

RealTime Transcriptions

TRANSCRIPTION OF THE

INQUIRY

IN TERMS OF SECTION 74(c) OF THE INCOME TAX ACT AND
SECTION 57(c) OF THE VAT ACT

CASE NO 1018017

IN THE MATTER	
SB BOSCH	
REPRESENTED BY:	VARIOUS
BY	
THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE	
REPRESENTED BY:	MS C NAUDE
ASSISTED BY:	MS D CHABEDI MS T PHEHANE
INSTRUCTED BY:	MAHLANGU INCORPORATED Ref: Ms Nelia Wessels

CHAIRPERSON

ADV S HASIM SC

HELD ON

DAY 8 26 NOV 2012 PAGES 463 TO 655

HELD AT

MacRoberts Inc, cnr Duncan & Charles Streets, Brooklyn, Pretoria



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1 [PROCEEDINGS ON 26 NOVEMBER 2012]
 2 [10:04] CHAIRPERSON: The Commission resumes.
 3 Brigadier – sorry, Warrant Officer – sorry, I promoted you
 4 for a moment. Warrant Officer, I must remind you that
 5 you're still under oath. Mr Ntsebeza, you said you had
 6 some questions to ask the Warrant Officer.
 7 CROSS-EXAMINATION BY MR NTSEBEZA SC:
 8 Indeed, Mr Chairman, thank you.
 9 Brigadier, I just want to take you through
 10 Exhibit II, your – I think it's your statement or a CV.
 11 Have you got that? You've got that in front of you?
 12 W/O WESSELS: I do, yes.
 13 MR NTSEBEZA SC: Yes. I just want to
 14 make sure, you mentioned that pyrotechnics and teargas are
 15 not included in this CV, is that right?
 16 W/O WESSELS: That is correct.
 17 MR NTSEBEZA SC: By the way, just to make
 18 sure that we are on the same page, what does – what do, or
 19 what does pyrotechnics involve? What is it all about?
 20 W/O WESSELS: Pyrotechnics are, normally
 21 falls the Explosives Act. They unfortunately do not fall
 22 under our area of expertise.
 23 MR NTSEBEZA SC: Right.
 24 CHAIRPERSON: I think what Mr Ntsebeza
 25 wants to know from you is, what are pyrotechnics?

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1 W/O WESSELS: Pyrotechnics would be the
 2 teargas canisters, the stun grenades and those types of
 3 devices.
 4 MR NTSEBEZA SC: Is your evidence that
 5 you are not trained in pyrotechnics?
 6 W/O WESSELS: That is correct.
 7 MR NTSEBEZA SC: Are you aware of any of
 8 your colleagues who are?
 9 W/O WESSELS: Unfortunately nobody at the
 10 ballistics section as such receives any training in
 11 pyrotechnics. As I said, it falls more under the
 12 explosives side of things and you will need somebody from
 13 the explosives section to be able to answer any questions
 14 about those.
 15 MR NTSEBEZA SC: I see. Now, you say in
 16 Exhibit II that you've received in-service training and
 17 then you list the areas. In 2.1.8 you talk about different
 18 manufacturing processes of firearms and firearm components.
 19 W/O WESSELS: That is correct.
 20 MR NTSEBEZA SC: Now when you say you've
 21 had in-service training, what does that kind of training
 22 entail?
 23 W/O WESSELS: There is a specific
 24 workplace skills programme consisting of specific modules
 25 and levels of training that you receive, normally the

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1 theory followed by a written test as well as a competency
 2 test about the work completed.
 3 MR NTSEBEZA SC: How long does the
 4 training last?
 5 W/O WESSELS: To be qualified as a
 6 forensic ballistics specialist it normally takes in the
 7 region of three years.
 8 MR NTSEBEZA SC: Can I then assume that
 9 it would have taken that nm of years to get your
 10 qualification or for you to be able to say that is an area
 11 also in which you have some expertise?
 12 W/O WESSELS: That would be correct.
 13 CHAIRPERSON: I see from your CV you also
 14 have an advanced certificate in forensic criminalistics
 15 from the University of South Africa. Was that extra
 16 training or is that the same training that you've been
 17 referring to?
 18 W/O WESSELS: That is extra training, Mr
 19 Chairman.
 20 CHAIRPERSON: How long did that take?
 21 W/O WESSELS: That was a two year course,
 22 Mr Chairman.
 23 MR NTSEBEZA SC: Would it then, apropos
 24 to 2.18, it would then be safe to say that you are fully
 25 versed with the way that firearms are manufactured and with

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1 the way in which their components are manufactured?
 2 W/O WESSELS: I have seen examples of how
 3 certain parts and certain firearms are manufactured so that
 4 we have a good basic working knowledge of the processes
 5 followed. Unfortunately it's not possible to know exactly
 6 how every part is made or how, specificity from every
 7 specific firearm. We get training in the basic machining
 8 skills and how they are performed.
 9 MR NTSEBEZA SC: Is it safe to say that
 10 your knowledge gained in three years of being involved in
 11 the manufacturing processes of firearms and firearm
 12 components, qualifies you to know what kind of firearms
 13 have been manufactured, you would able to distinguish
 14 between firearm A and firearm B and how that firearm has
 15 been manufactured and why it was manufactured, because of
 16 your qualification in that respect? I see you pause.
 17 W/O WESSELS: I am not quite following
 18 you on the question, sir, I've lost you.
 19 MR NTSEBEZA SC: No, you're free to say
 20 so. Now are you able, because of this course 2.18, to say
 21 what kind of firearm has been manufactured, where and how?
 22 W/O WESSELS: If I understand you
 23 correctly, I can tell you where, who manufactured a
 24 specific firearm and where it would've been manufactured.
 25 Unfortunately I'm not a trained machinist as such, so I

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1 won't be able to tell you all the specific machining
 2 operations that were done. I can, however, say what the
 3 basic type of machining processes would have probably been
 4 followed, if that answers your question.

5 MR NTSEBEZA SC: I see. You see, when
 6 you say there are different manufacturing processes of
 7 firearms, am I to understand by that that your course
 8 entails a practical side of it where you are taken to a
 9 manufacturing plant to see how firearms are manufactured or
 10 am I overstating it?

11 W/O WESSELS: We are taken to one or two
 12 different factories where they actually manufacture and we
 13 are able to observe some of the processes. Of course, due
 14 to time restraints you can't always see all the exact
 15 manufacturing processes followed but we are given a basic
 16 knowledge and are shown how the machines work, what the
 17 machines actually do and we observe some of the parts being
 18 made during the process.

19 MR NTSEBEZA SC: I see. I see for
 20 instance in that same exhibit under 2.6 you do indicate
 21 that you visited the following firearm and ammunition
 22 manufacturers to ascertain the processes that are used in
 23 the manufacturing of firearms and ammunition. Is that what
 24 you mean?

25 W/O WESSELS: That is correct.

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1 MR NTSEBEZA SC: And that would have been
 2 part of your training, the practical side of training in
 3 the manufacturing of firearms and ammunition.

4 W/O WESSELS: That would be correct.

5 MR NTSEBEZA SC: Now is there a different
 6 place for the manufacture of firearms to a place where you
 7 manufacture ammunition?

8 W/O WESSELS: Yes, it normally is.

9 MR NTSEBEZA SC: At 2.6.1, in other words
 10 at Lyttelton Engineering Works in Pretoria, typically what
 11 would you have then gone there to observe as part of the
 12 process of being trained in manufacturing of firearms and
 13 ammunition?

14 W/O WESSELS: Lyttelton Engineering Works
 15 is where they manufacture firearms and firearm components.

16 MR NTSEBEZA SC: And in 2.6.2, what is
 17 manufactured there?

18 W/O WESSELS: Somchem is where they
 19 manufacture most of the propellant powder used inside the
 20 cartridge cases.

21 MR NTSEBEZA SC: And at Swartklip, 2.6.3?

22 W/O WESSELS: Swartklip is where they
 23 mostly manufacture 22 long rifle cartridges as well as
 24 shotgun shells.

25 MR NTSEBEZA SC: Now at these

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1 manufacturing plants, would it be correct to say that you
 2 would be told why different kinds of firearms and
 3 ammunition are manufactured? Would it typically be
 4 something where you say no, this kind of firearm is A, B,
 5 C, D, these are the purposes for which it is manufactured?

6 W/O WESSELS: I'd say yes, both yes and
 7 no.

8 MR NTSEBEZA SC: Let's start with the
 9 yes.

10 W/O WESSELS: Certain models, where they
 11 manufacture certain models they would give you the
 12 practical applications or what the firearm is intended to
 13 be used for, but these could include a variety of reasons.
 14 It also depends on the specific firearm that was made.

15 MR NTSEBEZA SC: Now, we'll come back to
 16 the weapons at a later stage. Let me just now go back to
 17 page 1 of Exhibit II. Now, in 2.1.11 you indicate your
 18 level of expertise in the reloading of ammunition and the
 19 manufacturing process of ammunition. Now we've dealt with
 20 the manufacturing process but the reloading of ammunition,
 21 what does that entail and why is it an area of expertise
 22 that you must have?

23 W/O WESSELS: Sir, the reloading of
 24 ammunition is exactly what it states there. It is by re-
 25 making use of a fired cartridge case by resizing it and

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1 pressing it to its original dimensions, replacing the fired
 2 primer with unfired primer, refilling it with a propellant
 3 charge and reseating a bullet of your specific choice. In
 4 that way you can custom manufacture ammunition to suit a
 5 specific firearm to give it optimal performance or to adapt
 6 the performance of that ammunition to a specific
 7 requirement. It's also mostly use as a cost saving
 8 measure.

9 MR NTSEBEZA SC: Thank you. And 2.1.12,
 10 short range determination, now what does that entail?

11 W/O WESSELS: That would entail
 12 determining a possible distance bracket from where a shot
 13 could have been fired, whether a distance from a target or
 14 in certain cases also a direction from where the shot was
 15 fired.

16 MR NTSEBEZA SC: I see. Why is that
 17 important? I can imagine why it is important but let me
 18 get a sense from an expert.

19 W/O WESSELS: It's normally to determine
 20 whether or not the example or the occurrence of events did
 21 actually occur as stated by a witness or as it happened.
 22 So we would give evidence whether or not the shot was fired
 23 from close range or whether it was fired from a distance.

24 MR NTSEBEZA SC: And is it safe to say
 25 that it is important from a fatality point of view, that

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1 the distance is either at short range or at long range?
 2 W/O WESSELS: Sorry sir, could you just
 3 repeat the first part? I just didn't hear –
 4 MR NTSEBEZA SC: From the point of view
 5 or whether or not a fatality could occur, does it matter
 6 whether the shot has been fired at the target at close
 7 range or at long range?
 8 [10:24] W/O WESSELS: Not necessarily in the case
 9 of whether or not a fatality could occur, but in order to
 10 determine if the version of happening of the event is
 11 correct, whether the shot was fired from extremely close
 12 range or whether the shot was fired from a further distance
 13 as stated by the witnesses.
 14 MR NTSEBEZA SC: Yes, I'm seeking to
 15 solicit your expertise for assumptions that I might make in
 16 my argument, so let me then put it this way. What are the
 17 probabilities of a death occurring if, in respect of your
 18 training which you received in determining the range of the
 19 shot, if a person has been shot at close range or if a
 20 person has been shot at a longer range – just
 21 probabilities.
 22 W/O WESSELS: Sir, it actually does not
 23 depend on the range of the shot.
 24 MR NTSEBEZA SC: I see.
 25 W/O WESSELS: It depends on where the

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1 placement – a short distance shot to a lower extremity or
 2 to an extremity of the body is less likely to cause death
 3 than a shot fired from a distance to a vital organ.
 4 MR NTSEBEZA SC: Which then would take me
 5 to the second page of your exhibit, Exhibit II, where –
 6 CHAIRPERSON: Have you moved away from
 7 shot range determination?
 8 MR NTSEBEZA SC: Yes.
 9 CHAIRPERSON: Will you forgive me if I
 10 then ask a question on that topic myself, seeing we're
 11 discussing it?
 12 MR NTSEBEZA SC: Indeed.
 13 CHAIRPERSON: Would I be correct in
 14 thinking that your expertise in shot range determination
 15 can help us in a couple of contexts? If it is alleged by
 16 someone who fired a shot that he was defending himself at
 17 close range because someone was approaching him with a
 18 sharp weapon of some kind but you are able to ascertain,
 19 using your expertise, that the shot fired which actually
 20 killed the alleged assailant was not fired at short range,
 21 at close range but from a distance of substantially more
 22 than just a few metres, that would enable us to make a
 23 finding that the alleged killing in self-defence story
 24 didn't stand up. Is that correct?
 25 W/O WESSELS: That would be correct.

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1 CHAIRPERSON: Alternatively, if the
 2 deceased had signs of tattooing and other marks of the kind
 3 that you described in your evidence last week, that would
 4 serve to corroborate the version of the person who fired
 5 the fatal shot.
 6 W/O WESSELS: That would be correct.
 7 CHAIRPERSON: Conversely, if it was
 8 alleged that someone had been shot in cold blood, as it
 9 were, by someone firing a firearm at him at point blank
 10 range, that story also could be verified or contradicted
 11 either by the presence of tattooing and other marks of the
 12 kind you describe, which would support the story of a close
 13 range cold-blooded killing, or could be contradicted by the
 14 absence of marks of the kind you've described which
 15 indicate that the fatal shot was fired from a considerable
 16 distance. Am I understanding that to be your evidence?
 17 W/O WESSELS: That would be correct.
 18 CHAIRPERSON: Thank you.
 19 MR NTSEBEZA SC: Now you – in Exhibit II
 20 on the following page under 2.5 firstly you talk about the
 21 wounding effect that the bullet has on tissue. Do you see
 22 that?
 23 W/O WESSELS: That is correct.
 24 MR NTSEBEZA SC: Now can you just tell us
 25 a little bit more about more about what is involved in your

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1 being trained as an expert in that regard?
 2 W/O WESSELS: We are basically trained in
 3 the effect that the bullet as such has on the tissue, what
 4 causes the wounding and also what is the effect of specific
 5 factors upon the creation of wounds, also to determine to a
 6 certain extent, to look at the wound itself and see whether
 7 it was fired from high velocity or lower velocity. I hope
 8 that clarifies it.
 9 MR NTSEBEZA SC: Yes. Now I mean we have
 10 encountered a number of these phrases in either the post-
 11 mortem reports or in the ballistic report that we have just
 12 recently received, about high velocity/low velocity. Can
 13 you just explain to a lay person what a higher velocity
 14 shot is? What does that mean and what does that entail and
 15 what does that tell us?
 16 W/O WESSELS: High velocity is normally
 17 associated with bullets fired from rifles. They have a
 18 much higher velocity when leaving the firearm, discharge at
 19 a much higher velocity and normally create much more
 20 extensive wound tracts than that fired from a handgun or
 21 from a shotgun, which are normally classified as low
 22 velocity wounding or low velocity bullets as such.
 23 MR NTSEBEZA SC: Now in your training
 24 about the wounding effect of a bullet, would that – and I
 25 want to tie up with, I want to tie this question with what

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1 I and the Chair have been asking you about the range –
 2 would it make it possible for you to determine whether a
 3 particular target, because of the wound you see, was shot
 4 at short range or at long range or doesn't it matter,
 5 doesn't the range determine the wounding effect of the
 6 ammunition?
 7 W/O WESSELS: Being closer towards the
 8 firearm, which would entail that the velocity is as such
 9 higher, will tend to create a more severe wound. However,
 10 the velocity of rifle bullets do not – diminish so
 11 drastically that a longer distance shot up to 100 or 200
 12 metres even, we can still ascertain that it was a high
 13 velocity bullet that did the damage. There are actually –
 14 the creation or the shape of the wound tract would not
 15 necessarily give us a determination of distance. There are
 16 other factors that play a bigger part, such as the deposit
 17 of soot, the deposit of – or the absence or the presence of
 18 tattooing, which would rather indicate distance and would
 19 be a safer way to use or a safer method to use.
 20 MR NTSEBEZA SC: Now let's take for
 21 instance an R5 rifle. Is your evidence that if a target
 22 was in the kind of range that I am relevant to you, about
 23 20 metres, that the wounding effect of a high velocity
 24 bullet at you would be the same if you were 200 to 300
 25 metres away?

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1 W/O WESSELS: At this distance, sir,
 2 between 20 metres and 200 metres there wouldn't be a
 3 significant difference. It would also not really be able
 4 to determine that the shot was in a certain bracket. The
 5 really close range, and where we can determine range,
 6 happens much closer, where we expect to find – and that's
 7 why we use different methods for determining distance, not
 8 velocity or indication of wound track but rather the
 9 deposit of unburnt or partially burnt propellant particles
 10 as well as the presence of tattooing or the absence of
 11 tattooing to determine a specific distance. I must also
 12 note that we cannot determine exactly up to specific metres
 13 that the distance was, the shot was fired from, but we
 14 would give a bracket saying it would be in between this and
 15 this distance, is what we would expect to find.
 16 MR NTSEBEZA SC: Perhaps you'll
 17 appreciate why I ask these questions. I represent the
 18 families of those who died on the 16th of August as a result
 19 of gunshot wounds, in the main. Do you understand that?
 20 W/O WESSELS: I understand.
 21 MR NTSEBEZA SC: And some of the families
 22 who are here are keen to know, which is why I want to get
 23 the advantage of your expertise, as to whether for instance
 24 their families had any chance of survival if they were shot
 25 at close range or if they were shot at a long range. Do

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1 you appreciate that?
 2 W/O WESSELS: I can understand that.
 3 MR NTSEBEZA SC: And that was why it was
 4 important for me to be able to find out from you whether it
 5 matters at all that targets may have been at short range or
 6 may have been at a longer range. It seems to me from what
 7 you tell me, and you'll correct me if I'm wrong, that it
 8 really doesn't matter whether you are 200 or 300 metres
 9 away, depending on the range of the firearm, if the target
 10 hits you – I mean if you are the target and you are hit by
 11 a particular kind of firearm discharging kind of
 12 ammunition, you are likely to die in much the same way as
 13 you would have done if you were shot at 20 metres. Is that
 14 your evidence?
 15 W/O WESSELS: That would be correct, sir.
 16 Again, as I stated before, more the placement of the bullet
 17 or, sir, that the vital organs hit will be more indicative
 18 of whether or not your survive the shot than the distance
 19 that the shot was fired.
 20 MR NTSEBEZA SC: Just to eliminate all
 21 the other factors, is your evidence that if for instance
 22 the target area of the body was the head, it would be – it
 23 would matter little if you were being shot at close range,
 24 20 metres, than if you were – or if you were shot at 300
 25 metres range? If you were being shot in the head with an

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1 R5, with those bullets that go into an R5, it would matter
 2 little.
 3 W/O WESSELS: That would be correct.
 4 CHAIRPERSON: Mr Ntsebeza, isn't this a
 5 question that can more profitably be asked of a doctor? I
 6 can imagine a bullet 20 metres through the heart would be
 7 as deadly as a bullet at 100 metres through the heart. It
 8 may be that where exactly enters the head – some head
 9 injuries caused by bullets would not be fatal, others would
 10 be but that's a question more sensibly, if I may suggest,
 11 more gainfully asked of a doctor and I take it that one or
 12 other of the doctors who did the post-mortems will be
 13 available to give evidence if it's necessary.
 14 MR NTSEBEZA SC: I was in a bit of a
 15 cleft stick here, Mr Chairman, because we have a witness
 16 here who talks about how he has studied the effect that the
 17 bullet has on the target and all of that, so I just wanted
 18 to explore that aspect for a minute. Now, you were – and I
 19 don't intend to go there, in fact I won't go there – you
 20 were shown rather graphic pictures last week of what I
 21 suspected was a shattered head of one of the victims. Do
 22 you recall that?
 23 W/O WESSELS: Yes, I do.
 24 MR NTSEBEZA SC: Now the families I
 25 represent I am sure would like to be, would like to know

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1 whether that kind of injury to tissues where it appeared
 2 that almost the entire head or half the head or a
 3 significant portion of the head was blown off, whether
 4 that's the kind you would find only if the target was at
 5 short range or if the target was at longer range, or it
 6 doesn't matter, the distance doesn't matter. That's what I
 7 want to clear.
 8 [10:44] W/O WESSELS: On high velocity bullets
 9 such as fired from rifles, sir, that would be – the range
 10 would not really be indicative of that. It would just be
 11 indicative of a high velocity bullet.
 12 MR NTSEBEZA SC: Now, I just want to be
 13 sure that I understood your evidence last week well. You
 14 came across as saying there is no such a thing as non-
 15 lethal ammunition. Did I get you right?
 16 W/O WESSELS: That is correct, sir. Any
 17 ammunition has the capacity or the capability to be lethal.
 18 MR NTSEBEZA SC: But did I understand you
 19 to be making a qualification by saying some ammunition is
 20 less lethal than others or what do I understand by that
 21 part of your evidence which I got?
 22 W/O WESSELS: What I meant to convey
 23 there, that some ammunition will have less of a chance of
 24 creating a lethal wound than others.
 25 MR NTSEBEZA SC: I see. Now I would like

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1 us to look at Exhibit L, I think, which is the SAPS
 2 presentation. There are two slides there that I would like
 3 you to look at. Let's start with the first one and that
 4 would be slide 211. Mr Chairman, whilst the witness is
 5 looking for the relevant place could we have the relevant
 6 Exhibit B on the screens? I'm unfortunately embarrassed
 7 because I left –
 8 CHAIRPERSON: The relevant slide Exhibit
 9 L, is that what you want on the screen?
 10 MR NTSEBEZA SC: There was the exhibit
 11 that showed the kinds of firearms and munitions. I see
 12 it's B59, I'm told.
 13 CHAIRPERSON: Yes.
 14 MR NTSEBEZA SC: If it could just be put
 15 there, Chairman.
 16 CHAIRPERSON: Can that be arranged
 17 please?
 18 MS PILLAY: I think we just need a few
 19 minutes, Chairperson, but it can be arranged.
 20 CHAIRPERSON: Alright, well –
 21 MR NTSEBEZA SC: No, we can proceed.
 22 CHAIRPERSON: I was going to say proceed
 23 in the meanwhile and when you get that slide on the screen
 24 you can then ask questions about it.
 25 MR NTSEBEZA SC: Thank you, Mr Chairman.

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1 If you could look at Exhibit L, slide 211, do you have
 2 that?
 3 W/O WESSELS: Yes, I believe I do.
 4 MR NTSEBEZA SC: Now, the – let's start
 5 with the first column where it talks about 9mm. Now
 6 typically what would those ammunition forms be coming out
 7 of, the 9mm bullets?
 8 W/O WESSELS: They would usually be fired
 9 from pistols.
 10 MR NTSEBEZA SC: Pistols? And 5.56mm?
 11 W/O WESSELS: That would usually be fired
 12 from the R5 rifles.
 13 MR NTSEBEZA SC: R5. And the 7.62?
 14 W/O WESSELS: That would normally be
 15 fired from the R1 rifle.
 16 MR NTSEBEZA SC: Now never mind about the
 17 warnings and the to what's but it does appear from this
 18 presentation that both – not both, the pistols, the R5s and
 19 the R1s were used in what is characterised as scene 1,
 20 which is the first area where there were shootings on the
 21 16th? Will you agree with me?
 22 W/O WESSELS: Sir, unfortunately not know
 23 what is scene 1 or scene 2, I cannot really say.
 24 MR NTSEBEZA SC: That's not really the
 25 thrust of the question. The question is, when you look at

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1 that categorisation of what was used it would appear that
 2 that entire range of firearms were used, if we accept the
 3 correctness of this chart.
 4 W/O WESSELS: That would be correct.
 5 MR NTSEBEZA SC: And I think and I would
 6 to suggest to you that you and Adv Bizos settled the
 7 question last week of the kinds of firearms, R1 rifles and
 8 R5 rifles, those are military rifles. Those are rifles
 9 that are intended to be used in those kinds of situations.
 10 Do you agree with that?
 11 W/O WESSELS: I would agree, sir.
 12 MR NTSEBEZA SC: These are the weapons
 13 that you bring into any situation for purposes of killing a
 14 target, in the main, would you agree -
 15 W/O WESSELS: Sorry sir, if you can maybe
 16 just repeat? I'm not quite with you on what is being
 17 asked.
 18 MR NTSEBEZA SC: R1 rifles and R5 rifles
 19 are weapons you would bring into a situation where you aim
 20 to kill the target at which they would be fired mainly?
 21 Isn't that right?
 22 W/O WESSELS: Sir, it would be difficult
 23 for me to try and say that they were – they surely, and I
 24 can agree with you, they surely have the capability of
 25 killing but to say they were intended to kill is, for me,

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1 difficult.

2 CHAIRPERSON: I don't think that Mr

3 Ntsebeza is necessarily asking you about the intention of

4 the people on the 16th of August –

5 MR NTSEBEZA SC: Mm.

6 CHAIRPERSON: That's a question on which

7 you can't help us because you weren't there, but he's

8 talking, asking you a more general question and perhaps to

9 focus it more clearly to enable us to proceed on this

10 point, it might be helpful to consider the operation that

11 allegedly took place over the weekend where –

12 MR NTSEBEZA SC: Yes, you took the words

13 away from me.

14 CHAIRPERSON: I beg your pardon, if I'm

15 taking the words out of your mouth, Mr Ntsebeza, let me put

16 them back in your mouth and you can carry on.

17 MR NTSEBEZA SC: Chair, I'm not also

18 wanting to take them away from your mouth when they are

19 already there, but this is exactly what I was going to ask

20 you. If you were aware of the operation at the weekend

21 where seven people were killed by the security forces in –

22 CHAIRPERSON: In fact it was by the

23 special task force, according to the reports that –

24 MR NTSEBEZA SC: Indeed. You are aware

25 of that?

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1 W/O WESSELS: I heard something about it

2 on the radio.

3 MR NTSEBEZA SC: But the point here is

4 that the security forces must have proceeded on the basis

5 that they are going to deal with people who are armed with

6 just as lethal weapons as they have. They probably had R5s

7 because I was later told that a number of firearms were

8 confiscated after the killing of the seven people. But

9 what I'm saying is, do you accept that when any formation

10 of the security forces arm themselves with R1s and R5s, it

11 is in circumstances where they know that whoever are the

12 targets, whatever the circumstances, are likely to be

13 killed by what is going to come out of their firearms. Is

14 that a fair proposition to make?

15 W/O WESSELS: I can understand what

16 you're saying and I would agree with you. I would also

17 just like to add that the R5 is issued to all the members

18 of the South African Police Service and used in their daily

19 tasks where it should be needed, if it should be in such

20 circumstances where a certain amount of force is directed,

21 to be able to counter that, it's another option.

22 MR NTSEBEZA SC: No, that's why I'm not

23 pursuing you in respect of what happened on the 16th because

24 you were not there, you were not involved in the planning,

25 you do not know why there were people armed with R1s and R5

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1 rifles there and all of that, you appreciate that?

2 W/O WESSELS: Yes, I understand.

3 MR NTSEBEZA SC: My intention is just to

4 get an unequivocal statement from you, if it is possible,

5 that agrees with me that when once you bring R1 rifles and

6 R5 rifles to a scene, you are likely to incur fatalities

7 because those are lethal weapons intended to kill.

8 W/O WESSELS: I will agree with you

9 there.

10 MR NTSEBEZA SC: Are you familiar with

11 the magazine Jane, Jane's Weekly, I think?

12 W/O WESSELS: Yes sir, I have encountered

13 it.

14 MR NTSEBEZA SC: I would expect you to,

15 Warrant Officer, as an expert. Now I did a little bit of

16 research with them and they talk about 5.56mm R4 assault

17 rifles. Are you familiar with those?

18 W/O WESSELS: Yes sir, I am.

19 MR NTSEBEZA SC: and they say in regard

20 there to that those – they call them the Vektor,

21 V-E-K-T-O-R – they replaced both the Fabrique Nationale

22 7.62mm fusil automatique leger. Are you familiar with the

23 7.62mm fusil, F-U-S-I-L?

24 W/O WESSELS: That is similar to the R1,

25 sir.

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1 MR NTSEBEZA SC: Jane's are good, and

2 they say that it also replaced the Heckler & Koch G3 as the

3 South African Defence Force – now the South African

4 National Defence Force – standard infantry weapons.

5 W/O WESSELS: I am, yes.

6 MR NTSEBEZA SC: And again, I'm reverting

7 just to what I said, this is the kind of weaponry that is

8 used by the infantry in the National Defence Force, weapons

9 of war. I won't go to say they are weapons of mass

10 destruction but something very near to that, these are

11 weapons of war. Do you agree with that?

12 W/O WESSELS: That is correct.

13 MR NTSEBEZA SC: Jane's also goes on to

14 say this, that this 5.56mm assault rifle is a modified

15 version of the Israeli Galil, G-A-L-I-L.

16 W/O WESSELS: That is correct, sir.

17 MR NTSEBEZA SC: Now because my

18 researcher could not resist saying the following, you need

19 not make any comment there about, "The Israelis use the R5

20 to kill the Palestinians. The apartheid order used the R5

21 to kill the ANC. The ANC used the R5 to kill" –

22 CHAIRPERSON: No, no, Mr Ntsebeza. I'm

23 not sure that that's a question, the answer to which would

24 assist us in any way in answering the points that have been

25 referred to us for decision. The points you may wish to

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1 make on an outside platform, I don't propose to allow you
2 to make it here.

3 [11:04] MR NTSEBEZA SC: M'Lord, it will accept
4 the ruling. The only point I want to make is that because
5 as at this date these killings are topical, here and in
6 Israel in the Gaza Strip and all of that, it would be fair
7 to make the point that the R5 seems to be a weapon that is
8 common to all these scenes. It's a weapon that has been
9 used to effect deaths.

10 CHAIRPERSON: You'd have difficulty in
11 disagreeing with that proposition, Warrant Officer, is that
12 correct?

13 W/O WESSELS: Ja, I can only agree. I
14 can only add that it's also used to protect the lives of
15 the citizens that those military forces protect.

16 MR NTSEBEZA SC: That takes me to the
17 second point. It would take a proportionate level of
18 resistance from those who are the targets to justify the
19 use of R5 and R1 rifles, do you agree? You can't go into a
20 domestic situation – you wouldn't expect the police, when
21 they are called to quell a demonstration, to be going there
22 with R1 rifles and R5 rifles. I see you are wrestling with
23 your conscience.

24 W/O WESSELS: Yes. It is difficult for
25 me to say whether they should be allowed or not. These

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1 firearms, in my opinion, are not just used to kill but also
2 to defend and in that statement, even a breadknife wielded
3 in the right hands is just as dangerous as R5 rifles.

4 MR NTSEBEZA SC: Now let's be serious,
5 Warrant Officer. Let's imagine a situation where I am
6 armed with an assegai and a panga and you are armed with an
7 R1 or an R5 rifle. That's a no contest situation, would
8 you agree? It's a no brainer -

9 MR SEMENYA SC: Chair, I don't –
10 CHAIRPERSON: Mr Semanya?
11 MR SEMENYA SC: Chair, I don't understand
12 the question. I don't know what the no brainer is.

13 MR NTSEBEZA SC: The question is simple –
14 CHAIRPERSON: No brainer is a comment,
15 actually. Just put the question, if the witness
16 understands the question he can answer it, if he doesn't
17 he'll ask you to explain it.

18 MR NTSEBEZA SC: Thank you, Mr Chairman.
19 You did understand the question, Warrant Officer.

20 W/O WESSELS: So if –
21 CHAIRPERSON: The objection is made to
22 the comment about a no brainer. That's a comment, we'll
23 ignore that. I think for clarity purposes, repeat the
24 question and let's get the answer.

25 MR NTSEBEZA SC: The question was, if I

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1 had an assegai and a panga and you had an R1 rifle, an R4
2 rifle and an R5 rifle and we're confronting each other,
3 there is no question that that would not be a proportionate
4 contest. You are more, your fire power is superior than
5 mine.

6 W/O WESSELS: That would be correct, sir,
7 but it would still not change the fact that the assegai or
8 the panga would be just as dangerous to my life.

9 MR NTSEBEZA SC: As I said, I was talking
10 – I assume all of those things, that's why I went with the
11 panga and the assegai but I'm saying as an expert that you
12 are, knowing the lethal effect of all these weapons
13 including assegais and pangas, just the range – I mean you
14 would, unless you were going to throw it Shaka style, there
15 is no way in which I would be matched proportionally with
16 you if you had an R5 rifle and I only had an assegai and a
17 panga. Is that a fair proposition to make?

18 W/O WESSELS: Sir, although there is a
19 disparity of the amount of force that can be used, there
20 are several studies that have shown that within a range of
21 seven metres, a person wielding a sharp object will easily
22 disable the person having a firearm already in his hand.

23 CHAIRPERSON: Mr Ntsebeza, I don't quite
24 understand the question. Are you suggesting that if
25 someone comes to – if I have an R5 in my hand, that's all

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1 I've got and someone comes to attack me with a panga,
2 because my weapon is proportionately much more powerful
3 than the panga, I'm disabled – I'm not allowed to use it
4 and I must submit to being killed by the panga?

5 MR NTSEBEZA SC: No, no, no –
6 CHAIRPERSON: Is that the question?
7 MR NTSEBEZA SC: No, no, no –
8 CHAIRPERSON: That would be a no brainer.
9 MR NTSEBEZA SC: Indeed it would. No,
10 indeed it is – that is not what, and in fact I think you
11 understood me not to be saying so. All I'm saying is, I've
12 got a far more superior weapon than, in the circumstances,
13 and there is a likelihood, the probabilities are that I
14 will inflict injury on you with your panga and your assegai
15 quicker than you would, given of course what you said
16 about seven metres range but if the distance for instance
17 is between here and you and we are called upon to defend
18 ourselves, I would in those circumstances inflict more
19 damage to you than you would to me.

20 W/O WESSELS: That I would agree with,
21 yes.

22 MR NTSEBEZA SC: I mean in terms of your
23 evidence last week, we were talking here about firearms
24 which discharge bullets at the rate of 600 to 700 a minute.
25 Was that your evidence?

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1 W/O WESSELS: That is correct, that is
 2 what it's theoretically capable of.
 3 MR NTSEBEZA SC: Yes. Which means at one
 4 second, 10 bullets are capable of being discharged by that
 5 firearm, 10, just on the 600 – don't even go to the 700.
 6 On the 600 a minute rate rapid fire, in one second and that
 7 second is gone just by me saying one second, 10 bullets.
 8 W/O WESSELS: What we have found by
 9 testing, sir, is that it would normally be between four and
 10 seven rounds that would be discharged per second.
 11 MR NTSEBEZA SC: Now what mathematics
 12 [indistinct] –
 13 CHAIRPERSON: Can we continue this debate
 14 after tea? I understand your point, 600 divided by 60 is
 15 10 but the witness may be able to explain to us why,
 16 despite that simple arithmetical result, he gets a figure
 17 of four to seven a second. After we've taken the tea
 18 adjournment we can fruitfully continue that discussion.
 19 MR NTSEBEZA SC: Thank you.
 20 CHAIRPERSON: The Commission will
 21 adjourn.
 22 MR NTSEBEZA SC: Thank you, Chairman.
 23 [COMMISSION ADJOURNS COMMISSION RESUMES]
 24 [11:44] CHAIRPERSON: The Commission resumes.
 25 Warrant Officer, I have to remind you that you are still

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1 under oath. You want to continue the conversation about
 2 the number of bullets per second that are fired by one of
 3 these automatic assault rifles?
 4 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD):
 5 Thank you, Mr Chairman. And I was told, Mr Chairman, that
 6 the Exhibit B – what? B50-something is, 59, if it could be
 7 put up? Thank you. Now you were in the process of
 8 explaining the mathematics of 600 bullets per minute and I
 9 was seeking to make argument with you that if that is the
 10 range, the rate at which these automatic rifles eject
 11 bullets then that would amount to 10 bullets per second.
 12 Do you recall that?
 13 W/O WESSELS: Yes sir, that is normally
 14 the published figure in publications such as Jane's –
 15 MR NTSEBEZA SC: Yes.
 16 W/O WESSELS: - and others that produce
 17 that cyclic rate. In a perfect world the firearm is
 18 capable of discharging that amount of rounds. There are,
 19 unfortunately, other factors that play a role in it, such
 20 as the charge of the cartridge, the working of the parts –
 21 that sometimes there are even rate reducers introduced into
 22 the firearm to slower or lower the rate so that more
 23 accurate fire can be given. As you can understand, it's
 24 difficult to try and control a firearm with such a rapid
 25 rate of fire. More accurate, deliberate fire can be given

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1 at a slower rate.
 2 MR NTSEBEZA SC: Yes. Yes, thank you but
 3 all things being equal, that is the – you would remember
 4 that there was an exercise that you had to do last week as
 5 to how many could have been discharged in a period of eight
 6 seconds, you remember that?
 7 W/O WESSELS: Yes, I remember.
 8 MR NTSEBEZA SC: On balance and
 9 proceeding on the basis of 600 per minute, 10 per second,
 10 in eight seconds we would account for 80 bullets having
 11 been discharged by those kinds of firearms, would that be
 12 correct?
 13 W/O WESSELS: Sir, yes, theoretically
 14 that is possible. Practically, since the magazine can only
 15 take 35 rounds, it would not be possible to do, to fire as
 16 many rounds within that second. I also based the figure
 17 that I gave on practical tests that I did with R5s myself
 18 to determine the rate of fire.
 19 MR NTSEBEZA SC: We are – if you look at
 20 Exhibit B59, the one on the chart – I can't see from this
 21 distance, what rifle are we talking about? 1, 2, 3, 4. Is
 22 it on the second block on your left?
 23 W/O WESSELS: That would be correct –
 24 MR NTSEBEZA SC: The mouse is – ja, then
 25 the mouse is not pointing to where I want it to point.

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1 There you are, there – no – no. Is that the R1, R5, R4
 2 kind of rifle?
 3 W/O WESSELS: That is the R4 rifle, sir.
 4 MR NTSEBEZA SC: R4, yes. The rifle next
 5 to it, I am quite curious about it, what kind of rifle is
 6 that?
 7 W/O WESSELS: That is a bolt action
 8 rifle, sir.
 9 MR NTSEBEZA SC: Is it automatic? In
 10 other words, is it one of those that discharges bullets if
 11 you keep on, your finger on the trigger?
 12 W/O WESSELS: No sir, it's not capable of
 13 that. It's a manually operated rifle. It requires the
 14 person doing the shooting to manually open, bolt, extract
 15 the cartridge from the chamber, push the bolt forward and
 16 then feed a new cartridge into the chamber of the rifle and
 17 to close the bolt again.
 18 MR NTSEBEZA SC: Yes. Just to separate
 19 fact from fiction now that we have you as an expert, would
 20 that be your typical sniper rifle or am I talking something
 21 layman-ish?
 22 W/O WESSELS: It could possibly be used
 23 for that. To me it appears more to a hunting, hunting type
 24 rifle, sir.
 25 MR NTSEBEZA SC: And there's something in

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1 that rifle that indicates, just about the level of the –
 2 what is that thing?
 3 W/O WESSELS: I think you're referring to
 4 the telescope, sir.
 5 MR NTSEBEZA SC: Telescope, yes. Is it
 6 part of SAPS training for people to be trained in the use
 7 of rifles with telescopes?
 8 W/O WESSELS: I believe there are certain
 9 individuals that are trained as, with the use of bolt
 10 action scope rifles, yes sir.
 11 MR NTSEBEZA SC: For what – for what
 12 would they have to have that kind of training?
 13 W/O WESSELS: That would normally be
 14 advanced training and it would probably be for sniping
 15 duties or counter-sniping duties.
 16 MR NTSEBEZA SC: Correct me if I am
 17 wrong, am I assuming correctly, if snipers are sometimes
 18 used in hostage situations where, after the failure of
 19 negotiation, a well-trained sniper might have to – as the
 20 language says – take the target out, and that is where the
 21 accuracy would demand the use of a telescope?
 22 W/O WESSELS: That would probably be
 23 included in their duties, yes.
 24 MR NTSEBEZA SC: Yes. There is, in that
 25 Exhibit B59 there is the square with bullets in it, do you

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1 see that?
 2 W/O WESSELS: The cartridges itself?
 3 MR NTSEBEZA SC: The cartridges, yes.
 4 Those are not – oh yes, okay. Are they empty? In other
 5 words, are they not bullets, they're just casings?
 6 W/O WESSELS: If we can maybe just
 7 advance the screen up slightly?
 8 MR NTSEBEZA SC: Just about there.
 9 CHAIRPERSON: The empty cases appear to
 10 be square 9 and the cartridges themselves are square 8.
 11 MR NTSEBEZA SC: And what is 8? Can the
 12 mouse point to 8? Oh, yes.
 13 W/O WESSELS: Those are the cartridges,
 14 sir, that is the complete round of ammunition.
 15 MR NTSEBEZA SC: Yes, which would
 16 typically be used in an R4, R1, R5 or do they use all those
 17 kinds of ammunition?
 18 W/O WESSELS: No, the R4 and the R5 are
 19 chambered for the 556x45mm cartridge. That would be
 20 similar to the one third from the left, sir.
 21 MR NTSEBEZA SC: Third from the left.
 22 And the one second from the left?
 23 W/O WESSELS: It's difficult to determine
 24 the correct calibre just from looking at the photograph
 25 since there's no scale really, but that to me would appear

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1 more to be a 308 calibre or 762x51, such as chambered in
 2 the R1 rifle.
 3 MR NTSEBEZA SC: Yes. Now, those are
 4 decidedly lethal ammunition, in terms of your
 5 categorisations those would be clearly lethal ammunition to
 6 use in any situation.
 7 W/O WESSELS: Yes, they had the
 8 abilities.
 9 MR NTSEBEZA SC: So if you had a look at
 10 Exhibit L slide 257, there they talk about a total of 268
 11 sharp point ammunition. Now what does sharp point mean?
 12 W/O WESSELS: Sir, that would normally
 13 indicate ammunition such as the 556, the 9mm Parabellum and
 14 the 762x51 as issued to the South African Police Service.
 15 MR NTSEBEZA SC: Yes. Now if you look at
 16 – thank you - if you look at that slide we see that in the
 17 column less than lethal, rubber, teargas, stun. Now
 18 assuming the correctness of those figures, at a glance it
 19 would appear that there were less, less than lethal
 20 ammunition used than there was the usage of lethal
 21 ammunition. The total for less than lethal seems to be 34
 22 and the total for lethal is 268. Would that be a fair
 23 assessment of that chart?
 24 W/O WESSELS: That would be correct.
 25 MR NTSEBEZA SC: Now, there's a fair

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1 amount of debate about rubber and all of that but just
 2 taking rubber bullets as a category, you would, as an
 3 expert, not say that rubber bullets are not capable of
 4 killing.
 5 W/O WESSELS: No, they do have – or the
 6 capability of killing.
 7 MR NTSEBEZA SC: They have the
 8 capability.
 9 CHAIRPERSON: Mr Ntsebeza, I don't
 10 understand the evidence – unless I've misunderstood it – to
 11 be that rubber bullets were used at Marikana. My
 12 understanding was it was rubber balls and the suggestion is
 13 that the reason for that was for the very reason you've
 14 mentioned actually, rubber bullets can kill, whereas it is
 15 thought that rubber balls can't.
 16 MR NTSEBEZA SC: Thank you, Chairman.
 17 Now assuming the Chair is indicating, would you say the
 18 rubber balls are completely incapable of killing or the
 19 chances are less of rubber balls killing than sharp point
 20 ammunition would do?
 21 W/O WESSELS: The chances of the rubber
 22 balls killing is less than.
 23 MR NTSEBEZA SC: You are familiar with
 24 the Andries Tatane case from Ficksburg? I'm sure you would
 25 be?

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1 W/O WESSELS: Yes, I am.
 2 MR NTSEBEZA SC: One doesn't know, it
 3 appears there that either rubber bullets or rubber balls
 4 were used but at that range they were fatal.
 5 W/O WESSELS: That's what seemed to have
 6 happened, yes.
 7 MR NTSEBEZA SC: Yes. And whilst we are
 8 on the subject of ammunition, just to take advantage of
 9 your being here, there's always been a story that there are
 10 kinds of ammunitions which, on penetration, explode, which
 11 is why sometimes the target that has been hit by that kind
 12 of ammunition is fractured in a number of ways. Is that an
 13 old wives' tale or is there science to it?
 14 W/O WESSELS: Sir, I think there is a bit
 15 of both. What normally happens is, as we discussed
 16 earlier, that there's two effects in wound ballistics –
 17 firstly, the effect of the bullet upon the target but also
 18 reversely, there's also the effect of the target upon the
 19 bullet. In some cases when the bullet strikes the target,
 20 due to it moving from a very high velocity and being
 21 suddenly slowed down, as you can expect, it puts great
 22 pressure upon the bullet. At this stage the jacket or the
 23 core or the bullet might separate and also break up into
 24 smaller pieces just by the shearing forces of the tissue
 25 working against the bullet. Many times this is described

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1 as the bullet exploding while it is actually, what happens
 2 is that the bullet basically disintegrates due to the
 3 forces being applied to it.
 4 MR NTSEBEZA SC: Right, now my last
 5 question will be following. Do you have any video material
 6 of the training of South African Police Services in the use
 7 of the various types of firearms? I know you don't have it
 8 now as you sit there, but is there any such material
 9 available?
 10 [12:04] W/O WESSELS: Unfortunately I cannot give
 11 you a direct answer. I would expect there to be some
 12 material shown of how people are trained, maybe just this
 13 promotional item or as a training guide, unfortunately I
 14 cannot, because I'm not part of that environment, give you
 15 a 100% sure answer, but I would expect there to be.
 16 MR NTSEBEZA SC: There is a 20 second
 17 clip that I will ask the permission of the chair to show,
 18 which purports, and I can't take it higher than that, it
 19 purports to be SAPS in training in the use of R5s. Just a
 20 20 second. I make no claims that it is the thing. My ten
 21 year old daughter sent me to a thing a called You Tube, and
 22 then I got that and I believe that it has been indicated -
 23 CHAIRPERSON: Mr Ntsebeza, I see Mr
 24 Semenya has turned on his microphone, he wants to say
 25 something.

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1 MS SEMENYA SC: Chair, again a request.
 2 I think Mr Ntsebeza would have wanted us to see it, than
 3 catch us off guard. I have no idea what he intends to
 4 show.
 5 CHAIRPERSON: Mr Ntsebeza, can you tell
 6 us what the purpose of the question is, so we can see
 7 whether it's relevant to the matters that we have to
 8 investigate?
 9 MR NTSEBEZA SC: Mr Chairman, thank you
 10 very much. The purpose would be to get from the witness an
 11 indication of whether the kind of training of what appears
 12 to be SAPS officials in the usage of those firearms is
 13 typically what he has been referring to when he says he's
 14 aware of the usage of these firearms by the South African
 15 PS.
 16 CHAIRPERSON: I'm going to ask him
 17 whether he's able to comment at all.
 18 MR NTSEBEZA SC: Yes.
 19 CHAIRPERSON: Have you seen any training
 20 material used by the South African Police Service regarding
 21 – relating to the use of these weapons?
 22 W/O WESSELS: I must admit I've not seen
 23 anything like that, I've also not been involved with the
 24 training as such.
 25 CHAIRPERSON: So it sounds to me, Mr

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1 Ntsebeza, that this won't take us any further. It may well
 2 be that there will be subsequent witnesses to whom you can
 3 appropriately put this, but it sounds like a waste of time
 4 at the moment, frankly, with this witness.
 5 MR NTSEBEZA SC: Mr Chairman, I will not
 6 take that any further, and I will not take the witness any
 7 further. That's the end of my cross-examination.
 8 CHAIRPERSON: Thank you, Mr Ntsebeza. Is
 9 there anyone else representing any of the parties who
 10 wishes to cross-examine?
 11 MS MASEBE: Yes, Chairperson, on behalf
 12 of the Monene family. My name Takalane Masebe, I would
 13 like to put a few questions to this witness.
 14 CHAIRPERSON: Please proceed. Have you
 15 got your microphone turned on?
 16 MS MASEBE: Chairperson, I'm right at the
 17 back. I believe –
 18 CHAIRPERSON: Is your microphone turned
 19 on?
 20 MS MASEBE: Yes, my microphone is on.
 21 CHAIRPERSON: I wonder if it wouldn't be
 22 better, I'm sure Mr Semenya would be honoured to have your
 23 sitting on his right-hand. There's an empty seat next to
 24 him. It's in the front row. We can then see you and you
 25 can see us, and things might proceed more smoothly. You

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1 don't object, do you, Mr Semenya? Please proceed with your
 2 questions. Maybe easier to turn Mr Semenya's microphone
 3 on.
 4 MS MASEBE: Thank you, Chair.
 5 CHAIRPERSON: He won't object, you have
 6 to share a microphone.
 7 CROSS-EXAMINATION BY MS MASEBE: I don't
 8 believe he will. Warrant Officer, I would like you to turn
 9 to slide 54 of Exhibit L. I believe it's right in front of
 10 you. Have you got slide 54? 54, Exhibit L?
 11 W/O WESSELS: Yes, I do.
 12 MS MASEBE: Yes.
 13 CHAIRPERSON: I don't know if it's
 14 necessary to put this slide up. If you want it put up,
 15 give us warning because it's one of these slides we were
 16 given warnings about in the past, but if you don't need to
 17 have it shown and you just want to ask the witness about
 18 it, without being shown, just carry on, but otherwise we
 19 have to warn those who may be affected to give them the
 20 chance to leave if they wish.
 21 MS MASEBE: That is correct, Chairperson,
 22 I don't believe it should be shown. I believe that it will
 23 suffice from here. Warrant officer if you can look at that
 24 picture, right on top of the dark patch that covers tea
 25 face, there is what appears to be a bullet wound. Would

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1 you agree with me that is a bullet wound?
 2 W/O WESSELS: Unfortunately, from the
 3 angle that it's taken, it's very difficult to determine.
 4 It would appear to be similar to a bullet wound.
 5 Unfortunately I cannot in all honesty say 100% from this
 6 angle whether or not it was.
 7 CHAIRPERSON: According to the caption,
 8 this is a picture of the second deceased member of the
 9 police who was killed on the 13th of August. It's stated
 10 that he was hacked and shot twice. So you would expect to
 11 find – I'm not sure if they're visible in the photograph,
 12 but you would expect to find two bullet wounds.
 13 MS MASEBE: Thank you, Chair.
 14 CHAIRPERSON: Ja, maybe we should ask the
 15 evidence leaders the pm photographs, taken at the post-
 16 mortem examination, because they may illustrate more
 17 clearly the point you're trying to make.
 18 MS MASEBE: That will be perfect,
 19 Chairperson.
 20 CHAIRPERSON: It may take some time to
 21 find those photograph, are there other questions you wish
 22 to ask in the meanwhile, you can return to it, and if
 23 you've finished your other questions and they still haven't
 24 found the photographs yet, then we can ask the witness to
 25 stand down and when they have been found, you can then put

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1 them to him.
 2 MS MASEBE: Chairperson, unfortunately my
 3 line of questioning is on this exact picture and that exact
 4 bullet wound, so I believe that we'll have to – the witness
 5 will have to stand down.
 6 CHAIRPERSON: Well, let's go and ask the
 7 evidence leaders how long they'll need. How long will you
 8 need, Ms Pillay, you're attending to this are you?
 9 MS PILLAY: Yes.
 10 CHAIRPERSON: How long will you need to
 11 find the photograph to which reference has been made?
 12 MS PILLAY: Chair, because it relates the
 13 deaths before the 16th, we probably need about 15 minutes
 14 just to locate the pm report.
 15 CHAIRPERSON: Okay, may I ask is there
 16 anyone else who wants to ask questions – cross-examination
 17 of the witness? No, well is there any re-examination from
 18 the side of the evidence leaders which we can take those
 19 now, so we don't have to adjourn for 15 minutes.
 20 MR NTSEBEZA SC: The re-examination, Mr
 21 Chairman, will have to be –
 22 CHAIRPERSON: I'm sorry, I made that
 23 mistake that before. Mr Semenya is going to re-examine the
 24 witness, but I understand that Commissioner Hemraj also
 25 wants to ask some questions, so while Ms Pillay is trying

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1 to find the photograph, Commissioner Hemraj will ask
 2 questions and then if he has any re-examination, Mr Semenya
 3 will do so. Commissioner Hemraj, would you like to start
 4 asking questions?
 5 COMMISSIONER HEMRAJ: Thank you. Warrant
 6 officer, in the flight of the bullet, at some stage it
 7 loses velocity, is that correct?
 8 W/O WESSELS: That's would be correct.
 9 COMMISSIONER HEMRAJ: And it becomes
 10 unstable and tumbles?
 11 W/O WESSELS: It becomes more – it just
 12 slows down, not necessary tumbles. A tumble or an
 13 unsteadiness would be when it actually strikes something in
 14 it's way.
 15 COMMISSIONER HEMRAJ: And the appearance
 16 of a wound created by such a bullet is very different to
 17 the appearance of wound created by a bullet that's still
 18 stable.
 19 W/O WESSELS: That would be correct.
 20 COMMISSIONER HEMRAJ: And the appearance
 21 of that wound is one of the factors that assist in
 22 determining the distance between the shotist and the
 23 target.
 24 W/O WESSELS: Both the appearance of the
 25 wound and then other factors such as - the presence or the

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1 absence of tattooing, or the deposits of burn and unburnt
 2 would be used to determine distance.
 3 COMMISSIONER HEMRAJ: But in the absence
 4 of tattooing, an irregular entrance wound as opposed to the
 5 circular defect is sometimes an indication of a projectile
 6 that's been fired from a longer distance?
 7 W/O WESSELS: Not necessarily, Ma'am, it
 8 would also indicate the bullet struck something on its way
 9 or maybe was – or it struck an intermediate target, which
 10 made it unstable.
 11 COMMISSIONER HEMRAJ: So it's a ricochet
 12 bullet then?
 13 W/O WESSELS: Possible, yes.
 14 COMMISSIONER HEMRAJ: Now, with a 9mm,
 15 what is the range before that projectile becomes somewhat
 16 unstable and would create an irregular entrance wound?
 17 W/O WESSELS: It would be difficult,
 18 since, as I say, they don't really become unstable as such,
 19 they slowly start losing velocity and rotational spin and
 20 then, only then, but that would be at a very long distance.
 21 I would expect, if I remember what I read up about it, in
 22 the region of about a kilometre.
 23 COMMISSIONER HEMRAJ: And what a
 24 projectile that emanates – fired from a rifle?
 25 W/O WESSELS: That I would just about

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1 double the distance, so around the range of about 2
 2 kilometres.
 3 COMMISSIONER HEMRAJ: And can you help me
 4 with something else, Warrant Officer, if you find a firearm
 5 on a crime scene, are there tests that can be carried out
 6 on that firearm to determine if it has been fired?
 7 CHAIRPERSON: Recently?
 8 W/O WESSELS: It can be checked to see
 9 that it has been fired. Unfortunately, there's no test to
 10 determine when it was last fired. The presence of firing
 11 residue or partially burnt powder particles, anything,
 12 would indicate that it was fired. Unfortunately, it's not
 13 possible to determine when was the last time when that shot
 14 was fired.
 15 COMMISSIONER HEMRAJ: So your tests
 16 cannot determine whether the firearm was fired within the
 17 last 24 hours or last week or last month, or indeed last
 18 year?
 19 W/O WESSELS: It only indicate that it
 20 was not cleaned since the last time it was fired, whenever
 21 that might be.
 22 COMMISSIONER HEMRAJ: On another topic,
 23 the switching of the firearm to automatic fire, is that a
 24 deliberate action, or can that happen accidentally?
 25 W/O WESSELS: That would depend on a

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1 specific firearm and where the switch for the select – or
 2 the selector switch in that term, is situated. Also how it
 3 activates whether it's in a position where it might be
 4 accidentally bumped from a single shot to full automatic.
 5 COMMISSIONER HEMRAJ: Well, tell us about
 6 the R1 and the R5. Are those deliberate actions in
 7 switching them to automatic fire?
 8 W/O WESSELS: The R1 is quite a
 9 deliberate action. On the R5 I have seen it, I have
 10 personally seen it, that it is accidentally switched,
 11 either by the thumb, or by an inconsistent or wrong grip,
 12 if I can say that, upon the firearm.
 13 COMMISSIONER HEMRAJ: And then what is
 14 the effect of rubber balls hitting a human body? What is
 15 the force with which they hit the human body? Can they
 16 stop a person in their tracks, can they push them back,
 17 what exactly is the effect?
 18 W/O WESSELS: Ma'am, it would depend on
 19 the impact velocity of, and that would also really, in the
 20 case of the rubber balls, be determined by the distance.
 21 It will not be able to hit – I would not expect it to be
 22 able to hit somebody down. It would cause severe pain and
 23 a severe bruise upon the area where it struck.
 24 COMMISSIONER HEMRAJ: Can you perhaps say
 25 from what approximate distance it would need to be fired to

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1 actually stop someone in their tracks?
 2 W/O WESSELS: Ma'am, I think that would
 3 actually depend on the pain threshold of the person. For
 4 one person it might be a lot further distance where he
 5 would be discouraged from going further, for somebody
 6 that's maybe in an advanced stage of agitation, or maybe on
 7 something that's given him a numbing effect, it might be
 8 that he will carry on moving forward, even though struck
 9 repeated times.
 10 COMMISSIONER HEMRAJ: So there's really
 11 no way of saying at what distance those rubber balls would
 12 be effective, is that what you're saying?
 13 W/O WESSELS: Yes, Ma'am, it would depend
 14 on the person being struck by then.
 15 COMMISSIONER HEMRAJ: Yes, thank you,
 16 Warrant Officer.
 17 CHAIRPERSON: Ms Pillay, I see you've now
 18 returned. Are you able to show the photographs that you've
 19 been asked to show? Have you found them on their hard
 20 drive?
 21 MS PILLAY: Chair, what I do have is the
 22 post-mortem reports for Mr Monene. Unfortunately, it
 23 doesn't have pictures on it. So I'm not sure what Ms
 24 Takalane is referring to, and I can find, if she let's us
 25 know where she got the pictures from, we can trace it.

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1 CHAIRPERSON: We understand that
 2 photograph of the PMs are – I don't know if all the PMs,
 3 but some of the PMs are in the possession of some of the
 4 evidence leaders. Are you saying you haven't got
 5 photographs in respect of this particular post-mortem
 6 examination?
 7 MS PILLAY: Chair, we have the post-
 8 mortem report of this particular deceased, but it doesn't
 9 have any pictures attached to it. So we've just, this
 10 morning, received additional photographs from IPID, and Mr
 11 Wesley's going through that as we speak, to see if we can
 12 find any relating to Mr Monene, but I'm almost certain that
 13 that's not the picture that Ms Takalane was referring to,
 14 because that has just virtually come in. So if there is
 15 another photo that she is specifically referring to, if she
 16 can let us know where it is, we can then arrange for it to
 17 be shown.
 18 [12:24] MS MASEBE: Well, Chairperson, I was
 19 referring to this only picture and unfortunately if the
 20 witness says he cannot see whether it was a bullet wound or
 21 not, then it doesn't help us at all.
 22 CHAIRPERSON: If I understood you to
 23 refer to photograph N which is part of Exhibit L, -
 24 MS MASEBE: Yes –
 25 CHAIRPERSON: - and then I raised the

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1 question as to whether there wasn't perhaps a photograph
 2 taken as part of the post mortem examination. The answer
 3 to that appears to be, there may be but the evidence
 4 leaders can't tell us yet and Mr Wesley is trying to find
 5 out. So if that photograph, if there is a photograph and
 6 that will assist you in your cross-examination, then
 7 perhaps we can ask Mr Semenya in the meanwhile to re-
 8 examine and perhaps, I don't know how long his re-
 9 examination will be, but either if Mr Wesley comes back
 10 during the re-examination you can take over, or we may have
 11 to have a short adjournment when Mr Semenya is finished, to
 12 see what Mr Wesley has been able to find, unless if there
 13 are other questions you can ask at the moment in the
 14 absence of a photograph?
 15 MS MASEBE: Chairperson, unfortunately
 16 not, without this photograph, unless if it can be enlarged
 17 and then the witness can be able to see that particular
 18 bullet wound, there isn't other questions.
 19 CHAIRPERSON: I would think it is
 20 probably a very high probability that there will be a
 21 photograph because it was done in all of the post mortem
 22 examinations, but in the meanwhile let's not waste further
 23 time. Mr Semenya, would you like to re-examine and then
 24 we'll see what happens when you finish your re-examination.
 25 RE-EXAMINATION BY MR SEMENYA SC: Thank

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1 you. Should the [inaudible] that some of the protestors
 2 had blankets on them, would you expect that to have an
 3 affect on rubber bullets fired at them?
 4 W/O WESSELS: Rubber balls or bullets?
 5 MR SEMENYA SC: Rubber balls.
 6 W/O WESSELS: Yes, I would expect that
 7 that would cushion the impact of the balls.
 8 MR SEMENYA SC: Can I take you back to
 9 the evidence relating to buck shots, do you recall that
 10 evidence?
 11 W/O WESSELS: Yes, I do.
 12 MR SEMENYA SC: Do you know what type of
 13 buck shots we have, as in LG, SG etcetera?
 14 W/O WESSELS: The most commonly found
 15 would be the LG, SG, SSG, AAA and that would, from thereon
 16 would be described further on down as birdshot.
 17 MR SEMENYA SC: And do you know which
 18 ones are issued to the SAPS?
 19 W/O WESSELS: As far as I am familiar,
 20 Sir, it is SSG.
 21 MR SEMENYA SC: And in relation to
 22 birdshots, what type of birdshots are there?
 23 W/O WESSELS: Birdshot would be in
 24 descending numbers, gaining numbers from 1, 3, 4, 5, 7, 7
 25 and a half, number 9 and also number 12 shot.

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1 MR SEMENYA SC: And do you know which
 2 ones are issued to the South African Police Service?
 3 W/O WESSELS: As far as I know it is
 4 number 5 shot.
 5 MR SEMENYA SC: And perhaps can we
 6 reiterate, Warrant Officer, the range, the lethal range of
 7 an R5 shot would be what?
 8 W/O WESSELS: The lethal range for a 556
 9 bullet fired from an R4 could be up to 2 kilometres.
 10 MR SEMENYA SC: And for a 9 millimetre?
 11 W/O WESSELS: It would be up to a 1,2
 12 kilometres, 1200 metres.
 13 MR SEMENYA SC: Now as you testified a
 14 magazine to a pistol may have a particular capacity.
 15 W/O WESSELS: That is correct.
 16 MR SEMENYA SC: And is it possible to
 17 have more bullets than the capacity of the magazine such as
 18 those that may be in the chamber?
 19 W/O WESSELS: That would be correct.
 20 MR SEMENYA SC: So if you find a pistol
 21 with a full magazine it does not necessarily conclude that
 22 such a firearm has not been fired?
 23 W/O WESSELS: No, no, it would not.
 24 MR SEMENYA SC: The question relating to
 25 whether an R5 or an R1 is a military weapon, do you know if

<p style="text-align: right;">Page 2182</p> <p>1 those firearms are issued to the South African Police? 2 W/O WESSELS: The R5 is definitely 3 issued, yes. 4 MR SEMENYA SC: And would an R5 use 5 necessarily suggest a state of war? 6 W/O WESSELS: No, I would not suggest 7 that. 8 MR SEMENYA SC: In cases such as heists 9 what armour men do you expect the police to have? 10 W/O WESSELS: I would expect them to be 11 armed with something capable of or just as capable as what 12 the people doing the crime, to put them on an equal footing 13 with at least that. So in this case it would be R5s. 14 MR SEMENYA SC: And should the evidence 15 be that the police knew that some of the protestors had 16 confiscated an R5 from them, from one of them, what armour 17 do you expect to be police response to have amongst many? 18 W/O WESSELS: At least R5 or R1 rifles. 19 MR SEMENYA SC: And if Intelligence at 20 the hands of police suggests that there could be one of the 21 protestors with an R5, what type of a unit in the police 22 would be appropriate to deal with such a threat? 23 W/O WESSELS: I would suggest that would 24 require the special skills of the more advanced units such 25 as the Special Task Force, the NIU and if they were not</p>	<p style="text-align: right;">Page 2184</p> <p>1 could come back. Does that mean you found the photographs? 2 MR WESLEY: Mr Chair, yes, we found the 3 photographs. 4 CHAIRPERSON: May I enquire whether they 5 are of such a nature to necessitate a warning to members of 6 the Masebe family? 7 MS MASEBE: Well, Chairperson, I would 8 suggest that a warning be issued although it's not a very 9 big picture so – but then I would suggest that a warning be 10 issued because I know that the family members are present. 11 CHAIRPERSON: It's the Manabe family, 12 isn't it? 13 MS MASEBE: Monene. 14 CHAIRPERSON: Monene? 15 MS MASEBE: Monene. 16 CHAIRPERSON: If there are any members of 17 the Monene family in the auditorium, it's my duty to tell 18 you that we are shortly to see a picture taken at the post- 19 mortem examination on the body of Mr Monene which may well 20 cause them a lot of unhappiness and grief and distress. So 21 I'm going to give them a minute to leave the auditorium if 22 they wish to do so. For the record, I understand that the 23 interpretation has been both in isiXhosa and in Sesotho, is 24 that correct? 25 MR HANABE: Yes.</p>
<p style="text-align: right;">Page 2183</p> <p>1 available, TRT. 2 MR SEMENYA SC: And what weapons would 3 you expect them to have? 4 W/O WESSELS: That would be R5s, R1s and 5 in specific cases I think, in such a case I think several 6 members armed with Sniper or very accurate rifles might be 7 required. 8 MR SEMENYA SC: Thank you, Warrant 9 Officer, those are the questions, Mr Chair. 10 CHAIRPERSON: I see Mr Wesley has 11 returned and he is being speaking to Adv Pillay, are you 12 able to tell us whether there is a photograph such as the 13 one which is sought for use in cross-examination? 14 MR WESLEY: Mr Chair, I am afraid I 15 didn't see the photograph which was sought, I was out of 16 chambers at the time, but what we are doing is, we are 17 arranging that some of the autopsy photographs, what we 18 believe to be the correct autopsy photographs will be able 19 to be viewed on the screens. If we could perhaps just have 20 five minutes to arrange that, I do apologise? 21 CHAIRPERSON: The commission will adjourn 22 until Mr Wesley is ready to proceed. 23 [COMMISSION ADJOURNS COMMISSION RESUMES] 24 [12:42] CHAIRPERSON: The Commission resumes. I 25 understand – I received a message to the effect that we</p>	<p style="text-align: right;">Page 2185</p> <p>1 CHAIRPERSON: The family concerned are 2 actually Sesotho speakers. Well, no-one is showing any 3 signs of leaving the auditorium so I take it we can 4 proceed. 5 CROSS-EXAMINATION BY MS MASEBE (CONTD): 6 Thank you, Chair. May we have the picture shown? Now, 7 Warrant Officer, that is the bullet wound that I was 8 referring to. Can you see it? 9 W/O WESSELS: If it's just possible that 10 it can just go and stand closer, do you mind? Yes, it does 11 appear as a bullet wound, it has the characteristics of a 12 bullet wound. 13 CHAIRPERSON: Are you able to tell us 14 whether that's the entrance wound or the exit wound? 15 W/O WESSELS: It appears to be an 16 entrance wound. 17 MS MASEBE: Now, Warrant Officer, the 18 appearance of a greyish colour and a black colour, is that 19 an indication of what you earlier referred to as tattooing 20 in your evidence? 21 W/O WESSELS: This is actually the skin 22 of, the ring of abrasion. It's where the bullet actually 23 abrades against the skin as it moves through and overcomes 24 the elasticity of the skin and it also looks like what 25 appears to be a soot deposit. From this wound I would</p>

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1 actually say it was closer than the two in distance and it
 2 would appear to be a loose contact wound.
 3 MS MASEBE: Now Warrant Officer, you've
 4 just stated that it was closer. Can you estimate the
 5 distance from which this shot was fired?
 6 W/O WESSELS: It appears that the barrel
 7 of the specific firearm was actually just about touching
 8 the skin or touching the person.
 9 MS MASEBE: Now Warrant Officer, can you
 10 tell this Commission the type of firearm that would be
 11 capable of firing such a wound?
 12 W/O WESSELS: It is difficult to say from
 13 this angle. I would suggest that it's a handgun.
 14 MS MASEBE: Thank you, Chairperson, that
 15 will be all.
 16 CHAIRPERSON: Is there anyone who wishes
 17 to ask any questions arising from the questions that have
 18 just been asked?
 19 COMMISSIONER HEMRAJ: Warrant Officer,
 20 the carrying of one round in the chamber in the pistol, is
 21 it the practice of the South African Police Service to do
 22 that?
 23 W/O WESSELS: I know that some of the
 24 units do, do that.
 25 COMMISSIONER HEMRAJ: Is that to

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1 facilitate the reaction time?
 2 W/O WESSELS: That is correct.
 3 COMMISSIONER HEMRAJ: Thank you.
 4 CHAIRPERSON: There being no further
 5 questions, it remains for me to thank the Warrant Officer
 6 for his evidence and to excuse you from further attendance,
 7 obviously on the basis that if for some reason we have to
 8 recall you, you're prepared to come back but otherwise
 9 you're excused from further attendance. Thank you.
 10 [NO FURTHER QUESTIONS - WITNESS EXCUSED]
 11 CHAIRPERSON: Now, I did understand that
 12 Ms Pillay was now going to assist us in the housekeeping
 13 matters that we discussed on Friday, documents that had to
 14 be – should have been provided by the cross-examiners and
 15 weren't but which she was now going to give us, exhibit
 16 letters and so forth, but Mr Madlanga if it's not
 17 appropriate or possible to do that at the moment, we will
 18 adjourn. I was proposing to adjourn because we started
 19 late this morning, being a Monday, till half past one. So
 20 would it be appropriate for us to take that adjournment
 21 now?
 22 MR MADLANGA SC: Chair, may I ask – there
 23 are witnesses, six witnesses that were subpoenaed. We have
 24 not been able to make contact with them. May I perhaps
 25 just mention their names and see if they do not respond,

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1 but I will ask the Commission to indicate what it is that
 2 I'm proposing to do.
 3 CHAIRPERSON: I think you must tell me
 4 what you propose to do, I can't read your mind. Mr Mpofu
 5 also wants to say something but first say what you want to
 6 say –
 7 MR MADLANGA SC: That is the –
 8 CHAIRPERSON: Call the names out and then
 9 we –
 10 MR MADLANGA SC: I did, I already did
 11 indicate, Chair, which is that I propose reading the names
 12 out, yes.
 13 CHAIRPERSON: Read out the names.
 14 MR MADLANGA SC: Thank you, Chair. Mr
 15 Vusi Mohale, please just enquire if the people are in the
 16 room and – because some of the names are Sesotho names, if
 17 you could say it both in isiXhosa and Sesotho. Sethembele
 18 Ntakana, Mlambisa Thokotokwana, Tembinkosi Mtjo, Umlandeni
 19 Nyalwana and Lungani Mabotyana.
 20 CHAIRPERSON: None of the person's names
 21 has responded or they do not appear to be present. Mr
 22 Mpofu has put his microphone on, presumably he wants to
 23 help us.
 24 MR MPOFU: Chairperson, yes, thank you
 25 very much. This is a matter that I was going to address

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1 hopefully before lunch. The five, I was not aware of the
 2 sixth subpoena but maybe my attorneys are – my attorneys
 3 are working on the matter outside, so they might come back
 4 with the sixth attorney. I'm in possession of the five,
 5 five of the subpoenas and the people are here outside.
 6 CHAIRPERSON: They are outside?
 7 MR MPOFU: Yes, Chair.
 8 CHAIRPERSON: Okay.
 9 MR MPOFU: As I say, I'm not sure about
 10 the sixth but I expect the sixth person to be here as well.
 11 Chairperson, I've been instructed to say the following
 12 about this matter. Firstly, that we are very much taken
 13 aback that subpoenas have been issued against our clients
 14 because the arrangements that were being discussed – and as
 15 I indicated many times before, we, for the people we
 16 represent who are charged with murder, among other things –
 17 it is our preference and their preference that if they're
 18 going to testify they should be led by the legal
 19 representatives of their choice.
 20 CHAIRPERSON: - afforded the opportunity
 21 to lead the witnesses and my understanding, from what
 22 happened previously, was that you indicated you weren't
 23 going to do that, so – but obviously it's desirable that if
 24 clients of yours are going to give evidence that you should
 25 be given the opportunity to lead their evidence. That's

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1 the appropriate way to do it but anyway, please carry on.
 2 MR MPOFU: Yes. Well, firstly
 3 Chairperson, I never indicated that I was not going to call
 4 anybody but anyway the record will speak for itself on that
 5 but even if that was the case, the point I'm making is
 6 simply that the - the reason why we have applied is because
 7 there was an understanding that we would supply the names
 8 of two, if I understand it well, two witnesses who might or
 9 rather would be called definitely, but who might come after
 10 Mr Mathunjwa or the other evidence of the families. And in
 11 fact the entire weekend we've been working on exactly that
 12 but it turns out that as early, as long ago as the 16th of
 13 November 2012, which is more than 10 days ago, these
 14 subpoenas had been issued. Well - and that's the
 15 surprising thing because we have said time and again here
 16 what the preference of the witnesses is.
 17 There was also some communication that those
 18 subpoenas would be held in abeyance. Apparently there was
 19 a threat made when I was not here. Anyway, to cut a long
 20 story short, Chairperson, I would like to make the
 21 following proposal. We would like to give the evidence
 22 leaders an opportunity, a number of days if they want that,
 23 for them to withdraw the subpoenas and either to continue
 24 to engage us about the possibility of our witnesses coming
 25 here, failing which - or for the Chairperson to make a

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1 ruling in that respect - failing which our instructions are
 2 to approach the High Court to set aside those subpoenas and
 3 if -
 4 CHAIRPERSON: On what basis would the
 5 subpoena be set aside or on what basis would it be
 6 contended that they should be set aside?
 7 MR MPOFU: I will tell you now, Chair.
 8 One of the bases is the one that I've already mentioned,
 9 that these are people who are facing murder charges and
 10 whatever evidence they're going to give, they would prefer
 11 if they give that evidence they would prefer to do so under
 12 the auspices of their chosen legal representatives, not by
 13 some form of duress, number one.
 14 Number two, that one of the reasons why it has
 15 taken us longer than usual to even arrange the situation
 16 where we are in now of being able - in fact ironically this
 17 morning we were in the position to give over some names and
 18 time frames, but be that as it may, one of the reasons that
 19 there was that delay is because of the lack of capacity on
 20 the side of our team caused by the absence of funding. And
 21 that those people should not then be disadvantaged simply
 22 because, or rather the -
 23 CHAIRPERSON: I'm sorry to interrupt you.
 24 MR MPOFU: Yes.
 25 CHAIRPERSON: I don't understand on what

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1 basis subpoenas can be set aside, as suggested by you. I
 2 can understand that a witness who has been subpoenaed may
 3 wish to be led in chief by his own representative - we can
 4 find out from Mr Madlanga whether he proposes, if the
 5 witnesses' legal representatives are prepared to lead them,
 6 nevertheless to lead them himself and not allow the
 7 representatives to lead them. If that's the case, we can
 8 take the matter further but the mere fact that they've been
 9 subpoenaed by the evidence leaders in a situation where it
 10 didn't appear, it wasn't clear they were going to be led by
 11 their own representatives, I don't know if that forms a
 12 basis to set the subpoenas aside. The fact they're
 13 charged, I'm not sure how that is - because the regulations
 14 provide that any evidence they give here couldn't be used
 15 against them in any criminal trial to which they would be
 16 subjected if they were to be charged later - but it's now
 17 one o'clock, I propose adjourning now till half past one.
 18 May I suggest that you and Mr Madlanga discuss the matter
 19 during the lunch adjournment to see whether a modus vivendi
 20 can't be worked out so that - because as you'll understand,
 21 our function here is to get to the truth of what happened.
 22 People who were actors in the events are all liable to be
 23 subpoenaed, obviously entitled to be led by their own
 24 representatives if they wish. If they don't wish that or
 25 their own representatives choose not to lead them, that

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1 can't stop the Commission from permitting the evidence
 2 leaders to lead them. On that basis we'll take the
 3 adjournment till half past one.
 4 MR MPOFU: Chairperson, if I may -
 5 CHAIRPERSON: Take the adjournment till
 6 half past one, Mr Mpofo.
 7 MR MPOFU: I'm not going to be here in
 8 the afternoon, Chairperson.
 9 [COMMISSION ADJOURNS COMMISSION RESUMES]
 10 [13:34] CHAIRPERSON: The commission resumes. Mr
 11 Mpofo, you were addressing me when I adjourned, I suggested
 12 that you speak to Mr Madlanga to work out a modus operandi
 13 during the lunch adjournment, have you anything to report?
 14 MR MPOFU: Yes, Chairperson, we could not
 15 reach any tangible agreement but I suggested that I was
 16 going to go and take instructions from the attorneys and
 17 the clients, and ja, our position is simply that the
 18 subpoenas should be withdraw, alternatively -
 19 CHAIRPERSON: But why should they be
 20 withdrawn? What good basis would there be -
 21 MR MPOFU: Okay, again, - well, if they
 22 are not withdrawn here, then we will try to have them
 23 withdrawn elsewhere. All I am saying -
 24 CHAIRPERSON: But on what legal basis or
 25 aren't you prepared to tell me?

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1 MR MPOFU: Well, insofar as I haven't
 2 prepared, Chair, I am sure it will be argued before that
 3 judge but insofar as I am prepared to, it is on the basis
 4 that, one, the record will show that we have never refused
 5 to bring witnesses. I've said it repeatedly here, that at
 6 no stage have we refused. Two, the fact that we were not
 7 even given the courtesy of being informed that our people
 8 are going to be subpoenaed and who and the identities of
 9 those people, many other grounds but those are one or two,
 10 I think would be enough. It doesn't matter, I am sure the
 11 court that it will go to will decide –
 12 CHAIRPERSON: No, you said the subpoenas
 13 should be withdrawn alternatively, and I didn't give you a
 14 chance to say what the alternative was, because I asked you
 15 on what basis they should be withdrawn?
 16 MR MPOFU: Yes.
 17 CHAIRPERSON: Are you able to tell me
 18 what the alternative is?
 19 MR MPOFU: No, the alternative is what
 20 I've just said which is, that we'll go to court.
 21 CHAIRPERSON: Oh, I see. Mr Madlanga, do
 22 you wish to comment on what Mr Mpofu said?
 23 MR MADLANGA SC: Mr Chairman,
 24 Commissioners, as such we would start with the point about
 25 a lack of courtesy on our part, that is totally untrue. On

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1 the 16th of November when the representatives of the various
 2 parties and the evidence leaders held a meeting on
 3 outstanding matters on phase 1, I announced in that meeting
 4 openly in the presence of everybody and I was addressing
 5 myself to Mr Mpofu's junior, Mr Mpofu was not at the
 6 meeting, and I said to Mr Musi that as a matter of
 7 professional courtesy, those were the words that I used and
 8 all my colleagues present here who were in that meeting
 9 will bear me out on that, we are going to subpoena some of
 10 your clients. I forget the exact words towards the end,
 11 but the first part about it being a matter of professional
 12 courtesy, those were the words that I used.
 13 Thereafter, after the meeting had been finalised
 14 Mr Musi came to me and made a request, in fact he first
 15 made it openly at the meeting, that we should not go ahead
 16 with issuing the subpoenas and I said our decision stands.
 17 He came to me afterwards and I said to him I would talk to
 18 the other evidence leaders which I did over the weekend and
 19 I kept him informed. So over the weekend I said to him,
 20 I've since raised it. I first said, I have raised it and
 21 thereafter I said sent another e-mail, this was by e-mail.
 22 I sent a second e-mail in which I said the decision stands
 23 because after discussion the evidence leaders say we should
 24 stand by our decision, and a mistake that I made was the
 25 use of a wrong verb. In the e-mail in which I advised Mr

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1 Musi that we would be going ahead with the subpoenas, I
 2 said that the subpoenas would be issued on Monday, Monday,
 3 the 19th.
 4 It so happened that the subpoenas had in fact
 5 already been issued on the 16th, but I had said in so many
 6 years to my juniors who were attending to it, Mr Mojapelo,
 7 I do not know who else, that they should hold back on those
 8 subpoenas because I am in discussion with Mr Mmusi, but I
 9 used the wrong verb and said, instead of they will be
 10 served on Monday I said, they will be issue don Monday.
 11 CHAIRPERSON: I am sorry to interrupt
 12 you.
 13 MR MADLANGA SC: Yes.
 14 CHAIRPERSON: The meeting to which you're
 15 referring –
 16 MR MADLANGA SC: Yes –
 17 CHAIRPERSON: - where you spoke about
 18 professional courtesy and so on?
 19 MR MADLANGA SC: Yes.
 20 CHAIRPERSON: When did that take place?
 21 MR MADLANGA SC: On the 16th of November,
 22 Mr Chairman.
 23 CHAIRPERSON: Had the subpoenas already
 24 being issued at that time?
 25 MR MADLANGA SC: I am not, just hold, Mr

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1 Chair. They had already been issued, but the sheriff was
 2 only called and came to this building on Monday, the 19th
 3 and he was only given the subpoenas on Monday, the 19th and
 4 that is after the evidence leaders were not prepared to
 5 exceed to Mr Mmusi's request. They were then given to the
 6 sheriff and from then on the sheriff started the process of
 7 having them served. Now if I may just, yes?
 8 CHAIRPERSON: Mr Madlanga, I suggest you
 9 pause every now and again, to give the interpreter a chance
 10 to interpret.
 11 MR MADLANGA SC: What we as evidence
 12 leaders would be interested to get an idea of is whether or
 13 not there is an intention on the part of Mr Mpofu and his
 14 team to lead witnesses at all. When we adjourned and
 15 approached them at the suggestion of the chairman, based on
 16 –
 17 CHAIRPERSON: Are you talking about
 18 today?
 19 MR MADLANGA SC: Today, today, yes, based
 20 on what Mr Mpofu had said which is that there was an
 21 understanding that two witnesses would be called, during
 22 the adjournment we asked for the names of those two
 23 witnesses, he would not give us those names and we also
 24 asked whether or not there was any intention to call any
 25 witnesses and we did not get any response to that either.

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1 We would not like the issue of, or the question of the
 2 subpoenas to cloud the real issue. It is important to know
 3 whether testifying under a subpoena or not, whether called
 4 by Mr Mpofo or not, whether his clients or witnesses will
 5 be testifying at all, it is important to know that issue
 6 for purposes of forward planning.

7 Of course we cannot and we will not stand in Mr
 8 Mpofo's way if they want to approach the High Court to seek
 9 the setting aside of those subpoenas, but for purposes of
 10 what goes on before this commission I would urge the
 11 commissioners to establish from Mr Mpofo whether or not
 12 they are going to be calling any witnesses and I must
 13 upfront indicate that we are prepared to let him or whoever
 14 else in his team to lead their witnesses. It is not as if
 15 we are married to the idea of calling the witnesses
 16 ourselves, not at all and we got, if they will call the
 17 witnesses, that we'll deal with the matter to finality
 18 insofar as we are concerned. Those are our submissions,
 19 thank you Chair.

20 CHAIRPERSON: Mr Mpofo, Mr Madlanga has
 21 raised certain questions which he says you should be asked
 22 to answer, so will you please give us the answers to the
 23 questions proposed?

24 MR MPOFU: Yes, thank you. Chairperson,
 25 before I do so, I have actually already answered the

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1 questions but I'll do it again. The issue that, I don't
 2 want to get involved in the unseemly business of he said,
 3 she said and so on. The only issue that cannot be refuted
 4 is that nobody until now has told us at least the
 5 identities of the people that they were going to subpoena.
 6 If anyone wants to refute that then they should say so now,
 7 one. Two, and that's the important thing, there is no use
 8 to say we will subpoena somebody out of 300 people, I mean
 9 that doesn't assist anybody. The –

10 CHAIRPERSON: When did you know that
 11 these particular people had been subpoenaed?

12 MR MPOFU: This morning.

13 CHAIRPERSON: Alright, so you know who
 14 the people are, so there is no point in them telling you
 15 now because you already know.

16 MR MPOFU: Well, no Chair, I am sorry, I
 17 know now but I am raising a completely different point of
 18 courtesy, of whether or not it is desirable to say to
 19 somebody who represents other people, if it is the police I
 20 am going to subpoena sergeant so and so or not, not whether
 21 subsequently ten years later you might find out. The
 22 question is whether, if I was going to subpoena a policeman
 23 I should say to Mr Semenya, I want, I am going to subpoena
 24 sergeant so and so or warrant officer so and so, and if the
 25 commission thinks that's not important, well, but I, we at

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1 least on our side think that it is very important, because
 2 after all it is the people, it is the identities, it is not
 3 the concept of subpoena that is important to us, but be
 4 that as it may, that was not done.

5 The other issue is that, as you said and I am
 6 sure I am saying this for the fifth or the sixth time now,
 7 that the issue of calling these people for us, the only
 8 importance is that we have to do a very difficult selection
 9 process which anybody who has 300 clients, I am sure can
 10 appreciate, and that is the only issue I've raised here.
 11 Faced with the issues of those numbers, the issue of our
 12 capacity and the issue that these people are facing 34
 13 murder charges, I've never said that we're not going to
 14 call these people. It didn't assist –

15 CHAIRPERSON: Sorry, are you going to
 16 call witnesses?

17 MR MPOFU: Yes, Chair, I said that before
 18 lunch. I said, I came here specifically to communicate
 19 that.

20 CHAIRPERSON: Which witnesses are you
 21 going to call?

22 MR MPOFU: Well, Chairperson –

23 CHAIRPERSON: Are you not prepared to
 24 tell us at this stage?

25 MR MPOFU: Not at this stage but at least

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1 I can commit to you –

2 CHAIRPERSON: When will we know?

3 MR MPOFU: You should know by, -
 4 Chairperson, the identities we can, if it pleases the
 5 chairperson, could we give you the identities on Wednesday?
 6 We have once again, we have a shortlist of about five and
 7 we were going to select the two from those. The statements
 8 were taken –

9 CHAIRPERSON: Are you going to call two
 10 witnesses?

11 MR MPOFU: Yes, the minimum, Chair, we
 12 might call more but not less than two.

13 CHAIRPERSON: Alright, so I've written
 14 down, I am going to call at least two witnesses, the
 15 commission will know by Wednesday –

16 MR MPOFU: By Wednesday –

17 CHAIRPERSON: - who they are.

18 MR MPOFU: Yes, and the statements might
 19 not come on Wednesday, but within a few days, that –

20 CHAIRPERSON: No, no, no, but, no, no,
 21 there are already statements as I understand –

22 MR MPOFU: Yes, there are.

23 CHAIRPERSON: So I understand you may
 24 wish to amplify it.

25 MR MPOFU: Yes.

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1 CHAIRPERSON: But there are already
 2 statements which were taken by IPID.
 3 MR MPOFU: Of some sort, ja.
 4 CHAIRPERSON: Which are in the possession
 5 of the evidence leaders?
 6 MR MPOFU: No, no, they're still in our
 7 possession.
 8 CHAIRPERSON: No, haven't they got the
 9 IPID statements?
 10 MR MPOFU: Not of these people that I am
 11 going to identify on Wednesday.
 12 CHAIRPERSON: Now, Mr Mpofo, may I ask
 13 you this, are you going to call people who have not
 14 received subpoenas, in other words the people you have in
 15 mind are they not eh people who have been subpoenaed?
 16 MR MPOFU: Yes, a good question,
 17 Chairperson, if I may say so, that's the whole issue of the
 18 identity. Yes, there are two that we have identified
 19 according to the request that was made by the evidence
 20 leaders have not been subpoenaed, ja.
 21 CHAIRPERSON: Alright, now the people
 22 who've been subpoenaed, on what basis, do they object to
 23 giving evidence?
 24 MR MPOFU: Not as such, yes, we didn't –
 25 CHAIRPERSON: On what basis would they

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1 refuse to, I mean the commission has the power to call
 2 anybody. The evidence leaders have the right to ask us to
 3 subpoena anybody, provided they are competent witnesses
 4 there would be no basis, that I am aware of on which they
 5 could refuse to give evidence.
 6 MR MPOFU: Well –
 7 CHAIRPERSON: They can't even plead, they
 8 may be asked questions that may incriminate them because
 9 that's provided for in the regulations, that's why I ask
 10 the questions. The people who have been subpoenaed who are
 11 your clients, are you telling me that they refuse to give
 12 evidence or decline to give evidence?
 13 MR MPOFU: No, I am not saying they are
 14 refusing, but our instructions to them, - their
 15 instructions to us rather, is to certify the subpoenas on
 16 the basis that I've already mentioned.
 17 CHAIRPERSON: The people you propose
 18 calling or thinking you're calling on your list, five –
 19 MR MPOFU: That I will call, ja.
 20 CHAIRPERSON: Yes, have they not been
 21 interviewed by IPID?
 22 MR MPOFU: By IPID –
 23 CHAIRPERSON: Are there statements, you
 24 see there are statements which have been made available
 25 which were taken by IPID from people who were accused, from

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1 the police, people who were injured, all sorts of people.
 2 Now the five that you are talking about have they made
 3 statements to IPID?
 4 MR MPOFU: Some of them, Chairperson. I
 5 can't tell you offhand but my own recollection is that the
 6 vast majority of the people that I represent have made such
 7 statements, so I'll be surprised, but I can't give you a
 8 definite answer –
 9 CHAIRPERSON: Well, surely if you'd
 10 identified these people, the people you're proposing to
 11 call, I would have thought one of the most logical and
 12 prudent things to do is to get their IPID statements to see
 13 those, to see whether those statements in fact are in
 14 accordance with their present instructions and if they're
 15 not why and alternatively if they are, what extra points
 16 have to be added. I have a difficulty in seeing, you can
 17 tell me that you don't know whether the five people you
 18 were thinking of calling, they have made IPID statements or
 19 not.
 20 MR MPOFU: Chairperson, I don't know how
 21 I can take the matter, - I am telling you -
 22 [13:54] CHAIRPERSON: I've asked you a question –
 23 MR MPOFU: Well, I can't tell you
 24 offhand. I'm saying I will verify, Chairperson, but I
 25 can't give you an answer, a definitive answer which I'm not

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1 sure of. I don't think that that would be fair on me.
 2 These statements are not just being taken by me and I've
 3 just said that they are still in a position where they've
 4 been taken by other people, they are being collated, they
 5 are being brought to me. So I don't know on what basis - I
 6 may not be sure that if one or two of them have made an
 7 IPID statement, I'm not.
 8 CHAIRPERSON: Do I assume that the people
 9 you're proposing to call were arrested? I think you say
 10 they're facing charges of murder, so they are among the
 11 people who were arrested.
 12 MR MPOFU: That I'm sure of.
 13 CHAIRPERSON: As far as I know they all
 14 made statements of some kind or another.
 15 MR MPOFU: That's exactly what I was
 16 saying, Chairperson, but what I'm not – I was saying the
 17 vast majority of them made statements but I can't say to
 18 you now sitting here that all five of them made – if one of
 19 them turns out that they didn't make a statement then
 20 you'll say, ja, well, I gave you an answer that I wasn't
 21 sure of –
 22 CHAIRPERSON: You don't have to qualify
 23 it by saying you're sure, that's fine.
 24 MR MPOFU: Yes, as far as I know they
 25 would have made statements.

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1 CHAIRPERSON: I have difficulty
 2 understanding on what basis the seven – it's seven, is it –
 3 that Mr Madlanga identified and who have been subpoenaed –
 4 MR MPOFU: Six.
 5 CHAIRPERSON: Sorry, six - on what basis
 6 they shouldn't be called to give evidence. I can
 7 understand your desire to precognise them and lead them. I
 8 can understand their desire to be precognised and led by
 9 their legal representative, so let's leave that apart.
 10 MR MPOFU: Yes.
 11 CHAIRPERSON: But on the assumption that
 12 that aspect is satisfactorily dealt with, is there any
 13 basis upon which they would refuse to give evidence?
 14 MR MPOFU: Chairperson, once again that's
 15 a difficult question. One of the –
 16 CHAIRPERSON: It's not a difficult
 17 question, it's quite a simple question –
 18 MR MPOFU: Well, it is for me – if I can
 19 just finish what I'm saying. I'm saying that, Chairperson,
 20 the reason why it's difficult is because – and it's more a
 21 point in your favour, Chairperson – one of the prayers that
 22 they want us to seek if we go to the High Court is exactly
 23 that, that they should be – if they're forced to come, they
 24 should be led by legal representatives of their choice -
 25 CHAIRPERSON: I wouldn't allow them to be

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1 led by anybody else if they insisted on being led by their
 2 legal representatives –
 3 MR MPOFU: Of their choice.
 4 CHAIRPERSON: And if their legal
 5 representatives were willing to lead them.
 6 MR MPOFU: Ja.
 7 CHAIRPERSON: But if they didn't insist
 8 on it or alternatively if their legal representatives for
 9 some reason or other weren't prepared to lead them, then I
 10 would obviously insist on them being led by the evidence
 11 leaders.
 12 MR MPOFU: Yes.
 13 CHAIRPERSON: So that matter we can put
 14 aside.
 15 MR MPOFU: Yes, thank you Chairperson, in
 16 fact that's exactly the issue that I was saying it's for –
 17 I'm sorry to interrupt but I was interrupting because I was
 18 agreeing with you, that on that score it looks like we,
 19 from what the Chairperson has said already, it looks like
 20 that issue would fall by the wayside. Of course their
 21 primary relief that they seek is that the subpoenas should
 22 be set aside but if not, then they want to be led by us.
 23 So that's our instructions as we sit here how.
 24 CHAIRPERSON: Yes, but I still asked you
 25 a question, I'm not sure of your answer. Do they refuse,

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1 object to give evidence before us if they are given,
 2 afforded the opportunity of being led by you?
 3 MR MPOFU: Chair, I would have take
 4 instructions. I wouldn't expect them – I think if one
 5 explained that any jeopardy that they might have perceived
 6 would be removed by such a step, then I would expect them
 7 to comply but I can't say immediately. The issue here,
 8 Chairperson, is simply this, that the compulsion that comes
 9 with the subpoena, in their view, is uncalled for because
 10 you know where is it going to end? We have to be given the
 11 liberty, like all the other parties, to choose from the
 12 group of people that we represent, as any other party does,
 13 we were going to call –
 14 CHAIRPERSON: Why is that so? I am not
 15 sure any party – if one of the generals isn't called and I
 16 consider it necessary that he be called, I'll have him
 17 subpoenaed. If it's necessary for the Minister to give
 18 evidence and the Minister doesn't want to give evidence,
 19 I'll have him subpoenaed.
 20 MR MPOFU: Yes.
 21 CHAIRPERSON: If the Premier of the North
 22 West Province has to give evidence about – if this is
 23 correct, I don't know if it is correct but if it's correct
 24 that substantial amounts of money were paid to the
 25 provincial government by Lonmin for the purpose of having

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1 housing built and that money hasn't been spent and the
 2 housing hasn't been built and if it's necessary for the
 3 provincial Premier to be called, I will have her called as
 4 well.
 5 MR MPOFU: Yes, I –
 6 CHAIRPERSON: So I'm not interested in
 7 being told that the parties have the right to decide who
 8 will be called, because that's not so.
 9 MR MPOFU: No.
 10 CHAIRPERSON: And if Mr Burger doesn't
 11 want to call some of the officials from Lonmin who can give
 12 important evidence, they'll be called.
 13 MR MPOFU: Yes, but –
 14 CHAIRPERSON: He's got no right to veto
 15 the calling of a witness and neither have you. I don't
 16 understand that point at all.
 17 MR MPOFU: Well, Chair, maybe you'll
 18 understand it if I put it like this. In each of the
 19 examples you've given me, I'm sure you'd tell Mr Semanya,
 20 Mr Burger, Mr X, the identity of that witness and you would
 21 call that witness. I don't foresee a situation that
 22 anybody, neither you Chairman, knowing you, or the evidence
 23 leaders would simply ambush Mr Burger by saying tomorrow
 24 we've subpoenaed Mr De Villiers from Lonmin without having
 25 said that to him. That will not happen. This can only

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1 happen to these people because they are poor and they're
 2 defenceless and they're being taken advantage of. No other
 3 party can be treated this way, Chairperson.
 4 CHAIRPERSON: To some extent that's water
 5 under the bridge. Whether there was a lack of courtesy in
 6 not stating who was to be subpoenaed is a matter upon which
 7 it's not necessary to give a finding because it's behind
 8 us. The people who were subpoenaed know they were
 9 subpoenaed, you know who they were and I'm not sure that
 10 the fact that there was this discourtesy, if there was, in
 11 the past, affords them a reason to refuse to give evidence
 12 now or to have their subpoenas set aside. So I can't
 13 understand the attitude that's being adopted. Perhaps you
 14 must be patient with me and explain it simply because I'm
 15 afraid it's beyond my comprehension at the moment.
 16 MR MPOFU: Well, Chairperson, the
 17 comprehension that is important is that of my client and
 18 their position is simply that there is no basis upon which
 19 they are being compelled by the force of law to do
 20 something – a) I know that we've passed that stage –
 21 without their chosen legal representatives being here.
 22 Well, I'm giving you the context of how we got here in the
 23 first place, and so that's the one thing. But I'm now
 24 addressing the only remaining issue which is the compulsion
 25 and I'm saying, Chairperson, if that compulsion was indeed

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1 as Mr Madlanga seems to suggest because they were not sure
 2 whether they were going to call people or not, that's also
 3 behind us because I've just said that we are going to call
 4 witnesses. So the alleged reason for the compulsion has
 5 been removed and therefore the compulsion itself should
 6 equally be removed.
 7 CHAIRPERSON: I understand that. We've
 8 got subpoenas that have been served on these people,
 9 they're here. In a moment I take it Mr Madlanga is going
 10 to ask me to have them called in and asked to come back on
 11 another day. If the subpoenas are withdrawn and for some
 12 reason you decide you're not going to call them, then we
 13 have to subpoena them all over again, which would be a
 14 waste of time and money and effort. So I still don't
 15 understand that point.
 16 MR MPOFU: Ja, well, the biggest waste of
 17 time and money and effort will be if we are forced to go to
 18 court, I think, but be that as it may –
 19 CHAIRPERSON: If you're forced to go to
 20 court on a cause of action that's non-existent, the waste
 21 will be at your door and not anybody else's door but that
 22 would be a matter for the Judge to decide –
 23 MR MPOFU: Yes. Thank you, Chair. Our
 24 solution is quite simple, as I understand it, it looks like
 25 we've found each other. If the subpoenas are withdrawn we

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1 will call -
 2 CHAIRPERSON: Why must the subpoenas be
 3 withdrawn?
 4 MR MPOFU: Well, okay, well if they're
 5 not then –
 6 CHAIRPERSON: What purpose is there in
 7 withdrawing the subpoena? The subpoena is there, you can
 8 even have an arrangement with Mr Madlanga as to the day on
 9 which they must come back. I'm sure Mr Madlanga will be
 10 amenable in that regard but if for some reason there's a
 11 lack of co-operation in the future and the subpoenas have
 12 to be issued again, there'll be further expense and time
 13 and trouble wasted. So on what possible, rational,
 14 sensible basis can it be said that the subpoenas must be
 15 withdrawn? Once you've got the concession that if the
 16 witnesses are called you will be given the opportunity
 17 which you may choose to avail yourself of or not, as they
 18 case may be, but you'll have the opportunity to lead them.
 19 MR MPOFU: Chairperson -
 20 CHAIRPERSON: I've asked you a question.
 21 Please explain to me in simple terms so I can understand.
 22 MR MPOFU: I will, I will, Chairperson.
 23 The only issue is the following, Chair, and I can't take it
 24 more – I can't say it more than this. If, after the two
 25 witnesses that we call or three witnesses, whatever we give

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1 you on Wednesday, Mr Madlanga is of the view that he still
 2 needs to compel anybody without asking us, any of our
 3 clients, to compel them – in other words to pass us and
 4 compel our clients to come here, then at that stage it's a
 5 matter that either, between myself and Mr Madlanga, can be
 6 resolved should he still need any further people. The only
 7 issue really that's standing, that is, I think between any
 8 of the parties now, is whether there should remain a
 9 compulsion for, right now, for these people to be coming
 10 here by force on a daily basis - as it is specified in the
 11 subpoenas – on the off-chance that Mr Madlanga and I, after
 12 the other two witnesses are called, will not be satisfied
 13 or will not be able to identify other people, one.
 14 Two, the second issue is whether – I'm not even
 15 sure about the advisability of the situation where I have
 16 to lead witnesses that I have not decided to call.
 17 CHAIRPERSON: Mr Madlanga, did you at any
 18 stage give – before the 16th or after – give Mr Mpofo any
 19 names of people who are his clients who you thought should
 20 be called?
 21 MR MADLANGA SC: Mr Chairman, I must
 22 confess that we did not give my learned friend or indeed
 23 his junior who we were interacting with at the time, the
 24 names of the people but we were open about the fact and as
 25 I indicated, there was the e-mail engagement and if, if

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1 there was any seriousness about the need to know the names,
 2 there was nothing, nothing at all stopping my learned
 3 friends on the other side asking for the names. We would
 4 definitely have given them the names of the people.
 5 CHAIRPERSON: Thank you.
 6 MR MADLANGA SC: May I –
 7 CHAIRPERSON: You can carry on.
 8 MR MADLANGA SC: Yes. Mr Chair, may I
 9 just correct myself? My juniors are correcting me. We
 10 had, a long time ago, given five names to our learned
 11 friends –
 12 CHAIRPERSON: That was my recollection.
 13 MR MADLANGA SC: Yes, yes –
 14 CHAIRPERSON: That's why, but I wasn't
 15 sure I was right, that's why I asked you the question.
 16 MR MADLANGA SC: We had given five names
 17 to them, yes.
 18 CHAIRPERSON: The five names you gave,
 19 are those –
 20 MR MPOFU: No –
 21 CHAIRPERSON: Do they include –
 22 MR MADLANGA SC: What happened is –
 23 CHAIRPERSON: Sorry, before you – those
 24 five names you gave, are those five people the ones who
 25 were among the six who were subpoenaed?

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1 MR MADLANGA SC: Mr Chairman, yes,
 2 because there was an engagement between us and the NPA
 3 advocate who is handling the murder trials, he indicated to
 4 us that he would not like some of the evidence contained in
 5 his dockets to be proved. So we took out some of the names
 6 but at least off the top of my head I remember one, one
 7 name that was taken out, one or two – one, yes – but the
 8 other names remain. So we had –
 9 CHAIRPERSON: Sorry, so do I understand
 10 you to say you gave names to your learned friends sometime
 11 ago, before the – long before the 16th – that these were
 12 people whom he represented who you thought should be called
 13 to give evidence. You say you subsequently, as a result of
 14 discussions with someone on the staff of the provincial DPP
 15 in North West, you subsequently withdrew one or possibly
 16 two names but of the remaining names, are those people who
 17 are being subpoenaed?
 18 MR MADLANGA SC: Yes, yes Mr Chairman,
 19 but the list of the subpoenaed witnesses is more, more than
 20 the names that we had indicated, yes.
 21 CHAIRPERSON: What do you say in response
 22 to Mr Mpofu's suggestion that, firstly, he will give us, he
 23 will tell us by – he tells us he will call at least two
 24 witnesses. He says he will give the Commission, that
 25 includes you, the names of the two or more by Wednesday,

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1 which I presume means on Wednesday. He says that the
 2 people he proposes calling have not been subpoenaed, in
 3 other words they're not among the group subpoenaed. He
 4 says that those who have been subpoenaed he doesn't think
 5 refuse to give evidence, they had this concern about being
 6 led by persons other than their own lawyers but that has
 7 now fallen away, but he says that the subpoenas issued
 8 should be withdrawn. When I put it to him that if, for
 9 some reason, it was necessary to call or considered
 10 desirable to call those witnesses at some future date and
 11 they weren't willing to come, they'd have to be subpoenaed
 12 again, I therefore asked him what purpose would be served
 13 in withdrawing the subpoenas at this stage - he gave an
 14 answer which you heard. I'm not sure that if fully
 15 understand it but that's probably my fault, but do you
 16 respond, do you wish to respond at all to what he said?
 17 MR MADLANGA SC: Yes. Mr Chairman, what
 18 I would suggest is that the witnesses who are said to be
 19 here should be called in and be warned to be in attendance
 20 on Wednesday. Depending on what we get from my learned
 21 friend Mr Mpofu, we will then decide on the day as to the
 22 best course to take. That would be our suggestion. Now on
 23 the question of whether, because they propose leading or
 24 calling only two witnesses, whether we will still insist on
 25 calling more, that will depend on the evidence that the two

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1 witnesses will cover and that we will be able to see from
 2 their statements.
 3 CHAIRPERSON: I'm not sure that I and my
 4 colleagues would be content for witnesses to be told that
 5 they have to come on the basis of what other people's
 6 statements say they will say, because when they go onto the
 7 witness stand – or witness table actually – they may not
 8 say what their statements say they will say or, even if
 9 they say it in chief, it might not stand up in cross-
 10 examination.
 11 [14:14] So the decision, any decision as to witnesses
 12 after those two, would have to be taken after those two
 13 people have testified and not before, certainly not on the
 14 basis of statements that were put up - but subject to that,
 15 I propose putting your proposal to Mr Mpofu. What do you
 16 say about Mr Madlanga's –
 17 MR MPOFU: Chair, that is my proposal
 18 which you said you didn't understand. I had said exactly
 19 that the – after the witnesses have been called, I'm sure
 20 that between Mr Madlanga and I, depending on the nature of
 21 the evidence – which is what you've just said now,
 22 Chairperson – we would at that stage, I think those were
 23 the words I used, then either voluntarily or by compulsion
 24 or whatever method, secure the outstanding evidence. That,
 25 what Mr Madlanga has proposed, is exactly what I proposed.

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1 So I obviously agree with it. Maybe it's just the way I
 2 articulated it.

3 CHAIRPERSON: It's not quite as simple as
 4 that because you're still not addressing the point that I
 5 don't understand but we won't worry about that. You now,
 6 as I understand it, don't quarrel with Mr Madlanga's
 7 suggestion. So would the six people who have been
 8 subpoenaed, if they're here or as many of them as are here,
 9 please be called into the auditorium?

10 MR MPOFU: No, just to clarify something
 11 to assist Mr Madlanga, where he said maybe one of the –
 12 it's actually two. The lists are different, except there
 13 are only two names that are common. I just wanted to put
 14 that on the record. In other words, the list of the
 15 subpoenaed people and the old list of October that he had
 16 sent us are different.

17 CHAIRPERSON: You were given an old list,
 18 were you?

19 MR MPOFU: A what?

20 CHAIRPERSON: You were given an old list?

21 MR MPOFU: No.

22 CHAIRPERSON: You were told that people
 23 were going to – he wanted people to come?

24 MR MPOFU: Chair, I said that to you on
 25 the 16th on the record. I said, I said that there was an

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1 old list which had nothing to do with the issue of when Mr
 2 Madlanga was effectively saying that we should start
 3 pleading our cases, so that's on the record. All I'm
 4 clarifying now is that only two of the names – in other
 5 words, this is a different list that has been done now.
 6 Thank you.

7 CHAIRPERSON: Alright. Well, it's
 8 helpful that that point is clarified. Could we have the
 9 people who were subpoenaed who are present, please, called
 10 into the auditorium?

11 MR MADLANGA SC: Mr Chairman, the names
 12 were called out, as the Commission is aware, earlier and my
 13 learned friend indicated that they are aware of their
 14 whereabouts. Perhaps my learned friends –

15 CHAIRPERSON: They were here in the
 16 building, as I understood.

17 MR MPOFU: Yes, my attorney has gone to
 18 call them.

19 CHAIRPERSON: The attorney has gone to
 20 fetch them.

21 MR MPOFU: Except for Nyalwana, Umlandeni
 22 Nyalwana is not on my list.

23 CHAIRPERSON: I suggest you call the
 24 names again and ask them to answer to their names when the
 25 names are called out, by raising their hands and – that's

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1 helpful. The authorities seem to think that even if you're
 2 subpoenaed, you still need a pass to be here. They've all
 3 got passes, that was very nice. Alright, would you call
 4 their names out and let each raise his hand when his name
 5 is called out?

6 MR MADLANGA SC: Mr Vusi Mohale, Mr
 7 Sethembele Ntakana, Mr Mlambisa Thokotokwana, Mr Teminkosi
 8 Mtjo, Mr Umlandeni Nyalwana, Mr Alfred – I'm sorry, Mr
 9 Lungani Mabotyana. Six.

10 CHAIRPERSON: This gentleman here.
 11 Gentlemen, thank you for coming in obedience to the
 12 subpoenas you received. Sorry, five names were called, we
 13 have a sixth gentleman who hasn't raised his hand yet.

14 MR MADLANGA SC: I called six, perhaps if
 15 I could ask the Commission to find out who the sixth
 16 gentleman whose name was not called out, is.

17 CHAIRPERSON: The gentleman who didn't
 18 raise his hand, whose name wasn't called out, would he
 19 please step forward for a moment?

20 MR HANABE: There he is, Commissioner,
 21 raising his hand.

22 CHAIRPERSON: What's your name, sir?

23 MR MPOFU: Chairperson, there seems to be
 24 confusion. The gentleman is not in possession of a
 25 subpoena, neither does his name appear or rather found from

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1 Mr Madlanga's list. So it would seem that we happen to
 2 have six because of that mistake but there's a sixth person
 3 missing here.

4 CHAIRPERSON: So we've got the wrong
 5 sixth man. What is his surname?

6 MR MPOFU: Mokone Lebogang. L is the
 7 initial.

8 CHAIRPERSON: Yes?

9 MR MPOFU: And Mokone, M-O-K-O-N-E.

10 CHAIRPERSON: Mr Mokone, there appears to
 11 have been a misunderstanding. You haven't been subpoenaed,
 12 you didn't have to come forward and you can leave the
 13 stage.

14 MR MADLANGA SC: Mr Chairman, may I say
 15 something?

16 CHAIRPERSON: Yes, of course.

17 MR MADLANGA SC: Yes, my junior Mr
 18 Mojapelo says that according to information that he has
 19 received, Mr Mokone was in fact served although the return
 20 of service is not yet to hand. Perhaps if the Commission
 21 could find out from him whether he has been served or not.
 22 We do have him on the list.

23 CHAIRPERSON: Mr Mokone – you're Mr
 24 Lebogang Mokone, are you? Yes, and you did get a subpoena?

25 MR MPOFU: He says no.

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1 CHAIRPERSON: Well, what are you doing
 2 here then?
 3 MR MPOFU: He says, Chairperson he says
 4 the employer told him to come. It's clear that the
 5 confusion – if he was in the list, Chair, maybe this list
 6 was also sent in order to make sure that they don't get
 7 adverse consequences at work.
 8 CHAIRPERSON: Okay, I understand,
 9 alright. So what must we do about Mr Mokone? He has very
 10 properly and appropriately come at the urging of his
 11 employer but if he hasn't received a subpoena then I
 12 haven't got the power to warn him to come on a later date,
 13 have I?
 14 MR MADLANGA SC: Mr Chair, I would say
 15 not, yes.
 16 CHAIRPERSON: So what I did in suggesting
 17 that he leave the stage was correct?
 18 MR MADLANGA SC: Yes, yes.
 19 CHAIRPERSON: Mr Mokone, you don't have
 20 to stay on the stage. You can step down if you wish. The
 21 remaining five gentlemen, I must ask you please, warn you
 22 to come on Wednesday at half past nine here at this, the
 23 auditorium at the Civic Centre and a decision will then be
 24 taken, you will then be told what is going to happen after
 25 that but your subpoena is now extended, as it were, until

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1 Wednesday half past nine here at the Civic Centre. If you
 2 need a letter to give to your employer, if you're in
 3 employment and you needed to give a letter to your employer
 4 explaining why you can't be at work on Wednesday because
 5 you have to be here, Mr Madlanga will arrange that a letter
 6 be drafted and given to you so you can show it to your
 7 employers. That can be managed by means of negotiation
 8 between Mr Mpofo and Mr Madlanga. Thank you very much for
 9 coming. Because you came as witnesses in obedience to a
 10 subpoena, you're entitled to witness fees for your presence
 11 here today and make sure they pay your witness fees before
 12 you leave. If a subpoena was given to Mr Mokone's employer
 13 and that's why he was here, he is also entitled to witness
 14 fees for being here today.
 15 MR MPOFU: Thank you, Chairperson.
 16 CHAIRPERSON: We look forward to seeing
 17 you on Wednesday.
 18 MR MPOFU: Thank you, Chairperson.
 19 Chairperson, I can't resist asking whether the payment
 20 regime can be extended to their lawyers.
 21 CHAIRPERSON: Well, if the lawyers are
 22 prepared to appear at the tariff fixed for witnesses who
 23 come in obedience to subpoenas, I'm quite sure that can be
 24 arranged.
 25 MR MPOFU: Sorry, Chairperson, may I be

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1 excused, Chairperson?
 2 CHAIRPERSON: It sounds as if you've done
 3 your, you've done what you had to do today.
 4 MR MPOFU: Thank you, Chairperson. Thank
 5 you.
 6 CHAIRPERSON: Mr Semenya, are we still in
 7 your hands or must I ask Mr Madlanga what do we do next?
 8 Have you got any more witnesses?
 9 MR MADLANGA SC: Mr Chairman,
 10 commissioners, the next witness would have been Mr
 11 Mathunjwa but when I spoke to Mr Bruinders during the lunch
 12 adjournment he was not yet quite ready but perhaps the
 13 Commission may enquire from him at what stage he is now.
 14 CHAIRPERSON: Mr Bruinders, I see you're
 15 in court and you have the microphone in front of you. Are
 16 you able to answer the question that Mr Madlanga posed?
 17 MR BRUINDERS SC: Thank you,
 18 commissioners, I am. You will recall that there was an
 19 arrangement that Mr Mathunjwa would give evidence today
 20 subject to us receiving statements from the parties who
 21 might have witnesses who will say something that might
 22 prejudice AMCU's case or Mr Mathunjwa. We have received –
 23 we got Lonmin's statements and documents last week and we
 24 got some more this morning that we worked through but what
 25 we don't yet have are the NUM's statements. Now I'm told

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1 by the NUM representatives that they have today e-mailed to
 2 the evidence leaders copies of the statements and
 3 apparently there's a bundle of documents attached to them.
 4 Hard copies are apparently on their way and they will make
 5 that available to us as soon as they get here. We would
 6 like the opportunity to go through those with Mr Mathunjwa
 7 before we lead him.
 8 CHAIRPERSON: Does that mean that you're
 9 obviously not able to proceed today, but there's a prospect
 10 at least that you may be able to proceed sometime tomorrow?
 11 MR BRUINDERS SC: No, there's – we, Mr
 12 Chair, we're very keen to lead Mr Mathunjwa, in fact he's
 13 quite keen to give evidence because he's a busy man and
 14 obviously can't hang around here. So if we get those
 15 statements soon this afternoon, we'll lead him tomorrow
 16 morning.
 17 CHAIRPERSON: What you're suggesting to
 18 me is that I should adjourn the proceedings until 9.30
 19 tomorrow morning.
 20 MR BRUINDERS SC: That would obviously
 21 suit Mr Mathunjwa but of course if there's anything else
 22 that can take place now then that must be so.
 23 CHAIRPERSON: Alright, well let's see if
 24 there's anything else that can take place now before I
 25 adjourn. Mr Madlanga, is there anything else that can take

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1 place now?

2 MR MADLANGA SC: None at all,

3 commissioners.

4 CHAIRPERSON: Subject to what –

5 MR MADLANGA SC: Just a minute, just a

6 minute.

7 CHAIRPERSON: There's housekeeping. So

8 the clerk of the papers is Adv Pillay. Have you anything

9 to report?

10 MS PILLAY: Chairperson, I do. If I can

11 start with - the last exhibit number that we have is II,

12 Chairperson, and that's the statement of Warrant Officer

13 Wessels.

14 CHAIRPERSON: His CV really.

15 MS PILLAY: Or his CV, yes. I then would

16 like to hand up Exhibit J, what I've marked JJ which is the

17 bundle of photographs that were relied upon by the team for

18 the victim and I will take you through each photograph now.

19 CHAIRPERSON: You've numbered the

20 photographs, have you?

21 MS PILLAY: I have. I'll take you

22 through that now.

23 CHAIRPERSON: Do you have copies for your

24 learned friends?

25 MS PILLAY: Chairperson, we haven't made

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1 copies for each of the parties but all of the photographs

2 are on the SAPS EHD and I'll just take a minute to take you

3 through each, where each one can be found.

4 CHAIRPERSON: Thank you, thank you but I

5 don't think that JJ7 should be in the bundle. It was

6 referred to and then I – or Mr Semenya objected. Perhaps

7 if I hand my bundle to Mr Semenya so he knows what I'm

8 talking about.

9 MS PILLAY: I did check, Mr Chairperson,

10 that JJ7 is on the SAPS hard drive. That's why the new

11 SAPS document –

12 CHAIRPERSON: No, I understand it's on

13 the SAPS hard drive but the question is whether it's

14 relevant to anything we're busy with and whether it should

15 be before us and Mr Semenya – anyway, let's hear hat M

16 Semenya says. If he's happy that it should go in, I won't

17 stand in his way.

18 MS PILLAY: While Mr Semenya is looking

19 at JJ7, Mr Chairperson, if I could run through JJ1 to 6

20 just so that the rest of the parties know where to find

21 those photographs. JJ1 can be found on the SAPS external

22 hard drive at \lcrc –

23 CHAIRPERSON: Sorry, sorry, before you

24 carry on. You've given me a technicolour copy but my

25 learned colleagues have got black and white copies which

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1 are very much like the – like one of the water cannon

2 videos where the water cannon, one of the water cannon

3 video – sorry, one of the water cannon video cameras the

4 lens was covered in mud, so the video is just clear as mud.

5 Well, these black and white pictures are like that. So

6 would you please, before the end of business today',

7 arrange for colour, technicolour copies to be available to

8 my two colleagues?

9 MS PILLAY: I will do so, Mr Chairperson,

10 my apologies to Commissioners Hemraj and Tokota. We're

11 just having slight constraints with resources but we will

12 definitely get them colour copies by the end of the day.

13 CHAIRPERSON: I don't understand why,

14 having made one colour copy, it was considered necessary to

15 then switch over to black and white, particularly regard

16 being had to the fact that how clear the black and white

17 was, it was an economy which failed.

18 [14:34] MS PILLAY: If I may then carry on with

19 JJ1, Mr Chairperson, it's SAPS external hard drive

20 \lcrc\scene2\201008303 and the photograph is 2735. JJ2 is

21 SAPS external hard drive \lcrc\scene2\201208303 and the

22 photograph is 2736. JJ3 is SAPS external hard drive

23 \lcrc\scene2\201208303 and the photograph is 2739. JJ4 is

24 photograph 156, it's external hard drive

25 \photos\Thursday16\pic156. JJ5 is to be found in the new

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1 material folder that I've then copied for the parties.

2 It's new material from SAPS \photosvideographs \BBC'S

3 Lonmin Marikana Mine Clashes and it's snapshot 0900. JJ7

4 is in the same file, that's in the new material folder from

5 SAPS folder and it's snapshot 11.13.

6 CHAIRPERSON: Right, now Mr Semenya was

7 going to tell us what his attitude is to it being received

8 as an exhibit at the Commission.

9 MR SEMENYA SC: Chair, our objection

10 still stands.

11 CHAIRPERSON: It was conceded, by Mr

12 Mmusi I think it was, who was asking questions based upon

13 these things, that it had no relevance to the inquiry at

14 all. It shows a picture of a cannon being mounted on the

15 back of a bakkie and being used allegedly by the police to

16 fire at miners, South African Police, to fire at miners.

17 It's not suggested anything of that kind happened at

18 Marikana and you weren't here, Ms Pillay, but I asked the

19 press to live up to the high standards we've come to – the

20 media, to live up to the high standards we've come to

21 expect of them, not to report on it. Mr Semenya asked me

22 to give a directive, which I had no power to give, but I

23 asked them to live up to the high standards we've come to

24 expect of them and asked them not to disappoint us and I'm

25 happy to say they didn't disappoint us and it hasn't been

<p style="text-align: right;">Page 2230</p> <p>1 mentioned. So I think we can just take it from the bundle 2 and which means that what you've marked JJ8 is then 3 promoted in the batting order and becomes JJ7. 4 MS PILLAY: Thank you, Mr Chairperson, 5 that would be – just to mention that I did check with Mr 6 Mmusi before I marked the exhibits, just to check whether 7 he wants it still marked as an exhibit and he indicated 8 that he did. I'm not sure if he wants to address the 9 Commission – 10 CHAIRPERSON: Oh, well maybe he wants to 11 persuade me to change my mind. 12 MR MMUSI: Mr Chair, my understanding of 13 Mr Semenya's objection is that he didn't want the photo to 14 be used as if the machine gun was used to fire at the 15 protesters and I conceded, correctly so, that we are not 16 alleging that the machine gun was used to fire at the 17 protesters and it was not discovered for that particular 18 purpose. It's merely in the context of the circumstances 19 of this particular case, the police were at Marikana to 20 disperse the protesters. Now they came with an avalanche 21 of ammunition, including that particular thing. Now it's 22 merely a question of the balance of forces. Now, they – 23 that is the only purpose why that particular machine gun 24 was discovered and if Mr Chairman can recall that the 25 second reason why the firearm was discovered was solely to</p>	<p style="text-align: right;">Page 2232</p> <p>1 that picture unfortunately is the picture that, if you look 2 at it, it was obtained from the media and that that Mr 3 Chairman is commenting about, was not written by us, it was 4 written by the people from whom the picture was obtained 5 from. Now we add nothing and we put no emphasis on what is 6 written on the picture itself. 7 CHAIRPERSON: The question is, what 8 relevance does that picture have to the inquiry on which we 9 are currently engaged in this Commission? 10 MR MMUSI: Mr Chairman, I want to believe 11 that at the end of the Commission one of the issues that 12 you'll be confronted with is to evaluate the behaviour of 13 the protesters, the behaviour of the South African Police 14 Force, the activities and the necessary actions required to 15 meet the activities as at the time. Now you might look at 16 this particular thing – I don't know what evidence Mr 17 Semenya is going to lead with regard to this particular 18 photograph. In his re-examination of the witness today he 19 put to the witness that if the intelligence was suggesting 20 to the South African Police that they were going to meet 21 people who were armed with R5s then they would be, I'm 22 assuming, justified in bringing that particular machine 23 gun, so it's not irrelevant. So in that particular context 24 I would then say to you – 25 CHAIRPERSON: This isn't an R5, what's</p>
<p style="text-align: right;">Page 2231</p> <p>1 identify it as not being one of the firearms that had been 2 depicted in Exhibit B59. So that was the purpose and I 3 didn't understand the objection of Mr Semenya to include 4 that the machine gun should not be listed as one of the 5 exhibits. If that was the case, then I would not 6 understand because this is the document that I got from the 7 SAPS hard drive and it is falling within the four corners 8 of the activities which are being investigated by this 9 Commission. So if his objection – 10 CHAIRPERSON: It contains the legend 11 "Police open fire at South African miners." Now you say 12 that the police didn't use that weapon to fire at the 13 miners, is that correct? 14 MR MMUSI: Mr Chairman, I said I did not 15 discover – I did not discover that particular photograph to 16 allege that the police used the machine gun to fire. 17 CHAIRPERSON: The words underneath it say 18 "Police open fire at South African miners," so what does 19 that mean in English? Doesn't that mean they used that 20 weapon and fired it at South African miners? If the 21 English words have any meaning – 22 MR MMUSI: I agree – 23 CHAIRPERSON: "Police open fire at South 24 African miners" must bear that meaning surely? 25 MR MMUSI: I agree with you, Mr Chairman,</p>	<p style="text-align: right;">Page 2233</p> <p>1 depicted on this photograph with this legend. 2 MR MMUSI: Mr Semenya put more than that. 3 He said if the police were informed in terms of 4 intelligence, one of the reactions would be to bring the 5 snipers to take out the relevant particular person and that 6 particular function would then, in the context of his slide 7 presentation, be conducted by the STF and that particular 8 machine gun is carried by the STF. So I do not want to 9 anticipate what his evidence is going to be, save to say 10 that for the period that is being investigated by the 11 Commission, if the Commission looks into the activities, 12 this is one of the ammunitions that was found in Marikana. 13 CHAIRPERSON: Mr Semenya – sorry, have 14 you finished? 15 MR MMUSI: That is all, Mr Chairman. 16 CHAIRPERSON: Mr Semenya, what do you say 17 in answer to that? 18 MR SEMENYA SC: Just to accommodate Mr 19 Mmusi, I will give him an example of a Browning machine 20 gun, a 20mm barrelled machine gun. That exhibit is 21 misleading and has no relevance to the issues that happened 22 between the 9th and the 16th. 23 CHAIRPERSON: It sounds to me as if the 24 sensible thing to do is to rule that JJ7 can't be before us 25 at this stage, but this is on the basis that you in the</p>

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1 course – at some stage in the course of your case will
 2 present evidence along the lines you've now mentioned,
 3 which Mr Mmusi or his leader can then deal with. Is that
 4 fair? In other words, it's not relevant yet. It may
 5 become relevant at some stage, it can then be dealt with.
 6 MR SEMENYA SC: To accommodate him, we
 7 can give him an example, Chair.
 8 CHAIRPERSON: Well, give it to him some
 9 other time, don't give it now. No, my ruling is that JJ7,
 10 the present JJ7 must be removed from the exhibit. The
 11 present JJ8 is promoted to JJ7 but if at some future stage
 12 in the evidence the point that Mr Semenya has raised about
 13 the Browning machine gun is raised, then obviously this
 14 aspect can be revisited and exhibits relating thereto will
 15 then obviously be relevant and can be put in. That seems
 16 to be – Ms Pillay, is there anything else you want to put
 17 before us?
 18 MS PILLAY: Mr Chairperson, JJ7 would
 19 then be image 0018. Unfortunately I haven't been able to
 20 find it on the SAPS hard drive as yet but Mr Mmusi has
 21 undertaken to give me the password for that and I will e-
 22 mail it to the parties as soon as he has. Then KK, Mr
 23 Chairperson, would be the witness statement of Mr Fanyana,
 24 Peter Fanyana Kwadi, that was relied upon by Mr Ntsebeza
 25 during cross-examination on Friday. I beg leave to hand up

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1 copies of the statement.
 2 MR BUDLENDER SC: In colour.
 3 MS PILLAY: Mr Budlender says in colour,
 4 Mr Chairperson. This statement has been e-mailed to the
 5 parties. And then LL, Mr Chairperson, is the SAfm Forum at
 6 Eight transcript, which was also relied upon by Mr
 7 Ntsebeza. I beg leave to hand up copies.
 8 CHAIRPERSON: I -
 9 MS PILLAY: It was on the 16th, I think.
 10 CHAIRPERSON: Was it actually on the 16th?
 11 MS PILLAY: 15th, sorry, I apologise. On
 12 the 15th of August. The version that I have included as LL
 13 – Mr Chairperson, just for clarity, there are two versions
 14 of that transcript which have now been submitted by the
 15 parties. There's a version by Lonmin and a version by
 16 AMCU. The one that I've printed out is the version by
 17 AMCU. I'm assuming that that's the one Mr Ntsebeza would
 18 have relied on.
 19 CHAIRPERSON: Well, are we going to be
 20 taken through the differences? Are we going to – if there
 21 are material differences, shouldn't those be the subject of
 22 agreement between the parties so we don't have to waste
 23 time here?
 24 MS PILLAY: I'm sure that AMCU and Lonmin
 25 would see to that, Chairperson, a comparison between their

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1 version and AMCU's version and to let us know if there is
 2 an agreed version of the transcript.
 3 CHAIRPERSON: I see Mr Mathunjwa was one
 4 of those who participated in the Forum at Eight, so clearly
 5 it's important that that be before us before he comes and
 6 gives his evidence tomorrow.
 7 MS PILLAY: Yes, what we have at the
 8 moment is just the two separate versions. I'm not sure if,
 9 between the Lonmin team and AMCU team, they'll be able to
 10 compare the two versions and let us know if there are any
 11 material differences between the two transcripts. And then
 12 finally, Mr Chairperson, MM is the last picture, the
 13 photograph of the bullet wound of Mr Monene's body, that
 14 was the last picture that was relied upon by Ms Takalane.
 15 Unfortunately we don't have colour.
 16 CHAIRPERSON: If any of the other
 17 photographs are anything to go by, it's fortunate that we
 18 haven't got colour, I would say.
 19 MS PILLAY: Yes.
 20 CHAIRPERSON: Unless the parties insist,
 21 I certainly won't insist on colour.
 22 MS PILLAY: I'm indebted to you, Mr
 23 Chairperson. If I could just give the pathway to that
 24 photograph to the parties because I haven't handed out
 25 copies of that. It's to be found on the SAPS external hard

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1 drive \lrcrcforensics\pmcas115\dsc4907.
 2 CHAIRPERSON: Yes, thank you Ms Pillay.
 3 MS PILLAY: Thank you.
 4 CHAIRPERSON: There's one other exhibit
 5 that we still are waiting for and that is, in Exhibit S
 6 which is a letter sent by the National Commissioner to all
 7 Provincial Commissioners and other people on the 20th July
 8 2012, there's a reference to an evenly numbered letter
 9 dated 20 December 2011, which is withdrawn and replaced by
 10 the instruction contained in this letter. You gave it an
 11 exhibit number, I think it's Exhibit R but we haven't got
 12 copies of it. We don't insist on Technicolor but we would
 13 like them, please.
 14 MS PILLAY: Mr Chairperson, we are in
 15 possession of the letter and I'll make sure you have it
 16 before the end of the day.
 17 CHAIRPERSON: Thank you very much. Mr
 18 Madlanga, is there any further business for us to transact
 19 before we adjourn till tomorrow morning?
 20 MR MADLANGA SC: None at all, Mr
 21 Chairman, thank you.
 22 CHAIRPERSON: Mr Ntsebeza?
 23 MR NTSEBEZA SC: Mr Chairman, I believe
 24 there was some unfinished business and I've been discussing
 25 with the evidence leaders thereabout and that is a formal

1 application by the families for them to present evidence in
2 a particular fashion. We have completed that application.
3 It is ready to be served on all the parties, including your
4 good selves.

5 CHAIRPERSON: I don't know why you use
6 the word "serve" – is the deputy sheriff come and serve it
7 on me? Alright, we look forward to reading it and once
8 we've seen it we can then schedule a time when you can
9 present the application.

10 MR NTSEBEZA SC: Thank you.

11 CHAIRPERSON: Unless all concerned run up
12 the white flag and it's not necessary.

13 MR NTSEBEZA SC: Very well, Mr Chair.

14 CHAIRPERSON: We've finally exhausted the
15 business that we have to transact today and so until 9.30,
16 or as soon thereafter as Mr Bruinders allows us, we will
17 resume tomorrow morning.

18 [COMMISSION ADJOURNED]

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