

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
JUDICIARY COMMITTEE  
SUBCOMMITTEE ON CORRECTIONS AND REHABILITATION

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Verbatim report of hearing held in  
Minority Caucus Room, Main Capitol  
Building, Harrisburg, Pennsylvania,  
on Wednesday,

November 12, 1975  
9:30 a. m.

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Hon. Charles P. Hammock, Chairman  
Hon. David P. Richardson, Acting Chairman

Members of the Subcommittee

Hon. Michael Bishop	Hon. Raymond F. Lederer
Hon. Lucien E. Blackwell	Hon. Marvin E. Miller, Jr.
Hon. Ronald R. Cowell	Hon. Frank L. Oliver
Hon. D. Michael Fisher	Hon. Joseph Rhodes, Jr.
Hon. William D. Hutchinson	Hon. Anthony J. Scirica
Hon. George O. Wagner	

Reported by:  
Michael P. Elliott

Prepared under the direction  
of the Chief Clerk's Office,  
Vincent Scarcelli, Chief Clerk

APPEARANCES:

John W. Hartman, Esquire,

Robert Kagan, Esquire.

Counsel for the Committee

ALSO PRESENT:

Representative Samuel A. Ross

Sam McClea, Staff Member

Jonathon Cousins, Staff Member

INDEX TO WITNESSES

<u>NAME:</u>	<u>Page</u>
Ceylon I. Williams	7
James W. Garrall	33
Gregory L. Wolfe	57
Frederick A. Smith, Jr.	81
Ernest J. Green	89
Maynard E. Strock	111
Thomas Stewart	123
Ceylon I. Williams, recalled	154
Charles Winters	206

171

REPRESENTATIVE RICHARDSON: The hour of 9:30 having arrived, I would like to open the sixth day of hearings of the Task Force to Investigate Juvenile Incarceration and Rehabilitation of the Subcommittee on Corrections.

We presently have not gotten any response from the guards, other than from Superintendent Patton, who, through telephone conversation moments ago, indicated that the counselor for the guards will appear here before this Committee at 1:30 p.m.

There have been some problems overall in finding out why Mr. Kirschner, who is representing the Correctional Officers, did not appear here this morning. He said he did not have ample notice. Word has it that Mr. Sam McClea, of the staff of this Committee, did speak directly with him and have a conversation.

All letters requesting the Correctional Officers to appear here today were delivered on Saturday, giving them three calendar days' notice, indicating that they also have to appear here with counsel, with a copy of the resolution and a copy of Rule 51.

We are now in the process of waiting for the counselor and the guards to appear. Some are off duty and had to be contacted at home. And Superintendent Patton indicated



they can all be here by 1:30.

I would like at this time to have Sam McClea give us an indication of what happened with the telephone conversation with Mr. Kirschner.

MR. McCLEA: I contacted Mr. Kirschner's office on Monday morning, at which time I left a message concerning the hearing date for Wednesday, and what room it was to be in. He was not available. He then called me back and indicated to me that he had gotten my message, but did not understand it. And I went on to explain to him that the Subcommittee was arranging to have a hearing on Wednesday at 9:30, in the Minority Caucus Room, and would be asking the six guards who had not testified to testify, as well as the two officers, and requesting him to be present if he is their counsel.

He indicated that he has a busy schedule and other responsibilities, and was not sure that with such short notice he would be able to comply with that date.

I asked him if I was to assume then that he would not be present, and he indicated that I was not to assume anything.

REPRESENTATIVE RICHARDSON: With that, I would like to indicate the members present thus far are Representative Lederer, Representative Oliver, Representative

Wagner, Representative Fisher, and myself

At this time I would like to recess this hearing until 1:30 p.m

(A recess was taken.)

REPRESENTATIVE RICHARDSON: The hour of 1:30 having arrived, and the recess having expired, I would like to call this hearing back to order.

On Wednesday of last week our fifth hearing on the Task Force of the Subcommittee on Corrections to Investigate Juvenile Incarceration was held. We had asked at that time that Lieutenant Williams come before us and testify. There was some problem that existed as a result of that, because he was not issued a letter, nor was he issued Rule 51, and House Resolution 47. It would certainly be unfair to ask him to testify before this Committee.

This morning, as a result of that, no guards were present, which resulted in a telephone conversation that I held with Superintendent Patton, who indicated to me that Mr. Kirschner was not available today, and that he had so indicated that he would not be here to represent as counsel the Correctional Officers of the Camp Hill Institution. I did speak with Mr. Kirschner in Philadelphia, and he so indicated

that he could not be present today, but that he had sent a telegram. Going through today's mail which just came in, there was a mailgram that I will give to the stenographer so he can record it in the record.

Upon that conversation I indicated to him that although he was unable to be here that perhaps his partner, Mr. Goldstein, who was representing the Correctional Officers at the beginning of our hearings would do likewise today, and try to get these hearings out of the way without having to go through subpoenaing the guards to appear here and testifying before this Committee.

Upon talking then after that with Superintendent Patton again, he indicated that Correctional Officers were on their way to the hearing and that 1:30 would be ample time to get everyone here, which is where we are at the present time.

At this time I would like to call to the witness stand Lieutenant Williams.

CEYLON I. WILLIAMS, called as a witness,  
being first duly sworn, according to  
law, testified as follows

BY REPRESENTATIVE RICHARDSON

Q Would you state your name for the record, please?  
Also, state your position.

A Ceylon I. Williams.

Q And your position?

A I am a Lieutenant at the State Correctional  
Institution at Camp Hill.

Q Would you indicate whether or not you are  
represented by counsel?

A Yes, I am.

REPRESENTATIVE RICHARDSON. Would you state your  
name for the record, please?

MR. FILIPI. Francis R. Filipi I am an Assistant  
Attorney General.

BY REPRESENTATIVE RICHARDSON:

Q I would like to ask you, Lieutenant Williams, to  
speak up loudly and clearly We do not have any microphones,  
and last week we did have problems hearing the witnesses as  
they responded.

Lieutenant Williams, you are a Correctional Officer,  
a Lieutenant at the Camp Hill Institution. How long have you  
been a Lieutenant there, sir?

A As a Lieutenant, almost three years.

Q Three years?

A Yes.

Q And prior to that were you a Correctional Officer?

A Yes.

Q At Camp Hill?

A Yes.

Q How long were you there before that?

A Two years as a Sergeant, and all told I have been there almost thirteen years.

Q Thirteen years at the Institution?

A Yes

Q So you have a familiar background with the Institution itself and its procedures, is that correct?

A Yes.

Q Could you indicate to this Committee whether or not you were employed as a Correctional Officer, a Lieutenant, on October 15th of this year?

A Yes, I was.

Q Would you indicate to this Committee whether or not you, as a Lieutenant, gave any orders to have anyone arrested and taken to he BAU, what they call Mohawk, as a result of your command?

(Mr. Williams consulted with his counsel )

MR. WILLIAMS: On advice of counsel, I cannot answer this question, because of the opinion of the Attorney General.

BY REPRESENTATIVE RICHARDSON:

Q Because of the opinion of the Attorney General?

A Yes.

REPRESENTATIVE RICHARDSON: Counsel, can you tell me what the opinion of the Attorney General is?

MR. FILIPI: The opinion of the Attorney General is consistent with the opinion stated previously to this Committee; that is, that this is part of the ongoing investigation, and that this matter will not be made public, inasmuch as Lieutenant Williams has made his affidavit as part of that and, of course, it is part of that investigation. At this time it will not be made public.

I might add, of course, that he is bound by the opinion of the Attorney General. It is binding upon him. And under a provision of the Administrative Code, Section 592, he cannot be held liable by complying with the opinion of the Attorney General.

REPRESENTATIVE RICHARDSON: Let me ask a question then of the counselor:

Was there any reason why Lieutenant Williams was

not present this morning?

MR. FILIPI: I don't know why he was not present. I have only second-hand information on this matter. I understand it was rather confusing, but that is the extent of my knowledge.

BY REPRESENTATIVE RICHARDSON

Q Was it my understanding, Lieutenant Williams, that you were represented by Mr Kirschner, or you were to be represented? That was my understanding.

A It was agreed upon previously that he would. This was my understanding, that, if necessary, he would be here.

Q If necessary?

A Yes.

REPRESENTATIVE RICHARDSON: Perhaps again you can help me with the Attorney General's opinion. Is it my understanding that Lieutenant Williams falls under the guise of the Judicial Branch of Government of the Commonwealth and does not fall under the status of a Correctional Officer?

MR. FILIPI: Of course, he is a Correctional Officer under the Executive Agency, Department of Justice, Bureau of Corrections.

REPRESENTATIVE RICHARDSON: In other words, what I

am trying to get at is that he doesn't fall under the same category as the other Correctional Officers at the Institution who do not hold high-ranking positions?

MR. FILIPI: As I understand your question, whether or not he is a member of a class that is represented by the Union. He is not.

REPRESENTATIVE RICHARDSON: He is not represented by the Union?

MR. FILIPI: No, he is not in a Union class.

BY REPRESENTATIVE RICHARDSON:

Q Well, then, for the record, if you would, Lieutenant, could you indicate to me whether or not you know Michael Kaup?

A Yes, sir.

Q Do you know Joseph Snyder?

A Yes, sir.

Q Do you know Kendall Magwood?

A Yes, sir.

Q James Burgh?

A Well, I couldn't make a positive identification on him. I know of him.

Q Raul Ptcheco, do you know him?



A Yes, sir.

Q Anthony Goodwin?

A Yes, I do.

Q Ron Sutton?

A Not by name.

Q Gary Misko?

A Yes, sir.

Q Do you know William Kane?

A No, sir.

Q Now, as a Lieutenant, sir, for the past three years at the Correctional Institution at Camp Hill, could you describe for me, sir, your training and procedures that you have concerning the use of force?

A Well, we have the directives, the Institution-Bureau Directives, defining the amount of force. It has always been the Bureau's policy and the institution policy that only the amount of force necessary to contain or subdue an individual shall be used.

Q Do you know what the amount of force necessary is?

A I don't hardly think anyone knows until he is in that particular situation.

Q Can you give us an example, without going into the October 15th incident, of a particular situation where that

one example might come up in terms of what you would consider the use of force?

A It may require the use of force to separate two who are fighting. Force may be required to be used in moving an individual who refuses to be moved. Force may be required if an individual assaults someone -- an officer.

Q Would you have a definition for this Committee as to what your feelings are, or your study was as a result of your training to the excessive force that is used on an individual? What is excessive force?

A Excessive force may be defined as: After an individual is contained or subdued, any amount of force used thereafter would be excessive force.

Q Have you ever seen such cases?

A No, sir.

Q Thirteen years?

A Thirteen years.

REPRESENTATIVE RICHARDSON: Representative Oliver?

REPRESENTATIVE OLIVER: No questions.

REPRESENTATIVE RICHARDSON: Mr. McClea?

BY MR. McCLEA:

Q Lieutenant Williams, have you ever known of/or --

well, known of an officer being suspended or fired for the excessive use of force?

A No, sir.

Q In thirteen years?

A Not to my knowledge, not at present, no.

Q Have you ever known of an officer being reprimanded for the excessive use of force by the administration?

A Well, that would be between the officer and the administration.

Q Have you ever heard of an officer being reprimanded?

A I believe in a few isolated cases I have heard of them.

Q But you do not know of any officer who has ever been suspended, or fired for that matter, for reasons of the excessive use of force?

A May I say, on your previous question, I couldn't say exactly whether he was reprimanded for using excessive force.

Q I am not sure I follow you.

A What was your previous question?

Q Have you ever heard of an officer being reprimanded for the use of excessive force?

A No, sir. I don't know of any officer who has used

excessive force.

Q I imagine when an incident arises when force is being used, every officer or every person involved must, for themselves, determine what is necessary and what is excessive. Would you say that is the case?

A Yes, sir.

Q Is there any directive or any policy that you know of which tries to define at least the parameters of which is necessary and which is unnecessary use of force?

A Yes, sir. I think each and every one of us has been told when the individual is contained or subdued, that anything beyond that point is excessive force.

Q The Bureau also has distributed directives suggesting the use of different kinds of mechanical instruments, such as batons, or billy-jacks, or Mace, or anything of that nature. Would you say that -- let's take each one individually.

Would you say that the use of batons occurs frequently in the institution?

A No, sir.

Q Have you, in the thirteen years you have been there, seen the use of batons?

A No, sir.

Q Have you, in your thirteen years, ever seen the

use of a billy-jack?

A No, sir.

Q Have you, in the thirteen years you have been there, ever seen the use of Mace?

A No, sir

Q Have you ever seen the use of shields?

A No, sir.

Q How about a duster?

A A what?

Q Have you ever seen the use of a duster. I used the term that we had been given by the Bureau of Corrections - a mechanical instrument?

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: (No audible response )

BY MR. McCLEA.

Q Then, to your knowledge, would it be accurate to say that the only means of applying force, be it necessary or unnecessary, that you have ever seen is through the use of physical hands?

A Yes, sir.

Q Have you ever seen the use of force implemented

by the use of any technical devices?

A No, sir.

Q Do you think the Bureau may have wasted its time buying that equipment and sending out directives as to the use of it?

A No, sir.

Q Do you think the equipment should be there and the directives --

A Oh, definitely, the same as any patrolman carries a weapon, carries a gun. He may never use it, but he still carries it in case he may have to use it.

Q Then, to your knowledge, on the night of the fifteenth there were no devices like that around, or out of a -- I understand they are locked up in a special compartment, is that right?

A Yes, sir.

Q That compartment had not been opened on the night of the 15th --

A No, sir.

Q -- to gain access to any of that kind of mechanical devices?

A No, sir. There was no need for it.

Q Have you ever, in the thirteen years you have been

there, learned of any incident in which an inmate has secured in his possession a deadly weapon?

A Yes, sir.

Q Be it a knife, a shank, a zip gun?

A Yes, sir.

Q You have?

A Yes, sir.

Q And in order to subdue that individual, the use of any of these mechanical instruments would not be appropriate?

A It may be if whoever was in charge so desired it. However, I have never advised it to be used.

Q Have you ever heard of anybody using these devices?

A No, sir.

Q You have never seen nor heard of any Correctional Officers using any of these devices?

A No, sir.

MR. McCLEA: That's all I have. Thank you

REPRESENTATIVE RICHARDSON: Representative Ross?

REPRESENTATIVE ROSS: No questions.

REPRESENTATIVE RICHARDSON: Mr. Hartman?

MR. HARTMAN: Mr. Filipi, I am going to direct my inquiry to you.

Pursuing what you stated to the Committee as to the

position of the Attorney General's office -- could you restate that for us, please?

MR. FILIPI: I wouldn't like to term it a position, but rather an opinion.

The opinion of the Attorney General is --

MR. HARTMAN: Attorney General Kane?

MR. FILIPI: Yes.

This is consistent with the statement made on behalf of Mr. Patton at the time he was testifying, you remember, I believe last Wednesday, two weeks ago. And that position was that when an investigation being pursued by the Department of Justice is not in its completed stage, that the various parts of the investigation will not be made public.

MR. HARTMAN: But we have not asked you for any part of that investigation here this afternoon.

MR. FILIPI: But the statements made by the Lieutenant being part of his affidavit, and also because this is part of the incident --

MR. HARTMAN: What about the statements made by the various guards and inmates?

MR. FILIPI: We do not represent the officers.

MR. HARTMAN: Why?

MR. FILIPI: They have chosen to have their own



counsel.

MR. HARTMAN: Are you acting in private counsel capacity here right now?

MR. FILIPI: I am acting in my capacity as Assistant Attorney General on behalf of the Bureau of Corrections. And to the extent that Lieutenant Williams is employed by the Bureau of Corrections, I am representing him as an employe of the Bureau of Corrections.

MR. HARTMAN: Did Lieutenant Williams request you to do this?

MR. FILIPI: To my knowledge, yes.

BY MR. HARTMAN:

Q When did you do that, sir?

A Last Thursday when I was over here.

Q I thought in your earlier testimony that it was your understanding that Mr. Kirschner was going to represent you.

A If I had no other representation, Mr. Kirschner volunteered to represent me.

Q When did you find out then that Mr. Filipi was going to represent you?

A Thursday afternoon.

Q Thursday afternoon?

A Yes, sir.

Q Has the Attorney General himself directed you not to testify?

MR. FILIPI: It is not a matter of direction, but, rather, a matter of a binding opinion. As I earlier stated, the Administrative Code, Section 592, which is found as Title 71, Section 192, provides that an opinion of the Attorney General -- it is the duty of any employe of the Executive Department -- and, of course, I am paraphrasing very loosely -- that he is under a duty to comply with the opinion of the Attorney General; and that if he does comply with the opinion of the Attorney General, he cannot be held liable personally.

MR. HARTMAN: Do you have a copy of the Attorney General's opinion?

MR. FILIPI: It is not an opinion that I have seen written down.

MR. HARTMAN: Then how does it come within Section No 592 of the Administrative Code?

MR. FILIPI: It is the same way that it came under the Administrative Code, Section 592, when Mr. Patton came before you.

MR. HARTMAN: Well, we didn't accept that as -- that was your position, and the Committee --

MR. FILIPI: That is our position today.

MR. HARTMAN: But why would that not equally apply to any of the other guards?

MR. FILIPI: It very well may, but we do not at this time represent them, because they have chosen private counsel.

MR. HARTMAN: Have you communicated to the other guards that in any way, shape or form, they are subject to that opinion?

MR. FILIPI: No, because of the fact that they chose their counsel prior to this question first being met by the Attorney General.

MR. HARTMAN: Well, that would not alter the effect of that section of the Administrative Code.

MR. FILIPI: The opinion has not been applied to them.

MR. HARTMAN: It has not been?

MR. FILIPI: They have not requested it.

MR. HARTMAN: Then just who does the opinion apply to?

MR. FILIPI: Those who request it, naturally.

MR. HARTMAN: Those who request to be covered?

MR. FILIPI: Those who ask the Attorney General for a legal opinion on this matter.

MR. HARTMAN: Are you telling this Committee that the Attorney General issues an opinion, and then it is only applicable to those who request to be covered by it?

MR. FILIPI: Not to be covered by it, but those who ask for the opinion

MR. HARTMAN: Oh, if you don't ask for the opinion of the Attorney General, you are not subject to it? Is that what you are saying?

MR. FILIPI: I think that is possibly a mis-phrase of what I said, or I have conveyed a wrong point.

As far as representation of those officers, we have been asked -- we have not been asked to represent them. They, of course, had Union counsel. Any argument on behalf of the Attorney General's office which would be in that representative capacity has not been fostered as to them. You may be in an area actually that the Attorney General's office has not yet fully developed, and I have not been asked to turn my attention to the officers that are covered by the Union class.

MR. HARTMAN: Well, then, just who exactly is

covered by this alleged opinion of the Attorney General?

MR. FILIPI: The opinion of the Attorney General would cover, in the case of this subcommittee hearing, the Superintendent, the two Lieutenants -- the Lieutenant before you now, and the one that is now a Captain, Captain Winters -- and anyone else, I guess, that is a management class, who would come before you, and we would get the proper request through, that this opinion applied to them as to their ability to give information.

MR. HARTMAN: And what is the basis of the opinion for their not testifying?

MR. FILIPI: It is the position of the Department of Justice and the Attorney General's office that when an investigation is ongoing, that it not be made public.

MR. HARTMAN: That is not responsive. What is the criteria upon which you base who may or may not testify under the opinion?

MR. FILIPI: The determination, of course, would be made because we are not talking about a general question, but rather those individuals who would have information. And it would have to be determined by what information they would have and whether it is part of the ongoing investigation. Lieutenant Williams here before you has information regarding

one of the incidents, and, in fact, a question was posed and response given that it was, in fact, part of the investigation. It was ongoing. And, therefore, he would not be able to make public his observation, which is also part of the investigation.

MR. HARTMAN: Well, does each --

REPRESENTATIVE FISHER: Let me interject here.

You are telling me that his observations are part of an investigation?

MR. FILIPI: Yes, it's part of an ongoing investigation.

REPRESENTATIVE FISHER: His recollection of what he observed is part of the Attorney General's investigation?

MR. FILIPI: Yes.

REPRESENTATIVE FISHER: Show me where it is in the file.

MR. FILIPI: In what file?

REPRESENTATIVE FISHER: In the file that you have I want you to put your finger on somebody's recollection of what they observed.

MR. FILIPI: It could be found in the file in the form of his affidavit.

REPRESENTATIVE FISHER: His affidavit is what is part of your investigation, is that not correct?

MR. FILIPI: But if he were to repeat what his affidavit says, it is the same thing.

REPRESENTATIVE FISHER: His affidavit is part of the investigation. I agree that what he tells you is within the jurisdiction of the Attorney General as to what he signed on that piece of paper. But now you are saying that his observation as to what he saw that one night relating to those two incidents, that is also part of the investigation?

MR. FILIPI: Yes.

REPRESENTATIVE FISHER: It is not. I respectfully disagree.

REPRESENTATIVE RICHARDSON: Mr. Kagan?

MR. KAGAN: If the Lieutenant was summoned before a grand jury, would your position still be the same?

MR. FILIPI: I think we would have to review the position. I don't feel free at this time to discuss that. I don't know. I haven't addressed myself to it, very simply.

MR. KAGAN: Is the Attorney General's opinion an informal opinion? Is it a formal opinion? In what form does this Attorney General's order come down?

MR. FILIPI: I do not know if it is formal or informal -- how they term it.

MR. KAGAN: How can you address this Committee without

knowing that? I mean, what is the legal basis of an informal opinion?

MR. FILIPI: The provision -- I don't know that formal versus informal is of any moment in this discussion.

MR. KAGAN: Oh, I would think it is of prime moment.

MR. FILIPI: Insofar as the provision of the Administrative Code says -- an opinion of the Attorney General, not speaking of formal or informal

MR. KAGAN: There is no such thing as -- an opinion is a written opinion, and they are numbered, if I am not incorrect. Do you mean to tell me there is a vast majority of Attorney General's (quote)"opinions" that are not written down which are subject to someone's memory, that are informal, in-house gossip -- things that just float around the department -- which have binding force and effect of law?

MR. FILIPI: This is certainly not gossip.

MR. KAGAN: Is it written down?

MR. FILIPI: I don't know.

MR. KAGAN: I think that it behooves you to bring forward to this Committee a written, formal Attorney General's opinion. I do have friends that are Deputy Attorney Generals who bemoan the fact that they must write Attorney General



opinions that have to go through the layers of bureaucracy in the Attorney General's office before they get signed by the Attorney General and before they become effective, so I know a little bit about how the internal processes work over there. And I would like to see the Attorney General's opinion which applies to this case.

MR. FILIPI: I believe you put your finger on one matter immediately, that is, that, in fact, it takes months of bureaucratic red tape to get through that.

MR. KAGAN: Are you saying that there is no opinion, but there is an opinion in the works; is that what you are saying?

MR. FILIPI: I am not able to address myself to whether the opinion is --

MR. KAGAN: Then what opinion are you talking about, your opinion?

MR. FILIPI: No.

MR. KAGAN: Whose opinion?

MR. FILIPI: The Attorney General's.

MR. KAGAN: What number is it?

MR. FILIPI: I have no number.

MR. KAGAN: Where can you find it?

MR. FILIPI: I don't know.

MR. KAGAN: I think you ought to know, and find out for this Committee. How are we supposed to know you didn't just make it up this morning?

MR. FILIPI: I believe if counsel will remember, the Attorney General appeared before you --

MR. KAGAN: This Committee used a separate and distinct procedure at the request of the Attorney General to take certain testimony of Mr. Patton in executive session or to take evidence or to just sit and have a discussion with you gentlemen. There has been no formal or informal procedure worked out to that effect in this instance; in fact, I think, speaking for the Committee, the Committee was totally unaware that an Attorney General's (quote) opinion (close quote) would be used as an informal or a formal basis of having your client not testify before this Committee.

MR. FILIPI: I think possibly I would like to rephrase what you just said. The Lieutenant has not --

MR. KAGAN: You don't have to rephrase what I just said.

MR. FILIPI: The Lieutenant has not refused to testify before you; the Lieutenant cannot testify to certain facts.

MR. KAGAN: If you can cite an opinion, then I

can say you are correct, that he has not refused, but if you have no basis, no legal basis, or written Attorney General's opinion, this Committee has no other choice but to say that the Lieutenant has refused to testify. I think it ill behooves a member of the Department of Justice to come before this Committee without a formal opinion.

MR. FILIPI: I have stated that there was an opinion.

MR. KAGAN: Can you find that opinion? Can you give that opinion to this Committee this afternoon?

MR. FILIPI: As I stated, I do not know if it is in writing.

MR. KAGAN: Can you make a call to the Department of Justice and give this Committee that opinion?

MR. FILIPI: If it is on paper, I will do whatever I can.

MR. KAGAN: If it is not on paper, then I would like you to also get us a formal opinion as to the efficacy of non-written verbal or non-verbal opinions by somebody in the Department of Justice which have binding legal effect.

MR. FILIPI: I will communicate your request to the Department of Justice.

REPRESENTATIVE RICHARDSON: In view of the

conversation we have just had, I will excuse Lieutenant Williams momentarily until you are able to ascertain the information that has been requested by this Committee in order for us to hear Lieutenant Williams. One of the bases for calling Lieutenant Williams was to get that information from him, particularly because he does not fall under the jurisdiction of a Correctional Officer. You indicated that he was in a different class. Well, that indication without any formal opinion as stated by Mr. Kagan and Mr. Hartman would be an indication to this Committee that at the present time, Lieutenant Williams is just refusing to answer

So, if you would get that opinion that the Attorney General has, we would be most appreciative. Right now, you are excused until the Deputy Attorney General gets the information that is necessary.

(Witness excused.)

REPRESENTATIVE RICHARDSON. I would like to call to the stand Officer Charles Winters. Is he also represented by you?

MR. FILIPI. No. He is a Captain, but at the time of the two dates in question, he was a Lieutenant. He is not an officer and was not an officer at the time.

REPRESENTATIVE RICHARDSON: Well, isn't this the same situation?

MR. FILIPI: Oh, yes.

REPRESENTATIVE RICHARDSON: I am asking if it is the same situation. If it is, there is no need to call Captain Winters at this moment. You might as well be excused until we are able to hear from the Attorney General.

At this time then, I would call Officer James W. Garrell.

JAMES W GARRELL, recalled as a witness, having been previously sworn, according to law, testified as follows:

BY REPRESENTATIVE RICHARDSON:

Q Mr. Garrell, you are still under oath; therefore, you do not have to be sworn in.

Would you state your name, please, for the record, and your position?

A James W. Garrell, Correctional Officer 1.

Q Are you represented by counsel?

A Yes

Q Would you have him state his name for the record, please?

MR. GOLDSTEIN: Richard Kirschner.

Mr. Chairman, initially I came here to advise the Committee that Mr. Kirschner would be unable to attend today's hearing. I heard placed into the record by Representative Richardson, the mailgram forwarded to this Committee by Mr. Kirschner, advising that, due to inadequate notice, he was unable to appear today and represent the Correctional Officers requested by the Committee. I have been advised by the Correctional Officers that they have exercised their right to select Mr. Kirschner personally as their counsel at this proceeding.

I believe Mr. Kirschner has advised Representative Richardson that, upon notice, he will be able to serve in that capacity, as representative of these Correctional Officers, but at this time it is impossible for him to be present.

REPRESENTATIVE RICHARDSON: Are you trying to indicate to this Committee that, with respect to the fact that the gentlemen who are present now, the Correctional Officers who are now present, are going to refuse to testify?

MR. GOLDSTEIN: It is my information that they will refuse to testify because they are being denied their right to be represented by counsel of their choice, as well as the possible right to exercise their -- strike that -- the

possible exercise of their rights under the Fifth and Fourteenth Amendments of the United States Constitution, and the Constitution of the Commonwealth of Pennsylvania.

REPRESENTATIVE RICHARDSON: It is my understanding, Mr. Goldstein, that you do hold a co-partnership, or you do work out of Mr. Kirschner's office.

MR. GOLDSTEIN: I am an employe of Mr. Kirschner.

REPRESENTATIVE RICHARDSON: You are an employe of Mr. Kirschner?

MR. GOLDSTEIN: That's correct.

REPRESENTATIVE RICHARDSON: Therefore, you operate out of his office?

MR. GOLDSTEIN: That is correct.

REPRESENTATIVE RICHARDSON: And your duties then fall under the jurisdiction of, you know, representing his clients when he is not able to do so?

MR. GOLDSTEIN: That is correct.

REPRESENTATIVE RICHARDSON: Would I also be correct in assuming, Mr. Goldstein, that you were representing Mr. Kirschner the first day of these hearings, where he was not present and was unable to attend because of some other prior commitment -- that you represented the guards on that day; is that correct?

MR. GOLDSTEIN: No, I represented the guards on that day. I did not appear on behalf of Mr. Kirschner.

REPRESENTATIVE RICHARDSON: Then would I be correct in saying that the information given to the Committee at that time was an incorrect statement; is that correct?

MR. GOLDSTEIN: If you would advise me as to which statement you are referring to --

REPRESENTATIVE RICHARDSON: At the time I asked you where you came from, and you indicated that you came from Mr. Kirschner's office, and that he was unable to attend, and that was the reason why you were representing the guards.

MR. GOLDSTEIN: I don't recall that statement, sir.

REPRESENTATIVE RICHARDSON: You don't recall that?

MR. GOLDSTEIN: No.

REPRESENTATIVE RICHARDSON: If that happens to be a truism -- and I believe it to be correct, if we were to go back into the records and pull that out -- would you say that your answer would still be the same, that you refused to allow these gentlemen to testify before this Committee, even though you are counsel and can represent them, from Mr. Kirschner's office?

MR. GOLDSTEIN: I am counsel and can represent them, and I am from Mr. Kirschner's office. However, they have



exercised their selection as to whom they wish to represent them in these proceedings, and that selection is Mr. Kirschner and not myself.

REPRESENTATIVE RICHARDSON: Is that by choice or chance? Did you tell them to do that, and that is why you are saying that is the position they have taken?

MR. GOLDSTEIN: They have advised me that they wish to be represented by Mr. Kirschner.

REPRESENTATIVE RICHARDSON: I am saying, is that based on your conversation that you have held with them prior to this Committee meeting, when Mr. Kirschner was not present, indicating to them that they were only to be represented solely by Mr. Kirschner, who is supposed to be their -- well, their counsel of record?

MR. GOLDSTEIN: No, it is based upon my information which I received from Mr. Kirschner, that he was selected by these individuals to represent them. He, personally, not myself.

REPRESENTATIVE RICHARDSON: You just got finished saying that Mr. Kirschner advised them that they were supposed to --

MR. GOLDSTEIN: No, no.

REPRESENTATIVE RICHARDSON: Mr. Kirschner said

what?

MR. GOLDSTEIN: Mr. Kirschner advised me that he was selected by them as their representative. I am sorry, perhaps I didn't make that clear when I spoke initially. Mr. Kirschner advised me of that.

REPRESENTATIVE RICHARDSON: Well, let me ask you one other question, let me ask you this:

Last week when Mr. Kirschner was late or was not here and one of your men was called -- but you were both acting in co-equal responsibility -- you at that time represented one of the guards until Mr. Kirschner came. Am I to understand now that you are not doing that as an employe of Mr. Kirschner, but only because you wanted to do it?

MR. GOLDSTEIN: At that time I did represent them. At this time I do not. They have not -- I have been advised by Mr. Kirschner that they have selected him to serve as their counsel for these proceedings.

REPRESENTATIVE RICHARDSON: Sam McClea?

MR. McCLEA: It's getting very confusing. One moment they decide to have you as their counsel, on the first day of the hearing, and now, other days, they pick somebody else. Now they are going to pick -- are they members of the Union?

MR. GOLDSTEIN: Yes, they are.

MR. McCLEA: Does the Union have a certain office on retention?

MR. GOLDSTEIN: Yes, they do.

MR. McCLEA: Is it the office you are employed at?

MR. GOLDSTEIN: Yes, it is.

MR. McCLEA: Is it the same office that Mr. Kirschner is employed at?

MR. GOLDSTEIN: Yes, it is -- well, no, he is a partner in the office.

MR. McCLEA: All right, thank you.

BY REPRESENTATIVE RICHARDSON:

Q Officer Garrell, are you a Correctional Officer at the Institution at Camp Hill?

(Mr. Garrell consulted with  
Mr. Goldstein )

MR. McCLEA: You are not representing him. You cannot advise him

REPRESENTATIVE RICHARDSON: I am speaking to that gentleman. You have already indicated that you are not representing him. You are not his counsel. This is why I

asked you from the very beginning.

MR. GOLDSTEIN: I understand, Representative. Fine.

REPRESENTATIVE RICHARDSON: Therefore, if you are not representing him, you can be excused. You are not representing them.

MR. GOLDSTEIN: Thank you.

BY REPRESENTATIVE RICHARDSON:

Q Mr. Garrell, as you know, you are still under oath. You requested to appear here before this Committee to discuss certain things that have been involved at the Camp Hill Institution.

I would like to know how long you have been an employe at Camp Hill.

A Roughly, one and a quarter years.

Q In that one and a quarter years, sir, have you had at any time any incident that has occurred that you know about that would bring about any excessive force or use of force to any inmate?

A On previous advice of counsel, I refuse to answer this question, on the grounds that my answer may tend to incriminate me, and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States

Constitution and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania; and for the further reason that I have been denied the right to be represented by counsel of my choice.

Q I am trying to get some information for the record, Mr. Garrell.

Did you have any previous training to the time you became a Correctional Officer at the Institution?

A On advice of counsel I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania; and for the further reason that I have been denied the right to be represented by counsel of my choice.

Q Were you present on October 15th and October 20th at the Institution at Camp Hill?

A On advice of counsel I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the

Constitution of the Commonwealth of Pennsylvania; and for the further reason that I have been denied the right to be represented by counsel of my choice.

Q Let me ask you this question: Are you married?

A I refuse to answer because I have been denied the right to be represented by counsel of my choice

Q Because of what, sir?

A I have been denied the right to be represented by the counsel of my choice.

CHAIRMAN HAMMOCK: You forgot the Fifth and Fourteenth Amendments, or did you choose to leave that out this time?

MR. GARRELL: Yes, sir.

BY REPRESENTATIVE RICHARDSON:

Q Did you see Sergeant Stotelmyer grab Robert Kaup and Joseph Snyder by the throats and drag them down the tier deck of Ward "C" at the Camp Hill Institution on October 15th?

A On advice of counsel I refuse to answer this question on the ground that my answer may tend to incriminate me, and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of

the Commonwealth of Pennsylvania; and for the further reason that I have been denied the right to be represented by counsel of my choice

Q       Officer Garrell would you rather be subpoenaed to be here to testify before this Committee, sir?

A       Since I have no counsel, I will not answer the questions, because my right to be represented by counsel has been denied.

REPRESENTATIVE FISHER: Counsel of your choice.

REPRESENTATIVE RICHARDSON   Mr. Hartman?

MR. HARTMAN: I would just like to make the observation that whatever Officer Garrell has just stated is not exactly correct; that both the Officer and his Counsel were given notice, and he did have the right to choose the counsel of his choice. And it just so happens that the counsel of his choice chooses not to be present here today. So I do not think it is entirely correct when the Officer says, he is being denied the right to counsel of his choice. And I might further state that I think it was placed on the record earlier that at the time that the representative of this Committee, Mr. Sam McClea, communicated with counsel of Officer Garrell's choice, there was no indication that he would not be here, nor any request to the Committee that he continue it for his

convenience.

BY REPRESENTATIVE RICHARDSON:

Q That is correct. The fact of the matter is that that particular mailgram was received today, which would be the morning of the hearing, so you should know, Mr. Garrell, that the counsel of your choice did not notify the Committee that he would not be present today.

(Discussion off the record.)

BY REPRESENTATIVE RICHARDSON:

Q It's been raised by the Committee as to -- whom do you think the blame is on, that you have not been represented by counsel, Officer Garrell?

A It was the short notice that was given to counsel which made it impossible for him to appear.

Q Did you hear the statement by Attorney Hartman that was just given? Attorney Hartman is the gentleman sitting at the end of this particular stand here.

Q I don't recall that, sir.

REPRESENTATIVE RICHARDSON: Would you repeat that, Attorney Hartman?



BY MR. HARTMAN.

Q I stated that it was earlier put into the record this morning that the representative of this Committee, Mr Sam McClea, who is sitting to my left, was in communication with Mr. Kirschner on Monday, relative to this hearing today. In their conversation, Mr. Kirschner did not say he would not be here.

Secondly, he did not make a request of this Committee that we continue the hearing until a more convenient time. And, in fact, in response to a direct question from Mr. McClea, when he did raise the question that he might not be here, Mr McClea asked him if we were to assume he would not be here, and he said we should not make any assumption

So the Committee had nothing to go on except to assume that he would comply with the notice.

A It was my understanding that my counsel had made previous engagements for today, and upon short notice could not appear

Q Are you aware that your counsel did not request this Committee to continue the hearing?

A No, sir.

MR. GOLDSTEIN: May I be heard, please?

REPRESENTATIVE RICHARDSON: No, sir.

MR. GOLDSTEIN: I beg your pardon?

REPRESENTATIVE RICHARDSON: No, sir.

MR. GOLDSTEIN: To correct a misstatement by  
counsel?

REPRESENTATIVE RICHARDSON: No, sir You are not  
in order, and you may not address this Committee at this time.

MR. GOLDSTEIN: Thank you.

REPRESENTATIVE RICHARDSON: Representative Oliver?

BY REPRESENTATIVE OLIVER:

Q I would still, if you don't mind, ask you the same  
questions Who denied you the right to counsel? In other  
words, did this Committee deny you that right? You made the  
statement.

A On notice of counsel I refuse to answer this  
question on the ground that my answer may tend to incriminate  
me and I, therefore, invoke my rights under the Fifth and  
Fourteenth Amendments of the United States Constitution, and  
my rights against self-incrimination as contained in the  
Constitution of the Commonwealth of Pennsylvania; and, for the  
further reason that I have been denied the right to be  
represented by counsel of my choice.

Q All right, Officer, do you know what happened on

the night of October 15th?

A On advice of counsel, I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania; and for the further reason that I have been denied the right to be represented by counsel of my choice.

Q One other question:

As far as restraining inmates, do you know of any directives or procedures that Officers are supposed to use?

A On advise of counsel, I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania; and, for the further reason, that I have been denied the right to be represented by counsel of my choice.

REPRESENTATIVE OLIVER: I have no further questions.

REPRESENTATIVE RICHARDSON: Representative Ross?

REPRESENTATIVE ROSS: I waive my questions.

REPRESENTATIVE RICHARDSON: Representative Hammock?

CHAIRMAN HAMMOCK: I have no questions

REPRESENTATIVE RICHARDSON: Representative Fisher?

REPRESENTATIVE FISHER: No questions.

REPRESENTATIVE RICHARDSON: Representative Miller?

REPRESENTATIVE MILLER: No questions,

Mr. Chairman.

REPRESENTATIVE RICHARDSON. Mr. Kagan?

MR. KAGAN: No questions

REPRESENTATIVE RICHARDSON Mr. Hartman?

MR. HARTMAN: No questions.

BY REPRESENTATIVE RICHARDSON:

Q One last question I would ask again: Would you rather be subpoenaed to testify before this Committee, Officer Garrell?

A That in itself is a legal question, and I have been denied the right to be represented by counsel of my choice.

Q That is the answer you would give to this Committee?

A Yes, sir.

MR. McCLEA: It is also a personal question.

REPRESENTATIVE FISHER: Mr. Chairman?

REPRESENTATIVE RICHARDSON: Representative Fisher.

BY REPRESENTATIVE FISHER:

Q Are you appearing here voluntarily today?

A Yes, sir.

Q Why did you come if your counsel was not available?

A I didn't know for sure whether he would be here  
or not.

Q When did you find out he would not be here?

A When I arrived

Q So, in other words, your counsel did not even  
communicate with you about the fact that he could not be here  
for this hearing?

A Well, he's obviously not here.

Q Okay. So the first indication that you got from  
your attorney that he was not going to be here was when you  
arrived and discovered he was not here?

A It was my understanding that he was not going to  
be here.

Q It was your understanding that he was not going  
to be here? Is that what you said?

A It was my understanding he was not going to be here.

Q Not going to be here.

A This was second-hand information. When I came today, I saw that obviously he wasn't here.

Q But you did come here voluntarily with some expectation that perhaps he may have been here?

A Yes, sir.

Q At least as far as you were concerned, first-hand, you were not directly advised by Mr. Kirschner that he could not be here; is that right, or that he would not be here?

A It was my understanding that he could not make it.

Q But there was still some doubt in your mind that he may have made it, right?

A I didn't know until I walked in the door, sir.

REPRESENTATIVE FISHER: That's all.

REPRESENTATIVE RICHARDSON: Representative Oliver?

BY REPRESENTATIVE OLIVER.

Q In other words, Officer Garrell, never at any time did your counsel tell you that he would not be here today?

A Not directly, sir; indirectly, he did.

Q I am not speaking about indirectly; I'm talking

about directly. He never told you that he would not be here today?

A He did indirectly, sir.

Q Would you explain to me how he did that indirectly?

A Through various channels he communicated.

Q Well, actually, you don't know whether he said it or not?

A Right.

Q So he never told you then personally that he would not be here today?

A Not directly, sir.

REPRESENTATIVE OLIVER: That's all.

BY REPRESENTATIVE RICHARDSON:

Q I leave that question as it stands then, that the only answer that you have to my question of whether or not you are going to be subpoenaed is that you are not represented by counsel; that is the only answer?

A Yes, sir.

REPRESENTATIVE RICHARDSON: Mr. McClea?

BY MR. McCLEA:

Q Mr. Garrell, I don't think this Committee has too much difficulty with your taking the Fifth Amendment to

appropriate questions. I think there is a concern on behalf of this Committee -- and perhaps I don't speak for every member -- as to the need to have to subpoena somebody to be here, because his attorney is not here. I think it concerns this Committee that we have to go that far -- not because you did not make yourself present, but because the attorney did not, or he did not ask a representative to request the officers to accept him in his behalf, and perhaps maybe the other way. That concerns me; that we may have to resort to a subpoena, through no fault of your own, except your reluctance to either accept him as counsel or proceed with your testimony.

REPRESENTATIVE RICHARDSON: Representative Miller

REPRESENTATIVE MILLER: Pardon me for being late, but was it established that Mr. Kirschner was the gentleman's choice for counsel?

REPRESENTATIVE RICHARDSON: Yes, it was.

REPRESENTATIVE MILLER: That was established

Thank you.

BY REPRESENTATIVE RICHARDSON:

Q If it wasn't established, we ought to clarify that.

Who is your choice?



A (No audible response.)

BY MR. McCLEA:

Q Was your -- well, you haven't testified before, so -- or did you? Even though you have not testified the first day of hearings, did you accept the other attorney who is here in the room today, Mr. Goldstein, as your attorney on the first day?

A Today is the first day I testified.

Q And prior to that you have never asked anybody else to represent you?

A You are putting your question in the form of a statement.

Would you repeat your question, please?

Q Did you, prior to today, ask anybody to represent you?

A Yes, sir.

Q Was that Mr Kirschner?

A Yes, sir.

Q So, on the first day of the hearings, you did not ask Mr. Goldstein who was here as an attorney from that office to represent you?

A I didn't.

MR. McCLEA: Thank you.

REPRESENTATIVE RICHARDSON. Mr. Kagan?

BY MR. KAGAN:

Q Let me just make one thing perfectly clear to the witness, and any other prospective witnesses that may be here in the audience:

The Committee and the House of Representatives extend to individuals that they call before their Committee the right, or the privilege to have counsel with them. If a witness comes and appears before the Committee voluntarily and has been apprized of his right to have counsel, that does not mean that a witness here before the Committee under oath can fail to speak or to say he will not speak, because he does not have counsel with him. He has been afforded the right to bring counsel with him if he so chooses. If his counsel does not appear with him, that is his fault.

You have been afforded the right, and you have been given notice to have counsel. If you don't want to appear, you don't have to appear unless you are subpoenaed. But if you are here willingly to testify, you cannot refuse to answer questions because your counsel has chosen not to attend. The right to bring counsel with you to a hearing

before this Committee is not a right written in stone. It is an invitation to come, and the opportunity to bring counsel is something that we give to you. If he is not here, that is his problem, and maybe your problem, but you can't refuse to give testimony on that basis.

A (No audible response.)

BY REPRESENTATIVE RICHARDSON:

Q After hearing the comments of Mr. Kagan, Mr. Garrell, I just want to make it very clear as to the fact that you are here voluntarily and nobody forced you to be here at this time, which is why I asked you if it would be better for you to testify before this Committee, noting that you are under oath before this Committee, and, therefore, you recognize the seriousness of these particular hearings, and what they mean

I think that all that can be said on this matter has been said, and you have that information at your disposal. I hope you have internalized that and maybe now have an understanding of the rules of this House. Did you read House Resolution 47 before you came before this Committee?

A Yes, sir.

Q Do you understand what it said?

A Yes, sir.

Q Do you understand Rule 51 -- what it says?

A Yes, sir.

Q And you went ahead and got your counselor, and do you understand that this Committee can subpoena you and your documents and records and what-have-you concerning this particular matter? And certainly you have the constitutional right, which you just read off, but I want to make it clear that you are not operating under the same guidelines that you are operating under in court. This is the House of Representatives. Therefore, I think a lot of things that have been told to you by counsel do not refer to this particular House proceeding, as it is set up. I think you should be so advised about what we are operating under.

If there are no other questions from the Committee, you are excused. And we will ascertain as a Committee as to what we are going to do with you; whether we are going to subpoena you or not.

(Witness excused.)

REPRESENTATIVE RICHARDSON: Officer Wolfe?

GREGORY L. WOLFE, called as a witness,  
being first duly sworn, according to  
law, testified as follows:

BY REPRESENTATIVE RICHARDSON:

Q Officer Wolfe, would you state your name for the  
record, please?

A Gregory L. Wolfe.

Q And your position?

A Corrections Officer

Q Are you represented by counsel, sir?

A Yes, sir.

Q Who is your counselor?

A Mr Goldstein.

REPRESENTATIVE RICHARDSON: Mr. Goldstein, are  
you his counsel?

MR. GOLDSTEIN: Yes, I am

BY REPRESENTATIVE RICHARDSON:

Q Officer Wolfe, I would like to know how many years  
you have been a Corrections Officer at the Camp Hill Institution.

(Mr. Wolfe consulted with his counsel )

MR. WOLFE: On advice of counsel, I refuse to

answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Do you have a problem that your answer would be incriminating if you tell us how many years you have worked at the Institution at Camp Hill?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: On advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Do you know how many years you have worked at Camp Hill?

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(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: On advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Were you present and working on October 15, 1975, at the Camp Hill Institution?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: On advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Do you know Sergeant Stotelmyer?

(Mr. Wolfe consulted with his attorney.)

MR. WOLFE: On advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Do you know Mr. Kirschner?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: Yes, I do.

BY REPRESENTATIVE RICHARDSON:

Q Do you know the counselor who is sitting next to you?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: Yes, I do.

BY REPRESENTATIVE RICHARDSON.

Q Did you ever retain or request that Mr. Kirschner



be your lawyer?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: Yes, I have.

BY REPRESENTATIVE RICHARDSON:

Q Yes, you have what?

A Requested that Mr. Kirschner be my counsel.

Q And you have requested Mr. Goldstein to be your counselor; is that correct?

A That's correct.

Q So you have two counselors, then, is that right?

A Yes.

Q Okay.

Do you know what a duster is?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: On advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Do you know what Mace is?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: On advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

REPRESENTATIVE MILLER: Mr. Chairman?

REPRESENTATIVE RICHARDSON: Representative Miller.

REPRESENTATIVE MILLER: Mr. Chairman, have both consul for the witness and the witnesses that have appeared been instructed as to the recourses available to this Committee under the rules of the Pennsylvania General Assembly, wherein witnesses appear to be abridging the Fifth Amendment prerogatives and taking that statement for all questions answered? Are they aware, number one, that we can issue formal subpoenas? And then, refusing, in that circumstance, we can go further and, indeed, go as far as calling them before the full House of Representatives. If there they refuse to answer,

we have the authority to commit them to Dauphin County Prison.

Now has counsel advised his client of that?

MR. GOLDSTEIN: May I respond?

REPRESENTATIVE MILLER: Yes.

MR. GOLDSTEIN: Yes.

REPRESENTATIVE MILLER: They are aware of the full series of prerogatives?

MR. GOLDSTEIN: Yes.

REPRESENTATIVE MILLER: And is it counsel's intention to continue with all witnesses the carte blanche use of the Fifth Amendment, which is certainly, if not specifically, at least abrogating the spirit of its intent?

MR. GOLDSTEIN: I cannot subscribe to that statement at all.

REPRESENTATIVE MILLER: I am not asking you to subscribe; I am asking you to answer it.

MR. GOLDSTEIN: The only thing I can tell you is that in the exercise of my judgment, when questions are asked of witnesses whom I represent, I will advise them as to each and every question whether or not to exercise their rights under the Fifth and Fourteenth Amendments of the United States Constitution.

REPRESENTATIVE MILLER: I thank the gentleman.

Thank you, Mr. Chairman.

BY REPRESENTATIVE RICHARDSON:

Q I will ask you, are you aware that you could possibly go to jail, Officer?

A Yes, sir.

Q Are you aware that in answering questions like whether or not you know what Mace is and you take the Fifth Amendment, that you are aware of the seriousness of the particular situation which you are putting your own self into? Do you understand that?

(Mr. Wolfe consulted with his counsel )

MR. WOLFE: On advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Were you walking beat on the night of October 15th when the alleged fires were supposed to have been started on

the tier of Ward "C" -- that particular night in question, October 15th?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: On advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Do you know Officer Green?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: On advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Is Officer Green sitting in this room?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: On the advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Do you know at this present time, you are wearing out the Fifth Amendment?

I think it should be noted very clearly to you, Mr. Wolfe, that asking you whether or not you can identify an officer in this room where you are sitting, particularly as it relates to our Committee, is certainly a violation of that Fifth Amendment when you refuse. And I think, respectfully, you should be aware of exactly what you are doing, along with your counselor, so he can continue to advise you as to whatever manner he wants, but at least what the repercussions

could indicate, that it could move on into something very serious.

Are you married, sir?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: Yes, sir.

BY REPRESENTATIVE RICHARDSON:

Q And you have children?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: Yes.

REPRESENTATIVE RICHARDSON: Sam McClea?

BY MR. McCLEA:

Q Have you been to any of the other days on which we had hearings?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: No, I have not.

BY MR. McCLEA:

Q This is your first?

A Yes.

MR. McCLEA: I have a question for the attorney. Have you been at any other of the days on which we have had hearings?

MR. GOLDSTEIN: Yes, I have.

MR. McCLEA: Was it the first day?

MR. GOLDSTEIN: I don't know whether or not it was the first day of this Committee's investigation.

MR. McCLEA: Have you been here for more than one day?

MR. GOLDSTEIN: Yes.

MR. McCLEA: During those days, were any officers asked to testify?

MR. GOLDSTEIN: On one of those days.

MR. McCLEA: Were you familiar with the person whom you worked with, Mr. Kirschner -- his usage and advice that he was making to the guards that he was representing in the usage of the Fifth and Fourteenth Amendments?

MR. GOLDSTEIN: Are you asking me, did I see him?

MR. McCLEA: Did you see him, and hear him, and take cognizance of -- well, cognizance is something we would have to assume.

MR. GOLDSTEIN: It is a valid assumption. Yes.

MR. McCLEA: Would you say from seeing and hearing



then and the recall that you may have, that some of the questions that were asked officers at that time have also been asked of this officer?

MR. GOLDSTEIN: I really couldn't recall that.

BY MR. McCLEA:

Q Officer, you are aware that your attorney is giving you advice and not orders?

A Yes, I am.

Q You are.

And that any penalty that would have to be paid would have to be paid by yourself and not the attorney?

MR. GOLDSTEIN: I don't think the witness is qualified to answer that.

MR. McCLEA: Well, is he aware of the consequences?

BY REPRESENTATIVE RICHARDSON:

Q Well, we will ask you directly: Are you aware of the consequences? You can confer with your counsel.

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: I cannot answer that question, because I do not feel qualified

BY MR. McCLEA:

Q Has your attorney made you aware that if there are consequences to be paid by your testimony, that they are not consequences on his behalf, but they are consequences that you would have to pay?

A Yes.

Q He has?

A Yes.

Q I asked that because if the hearings turn into a "Mickey Mouse" game, who the results of that game would fall upon would probably not rest on the attorney giving advice. That is not who would be called before the House. That is a decision you and your own self would have to make.

A Yes.

REPRESENTATIVE RICHARDSON: Representative Oliver?

BY REPRESENTATIVE OLIVER:

Q Officer Wolfe, do you know of any directives that were issued as far as restraining inmates?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: On advice of counsel, I refuse to answer this question on the grounds that my answer may tend to

incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

REPRESENTATIVE OLIVER: That's all.

REPRESENTATIVE RICHARDSON: Representative Ross?

REPRESENTATIVE ROSS: No questions.

REPRESENTATIVE RICHARDSON: Representative Lederer?

BY REPRESENTATIVE LEDERER.

Q Officer Wolfe, would you say that a Correctional Officer is judged on what he observes and how he reacts to what he observes?

(Mr. Wolfe consulted with his attorney.)

MR. WOLFE: Would you repeat that, please?

BY REPRESENTATIVE LEDERER:

Q Would you say that a Correctional Officer may be judged by his peers on what he observes and how he reacts to what he observes?

A Yes, I do.

Q Would you say a Block Officer should observe more than other duty officers?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: I am a trainee, and because of my lack of experience, I do not feel qualified to answer that question.

BY REPRESENTATIVE LEDERER:

Q I am a little late, and I apologize How long have you been with the Department of Corrections?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: Six months.

BY REPRESENTATIVE LEDERER:

Q In that six months, have you been isolated to one section in your duties, or have you been given an overall sort of thing -- a little bit of this and a little bit of that?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: I've been given overall duties.

BY REPRESENTATIVE LEDERER:

Q I am trying to avoid questions which would get into the Fifth and Fourteenth Amendments of our great Constitution.

From your knowledge, a Block Officer -- he would

report to a supervisor any tensions or problems in a block?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: Most definitely they would.

BY REPRESENTATIVE LEDERER:

Q In your own words, could you tell me, to your knowledge, what the duties are of a Block Officer?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: There is a job description that would more adequately describe the duties than what I could give you.

BY REPRESENTATIVE LEDERER:

Q Would you say it would be unfair for me to ask you that job description?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: Yes.

BY REPRESENTATIVE LEDERER:

Q Well, I didn't ask for the job description, I asked you in your own words.

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: I don't believe I am adequately knowledgeable enough to describe what the functions are completely, or impartial.

BY REPRESENTATIVE LEDERER:

Q I accept that answer.

To your knowledge, when a Block Officer reports any incident in his cell block for disciplinary reasons, is it true that there is some kind of board or hierarchy that he reports to in writing?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: We have a form which we write all incidents that happen. And this form is given to either a minor or a major court within the Institution. And whatever court has the paper decides what should be done.

REPRESENTATIVE LEDERER: Okay. No more questions.

REPRESENTATIVE RICHARDSON: Attorney Hartman?

MR. HARTMAN: No questions.

REPRESENTATIVE RICHARDSON: Representative Oliver?

BY REPRESENTATIVE OLIVER:

Q Officer Wolfe, did you obtain this job through a Civil Service examination?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: Yes, sir, I did.

BY REPRESENTATIVE OLIVER:

Q Approximately how long ago did you take the examination?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: To the best of my knowledge, I believe it was August of '74.

BY REPRESENTATIVE OLIVER

Q And you have been employed for six months?

A Yes, sir.

Q Can you tell this Committee then the day you were hired, what sort of guidelines you were given?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: Your question is unclear to me.

BY REPRESENTATIVE OLIVER:

Q As far as your duties are concerned, did anybody talk to you and tell you about the rules and regulations and what duties you had to perform?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: Yes, we had classes, training classes, for the first two months. And there is a continuing process for the first year in which you are considered a trainee, so it is a continual program.

BY REPRESENTATIVE OLIVER:

Q On the first day you reported for work, as far as your duties were concerned, did anybody outline to you your duties as a Correctional Officer?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: The first day on the job we took some psychiatric or psychology tests, approximately four or five hours long.

BY REPRESENTATIVE OLIVER:

Q That is not the question. I asked you specifically, did anybody tell you what your duties were?

A On the first day?

Q Yes, on the first day.

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: No. On the first day we were given tests.

BY REPRESENTATIVE OLIVER:



Q So, within the past six months, has anybody told you what your daily duties are?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: Could you repeat your question?

BY REPRESENTATIVE OLIVER:

Q Within the past six months, has anyone told you what your specific duties are?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: My job is continually training, and each day I may have a different job. And I learn my requirements for that job then, but it is very seldom the same thing.

BY REPRESENTATIVE OLIVER:

Q Have you finished that training?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: No. Training is one year.

BY REPRESENTATIVE OLIVER:

Q For example, tomorrow, what will your duties be?

A I have no idea.

Q Who will issue these orders to you?

A The Captain.

Q What Captain?

A I have no idea what Captain will be on the shift tomorrow.

Q Who issued that to you yesterday?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: I cannot recall the name.

BY REPRESENTATIVE OLIVER:

Q What were your duties yesterday?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: I am just taking a minute to clear myself.

When I arrived in the Institution, my first job -- yesterday was our holiday routine; it was a state holiday. My first job was to go in and patrol a block that was at the movies, and there were people left in. I was to patrol that block. As I got inside, I was told to man a tower until they found someone to replace me. When I got replaced, I came inside the Institution, went down and ate my lunch. After lunch, I came back to relieve the man who was patrolling the ward, so he could go down to eat.

When I was then patrolling the ward, the Lieutenant

called me to go out to the main gate and pick up a man who was transferred, whom we took to solitary -- BAU. After we dropped that man off at the BAU, I went down and stood main line -- do you understand what I am saying?

BY REPRESENTATIVE OLIVER:

Q Well, I have never been there.

A Well, "main line" is when they feed the inmates.

After main line, I went up to "A" Ward, and we counted at five o'clock. Then we had their exercise period until nine o'clock. At nine o'clock they were locked in, and for the last hour we just tried to keep them quiet.

Q In other words, more than one person gave you assignments yesterday, did they not?

A That's correct.

Q What was your assignment for today?

A My assignment for today -- I worked from six to two this morning. I worked overtime. My assignment was main line, and I relieved two wards. I took a sick line over to the dispensary.

Q Who issued those orders today?

A This morning, Captain Egan--

Q Captain who?

A Captain Egan and Lieutenant Williams.

REPRESENTATIVE OLIVER: All right. Thank you.

REPRESENTATIVE RICHARDSON: Representative Fisher?

REPRESENTATIVE FISHER: I have no questions.

REPRESENTATIVE RICHARDSON: Representative Lederer?

BY REPRESENTATIVE LEDERER:

Q May I ask a question, in the form of a statement, I guess?

Officer Wolfe, would you say that a Correctional Officer who works block duty, who does not know all he should observe, has the right to write up for discipline matters?

(Mr. Wolfe consulted with his counsel).

MR. WOLFE: I don't understand your question.

BY REPRESENTATIVE LEDERER:

Q A trainee, right? Do you think, while working block duty or any other duty in an institution who may not be called down to note what he observes or doesn't observe, has the right to write up an inmate for discipline reasons?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: I don't understand what you are trying to ask me.

BY REPRESENTATIVE LEDERER:

Q All right, we will try it again.

I am a trainee, with less than a year in, and I am working as a Correctional Officer. Do you think I have the right, if I see an inmate commit an infraction, to write him up?

(Mr. Wolfe consulted with his counsel.)

MR. WOLFE: Yes, he would be qualified to write him up.

REPRESENTATIVE LEDERER: Okay No more questions.

REPRESENTATIVE RICHARDSON: Officer Wolfe, I would like to let you know that you are excused for now, subject to being called back at the call of the Speaker. And I appreciate your coming in and testifying.

(Witness excused.)

REPRESENTATIVE RICHARDSON: Officer Smith?

FREDERICK A. SMITH, Jr., recalled as a witness, having been previously sworn, according to law, testified as follows:

BY REPRESENTATIVE RICHARDSON:

Q I will remind you, Officer Smith, that you are still under oath.

Would you state your name for the record, please?

A Frederick A. Smith, Jr.

Q And your position?

A Correctional Officer I, State Correctional Institution at Camp Hill.

Q Are you represented by counsel?

A My counsel is not here I requested Mr. Goldstein to represent me at this hearing.

Q Okay then, you are represented by counsel as so indicated for the record

A Yes, sir.

Q How long have you been a Correctional Officer, sir?

(Mr. Smith consulted with his counsel.)

MR. SMITH: It will be four years in December.

BY REPRESENTATIVE RICHARDSON:

Q Four years in December?

A Yes.

Q And as a result of your being a Correctional

Officer there at the Institution, you have seen several --  
let me rephrase that.

Officer Smith, have you ever seen any misconduct  
on behalf of the inmates, juveniles in particular, where there  
have been altercations between the two?

(Mr. Smith consulted with his counsel.)

MR. SMITH: Could you repeat that?

BY REPRESENTATIVE RICHARDSON:

Q Have you ever seen any fighting or any other kind  
of altercations between the inmates inside the Institution,  
specifically, juveniles?

(Mr. Smith consulted with his counsel.)

MR. SMITH: Yes, sir.

BY REPRESENTATIVE RICHARDSON:

Q As a result of that, have you ever interceded and  
broken any of them up?

(Mr. Smith consulted with his counsel.)

MR. SMITH: On advice of counsel, I refuse to  
answer this question on the grounds that my answer may tend to

incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Were you present on October 15, at the Camp Hill Institution?

(Mr. Smith consulted with his counsel.)

MR. SMITH: On advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Do you know Sergeant Stotelmyer?

(Mr. Smith consulted with his counsel.)

MR. SMITH: Yes, sir.



BY REPRESENTATIVE RICHARDSON:

Q Is he your superior?

A No, sir.

Q Was he also present on October 15th when you were working?

(Mr. Smith consulted with his counsel.)

MR. SMITH: On advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Did you see any Correctional Officer punch, beat, kick, throw down a pair of steps, throw their heads up against the wall, or bang their heads up against the bars, on October 15 or October 20th?

(Mr. Smith consulted with his counsel.)

MR. SMITH: On advice of counsel, I refuse to answer this question on the grounds that my answer may tend to

incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Have you ever beaten or punched an inmate at this Institution?

(Mr. Smith consulted with his counsel.)

MR. SMITH: On advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and, I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Do you know what a duster is?

(Mr. Smith consulted with his counsel.)

MR. SMITH: Yes, sir.

BY REPRESENTATIVE RICHARDSON:

Q Could you tell this Committee what the duster is?

(Mr. Smith consulted with his counsel.)

MR. SMITH: My understanding of a duster is that it is a slang word for a short billy-club.

BY REPRESENTATIVE RICHARDSON:

Q Have you ever seen one?

(Mr. Smith consulted with his counsel.)

MR. SMITH: Yes, sir.

BY REPRESENTATIVE RICHARDSON:

Q At your Institution?

(Mr. Smith consulted with his counsel.)

MR. SMITH: No, sir.

BY REPRESENTATIVE RICHARDSON:

Q Somewhere else?

A Yes, sir.

Q Do you know what Mace is?

A Yes, sir.

REPRESENTATIVE RICHARDSON: Representative Oliver?

REPRESENTATIVE OLIVER: No questions.

REPRESENTATIVE RICHARDSON: Representative Lederer?

BY REPRESENTATIVE LEDERER:

Q Officer Smith, as an experienced officer, would you say that a block officer's main use would be to observe?

(Mr. Smith consulted with his counsel.)

MR. SMITH: No, sir.

BY REPRESENTATIVE LEDERER:

Q One other question:

Would you say that a trainee should not be in a block alone without an experienced officer?

(Mr. Smith consulted with his counsel.)

MR. SMITH: Yes, sir.

REPRESENTATIVE LEDERER: Thank you.

REPRESENTATIVE RICHARDSON: Representative Fisher?

REPRESENTATIVE FISHER: No questions.

REPRESENTATIVE RICHARDSON: Mr. Kagan?

MR. KAGAN: No questions.

REPRESENTATIVE RICHARDSON: Mr. Hartman?

MR. HARTMAN: No questions.

REPRESENTATIVE RICHARDSON: You are excused,  
Officer Smith.

At the present time I would like to indicate that  
if this Committee so desires, we will call you back, for  
further questioning.

(Witness excused.)

REPRESENTATIVE RICHARDSON: Officer Green?

ERNEST J. GREEN, recalled as a witness,  
having been previously sworn, according  
to law, testified as follows:

BY REPRESENTATIVE RICHARDSON:

Q Mr. Green, you have already been sworn, is that  
correct?

A Yes.

Q Would you state your name, please?

A Ernest J. Green.

Q And your position?

A Correctional Officer I.

Q Let me know whether or not you are represented

by counsel.

A Yes, I am.

Q State his name for the record.

A Mr. Goldstein.

Q How long have you been a Correctional Officer at Camp Hill?

A Ten years.

Q And in those ten years there at the Institution, have you ever had an occasion to separate any juvenile inmates who might be fighting among themselves?

(Mr. Green consulted with his counsel.)

MR. GREEN: On the advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON·

Q Did you have any training prior to your becoming a Correctional Officer at Camp Hill, sir?

(Mr. Green consulted with his counsel.)

MR. GREEN: Yes.

BY REPRESENTATIVE RICHARDSON:

Q And what was that?

(Mr. Green consulted with his counsel.)

MR. GREEN: Intermediate and mediate (sic) training schools.

BY REPRESENTATIVE RICHARDSON:

Q Is that located here in this vicinity?

A It is in the State Correctional Institution at Camp Hill.

Q You are saying that it is part of Camp Hill?

(Mr. Green consulted with his counsel.)

MR. GREEN: At the Bureau of Corrections.

BY REPRESENTATIVE RICHARDSON:

Q The Bureau of Corrections?

A Yes, sir.

Q Before you became a Correctional Officer?

A Oh, no.

(Mr. Green consulted with his counsel.)

BY REPRESENTATIVE RICHARDSON:

Q My question was, what was your training prior to your becoming a Correctional Officer at the Institution?

(Mr. Green consulted with his counsel.)

MR. GREEN: I was an attendant before I came to Camp Hill. I was an attendant at the Harrisburg State Hospital.

BY REPRESENTATIVE RICHARDSON:

Q Well, did you have any training there before you became an officer at that particular State Hospital?

(Mr. Green consulted with his counsel.)

MR. GREEN: Yes, I was trained.

BY REPRESENTATIVE RICHARDSON:

Q Who trained you then?

(Mr. Green consulted with his counsel.)

MR. GREEN: The school there.

BY REPRESENTATIVE RICHARDSON:

Q There is a school there, you are indicating to this Committee, and at that time --

A At the State Hospital.

Q -- they trained you?



A Yes.

Q Did you ever go to school for this training?

(Mr. Green consulted with his counsel.)

MR. GREEN: There were classes there.

BY REPRESENTATIVE RICHARDSON:

Q And you went to those classes, sir?

A Yes.

Q What were the instructions in those classes?

(Mr. Green consulted with his counsel.)

MR. GREEN: How to care for the patients.

BY REPRESENTATIVE RICHARDSON:

Q How to care for the patients?

A Yes.

Q So that is the only training, caring for patients, prior to your becoming a Correctional Officer at Camp Hill, right?

(Mr. Green consulted with his counsel.)

MR. GREEN: Yes.

BY REPRESENTATIVE RICHARDSON:

Q Then you left there at the State Hospital, and

you came over to Camp Hill to become a Correctional Officer?

A Yes.

Q And you passed the test?

A Yes.

Q Do you envision that this is going to be a career you are going to continue to pursue?

A Yes.

Q Are you up for promotion at this time?

(Mr. Green consulted with his counsel.)

MR. GREEN: I don't know.

BY REPRESENTATIVE RICHARDSON:

Q Were you present on October 15th?

(Mr. Green consulted with his counsel.)

MR. GREEN: On advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Were you present on October 20th?

(Mr. Green consulted with his counsel.)

MR. GREEN: On the advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Have you ever seen a Correctional Officer hit an inmate?

(Mr. Green consulted with his counsel.)

MR. GREEN: On the advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON.

Q Do you know Sergeant Stotelmyer?

(Mr. Green consulted with his counsel.)

MR. GREEN: Yes.

BY REPRESENTATIVE RICHARDSON:

Q Is he your immediate boss, superior?

(Mr. Green consulted with his counsel.)

MR. GREEN: No, sir.

BY REPRESENTATIVE RICHARDSON:

Q Does he work on the shift that you work on?

(Mr. Green consulted with his counsel )

MR. GREEN: No, sir.

BY REPRESENTATIVE RICHARDSON:

Q What shift do you work, sir?

(Mr. Green consulted with his counsel.)

MR. GREEN: I work 6 a m to 2 p.m

BY REPRESENTATIVE RICHARDSON:

Q Six a.m. to two p m.?

A Yes.

Q Therefore, you are there early in the morning?

A Yes.

Q You have to get up early to get there.

Do you feed the inmates?

(Mr. Green consulted with his counsel.)

MR. GREEN: Yes, I do.

BY REPRESENTATIVE RICHARDSON:

Q What time do they eat?

(Mr Green consulted with his counsel.)

MR. GREEN: 6-15 a.m

REPRESENTATIVE RICHARDSON: Representative Lederer?

BY REPRESENTATIVE LEDERER:

Q Is it your experience that the Bureau Training School is adequate?

(Mr. Green consulted with his counsel.)

MR. GREEN: Yes.

BY REPRESENTATIVE LEDERER:

Q Could you briefly, Officer Green, give us the main

functions of a block officer?

(Mr. Green consulted with his counsel.)

MR. GREEN: The duties of a Correctional Officer are contained in a job description published by the Bureau of Corrections, and I feel that I cannot adequately describe all of the functions and responsibilities of the position.

BY REPRESENTATIVE LEDERER:

Q I am going to give you that same question, the same way again, all right?

In your own words, can you tell me the duties of a block officer, his main functions?

(Mr. Green consulted with his counsel.)

MR. GREEN: To the best of my ability, as a Correctional Officer and a Block Officer, the responsibilities of a Block Officer are to see that the men are fed, to see that they get what is entitled to them, answer all problems that the inmates have -- that's one of the main things -- security.

(Mr. Green consulted with his counsel.)

MR. GREEN: All of the responsibilities are in the job description.

BY REPRESENTATIVE LEDERER:

Q Would you say that a valuable tool for a Block Officer is observation?

(Mr. Green consulted with his counsel.)

MR. GREEN: In my opinion, yes.

REPRESENTATIVE LEDERER: Thank you.

REPRESENTATIVE RICHARDSON Mr. Kagan?

MR. KAGAN: No questions.

REPRESENTATIVE RICHARDSON: Mr. Hartman?

MR. HARTMAN: No questions.

REPRESENTATIVE RICHARDSON: Representative Oliver?

BY REPRESENTATIVE OLIVER:

Q Officer, how many guards does it take to enter a cell to remove an inmate?

(Mr. Green consulted with his counsel.)

MR. GREEN: On the advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the

Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania,

BY REPRESENTATIVE OLIVER:

Q Have you ever, on any occasion, had to enter a cell to remove an inmate -- you personally?

(Mr. Green consulted with his counsel.)

MR. GREEN: On the advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE OLIVER:

Q Do you work pretty steady?

(Mr. Green consulted with his counsel.)

MR. GREEN: What do you mean, do I work every day, sir?



BY REPRESENTATIVE OLIVER:

Q Just how many days have you been off from work, say, in the past six months?

(Mr. Green consulted with his counsel.)

MR. GREEN: I really can't answer that.

BY REPRESENTATIVE OLIVER:

Q May I ask you this question then? Were you paid for the day of October 15th?

(Mr. Green consulted with his counsel.)

MR. GREEN: On the advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me, and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE OLIVER:

Q Have you ever, on any occasion, had to restrain an inmate?

(Mr. Green consulted with his counsel.)

MR. GREEN: On the advice of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE OLIVER:

Q Have you ever had any formal training as far as restraining inmates is concerned?

(Mr. Green consulted with his counsel )

MR. GREEN: Yes.

BY REPRESENTATIVE OLIVER:

Q Could you tell us what that was?

(Mr. Green consulted with his counsel )

MR. GREEN: At the Bureau of Corrections, yes, sir.

BY REPRESENTATIVE OLIVER:

Q Pardon me?

A At the Training School at the Bureau of Corrections.

Q        Could you tell us what sort of training they give you?

(Mr. Green consulted with his counsel.)

MR. GREEN: It was how to restrain and how to work with inmates -- about four weeks of classes.

BY REPRESENTATIVE OLIVER:

Q        In what manner, as far as handling the inmates was concerned?

(Mr Green consulted with his counsel.)

MR. GREEN: Well, there were lectures and practical exercises.

BY REPRESENTATIVE OLIVER:

Q        Well, can you tell us what you were shown, or what you were told?

(Mr. Green consulted with his counsel.)

MR. GREEN: I don't remember all of it, but the practical basis of how to do it they told me

BY REPRESENTATIVE OLIVER:

Q        Well, tell us what you remember.

A Well, they always say that -- they always say, try to talk to the inmate, you know, and stuff like that -- just talking.

Q If you don't succeed by just talking to him, what do you do then?

(Mr. Green consulted with his counsel.)

MR. GREEN: We'l, they told us to use minimum force only to restrain an inmate

BY REPRESENTATIVE OLIVER:

Q Minimum force. What are you talking about?

(Mr. Green consulted with his counsel.)

MR. GREEN: Whatever force is necessary to subdue him.

BY REPRESENTATIVE OLIVER:

Q Well, you tell me what you would do personally to subdue him.

(Mr. Green consulted with his counsel.)

MR. GREEN: I would use whatever necessary force to subdue him.

BY REPRESENTATIVE OLIVER:

Q For example, if an inmate, let's say, punched you, what sort of force would you use? What would you do?

(Mr. Green consulted with his counsel.)

MR. GREEN: That really depends on the circumstances of the situation.

BY REPRESENTATIVE OLIVER:

Q I will ask the question again: If an inmate punched you, what would you do?

(Mr. Green consulted with his counsel )

MR. GREEN: That depends on the circumstances of the incident; that just depends.

BY REPRESENTATIVE OLIVER:

Q You haven't told me anything.

On the night of October 15th, tell us what happened.

(Mr. Green consulted with his counsel.)

MR. GREEN: On the advice of counsel, I refuse to answer this question on the grounds that my answer may tend

to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

REPRESENTATIVE OLIVER: That's all.

BY REPRESENTATIVE RICHARDSON

Q Two questions.

If you know, approximately how many Black Correctional Officers are there at Camp Hill?

(Mr. Green consulted with his counsel.)

MR. GREEN: I am not sure.

BY REPRESENTATIVE RICHARDSON:

Q Approximately? That's why I asked the question before. I asked, approximately. Let me state it again: Approximately how many are there, more than ten or less than ten?

(Mr. Green consulted with his counsel.)

MR. GREEN: Approximately less than ten.

BY REPRESENTATIVE RICHARDSON:

Q In the whole Institution?

(Mr. Green consulted with his counsel.)

MR. GREEN: I am not sure

BY REPRESENTATIVE RICHARDSON:

Q You are not sure?

A No.

Q Are any of those sergeants or captains?

(Mr. Green consulted with his counsel )

MR. GREEN: Yes, sir.

BY REPRESENTATIVE RICHARDSON:

Q How many?

A Three.

Q What are they?

(Mr. Green consulted with his counsel.)

MR. GREEN: One Lieutenant and two Sergeants.

BY REPRESENTATIVE RICHARDSON:

Q Okay. Do they work on your shift?

(Mr. Green consulted with his counsel.)

MR. GREEN: One.

BY REPRESENTATIVE RICHARDSON:

Q Do you know if any of them were present on October 15th or October 20th?

(Mr. Green consulted with his counsel.)

MR. GREEN: On the advise of counsel, I refuse to answer this question on the grounds that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self-incrimination as contained in the Constitution of the Commonwealth of Pennsylvania

BY REPRESENTATIVE RICHARDSON:

Q Are you Civil Service?

A Yes, sir.

Q Is there any reason why there are less than ten Black Correctional Officers at the Institution, if you know?

A I don't know.

Q Do they get assigned there?

A I don't know.

Q Have you requested that more black officers to be sent to Camp Hill?

A Yes, sir.



Q Through a particular Union or something that you work with on the outside of the Institution?

(Mr. Green consulted with his counsel.)

MR. GREEN: To the Bureau of Corrections.

BY REPRESENTATIVE RICHARDSON:

Q The Bureau of Corrections?

A Yes, sir.

Q Do you know the approximate number of black inmates inside the Institution?

(Mr. Green consulted with his counsel.)

MR. GREEN: No, sir.

BY REPRESENTATIVE RICHARDSON:

Q Could you tell me whether or not, Officer Green, there has been a move also by the Bureau to seek additional black Correctional Officers, because the Institution is about seventy per cent black?

A I don't know, Mr. Richardson.

REPRESENTATIVE RICHARDSON: Thank you very much.

I would like to let you know that you are excused now, but you are subject to being recalled a little

later.

This Committee thanks you very much for your answers.

(Witness excused.)

REPRESENTATIVE RICHARDSON: We will now take a five-minute recess for our stenographer.

(A recess was taken.)

REPRESENTATIVE RICHARDSON: The time of recess having expired, I would like to call the Committee to order.

I would like to call Mr. Maynard Strock.

MAYNARD E. STROCK, recalled as a witness, having been previously sworn, according to law, testified as follows:

BY REPRESENTATIVE RICHARDSON:

Q Would you state your name for the record?

A Maynard Strock.

Q You have already been sworn?

A Yes, I have.

Q Would you identify your position?

A I am a State Correctional Officer at Camp Hill.

Q Are you represented by counsel?

A Yes, sir.

Q Who is that?

A Mr. Goldstein.

Q How long have you been employed at the Correctional Institution at Camp Hill?

A A little over a year.

Q And in that year, have you had any training?

A Yes, sir, I have.

Q Have you had any training with juveniles concerning the correct manner in which you should handle juveniles.

(Mr. Strock conferred with his counsel.)

MR. STROCK: Yes.

BY REPRESENTATIVE RICHARDSON:

Q And what was the training specifically as relating to juveniles? I am not talking about overall training; I am talking about juveniles.

(Mr. Strock consulted with his counsel.)

MR. STROCK: There was general basic training at the academy that I attended, and, of course, the juveniles were part of it.

REPRESENTATIVE RICHARDSON: Mr. Stenographer, would you read back my last question to the gentleman?

(The last question was read back by the reporter.)

(Mr. Strock consulted with his counsel.)

MR. STROCK: It was general training for inmates, and there was no specific training for juveniles.

BY REPRESENTATIVE RICHARDSON:

Q So, therefore, you never really received any specific training for juveniles and, therefore, it was incorporated into the overall general kind of training that might be instituted to all Correctional Officers?

A Right.

Q Specifically now I am asking you whether you can tell me about the little bit of training that you received about juveniles?

Can you tell me in your own words, what that little bit of training was?

(Mr. Strock consulted with his counsel.)

MR. STROCK: I don't recall any specific training for juveniles.

BY REPRESENTATIVE RICHARDSON:

Q So, therefore, you are saying you don't recall. You are not saying that there wasn't any general overall process? You don't recall what was discussed?

A That's right.

Q Do you know whether or not there was any psychological tests or evaluation given to yourself?

(Mr. Strock consulted with his counsel.)

4-4

MR. STROCK: To the best of my knowledge, I don't know if they were psychological tests. I don't know what they were.

BY REPRESENTATIVE RICHARDSON:

Q Have you had any psychological tests?

(Mr. Strock consulted with his counsel.)

MR. STROCK: To the best of my knowledge, I don't know.

BY REPRESENTATIVE RICHARDSON:

Q Were you present on October 15th?

(Mr. Strock consulted with his counsel?)

MR. STROCK: On advice of counsel I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Do you know Sergeant Stotelmyer?

(Mr. Strock consulted with his counsel.)

MR. STROCK: Yes, sir.

BY REPRESENTATIVE RICHARDSON:

Q Is he your superior?

A Yes, sir.

Q You have had occasions to work with him in the past?

(Mr. Strock consulted with his counsel.)

MR. STROCK: Yes, sir.

BY REPRESENTATIVE RICHARDSON:

Q Have you in any incidents ever had occasion to see him in operation?

(Mr. Strock consulted with his counsel.)

MR. STROCK: On advice of counsel I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Do you know whether or not, sir, Sergeant Stotelmyer grabbed any of the officers on that day -- strike that --

Do you know whether or not Sergeant Stotelmyer grabbed any inmates on that day and punched them?

(Mr. Strock consulted with his counsel.)

MR. STROCK: What day?

BY REPRESENTATIVE RICHARDSON:

Q October 15th or October 20th?

(Mr. Strock consulted with his counsel.)

MR. STROCK: On advice of counsel I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Do you know whether or not that happened on any day?

(Mr. Strock consulted with his counsel.)

MR. STROCK: On advice of counsel, I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the



Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Also, can you tell me whether or not, sir, you, as a Correctional Officer -- how many years have you worked there? Did you say one year?

A Yeah, a little over a year.

Q And in that year that you worked there, have you ever had occasion to see other Correctional Officers beat on or hit on or use excessive force against any inmates there?

(Mr. Strock consulted with his counsel.)

MR. STROCK: On advice of counsel, I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

REPRESENTATIVE RICHARDSON: Representative Oliver?

BY REPRESENTATIVE OLIVER:

Q Officer Strock, can you tell me what is minimum force. How do you define that?

(Mr. Strock consulted with his counsel.)

MR. STROCK: Only that force required to subdue an inmate.

BY REPRESENTATIVE OLIVER:

Q Would that mean physical contact?

(Mr. Strock consulted with his counsel.)

MR. STROCK: That would depend on the circumstances of the situation.

BY REPRESENTATIVE OLIVER:

Q Would you tell me under what sort of circumstances it would be physical, where physical contact would be used?

(Mr. Strock consulted with his counsel.)

MR. STROCK: On the advice of counsel, I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained

4-9

in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE OLIVER:

Q Could you tell this Committee what happened on the night of October 15th?

(Mr. Strock consulted his counsel.)

MR. STROCK: On advice of counsel I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE OLIVER:

Q Can you tell me as an individual, if you had to remove an inmate from the cell, would it be necessary for you to have more than one guard to do this?

(Mr. Strock consulted his counsel.)

MR. STROCK: On advice of counsel I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution

4-10

and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE OLIVER:

Q Have you ever had to remove an inmate from a cell?

(Mr. Strock consulted his counsel.)

MR. STROCK: On advice of counsel I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE OLIVER:

Q In your time working there, have you ever seen physical contact being used as far as an inmate is concerned?

(Mr. Strock consulted his counsel.)

MR. STROCK: On advice of counsel, I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in

the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE OLIVER:

Q Since you have been employed there, have you ever had an inmate strike you personally?

(Mr. Strock consulted with his counsel.)

MR. STROCK: No.

BY REPRESENTATIVE OLIVER:

Q Do you know of any inmate striking any other guard?

(Mr. Strock consulted with his counsel.)

MR. STROCK: No.

REPRESENTATIVE OLIVER: That's all.

REPRESENTATIVE RICHARDSON: Representative Lederer?

BY REPRESENTATIVE LEDERER:

Q Can you tell me how long a state employe must be an employe of the Commonwealth before he can join AFSCME?

(Mr. Strock consulted with his counsel.)

MR. STROCK: I don't know.

BY REPRESENTATIVE LEDERER:

Q Are you a member of AFSCME?

A Yes, I am.

Q Can you tell me how long it took you before you joined?

(Mr. Strock consulted with his counsel.)

MR. STROCK: I'm not sure.

BY REPRESENTATIVE LEDERER:

Q Would you say you have been a member over six months, or are you not sure about that?

(Mr. Strock consulted with his counsel.)

MR. STROCK: I'm not sure.

BY REPRESENTATIVE LEDERER:

Q Does your daily routine change much, like once a day, you might be a Block Officer and another day you might be in the tower? Does it vary? In other words, I am just trying to -- well, I'm sorry. Let me rephrase it.

At the beginning of the week, do you know your particular duties for that week?

(Mr. Strock consulted with his counsel.)

MR. STROCK: My assignments change each day of the week.

BY REPRESENTATIVE LEDERER:

Q Is that the normal for most noncommissioned officers?

(Mr. Strock consulted with his counsel.)

MR. STROCK: I believe it is, yes.

REPRESENTATIVE LEDERER: No further questions.

Thank you.

REPRESENTATIVE RICHARDSON: Mr. Kagan?

MR. KAGAN: No questions.

REPRESENTATIVE RICHARDSON: Thank you very much, Officer Strock.

I would like you to know that you are excused at this time but you are subject to being called at a later time by this Committee.

Thank you very much.

(Witness excused.)

REPRESENTATIVE RICHARDSON: I would like to call Mr. Thomas Stewart.

THOMAS STEWART, called as a witness,  
being first duly sworn according to  
law, testified as follows:

4-14

BY REPRESENTATIVE RICHARDSON:

Q Would you please state your name for the record?

A Thomas Stewart.

Q And your position?

A Correctional Officer I at Camp Hill.

Q Would you let me know whether or not you are represented by counsel?

A Yes, I am.

Q What is his name?

A Mr. Goldstein.

Q Are you an officer or a Sergeant?

A Correctional Officer I.

Q How long have you been a Correctional Officer at the institution?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: Twenty-two years.

BY REPRESENTATIVE RICHARDSON:

Q Twenty-two years?

A Yeah.

Q And in those twenty-two years, I would imagine, sir, that you have had quite a bit of experience, recognizing that there was a change in the guards and new personnel coming in,



4-15

and superintendents for that matter also. Certainly Superintendent Patton hasn't been the superintendent for twenty-two years, has he?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: No.

BY REPRESENTATIVE RICHARDSON:

Q Do you have a problem hearing my questions?

A I beg your pardon?

Q Do you have a problem --

A Well, you are not too loud.

Q Officer Stewart, you have been a Correctional Officer for twenty-two years. I was wondering whether or not you as an individual have been able to see several different superintendents come through the institution, recognizing that Superintendent Patton has not been there twenty-two years.

A Right.

Q Can you tell me what your duties are as a Correctional Officer there at the institution?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: That would be a big field to cover.

BY REPRESENTATIVE RICHARDSON:

4-16

Q Pardon me?

A That would be a big field to cover in general. What I am doing now -- I work at the main gate a couple days a week and on special relief the rest of the time.

Q The main gate a couple of days a week?

A Yes. Then I work inside the rest of the time.

Q What are your duties?

A Well, all over, generalized. I work mainline. I stand mainline.

Q Officer Stewart, I don't think you understand my question.

A Yes, I do.

Q I will try and be as precise as possible.

My question to you -- and you can consult with your lawyer -- what are your specific duties as a Correctional Officer I who has been there twenty-two years? What do you do?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: The duties of this position are contained in a job description published by the Bureau of Corrections.

BY REPRESENTATIVE RICHARDSON:

Q Okay.

Now, my direct question to you -- since I already know that -- is that you, Officer Stewart, -- what are your duties? I am not asking you for those that are described by the Bureau of Corrections' directive and in its manual. What do you do specifically as a Correctional Officer at the institution at Camp Hill?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: Whatever I am assigned to do on that specific day. Your job changes from day to day.

BY REPRESENTATIVE RICHARDSON:

Q In twenty-two years, Officer Stewart, you had a different job every day in twenty-two years?

A No, sir.

Q You just indicated to me that it changes from day to day.

A Right now, at the present time.

Q What did you do yesterday? Specifically, what did you do yesterday?

A I didn't work yesterday.

Q What did you do the day before that?

A I didn't work.

Q Well, sir, you are in uniform. Did you work today?

A Yes, I did.

Q What did you do and what time did you come to work today?

A Six o'clock.

Q Is that from six to two?

A Yes.

Q That is your shift?

A Yes.

Q At six o'clock this morning, what were your specific duties for this day?

A I stood mainline. That's where we feed them. Then I went in and exercised the BAU block. Then I relieved Main Gate to eat. I went down and ate myself, stood mainline. Then we came over here.

Q Did you come in contact with any inmates?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: Yes.

BY REPRESENTATIVE RICHARDSON:

Q What did you do?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: Watched them as they performed

their activities. I just watched them as they performed. I didn't talk to them.

BY REPRESENTATIVE RICHARDSON:

Q Any rumbles today on the block?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: On advice of counsel I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Were you a Correctional Officer on October 15th of this year?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: On advice of counsel I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Were you present on October 20th?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: On advice of counsel I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q How long did you go through training when you first came aboard?

(Mr. Stewart consulted his counsel.)

MR. STEWART: I trained down at Hershey for three weeks with the State Police.

BY REPRESENTATIVE RICHARDSON:

Q With the State Police?

A Yes.

Q What other prior experience did you have before the training, after you became a Correctional Officer? In

4-21

other words, prior to your becoming a Correctional Officer twenty-two years ago, what other training did you have before you became a Correctional Officer?

MR. GOLDSTEIN: Prior to his assumption of the job?

5 BY REPRESENTATIVE RICHARDSON:

Q Prior to your becoming a Correctional Officer, did you have any other experience?

A No.

Q None at all.

REPRESENTATIVE RICHARDSON: Representative Oliver?

BY REPRESENTATIVE OLIVER:

Q Officer, have you ever, on any occasion, had to remove an inmate from a cell to the BAU?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: On advice of counsel I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE OLIVER:

Q I must apologize. I wasn't here when you first came in. But just what is your position? Are you a Correctional Officer?

A Correctional Officer I.

Q Did you ever take an examination to be promoted to corporal or sergeant in your 22 years?

A Not the last two.

Q Pardon me?

A Not the last two.

Q I said in the last 22 years.

A Yes, I have taken, but I have not taken the last two that were put out.

Q But you have taken them?

A Yes, several years ago.

Q May I just ask how you made out?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: I don't remember.

BY REPRESENTATIVE OLIVER:

Q Can you tell me how many -- well, first of all, do you know Joseph Snyder?



(Mr. Stewart consulted with his counsel.)

MR. STEWART: On advice of Counsel, I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE OLIVER:

Q An inmate weighing approximately 115 pounds -- how many guards, in your honest opinion, do you think would be required to remove him from a cell?

(Mr. Stewart consulted his counsel.)

MR. STEWART: On advice of counsel, I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE OLIVER:

Q On the 15th of October, were you working that day?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: On advice of counsel I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

REPRESENTATIVE OLIVER: That's all.

REPRESENTATIVE RICHARDSON: Representative Ross?

REPRESENTATIVE ROSS: No questions.

REPRESENTATIVE RICHARDSON: Representative Lederer?

BY REPRESENTATIVE LEDERER:

Q Officer Stewart, as an experienced officer, would you say that a Block Officer's observation is important to him performing his duties?

A Yes.

Q Does a Commissioned Officer have to be present when an inmate is taken to the BAU?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: I do not know.

REPRESENTATIVE LEDERER: Thank you.

REPRESENTATIVE RICHARDSON: Mr. Kagan?

MR. KAGAN: No questions.

REPRESENTATIVE RICHARDSON: Mr. Hartman?

MR. HARTMAN: No questions.

REPRESENTATIVE RICHARDSON: Representative Oliver?

BY REPRESENTATIVE OLIVER:

Q One more question.

On the night of October 15th, was a Commissioned Officer present when you had this disturbance?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: On advice of counsel I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

REPRESENTATIVE OLIVER: No further questions.

BY REPRESENTATIVE RICHARDSON:

Q Do you know inmate Kendall Magwood?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: On advice of counsel I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Do you know Sergeant Stotelmyer?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: Yes, I do.

BY REPRESENTATIVE RICHARDSON:

Q Is he your superior officer?

A No, he isn't.

Q Have you ever worked in his presence before?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: On advice of counsel I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained

in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Have you seen Sergeant Stotelmyer attempt to strangle any inmate at the institution?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: On advice of counsel I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Has an inmate ever, at any time in your 22 years, ever physically hit you?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: On advice of counsel I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

BY REPRESENTATIVE RICHARDSON:

Q Have you ever had to hit an inmate for doing something --

A I refuse to answer this question on the grounds --

Q Excuse me. May I finish my question?

As a Correctional Officer at the institution in the 22 years that you have been there, have you ever had to hit an inmate because of any particular reason?

(Mr. Stewart consulted with his counsel.)

MR. STEWART: On advice of counsel I refuse to answer this question on the ground that my answer may tend to incriminate me and I, therefore, invoke my rights under the Fifth and Fourteenth Amendments of the United States Constitution, and my rights against self incrimination as contained in the Constitution of the Commonwealth of Pennsylvania.

REPRESENTATIVE RICHARDSON: You may be excused at this present time, Officer Stewart. I would like to let you know that you are subject to being called at a later time.

(Witness excused.)

REPRESENTATIVE RICHARDSON: The Attorney General's Deputies are both here, Mr. Smyser and Mr. Filipi.

Before the other guards testified, you represented a couple of guards here. You indicated to us their names were Lieutenant Ceylon Williams and Charles Winters. At that time you indicated to this Committee that it was an Attorney General's opinion only that made you give some remarks to the two gentlemen who indicated that they were not answering because of the opinion of the Attorney General.

We asked then for you to bring that particular opinion back in writing, before this Committee, so it might be able to then act accordingly to that opinion.

Have you done that?

MR. FILIPI: That opinion is not in writing.

REPRESENTATIVE RICHARDSON: It is not in writing?

MR. FILIPI: It is not in writing.

REPRESENTATIVE RICHARDSON: Therefore, you are basing your decision for not allowing Lieutenant Williams and Captain Winters to speak before this Committee on an opinion that is not in writing?

MR. FILIPI: It was a verbal opinion of the Attorney General, after extensive research on the point by the Solicitor General that while the investigation is ongoing, they cannot testify as to those points that are a part of that investigation.

REPRESENTATIVE RICHARDSON: I would like to turn the questioning over to our attorneys, Bob Kagan and John Hartman.

MR. KAGAN: Perhaps you can tell this Committee what is the legal effect of the verbal opinion of the Attorney General?

MR. FILIPI: It is the opinion of the Attorney General's Office that a verbal opinion, like a written opinion, is binding and comes under the section that I previously cited as Title 71 Purdon's Statutes, Section 192, otherwise known as Administrative Code, Section -- I believe I erroneously called it 592; it is 512.

MR. KAGAN: It is the opinion of the Attorney General that verbal opinions are binding?

MR. FILIPI: Yes.

MR. KAGAN: What other verbal opinions are you aware of that were issued by the Attorney General that are binding?

MR. FILIPI: I'm not aware of --

MR. KAGAN: Is there any statutory authority for the issuance of a verbal opinion?

MR. FILIPI: I am not aware of anything beyond what I just gave you.



MR. KAGAN: When you quote the Attorney General's opinion, is that an exact quote?

MR. FILIPI: Which opinion now are we talking about?

MR. KAGAN: The verbal opinion, since we have no written opinion?

MR. FILIPI: Neither the opinion as to whether the Officers may testify as to parts that are still part of that investigation, or the opinion of whether or not Section 192 of Title 71 is applicable -- neither of them could I possibly remember verbatim.

MR. KAGAN: They have the binding effect of law and you cannot remember them?

MR. FILIPI: I did not say I could not remember them; I said I could not remember them verbatim.

MR. KAGAN: Do you think you might have missed any important parts?

MR. FILIPI: No.

MR. KAGAN: Who gave you this Attorney General's opinion?

MR. FILIPI: The Attorney General.

MR. KAGAN: When was this Attorney General's opinion first issued?

MR. FILIPI: When was it first issued?

MR. KAGAN: How long has it been applicable?

MR. FILIPI: Now we are speaking about -- we are talking with regard to the officers not testifying?

MR. KAGAN: The ones you have just been answering all of the questions to.

MR. FILIPI: The exact time I don't know. I was made aware of it prior to coming here.

MR. KAGAN: Does the Attorney General offer give you verbal Attorney General's opinions that have the effect of law on the Executive --

MR. FILIPI: Prior to my coming in here this morning, or this afternoon at 1:30 or thereabouts, I had not received it directly from the Attorney General but rather through an individual.

MR. KAGAN: How did you know what it was?

MR. FILIPI: From Mr. Smyser.

MR. KAGAN: Mr. Smyser, did you receive it directly from the Attorney General?

MR. SMYSER: The opinion is the result of the research of the Attorney General, the Solicitor General and myself. The opinion of the Attorney General can be issued either by the Attorney General or through one of the Attorney

General's Deputies. In this case, the opinion of the Attorney General was issued by the Attorney General through myself through Mr. Filipi to the State Officers involved.

MR. KAGAN: Did the Attorney General express his opinion to you directly?

MR. SMYSER: Yes, he did, sir.

MR. KAGAN: And did you remember the exact words that he used? Did you write those down anywhere?

MR. SMYSER: The issue, Mr. Kagan, is whether or not the officers should be advised --

MR. KAGAN: The issue is whether the Attorney General's opinion, verbal, is a binding legal opinion.

MR. SMYSER: That's not the issue as I see it.

MR. KAGAN: Well, I'm sorry, but that's how this Committee sees it. If the Attorney General's Office had a binding legal opinion which would prohibit these officers from testifying as to matters concerning incidents at the Camp Hill Institution, we have House Resolution 47 which authorizes this Committee to look into those matters. If there was a written Attorney General's opinion which carried the force and the effect of law which would prohibit that or in some way change their status, vis a vis this Committee, I think the Committee has shown its willingness previously to accept such a ruling

of the Attorney General's Office.

But when the Attorney General's Office comes to us and says that verbal Attorney General's Opinions have the force of law, I think that stretches the credibility and almost defies comprehension that in this country verbal opinions have the effect of law by any Executive Officer.

MR. SMYSER: When I said that that wasn't the issue as I see it, I meant that that was not the issue which is the subject matter of the Attorney General's opinion. And you asked me to quote the opinion verbatim. And what I was about to say is that the ultimate issue of that opinion is whether or not to advise those guards or those lieutenants, whatever they may be, to testify concerning the events of October 15th and October 20th or not to testify concerning those events.

The rationale for the opinion was stated to this Committee by Solicitor General Yakowicz. The ultimate opinion itself is a very simple yes or no proposition. The Attorney General's opinion is no.

MR. KAGAN: In other words, the Attorney General will not allow these gentlemen to testify?

MR. SMYSER: He has advised them as their legal adviser not to testify.

MR. KAGAN: In a private capacity or in a

governmental capacity?

MR. SMYSER: Governmental.

MR. KAGAN: Does the Attorney General have the authority to issue orders in his governmental capacity verbally, not based on any Attorney Generals' opinion or any statute?

MR. SMYSER: Well, it is based on the law that was given to this Committee by Solicitor General Yakowicz. The Section of the Administrative Code that was cited does not speak at all to whether or not an Attorney General's advice may be in writing or may be verbal.

MR. KAGAN: To be binding and have the effect of law, it must be in writing. I think the Solicitor General stated that Attorney Generals' opinions are valid and binding as to the Executive. And I'm sure that those opinions are not given in writing unless there is a man who sits in the back of the room who carries on the verbal tradition of the Justice Department from year to year.

MR. SMYSER: Well, in any event, it is our opinion that this is binding legal advice.

MR. HARTMAN: Mr. Smyser, are you saying that the Attorney General himself directed Lieutenant Williams and Captain Winters not to testify?

MR. SMYSER: That's correct.

MR. HARTMAN: Do you know when this occurred?

MR. SMYSER: Well, it occurred when the issue arose. I don't remember when that issue arose. It seems to me that it was late last week. The subject matter was reaffirmed, and the opinion was reaffirmed only a short while ago in a conference among Mr. Filipi, myself and the Attorney General.

MR. HARTMAN: No. My question was, did the Attorney General himself direct Lieutenant Williams and Captain Winters not to testify?

MR. SMYSER: Through myself and through Mr. Filipi, as I have already stated.

MR. HARTMAN: Are you saying you spoke directly with the Attorney General himself this afternoon prior to coming down here?

MR. SMYSER: Yes, sir, that's correct.

MR. HARTMAN: Can you relate to the Committee exactly what the Attorney General said his opinion was relative to those two men?

MR. SMYSER: No, I can't. I just can't remember it exactly.

MR. HARTMAN: Then what was the general thrust of the opinion?

MR. SMYSER: Well, the specific thrust of the

opinion was that they should be advised not to testify with respect to anything which is the subject matter of our investigation of the incidents of October 15th and October 20th.

MR. HARTMAN: And what does he base that on?

MR. SMYSER: He bases it -- and I fall back again, on general terms, because I don't have a copy of the position statement that was submitted to this Subcommittee by the Solicitor General. The rationale contained in that statement is the basis of this opinion.

MR. HARTMAN: Well, that statement, though, was relative to Superintendent Patton and certain written material and recollections of reading that written material. I do not know that the same thing would apply to the officers we are talking about.

If we were to follow out the logic of what the Attorney General is now presenting to this Committee, I ask you, like I previously asked Mr. Filipi, why was not that opinion also given to the Correctional Officers who also gave statements to the Attorney General's investigators? I would think the same rationale would apply.

MR. SMYSER: There was no occasion in the course of this proceeding as it developed for the Attorney General to render any advice to those Correctional Officers since they

retained other counsel.

MR. HARTMAN: Well, are you saying that they rendered this advice at the request of Lieutenant Williams or Captain Winters or on their own volition?

MR. SMYSER: I think the answer to that is that it was at their request. They inquired when it was learned that they were to be here whether and how they were to be represented. That was communicated to Mr. Filipi. In that sense, they sought the legal advice of the Attorney General. Having sought that advice, they were advised as we know they were advised.

MR. HARTMAN: You are telling this Committee now that it is the opinion of the Attorney General that the House of Representatives does not have the power, if it so desires, to compel the testimony of Lieutenant Williams and Captain Winters?

MR. SMYSER: That's correct.

MR. HARTMAN: And you have so advised those gentlemen?

MR. SMYSER: Subject, of course, to the limitations that are clear in this framework, I think, that this is a matter of very short duration, that being the duration of an executive investigation, following an incident, an incident that might very well have criminal implications.



MR. HARTMAN: But that would also apply to the other Correctional Officers. I don't see the distinction between Lieutenant Williams and Captain Winters and the other ten gentlemen who were called before this Committee.

MR. SMYSER: The distinction is only, sir, in the history as it developed. They did not seek legal advice, and there was no occasion to so advise them.

MR. HARTMAN: But if the Attorney General is of the opinion that such testimony before this Committee would be injurious to that investigation, I would think he would be duty bound under the law you are citing to relate to those gentlemen that they are subject to the opinion also. I cannot see the difference.

MR. SMYSER: I can only answer that that is a very interesting point, one which, however, has been mooted by the course of actions that the other officers have elected to take.

MR. HARTMAN: Then I also fail to see, since the Attorney General is really the ultimate custodian of the inmates who came before us, why that same opinion would not be applicable to them, and since he is the custodian, why he would allow them to come before this Committee and testify.

MR. SMYSER: The Attorney General just cannot give advice to those inmates who are not state officers.

MR. HARTMAN: Ah, but that is not what his opinion is based on. His opinion is based on the policy of the Department of Justice that it will not allow an investigation which it is conducting to come before this Committee. And I am saying that he did allow inmates under his custody and control and guards also to come before this Committee. And I fail to see how at this juncture those two gentlemen are any different from the others.

And we are not talking now about the written statements which your investigators have gone and taken. That is not the point of discussion. The point of discussion is the testimony of the individuals themselves.

MR. SMYSER: I am here to state the position and the opinion of the Attorney General. I don't know that we should pursue those distinctions. In any event, I am prepared to respond to that particular inquiry.

MR. KAGAN: I take it the policy is that investigations which are current, which are not complete, should not be the subject of disclosure in a hearing of this type?

MR. SMYSER: That is basically correct, Mr. Kagan.

MR. KAGAN: Then I would submit to you that the testimony of the guards, under the jurisdiction of the Attorney General, could constitute a waiver of that principle.

MR. SMYSER: No, because there has been no waiver, in fact, since the guards have not, in fact, testified to the subject matter of the inquiry.

MR. KAGAN: They are perfectly entitled to stand on their rights under the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the Commonwealth of Pennsylvania. That is a valid right that the Committee respects, but from my experience at this juncture with the gentlemen, the lieutenant and the other gentleman, is that they are not going to be allowed to testify at all as to any matters.

MR. SMYSER: As to any matters concerning these particular incidents under investigation. That is correct.

MR. KAGAN: And I would suggest that a waiver has been made. I would suggest that the gentlemen be called and questions propounded to them.

REPRESENTATIVE RICHARDSON: We wanted to get that for the record, Mr. Smyser, and also Mr. Filipi, because as I so instructed you before you left, if you could bring back that opinion so we could proceed on with these hearings. It is now our understanding that that has happened and I would like to call back Mr. Ceylon Williams.

REPRESENTATIVE LEDERER: May I ask a few questions?

REPRESENTATIVE RICHARDSON: Yes.

REPRESENTATIVE LEDERER: Is the Attorney General counsel for all of the employes of the Justice Department if they seek his counsel when they are under investigation?

MR. SMYSER: Well, the basic answer to your question, sir, is yes; we are counsel to all state officers and employes.

REPRESENTATIVE LEDERER: All state officers, not just Justice Department employes?

MR. SMYSER: That's correct.

REPRESENTATIVE LEDERER: In other words, if it has something to do with the Department of Transportation and there is an investigation and employes go to the Attorney General's Office, it is your thought that he is counsel for them also?

MR. SMYSER: It depends very much on the nature of the proceeding or the nature of whatever the legal context is, sir, that brings about the need for counsel. We would not serve as counsel in a criminal prosecution.

REPRESENTATIVE LEDERER: I am not talking about criminal court. Any department of the Commonwealth that the Legislature would be investigating and there would be a dual investigation by the Attorney General's Office -- those people could be represented or counseled by the Attorney General's

Office?

MR. SMYSER: Yes.

REPRESENTATIVE LEDERER: Thank you.

REPRESENTATIVE RICHARDSON: Representative Oliver?

REPRESENTATIVE OLIVER: No questions.

REPRESENTATIVE RICHARDSON: Representative Ross?

REPRESENTATIVE ROSS: No questions.

REPRESENTATIVE RICHARDSON: Mr. Hartman?

MR. HARTMAN: If I may, just for a second -- correct me if I am wrong -- is it true there is an Executive Order issued by the Governor sometime during 1974 relative to personnel under the control of the Governor as to their cooperation and testimony before investigations of this type?

MR. SMYSER: I understand that is correct. I am not familiar --

MR. HARTMAN: Are you familiar with that?

MR. SMYSER: I am familiar with it in general terms. I am not familiar with the specific terms of the general order.

MR. HARTMAN: Could you tell the Committee in general terms your understanding of it?

MR. SMYSER: I don't really think I could in any responsible fashion without reviewing that order.

MR. HARTMAN: Is Mr. Filipi able to aid us in this matter?

MR. FILIPI: It is my recollection, first, that it was not in the form of an executive order, but rather it was headed "Management Directive." I'm not sure if that is relevant -- if that is the one we are talking about. I'm not sure. I am very sketchily familiar with a document requiring cooperation and that, if in fact, someone invokes the Fifth Amendment, that some attempt should be found as to why.

MR. HARTMAN: Would that apply to someone coming before this Committee and acting in such a manner?

MR. FILIPI: I wouldn't be able to give you any kind of responsible opinion on that. As you are obviously aware from what I just said, I am not that familiar with it.

MR. HARTMAN: Would you be able to supply the Committee with a copy of that order at your convenience?

MR. FILIPI: I believe we could, yes.

REPRESENTATIVE RICHARDSON: Mr. Smyser and Mr. Filipi, I am going to call Mr. Ceylon Williams to the stand.

CEYLON I. WILLIAMS, recalled as a witness, having been previously sworn, according to law, testified as follows:

BY REPRESENTATIVE RICHARDSON:

Q Lieutenant Williams, we were asking you some questions before the brief recess. You had a piece of paper that you were reading from that indicated that in the opinion of the Attorney General, that you could not answer.

After sitting here and listening to the discussion of our Committee with the two Deputy Attorneys General sitting here today, I am going to ask you some questions relative to Camp Hill and some other questions relating to incidents on October 15th and October 20th,

I am going to ask you to answer them directly. Failure to do so, Lieutenant Williams, I want to indicate to you will be met with some further proceedings that I think you should be aware of, and I won't assume that that won't happen. I am just telling you now so you will know what the course of action is of this Committee.

I want to ask you questions first to see whether or not you are going to respond.

Number one, Lieutenant Williams, were you working or present on October 15th of 1975 at Camp Hill Institution?

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: Yes, I was.

BY REPRESENTATIVE RICHARDSON:

Q As a result of your working on that particular day, can you tell me the shift that you worked?

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: Two to ten; two in the afternoon to ten in the evening.

BY REPRESENTATIVE RICHARDSON:

Q Were you present or on duty at the time that the inmates went over to the rock concert?

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: Yes, I was.

BY REPRESENTATIVE RICHARDSON:

Q As a result of that, you indicated to us this morning that you knew some of the inmates. Did you, for any reason, see Michael Kaup on that day?

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: Yes, I did.

BY REPRESENTATIVE RICHARDSON:

Q In what capacity did you see him?



(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: On advice of counsel, I cannot answer that question because of the opinion of the Attorney General.

BY REPRESENTATIVE RICHARDSON:

Q Now, I am going to let you know before I go any further and ask you any more questions, Lieutenant Williams, that because you as an individual -- because it is not a written order of the Attorney General nor a written opinion, nor can you tell me whether or not you were directly directed not to answer, that you have a right to take the Fifth and Fourteenth Amendments, but you cannot sit here before this Committee and say, because of the opinion of the Attorney General you refuse to answer.

MR. FILIPI: I must take exception with the statement made by the Chairman, because it is the opinion of the Attorney General that he is bound by the opinion, whether it was given to him personally by the Attorney General or by me or by Mr. Smyser; and that, in fact, he is bound by that and cannot answer questions that relate specifically to that investigation.

BY REPRESENTATIVE RICHARDSON:

Q It is the opinion of this Committee that the opinion of the Attorney General has no binding effect in relationship to these particular hearings.

I will ask Lieutenant Williams to answer the questions directly.

On October 15th of this year, in what capacity did you see Michael Kaup?

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: On advice of counsel, I cannot answer this question because of the opinion of the Attorney General.

BY REPRESENTATIVE RICHARDSON:

Q Do you want this Committee to subpoena you, sir, in order for you to answer any questions relative to any incidents on October 15th or October 20th?

MR. FILIPI: That doesn't seem like a proper question to put before him -- whether he wants to be subpoenaed.

BY REPRESENTATIVE RICHARDSON:

Q Well, I can ask you a personal question. I want

to know how you feel personally. Do you want to be subpoenaed to answer questions before this Committee?

A At present I am before your Committee to answer questions now.

Q Well, you are not answering them, sir.

A On the opinion of counsel.

Q What I am saying is that I have given you other information. Your counsel has given you some information as one particular authority, which is an opinion which has not been written nor was it presented to this Committee other than verbally. I am saying that it was just the opinion of the Attorney General and has no binding effect in relationship to you testifying before this Committee.

We are saying that as a Committee, under House Resolution 47, that it has no binding effect on this Committee. Because if you read the letter that was sent out to you, you had included in it House Resolution 47. Did you read that revolution?

A Part of it.

Q Part of it?

A Yes.

Q Did you read the part that said:

"RESOLVED, That the Committee may hold hearings,

take testimony, and make its investigation at such places as it deems necessary within this Commonwealth.

"It may issue subpoenas, under the hand and seal of its Chairman, commanding any person to appear before it and to answer questions touching properly being inquired into by the Committee and to produce such books, papers, records and documents as the Committee deems necessary."

Did you read that part, sir?

A Yes.

Q Did you also read the part which says:

"Such subpoenas may be served upon any person and shall have the force and effect of subpoenas issued out of the courts of this Commonwealth."?

Do you understand that?

A Yes, I read it.

Q Did you also read the part which says:

"Any person who wilfully neglects or refuses to testify before the Committee or to

produce any books, papers, records or documents, shall be subject to the penalties provided by the laws of the Commonwealth in such case."

Did you read that?

A Yes, sir.

Q Do you understand that you are now falling under the category of wilfully neglecting to answer questions before this Committee?

MR. FILIPI: I don't believe that he is. He is not in a position of wilful'y or not wilfully. He is in a position of not being able to answer because of a binding Attorney General's opinion. It is not whether he can physically answer the question or not.

BY REPRESENTATIVE RICHARDSON:

Q Were you ordered not to answer any questions, sir? Were you ordered not to answer? I am asking you directly. If you want to consult with your counsel, you may do so, but I am asking you directly.

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: I was not ordered. It is a binding opinion of the Attorney General.

6  
5-52

BY REPRESENTATIVE RICHARDSON:

Q If you were not ordered, what is stopping you from answering the questions?

A Because of the opinion of the Attorney General.

Q Then I will read this one other time to you.

"Any person who wilfully neglects....", now you are wilfully neglecting to answer questions of this Committee, which is not a binding opinion on the part of this Committee. You are saying that you have an opinion of the Attorney General which is binding on you, but I am saying that you are appearing before this Committee, which is in a totally different set of procedures and rules that we are following, and not one under the Attorney General's Office and the Department of Justice.

You are appearing before the House Committee under House Resolution 47 to investigate juvenile incarceration across the state of Pennsylvania. I want to bring that to your attention so you understand exactly why we asked you to come here.

So - "Any person who wilfully neglects or refuses to testify before the Committee or to produce any books, papers, records or documents, shall

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p-53

be subject to the penalties provided by the laws of the Commonwealth in such case."

I just wanted you to know that your refusal to answer questions at this time, sir, puts this Committee in a position where we will have to subpoena and you will have to answer the questions.

Do you understand that?

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: I understand that that is the position of the Subcommittee.

BY REPRESENTATIVE RICHARDSON:

Q And then you also understand, sir, that if you refuse then to answer questions before this Committee, that you can be held in contempt of this Committee, and that you will be taken in front of the full House of Representatives in its full body and be asked the same questions, where, if you refuse again to answer them, you can be put in jail, in the Dauphin County prison?

Do you understand that? Were you told that by your attorney?

MR. FILIPI: Are you asking if he was told that

by me?

REPRESENTATIVE RICHARDSON: That's right. And he can confer with you if he wishes to.

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: I was not told by my counsel that that was a possibility.

REPRESENTATIVE RICHARDSON: Then, counselor, I am suggesting to you that you tell him the full penalties involved.

MR. FILIPI: It is the opinion of the Attorney General's Office that those penalties, in fact, are not available against Lieutenant Williams.

REPRESENTATIVE RICHARDSON: Well, I am saying that you should advise him as to what rules he is operating under.

MR. FILIPI: I must advise him as I understand the law as an Assistant Attorney General who has consulted with other individuals in the Attorney General's Office. I can only advise him as to what the legal understanding and opinion is of the Attorney General's Office.

REPRESENTATIVE RICHARDSON: What if I told you then that if your opinion does not hold up, that the penalties



of him not answering before this Committee or before the full House of Representatives could result in him going to jail in Dauphin County prison?

I am saying that recognizing the possibilities that if your opinion doesn't hold up, I think he certainly should be advised that he could be incarcerated in Dauphin County prison.

MR. FILIPI: That is a point, again, on which you and I differ. The individual here, Lieutenant Williams, is not obligated to go beyond the opinion of the Attorney General to seek alternate counsel on the question of whether or not the Attorney General's opinion is proper or not proper. He is at this time bound by the Attorney General's opinion.

However, whatever the outcome might be ultimately as to that opinion, that is of no relevance as far as the fact that he is not liable under Section 512 of the Administrative Code as codified in Purdon's Statutes, Title 71, Section 192.

REPRESENTATIVE RICHARDSON: Which says what?

MR. FILIPI: I believe the relevant portion is Paragraph 2 of that section which states:

"It shall be the duty of any Department, Board, Commission or Officer having requested

or received legal advice from the Department of Justice regarding the official duty of such Department, Board, Commission or Officer to follow the same, and when any Officer shall follow the advice given him by the Department of Justice, he shall not be in any way liable for so doing upon his official bond or otherwise."

REPRESENTATIVE RICHARDSON: That is the opinion you are reading from?

MR. FILIPI: That is the law I was reading from.

REPRESENTATIVE RICHARDSON: Attorney Hartman, do you have a response to that?

MR. HARTMAN: I would like to ask Lieutenant Williams some questions.

BY MR. HARTMAN:

Q I believe you testified -- and correct me if I am wrong, sir -- that the Attorney General did not order you not to testify, is that correct?

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: That's correct. The Attorney General did not order me not to testify.

BY MR. HARTMAN:

Q Nor did any of his deputies?

A That's correct, also.

Q And again, correct me if I am wrong, your refusal to testify you state is based on the opinion of the Attorney General?

A That is correct.

Q For the benefit of the Committee, could you now tell us what the opinion of the Attorney General is?

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: The opinion of the Attorney General is that I shall not answer any questions relating to the incidents that occurred on the 15th and 20th of October until the investigation is complete.

BY MR. HARTMAN:

Q You do not take that as an order not to testify?

(Mr. Williams consulted with his counsel.)

MR. FILIPI: I think we are in a matter of semantics. It is his duty under a binding opinion not to testify. It is not an order.

MR. HARTMAN: It is not a question of semantics. What the Committee is trying to determine is the reason why Lieutenant Williams refuses to testify.

Number one, if I may, he stated he was not ordered either by the Attorney General nor his Deputies; and number two, when I asked him the questions about what the Attorney General's opinion was, he did not really know what it was. He had to have you tell him.

MR. FILIPI: He knew in essence he was not to testify without consulting me.

BY MR. HARTMAN:

Q Just one other question, Lieutenant Williams.

Other than you were not to testify, is there anything more of the Attorney General's opinion that you personally are aware of as to why"

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: No.

BY MR. HARTMAN:

Q All you know is, you are not supposed to testify?

A Until the investigation is completed.

MR. HARTMAN: That's all I have.

REPRESENTATIVE RICHARDSON: Mr. Kagan?

BY MR. KAGAN:

Q Lieutenant Williams, when did you first become advised that you would be coming before this Committee to testify?

A Well, Thursday of last week, my wife received a call approximately at ten o'clock or so. She notified me, as I was away from home. And that was the first I had known. I had received my letter to be present here, I think, late Saturday afternoon.

Q And the first you became aware of this Committee's proceedings was by letter, as it pertained to you?

A Pertaining to me, yes, sir.

Q What did you do at that time?

A When I received the letter?

Q Yes.

A I read what it stated in the letter and part of the House Resolution.

Q And then what did you do?

A No more. I sat down, read the paper and watched television.

Q Did you go to work on that Monday? You received

the letter on Saturday, right?

A Right.

Q Did you do to work on Monday?

A Yes, sir.

Q Did you talk to anybody about the letter?

A No, sir, no more than the Deputy Superintendent, Mr. Marks, I believe. I informed him that I had received the letter.

Q And did you say anything to him or just inform him that you had received the letter?

A I informed him that I received the letter and asked about legal representation.

Q You asked him about legal representation?

A Yes.

Q And what did he say?

A That the Attorney General's Office would provide legal representation.

Q Did you ask who else received letters?

A No, sir.

Q Did you talk to any -- for instance, did you talk to Mr. Green or Mr. Strock about their appearances before the Committee?

A Yes, sir. It was a general topic of discussion

at the institution.

Q Did you ask them whether they were going to be represented by counsel?

A I had known this. There was no need to ask them. This has been obvious from all of the newspaper reports and their own conversations.

Q Did you know who their counsel was going to be?

A I believe a Mr. Kirschner.

Q Did you know at that time who their counsel was going to be?

A Well, to state specifically that one of them came to me and said that Mr. Kirschner was going to be his counsel, I would say no.

Q Did you think they were going to be represented by the Attorney General also, just like you? Did you have any reason to believe they were in a different status than you?

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: No, I wouldn't have known why. No, I didn't. It never occurred to me.

BY MR. KAGAN:

Q How come you didn't seek outside counsel?

A Had I wanted to, I could have, yes.

Q And do you think your counsel would have let you testify?

A Only counsel could answer that.

MR. KAGAN: Okay.

REPRESENTATIVE RICHARDSON: Representative Lederer?

BY REPRESENTATIVE LEDERER:

Q Commissioned Officers aren't members of ACFSME, am I correct in saying that?

A That's right.

Q Does the Lieutenant assign officers to their duties on their particular shift?

A Yes, sir.

Q Do you assign the Block Guards?

A No, sir.

Q Who assigns the Block Guards?

A Block Officers are assigned in a daily roster basis. The only time I would assign a Block Officer is if that particular Block Officer would not be present that day and we would have to fill the assignment. Then, upon my advice, along with possibly the Captain of the shift, we would decide who would be the most qualified to be placed in that particular block.



Q Are there times when a Block Officer may be assigned by the Administration that you and the Captain may not be happy with and change to another position?

A Not particularly. I think it is discussed with the Administration when the proper changes are made within.

Q Would you say the Block Officer is important -- let me rephrase that.

Would you say an important tool of a Block Officer is observation?

A It's important of any officer, observation.

Q When a Block Officer observes an infraction, who does he report to?

A He reports it to his immediate supervisor or possibly the Sergeant on duty, or to myself, or the Captain, whichever one may come by first, or whichever one he can get in touch with first.

Q On the incidents of October 15th and 20th, did the Block Officer report to you or to the Sergeant?

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: To be specific, the Block Officer was not in the block to report the incidents because of the concert, the rock concert.

BY REPRESENTATIVE LEDERER:

Q Would you know who was in the block as Correctional Officer?

A Mr. Wolfe was assigned to the block to patrol the block until such time as the concert was over with and the inmates returned to the block.

Q Would Mr. Wolfe have the responsibilities of the Block Officer while he was there?

A Would you repeat that question, please?

Q Would Officer Wolfe have the responsibilities of the Block Officer while he was on that detail?

A Certainly. Any officer has this responsibility to maintain peace and order and the security of the institution.

Q Would it be his responsibility to report any infraction of the rules on those particular nights?

A Yes, sir.

Q Would you say that, if any inmates were taken to the BAU for any infractions on those particular nights, or events were done because of his report?

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: Yes, sir.

BY REPRESENTATIVE LEDERER:

Q Okay. If he reported these infractions for disciplinary action would you say he would be in a good position to observe any tensions between the guards and the inmates on those particular nights?

A Between the guards and the inmates?

Q Right. Well, let me try to reword it again. When the inmates were taken, whether docilely or by force, he would be in a good position to see that?

A Not necessarily.

Q Well, if you can say that, can I say that if he wasn't in a good position to see them, then possibly he wasn't in a good position to see the infractions, to begin with.

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: I wouldn't know personally.

BY REPRESENTATIVE LEDERER:

Q I just have one more question.

I assume -- and I could be wrong -- when Correctional Officer Wolfe -- when an inquiry was made by the Justice Department, they did talk to Officer Wolfe. Were you present at that time, Lieutenant?

6-66

A Would you repeat that?

Q When the Attorney General's Office investigated the problems on the 15th and 20th of October, they undoubtedly questioned Officer Wolfe. Were you present at that time?

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: No, sir.

REPRESENTATIVE LEDERER: No further questions.

REPRESENTATIVE RICHARDSON: Bob Kagan?

MR. KAGAN: Just a couple of questions preliminarily directed to Mr. Filipi.

BY MR. KAGAN:

Q Should the lieutenant be called before the Grand Jury, would it be your opinion that the Attorney General would advise the Lieutenant to testify in the same manner that he testified here today?

MR. FILIPI: I think it is entirely premature to say what will happen at that time.

MR. KAGAN: I am asking if the position of the Department would be that the employes of the Department of Justice not discuss ongoing investigations in a Grand Jury proceedings.

MR. FILIPI: I have not researched the question.

6-67

MR. KAGAN: Well, based on the Section that you cited to us in the Administrative Code, since the employees of the Department would be duty bound to get an Attorney General's opinion and the General Attorney would be bound to render them an opinion --

MR. FILIPI: The Attorney General does not issue hypothetical opinions.

I don't know if that answers your question.

MR. KAGAN: He did on the Sunshine Law.

MR. FILIPI: I don't think it was hypothetical.

MR. KAGAN: He was absolutely hypothetical.

MR. SMYSER: The section of the Administrative Code that you are citing doesn't go to the subject matter of the opinion. That is a separate question.

MR. KAGAN: Fine. Would the Attorney General so advise an employe not to give testimony to a Grand Jury? If a Grand Jury were convened tomorrow, would this gentleman be allowed to go to that Grand Jury and testify as to matters within his personal knowledge?

MR. SMYSER: I certainly don't know the answer.

MR. HARTMAN: How does that situation differ from the situation at hand here today?

MR. SMYSER: I don't know if it does.

6-68

MR. FILIPI: We are not sure.

MR. KAGAN: Let me ask you another question.

Letters were sent out to the various employes of the Department, Bureau of Corrections, under the head of -- I guess, being controlled by the Attorney General's Office, employes of the Attorney General. Now, under this Administrative Code Section, it says that whenever any Department shall require legal advice concerning its conduct and operation, it shall be the duty of such Department to refer the same to the Department of Justice.

Is that the major meat in your understanding?

MR. SMYSER: Yes.

MR. KAGAN: When legal questions arose concerning the guards, the Lieutenant, the Superintendent, were these questions referred to the Department of Justice?

MR. FILIPI: There was an offer made, or a request made for counsel from the Attorney General's Office as far as Superintendent Patton is concerned, and Lieutenant Williams and Captain Winters.

MR. KAGAN: Under the terms of this Section of the Administrative Code, the operations under just the general legal doctrines, you know, involving employers and employes

6-69

that the actions of the employes within the scope of their employment -- that the employer can be held liable for those. Wasn't the Department -- do you want me to state it a little more succinctly for you?

MR. FILIPI: No, that's okay.

I'm having trouble seeing its relevancy, but I understand it.

MR. KAGAN: Well, I will explain that to you in a second.

MR. FILIPI: Okay.

MR. KAGAN: Are the guards employes of the Department?

MR. FILIPI: They are employes of the Bureau of Corrections, which is a sub-entity of the Department of Justice.

MR. KAGAN: And questions arose concerning their conduct while on duty in their capacity as employes of the Department?

MR. FILIPI: As relates to --

MR. KAGAN: The incidents of October 15th and 20th?

MR. FILIPI: Yes.

MR. KAGAN: Okay. Why didn't the Department of Justice represent these people?

MR. FILIPI: The Department of Justice is

-70

representing --

MR. KAGAN: Why didn't they represent the guards?

MR. FILIPI: Why didn't they elect the guards?

MR. KAGAN: Yes.

MR. FILIPI: They elected to --

MR. KAGAN: The guards don't have an election under this statute. It says that it shall be the duty of the Department to render legal opinions.

MR. FILIPI: That's right.

MR. KAGAN: So why wasn't the legal opinion of the Department rendered to the guards that they can't discuss matters of an ongoing investigation?

MR. FILIPI: I think we have to look back at the historical sequence of this. The officers were called, the officers had their own representation and the officers --

MR. KAGAN: That's not the question.

Under 71, 192, of Purdon's, the Department has a duty to give legal advice to its employes concerning their official conduct.

Why didn't the Department advise the guards as to the official opinion of the Attorney General vis a vis testifying to an ongoing investigation?

MR. FILIPI: None was requested. Are you implying



6-71

that the Attorney General --

MR. KAGAN: The Department has a duty to request it. Are you the attorney for the Department of Corrections?

MR. FILIPI: I am assigned to this Bureau of Corrections.

MR. KAGAN: And when an action or activity arises concerning the legal obligations, or any legal question arises concerning the obligations of that Department, isn't it the procedure that the Attorney General is asked to give a legal opinion, based on the duties and statutes governing the conduct of employes in that Department?

MR. FILIPI: It may not be in the form of a legal opinion --

MR. KAGAN: Verbal or nonverbal.

MR. FILIPI: Well, I am having trouble understanding exactly what you mean when you say that the Attorney General would issue an opinion as to any incident.

MR. KAGAN: Would give legal advice.

MR. FILIPI: If it was requested.

MR. KAGAN: It doesn't say requested.

MR. FILIPI: Are you implying that the Attorney General just sui sponte goes about and advises each and every employe?

MR. KAGAN: No, I will tell you what I am implying. The guards, the lieutenant, the superintendent all get the same letter, all arising out of official action taken October 15th and 20th.

MR. FILIPI: The letter we are talking about is the letter by the Subcommittee requesting their presence?

MR. KAGAN: Right.

MR. FILIPI: Okay.

MR. KAGAN: Now, the legal counsel in the Department is aware of the activities concerning the Department, goes to the Attorney General, gets an Attorney General's opinion stating that we don't discuss ongoing investigations. But he doesn't direct it at the guards, and I wonder why? They are employes of the Department also, and the Attorney General's opinion is as binding on them as it is on the lieutenant and the superintendent. It has the same force and effect for them as it does for these two gentlemen. And the guards who came before us could have testified to anything they wanted to. They were not bound by an Attorney General's opinion, or one wasn't submitted to them, and now I am wondering why.

MR. FILIPI: That's your opinion.

MR. KAGAN: Because it is a Department policy,

not an employe policy as to whether he wants to talk or doesn't want to talk.

I feel confident that the lieutenant not being bound by your Attorney General's opinion would be more than glad to tell this Committee everything it wants to know.

MR. FILIPI: I think you are probably right on that.

MR. KAGAN: I am sure. I have no doubt that the lieutenant would want to come forward. And I am wondering why the Department won't let him come forward when it let the guards come forward to testify.

MR. FILIPI: The position has been stated previously. If you want me to restate it --

MR. KAGAN: No. I understand the position. I am trying to understand why the guards weren't given the same opportunity.

MR. FILIPI: Again, the guards elected to have private counsel.

MR. KAGAN: Were they given the choice?

MR. FILIPI: Certainly.

MR. KAGAN: Did the Attorney General offer them counsel from the Attorney General's Office?

MR. FILIPI: Yes.

MR. KAGAN: Okay, I'm glad to know that.

MR. FILIPI: That was the first step.

MR. KAGAN: Is your opinion binding --

MR. FILIPI: We did not make that opinion on this matter. I was not aware of a standing position or opinion on the part of the Attorney General regarding ongoing investigations at that time.

MR. KAGAN: You were aware of it last week.

MR. FILIPI: Yes.

MR. KAGAN: Why did the guards today not state the Attorney General's opinion if it was a Department policy?

MR. FILIPI: They were represented by their private counsel.

MR. KAGAN: But we are talking about acts done in their official capacity as guards. In the course of an ongoing investigation, I am just shocked that they were allowed to testify; that the Attorney General's Office didn't cite that opinion on their behalf.

MR. FILIPI: We were not representing them.

MR. KAGAN: But it is your Department and your policy and they are bound by it.

MR. FILIPI: I think our opinions differ.

MR. KAGAN: I think you are playing a little

6-75

footloose with this Committee.

MR. FILIPI: No, definitely not.

MR. KAGAN: That opinion is binding on everybody involved in that investigation. Everybody employed by the Department is bound by that opinion vis a vis this investigation, correct?

MR. FILIPI: I don't think that opinion was ever stated by us. And, as a matter of fact --

MR. KAGAN: Well, I'm asking you, is everyone bound by that opinion, or just certain individuals?

MR. FILIPI: We have not dealt with that question.

MR. KAGAN: So some people may be bound and some people may not be bound?

MR. FILIPI: I am not ready to say that either. I just don't know. I have not researched the question.

MR. KAGAN: Well, what is the opinion then?

MR. FILIPI: The opinion was specific as to the individuals.

MR. KAGAN: Directed to one individual? The opinion is, "Lieutenant, you can't discuss an ongoing investigation."?

MR. FILIPI: Each was on its own factual situation.

MR. KAGAN: All of the factual situations are

virtually identical. Would you distinguish the factual situations for me?

MR. FILIPI: We just did not reach any opinion regarding the officers.

MR. KAGAN: Who's "we?"

MR. FILIPI: Mr. Smyser, the Attorney General and myself. I never heard, in my presence, anything discussed regarding the guards, as far as whether they are bound by it or not bound by it.

MR. KAGAN: Aren't they employed by the Department?

MR. FILIPI: They are certainly employed.

MR. KAGAN: And aren't they bound by directives aimed at the Department?

MR. FILIPI: I would think so, yes.

MR. KAGAN: And aren't they bound by legal opinions given for the Department's benefit?

MR. FILIPI: I would say, generally, yes.

MR. KAGAN: Why weren't they apprised of the Attorney General's opinion? They wouldn't have had to go through the problem of calling Mr. Kirschner, and Mr. Goldstein.

MR. FILIPI: They elected to have their own counsel.

MR. KAGAN: Were they told that they didn't have to testify because of the Attorney General's opinion?

MR. FILIPI: They elected to have their own counsel.

MR. KAGAN: I am asking you if they were told that they didn't have to testify?

MR. FILIPI: I believe that would be an interference between the client and his counsel. They elected to have their own counsel before --

MR. KAGAN: What counsel, you? I'm asking you if you informed the guards that they had a right (quote) not to testify (close quote)?

MR. FILIPI: By the time the opinion was made known to me, they had already elected to be represented by Mr. Kirschner and Mr. Goldstein.

MR. KAGAN: Did you inform Mr. Kirschner and Mr. Goldstein that there was an outstanding Attorney General's opinion which said those gentlemen would not have to testify because of the Attorney General's opinion, that they were bound in the course of their employment?

MR. FILIPI: I think that may be erroneous, because the Attorney General --

MR. KAGAN: That's not what I asked you. I asked you if you informed their attorneys.

MR. FILIPI: I did not inform their attorneys. I did not know if their attorneys were aware, but I think your

6-78

statement of what the opinion was is erroneous.

MR. KAGAN: What is the opinion?

MR. FILIPI: The opinion is that Lieutenant Williams and Captain Winters and Mr. Patton are not permitted to talk regarding the ongoing investigation.

MR. KAGAN: And when was this opinion rendered.

MR. FILIPI: It was reconfirmed before me today around three o'clock. I also received this via Mr. Smyser last Friday.

MR. KAGAN: Last Friday?

MR. FILIPI: Last Friday.

MR. KAGAN: The Superintendent came before the Committee on Thursday.

MR. FILIPI: That is as to the Lieutenant and the Captain. Excuse me. I should have clarified that.

MR. KAGAN: But you didn't inform the guards or you didn't inform the guards' attorneys that there is an ongoing policy as explained to us by the Attorney General that investigations in being are not disclosed, that there is no discussion of ongoing investigations, which is the nature of the policy and you can just fill in the blank as to whose name may be called.

MR. FILIPI: I did not discuss that policy. And



7-79

certainly I think if I had, I would have been overstepping whether or not the opinion was as to the guards, because I don't know.

MR. KAGAN: So, in other words, we may at some time --

MR. FILIPI: I don't know.

MR. KAGAN: -- be able to summon certain employees of the Department who may be able to talk about the incidents?

MR. FILIPI: I just don't know. I am not in a position at this time to tell you whether or not that is true.

MR. KAGAN: So the Attorney General's opinion revolves around three specifically named individuals?

MR. FILIPI: There are certainly three individuals at this time that this opinion is applicable to. Who else it may be applicable to, I don't know at this time.

MR. KAGAN: Could it be that in five minutes it may be applicable to everybody?

MR. FILIPI: I guess that is your surmise, but I don't know.

MR. KAGAN: No more questions.

REPRESENTATIVE RICHARDSON: Mr. McClea?

MR. McCLEA: I believe this is perhaps the area that Mr. Kagan is talking about. It is the only one I am

concerned about now.

From what I am hearing you say is that the Attorney General wishes to exercise -- and from what I understand Mr. Kagan is saying -- a responsibility mandating him to represent employes of the Commonwealth, in this case the Bureau of Corrections -- is that accurate to say -- while an investigation is ongoing in their Department, and the Legislature would like also to question these individuals?

MR. FILIPI: I am somewhat confused by your question.

MR. McCLEA: I will try to reword it.

It is my understanding from the Attorney General's opinion that you are alluding to, that while the Justice Department is undertaking an investigation, that the Attorney General's Office will represent individuals, or will represent in this case, some individuals?

MR. FILIPI: No. The position regarding representation has nothing to do with the investigation. Whether there is or is not an investigation ongoing had no significance as to whether or not the Attorney General will offer legal assistance.

MR. McCLEA: When does the Attorney General offer legal assistance?

MR. FILIPI: Legal assistance is offered to all members, employes, of the Executive Branch of government in all actions, but for those by conflict of interest, the Attorney General cannot represent in the area of criminal law.

MR. McCLEA: Does the Attorney General offer this assistance with discrimination --

MR. FILIPI: No.

MR. McCLEA: -- depending on the person's rank and position that they are employed by?

MR. FILIPI: No.

MR. McCLEA: And if not, why did not the Attorney General's Office not make the same offer? It does not have to order an employe to take that counsel, but why did they not take it upon themselves to exercise that responsibility and offer that assistance to every employe brought before this Committee?

MR. FILIPI: It was offered before to every employe.

MR. McCLEA: So your understanding is that every employe that we asked to come before this Committee -- and I am not including the inmates at this time --

MR. FILIPI: No, because they are not employes.

MR. McCLEA: -- the employes that came before

7-82

this Committee, that the Attorney General's Office or a person from that office -- be it you, Mr. Smyser, Mr. Gilman or the Attorney General or anyone else -- offered the guards the assistance of representation from their office?

MR. FILIPI: Yes.

MR. McCLEA: And did they also advise them the same advice that they did to all of the employes, or did they offer their advice with discrimination?

MR. FILIPI: No. I think we have to look at the sequence. The day --

MR. McCLEA: Regardless of the sequence. I am talking about the responsibility that they indicate they have. Did they distinguish between the advice they gave to the person, depending upon their rank or position?

MR. FILIPI: No, no. Assistance was offered to all of them.

MR. McCLEA: Did they distinguish between when they offered that advice?

MR. FILIPI: No.

MR. McCLEA: Did they distinguish -- does it matter to the Attorney General's Office whether or not a private counsel is or is not ever retained?

MR. FILIPI: As far as the relationship between

7-83

the client and his counsel, yes. I believe there is a great question of interference if you would step in between.

MR. McCLEA: Do they then offer that bit of advice to the counsel who has been retained by that person?

MR. FILIPI: Is this a general question or is this regarding -- no opinion was made as to the officers, okay?

MR. McCLEA: I think I am getting into the same round circle that perhaps Mr. Kagan got into.

MR. KAGAN: When were the guards offered the legal counsel?

MR. FILIPI: Whatever day was the day that they were notified that they would first be requested to be here. Mr. Patton contacted me, and we assured Mr. Patton that representation would be available from the Attorney General's Office with certain limitations.

MR. KAGAN: Such as?

MR. FILIPI: Such as the area of conflict of interest, in the possible Fifth Amendment problem, in the other things regarding the investigation which I don't think I am at liberty to get into at this time.

MR. KAGAN: Was it within your knowledge that this offer was transmitted to the guards?

MR. FILIPI: Yes, it would be my understanding

that it would have been.

MR. KAGAN: You didn't transmit it personally?

MR. FILIPI: Not personally.

MR. KAGAN: Did anybody from the Department of Justice, any of the attorneys with the Department of Justice, transmit this offer to the guards?

MR. FILIPI: Personally?

MR. KAGAN: Yes -- to the best of your knowledge?

MR. FILIPI: To the best of my knowledge, no.

MR. KAGAN: I keep looking at this section of the Administrative Code, and all I see in this Administrative Code is words like "shall" -- the Department shall do this, and the Department shall do that. And you keep telling me instances in departmental policies where the opinions of the Attorney General are not directly given to affected individuals. And I keep reading in this section of the Code that it shall be the duty of the Department to give this advice. And I don't understand why the advice wasn't given.

That is what raises the doubt in the minds of the members of the Committee as to what is going on.

MR. SMYSER: Mr. Kagan, do you read "shall" in that context to mean shall represent in a criminal case?

MR. KAGAN: This is not a criminal case, this is

7-85

a legislative hearing.

MR. SMYSER: Do you read it in that context?

MR. KAGAN: No, I don't.

MR. SMYSER: I would very much like to ask you several questions.

MR. KAGAN: Go ahead.

MR. SMYSER: Do you read it in that context, "shall" represent in criminal proceedings?

MR. KAGAN: No.

MR. SMYSER: Do you read it in that context to mean shall advise as counsel to state employes when appropriate that you should refuse to answer that question on the grounds it shall incriminate you?

MR. KAGAN: Sure.

MR. SMYSER: You do?

MR. KAGAN: Sure, if that's appropriate legal advice.

MR. SMYSER: Do you think the Attorney General having a client, a state official, who he knows is going to take the Fifth Amendment, should provide representation?

MR. KAGAN: I didn't know that he knew that a client was going to take the Fifth Amendment.

MR. SMYSER: Well, it became clear and I think in

the context of this --

MR. KAGAN: Well, it wasn't clear until the first time that somebody sat down in the witness chair to answer questions before this Committee. It was never clear with each and every individual until they did, in fact, take the Fifth Amendment. And they didn't in fact, have to testify, because if the Attorney General's opinion is that any employe of the Commonwealth does not have to discuss an ongoing investigation, then I just can't understand why they weren't given that advice.

MR. SMYSER: You pointed out the exact reason; that is, that everything developed very quickly. Events developed. The guards elected to have private representation. It became known to us through counsel for the guards that they would be taking the Fifth Amendment. We could not represent, as the Attorney General, somebody who was taking the Fifth Amendment.

There were very many reasons why this particular issue never became focused with respect to those guards. And it's very fine to look at it in retrospect and say, why, but during the course of this thing, the issues were never framed.

MR. KAGAN: Well, it was clear this morning when



there was a gentleman here who didn't have counsel that somebody had come from the Attorney General's Office and given one of the guards the assistance of counsel which he didn't have.

MR. FILIPI: We weren't aware of that. If you are talking about this afternoon, that was when I had already left the room to attempt to comply with Subcommittee's request regarding the opinion.

MR. HARTMAN: Let me ask a hypothetical question.

I think it is the position of the Attorney General that Lieutenant Williams and Captain Winters are bound by this so-called opinion, is that not correct?

MR. FILIPI: Yes, it is binding upon them.

MR. HARTMAN: Now, when did you first convey this to Lieutenant Williams?

MR. FILIPI: Friday afternoon, I believe.

MR. HARTMAN: Now, what would you have done or what would the Attorney General have done if, over the weekend, Lieutenant Williams saw fit to go out and get private counsel, and on the advice of that counsel, he wanted to come before this Committee and testify fully in response to questions of the Committee?

What would the Attorney General's Office have

7-88

done then, since he now had private counsel? Would you say that that opinion would still be binding on him and that he couldn't follow the advice of his counsel?

MR. FILIPI: I would say the opinion would have been binding on him, yes.

MR. HARTMAN: And how would you have invoked it?

MR. FILIPI: I am not exactly sure.

MR. HARTMAN: Would you have advised counsel of that opinion?

MR. FILIPI: If the opinion was already binding on him, I think we would have advised him. We would have stated to him the opinion that would be binding. If it had already been issued and was binding on him, he would already have been aware of it. I don't know what we would have had to do beyond that, as far as he was concerned.

MR. HARTMAN: You would have advised his counsel of that fact?

MR. FILIPI: I'm just not sure.

MR. HARTMAN: And you stated that as of Friday, you had advised Lieutenant Williams and you were representing him. May I ask why Lieutenant Williams and yourself and the other representatives from the Attorney General's Office were not here at 9:30 this morning, at the time requested for him

7-89

to appear?

MR. FILIPI: There was some confusion regarding that, from what I understand. It is all secondary hearsay. If you want my understanding of it, I will be glad to give it to you.

MR. HARTMAN: Yes, I would.

MR. FILIPI: Okay.

I was informed, in fact, that some communication would be made back from a member of the staff of the Subcommittee as to whether or not the hearing would be going this morning. That was hearsay. I'm sorry, but that is what I was told.

MR. HARTMAN: What time did you hear that?

MR. FILIPI: I heard that first -- let me think. I called Mr. Patton yesterday afternoon at approximately 2:45, I believe, or thereabouts. It may have been 2:50. At that time I was informed that the question of whether or not, in fact, the Subcommittee hearings would be going was somewhat tenuous, that, in fact, a member of the staff of the Subcommittee would inform Mr. Patton as to whether or not they were going to take place. I was awaiting word that they would, in fact, take place.

REPRESENTATIVE RICHARDSON: Mr. Filipi, let me

get something straight on that line.

Isn't it true that the only reason why you could assume that there might not be any hearing was because of the fact that Mr. Kirschner indicated he wasn't going to be present here today, and therefore, none of the guards would be present this morning?

MR. FILIPI: You are talking about the six guards?

REPRESENTATIVE RICHARDSON: Yes.

MR. FILIPI: Yes, that was my understanding that that was the problem.

REPRESENTATIVE RICHARDSON: But that is not what you said to the Committee.

MR. FILIPI: Yes, it is, because if, in fact, the Subcommittee elected not to hold hearings because six of the guards -- not referring to Mr. Williams and Mr. Winters -- if, in fact, they decide not to hold hearings whatsoever, I would like to know that before I come over here.

REPRESENTATIVE RICHARDSON: But you had no word from your staff, or members of the Committee, that the hearings were going to be cancelled, did you?

MR. FILIPI: I had indirectly.

REPRESENTATIVE RICHARDSON: I am saying from our Committee or from this staff.

7-91

MR. FILIPI: I have never had any personal contact regarding when a hearing is going to be held. No one on the Subcommittee or staff has ever called me and told me when a hearing is to be held. I have always gotten my information second-hand.

REPRESENTATIVE RICHARDSON: But at no time did you ever think in the past that there were not going to be hearings if I so scheduled them to be here at 9:30?

MR. FILIPI: I always checked and found out whether they were going on.

REPRESENTATIVE RICHARDSON: So the only information that would be relayed to you from Superintendent Patton must have been the fact that other guards were not going to testify because Mr. Kirschner wasn't going to be here. But just because they were not going to show up, that didn't mean the hearings would be canceled.

MR. FILIPI: That was not the information I received. I received the information that there would be some affirmative act on the part of the Subcommittee's staff whether or not the hearings would go on.

REPRESENTATIVE RICHARDSON: Who told you that?

MR. FILIPI: Mr. Patton -- that a member of your staff was to communicate with us if the hearings were going to

go on. And the problem dealt with representation of the six guards by Mr. Kirschner or someone from his office.

REPRESENTATIVE RICHARDSON: All right.

Representative Ross?

REPRESENTATIVE ROSS: I have no questions.

REPRESENTATIVE RICHARDSON: Representative Oliver?

BY REPRESENTATIVE OLIVER:

Q Lieutenant Williams, can you tell me the difference between minimum and excessive force?

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: Well, in my opinion, the minimum amount of force would be the amount only that would be used to reach the desired effect.

I mean, who decides what is minimum and what is maximum?

REPRESENTATIVE RICHARDSON: That is what we are trying to determine.

BY REPRESENTATIVE OLIVER:

Q On the night of October 15th, were you on the cell block at the time they were having this situation there?

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: Yes.

BY REPRESENTATIVE OLIVER:

Q Did you see any of the inmates being removed from their cells?

A Yes, sir.

Q Was Sergeant Stotelmyer there?

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: Yes, sir.

BY REPRESENTATIVE OLIVER:

Q Based on prior testimony that we have received, it seems that Sergeant Stotelmyer, based on the testimony, had a tendency of choking when removing an inmate from his cell.

Can you tell me, in your honest opinion, would this be considered as minimum or excessive force?

MR. FILIPI: Do I understand the question to be, would he consider choking to be minimum or excessive use of force?

REPRESENTATIVE OLIVER: Yes.

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: I would have to consider the

94

circumstances under which it may have been used, if it ever would be used.

BY REPRESENTATIVE OLIVER:

Q Well, Lieutenant Williams, I have directed circumstances to you of what actually has been told to this Committee.

A I'm not aware, sir, of --

Q Well, based on testimony that we have received, in your honest opinion, based on what has been told us, would you consider this to be excessive or minimum force?

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: I don't know what was told to you, sir. I have no idea what was related to you.

BY REPRESENTATIVE OLIVER:

Q Lieutenant Williams, another question.

Since you were there, would you tell us what actually took place?

(Mr. Williams consulted with his counsel.)

MR. WILLIAMS: On advice of counsel, I cannot answer this question because of the opinion of the Attorney



7-95

General.

REPRESENTATIVE OLIVER: Mr. Chairman, I move that since we do not have a quorum present here this evening, that tomorrow before a full quorum, that we vote to subpoena Lieutenant Williams to appear before this Committee and answer questions pertinent to the investigation.

REPRESENTATIVE LEDERER: I second the motion.

REPRESENTATIVE RICHARDSON: It has been properly moved and seconded that tomorrow morning before the Subcommittee on Corrections, that we subpoena Lieutenant Williams to testify before this Committee.

And since it has been properly moved and seconded, it is my understanding that it does not require a vote of the Committee to be present, and the matter will be taken up tomorrow, and upon that move, you will be notified accordingly, sir. You will perhaps be subpoenaed here and to answer questions.

I would also indicate to you, sir, that this Committee has the right to cite you in contempt. And all of the opinions that have been raised today can certainly be invoked and, as both Deputy Attorneys General can inform you, they will, I guess, move to go to court.

I would also indicate to you that you can rest

assured that this Committee is certainly not satisfied with the opinion that has been offered and rendered by the Attorney General and we will move accordingly. And I so inform you now.

So I would ask the Deputy Attorney General that he have Lieutenant Williams stand by. He will certainly be notified tomorrow right after our vote.

You are excused.

(Witness excused.)

REPRESENTATIVE RICHARDSON: I would like to call to the witness stand at this time Captain Winters.

CHARLES WINTERS, recalled as a witness, having been previously sworn, according to law, testified as follows:

BY REPRESENTATIVE RICHARDSON:

Q Captain Winters, have you been sworn in, sir?

A Yes, sir.

Q Would you state your name for the record?

A Charles Winters.

Q And your position?

A Captain, Correctional Institution at Camp Hill.

7-97

Q Indicate whether or not you are represented by counsel?

A I am, sir.

Q State his name for the record.

A Francis Filipi, Assistant Attorney General.

Q Captain Winters, how long have you been a Captain at the institution?

A I got my promotion last Friday.

Q Last Friday?

A Yes, sir.

Q Prior to that you were a lieutenant?

A Correct.

Q Were you a lieutenant on October 15th?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: I was.

BY REPRESENTATIVE RICHARDSON:

Q Were you a lieutenant on October 20th?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: Yes, I was.

BY REPRESENTATIVE RICHARDSON:

Q How long overall have you been a Correctional Officer at the Institution at Camp Hill?

A Approximately 20 years.

Q You have been there approximately 20 years?

A Yes, sir.

Q In your 20 years of service as a Correctional Officer, that you have made a career out of, have you ever seen any Correctional Officers engaged in any battle between inmates?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: Yes, sir -- well, would you clarify your question for me?

BY REPRESENTATIVE RICHARDSON:

Q I certainly will.

Have you ever seen any physical confrontations between any juvenile inmates at the institution and any of your adult Correctional Officers?

A Yes, juvenile and criminal (sic), both.

Q I didn't hear your answer.

A Juvenile and criminal -- adults, both, yes, sir.

Q Do you know Michael Kaup?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: Yes, sir.

BY REPRESENTATIVE RICHARDSON:

Q And was he incarcerated on October 15th at your institution?

A To the best of my knowledge, yes.

Q Were you present on October 15th?

A No, sir.

Q Were you present on October 20th?

A Yes, sir.

Q Do you know a Mr. Kendall Magwood?

A Yes, sir.

Q Did you see him on that day?

A I did.

Q And on that day that you saw him, did you have reason to go to his cell and remove him from his cell block?

A I did, sir.

Q And as a result of that, where did you take him?

A BAU Unit.

Q For what reason, sir?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: On advice of counsel, I cannot answer this question, because of the opinion of the Attorney

General.

BY REPRESENTATIVE RICHARDSON:

Q What opinion is that, sir?

A As stated before by my counsel, sir.

Q Do you know what that opinion is?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: Yes.

BY REPRESENTATIVE RICHARDSON:

Q Would you tell this Committee what it is?

A That I have been advised by counsel not to testify as to the specific incidents which happened on October 20th of this past year.

Q Do you know why?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: Yes, sir.

Could I have that question repeated?

REPRESENTATIVE RICHARDSON: Would the stenographer go back and read the previous question?

(The last three questions and answers were read back by the Reporter.)

(Mr. Winters consulted with his counsel.)

MR. WINTERS: I may not testify to this, sir, due to the investigating procedure going on with the Attorney General's Office.

BY REPRESENTATIVE RICHARDSON:

Q That you may not what, sir?

A Testify to your question due to the proceedings and investigation going on with the Attorney General's Office.

Q When do you think you will be able to testify?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: When the investigation is complete and -- when the investigation is completed, sir.

BY REPRESENTATIVE RICHARDSON:

Q When the investigation is complete?

A By the Attorney General's Office.

Q Do you know when it is going to be completed?

A I have no idea, sir.

REPRESENTATIVE RICHARDSON: Does your counselor know?

MR. FILIPI: I believe the Solicitor General

stated that it would be approximately two weeks from the time, and then it will be turned over to the District Attorney of Cumberland County.

REPRESENTATIVE RICHARDSON: Do you know whether or not that has been done yet?

MR. FILIPI: I do not know.

REPRESENTATIVE RICHARDSON: It has been two weeks.

MR. FILIPI: Not since the Solicitor General testified. The Solicitor General testified just last Wednesday, exactly one week ago. It was at the time of Mr. Patton's appearance here. I would guess then it might be another week more that we are talking about.

BY REPRESENTATIVE RICHARDSON:

Q I would like to ask you, Captain Winters, whether or not you know the seriousness of this Committee and its investigation at this present time, and all of the incidents that have occurred as a result of the incident on October 20th, since you are more familiar with October 29th.

A I do.

Q Do you know whether or not any officer who had occasion to go into Kendall Magwood's cell and remove him from that cell, whether or not any officer had a razor blade and



sliced Mr. Kendall Magwood on the neck?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: On advice of counsel, I cannot answer this question because of the opinion of the Attorney General.

BY REPRESENTATIVE RICHARDSON:

Q Do you know whether or not there was any physical confrontation with Kendall Magwood and any other officer who was on duty on that October 20th date?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: On advice of counsel, I cannot answer this question because of the opinion of the Attorney General.

BY REPRESENTATIVE RICHARDSON:

A Do you know what officers were present on October 20th, along with you when you removed Mr. Magwood from his cell and removed him to the BAU?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: Sir, what area are you referring to,

the immediate area?

BY REPRESENTATIVE RICHARDSON:

Q Well, wherever Kendall Magwood's cell was, wherever you went in to get him from the area he was in. I am asking you what other officers were on duty that day that helped to remove him from that cell block?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: On advice of counsel, I cannot answer this question because of the opinion of the Attorney General.

BY REPRESENTATIVE RICHARDSON:

Q Was Sergeant Stotelmyer on that day?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: Yes, sir.

BY REPRESENTATIVE RICHARDSON:

Q Was Sergeant Benner on that day?

A I don't know, sir.

Q Was Officer Forker on that day?

A I don't know, sir.

Q Was Officer Ströck on that day?

A Yes, sir.

Q Was Office Stewart on that day?

A Yes, sir.

Q Was Officer Green on that day?

A Yes, sir.

Q Was Officer Smith on that day?

A Yes, sir.

Q Was Officer Wolfe on that day?

A I don't know, sir.

Q Was Officer Garrell there?

A Yes, sir.

Q Do you know whether or not Lieutenant Williams was on that day?

A Yes, sir.

Q Did you see Officer Garrell at any time pull Officer Himes off of Kendall Magwood -- let me ask that question again. I made a mistake.

At any time on October 20th, did you see Officer Himes pull Officer Garrell off Kendall Magwood?

(Mr. Winters consulted his counsel.)

MR. WINTERS: On advice of counsel, I cannot answer this question because of the opinion of the Attorney

General.

BY REPRESENTATIVE RICHARDSON:

Q Are you here pursuant to a letter that you received requesting you to be here before this Committee?

A Yes, sir.

Q Did you read the contents of the letter and the two attachments, Resolution 47 and House Rule 51?

A Yes, sir.

Q Did you read it in its entirety?

A I did.

Q Did you understand it?

A I think so, yes.

Q Do you understand that this Committee may issue subpoenas under the hand and seal of its Chairman commanding any person to appear before it and to answer questions touching matters properly being inquired into by the Committee and to produce such books, papers, records and documents as the Committee deems necessary?

A Yes, sir, I did.

Q Did you also see the part that says,

"Such subpoenas may be served upon any person and shall have the force and effect of subpoenas issued out of the courts of this Commonwealth?"

A Yes, sir.

Q Do you understand it?

A Yes, sir.

Q Do you understand also in the same document that any person who wilfully neglects or refuses to testify before the Committee or to produce any books, papers, records or documents, shall be subject to the penalties provided by the laws of the Commonwealth in such case?

A Yes, sir.

Q You understand that?

A Yes, sir.

Q Do you understand the penalty that you might receive as a result of not answering questions?

A Yes, sir.

Q Let me ask you the same question that I asked Lieutenant Williams. Do you want this Committee to subpoena you to be here to answer questions before this Committee, sir?

A No, sir.

Q Were you ordered not to answer the questions of this Committee?

A No, sir, I was not ordered to.

Q Were you ordered by your counsel not to answer the questions of this Committee?

A No, sir.

Q Were you ordered by anyone else not to answer the questions of this Committee?

A No, sir.

Q Then why aren't you answering them?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: Sir, the opinion of the Attorney General has been binding upon me and therefore I --

BY REPRESENTATIVE RICHARDSON:

Q Tell me how it is binding on you? I have been hearing this a great deal. Tell me how it has been binding on you.

(Mr. Winters consulted with his counsel.)

MR. WINTERS: I don't know, sir.

BY REPRESENTATIVE RICHARDSON:

Q You sit here before this Committee and you want us to believe, sir, that when you tell me you were not ordered not to testify before this Committee, that no one has given you any reason not to testify, other than the opinion which you say is binding on you, and then when I ask you why it is not

binding, you confer with your counsel and you tell me you don't know -- I certainly don't understand that.

Perhaps you should ask your counselor again.

Can you tell this Committee why it is binding?

MR. FILIPI: Do you want him to answer that or me?

BY REPRESENTATIVE RICHARDSON:

Q I want a direct answer from you, Captain Winters.

(Mr. Winters consulted with his counsel.)

MR. WINTERS: It is my understanding, sir that this opinion protects me from liability. The opinion is binding upon me and therefore --

BY REPRESENTATIVE RICHARDSON:

Q I heard the statute earlier. I understand it will protect you from liability?

A Yes, sir.

Q Do you have a family, sir?

A Yes, sir.

Q Do you have children?

A Yes, sir.

Q And knowing the circumstances that you are falling into -- in other words, I understand that it must be very precarious for you.

Recognizing all that, are you still not going to answer any questions, although you have not been ordered not to?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: I am bound by the opinion of the Attorney General.

REPRESENTATIVE RICHARDSON: Representative Oliver?

BY REPRESENTATIVE OLIVER:

Q Captain, on October 20th, Kendall Magwood was removed from his cell -- or was he removed from his cell and taken to the BAU?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: He was.

BY REPRESENTATIVE OLIVER:

Q Can you tell me, did you assist in removing him to the BAU?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: On advice of counsel, I cannot answer



this question because of the opinion of the Attorney General.

REPRESENTATIVE RICHARDSON: I asked the gentleman to answer the question directly and he has already answered it.

MR. FILIPI: What was the question? Maybe I misunderstood.

BY REPRESENTATIVE OLIVER:

Q Did you assist in removing Kendall Magwood to the BAU?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: Yes, sir. I believe that that question was asked before.

BY REPRESENTATIVE OLIVER:

Q Well, you didn't answer my question. I probably wasn't here. I don't recall it. Did you assist in removing Kendall Magwood to the BAU?

A I did, yes.

Q Were there any other officers assisting you?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: On advice of counsel, I cannot answer this question because of the opinion of the Attorney General.

REPRESENTATIVE OLIVER: That's all I have.

REPRESENTATIVE RICHARDSON: Representative Ross?

REPRESENTATIVE ROSS: I have no questions.

REPRESENTATIVE RICHARDSON: Representative Lederer?

BY REPRESENTATIVE LEDERER:

Q Have you ever been before this Committee before as a witness?

A I was here and took the oath, sir.

Q But you never --

A Testified?

Q Yes.

A No, sir.

Q Were you represented by counsel at that time?

A Yes, sir.

Q Who were you represented by?

A Mr. Kirschner.

Q Mr. Kirschner?

A Yes.

Q Did you request Mr. Kirschner to represent you?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: Yes, sir, at that time.

BY REPRESENTATIVE LEDERER:

Q Are you a member of AFSCME?

A No, sir.

Q Did you ask him to represent you as private counsel with a fee, a retainer?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: No, sir -- well, would you repeat that question, please?

BY REPRESENTATIVE LEDERER:

Q Let me reword the whole question.

Was there any discussion of a fee at the time?

A No, sir.

Q Do you expect a fee? Do you expect to pay a retainer or a fee to Mr. Kirschner?

(Mr. Winters consulted with his counsel.)

REPRESENTATIVE LEDERER: He can answer that himself.

MR. FILIPI: Yes, I know. He is just attempting to communicate something to me.

(Mr. Winters consulted with his counsel.)

MR. WINTERS: There has been nothing brought forth

to that effect whatsoever, as yet.

BY REPRESENTATIVE LEDERER:

Q In your thinking, does it seem strange to you that Mr. Kirschner would represent you when you requested the Attorney General to represent you?

A Mr. Kirschner did this on a voluntary basis.

Q Did you approach him?

A No, sir, I did not.

Q Did the Attorney General at that time approach you to offer his services as counsel?

A Indirectly, yes.

Q How did they do it indirectly?

A Through the Superintendent.

Q Have you since asked the Attorney General to represent you?

A Yes, sir.

Q Can you tell me when?

A Today.

Q Today?

A Yes.

Q Today was the first time that you asked him?

A Yes, sir.

Q What time today did you ask the Attorney General

to represent you?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: Approximately 11:00 o'clock this morning.

BY REPRESENTATIVE LEDERER:

Q Were you going to come here without counsel this morning?

A I wasn't asked to come this morning.

Q Oh, when were you notified? I'm sorry. When was the letter sent?

A About 11:00 o'clock this morning.

Q You got the letter at 11:00 o'clock this morning?

A I didn't get a letter.

Q You never got a letter?

A I got a letter, but not this morning.

Q Pardon me?

A I got the original letter with the group of officers that got their letters.

REPRESENTATIVE RICHARDSON: The October 23rd letter is what they are referring to.

BY REPRESENTATIVE LEDERER:

Q When were you sworn?

A The day the rest of the officers were sworn. I don't know when it was.

Q Did it seem strange to you that the Attorney General's Office had not contacted you in reference to counsel?

A They did, sir.

Q On the 23rd?

A Yes, sir.

Q Well, it is not clear in my mind then why you would go to Mr. Kirschner.

(Mr. Winters consulted with his counsel.)

MR. WINTERS: Mr. Kirschner volunteered to represent me.

BY REPRESENTATIVE LEDERER:

Q On the 23rd who was your counsel when you were sworn in?

A Mr. Kirschner; but Mr. Goldstein was present.

Q All right, Mr. Goldstein. And how long did they continue as your counsel?

A Until today, sir.

Q Today?

A Yes, sir.

Q And approximately what time was that?

A Approximately 11:00 a.m.

Q Did you formally dismiss Mr. Goldstein as your counsel today?

A Yes, sir.

Q You formally dismissed him orally?

A Yes.

Q And at that time did you ask the Attorney General to represent you?

A Not at that time; prior to that time.

Q Pardon me.

A At 11:00 a.m.

Q So then, although you weren't called at that time, you had two persons acting as counsel?

A For a period of two hours, yes, sir.

Q The promise of the Attorney General, and then the attorney of record was Mr. Kirschner's Office?

A For a period of two hours, approximately.

Q Did it seem strange to you at all, from this period of the 23rd, that the absent people had retained an attorney for the noncommissioned officers and yet you, being a commission officer had no counsel at that time? Did that seem strange to you at all?

A No, sir.

Q And yet you were aware at that time that the Attorney General would make, through Superintendent Patton, counsel available to you?

A Correct.

Q Had you been called to testify on October 23rd, would you have testified?

A Yes, sir.

Q Would that be against the Attorney General's decision, which you have told us today on the advice of the Attorney General you would not testify?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: At that time I was not represented by the Attorney General's Office, and, therefore, was represented by Mr. Kirschner.

BY REPRESENTATIVE LEDERER:

Q Well, do you think, in your words, it would be unfair for you to testify against the Department ruling of the Attorney General, and that the Attorney General should have notified you at that time that on certain matters you were not to testify?



(Mr. Winters consulted with his counsel.)

MR. FILIPI: May I have the last question read back, please?

(The last question was read back by the Reporter.)

(Mr. Winters consulted with his counsel.)

MR. WINTERS: I didn't receive notice, sir, at that time that the opinion was binding at that time, sir.

BY REPRESENTATIVE LEDERER:

Q Okay then, do you think the Attorney General's Office has been keeping good faith with you?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: I think that they are keeping good faith with me, sir.

BY REPRESENTATIVE LEDERER:

Q Were you ever informed of the Attorney General's position in writing?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: No, sir.

REPRESENTATIVE LEDERER: That's all.

I would like to ask Mr. Filipi a question to get something clear in my mind.

Is it proper to advise a client, say, before this Committee or any other committee when you, or possibly your co-counsel there, are conducting an investigation on this personnel?

MR. FILIPI: I think that possibly the answer to that question would indicate something about the investigation. Let me see if I can answer it in some way.

I believe that generally, when in fact the preliminary investigation as it is ongoing does not indicate that a particular individual had committed any criminally culpable act, that it is entirely proper for the Attorney General's Office to represent him.

MR. SMYSER: May I elaborate on that?

REPRESENTATIVE LEDERER: Sure.

MR. SMYSER: I think that the problem of Attorney General representation of state employes and officers is one of the most difficult and recurring problems that the Department of Justice faces. We have, for instance, in court cases particularly and in civil rights cases, requested extensions of time for up to 60 days -- when we can get opposing counsel

to go along with it -- to investigate the circumstances just from the very point of deciding whether or not we can represent somebody or whether or not we are going to get in a case halfway through and realize that we are representing somebody who is culpable of crime.

That issue is not clear at this point in time. Efforts have been made in the past and are being made to clarify that question. There is a recent executive board resolution that attempts to codify some rules and regulations for that question.

But I think many of your questions here are directed at that very problem: When does the Attorney General represent and, believe me it is a very difficult problem.

REPRESENTATIVE LEDERER: I would like to go a little bit further -- or maybe just give a statement.

I find it very hard to believe that you are empowered by the Commonwealth to investigate certain happenings and at the same time - or before that time, you may have to ask for indictments either from the local courts or state courts. And there is that fine line there.

At the same time, if there was criminal intent or criminal happening that we are investigating, the Attorney General's Office which is empowered to bring before the courts

these people, at the same time -- today I have been told -- could very well be representing them. It is a fine line.

MR. SMYSER: Well, we don't extend, as you have seen, a blanket offer of representation. This is an initial offer of representation extended that is such -- you know we are dealing here with a situation that arose very, very quickly. This Subcommittee's hearings came about very, very quickly after the fact. We are used to court procedures where we do have some time to make determinations about representation. And I wish you would bear in mind that this situation was rather unique for us.

It was rather difficult for us to draw the guidelines for representation. We extended that initial offer when the Union indicated through Mr. Kirschner that it would provide representation for those guards. We acquiesced on that and saw nothing improper in acquiescing on that.

Now, in retrospect, that may appear to be an improper decision. At the time it appeared to be a proper decision. There was no thought about trying to advise those rank and file guards of the opinions that we have now formed and delivered with respect to Superintendent Patton and to the two commissioner officers.

BY REPRESENTATIVE LEDERER:

Q Let me ask you a few more questions, Captain.  
Do you feel comfortable being represented by  
counsel who could at any moment ask for your indictment?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: I would feel uneasy.

BY REPRESENTATIVE LEDERER:

Q Do you feel uneasy?

A Oh, no, sir.

Q Does the Officers' Association retain counsel?

A Pardon me?

Q Does the Officers' Association retain counsel?

A They do.

REPRESENTATIVE LEDERER: Thank you for your  
courtesy.

REPRESENTATIVE RICHARDSON: Mr. Hartman?

BY MR. HARTMAN:

Q Captain Winters, when you came here this morning,  
or whenever it was that you all arrived -- or let me put it  
this way, yesterday you knew you were going to appear here  
today.

A No, sir.

Q You did not?

A No.

Q When did you find out?

A Eleven o'clock this morning.

Q Eleven o'clock this morning?

A Yes, sir.

Q You had known since the 23rd, though, that you were going to be called?

A I was subject to appearing, yes, sir.

Q And had it been your intention when you were called that you would testify fully before this Committee, prior to this morning?

A At that time, sir, I was being represented by Mr. Kirschner and was relying upon his counsel.

Q I realize that. I am asking what your intention was relative to your testifying before this Committee when you were called?

A Whatever my counsel advised, sir.

Q Pardon me?

A Whatever my counsel advised at that time.

Q Would you have anticipated exercising any Fifth or Fourteenth Amendment rights on the advice of Mr. Kirschner?

A If Mr. Kirschner so advised me, yes, sir.

Q Did you think that was a possibility then?

A If Mr. Kirschner advised me, yes, sir.

MR. FILIPI: I think that is kind of speculation at this point.

BY MR. HARTMAN:

Q Well, I am not so certain it is, since everybody who Mr. Kirschner represented before this Committee did exercise those rights. And I believe Captain Winters was sitting here most of the days that testimony was taken.

A I was here two days, sir.

Q Two days?

A Yes, sir.

Q So you did observe people being represented by Mr. Kirschner exercising such rights?

A Yes, sir.

Q So that there is a distinct possibility that if you had not changed counsel, that you might have exercised such rights also?

A I might have, yes, sir.

Q Do you think the Attorney General's Office was aware of that fact?

MR. FILIPI: Again, in the area of speculation -- I don't think it is a question of --

MR. HARTMAN: Well, you stated to this Committee that one of the reasons you did not state to the guards what the Attorney General's opinion was, or did not seek to represent them further when Mr. Kirschner was in the picture, was that there were possible Fifth and Fourteenth Amendment rights that would be invoked by such individuals.

MR. FILIPI: That they have invoked them.

MR. HARTMAN: No, they had not prior to that. You did not know this until they took the stand and until each question was placed to those individuals, the Attorney General's Office did not know that fact. But you stated that is the reason why you did not state to them the opinion of the Attorney General.

MR. FILIPI: That was my statement and I don't believe it was Mr. Smyser's statement.

MR. SMYSER: We did know in a general way -- and I would be hard put to remember exactly how we knew it. I knew it on second or third hand that Mr. Kirschner -- this may have been the first or second day of the hearings after a guard or two had taken the Fifth Amendment -- but in any event it was related second or third hand to me that that would be the scheme of things for the guards represented by Mr. Kirschner.



And I might add to that, if I may, that if the other chain of events had occurred and if we had been requested by those guards to represent them, it would have been mandatory upon us, I think, as Deputy Attorneys General or Assistant Attorneys General, to determine whether there was any possibility that those guards would rely upon the Fifth and Fourteenth Amendments.

I think if we had found they did, we would have had a conflict of interests and we would have to advise them to get private counsel.

MR. HARTMAN: Well, did you do that in this case?

MR. SMYSER: As it developed, that opportunity never arose.

MR. HARTMAN: I am talking about Captain Winters who is sitting to your right.

MR. SMYSER: I believe that Mr. Filipi has talked to Captain Winters. I think our investigation was also such that it was clear there was no possible criminal involvement on his part.

MR. HARTMAN: But he is telling this Committee that it would have been a possibility --

MR. FILIPI: The possibility of invoking the Fifth Amendment, not a possibility of criminal consequences.

MR. HARTMAN: You are not talking about criminality, you are talking about the exercise of Fifth and Fourteenth Amendments rights.

MR. FILIPI: If he had exercised the Fifth and Fourteenth Amendments --

MR. SMYSER: Excuse me. If he had been represented by Mr. Kirschner, that is what he said when the question was placed to him. In response to that, he said there was a possibility that he might have.

MR. HARTMAN: And until this morning, he testified he was represented by Mr. Kirschner. He also testified that had he been represented by him all day today, that he might have possibly, on his advice, invoked such rights.

Now, I am saying, did the Attorney Generals determine that possibility before they consented to advise him before this Committee?

MR. SMYSER: We determined that on the basis of our investigation.

MR. HARTMAN: I am asking you if you asked Captain Winters about that possibility.

MR. SMYSER: I did not myself.

MR. FILIPI: I had stated to Captain Winters that, of course, if he was intending to invoke the Fifth or Fourteenth

Amendments, I could not represent him from that point. I did not advise him to invoke the Fifth Amendment.

MR. HARTMAN: And what did he indicate to you?

MR. FILIPI: This was not a problem to him. And our investigation had not proven that it was a problem for him to testify before this Subcommittee.

REPRESENTATIVE RICHARDSON: Mr. Sam McClea?

BY MR. McCLEA:

Q I have a couple of areas I would like to pursue. How long have you been working in the institution as a Correctional Officer?

A Approximately 20 years.

Q In that period of 20 years, to your knowledge, have you ever known of a Correctional Officer ever being suspended or dismissed --

A Yes, sir.

Q -- for using excessive force?

A Yes, sir.

Q You have?

A Yes.

Q Could you give a rough approximation or perhaps an exact number of how many times you heard of that?

A Well, I know of two incidents, approximately.

Q You know of two?

A Two at the most, I would say.

Q In the course of your 20 years?

A Yes, sir.

Q In the possession of the institution at Camp Hill they have -- they have in their possession a group of mechanical devices. Do they own batons, do you know?

A Yes, they do.

Q Do they own black jacks?

A No, sir.

Q They don't?

A No, they don't.

Q Do they own Mace?

A Yes, sir.

Q Do they own shields?

A They own shields, yes.

Q Are there any other kinds of mechanical devices they would use to insure safety?

A Just the handcuffs, sir.

Q Handcuffs?

A Yes, sir.

Q Are those pieces of equipment kept in a certain storage space?

A They are in designated areas, yes.

Q Designated areas?

A Yes, sir.

Q And they are locked so that the population --

A They are secured, yes.

Q Have you ever, in the period of 20 years, seen  
the use of that equipment?

A I have.

Q You have?

A Yes, sir.

Q Other than the handcuffs?

A Yes, sir.

Q Have you ever seen the use of a shield?

A Yes, sir.

Q Of Mace?

A Yes, sir.

Q Of a baton?

A No, sir.

Q No?

A No.

Q Have you ever heard of the use of a baton?

A No, sir.

Q Can you describe the kinds of incidents that were

occurring when the shield and Mace were used?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: We have had incidents where the inmate has been a security problem. He has attempted to injure himself. He has had to be removed to the hospital, to the isolation section of the hospital. We have had to go in after him with a shield. He may have had a weapon in his hand -- anything, I don't know -- and to protect the officers, of course, a shield was used, and they were controlled and taken to the isolation section of the hospital.

BY MR. McCLEA:

Q Now, this is getting more specific. Do you remember on the night of the 15th the possession of any of that kind of equipment, not counting the handcuffs, by any of the officers?

A I wasn't there on the 15th, sir.

Q How about the night of the 20th?

A There was nothing used, sir.

Q No equipment used?

A None at all.

Q Except handcuffs?

A No handcuffs.

Q No handcuffs?

A No, sir.

Q Was Mr. Magwood difficult to control?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: On advice of counsel, I cannot answer this question because of the opinion of the Attorney General.

BY MR. McCLEA:

Q If Mr. Magwood would have been difficult to control, would you foresee that that equipment would have been used?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: On advice of counsel, I cannot answer this question because of the opinion of the Attorney General.

BY MR. McCLEA:

Q In those instances where the equipment has been used -- shields -- or, let's say, in those instances where an inmate needs to be subdued or put under control or transferred,

or put under control to be transferred, or just put under control, is it usual that that equipment is used?

A Each case dictates a different procedure, sir.

Q But out of ten cases where individuals are physically subdued, how many of those would you guess that that equipment would be used?

A Which equipment, sir?

Q Be it shields or Mace or batons, and not counting handcuffs.

A Being shields, Mace or batons -- none, sir.

Q None?

A None.

Q Zero out of ten. How about out of a hundred cases, how many would you figure then?

A Sir, I think we are in two different areas here.

Q Okay. In out of 100 cases where an inmate would have to be subdued by an officer or officers, how many -- and this is your own guess -- how many out of that 100 occasions would a shield or a baton or Mace be used?

A Out of 100, sir? One, if that.

Q One, if that?

A Yes, sir.

MR. McCLEA: That's all. Thank you.



REPRESENTATIVE RICHARDSON: Representative Lederer?

BY REPRESENTATIVE LEDERER:

Q In your experience as a Correctional Officer of 20 years, is the show of force a deterrent in taking an inmate to confinement?

Now, I mean, for instance, if there is an inmate and he is giving a problem and one or two officers are trying to take him, then he might resist; as opposed to five or six officers, where he might not resist.

A Yes, I think that is a deterrent.

Q You think it is a good deterrent?

A Sir?

Q A good deterrent?

A I didn't say it was a good deterrent.

Q Your opinion is --

A I think a show of force is a deterrent, yes.

Q In your opinion?

A Yes, if they are not youths.

Q Not for youths?

A No.

Q Well, say, I am the one who is resisting.

A Sir, I think if there were five officers there, you would resist less than if there were only one.

Q Okay.

Now, who in the block would be in the best position to observe at any time?

A Well, the Block Officer should be, certainly.

Q Now, when an inmate may be taken to the BAU, the Block Officer doesn't necessarily go in to take him out, does he?

A He notifies the supervisor.

Q And the supervisor details other officers to take him?

A That is correct.

Q Does he have a specific place possibly where he should stay, say, by the controls or by the door?

A Yes sir. He should stay up front by the lever box.

Q And would you say at Camp Hill, the best place for observation of any such thing would be by the gate out?

A Our cell blocks are over 250 feet long. It is pretty hard to observe something 250 feet away, down at the end of the tier or at the end of the cell block; where up front he could see it, yes.

Q Well, what I am trying to say is, there is no place that is absolute, but there is one place maybe in the

cell block that is better than any other?

A Sir, when you are at the front of the cell block, you can't see clear down to the end of tier 3 or tier 4.

Q That's what I am asking. You can't?

A No, sir.

Q So, it wouldn't be the responsibility of the Block Guard or Block Officer to be down there. His main purpose would be to be down by the door?

For instance, you are going to take me out. You are in a detail of two or three men taking me, an inmate, out. Is there a specific place where the Block Officer should be?

A The Block Officer is generally the office designated to hit the cell door for the officers to escort the inmate up to BAU.

Q So he should be by the controls?

A Should be, yes.

REPRESENTATIVE LEDERER: Thank you very much.

REPRESENTATIVE RICHARDSON: Representative Oliver?

BY REPRESENTATIVE OLIVER:

Q Can you tell me for what reason Magwood was removed to the BAU?

(Mr. Winters consulted with his counsel.)

MR. WINTERS: On advice of counsel, I cannot answer this question because of the opinion of the Attorney General.

REPRESENTATIVE OLIVER: Mr. Chairman, in the absence of a quorum, I would move that tomorrow morning before a full quorum, that we vote to issue a subpoena to be served on Captain Winters to appear before this Committee to answer questions pertaining to this.

REPRESENTATIVE ROSS: I second.

REPRESENTATIVE RICHARDSON: It has been properly moved and seconded that Captain Winters be taken before this Committee in toto to vote upon tomorrow that he be subpoenaed to ask him questions pertaining to incidents relative to October 20th.

That has been so moved and tomorrow we will vote upon that.

Captain Winters, I cannot express to you the seriousness of this entire line of questioning that went on this afternoon. And the fact that our Committee has to subpoena you is certainly not because we really want to, but because we are trying to get as much testimony as we can on both sides of this issue.

We repeatedly have tried to get both sides since its inception, but we have received only one side of it.

I just want to let you know that upon tomorrow's meeting, at the end of that, you will be notified accordingly as to how this Committee will be moving, and you will be served, you and Lieutenant Williams, and Sam McClea will be ordered to issue subpoenas to you after our meeting.

At that time you will have to appear before this Committee. If you refuse at that time to testify before this Committee, it is quite possible you will be held in contempt. At that time, you will be brought before the entire body of the House of Representatives.

If you refuse then to testify, then there is a possibility that you might go to jail in Dauphin County prison in the state of Pennsylvania.

Understanding the rules that have been read on the opinion of the Attorney General and the rule cited from Purdon's, which indicates that you are free from liability, it makes it very hard at this particular time with co-equal branches of government, particularly since this House Resolution 47 is not under the Department of Justice. It is not the same rule as is in operation here.

You should be fully aware of that. And your counselors are here and can advise you what steps to take if that does occur.

So you are excused until further contact by this  
Committee.

(Witness excused.)

REPRESENTATIVE RICHARDSON: At this time we will  
recess this particular hearing until tomorrow morning at  
9:30.

(Hearing recessed at 4:30 p.m.)

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CERTIFICATE OF REPORTER

I hereby certify that the proceedings and  
testimony are contained fully and accurately in the notes  
taken by me during the hearing on the within cause, and  
that this is a correct transcript of the same.

  
Michael P. Elliott, Reporter