

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 84-1606

TITLE TERRANCE HOLBROOK, SUPERINTENDENT, MASSACHUSETTS
CORRECTIONAL INSTITUTION, NORFOLK, MASSACHUSETTS,
ET AL., Petitioners V. CHARLES FLYNN

PLACE Washington, D. C.

DATE January 14, 1986

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IN THE SUPREME COURT OF THE UNITED STATES

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TERRANCE HOLBROOK, SUPERIN- :
TENDENT, MASSACHUSETTS :
CORRECTIONAL INSTITUTION, :
NORFOLK, MASSACHUSETTS, ET AL., :
Petitioners, :

V. : No. 84-1606

CHARLES FLYNN :

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Washington, D.C.

Tuesday, January 14, 1986

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
2:02 o'clock p.m.

APPEARANCES:

THOMAS MORE DICKINSON, ESQ., Special Assistant Attorney
General of Rhode Island, Providence, Rhode Island; on
behalf of the Petitioners.

GEORGE KANNAR, ESQ., New York, New York; on behalf of
Respondent.

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P R O C E E D I N G S

CHIEF JUSTICE BURGER: Mr. Dickinson, I think you may proceed whenever you are ready.

ORAL ARGUMENT OF THOMAS MORE DICKINSON, ESQ.,
ON BEHALF OF THE PETITIONERS

MR. DICKINSON: Thank you, Mr. Chief Justice, and may it please the Court:

This is the case of Holbrook v. Moran -- Holbrook and Moran v. Flynn which is here on a writ of certiorari to review a decision of the United States Court of Appeals for the First Circuit, which court granted a writ habeas corpus to Charles Flynn.

The question before the Court today is whether the First Circuit committed error in concluding that the presence of armed Rhode Island State Troopers in the courtroom during Flynn's trial deprived Flynn of a fair trial by interfering with his presumption of innocence.

QUESTION: How many defendants were there being tried at that time?

MR. DICKINSON: Mr. Chief Justice, there were six defendants on trial at the time this case went to trial in Providence, Rhode Island. Three of the defendants -- all defendants were on trial together. Three of them were acquitted. Flynn and two co-defendants were convicted.

1 In my argument today --

2 QUESTION: Are you going to tell us exactly
3 where the officers were in relation to the defendants in
4 the courtroom?

5 MR. DICKINSON: Your Honor, the record --

6 QUESTION: Were they behind the chairs in which
7 defendants were sitting or where?

8 MR. DICKINSON: Your Honor, it would appear
9 that the record does not specifically reflect where the
10 officers were at all points in time. It is my
11 understanding, however, Your Honor, that the state
12 troopers were located in the front row of the spectator
13 section of the courtroom.

14 QUESTION: As, for example, we have a counsel
15 side here and a -- beyond it, a spectator section.

16 MR. DICKINSON: That is correct, Your Honor.

17 QUESTION: Is that the way it is?

18 MR. DICKINSON: And if I were to use this
19 courtroom as an illustration, I think it would be a
20 perfect illustration. The defendants would be seated in
21 the back row of the counsel section with their
22 attorneys --

23 QUESTION: Yes.

24 MR. DICKINSON: And the troopers would be
25 seated in the front row of the spectator section behind,

1 if you will, the bar, what we refer to in Rhode Island as
2 the bar.

3 QUESTION: But directly behind that, behind the
4 defendants, or does the record show?

5 MR. DICKINSON: The record does not
6 specifically address where they were.

7 QUESTION: It could be they were on the other
8 side of the front row?

9 MR. DICKINSON: It's unquestioned, Your Honor,
10 that they were seated in the front row of the spectator
11 section.

12 QUESTION: But they might have been on the
13 other side of the room from the defendants.

14 MR. DICKINSON: They might have been. The
15 record would not reflect such a finding. It would
16 appear --

17 QUESTION: It doesn't reflect where they were,
18 is that it?

19 MR. DICKINSON: It merely reflects that they
20 were outside the bar.

21 QUESTION: Yes.

22 MR. DICKINSON: And the defendants were inside
23 the bar.

24 QUESTION: All right.

25 MR. DICKINSON: I will be addressing two

1 questions in my argument today. First I will address the
2 manner in which the trial justice conducted the hearing
3 that concluded that the presence of the troopers was
4 permissible, and then I will address the broader question
5 of whether Flynn in this case was denied a fair trial.

6 I would briefly like to review some of the
7 important facts. This was a four month long trial that
8 occurred in the summer of 1976 in Providence, Rhode
9 Island. The case involved a major robbery, perhaps one
10 of the most celebrated trials ever in Rhode Island
11 history, the robbery of the Bonded Vault warehouse in
12 Providence, Rhode Island. In addition to armed robbery
13 charges, there were kidnapping charges and weapons
14 charges against, lodged against the defendants.

15 There were actually eight co-defendants in this
16 case. Two of them, however, were not tried with Flynn
17 and the others because they were at large at the time of
18 the trial. Those were defendants Macaskill and Lanou.
19 Five other defendants were tried with Flynn, as I pointed
20 out earlier, so six defendants were tried together.
21 Three were convicted and three were acquitted at this
22 trial. All of the defendants at this trial were held
23 without bail and therefore were, under Rhode Island law,
24 in the custody of the Rhode Island State Marshal

25 QUESTION: Were they held with -- when you use

1 the term were held without bail, do you mean they were
2 unable to raise money bail or that the trial court would
3 not allow them to be free even if they had raised money
4 bail?

5 MR. DICKINSON: It was that they, they were --
6 the trial court would not allow them to be free, and
7 perhaps this is -- this may be an esoteric point of Rhode
8 Island law. However, these defendants were specifically
9 determined prior to trial not to be entitled to bail. So
10 it wasn't a situation where they were indigent defendants
11 who couldn't afford to make bail, as perhaps this Court
12 referred to in the Estelle v. Williams case where you
13 might have an equal protection concern where the --
14 because the only reason the defendants is -- defendant is
15 in custody --

16 QUESTION: Well, bail was denied, that's all.

17 MR. DICKINSON: Bail was denied, that's
18 correct, Your Honor, prior to trial.

19 QUESTION: Did each have his own counsel?

20 MR. DICKINSON: My recollection is that Flynn
21 and another defendant shared counsel. I'm not sure which
22 other defendant that was, Your Honor. I believe it was
23 one of the defendants who was acquitted.

24 QUESTION: So it would suggest that there were
25 at least four defense counsel?

1 MR. DICKINSON: Oh, there were at least four
2 defense counsel, that's true, Your Honor.

3 QUESTION: For the trial.

4 MR. DICKINSON: And there were also two
5 prosecutors, I believe, in the courtroom at all times.

6 Two participants in the robbery who were never
7 charged as defendants, Messrs. Dussault and Danese, also
8 participated in the trial by testifying against Flynn and
9 his co-defendants. They had turned state's evidence and
10 were within the protection of Rhode Island authorities,
11 so that as this trial began, it became clear that this
12 was an unusual circumstances -- unusual circumstance,
13 first of all, because of the large number of defendants.
14 It became clear to the individuals charged with
15 maintaining custody of these defendants that with the
16 force of marshals that they had at their disposal, they
17 could not maintain the proper ratio of security personnel
18 to defendants in the courtroom.

19 The state marshals, if you will, were
20 numerically incapable of serving at this trial. There
21 were, at the time of this trial, there were eleven
22 marshals in Rhode Island, eleven available in Providence
23 County, I should say, to service this trial. The head of
24 the Marshals Service, Mr. Melucci, testified at a
25 pretrial hearing, and his testimony was that at all times

1 during the course of a criminal trial, when defendants
2 who are being held without bail are on trial, at all
3 times the marshals attempt to maintain a ratio of two
4 security personnel to one defendant.

5 Now, it would appear --

6 QUESTION: Mr. Dickinson, there was a state
7 appellate court review of the trial court's rulings, in
8 effect, wasn't there?

9 MR. DICKINSON: I suppose you might say, Your
10 Honor, that there were two reviews.

11 QUESTION: Was there -- yes, well, there was.
12 You acknowledge that.

13 MR. DICKINSON: That's true, that's true.

14 QUESTION: Now, did the state appellate court
15 ever think that the trial judge had considered that there
16 was anything about these defendants or this trial that
17 required extra security?

18 MR. DICKINSON: I would submit, Your Honor,
19 that there's nothing -- the state appellate court did
20 not, did not cite anything specifically referenced to
21 these defendants with regard to, if you will, heightened
22 security.

23 QUESTION: It seemed to focus on the manpower
24 shortages and the obligations of the collective
25 bargaining agreement.

1 MR. DICKINSON: Well, it certainly focused on
2 those aspects, Your Honor, and perhaps the reason for
3 that is that what the -- the purpose of the security
4 force was not enhanced security at all but was to provide
5 normal security, and the only way that normal security
6 could be provided was to enhance it with some outside
7 service.

8 QUESTION: Now, is that clear in the record,
9 that if there had been enough nonuniformed people
10 available, would they have been in the courtroom and
11 seated in roughly the same place?

12 MR. DICKINSON: Well, I don't think the record
13 specifically speaks to nonuniformed personnel for the
14 reason that the issue that was presented to the trial
15 judge was state troopers.

16 QUESTION: I know, I know.

17 MR. DICKINSON: As opposed to state marshals,
18 and of course, state marshals are uniformed.

19 QUESTION: I know, but you just said, you just
20 said that this wasn't enhanced security, this was just
21 normal security.

22 MR. DICKINSON: Normal security with unusual
23 personnel.

24 QUESTION: Except for the fact that they were
25 uniformed and armed.

1 MR. DICKINSON: And armed. And uniformed in
2 and of itself, I would suggest, is not unusual at all
3 because the state marshals are quite clearly uniformed.

4 QUESTION: Well, are you asking us to believe
5 that in this particular trial there always would have
6 been security people seated in the courtroom.

7 MR. DICKINSON: That is correct, Your Honor.

8 QUESTION: In a case like this.

9 MR. DICKINSON: In any case, Your Honor, there
10 would be a certain --

11 QUESTION: Would there have been four or --

12 MR. DICKINSON: There would have -- the
13 security forces would have maintained, attempted to
14 maintain a two to one ratio, so in a case where you had
15 one defendant, there would be two.

16 QUESTION: Was that the general rule?

17 MR. DICKINSON: The general goal, Your Honor,
18 was a two to one ratio. It was appear -- it would appear
19 that what was maintained throughout this case was a
20 better than one to one ratio, and that that was a -- the
21 minimal was above one to one, and going to one to one --

22 QUESTION: Well, Mr. Dickinson, had there been
23 a dozen marshals, uniformed differently, I gather, from
24 the state troopers, would they also have been armed?

25 QUESTION: No.

1 MR. DICKINSON: No, they would not have been
2 armed. Officers -- the marshals, officers who actually
3 have physical custody and hand-on contact with the
4 defendants are not armed, which brings me to another
5 problem --

6 QUESTION: Well, may I just ask while I have
7 you interrupted --

8 MR. DICKINSON: Yes, Your Honor.

9 QUESTION: Are the -- were the arms holstered
10 at the state troopers' sides, or could they be seen,
11 their weapons?

12 MR. DICKINSON: I would say they could be
13 seen. There's no question that they could be seen.

14 QUESTION: They could be.

15 MR. DICKINSON: They were on holsters, Your
16 Honor --

17 QUESTION: Yes.

18 MR. DICKINSON: And they were not concealed
19 under jackets.

20 QUESTION: Mr. Dickinson, do you take the
21 position that the presence of armed security guards in
22 the courtroom, no matter how many there might have been,
23 simply doesn't impair or burden the presumption of
24 innocence, or do you take the position that there was a
25 special need in this case for the security measures that

1 were in fact taken?

2 I'm not clear what your position is.

3 MR. DICKINSON: Well, I think our position,
4 Your Honor, is in some ways both. First of all, we
5 contend that in this case there was unquestionably a need
6 for the presence of a security force to maintain custody
7 of the defendants. By statute, individuals who are in
8 custody --

9 QUESTION: Except that there was no such
10 finding by the trial court or the state appellate court.

11 MR. DICKINSON: Well, I would suggest, Your
12 Honor, that the trial judge specifically found that it
13 was -- that the committed squad itself, the squad of
14 state marshals, was inadequate and that the only
15 supplement that was available to the committing squad was
16 a force of stat troopers, and that to that extent, from
17 that logical conclusion, these state troopers were
18 necessary in the courtroom to maintain custody --

19 QUESTION: So you want us to assume that there
20 was a finding that there was a need for special security
21 here, is that the position?

22 MR. DICKINSON: The special security being that
23 there was a large number of defendants, six, and that all
24 of them were held without bail, and that the available
25 security, the normal, customary state marshals, were

1 simply inadequate to both operate at this trial and
2 permit the system of justice in Rhode Island to go on --

3 QUESTION: Well, what was the need for arms?

4 Why were they armed?

5 MR. DICKINSON: The trial judge didn't make a
6 specific finding as to the need for arms, and it was
7 never really specifically addressed that there was a need
8 for the troopers to be armed in this courtroom.

9 QUESTION: Take, take this hypothetical.

10 Juror A, who has been to three trials and in
11 every trial the people there with the defendants were
12 unarmed, and then he's at this one where they are armed,
13 could he draw a conclusion from that?

14 MR. DICKINSON: I suppose that a hypothetical
15 juror might draw such a conclusion, and to that end,
16 Justice Giannini in this case conducted an extensive voir
17 dire of the jurors who were available for being empaneled
18 in this trial.

19 QUESTION: Did he ask them would they be
20 influenced by a gun?

21 MR. DICKINSON: During -- the voir dire itself
22 was never transcribed, Your Honor.

23 QUESTION: Well, I --

24 MR. DICKINSON: However, it's clear from
25 Justice Giannini's summarization of what occurred at the

1 voir dire that none of the jurors who were seated in the
2 jury box at the trial drew any kind of inference at all
3 from the presence of armed troopers.

4 QUESTION: They acquitted three of the -- they
5 acquitted three of the defendants, so they, apparently
6 they must have had a selective feeling if there was any
7 feeling at all.

8 MR. DICKINSON: Well, in fact, Your Honor,
9 that's why I don't think it's necessary for us today to
10 focus too much on the hypothetical juror because we have
11 the voir dire in this case in which the jurors clearly
12 expressed no inference at all from the presence of armed
13 troopers, and we have what this jury actually did in the
14 end, which was acquit three of the defendants.

15 QUESTION: About how many reasons can you
16 conceive that a juror would acquit one man and hold
17 another man guilty, about how many different reasons
18 would you --

19 MR. DICKINSON: Well, Your Honor, I think there
20 are infinite possibilities, of course --

21 QUESTION: Close to a million, wouldn't it be?

22 MR. DICKINSON: Of course, and as Justice
23 Giannini concluded in the motion for a new trial aspect
24 of this case, you can never really draw any inferences
25 from what the jury does in many cases because the burden

1 of proof beyond a reasonable doubt is so great that one
2 shifting set of circumstances related to one defendant
3 may fall below that burden, and in this case, apparently
4 that is what happened with the jurors. But the point is
5 that when they focused upon the three defendants that
6 they acquitted in their deliberations, they certainly
7 weren't influenced by the presence of the troopers. They
8 acquitted those defendants.

9 So --

10 QUESTION: Mr. Dickinson.

11 MR. DICKINSON: Yes, Your Honor.

12 QUESTION: I want to find out, if I can, if it
13 is in the record, how the system of furnishing security
14 at Rhode Island trials works.

15 Is it ordinarily the judge who decides what
16 sort of security particular defendants should be
17 furnished, or is it the marshals service?

18 MR. DICKINSON: I would say that the ordinary
19 practice, Your Honor, is that the marshals -- if a
20 defendant is not on bail -- I'm sorry, if a defendant is
21 on bail, we can dismiss that category of cases. The
22 marshals have nothing to do with that defendant because
23 he is not in custody; they are not charged with
24 maintaining his custody. So in that circumstance, all
25 you would have is the ordinary courtroom sheriff who

1 handles papers, and certainly is unarmed.

2 In a case where the defendant is on bail -- I'm
3 sorry, is held without bail, the Rhode Island statute
4 involving the Department of Corrections very clearly
5 requires the Department of Corrections to maintain
6 custody of that defendant even inside the courtroom.

7 QUESTION: So that's a -- the custody decision,
8 how it shall be maintained, is initially made by, not by
9 the Court, I take it, but by the Department of
10 Corrections.

11 MR. DICKINSON: And essentially, Your Honor,
12 it's not really a judicial function at the beginning,
13 it's an executive function. The Department of
14 Corrections is an arm of the executive, and these
15 defendants would be in their custody.

16 QUESTION: Mr. Dickinson.

17 MR. DICKINSON: Yes, Your Honor.

18 QUESTION: In connection with what you and
19 Justice Rehnquist are discussing, the District Court --
20 and I am looking at page B-12 of the Petition for
21 Certiorari --

22 MR. DICKINSON: Yes, Your Honor.

23 QUESTION: The first full paragraph goes on to
24 say "To repeat the characterization employed by the Rhode
25 Island Supreme Court, the circumstances of this trial

1 were veritably 'extraordinary.'" "And, the need for, and
2 extent of, security measures are generally held to be
3 within the sound discretion of the trial court."

4 MR. DICKINSON: That's correct, Your Honor.

5 QUESTION: I wonder if that doesn't answer to
6 some extent Justice Rehnquist's question.

7 MR. DICKINSON: Well, that would -- that would
8 certainly be true in a case where the defendant raises
9 the question and asks the trial judge to make a
10 decision. As I understood Justice Rehnquist's question,
11 it was a first line who's in charge of security, and the
12 first line is unquestionably the executive authorities.
13 Then --

14 QUESTION: In this case, the District Court so
15 found.

16 Has that finding been found clearly erroneous?

17 MR. DICKINSON: Found that it was the decision
18 of the -- the responsibility of the judge, Your Honor?

19 QUESTION: Yes.

20 MR. DICKINSON: No, that hasn't been found
21 erroneous.

22 QUESTION: All right

23 And that same judge went on to conclude that
24 the necessity for heightened security for this trial was
25 manifest, the last line on that page.

1 MR. DICKINSON: Yes. And --

2 QUESTION: The judge found there was a
3 heightened necessity for security. That hasn't been
4 found to be -- held to be clearly erroneous either.

5 MR. DICKINSON: Well, I think the First Circuit
6 did dispute that conclusion by District Judge Selya.

7 QUESTION: Did it find it clearly erroneous?

8 MR. DICKINSON: I don't think that the Court
9 specifically used the terms "clearly erroneous," Your
10 Honor. What the Court did was it concluded that the
11 findings within the Rhode Island State Court system had
12 involved the presence of the troopers and their necessity
13 to complement the state marshals and had not focused
14 specifically on the defendants and their
15 characteristics. And the First Circuit concluded from
16 that that that failure was constitutionally erroneous,
17 that the focus of the state trial judge should have been
18 on the defendants and their particular characteristics,
19 not on the need to maintain an ordinary ratio of security
20 personnel to defendants.

21 But I would point out that even the absence of
22 the specific findings by the trial judge in state
23 superior court in this case focusing on the specific
24 defendants and their characteristics, even the absence of
25 those findings, I would suggest, is not fatal to the

1 conclusion that the trial judge reached, and the reason
2 for that is that there are specific facts that are clear
3 from this record with regard to these defendants, factors
4 which the First Circuit suggested from the American Bar
5 Association Guidelines, that ought to be considered by a
6 trial judge in deciding on security issues.

7 One factor is that this particular defendant,
8 Mr. Flynn, had a prior record of escape, and that is
9 clear from the record of this trial. Another factor that
10 the American Bar Association standards suggest is that
11 accomplices of the individuals on trial were at large
12 during this trial, which in and of itself, according to
13 the American Bar Association comments, creates a
14 possibility of some need for security.

15 Also relevant factors that I would submit were
16 well known to the trial judge are the fact that two of
17 the state's witnesses were in the protection program, so
18 that the issues before the trial judge in considering
19 whether or not to permit the troopers to remain were very
20 clearly weighed in favor of permitting them to remain,
21 and in fact, he then conducted an extensive voir dire, a
22 voir dire which concluded with factual findings on his
23 part --

24 QUESTION: I gather that was after the
25 objection was made to the presence of the troopers?

1 MR. DICKINSON: That is correct, Your Honor,
2 that is correct, Your Honor, and I might point out that
3 he promised the defendants that should they wish to
4 exclude any of these jurors because of anything they
5 said, that he would certainly exclude them for cause, and
6 it is very clear that at the close of the jury selection,
7 the defendants were satisfied with the jury that they
8 had.

9 QUESTION: I don't know why they whether we've
10 breached it, but is the objection against the uniform or
11 the gun?

12 MR. DICKINSON: Well, I think that --

13 QUESTION: Or both?

14 MR. DICKINSON: I suppose that we could say
15 that it's both, Your Honor, and if it's against the
16 uniform, I think that Flynn has a real problem because he
17 was apparently willing to concede throughout the trial
18 that the state marshals would be fine, the normal state
19 marshals, and they wear uniforms, and their uniforms, I
20 would submit, are no more obtrusive or obnoxious, if you
21 will, to a defendant's presumption of innocence, than the
22 uniform worn by the Rhode Island State Troopers.

23 So I suppose that he may wish to focus more
24 narrowly on the weapons.

25 In any event, it's our position that whatever

1 this Court concludes with regards to the proceedings that
2 Justice Giannini conducted, we would argue that the trial
3 judge's proceedings were proper, and that he properly
4 concluded that this type of security force was necessary,
5 that he engaged in the proper balance under Estelle v.
6 Williams, and concluded that the jury would not be
7 influenced by this.

8 Whatever this Court thinks of Justice
9 Giannini's conclusion on that aspect, we would, we would
10 certainly argue that this case is still not a ripe case
11 or a proper case for a grant of a writ of habeas
12 corpus. First of all, the issue before the Court is
13 really whether or not the defendant was deprived of a
14 fair trial, and in making that determination, a reviewing
15 court has to consider both the evidence and other
16 circumstances at the trial in order to determine whether
17 or not the trial was constitutionally unfair. And I
18 would simply point to several aspects of this trial that
19 weigh heavily in favor of our claim that the defendant
20 was not deprived of a fair trial.

21 There were testimony by accomplices who
22 participated in the preparation for this crime which the
23 accomplices said that the meetings occurred at Flynn's
24 particular house. There was an identification both by
25 the accomplices and by an impartial witness whose

1 identification was deemed to be proper and admissible by
2 every judge who has reviewed this case, including the
3 First Circuit Court of Appeals. There was evidence that
4 Flynn and other of his co-defendants went to Las Vegas to
5 track down one of the witnesses who turned state's
6 evidence, witness Dussault, that they went there in an
7 attempt to persuade him that he should remain part of the
8 team. There was other physical evidence. There was --

9 QUESTION: Is it clear that the same evidence
10 wasn't offered against the defendants who were
11 acquitted?

12 MR. DICKINSON: Certainly that evidence, Your
13 Honor, particularly with regard to Dussault was not
14 offered against the defendants who were acquitted.

15 QUESTION: And how about the identification
16 evidence?

17 MR. DICKINSON: No, the --

18 QUESTION: Was there identification evidence
19 against the two who were acquitted?

20 MR. DICKINSON: The best identification
21 evidence, the impartial witness identification evidence,
22 was against Flynn, Your Honor, and I would argue that --

23 QUESTION: Was there any identification
24 evidence against the defendants who were acquitted?

25 MR. DICKINSON: Only in my recollection of the

1 record from the accomplice witnesses who were certainly
2 more familiar --

3 QUESTION: So should we disregard the
4 accomplish witnesses' testimonies throughout in order to
5 decide whether the evidence is clearly sufficient as to
6 those --

7 MR. DICKINSON: Well, I think that, I would
8 say, Your Honor, is a jury question, and the jury seems
9 to have accepted part of their testimony and apparently
10 rejected part of their testimony.

11 QUESTION: But we should read it and accept it
12 all, is that it?

13 MR. DICKINSON: Well, I think we should
14 certainly accept what the jury accepted, Your Honor,
15 which is the evidence against Flynn and the three
16 defendants that it convicted. I would also point out
17 there was more physical evidence against Flynn. There
18 was a briefcase that Flynn had been seen with at the
19 robbery scene that turned up at Flynn's house subsequent
20 to the robbery. Flynn himself on the evening of the
21 robbery was observed by witnesses to be flashing large
22 amounts of cash.

23 QUESTION: May I ask this? You are saying they
24 ought to go back for, in effect, a new hearing on whether
25 or not there was a fair trial. Should it primarily focus

1 on the evidence of guilt, or should there be more inquiry
2 into the kind of courtroom procedures followed with
3 regard to security?

4 MR. DICKINSON: Well --

5 QUESTION: For example, we don't yet know just
6 how many people were in the courtroom, do we?

7 MR. DICKINSON: That's true, Your Honor. We
8 don't specifically know --

9 QUESTION: I notice the district judge said
10 that the complaint was that the use of armed and
11 uniformed state troopers to augment, augment the other
12 people that were there.

13 MR. DICKINSON: There were marshals in the
14 courtroom --

15 QUESTION: In addition to the four uniformed
16 people.

17 MR. DICKINSON: -- but the troopers were
18 supplementing the marshals.

19 QUESTION: But we don't know how many
20 altogether, do we?

21 MR. DICKINSON: But I would suggest that the
22 record itself in this case doesn't reflect because the
23 defendants never, on a day to day basis, didn't put on
24 the record how many troopers were present and how many
25 marshals and where exactly they were, but I don't think

1 the defendants would contend that there were more than
2 four troopers present in the courtroom. I don't --

3 QUESTION: But there were more than four
4 security personnel.

5 MR. DICKINSON: Oh, there certainly were.
6 There were -- there were marshals there, perhaps as many
7 as four in addition to the troopers.

8 But the reason why we asked for a remand, Your
9 Honor, is that as we read the habeas jurisprudence of
10 this Court, a Court of Appeals on a fair trial issue
11 can't grant a new trial without considering whether or
12 not the defendant was denied a fair trial.

13 QUESTION: Your first argument is you want it
14 reversed, isn't it?

15 QUESTION: You want it reversed.

16 MR. DICKINSON: Well, we certainly want it
17 reversed, but I'm answering Justice Stevens' question
18 with regard --

19 QUESTION: Yes, all right, yes.

20 MR. DICKINSON: -- to a subsequent hearing.

21 And based upon the totality of the
22 circumstances that I have cited to Your Honors today, I
23 think clearly the First Circuit's decision ought to be
24 reversed. But --

25 QUESTION: Without the necessity for a new

1 hearing?

2 MR. DICKINSON: Absolutely without the
3 necessity for a new hearing, but short of that, Your
4 Honor --

5 QUESTION: Yes, yes, all right.

6 MR. DICKINSON: Were this Court to conclude
7 that the First Circuit had some points with regard to the
8 manner in which the trial judge had conducted the
9 pretrial hearing, it is certainly Flynn's burden as a
10 habeas petitioner to put before the federal court facts
11 that will support his claim for a new trial, and it is
12 our view that he failed to do that by failing to put in
13 any evidence in the lower court.

14 But based upon all these factors, it's the
15 state's position that Justice Giannini reasonably
16 concluded in the superior court level that the troopers
17 were necessary to maintain proper order and custody of
18 the defendants, and that even if he was wrong in that,
19 even if this court were to conclude he was wrong, that
20 the defendant was not denied his constitutional right to
21 a fair trial, there was strong evidence against this
22 defendant, strong evidence that the jury properly gave
23 credence to the presumption of innocence because it
24 acquitted three co-defendants, and strong evidence and a
25 factual finding by Justice Giannini that the jurors had

1 expressed no bias or prejudice relative to the presence
2 of the troopers, and for this reason, the state submits
3 that the judgment of the Court of Appeals should be
4 reversed.

5 And unless there are any questions, I will
6 reserve the balance of my time.

7 Thank you.

8 CHIEF JUSTICE BURGER: Mr. Kannar?

9 ORAL ARGUMENT OF GEORGE KANNAR, ESQ.,

10 ON BEHALF OF THE RESPONDENT

11 MR. KANNAR: Mr. Chief Justice, and may it
12 please the Court:

13 This case concerns a trial in which six
14 defendants, over the most strenuous possible objection,
15 were forced to appear before the jury for more than two
16 months guarded every day by armed and uniformed state
17 troopers with impressive, military-style uniforms,
18 wearing holsters at their hip.

19 Now, wherever the troopers may have been within
20 the courtroom, and whether we are concerned with the
21 style of the uniform, the existence of the side arm or
22 anything else is irrelevant in this case at this point
23 given what the record makes clear, that this show of
24 force was, A, without precedent in modern history of the
25 state, for the head of the committing squad himself had

1 testified he had never seen anything like it before, and
2 secondly, more importantly for present purposes, a show
3 of force that was labeled extraordinary, a departure,
4 extreme by all the local reviewing courts.

5 Moreover, all of the courts reviewin --

6 QUESTION: Well, what were they charged with
7 again?

8 MR. KANNAR: I beg your pardon?

9 QUESTION: What were they charged with?

10 MR. KANNAR: Well, they were charged with
11 charges arising from an armed robbery of a Bonded Vault
12 company.

13 QUESTION: Kidnapping?

14 MR. KANNAR: Well, the kidnapping, yes, there
15 were kidnapping charges, and what they concerned was
16 asking the people or forcing the people who worked in the
17 vault to move into the men's room during the course of
18 the crime.

19 All of the courts reviewing this question have
20 agreed that the courtroom security measures here were
21 presumptively prejudicial, that they raised a serious
22 risk of --

23 QUESTION: Do you know, I gathered that the
24 general rule of the marshals' service was that it's two
25 security persons for each defendant?

1 MR. KANNAR: Well, it's a little bit unclear.
2 The way that is phrased --

3 QUESTION: Well, is it possible that was the
4 rule?

5 MR. KANNAR: Sure.

6 QUESTION: Well, it may be --

7 MR. KANNAR: If I may elaborate --

8 QUESTION: It may be that if, it may be that
9 wholly aside, if the troopers hadn't been needed to
10 augment, it may be that there would have been 12 security
11 persons in the room.

12 MR. KANNAR: Well, first of all, it's quite
13 clear from the record, I think, that the defendants did
14 not waive the right to contest that one area.

15 QUESTION: I understand that.

16 MR. KANNAR: Secondly, if I may, Mr. Dickinson
17 just conceded in the course of his oral argument that the
18 only reason that there were armed guards in the courtroom
19 as opposed to unarmed guards was this very fact of a
20 shortage of personnel in the committing squad.

21 QUESTION: Well I understand that, but how
22 about my question? If they hadn't been needed to
23 augment, if there had been enough unarmed marshals
24 available, there might have been twelve in the
25 courtroom.

1 MR. KANNAR: That's right.
2 QUESTION: Uniformed.
3 QUESTION: And there had been no complaint?
4 QUESTION: Uniformed.
5 MR. KANNAR: Well, it's unclear from the
6 record --
7 QUESTION: And you wouldn't have made a
8 complaint.
9 MR. KANNAR: -- of what their uniform
10 consisted, Your Honor.
11 I beg your pardon?
12 QUESTION: And you wouldn't have complained?
13 MR. KANNAR: No, I said that the defendants
14 clearly reserved the right to address that question if it
15 had come up.
16 What the defendants consistently argued for was
17 a sort of compromise. They said we can have the state
18 troopers there, just please put them in plain clothes and
19 conceal the arms so that we'll know they are there, if
20 that's what the issue is, but the jury won't.
21 QUESTION: So you would have complained if
22 there had been 12 uniformed but unarmed security persons
23 in the room.
24 MR. KANNAR: I think depending upon the
25 deployment of the people, it is conceivable. We are not

1 contesting, however, it is not our claim today that the
2 federal courts should be putting, making decisions
3 concerning what is the appropriate level of security in
4 the ordinary course of affairs in the state courts. What
5 we are saying is in a case where the state supreme court
6 has explicitly held that this is a highly unusual
7 situation, a departure from ordinary proceedings where
8 the State Supreme Court in taking -- after accepting a
9 discretionary interlocutory review that it obviously had
10 no obligation to hear in the first place, cites to the
11 American Bar Association standard as a source of guidance
12 for the trial court judge --

13 QUESTION: Is the evidence of the trial judge's
14 denying bail part of this record?

15 MR. KANNAR: Well, what happened on the bail
16 proceeding, actually --

17 QUESTION: We know that it was denied.

18 MR. KANNAR: Right.

19 QUESTION: But are the reasons given?

20 MR. KANNAR: Well, not on this record. The
21 reason for that is that there was no actual consideration
22 of bail within this record. What happened was the
23 defendants, as one of their less restrictive
24 alternatives, as a device for seeking to do away with the
25 reasons that have been articulated for having the armed

1 and uniformed state police, asked the trial judge if he
2 would please hear an application for bail. What he held
3 was not that they were not entitled to bail. What he
4 held was that he was prohibited by Rhode Island law from
5 reconsidering another judge's denial of the application
6 for bail. Further, all four --

7 QUESTION: Excuse me --

8 MR. KANNAR: All three of the convicted
9 defendants were in fact immediately released on
10 post-trial bail as soon as the sentencing was completed.
11 So it's not a situation where that there was an
12 examination of the proclivities and tendencies of these
13 individuals, as has been suggested --

14 QUESTION: Why did the first judge --

15 QUESTION: Well, someone thought they weren't
16 good candidates for bail at the outset.

17 MR. KANNAR: Well, it's clear the first judge
18 who considered it thought so. Of course, the first judge
19 who considered it wasn't reviewing it in the context of a
20 possible denial or infringement of their fair trial
21 rights.

22 Secondly, they were all admitted --

23 QUESTION: Yes, but you suggest that their
24 denial, that the reasons for denying bail have no bearing
25 on the need for the presence of guards in the courtroom?

1 MR. KANNAR: I just don't think it was
2 foreseeable by the judge who considered their initial
3 bail application --

4 QUESTION: Well, in this day of almost everyone
5 being free on bail, that was a rather unique thing,
6 wasn't it?

7 MR. KANNAR: Well, it wasn't unique
8 particularly under Rhode Island practice, although I'm
9 not a Rhode Island lawyer. What seems to be, what I
10 would argue is the judge who made the initial decision,
11 who is a Rhode Island judge just like the three
12 successive Rhode Island judges who released all the
13 defendants on bail following conviction after looking at
14 their circumstances, that the first judge didn't foresee
15 that his decision would have these kinds of implications
16 for the men when they went to trial.

17 QUESTION: Well, what was the basis for the
18 first judge's denial of bail?

19 MR. KANNAR: Well, under -- I can only tell you
20 what it says under Rhode Island law.

21 Under Rhode Island law, a defendant in a case
22 like this may be detained if there's a showing that it's
23 a certain kind of crime and that there's a strong
24 probability, I believe is the language, of guilt.

25 The -- subsequent to this bail hearing in this

1 case, that pretrial bail hearing in this case, the state
2 supreme court, in an intervening decision, held that bail
3 courts in the State of Rhode Island, even in these cases,
4 have a duty to exercise their discretion, their
5 considered discretion, to see whether in fact despite
6 these showings and despite the nature of the offense that
7 has been charged, the individual might still be a good
8 bail risk.

9 Following that decision, when three post-trial
10 judges looked at the case again, they released these men.

11 QUESTION: But for purposes of the trial, these
12 people were held without bail.

13 MR. KANNAR: That is correct.

14 QUESTION: Let me ask you one other question.

15 You say that you are not asking the federal
16 courts to decide on the deployment of security people,
17 but because the Supreme Court of Rhode Island said this
18 was an extraordinary situation, that in effect, I guess
19 in your view, somehow has a bearing on the federal
20 constitutional question.

21 Why is that, because the state Supreme Court
22 didn't seem to rely on any federal constitutional
23 grounds.

24 MR. KANNAR: Well, I think what the state
25 Supreme Court was doing was really making what we might

1 well regard as a finding of fact concerning the
2 implications of this enhanced security on the average
3 Rhode Island juror, raising thereby a presumption which
4 needed to be rebutted or at least justified that these
5 measures were going to cause some infringement of the
6 defendants' --

7 QUESTION: So you say in an identical case
8 coming perhaps from Massachusetts where the supreme
9 judicial court had not intervened, the case would go
10 differently.

11 MR. KANNAR: Well, what I think makes the most
12 sense as a way of approaching the question generally is
13 to try to think of it as possibly having both a sort of
14 objective national standard in a sense, at least implicit
15 in these situations, as well as a sort of local rule as a
16 practical compromise, a local practice rule as a possible
17 compromise. What -- I think if the governor of a state
18 were to order the National Guard into every state court
19 trial in the state and set up a machine gun nest with a
20 machine gun trained on the defendant, regardless of
21 whether that happened in only one case or in every case,
22 I think this Court might well have some concerns about
23 it.

24 In the meantime, the American Bar Association
25 has articulated what seems to be a compromise, a

1 workable, sensible, common sense solution.

2 QUESTION: But, you know, the American Bar
3 Association doesn't write the Constitution.

4 MR. KANNAR: Of course not.

5 QUESTION: So why should any court just whose
6 sole power comes from the federal Constitution, tell a
7 state you have to follow the ABA?

8 MR. KANNAR: It's not that federal courts, or
9 that we're asking this Court to tell a state that. What
10 we're asking this Court to do is to give deference to the
11 finding of the Rhode Island Supreme Court that in the
12 State of Rhode Island at this time this form of security
13 was unprecedented and raised very serious questions.

14 QUESTION: Then the Supreme Court of Rhode
15 Island refused to reverse these convictions.

16 MR. KANNAR: Well, the Supreme Court of Rhode
17 Island in its refusal to reverse these convictions
18 re-emphasized, in fact, that the courtroom security
19 measures were extraordinary, thereby --

20 QUESTION: Yes, but it didn't say, it didn't
21 find them sufficiently extraordinary to reverse the
22 conviction.

23 MR. KANNAR: Well, not exactly. What they held
24 was that they were justified. We contest whether or not
25 these extraordinary measures were justified, whether they

1 are justified by an alleged union contract, by their --
2 by whether they're justified by an alleged police
3 regulation, whether they're justified in the sense that
4 unarmed, plain clothes persons could not have performed
5 the same job just as well without raising the question of
6 prejudice.

7 All of that we contest.

8 QUESTION: Well, don't you think the trial
9 judge is in the best position certainly to judge the
10 prejudicial impact, if any, on the jurors?

11 MR. KANNAR: Well, this Court, like the Rhode
12 Island Supreme Court, this Court in Estelle v. Williams
13 has made the judgment that there are certainly inherently
14 prejudicial in-court trial practices that cannot be
15 imposed over defendant's objection without a special
16 justification. That case clearly was overruling a trial
17 judge.

18 Moreover, in that case it was also taking into
19 account, as it emerged in oral argument in that case,
20 that the judge in that case, like the judge here, had
21 conducted a voir dire of the jurors before empaneling
22 them as to the question that was presented there, namely,
23 the effects of trying the prisoner in prison garb.

24 In addition, as it happens, it also emerged in
25 oral argument there that there was even a post-trial

1 federal habeas hearing in which the jurors were called in
2 to testify and testified they couldn't remember what kind
3 of clothes the defendant had been wearing, and that the
4 clothes he had been wearing had no bearing on their
5 decision in the case. This Court nonetheless as to that
6 part of Estelle unanimously held the practice to be so
7 inherently prejudicial that it couldn't be allowed over a
8 defense objection.

9 QUESTION: Well, what was the prejudice --

10 QUESTION: Do you have in mind a case --

11 QUESTION: Excuse me.

12 QUESTION: Do you have in mind the case about
13 1970 in this Court where the defendant was bound and
14 gagged --

15 QUESTION: And gagged.

16 QUESTION: -- and tied up in the courtroom?
17 Justice Black wrote the opinion.

18 MR. KANNAR: We don't -- we don't dispute in
19 the slightest the need for courts to impose security
20 commensurate with the risks that are presented to them in
21 a particular instance. I think in Illinois v. Allen
22 there was a very substantial chance of disruption by the
23 defendant. He was doing all sorts of things, and if I'm
24 not mistaken, the Court was unanimous in that case, too,
25 that there will be times when exceptional measures are

1 justified. We don't dispute it.

2 QUESTION: But this -- I still can't
3 understand, if these men had been unarmed it would have
4 been all right?

5 MR. KANNAR: No, our position is that the state
6 court having made a finding of fact that these
7 conditions, whether it's the arms or the uniforms or a
8 combination, and it may well be the combination, the
9 uniforms are very impressive uniforms, as the Court can
10 tell from our appendices.

11 QUESTION: Well, what's so impressive about a
12 state trooper uniform?

13 QUESTION: Weren't they just here in the
14 courtroom?

15 MR. KANNAR: When they -- it has to do, if the
16 Court would consult the appendix, what it has to do with,
17 they wear Sam Brown bandolier belts, they are required by
18 state regulation to wear that hat at all times when they
19 are on escort duties, as the major --

20 QUESTION: The hat scares people?

21 MR. KANNAR: It creates an impression --

22 QUESTION: An impression of what?

23 MR. KANNAR: Well, it's a psychological effect
24 on the person perceiving it as the, and for that --

25 QUESTION: Well, what is the psychological

1 effect?

2 MR. KANNAR: Of intimidation, of extreme
3 dangerousness, of something extraordinary going on.

4 QUESTION: Well, what about the there who were
5 acquitted? it was a selective fear, if it was there.

6 MR. KANNAR: Well, I think what the three who
7 were acquitted tend to demonstrate is that this was a
8 relatively close case, and as Justice Marshall
9 articulated this morning --

10 QUESTION: Well, but this also might
11 demonstrate -- you are answering a different question.
12 My question is, is not the fact that three of them were
13 acquitted at least some intimation that the jurors were
14 not intimidated by the presence of uniformed officers?

15 MR. KANNAR: Well, there are, as we said
16 earlier this afternoon, there are many ways to speculate
17 about what the effects of various in-court practices
18 might have --

19 QUESTION: But that's one of them, isn't it?

20 MR. KANNAR: It's one of them, sure.

21 QUESTION: That they were not intimidated.

22 MR. KANNAR: It's possible. It's possible.
23 There are many other possibilities.

24 QUESTION: Well, isn't it more than possible,
25 isn't it conclusive?

1 MR. KANNAR: Well, it isn't conclusive beyond a
2 reasonable doubt that every single one of these jurors
3 was unaffected as to Mr. Flynn with regard to the
4 presence of the troopers. For all the record
5 demonstrates, it could be that they acquitted the three
6 who were furthest from the troopers, and convicted the
7 three who were closest.

8 QUESTION: Do you consider the past criminal
9 record of Flynn as being relevant at all to the opinion
10 of the judge that security was needed in the courtroom?

11 MR. KANNAR: No, for two reasons. It's
12 obviously a relevant fact in a one-defendant case.
13 Now --

14 QUESTION: Well, it got into the record in the
15 case.

16 MR. KANNAR: Well, that's right, but the
17 problem vis-a-vis courtroom security in this case would
18 have been solved if any two of the six defendants, not
19 necessarily Mr. Flynn, had been admitted to bail. The
20 articulated reason for having the four troopers was based
21 upon the two to one ratio set forth by Captain Melucci,
22 the committing squad officer, that there because there
23 were six defendants as opposed to four, they needed four
24 additional helpers from outside the committing squad
25 force.

1 Had the trial judge considered bail as to all
2 six and held that bail was appropriate for two of them,
3 presumably, at least on the articulated rationale, the
4 need for the troopers would have disappeared as to all
5 six.

6 QUESTION: Well, the record shows that Flynn
7 had been convicted of prior convictions for assault and
8 battery, for armed robbery, and was an escapee from a
9 Massachusetts prison.

10 MR. KANNAR: Well, there was, among other
11 things, those facts were not relied upon by the trial
12 court, nor, as I say, is it --

13 QUESTION: Well --

14 MR. KANNAR: -- simply a decision regarding his
15 personal eligibility or appropriateness for bail that
16 governs the courtroom security side of the case.

17 QUESTION: That could, may very well have been
18 correct in the absence of that sort of criminal record,
19 in light of the crimes with which these defendants were
20 charged, but having in mind that record, I would think it
21 would be relevant, but I take it you do not.

22 MR. KANNAR: It would be relevant in a bail
23 determination regarding Mr. Flynn, to be sure. That,
24 however --

25 QUESTION: Not relevant to the courtroom

1 security?

2 MR. KANNAR: I beg your pardon?

3 QUESTION: Not relevant to the courtroom
4 security?

5 MR. KANNAR: Well, if Mr. Flynn had been the
6 only defendant, sure, but in this case there were five
7 other defendants, and if any two of them had been
8 released from bail under the theory and under the record
9 here --

10 QUESTION: Well, five, making a total of six,
11 would call for more handlers, would it not, in case they
12 tried to disrupt the courtroom?

13 MR. KANNAR: Well, the others, if they had been
14 released on bail, the articulated basis for having the
15 troopers there would have disappeared.

16 QUESTION: Well, I'm just talking about the
17 numbers. With six defendants and the usual ratio of two
18 guards for every defendant, there certainly was a need
19 for some manpower, was there not?

20 MR. KANNAR: Well, I don't think that's --
21 that's disputed in a serious way by the defendants even
22 at trial. What they said was, trying to work out a
23 practical compromise I think was if you need to do this,,
24 if you feel you have to do this, why can't it be done in
25 a less intrusive, a less impressive manner.

1 QUESTION: Was a request, was a request made
2 for having the officers leave their firearms outside the
3 courtroom?

4 MR. KANNAR: Well, in fact, even the head of
5 the committing squad requested the state troopers leave
6 their arms outside the courtroom.

7 QUESTION: But there was some state trooper
8 rule that they had to wear their weapon, wasn't there?

9 MR. KANNAR: Well, there was an assertion by
10 one of the witnesses, the state police major, that
11 trooper never takes off his weapon anywhere. However,
12 and the state Supreme Court, in reviewing the case on
13 direct appeal, referred to an alleged state police
14 regulation requiring them to wear their firearms. There
15 is no such regulation.

16 QUESTION: It also required them to wear their
17 hats you've been complaining about.

18 MR. KANNAR: I beg your pardon, Your Honor?

19 QUESTION: The rules also require them to wear
20 that big hat that you were complaining about.

21 MR. KANNAR: Well, it did, it does require
22 that.

23 Now, we maintain that this Court's holding in
24 Estelle that administrative convenience cannot justify
25 the imposition of prison clothes over an objecting

1 defendant governs the same standard is the applicable
2 standard in cases involving enhanced courtroom security.
3 The only question here is a legal question, whether the
4 measures were legally justified, that the convenience of
5 the guards and the jury --

6 QUESTION: What do you mean by the term
7 "legally justified?"

8 MR. KANNAR: Well, we mean as a question of law
9 that there was a sufficient basis relating to the special
10 circumstances presented by this case, these defendants,
11 relating to courtroom security per se, that justified
12 enhancing the in-court security.

13 We in addition say that once a criminal
14 defendant's fair trial rights have been unjustifiably
15 infringed through the intentional imposition over his
16 objection of presumptively prejudicial in-court
17 practices, that it does not suffice as a matter of law
18 that the jurors with the best of intentions -- and I
19 don't believe there's any suggestion in the First
20 Circuit's opinion that it disbelieved the sincerity of
21 the jurors -- may have honestly stated on a pretrial voir
22 dire that they didn't think the troopers would affect
23 their judgment, a judgment which was itself only to be
24 rendered two and a half months further down the road.

25 We do not argue for the establishment of a

1 nationwide standard. We argue that in a case where the
2 state Supreme Court has made the appropriate factual
3 finding that the enhanced security creates a
4 presumptively prejudicial situation, that this Court must
5 defer to the state court's finding of fact in that
6 context, and therefore, hold that the conviction here
7 must be overturned because the enhanced courtroom
8 security was neither justified nor was it cured or
9 remedied in any fashion by the pretrial voir dire.

10 If the Court has no further questions.

11 CHIEF JUSTICE BURGER: Very well.

12 Do you have anything further, Mr. Dickinson?

13 ORAL ARGUMENT OF THOMAS MORE DICKINSON, ESQ.

14 ON BEHALF OF PETITIONERS -- Rebuttal

15 MR. DICKINSON: Yes, one or two points, Mr.
16 Chief Justice, if I may.

17 With regard to the issue of bail, it's very
18 clear that under Rhode Island law at the time this case
19 was tried, a pretrial detainee could be held without bail
20 only upon a showing that he had a propensity to flee. I
21 have cited at pages 9 and 10 of my brief, in Footnote 3,
22 the case of Lemme v. Langlois in which the Rhode Island
23 Supreme Court held that a subsidiary finding to holding
24 without bail is a danger that the individual may seek to
25 flee, so that that, I think, is part of the record in

1 this case. The initial judge must have made that
2 conclusion with regard to all of the defendants in this
3 case, that they had that propensity.

4 With regard to Mr. Justice Marshall's questions
5 regarding the difference between guns and uniforms, I
6 would refer to pages 23 and 24 of our brief in which we
7 discuss the concession by Flynn's trial counsel that he
8 would have been happy if these troopers had been moved
9 somewhere else and done some other kind of duty, and if
10 state marshals had been brought in to replace them.

11 So I would submit that that clearly indicates
12 that he would have been happy with marshals, and he's
13 not -- he's not complaining about --

14 QUESTION: Uniformed marshals.

15 MR. DICKINSON: Uniformed, uniformed marshals,
16 certainly, Your Honor.

17 And with regard to hats, just finally, there's
18 nothing on this record to suggest that these troopers
19 wore hats in the courtroom, and I would suggest that they
20 did not.

21 Unless the Court has any other questions, I
22 would rest on my brief.

23 CHIEF JUSTICE BURGER: Thank you, gentlemen.

24 The case is submitted.

25 (Whereupon, at 2:47 o'clock p.m., the case in

1 the above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

#84-1606 - TERRANCE HOLBROOK, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION, NORFOLK, MASSACHUSETTS, ET AL., Petitioners V.

CHARLES FLYNN

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

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