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TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 250

26 JUNE 2014

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1 [PROCEEDINGS ON 26 JUNE 2014]
 2 [09:36] CHAIRPERSON: The Commission resumes.
 3 It's starting late because some of the counsel were held up
 4 in a horrendous traffic jam on the highway. I'm pleased
 5 that they have finally been able to arrive. I see that the
 6 case I read on the internet last night has now been
 7 downloaded for me, that's the McCann case and as far as I
 8 can see there are points in it which have distinct
 9 relevance in this case and thank you very much for making
 10 it available. Mr White, you're still under oath.
 11 GARY WHITE: (s.u.o.)
 12 CHAIRPERSON: Ms Le Roux?
 13 EXAMINATION BY MS LE ROUX (CONTD.):
 14 Thank you, Chair. Mr White, if we could start with the
 15 second aspect of our homework which was to consider
 16 standing order 251, exhibit ZZZ8, for the Chair. Chair,
 17 we're in your hands as to how you'd like to deal with this.
 18 Mr White, we gave him a copy and he has reviewed it. I'm
 19 not sure what specific you'd like him to –
 20 CHAIRPERSON: All I was interested to
 21 know, whether the Northern Ireland Police Service has got
 22 standing orders and rules that deal with the situations
 23 which are addressed in those two standing orders and what
 24 particularly interested me was the interrelation between
 25 the two because it does look, if one reads 251 there's a

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1 procedure for ensuring that innocent people in an advancing
 2 group are not injured, as far as possible. There doesn't
 3 appear to be a general discretion granted to everybody in
 4 the line to fire, which could end up in 60 people firing.
 5 Prima facie that doesn't seem to be the idea of 251. Of
 6 course 262 then deals with a slightly different situation
 7 and I'm not sure that the interrelation between the two
 8 doesn't require further exploration and elaboration and I'm
 9 simply interested to know whether either - if one confines
 10 oneself to Northern Ireland or whether one goes beyond that
 11 and looks at the United Kingdom or certainly England, Wales
 12 and Northern Ireland. Scotland may or may not be a
 13 different question – whether there's some information or
 14 inputs which he can provide to help us in that regard, but
 15 perhaps you can do it at the end of his evidence, I don't
 16 know, end of his evidence in chief.
 17 We were told in an e-mail from Mr Pretorius that
 18 there's a question as to whether we should look at the
 19 other parts of that standing order because we've only got
 20 part 3 and the information we were given is, part 3 is
 21 self-standing, that the other parts deal with other topics
 22 that are not relevant at all.
 23 MS LE ROUX: Yes, Chair, that was as we
 24 understand it and we've also been provided with, there was
 25 an amendment in 1989 of standing order 251. We have that

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1 as well.
 2 CHAIRPERSON: Yes, but I hope I've
 3 answered the question that you put to me. I know what I've
 4 said is slightly imprecise but you understand my problems
 5 in relation to the –
 6 MS LE ROUX: Yes.
 7 CHAIRPERSON: - interrelation between the
 8 two and particularly what one can describe as world best
 9 practices, on the assumption that the UK practice is in
 10 line with world best practice.
 11 MS LE ROUX: Yes.
 12 CHAIRPERSON: On handling the kind of
 13 situation that we have here, which is dealt with to some
 14 extent in those two standing orders.
 15 MS LE ROUX: Yes.
 16 CHAIRPERSON: I'm afraid I can't put my
 17 problem –
 18 MS LE ROUX: No, no.
 19 CHAIRPERSON: - with greater clarity than
 20 that, but I know what I've said isn't as clear as I would
 21 like it to be but I have done my best.
 22 MS LE ROUX: Yes, and Chair, obviously
 23 there's a bit more homework in that for us then to see if
 24 we can find other jurisdictions but Mr White, in light of
 25 what the Chair has indicated he's interested in, if you do

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1 have any response.
 2 MR WHITE: Chair, a couple of very brief
 3 points, if it's helpful. Firstly, there are a number of
 4 paragraphs, 251.5 which I was surprised to find it talked
 5 about police maybe justified in using their firearms under
 6 the following circumstances and if their station or
 7 barracks is attacked, if an attempt is made to relieve them
 8 of prisoners or to deprive them of their arms, but there's
 9 a further paragraph which talks about if an attempt is made
 10 – sorry, apologies - to defend themselves or other persons
 11 from death or serious injury if attacked, it's not clear
 12 whether or not those are linked, i.e. if your station is
 13 attacked in circumstances where you're defending your life,
 14 if they're separate than just the fact that you can use
 15 firearms on the basis of the station is being attacked
 16 would not be something that in the UK would be recognised.
 17 It's very specifically that third point that I talked
 18 about. Whatever the circumstances are, it's about the
 19 protection of life in relation to the use of lethal force.
 20 In lots of jurisdictions that I've had the privilege to
 21 view, some of the legislation might be written in terms of
 22 police might use firearms for example to quell a riot or in
 23 any circumstances I've seen, it'll then go on to say in
 24 circumstances where life is in danger. So to some extent
 25 you could actually take that first paragraph out because it

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1 doesn't really matter what you're doing, it's about if life
 2 is in danger.
 3 The other paragraph which I thought was pertinent
 4 and I think this might be what you were particularly
 5 directing me towards was paragraph 251.8 which talks about,
 6 "It is of the utmost importance that the officer or other
 7 senior member present should give all his attention to the
 8 supervision of the members under his command. He should
 9 not, therefore, except in the case of extreme necessity,
 10 himself fire but should, by a deliberate word of command,
 11 order one or more of the members under his command to fire
 12 a specified number of rounds at a particular person or
 13 persons indicated by him." Now that is a sort of command,
 14 I think you used the term yesterday, Chair, which again
 15 would be something that's not recognised sort of in the UK
 16 framework insomuch as I think I explained yesterday, the
 17 framework there and the framework applies to the entire UK
 18 including Northern Ireland, are based on authority levels.
 19 So looking at a particular situation, you know, there are
 20 levels of authority in relation to deploying firearms
 21 officers to different situations. Ultimately at the end it
 22 comes down to a situation where that individual officer,
 23 having been placed in that position on the levels of
 24 authority, he or she makes that final decision themselves
 25 as to whether or not to pull the trigger on the basis of

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1 the threat that they perceive at that particular time as
 2 opposed to being commanded to do so. So there's no read
 3 across there, there is nothing in the UK use of firearms
 4 procedures or doctrine which would map onto this. It's
 5 individual perceived threat.
 6 The last point that I would make is around, I
 7 also read again last night 262 and I think 262 is very much
 8 couched in language that I would recognise, which is around
 9 – well, first of all there's a very, I would consider,
 10 aspirational line in it which says "Use of force must be
 11 avoided at all costs." Certainly in the UK we would never
 12 see that written in any particular piece of doctrine
 13 because it is a very high threshold, "Use of force must be
 14 avoided at all costs." The rest of that, I think it's
 15 section 11 if memory serves me correct, is much more
 16 language that I would recognise which talks about minimum
 17 use of force, proportionate use of force in whatever the
 18 circumstances are, but I don't see any cross-reference to
 19 this. So 262 is much more what I would be familiar with in
 20 relation to, I think, international norms about
 21 proportionality and this paragraph 251.8 of standing order
 22 251 is certainly unusual in terms of any experience that
 23 I've had where it's a person who's making a command to
 24 others to fire. It is not something that we would do in
 25 the UK.

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1 CHAIRPERSON: The problem that I have,
 2 I'll make another attempt to sort of state it clearly, is I
 3 can understand in an ordinary situation where a policeman
 4 or woman or a number of them are in a situation where
 5 they're under attack, they have to defend themselves. I
 6 understand that and you can't expect them to only respond
 7 to orders and so on, their lives are in danger and they
 8 have to do the necessary but where, as here, you have a
 9 group of, a line of people specifically ordered to go to a
 10 particular place, they are there to deal with the situation
 11 where the first line, the POP people, have been under
 12 attack and have absented themselves, taken refuse and so
 13 on. And they are in line there to deal effectively with
 14 this group of people who are approaching to attack them and
 15 to say that any, each one of the 60 is entitled to exercise
 16 his discretion without any order at all seems to me to be a
 17 dangerous doctrine. And 251 says, it appears to deal with
 18 that kind of situation by saying what we see in 251.8 and
 19 you don't have all 60 or possibly all 60 firing. I can
 20 understand if there's never going to be an order, you can't
 21 blame all 60 for firing because if I was in the group I
 22 wouldn't know whether the man next to me is going to fire
 23 or not, so I would have to fire myself to protect myself
 24 and my colleagues and so on. But if an arrangement such as
 25 is set out in 251.8 applies, then of course that isn't a

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1 problem, then the senior officer then decides which of the
 2 60 will fire and where they will fire and the whole
 3 situation will be far more controlled. Now what we have
 4 here is a situation which prima facie falls to me – I
 5 haven't got a clear view on the matter, I'm seeking
 6 guidance but what we have is, according to what we've been
 7 told by the police, their policy is, every one of the 60
 8 can fire, use his own discretion and so on and take the
 9 consequences if he acted inappropriately and he wasn't
 10 covered by the relevant doctrines of the criminal law, but
 11 nevertheless they do give orders to cease fire, which
 12 immediately introduces a contradiction because if number 3
 13 in the line feels that he is in imminent threat and
 14 assuming he's got objective grounds for so thinking, he
 15 then receives an order by the commander to say cease fire.
 16 He doesn't agree that the threat is over, so what must he
 17 do? Must he stop firing and if he's correct, be killed?
 18 Alternatively, must he disobey the order because it's an
 19 unreasonable order and there are a whole lot of doctrines,
 20 legal rules about in what circumstances you can refuse to
 21 obey an illegal order – it creates scope for considerable
 22 confusion. I don't see how you can say, the police can
 23 say, yes, the orders – the officers can say you must cease
 24 fire but they don't tell you that you must fire initially.
 25 I understand the normal simple self-defence situation. Now

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1 it seems to me that 251.8 seems to address the problem I
 2 have but then also among the standing orders we've got 262
 3 which appears to be a contradiction. I was hoping that
 4 that contradiction in our standing orders would not be
 5 repeated in either the Northern Ireland or the UK
 6 equivalent of the standing orders and you could help us on
 7 that but if you can't, well, then so be it but if there is
 8 something you can tell us, not necessarily now from the top
 9 of your head, as it were, but when you go back to Belfast
 10 you may be able to get some information. Alternatively, as
 11 Ms Le Roux says, the legal team instructing you may be able
 12 to give us some assistance. Anyway that's the problem I
 13 have. I hope I've made my problem clear.
 14 MR WHITE: Chair, you've it very clear
 15 and if I can be of any assistance when, I mean I'll
 16 specifically take with some homework when I go back, to
 17 talk to people who would be specialist firearms officers.
 18 I'm a trained firearms commander myself but I'll talk to
 19 some of the people who deal with this type of thing daily
 20 and I'll communicate through my legal team if it's of
 21 assistance to you.
 22 CHAIRPERSON: Thank you very much. Ms Le
 23 Roux, thank you for the McCann – I think I've already
 24 thanked you for the copy of the McCann case that you gave
 25 us. It's a 1995 decision. I would anticipate that there's

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1 been a fair degree of literature on the subject since and I
 2 did a short Google search myself last night and I see
 3 there's quite a lot of writing on the subject. I'm
 4 interested to know whether there are other cases which have
 5 come up for courts of higher authority dealing with the
 6 situation where the individual shottists are held not
 7 liable because they honestly and on objective grounds
 8 believed that there was imminent threat and therefore they
 9 were entitled to defend themselves, but where the planning
 10 that put them in the situation where that happened was held
 11 to be defective and there is a finding against the planners
 12 or the authorities who, or commanders who allowed that
 13 situation to develop. That seems to be the nub of the
 14 decision. I'd be interested to see whether the principles
 15 set out rather tersely, if I may say so, in this judgment
 16 have been elaborated either in academic writing or, if I
 17 may be permitted to say so with the prejudices that
 18 accompany my background, by courts of higher authority.
 19 MS LE ROUX: Mr Chair, we'll certainly do
 20 that, that homework. If I could just ask Mr White one
 21 question on the 251 issue. Mr White, with respect to the
 22 training that your firearms officers receive, so leaving
 23 aside for the moment your criticism that you've clearly put
 24 before the Commission about having a TRT line of 60, in
 25 that event how are firearms officers trained, in your

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1 experience, with respect to the number of rounds that they
 2 then fire when they perceive the threat?
 3 MR WHITE: Well, the training would be
 4 that obviously each individual round has to be justified.
 5 The training would also include a considerable element of
 6 sort of a revision of, first of all, human rights
 7 principles and, secondly, an element within the training,
 8 judgmental as we would call it. In other words, officers
 9 are placed in the situation where they have to make a
 10 decision whether to fire or not and then to be able to
 11 justify the circumstances where they did. Ordinarily
 12 police officers would be trained to fire two shots on
 13 exposure of a target once they have satisfied themselves
 14 that, you know, the threat is imminent and that tends to be
 15 the training in the UK.
 16 MS LE ROUX: So for a line of 60 that
 17 would be 120 shots if each officer fired. We can do the
 18 math.
 19 MR WHITE: Well, if each individual –
 20 based on the assumption that each individual officer
 21 perceives an imminent threat to his life or to someone
 22 else's life, then having sort of crossed the threshold
 23 whereby I required to fire, it could therefore likely lead
 24 to two shots being fired, I stress that the training is
 25 that when the target is exposed, fire two shots – that's

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1 not to say that if that officer makes the decision at the
 2 time, that you know, they fire one shot and stop and
 3 there's lots of circumstances in which, you know, that may
 4 happen but the way they're trained is when the target is
 5 exposed, fire two shots.
 6 MS LE ROUX: Mr White, if we could then
 7 move on to the next topic which is your key criticisms and
 8 conclusions regarding scene 2. Chair, this is probably
 9 most usefully referenced in the supplementary statement of
 10 Mr White, page 15 paragraph 2.5. Mr White, could you
 11 summarise your conclusions with respect to scene 2 of the
 12 operation?
 13 MR WHITE: Apologies –
 14 MS LE ROUX: And Chair, sorry, I should
 15 put the other reference on the record which is in Mr
 16 White's final statement, the events of scene 2 are section
 17 7.6 commencing at page 116.
 18 CHAIRPERSON: Thank you.
 19 MR WHITE: Chair, in relation to the
 20 events at scene 2, if I understand the question correctly
 21 and referring to 2.5 of my supplementary statement, first
 22 of all that I understand that substantial concessions have
 23 been made in relation to command and control at scene 2 and
 24 that there did seem to be a degree of confusion with regard
 25 to what resources were actually being deployed there.

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1 Secondly, the whole question of proceeding of what's
 2 referred to as scene 2 after the events of scene 1, I
 3 criticise on the basis that certainly within the planning
 4 it would seem that there should have been a situation where
 5 basically the operation is paused and stopped as opposed to
 6 moving on to what's referred to as scene 2.

7 CHAIRPERSON: It's not really a planning
 8 question, though, you talked yesterday about dynamic
 9 situations.

10 MR WHITE: Yes, of course.

11 CHAIRPERSON: I think the evidence is
 12 reasonably clear that the police didn't expect scene 1 to
 13 happen. They've used the expression "disruption," the
 14 plans were disrupted. They intended to go to this DDA
 15 plan, disarm – disperse, disarm and arrest plan – I think
 16 about 20 minutes later, the idea was that they were going
 17 to put the barrier up. They expected the strikers to stay
 18 on the koppie side of the barrier, what amounts to a plain
 19 really, I think, slightly to the west of the koppie.
 20 Thereafter they were going to give warnings, Calitz was
 21 going to give warnings, two warnings translated into the
 22 vernacular languages, as to what was going to happen and
 23 then they were going to proceed with the DDA plan and they
 24 didn't expect – some would say they should have expected
 25 but they didn't expect that what would happen would, in

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1 fact would happen – what happened would happen – and they
 2 dealt with the situation as it happened. So that was
 3 something that wasn't part of the plan – it wasn't part of
 4 the plan of what would happen and they didn't deal for the
 5 contingency of what would happen if it did. That may be a
 6 ground for criticism in itself, but once it happened it was
 7 really, I would have thought, for Calitz, if he'd known
 8 about it – he says he didn't know – or the JOC once the
 9 people in the JOC, once they knew about it, to – or I think
 10 Mr De Rover takes a similar view, they should then have
 11 stopped the operation.

12 [09:56] And proceeded more cautiously and differently.
 13 That of course raises factual questions that you don't have
 14 to get involved in - we unfortunately do – as to when the
 15 JOC first heard about it and first realised it. But it is
 16 not fair to say, I would suggest, it was a planning
 17 problem, except perhaps the failure to foresee that this
 18 might well happen. It was a dynamic situation. The plan
 19 had been disrupted.

20 A further question that then arises is whether
 21 what happened at scene 2 involved the, an endeavour to
 22 implement the plan. Some witnesses have said – General
 23 Mpembe I remember in particular – said the plan was back on
 24 track by the time they got to scene 2, and what then was
 25 supposed to happen was the implementation of the DDA plan.

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1 So then the planning would be relevant at that point, but
 2 I'm not sure, with respect, it's fair to say that it was
 3 simply the planning that was defective, but how do you
 4 respond to that criticism?

5 MR WHITE: Chair, that's very helpful. I
 6 think my reference was to the plan. I wasn't suggesting
 7 that in terms of you know, planning, I don't think, whilst
 8 I did say in my evidence yesterday it could have been
 9 anticipated, and in fact I think the evidence is that it
 10 was to some extent anticipated that if the POP came under
 11 attack and did as the plan suggested, retreat to the Nyalas
 12 or whatever, then the fact that the TRT line would step in,
 13 it could have been anticipated. In fact I think it was
 14 anticipated that people therefore could be engaged with the
 15 R5 rifles.

16 So do I think that in his planning, that
 17 Lieutenant-Colonel Scott addressed is mind to the fact that
 18 at scene 1 you end up with 17 people dead and then he was
 19 suggesting that they would move on with the dispersal;
 20 categorically no, I don't for one second suggest that he
 21 ever addressed his mind to that.

22 So the point is, you know what I was referring to
 23 is that the plan effectively had I suppose at that point a
 24 number of stages - to roll out the wire as you describe,
 25 Chair, to give the warning and then to move forward. So

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1 when the wire gets rolled out certain events then happen.
 2 We have scene 1 and then we sort of have the continuation
 3 of the plan. Scott didn't anticipate scene 1, I've said,
 4 plus you know as you work through the choreography of this
 5 then you have the, sort of the second part of the plan,
 6 the disperse and disarm.

7 So my criticism therefore in relation to the
 8 issues of command and control I suppose are threefold.
 9 Firstly as you say that Officer Calitz who is the
 10 operational commander on the ground, I would have thought
 11 should have taken the decision to stop it if he knew, and
 12 again as you say there are issues of fact which is for
 13 yourselves to resolve, not myself. If he didn't know, how
 14 could he stop it? Beyond that then there are issues in
 15 relation to command and control with what happens next in
 16 relation to Mr Calitz on the basis of the way the units
 17 were coordinated, and I think they weren't and I think he
 18 gives oral evidence to the effect that, you know, at that
 19 part of the plan it became uncoordinated, I think is the
 20 word that he used.

21 The second point the, and again you've referred
 22 to this Chair, is the role of the JOC inasmuch as my
 23 understanding of the role of the JOC is that they're
 24 supposed to be overseeing this plan and that they should
 25 have, had they have known – and again I think that there

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1 are issues in relation to facts in question as to whether
 2 or not and how much they know, but to me their purpose is
 3 that they should have been stopping that plan, taking a
 4 grip and saying things are going badly wrong here, if they
 5 knew, and the third point is –
 6 CHAIRPERSON: Sorry to interrupt you.
 7 Keep your third point for the moment. I did say yesterday
 8 I didn't want photographs taken – would you listen to me,
 9 please? I didn't want photographs taken while the evidence
 10 is being led. The noise of the camera is distracting,
 11 upsets ones concentration. I did say that yesterday. It
 12 wasn't an instruction only intended to apply yesterday. It
 13 applies until further notice and I'd expect it to be
 14 complied with. There's a gentleman sitting in the corner
 15 with a camera who's obeying it and which I appreciate, but
 16 it applies to everybody. So please bear that in mind,
 17 otherwise I'll have to ask the camera people concerned to
 18 leave the chamber. I don't want to do that either. Sorry,
 19 you were coming to your third point, Mr White.
 20 MR WHITE: And the third point therefore
 21 then in relation to command and control is the fact that
 22 General Mpembe is the overall commander, who's in the
 23 helicopter, and I've said from first engaging with this
 24 process I don't in any way dispute the decision for General
 25 Mpembe to go in the helicopter to effectively get a bird's-

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1 eye view in his role as overall commander, therefore he can
 2 see more adequately what's happening. But again he is the
 3 overall commander. Things are going badly wrong, again a
 4 question of fact as to what he knew or what he didn't know,
 5 but one of the points that I was concerned about is General
 6 Mpembe in his evidence when he said that in his role of
 7 overall commander he couldn't really do anything unless he
 8 was responding to a question from either the JOC or the
 9 operational commander. You know, if he was aware of this
 10 thing going substantially wrong, in any set of
 11 circumstances I would, I can't find an instruction in the
 12 policy framework which say as overall commander he couldn't
 13 step in at any time because I think by definition he's the
 14 overall commander. If the facts were to show that he was
 15 aware, particularly of something as significant as what
 16 happened at scene 1 happening – if, I stress – then, you
 17 know, all the more in relation to that statement I just
 18 find it absolutely unacceptable.
 19 MS LE ROUX: Mr White, returning you to
 20 the events at scene 2, and perhaps the easiest way to do
 21 this would be to go in your final statement to page 116,
 22 there you, and in the pages that follow you set out six of
 23 your key criticisms relating to scene 2. Chair, we don't
 24 need to recite what those are, but Mr White, if there was
 25 any elaboration you wanted to make about those criticisms

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1 in relation to scene 2?
 2 MR WHITE: I think, Chair, in relation to
 3 the issues I've already highlighted it, I think it's
 4 specifically with regards to what's referred to as scene 2
 5 and approaching koppie 3, and the evidence seems to be that
 6 as police officers approach koppie 3 they come under fire
 7 from people within the koppie. That's certainly, there's
 8 evidence that that's what they perceived. So my
 9 fundamental question is why continue into koppie 3 on the
 10 basis that if there is a threat to your life to do that.
 11 The plan is about disperse, disarm and arrest.
 12 I wondered just simply why police officers would
 13 be exposed to the danger of confronting live firearms,
 14 especially when the way the resources are configured, at
 15 one stage the koppie is surrounded, so therefore why send
 16 police officers forward into a situation where they're
 17 facing live fire, as opposed to particularly if you have
 18 the koppie surrounded, well then if people are leaving they
 19 can be stopped, challenged, searched and there are police
 20 officers who give evidence I think within the TRT line that
 21 that happens out to the west, but basically to pause, to
 22 reflect, to have police officers in hard cover, as I would
 23 suggest, and then to see whether or not we can negotiate
 24 sort of further in relation to the arrest of the people who
 25 are on the koppie, and I think Lieutenant-Colonel Scott's

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1 oral evidence sort of agreed with that proposition on the
 2 basis that – again I just question the decision that if
 3 firearms are being used against police officers, why are we
 4 directing them into a position where there's a threat to
 5 their lives and then therefore placing them in a position
 6 where they have to make this individual judgment as to
 7 whether or not they use firearms. I can't understand the
 8 rationale behind that decision.
 9 CHAIRPERSON: [Microphone off, inaudible]
 10 point that you don't deal with in the passage to which Ms
 11 le Roux has directed our attention in your report, the
 12 subject of some evidence before us, and that was the
 13 apparent failure, I think admitted failure by Brigadier
 14 Calitz to give a warning. If the plan was back on track
 15 they were once again busy with the DDA plan, they were busy
 16 effectively with implementing, or complying with the
 17 provisions of section 9 of the Regulation of Gatherings Act
 18 and what is normally required there is a warning, in fact
 19 they'd intended to give warnings at – if scene 1 hadn't
 20 happened, about 20 minutes later they would have given
 21 warnings and proceeded with the DDA plan. It was only if
 22 the POP people found they couldn't perform their functions
 23 under the DDA plan that the TRT people were supposed to
 24 take over. But anyway, that's another matter.
 25 When they got to scene 2, according to some of

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1 the witnesses the plan was back on track. I know others
 2 don't agree with that, but some of them do, but in any
 3 event there was prima facie an obligation for them to give
 4 a warning to those on the koppie as to what was going to
 5 happen, and they didn't do that, and Brigadier Calitz was
 6 criticised by a number of counsel, particularly Mr Bizos in
 7 his cross-examination. You don't deal with that at all. I
 8 don't know whether you have any comments on it.
 9 MR WHITE: Chair, I think the reason that
 10 I didn't deal with it is because – the only reason I didn't
 11 deal with it, I didn't choose to comment simply because I'm
 12 very aware of what the plan was, the rollout of the wire,
 13 then a warning, then a period of about 20 minutes to let
 14 people leave, and then to move forward to disperse, disarm
 15 and arrest. Because of the unforeseen circumstances that
 16 we've alluded to in my previous answer at scene 1, I
 17 appreciate that Officer Calitz says he didn't know what
 18 happened at scene 1, and again question the fact, but given
 19 that after scene 1 clearly there is a degree of chaos and
 20 that, you know, with the gunfire that obviously lots of
 21 people heard, I think the crowd is gathering, you know,
 22 people are sort of already moving, if you like, and then
 23 Officer Calitz basically forms up and starts to move
 24 forward with the forces that he was supposed to take,
 25 albeit that the TRT are not there and I know there's

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1 evidence that he asks where they are.
 2 But I think that, you know, for me I was sort of
 3 trying to engage with the circumstances now as they rolled
 4 out. The original plan was to give a warning. I
 5 understand, you know, the statutory and legal framework
 6 about giving a warning, but I was sort of engaging with
 7 this in terms of a dynamic situation. People are
 8 scattering, I'm sure, you know when 328 rounds are fired
 9 plus other rounds are being fired potentially at the
 10 police, and so there is a lot of gunfire. That's got to
 11 create a huge amount of noise. I'm sure lots of people,
 12 including probably police officers, are frightened and
 13 confused and therefore my understanding of the situation is
 14 people are scattering all over the place. To some extent
 15 therefore people are already on the move and to be fair,
 16 you know, I therefore then didn't criticise this issue of
 17 not giving a warning at that stage because to some extent I
 18 sort of thought well maybe we've already moved past that,
 19 and that's why I didn't particularly make that point.
 20 MS LE ROUX: Mr White, staying with the
 21 roll and responsibilities of Brigadier Calitz on the day,
 22 and could I ask you to comment on the evidence, assume the
 23 evidence shows that the various units that's around koppie
 24 3 are unaware of the presence of other units and Brigadier
 25 Calitz is unaware that there's this encirclement. Now do

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1 you have any comment on what Brigadier Calitz's roles and
 2 responsibilities in that situation would have been?
 3 MR WHITE: As the operational commander,
 4 as the senior officer on the ground I think it's absolutely
 5 a requirement that Officer Calitz understands who is at
 6 that scene, and I think it's incumbent upon him to make
 7 sure that he knows all of the resources and, that are
 8 there, that are present and what they're doing. Having
 9 said that, there is also a responsibility – I know that
 10 there's evidence that some units moved to scene 2 of their
 11 own volition. The fact that Brigadier Calitz is the
 12 overall commander and therefore – sorry, apologies, the
 13 operational commander, so he's the commander on the ground,
 14 the fact that he is that and therefore has overall
 15 responsibility doesn't negate their responsibilities, you
 16 know, for telling him. I mean in some respects he can't be
 17 held accountable for the actions of people when he doesn't
 18 know, but still my criticism I think in relation to Officer
 19 Calitz is that given the very serious set of circumstances
 20 that we're dealing with, that it is a requirement for him
 21 to be in a position where he does know what resources that
 22 he has available to him.
 23 CHAIRPERSON: How can that work? He's on
 24 the west side, as far as I remember, of the koppie.
 25 General Naidoo who's supposed to be at forward holding area

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1 1 has come up there actually on his way to scene 1, but he
 2 allows himself to be diverted, but we won't go into that
 3 for the moment, and he then approaches from the east side
 4 where he meets up with the NIU people who've come from the
 5 north-east. It's not suggested that Brigadier Calitz could
 6 have seen them. It's not suggested there's anything on
 7 the, as I understand it, on the radio that would have
 8 alerted him to their presence. Wasn't he entitled to
 9 assume that they're doing what they have been told to do,
 10 that the NIU people are at, I think it was forward holding
 11 area 2, in that area, Naidoo is at forward holding area 1,
 12 in other words they're at their appointed stations, they
 13 haven't come to the area where they are, or they're going
 14 to take part in the action at koppie 3? What could he have
 15 done? I mean how can you criticise him for not knowing
 16 they were there?
 17 Truth is they should have reported their position
 18 to the JOC and the JOC should have told him 'By the way,
 19 you don't know this but you should know that some of your
 20 people are not where they were supposed to be, they're on
 21 the other side of the koppie and you must bear that in mind
 22 in the orders you issue.' Wouldn't that be fair?
 23 MS LE ROUX: Chair, if I could just
 24 assist Mr White, because I see him going through the file.
 25 In Mr White's supplementary statement commencing at page

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1 17, 2.5.7 is where he deals with Brigadier Calitz. This
 2 particular point is 2.5.11(d), which is page 20, because I
 3 see Mr White is flipping through the file. That reference
 4 may assist.

5 MR WHITE: Apologies, Chair. Again if I
 6 could ask Ms le Roux, because I was slightly distracted in
 7 looking at this, could you please repeat again just what
 8 you said?

9 MS LE ROUX: In your, the reference is
 10 that in your supplementary statement commencing at page 17
 11 is where you deal with Brigadier Calitz. 2.5.11(d), which
 12 is on page 20, is the specific point the Chair is
 13 referencing.

14 MR WHITE: Yes, Chair, and I'm grateful
 15 to Ms le Roux. I was actually just, the reason I was
 16 distracted, I was starting to read 2.5.11 and looking for
 17 the particular point, so as she says specifically in
 18 relation to (d), "Irrespective the purpose of the
 19 organisation, reorganisation line and the plan, Brigadier
 20 Calitz can also be criticised for his failure to remain in
 21 contact with those units that were intended to be part of
 22 the follow-up to the dispersal action, particularly the TRT
 23 and the NIU.

24 Whilst it might be understandable that Brigadier
 25 Calitz did not actively contact Captain Kidd's TRT unit at

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1 forward holding area 2, given that that unit was supposed
 2 to be stationary in front of the informal settlement, and
 3 did not actively contact the K9 unit, which was not
 4 supposed to take part in the final dispersal at all, I
 5 would have expected that the operational commander to
 6 remain in contact with the TRT and the NIU units that were
 7 supposed to follow up the POP members as part of the plan.
 8 Accordingly Brigadier Calitz must be held responsible at
 9 least in part for his lack of awareness that the NIU had
 10 arrived at koppie 3."

11 COMMISSIONER HEMRAJ: Mr White, with
 12 regard to your saying that certain of the units went to the
 13 koppie on their own, it was part of the original plan that
 14 some of the units were tasked with sweeping koppies 2 and 3
 15 following upon the dispersal and that's perhaps in the
 16 execution of that that some of the units that were so
 17 tasked did that.

18 MR WHITE: Well, I think in particular my
 19 comment was in relation to the TRT under the command of
 20 Captain Kidd and his instructions basically were around the
 21 protection of the informal settlement, and Captain Kidd
 22 then, if my memory serves me correct, in oral evidence
 23 talks about hearing the gunfire and whatever over the radio
 24 and responding of his own volition, and so the criticism
 25 there would be not of Officer Calitz who, you know, would

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1 not have anticipated that that would be happening at all,
 2 but of Officer Kidd, and I can fully understand as a
 3 professional police officer he hears this gunfire and he
 4 feels that he needs to respond to that. His task is to
 5 protect the informal settlement. You know, that's not
 6 under threat, so he then goes to assist, and I would
 7 applaud and congratulate him for doing that. I think it's
 8 a very professional attitude to take.

9 The criticism is he didn't tell anyone else and
 10 therefore we're back to this issue, you know, my, you know,
 11 key criticisms are in relation to things like intelligence,
 12 briefing, planning and command and control. So the fact
 13 that Captain Kidd then takes his unit to do something which
 14 is out of sync with the plan and therefore can't be
 15 anticipated by other people, there is a requirement on him
 16 to make sure that certainly Officer Calitz, the JOC and
 17 other units are aware of the activity that he's going to
 18 take.

19 MS LE ROUX: Mr White, if we can then
 20 round out your command and control point, because we've
 21 covered a lot of them already. In your supplementary
 22 statement, page 16, paragraph 2.5.6, you deal with this
 23 question of command and control from the JOC. If you could
 24 summarise that criticism and your conclusions for the
 25 Chair?

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1 MR WHITE: Thank you. Again I think it's
 2 best if I just simply read this. "In relation to the JOC
 3 it now seems clear that members of the JOC were aware that
 4 the operation had gone badly wrong by the time that
 5 Brigadier Pretorius sent a text to IPID at 16:03. Any
 6 lingering doubts as to the seriousness of the situation
 7 could have been resolved by the time that Brigadier
 8 Pretorius had spoken to Captain Loest by telephone at
 9 16:06.

10 [10:16] I cannot understand why in those circumstances
 11 members of the JOC did not do more to contact the
 12 operational commander or the overall commander or to act
 13 themselves to slow down or halt the operation and to
 14 regroup. Although Brigadier Pretorius gives evidence of
 15 attempting to contact Brigadier Calitz and Major-General
 16 Naidoo by telephone no one else in the JOC has given any
 17 evidence of making any attempt to make contact with the
 18 operational overall commanders in light of the information
 19 they were receiving. Or indeed anyone else."

20 MS LE ROUX: Mr White, if we then move
 21 onto the one explanation that the SAPS have provided for
 22 what went wrong at Marikana with respect to radio
 23 communications. In your final statement, page 106, section
 24 7.4 you deal with the issues around radio equipment and of
 25 course separately we have your criticisms about the use of

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1 call signs and the like on the radio. But focusing on the
 2 actual radio capacity of the SAPS on the day, could you set
 3 out your key criticisms and comments?
 4 MR WHITE: Chair, just briefly, I think
 5 that in operations, in large complex operations it is not
 6 unusual for it to have problems with the radios
 7 particularly around volume of traffic. And therefore
 8 because it's not unusual, it's predictable and I think in
 9 terms of planning that sort of issue should have been
 10 discussed and consideration been given to having perhaps a
 11 separate command channel. I understand from, I think TTT4
 12 which is the minutes of one of the JOC meetings it
 13 specifically states that the radio department, for want of
 14 a better term, in SAPS had highlighted the fact that
 15 there's a back-up radio channel, I think it was channel 38
 16 or something. So you know, given that large operation's
 17 involving a number of units quite often result in radio
 18 traffic chaos a bit like a traffic chaos perhaps on the way
 19 here this morning. Therefore problems with radios are not
 20 something which I think would ordinarily come as a surprise
 21 and again it's part of the planning that should have been
 22 worked through. And then also as Ms Le Roux then says,
 23 also beyond that in terms of the use of the radio, you know
 24 the confusion in relation to instructions that were being
 25 given with a lack of call signs. And I've listened to some

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1 of the audio of the radio and read some of the transcripts
 2 and I mean it is very confusing with regards to directions
 3 that had been given.
 4 CHAIRPERSON: Sorry to interrupt, can I
 5 just raise a point not directly relevant at the moment but
 6 that is, is it a practise in Northern Ireland to keep a
 7 recording of all the radio traffic? One of the problems we
 8 have here is that apparently it wasn't done, well it's said
 9 it wasn't done, I assume the purposes of the question that
 10 that's correct. We haven't got a complete recording of all
 11 the radio traffic, there are gaps and quite important
 12 things happened or should have happened during the gaps.
 13 Our task would be made much easier if there was a complete
 14 recording. Do you do that in Northern Ireland or –
 15 MR WHITE: The simple answer is yes,
 16 Chair.
 17 MS LE ROUX: Mr White, one final question
 18 on radios, if you were the overall commander or the
 19 operational commander of an operation in which 34 people
 20 were killed and the reason you didn't know that that had
 21 taken place until a fairly lengthy period of time after it
 22 had happened and you were told that the reason you didn't
 23 know is because there were radio problems, what would your
 24 response be?
 25 MR WHITE: Chair, I'd be outraged. I

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1 used to get angry with people at work, you know we have an
 2 expression in Ireland I recall about "Fit to kill dead
 3 things." You know it's basically an expression to show how
 4 frustrated and how angry you are. But it's almost beyond
 5 comprehension for me that an event of this nature, if I was
 6 the senior officer on the ground and not even around the
 7 end of the operation when 34 people have died. But the
 8 fact that 17 people have died or potentially are dying,
 9 many more are injured in the middle of an operation and I,
 10 as the senior officer on the ground, don't become aware of
 11 that, not made aware of it and again question of fact, you
 12 know but assuming the facts that I'm not made aware of that
 13 until, you know, a considerable period of time later. I
 14 suppose even expressing that sort of frustration around
 15 that, it's expressing a disbelief around it. I simply
 16 cannot comprehend a set of circumstances where that would
 17 be the case that information of such magnitude is not
 18 brought to my attention somehow.
 19 MS LE ROUX: And picking up on the
 20 somehow, Mr White, assume that there were radio problems
 21 how would you expect to have come to know that the
 22 operation had resulted in 17 people being fatally wounded
 23 and others injured, alternatively later on 34?
 24 MR WHITE: Chair, it just comes back to
 25 the point that I made earlier on in relation to principally

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1 that the JOC, you know what did they do first of all to
 2 stop or slow the operation, you kind of thing? What did
 3 they do, I talked about evidence that Brigadier Pretorius
 4 had given around trying to phone Officer Calitz and I
 5 appreciate that the phone didn't pick up, because I'm sure
 6 he's busy. Similarly with Officer Naidoo but, you know,
 7 what else was done, who else was phoned that given the
 8 magnitude of the situation, can we phone someone else who
 9 is close to Calitz? Can we phone someone who's not that
 10 close to Calitz but has access to a vehicle that can go and
 11 tell Calitz? You know there must be ways and again I
 12 suppose it's not for me to say exactly how, I'm asking the
 13 question, you know, well what did you do? You know it's
 14 got to be a situation whereby, given the events that are
 15 unfolding, I just simply say well did you do? I understand
 16 Brigadier Pretorius's evidence around trying to make two
 17 phone calls, is that sufficient, so I understand a senior
 18 officer who's at scene 1 because there's evidence of some
 19 of the police officers handing over firearms to him, I
 20 forget the rank, Mr Mere or Murray, I think he's a senior
 21 POPs commander –
 22 CHAIRPERSON: Colonel Mere.
 23 MR WHITE: Oh it is, thank you, Chair.
 24 Colonel Mere, did anyone try and contact him because he is
 25 obviously pretty stationary at scene 1? So I'm just simply

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1 saying that I'm absolutely surprised that, you know, every
 2 effort wasn't made in order to bring this information to
 3 the attention of Officer Calitz and would sort of ask the
 4 question then because I haven't seen it in written evidence
 5 I haven't necessarily seen anything further in oral
 6 evidence, so am I missing something around actually what
 7 people in the JOC did to bring this information to the
 8 attention of principally Officer Calitz?
 9 COMMISSIONER HEMRAJ: You're no doubt
 10 familiar with Brigadier Calitz's evidence about when he was
 11 at the scene and him shouting out orders that the noise of
 12 the Nyalas and if someone was trying to contact him on the
 13 cell phone he might not have heard it. Is that your
 14 experience on the field as well?
 15 MR WHITE: Of course. You know the way
 16 our radio communications work is that we actually have an
 17 earpiece connected to the radio. So to some degree it sort
 18 of disturbs your peripheral hearing if you like of other
 19 things and many times I have been in a situation where I'd
 20 have an earpiece here with the radio, I have my mobile
 21 phone perhaps shoved up the inside of my riot helmet. So
 22 I'm trying to make a phone call or listen to some
 23 instructions that have been given by phone, I might miss
 24 something in this ear on the radio. Obviously at that
 25 point I certainly am not aware of what's going on in the

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1 background alternatively I take the mobile phone out, I put
 2 it in my pocket, hear it when it rings again. So you know
 3 suffice if I say individual bits of communication can be
 4 missed. It happens all the time, quite often, you know, if
 5 I'm the senior officer on the ground I would normally have
 6 someone on my shoulder, quite often two people. One a
 7 tactical advisor, I explained their role yesterday. Two
 8 effectively a logist, someone when he hears me making a
 9 direction on the radio, when he hears me saying something
 10 to the tactical advisor, when he hears me saying something
 11 to the unit commanders he'll be writing that down. One of
 12 the other functions that he would have is basically to
 13 monitor the radio and tap me on the shoulder, Sir, did you
 14 hear that communication from – you know to make sure that –
 15 you know would it be reasonable to say an officer in the
 16 position of Mr Calitz wouldn't necessarily hear every piece
 17 of communication that's been relayed, yes I think that's
 18 entirely fair.
 19 MS LE ROUX: Mr White, in your experience
 20 in an operational commander role have you ever had someone
 21 – Mr White, just following up on your answer, when you've
 22 been in an operational commander role, I understand you may
 23 have the two people on your shoulder as you describe them,
 24 have you ever had a third person come up to you to convey
 25 information to you because they couldn't get hold of you?

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1 MR WHITE: Yes absolutely. For some
 2 reason and maybe it's about background noise, on numerous
 3 occasions someone will come forward from another point. I
 4 did some work with the Metropolitan Police and they
 5 actually operate on a system of runners. One of the things
 6 that surprised me about the Metropolitan Police, an
 7 organisation I have respect for, is that you'll see them,
 8 perhaps if you view television footage, they have all these
 9 hand-held radios. They're not connected to an earpiece and
 10 the amount of communication they must miss you know just
 11 with these – as opposed to having it connected to an
 12 earpiece but I actually did the senior public order
 13 commander's course with the Met in 2004 I think it was.
 14 And I was surprised they have actually have a system of
 15 runners as they call it where they have a number of people
 16 allocated to the commander who will run and transmit
 17 messages to other people and bring –
 18 CHAIRPERSON: I remember the origin of
 19 the Metropolitan Police with the Bow Street runners, so
 20 that goes back many centuries.
 21 MR WHITE: Indeed, Chair.
 22 COMMISSIONER HEMRAJ: Can I just
 23 understand why with a hand-held radio you would miss
 24 communication as opposed to having an earpiece?
 25 MR WHITE: Just simply because – well if

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1 you think about this, imagine your mobile phone and on an
 2 iPhone Apple very kindly provides you with those nice wide
 3 earphones. So if you have a mobile phone and you have your
 4 earphones in you pretty much hear the whole conversation.
 5 If you imagine having a mobile phone without the earpiece
 6 and say for example it's on speaker and you're holding it
 7 in your hand while you're making a telephone conversation
 8 to the Chair and at the same time lots of things are going
 9 on and other people are distracting your attention and
 10 talking to you. So it's not even that you're having a
 11 specific conversation with the Chair. Actually maybe the
 12 Chair has phoned you to have a bit of a chat around how
 13 yesterday went and you're thinking to yourself I don't
 14 really need to hear this but, you know, he's the Chair and
 15 obviously I'll be polite. Yes, Mr Chair, every so often
 16 because you're monitoring the conversation but you're not
 17 specifically engaged with it because you actually need to
 18 have a conversation with other people. Will you absolutely
 19 hear every word the Chair says? No you won't. If on the
 20 other hand you had an earpiece in it's much more likely
 21 that you're going to. So it's not to say, you know, that
 22 they will definitely miss but certainly the potential is
 23 that you're much more likely to miss communications. Just
 24 simply because even again a bit like your iPhone, if the
 25 volume only goes up so much and therefore, you know, if

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1 there's sort of ambient background noise, you know, those
 2 or whatever is coming out of the radio actually reach your
 3 ear or some other noises sort of override that whereas if
 4 you have an earpiece in then at least you hear.
 5 MS LE ROUX: Mr White, does that
 6 explanation of a hand-held radio versus an earpiece excuse
 7 other officers from ensuring they communicate with the
 8 commander and ensure confirmation that their communications
 9 reached the overall commander, or the operational
 10 commander?
 11 MR WHITE: Categorically no, what I'm
 12 referring to here is that in my experience in these large
 13 public disorder situations where there's a lot of different
 14 things going on it is predictable that there will be heavy
 15 traffic on the radio. It is predictable that people will
 16 have difficulties getting through on the radio. It is
 17 predictable that individual people will miss certain
 18 things. You know all of that is, I think, as I've said.
 19 My criticisms are in relation to Officer Calitz, at least
 20 of the resources that he knows should be with him, his part
 21 of the plan, maintaining contact with them. My criticisms
 22 are in relation to the JOC, the overall commander making
 23 sure that given that the situation is clearly unfolding in
 24 a way that it wasn't intended to unfold and they're hearing
 25 instructions from Officer Calitz being given over the radio

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1 which actually clearly suggests that the operation is
 2 continuing to happen.
 3 Even if they're assuming well Officer Calitz
 4 knows about what happened at scene 1 and he isn't making a
 5 judgment to say well we need to move on with the second of
 6 the operation and move into koppie 3. Surely someone else
 7 must making a decision to say hold on we need to take a
 8 grip of this. You know we need to stop this now and to
 9 override his instruction. Or alternatively maybe they're
 10 saying clearly Officer Calitz doesn't know therefore we
 11 need to get this information to him. And I'm making the
 12 point that the JOC, I would wonder where the evidence is,
 13 particularly the JOC or other senior people, they all have
 14 a responsibility in this. What did they do to get that
 15 information to him? Or alternatively it's the JOC, the
 16 joint operational command, you know, that they didn't of
 17 themselves do something to stop this, to slow it down, to
 18 pause and to reconsider.
 19 MS LE ROUX: Mr White, moving on then to
 20 my next topic which is covered at page 122, section 8 of
 21 your final statement. Chair, this is where Mr White sets
 22 out his conclusions relating to first aid attention for the
 23 wounded. Mr White, if you could briefly summarise your
 24 concerns and criticisms with respect to first aid
 25 provision.

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1 MR WHITE: Chair, very briefly in this, I
 2 mean if you're planning an operation which anticipates, you
 3 know, high levels of force then you need to make provision,
 4 there's a requirement to make provision in relation to
 5 first aid. I understand that part of the plan Lieutenant-
 6 Colonel Scott did make provision for first aid responders.
 7 So that's one point. Was that sufficient, again it's a
 8 question for yourselves perhaps. But then it sort of goes
 9 beyond that, so we have scene 1 and some of the evidence
 10 that has been shown to me is that at scene 1 there are
 11 police officers who can be seen on videos who engage in
 12 conversation, whatever they're talking about I don't know.
 13 But it's obvious – sorry, apologies, Chair. Sorry I was
 14 just letting you finish your conversation.
 15 CHAIRPERSON: Mr Tokota raised a point
 16 with me which we'll raise with you when you get there in
 17 your evidence.
 18 MR WHITE: Thank you. So the brief
 19 point, this appears that there is video evidence which
 20 shows police officers who were standing in proximity, close
 21 proximity to some of the people who were lying down at
 22 scene 1. Some of those people were clearly at that stage
 23 not dead but obviously injured and I'm just asking the
 24 question why those officers are not giving first aid. I
 25 appreciate there's a first aid provision within the

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1 operation and there may good reasons. I again question the
 2 fact as to why those first aiders are not actually treating
 3 these people, but they're not is a fact. So my question is
 4 why are police officers not even attempting to give any
 5 cursory first aid. It's a long, long time since I did
 6 first aid training but one of the things I know about
 7 bleeding and quite often gunshot wounds obviously is around
 8 direct pressure. So at the very least, you know, why is
 9 some help not being given. Again question of fact as to
 10 whether or not if earlier even cursory first aid had have
 11 been given might some of the people, who subsequently died,
 12 actually survived, I don't know.
 13 MS LE ROUX: Mr White, then finally,
 14 you're aware of course, of the evidence of Mr X and of
 15 course, it's not complete, you've interrupted him, but with
 16 respect to Mr X's testimony as we understand it and of
 17 course, this is something that you deal with in your
 18 response to the SAPS in GW10.
 19 CHAIRPERSON: What page of GW10?
 20 MS LE ROUX: In particular it's paragraph
 21 4, page 6. Mr White, perhaps if you could summarise your
 22 response to the SAPS here and then I'll ask you some
 23 follow up questions with respect to the Mr X evidence.
 24 MR WHITE: Chair, on memory I think was
 25 asked to basically engage with two statements in relation

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1 to Mr X. One, the first one I think is in relation to from
 2 February 13 and the second one from February 14. I think
 3 in summary in relation to all of that you know Mr X -
 4 MS LE ROUX: Mr White, let me interrupt
 5 you – Chair, just for the record the SAPS interrogatories
 6 to Mr White was they request Mr White to express an opinion
 7 or advise his stated opinion or to revise his stated
 8 opinion where were he to assume that the evidence of Mr X
 9 is truthful. Sorry, Mr White, I interrupted you.
 10 CHAIRPERSON: Sorry, let me read that
 11 again because I interrupted you and there's a typing error
 12 which I'll correct when I read it. "SAPS request Mr White
 13 to express an opinion or to advise his stated opinion were
 14 he to assume that the evidence of Mr X – were he to assume
 15 that the evidence of Mr X to be truthful." And his answer,
 16 this comes from the SAPS points of disagreement between
 17 SAPS and Mr White and he then in his reply deals with the
 18 two statements effectively. There are a number of others,
 19 but for our purposes there are two main statements of Mr X.
 20 The one dated February 13 which he deals with paragraph 4.2
 21 or 4.3 I think and 4.4.
 22 [10:35] And then there is a subsequent statement a year
 23 later, February 2014, where a number of facts are stated,
 24 or allegations are made which didn't appear in the earlier
 25 statement and he then deals with them in 4.5 and 4.6 and

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1 then summarise in 4.7. That's correct, that's the
 2 position –
 3 MS LE ROUX: Yes.
 4 CHAIRPERSON: - as far as the statement
 5 is concerned.
 6 MS LE ROUX: So Mr White, taking it in
 7 turn, if you assume that Mr X's February 2013 statement is
 8 true, what response do you have?
 9 MR WHITE: Chair, as you rightly pointed
 10 out my response is at 4.5 and 4.6 of my statement, which
 11 basically says that Mr X's evidence in February '13
 12 statement is in many ways consistent with the intelligence
 13 that the police actually engage with, i.e. things that
 14 they knew that, you know, amongst this larger crowd there
 15 was a smaller group who because of the events on the 13th
 16 could provably be sort of recognised as potentially violent
 17 group, and then also the intelligence that they were
 18 operating on with regards to what was presented in the JOC,
 19 that if police tried to remove weapons then that would be
 20 resisted.
 21 So ultimately I make the point that in relation
 22 to my key criticisms around the issues that I covered
 23 yesterday on a number of occasions, intelligence, the
 24 planning, briefing, command and control, accountability, I
 25 don't think it changes anything.

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1 The second statement of 2014 as you, it basically
 2 adds additional facts in which I think in summary basically
 3 represent a heightened level of threat from this group, and
 4 again I respond to that. But perhaps in the interest of
 5 brevity if I go directly to 4.7 of this particular
 6 statement and I basically just say, "Accordingly the
 7 contents of both Mr X's statements, if true, do not change
 8 the opinions expressed in my final statement in any
 9 significant way. Although the February 2014 statement
 10 suggests that the threat from the militant group may have
 11 been even greater than believed by SAPS, this simply
 12 reinforces my view that substantially greater consideration
 13 should be given to the alternative to a tactical option to
 14 disarm the strikers and there should have been a
 15 substantially greater focus on intelligence gathering,
 16 planning, briefing and communication."
 17 MS LE ROUX: Mr White, in your
 18 supplementary statement, if we go to page 24 –
 19 CHAIRPERSON: I was proposing to take the
 20 short first break round about now. When you said "finally"
 21 a few minutes ago I thought I'd wait, but if it was
 22 finally –
 23 MS LE ROUX: It's the final topic, Chair.
 24 I have a –
 25 CHAIRPERSON: Yes, I understand.

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1 MS LE ROUX: - few questions.
 2 CHAIRPERSON: I'm not being critical. I
 3 understand how these things happen, but will it be
 4 convenient for you if we take the adjournment now? It will
 5 give you chance to go through your notes and proceed with
 6 due preparation and concentration to your final-final-final
 7 point. Will that be in order?
 8 MS LE ROUX: That's fine, Chair.
 9 CHAIRPERSON: We'll take the short
 10 adjournment now, 15 minutes.
 11 [COMMISSION ADJOURNS COMMISSION RESUMES]
 12 [11:02] CHAIRPERSON: The Commission resumes.
 13 You're still under oath, Mr White.
 14 GARY WHITE: [s.u.o.]
 15 CHAIRPERSON: Ms le Roux.
 16 MS LE ROUX: Thank you, Chair.
 17 CHAIRPERSON: Final canter. I shouldn't
 18 use that word in this context, should I? Final lap.
 19 EXAMINATION BY MS LE ROUX (CONTD.): Mr
 20 White, just before the adjournment we were dealing with the
 21 Mr X case, if I can shorthand it like that, and you've
 22 dealt with it with respect to his two statements. I would
 23 just like to ask you the following, whether you accept the
 24 evidence that there is at least a group of the strikers who
 25 were gathered that underwent rituals that involved muti?

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1 MR WHITE: Yes, Chair, I accept that.
 2 MS LE ROUX: And you accept that the
 3 group on the koppie in the whole had traditional weapons
 4 and that there was, there's conceivably a smaller, what's
 5 been referred to as the warrior group that were also armed
 6 with traditional weapons?
 7 MR WHITE: Again Chair, yes, I accept
 8 that.
 9 MS LE ROUX: And Mr White, do you accept
 10 that there may be evidence that there was this smaller
 11 militant group that were aggressive towards the police and
 12 made threats?
 13 MR WHITE: Again Chair, yes, I confirm
 14 that.
 15 MS LE ROUX: Mr White, if I could then
 16 ask you the final-final question of your evidence-in-chief;
 17 page 127, paragraph 10.1.3 of your final statement, it's
 18 the last paragraph of your statement – Chair, I'm afraid
 19 I've done this wrong. There's a preceding point which I
 20 must go to first before I get there –
 21 CHAIRPERSON: That was your final-final
 22 point. We're going to get your final-final-final point in
 23 due course.
 24 MS LE ROUX: Indeed. Apologies, Chair.
 25 Mr White, in your supplementary statement – apologies to

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1 you as well. In your supplementary statement, page 24,
 2 section 3.2, this is where you respond to the dispute
 3 between yourself and the SAPS with respect to, if I can
 4 call it the nature of the threat, or the nature of the
 5 response. Chair, perhaps it's easiest to read it into the
 6 record. "The SAPS state broadly as follows. In broad
 7 terms the SAPS accepts the general principles of Public
 8 Order Policing referred to by Mr White in his statements,
 9 but wish to test the relevance or practicability of the
 10 principles of the events as they occurred at Marikana.
 11 Further, there is a sharp dispute in the
 12 description in the nature of the threat where Mr White
 13 appears to move from a premise that the threat that the
 14 armed and militant group of 400 strikers presented a public
 15 order management problem, whereas SAPS contends that the
 16 threat the group presented with armaments and behaviour
 17 well exceeded the boundaries of what a Public Order
 18 Policing could manage."
 19 Mr White, you then set out your response to that.
 20 Could you place that before the Commission, please?
 21 MR WHITE: Chair, I think that throughout
 22 all three of my statements I've engaged with the fact and
 23 said frequently this is a difficult, complex and most
 24 importantly dangerous operation. I've acknowledged in I
 25 think all of my three statements the fact that there were a

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1 lot of heavily armed people with traditional weapons.
 2 I've made reference to the fact that I don't
 3 think there's any dispute that some of the threat that the
 4 police officers were facing in relation to particularly the
 5 events on the 16th included a firearms threat, and there's
 6 evidence of course that say that firearms were actually
 7 used against them.
 8 So at no point did I sort of try and deny the
 9 fact that this is a very, very difficult, complex, and as I
 10 say, dangerous operation for the SAPS, and I think I've
 11 said a number of times in my statements, you know, I've got
 12 sympathy in terms of, you know, an organisation having to
 13 deal with this.
 14 However, and I think I alluded to this yesterday,
 15 you know these threats take place within the context of a
 16 large crowd. I don't know if the SAPS would suggest that
 17 everybody within that large crowd has a particularly
 18 violent intent in relation to the police. So this is a
 19 crowd management situation with additional complexities and
 20 additional sort of threats, if you like, added in within
 21 that, and I think that, you know, in summing up I could go
 22 to 3.2.3 of my supplementary statement where I say,
 23 "Consequently I do not consider that there's a sharp
 24 dispute between SAPS and me in relation to the nature of
 25 the threat faced. The sharp dispute is in relation to the

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1 response to that threat. Many of my criticisms are based
 2 on the fact that SAPS operational plan does not appear to
 3 have taken the potential threat properly into account.
 4 Notwithstanding the fact that the threat to the police was
 5 significant and specialist units were brought in to assist
 6 the POP members, I consider the situation at Marikana was a
 7 crowd management situation to be managed according to
 8 established crowd management principles. In a wide
 9 spectrum of public order events the situation presenting
 10 itself at Marikana was extremely challenging, but that does
 11 not mean that the application of public order crowd
 12 management principles was no longer appropriate. My
 13 understanding is that Standing Order 262 continued to be
 14 applicable to the SAPS operation at Marikana."
 15 COMMISSIONER HEMRAJ: You have no doubt
 16 been appraised of the evidence as regards certain threats
 17 that were made to the police. One was the burning of the
 18 Hippos, as they were called. Another was "We're all going
 19 to die today," or words to that effect. You have been
 20 appraised of those threats?
 21 MR WHITE: Yes, and I've seen the
 22 evidence of both Mr Calitz and Mr McIntosh that refer to
 23 those threats and I think they're made repeatedly, yes.
 24 MS LE ROUX: Mr White, then finally-
 25 finally, if I can direct you to page 127, the final page of

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1 your final statement, paragraph 10.1.3, and that
 2 essentially summarises your attitude to the operation at
 3 Marikana. Perhaps we can just end by you reading that into
 4 the record.
 5 MR WHITE: Yes, Chair, at 10.1.3 I say,
 6 "It is a matter for the Commission to judge the validity of
 7 the actions of the individual officers who used lethal
 8 force on the 16th of August 2012. However, even if there
 9 was conclusive evidence that every shot fired was
 10 justifiable self or private defence, my opinion is that
 11 this operation represents a serious failure of Public Order
 12 Policing. With better preparation, planning, leadership
 13 and execution a situation in which more than a hundred SAPS
 14 police officers felt compelled to fire live ammunition is
 15 likely to have been avoided."
 16 The only one sort of amendment I might make to
 17 that, Chair, is basically when I say "serious failure in
 18 Public Order Policing." I think it's a serious failure in
 19 policing, full stop.
 20 MS LE ROUX: Thank you, Chair, we have no
 21 further questions.
 22 CHAIRPERSON: Thank you, Ms le Roux. Mr
 23 Semenya, are you in a position to commence your cross-
 24 examination?
 25 MR SEMENYA SC: I am, Chair.

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1 CHAIRPERSON: Before you start would you
 2 like to do some housekeeping first or do you want to do it
 3 as you go along? You've given us a file containing a
 4 number of statements of which you gave notice to those
 5 calling Mr White, which he's presumably had an opportunity
 6 to read. Do you want me to mark them as exhibits now, or
 7 how do you want to handle the matter?
 8 MR SEMENYA SC: Chair, can we do it on
 9 the beat as and when I –
 10 CHAIRPERSON: Yes, if that's what you
 11 want to do, let's do it that way.
 12 CROSS-EXAMINATION BY MR SEMENYA SC:
 13 Thank you, Chair. Good morning, Mr White.
 14 MR WHITE: Good morning.
 15 MR SEMENYA SC: Can I ask that we paint
 16 the context within which Public Order Policing obtains? In
 17 democratic countries it is a measure intended to give
 18 meaning to the right of assembly. Am I right? And
 19 protest.
 20 MR WHITE: I think amongst other things,
 21 I mean certainly Public Order Policing also extends to
 22 things like football and wherever you have crowds, not just
 23 specifically related to protest.
 24 MR SEMENYA SC: Right, but because people
 25 have the right to assemble, the legal framework then

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1 assigns this type of responsibility to Public Order
 2 Policing. Am I right?
 3 MR WHITE: I think that's correct, yes.
 4 MR SEMENYA SC: But one distinct thing
 5 about that right, it seems to me that it is a right which
 6 has its own internal constitutional limitations, i.e. you
 7 can do it peacefully, correct?
 8 MR WHITE: Of course.
 9 MR SEMENYA SC: And you're also to do it
 10 without arms.
 11 MR WHITE: Yes, I don't disagree.
 12 MR SEMENYA SC: Now so that you then have
 13 a specialist unit in a democratic order that is responsible
 14 for crowd management operations. Am I right?
 15 MR WHITE: As I understand the position
 16 here in South Africa, yes, correct.
 17 MR SEMENYA SC: And I will try and go
 18 through some of these instruments with you just to have an
 19 appreciation of what it is that in some way balances all of
 20 these things out, if you follow my logic. Because our
 21 anticipation in the exercise of this right is that it is
 22 going to be largely, it's going to largely involve an
 23 exercise of a valid right, the constraints on the police to
 24 use force are therefore higher. Am I right?
 25 MR WHITE: Apologies, Sir, I didn't quite

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1 follow. I think I might have missed a word. I didn't
 2 quite hear. Could you repeat, please?
 3 MR SEMENYA SC: Okay. In the expression
 4 of that constitutional right of assembly and protest, you
 5 then have at least in this country statutes that begin to
 6 flesh out how that right is to be exercised, and in our
 7 case we have the Regulation of Gatherings Act, correct?
 8 MR WHITE: Indeed.
 9 MR SEMENYA SC: And when you, at least
 10 when I read it closely it seems to define for me even
 11 things of what the gatherings are contemplated in terms of
 12 that legislation. Have you paid it close attention you
 13 will realise if you do that for instance it does not
 14 necessarily conceive gatherings of a nature that is about
 15 industrial dispute. I can take you to the definition of
 16 gatherings if you want me to. Should I?
 17 MR WHITE: I don't know that it, if
 18 that's necessary. If I could say for the record, Chair, I
 19 mean I'm not in any way an expert or very overly familiar
 20 with the particular piece of legislation that you're
 21 referring to. I can say that having read the Standing
 22 Order 262 I understand I think the definition of both
 23 gatherings and demonstrations, but you know, I certainly
 24 stand to be corrected in relation to my understanding of
 25 that, but you know, perhaps I might need to be corrected at

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1 a later stage.

2 MR SEMENYA SC: No, there is nothing very

3 troubling about this. I'm merely saying that in a

4 democratic order such as we have here you would expect to

5 have a very complex set of legal rules and system

6 regulation labour relations for instance, where industrial

7 disputes would be taken to resolve and addressed.

8 MR WHITE: I'd be guided by you, but I'm

9 sure that's the case.

10 MR SEMENYA SC: Yes. Now, and on top of

11 that I can take you to Standing Order 262 if you like, but

12 it also is really a Standing Order fleshing out what is in

13 the statute, the Regulation of Gatherings Act, right? You

14 can accept that.

15 MR WHITE: Yes.

16 MR SEMENYA SC: Now even when we look at

17 instruments which I think is the plinth on which your

18 opinions are based, for instance "Keeping the peace," the

19 one distinct thing about those type of instruments is they

20 make the fulcrum of public policing really policing by

21 consent as the document speaks, right?

22 MR WHITE: I think that the, where it's

23 talking about is the ultimate objective of the police is to

24 try and ensure that that situation maintains. We police

25 communities and societies with their consent and the whole

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1 purpose around a document like "Keeping the peace" is to

2 ensure that when we deal with complex and difficult

3 situations, that actually we're very conscious of ensuring

4 that we do so in a way that maintains that public consent.

5 CHAIRPERSON: Sorry, before Mr Semenya

6 continues, may I ask you this. Have you had an opportunity

7 to study the Regulation of Gatherings Act?

8 MR WHITE: No, Chair, I haven't and I

9 think that's why I made the comment earlier on in my

10 evidence. I'm not a lawyer, I'm certainly not a lawyer in

11 South Africa, so no, I haven't.

12 MR SEMENYA SC: Now I just said central

13 to maintenance of public order there is a great dependence

14 on the cooperation of the society where the maintenance of

15 public order must obtain. Am I right?

16 MR WHITE: As I said, I think that's the

17 objective that the police should bear in mind when you're

18 engaging with these difficult situations.

19 MR SEMENYA SC: And if I understand those

20 instruments, as I say, "Keeping the peace," public order

21 management entails a confluence of cooperation by various

22 stakeholders involved in any operation of this kind. Am I

23 right?

24 MR WHITE: Indeed, yes.

25 MR SEMENYA SC: And it is central if you

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1 are to produce outcomes that are desirable that all the

2 role-players in a particular event cooperate with each

3 other.

4 MR WHITE: Well, I think if all of the

5 role-players in a particular event cooperate with each

6 other, that's likely to contribute to the best possible

7 outcome. Basically what "Keeping the peace" talks about is

8 how you engage with stakeholders to try and encourage that

9 situation to prevail. Of course the reason that we have a

10 document like "Keeping the peace" is the fact that in

11 difficult situations not all of the actors, stakeholders or

12 participants do necessarily act in the way that we would

13 want them to do, so therefore you don't necessarily always

14 get the absolute desired outcome that you're looking for.

15 MR SEMENYA SC: No, I know I'll get there

16 in a little while, but the proposition I'm putting to you

17 that you get the desirable outcome where there is every

18 party comes to the party and do what they must do, that is

19 the way that assures a successful outcome to a public order

20 operation. Am I right?

21 MR WHITE: Like I say the hope would be,

22 in fact if every single stakeholder, every single

23 participant or actor in any particular policing situation

24 was operating in a way that was contributing to this

25 desired outcome, then I don't think actually there will be

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1 a need for the police in the UK to have a doctrine such as

2 "Keeping the peace" because I mean ultimately if everybody

3 was playing the role to see if we can resolve disputes in a

4 way that doesn't create any difficulties or problems, well

5 then why would you need guidance to help you sort of

6 achieve that? So I mean clearly this is what we would

7 want, but we know the reality of life is it doesn't always

8 work like that, so that's why there is a document such as

9 "Keeping the peace" which helps to sort of guide police

10 commanders in preparing for these things.

11 MR SEMENYA SC: Yes, Mr White, the Chair

12 in the past would say to witnesses don't try and answer a

13 question you anticipate will follow. The proposition I'm

14 putting with you is plainly correct. Am I right? That

15 everybody playing their part, the outcomes are almost

16 always a happy one.

17 MR WHITE: If everyone plays their part

18 then the outcomes are almost always a happy one, yes.

19 Apologies, Chair.

20 MR SEMENYA SC: Thank you. And also

21 conversely when the wheels get off the wagon you would want

22 to see in what respect the one or other of the role-players

23 did not bring their weight to the wheel, correct?

24 MR WHITE: I have no dispute with that.

25 MR SEMENYA SC: Sorry?

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1 MR WHITE: I don't dispute that.
 2 MR SEMENYA SC: Right, and when I look at
 3 the Regulation of Gatherings Act which the Chair referred
 4 to, in fact the whole structure is to obtain what is called
 5 a section 4 meeting where you know who is going to be in
 6 the march, what resources are necessary, what medical is
 7 necessary, who is going to do the marshalling, etcetera,
 8 etcetera. Am I right?
 9 MR WHITE: I have seen that in –
 10 CHAIRPERSON: He says he hasn't read the
 11 act. He must just accept what you say, but of course
 12 you'll also appreciate that section 9 of the act does deal
 13 with the situation where the police have to take action,
 14 like disarming, dispersing, even arresting in certain
 15 circumstances, because there are dangers, threats to public
 16 peace. So the act isn't entirely directed at specific
 17 peaceful irenic gatherings. But the witness doesn't know
 18 anything about that, so you can't ask him about it, except
 19 putting propositions to him, I mean.
 20 MR SEMENYA SC: Well, even if it is
 21 without reference to the act, Mr White, that is your
 22 understanding about how planning of public operations
 23 happen. You involve all the role-players, you define their
 24 roles and you draw an agreement and you have a written
 25 plan. Am I right?

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1 MR WHITE: As far as possible, yes.
 2 [11:22] MR SEMENYA SC: The trickier one
 3 obviously would relate to instances where they are
 4 spontaneous and therefore there are no plannings and
 5 therefore there may be unforeseen circumstances for which
 6 some measure of planning must happen, but we'll get to that
 7 later, am I right?
 8 MR WHITE: Correct.
 9 MR SEMENYA SC: Now, you were aware that
 10 this Commission was established to investigate a number of
 11 things, am I right?
 12 MR WHITE: Indeed, Chair.
 13 MR SEMENYA SC: And the Marikana incident
 14 with which you are now familiar is intended to probe, or
 15 the Commission is intended to probe around that event, the
 16 role played by the various stakeholders, if I were to call
 17 it that. Correct?
 18 MR WHITE: Yes, Chair, I understand that
 19 to be the case.
 20 MR SEMENYA SC: Just for completeness,
 21 even the other instrument relative to public order policing
 22 that comes to mind would be the HMIC document, the rules of
 23 engagement.
 24 MR WHITE: I'm familiar with it, yes.
 25 MR SEMENYA SC: That, too, has at its

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1 centre the emphasis on making sure that these operations
 2 have the confidence and the support of all the role players
 3 when they are staged, public order operations.
 4 MR WHITE: In its general intent, yes, I
 5 think that's reasonably accurate, yes.
 6 MR SEMENYA SC: That, too, transported
 7 into the APP as well.
 8 MR WHITE: Absolutely.
 9 MR SEMENYA SC: Right. Now a proper
 10 investigation, I gather, of what would have happened in
 11 Marikana would entail probing, as I put the expression,
 12 where the wheels got off. You look at the role of the
 13 police, you look at the role of Lonmin, you look at the
 14 role of the unions, et cetera. Am I right?
 15 MR WHITE: I think that would be fair and
 16 reasonable, yes.
 17 MR SEMENYA SC: And I was quite surprised
 18 that your brief seemed to be saying, just look at the
 19 conduct of the police. That was your brief, right?
 20 MR WHITE: That's absolutely correct.
 21 MR SEMENYA SC: And I want to suggest to
 22 you, Mr White, that as an independent expert commenting on
 23 a public order operation that went awry, you would have
 24 said to, as you call them, your legal team, but this will
 25 give a very skew report because I must be able to comment

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1 on the roles of others to see whether or not they did or
 2 did not have an impact on the resultant outcome – fair to
 3 say?
 4 MR WHITE: I don't know if that's fair to
 5 say in that I don't think my legal team at any stage tried
 6 to hide any evidence from me in terms of the role of
 7 others. I mean I've been provided with transcripts of
 8 meetings between the police and Lonmin, for example, and
 9 you know certainly I've been provided with a lot of
 10 evidence which shows, as Ms Le Roux was referring to in her
 11 sort of closing remarks there about the sort of potential
 12 violent intent of at least some of the people within the
 13 group, but my experience is, as I referred to yesterday, is
 14 on the basis of, you know, 30 years policing. My
 15 understanding was I was being asked to provide expert
 16 opinion in relation to, based on my experience and
 17 therefore I don't think it was actually unusual that I was
 18 being asked to look at the role of the police in this
 19 because that's what I know best. But I do think, you know,
 20 it's fair to say that there was no intent, no attempt from
 21 my legal team to try and shield from the fact that
 22 obviously there are other role players within this and some
 23 of the things that they did or did not do, but my brief was
 24 to comment in relation to the role of the police. I
 25 accepted that as a reasonable proposition.

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1 MR SEMENYA SC: No, I'm not blaming
 2 anybody. I'm merely saying that you hold expertise in
 3 relation to the role, for instance, of the community in
 4 public order operations, correct?
 5 MR WHITE: I have lengthy experience in
 6 dealing with the situations where engagement with the
 7 community is a requirement.
 8 MR SEMENYA SC: And you have expertise
 9 and understanding in relation to the role of the public in
 10 public order management operations, am I right?
 11 MR WHITE: Yes, indeed.
 12 MR SEMENYA SC: So you could competently
 13 have given us your expert opinions about the
 14 appropriateness or otherwise of the conduct of the strikers
 15 in the Marikana tragedy, am I right?
 16 MR WHITE: I'm not sure what you would
 17 have anticipated or wanted me to say. I mean I've said
 18 throughout this, is there a real threat in this operation
 19 to the police, frequently I've said that. So therefore
 20 logically that potentially comes from at least a section of
 21 the crowd who therefore, I think logic would show, are
 22 clearly not going to be overly co-operative with the
 23 police. So I'm not sure ultimately what the point of the
 24 question is and I'm not being obtuse –
 25 MR SEMENYA SC: I'll repeat it, I'll

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1 repeat it. You hold expertise in relation to public order
 2 management operations, to give expert opinion in relation
 3 to the appropriateness or otherwise of the conduct of the
 4 strikers, for instance, in this case. Am I right?
 5 MR WHITE: That's – okay, I'll say yes
 6 and then let's see where it goes.
 7 MR SEMENYA SC: Thank you. And you also
 8 hold expertise and you could have given us your expert
 9 opinion in relation to the appropriateness or otherwise of
 10 the conduct of Lonmin in the resultant tragedy that
 11 resulted, am I right? You hold that expertise.
 12 MR WHITE: Well, as I said yesterday, I
 13 have limited expertise in relation to dealing with
 14 industrial disputes but if your point is about having
 15 experience with regard to dealing with different
 16 stakeholders –
 17 MR SEMENYA SC: Correct.
 18 MR WHITE: - community, then yes, I do,
 19 but again I caveat my answer by saying I don't really
 20 understand the implication of the question and again I'm
 21 not trying to be awkward but – so I'll say yes and then
 22 perhaps I can help you further at a later stage.
 23 MR SEMENYA SC: Yes. And so you could
 24 bring your critical scrutiny into looking as to whether for
 25 instance in this Marikana operation, whether the unions

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1 would have acted appropriately or what could they have
 2 brought to bear in producing an outcome that is desirable.
 3 You have that type of expertise. I'm just exploring that
 4 your expertise is not limited to the conduct of the police.
 5 MR WHITE: Well, I'm more than happy to
 6 discuss my experience in relation to dealing with
 7 stakeholders involved in these types of situations beyond
 8 the police. Do I have any particular experience or
 9 expertise in relation to the conduct of unions? No, I
 10 don't but again in order to be helpful in – for example I
 11 explained yesterday that a lot of the difficulties that we
 12 have in Northern Ireland relate to the parading situation,
 13 so there are a number of actors there like the parading
 14 institutions, the bands, residents' associations, the
 15 Parades Commission themselves, all actors, stakeholders who
 16 can contribute to this and I've lots of experience in
 17 dealing with those.
 18 MR SEMENYA SC: You see, I'm trying to
 19 get us at a point where we don't leave this Commission with
 20 the conclusion that the South African Police Service must
 21 be, must be put at a level where a resolution of public
 22 disorder must accept on the one equation that people will
 23 come with spears, they will come with pangas, they'll come
 24 with murderous intent, they will come and attack the police
 25 and we must get our police at a level equivalent to contain

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1 that. That would be the wrong approach completely, Mr
 2 White, am I right?
 3 MR WHITE: I'm not, I'm genuinely not
 4 following you. I understand, if I understand the question
 5 properly –
 6 MR SEMENYA SC: Which I can explain it.
 7 MR WHITE: Please do.
 8 MR SEMENYA SC: If we are to avoid
 9 another Marikana, we cannot leave this Commission with a
 10 recommendation that says the police must be upped to the
 11 level where they always are to deal with people who are
 12 armed, they are in formations, with murderous intent and
 13 intent on killing the police, the message must come out of
 14 this Commission that says in a democratic order you need to
 15 have law abiding tolerance so that the police can also
 16 discharge the maintenance of public order and peace. Isn't
 17 that where we should be going?
 18 MR WHITE: I don't think that's an
 19 unreasonable proposition and I hope that's what comes out
 20 of the Marikana Commission.
 21 MR SEMENYA SC: Correct, and therefore
 22 with the benefit of your expertise it would have been
 23 possible to say, to have you tell the Commission that the
 24 proper play by Lonmin in this public order would have been
 25 A and B and C so that in its recommendations, Lonmin as a

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1 stakeholder could see where it erred, with the benefit of
 2 your expertise. Correct?
 3 MR WHITE: Well, I think that there may
 4 well be things that Lonmin could have done differently,
 5 there may well have been things that the unions could have
 6 done differently, there may well have been things that the
 7 strikers themselves could have done differently, all of
 8 that. And as I say, I understand that that's what the
 9 Commission will address themselves to. However, my brief
 10 was to look at this from the point of view of the police,
 11 that's where I have expertise and beyond that, if all of
 12 those people have contributed in a different way then it
 13 still requires the police to have an operation or approach
 14 to the situation and that's what I commented on. If all of
 15 those actors had have acted differently, well, then maybe
 16 the outcome would have been different but I would still say
 17 that, you know, my assistance to the Commission is best in
 18 relation to operational policing because that's where my
 19 experience is. But going back to the earlier part of your
 20 question when you were talking about, you know, the rights
 21 and responsibilities, I mean one of the things that we talk
 22 about all the time around the European Convention on Human
 23 Rights in my own country and the fact that it's my primary
 24 legislation, is with rights come responsibilities. I do
 25 not for one second try and suggest that Lonmin, the

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1 strikers themselves, et cetera, et cetera, have
 2 responsibilities in relation to this. My brief was to
 3 engage with the police, on the issues in relation to the
 4 police. If your question is that you feel that perhaps I
 5 should have pushed back on my legal team and said, no – no,
 6 I feel I should be contributing more and I should be giving
 7 expert opinion in relation to the rules of the others, then
 8 to be honest with you I think there's a point of
 9 disagreement, whether it's from the point of view that I
 10 say my expertise is in relation to operational policing
 11 that happens within that wider context, I'm sure other
 12 people are far more able than me to be able to talk about
 13 the intricacies of the activities of unions or the mine
 14 company or whatever.
 15 MR SEMENYA SC: No, I thought, Mr White,
 16 we had agreed that your expertise is public order policing
 17 and we have agreed that that field is a field which
 18 operates with multiple parties who sit together and who
 19 bring their weight to the equation. That, we have gone
 20 past it now, I think, haven't we?
 21 MR WHITE: I absolutely agree with that
 22 point, that's correct.
 23 MR SEMENYA SC: So you would be able to
 24 bring your informed experience and opinion and expertise in
 25 advising this Commission what would have been an

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1 appropriate part to be played by this group, that group,
 2 that group, for a desirable outcome. That expertise you
 3 have, am I right?
 4 MR WHITE: I'm not sure ultimately
 5 therefore what my conclusions would have been and how
 6 helpful they would be if I was to say that I think Lonmin
 7 should have perhaps at an earlier stage agreed to give the
 8 miners more money, then maybe all of these events could
 9 have been avoided. I think the unions should have been
 10 more conciliatory in relation to the amount of money they
 11 were asking for. I think you know the strikers shouldn't
 12 have been as violent, they should have – you know, would
 13 that have been of value to you, Chair?
 14 MR SEMENYA SC: I would suggest it would
 15 be of value to the Commission, Mr White, because the
 16 finding of the Commission would also be having the benefit
 17 of an expert opinion of the kind you hold and I would have
 18 been able to argue on the basis of your expert opinion that
 19 I'm able to drive a submission of where Lonmin could have
 20 gone right or wrong on the strength of the expert opinion
 21 of Mr White with such a wealth of experience –
 22 CHAIRPERSON: Of course the difficulty
 23 with that is, one doesn't want him to express expert
 24 opinions on matters on which, on which he has no expertise.
 25 If you think of the Marikana situation as being like a sick

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1 patient who's got lung cancer, who's got a broken femur and
 2 a few other diseases as well or maladies as well, you have
 3 a number of doctors come and give opinions on the patient,
 4 what can be done to heal the patient, the cardiologist –
 5 and also heart trouble – the cardiologist talks about the
 6 heart, the oncologist talks about the cancer, the
 7 orthopaedic surgeon talks about the fractured femur. You
 8 don't expect the cardiologist then to say, well, by the
 9 way, while I'm here I'll tell you what I think about the
 10 fractured femur and I'll tell you what I think about the
 11 lung cancer. He is called as an expert to deal with one
 12 part of the problem, namely the police, their operations.
 13 He has expertise, of course, in something else and that's
 14 dealing with disorderly people who cause this public
 15 disorder and require policing operations and by
 16 implication, he wasn't asked directly but by implication he
 17 has expressed criticisms of the strikers because he talked
 18 about the magnitude of the threat, he talked about the
 19 problem the police had. Clearly, had he been asked to
 20 elaborate on that he presumably would say, talk to things
 21 about the fact that they shouldn't have possessed the
 22 weapons, they shouldn't go around murdering people,
 23 injuring people and making threats. Those are his areas of
 24 expertise, those are linked to the sort of cardiac problems
 25 the cardiologist would talk about but, frankly, if he comes

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1 along and tries to give us, gives evidence to us about how
 2 he thinks trade unions should behave, dealing with matters
 3 of industrial relations and so forth or he tells us how he
 4 thinks employers should behave, how they shouldn't be
 5 obstinate and difficult and possibly cynical in the way
 6 they approach the matter - these are all criticisms that we
 7 will hear in due course I'm sure - then, frankly, I would
 8 tell him, is that, do you know anything about that, have
 9 you got experience of that, we're not interested
 10 particularly in your views on that. So I'm not sure that
 11 the proposition you're putting to him is entirely accurate.
 12 MR WHITE: Thank you, Chair, I'm very
 13 grateful.
 14 MR SEMENYA SC: Chair, perhaps two things
 15 immediately. You would be aware, Chair, that one of the
 16 concerns my client has is that we are 18 months into this
 17 Commission hearing, 90% of what we do has been probing the
 18 police conduct and where the terms of reference clearly
 19 point to a probing of multiple areas that may have
 20 contributed to the result, on the time frame now given the
 21 rest of the matters have to be done in a month.
 22 CHAIRPERSON: Yes, can I respond to that?
 23 You talk about the present time frame. As you know, an
 24 application has been made for an extension and we will get
 25 the result of that I believe quite soon and if the

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1 extension is granted then of course we won't just have a
 2 month but to deal with the point you made more fully -
 3 MR SEMENYA SC: And also -
 4 CHAIRPERSON: Sorry, can I finish? I'll
 5 give you an opportunity. We started off with evidence
 6 which took much longer than we thought it would, but of the
 7 objective facts on the ground, what the people who went to
 8 the scene found and so forth. We then moved on to the
 9 evidence, I think it was of AMCU, they led their evidence
 10 and their conduct came under scrutiny and Mr Mathunjwa was
 11 extensively cross-examined, and other AMCU officials I
 12 think. Then we had evidence from NUM.
 13 [11:41] The NUM people gave evidence, they were
 14 extensively cross-examined and from the president of NUM
 15 down to the shop stewards and people on the ground at
 16 Marikana. That evidence was also examined fully. Then we
 17 had people like Mr Magidiwana and Mr Phatsha, among the
 18 strikers, they gave evidence, they were cross-examined
 19 extensively. At that point, as far as I remember, you
 20 produced the statement of Mr X and Mr Mpofo took the view
 21 that he would like to call evidence later to deal with what
 22 Mr X was going to say. And he gave statements, we've got
 23 statements of two witnesses whom he proposes to call as I
 24 understand fairly soon after Mr X's evidence. We then
 25 started on the police case and you led a number of

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1 witnesses, some of them were extensively cross-examined but
 2 there were a number of witnesses you led and you obviously
 3 have to because there are a lot of police actors involved
 4 in this. There were certain reasons which I don't want to
 5 go into as to why some of the cross-examination, some of
 6 the police people took far longer than we thought.
 7 Documents that had previously been asked for and were said
 8 to be non-existent finally appeared on Colonel Scott's
 9 computer and that led to lengthy cross-examination. And
 10 other documents came forward as well. Certainly a lot of
 11 time has been spent on the police case for various reasons
 12 but the point that I'm making to you is that AMCU has under
 13 the microscope, NUM has been under the microscope, a number
 14 of witnesses have come from the striker's side. We're now
 15 busy with the police, we're near the end of the police
 16 evidence, this witness, of course, has been interposed for
 17 logistic reasons. We're then going to turn to Lonmin and I
 18 know the police take the view and this has been stated in
 19 their opening statement, that Lonmin behaved badly. That
 20 if Lonmin had been co-operative and had done things that
 21 they were urged to do by the police then you will contend
 22 in due course I take it that either - that what happened on
 23 the 16th of August wouldn't have happened and you may well
 24 have submissions to make in regard to the 13th as well. And
 25 the point I'm making to you is I'm not sure that this

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1 witness can help us much in relation to the criticisms to
 2 be directed against Lonmin. Those criticisms will not be
 3 ignored, they will be fully investigated. We've already
 4 had cross-examination of Mr De Costa on issues of that
 5 kind, so there is already, some of that material is already
 6 before us. So I can understand the police saying that the
 7 impression is created we are the sole people who are being
 8 criticised. And that's not fair you would say.
 9 Now, of course, if that correct you would be
 10 entitled to say it's not fair but certainly the other
 11 persons who are listed or other parties listed in the terms
 12 of reference whose behaviour has to be examined, some of it
 13 has been examined, some still will be examined. This
 14 witness though I would have thought in the position of a
 15 cardiologist in the metaphorical example I put to you, who
 16 can help us to deal with the cardiological problems, he
 17 can't help us very much anyway in relation to the behaviour
 18 of the unions or the employer.
 19 That's to say by implication, I presume if you
 20 ask him more about it he will say more, he can criticise
 21 the behaviour of the strikers. And he's already conceded
 22 that there was a very serious problem that the police had
 23 to deal with. As I understand it he has a great with the
 24 police, the problem, of course, was armed strikers who were
 25 gathering in circumstances not covered by the right of

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1 gatherings or assembly in the Constitution, who were in
 2 possession of weapons who refused to hand them over and
 3 some of whom appear to have used them to murder or injure
 4 people or certainly certain people at various times. That
 5 is very serious misbehaviour which I take it he can
 6 elaborate on if you want him to. But I don't think the
 7 main thrust of what you said with respect is correct and I
 8 thought it appropriate for me to say so.
 9 MR SEMENYA SC: Chair, as you would say
 10 one day we'll want to look at this transcript and see what
 11 it is that we did and one of those things that I would like
 12 to say is to read that as SAPS we took all the points we
 13 deemed relevant in relation to the evidence of the witness
 14 and I acknowledge the hypothetical example that, Chair,
 15 you're making. But this witness, that's where I started, I
 16 said you are an expert in a field where confluence of
 17 various players are intended to operate in a particular way
 18 to produce the desired outcome. Now I think it is fair,
 19 Chair, with respect that I should –
 20 CHAIRPERSON: I'm not stopping you, I'm
 21 just saying to you as a matter of emphasis, you can
 22 obviously ask him about the employer, you can ask him about
 23 the trade unions, you can ask him about the strikers. I'm
 24 not stopping any of that cross-examination but what I was
 25 resisting was the suggestion that he can testify with equal

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1 authority and expertise and experience in relation to the
 2 behaviour of Lonmin which has already come under the
 3 microscope to some extent and the Lonmin representatives
 4 here will I'm sure be pleased to hear that that scrutiny is
 5 going to continue when the Lonmin witnesses come. You
 6 can't deal with him with Lonmin's behaviour with the same
 7 depth that you can deal with the evidence of – his opinion
 8 in evidence in relation to the police and as I've said by
 9 implication the strikers as well. And the same applies to
 10 the trade unions.
 11 MR SEMENYA SC: Mr White, examining the
 12 evidence you did realise very early did you not that the
 13 tragedy in Marikana had as its origin an industrial
 14 dispute.
 15 MR WHITE: Yes indeed.
 16 MR SEMENYA SC: About which, as I will
 17 show you later, you say the employees were demanding
 18 significant increase in their salary.
 19 MR WHITE: I've said that specifically
 20 and I accept that, yes.
 21 MR SEMENYA SC: And I was quite intrigued
 22 by the adjective you used, that is was significant, what
 23 informed that?
 24 MR WHITE: On reflection I assume that it
 25 may well be as a result of what they were being paid and

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1 what the request was for the increase and you compare the
 2 two figures, that might seem to be significant.
 3 MR SEMENYA SC: But I take it you did not
 4 know the numbers.
 5 MR WHITE: I think, could you point me to
 6 the particular part of my statement where I say that and
 7 maybe I might try and help you?
 8 MR SEMENYA SC: Certainly. If you go to
 9 your provisional statement WW2.
 10 MR WHITE: Yes.
 11 MR SEMENYA SC: And if you go to page 14
 12 you will find on that page paragraph 3.1.2 you're dealing
 13 with the event of Marikana in a summary. Are you there?
 14 MR WHITE: Yes.
 15 MR SEMENYA SC: There it reads, "on 9 and
 16 10 August 2012 about 3000 employees commenced the strike at
 17 Lonmin's Marikana mine in the North West Province of South
 18 Africa. They were demanding a significant increase in
 19 their salaries to twelve and a half thousand per month."
 20 MR WHITE: I see that that's correct,
 21 yes.
 22 MR SEMENYA SC: Well to that I ask you
 23 did you know what the numbers are. What were they earning,
 24 what were they not earning and why twelve and a half
 25 thousand is such a significant increase?

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1 MR WHITE: First of all I wrote the
 2 statement a long time ago, I'm assuming that there was
 3 obviously information in front of me which said what they
 4 were earning and allowed me to sort of make the assessment
 5 that from whatever X was to twelve and a half thousand.
 6 I'm foggy with regards to what it was. Perhaps if you
 7 could just help me with regards to what that figure was.
 8 MR SEMENYA SC: Let's move on a little,
 9 Mr White. You were also aware, having read the evidence,
 10 that what the strikers really demanded on the koppie was
 11 merely that the employer must come speak to them. Right?
 12 MR WHITE: I've seen a lot of evidence
 13 where strikers have made that request, I think actually
 14 often through the police.
 15 MR SEMENYA SC: And in your experience a
 16 demand of that nature is capable of resolving a public
 17 disorder. It's one that attempts must be made at meeting
 18 it, no?
 19 MR WHITE: In my experience, you know if
 20 there's anything that can be done in order to try and avoid
 21 disorder that's what you should do and I note that Mr De
 22 Rover I think said something very similar where he talks
 23 about your mouth is your best weapon. In other words if we
 24 can talk these situations down, of course.
 25 MR SEMENYA SC: And you also saw the

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1 evidence what I invite your comment on, of the police, even
 2 at the highest level trying to persuade Lonmin into talking
 3 to the strikers on the koppie –
 4 MR CHASKALSON SC: Sorry, Chairperson,
 5 the evidence is actually to the contrary. I mean the
 6 evidence is that the police at the highest level,
 7 Lieutenant-General Mbombo were essentially telling Lonmin
 8 to take a hard line against the strikers.
 9 CHAIRPERSON: Mr Chaskalson, there was
 10 also evidence I think from General Mpmembe –
 11 MR CHASKALSON SC: The highest level is
 12 Lieutenant-General Mbombo, Chairperson.
 13 CHAIRPERSON: The highest level is
 14 actually General Phiyega, National Commissioner Phiyega
 15 but let's take the highest level out of it in this case and
 16 say at a high level.
 17 MR CHASKALSON SC: The highest level that
 18 engaged with Lonmin was Lieutenant-General Mbombo on
 19 record.
 20 CHAIRPERSON: That's correct. But let's
 21 just limit it to a high level. At the high level the
 22 evidence is General Mpmembe did ask the police, sorry ask
 23 Lonmin to deal with the strikers and Lonmin took up an
 24 attitude they had a two year contract and a two year wage
 25 agreement, it wasn't necessary for them to engage and there

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1 were various other reasons they gave. So there is
 2 substance in the point being put by – he isn't quite the
 3 highest level, I understand the point you're making based
 4 on the transcript of discussion between General Mbombo and
 5 Mr Mokwena which presumably will be dealt with later when
 6 Mr Mokwena comes to give evidence. But subject to the
 7 deletion of the word highest I'll allow Mr Semenya to ask
 8 his questions.
 9 MR SEMENYA SC: Mr Chair, isn't the
 10 palliative degree in my judgement correct? The National
 11 Commissioner came the Monday and even asked who are these
 12 faceless people. Let's try and examine these things but an
 13 objection of what degree of –
 14 CHAIRPERSON: I've disallowed the
 15 objection, I said you can carry on.
 16 COMMISSIONER HEMRAJ: But it goes further
 17 because when the negotiations were taking place and the
 18 request was made of the negotiators that message for the
 19 employer to come to the scene to talk to them was passed
 20 back through to Lonmin. That is the evidence.
 21 CHAIRPERSON: When Lieutenant-Colonel
 22 McIntosh was being cross-examined by Mr Mpofo he made it
 23 clear he was operating in two capacities. One capacity as
 24 a policeman trying to get people to lay down their arms,
 25 dealing with the public order aspects of the matter And

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1 the other as a kind of intermediary or messenger taking
 2 messages from the strikers to the employers and from the
 3 employers to the strikers. So the point you make is
 4 correct. So I've allowed you to proceed.
 5 MR SEMENYA SC: Thank you, Chair. Given
 6 your expertise you would have found the conduct of the
 7 police to have been appropriate in those circumstances, Mr
 8 White, am I right?
 9 MR WHITE: Just to clarify where the
 10 police passed on messages from the strikers to the
 11 management or to the hierarchy of the unions that they
 12 wanted to negotiate?
 13 MR SEMENYA SC: Well let's start at this
 14 level, of encouraging dialogue around the impasse.
 15 MR WHITE: Yes, I'm entirely supportive
 16 of the police in encouraging dialogue, yes.
 17 MR SEMENYA SC: And you have seen,
 18 looking at the evidence, the extent at which that effort
 19 was done by the police in trying to dissolve the dispute,
 20 that you'd find to appropriate behaviour wouldn't you or
 21 not?
 22 MR WHITE: I agree and I endorse the
 23 comments of the Commissioner when she talked about Mr
 24 McIntosh and in particular doing this, yes and I think I've
 25 potentially commented on it.

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1 CHAIRPERSON: One could go a bit further
 2 couldn't one? One could say that this is a matter that
 3 obviously will be dealt with more fully when witness come
 4 back from Lonmin. But the view I think has been expressed
 5 but I'm interested to get your views on it, not quite in
 6 terms that I'm going to put it to you but the view has
 7 being expressed that the police were given a rather poor
 8 hand to play if you use card playing analogy. They tried
 9 to get the strikers to leave the koppie, lay down their
 10 arms and so forth. Because of the attitude adopted by the
 11 employer that the police were doing their best to solve the
 12 problem by negotiation but it will be said and has already
 13 been said that the attitude adopted by Lonmin was unhelpful
 14 and made the police task more difficult than it would
 15 otherwise have been. Are you in a position to comment on
 16 that?
 17 MR WHITE: I think that the opening sort
 18 of questions that I answered were around if every single
 19 actor lived up to what we would see as their
 20 responsibilities would that ultimately lead to the best
 21 possible outcome. And I said yes if Lonmin, you know, had
 22 to be much more compliant perhaps it would have led to a
 23 different outcome. Mr Semenya asked about do I have
 24 experience in this type of thing, about dealing with the
 25 different stakeholders and I gave a lot of evidence

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| <p style="text-align: right;">Page 31518</p> <p>1 yesterday in relation to my experience and just briefly 2 reflect back and things like parade disputes. We have a 3 number of actors there and it is incredibly frustrating 4 around the [indistinct] of some of those groups in relation 5 to their firmly held views as to what should happen. Again 6 if only they would give this a little bit of ground and 7 they would give this little bit of ground it would make the 8 situation a lot easier. But they don't. I can have a view 9 on them, I can be sort of critical and whatever but the 10 bottom line is whatever the position is I then have to deal 11 with that. And I can go home at night and be really, 12 really frustrated and I can have a particular view on 13 particular stakeholders but it doesn't actually change the 14 fact that here is this really difficult position as the 15 police commander I need to deal with it. I wish it was 16 different but it's not so how do I deal with it.</p> <p>17 MR SEMENYA SC: Well you see we're going 18 to be ultimately asking the Commission to tell the rest of 19 South Africa and the rest of the world that it is 20 inappropriate to come with murderous intent and attacking 21 the police in any democratic order. But I want to rest all 22 of those opinions at the back of your expertise, Mr White. 23 You see where I'm going.</p> <p>24 MR WHITE: Well I will just simply 25 respond and say I absolutely agree with exactly what you've</p> | <p style="text-align: right;">Page 31520</p> <p>1 I don't know that my criticisms are suggesting that in any 2 way that the police always need to be – I don't know if 3 this in unison with the question and if it's not I 4 apologise but I don't know if you're suggesting that my 5 recommendations or my criticisms will ultimately lead to 6 the South African police being armed at the teeth to be 7 able to deal with a very violent group with spears and I 8 don't know.</p> <p>9 [12:01] I apologise if I have misconstrued.</p> <p>10 MR SEMENYA SC: Shall it be a convenient 11 stage for the tea?</p> <p>12 CHAIRPERSON: If it is convenient for 13 you.</p> <p>14 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>15 [12:22] CHAIRPERSON: The Commission resumes. Mr 16 White, you're still under oath.</p> <p>17 GARY WHITE: [s.u.o.]</p> <p>18 CHAIRPERSON: Mr Semenya.</p> <p>19 MR SEMENYA SC: Thank you, Chair.</p> <p>20 COMMISSIONER HEMRAJ: Before you start, 21 Mr Semenya, can I just ask Mr White, have you been 22 furnished, Mr White, with the statements from the other 23 parties, Lonmin, NUM, AMCU, injured and arrested, to –</p> <p>24 MR WHITE: Sorry, Commissioner, I've seen 25 a number of statements from parties other than the police.</p> |
| <p style="text-align: right;">Page 31519</p> <p>1 said. I hope you do tell the world and the rest of South 2 Africa that it is absolutely wrong to come to an event like 3 this with murderous intent and the fact that, you know, 4 amongst all of that two police officers were killed and 5 this is something I'm extremely cognisant of.</p> <p>6 MR SEMENYA SC: And to expect the police 7 in this country to raise their level of skill in using 8 rubber bullets to contain this type of violence. That is 9 the wrong direction for this Commission to send us a 10 message. Am I right?</p> <p>11 MR WHITE: I think that the key 12 criticisms that I've made in relation to the police as you 13 say, my criticisms are only at the police because of my 14 grief are hopefully intended to be helpful to the 15 Commission in relation to – I think if these things had 16 have been done better then potentially even with all of the 17 difficult circumstances of this then potentially maybe the 18 tragic outcome may not have happened. It may still have 19 happened, we just simply don't know but I do look at the 20 events across those number of days, observed the evidence, 21 raised my concerns and criticisms on the basis of my 22 experience and I hope that's helpful to you Chair and to 23 the rest of the Commission in deciding how you might want 24 to make recommendations going forward that perhaps a 25 situation of similar type might be avoided in the future.</p> | <p style="text-align: right;">Page 31521</p> <p>1 You know, have I seen every single statement? I'm not 2 sure. I've certain seen statements from parties other than 3 the police. I'm pretty sure Lonmin's – I need to just look 4 at my legal team just around helping with my memory, but 5 certainly categorically I've seen statements other than 6 from the police, yes.</p> <p>7 COMMISSIONER HEMRAJ: And have you had an 8 opportunity to be appraised of their evidence as well as it 9 appears on the transcript?</p> <p>10 MR WHITE: Yes, I mean and I've seen 11 things like transcripts between, meetings between for 12 example the Lonmin management and the police and have read 13 those, yes.</p> <p>14 COMMISSIONER HEMRAJ: And the evidence in 15 court insofar as they –</p> <p>16 MR WHITE: No, I haven't been directed 17 towards the oral evidence of those –</p> <p>18 COMMISSIONER HEMRAJ: Thank you, Mr 19 White.</p> <p>20 CHAIRPERSON: [Microphone off, inaudible] 21 tell us what you've seen, I get the impression – I just 22 want to know whether my impression is correct – that there 23 was a difficulty in regard to your getting transcripts of 24 the evidence of witnesses who testified in Afrikaans and 25 we've been trying to get, there was talk of translations</p> |

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1 being prepared. I don't know what's happened. I don't
 2 need those, so I haven't seen them, but I don't know how
 3 far they've gone with that, but there was at one stage
 4 certainly I was told a problem in relation to showing
 5 people like you transcripts of evidence of people who
 6 testified in Afrikaans. Is that still the case, or –
 7 MR WHITE: I would be confident, Chair,
 8 that I think that certainly any evidence that you know my
 9 legal team felt, and obviously I'll be very open, clearly
 10 I, to some degree was obviously in their hands. I'm
 11 confident that they have tried to show me, you know,
 12 evidence basically of this entire picture. I haven't seen
 13 any oral transcripts in relation to people, I'm pretty
 14 confident other than the police having engaged with that.
 15 If I help, if it's helpful of course, you know, I
 16 haven't been engaged in this process constantly. You know
 17 I was engaged initially when I received the evidence from
 18 the SAPS hard drive and that's largely from what I, from
 19 there that I prepared my provisional statement. Then there
 20 was perhaps a bit of a hiatus and then around the
 21 completion of my final statement, which obviously was a
 22 fairly lengthy process given that it was almost 130 pages,
 23 and I engaged with further evidence, you know, Lieutenant-
 24 Colonel Scott's hard drive, etcetera, etcetera, etcetera,
 25 and also some of the oral evidence and there was, that you,

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1 the Commission has heard.
 2 Another hiatus and then it literally was probably
 3 around three weeks ago I then received a further brief from
 4 the South African Human Rights Commission around, you know,
 5 here's the new evidence and as I've said openly in my
 6 supplementary statement, neither I or the South African
 7 Human Rights Commission would be trying to say to the
 8 Commission that this is now the entirety of all the
 9 evidence that your good selves have heard since my final
 10 statement in October 2013, because I just think that will
 11 be impossible. I mean in my own office at home we started
 12 to print out the key transcripts from the National
 13 Commissioner, General Mbombo, General Mpenbe, I think
 14 General Mpenbe's oral evidence ran to something like four
 15 lever arch files. You know it's literally thousands, a
 16 couple of thousand pages or something. I have done my best
 17 to try and engage with as much of that as I possibly can,
 18 but you know, I will be lying to you if I say that you
 19 know, absolutely I've engaged with every single page.
 20 MS LE ROUX: And Chair, if I could just
 21 clarify, with respect to evidence that wasn't given in
 22 English, the Brigadier Calitz English translations of the
 23 transcripts are available on the Commission's website and
 24 those are what Mr White has been provided with. Other
 25 witnesses, if it hadn't been translated we would try to do

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1 as best translation as we could, or you know, sort of
 2 summarise and translate into English and provide those to
 3 Mr White, with non-English witnesses.
 4 CHAIRPERSON: I see, thank you. Yes, Mr
 5 Semenya.
 6 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):
 7 Thank you, Chair. At the back of your expertise, I take it
 8 the Commission can say at the end of the day that to avoid
 9 another Marikana a party similarly situated like Lonmin is
 10 better to be more facilitative and not obdurate if that
 11 position would avoid the tragedy, correct?
 12 MR WHITE: You know, I think that's the
 13 ideal that we would all want to work to, as I said in a
 14 previous answer, and in addition to that perhaps if I could
 15 refer to 2.3 of my supplementary statement when I
 16 ultimately say any – this is in relation to questions that
 17 have been asked of me that I think have been referred to
 18 earlier on – any criticisms that I may direct towards the
 19 police in regard to their actions at Marikana is in no way
 20 intended to absolve any other party of their responsibility
 21 or obligations under the law of civic duty.
 22 MR SEMENYA SC: Yes, it is more a quest
 23 on my part to see how with the expertise you have a party
 24 similarly placed like Lonmin should in other circumstances
 25 behave to avoid these outcomes. That's where I'm trying to

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1 go with you.
 2 MR WHITE: Well, again hopefully to be
 3 clear, my experience with these types of situations are
 4 that if everyone is prepared to enter into the spirit of
 5 compromise, it is much more likely to lead to an outcome
 6 which lessens the likelihood of the police having to use
 7 any type of force at all, and because you raised this in
 8 the context of my experience just before we broke for the
 9 short moment, I had been making the point that in my
 10 experience unfortunately a lot of actors don't necessarily
 11 play the part that we would want them to. It would be
 12 great if in my country there was a commission which would
 13 somehow be able to force those other actors and
 14 stakeholders to live up to what I consider to be their
 15 civic duty and responsibilities, but I don't know that
 16 they're in a position to do that.
 17 MR SEMENYA SC: But the ringing message
 18 must always come even from a commission such as this that
 19 it is important that we all operate within the parameters
 20 of permissible behaviour, if you are police, if you are
 21 employers, if you are strikers, etcetera, and that's why
 22 this conversation I'm having with you. It's important that
 23 ringing message must come out, no?
 24 MR WHITE: Well, I don't disagree with
 25 you. I think that, you know, given the context in which

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1 you place that, of course you would want all stakeholders
 2 to live up to what are considered to be their
 3 responsibility. Of course you would.
 4 MR SEMENYA SC: And even in relation to
 5 the unions, I don't know if you're familiar with the
 6 evidence that this complaint of the RDOs is one that is as
 7 old as 2009, complaining about the same thing until it
 8 manifested in the manner it did in 2012. On the basis of
 9 your expertise would you say that there could have been
 10 something done differently by the unions?
 11 MR WHITE: Chair, referring to the
 12 interjection that you made earlier on, I mean I'm not
 13 familiar with all that the unions have done in this ongoing
 14 dispute, certainly not stretching back to 2009. I would
 15 say for the record again as a professional police officer
 16 who has lots of experience in dealing with these particular
 17 types of situations, perhaps if everyone comes to them with
 18 a, in the spirit of compromise and prepared to negotiate,
 19 well then ultimately we can avoid the police ever having to
 20 use any force at all, a lot less higher levels of force,
 21 but I don't genuinely understand what the relevance is of
 22 the question in relation to could the unions have done
 23 more. I haven't engaged specifically with that, but you
 24 know I admit if Mr Semenya says that he thinks that perhaps
 25 they could have, then I'm not going to disagree with that,

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1 but I don't really think that's an area within my
 2 expertise.
 3 I think I've been very clear in relation to how I
 4 think it's the responsibility of all people. I mean even
 5 if you take it right back to there should be responsibility
 6 in all citizens to act properly and within the law, but you
 7 know what; sometimes people break the speed limit,
 8 sometimes people steal things out of shops, sometimes
 9 people assault each other in the street. If they didn't do
 10 any of those things would that likely to be a better
 11 outcome in relation to, you know, policing? Of course it
 12 would. Unfortunately life's not like that.
 13 But just to come back to your particular
 14 question; I don't know the intricacies of this particular
 15 dispute and what the unions did or didn't do, so I don't
 16 really feel I can comment much more than that.
 17 MR SEMENYA SC: No, Mr White, you see
 18 Public Order Policing is a slightly different proposition,
 19 is it not? There you are dealing even with the fact that
 20 the use of force, if it should be there at all, at its very
 21 highest it's a rubber bullet, or what you call the
 22 attenuated energy projectile in the UK. That's the level
 23 at – that's the highest level of containing public
 24 disorder. Am I right?
 25 MR WHITE: On occasions the threat level

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1 certainly in Northern Ireland extends beyond that, as I
 2 gave a lot of evidence yesterday. So therefore sometimes
 3 actually the threat level is such that the tactical,
 4 tactics employed by the police actually go beyond AEPs to
 5 sometimes live rounds.
 6 MR SEMENYA SC: Well, that's in
 7 exceptional circumstances. The rule really is non-lethal
 8 force must be used to contain public disorder. Isn't that
 9 right?
 10 MR WHITE: Yes, as far as possible,
 11 that's correct.
 12 MR SEMENYA SC: And it is principally
 13 because unlike in robberies and other violent criminal
 14 behaviour, there is no such constraint on the response
 15 appropriate by police in those circumstances, is there?
 16 MR WHITE: As in to say that when you're
 17 dealing with a robbery –
 18 MR SEMENYA SC: No, as in saying police
 19 have a duty in swotting a robbery to use less-than-lethal
 20 weapons, there's nothing like that.
 21 CHAIRPERSON: Robberies are robberies. I
 22 think you mean serious robberies like cash heists and that
 23 sort of situation, don't you? You don't mean just an
 24 ordinary robbery. You mean very serious robberies where
 25 firearms are used and that kind of thing.

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1 MR WHITE: The general concept that we
 2 adhere to in the UK in relation to policing around the use
 3 of force is minimal use of force in any circumstances.
 4 When police officers deploy to any situation, so let's take
 5 it a non-public order situation, a robbery as you say, if
 6 police officers are attending a robbery with firearms, or
 7 they may be even attending a robbery where somebody is,
 8 carried out with baseball bats and, you know, threatening
 9 people with weapons like that and not firearms, then the
 10 police approach to dealing with that will be again to use
 11 the minimum level of force.
 12 We don't routinely carry AEPs in all police
 13 vehicles. Even the public order police don't carry
 14 routinely AEPs. That tactical option is reserved for when
 15 planning an operation, in the way I explained yesterday,
 16 when the silver commander is required to give consideration
 17 to how he or she is going to plan this out, they might
 18 think based on the threat and risk assessment that they
 19 require AEPs. That's part of the tactical plan which the
 20 assistant chief constable, the gold commander has to
 21 approve.
 22 Specifically on AEPs there are various levels of
 23 authority. The authority to issue AEPs is at the level of
 24 assistant chief constable. If you can convince him or her
 25 that there's sufficient threat they will give you authority

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1 to issue it out of a station armoury to be carried in a
 2 vehicle, and in our context we actually then lock them in a
 3 lock box in the vehicle.
 4 As the situation develops and we see how this
 5 plan is unfolding, if the threat level is such that these
 6 things might need to be used then the silver commander
 7 makes the judgment as to whether or not he/she gives
 8 authority to deploy, take them out of the vehicle and make
 9 them ready, and then there's a further level of authority
 10 which is authority to use, again by the silver commander.
 11 After that it becomes the individual choice of the police
 12 officer based on the circumstances now that he has
 13 authority to use, whether or not he's going to fire given
 14 the circumstances he sees in front of him. Now that's in a
 15 public order situation.
 16 As I say the tactical support groups who deal
 17 with public order don't just deal with that. The majority
 18 of their time is spent engaged in searching and other types
 19 of activities. So they don't routinely carry them.
 20 It may be that because of an increased threat
 21 situation that they may get authority to carry them over a
 22 period of two weeks when the assistant chief constable has
 23 been convinced that there is a need for them to have
 24 immediate access, so he gives the authority to deploy in a
 25 particular geographic area over a defined period of time.

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1 So park that.
 2 In relation to the types of officers that we
 3 would send to more serious day-by-day incidents - robberies
 4 as I was asked for in the question - we would likely to be
 5 sending our armed response vehicles to those. The armed
 6 response vehicles are officers specially trained - I
 7 explained this yesterday - who have lots of tactical
 8 options ranging from the traditional police truncheon and
 9 handcuffs, individual CS spray that you can spray in
 10 someone's face. They're not generally used, but those
 11 officers would be armed with Taser. They would also be
 12 armed with AEPs. They would carry AEPs all the time, and
 13 they're also armed, as their name suggests, with lethal
 14 rounds. When they go to engage for example a robbery then
 15 they have to make the assessment as to what they think they
 16 may need to do, and again this will be guided by a level of
 17 authority because this is a firearms incident and there
 18 will be some senior officer who's been engaged at this time
 19 to basically guide in relation to what types of tactical
 20 options are appropriate. So therefore AEP may well be used
 21 in that type of a situation, which is categorically and
 22 definitely not public order, but it's being used because
 23 it's far more preferable in those circumstances to see if
 24 you can engage this threat and to neutralise whatever the
 25 threat is by using a single AEP round as opposed to using a

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1 live round.
 2 MR SEMENYA SC: No, I accept that
 3 lawfully police of whatever rank and level, even civilians
 4 for that matter, are only justifiable justified to use
 5 force proportionate to the threat. That's not my enquiry
 6 with you, but I'm saying in police training there are
 7 various levels of training and at one end of it is training
 8 that is intended to adequately contain violent serious
 9 robberies, as the Chair is describing, for which POP
 10 members are not necessarily so trained. Is that a fair
 11 statement to make?
 12 MR WHITE: Would we send POP members as
 13 you talk about to, you know, an armed robbery? If it as
 14 absolutely necessary because there was no one else to send,
 15 well of course we're going to, but as a choice of first
 16 preference, no, we would send the armed response units and
 17 I explained their function.
 18 MR SEMENYA SC: And by converse of logic
 19 if it's a public order thing you don't send the armed
 20 response team either, you send an appropriate level of
 21 force to contain it as best as they're trained.
 22 MR WHITE: That's correct, and I've
 23 covered this in my final statement. I'm not sure which
 24 particular paragraph, but where I talk about if in a public
 25 order situation the level of threat is such that it's

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1 requiring also a firearms response, then we would deploy
 2 the armed response officers into that situation. I
 3 explained in my statement how that would be done and I also
 4 then alluded to the fact that even at the higher levels
 5 again our most specially trained people in relation to
 6 firearms would be the SSU, the special support unit, which
 7 I'm assuming is perhaps a bit of a read-across to the STF
 8 as it's being described here, and part of the reason,
 9 Chair, that I say that potentially a read-across is that
 10 when I saw Lieutenant-Colonel Scott talk about snipers, if
 11 we were deploying snipers it would be the SSU, the special
 12 support unit that will be doing that, and because he said
 13 it's the STF I'm assuming there's perhaps a read-across
 14 there. I might be wrong in that.
 15 MR SEMENYA SC: Can we deal with an
 16 appreciation of the nature of threat Marikana was emanating
 17 from the strikers. I invite us, Chair, to exhibit AAAA8,
 18 which is the supplementary statement of Mr X.
 19 CHAIRPERSON: This is not his
 20 supplementary statement.
 21 MR SEMENYA SC: No, it's not the
 22 supplementary statement, Chair.
 23 CHAIRPERSON: This is the statement that
 24 he made, which is one of the case dockets.
 25 [12:41] MR SEMENYA SC: Correct, Chair. I just

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1 want us to deal with various paragraphs from there and
 2 solicit your reaction, Mr White. If we start with
 3 paragraph 4 it says, "On Thursday 2012-08" – the screen has
 4 a different one. It must be AAAA8.
 5 CHAIRPERSON: According to the heading on
 6 the screen we are being shown exhibit AAAA8 which is from
 7 docket CAS205, I take it it's 205/8/2012. You've got a
 8 list in your bundle of documents to which the witness is
 9 referred, of item 8 which has a number of statements, nine
 10 of them in fact. The last one listed is AAAA8, the one –
 11 now we've got AAAA1.2, that's the typed version of one of
 12 the statements he made. That is, according to my notes
 13 AAAA1.2 is the typed version of the statement he made on
 14 the 7th of February 2013. What we've dealt with so far have
 15 been – we, I mean the Commissioners and the witness – were
 16 the two main statements which Mr X made, the first one
 17 being the 7th of February 2013 which was discussed by the
 18 witness in his supplementary statement and then there was a
 19 second statement made in February this year, but what we've
 20 now got on the screen is the typed version of the first
 21 main statement, as it were, the one of February 2013, 7th of
 22 February. We've got on the screen now paragraph 4 of that
 23 statement, is that the paragraph to which you wish to refer
 24 the witness?
 25 MR SEMENYA SC: I'm indebted to you,

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1 Chair. For the record, it is AAAA8.2 – 1.2. Then, Mr
 2 White, it reads, "On Thursday 2012-08-09 when the strike
 3 started it was agreed that all of the RDOs must not report
 4 for work and that we must meet again at 8 o'clock AM on
 5 Friday 2012-08-10 at Wonderkop stadium. On Friday
 6 2012-08-10 at about 08:00AM we met again at Wonderkop
 7 outside the gate of the stadium. There were a lot of
 8 people, about 5 to 8 000 people and we were now joined by
 9 people of other sections or departments, but all
 10 mineworkers. There were five of us who were nominated to
 11 represent us when talking to the employer about our
 12 demands." If I stop there, I'm going to be seeking to
 13 convey to you that you see a certain level of organisation
 14 in what ultimately proves to be the warrior group, the
 15 militant group or the armed group or the tight group. Are
 16 you with me?
 17 MR WHITE: Ja, I'm happy to accept that
 18 clearly this is an ongoing process, as you say, people meet
 19 and leaders are identified and nominated. I don't know
 20 that there's evidence in that particular paragraph that
 21 directly links them to the warrior group that you describe
 22 at this stage but, you know, the fact that people come
 23 together, many, many people and they have nominated five
 24 members to represent them talking to the employer, does
 25 that suggest a degree or organisation? Yes, it does.

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1 MR SEMENYA SC: No, I'm just alerting you
 2 where I'm going. I'm just trying to take the excerpts of
 3 the statement and ultimately I'll say that it shows a
 4 particular level of organisation. I'm just trying to have
 5 you walk with me.
 6 MR WHITE: Sorry, my apology. I think
 7 you criticised me earlier on for trying to get ahead. I
 8 thought that you'd asked me a specific question and I was
 9 responding to that, so I apologise.
 10 MR SEMENYA SC: That's perfectly okay.
 11 And if you go to 6 you will see that he discusses the
 12 Saturday and says, "On Saturday 2012-08-11 at about 08:00
 13 we met again at Wonderkop stadium, we were still many. We
 14 agreed to go to NUM offices, to the closed NUM offices. We
 15 went to NUM offices singing slogans, songs. We passed the
 16 first gate to the hostel, passed the bus stop, passed the
 17 taxi rank and near the toilets of NUM we were stopped by
 18 mine security and the security started firing upwards with
 19 rubber bullets and we started running away to different
 20 directions until we all met at the mountain koppie near
 21 Nkaneng informal settlement." And there they were
 22 addressed by various individuals "who told us that we will
 23 not meet at the stadium again, that's the mine property,
 24 we'll hold our meetings at the mountain henceforth." You
 25 have noted that, haven't you?

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1 MR WHITE: Yes, indeed.
 2 MR SEMENYA SC: Okay. Paragraph 7 then
 3 says, mentions some names there and says, "They further
 4 addressed us that we must unite and seeing that the
 5 security are shooting at us, we are not going to get our
 6 demands. They told us that we must organise an inyanga to
 7 protect us from being shot and make us strong." Do you see
 8 that?
 9 MR WHITE: Yes, I do.
 10 MR SEMENYA SC: If I may just interrupt
 11 myself, you're not familiar with things like the use of
 12 muti, are you?
 13 MR WHITE: Before engaging with this
 14 process, I'd never even heard the word. I'm slightly more
 15 familiar with it now because of the evidence obviously that
 16 I've read.
 17 MR SEMENYA SC: And you don't know what
 18 influence, if any, it has on people who apply it.
 19 MR WHITE: I don't know. I can only form
 20 a judgment based on the information that I've read.
 21 MR SEMENYA SC: And the level of fact
 22 about which you base your opinions, you would accept that
 23 the evidence is that they thought this muti would render
 24 them invincible.
 25 MR WHITE: I accept that there are a lot

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1 of circumstances I come across where people believe things
 2 and I can't understand why they believe them, but I
 3 wouldn't question their strength of belief in them and I
 4 don't think in engaging with this evidence it's either my
 5 place to question the level of belief in it and I don't
 6 think in informing my judgments I have questioned that
 7 belief. I think I've tried to enter into the process on
 8 the basis of, if that's what people believe, well, then
 9 look at the evidence with regard to how these circumstances
 10 unfolded, accepting that that is the position, that –
 11 MR SEMENYA SC: And neither are you
 12 exposed to many incidents of public disorder in this
 13 country where muti is alleged to have been used and where
 14 no such allegation exists into those containment of public
 15 disorder situations, am I right?
 16 MR WHITE: The only incidents of public
 17 disorder that I've engaged with in terms of this process,
 18 as I think I was clear about yesterday, is the
 19 circumstances relating to the 9th to the 16th of August.
 20 MR SEMENYA SC: And whilst we're still
 21 there, I mean as an expert you would agree with me, won't
 22 you, that police operations rely in building their doctrine
 23 on past experiences that build up, am I right?
 24 MR WHITE: Of course, I think experience
 25 is always going to inform, you know, an ongoing process,

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1 yes.
 2 MR SEMENYA SC: And in their debriefings
 3 and forming their, informing their operations, they would
 4 learn from previous lessons of successes and correction of
 5 previous lessons of failures. That's how a police
 6 organisation works.
 7 MR WHITE: I think that's how any
 8 professional learning organisation should work, yes, I
 9 agree with you.
 10 MR SEMENYA SC: Including the police.
 11 MR WHITE: Absolutely including the
 12 police.
 13 MR SEMENYA SC: Yes, and you do accept
 14 that South Africa experiences a high degree, I mean a huge
 15 number of public disorders in a particular year, at least
 16 in our recent past? You are familiar with that history –
 17 with that fact, not history.
 18 MR WHITE: I have certainly been given
 19 some information which suggests that, you know, there are a
 20 large number of public order, public disorder type
 21 situations. I wouldn't be qualified to say whether it's
 22 huge or not and I say that genuinely because you've
 23 challenged me earlier on around my use of the word
 24 "significant" so I don't think I'm qualified to say that,
 25 so I won't.

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1 MR SEMENYA SC: "High" is a better word
 2 to use, you say.
 3 MR WHITE: There do seem to be a lot of
 4 incidents, absolutely, yes.
 5 MR SEMENYA SC: On which the police have
 6 built a particular reliance, given the success rates that
 7 they have achieved over the years.
 8 MR WHITE: Again I'm very conscious that
 9 Mr De Rover comments on this in his statements. I'm
 10 genuinely not in a position to judge from the point of view
 11 that I've engaged with the evidence in relation to the 9th
 12 to the 16th of August. I don't know the circumstances in
 13 relation to any of the other incidents so I can't draw
 14 conclusions as to whether or not they were dealt with very
 15 well. I mean at this moment in time I'm more than happy to
 16 accept your suggestion or the evidence of Mr De rover that
 17 perhaps they have, but I genuinely cannot comment on that
 18 and I think I've actually commented to that effect in
 19 relation to some of the questions I've already answered to
 20 the SAPS legal team.
 21 MR SEMENYA SC: Well, where I'm going
 22 with this is that where you talk about police planning, you
 23 must be placing some measure of value in what the past
 24 experience in relation to an event is for the purposes of
 25 that planning about which you make, you express opinions.

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1 MR WHITE: Sorry, maybe your question
 2 slightly deviated from what I thought you were asking me.
 3 I thought that you were asking me the sort of position that
 4 police operational planning should adhere to lessons
 5 learned from previous experiences and if that, if that is
 6 the question that you asked me, then yes.
 7 MR SEMENYA SC: Of course. Now where, as
 8 the evidence stands, that given the history and successes
 9 of previous operations, the police have never ever
 10 confronted a situation where an unfurling of a barbed wire
 11 would trigger an attack on the police. If you accept that
 12 as the premise, you cannot falter their planning on the
 13 basis that that should have been foreseeable, am I right?
 14 MR WHITE: Firstly, to be absolutely
 15 crystal clear, if you accept as a premise that in the
 16 history of public order policing for the South African
 17 Police that the rolling out of barbed wire has not resulted
 18 in people charging towards that wire, then I think it would
 19 be fair to say then there would be absolutely no
 20 expectation that in the events of the 16th that would
 21 happen. However, I would say to you in order to engage
 22 with that premise, are you saying to me that that is the
 23 case, that in every situation in relation to public order
 24 policing in South Africa that in the rolling out of the
 25 wire it has never happened?

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1 MR SEMENYA SC: I don't know whether you
 2 asked me a question. I'm –
 3 MR WHITE: I did, Chair. I said Mr
 4 Semenya said to me if I accept the premise that this has
 5 never happened before when wire is rolled out that people
 6 charge forward, would it be fair to base expectations that
 7 when the wire was rolled out on this occasion that people
 8 wouldn't charge forward and I said based on that premise,
 9 very clearly, yes, I think that would be a reasonable
 10 expectation, of course. But I then said to him, you know,
 11 in engaging with that premise is he then able to say to me
 12 that actually that is the case, that in the history of
 13 public order policing in South Africa in relation to the
 14 high number of incidents I think, as he described it, that
 15 when wire has been rolled out that there has never ever
 16 been a case that people have charged before the wire, and I
 17 think that's a fair question to ask back.
 18 MR SEMENYA SC: I put it –
 19 CHAIRPERSON: But it's not normally the
 20 function of witnesses to ask questions of those who are
 21 cross-examining them and it's not a good precedent to
 22 establish. He put the premise to you, got an answer. If
 23 he wants your answer to have value he may have to lead the
 24 evidence to support the premise but, with respect, it's not
 25 for you to ask him a question.

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1 MR CHASKALSON SC: But Chairperson, we
 2 do, with respect, have a practice in this Commission that –
 3 a practice that we were trying to enforce only the other
 4 day, that where a proposition is put, if it's not contained
 5 in the evidence in the transcript, a statement to that
 6 effect has to be given and if it is contained in the
 7 evidence in the transcript, a reference must be given.
 8 CHAIRPERSON: Yes, no – no, but that's a
 9 different situation. There where evidence is put then one
 10 expects, and we've said it must be a statement setting out
 11 the evidence unless opposition for it involves a conclusion
 12 from circumstantial evidence and the circumstances are
 13 already before us, but here a proposition was put, he was
 14 asked to accept whether it's correct as an assumption, he
 15 did and I am saying if the assumption isn't established to
 16 be correct then the answer he obtained won't have any
 17 value. I don't think we can take it any further than that.
 18 MS LE ROUX: Chair, while we're dealing
 19 with potential objections to this premise, in Mr White's
 20 supplementary statement, page 10, little (ii) at the top of
 21 the page, there's a reference to the transcript. It's day
 22 137 page 14579 where the evidence of Lieutenant-Colonel
 23 Scott is recorded that he anticipated the risk that upon
 24 the commencement of the dispersion action the strikers
 25 would move towards the police and attack. So I just want

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1 the record to be clear that we're asking Mr White to assume
 2 it was not anticipated, where we have evidence from
 3 Lieutenant-Colonel Scott that it was.
 4 MR SEMENYA SC: Chair –
 5 CHAIRPERSON: What page is that again?
 6 MS LE ROUX: Page 10 of Mr White's
 7 supplementary statement.
 8 CHAIRPERSON: Paragraph? Paragraph?
 9 MS LE ROUX: It's the paragraph at the
 10 top of the page, little Roman (ii). This is recapping –
 11 CHAIRPERSON: No, no –
 12 MS LE ROUX: - and then there's a
 13 transcript reference footnote 36.
 14 CHAIRPERSON: Yes, I understand but what
 15 he was talking about was the commencement of the dispersion
 16 action and what we are dealing with now is something which
 17 I think precedes the commencement of the dispersion action,
 18 namely the putting up of the protective barrier. There was
 19 of course the suggestion in one of the plans that it
 20 wouldn't be a good idea to have the wire trailers there on
 21 the Wednesday because that might provoke the strikers but I
 22 think the proposition put by Mr Semenya is an accurate one
 23 and not contradicted by the passage on page 10 of the
 24 supplementary statement to which you refer. So think Mr
 25 Semenya can continue.

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1 MR SEMENYA SC: Thank you, Chair. I'm
 2 just saying from experience when one critiques a police
 3 operation, it is a critique that is often not done with the
 4 benefit of hindsight, am I right?
 5 MR WHITE: Well, I think all critiques
 6 are ultimately done with the benefit of hindsight, that one
 7 – I would hope that I have tried to engage with this
 8 process and tried to understand in offering up some
 9 concerns and criticisms, I've tried to engage with the
 10 evidence and tried to understand what the circumstances
 11 that the police officers were engaging with at the time,
 12 and based my judgment on the decisions that they were
 13 making at the time –
 14 MR SEMENYA SC: Correct –
 15 MR WHITE: - with the benefit of the
 16 information that they had, as opposed to having the luxury,
 17 I would say, of the 20/20 hindsight aspect, so ja.
 18 MR SEMENYA SC: That's where I'm going,
 19 typically known as the reasonable officer test. You
 20 measure their conduct based on information that was
 21 available to them at the time they acted in the matter
 22 under scrutiny. Am I right?
 23 MR WHITE: That would only be fair too,
 24 anything else would be unfair.
 25 MR SEMENYA SC: Would it be convenient to

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1 take the lunch adjournment now, Chair?

2 CHAIRPERSON: Yes, Mr Semenya. We must

3 try to be back at quarter to two.

4 [COMMISSION ADJOURNS COMMISSION RESUMES]

5 [13:52] CHAIRPERSON: The Commission resumes. Mr

6 White, you're still under oath.

7 GARY WHITE: (s.u.o.)

8 CHAIRPERSON: Mr Semenya?

9 MS LE ROUX: Chair, if I could, before my

10 learned friend commences, just give you a correct page

11 transcript for this point. Earlier I directed you to an

12 aspect of Mr White's statement with a footnote to

13 Lieutenant-Colonel Scott's evidence around the anticipation

14 of the attack on the barbed wire. If I could give you two

15 references because the issue was canvassed with Mr Scott,

16 firstly in response to a question from yourself, Chair, and

17 then secondly, the second reference relates to a question

18 from Commissioner Hemraj. It was day 137 on the 15th of

19 October commencing at page 14564, line 25. Page 14564 line

20 25, this is the Chair asking, then he goes, "What I did

21 anticipate, though, was that once the wire was rolled out

22 that if there would be weak points between the actual

23 trailer and the Nyala, that those would need to be defended

24 because I foresaw that there's a possibility that if they

25 did approach at that stage or during the actual dispersion

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1 action to try to come through to the police's side that

2 there would be weak points. Either through those gaps or

3 possibly even underneath." And he continues – Chair, you

4 then put your prima facie view –

5 CHAIRPERSON: Thank you, for the

6 reference and may I say that, you know, you're doing what I

7 spoke to someone else about the other day, that it's not

8 appropriate normally while a witness is being cross-

9 examined for the counsel who leads the witness to sort of

10 interpose little extra bits of evidence to support what he

11 says or not. I understand you're not doing it for the

12 purpose –

13 MS LE ROUX: Chair, I'm just correcting

14 the reference.

15 CHAIRPERSON: You're giving us a

16 reference, it's useful to have that on the record so when

17 we read the record we'll have the reference and I'm

18 grateful to you for that but I think you can perhaps give

19 us the reference in re-examination. We'll let Mr Semenya

20 continue in the meantime. You've turned your light on, was

21 there something you wished to say?

22 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):

23 No, no, thank you, Chair. Mr White, I want to deal with

24 the fact that on this history, until the Marikana event,

25 has never had an unfurling of a barbed wire triggering an

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1 attack on the police. With that given, would you criticise

2 the planning not to have factored that as a possibility?

3 MR WHITE: Could I understand your

4 question? You're saying to me that in all of the

5 experience of the South African Police that this has never

6 ever happened, then I wouldn't question an assumption in

7 relation to the planning for this particular event. It

8 would be unlikely to happen in this particular event if

9 that is the case, and I stress, that the rolling out of the

10 wire would encourage an attack on the police.

11 MR SEMENYA SC: Sorry, maybe I did not

12 follow the answer. Are you saying you would criticise an

13 unknown not being factored as a possible risk?

14 MR WHITE: Hopefully, Chair, again I'll

15 repeat. If the experience of the South African Police, I

16 think is implied in the question, has been that this has

17 never ever happened before that the rolling of the wire

18 resulted in an attack on the police, then I think that

19 based on that experience it would be reasonable as a

20 planning assumption to expect that the rolling out of the

21 wire on this occasion wouldn't result in an attack on the

22 police. However, I'd say I'm basing that answer on the

23 premise that it's provably true, therefore that this has

24 never happened before and, secondly, I'm assuming that the

25 suggestion is provably true that there is an attack on the

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1 police on this occasion as a result of the rolling out of

2 the wire and I don't give a specific judgment on that. I

3 don't think it's my place to do so.

4 MR SEMENYA SC: And I did understand you

5 correctly that you did familiarise yourself with the

6 provisions of the standing order 262.

7 MR WHITE: That's correct, I have read

8 262.

9 MR SEMENYA SC: Can I invite you that we

10 look at clause or section 2 which is dealing with

11 definitions? If you go to 2, at F there is a definition

12 for defensive measure, do you see that?

13 MR WHITE: I do indeed.

14 MR SEMENYA SC: And it says, "Defensive

15 measures refer to proactive tactical measures such as a

16 static barrier which are used to protect and safeguard

17 people or property by cordoning off or blocking, isolating,

18 patrolling, escorting and channelling people." That would

19 include something like barbed wire, am I right?

20 MR WHITE: I think absolutely, it could

21 include something like barbed wire, yes.

22 MR SEMENYA SC: And if you look at clause

23 or section 11 of that standing order, it has under 11.2 and

24 says to us, "If negotiations fail and life or property is

25 in danger, the following procedure must be followed" and as

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1 step 1 it says, "Put defensive measure in place as a
 2 priority." Okay? It is only two where the warning starts
 3 to happen, do you agree with you?
 4 MR WHITE: I agree with you on the force
 5 order, yes.
 6 MR SEMENYA SC: So when, in Marikana, the
 7 police put up a defensive measure like a barbed wire, they
 8 weren't expected to announce in terms of the standing order
 9 that you are now going to be putting a defence wire and
 10 this is its purpose, et cetera, am I right?
 11 MR WHITE: Against that specific point in
 12 the force order, I can agree with that.
 13 MR SEMENYA SC: That would contradict
 14 your opinion on this point, would it not? I thought your
 15 evidence was that they should have announced and removed
 16 the element of surprise in relation to this matter.
 17 MR WHITE: Yes, absolutely and I'm very
 18 clear on that. You know when the police – my evidence was
 19 given, Chair, on the basis of my experience and my
 20 experience is that when the police carry out a measure it
 21 is often likely that, you know, one of the predeterminants
 22 of crowd behaviour will be the activities of the police.
 23 If the police were going to actually carry out an action,
 24 then therefore the police could anticipate that there will
 25 be a response to that action and therefore should warn the

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1 crowd. Now my evidence I think, I hope, yesterday was very
 2 clear with regards to, I was basing that on my experience
 3 on what I think to be relatively well recognised crowd
 4 management principles. I think I may have referred
 5 specifically even to within "Keeping the Peace" we talk
 6 about no surprises. So my evidence yesterday was very much
 7 on the general premise that if the police are going to do
 8 something they should give a warning in advance.
 9 CHAIRPERSON: What Mr Semenya's point is,
 10 is that what they did was in accordance with the procedure
 11 enjoined upon them by standing order 262 and that you
 12 concede to be correct. So you can't criticise them
 13 therefore for not complying with their own standing order.
 14 Your point, as I understand it, is that your experience is,
 15 never mind what the standing order says, it's sensible to
 16 apply the no surprises principle because if you don't you
 17 may get a reaction from the crowd which you don't want.
 18 MR WHITE: That is exactly –
 19 CHAIRPERSON: Is that basically what
 20 you're saying?
 21 MR WHITE: That is exactly correct,
 22 Chair.
 23 MR SEMENYA SC: Alright –
 24 CHAIRPERSON: - answer to that of course
 25 is that that may be your experience elsewhere but their

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1 experience, says Mr Semenya, is that that's never happened
 2 before and that was why they didn't foresee it on that
 3 occasion and I think you've conceded again that if that's
 4 so, if that assumption is correct then obviously the point
 5 made by Mr Semenya is correct, that they can't be
 6 criticised for not foreseeing something would happen which
 7 had never happened before in similar circumstances. That
 8 must also be right.
 9 MR WHITE: Chair, again you're absolutely
 10 correct but if I could remind you of a caveat in my
 11 response which basically said this premise is based on this
 12 is provably true.
 13 CHAIRPERSON: Yes.
 14 MR WHITE: And that's why, and again I
 15 apologise for asking the question, it's the first time I've
 16 appeared as an expert witness in front of a Commission like
 17 this so I'm learning as I go along in relation to the rules
 18 and any further questions I'll address through you, Chair,
 19 so I apologise for –
 20 CHAIRPERSON: You did make it clear that
 21 that, your answer was based upon the acceptance of the
 22 premise, not because you accept the premise as correct from
 23 your own knowledge but you accept that if that is the
 24 premise then your answer is given on the basis, on the
 25 assumption shall we say that the premise is correct. You

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1 did make that clear –
 2 MR WHITE: That's absolutely true but I'm
 3 conscious of the fact that in some of the evidence before
 4 the Commission, including perhaps – and I think this may
 5 have been what Mr Semenya was referring to – the statement
 6 of Mr De Rover where he talks about, and I can't remember
 7 off the top of my head, I'm more than happy to check it
 8 out, the huge number – and I use that word advisedly – of
 9 public order incidents that the South African Police have
 10 dealt with. I have given evidence to say I have no
 11 knowledge of those and I'm just saying for my own
 12 protection in terms of the evidence that I give you, Chair,
 13 is that if it can be proven, if it's provably true that
 14 this has never happened before, well, then I'm absolutely
 15 more than happy to say as a planning assumption why would
 16 Lieutenant-Colonel Scott think that it might happen then,
 17 if it is provably true. I'm sure that I will be asked to
 18 show evidence of statements that I make to this Commission
 19 and I think it's only then fair for my protection that I be
 20 afforded the same courtesy in relation to actually being
 21 asked questions which are based on things that are provably
 22 true.
 23 CHAIRPERSON: Yes, well, of course that
 24 is really a point that counsel who have led you can argue
 25 at the end and if there isn't such evidence established and

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1 it's a point that they can make, but it's not normally wise
 2 for witnesses to start asking questions of the cross-
 3 examiner, even in the circumstances such as we find here
 4 because it creates a precedent. It's a genie that, once
 5 you've let it out of the bottle, you can't put back in
 6 again so I think we must avoid that if we – carry on, Mr
 7 Semenya.

8 MR SEMENYA SC: Thank you, Chair. I
 9 think, Mr White, the point is even more than that. The
 10 evidence is that before the unfurling of the barbed wire,
 11 Mr Noki came and asked what was the purpose of this barbed
 12 wire there. Was that information, are you aware of that
 13 information?

14 MR WHITE: I'm aware that Mr Noki
 15 approached the police on a number of occasions in relation
 16 to the purpose of the barbed wire and if you direct me to a
 17 particular incident when he did that, if you want to show
 18 me the reference or alternatively if we're talking
 19 generally at this point I'm more than happy to accept the
 20 point that he certainly approached the police to ask about
 21 the purpose of the wire.

22 MR SEMENYA SC: And as a matter of
 23 evidence, it is that that communication was, the answer to
 24 that enquiry was communicated by the police through a
 25 loudhailer audible to the majority of the people who were

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1 on the hill. Was that information made available to you?

2 MR WHITE: Yes, I've read evidence that
 3 suggests that a response to that question was made through
 4 loudhailer. I think the question was posed more than once.
 5 I don't know if the loudhailer was used every time but, you
 6 know, again I don't know for certain. And the other point
 7 that I don't know is whether or not, you know, the majority
 8 of the people on the hill heard that warning certainly but
 9 I know that there was evidence given that the warning or
 10 the explanation rather was given by loudhailer, yes.

11 MR SEMENYA SC: And the execution
 12 contemplated by clause or section 11 of the standing order
 13 is that after the defensive measure has been taken – the
 14 second step – you warn participants according to the Act of
 15 the action that will be taken against them should the
 16 defensive measure fail. Do you see that?

17 MR WHITE: I can see that, yes.

18 MR SEMENYA SC: Now the evidence, I don't
 19 know if this has been brought to your attention but I want
 20 to solicit your opinion, is that the attack on the
 21 defensive measure interrupted the entire plan as it was
 22 conceived because it was a happening of the first time.
 23 Would you find that understandable from your point as an
 24 expert, that they were all caught by surprise, this is not
 25 how things happen and they couldn't therefore, from that

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1 point on, go to step 2 as contemplated in section or clause
 2 11 of the standing order 262.

3 MR WHITE: If, again in order to be
 4 helpful, with all of the things that we previously
 5 suggested, if this then, I think that you used the word
 6 "attack," happened as a result of the wire being deployed,
 7 I think your question is would that have taken the police
 8 by surprise, given the previous experience and with all of
 9 those things which you said, yes, I'm sure it would have
 10 taken them by surprise if that had happened in that way,
 11 yes.

12 MR SEMENYA SC: And the opportunity to
 13 follow 262 sequentially, as it is numbered here, would then
 14 have been disrupted.

15 MR WHITE: Under those circumstances the
 16 opportunity to follow that as you say, would have been
 17 disrupted.

18 MR SEMENYA SC: Okay. And were you
 19 exposed to the evidence that according to the Sangoma's
 20 instruction to the group of people who were taking these
 21 rituals, undergoing these rituals, was that what they
 22 needed to do is to provoke some action on the part of the
 23 police and the muti will work. Are you familiar with the
 24 evidence?

25 MR WHITE: I'm aware of that specific

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1 point, as recently as last night it was brought to my
 2 attention, Chair.

3 MR SEMENYA SC: And have you been exposed
 4 to the fact that that as an intelligence was not available
 5 to the police, let me talk about the 13th of August 2012?

6 MR WHITE: I will assume that it wasn't
 7 available to the police because TT5 exhibit doesn't make
 8 any specific reference to it.

9 MR SEMENYA SC: And given the fact that
 10 there was no history of incidents where use of a stun
 11 grenade triggered a direct attack on the police, there
 12 couldn't be expected, on the principle we discussed of a
 13 reasonable officer test to have anticipated it in advance
 14 that such a stun grenade would trigger an assault on the
 15 police.

16 MR WHITE: I think the evidence that I
 17 have given is that, as a general premise, we can say that
 18 the behaviour of crowds can be influenced by the behaviour,
 19 actions of the police. Therefore if we're dealing
 20 specifically with the 13th, if I follow you correctly you're
 21 asking me the question that when the stun grenade gets
 22 fired it should be a surprise, you're saying to me it
 23 should be a surprise that that creates a reaction by the
 24 crowd, is that correct?

25 MR SEMENYA SC: No – no, let me repeat my

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1 question. Past police experience has never produced an
 2 outcome where use of a stun grenade triggers an attack on
 3 the police. I'm putting that to be the fact. Now I'm
 4 inviting your opinion on this. If that is factually
 5 correct, the police could not have reasonable have foreseen
 6 such action such as a stun grenade or teargas to be a
 7 trigger for an attack on them. Is that reasonable to draw
 8 that conclusion, given your expert experience?
 9 [14:12] MR WHITE: You see my evidence has always
 10 been that in my experience actions by the police will
 11 create a reaction by the crowd, so therefore that reaction
 12 to a stun grenade, which with respect we don't use in the
 13 UK, the reaction to a stun grenade might be, and I'm sure
 14 this is what the police probably intended, is that people
 15 would run away. That's the reaction, to move back from
 16 that.
 17 Maybe in other circumstances when the police do
 18 something it raises the level of emotion within the crowd.
 19 Again I have seen this where the police have used force, in
 20 my context whether that be AEPs or water cannon, the
 21 purpose of those tactical options is to try and get the
 22 crowd to move back and create some distance, but of course
 23 that it's going to inflame them, this is something you take
 24 into consideration, you know, the attitudes within the
 25 crowd which actually might result then in a reaction from

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1 them.
 2 Specifically in relation to your question, if
 3 this situation where a stun grenade has been fired has
 4 never before resulted in an attack on the police, then as a
 5 planning assumption I think it would be fair to say that
 6 when you're working out what might happen, consistent with
 7 the remarks that I've made about general principles but
 8 that would it be a reasonable planning assumption that it
 9 would not happen; on this occasion I think that would be a
 10 reasonable planning assumption. But I am relying on the
 11 fact that, you know, the person making that assumption
 12 would be aware that this had never happened before, in
 13 order to try and answer your question, because it would be
 14 my experience in a more general sense that, as I've
 15 explained to the Commission, when action is taken by the
 16 police it creates a reaction and that reaction can be very
 17 varied.
 18 MR SEMENYA SC: And the reaction
 19 standard, I'm sure even in your country, Mr White, if you
 20 use things like pyrotechnics, you use – well, you don't use
 21 teargas there, but the reaction is to move away from the
 22 police and not to attack. Isn't that your experience?
 23 MR WHITE: The intention in using, and
 24 the two principal types of tactical option that we would
 25 use in circumstances like that would be water cannon and

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1 AEPs, and you're using those with the intention to try and
 2 get the crowd to move back to maintain a distance. The
 3 reason that we would want to maintain a distance, I gave
 4 evidence yesterday, Chair, with regards to the types of
 5 threat we would be under – Molotov cocktails, blast bombs –
 6 the vast majority of those types of weaponry are thrown.
 7 Therefore if the intelligence is, or you're seeing that
 8 situation live in front of you, obviously what you want to
 9 do is try and push the crowd back far enough so that if any
 10 of those types of instruments are thrown then they won't
 11 reach behind the police lines, therefore causing injury to
 12 the police. So the intention in firing both water cannon
 13 and also AEPs would be to push the crowd back, and our
 14 expectation would be that that is exactly what would
 15 happen.
 16 Does that happen in every set of circumstances?
 17 No, it doesn't. Take for example specifically AEP. AEP is
 18 directed at a particular individual, the individual that
 19 the person who's responsible for firing it has identified
 20 as posing the biggest threat at that particular time.
 21 That's why the round is fired at them. Now how the rest of
 22 the crowd will perceive that is they'll be aware that an
 23 AEP round has been fired and they'll hear the bang,
 24 potentially they'll hear, you know, see the puff of smoke
 25 and whatever, and that one person may well be hit and maybe

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1 fall, whilst you know, other people within the crowd will,
 2 because they're not being affected by it might, their rage
 3 is inflamed, if you like, and they might come forward.
 4 That has happened. Other people will, 'I don't want any
 5 part of this' now the police have stepped up and move back,
 6 which is exactly what we want, and then of course other
 7 people within the crowd might not be aware of that
 8 happening at all. So the reaction of the crowd will often
 9 be varied.
 10 The intention in firing it is we get the crowd to
 11 move back, but one of the things that we take into
 12 consideration even in bringing water cannon to a scene, and
 13 I think I made reference to this yesterday, is that the
 14 appearance of the water cannon – because unlike an AEP
 15 launcher you can't hide them, they're huge – that as itself
 16 can sometimes inflame a situation in the crowd. Sometimes
 17 we'll bring it forward in terms of dynamic planning because
 18 you're actually thinking this might achieve a purpose
 19 insomuch as the crowd see the water cannon and rather than
 20 actually be engaged by it maybe they might just start to
 21 withdraw. So you know, you're actually bringing it, as Mr
 22 Scott might have suggested in stage 2 of the plan, as a
 23 show of force, but you're also weary of the contrary effect
 24 whereby it actually inflames the situation, raises tension
 25 and I think I gave an example of that yesterday.

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1 So the issue is that actually you know, there's
 2 no absolute predeterminant of this, how this is going to
 3 work out, and in many respects that's the skill of a public
 4 order commander trying to use his experience on the ground
 5 in terms of some dynamic planning. I would love to be able
 6 to sit here and say to you, you know, actually if A
 7 happens, then B will happen, then C will happen, then D
 8 will happen.
 9 Unfortunately in my experience it's not like
 10 that. As a general premise when police take action the
 11 circumstances is if something happens, it's like physics,
 12 reaction creates a reaction and certainly in relation to
 13 the situation that we're talking about it seems activities
 14 of the police then create a reaction.
 15 In relation to the question I'm being
 16 specifically asked therefore, would stun grenades force the
 17 crowd to go back? I think the general premises is that
 18 yes, you would expect them to do that. Does that happen in
 19 every single occasion? I genuinely don't know because I
 20 don't use stun grenades. Does it happen every single
 21 occasion here in South Africa? Well, of course I don't
 22 know, but if the circumstances that are being put to me are
 23 every single time this has been used in South Africa,
 24 here's what the response was, that the crowd moved back,
 25 the crowd didn't as a result of that attack, then I would

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1 say as a general planning assumption in terms of
 2 anticipating what the implication is when I fire this, I
 3 think that would be reasonable to assume. My question is
 4 does the person who's firing it realise that and how would
 5 he be informed by all of this evidence which suggests that
 6 it has never ever, ever, ever happened before in South
 7 Africa? How would they know that?
 8 CHAIRPERSON: It depends upon when the
 9 planning that we talked about took place. If the planning
 10 took place after the 13th then there was knowledge that stun
 11 grenades do not have the effect of making the people run
 12 away because they didn't run away on the 13th, and the
 13 further problem that I have and I'd like you to comment on,
 14 is – and I don't know about these cases where stun grenades
 15 made people run away, but accept for the moment that that's
 16 correct, the people who ran away, were they people who'd
 17 taken muti? Because it seems to me that – and this is a
 18 prima facie view, I just want comments on it – a stun
 19 grenade I take it is designed to make a person think
 20 they're being shot at and they're not being made to believe
 21 this is a firework that's been let off. A stun grenade
 22 goes off, you think a bullet is being fired at you.
 23 Nothing happens, because it's a stun grenade. That might
 24 in fact encourage people to believe that the muti is
 25 working. Stun grenade has gone off, two shots have been

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1 fired and nothing has happened. I don't know how you
 2 respond to that. It's just a prima facie view of mine and
 3 may be entirely erroneous.
 4 MR WHITE: Chair, I think number 1, we
 5 don't use stun grenades; number 2, muti is obviously a
 6 concept that I was unfamiliar with, as I'd given evidence
 7 earlier on. So I don't know, but I can follow your logic
 8 absolutely and certainly as I say in response to your
 9 question it was brought to my attention last night, I've
 10 seen published statements which have suggested the impact
 11 of muti. I've seen statements which have suggested things
 12 that, actions that the strikers who have subjected
 13 themselves to muti if they do, that might negate the muti.
 14 I've been aware of statements to that effect before. The
 15 specific issue of the muti is not effect, will not take
 16 effect until such times as there's an attack by the police
 17 and therefore it needs to be provoked. That's if I follow
 18 you correctly, and you're nodding, so I think I do. That
 19 specific piece of information was, the first I heard of
 20 this was last night, so with that in mind in relation to
 21 what you're saying then I think that's a logical
 22 conclusion, Chair, yes.
 23 MR SEMENYA SC: And also allied to that,
 24 these people are having blankets around them which would
 25 make the rubber bullets not penetrate, almost fortifying

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1 the belief the sangoma tells them that bullets will do
 2 nothing to you. I'm painting this picture, Mr White, to
 3 say am I conveying to you the fact that we are dealing with
 4 a group of people quite different from how your normal
 5 public disorder crowd behaves?
 6 MR WHITE: Crowds behave in different
 7 ways and people within crowds have different intentions and
 8 suffice to say that there are a lot of people in Belfast
 9 who engage with this activity that it will be very
 10 difficult, you know, to try and work out specifically what
 11 they might try and do because they put themselves in
 12 positions of considerable danger, which I would say is just
 13 not logical. You know, why would people do this when
 14 they're likely to get hurt in terms of use of force by
 15 police or someone else? So I just make that point that
 16 we're not always dealing with very rational people that
 17 make logical assumptions in relation to dealing with
 18 crowds, full stop.
 19 In relation to the point around do I, have I ever
 20 come across a crowd who obviously have undergone the types
 21 of rituals and the belief construct that is associated with
 22 muti in terms of – invincible, invisible and invulnerable I
 23 think are three words that I've seen in the evidence,
 24 absolutely no, I haven't, and I think I've previously given
 25 evidence to that effect.

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1 MR SEMENYA SC: But this also points to
 2 doctrine because the police can understand that there is
 3 de-individuation in crowd unrest situation, that that
 4 builds into the doctrine. What is not doctrine, and I'm
 5 suggesting to you, is how this particular group was
 6 behaving. Did that come out from reading the evidence to
 7 you?
 8 MR WHITE: There is a lot of evidence
 9 that talks about the fact that this particular group, or at
 10 least people within it have undergone muti rituals and what
 11 that means to them in terms of what they believe that it
 12 would do. I'm absolutely crystal clear on that. Does that
 13 answer your question, or is there a supplementary part to
 14 it?
 15 MR SEMENYA SC: Let me try and explicate
 16 it. The group of 3 000-odd people that were in the koppie,
 17 once the barbed wire was unfurled they disappeared. They
 18 walked into various different directions. That would be
 19 predictable behaviour that the majority of people would
 20 move if they see a police action starting, right? At least
 21 – well, let me solicit your opinion.
 22 MR WHITE: I think that it's entirely
 23 predictable that people would, you know, if the police are
 24 now starting to roll out barbed wire and the situation
 25 therefore seems to be now starting to escalate, that you

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1 know, people would, generally people would move away and I
 2 think yes, there is absolutely a lot of evidence that a lot
 3 of people did. I think other people didn't; maybe they
 4 were just above to move, I don't know, but certainly
 5 there's evidence to suggest that other people amongst the
 6 3 000 that you refer to moved away yes, that's correct.
 7 MR SEMENYA SC: And that would be
 8 consistent with past police experience and that's how most
 9 of these public disorder situations are resolved, by
 10 minimum use of force really.
 11 MR WHITE: Hopefully that is the case,
 12 that's the intention, yes.
 13 MR SEMENYA SC: But it was in fact the
 14 case. That's what I'm inviting your opinion on. It was in
 15 fact the case that in Marikana those who were not in the
 16 muti band moved away.
 17 MR WHITE: And again I think I've seen
 18 video evidence and photographic evidence which suggests
 19 that, you know at, in and around the particular time that
 20 we're talking about a number of people started to leave the
 21 koppie. I'm aware, you know, because of evidence that I've
 22 seen that the AMCU leader or president – excuse me, or
 23 whatever the particular title is – I think has addressed
 24 them and has now just left. You know, is it as a result of
 25 what he said to them and people were saying okay, let's

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1 move? Is it before of the police then starting to take
 2 action, i.e. they can see the Nyalas with the wire
 3 starting to roll out? Is it a combination of those things?
 4 I genuinely don't know, but I'm absolutely saying to you
 5 yes, you know, from the evidence I've seen that at a point
 6 when the wire is rolling out and therefore the point after
 7 the gentleman from the AMCU has spoken and has left, then
 8 you know, other than the particular group that you're
 9 focussing on, other people are leaving the koppie, yes.
 10 MR SEMENYA SC: And you're familiar with
 11 the fact that the AMCU president, as you refer to, was
 12 pleading with this group of muti band to say please go
 13 away? You –
 14 MR WHITE: I think he actually said "on
 15 my bended knees" or something. There was a reference to
 16 that –
 17 MR SEMENYA SC: Correct.
 18 MR WHITE: - and pleading with them, yes.
 19 CHAIRPERSON: I think further he pleaded
 20 with them to go away, he went on his bended knees, told
 21 them that if they didn't go away they'd be killed and the
 22 evidence is they didn't take what he said seriously and
 23 they said they're ready to be killed and the group – this
 24 is the evidence, there may be other evidence later which
 25 will be different, but the evidence is that there was a

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1 bunched group at the front, who according to the evidence
 2 of Mr X are the makarapas, they were the ones who
 3 apparently didn't pay any attention to what Mr Mathunjwa
 4 had said. Mr Mathunjwa spelt it out quite clearly, told
 5 them to go, pleading with them to do so, went on his bended
 6 knees and told them if they didn't do it they'd be killed,
 7 and they don't appear to have taken that very seriously.
 8 There is an argument of course that there was a bit of
 9 delayed reaction and they then eventually did decide to
 10 leave and that's one of the issues we have to decide later,
 11 but on the evidence that we have, as I've summarised it to
 12 you, the facts are as I've given them to you.
 13 MR WHITE: Yes, Chair.
 14 MR SEMENYA SC: To add to the cocktail,
 15 to add to that cocktail, I don't know whether it has been
 16 brought to your attention or you have read the evidence
 17 that this involved also an employment environment involving
 18 migrant labour where you find people in the majority coming
 19 out of the Eastern Cape and coming to work in a different
 20 North West province up in the country. Has this been
 21 brought to your attention?
 22 MR WHITE: I haven't in all honesty seen
 23 evidence to that effect, Chair, but having had the
 24 privilege to be here for a number of days now, certainly
 25 I've been made aware of that intricacy, if you like, as a

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1 result of just conversations that I've had with my legal
 2 team as they've tried to, you know, explain sort of some of
 3 the context. So the issue of migrant labour I know very
 4 little about, but I'm familiar that there is an added
 5 complication around that. But as I say, that has been on
 6 the basis of conversations with my, the legal team who I've
 7 spent obviously a lot of time with, as opposed to I don't
 8 know that I could point to specific evidence that I've seen
 9 to that effect.

10 MR SEMENYA SC: And they come and work
 11 using a language quite different and distinct from the
 12 language of the people who live in those neighbourhoods.

13 MR WHITE: I'm not aware of that, but I
 14 know that from the 13th I think there was evidence around a
 15 particular language and –

16 CHAIRPERSON: No, no, there are two
 17 points. There are two points. The first point is most of
 18 the rock drill operators were people – most, if not all of
 19 the rock drill operators, were people who didn't come from
 20 the Rustenburg area. They came from what is known as the
 21 labour-sending areas. Most of them came from Eastern Cape,
 22 Pondoland, others came from Lesotho and Swaziland and so
 23 on, Mozambique I think too. Most of them were Ponds
 24 though, from Pondoland, and the language they speak is
 25 Xhosa. The people in the Rustenburg Marikana area, they

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1 speak Setswana, which is a Tswana language. So they were
 2 different ethnic group, spoke a different language. That's
 3 the first point.

4 The second point is that on the mines they have a
 5 lingua franca which is known as Fanagalo, which is actually
 6 an artificial language composed of bits of various of the
 7 vernacular languages, some of them so-called Nguni
 8 languages like Zulu and Xhosa, and some of them bits of
 9 Sotho and Tswana and so on.

10 The evidence in relation to what happened on the
 11 13th, the Monday, and thereafter when Lieutenant-Colonel
 12 McIntosh came and negotiated, the language used was
 13 Fanagalo, this artificial language which is used on – this
 14 lingua franca used on the mines. That's the point.

15 But the further point is that – I try to use a
 16 term you may understand – these people come from, most of
 17 the workers are migrant labourers, they are what would be
 18 known in German as "gastarbeiters,"
 19 [14:32] Except I think a lot of the gastarbeiters
 20 actually permanently stay in Germany, many of them work for
 21 BMW and they live in Bavaria making BMW motor cars. They
 22 come from Turkey and various other places but the position
 23 appears to be in Europe that many of them then put roots
 24 down and stay permanently in the country to which they've
 25 come and in which they work. The experience here is while

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1 some of that happens but not very much. Generally speaking
 2 our gastarbeiters come, work in the mines and other
 3 industries and so on and then go back to the places from
 4 which they come, taking the money they've earned. They
 5 remit money, of course, to their families while they're
 6 working but they also try to save money and go back. In
 7 many cases buy smallholdings and lead a traditional kind of
 8 life raising cattle and that sort of thing. That's the
 9 background, the migrant labour system has operative in this
 10 country for well over a century if not a century and a
 11 half. And there's all sorts of problems it brings in its
 12 wake which are matters that this country will have to deal
 13 with in the years to come. But its very central to what
 14 goes on not only in the Lonmin mine but mines generally. I
 15 think that's the – I'm sorry I had to give you a little
 16 lecture but that's really the background you need to know
 17 to understand the point that Mr Semenya is putting to you.
 18 Did I put it correctly, Mr Semenya?

19 MR SEMENYA SC: Indeed, Chair, and just
 20 around that point of – I don't know if it's been brought to
 21 your attention that the permanents in Rustenburg it's also
 22 undermined because the people there would consider them
 23 alien. In fact, Chair, you'd recall Advocate Dira acting
 24 for Bapo ba Mogale saying they came and infested our land
 25 here. So I'm trying to –

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1 CHAIRPERSON: Sorry, Bapo ba Mogale the
 2 witness, the Bapo ba Mogale is the tribal authority, it's
 3 the tribe of people who are Setswana, they speak Tswana.
 4 The evidence or the assertion made to us by the counsel who
 5 appeared for them in an application we had some time ago,
 6 there was a great deal of resentment by these people to
 7 this influx of migrant labourers who came and took the jobs
 8 away and the money they would have otherwise earned and so
 9 on. So there is a – of course then it's correct to use the
 10 expression xenophobia because they're not really foreigners
 11 in the South African sense but they're almost treated as if
 12 they are foreigners if the are from different ethnic group
 13 within South Africa. According to what was put to us there
 14 were quite strong feelings of hostility towards them on the
 15 part of the local people. How true that is I don't know
 16 but that certainly was an allegation of a witness very
 17 strongly made before us. I think that's a correct summary
 18 of the position is it, Mr Semenya?

19 MR SEMENYA SC: It is indeed, Chair.
 20 Yes, Mr White, so I've tried to paint a profile of the 300,
 21 400 people. Now I want to try and deal with the statements
 22 that at least point us to the lengths with which the manner
 23 the perpetrator would review how grisly they were – shall
 24 we go again to exhibit AAAA1.2?
 25 CHAIRPERSON: Which paragraph do you want

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1 to refer us to?

2 MR SEMENYA SC: If we can start at

3 paragraph 12, Chair.

4 CHAIRPERSON: This is an account of what

5 happened on the 13th isn't it?

6 MR SEMENYA SC: On the 12th.

7 CHAIRPERSON: Oh yes, quite right. This is

8 what happened on the 12th the Sunday morning.

9 MR SEMENYA SC: Correct, Chair.

10 CHAIRPERSON: In the vicinity of the

11 hostel and the taxi rank, yes.

12 MR WHITE: Chair, apologies for the

13 interruption, where you want to take me –

14 CHAIRPERSON: AAAA1.2.

15 MR WHITE: Yes indeed and I have it in

16 front of me and –

17 CHAIRPERSON: Page 7 going onto page 8.

18 MR WHITE: Just for clarification, Sir, I

19 apologise and this is a statement from Mr X.

20 CHAIRPERSON: This is Mr X's statement,

21 the first statement, the statement he made in February 2013

22 and he's describing what happened on the Sunday morning

23 when the two security guards, employed by Lonmin, were

24 killed in the vicinity of NUM office and the taxi rank and

25 the hostel and so on.

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1 MR SEMENYA SC: You would see on page 7 –

2 CHAIRPERSON: I should say when I say

3 he's describing what happened he's describing what he

4 alleges happened.

5 MR WHITE: Of course, Chair, thank you.

6 MR SEMENYA SC: If you go to that page,

7 just before paragraph 12, that is an unnumbered paragraph.

8 It just gives us context, we're on page 7 where it starts

9 "On Sunday" do you see that?

10 MR WHITE: I see that point, yes.

11 MR SEMENYA SC: It describes in rather

12 broad terms that they take a decision to go to the offices

13 of NUM and they say took – "The decision was that we are

14 going to fight anyone who stands or block us on our way."

15 That's the background then the security guards come there,

16 if I just rush it through and they were going to fight with

17 their weapons, the knobkerries, the pangas, the spears, the

18 bush knives and they also even had a firearm in their

19 possession. Do you see that?

20 MR WHITE: Yes, I do.

21 MR SEMENYA SC: And if you go to

22 paragraph 12 which is where I'm trying to point our –

23 direct our attention. Then say "The security officials

24 then started to shoot at us and Baai retaliated by shooting

25 back at the security and it was when the situation went out

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1 of control. The security ran away as well while we were

2 attacking them in large number." I emphasise the point in

3 that the attack is in large number. "I saw the two

4 security officials try to get into their vehicle and we

5 blocked them and assaulted with our weapons. I personally

6 stabbed one of the security somewhere on the mouth or face.

7 I stabbed him with a butcher knife I had with me. I saw

8 Baai shooting at a security and took his firearm and saw

9 Anele shooting at other security official. Anele took his

10 firearm and a cell phone. After Baai taking security's

11 cell phone he gave it to one Tjevi. I also saw Mambush

12 taking a two way radio and a cell phone from security

13 official's lying outside a vehicle. I saw one Bhele had a

14 two litre container with petrol and pour it on a security

15 vehicle and it caught fire. Anele took blood from a

16 security using his panga and put blood into a plastic.

17 Bhele then cut off the chin and tongue of a security who

18 was lying outside the vehicle and put them into the plastic

19 that Anele had already put the blood in. One of the guy

20 whom I saw also stabbing a security was Rasta, I also saw

21 Baai pulling a security official out of a vehicle." What

22 I'm saying it's a very grisly description of a brutality on

23 another human being, would you agree?

24 MR WHITE: It's shocking.

25 MR SEMENYA SC: And not typical of that

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1 which you would find in public disorder environment

2 necessarily. If there'd been a killing it's been a killing

3 but this is something else.

4 MR WHITE: Again I haven't come across

5 this type of thing in my experience, no. I have come

6 across situations obviously where people have been killed

7 but in terms of the sort of ritual aspect of the follow ups

8 or post mortem it would seem, that no, Chair, I haven't.

9 COMMISSIONER HEMRAJ: There's a further,

10 when he gave evidence Mr X said that they took a decision

11 that they would kill anyone that came in their way. The

12 statement just says that they would fight with anyone. He

13 specifically said they would kill anyone that came in their

14 way.

15 MR WHITE: Thank you, Commissioner.

16 MR SEMENYA SC: There are other

17 statements of various witnesses. If I have to go there I

18 will, also demonstrating the action of the group being and

19 action in concert. Did your reading of the evidence reveal

20 that picture?

21 MR WHITE: I think that it's fair to say

22 that the evidence revealed a degree of organisation and to

23 some degree a mutual intent, how far that spread across the

24 300 I can't honestly say. But in trying to be fair, you

25 know, Chair, you know I would say that I understand the

1 point that you're trying to make that you know this is not
2 one or simply two individuals who were sort of acting of
3 their own initiative as such. I'm more than happy to
4 accept that point, absolutely.

5 MR SEMENYA SC: And the evidence we are
6 told when the 300, 400 of them, the evidence is also that
7 when the group of 300 or 400 of them were to go around the
8 kraal, this is now on the 16th, now Mr Noki then says to all
9 of them, no you don't have to run away, we have done
10 nothing wrong. We are all going home and the surprise
11 element and this is where I'm inviting your opinion, is
12 they all agree to go in a direction that he's leading them.
13 So I'm suggesting that the argument on our part will be
14 that they were acting as a single concerted group under
15 command and instruction with a bend on a murderous route.

16 MR WHITE: I think ultimately that's a
17 question of fact is to whether they were or not and that's
18 obviously for yourself, Chair as the Commission. If it's
19 helpful to the Commission, as I've said, I do see, you
20 know, evidence of a number of people at least acting in
21 concert as opposed to these people all acting as
22 individuals. Could I again offer to the Commission if it's
23 helpful, you know, again I have plenty of experience of
24 this. I've seen crowds of 200 or 300 who will open up
25 despite the fact that they're throwing stones or whatever,

1 members or a number of the members of the group act in a
2 way totally out of character because of this de-
3 individuation effect of operating in a mob situation. I
4 take it you must have encountered periods, evidence of that
5 kind in your experience.

6 MR WHITE: If it's helpful, I actually
7 make specific reference to some academic learning within my
8 final statement. I make particular reference to work by
9 Professor Stott. I think at the time he was connected with
10 Liverpool University but I'm not sure if he still is and
11 Professor Stott does a lot of work with the UK police
12 generally. He is involved in training, he is involved in
13 helping to develop doctrine. But I think that one of his
14 central themes is that when he first started engaging with
15 the police a number of years ago he felt that perhaps the
16 doctrine and the thinking that informed that that his
17 concern was out of date because it largely engaged with
18 what are traditional crowd management theories informed as
19 far back by Gustave Le Bon from the sort of late 1900s.
20 Sorry 1800s which talked about mob mentality and a crowd
21 acting as one. Stott's work along with others looks at it
22 very differently hence his work would be referred to as the
23 elaborated social identity model. And within that what he
24 would talk about is that people actually still act as
25 individuals to some extent. And this is part of the thing

1 a large section of them perhaps to the side of the middle
2 of the crowd will open up revealing someone standing with a
3 gun behind them. The gunman will fire a number of shots
4 towards the police and the crowd will immediately then
5 obviously move back across shielding our sight of the
6 gunman while he gets away. You know again – so I've
7 experience of people that act in concert.

8 CHAIRPERSON: So that then is an
9 illustration of all or most of the members of the group
10 acting almost as one.

11 MR WHITE: Hopefully it's an example of
12 experience of organisation, a lot of people certainly
13 acting, understanding a plan and operating in concert with
14 it. I absolutely accept that there was no element of this
15 concept of protection by muti or whatever in the context
16 that I'm familiar with. But just out of that and hopefully
17 for assistance in relation to my assistance to you, Chair
18 as someone who has a degree of experience in this type of
19 thing, so that was specifically around organisation in
20 crowds.

21 CHAIRPERSON: Mr Semanya also used the
22 word de-individuated and we've had a number of cases in
23 South Africa where expert evidence has been given of mob
24 violence. Experts evidence has been given that there's an
25 element that's called de-individuation and some of the

1 that I was referring to earlier on, it's almost in the
2 actions of the police that might have – forgive my perhaps
3 pre-use of language, almost a radicalisation of fact on
4 some parts of the crowd. And it may well be that perhaps
5 an over reaction by the police might draw together some
6 people who previously were within a crowd almost as
7 individuals and now all of a sudden they have a sort of a
8 common identity because they're experiencing the same thing
9 at the same time by the police. So he refers to it as an
10 elaborated social identity model. But I mean all of this
11 is to say that to a large extent the doctrine in the UK and
12 I think sort of further afield, certainly within Europe
13 would be that Le Bon's sort of theory on this crowd. You
14 know people sort of acting as a single entity because they
15 sort of if you like, get the protection and the anonymity
16 of the crowd. And take on this sort of single mindset,
17 it's the law of thinking. And I say that just in a
18 European context, it may well be and I'm not clearly an
19 expert on this but maybe the introduction of the added
20 ingredient of the muti type issue might change that. I can
21 only offer you my experience and expertise.

22 CHAIRPERSON: I'm just trying to explain
23 to you the word Mr Semanya used, de-individuated was a
24 reference to theories based on the work of Le Bon which was
25 exhaustively covered in a number of matters that came

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| <p style="text-align: right;">Page 31582</p> <p>1 before the courts in the 80s and early 90s when there was 2 mob violence and necklacing and that kind of thing. And a 3 lot of evidence was led by experts, psychologists mainly of 4 the Le Bon theory and I was involved in a matter in 5 Upington. This was quite a notorious case at the time, 6 there was a lot of evidence of that kind and what seemed 7 clear was that a number of people were acting out of 8 character. You had a wide range of people, all sorts of 9 occupations and types of personalities and so on and when 10 they were together in this – the action which led to the 11 case in which I appeared they acted out of character you 12 see. And we had evidence which was accepted by the court. 13 And there were a number of other cases where 14 similar evidence was accepted and that's the basis I think 15 of Mr Semenya's question. In fact we've even got training 16 manuals that were put before the Commission, police 17 training manuals where the Le Bon theory is expounded as 18 sort of doctrine accepted by the police. So I put that to 19 you for what it's worth. Of course it also has a bearing I 20 take it on the question you've been debating and that is 21 whether one can criticise the police for making certain 22 assumptions. If the Le Bon theory is accepted as doctrine 23 in police training, whether it's right or wrong is a 24 different question. In judging the conduct of the police 25 and whether they can be criticised for planning on the</p> | <p style="text-align: right;">Page 31584</p> <p>1 MR WHITE: And apologies, Chair, to you 2 and to Mr Semenya. 3 [14:52] In that I misinterpreted when he said one single 4 cell phone on the koppie. I was imagining this was an 5 agreement amongst the three and a half, you know the 3 300, 6 as opposed to just a particular group. Perhaps that's what 7 you're talking about and I'm saying I would have remembered 8 it – 9 CHAIRPERSON: The evidence of X, Mr X is 10 that I think there were various discussions on the koppie 11 and it was agreed – whether, you know there was, certainly 12 whether it was agreed by everybody is something he can't 13 talk about, but it appears to have been accepted without 14 dissent as it were, you know, vocalised express dissent, 15 that that would be what would happen, that there'd be only 16 one cell phone. That's Mr Semenya's question. 17 MR SEMENYA SC: Correct, and - Chair, 18 yes, thank you – and also that seems to be an explanation 19 for the death of Mr Twala on the 14th, who it was found 20 after interrogation he had a cell phone and that had 21 airtime on it. That information has, are you aware of it? 22 MR WHITE: I'm familiar with evidence 23 concerning the death of the gentleman that you talk about. 24 I'm familiar that there was evidence in relation to 25 discussions specifically about the fact that he had to</p> |
| <p style="text-align: right;">Page 31583</p> <p>1 basis of certain assumptions. If those assumptions are 2 what they have been taught, if those assumptions are 3 doctrine accepted by the police and accepted by the courts 4 over the last decades then it's difficult to criticise 5 them. I think that's all – I'm sorry if I took your 6 question away from you, Mr Semenya, but that's basically 7 the point you were building up go I take it. 8 MR SEMENYA SC: Indeed, Chair. Now, Mr 9 White, I don't know if this information has your attention 10 but there was even a decision at the koppie that only one 11 cell phone be allowed there. Has that information been 12 brought to you? 13 MR WHITE: I don't think I'm aware of 14 that particular piece of information. I'm not sure if I've 15 seen that and I've forgotten it, I think it's quite a 16 significant point, the fact that it is only once I'm sure I 17 would remember it. And I'm more than happy to engage with 18 that piece of evidence if you want to direct me to it or 19 alternatively it's a more general point that you're making, 20 I'm happy to hear your question. 21 CHAIRPERSON: I think you can accept that 22 that is the evidence. Again it's evidence from Mr X, 23 whether Mr X's evidence is going to be believed at the end 24 of the day is a matter none of us knows the answer to at 25 this stage but that certainly is the evidence he gave.</p> | <p style="text-align: right;">Page 31585</p> <p>1 mobile phone. I'm not familiar with the, I suppose the 2 causal connection necessarily that I think you refer to 3 that perhaps because he had a mobile phone and there had 4 previously been agreement that there would only be one on 5 the koppie, then in some respects that marked his fate. 6 I'm not aware of that particular aspect, I would have to 7 say. 8 MR SEMENYA SC: Now I'm painting that 9 picture to drive the point that collating ongoing 10 intelligence about the thinking of this group, what they 11 are planning to do, when are they planning to do it, how 12 they are planning to do it, is seriously compromised in the 13 light of the set of facts I'm painting. Would you accept? 14 MR WHITE: Sorry, when you say is 15 seriously compromised, I thought that all of the things 16 that you said, what you were suggesting is all of these 17 things tend to suggest that, you know, this is a group 18 acting in concert as opposed to it compromises that fact, 19 as opposed – 20 MR SEMENYA SC: No, it would compromise 21 the police capability of finding reliable intelligence to 22 inform their planning. 23 MR WHITE: It may well have an impact on 24 it, I mean if this, yes, if this group is acting, and I'm 25 aware of other evidence which basically suggests this is a</p> |

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1 tight-knit group and it's very hard to penetrate and of
 2 course therefore that, yeah, I'm absolutely happy to accept
 3 that that is going to have an impact on the police's
 4 ability to be able to actually get intelligence from within
 5 the group. Whether it makes it impossible, I don't know,
 6 but I'm more than happy to accept the premise that of
 7 course it's likely to make it more difficult, yes.

8 MR SEMENYA SC: Now when I tried to
 9 follow your evidence about inadequate intelligence in
 10 relation to the Marikana operation, did I understand you to
 11 say the intelligence was inadequate as a function of one or
 12 other negligence on the part of the police in not picking
 13 it up when it was there?

14 MR WHITE: I made the point that when I
 15 was engaging with the evidence and I saw the exhibit TT5,
 16 which was labelled as a composite of all of the
 17 intelligence that was available to the police throughout
 18 this operation, and on that piece of paper there were 10
 19 entries. I think if memory serves me correct, and if
 20 you're prepared to indulge me from memory as opposed to me
 21 looking at it, but I think the first three, possibly four,
 22 maybe three entries relate to incidents that happened in
 23 February. I think then the fourth one –

24 CHAIRPERSON: The point was there were
 25 basically only three –

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1 MR WHITE: Two, possibly three, yes –
 2 CHAIRPERSON: - items, two or three
 3 items –

4 MR WHITE: Actionable –
 5 CHAIRPERSON: - of what you would call
 6 intelligence in the document. You were surprised, regard
 7 being had to the period it covered, that they only had two
 8 or three bits of information and that you suggested
 9 indicated inadequate intelligence gathering, as I
 10 understood your evidence.

11 MR WHITE: That's correct, Chair, and
 12 then I went on to say that even engaging with one of the
 13 pieces of evidence which I would consider to be actionable
 14 intelligence, and I referred to the statement of Brigadier
 15 Engelbrecht and the conversation then that he had with
 16 General Mpembe when it was obvious that it seems to me that
 17 Brigadier Engelbrecht didn't feel that the intelligence
 18 that he had actually taken the trouble to send a text on to
 19 Mr Mpembe and subsequently speak to him about it, had been
 20 auctioned in the way that he would have expected it. So my
 21 comment was in relation to intelligence I was surprised at
 22 how little there was and I was therefore making an
 23 assumption – and I stand by it – that therefore, you know,
 24 the operation must be compromised up to a point in relation
 25 to that lack of intelligence, and then secondly the point

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1 that even where there was actionable intelligence there are
 2 questions with regards to how properly that was acted upon.

3 CHAIRPERSON: That related to what
 4 happened on the Sunday, Sunday the 12th. What the police
 5 were supposed to do was to beef up – if that's the right
 6 word – the visible policing activity in the light of the
 7 information received, and that they didn't seem to have
 8 done properly, hence these incidents that took place that
 9 we've been talking about, the security guards and so on,
 10 and according to Brigadier Engelbrecht General Mpembe was
 11 dissatisfied that there hadn't been appropriate response to
 12 the intelligence.

13 Of course what we know is thereafter there's a
 14 massive increase in the forces available – forces is a word
 15 I don't like – the members of the service who were there
 16 who were responding to the threat, as it were. It was a
 17 relatively low-key operation, as far as one can tell from
 18 the evidence, on the Sunday but certainly as the time went
 19 on the degree of intensity of police operation increased
 20 dramatically. So it doesn't follow that intelligence
 21 information would have been responded to perhaps as
 22 inadequately as was the case on the Sunday, but I think to
 23 put the whole thing in context.

24 I'm told I may be wrong when I said that the
 25 security officers killing took place because of the lack of

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1 visible policing, but anyway, the rest of it was right,
 2 that there was a message sent, information sent to Mpembe
 3 which he passed on and he later expressed disappointment
 4 that it hadn't been adequately responded to. That part is
 5 correct, is it not, Mr Semenya?

6 MR SEMENYA SC: Yes. Yes, Chair, that
 7 part is correct –

8 CHAIRPERSON: But the point I was making
 9 was that thereafter there was a dramatic build-up of
 10 resources, police resources and so that fact didn't
 11 necessarily operate either at all or as strongly
 12 thereafter.

13 MR SEMENYA SC: Yes. Mr White, I wanted
 14 us to –

15 MR WHITE: Perhaps –
 16 MR SEMENYA SC: - to tidy – sorry?
 17 MR WHITE: Perhaps just for a point of
 18 clarification therefore in relation to my evidence is that
 19 - I think I commented on this yesterday – given the
 20 sparsity of the intelligence and the fact that Brigadier
 21 Engelbrecht contacts General Mpembe in relation to this
 22 particular piece of evidence, and I absolutely understand
 23 your point, Chair, that the resources for this operation
 24 were gradually building up, but you know, for me it's, I
 25 think it's important to note, I noted that not only was

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1 this one of two or three specific pieces of intelligence;
 2 the fact that Brigadier Engelbrecht, who is I think a very
 3 senior person in the Intelligence Branch, feels that it is
 4 so significant and so important that he contacts the
 5 overall commander in relation to this - I appreciate, you
 6 know, resources are difficult - it seemed to me that they
 7 had was around visible policing in order to try and police
 8 out this threat.

9 Chair, you referred yesterday quite correctly to
 10 a situation in my country where given the longstanding
 11 nature we would have informers placed within particular
 12 organisations. Sometimes the intelligence that comes back
 13 from that is very specific, sometimes it's less so. We
 14 would have the experience whereby say for example we know
 15 that potentially there was going to be a bomb within the
 16 Belfast city centre in a particular area, we're not sure
 17 exactly the time, exactly where it's coming from or
 18 whatever. One of the responses to that would be to have a
 19 very visible policing presence. Firstly if that
 20 intelligence is absolute accurate and therefore then a bomb
 21 is moving in, there's the possibility of interrupting that,
 22 but number 2, because if you put that very visible policing
 23 presence out the people who are behind this threat, you
 24 know, they're careful and conscious too; all of a sudden
 25 they see heightened policing presence and they start to

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1 think to themselves, 'Oh, the police know something,' and
 2 therefore that might deter the movement of the bomb in the
 3 first place. We would refer to that as policing out the
 4 threat.

5 It seemed to me that the conversation that
 6 Brigadier Engelbrecht was having with Mr Mpembe in relation
 7 to here's this particular piece of intelligence is that
 8 seems to be what he had anticipated or what he wanted to
 9 happen. I think in fairness to Mr Mpembe when they had the
 10 subsequent conversation his reply is "It didn't happen as I
 11 intended," so I don't know, I'm blind to what particular
 12 instructions Mr Mpembe gave and how let down he may have
 13 been by other people, but the fact remains that actually
 14 here was this identifiable piece of evidence, or
 15 intelligence that they might have been able to do something
 16 about and it certainly wasn't done to the satisfaction of
 17 certainly Mr Engelbrecht and potentially Mr Mpembe as well.

18 MR SEMENYA SC: There are two distinct
 19 things, Mr White, I'm trying to tidy with you. The one is
 20 there was intelligence not properly acted upon, and that's
 21 not what I'm discussing with you. I want to discuss the
 22 second part. Is it your evidence that the police were
 23 remiss in collecting intelligence that was there?

24 MR WHITE: I'm saying I was very
 25 surprised at the lack of intelligence. I don't know the

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1 reason why there was such a lack of intelligence. I have
 2 seen evidence, including the statement for example of
 3 Officer Victor, which indicates some of the activities that
 4 he had undertaken in order to try and obtain further
 5 intelligence. I am not, I haven't been provided I don't
 6 think with, you know, the full explanation with regards to
 7 why there was only two or three pieces of actionable
 8 intelligence across the course of a week.

9 I'm saying to you in response I fully understand
 10 and I don't deny, I'm sure that there were many, many
 11 difficulties in trying to obtain intelligence, but I still
 12 come back to the point that the operations specifically on
 13 the 13th and the 16th, the level of intelligence that were
 14 informing those operations was very, very sparse.

15 MR SEMENYA SC: Now I know it is sparse.
 16 I'm saying is it as a function of police remissness.
 17 That's what I'm asking you.

18 MR WHITE: Well, I think that there are
 19 certain pieces of evidence that you could point to with
 20 regards to what you call police remissness. For example
 21 Lieutenant-Colonel Scott I said in my evidence yesterday
 22 issues what I would term an intelligence requirement. He
 23 specifically asks for some intelligence, and then I'm
 24 confident that he gave oral evidence that he never ever got
 25 any response to that. So I think that, you know, that

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1 would be an example whereby there's a remiss.
 2 MR SEMENYA SC: On whose part? Just give
 3 me the individual.

4 MR WHITE: On the part of the South
 5 African Police department.

6 MR SEMENYA SC: Where was that
 7 intelligence and on your part - Chair, I see it is 5 past
 8 3.

9 CHAIRPERSON: Yes, I was looking for
 10 something, but I think - I was going to raise with you
 11 whether we haven't reached the stage where it might be
 12 appropriate to take tea, but do I understand you to say
 13 that it is appropriate?

14 MR SEMENYA SC: It is, Chair.

15 CHAIRPERSON: Alright, well let's act on
 16 that and take the tea adjournment.

17 MR SEMENYA SC: Thank you.

18 CHAIRPERSON: 15 minutes.

19 [COMMISSION ADJOURNS COMMISSION RESUMES]

20 [15:25] CHAIRPERSON: The Commission resumes. Mr
 21 White, you're still under oath.

22 GARY WHITE: (s.u.o.)

23 CHAIRPERSON: Mr Semenya?

24 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):
 25 Thank you, Chair. Mr White, just before break I wanted to

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1 understand what you called police remissness in relation to
 2 intelligence gathering. Are you saying they were remiss
 3 because despite the request by Colonel Scott, no feedback
 4 was given?
 5 MR WHITE: Overall I make the assessment
 6 on the basis of the sparsity of intelligence and you, I
 7 think before tea you'd said there is a sparsity of
 8 intelligence. Dealing with – I'm saying that I understand,
 9 I'm sure there were huge difficulties in relation to trying
 10 to gather intelligence but nonetheless I still think the
 11 outcome therefore raises questions. So I then looked to
 12 specific issues and I deal specifically, Chair, with this
 13 at page 60 of my final statement in paragraph 6.2.2. If
 14 it's helpful to paraphrase, I make reference to the fact
 15 that Lieutenant-Colonel Scott suggests that he had sought
 16 intelligence, sought intelligence on the area's roads and
 17 the attitudes of the area's population. Community
 18 intelligence and tension indicators are the sort of things
 19 that I, is the language that I would use in relation to
 20 what he seems to be seeking. Bearing in mind that he's the
 21 chief planner, he puts out what I've previously described
 22 as what I would consider to be an intelligence requirement.
 23 He says this is what I need in order to help me build this
 24 plan. Lieutenant-Colonel Scott then gives oral evidence.
 25 He talks, he gives evidence potentially – ja, oral evidence

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1 to the fact that no information came back, with the
 2 exception of some small piece of information in relation to
 3 something to do with the roads itself. I can point you to
 4 the transcript where, the specific transcripts, Chair, if
 5 it's helpful. Transcript 13418 to 9 is where, in oral
 6 evidence, Mr Scott under questioning by Ms Le Roux again
 7 talks about this requirement that he issues around
 8 intelligence. And it's in transcript 15125 is where he
 9 then responds in relation to a question from Ms Le Roux and
 10 indicates that he doesn't actually receive any intelligence
 11 back with regards to that matter.
 12 COMMISSIONER HEMRAJ: I have – sorry.
 13 [Microphone off, inaudible] - the lack of that specific
 14 intelligence that he requested impacted adversely on the
 15 planning.
 16 MR WHITE: What I'm attempting to do is
 17 basically say that I struggled to understand how this
 18 operation, over a period of a week, only had 2/3 pieces of
 19 actionable intelligence. I think that the lack of
 20 intelligence significantly impacted on the success or
 21 otherwise of the operation. That's one of my key
 22 criticisms. So engaging with the evidence, in order to be
 23 fair, I have been alerted to the fact that the South
 24 African Police have said that there are specific issues
 25 here which were causing a problem with relation to

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1 intelligence and I'm prepared to accept that. I fully
 2 understand that, so I'm now pointing to particular pieces
 3 of evidence where I'm saying, well, Lieutenant-Colonel
 4 Scott issued an intelligence requirement which would have
 5 helped him. He wouldn't have issued it if he didn't think
 6 it would have helped him and yet he got no response back in
 7 relation to that. So I think, you know, that's evidence of
 8 a contributory factor. Had Lieutenant-Colonel Scott got
 9 information back and specifically in relation to what he
 10 was asking for, would that have had a significant impact on
 11 the ultimate outcome of this operation? I don't know and
 12 to be absolutely fair, I don't think the specific types of
 13 intelligence that he was asking for would have made this
 14 big dramatic effect, but I'm using that basically to say,
 15 look, I think there are intelligence failures here overall.
 16 Again I come back to my main criticism, an operation this
 17 scale of magnitude running over this period of time with
 18 such a dearth of intelligence and now here is an example,
 19 Chair, to you to show you that how clearly the processes
 20 were not properly working, which basically helps to
 21 reinforce my overall points. So I'm not saying that the
 22 specific piece of intelligence would have had, you know,
 23 the impact of changing the outcome of the tragedy of
 24 Marikana.
 25 COMMISSIONER HEMRAJ: The question is

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1 whether the particular intelligence that he requested and
 2 the lack of any response adversely affected the planning
 3 because he was the chief planner? What is the answer to
 4 that question?
 5 MR WHITE: I think it adversely affected
 6 the planning because he is the chief planner, yes.
 7 COMMISSIONER HEMRAJ: How so?
 8 MR WHITE: Well, ultimately Lieutenant-
 9 Colonel Scott was trying to establish, you know, what the
 10 view in the local community was and what basically, to try
 11 and find information around the attitudes of people
 12 generally. So when we're talking about this crowd on the
 13 koppie, whilst we've been focusing very much on the warrior
 14 group that's just been described – it's not my description
 15 but that's how it has been described – but the information
 16 that he was seeking was then perhaps going to be
 17 informative in relation to how other people might respond
 18 to police interaction, because potentially if the police
 19 had have moved forward, maybe people – maybe people in the
 20 community said, we want nothing to do with these people, in
 21 fact we would like the police to deal with them really,
 22 really harshly because we're frightened of them, we're
 23 concerned about them. Maybe people in the community would
 24 have actually said, look, to be honest with you, you know,
 25 they appear to be making sort of threats and gestures and

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1 whatever but actually you know what, we know a number of
 2 them and I don't think there's anything in that. Maybe
 3 they would have been basically saying, look, at the end of
 4 the day these are the people who are actually standing,
 5 fundamentally standing up for our rights so we have a
 6 degree of sympathy with them. Those sorts of things then
 7 would have potentially factored into this – say for example
 8 you take the last premise, then you've got to take into
 9 consideration, well, if we take any action in relation to
 10 this warrior group, actually the intelligence is telling us
 11 that the other 3 000 people are potentially going to be
 12 very supportive of them. So instead of dealing with the
 13 group that's potentially going to be resistant to the
 14 police, which is 300, maybe then the activities that the
 15 police take, because of the community intelligence that's
 16 coming back, suggests that we're going to engage with a
 17 group who are going to be resisting us, which is 3 000. I
 18 think that is particularly significant information.

19 COMMISSIONER HEMRAJ: The basis of that
 20 is that the community that you talk – you equate the
 21 community to the 3 000 people?

22 MR WHITE: I simply say that the
 23 community in Marikana are a source of information and
 24 intelligence. I think, in my experience, it's up to the
 25 police to explore every avenue and I think to a large

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1 extent Colonel Scott – I'm assuming, I might be wrong –
 2 agrees with me. That's why he issued that intelligence
 3 requirement and yet he got nothing back.

4 COMMISSIONER HEMRAJ: I'm not sure he
 5 agrees that it had an adverse effect on his planning but he
 6 agrees that he asked for it and didn't receive the
 7 information.

8 MR WHITE: Apologies, Commissioner, just
 9 to be clear. When I said that I think he agrees with me,
 10 in that I'm saying that if he – the fact that he issued
 11 that intelligence requirement, I think that logic would
 12 suggest that Colonel Scott feels that the information that
 13 would come back is going to be of value to him, otherwise
 14 why would he issue it? Whether or not, with no information
 15 coming back, he feels that that had a significantly
 16 detrimental effect on his planning, I don't know.

17 COMMISSIONER HEMRAJ: Equally, if he
 18 didn't get the information, he must have planned
 19 accordingly, mustn't he?

20 MR WHITE: Well, obviously he is taking
 21 decisions in the absence of that information but I think
 22 that he does give further oral evidence that obviously, you
 23 know, the planning is to some extent undermined by the lack
 24 of intelligence.

25 CHAIRPERSON: I want to deal with another

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1 aspect of intelligence. On page 60 to which you've
 2 referred us, from the third line downwards you talk about
 3 the kind of information which you would have expected to
 4 see. "This might have included information in relation to
 5 the intentions of the protesters, i.e. how long they
 6 intended to maintain their protest, details on individual
 7 key members of the groups, where the majority of the people
 8 who left the koppie each evening went, how many remained on
 9 the koppie overnight and who they were, the likely number
 10 of firearms, et cetera." You say, "I would have expected
 11 to see this information being updated and fed into the JOC
 12 on an ongoing regular basis." Now some of that information
 13 might have been difficult to get, the intention of the
 14 protesters, how long they intended to remain and so on. So
 15 the indications, I think, are that they intended to remain
 16 there until they got their R12 500, but what we do know,
 17 because Brigadier Engelbrecht tells us this, is a process
 18 was on the go to get certain information. He talks about,
 19 I mentioned it to your yesterday, in his statement, they
 20 got a whole lot of detectives from Gauteng, they spent
 21 their time analysing the still photographs and I think the
 22 videos together with Lonmin human relations people to try
 23 to identify particular people. Presumably they would have
 24 concentrated, I would think, on those who were visibly
 25 bearing not just sticks and so on but pangas and assegais

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1 and possibly even firearms. Then presumably they would
 2 have expected the Lonmin people to say, yes, that is Bill
 3 Jones and this is his address, he lives in this hostel or
 4 he lives in a shack in the informal settlement and so on.
 5 That appears to have been an ongoing process which I can
 6 only assume, we may have more evidence later but I can only
 7 assume that it hadn't yet reached finality. I understand
 8 your point is they should really have given the results as
 9 and when they came in but it does look as if they were
 10 still busy with it and they weren't yet ready to do
 11 anything specific with it. You also refer to the proposal
 12 to have a cordon and search based on – I think Mpembe had
 13 talked about, yes, it's paragraph 6.2.3 on page 61 - you
 14 say, "I note that stage 5 of the operational plan involved
 15 'intelligence led follow-up operations to arrest at places
 16 of residence' and stage 6 of the plan involved a cordon and
 17 search operation which necessarily would have required
 18 intelligence to be effective." You say authorisation was
 19 given for this operation but there appears to be no
 20 intelligence gathered to support that operation. Well, my
 21 understanding of that is this, if they arrested people as
 22 they were proposing to arrest people, I think they hoped to
 23 get information from them which would have assisted them
 24 with stage 5. As far as stage 6 was concerned, that
 25 appears to have been dependant on two things that I

1 mentioned to you yesterday, one is the results of this
 2 analysis of the still photographs read with the information
 3 they hoped to get from Lonmin and the other was a response
 4 from NUM in consequence of the request that General Mpembe
 5 made to Mr Zokwana that the NUM people must tell the police
 6 which of their colleagues and miners have got dangerous
 7 weapons and where they keep them and so on. And that
 8 request was only made on the Wednesday night and that was
 9 of course the night the decision was taken that, come what
 10 may, if the weapons weren't handed down, Thursday was D-
 11 day. So there wasn't much, there wasn't any time to react
 12 to that. That, I would think, appears to be the answer to
 13 the point you make. It's not necessarily correct to say no
 14 intelligence had been gathered but certainly not enough
 15 time had elapsed for such intelligence as had been gathered
 16 to be processed and put in a reportable form, but if they
 17 had not decided to go ahead on the Thursday and they
 18 decided to wait until the Friday when they had more
 19 information of the kind I've discussed, it might have been
 20 different but that's one of those what-if questions, isn't
 21 it?

22 MR WHITE: Indeed, Chair, but perhaps if
 23 it's helpful I could deal with those because I don't want
 24 in any way that, you know, my information or evidence, say,
 25 is in any way misleading. Let me look at 6.2.3. In the

1 12 o'clock. I thought at one stage, in fact I'm still not
 2 sure that I was wrong, that in fact there was a mistake
 3 when those – I told you those minutes were heavily edited –
 4 that when the minutes were finally produced at Roots some
 5 considerable time down the track, the intelligence given at
 6 12 o'clock was reported as having been given at 6:30, but
 7 in any event that appears to be the point at which the
 8 curtain went down on such evidence as had been gathered
 9 which was reported. It doesn't mean they weren't going on
 10 with the intelligence gathering and who knows what evidence
 11 would not have been available at say 6 o'clock on Thursday
 12 evening if they'd then gone over to the cordon and search
 13 operation which had already been authorised.

14 MR WHITE: I agree with everything you
 15 say, Chair, I think you're absolutely right. And to add to
 16 that, the conversation that I was having with the
 17 Commissioner earlier on with regards to an intelligence
 18 requirement that Lieutenant-Colonel Scott said, it may well
 19 have been that if the police officers were out within the
 20 community and asking for community intelligence, one of the
 21 issues that may have come back might have been some
 22 information which might have been of assistance in relation
 23 to this cordoning application as well. The point that I'm
 24 making here, the very last few words in relation to 6.2.3,
 25 "No intelligence gathered" – "There appeared to be no

1 first instance what I'm saying is, I talk about the cordon
 2 operation and I think that's a very good tactical approach
 3 to take to this. It's again trying to police our threat,
 4 you know, let's go and find these guns. Right. If the
 5 only information/intelligence that they were going to base
 6 that cordon application on was basically on the information
 7 that they got on the arrests at stage 4 or 5 of the
 8 operation, well, then of course there will be no
 9 intelligence prior to the operation. However –

10 CHAIRPERSON: But there were the other
 11 two things. There was the response they were hoping to get
 12 from Mpembe's request to Zokwana and there was the material
 13 they were hoping to get from the analysis of the still
 14 photographs from Lonmin which would have provided
 15 information as to who the people who had weapons and where
 16 they lived. And that apparently was an ongoing process
 17 which I take it we must assume hadn't reached finality
 18 because otherwise if it had been, there would have been
 19 some evidence of it. But of course what we're also told
 20 is, I think the curtain goes down essentially on Thursday
 21 morning because the last bit of information which is
 22 mentioned is the information that was given, albeit subject
 23 to a typographical mistake possibly, at 6:30 I think it was
 24 on Thursday morning, although there's some suggestion that
 25 there was, it was – there was further information given at

1 intelligence gathered to support that operation." Why do I
 2 say that? I say that because TT5 says this is a composite
 3 of all of the intelligence. Now I said that in my first
 4 provisional statement, I've said it in my – so I've been
 5 engaged in this process over a period of time. If there
 6 was ongoing intelligence and perhaps actually it's been an
 7 oversight and it hadn't made it, for the purposes of this
 8 Commission, into TTT – TT5 then, apologies – then I'm sure,
 9 you know, it was within the remit of the SAPS legal team to
 10 actually say, actually TT5, you know, was a moment in time
 11 and here is all of this other intelligence. But you know
 12 here I am sitting in front of you, sir, at the end of June
 13 in 2014, having engaged with this process over a period of
 14 time and one of my key criticisms carried over from my very
 15 first statement is saying about lack of intelligence and I
 16 point to TT5. No-one has ever come back to me and said –
 17 no-one has ever come back to you, more importantly, sir,
 18 and said well, actually TT5 is not all of the intelligence
 19 that actually is available. So I make that judgment on the
 20 basis of that particular piece of evidence that I've
 21 engaged with in relation to the Commission and perhaps,
 22 perhaps, we don't know, had Lieutenant-Colonel Scott's
 23 activities been carried out as he requested, maybe there
 24 might have been more information to assist with that
 25 cordoning operation, is the first point.

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1 The second point is that I'm aware of some
 2 evidence that I've engaged in, engaged with around the
 3 investigative arm of the operation and also perhaps the
 4 intelligence arm and I would also then point to the
 5 statement of Mr Victor, if perhaps reference, is this – I
 6 think it's unexhibited but it's Mr Johannes Jacobus
 7 Hermanus Victor. He's from the intelligence branch and I
 8 engaged with that particular piece of evidence and he talks
 9 about the different things that he was attempting to do in
 10 relation to, you know, gathering intelligence and I support
 11 and congratulate him for that. He talks at 4.9 of that
 12 statement about "interviewing possible witnesses, security
 13 officers and members of the public to obtain intelligence
 14 and to ID suspects. Some witnesses asked me not to divulge
 15 their IDs for fear in relation to their safety," which is
 16 entirely something you can anticipate and of course he's
 17 not going to divulge those but you know I would question
 18 then, well, what happened as a result of those interviews?
 19 If those did in fact take place, what valuable information
 20 did you actually get that you were then able to put into
 21 the system which would then have informed TT5 but, more
 22 importantly, informed the operation? So I mean all of this
 23 is in relation to your question, sir, with regards to, you
 24 know, do I see any particular remiss or failings.
 25 [15:45] Those are two examples as I've engaged with the

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1 evidence. I'm saying I do think that there are some
 2 feelings. I, for the record I have stated frequently that
 3 I absolutely understand that this is not an easy process
 4 because of all of the things that you say, Sir, and all of
 5 the things that have already been put before the
 6 Commission. Was it hard to get intelligence? I'm sure it
 7 was, but I still come back to the point my overarching
 8 criticism is this operation I think was handicapped on the
 9 basis of poor intelligence.
 10 The intelligence composite TT5 has 10 entries, of
 11 which two/three are what I would consider to be actionable
 12 intelligence. It would seem to me that there does seem to
 13 be some degree of breakdown in the processes which actually
 14 feed the intelligence into the people that need that
 15 information in order to make informed decisions. Whether
 16 or not if they had much more intelligence it would have
 17 ultimately led to a different outcome, I genuinely don't
 18 know. That's an assessment that you'll have to make, Sir,
 19 but I'm here to help to provide evidence on the basis of my
 20 experience and that's it.
 21 COMMISSIONER HEMRAJ: Mr White, given the
 22 difficulties that you admit there were and the climate,
 23 it's possible they tried very hard and didn't succeed to
 24 get intelligence.
 25 MR WHITE: That might be so, but again I

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1 would point as a single example to that particular issue
 2 that I've talked about with Mr Scott, he asked, and I don't
 3 think he, nothing came back to him. We would have been
 4 having a different conversation if it had been that there
 5 was a report-back to say that no intelligence is available
 6 within the community, but that's not the case.
 7 MR SEMENYA SC: You see, Mr White, I have
 8 two aspects to take up with you on that answer. One, you
 9 are now throwing conjecture on a question of fact, which
 10 shouldn't be your province. What you are saying is there
 11 was intelligence obtainable but not obtained, or obtained
 12 but not conveyed to Mr Scott. It's a province where you
 13 cannot be as an expert.
 14 MR WHITE: Then I apologise to the
 15 Commission if I've overstepped my boundaries, and I mean
 16 that sincerely. I genuinely do apologise, but you're
 17 asking me a question in relation to intelligence. As I
 18 said on numerous occasions yesterday, I point to the
 19 exhibit TT5 as the key document that I was relying on in
 20 relation to my criticism around intelligence. Then you
 21 asked me a question, was it about, you know, there was a
 22 remiss, in other words people hadn't – I'm assuming, my
 23 assumption was that your question you asked me was that
 24 perhaps people hadn't done what they were supposed to do,
 25 and in my answer to you I was saying well here's some

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1 examples, and genuinely Chair, if I've overstepped my mark
 2 there I absolutely apologise.
 3 MR SEMENYA SC: Because we agree with you
 4 entirely; there wasn't adequate intelligence of the nature
 5 we now know. We now know a lot more and would have planned
 6 this operation a lot, lot better, having a clear
 7 understanding what threat was there, etcetera, etcetera.
 8 But you and I agreed earlier that's not the probe now. The
 9 probe now is to look at what on the ground was the
 10 intelligence available and whether or not they acted
 11 properly based on it. Am I correct?
 12 MR WHITE: Well, of course an operation
 13 can only be based on the intelligence that's available and
 14 then taken appropriate actions and steps in relation to
 15 that intelligence. However, my evidence to the Commission,
 16 you know I was asked, I give evidence in relation to
 17 criticisms and concerns in relation to the operation and
 18 the criticisms, you know one of the chief criticisms was in
 19 relation to the absence of intelligence.
 20 MR SEMENYA SC: Alright, I think we have
 21 exhausted that.
 22 CHAIRPERSON: [Microphone off, inaudible]
 23 fair to use the word "criticism" in this context. What you
 24 say is at the top of page 60, "I would have expected to see
 25 considerably more information and intelligence." That's

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1 line 2 on page 60. "I would have expected it." Then you
 2 say the kind of thing you would have expected, and you then
 3 deal with Scott's request and there appears to be no
 4 response, and you deal with TT5 and TT4, and so on. But
 5 what it amounts to is you expected a lot of information
 6 which, or intelligence, which wasn't available. Whether it
 7 wasn't available because they tried hard and couldn't get
 8 it is something we don't know. We have to speculate about
 9 that. There's in fact a question mark on that.

10 If they got information of the kind you
 11 mentioned, you know the people went home every night and
 12 how many remained on the koppie and the likely number of
 13 firearms, if they got that information, which they may have
 14 got, which we don't know, then of course it wasn't
 15 conveyed. So there are two questions. One thing seems to
 16 be clear; whatever information, if – did they – there are
 17 two points. Did they get information? It may be they
 18 didn't get information despite vigorous efforts to do so.
 19 If they did get information then the criticism would be
 20 they should have communicated that and they didn't. I
 21 think we can accept that they didn't communicate any
 22 information other than what they say they communicated. So
 23 the real question is did they get – should they have got
 24 more information than they communicated? Did they do their
 25 best, or were they slack and lazy and inefficient, and so

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1 on? In other words were they to blame for the fact that
 2 they didn't get information? And without knowing what
 3 efforts they made, without knowing what obstacles they
 4 encountered, without knowing how much resistance there was,
 5 we can't really make a judgment on that, can we? So we
 6 can't criticise them. We can say the intelligence was
 7 "poor" but whether it was culpably poor in the sense that
 8 they should have got more than they did, I'm afraid that's
 9 something on the material before us we can't make a
 10 judgment on. That must be right, surely?

11 MR WHITE: Well then I thank you for the
 12 clarification, Chair, and I'm happy to agree with you.

13 MR SEMENYA SC: Chair, I intend to deal
 14 with video footage to deal with a particular aspect.

15 CHAIRPERSON: Will the video footage take
 16 more than seven minutes?

17 MR SEMENYA SC: Yes. Well, not seven
 18 minutes, but what it would do, it would entail us replaying
 19 it in the morning to make a connection with the questions I
 20 intend to put.

21 CHAIRPERSON: That sounds like a point
 22 that I can't resist, despite my wish to be able to do so.
 23 So we'll adjourn now until tomorrow morning at 9 o'clock.

24 MR SEMENYA SC: Thank you, Chair.

25 [COMMISSION ADJOURNED]

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