in front of the

24 Lyceum Building at point blank with the weapons, the tear gas

25 guns, and one of our men was knocked down and several of them

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1 were hit. They had to leave. They left there and went down
2 to the Gym. where our headquarters were, and they were gassed
3 again in that area. They had to leave.

4 Q Was there a crowd there?

5 A A crowd?

6 Q Yes.

7 A There were a few people followed the patrolmen
8 down there for protection. Yes, sir, there was, and they
9 gassed them and the patrolmen again and gassed the building,
10 inside the building and made it untenable. They couldn't go
11 in there.

12 Q Let me get this time fixed. When did the State
13 Highway Patrolmen leave the Lyceum area, at the first gassing?

14 A When they were gassed out, yes, sir.

15 Q They went to the Gymnasium then?

16 A Went to the Gym, yes, sir.

17 Q Did you go with them?

18 A No, sir, I was inside of the building at that
19 moment.

20 Q Did you ever issue any instructions or orders that
21 they should leave the Lyceum area?

22 A No, sir, it wasn't necessary.

23 Q You didn't order them to the Gymnasium?

24 A They were gassed away. They had to leave.

25 Q Well, that's what they told you.

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1 A That's what I saw.

2 Q Did you follow them up to the Gymnasium?

3 A No, sir. I was inside of the building talking to
4 one of your Federal officers.

5 Q Did you ever see yourself anybody gas the Gymnasium
6 building?

7 A No, I did not, but I went down and the gas was there.

8 Q Well, of course you realize that gas can be carried
9 along by the wind.

10 A All over the place, that's true, but the concentra-
11 tion down there was too heavy for just floating in.

12 Q Did you personally see anybody fire any gas guns
13 in the Gymnasium area?

14 A I did not, no, sir.

15 Q How many occasions in your life have you seen tear
16 gas used?

17 A Well, I am no expert on tear gas.

18 Q That isn't the question. How many times have you
19 been around when it's been used?

20 A I don't imagine over two or three times in my life.

21 Q Do you remember when they were?

22 A When we were possibly gassing some criminal out of
23 a house or out of a woods and so forth and so on.

24 Q Were you personally present on those occasions?

25 A Of course I have tested for gas and gas chambers

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1 in the Army for years.

2 Q Did your men go to their cars to get the gas masks?

3 A Yes, sir.

4 Q And what happened?

5 A Of course after the concentration of gas was already
6 there, it is hard to put a gas mask on unless you are an expert
7 and know how to expel the gas from the mask first, but
8 secondly they did and they couldn't use them. They were in-
9 effective.

10 Q Well now, we left the men all up at the Gymnasium.
11 Did they spend the night there?

12 A No, sir.

13 Q What did they do?

14 A They abandoned it. I ordered them out of there.

15 Q You ordered them out and where did you order them
16 to go to?

17 A I ordered them out on the highway where I could
18 get them together and regroup and talk with them and figure
19 out the best thing we could do to help the situation.

20 Q Where did you meet on the highway?

21 A I met them down at what they call the "old skating
22 rink".

23 Q And how many men were there?

24 A At that time -

25 MR. CATES:

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1 I am going to object to this, as being beyond the
2 scope of our complaint.

3 MR. EARDLEY:

4 Go ahead. Your complaint is mercifully ambiguous
5 as to when anything happened.

6 A Well, let's see. Where were we?

7 Q We were trying to find out - you fellows gathered
8 down at the skating rink and I just asked you how many were
9 there.

10 A I imagine at that time there was something like a
11 hundred. That was around 10:30 or 11:00 o'clock, I believe.

12 Q Well, ye gods, we've got two hours to cover. They
13 left the Lyceum area around 8:00, because that's when the gas
14 was fired, and they went to the Gymnasium.

15 A Yes, sir.

16 Q When did you order them out of the Gymnasium,
17 what time?

18 MR. CATES:

19 Continuing objection.

20 THE WITNESS:

21 A Right after they were gassed there.

22 MR. EARDLEY:

23 Q And what time was that?

24 A I can't tell you.

25 Q Well, you gave us a time that you were down at the

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1 skating rink, around 10:00 or 10:30. Was it just before that?

2 A I had a reason I knew what time that was.

3 Q Well, did you leave the Gymnasium just before, a
4 few minutes before you arrived at the skating rink?

5 A No, it was earlier than that, earlier than that,
6 because I had left instructions with the Chief. Just beginning
7 back a little bit, I was in the Lyceum Building, as I told you,
8 talking to one of your men, and one of my inspectors came in
9 and got me, and he said: "The men are gassed down at the
10 building and we don't know what to do down there" and they
11 wanted me to come down there. In fact, they had heard that
12 I was killed and they were a pretty angry group of men, so I
13 went down there, and it was untenable. You couldn't stay
14 there. I told the Chief to get them out of that area, get
15 them out on the highway and establish roving patrols and to
16 reinforce the road blocks until I got back down there, that I
17 wanted to talk with them.

18 Q I see. So for an undetermined period of time they
19 were in the Gymnasium. Then you went up and gave them the
20 order and they left.

21 A Yes, sir.

22 Q Your instructions were that they were to reinforce
23 road blocks and operate on the highways.

24 A That's right.

25 Q Did you ever change your instructions to them?

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1 A No, sir, not in particular.

2 Q In other words, from then on these men were

3 working at road blocks and on the highways?

4 A That's right, because Governor Johnson came up

5 there while I was talking with the men around 11:00 o'clock.

6 Q You mean Lieutenant-Governor Johnson?

7 A Lieutenant-Governor Johnson, and we went on up and

8 talked to Mr. Katzenbach about it.

9 Q Who is "we"?

10 A Governor Johnson and myself, with the idea of

11 seeing what we could do to help the situation.

12 Q What was the situation at 10:30 or 11:00 o'clock?

13 A It was pretty rough.

14 Q What was going on?

15 A Well, a lot of stones being thrown, and this, that

16 and the other.

17 MR. CATES:

18 Continuing objection.

19 THE WITNESS:

20 It was rugged up there, to be honest about it.

21 MR. EARDLEY:

22 Q And these objects were being thrown by people in

23 crowds that you couldn't identify.

24 A Oh, no, sir, I couldn't identify them.

25 Q And was it that time that you and Lieutenant-

1 Governor Johnson were up there that Katzenbach requested
2 you to assist controlling the crowd on the campus and you
3 stated you only had 75 men and couldn't do it?

4 A. That was reiterated again. We had discussed that
5 earlier and Governor Johnson told him then, "Well, if you
6 stop this gas, we will attempt to do what we can, and I will
7 get in there", and he had a loud speaker, "we will get in
8 there and do what we can do", and they wouldn't consent to
9 that.

10 Q. You don't know how many people were in the crowd
11 at that time, do you?

12 A. No, sir, it was dark as the inside of a cat about
13 that time and you couldn't tell.

14 Q. These people were not wearing gas masks, were they?

15 A. Sir?

16 Q. The crowd wasn't equipped with gas masks, was it?

17 A. If they were, I wouldn't know.

18 Q. Were the lights on the campus out?

19 A. Yes, sir.

20 Q. How did that happen?

21 A. I don't know, sir, but there wasn't a light burning
22 out there. No, sir, it was black dark. That was one reason
23 particularly that our 75 men couldn't have accomplished any-
24 thing any more than they did.

25 Q. Was this decision to withdraw your patrolmen from

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1 the campus your decision or did you get these orders from
2 Governor Barnett or Lieutenant-Governor Johnson?

3 A Governor Johnson wasn't there at the time. It
4 was my decision and I did not discuss it with anybody. I
5 took the initiative myself.

6 Q Were you out there in that general area all night
7 long?

8 A I was in that area all night. I only left it one
9 time and that was to go down and talk with the personnel. I
10 didn't even go out to eat. I stayed there all the time.

11 Q Did Governor Barnett during any time during the
12 night give you any orders to establish road blocks and keep
13 people off the campus?

14 MR. CATES:

15 Object. I don't see how that's relevant.

16 THE WITNESS:

17 A Just the initial order. That was his theme all
18 the way through.

19 MR. EARDLEY:

20 Q Yes, but I am thinking later. You stated one time
21 that he got some misinformation about road blocks being with-
22 drawn.

23 A Not road blocks, no, sir.

24 Q Wasn't it? What was it?

25 A That was the patrol from the campus proper.

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1 Q Oh, and he ordered you to maintain the patrolmen
2 on the campus?

3 A He inquired. He said "I heard that they had re-
4 moved the Patrol from the area", and I told him that nothing
5 had been removed except those men that were right there
6 around the Lyceum Building and the Gym .

7 Q When was this conversation?

8 MR. CATES:

9 A running objection to all of this.

10 THE WITNESS:

11 I don't know, sir.

12 MR. EARDLEY:

13 Q Was it after the gas was fired?

14 A Oh, yes.

15 Q Was it after the men had left the Gymnasium area?

16 A Yes, sir, I believe it was. I'd say it was.

17 Q Were you there when there was violence being mani-
18 fested by firing cars , guns going off?

19 MR. CATES:

20 Set your time, sir.

21 MR. EARDLEY:

22 I don't know the time. If I did I wouldn't waste
23 my time on his memory (laughing).

24 A Would you mind repeating that again.

25 Q Well, did you see any violence of any kind during

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1 the night?

2 A Actual, eyeball, violence, no, sir, I did not.

3 I observed a lot of things that were going on.

4 Q Like what?

5 A Well, like missiles being hurled, stones and so
6 forth, and vehicle on fire. I had to observe that because
7 it lighted up the whole area.

8 Q Do you know what time this was?

9 A No, sir.

10 Q Was it after the gas was fired or before?

11 A I couldn't say. I don't remember.

12 Q You don't remember any attempt to fire an Army
13 truck?

14 A No, sir, I do not of my own knowledge.

15 MR. CATES:

16 Object.

17 MR. EARDLEY:

18 Q I notice, Colonel, before I forget it, that you
19 have been referring to some handwritten notes. Are these
20 taken from a diary of any kind?

21 A No, sir, they are just in my pocket now, just what
22 I made -

23 Q You mean before you came here you tried to re-
24 member what the time was. Is that it?

25 A Trying to give you the facts as I know it and see it.

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1 to give you the truth.

2 Q Did you ever have a conversation with Mr. McShane,
3 and this was just before the gas was fired, in which he asked
4 you to assist because the crowd was getting out of hand, and
5 you stated that your hands were tied, that you couldn't do
6 anything?

7 A No, sir.

8 Q You don't recall any such conversation?

9 A We had a conversation.

10 Q What was that conversation?

11 A Just as I stated before, when I came out of the
12 Lyceum Building, I was in Mr. Clegg's office, Mr. Katzenbach
13 had requested us to help with that crowd, and when I came out
14 on the porch, McShane came up to me and asked if we could help
15 and I said "That's what I'm coming out here for, to get every
16 man we can to help." I never did make any statement to Mc-
17 Shane that my hands were tied about anything.

18 Q What, if anything, did you see during the night,
19 starting at 8:00 o'clock, I guess, or any time before - any
20 time, make it general - that would indicate to you, if it did,
21 that the marshals were unseasoned or unskillful?

22 A Well, in the very beginning it was self-evident
23 that they were untrained or that they had not worked together
24 enough, because they were highly nervous, and this first
25 occasion that I had to see, that they would take off their

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1 helmets and don their masks. That was just one occasion that
2 I saw. Now, of course there is a lot of things that the men
3 know about and I don't.

4 Q I only want what you know about it.

5 A I understand that, sir.

6 Q What was it that made you believe they were nervous?

7 A It was self-evident. You could see it.

8 Q What time was this?

9 A This was practically from the time they arrived
10 on the campus.

11 Q Even though the crowd was not unruly and was not
12 throwing anything at them, they were nervous?

13 A Yes, sir.

14 Q And what were they doing?

15 A Well, you could just see that -

16 Q What did they do?

17 A Nothing except the expression of their faces.

18 That's about all I can tell you.

19 Q You mean you determined from the expression on
20 their faces that they were nervous right from the beginning?

21 A That's right.

22 Q What else did you see to indicate to you - you made
23 also a statement that they had not worked together. What in-
24 dicated that to you?

25 A It didn't seem that they were a team to me.

1 Q How did that manifest itself?

2 A Well, it was a kind of disjointed affair there.

3 They didn't seem to be working as a team.

4 Q Well, they were all around the building from 4:00
5 o'clock on, weren't they?

6 A That's right.

7 Q From their standing around that building in a line,
8 what indicated that they were not working as a team?

9 A Well, that's pretty hard to explain, except that if
10 you have dealt with a lot of men all of your life you can
11 pretty well determine that.

12 Q Well, how?

13 A That's pretty hard to explain.

14 Q Are you able to explain it?

15 A No, sir, I am not exactly, no more than I have said.

16 Q How many state troopers were injured during the
17 night?

18 A I believe somewhere like ten or twelve.

19 Q Have you their names?

20 A With me?

21 Q Do you know who they are?

22 A I do not have them with me, no.

23 Q Can you name any of them?

24 A I know one or two.

25 Q Name the two.

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1 A Nichols or Nicholas and Brunt.

2 Q Were you present when they were hurt?

3 A I was present, but I didn't actually see it. In
4 other words, I saw the gas propelled, I saw it fired. I saw
5 it fired on a level instead of elevating it, but at the moment
6 I didn't know who it had hit, except that I saw it fired into
7 the backs of the patrolmen.

8 Q When was this?

9 A This was in the first volley.

10 Q And what kind of tear guns were the marshals using?

11 A They were 37 Millimeter, inch and a half.

12 Q Are you familiar with that type of weapon?

13 A Yes, sir.

14 Q What kind of a cartridge does it have?

15 A They fired several projectiles there. They had
16 some short range and long range projectiles.

17 Q What's the short range projectile?

18 A The short range is just fired at the end of the
19 shell and more or less there is no head on it, don't you see,
20 and that gas is fired there and if you fire it point blank
21 it will burn you.

22 Q It would burn?

23 A Yes, sir.

24 Q How far - at the time of the firing the marshals
25 were about 10 feet away from the state troopers?

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1 A I would say about 20 feet.

2 Q The marshals were about 20 feet from the state
3 troopers?

4 A About that.

5 Q You are not indicating, are you, that at that
6 distance these short range cartridges could hurt anybody?

7 A Except a little burning, but the long range
8 projectiles -

9 Q Well now, what was the long range projectile that
10 they were using?

11 A They have a range of something like 150 or 200 yards.

12 Q What do they look like?

13 A A cartridge case six or eight inches long and with
14 a projecting head five or six inches long.

15 Q Made out of metal or what?

16 A Made out of composition, paper. They make them
17 several different ways. I couldn't tell you exactly whether
18 that was plastic or paper or what. I didn't examine them
19 carefully.

20 Q But in any event, you didn't see the actual injury
21 occur, did you, in either case?

22 A Except I saw the guns leveled; on a straight line,
23 not elevated, at the first fire. I could tell the position
24 of the guns, that they were fired straight.

25 Q Well then, I gather from your remark that in your

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1 experience with tear gas, the gun should be elevated above the
2 heads of the people.

3 A Yes, sir.

4 (At this time there was a short break, and the
5 proceedings continued:)

6 MR. EARDLEY:

7 Q I am going to sort of hit and miss around, so you
8 had better listen to me carefully. I have got a note here
9 that - I think earlier in your testimony you stated that the
10 state patrol was available for riot control work, particularly
11 on the call of the Governor, is that correct?

12 A Particularly on the call of the sheriff, I believe
13 I might have said that.

14 Q The Sheriff, - you didn't mean to say Governor.

15 A I don't believe so.

16 Q What role, if any, did Chief Tatum play on September
17 30th?

18 MR. CATES:

19 We object unless it is tied in.

20 THE WITNESS:

21 I saw Chief Tatum several times.

22 MR. EARDLEY:

23 Q Did he have any police there?

24 A Yes, sir.

25 Q What were they doing?

1 A I don't know, sir, I had no real contact with him
2 except in the very beginning. I saw him there.

3 Q How many police did he have?

4 A I believe - I won't be sure, but he had six or eight.

5 Q Did you identify any sheriffs or local police there?

6 A That night?

7 Q Yes.

8 A No, sir.

9 Q You didn't see any.

10 A I don't believe that -- there may have been one or
11 two, but that is all, if there were any.

12 Q You don't remember them, you couldn't identify them.

13 A I don't remember who they were at the moment, I would
14 have to get my wits together, but there may have been one or
15 two sheriffs there.

16 Q When Yarbrough, McClaren, and Judge Moore were on
17 the campus, - were they all there at the same time?

18 A Yes, sir.

19 Q Who was in charge?

20 A Senator Yarbrough. Of course, Judge Moore had dual -

21 Q He had what?

22 A Authority, I would call it.

23 Q Who told you Senator Yarbrough was to be in charge
24 when he arrived?

25 A He did himself.

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1 Q He did himself.

2 A He read some sort of proclamation or something there
3 to Mr. Katsenbach.

4 Q From the Governor?

5 A And told Mr. Katsenbach that he was in charge.

6 Q That he, Senator Yarbrough, was in charge.

7 A Yes, sir.

8 Q Did you inform Governor Barnett of what your plan
9 of operations were, was rather, with respect to placing road-
10 blocks and keeping people out?

11 A No, sir, as I told you in the very beginning, this
12 thing worked so fast, piecemeal proposition, and I don't remember
13 talking to the Governor about plans, except that when he would
14 call me about removal. Somebody evidently was calling him, and
15 he would get disturbed over the fact, and he would call us, and
16 all the way through, he wanted law and order.

17 Q Yes, and he didn't go into detail with it as to
18 how you were to maintain order?

19 A Of course, he left this to our judgment. We were
20 on the ground and -

21 Q Don't you remember any meeting with a Justice
22 official?

23 A Pardon me.

24 Q Do you remember a meeting with a Justice official
25 in which you discussed what was to happen on September 30th at

1 the school?

2 MR. CATES:

3 What day?

4 MR. EARDLEY:

5 On September 30th.

6 THE WITNESS:

7 At what school?

8 MR. EARDLEY:

9 Q At Ole Miss, - didn't you meet with a Justice offi-
10 cial and plan how this thing would be conducted?

11 A I don't remember, not exactly. In other words, I
12 did meet with a Justice official.

13 Q Where?

14 A He was in front of the Alumni Building.

15 Q Where was this - is that on the campus?

16 A Yes, sir.

17 Q Was this before you went to the airport?

18 A That's right.

19 Q But you can't identify that official?

20 A Yes.

21 Q What was his name?

22 A Guthman.

23 Q Guthman?

24 A Guthman.

25 Q Did he tell you that the marshals were going to

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1 arrive at the airport?

2 A No, sir.

3 Q What did he tell you?

4 A He didn't — I knew nothing about their plans, nobody
5 told me anything about their plans, what they were going to do
6 and what they planned to do. The only thing he wanted to know
7 from me was where the lyceum building was and how to get to the
8 airport.

9 Q In other words, there was no discussion at any time
10 prior to the arrival of the marshals with respect to cooperation
11 between the marshals and the state police in maintaining law
12 and order?

13 A Not that I remember, except that we were there to
14 see what we could do to maintain law and order, but I already
15 had my orders what to do in that respect.

16 Q Was Governor Johnson on the campus during September
17 30th?

18 A Yes, sir.

19 Q Did he take charge there when he was there?

20 A He was in charge, yes, sir, that was from about
21 11 o'clock. He came in about 11 o'clock that night.

22 Q Until when?

23 A Until the next day about noon when we were relieved.

24 Q Did you take your orders from him at that time?

25 A Yes, sir, we worked right together and were relieved

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1 by Mr. Katzenbach.

2 Q Did you have any conversation with any Government
3 official about the necessity of breaking this crowd up into
4 small groups in order to maintain law and order?

5 A No, sir, I did not.

6 Q You didn't?

7 A I did not.

8 Q When was it that Mr. Yarbrough and perhaps Judge
9 Moore, I don't know, wanted to withdraw the patrol?

10 A That was just immediately before the firing of the
11 gas, but that was a request to Mr. Katzenbach and his staff.

12 Q You testified at one point there was a commotion at
13 the left of the line, I asked you if you saw any violence, and
14 you said you saw a commotion at the left of the line.

15 MR. CATES:

16 I think he testified that he heard about one.

17 MR. EARDLEY:

18 Q What was the commotion that you know about?

19 A I do not know - all I could see was a little weaving
20 in and out down there. I don't know exactly what happened,
21 because I was too far away, and there was too much noise, - I
22 couldn't decipher what it was.

23 Q You testified that you confiscated a lot of weapons
24 that night - where are they now?

25 MR. CATES:

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1 I object.

2 THE WITNESS:

3 A They are in possession of the patrolmen.

4 MR. EARDLEY:

5 Q In whose custody?

6 A In each of the districts at the moment.

7 Q What does that mean?

8 A Well, the patrol is subdivided into nine districts,
9 and the district commanders have those weapons. They seize
10 them themselves and they have them in -

11 Q (interposing) You mean if a certain district guy
12 got it, he kept it, is that right?

13 A That's right.

14 Q Did you see any incident involving a bulldozer that
15 night?

16 MR. CATES:

17 Object.

18 THE WITNESS:

19 A Very frankly, no, sir, I didn't see that bulldozer
20 until the next morning.

21 MR. EARDLEY:

22 Q You didn't see it that night at all.

23 A No, sir, I didn't see it that night.

24 Q You saw a bulldozer there on the street the next
25 morning.

A I saw it in the middle of that block the next

1 morning.

2 Q Did you see any incident involving a fire engine?

3 A I didn't see that until the next morning.

4 Q With respect to that meeting at the skating rink

5 where you said the patrolmen went from the gymnasium to a

6 skating rink -

7 A Pardon me, sir?

8 Q You remember your testimony about a meeting at the

9 skating rink on September 30th.

10 A Yes, sir.

11 Q And you left the campus to go there.

12 A Yes, sir.

13 Q What happened there?

14 A I had the men assembled there to figure out ways and

15 means, what we could do to help with this situation, and advice

16 to the inspectors, the leaders, and the men themselves about

17 what we could do.

18 Q How many were there?

19 A How many were there?

20 Q Yes.

21 A I would say around 100. Practically all the men had

22 come in by that time.

23 Q And there was a general discussion about what should

24 be done.

25 A Yes, sir. And they, themselves, said "well, there is

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1 very little that we can do unless they stop the firing of the
2 tear gas guns".

3 Q You mean because they didn't have gas masks that
4 would work -

5 A Didn't have the proper protection, and didn't have
6 the number of personnel that was required to stop that thing.

7 Q How many men would you need to stop that?

8 MR. CATES:

9 We object to that.

10 THE WITNESS:

11 A That is hard to tell, but they tell me it took sev-
12 eral thousand.

13 MR. EARDLEY:

14 Q Anyway, you didn't have the men -

15 A I didn't have that many, no, sir.

16 Q And could you have called other men, or were your
17 people committed somewhere else?

18 A That's all I had.

19 Q That's all you had to use -

20 A All I had except a few cripples and those on other
21 duties, - sick.

22 MR. EARDLEY:

23 Well, that is all until we meet you again.

24 (It had been discussed off the record that the
25 deposition could not go on until a hearing was

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had before Judge Cox, and so at this time, as Judge
Cox was out of town, the deposition was closed)

REPORTER'S CERTIFICATE

STATE OF MISSISSIPPI
COUNTY OF HINDS

I, Meta Nicholson, Professional Court Reporter and
Notary Public of Hinds County, Mississippi, certify to the
best of my skill and ability I reported in shorthand and tape-
recorded the foregoing deposition of Colonel T. B. Birdsong
and have had the same typed up under my supervision, and the
foregoing pages, 1 through 87, both inclusive, are a true and
correct copy of the said deposition, taken on the time and at
the place stated in the title page hereof.

I further certify that I am not related to any of the
parties in interest, and have no interest in the outcome.

Witness my signature, and seal, this 1st day of January,
1963.

Meta Nicholson

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