

1 action, does it not?

2 **THE WITNESS:** Individual action, action
3 of the same type, a counter sniper action. If
4 we can identify the exact window or the exact
5 apartment or the roof that the sniper fire is
6 coming from and we can see someone there, then
7 I think we should return with like weapons.

8 **CHAIRMAN LILLEY:** Thank you very much.

9
0 **C H A R L E S A . M e L E A N , Sworn.**

1 **EXAMINATION BY MR. PORTUNATO:**

2 **Q** Will you give us some of your background,
3 Colonel.

4 **A** I am presently a colonel in the New Jersey
5 Army National Guard and my position there is military
6 support plans officer, which I have been for the past
7 two and a half years. Prior to that I was inspector
8 general of the 50th Armored Division, from January of
9 1949 to March of 1963. Is that far enough back?

0 **Q** Go back just a little bit further.

1 **A** Prior to that I was a teacher in the public
2 school system of Hackensack, New Jersey, from 1938 to
3 1947, with a little interlude of five and a half years
4 in the military service of the United States.

5 **Q** Were you assigned or is it your general duty to

1 investigate any allegations of misconduct on the part of 35

2 National Guard officers?

3 A Not at the present time. That is not my
4 primary duty. My primary duty as military support plans
5 officer is developing plans for the coordinated employment
6 of the military forces stationed in the State of New
7 Jersey in the event of a civil defense emergency, all
8 of which sounds like a lot of words but this is
9 primarily a planning job in the operations and training --

10 Q Were you assigned the duty of investigating
11 and making recommendations regarding any allegations
12 of misconduct against National Guard officers?

13 A Yes, sir, I was.

14 Q Now can you tell us -- and I think it would be
15 best if we took it up complaint by complaint -- A, the
16 date of the complaint, the date of the incident and the
17 source of the complaint. We will start with that.

18 A All right. We will start from the beginning.
19 I think the first complaint we received was from a Mr.
20 Thomas Gill, who operates a grocery store known as a
21 Shop-Rite at 357 15th Avenue, Newark, and his complaint
22 was made to Governor Hughes in a telegram which we
23 received on Sunday, the 17th of July, 1967, in which
24 he stated that his store front had been shot up by
25 members of the New Jersey Army National Guard, and a few

1 other things an irate citizen has a right to say, and I
2 investigated that complaint.

3 Q Did Mr. Gill say when that incident took place?

4 A Yes. He alleged that it took place about 2:30
5 in the morning of Sunday, 17 July. Now, Mr. Gill's
6 statement to me personally was that he had not seen the
7 perpetrators, he had not looked out in the street although
8 he was awake, he was in the building, he was upstairs,
9 he heard the gunfire; he was in a room immediately over
10 the front of his store which looked out onto the street
11 but he did not look out on the street, he retreated to his
12 bedroom in the rear of the building; he could find
13 nobody in the neighborhood who had seen the action or
14 knew anything about the action, and his was the only
15 building on his side of the street fired on; he had no
16 personal evidence as to who had done this nor could he
17 produce any witnesses that he had found in the area, in
18 the neighborhood, and that is a heavily populated area,
19 to tell him who had done it.

20 We collected from the inside of his building
21 a number of bullets, picked some up off the floor, we
22 found one on a shelf, we found a couple in Kleenex boxes,
23 that had gone through the Kleenex boxes and been stopped
24 between two boxes.

25 We had these bullets subjected to ballistics

1 examination by a disinterested agency, who didn't know
2 where they came from, I'm certain, because they got to
3 them by a circuitous route. And for your record the
4 agency is the Laboratories of the Office of the Provost
5 Marshal General of the United States Army at Fort Gordon,
6 Georgia. Their examination of the bullets indicated that
7 they were fired from a Smith & Wesson caliber 45 revolver,
8 that apparently all of them had been fired from the same
9 weapon, that the bullets were made by two different
10 manufacturers, that prior to being fired they had
11 probably been held in what are known as half-moon clips
12 of three bullets to a clip.

13 It was interesting that although we found the
14 bullets inside the store, we found the empty cartridge
15 cases out on the street.

16 But they stated in their examination that all
17 of the bullets were fired from the same gun, the same
18 weapon, that all of the cartridges appear to have been
19 at one time a part of a complete round with the bullets
20 that we found, that the primers had been hit with a
21 hammer rather than a firing pin, which is indicative of
22 a revolver as opposed to an automatic pistol.

23 And on the basis of this evidence, and the
24 lack of any other confirming evidence, we turned the
25 matter over or we reported the matter to the county

1 prosecutor of Essex County for his attention. And
2 insofar as the New Jersey National Guard was concerned,
3 from the available evidence at this time, there is no
4 indication that Mr. Gill's allegation that this was done
5 by the National Guard is supported by any of the facts
6 that are available or that he has presented.

7 Q I take it, therefore, that the National Guard
8 does not employ Smith & Wesson 45 caliber weapons.

9 A This is correct, nor have we had any ammunition
10 that is loaded or contained in half-moon round clips.
11 The National Guard is not equipped with that type of
12 weapon nor do we issue ammunition in that style. And
13 the other significant item is the two different
14 manufacturers; it would be highly improbable that we
15 would issue ammunition from two different manufacturers
16 that one person would be carrying on him at one time.
17 These things come to us in large lots from one source.

18 MR. DRISCOLL: What kind of sidearms
19 do the officers in the National Guard carry?

20 THE WITNESS: It depends upon their
21 grade, Governor. Company grade officers
22 carry a carbine or a rifle. A field grade
23 officer, depending upon his job, might carry
24 a 45 caliber automatic Colt, Model 1911 or
25 Model 1911A1 pistol.

1 CHAIRMAN LILLEY: Is this a matter of
2 field officers buying their own personal
3 firearms or is this standard issue?

4 THE WITNESS: Do they buy their own
5 personal firearms?

6 CHAIRMAN LILLEY: Yes.

7 THE WITNESS: Yes, sir. I imagine a
8 great many of them -- well, not a great many
9 of them -- some of them buy their own personal
10 firearms. Now, whether they buy Smith & Wesson
11 caliber 45 revolvers, my personal observations
12 over the years is that this is not done. It is
13 not uniform. You wouldn't go out with troops
14 and wear something that you are not supposed to
15 be wearing. If you want a revolver, I would
16 dare say you have to buy it because the Army
17 issues automatic pistols, and my personal
18 preference is that weapon for many reasons.
19 The number of our people armed with caliber 45
20 pistols for such an operation as a riot control
21 operation is kept to the minimum since a
22 person armed with a pistol does not make such
23 of an impact, a psychological impact, upon the
24 people in the
25 element you are trying to control. And the
type of weapon used is most unusual. It is an

1 if he could old, old weapon. It isn't even used by police
2 he had been agencies.

3 MR. DRISCOLL: Did this particular
4 number and complainant have on his store windows "Soul
5 Brother"?

6 Q Do you THE WITNESS: I think he did, Governor.
7 of this sort? MR. DRISCOLL: Did you have occasion,

8 either personally or through some representative
9 the entire of your office, to inspect the glass windows
10 asked us, and examine the holes?

11 THE WITNESS: Yes. I was there
12 personally and I talked with Mr. Gill.

13 Q Do I MR. DRISCOLL: And there were holes?

14 least, you feel THE WITNESS: Yes, sir. There is no
15 question about that. The amazing thing was,
16 for the number of holes in the windows, the
17 interest to small amount of damage done inside.

18 Considering the number of holes in the windows,
19 the damage to the stock was amazingly little.
20 There were a number of holes in the windows.

21 BY MR. FORTUNATO:

2 Q Did you or your office seek to talk to other
3 people in the area who might have seen what transpired?
4

5 A No, we didn't. We asked Mr. Gill to find for us,

1 if he could, among the people he knew in the neighborhood --
 2 he had been there a long time -- persons who could give
 3 some additional testimony. We left with him a telephone
 4 number and my name, my office, and he has never contacted
 5 me.

6 Q Do you make a formal recommendation in cases
 7 of this sort?

8 A Well, we haven't in this case. We have discussed
 9 the entire project with the Attorney General and he has
 10 asked us, when we are satisfied we have gone as far as
 11 we can, to make them a matter of record and send them to
 12 him for his consideration.

13 Q Do I understand in the case of Mr. Gill, at
 14 least, you feel you have gone as far as you can go?

15 A Yes, sir.

16 Q Is there anything you think might be of
 17 interest to us regarding this incident or shall we pass
 18 on to the next one?

19 A I think we can pass on to the next one. I
 20 think I have told you everything that I have developed
 21 on this.

22 Q All right.

23 A The second one we received was from a Mr.
 24 Earl Harris, who resides at 60 Crawford Street in Newark.

25 A restaurant of his which was under construction at the

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time at 124 Elizabeth Avenue, known as the Little Pigly Wiggly, was damaged by fire, by gunshot, gunfire on the night of 15-16 July 1967. He and his attorney made this complaint in person jointly to the superintendent of the New Jersey State Police and to the Chief of Staff, Department of Defense, I think on the morning of Monday, 17 July '67, and I accompanied a Captain Dollar of the New Jersey State Police on this investigation and taking down Mr. Harris' complaint that morning. His complaint amounted to alleging that some members of the Newark Police Department had stopped at his store at 124 Elizabeth Avenue and had fired some shotgun shells through the plate glass windows and the door of the premises on 124 Elizabeth Avenue.

We visited the premises, and they had been fired on. Mr. Harris said he had witnesses who lived in the area, lived in the same building and the adjoining building, who had observed this, had seen a Newark police sedan stop on the wrong side of the street directly in front of 124 Elizabeth Avenue, from which several policemen dismounted with shotguns, said some uncomplimentary things about Mr. Harris and proceeded to shoot up his windows; when they were finished, they got in the car and drove slowly southward on the left-hand side of the street.

In that year statement presented

By: The county prosecutor of Essex County

1 asked us for One individual, Mr. Harris said, took the
2 license number of the car and wrote it with a nail on an
3 unfinished countertop of the store. That day Mr. Harris
4 could find none of his witnesses in the area. He
5 promised that he would and would get in touch with us.
6 Again Captain Dollar left with him his name and telephone
7 number. I don't know what has transpired between Captain
8 Dollar and Mr. Harris since.

9 We, however, withdrew from the investigation
10 since it didn't involve the Army National Guard in any
11 way. The witnesses and Mr. Harris and his attorney,
12 who I believe is a member of this board --

13 VICE CHAIRMAN BROWN: Lofton?

14 THE WITNESS: Lofton, said that these

15 perpetrators were members or their information

16 was that they were members of the Newark

17 Police Department and we withdrew from the case

18 and I don't know what action the state police

19 may have taken with respect to that complaint.

20 Q Did the National Guard refer this complaint
21 to the Newark police?

22 A No, we didn't. We reported it to the county
23 prosecutor of Essex County.

24 Q Is that your standard practice?

25 A No. The county prosecutor of Essex County

1 asked us for a resume of all complaints that we had
2 received and any investigation or any testimony or
3 evidence that we may have developed in the complaint,
4 and so we gave him all the information.

5 Q I gather that is as much as you can tell us
6 about this complaint.

7 A Yes, sir. That's about it.

8 Q Go on to the next complaint.

9 MR. BRISCOLL: Was this another case
10 where "Soul Brother" had been written on the
11 windows?

12 THE WITNESS: Governor, there was so
13 indicated by little of the window remaining that I couldn't
14 say what had been on it.

15 Q Was this done by bullets as well as --

16 A No. This was done by shotguns. We recovered
17 from the interior in the woodwork, the paneling, similar
18 to this, a number of double O buckshot pellets.

19 Q Did you run a ballistics test?

20 A You can't run a ballistics test on a shotgun
21 pellet and we wouldn't -- we don't have the capability.

22 Captain Dollar took the pellets and he might have them yet.

23 Q All right. Proceed on with the next complaint.

24 A The next one was -- I think this might be in
25 proper sequence -- a Mr. Edward T. Bowser acting for the

1 Prince Hall Temple of 185 Belmont Avenue, Newark, New
2 Jersey, made a complaint to the New Jersey Army National
3 Guard by calling our unit at the Roseville Avenue Armory
4 in Newark and making his complaint to the effect that the
5 building owned by the Prince Hall Temple at 185 Belmont
6 Avenue had been damaged by rifle fire by the National
7 Guardsmen on Saturday, 15 July 1967 at about 1800 hours.
8 And this item was investigated for us by a Lieutenant
9 Colonel Arthur Kling, who has an office in that area, is
10 one of our permanent duty people.

11 And the result of our investigation indicates
12 that this building was damaged as complained or as
13 indicated by the complainant. A small detail of National
14 Guardsmen were assigned as a security detail to Fire
15 Engine Company No. 12 and a rescue company located in the
16 firehouse on Belmont Avenue across the street and about
17 200 feet south of this Prince Hall Temple. And at about
18 1800 hours of the Saturday in question this firehouse
19 was fired on by some unidentified persons from buildings
20 across the street and some of the fire appeared to be
21 coming from the roof of the Prince Hall Temple. And these
2 National Guardsmen assumed that they had seen an
3 individual on the roof and fired some rounds up toward the
4 roof.

5 In doing so they hit the coping on the top of the

1 roof wall and shattered some of that and put a round or
2 two through some of the windows on the third floor and
3 went through a ventilator cover, an aluminum or metal
4 ventilator cover.

5 There is no doubt in our mind that this was
6 done by the Army National Guard, that it was not a
7 malicious or capricious act, that there was ample evidence
8 to indicate that the fire engine house was being fired on.

9 We did not find nor catch the individual who
10 was or individuals who were firing on the firehouse.

11 MR. DRISCOLL: Did you identify the
12 people who returned the fire?

13 THE WITNESS: As individuals, no, sir.
14 We assume that this was done in accordance with
15 their duty. We didn't proceed that far to
16 determine the individual who did the shooting.

17 MR. DRISCOLL: Colonel, the guardsmen
18 were equipped with automatic rifles, were they
19 not?

20 THE WITNESS: Not automatic rifles, no,
21 sir. They were equipped with 30 caliber rifles.

22 MR. DRISCOLL: Did they have sub-machine
23 guns in some instances?

24 THE WITNESS: No, sir. We are not armed
25 with sub-machine guns, Governor.

1 Depart: MR. DRISCOLL: You had what, the M-16
2 or M-1? I recall it, in addition to the

3 Indivi: THE WITNESS: The M-1 rifles.

4 chief: MR. DRISCOLL: Is it part of the
5 training of the National Guard in cases of
6 civil disturbance to fire a number of rounds
7 in an effort to catch a sniper or are there
8 better methods of catching a sniper?

9 THE WITNESS: Governor, are you referring
10 to training prior to the period of 13 to 17
11 July or subsequent to it?

12 MR. DRISCOLL: I am referring to
13 training prior to it.

14 THE WITNESS: Governor, I would have to
15 say that I am not qualified to give you a
16 reliable reply to that, in all sincerity,
17 since I would be guessing purely.

18 MR. DRISCOLL: Was there an officer
19 in charge of this group that was protecting
20 the firehouse?

1 THE WITNESS: No, sir. There was a
2 noncommissioned officer. It was a small group.
3 We had with every fire engine company a small
4 group at the station and that rode with the
5 equipment at the request of the Newark Fire

Department, beginning sometime on Saturday

morning, as I recall it, in addition to two

individuals riding with each of the battalion

chiefs of the Newark Fire Department beginning

at about the same time, at the request of the

chief of the Newark Fire Department.

BY MR. FORTUNATO:

Q From what source of information do you make your judgment that there was fire coming from 188 Belmont

Avenue?

A Well, there are three fire captains stationed in the firehouse that houses Engine 12 and -- not a rescue truck, it is a salvage company -- and they testified that the firehouse was being fired on; there is no question in their mind about it, and it was not the first time it had been fired on, it was not the only time they were fired on, and at least one of them indicated that in his opinion some of the firing was coming from, it appeared at the time, the rooftop of this Prince Hall building.

Q Then do I understand -- this is basically the heart of my question -- that in investigating this incident you or a representative of your office spoke with the fire captains at this particular fire station and ascertained

1 from them that there was firing coming from Belmont
2 Avenue?

3 A That is correct.

4 Q Did you also ascertain from them that the
5 National Guardsmen on duty returned fire at least in the
6 general direction of 188 Belmont?

7 A That is correct.

8 Q And fundamentally that, then, is the source of
9 the information which you have.

10 A That is correct.

11 Q Well, is there any other source, from an
12 investigative point of view, that you have regarding
13 this incident?

14 A Mr. Bowser said that they were being fired on
15 by our people, and there is sufficient evidence to
16 indicate his building was, no question about it.

17 Q Have you made a recommendation regarding this
18 incident or again are you --

19 A At the request of the Attorney General of the
20 State of New Jersey, we have turned the matter over to
21 his office, and we have so notified Mr. Bowser and
22 advised him that any additional information he might
23 seek about this he will have to talk with the Attorney
24 General, because we have no way of concluding this thing.
25 His damage amounts to something like \$250, he said.

1 VICE CHAIRMAN BROWN: What was the nature
2 of the damage?

3 THE WITNESS: Broken cornice pieces
4 on the top of the wall of the roof, a broken
5 window, a damaged partition inside the building.

6 VICE CHAIRMAN BROWN: There was some
7 penetration of bullets?

8 THE WITNESS: Yes.

9 VICE CHAIRMAN BROWN: With respect
10 to Colonel Kling's investigation, would he
11 under the circumstances of the Guard organization
12 during this period be able to trace the
13 members of the unit or the members of the squad?

14 THE WITNESS: With difficulty.

15 VICE CHAIRMAN BROWN: There were some
16 problems, I suppose, with following through
17 in the nature of the assignments in the midst
18 of the distribution of men on Saturday, I
19 would say, is that so?

20 THE WITNESS: Yes.

1 VICE CHAIRMAN BROWN: I would suppose
2 that is why Colonel Kling was limited in trying
3 to find the people who might have fired in
4 contrast to talking to the fire captains.

5 THE WITNESS: Well, together with the

1 fact that this was not something done
2 maliciously or capriciously or wantonly.

3 MR. DRISCOLL: Colonel, these are
4 conclusions that you are drawing.

5 THE WITNESS: From the evidence, yes, sir.

6 MR. DRISCOLL: They are conclusions you
7 are drawing.

8 THE WITNESS: Yes, sir.

9 MR. DRISCOLL: From your point of view
10 charged with the responsibility for this
11 investigation. And I gather that Kling
12 reports to you, is that correct?

13 THE WITNESS: That is correct.

14 MR. DRISCOLL: We have his hearsay
15 statement that the fire chief said they were
16 being fired upon but we haven't pinpointed
17 exactly where the firing was coming from
18 except that it was in the general direction
19 of somewhere across the street, and we don't
20 know the extent of that firing.

21 THE WITNESS: I don't follow the governor
22 quite -- as to the extent of firing being
23 received, sir?

24 MR. DRISCOLL: The firing alleged to be
25 received, yes. In other words, was it a

1 fusillade or was it a single sniper? The
 2 evidence indicates it was a single sniper,
 3 or was it three or four of them? Do we
 4 know anything about that?

5 THE WITNESS: We don't, no, sir, and
 6 for the purposes of my investigation or our
 7 investigation -- the purpose of our
 8 investigation was to determine did the
 9 National Guard do this or did it not do this.

10 MR. DRISCOLL: And you determined it
 11 probably did it?

12 THE WITNESS: Yes, sir.

13 MR. DRISCOLL: But you concluded it
 14 was not capricious or malicious?

15 THE WITNESS: Well, when three officers
 16 of a fire department who are stationed there
 17 say, "We were being fired on at that time,"
 18 and the building shows marks of having been
 19 fired on --

20 BY MR. FORTUNATO:

1 Q Q When you say "building," you mean the
 2 firehouse?
 3

4 A A The firehouse and the sidewalk in front of it
 5 shows scars of having been hit with bullets, and the fire

officers tell us that, "Your men did fire on that building,"

I think we must assume the responsibility for it, and further that this was not a capricious act. It was in broad daylight. It wasn't somebody surreptitiously sneaking down the street in the middle of the hours of darkness and pumping some rounds into a selected building.

And I felt and we feel that in this case the Prince Hall Temple has a justifiable complaint and that the hall was damaged.

We can't prove that there was somebody up on top of their roof even though Mr. Bowser took the National Guardsmen up on top of the roof to look.

Q Would you consider it too much of an extension of your investigative efforts to determine which specific individuals from the National Guard were involved so that you could ask them the circumstances under which they were operating and the circumstances under which they returned fire? What difficulties does that pose? You said I believe that it could be done with difficulty.

A It is just finding these individuals, digging out the men.

Q Could you be a little bit more graphic in illustrating how difficult a job that would be?

A Well, at the present time we have no records to indicate what unit supplied those men to that

1 particular place and how many times they were changed
2 after being put there once throughout the period of time.

3 Q Did you investigate sufficiently to determine
4 that it would be a difficult job to find out who the
5 individuals were?

6 A Really, no, since this was not the job
7 assigned to me. The job assigned was to determine did
8 we do this, is this complaint correct.

9 VICE CHAIRMAN BROWN: You didn't conduct
10 this personally?

11 THE WITNESS: No.

12 VICE CHAIRMAN BROWN: Kling did. I
13 want to perhaps give you some idea, if I may,
14 in what context the question is being asked.
15 One of the very real issues that has been
16 raised throughout is successive fire under
17 circumstances where there was return fire or
18 return fire that was assumed or fire in
19 circumstances where no one found or apprehended
20 snipers, so perhaps some of the questions
21 go beyond the scope of what your original
22 assignment was and, in the second place, you
23 didn't do the investigation. I think it would
24 have been a different approach, if I may say so,
25 because it has become very important in the

1 context of this commission's hearings to try
2 to determine the extent of fire, the reason
3 for fire, the capability and accountability
4 of the Guard under all these circumstances.

5 THE WITNESS: Yes.

6 VICE CHAIRMAN BROWN: So in that view,
7 I think I can presume to say that the
8 governor's questions fall within these
9 broader categories than your original
10 assignment would have been.

11 THE WITNESS: Well, if it is desired,
12 we certainly can make the attempt.

13 VICE CHAIRMAN BROWN: Well, in view of
14 the widespread and possibly unjustified
15 criticism of the Guard, not only of New Jersey
16 but throughout the country, in terms of, A,
17 lack of control, B, almost uncontrolled
18 response of the individual and, C, the charge
19 of excessive damage and danger of lives by
20 volumes of fire that indicate automatic fire
21 with actually non-assigned weapons, do you
22 think in the interest of the Guard, as well as
23 in the interest of the rather difficult job
24 this commission has to do, that an investigation
25 like that might be followed to that point so

1 that we might have the material to stand up
2 to this kind of questioning? Actually if
3 ultimately there are reports with these areas
4 that don't indicate a concern for that, I think
5 you can see that there may well be criticism
6 that would be both unwarranted and unavoidable.

7 THE WITNESS: If the commission would
8 like that, we can make the attempt.

9 VICE CHAIRMAN BROWN: Mr. Chairman, I
10 would ask that we get that kind of investigation.
11 You see, the very fact -- this is a statement
12 now, not a question, but I have a double
13 concern here. The very fact that, for
14 example, the public might read, "Well, we don't
15 know who these men were, we don't know the
16 circumstances but fire captains tell us,"
17 and if you put it in a further context that
18 sniper fire had been much talked of but not
19 too frequently identified in terms of what
20 would satisfy your mind on the fact, then you
21 can see it in terms of the Guard or the
22 commission. I think this is very essential
23 because these are going to be put in the
24 public archives and there will be people
25 like McClellan Committees and other committees

1 ad infinitum that will come down, so in the
2 interest of the commission and the Guard I
3 would urge the chairman to have that done.

4 CHAIRMAN LILLEY: I would so request
5 that, Colonel.

6 VICE CHAIRMAN BROWN: For example, you
7 indicated Mr. Bowser took some people up on
8 the roof to show them, I suppose --

9 THE WITNESS: Yes. Unfortunately Mr.
10 Bowser, although he had conversation with
11 these people, never wrote down a single name
12 and they are right across -- none of these
13 fire people recall any names.

14 VICE CHAIRMAN BROWN: Well, now, Bowser
15 apparently was cooperating --

16 THE WITNESS: No. Bowser was complaining.

17 VICE CHAIRMAN BROWN: Well, when did he
18 take the Guardsmen up on the roof?

19 THE WITNESS: Shortly after the incident.

20 VICE CHAIRMAN BROWN: Oh, he took them
21 up to show them what had happened?

22 THE WITNESS: Yes. Nobody could get up
23 on his roof without his unlocking some doors.

24 VICE CHAIRMAN BROWN: The temple, as I
25 know the site, is not directly across from the

firehouse.

THE WITNESS: No. It is about 200 or 250 feet north of it.

VICE CHAIRMAN BROWN: North of it, as I know it, and this is a Masonic Temple. I think it is Prince Hall Masons, as I remember it, and there is somewhat of an angle there and there are other roofs in the vicinity, I suppose.

THE WITNESS: Lower.

VICE CHAIRMAN BROWN: Were there any complaints from any of these people that came to your attention?

THE WITNESS: No, sir.

VICE CHAIRMAN BROWN: Were there any attempts on the part of the Guard to go beyond the mere ascertainment of these things, possibly for claim purposes, and to survey an area such as this where the fire department was an apparent target, if not a real one, and where there were roofs and possibly other damage? Did Kling or anyone else go to that extent?

THE WITNESS: No, we didn't.

VICE CHAIRMAN BROWN: Well, I would like

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1 to ask your opinion on this now. In view of
2 the subsequent response of the public and
3 others, don't you think that it would be
4 in the Guard's interest where there are such
5 situations, that you would rather take a
6 thorough look-see at this kind of thing,
7 from what you have seen in your overall
8 acquaintance with this problem?

9 (Discussion off the record.)

10 (Short recess.)

11 BY MR. FORTUNATO:

12
13 Q I believe before the brief recess we had
14 completed our discussion of incident No. 3 with the
15 representation, Colonel, that you would report back to
16 us if there was anything further to report regarding
17 efforts to talk to the specific National Guardsmen
18 involved in this incident.

19 A Yes, sir.

20 Q That takes us to incident No. 4.

21 A This complainant is a Mr. Gerald F. Roney,
22 who lives at 624 15th Avenue, Newark. He operates a
23 barbershop at 490 15th Avenue in Newark. And the plate
24 glass windows and some of the interior of his barbershop
25 were damaged by gunfire at about 3:00 o'clock Sunday

1 morning, 16 July 1967. An interrogation of witnesses
2 produced by Mr. Roney, one of whom lives in the
3 building and who observed the incident, indicated that
4 this damage was done by police officers using shotguns
5 at about 3:00 o'clock Sunday morning.

6 It further develops that Mr. Roney does not
7 own the building, and the actual owner of the building
8 has filed no complaint concerning the damage to the
9 building itself.

10 Following our investigation I advised Mr.
11 Roney that we had no jurisdiction in this matter since
12 all his witnesses indicated that this was done by either
13 the New Jersey State Police or the Newark City Police,
14 that he should take his complaint to either the county
15 prosecutor of Essex County or the Attorney General of
16 New Jersey.

17 We included his complaint in the resume we
18 sent to the county prosecutor of Essex County. I don't
19 know what other action Mr. Roney has taken although he
20 said he understood and he knew what he was going to do
21 at that time.

22 Q How did you happen to come by this complaint?

23 A Mr. Roney made a telephone call to the Roseville
24 Avenue Armory and the first person he talked to there,
25 he gave him the story, and it was transmitted to me, to

1 my secretary and then to me. I happened to be on field
2 training at the time that we received it. But a few days
3 later we went to Mr. Roney's barbershop and talked to him
4 there and to his witnesses.

5 Q You did talk to his witnesses?

6 A At the barbershop. One of them lived upstairs
7 over the barbershop and one lived across the street.

8 VICE CHAIRMAN BROWN: Colonel McLean,
9 if, as in the instance of Mr. Bowser at the
10 Prince Hall Temple, there is subsequently a
11 claim made against the government, would the
12 Guard in its role investigate the complaint
13 under the procedures that are --

14 THE WITNESS: I don't know. I honestly
15 don't know, and that question has been asked
16 of the Department of Defense, and I don't know
17 that an answer has been received.

18 VICE CHAIRMAN BROWN: Well, in our
19 normal field training activities -- when I say
20 "our," I mean when the Guard goes away and
21 leaves the area and goes to field training
22 exercises and there are civilian complaints,
23 automobile damage, damage to property, that is
24 normally processed through our regular claims
25 procedure.

1 THE WITNESS: Yes. That is provided
2 for by law and regulation.

3 VICE CHAIRMAN BROWN: Now, would this
4 conceivably fall within the same category?
5 I am only using Mr. Bomser and Prince Hall
6 Temple as an example. If Prince Hall Temple
7 wants to proceed with a complaint for damages
8 to be paid by the United States Government
9 through the Guard procedures, then you would
10 have a different kind of an investigation,
11 would you not?

12 THE WITNESS: Well, there is a claims
13 action per se. But you must remember one thing.
14 You use the term the claim being paid by the
15 Federal Government. The Federal Government
16 has no interest in such claims and the Federal
17 law regarding claims for damages incidental
18 to troop movements of Army National Guard is
19 not applicable here since we were not on a
20 Federal status.

21 VICE CHAIRMAN BROWN: So then you would
22 have state claims.

23 THE WITNESS: Whatever the state law
24 might be with respect to that, and I am not
25 familiar with that. I don't know of any

1 provision of law --

2 VICE CHAIRMAN BROWN: So then would these
3 civilians in the instance of injury to property
4 or to persons have any recourse for a claim
5 for damages through the National Guard
6 procedures, as far as you know?

7 THE WITNESS: I don't know of any such
8 procedures. That is why we have turned this
9 over to the Attorney General in the case of
10 Mr. Bowser, Prince Hall Temple.

11 VICE CHAIRMAN BROWN: In your opinion
12 is there some question as to whether or not
13 the Guard would be responsible financially
14 for damage to persons or property or is this
15 just not a clarified area? Are you saying it
16 is not clear or you feel they would not be
17 responsible?

18 THE WITNESS: You know me well enough to
19 know that you must always assume your
20 responsibilities, but I don't know what the
21 law is with respect to it.

22 VICE CHAIRMAN BROWN: So this is a gray
23 area then, isn't it?

24 THE WITNESS: Yes.

25 MR. WACHENFELD: You just say, "I bow to

1 the chairman's view on this."

2 THE WITNESS: Yes, sir.

3 VICE CHAIRMAN BROWN: Well, I want to
4 preface this by saying that I think it is true
5 that you have probably had more experience
6 in guiding, directing and processing claims
7 against the Guard than probably anybody in
8 the state, that is why I am asking the question
9 to your special expertise to be concerned
10 with this area in the event there are such
11 claims or, in limitation, even possibly of
12 guard action and responsibility within this
13 concept, you see, so that, as the Justice
14 said, these are in a sense loaded questions
15 but I want to tell you they are loaded, that is
16 the only difference. So that in this area,
17 in view of what I have just said, we don't
18 know what the claims procedure would be
19 and even in your experience you couldn't tell
20 us?

21 THE WITNESS: No, sir.

22 VICE CHAIRMAN BROWN: As I understand it,
23 to go into the second phase of it, the normal
24 claims investigation, if it were cognizable
25 against the Federal Government as in the

1 normal procedure on active duty of the Guard,
2 this would require an appointment of an
3 investigating officer, the taking of
4 statements by witnesses, and it is a rather
5 meticulous and precise procedure, isn't that so?

6 THE WITNESS: Yes, sir.

7 VICE CHAIRMAN BROWN: Now, in view of
8 that, would you feel or do you think that it
9 is possible to follow up on these investigations
10 in a manner somewhat akin to the claims
11 procedure normal under claims against the
12 government when the Guard is activated as
13 for field training so that you have an
14 investigating officer, you get the statements
15 of witnesses and, as I know, as you demand,
16 pictures of the situs, and this kind of thing
17 would be that kind of investigation that
18 might fit what we have suggested is a
19 requirement for these procedures.

20 THE WITNESS: Well, that would serve a
21 purpose -- it serves two purposes. If you
22 receive a claim against the government --
23 now, I don't know which government you have
24 in mind, which echelon of government you have
25 in mind, but it serves the purpose of what the

1 conducting an investigation and determining
2 the extent of the damage incurred and, insofar
3 as possible, the responsibility for the
4 damage.

5 VICE CHAIRMAN BROWN: So that if
6 subsequently there is a claim against the
7 Guard, this would be most useful in determining
8 those issues as well as attempting to
9 determine some of the questions that we may
10 have asked you.

11 THE WITNESS: I think so.

12 VICE CHAIRMAN BROWN: So with your
13 concurrence, Mr. Counsel, I would ask if you
14 would consider that kind of investigation,
15 which is very, very thorough.

16 (Off the record.)

17 VICE CHAIRMAN BROWN: We asked the colonel
18 to conduct certain investigations and I am
19 trying to outline the kind of thorough
20 investigation that is normally done where there
21 is a potential claim.

22 MR. FORTUNATO: We can agree that the
23 most thorough kind of investigation possible
24 would benefit us. However, we are also mindful
25 of the particular area of jurisdiction that the

1 National Guard is operating under, and so far as
2 that were the incidents which have been brought to our
3 attention, it would seem the only one that
4 of 319 Base merited further investigation, again in terms
5 Julius Wald of your jurisdiction, would be the incident
6 complained involving Prince Hall Temple.

7 shot up by your people," and they transmitted the

8 BY MR. FORTUNATO:

Information to me by telephone.

9 Q And you have agreed that you will furnish us
10 with additional information if any be forthcoming?

11 A Fine. This was a good point after the incident.

12 real Q Now, in the case of Roney, have you completed
13 all that you can tell us about your investigation?

14 him. A And I have, yes. He stated that he had observed

15 the Q One of the questions wasn't specifically
16 brought out. Did you take statements from the witnesses
17 that Roney presented to you or did you listen to what they
18 had to say? Complaint should properly be made to either

19 the A Yes. We took their statements. Attorney General of

20 the Q You did take their statements? statement to

21 Mr. A Correct. And they would take it from there.

22 Q Would this also be true with respect to other
23 individuals with whom you spoke insofar as the first
24 three incidents are concerned? as about the dress of the

25 A Yes, sir.

1 Q All right. Do you have any other complaints
2 that were brought to your attention?

3 A Two other individuals, a Mr. Rafael Shustak
4 of 910 Bergen Street, Newark, New Jersey, and a Mr.
5 Julius Wald of 907 Bergen Street, Newark, New Jersey,
6 complained, again to our local armory, "My place was
7 shot up by your people," and they transmitted the
8 information to me by telephone.

9 Q This complaint would have been received
10 by you Sunday or Monday?

11 A No. This was a good month after the incident,
12 really. And I met with these men at the scene of the
13 damage. One individual, Mr. Wald, had a witness with
14 him, and when the witness stated that he had observed
15 the damaging of the plate glass window at 907 Bergen
16 Street by a member of the New Jersey State Police, I
17 had to immediately tell them I had no jurisdiction and
18 that there complaint should properly be made to either
19 the Essex County Prosecutor or the Attorney General of
20 the State of New Jersey. I made the same statement to
21 Mr. Shustak. They said they would take it from there.

22 Q And that was the extent of your investigation?

23 A Yes, sir.

24 Q Would you indicate to us what the dress of the
25 National Guardsmen is.

1 A The uniform?

2 Q Yes.

3 A During that period of time they wore a
4 helmet liner with steel helmet. Some of them may have
5 had camouflage cloth and nets on the steel helmet. They
6 wore what is known as the OG-107 uniform. That is a
7 green cotton jacket and trousers with combat boots,
8 cartridge belt -- it has a different name now, which
9 escapes me at the moment -- cartridge belt will suffice,
10 with suspenders, individual weapon, which was primarily
11 either a carbine or rifle, predominantly M-1 rifle.

12 Q Now, the six incidents that you related
13 are the sum total of the complaints that were brought
14 to the National Guard, specifically to your attention?

15 A That is correct.

16 MR. FORTUNATO: I have no further
17 questions, Mr. Chairman.

18 MR. DRISCOLL: Are you aware, of your own
19 knowledge, as to the amount of ammunition that
20 was issued to each man?

21 THE WITNESS: No, sir, I am not.

22 MR. DRISCOLL: Have you had any cause
23 to investigate the difference between the
24 amount of ammunition that was available and the
25 amount of ammunition that was leftover after

1 the incident was concluded?

2 THE WITNESS: No, sir.

3 (Discussion off the record.)

4 VICE CHAIRMAN BROWN: In line with that,
5 Colonel McLean, was there or is there or will
6 there be, as far as you know, any overall
7 investigation of the Guard procedures conducted
8 by the Guard itself, perhaps in your role
9 as inspector general or in other situations,
10 to determine the performance of the Guard in
11 terms of ammunition available, ammunition
12 expended, type of ammunition issued, control
13 of small units, and so forth?

14 THE WITNESS: I know of none at the
15 present time.

16 VICE CHAIRMAN BROWN: Has there been any
17 investigation that would project itself toward
18 any idea of searching out injuries to people?
19 That is, to take the 26 deaths, for example,
20 and evaluate in terms of possible connection
21 between the deaths and National Guard fire.

22 THE WITNESS: I know of none.

23 VICE CHAIRMAN BROWN: Has there been any
24 investigation of the firing on Scudder Homes
25 and Hayes Homes wherein it has been reported

1 that there was multiple fire aimed at the
2 buildings, which caused some marks on the
3 building and at least in one instance
4 apparently may have injured persons within
5 the building because the National Guard
6 projectiles being fired from M-1's, and so
7 forth, penetrated the outer skin of the
8 buildings?

9 THE WITNESS: I don't know of any.

10 VICE CHAIRMAN BROWN: Is your role
11 officially that of inspector general? Are you
12 assigned that?

13 THE WITNESS: No, sir.

14 VICE CHAIRMAN BROWN: Perhaps for the
15 benefit of the commission, this role of
16 investigating these matters is really beyond
17 your current assignment at the Headquarters,
18 Department of Defense, isn't that so?

19 THE WITNESS: Well, let's say that it is
20 in addition to my other duties when called
21 upon to do so.

22 VICE CHAIRMAN BROWN: But you are not
23 specifically assigned as inspector general and
24 it is not your general responsibility to so
25 conduct or to make decisions about conducting --

1 THE WITNESS: No, sir.

2 VICE CHAIRMAN BROWN: Who would be the
3 man who would make the decisions with respect
4 to conducting, let us say, an overall
5 investigation of the total activity of the Guard?

6 THE WITNESS: I would say General Cantwell.

7 VICE CHAIRMAN BROWN: He would be the
8 only one, and your primary responsibility,
9 prime area is really civil defense, is it not,
10 or cooperation with civil defense?

11 THE WITNESS: Well, as I stated in the
12 beginning, I am the military support plans
13 officer. I do not work for or with civil
14 defense per se.

15 VICE CHAIRMAN BROWN: You are kind of
16 military backup planning officer to support
17 civil defense?

18 THE WITNESS: That's right.

19 VICE CHAIRMAN BROWN: Therefore such
20 questions as I have put to you about the
21 overall investigation are not within your
22 authority and your answers merely mean in your
23 role you simply don't know of any such plans?

24 THE WITNESS: That is correct.

25 VICE CHAIRMAN BROWN: Colonel McLean,

1 may I ask if you have been specially assigned
2 by General Cantwell to any duties concerning
3 the investigation. Are you in overall charge
4 or is it your duty to go into it in any way?

5 **THE WITNESS:** I have been assigned by
6 General Cantwell to receive the complaints,
7 to take the complaints received in the
8 Department of Defense of New Jersey and to
9 investigate them for the purpose of determining
10 the extent to which the complaint is true and
11 correct insofar as the National Guard is
12 concerned.

13 **VICE CHAIRMAN BROWN:** But unless a
14 complaint or a claim is made you are not
15 authorized to proceed?

16 **THE WITNESS:** No, sir.

17 **VICE CHAIRMAN BROWN:** In other words,
18 we have here a total of -- how many would there
19 be? Were there six?

20 **THE WITNESS:** Six people. Six persons.

21 **VICE CHAIRMAN BROWN:** -- six persons
22 the individual complaining. So that in fact if you were
23 aware that there were other complaints, it
24 would not be your role or your responsibility
25 to investigate them until such a complaint is

made?

1
2 THE WITNESS: Well, this is a very, very
3 wide area. Ray, I think you know me well enough
4 to know that if I became aware of something
5 that I thought we should pay attention to,
6 I would go into General Cantwell's office and
7 say, "Sir, this exists, I think we should look
8 at it," and he would say, "Look at it."

9 VICE CHAIRMAN BROWN: Yes, I believe that.

10 BY MR. FORTUNATO:

11
12 Q Other than the six complaints that you have
13 mentioned, are you aware of any other specific complaints
14 that have been made against the National Guard arising
15 out of the disorder in July?

16 A Well, excluding what appears in the nation's
17 press, I am not aware of any other specific complaints
18 against the National Guard. Now, we have the general
19 complaints made in the nation's press about too much
20 weapons fire, and this sort of thing. I think General
21 Cantwell has answered that on a number of occasions, as
22 the individual to answer it. It is not my responsibility
23 to answer such a thing.

24 MR. DRISCOLL: General Cantwell is the
25 head of the Department of Defense?

1 THE WITNESS: Yes, sir.

2 MR. DRISCOLL: Where were you during the
3 period of the riots? Were you in Newark, by
4 any chance?

5 THE WITNESS: Yes, sir. I was at our
6 operational headquarters in the Roseville
7 Avenue Armory in Newark.

8 MR. DRISCOLL: Did you hear widespread
9 firing?

10 THE WITNESS: Not from that location. I
11 think on only one or two occasions throughout
12 four or five days that we were there did we
13 hear what could be called small arms fire.
14 This was outside of the general area of the
15 disturbance.

16 (Discussion off the record.)

17 VICE CHAIRMAN BROWN: Colonel McLean, to
18 your knowledge is there anyone who has the
19 responsibility in the role of overall
20 investigation of the disturbances in Newark in
21 July within the framework of the Guard itself?

22 THE WITNESS: Not to my knowledge.

23 VICE CHAIRMAN BROWN: And your role is that
24 of investigating specific complaints which are
25 submitted to you and which you have the


obligation to investigate and nothing beyond
that? Would that be correct?

THE WITNESS: That's right.

VICE CHAIRMAN BROWN: Thank you very much.

C E R T I F I C A T E

I HEREBY CERTIFY that the foregoing
is a true and accurate transcript of the
proceedings and testimony as taken
stenographically by me at the time and
place hereinbefore set forth.


Leo M. Niele

Dated: 12-11-67