

Q. Did you obtain accommodations for Meredith in Baxter Hall?

A. The accommodations had already been provided by the University.

Q. Was any University personnel at Baxter Hall when you arrived, besides Chief Tatum?

A. I can't recall. Of course, I recall very vividly Chief Tatum. He was the outstanding man, and I had a previous conversation with him.

Q. Did you accompany Meredith to his quarters after you reached Baxter Hall?

A. I met him at the car as he arrived, and with a group of some deputy marshals I did escort him, of course, up the walk and up the stairs into the room.

Q. When were more marshals sent to Baxter Hall? What time?

A. I think it would be some time after eight P.M.

Q. How many were sent?

A. I believe about eight or ten, about ten.

Q. Were marshals still coming in at Oxford Airport all this time between four in the afternoon and eight P.M. that night?

A. Yes, sir.

Q. They were still coming in?

A. Yes, sir.

Q. Were they being directed on to the Lyceum building?

A. Yes, sir.

Q. Who was directing them?

A. When you say "direct them," my understanding is that the ones who took us there originally went back to the airport; there was another round of marshals would

arrive and be put in trucks and driven up to the --

- Q. Were they accompanied by highway patrolmen?
- A. You mean actually and physically escorted up and back?
- Q. Yes.
- A. I don't think so.
- Q. You don't know though?
- A. I don't know.

(Noon Recess)

After Recess

- Q. Directing your attention back to Plaintiff's Exhibit 2, off of Highway 6 up at the northern end of the exhibit coming onto the campus, were there any highway patrolmen at that junction?

MR. EARDLEY: Could we mark that?

- Q. All right. Mark that as Number 1.
- A. I want to make sure I understand you correctly.
- Q. Mark that Number 1. That is the juncture of which I speak.
- A. That's what I wanted to know. This would be the entrance on to --
- Q. -- The campus itself.

(Witness marks)

- Q. The question is, were there any highway patrolmen there?

MR. EARDLEY: At what time?

MR. GATES: At the time when they first came upon the campus at approximately four o'clock in the afternoon.

- A. Yes, sir, there were.
- Q. How many would you say?

A. There were two cars, highway police cars, and I'd say about a dozen policemen.

Q. Mark this juncture Number 2.

MR. EARDLEY: Will you identify that for us.

MR. CATES: It is the first juncture at the faculty apartments on Plaintiff's Exhibit 2.

Q. Mark it as 2.

(Witness marks)

Q. Were there any highway patrolmen there?

A. I recall there were a few, but how many I wouldn't know, but there were some.

Q. Would you approximate?

A. Half a dozen.

Q. At the next juncture on Plaintiff's Exhibit 2, which is the south entrance near the faculty apartments by the Kappa Kappa Gamma Sorority House, would you mark that juncture as 3?

(Witness marks)

Q. Were there any highway patrolmen there?

A. Yes, there were some. The exact number I don't know.

Q. Would you approximate it?

A. I'd say four to six.

Q. Then moving on south to the Law Building across from the Chancellor's home, at that juncture were there any highway patrolmen?

MR. EARDLEY: Mark it, will you?

Q. Yes. Mark it Number 4.

(Witness marks)

A. Yes, sir, there were some patrolmen there.

Q. How many would you say?

A. About a half dozen.

Q. Following the road to the west and on around south again at the juncture of the Fine Arts Center and the classroom as you come into University Circle, were there any--- First, mark it 5 on Plaintiff's Exhibit 2.

(Witness marks)

Q. Were there any highway patrolmen at this juncture?

A. Yes, sir, there were some.

Q. How many would you estimate?

A. About a half dozen.

Q. Could you see as you turned down to your left or at the opening of the University Circle where the Confederate monument is -- it is not drawn on Plaintiff's Exhibit 2, but nevertheless it was there -- could you see any highway patrolmen there?

MR. BARDLEY: Would you mark that?

Q. Yes, juncture Number 6.

A. There could be, but I don't recall. (Witness marks)

Q. Right. When you came on up to the Lyceum Building, were there any highway patrolmen there at the Lyceum Building when you arrived?

A. You mean directly in front of the Lyceum itself?

Q. Let's say in the vicinity.

A. Yes, there were some there.

Q. Where in the vicinity of the Lyceum Building were these patrolmen?

A. I observed some here, which would be to the north. In other words, this is the entrance to the Lyceum.

Q. That's correct.

A. To the north of the Lyceum there would be some.

- Q. The northeast corner?
- A. Yes. Shall I mark it?
- Q. No, sir.
- A. And to the south.
- Q. Southeast corner?
- A. Yes, sir.
- Q. Approximately how many patrolmen were there at that time?
- A. Say, from six to ten.
- Q. You had 170 marshals in your company at that time? Is that correct?
- A. Yes. I'm just trying to recall whether they went back to pick up a second--- No, I would think we had the whole 170 there with us when the original going-ons were at the campus.
- Q. Would you diagram on Plaintiff's Exhibit 2 how you disbursed those marshals around the Lyceum Building?
- A. Well, when we got there, the first thing we did was to have them dismount and get out of the trucks that were carrying them, and they stood around there for, say, several minutes until--
- Q. Excuse me. Where is "around there"?
- A. Would be in front of the Lyceum. Then subsequently we took the 170---
- Q. "Subsequently"? What approximate hour would this be, or how much time later?
- A. Say maybe about ten minutes after we arrived. Say ten or fifteen.
- Q. All right.
- A. We lined up the marshals from what would be the --- northeast corner of the Lyceum --?

Q. Yes, sir.

A. From there down in front of the Lyceum and around ---

Q. -- to the southeast corner?

A. Southeast corner, and roughly a little down past the corner.

Q. Just that line? Is that the only area you had them in at that time?

A. At that time.

Q. And that time was what?

A. Say about 4:45.

Q. Were other marshals coming in?

A. Oh, yes. Subsequently more did come in.

Q. How did you disburse the new arrivals?

A. We put them in the back of the Lyceum.

Q. That would be the west side from the north?

A. Yes, sir.

Q. Did you put any on the north side and the south side of the Lyceum Building?

MR. EARDLEY: In other words, whether it's surrounded?

MR. CATES: Yes, sir.

A. Yes, sir, I recall that.

Q. About what time was this?

A. About 4:45, five o'clock. In that area.

Q. Would you diagram the Lyceum Building, how the completion of the surrounding of the Lyceum was done?

A. When it was completely surrounded?

Q. Yes, sir.

A. Would you want me to draw a line for you?

Q. Yes, sir.

A. Just one straight line, or --

Q. As you see fit.

A. Suppose we start here. All right?

(Witness marks)

Q. Would you diagram where you were?

A. Well--

MR. EARDLEY: At what time?

Q. At the time that you arrived.

A. When I first arrived?

Q. Yes.

A. Was directly in front of the Lyceum, but I didn't stay there.

Q. Right.

MR. EARDLEY: I think the record should show that Mr.

McShane has made a dotted line completely around the Lyceum.

MR. CATES: All right.

Q. Now, were there any students gathered at the time you arrived?

A. When we first arrived?

Q. Yes.

A. No. There were a little, there were a few, but very few, just occasionally passing by.

Q. Were there any highway patrolmen coming in at that time?

A. Coming into where?

Q. Coming into the area in front of the Lyceum Building.

A. Could be, but I didn't notice.

Q. Do you have the names or do you know the names of all the marshals that were there, the 170?

A. No, sir, I'm sorry. But I can provide you with them if you wish.

Q. All right. Approximately what time did you give the order to fire the gas?

A. About eight o'clock their time.

Q. At that time, what was the relative position of the marshals? Was it the same as you diagramed here?

A. More or less, yes.

Q. Where was your position at eight o'clock?

A. Directly in front of the Lyceum.

Q. Did you have an assistant to you, or --?

A. Yes, sir.

Q. Who was that?

A. Mr. Cameron.

Q. Were there any other assistants?

A. Yes. Mr. Donald F-O-R-S-H-T, Mr. Al Butler, Mr. Ellis Duly. They were the ones with whom I was in constant contact.

Q. How many men did they have under their control?

A. Well, they had the 170 divided into groups, but they were the three group leaders.

Q. Did they later have the entire 450, or whatever --

A. -- No, no, because the highway patrolmen had their own groups, their own squads, under the direction of Mr. Chamblee.

MR. EARDLEY: You mean Border Patrol.

A. I'm sorry. The Border Patrolmen under Mr. Chamblee. And then subsequently, later that night, when the Bureau of

Prison personnel arrived, they were under the leadership of Mr. Eoel Allridge, A-l-l-r-i-d-g-e.

Q. How many marshals, total number of marshals, did you have that were duly appointed marshals, as opposed to those who later were border patrolmen and other Federal personnel who were deputized there as marshals?

A. About 123.

Q. How many border patrolmen did you have?

A. I believe it was in the neighborhood of around 336.

Q. What was the character of the other Federal employees that you had?

A. Bureau of Prison personnel?

Q. Right.

A. That would be about 97 or 98 of them.

Q. Were all these personnel under your control?

A. That's correct.

Q. They took orders from you?

A. Not directly from me. Through Cameron or Butler or Duly.

Q. Mr. Butler, Mr. Cameron, Mr. Forsht, and Mr. Duly all looked to you for direction and control?

A. Right, as I looked to them for advice on the situation as it existed that night.

Q. Right. At the time of the firing of the first gas, where were their positions, your group leaders? Were they with you?

A. Well, we had had this quick conference, meeting. This is after I returned from being in the Coliseum with

Colonel Birdsong---

Q. --Excuse me. The Coliseum?

A. The Lyceum. I had come out, and prior to going in Mr. Cameron and Mr. Forsht and Mr. Butler -- I don't think Duly participated in this -- said the thing was getting extremely worse and --

Q. Excuse me. The question was, where were they at the time you ordered the firing of the gas?

A. They were out front here with me.

Q. Would you diagram where they were?

A. Say, I was here --

Q. Use an "A" on Plaintiff's 2 where you were; "B" where Cameron was.

A. (Witness marks)

Q. All right. Where was Mr. Forsht? With a "C".

A. Mr. Forsht, as I recall, would have been up here, in charge here.

Q. Is that Foster, or --

A. Forsht, F-o-r-s-h-t. (Witness marks)

Q. All right. Where was Mr. Butler?

A. Butler would have been about here, "D", (Marks) and "E" would have been Duly. (Marks).

Q. After the firing of the first gas, what positions did these group leaders take?

A. They maintained the same position they were prior to the firing of the gas.

Q. And off and on during the night - I recognize they weren't

there constantly, but off and on during the night, was this their relative position?

A. Well, by "relative position" you mean for the best part during the course of the night?

Q. Let's tie it down. From eight o'clock until one P.M. or 1 A.M. in the morning on the 1st of October, 1962, would these positions^{be} the relative positions of these gentlemen during the night?

A. Yes.

MR. HARBLEY: Let's try and get something straight. If I read the Complaint correctly, Mr. Faneca suffered the injuries about which he complains at eight o'clock when the tear gas was fired. That is what I gather from the Complaint, although you don't specifically set forth the time, so that any occurrences after eight o'clock after the injury would be quite irrelevant to this proceeding, and I don't think we have to carry on the battle into the next morning if Mr. Faneca's injuries occurred, as I gather from the petition, at the time of the firing of the tear gas at eight o'clock.

MR. CATS: If you want to object, you are perfectly at liberty to so object.

Q. At approximately what time did the total --- what was the total number of personnel reached? What was the highest number of marshals you had around the Lyceum at what time?

A. I'd say some time after nine o'clock when the Bureau of Prison personnel arrived.

Q. You reached the optimum?

A. Yes.

MR. BARDLEY: Do you use "marshals" in the sense of those trained as marshals or the entire deputized group under his command?

MR. CATES: I use the entire deputized group under his command.

Q. At the firing of the first round of gas, how many highway patrolmen were in front of the Lyceum?

A. How many highway patrolmen?

Q. Yes.

A. Specifically that would be hard for me to answer.

Q. I recognize that. Would you approximate?

A. I would think about fifty.

Q. How were all of your personnel, whether Bureau of Prison personnel or marshals or border patrolmen, how were they dressed?

A. The border patrolmen and the deputy marshals had a sort of an orange vest on with a white helmet on, which it said "U. S. Marshal" on it, and the vest was for carrying tear gas equipment.

Q. What type of tear gas were you using?

A. We were using the ordinary type of tear gas. You want the name? The chemical name?

Q. Yes, sir.

A. I can't supply that to you. I'm not familiar with it.

Q. Yet you are trained with it? Is that correct?

A. I personally trained with it?

Q. No, sir. Your personnel.

A. Oh, yes.

- Q. Do you know what variety you were using? In other words, were you using more than one variety of tear gas?
- A. My recollection is that there was just the one type used.
- Q. Where was the highway patrol, the fifty you mentioned a moment ago? Would you diagram where they were?
- A. Who?
- Q. The fifty highway patrolmen, approximately. The State highway patrolmen, at the time you ordered the firing at approximately eight o'clock, where were they?
- A. Where they were?
- Q. As to general location.
- A. Where do we arrive at fifty?
- Q. Your own figure. You said approximately fifty personnel.
- A. Of border patrol or highway patrol? Which are we talking about?
- Q. Highway patrol.
- A. I understood you to say border patrol.
- Q. No, sir. I asked you how many highway patrolmen were there.
- A. Let me have the question again.
- Q. I asked you what was the general position of the highway patrolmen.
- A. The Mississippi State Highway Patrolmen?
- Q. Yes, sir, at the time of the ordering of the firing at approximately eight o'clock.

MR. EARDLEY: I didn't hear the question. I certainly didn't hear his answer about fifty, but for the sake of the record, would you mind repeating the question of

how many highway patrolmen there were?

MR. GATES: He has already stated there were approximately fifty.

A. I misunderstood. I thought you said border patrol.

Q. How many Mississippi State Highway Patrolmen were there at the approximate time you ordered the firing of the gas?

A. Directly in front?

Q. Directly in front of the Lyceum Building.

A. I didn't see any more than a half dozen.

Q. Where were their locations?

A. They were in the general area around here in front, through here.

Q. Would you diagram them, please?

A. To the best of my recollection?

Q. To the best of your recollection.

A. As I recall, this crowd was here -- Supposed to be up on the grove; actually they were up here in front of us -- infiltrating us through here. I recall seeing one patrolman here ...

Q. Would you signify that with an "X", please?

(Witness marks)

A. And the crowd in front of them.

Q. I asked you where the highway patrol was.

A. All right. In this general area.

MR. BARDLEY: Which is indicated by ---

MR. GATES: -- Wait a minute.

Q. In this general area. Are those highway patrolmen?

A. Yes.

Q. All right. Label those, please, sir, "X-1," "X-2," "X-3,

4 and 5."

(Witness marks)

Q. At the time you ordered the firing of the gas, where was the location of Colonel Birdsong?

A. My last recollection of Colonel Birdsong after we had had this conversation which I asked for more assistance, the last I saw of him, he was standing out in front of the Lyceum.

Q. Signify that by "X-6."

(Witness marks)

A. And he was standing in close proximity of Senator Yarborough, who was trying to talk to the crowd and wasn't very successful in doing it, and he was standing right near him. That is my last recollection of both Senator Yarborough and Colonel Birdsong.

Q. Was anyone standing near you at the time you gave the order to fire the gas?

A. Cameron.

Q. No one else was standing near you?

A. There were several people around. You mean directly in front of me?

Q. Directly in front of you or on the side of you.

A. Maybe on the side of me.

Q. Were they your personnel or State personnel or what?

A. Could have been our personnel or it could have been people from the crowd or could have been State officials. I couldn't identify them.

Q. Do you know who the personnel were on the north side of the building, your personnel? Do you have the names of those?

A. Names? No, sir.

Q. Do you have the names of those who were on the west side?

A. No, sir. You mean do I recall the names?

Q. Yes.

A. No, I don't, but I'm sure we have names that we can provide.

Q. Why was the Lyceum chosen to ring rather than Baxter Hall where Meredith was?

A. Well, because at the time that we arrived in Oxford and prior to leaving Millington and arriving at Oxford, and going up to the Lyceum, it was our understanding Meredith was to be registered that afternoon.

Q. You were told later that he wasn't?

A. At a much later hour.

Q. But before you fired the gas?

A. Yes. Sure.

Q. Now, since there was no reason to remain there, since he was not to be registered, why did you remain?

A. Because of the fact it had been established as the base of operations. This is where the Justice Department officials met with the University officials for the purpose of registering--

Q. But this was earlier. I'm talking about afterward.

A. Well, I received no orders to the contrary.

Q. You didn't make any suggestion, in order to avoid violence, to withdraw?

A. May I have that again?

Q. You didn't make any suggestion, in order to avoid violence after Meredith left, to withdraw?

A. Meredith had never arrived.

Q. I mean up to Baxter Hall.

A. He went directly from the airport to Baxter Hall.

Q. And you know that he wasn't coming here. Why didn't you suggest to them to withdraw?

A. To whom?

Q. To your superior, Mr. Katzenbach.

Q. Well, it was not my place to suggest to Mr. Katzenbach.

Q. Not in order to avoid any violence?

A. I think there would have been more violence had we attempted to withdraw at that point.

Q. Although there wasn't any then?

A. The crowd was getting out of hand.

Q. You weren't doing anything to withhold them. The highway patrolmen were.

A. No, they were not, sir.

Q. You were not assisting the highway patrolmen, were you?

A. We were--

Q. Answer the question. Were you assisting the highway patrolmen?

MR. BARDLEY: To do what?

MR. CATES: To withhold the crowd.

A. It was not our duty.

Q. I didn't ask you what your duty was, Mr. McShane. I asked a specific question. Did you assist the highway patrolmen in holding back the crowd?

A. How could we assist the highway--

Q. I didn't ask you that.

A. I can't give you a yes or no on that.

Q. Certainly, you can. Did you or not assist the highway patrolmen in withholding the crowd?

A. We couldn't because the highway patrolmen were not ---

Q. That is not the question.

A. I can't give you a yes or no.

Q. Yes, you can.

A. I cannot.

MR. EARDLEY: The reason he can't answer the question is because you are making an assumption he doesn't find to be true; to-wit, that the highway patrolmen were trying to withhold the crowd, and ---

MR. CATES: Let him answer. If you want to object ...

Q. Answer the question.

MR. EARDLEY: I object to badgering.

MR. CATES: No, sir, he can answer the question.

Q. Did you or not, your personnel, assist the highway patrolmen in pushing back the crowd?

A. No, because they were not doing anything to push the crowd back either.

Q. Did you ever on your own attempt to push back the crowd?

A. No, sir.

Q. Did you attempt in any other method than firing the gas to keep the crowd down?

A. No, sir.

Q. Do you deny that more highway patrolmen were coming to the Lyceum at the time you fired the gas?

A. Not to my knowledge.

Q. You don't deny that more highway patrolmen ----

A. -- I have no knowledge of any highway patrolmen coming to the Lyceum.

Q. You do deny it?

MR. EARDLEY: He just said he had no knowledge.

MR. CATES: I want to know whether he does or does not deny.

MR. EARDLEY: If he doesn't know, he can't either affirm or deny.

Q. Why didn't you warn the crowd you were going to fire the gas?

A. Because at that point there was no way you could warn the crowd. There was a tremendous amount of shouting, jeering, rock-throwing, Coca Cola bottle-throwing.

Q. But you made no attempt to --

A. Now, I wanted to get to this, if I could. When I come out of the Lyceum with Colonel Birdsong, I observed that Cameron had given an order to don the masks. --

Q. Let me ask the questions, if you don't mind.

A. Surely.

Q. What was the position of Mr. Katzenbach at the time you ordered the firing of the gas?

A. You mean physical position?

Q. That's correct.

A. In role of authority?

Q. No, sir. His physical position. You are correct. Physical position, but not in authority, at the Lyceum Building.

A. Well, he was around the Lyceum some place.

Q. You don't have any idea where?

A. No, sir.

Q. Was Mr. Gwin Cole one of the Mississippi Highway Patrol officers who was present?

MR. BARKLEY: Would you spell that?

MR. CAPES: G-v-i-n C-o-l-e.

A. What about him?

Q. Gwin Cole, who was a Mississippi State Highway Patrolman, was he present at Oxford on --

A. I wouldn't know.

Q. Would you deny this statement by Mr. Cole:

"I was standing ⁱⁿ the street in front of the Lyceum Building. There were about 200 marshals, I would say, surrounding this building and Army trucks sitting in front of the building that brought the marshals in. Highway Patrolmen, sheriffs and deputy sheriffs and other officers were engaged in getting these students back out of the street, on the curb-- they were heckling the marshals and some of them were heckling us and throwing cigarette butts and what-have-you. And all at once I saw a Chief Deputy Marshal, Mr. James P. Mc Shane-- he shouted, 'Let 'em have it--gas'. And I dropped to my knees -- the gas was coming by me and over my head fired from these guns and I dropped down to my knees -- and I saw him run back in the Lyceum Building. I followed him with my eyes full of gas and I got inside the building and I told him....."

He never did speak to you, Mr. McShane?

A. I have no recollection of --

- Q. -- He never did tell you, "That's the dirtiest trick that I have ever seen done"?
- A. I didn't say--
- Q. -- You said you never did see him.
- A. -- I said I have no recollection.
- Q. You wouldn't deny that he told you this?
- A. I have no recollection of seeing a Mr. Cole. If Mr. Cole would walk in here now, I wouldn't know him.
- Q. Would you deny Mr. Cole told you that that was the dirtiest trick he had ever seen?
- A. I have no recollection of Mr. Cole speaking to me about that or anything else at any time that night.
- Q. And that "he dropped his head and walked off and Mr. Katzenbach of the Justice Department walked up to me and told me he was sorry but somebody jumped the gun"?
- A. Well, I don't know what Mr. Katzenbach said to him.
- Q. "And that is when the riot started." Do you deny that?
- A. I deny that.
- Q. In other words, if Mr. Cole testified to that, he would be lying? Is that correct?

MR. EARDLEY: Just a moment. He doesn't have to testify about what Mr. Cole said.

- Q. Had these marshals ever operated together as a unit before, including your Bureau of Prisons and Border Patrolmen? Had they ever operated as a unit before?
- A. As a team?
- Q. Yes.

A. Collectively, as a whole, I would have to say I don't think so, Mr. Cates, though there had been a certain number of them, I believe, at Montgomery with us.

Q. Did you tell the highway patrolmen you were going to fire the gas? -- The Mississippi Highway Patrolmen, that is?

A. Any Mississippi Highway Patrolmen?

Q. Yes.

A. No, sir, I did not.

Q. You didn't warn them at all?

A. They weren't there to be warned.

Q. Answer the question. Did you warn them at all?

A. I told Colonel Birdsong unless something was done, and done shortly, I would have to take drastic action. Colonel Birdsong is the head of the Mississippi Highway Patrol.

Q. That is not my question. My question is very simple. Did you warn the highway patrolmen at that particular moment you were going to fire the gas?

A. No, I did not.

Q. Thank you. Were the personnel under your command armed with fire arms -- and in that vein, I mean pistols and rifles, as opposed to any gas weapons and things of that nature?

A. Yes, they had firearms.

Q. What type?

A. 38 caliber Smith & Wesson or 38 caliber Colt.

Q. Were they also armed with ammunition?

A. You mean ammunition for the revolvers?

Q. Yes.

A. Yes, sir.

Q. Do you know whether the gas that was used sought a lower level? In other words, went down to the earth, as opposed to dispersing or vaporizing?

A. It was shot out of these 1.5 caliber tear gas guns and went a distance of about 17 to 20 feet, and they would start to vaporize slowly.

Q. In other words, was the nature of the gas such that it would hover on the ground and seek a lower position, as opposed to vaporizing in a hurry?

A. Well, it would have a tendency to vaporize, but not too quickly.

Q. Thank you. I would like, Mr. McShane, that you make a mental note to supply me as soon as possible the names of the marshals who occupied the north side of the Lyceum Building and the west side of the Lyceum Building.

MR. EARDLEY: I told you before; I'll put in the record that I'm very glad to furnish you the names of the marshals who were in the immediate vicinity of your client at the time he was injured. Is this the location?

MR. CATES: Yes.

MR. EARDLEY: I'm assuming it is. So that if you could mark on the map where it was that Mr. Faneca was, we'll know more definitely what you really want in the way of names.

MR. CATES: I think you can elicit that on your

deposition tomorrow.

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MR. EARDLEY: Tomorrow? All right. Then we'll give you the names.

Q. Have you made any statements with regard -- any written statements -- with regard to the incidents on September 30, 1952?

A. Yes, I have.

Q. Whom did you make these statements?

A. To the attorney for the Department of Justice, and subsequently to Mr. Doar.

Q. Have you caused any diagrams or other drawings to be made of the incidents of September 30th?

A. There may be one or two diagrams that I drew, but offhand I don't recall; yet I have a rather hazy recollection of doing it.

Q. How often have you talked to your attorney about this?

MR. EARDLEY: Plenty.

MR. CATES: Let him supply the answer.

A. When you say "my attorney" --

MR. EARDLEY: You see, he has talked to many of us.

A. I have talked to a number of officials in the Department of Justice.

Q. Would you say as many as five or six times?

A. More than that.

- Q. Who are these people you talked to?
- A. I have spoken to Mr. Katzenbach about it; Mr. Burke Marshall; Mr. Jack Miller of the Criminal Division; Mr. Coerdorfer; Mr. Eardley, of course; Mr. Doar; Mr. Fhealen; and several other attorneys in the Department of Justice.
- Q. Would you describe for us the type of gas weapons that were used on September 30, 1962?
- A. There was this 1.5 caliber gas gun, and there was a type of tear gas grenade that is in a tin canister, and when you wish to discharge it, you pull a pin out and hold it, and when you are ready to throw it, you throw it out underhanded; or if need be, if the occasion demands and you want to throw it a greater distance, you can throw it overhand. And some sort of chemical reaction in there after it's released that causes the sides to burst out, and smoke emits from it.
- Q. Did you have a regular rifle or pistol projector? All of it was by hand?
- A. Yes. The 1.5 caliber gas gun.
- Q. This is what you call a gas gun?
- A. Yes, sir, which discharges gas.
- Q. Did the marshals have gas masks?
- A. Yes.
- Q. And I mean all the Federal personnel.
- A. Yes.
- Q. When one makes application to become a Federal marshal, is

a photograph taken of him?

A. Yes.

Q. Do you know whether this is true about the other Federal personnel who were there?

A. No, I wouldn't know.

Q. Did you ever have occasion to see Governor Johnson on the night of September 30, 1962?

A. No, sir.

Q. You never did see him?

A. No, sir.

Q. You are positive?

A. Positive.

Q. You never had a conversation with him?

A. On the night of September 30th?

Q. Yes, sir.

A. At the Lyceum?

Q. Yes, sir.

A. No, sir.

Q. Did you ever have occasion to see a man by the name of Russell Moore on the night of the 30th, 1962?

A. I don't know the name.

Q. Well, let me ask you this: Did you ever talk to any of the state personnel, after the firing of the gas, in a representative group or have liaison with any state people?

A. No, sir. You mean with the state officials?

Q. Yes, sir, state officials, whether they be Colonel Birdsong

or ---. Let me start from scratch. After the firing of the gas, did you have any liaison with Colonel Birdsong?

A. My recollection is no.

Q. Did you have any liaison with any other Mississippi State Highway Patrol personnel after the firing of the gas?

A. No, sir.

Q. Did you have any liaison or conversation with any other state personnel, whether they be elected officials or any other officials?

A. Law enforcement officials?

Q. Yes.

A. No, sir, to my recollection, no, sir.

Q. At the time of the firing of the gas, how many sheriffs and deputy sheriffs were at the Lyceum?

A. I wouldn't know.

Q. You wouldn't deny there were sheriffs there?

A. Could be. I just don't know.

Q. Therefore, you don't know in what capacity, if they were there, that they were?

MR. EARDLEY: Obviously he doesn't know.

MR. CATES: I'm trying to sew it up, Mr. Eardley, just clarify what he does know.

Q. Do you know whether or not the plaintiff was ever arrested on September 30, 1962?

- A. I have no knowledge that he was.
- Q. You don't know whether he was or was not?
- A. That's correct. Excuse me. When you say "arrested,"
you mean actually taken into physical custody?
- Q. Let's say arrested. I mean in the legal and classical
sense.
- A. Served with --
- Q. --Served with a warrant for arrest. Was he ever served
with a warrant for arrest?
- A. Not that I know of.
- Q. And in the University sense, was he illegally arrested by
being accosted and being picked up?

MR. EARLEY: I object to that on the ground you are
asking for a legal conclusion of the witness, and he
is not a lawyer.

- Q. All right, let's put it this way: In any other capacity
was he picked up? Do you know whether he was picked
up or not?
- A. I don't know.
- Q. From eight o'clock on until one P.M. in the morning, were
you ever at the northwest corner on the outside of the
Lyceum?
- A. Up in this general area? The Northwest? Yes, I would have
been up there.
- Q. How often were you there?
- A. That's hard to say.

- Q. Were you there once or twice?
- A. Oh, yes. From eight o'clock until one o'clock in the morning?
- Q. Yes.
- A. Let's say a half a dozen times.
- Q. Then you were not there constantly? Is that correct?
- A. No, sir.
- Q. Then you would have no knowledge of whether any of your personnel left their position? Is that correct?

MR. EARDLEY: You mean at any time?

- Q. Therefore you would have no personal knowledge of whether any of your personnel left the northwest corner of the Lyceum Building? Is that correct?
- A. In the hours between---
- Q. Between eight P.M. and one A.M.?
- A. No, sir.
- Q. You would not deny those personnel left? Is that correct?

MR. EARDLEY: He doesn't know. How can he affirm or deny something he doesn't know anything about?

MR. CATES: He can certainly answer the question yes or no. It calls for a simple answer.

- Q. You would not deny some of those personnel left their position?

- A. Do you mind repeating the question? I want to get it straight.
- Q. Sure. Between the hours of eight P.M., 30th of September, 1962, and one A.M., 1 October, 1962, would you deny that any of your personnel left their position on the northwest corner of the Lyceum Building?
- A. Well, not having been there constantly nor through the night, I just wouldn't know.
- Q. So you could not deny that?
- A. I could not deny it.
- Q. All right. You therefore could not deny the allegation of Paragraph 8 of the Complaint that other defendants than yourself did wrongfully and in a negligent manner charge toward the plaintiff, after having been pleaded with and begged by the plaintiff not to, and did wrongfully and negligently fire upon the plaintiff certain tear gas and type of gas projectile?

MR. EARDLEY: You are talking about the unnamed defendants?

MR. CATES: That is correct. As I said, the other defendants.

MR. EARDLEY: Mr. Katzenbach is a defendant.

MR. CATES: That is correct, but he said he wasn't outside all the time, so he doesn't know what Mr. Katzenbach did.

Q. In other words, you couldn't deny that last part of Paragraph 8 which I just read to you concerning the other defendants? Is that correct?

MR. EARDLEY: He doesn't know, so how can he answer? What do you gain by this?

MR. CATES: Let me ask the questions. If you want to object to them, fine.

Q. Would you answer the question?

A. As Mr. Eardley said, that is true.

Q. What?

A. That I wasn't there all evening.

Q. So you couldn't deny that?

A. That's right.

Q. As far as the other defendants are concerned?

A. That's right.

(Five minute recess)

After Recess

MR. CATES CONTINUES:

Q. Did the marshals have any shotguns or rifles?

MR. EARDLEY: How does this bear on the issues of this case? Is there any charge that this boy was hit by a shotgun or a rifle?

Q. Would you answer the question?

A. Give it to me again.

Q. Did the marshals or the personnel under your control have any shotguns or rifles, in the classical sense, as opposed to any gas weapons?

A. Well, my understanding is that the deputy U. S. marshals did not, and the border patrolman did not, and -- this I haven't been able to check, as to whether ----

MR. EARDLEY: -- If you don't know, don't speculate.

Q. There appeared in the Allen-Scott Report, a nationally syndicated column, that the President of the United States stated that "the U. S. marshals were inexperienced and blundered in their use of tear gas. It was a very sad day." Is that a correct statement?

MR. EARDLEY: I object to any question like that. How would Mr. McShane know? Did you say the President of the United States said this?

Q. Would you answer the question?

MR. EARDLEY: I'm directing him. I want to hear the question again. I'll probably direct him not to answer.

Q. There appeared in the Allan-Scott Report, which is a

syndicated column, the following statement by the President of the United States: "The U. S. marshals were inexperienced and blundered in their use of tear gas. It was a very sad day." Are you aware of such a statement?

MR. EARDLEY: Just a minute. Let's clarify what the question is.

MR. GATES: I'm asking is he aware of that statement.

MR. EARDLEY: In other words, is he aware that the President of the United States made such a statement?

MR. GATES: Right.

MR. EARDLEY: How would he be more aware than anybody who reads the newspapers?

Q. Are you aware of such statement?

A. I have read the statement.

Q. Have you written the syndicated column to contradict this statement at all?

MR. EARDLEY: Object to it as immaterial.

Q. Would you answer the question?

A. Would you mind repeating it?

Q. Have you written the Allen-Scott Report people, a syndicated column, to contradict this statement in any way?

A. No, sir.

Q. Were any students picked up during the night of September 30, 1962, without any warrants for arrest?

MR. BARDLEY: By whom?

MR. CATES: Thank you.

Q. By you or your personnel who were under your control?

A. By me?

Q. Yes.

A. No, sir. By personnel, you mean the deputy marshals --

Q. Right. The personnel. The broader term to include all the Prison----

A. --You were asking were any students from the University taken into custody?

Q. Yes.

A. On the campus?

Q. Yes.

A. I believe there were. Now, whether they were students or people who happened to be on the campus that time, I can't tell you, Mr. Cates.

Q. As to whether they were or were not students, that is what you are saying?

A. Yes.

Q. But you would not deny that students were picked up without warrants by the personnel under your control and your authority?

A. That's right.

Q. Where did you place these personnel, Mr. McShane?

- A. They were taken to an office --and, I believe, Mr. Clegg's office, a University official -- in the Lyceum. He had his office in the Lyceum. They were taken and kept downstairs.
- Q. Were any of them brutalized, Mr. McShane?

MR. EARDLEY: Just a moment. Unless Mr. Faneca is one of the students -- and I've assumed up to now that he wasn't -- I object to any testimony about what happened to other people on the campus that night.

- Q. Would you answer the question?

MR. EARDLEY: I direct him not to answer the question.

- Q. Would you answer the question, please? Were any of the students that were picked up by your personnel brutalized?

MR. EARDLEY: If you will make a statement Mr. Faneca was one of the students picked up, I'll withdraw the objection; otherwise, we'll go see the judge.

- Q. Would you answer the question? You will answer it or you won't. I've got to know.
- A. Well, I won't answer it.
- Q. All right. Were you present when any agreement was made between the highway patrol and the Federal personnel as to the entrance of U. S. marshals and other personnel upon the campus of the University?

- A. When?
- Q. On September 8, 1962.
- A. September 8th?
- Q. Excuse me. I beg pardon. September 30, 1962.
- A. You mean, you are talking about the afternoon at the airport when Colonel Birdsong arrived?
- Q. I'm asking you.
- A. Well, just when we're talking about, when Mr. Katzenbach and Mr. Birdsong met, I took no part in that.
- Q. Was this at the airport?
- A. Well, about a quarter of a mile down from the airport, down that road leading into Route 6.
- Q. Were there any other detention facilities for persons who were arrested or picked up on September 30, 1962, besides the Lyceum Building?
- A. No, sir.
- Q. Were there any other facilities used from 1 October until later in October besides the Lyceum Building?
- A. Yes. Out on the air strip the Bureau of Prisons took charge out there, and there was a building which is owned by the United States Government. It is an agency of the United States Government. And its name escapes me for the moment, but that building was used.
- Q. Was that under your control?
- A. It was under the control of the Bureau of Prisons.
- Q. Which, in turn, was under your control? Is that correct?
- A. That's right.
- Q. Who was in charge out there?
- A. Mr. Euel Allridge.
- Q. He was in charge of that facility?

- A. Yes, sir.
- Q. What instructions did you give with regard to students that were picked up by your personnel?
- A. May I have the question again?
- Q. What instructions did you give as to the guarding and the conduct of the students that were picked up?
- A. That night there were no instructions given. When we first went in there, we had no idea we would be forced to take people into custody.
- Q. Did you make any provisions to feed and water them?
- A. At that particular time?
- Q. Yes.
- A. No, sir. Now, you're talking at the time or prior to or just as we went in there, that later on in the evening---
- Q. I'm just asking you. You just answer the question.
- A. I want to make sure I understand you clearly.
- Q. Just answer it to your best ability.
- A. As far as I know, there were no provisions made.
- Q. Where did you stay while you were in Oxford, Mr. McShane?
- A. What time?
- Q. September 30th.
- A. Well, I stayed on the --
- Q. --On the campus during the whole night?
- A. All night and all the next day until about, I guess, one o'clock the following morning.
- Q. And then where did you go?
- A. If I recall correctly, I think we went to -- I went to Baxter Hall and stayed at the dormitory where Mr. Meredith was.

- Q. You were billeted, so to speak, up at Baxter Hall? Is that correct?
- A. Yes.
- Q. Do you know whether Mr. Katzenbach had any conversation with Mr. Robert F. Kennedy on the afternoon, say, at approximately five o'clock, September 30, 1962?
- A. Would I know if he had a conversation?
- Q. Yes.
- A. Well, I heard he had a conversation, but as to what the conversation was about, I don't know.
- Q. Did you ever talk to Mr. Kennedy on September 30, 1962?
- A. Yes, sir, I did.
- Q. What time?
- A. I think it was about 9:30, and he wanted to know the general condition there. I told him. I also impressed upon him the fact that we were still continuing to be getting wave after wave of these rioters, that our tear gas equipment was running extremely low, and the whole picture looked extremely black.
- Q. Did you ever request authorization from Mr. Katzenbach or Mr. Kennedy to use weapons?
- A. Did I what?
- Q. Did you ever request authorization on September 30, 1962, from either Mr. Katzenbach or Mr. Kennedy, Robert F. Kennedy, permission to use firearms?
- A. No, sir.
- Q. Were firearms ever used by your personnel on September 30, 1962?

A. Yes. There were one or two instances where they were used.

Q. Yes, sir. When was that?

A. Well, I understand one time---

MR. EARDLEY: I object to any speculation.

MR. CATES: Fine.

MR. EARDLEY: Or his understanding. If he was present and saw it, he can testify about it, but as to what his understanding was, I don't see --

MR. CATES: I just asked him.

Q. Do you know whether or not Governor Johnson ever spoke to Mr. Doar on September 30, 1962?

A. At the Lyceum?

Q. Yes.

A. I have no knowledge.

Q. Do you know whether he ever spoke to Mr. Katzenbach?

A. I have no knowledge.

Q. And you have no knowledge of a man by the name of William Tucker, of September 30th through 7 October 1962?

A. No, sir.

Q. What control did you exert over the personnel out at the Soil Conservation building at the airport at Oxford, Mississippi, between September 30, 1962, and 7 October 1962?

A. What control?

Q. Yes.

A. Mr. -- I placed Mr. Noel Allridge of the Bureau of Prisons in charge out there. I visited on a couple of occasions between those -- You say the 7th of October?

- Q. Yes.
- A. Which would be what?
- Q. Which would be a following Sunday.
- A. No. I left Oxford, I believe, on the 4th of October. If October 4th is a Thursday, that is when I left Oxford.
- Q. Yes, sir. When did you return to Oxford, or did you ever return to Oxford?
- A. Yes. I believe I returned the following week.
- Q. Approximately what day?
- A. I think maybe Wednesday of the following week, Tuesday. That's the best I can recall.
- Q. What chain of command or designation of supervisory personnel did you have around the Lyceum building?
- A. Insofar as we are concerned?
- Q. Yes, sir.
- A. Starting with me, that would be myself; Mr. Cameron; the three group leaders, me and Mr. Duly, Mr. Forsht, and Mr. Butler.
- Q. And that was your chain of command?
- A. Yes, sir.
- Q. Was martial law ever declared in Oxford, Mississippi, to your knowledge, between September 30th and --
- A. And what?
- Q. -- We'll say 7 October. Or has it ever been declared in Oxford from 30 September to date?
- A. No, sir, to my knowledge.
- Q. Has a national emergency ever been declared in Oxford, Mississippi, from 30 September to date?

MR. EARDLEY: You mean by the President of the United States?

MR. CAHES: By any person.

MR. EARDLEY: I don't see how he would know.

Q. Do you know?

A. Not to my knowledge.

Q. Approximately what time did the Federal troops arrive on the campus of the University?

A. You are not talking about the National Guard?

Q. No, sir, Federal troops. Regular units of the United States Army.

A. I'd say about one, one-thirty in the morning. Somewhere in that area.

Q. Were they under your control?

A. Oh, no.

Q. Were students who were picked up by your personnel on September 30, 1962 given any specific instructions as to how they would sit, how they would conduct themselves, whether they could relieve themselves, or anything? Were any instructions given along that line?

A. Would you mind repeating that?

Q. On 30 September 1962, were there any specific instructions given by you to students who were picked up by your personnel as to the method by which they would sit, whether they could talk, whether they could call for

an attorney, or anything of that nature, or any instructions along that line?

A. Given by me to the personnel?

Q. Yes.

A. No, sir.

Q. Did you give any instructions at all as to the character and conduct to be carried out toward the students who were picked up by your personnel?

A. Let me follow you again.

Q. Did you issue any instructions?

A. To my personnel?

Q. To your personnel as to what conduct was to be carried on with regard to the arrest of any students?

A. No, sir.

Q. On September 30th?

A. No, sir.

Q. Did you issue any orders along that line?

A. No, sir.

Q. Were you ever present on October 1st, 2nd, and 3rd at the Soil Conservation office on the Oxford airport?

A. On the 1st, 2nd, or 3rd?

Q. Yes.

A. Yes.

Q. You were present?

A. Yes. Not on those three days, but I recall being over there on at least two occasions. Whether it was the 1st, 2nd, or 3rd, I don't know.

Q. Well, were you present there between the 1st and the 4th?

A. Yes.

Q. Were any of the Federal marshals or other Federal personnel under your control ever reprimanded by you or any other personnel of the Justice Department for any conduct that they might have committed from 30 September 1962 to date?

MR. EARDLEY: Object. What has this got to do with the case?

Q. Will you answer the question?

MR. EARDLEY: I think we'll go down and get the judge, get a ruling from the judge. We have to settle this. If it involved your student, it would be pertinent, but there is no indication that it was.

MR. GATES: I'm asking the broad question.

MR. EARDLEY: I'll object to this.

Q. Would you answer the question?

MR. EARDLEY: We can go down later?

MR. GATES: He has to say whether he will or will not.

MR. EARDLEY: I instruct him at this point not to.

A. I will not.

Q. Have you ever had any problem carrying out the duties of your office before this?

A. What sort of problems, Mr. Cates?

- Q. Well, I'm just searching. I want you to tell me whether you have or haven't. I don't know that you have.
- A. What do you mean by problems? We have problems every day.
- Q. Have you had any difficulties in executing the duties of your office before?
- A. You mean since June of '62?
- Q. In making any arrests or guarding or taking care of personnel?
- A. I have had difficulty.
- Q. When was this?

MR. EARDLEY: Unless this can be tied into the Oxford incident, I am going to object to the line of inquiry and instruct him not to answer. I just can't see why we are chasing off into what happened at Montgomery, for example, and the difficulties we had down there.

- Q. Would you answer the question, please?
- A. As to any difficulties I have had since becoming the chief marshal?
- Q. Yes, sir.
- A. On June 29th of this year I was dispatched to Tel Aviv to return Dr. Soblen.

MR. EARDLEY: I instruct the witness not to go into the Soblen incident, because it does not bear on this in any way, shape or form. It is encumbering the record and getting us nowhere.

Q. Will you answer the question?

A. No, sir.

Q. Were you ever served with any state court writ or other type of processes of the State of Mississippi at any time this summer, 1962?

A. You mean for state courts itself?

Q. Yes.

A. No, sir.

Q. Were you aware of any injunction that was issued by Chancellor Porter of the State of Mississippi enjoining you from trespassing on the University of Mississippi?

A. No, sir.

MR. CATES: I think we might as well take these three things down to the judge.

MR. EARDLEY: Yes.

* * * * *

MR. EARDLEY: Let the record show we have been down to the Court.

MR. CATES: Yes. Let the record show we have been down to the Court, and that, with regard to the question of any examination on incidents surrounding Dr. Robert Soblen, that was denied.

With regard to the question concerning any brutality toward students on 30 September, 1962, the plaintiff would be permitted to question along those lines on that date.

With regard to the question of whether any Federal marshal or other Federal employee under the direction and in the control of Mr. McShane had been reprimanded by the Justice Department or other Federal department for his conduct on 30 September 1962, the Court permitted the plaintiff to question along that line.

Is that correct?

MR. BARDLEY: That is correct.

MR. CATES CONTINUES:

Q. Were any students who were picked up by your personnel on the 30th of September, 1962, struck or beaten by any of your personnel --

MR. BARDLEY: If you don't mind, I don't want to be captious, but I think you should ask the witness whether he is going to testify from things that occurred in his presence or things reported to him.

Q. You may limit it to that, which either occurred in your presence or which you had personal knowledge of.

A. May I have the question again so I can get it straight?

Q. Sure. Were any students on 30 September 1962 who were picked up by your personnel beaten or struck in your presence or by you?

A. No, sir.

Q. None at all?

A. None at all. I have no knowledge of any, and I assaulted no one.

Q. During the entire---

A. From the time I arrived until the time I left.

Q. Did you make any effort to protect any other student's rights on the campus besides James Meredith?

A. Such as in what way? I don't follow you as to their rights.

Q. Did you offer them any physical protection? Did you protect any white students?

A. From what?

Q. Violence.

A. We had no, we received no complaints of any white students being assaulted or in need or wanting deputy marshals assigned to protect them. We had no request for that.

Q. To your knowledge, do you know whether any personnel who were under your control on September 30, 1962, were reprimanded for any of their conduct on September 30, 1962?

A. Not to my knowledge.

Q. Reprimanded by any Federal office or division?

A. I have no knowledge.

Q. Do you know whether or not Faulkner Hall was gassed on September 30th, requiring the students to evacuate said hall, by the Federal marshals? I direct your