RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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



HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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Marikana Commission of Inquiry

Page 30441[PROCEEDINGS ON 14 DECEMBER 2012]1integrated into the SAPS operational appro2[09:30]CHAIRPERSON:The Commission resumes.2order operations. If we talk about the less3Brigadier, you're still under oath.Mr Budlender, you are3we are looking to the use of water canon,	
2 [09:30] CHAIRPERSON:The Commission resumes.2order operations. If we talk about the less3 Brigadier, you're still under oath.Mr Budlender, you are3we are looking to the use of water canon,	Page 3046
3 Brigadier, you're still under oath. Mr Budlender, you are 3 we are looking to the use of water canon,	• ·
	-
4 still cross-examining? 4 gradual response, use of teargas, use of re	
5 MR BUDLENDER SC: Yes, Chair. 5 resort, but however I'm saying there is a g	
6 CHAIRPERSON: But before you pose your 6 will be a gap when we do our operations.	ç
7 next question, you will remember, Brigadier, I asked you a 7 is to have more options. We must not onl	
8 question last night before we adjourned. 8 only because the main purpose of the tear	0
9 BRIG MKHWANAZI: Correct, Chairperson, 9 the area to make sure that spectators can	
10 yes. 10 disperse or to move away from the positio	-
11 CHAIRPERSON: Have you had an opportunity 11 fail with the teargas, what next? Now it b	
12 to think of the answer? 12 problem. So we need just to close that gate	
13 BRIG MKHWANAZI: Chairperson, I've got an 13 more, other less lethal weapon just to see	-
14 answer. Can I give? 14 teargas fails, what else can come up, until 15 14 teargas fails, what else can come up, until	we deal with
15 CHAIRPERSON: Yes, please give it. 15 the situation amicably.	
16 BRIG MKHWANAZI: Yes. Chairperson, I 16 The other point I'm going to mention 17 here extended to be backed to find the termination of terminatin of termination of terminatin o	
17 have actually tried and looked to few issues that maybe 17 Chairperson, is a point which actually crea	
18 were of a shortcoming and become more of the issues that we 18 bad image to the SAPS, that during the int	•
19 have to have a lesson and see which direction we can take 20 in future, and these are firstly, number 1 would be command 20 members to sucid contemination. In other	
 20 in future, and those are firstly, number 1 would be command 20 members to avoid contamination. In othe 21 and control. Command and control. Under command and 21 here is that the gas mask is the one that would be command and 	
5	
 22 control I will clarify why I'm saying that, is that the 22 make sure members are not affected with 23 magnitude of the operation provided important information 23 being used. If one's checking the visuals 	-
24 in terms of managing operation for the future, in the 24 some of the members of SAPS, they move	-
25 sense, the unified command and span of control to address 25 them, they show that they actually get aff	
Page 3045	Page 3047
1 the issues of accountability and the leadership should be 1 teargas. So some of those members are	0
2 entrenched in the operational doctrine. What I mean is a 2 and those members are not in possession	of that type of
3 that under Public Order Policing we've got a span of 3 equipment. So what I'm saying is at least	t in future let's
4 control. However, SAPS as police, we have chain of 4 make sure that we make those equipmen	t available for them.
5 command. So the two, we need just to look at it and 5 At the same time let's give training to the	m as well how to
6 revisit, especially if we have a unified command of 6 utilise them so that if we come to this typ	e of operation
7 control, because looking to the situation in Marikana, we 7 whereby we have an integrated operation	where multi-
8 have a vast area, it was too big in a sense that each and 8 discipline are brought together, at least the	nose members
9 every section must have its own tactical commander, and its 9 must actually manage to deal with the site	uation properly.
10 own tactical commander must all the time communicate with 10 The last point, Chairperson, I want	
11 the operational commander, of which somehow I have a 11 is that I think what is important, after even	
12 feeling that there was some sort of break of communication 12 to embark on a research. The research w	
13 in some other areas most of the time. We need to start 13 it should be at least on a less lethal and le	-
	-
14 improving on that and see if how can we shape it properly 14 which actually whereby we'll be checking	abistuo sabula
15 to make sure that in future we don't have a problem around 15 utilised by other police agencies. That inc	
15to make sure that in future we don't have a problem around15utilised by other police agencies. That includes the communication, all what actually16that. That includes the communication, all what actually16South Africa. As you know very well, I me	entioned from the
15to make sure that in future we don't have a problem around15utilised by other police agencies. That includes the communication, all what actually16that. That includes the communication, all what actually16South Africa. As you know very well, I me17we assist, the training that will assist as well to17beginning that Public Order Policing as a	entioned from the programme after
15to make sure that in future we don't have a problem around15utilised by other police agencies. That includes the communication, all what actually16that. That includes the communication, all what actually16South Africa. As you know very well, I me17we assist, the training that will assist as well to17beginning that Public Order Policing as a poly18understand this command and control situation during the18'94, there were changes, but we learn from the poly	entioned from the programme after m Belgium and I
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1 Continuous basis: at the end of the day we sort out the 2 problem. This is the end of my contribution, Sir. 1 MR BUDLENDER SC. Well they didn't 3 CHAIRPERSON: Thank you very much, 4 Brigadier. Mr Budlender, you said you had two questions 5 you wanted to ask last night before we adjourned – 6 3 each of them had done and then L was put together after 4 4 Brigadier. Mr Budlender, you said you had two questions 5 Yes. 5 BRIG MKHWANAZI: Yes, it was the 6 6 6 MR BUDLENDER SC: Yes. 7 MR BUDLENDER SC: Yes, Sir, I'm afraid 11 1 MR BUDLENDER SC: Yes, Sir, I'm afraid 11 1 Consellor. We're support to go through the final, or 12 10 MR BUDLENDER SC: Yes, Sir, Ym afraid 11 10 Consellor. We're support to go through the final, or 12 10 MR BUDLENDER SC: At the end of the 14 14 Process you worked on the draft presentation, I, which was 14 16 Chairperson, is that it's to be able to indicate in some 13 an expert gives an opinion, he or she has to do so by 14 17 BRIG MKHWANAZI: We's, my understand ithat 14 18 BRIG MKHWANAZI: We's, my understand ithat 14 18 BRIG MKHWANAZI: Chairperson, what 18 18 19 Weighigh all of the information in an independent and 20 16 17 BRIG				
2 problem. This is the end of my contribution, Sir. 2 present exhibit L. They first, I take it all reported what 3 CHARPERSON: Thank you very much, 3 each of them had dee and then L was put lighther after 4 Brigadien. 5 you vented to ask last night before we adjourned - 6 6 MR BUDLENDER SC: Yes, Yes, 1 MR BUDLENDER SC: Yes, and you tak was 8 unli you have this answer before you proceed with them. 1 8 to listen to what the units reported as to what was 10 Its an Mpolu-like two quastions, Chairperson, but it will 1 consolidate information. 11 its an Apport-like two quastions, Chairperson, but it will 1 consolidate information. 12 be ab lin molicitate, 1 will be in that 1 1 the safe to indicate in some 13 an expert, 1 an order to able to indicate, 1 will be in that 1 Bappened is after they have actually put the information 14 the SAP Sacted correctly on the day un uderstand that 1 Bappened is after they have actually out understand that 16 chaiperson, is that I sto be able to indicate, 1 will be in that 18 Bappened is after they have actually put the information 16	1	5	1	Page 3050
3 CHAIRPERSON: Thank you very much, 3 ach of them had done and then L was put together after 4 Brigadier, Mr Budlender, you vaid you had two questions 5 BRIG MKHWANAZI: Yes, it was the 6 MR BUDLENDER SC: Yes, And I suggested you waid 6 7 CHAIRPERSON: And I suggested you waid 6 16 9 take it you may have some other questions as well. 10 BRIG MKHWANAZI: Yes, and you take was as an expert opinion on whether 11 tas an expert, in order to express an expert opinion on whether 11 Counselior. Were support to go through the final, or 12 be a bit more. BRIG MKHWANAZI: Yes, and you suggested some changes 16 the support. It was presentation. 11 BRIG MKHWANAZI: It is correct. 13 BRIG MKHWANAZI: Yes, and you understand that 19 Deprive was adde or comments from the floor whithe 14 brobschulz And the support was device orments from the floor whith the 14 brobschulz Yes adde or comments from the floor whother 15 broblex support to go through the final				,
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5 you wanted to ask last night before we adjourned - MR BUDLENDER SC: Yes. 5 BRIG MKHWANAZI: Yes, It was the information leading to the final product for exhibit L. 6 Information leading to the final product for exhibit L. 6 7 CHAIRPERSO: Yes. 7 MR BUDLENDER SC: Yes. 7 7 MR BUDLENDER SC: Yes. 7 MR BUDLENDER SC: Yes. 7 7 MR BUDLENDER SC: Yes. 7 7 MR BUDLENDER SC: Yes. 7 <t< td=""><td></td><td><u> </u></td><td></td><td></td></t<>		<u> </u>		
6 MR BUDLENDER SC: Yes. 6 information leading to the final product for exhibit L 7 CHAIRPERSON: And I suggested you wait NR BUDLENDER SC: Yes. 9 dake it you may have some other guestions as well. 10 MR BUDLENDER SC: Yes. 10 MR BUDLENDER SC: Yes., Sir, I'm afraid 10 BRIG MKHWANZ1: It is an hydori-like two questions. Chairperson, buit it will 11 its an hydori-like two questions. Chairperson, buit it will Counsolidated information. 11 Counsolidated information. 15 be Ablt more. Brigadier, you've been giving evidence as an expert gives an opinion no whether 14 the SAPS acted correctly on the day in question. 15 the output of the workshop, and you suggested some changes 16 Chairperson, is hat it is to be able to indicate. I will be in that asset and the only the day in question. 15 the output of the workshop, and you suggested some changes 16 MR BUDLENDER SC: And you understand that 10 URB workshop, and you suggested some changes 10 MR BUDLENDER SC: And you understand that 10 URB workshop, and you assign in the onhyot the onyot the parter sastart, into the parter samaling			-	
7 CHAIRPERSON: And I suggested you wait 7 MR BUDLENDER SC: Yes, and your task was 8 until you have this answer before you proceed with them. 1 to listen to what the units reported as to what they had 9 take it you may have some other questions as well. 1 to listen to what the units reported as to what they had 10 MR BUDLENDER SC: Yes, Sir, Fm afraid 10 Counsellor. BRIG MKHWANAZI: It is correct. 11 the SAPS acted correctly on the day in question. 11 Counsellor. Aff the end of the 16 chairperson, is that it's to be able to indicate. I will be in that 15 BRIG MKHWANAZI: Chairperson, what 17 MR BUDLENDER SC: And you understand that 16 Io II? 17 MR BUDLENDER SC: And you understand that 16 Io II? 18 weight gail of the information in an independent and 10 Use Weads our comments from the floor with the 12 BRIG MKHWANAZI: That's correct, and 11 I've said yesterday, mostly what I contributed at was about 13 MR BUDLENDER SC: You were a				
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14MR BUDLENDER SC:During those three days14can't give a number, you were not asked to count them. But15each of the units reported on what it had done on the day14can't give a number, you were not asked to count them. But16in question.15I'm asking you for an estimate. Is it more like 20, or17BRIG MKHWANAZI:Counsellor, it is1618correct. However, the groups were divided. People were17BRIG MKHWANAZI:I will put, Counsellor,19divided into groups. They worked into groups, and our task19definitely.20MR BUDLENDER SC:Thank you. Now in the21product.20MR BUDLENDER SC:Thank you here any one of22MR BUDLENDER SC:And the reports they22those 80 people, approximately 80 people, express the view	12	say yes or no because I only managed to be with the group	12	but with figures I will definitely not be sure.
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24 BRIG MKHWANAZI: That's correct, 24 BRIG MKHWANAZI: No, Counsellor.				
24Division Microvalue1.110, counsellor.25Counsellor. It's the one, exhibit L.25MR BUDLENDER SC:Not one in three days,				

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1	Page 3052	1	Page 3054
1	after this event, suggested that things might have been	1	because when I came here, the main, sole purpose for me to
2	done differently?	2	come here was to talk about training, of which I prepared
3	BRIG MKHWANAZI: Not if I recall,	3	myself about training, but when I sat here, everything was
4	Counsellor.	4	changed now that I have to as well embark on this side of
5	MR BUDLENDER SC: Well, I have to put a	5	the operational side. Then I have to definitely try and
6	question to you, Brigadier, which is a serious question.	6	get myself acquainted so that I can give information if I
7	Was this a meeting aimed at analysing what went wrong at	7	have to give information.
8	the day, or aimed at touching together a version to put	8	MR BUDLENDER SC: Brigadier, the South
9	before the Commission?	9	African Police Service have a tremendously important and
		-	
10	BRIG MKHWANAZI: On my understanding,	10	difficult task to perform for all of us.
11	Counsellor, and with a letter which was sent to my	11	BRIG MKHWANAZI: That's correct,
12	province, the letter was stating that we will contribute on	12	Counsellor.
13	policies, contribute on national instructions, as well as	13	MR BUDLENDER SC: In order to be able to
14	standing orders. That's how my letter was and the	14	perform that task effectively, they need the trust and
15	explanation I received was only based on that, and on my	15	support of the public.
16	arrival as well that's all what actually we speak on. As	16	BRIG MKHWANAZI: That's correct, we
17	the groups were divided doing their tasks, coming back,	17	cannot achieve this work without the community.
18	giving us their product, we have to interact on that.	18	MR BUDLENDER SC: And I want to suggest
19	MR BUDLENDER SC: Let me put the question	19	to you that if something goes badly wrong, that trust and
20	differently. Was it a meeting which had as one of its	20	support will be promoted if the SAPS admitted frankly, and
21	goals to identify matters which had gone wrong on the day	21	say what they will do to make sure that it doesn't happen
22	in question?	22	again. Do you agree with that?
23	[09:50] BRIG MKHWANAZI: I would say no,	23	BRIG MKHWANAZI: I will agree with you,
24	Counsellor, because I think at that stage it was going to	24	and at the same time, after the truth has been unveiled
25	be wrong if we have a meeting that identifies mistakes,	25	properly and a recommendation is there, I think definitely
	fre and the	1.2	is I LAV.
	Page 3053		Page 3055
1	Page 3053 hence already the Commission has been appointed and the	1	Page 3055 it will actually promote trust between Police and
1	hence already the Commission has been appointed and the		it will actually promote trust between Police and
2	hence already the Commission has been appointed and the members who were dealing with them, these are the	R 2	it will actually promote trust between Police and community.
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Page 3056 1 BRIG MKHWANAZI: It's correct. As I 1 as well. So what the question b 2 indicated yesterday that we have all disciplined – deployed 2 was, was this part of the breach	
	Page 3058
2 indicated yesterday that we have all disciplined – deployed 2 was, was this part of the breach	y the counsellor yesterday
	ing identified, attack on
3 especially on spotting event. However, on issues we face 3 the police identified under the ri	sk analysis, and my
4 with Marikana, there was definitely a challenge that we 4 question was, it was not address	sed because if we check to
5 brought a lot of discipline. However, we need just to look 5 the risk analysis, the plan before	e me, it was not actually
6 at it as well to say when it come to that position, how are 6 identified.	
7 we going actually to deal with those issues of command and 7 MR BUDLENDER SC:	But you said you
8 control so that the vastness of the area, it need to be 8 thought there was a valid explanation of the second se	nation for this, namely that
9 coordinated properly; at the end of the day we are 9 they were, Police were anticipat	ing that the strikers would
10 successful.10 hand over their weapons on the	morning of the 16th of
11MR BUDLENDER SC:Secondly, there is a11August.	
12need to conduct research and find ways of obtaining less12BRIG MKHWANAZI:	You're correct,
13lethal options for dealing with public order operations.13Counsellor. It was my opinion t	hat maybe it may happen
14BRIG MKHWANAZI:That's correct.14that the planners, they relied to	the information received
15MR BUDLENDER SC:And thirdly, the15that the following day the weap	on will be laid down and if
16 members who were present on that day should've been issued 16 they will be laid down completel	y it shows that there's a
17 with gas masks.17 sign of peace, of which it never	happened on the day. But
18 BRIG MKHWANAZI: Yes, that's correct. I 18 my answer, it cannot be exactly	correct, but it's my
19mentioned that, Counsellor, especially as a witness to the19opinion, I'm thinking of that.	
20 side of the Police especially if a member will indicate20MR BUDLENDER SC:	Brigadier, your answer
21 that he's feeling something is contaminated, then that need 21 can't simply not be possibly not	 I can't remember the
22 to be addressed, hence some of the members are not issued 22 phrase you used. I put it to you	ı, your answer can't
23 with gas masks because they don't work with public order 23 possibly be correct, the explanation	tion you give, and let me
24 policing. 24 tell you why. The first reason is	that Colonel Scott's
25MR BUDLENDER SC:Now the failure to25plan was drawn on the 14th of A	August before the alleged
Dening house that of the house	
Page 3057	Page 3059
1 issue some members with the gas masks is an error or 1 undertaking to surrender weapon	S ON THE LETH OF AUGUSE SO
2 mintake which you the identified which happened on the	-
2 mistake, which you've identified, which happened on the concern and a concern which that risk warms the process which that risk warms the process which th	on the 16th can't be the
3 day. 3 reason why that risk wasn't ment	on the 16th can't be the ioned. Or rather, sorry,
3 day.3 reason why that risk wasn't ment4BRIG MKHWANAZI:It's a shortcoming, I4 let me put it differently. The expension	on the 16th can't be the ioned. Or rather, sorry, ectation that weapons
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	Page 3060		Page 3062
1	MR BUDLENDER SC: That relates to Colonel	1	incorporate this problem in the, to incorporate a risk
2	Scott's plan, but I want to put it to you that there's also	2	analysis based on a possible attack on the Police had
3	the operational plan which is part of SS3. Do you have	3	originally be occasioned by the alleged undertaking to hand
4	exhibit SS3?	4	the weapons down, the plan would've required revision and
5	BRIG MKHWANAZI: Yes, I've got it, Sir.	5	the incorporation of the risks flowing from the fact that
6	MR BUDLENDER SC: If you will go to the	6	the weapons had not been handed over. Would you agree with
7	third page of that bundle –	7	that?
8	BRIG MKHWANAZI: The date marked 8/08/13,	8	[10:10] BRIG MKHWANAZI: Chairperson, normally
9	that's correct, Sir.	9	what can happen is that if the information is received
10	MR BUDLENDER SC: That is the operational	10	through intelligence that says weapon won't be actually
11	plan compiled with effect from the 13th of August 2012.	11	laid down by the participants, normally there will be,
12	BRIG MKHWANAZI: That is the 13th, that	12	actually it will be normally be documented and maybe that
13	was the date it was compiled.	13	document will be available as an annexure to the plan as
14	MR BUDLENDER SC: And then if you'll go	14	well, if possible, but if I indicate that without having it
15	to the next page, under paragraph 1.3 you'll see under risk	15	been included, it's just my opinion, Chairperson, to say
16	analysis, various risks are identified.	16	maybe it was an agreement, but I still maintain the point
17	BRIG MKHWANAZI: That's correct.	17	to say if the information is through maybe intelligence,
18	MR BUDLENDER SC: And as you pointed out	18	always it's on paper, it's written, and maybe it can come
19	yesterday, that risk does not include the risk of an attack	19	up as an annexure added to the plan itself, because to go
20	on the Police by the strikers.	20	back and write it again, it won't be, occur in that way.
21	BRIG MKHWANAZI: I agree, Sir.	21	CHAIRPERSON: My point is slightly
22	MR BUDLENDER SC: I want to suggest to	22	different. Whether or not a plan is based upon written
23	you, and I'm going to try to show you this a bit later	23	intelligence, if it becomes clear before the plan is put
24	today, that that was an accurate risk analysis. On 13th of	24	into operation that one of the assumptions on which the
25	August there was no risk of an attack on the Police, and	25	plan is based is incorrect, then doesn't the plan require
	As I and a	~~~	· · · · · · · · · · · · · · · · · · ·
1	Page 3061 what created the risk was the implementation of Colonel	1	Page 3063 reconsideration and possible amendment to cater for a risk
2	Scott's plan. There are a lot of conclusions in that, $E = F = 0$	R2.	which has now appeared to be one that has to be dealt with?
3	Brigadier. It's not fair to ask you to answer yes or no.	3	BRIG MKHWANAZI: Chairperson, it is
4	I'll try to show you in due course why I say that. Can we	4	correct. From the beginning I indicated the influence of
5	then move on to Standing Order 262, which I think is also -	5	factors when you plan the operation, whereby actually the
6	CHAIRPERSON: Are you moving away from	6	whole thing comes by the information that comes
7	the risk analysis, or the lack of a risk analysis?	7	continuously from Intelligence and it can come from
8	MR BUDLENDER SC: Yes, I am, Chairman.	8	different people on the meeting, or whatever position.
9	CHAIRPERSON: I'd like to ask a question	9	Obviously there will be changes to ensure that there's some
10	about that. You said yesterday and today that you - I'm	10	of sort of plan how to deal with that type of situation.
11	not quite sure whether this was what you understood from	11	But I won't have a proper position to say what happened on
12	other people or whether this was just your own theory, but	12	the day, why it was incorporated and how they plan to deal
13	you explained the lack of a risk analysis in Colonel	13	with it, but as I mentioned from the beginning,
14	Scott's plan on the basis that there had been an	14	Chairperson, I mentioned my opinion, of which they may have
15	undertaking to lay down weapons at 9 o'clock on the 16th	15	a different answer on that position.
16	and therefore there was no risk of any attack by the	16	MS HEMRAJ SC: Brigadier, if a plan is
17	strikers directed against the Police. But Mr Budlender put	17	made and intelligence comes in which affects the execution
18	to you that doesn't work because Colonel Scott's plan had	18	of that plan in an effective way, surely that plan is then
19	been compiled before there was a suggestion of an alleged	19	subject to being amended, edited, revised?
20	undertaking to lay down the weapons. But I've got a	20	BRIG MKHWANAZI: Chairperson, as I
21	further problem I want to put to you, and that is that by	21	indicated yesterday that before the plan can be compiled,
22	the time the plan was activated, was put into operation, it	22	especially in a march or a gathering of this nature there
23	was known that the weapons hadn't been handed over and	23	must be a meeting that takes place. Within that meeting at
24	weren't going to be. So if the failure - and I use the	24	least there must be information that comes out there how
25	word "failure" with its full meaning - if the failure to	25	the gathering will be held, how the march will be held, if

Page 306 Page 306 1 It is a march, and there must be conditions. All Intell 1 origometric comes from the position, and Intelligence will 2 embarks avecl, coming through with information 3 embarks avecl, coming through with information 1 faste place, and all that. Then the plan will be compiled. 1 movored using water comon the protectors, and information 2 embarks avecl, coming through this information 1 faste place, and all that. Then the plan will be compiled. 2 movored using water comon the protectors, and its marks and 2 what is then said, and then number of DP in the degression line than 3 escend line of armed members of DP in the degression line than 3 escend line of armed members of DP in the degression line than 3 escend line of armed members of the Tartical Response Team, 3 escend line of armed members of the Tartical Response Team, 3 escend line of armed members of the Tartical Response Team, 3 escend line of armed members of the Tartical Response Team, 3 escend line of armed members of the Tartical Response Team, 3 escend line of armed members of the Tartical Response Team, 3 escend line of armed members of the Tartical Response Team, 3 more radius, and they attacked the members of the Tartical Response Team, 3 more radius and they attacked the members of the Tartical Response Team. 3 more radius and they attacked the members of the Tartical Response Team. 3 more radius and they attacked the members of the Tartical Response Team. 3 more radius and they attacked the members of the Tartical Response Team. 3 more radius and they attacked the members of the Tartical Response Team. 3 more radius and they attacked the members of the Tartical Response Team. 3 more radius and the second line of members of the Tartical Response Team. 3 more radius and the second line of tartical tartical response would be from the second line of members of the Tartical Response Team. 3 more radius and the tartical tart				
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1	Page 3068 BRIG MKHWANAZI: Correct.	1	Page 3070 violence.
2	MR BUDLENDER SC: On the next page, step	2	BRIG MKHWANAZI: That information I got
3	5 identifies information which must be collected.	3	it, Sir.
4	BRIG MKHWANAZI: Which paragraph is that,	4	MR BUDLENDER SC: That's consistent with
5	Counsellor?	5	what you've been told.
6	MR BUDLENDER SC: It's step 5 under	6	BRIG MKHWANAZI: That's information I got
7	paragraph 9, sub 2 –	7	it, Sir, that there were, actually there was that gap.
8	BRIG MKHWANAZI: Ja, I see it now, thank	8	However, there were lot of activities that were taking
9	you.	9	place which were not violently at all, yes.
10	MR BUDLENDER SC: And if we look at that	10	MR BUDLENDER SC: So at the time when the
11	we see that it's anticipated that in this ACCU controlled	11	operation was, or at the time when stage 3 was initiated
12	operation under 5, sub 2, there might be an outbreak of	12	just before 4 o'clock, there had been no violence for 48
13	violence and under 5, sub 4, there might be firearms held	13	hours.
14	presumably by the participants.	14	BRIG MKHWANAZI: That's how I got
15	BRIG MKHWANAZI: Correct, Sir.	15	information up to so far, Sir.
16	MR BUDLENDER SC: So from this we can	16	MR BUDLENDER SC: The barbed wire was
17	conclude that POPs, or the ACCU may have operational	17	then rolled out. Within 30 minutes 34 people had been
18	control where violence is likely and where the participants	18	killed and more than 70 had been injured. Is that correct?
19	have firearms?	19	BRIG MKHWANAZI: I do get the position,
20	BRIG MKHWANAZI: It is correct, Sir.	20	Sir, that 34 people were actually killed. However, I'm not
21	However, we need to ensure what type of firearm are they	21	certain with the comment to say the barbed wire was
22	having in their possession, and the danger is poses to the	22	deployed, then 34 were killed. I'm not sure the - maybe
23	members of SAPS during the operation, or the other members	23	you can clarify it better.
24	of the community. Then thereafter we have to see is it	24	CHAIRPERSON: Yes, Mr Semenya?
25	going to be sufficient only for Public Order Policing to	25	MR SEMENYA SC: Chairperson, I don't know
	Page 3069		
1 2	handle that situation. If not, we can have to look to others as well.	1 R 2	Page 3071 whether my understanding of the evidence is correct. The victim with a skull on the chest would have been the
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2 3 4	handle that situation. If not, we can have to look to others as well. MR BUDLENDER SC: I understand. Now yesterday you, and I think perhaps on the previous day, you	3 4	whether my understanding of the evidence is correct. Thevictim with a skull on the chest would have been theTuesday.CHAIRPERSON:Yes, but that's where the
2 3 4 5	handle that situation. If not, we can have to look to others as well. MR BUDLENDER SC: I understand. Now yesterday you, and I think perhaps on the previous day, you told us about what seems to me to be a very important rule,	3	whether my understanding of the evidence is correct. The victim with a skull on the chest would have been the Tuesday. CHAIRPERSON: Yes, but that's where the 48 hours comes from, from the – there's some suggest, I
2 3 4 5 6	handle that situation. If not, we can have to look to others as well. MR BUDLENDER SC: I understand. Now yesterday you, and I think perhaps on the previous day, you told us about what seems to me to be a very important rule, the rule of situational appropriateness.	3 4 5 6	whether my understanding of the evidence is correct. The victim with a skull on the chest would have been the Tuesday. CHAIRPERSON: Yes, but that's where the 48 hours comes from, from the – there's some suggest, I think, wasn't the body found about 2:30 on the Tuesday
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	Page 3072		Page 3074
1	that people doesn't go through. That is information I	1	BRIG MKHWANAZI: It's possible.
2	received –	2	MR BUDLENDER SC: I put it to you that
3	MR BUDLENDER SC: - experienced – and	3	it's also common sense that if the strikers had firearms,
4	tell me whether I'm right – in a large demonstration the	4	they would be more likely to keep them on the koppie at
5	people who were involved ran – from the very deeply	5	night where they were safe than to carry them home through
6	committed, to the middle group, to people who are really	6	the streets.
7	just hangers-on – we'll come to the extent necessary to how	7	BRIG MKHWANAZI: I'm not sure,
8	it happened – the shootings took place, although you have	8	Counsellor, on that, where the safeness of the weapon will
9	no first-hand knowledge of that and so it may not be	9	be, I'm not sure. I'll hear it from you.
10	appropriate to ask you much about it, but all I –	10	MR BUDLENDER SC: Well, if you have
11	BRIG MKHWANAZI: That's correct, I agree	11	weapons which are at risk of – which you fear might be
12	with you.	12	confiscated, you're not likely to walk through the streets
13	MR BUDLENDER SC: We must have been at	13	with them.
14	the same demonstration, Brigadier. Secondly, there is	14	BRIG MKHWANAZI: Counsellor, in my
15	usually a relatively small core of deeply committed	15	experience as a police official, from constable until now,
16	participants. All I'm putting to you is that –	16	I have many incidents in the street. I've arrested
17	BRIG MKHWANAZI: My knowledge,	17	somebody in possession of a firearm, unlicensed, used for
18	Counsellor, especially with – the crowd dynamics is that	18	other criminal activities right in the street, not inside
19	normally people or individuals, they get absorbed into a	19	the house only.
20	crowd and at the same time they fall into the same identity	20	MR BUDLENDER SC: I think I'm not putting
21	– of the crowd.	21	my question clearly, Brigadier. Let me put it this way.
22	MR BUDLENDER SC: - cause that the	22	Let's assume you and I are members of a group on a koppie
23	shootings happened – and after – yes, I understand that,	23	and we have weapons and we are concerned that the Police
24	but there is usually a relatively – core of deeply	24	might try to take them off us. Night time arrives, most of
25	committed people who are the leaders of the demonstration -	25	the people go home through the streets. Some of us stay on
	As 1 and 15	14	4 //it/la
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	Page 3073		Page 3075
1	wire was rolled out.	1	the koppie overnight. It would be more sensible for us to
1 2	wire was rolled out. BRIG MKHWANAZI: I agree: C HIVE FO	1 R2	the koppie overnight. It would be more sensible for us to keep those weapons with us on the koppie than to put them
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Marikana Commission of Inquiry

1	Page 3076	1	Page 3078
1	in the gathering during the day. BRIG MKHWANAZI: Counsellor, I will say	1 2	police training manual which we've been given, actually deals with how to carry out operations at night.
2		2	BRIG MKHWANAZI: That's correct.
3 4	yes, arresting the group leaders will actually calm the situation, but sometimes it doesn't work that way. The	3 4	MR BUDLENDER SC: Now in fact, General,
5	constituencies will always definitely try and fight very	5	Brigadier, sorry, I'm promoting you prematurely. In fact
6	harder after their leaders have been arrested. That's	6	this option was apparently considered. Would you go to
7	always, it does happen.	7	L63. Let's just – sorry, have you got that?
8	MR BUDLENDER SC: And if you moved at	, 8	BRIG MKHWANAZI: Not yet.
9	night on the core group on the koppie, you would stand a	9	MR BUDLENDER SC: It say –
10	good chance, or at least a reasonable chance of	10	BRIG MKHWANAZI: I'm getting there now.
11	confiscating some or all of the firearms.	11	MR BUDLENDER SC: The page is headed JOC
12	BRIG MKHWANAZI: With the proper plan,	12	briefing and then there's a box headed with a sub-heading
13	proper information, Counsellor, yes it's possible.	13	report in it. Do you have it?
14	MR BUDLENDER SC: So this option of	14	BRIG MKHWANAZI: Yes, I've got it.
15	moving at night on the small group who remained there, is	15	MR BUDLENDER SC: Right, now if we can
16	an alternative which should've been considered.	16	identify at first, you will see on the right hand side at
17	BRIG MKHWANAZI: If it's true really that	17	the top, there is the calendar for August which shows that
18	they were there and the information is there, Counsellor,	18	this relates to the 14th of August 2012. Can you see that?
19	that will work very well.	19	BRIG MKHWANAZI: That is correct.
20	MR BUDLENDER SC: Chair, would this be a	20	MR BUDLENDER SC: Now there's an item
21	convenient time for the tea adjournment?	21	report and then let's come to operational deployments, do
22	CHAIRPERSON: We'll take the tea	22	you see that? The second sub-heading in the first box.
23	adjournment. I just want to remind everyone that the lunch	23	BRIG MKHWANAZI: Yes, I see that
24	adjournment will be shorter today than usual because it's	24	operational deployment, the one on top.
25	Friday. We will resume at about 13:30 and we will then	25	MR BUDLENDER SC: Alright and what says
	As and a	2	15 / Cit fu
	I have been been been been been been been be		
	Page 3077		Page 30/9
1	adjourn at 3 o'clock to enable those who have to travel.	1	the following, at 6 o'clock – that's 6 in the morning,
2	adjourn at 3 o'clock to enable those who have to travel.We'll take the adjournment now.A R C H I V E F O	R 2	the following, at 6 o'clock – that's 6 in the morning, 06h00 the initial interim operational strategy considered
2 3	adjourn at 3 o'clock to enable those who have to travel. We'll take the adjournment now. [INQUIRY ADJOURNS INQUIRY RESUMES]	2 3	the following, at 6 o'clock – that's 6 in the morning, 06h00 the initial interim operational strategy considered was to prevent the protestors from coming to the koppie
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	Page 3080		Page 3082
1	later by the 16th of August these reasons which were given	1	result is that the crowd becomes smaller and easier to
2	for not following this strategy had fallen away. Forces	2	manage.
3	called up from distance locations had arrived by then.	3	BRIG MKHWANAZI: That's correct, the main
4	Those who were there had been oriented to the mission area,	4	purpose is to have people voluntarily leaving that
5	correct?	5	position. At the same time you can be able to actually
6	BRIG MKHWANAZI: That's correct.	6	deal with the situation that is before you if it come to
7	MR BUDLENDER SC: So the reason for not	7	that need.
8	doing this on the 14th no longer existed on the 16th.	8	MR BUDLENDER SC: Now we've been talking
9	BRIG MKHWANAZI: That's correct.	9	about alternatives to the - which could've and should've
10	However, I'm not sure, Counsellor, why after they took a	10	been considered. Now if you thought the weapons were being
11	decision they never go back and revisit and see what they	11	kept by the people who slept in the hostel, one way of
12	can do. I'm not sure in that position.	12	confiscating the weapons would be to cordon the hostels and
13	MR BUDLENDER SC: That's a very good	13	not let people out until they had been searched for
14	question. Yes, now, Brigadier, on the face of it, if you	14	weapons. That would be a possibility.
15	wanted to – on the face of it, it would be a lower risk	15	BRIG MKHWANAZI: Normally, Counsellor, if
16	strategy to confront 50 people by surprise at night than 3	16	you work with hostels you need to have a proper information
17	500 people in daylight who can see it coming.	17	intelligence wise that must come through. At the same time
18	BRIG MKHWANAZI: You're correct,	18	we need to take the - look to the situation especially with
19	Counsellor, however maybe can I point something, especially	19	the terrain, the number of rooms that are available as well
20	if you deal with the spectators or – sorry with the	20	to plan properly so that if you cordon, you can be able to
21	participants during the day at that type of a – at that	21	deal with the situation. If it's well planned and you got
22	figure, the only way is to follow the procedures, giving	22	information properly because what is important is to know
23	warning, let the people move first on their own. There are	23	exactly where the firearms are kept then you can be in a
24	those who will voluntarily disperse and go back home which	24	position to deal with the situation property but if it's
25	will actually maybe allow you to have a better number to	25	not that position, always this challenging because if you
	Ats / and re	10	T / wt w
1	Page 3081 contain. That's the only part maybe you can sometime	1	Page 3083 talk about the hostel, it can be having a lot of rooms and
1 2	Page 3081 contain. That's the only part maybe you can sometime utilise as well, depending to the situation on a day as	1 R 2	Page 3083 talk about the hostel, it can be having a lot of rooms and
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	Page 3084		Page 3086
1	stabilise the area, is that correct?	1	my point in making is I'm actually dealing with the
2	BRIG MKHWANAZI: That's correct, Sir.	2	position whereby we talk of gathering procedures that we
3	MR BUDLENDER SC: That would be a good	3	need to follow. If everything was followed properly, I
4	thing to do.	4	don't think it was going to be a problem even to go to that
5	BRIG MKHWANAZI: That's correct.	5	position to say let's search them before they reach the
6	MR BUDLENDER SC: And in fact the police	6	koppie because obviously the marshals will do that type of
7	planned to do that. Are you aware of that?	7	a job and police will only have to assist that's all, to
8	BRIG MKHWANAZI: Definitely it is one of	8	make sure such things doesn't happen.
9	the stages.	9	MR BUDLENDER SC: Brigadier, we know that
10	MR BUDLENDER SC: Wouldn't it – well	10	this was a gathering which was not – which did not follow
11	let's go to slide L82. This is also part of Colonel	11	the procedures and the Regulation of Gatherings Act. So
12	Scott's plan of the 14th of August, is that correct?	12	that doesn't help us very much, does it?
13	BRIG MKHWANAZI: Correct.	13	[11:41] BRIG MKHWANAZI: I do agree.
14	MR BUDLENDER SC: And you'll see that	14	MR BUDLENDER SC: So all I'm putting to
15	under stage 6 he says this is now going to come at the end	15	you is that one of the alternative strategies if you wanted
16	of his process. In order to complete the disarming process	16	to stop people coming to the koppie armed, was to deploy a
17	in the Marikana area, the Karee and Wonderkop hostels will	17	filtering police line to search those who were approaching
18	have cordon and search operations executed to remove any	18	or who were moving along approach routes.
19	further dangerous weapons in order to stabilise the area.	19	BRIG MKHWANAZI: Counsellor, I do agree.
20	So that was part of the plan.	20	Not to make a problem to your question, if we check back on
21	BRIG MKHWANAZI: I do agree.	21	the 13th, that was tried already by General Mpembe and
22	MR BUDLENDER SC: Can you think of any	22	definitely it had a difficult of a result.
23	good reason why that shouldn't have been done before the	23	MR BUDLENDER SC: No, Brigadier, I don't
24	crowd of 3 500 were confronted on the koppie?	24	think that's at all what General Mpembe attempted. General
25	BRIG MKHWANAZI: As I have indicated,	25	Mpembe didn't have a pre-planned and pre-organised
	As and to	12	is / style
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	Page 3085	•	Page 3087
1	Counsellor, from the beginning, I'm not sure how actually	1	filtering police line. He came across a group of people
2	Counsellor, from the beginning, I'm not sure how actually they never revisited the strategy. Remember the strategy	R 2	filtering police line. He came across a group of people who were marching and he dealt with the situation ad hoc as
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	Page 3088		Page 3090
1	BRIG MKHWANAZI: My point in checking	1	MR BUDLENDER SC: I understand that.
2	there was that we need to check when do we do it, because	2	They are the people on the ground; they know what is going
3	if we do it during the day it may sometimes cause problem,	3	on, and they are best placed to make the decision.
4	hence they are already armed.	4	BRIG MKHWANAZI: It depends, Counsellor,
5	MR BUDLENDER SC: Yes, the sensible time	5	where the overall commander is at that stage. He may
6	to do it would be when they came out in the morning.	6	sometimes be in a JOC, or maybe he can be somewhere, but
7	BRIG MKHWANAZI: If the information is	7	these are two people who must make decisions.
8	well, given plan is in place properly, I will agree with	8	MR BUDLENDER SC: And it's a decision
9	you, Counsellor.	9	which must be taken at the time in question just before you
10	MR BUDLENDER SC: We've agreed that the	10	implement, in the light of all the circumstances which then
11	further option was a cordon and search of the hostels	11	prevail.
12	before confronting the people on the koppie.	12	BRIG MKHWANAZI: It will depend, because
13	BRIG MKHWANAZI: Yes, Counsellor, I'm in	13	all decision must be made based on the operational plan
14	agreement. The only thing I'm saying is that proper	14	that is in place, unless if it is a new information that
15	information must be, actually be obtained. Hence the	15	comes up, then that decision will be taken right at that
16	hostel got lots of rooms, know exactly where the weapons	16	point and say what has to be done to deal with that
17	are, then you have a proper plan and you'd be able to	17	situation. But if it is on the plan, the only thing is to
18	search without any problem and be able to disarm whoever is	18	say when are we activating, or should we activate paragraph
19	having anything in his possession at that stage.	19	so-and-so and do what we're supposed to do.
20	MR BUDLENDER SC: And we've agreed that a	20	MR BUDLENDER SC: It would be wrong – let
21	further option would be to deploy a filtering police line	21	me put it differently. It would be wrong to make the
22	to stop people reaching the koppie with weapons.	22	decision the day before to say we're going to implement
23	BRIG MKHWANAZI: My point, Counsellor,	23	this strategy, regardless of what the circumstances are
24	was that if this was done in a proper way, notice given,	24	tomorrow?
25	condition put in place, as well as marshals in place as the	25	BRIG MKHWANAZI: Counsellor, right from
		100	
	As any a		
	Page 3089		Page 3091
1	people are moving to the koppie, the job for the Police was	1	Page 3091 the beginning I said always there will be influencing
2	people are moving to the koppie, the job for the Police was going to be too little because they were going to manage	R 2	Page 3091 the beginning I said always there will be influencing factors that come during the operation. You have the plan,
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1	Page 3092		Page 3094
1	anticipated situation. However, during the day of the	1	information it's through from the side of the Police with
2	situation something happened; decision need to be taken	2	our own chain of command, how we have to do the job. But
3 4	now, and definitely the operational commander together with	3 4	on political side to say now do the following, it has never
4 5	an overall commander, they will take a decision to say let's activate this type of a plan and address the	4 5	happened to my side. MR BUDLENDER SC: Yes, and if it were to
6	situation. I agree with you.	5 6	happen it would be a bad thing?
7	MR BUDLENDER SC: Yes, I understand that.	7	BRIG MKHWANAZI: Ja, for me it would be
8	You have an operational plan, but of course you don't	8	for the first time, Sir.
0 9	implement it blindly. You look at the situation on the	9	MR BUDLENDER SC: And you would consider
9 10	ground at the time before you decide to implement.	10	it to be a bad thing? That's why it's never happened
11	BRIG MKHWANAZI: That's correct,	11	before.
12	depending to what issues that are transpiring during the	12	CHAIRPERSON: In the witness's
13	course of the event.	13	experience?
14	MR BUDLENDER SC: Yes, exactly. Now	14	MR BUDLENDER SC: In the witness's
15	these are difficult decisions which the operational	15	experience, yes.
16	commander and the overall commander have to make.	16	BRIG MKHWANAZI: Ja, on my opinion really
17	BRIG MKHWANAZI: I will agree and say	17	it would be a first time to have political role players
18	again that it depends what type of a situation actually	18	coming in and give instructions to Police how to police a
19	that they are coming across then, but yes, decision needs	19	situation. That would be a new thing. The only thing,
20	to be taken.	20	Counsellor, that can be done if we talk about the situation
21	MR BUDLENDER SC: My point is that these	21	of Marikana, we can look of the influential figures in
22	are difficult decisions and they should be taken by	22	politic who can come in and talk to the people maybe to
23	somebody with good operational experience.	23	assist, to make sure things can be actually peacefully
24	BRIG MKHWANAZI: Correct.	24	resolved. That can be done, but not to say how the Police
25	MR BUDLENDER SC: And if someone other	25	or the police functions must be executed on that particular
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	Page 3093		Page 3095
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	Page 3096		Page 3098
1	because nobody maybe was aware that it will happen and what	1	you, Chair. Now, Brigadier, to move to a new point, you
2	decision, what steps to be followed to deal with that	2	made reference in your evidence-in-chief to the Goldstone
3	particular problem.	3	Commission. Do you remember that?
4	CHAIRPERSON: The reason I ask the	4	CHAIRPERSON: Correct, Sir.
5	question is, what interests me is was it considered	5	MR BUDLENDER SC: That was the commission
6	necessary for the operational plan to be put into operation	6	of inquiry regarding the prevention of public violence and
7	on that Thursday. In other words was it also possible that	7	intimidation.
8	the matter could be held over till the next day, till the	8	BRIG MKHWANAZI: Correct, Sir.
9	Friday when something could have happened overnight, as Mr	9	MR BUDLENDER SC: And are you aware that
10	Budlender has suggested. Now you've agreed, if I	10	the commission put together a panel of experts to give it
11	understood you. In other words, as you see it on the facts	11	advice regarding a new system of legal control of
12	that have been put before you, was there any compelling	12	demonstrations in South Africa?
13	operational necessity for the plan to be put into operation	13	BRIG MKHWANAZI: That's correct, Sir.
14	on Thursday the 16th?	14	However, I never have an opportunity to read the report,
15	BRIG MKHWANAZI: The only information,	15	Sir.
16	Chairperson, I received was that for the plan to be delayed	16	CHAIRPERSON: You might find it helpful
17	was due to the fact that there was an agreement that the	17	in your work if you do so. It's a comprehensive report,
18	arms will be laid down, and that's the information I got.	18	compiled by an international panel, who actually rafted the
19	If you look to that position, if the arms were laid down,	19	Regulation of Gatherings Bill –
20	it means everything is peacefully, wasn't going to be any	20	BRIG MKHWANAZI: Yes.
21	problem that comes out. That's the only information I got.	21	CHAIRPERSON: - which was adopted by
22	I don't have another reason around that.	22	parliament.
23	CHAIRPERSON: Apparently it must have	23	BRIG MKHWANAZI: That's correct, Sir.
24	become clear in the course of the morning that if there was	24	CHAIRPERSON: It was chaired, I met the
25	such an agreement, as you will have heard there's debate	25	people concerned at the time in 1993, but the chairman was
		ñ	m lo have
1	Page 3097 about that, but if there was such an agreement it wasn't	1	Page 3099 an eminent Professor of Law from Harvard, who was very
2	being adhered to. The weapons were not being laid down and	2	largely responsible for a good deal of the thinking that
3	the strikers were not prepared, despite pleas to them from	3	went into the bill and now the act, and it's all explained
4	Mr Mathunjwa, to leave the koppie. That must have been	4	in the book which counsel has referred to.
5	apparent at least by the middle of the day, between say	5	BRIG MKHWANAZI: Okay, thanks.
6	noon and 2 o'clock. So the question that arises then is	6	CHAIRPERSON: I think we still don't have
7	was there any compelling necessity, given that situation,	7	an exhibit number, so we will ask Ms Pillay once again to
8	for the plan to be put into operation on that day?	8	assist us.
9	BRIG MKHWANAZI: I do understand,	9	MS PILLAY: Chair, it would be TT1.
10	Chairperson, your question very well. However, I won't be	10	CHAIRPERSON: Thank you.
11	able to have a proper answer to say why they decided to	11	MR BUDLENDER SC: Brigadier, you have in
12	proceed with the plan after they have learned that people	12	front of you a part of the, an extract from the report
13	are not prepared to lay down their arms. There maybe can	13	which was produced by that panel.
14	be lot of reasons around, of which maybe the people who	14	BRIG MKHWANAZI: Thank you.
15	were involved on the operation said they will be in a	15	MR BUDLENDER SC: Perhaps we can start by
16	position to indicate, really, I couldn't manage to get that	16	identifying who the members of the panel were to whom the
17	information exactly to say why immediately after they pick	17	Chair referred. If you'll go to the last page but two,
18	it up that people are not going to lay down the arms, why	18	it's called page 69, you'll see appendix A, you see that?
19	they decided to go and activate level 3. I'm not having	19	BRIG MKHWANAZI: I see it, Sir.
20	that information.	20	MR BUDLENDER SC: And we see who the
21	CHAIRPERSON: Thank you, Brigadier.	21	people were. There was Lee Brown, who was the Commissioner
22	Sorry, Mr Budlender. You wanted to move on to another	22	of Police of the City of New York, correct?
23	point now. I thought that point's physically in the	23	BRIG MKHWANAZI: Correct.
24	context of the subject which you'd just been dealing with.	24	MR BUDLENDER SC: And there was Prof Dr
25	MR BUDLENDER SC: Very much so. Thank	25	Fijnaut, F-I-J-N-A-U-T, who was a Professor of Criminology
1			

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Page 3100		Page 3102
and Criminal Law from Holland, and the book tells us that	1	operation, and it's said that he frequently lectures at the
he has written a great number of books, reports and	2	National Police Staff College in the United Kingdom.
articles in the field of policing, organised crime, general	3	BRIG MKHWANAZI: I see that.
criminology and comparative and international criminal law.	4	MR BUDLENDER SC: I'm sure you'll agree,
		Brigadier, that that's a group of very eminent people with
-		very great knowledge of policing, including public order
		policing, both in theory and in practice. Would you agree
· · · · · ·	-	with that?
		BRIG MKHWANAZI: I do.
		MR BUDLENDER SC: Incidentally, have you
-		heard before of Prof PAJ Waddington? Have you heard
		anything about him?
		BRIG MKHWANAZI: No, it's first time to
	-	hear, Sir.
		MR BUDLENDER SC: I'm told he's a former
		policeman; he's known as Tank Waddington. It may tell us
		something about him. Tank.
	_	BRIG MKHWANAZI: No, I haven't met him,
5		Sir.
		MR BUDLENDER SC: Now would you go to the
		page which is printed page 37? Do you see the sub-heading
		at the foot of page 37, "Command and control of police?"
	1 P*	BRIG MKHWANAZI: Correct.
DO TRACK	1 15	MR BUDLENDER SC: Now I would like to
MR BUDLENDER SC: Yes. Then we have Pro	25	read a passage to you from there, and you can follow it as
Page 3101		Page 3103
Philip Heymann, H-E-Y-M-A-N-N, who was an eminent professor	14	I go. Quote, "Each of the preceding scenarios presumes the
at Harvard, director at the Centre for Criminal Justice, v \in F 0	R2 .	effective deployment of tactics within some clearly
and has held very many senior positions in the United	3	formulated strategy. It is of the utmost importance that
States government. See that? Then we have the late Adv	4	the policing of public order operations is characterised by
Louw, who was an advocate of the Supreme Court of South	5	thorough planning and preparation. Senior officers must
Africa. Then we have Dr Olivier, who was the head of	6	consider and make contingency plans for various scenarios,
Conflict Analysis at the Human Sciences Research Council.	7	from those thought to be highly probable, through to those
BRIG MKHWANAZI: Yes, Sir.	8	considered possible, however unlikely. Through these means
MR BUDLENDER SC: It tells us that he was	9	the police will avoid being surprised by unexpected events
engaged in extensive research on civil unrest and political	10	and thus retain maximum control over their own officers and
violence in South Africa. Then we have Prof Clifford	11	the events themselves." You see that?
	11 12	
violence in South Africa. Then we have Prof Clifford		the events themselves." You see that?
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1	Page 3104	1	Page 3106 a contingency to if something happens, goes wrong.
1	you don't have an adequate plan. BRIG MKHWANAZI: Correct.	2	MR BUDLENDER SC: Yes, the plan was, the
2 3	BRIG MKHWANAZI: Correct. [12:21] MR BUDLENDER SC: Now let's look at the	3	contingency was that if things went wrong, the TRT, the
4	plan in this case. Would you go to L177? Do you have it?	4	NIU, and the SDF would come into play either from those
4 5	And we see there, that the plan was first to – we are now	4 5	already on the site, or from those at the forward holding
	talking about plan of stage 3, that's correct?	6	areas. Is that correct?
6		_	
7	BRIG MKHWANAZI: That is correct, yes.	7	BRIG MKHWANAZI: Yes, that's my
8	MR BUDLENDER SC: And the plan was to	8	understanding, they will be moving from the reserve
9	enclose the neutral area with barbed wire.	9	position in the holding area, and assist where there is a
10	CHAIRPERSON: There's an attempt being	10	problem, if something goes wrong.
11	made to show us slide 177, but we are in fact seeing slide	11	MR BUDLENDER SC: Now these are people
12		12	who use equipment which is not designed to be used for
13	MR BUDLENDER SC: Thank you, Chair. So	13	public order policing or crowd control, they carry sharp
14	the phase 1 was going to be enclose the neutral area with	14	weaponry.
15	barbed wire, that is correct?	15	BRIG MKHWANAZI: It is correct.
16	BRIG MKHWANAZI: Yes.	16	MR BUDLENDER SC: And give the nature of
17	MR BUDLENDER SC: Phase was going to be	17	the weaponry which they carry, we know that if they use it,
18	to form lines, I beg your pardon, form two lines of Public	18	there is a probability that people will be killed.
19	Order Police with Nyalas and water canons, and then the –	19	BRIG MKHWANAZI: Correct.
20	and with the TRT and the NIU and the SDFs behind them,	20	MR BUDLENDER SC: So what we have arrived
21	correct?	21	at, is the following, the only contingency plan in this
22	BRIG MKHWANAZI: Correct.	22	plan, was that if things didn't work out as intended, the
23	MR BUDLENDER SC: And then there was to	23	people with sharp ammunition would be brought into play and
24	be the use of force in a continuum, firstly the instruction		it was then likely that people would be killed.
25	to disperse, to which you have already referred us. That	25	BRIG MKHWANAZI: On my understanding,
	Daringhe house the		or to time
1	is correct? Page 3105	1	Page 3107
1 2	is correct?	1	Counsellor, from the reserve group which were placed on the
1 2 3	is correct?		Page 3107 Counsellor, from the reserve group which were placed on the holding areas, there was Public Order Policing members as
2	is correct? BRIG MKHWANAZI: MR BUDLENDER SC: And then the move to	R 2	Counsellor, from the reserve group which were placed on the
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		1	
1	Page 3108	1	Page 3110
1	Counsellor, normally briefing must be given thoroughly.	1	BRIG MKHWANAZI: It can be possible, Sir.
2	MR BUDLENDER SC: Thank you, Brigadier, I	2 3	MR BUDLENDER SC: Well, you wouldn't be surprised if that happened, would you? You wouldn't be
3 4	now want to move onto the looking at the plan itself to ask you some questions about the plan itself. I'll take you to	4	surprised if that happened, would you? You wouldn't be surprised if some people said to themselves, hang on,
4 5	specific pages, if I – where I get there, I won't have to	5	things are getting rough here now, the barbed wire is
6	do much of that, I don't think, but I think we know, I am	6	coming out, I am going home.
7	sure we have agreed, that the basic premise of the plan was	7	BRIG MKHWANAZI: As, Counsellor, you have
8	that while the razor wire was being rolled out, the	8	said that some of them may happen that they never knew what
9	strikers would remain on the koppie.	9	was happening, it's normal, it can be possible.
10	BRIG MKHWANAZI: Information that I	10	MR BUDLENDER SC: You wouldn't be
11	received, Counsellor, was that after the deployment, the	11	surprised by that and in fact that was part of the plan
12	participants will be dispersed from the koppie.	12	that people should leave without any force being used.
13	MR BUDLENDER SC: In other words, it was	13	BRIG MKHWANAZI: It's part of the plan,
14	anticipated that all or most of them would remain on the	14	of course.
15	koppie, until after the deployment of the barbed wire when	15	MR BUDLENDER SC: Now, the direction of
16	the dispersal would take place.	16	the settlement, the informal settlement, where some of the
17	BRIG MKHWANAZI: That's information I	17	people lived, is north west of the koppie.
18	got, I think so, Sir.	18	CHAIRPERSON: I take it Mr Budlender, if
19	MR BUDLENDER SC: Now, we also know from	19	you look at slide 81, you will see the koppie, you will see
20	what happened, that that's not what transpired, in fact	20	the various police forces arraigned and then behind them,
21	many people moved off the koppie once the police started	21	is the informal settlement.
22	deploying the barbed wire.	22	MR MAHLANGU: Sir, it's 181? 81.
23	BRIG MKHWANAZI: Information received	23	CHAIRPERSON: Well it's various places
24	from my side, Counsellor, is that when the barbed wire was	24	but I think the slide 81 is a convenient one.
25	deployed, and it was breached by some of the group of the	25	BRIG MKHWANAZI: Yes, I got it, north
		1 T	m to have
1	Page 3109 people, and there were some people who were actually moving	1	Page 3111
2	away as well, and they were not confronted by anybody.	and has	TUS MR BUDLENDER SC: Now if you'll look at
3	They were able just to move in the meantime.	3	that slide, Brigadier, you will see –
4	MR BUDLENDER SC: I think you'll agree	4	CHAIRPERSON: Mr Semenya wishes to say
5	also that it's not really surprising that people	5	something.
6	experienced barbed wire or razor wire as threatening, and	6	MR SEMENYA SC: Chair, I don't mean to be
7	some of them would have been afraid that they were going to	7	difficult, but is the proposition that the ones who were in
8	be surrounded and encircled.	8	the group, passed the kraal, some of them lived in that
9	BRIG MKHWANAZI: It is possible, but on	9	area? Are they posting that a fact?
10	that day, I am not sure the purpose of the barbed wire was	10	CHAIRPERSON: Mr Budlender, you heard the
11	to encircle the people. I don't think so it was that	11	question, I am not sure it's an objection, but it's a
12	purpose, Sir.	12	question which might lead to an objection if you don't
13	MR BUDLENDER SC: I understand it,	13	answer properly.
14	Brigadier, but of course the people on the koppie didn't	14	MR BUDLENDER SC: Well, according to the
15		15	IPID statements which we have some of the strikers lived in
	know why the barbed wire was being put in place.		
16	BRIG MKHWANAZI: Possible.	16	the informal settlement. Can I just finish, Chair? I put
16 17	BRIG MKHWANAZI:Possible.MR BUDLENDER SC:We have seen from the	16 17	it to the witness on this basis, I don't want to give
16 17 18	BRIG MKHWANAZI: Possible. MR BUDLENDER SC: We have seen from the statements produced by the – according to the statements	16 17 18	it to the witness on this basis, I don't want to give evidence, but if some of – let me put it to you this way,
16 17 18 19	BRIG MKHWANAZI: Possible. MR BUDLENDER SC: We have seen from the statements produced by the – according to the statements produced of – by IPID, of people who were there, people	16 17 18 19	it to the witness on this basis, I don't want to give evidence, but if some of – let me put it to you this way, Brigadier –
16 17 18 19 20	BRIG MKHWANAZI: Possible. MR BUDLENDER SC: We have seen from the statements produced by the – according to the statements produced of – by IPID, of people who were there, people refer to being encircled or surrounded.	16 17 18 19 20	it to the witness on this basis, I don't want to give evidence, but if some of – let me put it to you this way, Brigadier – CHAIRPERSON: Earlier on in your cross-
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	Page 3112		Page 3114
1	informal settlement, can you make that assumption for the	1	in place and then we roll out these vehicles and people in
2	moment. If I am wrong in that, and none of the strikers	2	order to carrying out the dispersal action?
3	came from the informal settlement, then of course what will	3	MR MKHWANAZI: I see that.
4	follow will be irrelevant, but can you make that assumption	4	MR BUDLENDER SC: Now if there were
5	for the moment? Right, okay, now Brigadier, can you locate	5	people on the Koppie who lived in the settlement and wanted
6	the koppie where the strikers were on that diagram, if I	6	to go there, the logical thing would have been for them to
7	have it correctly, it's K1. Can you see that?	7	head in a north-westerly direction, really through that
8	BRIG MKHWANAZI: I saw it yesterday, oh,	8	area where the barbed wire and the – had not reached and
9	ja. That's it.	9	where these other troops were going to be deployed, but
10	MR BUDLENDER SC: Alright.	10	hadn't yet arrived? Can you see that?
11	BRIG MKHWANAZI: I see it.	11	MR MKHWANAZI: Yes.
12	MR BUDLENDER SC: Now, you can see in the	12	MR BUDLENDER SC: That would be the
13	top right-hand corner of that, to orientate ourselves on	13	obvious way to go home if you wanted to go home to the
14	the top right-hand corner of that diagram is the north	14	informal settlement?
15	sign, do you see that? It's very small.	15	MR MKHWANAZI: That's correct.
16	BRIG MKHWANAZI: I see that.	16	MR BUDLENDER SC: And now if you were
17	MR BUDLENDER SC: Sir, if we now relate	17	going in that direction, you couldn't go too far West,
18	K1 to the informal settlement, in fact the statement is due	18	because there is a negative attraction point. There was
19	north of the koppie, can you see that?	19	IRA2, which was the TRT and other people, you see that
20	BRIG MKHWANAZI: Yes.	20	green one? So if you were sensible in wanting to avoid
21	MR BUDLENDER SC: Now we know that the	21	trouble, you wouldn't hit straight towards them. That
22	razor wire was extended on that yellow line, or more or	22	would be trouble. You would bend around to the right
23	less on that yellow line which is shown there, can you see	23	towards the informal settlement.
24	that?	24	MR MKHWANAZI: I see that, but I wonder
25	BRIG MKHWANAZI: I see that.	1 15	if I can explain my understanding in disperse? From the
	As and the	12	
	Page 3113		Page 3115
1	Page 3113 MR BUDLENDER SC: It blocks mainly the	1	Page 3115 situation explained to me, I would like to say I was going
1 2			Page 3115
	MR BUDLENDER SC: It blocks mainly the		Page 3115 situation explained to me, I would like to say I was going
2	MR BUDLENDER SC: It blocks mainly the easterly direction, easterly and some of the northerly. Do	R2	Page 3115 situation explained to me, I would like to say I was going to be happy if I will hear that the police official after
2 3	MR BUDLENDER SC: It blocks mainly the easterly direction, easterly and some of the northerly. Do you see that?	R2	Page 3115 situation explained to me, I would like to say I was going to be happy if I will hear that the police official after the deployment of the barbed wire did manage to deploy,
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	Page 3116		Page 3118
1	are now and what is the position, please.	1	if they were all from the side of the settlement.
2	MR BUDLENDER SC: Let me try to show you,	2	MR BUDLENDER SC: Well, those who were
3	Brigadier. If you look at – let's look at slide L200.	3	from the settlement?
4	MR MKHWANAZI: I've got it.	4	MR MKHWANAZI: Definitely. They will
5	MR BUDLENDER SC: Right. Now what that	5	have definitely want to go home.
6	shows us firstly, the dotted yellow line shows us how far	6	MR BUDLENDER SC: Yes.
7	the deployed barbed wire actually reached. It was not as	7	MR MKHWANAZI: It's a fact.
8	far as had been planned on L81, which you've been shown.	8	MR BUDLENDER SC: That's a positive
9	Can you see that? For the sake of fairness, I should – and	9	attraction point as you call it?
10	completeness, I should say that there was an attempt to	10	MR MKHWANAZI: Yes.
11	close that gap between the front Nyala and that first	11	MR BUDLENDER SC: And there was nothing
12	kraal, but that's as far as that barbed got on the most	12	to stop them doing that at that time?
13	generous reading. You see that?	13	MR MKHWANAZI: Counsellor, that's
14	MR MKHWANAZI: I see it.	14	information I got that during the deployment of the barbed
15	MR BUDLENDER SC: And this is a	15	wire, some of the people they were as well moving, nobody
16	photograph taken at about the time shortly before the	16	stopped there.
17	deployment of the barbed wire came to an end, because you	17	MR BUDLENDER SC: And even if they were
18	can see how far it's already got.	18	armed, they could go home with their arms?
19	MR MKHWANAZI: I see that.	19	MR MKHWANAZI: I haven't checked on that
20	MR BUDLENDER SC: Now if you look on the	20	position, Sir, I would be lying, I'm not sure.
21	right of that photograph, you will see the area where the,	21	MR BUDLENDER SC: Well, we've see there
22	if I can call them the dispersal team were going to be.	22	was nothing to stop them doing that. There was no-one in
23	The water canon, the POP units, the TRT behind them, the	23	place to stop them?
24	NIU and the STF behind them, they were all going to be on	24	MR MKHWANAZI: I'm not sure. I'm not
25	the right and they were going to give effect to the	25	certain how to answer that question really.
20	the right and they were going to give enect to the	25	certain now to answer that question really.
	A3 / =	1	TE TWE LA
	Page 3117		Page 3110
1	dispersal, you see that?	1	Page 3119
1 2			MR BUDLENDER SC: Why don't you just say
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2 3	dispersal, you see that? MR MKHWANAZI: CHAIRPERSON: Something?	2 3	MR BUDLENDER SC: Why don't you just say yes? MR MKHWANAZI: I need first, I rather consult and see, and hear what's happening really. I
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1	Page 3120	1	Page 3122
1	MR BUDLENDER SC: I understand,	1	MR BUDLENDER SC: Brigadier, I'm just as
2	Brigadier, you weren't there and I don't want to ask, I	2	ignorant as you are. All I'm saying to you is, that this
3	really don't want to ask you questions about the detail of	3	plan had the result that as far as people leaving to go to
4	the operation. All I want to put to you is this. That	4	the North West after the settlement is concerned, it would
5	once the barbed wire was rolled out or was being rolled	5	achieve the goal of dispersal, but if some of them had
6	out, it was natural that some of the people on the Koppie	6	weapons with them, it would not achieve the goal of
7	would head in a North Westerly direction and try to	7	disarming them. Is that a fair proposition?
8	outflank the barbed wire which was being put in place.	8	MR MKHWANAZI: In that position, yes.
9	MR MKHWANAZI: It's possible, Sir.	9	MR BUDLENDER SC: In our position of
10	MR BUDLENDER SC: And there was no	10	mutual ignorance, we can reach the same conclusion?
11	contingency plan to deal with that?	11	CHAIRPERSON: Is it appropriate for us to
12	MR MKHWANAZI: I won't say it wasn't	12	take the adjournment on that note? The Commission will
13	there or it was there, but the main thing is, it's obvious	13	adjourn till half past one.
14	if people see that particular situation happen, definitely	14	[COMMISSION ADJOURNS COMMISSION RESUMES]
15	would like to go out and move back to their homes. I think	15	[13:29] CHAIRPERSON: The commission resumes.
16	the objective as well from SAPS on the day, was to have	16	Brigadier, you are still under oath. Mr Budlender.
17	people moving out from that position. I don't see any	17	MR BUDLENDER SC: Brigadier, just to tidy
18	problem around that position, that definitely you would	18	up one small point before I move onto the next part of this
19	need a contingency plan to stop them, because I don't see	19	subject. The purpose of the barbed wire was to prevent the
20	anything that says, stop them. What I see, is to split	20	strikers moving in an easterly direction, is that correct?
21	them into smaller manageable groups, disarm the	21	MR MKHWANAZI: I think it will be
22	participants, that's all what I'm seeing. So I don't see a	22	incorrect, counsellor, with the information I have received
23	problem on that.	23	from the people who brief me that the purpose of the barbed
24	MR BUDLENDER SC: What I put to you,	24	wire was to protect members of the SAPS as well as to
25	Brigadier, if that happened, the operation would succeed in	25	protect media people, as well as other VIP, if possible
		11.0	· /····
1	Page 3121	1	Page 3123
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2	part of its goal, but fail in another and important part of its goal. It could – it would succeed to that extent that	R 2	they come in. JUS MR BUDLENDER SC: I am sorry, I ran two
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1	MR BUDLENDER SC: And that is to the, and	1	MR BUDLENDER SC: As we have previously
2	we see K3 which is where the koppie is, I am sorry not K3,	2	agreed the plan was that the people or most of them would
3	K1, I beg your pardon. You see K1?	3	remain on the koppie while the barbed wire was deployed.
4	MR MKHWANAZI: Yes.	4	The other police officers will be brought around with
5	MR BUDLENDER SC: The koppie. And then	5	teargas, water cannons, stun grenades and so on and they
6	if we move to the right behind that cordon, that was the	6	would disperse the people who had remained on the koppie?
7	police and media safe area, do you see that?	7	MR MKHWANAZI: That is correct.
8	MR MKHWANAZI: Okay, I see that.	8	MR BUDLENDER SC: Instead of that a
9	MR BUDLENDER SC: Behind the cordon is	9	substantial number of people left the koppie going in a
10	the police and media safe area, do you see that?	10	north westerly direction, I think, but going towards, going
11	MR MKHWANAZI: I see that.	11	in the direction of the cordon, of the barbed wire. Or
12	MR BUDLENDER SC: And that's to the east	12	trying to go around the barbed wire. And there was never
13	of koppie 1.	13	an opportunity to do the deployment of the dispersal group
14	MR MKHWANAZI: Right, I see that.	14	which had been planned.
15	MR BUDLENDER SC: So this time I got it	15	MR MKHWANAZI: What I understand,
16	right. The cordon was to prevent the people from the	16	counsellor, is that the moment the barbed wire is deployed
17	koppie moving in an eastwards direction. Towards where the	17	there was a breach by some of the participants. If you
18	police and media safe area was.	18	mean that that is correct, there was a breach.
19	MR MKHWANAZI: The information I got is	19	MR BUDLENDER SC: Well ,Brigadier, there
20	that the cordon with the barbed wire was to protect media	20	are two different views as to what happened when the barbed
21	and as well members of SAPS. And at the same time	21	wire was deployed. One view is the one which you have put
22	participants were allowed to move if they move, at that	22	forward, that there was an attempt to breach the cordon.
23	stage there wasn't any problem. That's what I have got.	23	The other view was that there was an attempt to outflank,
24	MR BUDLENDER SC: The only point is this,	24	or to go around the cordon. You and I don't have to debate
25	that the area, the direction which they were prevented in	25	that, that will be dealt with by the people who were there.
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1	moving was an easterly direction. The cordon prevented the	1	But all I am putting to you, is that, that movement had the
2	moving in an easterly direction. Is that correct?	R 2	result that the next phase or the next stage, namely
3	MR MKHWANAZI: Looking to the position	3	bringing up the people who were going to carry out the
4	where the barbed wire ends, it is correct.	4	dispersal action, couldn't proceed as planned because, well
5	MR BUDLENDER SC: So the barbed wire,	5	we know it ended up in a shooting.
6	that barbed wire cordon was erected because it was	6	MR MKHWANAZI: That's correct,
7	anticipated that otherwise some of the strikers might move	7	counsellor, it actually disrupted the next stage of giving
8	in an easterly direction and the aim was to prevent that.	8	warning, disperse the people.
9	MR MKHWANAZI: The information I got is	9	MR BUDLENDER SC: And if the TRT and NIU,
10	that the barbed wire's purpose was only to protect media	10	and STF had to be brought into play there was a real risk
11	and police officials. I haven't received information that	11	of fatalities, because they are people who carry sharp
12	says it was stopping the participants to go to a certain	12	weapons.
13	direction. However, counsellor, I do agree with the	13	MR MKHWANAZI: It is a fact, counsellor,
14	position, where it ends it may definitely cause a problem	14	that if you bring TRT, national intervention, as well as
15	for them to go through if they have to go through. But the	15	special task force they carry live ammunition. And to take
16	information I got is that they were still allowed to move	16	that decision you must know exactly when and why they must
17	whatever direction they want to move.	17	intervene.
18	MR BUDLENDER SC: Let's move on. When	18	MR BUDLENDER SC: Yes, because if they do
19	the plan did not go as intended, things didn't proceed as	19	intervene, given the nature of the weapons that they carry
20	intended, that left the TRT and the NIU and the STF as the	20	and the nature of their functions, it's likely that some
21	back up to deal with the situation which had arisen.	21	people will be killed?
22	MR MKHWANAZI: Counsellor, maybe if I can	22	MR MKHWANAZI: It is normal, it is
23	understand at what stage maybe we are actually referring	23	possible. That's why I am saying your assessment must be
		24	preferred, when do you bring them in the position.
24	to, where the plan actually came to a position to say now		
24 25	to, where the plan actually came to a position to say now is not actually achievable.	25	MR BUDLENDER SC: Those sharp weapons are

	Page 3128		Page 3130
1	really the only means that those groups have of dealing	1	MR MKHWANAZI: It's one of the, I would
2	with the situation when they are called in.	2	say one of the lessons learned out of that, that those
3	MR MKHWANAZI: Come again, counsellor,	3	people were really coming forward, not doing what normally
4	you are saying, those?	4	is happening with the normal crowd situation we meet every
5	MR BUDLENDER SC: Those sharp weapons are	5	time.
6	really the only means that those units have of dealing with	6	MR BUDLENDER SC: Just to make clear that
7	the situation when they are called in. They don't carry	7	when I talk about the people I have been referring to, I am
8	non lethal weaponry.	8	not referring to all of the 3 500 strikers. There was
9	MR MKHWANAZI: That is correct.	9	clearly a very diverse group, I am referring to some of the
10	MR BUDLENDER SC: And they are also not	10	people in the group. I am sure you will agree with that?
11	trained in crowd management, that's what the public order	11	MR MKHWANAZI: Yes, maybe if I can have
12	police are for.	12	clarity, which is this group, are we talking about?
13	MR MKHWANAZI: That is correct, although	13	MR BUDLENDER SC: I don't want to attempt
		13	·
14 15	the national intervention members, the old ones are coming from that background.	14	to define the group, I am just saying there were such people amongst the bigger crowd.
	C C		
16		16	MR MKHWANAZI: Okay –
17	us by a senior police official, that the STF don't have the	17	CHAIRPERSON: You can assume that the
18	training, the TRT don't have the training in it, but the	18	people who were involved in the engagement, if one can call
19	NIU had some training in their previous life and so some of	19	it that, on the 13th where the two policemen were killed
20	them know something about it.	20	were part of the group who were on the koppie –
21	MR MKHWANAZI: That is correct.	21	MR MKHWANAZI: The bigger group.
22	MR BUDLENDER SC: I want to look at the	22	CHAIRPERSON: The bigger group on the
23	situation in which the plan was designed and implemented		16th.
24	and I want to put the following to you. Firstly, the	24	MR MKHWANAZI: Okay.
25	police knew that there were some violent people amongst the	25	MR BUDLENDER SC: And I have listed all
	Page 2120		Page 2121
1	Page 3129 strikers because they had already killed some mine	1	Page 3131
1	strikers because they had already killed some mine	1	Page 3131 the things, all the characteristics that, or some of the
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1	MR MKHWANAZI: I am not sure, counsellor,	1	believed.
2	what was their belief from the side of the police after	2	MR MADLANGA SC: Maybe what was reported
3	actually noticing the rituals being practised, it may	3	to them, not what the police believed.
4	happen they have that belief or it may happen they never	4	MR MKHWANAZI: It was reported.
5	have it but from our position I never received that	5	CHAIRPERSON: Yes, I think that is a
6	information that tells me clearly that it actually, it came	6	valid objection, isn't it. The next point of course, the
7	as a belief to them that really it will make participants	7	first part is, the information was that the Nyanga had been
8	to actually, to conduct themselves the way the counsellor	8	imported for this particular reason, and that in order that
9	is mentioning.	9	a ritual should be performed, on the second paragraph it
10	MR BUDLENDER SC: Think for a moment	10	indicates the police knew that a ritual of some kind had
11	about what the police probably believed. They didn't, they	11	been performed because that is seen - that's referred to in
12	took great care to observe and photograph these ritual	12	the second paragraph of 85 and is seen in the slide 86.
13	practices, you can see some of the photographs.	13	MR BUDLENDER SC: Brigadier, this is a
14	MR MKHWANAZI: I saw those.	14	report or reports which reached the police and it is what
15	MR BUDLENDER SC: The police didn't think	15	the police themselves observed.
16	these were wedding ceremonies that were being carried out.	16	MR MKHWANAZI: It definitely looks like
17	MR MKHWANAZI: That is correct, they	17	it is a report, of which I am struggling to understand
18	never thought that.	18	where it was from, but it was reported, yes.
19	MR BUDLENDER SC: The police thought that	19	MR BUDLENDER SC: And the next paragraph
20	these were rituals carried out to make people confident and	20	tells us that the police actually observed protestors
21	to give them confidence and to make them feel strong.	21	undergoing a ritual.
22	MR MKHWANAZI: Counsellor, as I have	22	MR MKHWANAZI: That is correct.
23	indicated I am not sure what was their belief after seeing	23	MR BUDLENDER SC: Do you see that?
24	this practice of rituals, I have said already that it may	24	MR MKHWANAZI: I see that, Sir.
25	happen that they have some sort of belief that maybe	25	MR BUDLENDER SC: Can I read you what was
	As and the	12	15 / Cly La
	Page 3133		Page 3135
1	definitely they will do as the counsellor is indicating, or	1	Page 3135 said by my learned friend, Mr Semenya in his opening
2	definitely they will do as the counsellor is indicating, or maybe not. I am not sure but definitely they saw this,	R 2	Page 3135 said by my learned friend, Mr Semenya in his opening statement on behalf of the police, paragraph 55. I will
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	definitely they will do as the counsellor is indicating, or maybe not. I am not sure but definitely they saw this, they took photos of that. MR BUDLENDER SC: Just look at slide 85 to which the chairperson referred you. MR MKHWANAZI: Got it. MR BUDLENDER SC: This it the information which the police had on the 14th of August, do you see that? MR MKHWANAZI: Yes, I see. MR BUDLENDER SC: It says, "it was reported that the protestors had imported an Nyanga to perform certain rituals and manufacture muti which would ensure them victory in confrontations with their opponents. The men who gathered at the koppie, armed with knopkieries iron rods, spears and pangas, believed the Nyanga could perform a ritual at the koppies and sprinkle them with muti to, 'make them brave.' That's what the police believed. MR MKHWANAZI: I don't have it. MR BUDLENDER SC: Do you know have 85? MR MKHWANAZI: I noticed that is actually starting at page 42 which is slide 84, then comes on the	2 3 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Page 3135 said by my learned friend, Mr Semenya in his opening statement on behalf of the police, paragraph 55. I will quote to you, if you can just listen to it carefully. This is what was said on behalf of the police to the commission. "You will hear in evidence about the dogged refusal by the protestors to disarm. You will hear about a ritual that some of them underwent in the belief that they would be invincible, invisible and invulnerable. This explains their inexplicable conduct of charging at the police with spears despite the force displayed by the police." That is the police view of what happened. MR MKHWANAZI: I hear that, Sir. MR BUDLENDER SC: Perhaps I can just, for the sake of completeness. Could you look at L107 and L108. I am not going to take you through that, but that is further information provided by the police to the commission in its, in the police presentation in relation to the role of the sangoma. Do you see that? MR MKHWANAZI: I see that. MR BUDLENDER SC: Right, let me come back to where I was, we know that the police knew that there were violent people amongst the strikers, correct?

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Page 3136 at teargas and stun grenades did not deter the people ncerned. MR MKHWANAZI: Are you referring, unsellor, before the 16th? MR BUDLENDER SC: Before the 16th, yes. MR MKHWANAZI: I will say I am not sure out the answer there to say yes or no, because I derstand the teargas was utilised on the 13th where tually police officials lost their lives and some of the mmittee members as well, lost their lives and one injured om the police side. So, I am not sure, maybe, I don't	1 2 3 4 5 6 7 8 9	Page 3138 move away to avoid trouble because they were not people who wanted to have trouble, but if there were some who wanted to make trouble they also wouldn't stand waiting to be dispersed and arrested. BRIG MKHWANAZI: It is possible that some people will do that. MR BUDLENDER SC: Come on, Brigadier, it is more than possible, it is the likely result, let's be
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tually police officials lost their lives and some of the mmittee members as well, lost their lives and one injured	9	
mmittee members as well, lost their lives and one injured		frank with each other.
-	10	BRIG MKHWANAZI: That's correct.
	11	MR BUDLENDER SC: And so it was entirely
ow if I haven't share it enough, to say really by that	12	foreseeable that they disperse and search and arrest plan
he police were at the position to say teargas is not more	13	would not proceed in the manner which was provided for in
		the plan.
0		
		· · · · ·
5		won't be able to comment except to say it will definitely
-		depend to the operational commander and overall commander to say how they were seeing the situation at that moment
		to say how they were seeing the situation at that moment.
		MR BUDLENDER SC: And the only
		contingency plan provided for this situation was police
-		members with sharp ammunition.
		BRIG MKHWANAZI: Counsellor, I indicated
	- p	from the beginning that from the reserve team or reserve
DO DO	1 8	group there was public order policing that is armed with
m what happened on the 13th of August.	25	shotguns and rubber bullets.
During the Days 2027		m / have 2120
		Page 3139 MR BUDLENDER SC: Brigadier, but if the
	and have	police, if the POPS police on the scene could not achieve
		what they wanted with rubber bullets and teargas, it was
		hardly likely that the reserved POPS members would achieve
		it by the same method.
		BRIG MKHWANAZI: Counsellor, I believe
-		the planning place was not only to address shooting rubber
		or shooting teargas, it was to address dispersing,
		arresting, meaning if one has to call public order policing
		they were not only to be called to come in and do shooting,
		but as well to perform other tasks to reinforce those
5		members who need some help.
	12	·
e koppie waiting to be dispersed or arrested.		MR BUDLENDER SC: Well, Brigadier,
DDIC MVUNANATI I am not auro about that	14	perhaps you can help the commission, what you suggested, that the POP members who were in the reserve areas would be
BRIG MKHWANAZI: I am not sure about that	1 Г	
int, it can be possible but normally it doesn't happen	15	
int, it can be possible but normally it doesn't happen at way, but yes.	16	able to achieve that the POP members on the scene couldn't
int, it can be possible but normally it doesn't happen at way, but yes. MR BUDLENDER SC: I want to put it to you	16 17	able to achieve that the POP members on the scene couldn't achieve?
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	rking at all. I haven't received that information before s, Sir. MR BUDLENDER SC: I don't want to go back that, Brigadier, it's on the record and we'll deal with it in due course. The police knew on the 16th of August m the events of the 13th of August that rubber was gely ineffective against this group. B:58] BRIG MKHWANAZI: I hear that, Counsellor. MR BUDLENDER SC: The police knew that ey were dealing with determined people who wouldn't heaply do what the police told them to do. They knew that m what happened on the 13th of August. Page 3137 BRIG MKHWANAZI: I then received the prmation but it is possible looking to what happened on 13th. MR BUDLENDER SC: And we've been in ail through the reports which the police received and observations which they made about the rituals and the e of muti. BRIG MKHWANAZI: I heard about it. MR BUDLENDER SC: And I want to put it to a that having regard to all of those circumstances it was irely foreseeable that when the razor wire was deployed se strikers would not simply stand in docile fashion on	b., Sir.15MR BUDLENDER SC:I don't want to go back16that, Brigadier, it's on the record and we'll deal with17at in due course.The police knew on the 16th of August18m the events of the 13th of August that rubber was19gely ineffective against this group.20BRIG MKHWANAZI:I hear that, Counsellor.MR BUDLENDER SC:The police knew thatey were dealing with determined people who wouldn'tmy what happened on the 13th of August.Page 3137BRIG MKHWANAZI:I then received theprmation but it is possible looking to what happened on13th.MR BUDLENDER SC:And we've been inail through the reports which the police received and observations which they made about the rituals and thee of muti.BRIG MKHWANAZI:I heard about it.MR BUDLENDER SC:And want to put it to91 that having regard to all of those circumstances it was10irely foreseeable that when the razor wire was deployed

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	Page 3140		Page 3142
1	that we see that the problem gets bigger we can bring them	1	Waddington.
2	to reinforce or if any member need to be taken out in the	2	BRIG MKHWANAZI: No –
3	line, the other member can come in and assist on that.	3	MR BUDLENDER SC: Do you know that book?
4	MR BUDLENDER SC: Well, let's get to the	4	BRIG MKHWANAZI: No.
5	point, Brigadier, the additional POP members were not in	5	MR BUDLENDER SC: Can you tell us the
6	fact able to resolve the matter without the lost of life,	6	names of any books dealing with public order policing?
7	correct?	7	BRIG MKHWANAZI: Ja, it will be a
8	BRIG MKHWANAZI: Counsellor, I am not	8	challenge to me, I forgot the names, I could have maybe
9	clear with your statement please?	9	brought something with me, at this stage I don't have
10	MR BUDLENDER SC: The situation was not	10	anything.
11	resolved without the loss of life, correct?	11	MR BUDLENDER SC: Have you ever heard of
12	BRIG MKHWANAZI: I will agree,	12	Professor David Waddington?
13	Counsellor, looking to the outcome of the operation on that	13	BRIG MKHWANAZI: No.
14	day.	14	MR BUDLENDER SC: Well, - so you're not
15	MR BUDLENDER SC: So we know that the	15	in a position to confirm or deny that he is an
16	additional POP members from the reserve area were not able	16	international expert in public order policing?
17	to resolve the matter without the loss of life.	17	BRIG MKHWANAZI: No.
18	BRIG MKHWANAZI: It is true, Sir.	18	MR BUDLENDER SC: Now I am going to give
19	MR BUDLENDER SC: Now, Brigadier, you	19	you an extract from this last book to which I've referred
20	know that there is a lot of literature internationally	20	now and I want to ask you some questions about that.
21	about public order policing.	21	CHAIRPERSON: Before you do that, in
22	BRIG MKHWANAZI: Yes, that's true.	22	fairness to the witness you might tell us, you say he is a
23	MR BUDLENDER SC: It is a subject which	23	professor, you might tell us at what university he is a
24	is intensively studied and written about in serious books	24	professor, you might tell us who the publisher is of the
25	and journals.	25	book, so that we can form some assessment as to whether it
			or to have
	Page 2141	1 L	Dago 21/2
1	Page 3141 BRIG MKHWANAZI: That's correct.	1	Page 3143
1	BRIG MKHWANAZI: That's correct.		Page 3143 is something to be taken seriously.
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2	BRIG MKHWANAZI: That's correct. MR BUDLENDER SC: I've got some of those	R 2	Page 3143 is something to be taken seriously. MR BUDLENDER SC: Chair, can I say that I
2 3	BRIG MKHWANAZI: That's correct. MR BUDLENDER SC: I've got some of those books here with me. I've got a book called Public order	2	Page 3143 is something to be taken seriously. MR BUDLENDER SC: Chair, can I say that I understand there will be a witness in due course who will
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	Page 3144		Page 31	46
1	interestingly the sociology of mining communities. Then,	1	that would be conducive to violent confrontation? You	
2	Brigadier, if you'll go to that TT2, could you just go to	2	understand the exercise we're doing?	
3	the table of contents of the book?	3	BRIG MKHWANAZI: Yes.	
4	BRIG MKHWANAZI: I am there already.	4	MR BUDLENDER SC: Now the first one is a	1
5	MR BUDLENDER SC: You will see that	5	hard line government willing to sanction police repression	on,
6	Chapter 1 deals with public order policing, theoretical	6	do you agree that that would be conducive to violent	
7	approaches.	7	confrontation?	
8	BRIG MKHWANAZI: I see that.	8	BRIG MKHWANAZI: I do agree.	
9	MR BUDLENDER SC: Chapter 2 deals with	9	MR BUDLENDER SC: Number 2 is explicit	
10	theories of public disorder.	10	pressure on the police from government and the other	
11	BRIG MKHWANAZI: Correct.	11	politicians, interest groups, general public, the media,	
12	MR BUDLENDER SC: Chapter 3 deals with	12	police personnel to apply uncompromising tactics and	
13	the American Urban Riots from 1991 to 2001.	13	strategies. Do you agree that that would be conducive	to
14	BRIG MKHWANAZI: Ja, I see it.	14	violent confrontation? Do you agree with -	
15	MR BUDLENDER SC: Chapter 4 deals with	15	[14:18] BRIG MKHWANAZI: I do agree.	
16	the British Urban Riots from 1991 to 2001.	16	MR BUDLENDER SC: Then the next one I	
17	BRIG MKHWANAZI: Correct, I see it.	17	want to refer to is under the sub-heading institutional,	
18	MR BUDLENDER SC: Chapter 5 deals with	18	the first one, centralised rather than local control over	
19	worldwide anti globalisation protests post Seattle.	19	police operations. Do you agree that that would be	
20	BRIG MKHWANAZI: I see that.	20	conducive to violent confrontation?	
21	MR BUDLENDER SC: Chapter 6 deals with	21	BRIG MKHWANAZI: Which is one is – you	
22	the GA to Justice and Home Affairs Ministers' meeting in	22	are at number 3?	
23	Sheffield in June 2005.	23	MR BUDLENDER SC: Number 1, under	
24	BRIG MKHWANAZI: That's correct.	24	institutional.	
25	MR BUDLENDER SC: Chapter 7 deals with	25	BRIG MKHWANAZI: Under institution, you	
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			m la Lana	
	Page 3145		Page 31	47
1	English football fans abroad from 1990 to 2006.	1	Page 31 know, I'm lost. Centralised rather than local control over	47
2	English football fans abroad from 1990 to 2006. BRIG MKHWANAZI: I see that.	R2	Page 31 know, I'm lost. Centralised rather than local control over police operation.	147
2 3	English football fans abroad from 1990 to 2006.BRIG MKHWANAZI:I see that.MR BUDLENDER SC:And Chapter 8 is the	2	Page 31 know, I'm lost. Centralised rather than local control over police operation. MR BUDLENDER SC: Do you agree with	147
2 3 4	English football fans abroad from 1990 to 2006. BRIG MKHWANAZI: I see that. If the football fans abroad from 1990 to 2006. MR BUDLENDER SC: And Chapter 8 is the conclusions of the study. It includes theoretical	2 3 4	Page 31 know, I'm lost. Centralised rather than local control over police operation. MR BUDLENDER SC: Do you agree with Professor Waddington that that is a factor which is	147
2 3 4 5	English football fans abroad from 1990 to 2006. BRIG MKHWANAZI: I see that: MR BUDLENDER SC: And Chapter 8 is the conclusions of the study. It includes theoretical foundations, the case studies and the policy implications.	2 3 4 5	Page 31 know, I'm lost. Centralised rather than local control over police operation. MR BUDLENDER SC: Do you agree with Professor Waddington that that is a factor which is conducive to violent confrontation? Do you agree?	147
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	Page 3148		Page 3150
1	MR MADLANGA SC: Where is what?	1	BRIG MKHWANAZI: It's correct.
2	MR HANABE: The paragraph.	2	MR BUDLENDER SC: And then under the sub-
3	MR BUDLENDER SC: Top of the page.	3	heading contextual, number 1, "a history of previous
4	MR MADLANGA SC: Top of the page, yes.	4	incidents or negative encounters with possible scores to
5	Counsel if you had noticed when Hennie refers to each one	5	settle. Professor Waddington says that's a factor which is
6	of these, at the end he says it would be conducive to	6	conducive to violent confrontation," do you agree?
7	violent confrontation. With each one of those, so your	7	BRIG MKHWANAZI: That's giving me a
8	interpretation should also convey the same meaning and -	8	little bit of a problem this one, Counsellor, because what
9	MR HANABE: Thank you very much,	9	we are normally doing is that we are helped by the
10	Advocate.	10	historical background to be able to plan properly. But if
11	MR MADLANGA SC: - but it depends on	11	doing that will actually contribute to a violent
12	whether you accept that I'm correct in what I'm saying.	12	confrontation then I have a problem on that because on my
13	MR HANABE: I will accept it, thank you.	13	experience I never have that situation. Always it used to
14	MR BUDLENDER SC: Then Brigadier, the	14	assist me.
15	next one I want to refer to is under cultural. Do you have	15	MR BUDLENDER SC: I understand your
16	the sub-heading cultural?	16	point, Brigadier. You say and I'm sure that's right, that
17	BRIG MKHWANAZI: Yes, I've got it.	17	you need to know that history in order to be able to deal
18	MR BUDLENDER SC: This one – officers	18	with the situation in a non-confrontational manner. That I
19	from outside the locality who are unfamiliar with local	19	think is the point you're making. But of course, I accept
20	customs and sensibilities and do not have a full commitment	20	that.
21	to maintaining good long term relationships or relations	21	BRIG MKHWANAZI: Thank you.
22	with the public. Do you agree that that would be a factor	22	MR BUDLENDER SC: But you will accept,
23	conducive to violent confrontation?	23	I'm sure, that if there is in fact a background of previous
24	BRIG MKHWANAZI: It's correct.	24	incidents or negative encounters with some people possibly
25	MR BUDLENDER SC: Paragraph 2, under	25	wanting to settle scores, that is a factor conducive to
	As and the	2	is / St Va
	Page 3149		Page 3151
1	cultural, special units subscribing to norms of		violence. Page 3151
2	cultural, special units subscribing to norms of confrontation. Did you agree that with Professor error	R2	violence. Page 3151 BRIG MKHWANAZI: Some people want to
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2 3 4	cultural, special units subscribing to norms of confrontation. Did you agree that with Professor CON Waddington that that is a factor conducive to violent confrontation?	2 3 4	Page 3151 violence. BRIG MKHWANAZI: Some people want to settle scores. MR BUDLENDER SC: Yes.
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2 3 4 5 6	cultural, special units subscribing to norms of confrontation. Did you agree that with Professor CO Waddington that that is a factor conducive to violent confrontation? BRIG MKHWANAZI: Ja – MR BUDLENDER SC: You agree?	2 3 4 5 6	Page 3151 violence. Some people want to settle scores. MR BUDLENDER SC: Yes. BRIG MKHWANAZI: No, I do. MR BUDLENDER SC: Can you go to the next
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1	that especially on crowd management environment, it	1	conducive to violent confrontation?
2	definitely, we need to ensure that some of these type of	2	BRIG MKHWANAZI: I do agree.
3	units are placed in a position whereby they cannot actually	3	MR BUDLENDER SC: I'm nearly finished,
4	be in a position to aggravate the situation as long as they	4	Brigadier, I promise. Paragraph 9 under situational, "a
5	are kept in - we have like the reserves where it was they	5	symbolically significant location e.g. a frontline to be
6	away from that position. They can only be called up if	6	defended by a community or subculture or no-go-area to be
7	there's a situation. So I have a problem but I'm not sure	7	retaken by the police." Do you agree that that is a factor
8	how they deploy because my question was to say as well the	8	which is conducive to violent confrontation?
9	writer is from South Africa or is not from South Africa.	9	BRIG MKHWANAZI: It's correct.
10	Yes, we have to learn from other people, I do agree, but at	10	MR BUDLENDER SC: Brigadier, only 3 more,
11	the same time is to say which situation are we talking	11	I promise. Under interactional, "sudden or overdramatic
12	about because the crowd in Belgium is not the same as crowd	12	police interventions which suggest overkill." Do you agree
13	behaviour in South Africa as well. So I'm looking at that	13	that that is a factor which is conducive to violent
14	to say how are we deploying. But in this essence I'm a	14	confrontation?
15	little bit - in this position I'm having a little bit of a	15	BRIG MKHWANAZI: I do agree.
16	problem.	16	MR BUDLENDER SC: Now, Brigadier,
17	MR BUDLENDER SC: I'll move on, paragraph	17	paragraph 6 under interactional, "dispersal tactics by the
18	3 under situational. "Deployment of officers from a	18	police that serve only to spread the crowd geographically
19	variety of different forces leading to poor coordination	19	and make its activities more unpredictable and less easy to
20	and blurred lines of command." Do you agree that if that	20	control." Do you agree that that's a factor which is
21	happens, that increases the risk of violent confrontation?	21	conducive to violent confrontation?
22	BRIG MKHWANAZI: I do agree.	22	BRIG MKHWANAZI: It's correct.
23	MR BUDLENDER SC: The next one, 6 under	23	MR BUDLENDER SC: And the last one to
24	situational. "Police definitions of public behaviour as	24	which I want to refer you, paragraph 8 under interactional,
25	sinister, illegitimate or ill-intentions." Do you agree	25	"a failure to engage in or a rejection of opportunities to
-	Divinta Laure View		m to have
1	Page 3153 that, 6 under situational. Do you agree that if the police	1	Page 3155 arbitrate or negotiate a reduction of hostilities
2	have this definition of the behaviour of the protestors as	2	especially when credible representatives are present and
3	sinister, illegitimate or ill-intentioned, that increases	3	issues do not seem intractable." Do you agree that that's
4	the risk of violent confrontation? You agree?	4	a factor which is conducive to violent confrontation?
5	BRIG MKHWANAZI: Yes, I do.	5	BRIG MKHWANAZI: I agree.
6	MR BUDLENDER SC: Thank you. Then item 8	6	MR BUDLENDER SC: Right. Thank you and
7	under situational, a strategic intention by the police to	7	just one point which is related, I'm not sure that I
8	engage in confrontation e.g. to clear an area or win by	8	understood your evidence yesterday correctly. Did you say
9	appearing to lose. Do you agree with the professor that	9	that when there is the show of force with the vehicles, the
10	that is conducive to violent confrontation?	10	police members should or should not display their arms?
11	BRIG MKHWANAZI: Ja, that part I'm not	11	BRIG MKHWANAZI: They actually conduct or
12	clear with, counsellor you can maybe indicate where it say	12	do the show of force without being having all the firearm,
13	or win by appearing to lose.	13	like shotguns and all that, it can be a side firearm of
14	MR BUDLENDER SC: Brigadier, we're again	14	course, but shotgun no, if they do that.
15	equally ignorant as far as that is concerned. Let's leave	15	MR BUDLENDER SC: Thank you, that's what
16	out that phrase.	16	I thought you had said. Then I'm moving, you'll be pleased
17	BRIG MKHWANAZI: - you say agree or not.	17	to hear, to a new topic which is negotiations. Now you
18	MR BUDLENDER SC: Let's – no, fair	18	train members of the South African Police Service in
19	enough. Shall we say a – I think it's described –	19	negotiation.
20	discussed in fact in his book, but I don't want to go	20	BRIG MKHWANAZI: Maybe I should maybe
21	there.	21	explain this way, Counsellor, that if we talk about
22	BRIG MKHWANAZI: Okay.	22	negotiation it's not negotiation as a course on its own,
23	MR BUDLENDER SC: "A strategic intention	23	but it's being presented together with a lecture regulation
24	by the police to engage in confrontation, e.g. to clear an	24	of Gatherings Act when we are busy giving information to
25	area." Do you agree that that is a factor which is	25	the members. So we theme that and negotiation is being
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1	explained as well, how it has to be handled but there is a	1	MR BUDLENDER SC: It's at page 2967 of
2	course where we have a course for hostage negotiator, those	2	the record, where Mr Semenya put to you, "there will be
3	are the specific course where a person has a person has	3	evidence of Fanagalo interpreters used, giving the audience
4 5	attend to that but this one is included during the time of	4	that was going to be addressed," and your answer was, "It
	the presentation of regulation of Gathering Act. [14:38] MR BUDLENDER SC: I understand. You	5	is correct, as long as there was somebody really from SAPS
6 7		6 7	who can interact with that, if you never had a problem with
7 8	yourself, have been trained in negotiation. BRIG MKHWANAZI: A course, hostage	8	that. I think it was correct as well, because dialogue
0 9	BRIG MKHWANAZI: A course, hostage negotiation, no, I never done it, but under regulation of	0 9	must be in the language people can understand." BRIG MKHWANAZI: What really I meant is
			5
10 11	Gathering Act, of course I've gone through a lot of time	10 11	that really from the SAPS side, we've got a person who can
	whereby we get lectured how we have to conduct ourselves,	12	manage to understand and be able to communicate with the
12	if we deal with discussions with the organisers or the	12	people who are going to march, for instance, if I speak
13	leaders of the organisation that is going to march on the		Tswana and somebody from the crowd, as a leader, speaks
14 15	day. So actually work under regulation of Gathering Act,	14	Tswana, obviously we will be able to communicate and solve
15 14	I've done that. MR BUDLENDER SC: We know, I think you'll	15	the problem. Then in that position I don't see there's any
16	. 5	16	problem, because what is the main objective here, is to say, let's solve the problem, let them actually manage to
17 10	agree that the first thing in negotiation is to gain the confidence of the party with whom you are negotiating. And	17	
18 19	I think you will agree that the essence of successful	18 19	reach their objective. The only thing is that it has to be
20	negotiation is give and take. Each party gives up	20	done and it has to be done within the legal framework of
20	something, in return for getting something it couldn't	20	the law, and if we manage each other to communicate in Tswana and definitely we manage to get things done
22	otherwise have.	21	properly, I don't see a problem into that position, Sir.
22	BRIG MKHWANAZI: It is correct, Sir.	23	MR BUDLENDER SC: Let me put it this way,
23	MR BUDLENDER SC: Just one further	23	Brigadier, the first prize is that the negotiator can speak
25	background question, we know that from the point of view of	24	the language of the people he or she is negotiating with.
20	background question, we know that norm the point of view of	14	the language of the people he of she is negotiating with.
			and I among the Second
	Page 3157		Page 3159
1	Page 3157 the strikers, Lonmin, their employer was their opponent.	1	Page 3159
1 2		and have	Page 3159
	the strikers, Lonmin, their employer was their opponent.	and have	Page 3159 BRIG MKHWANAZI: It is correct, but we
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1	BRIG MKHWANAZI: Counsellor if I listen	1	will be a problem. Some people won't trust, whether we are
2	properly, what is written there is that I said an	2	discussing in a good faith or not.
3	interpreter has to come from the side of the police. I am	3	MR BUDLENDER SC: Can I come to the last
4	not sure if I put it that way, but I don't dispute it if I	4	aspect on negotiation. From your attendance at
5	did, but as I am saying it cannot be a fast rule where the	5	Potchefstroom and your reading of the papers, you know that
6	interpreter comes from. Can an interpreter come from the	6	what the police asked the strikers to do was to surrender
7	side of the people who are actually marching as well. The	7	their weapons and leave the koppie.
8	main thing here, the objective let's understand each other,	8	BRIG MKHWANAZI: The core point I
9	let's solve the problem, nobody must be injured, lets have	9	received was that the main request was that they must lay
10	an objective being reached at the end of the day as police	10	down their arms, that was the main part.
11	officials.	11	MR BUDLENDER SC: What did the police
12	MR BUDLENDER SC: I understand that. It	12	offer the strikers in return, if they did that?
13	would be fine to have – it would be acceptable to have an	13	BRIG MKHWANAZI: Truly speaking,
14	interpreter who came from the side of the people you are	14	Counsellor, I never have that information. What maybe, as
15	negotiating with.	15	you said, if we negotiate, give and take but I never have
16	BRIG MKHWANAZI: From my experience,	16	any information to say what was there between the people,
17	Counsellor, working in Johannesburg with different marches,	17	because what I know normally is to look to say, what is the
18	COSATU, SATAWU, you name it, I never have a problem from	18	problem that need to be actually discussed or be
19	which side a person can come from. The main thing's the	19	negotiated, but in issue of what was the give and take
20	objective on the day, is to deal with the task before us	20	between the two parties negotiating, in most cases, I am
21	and make sure that it is successful. Counsellor, maybe if	21	not sure what was discussed, because I believe, Counsellor,
22	I may say, Sir, that I've never been challenged in most of	22	is that as we talk about negotiating, we are talking
23	my marches I've actually managed before with the language,		negotiation that is taking place before the koppie.
24	because always there will be a way how to communicate and	24	MR BUDLENDER SC: Brigadier, in the
25	how to move forward. So I don't think it is a problem at	24	papers which you read, and the meetings you've had, have
20	now to move forward. So I don't think it is a problem at	14	papers which you read, and the meetings you ve had, have
	Page 3161		Page 3163
1	all every time.	1	you seen any evidence of something which the police offered
2	MR BUDLENDER SC: Brigadier, I am not	R 2	the strikers in return for surrendering their weapons? Any
3	arguing with you at all, I am agreeing with you, that the	3	inducement of any kind.
4	best thing is, if a negotiator can speak the language –	4	COMMISSIONER TOKOTA: Sorry, before you
5	BRIG MKHWANAZI: Yes.	5	answer, when did you consider General Mpembe's offer that,
6	MR BUDLENDER SC: - but it's acceptable	6	we don't have a problem with you, give us your arms, then
7	if either side produces an interpreter, if either the	7	we will let you go.
8			we will let you go.
-	police produce an interpreter or if the people they are	8	MR BUDLENDER SC: Thank you, Commissioner
9	negotiating with produce an interpreter or if the people they are	8 9	
9 10			MR BUDLENDER SC: Thank you, Commissioner
	negotiating with produce an interpreter. That would also	9	MR BUDLENDER SC: Thank you, Commissioner Tokota, that's, with respect, very helpful. On the 13th,
10	negotiating with produce an interpreter. That would also be fine.	9 10	MR BUDLENDER SC: Thank you, Commissioner Tokota, that's, with respect, very helpful. On the 13th, General Mpembe said, look, you lay down your arms, and in
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1 2 3	Page 3164 cooperativeness of the Brigadier of course. Brigadier, when you are dealing with the people who are now on the koppie, they have their traditional weapons with them, and	
4	they are, have some number of firearms with them. The	
5	police have stated that people on the koppie, please hand	
6	down – surrender your weapons. Have you seen any evidence	
7	anywhere in the papers, or anything you've heard that they	
8	were offered any reward or return or inducement if they did	
9	that?	
10	BRIG MKHWANAZI: Ja, as an offer in	
11	return, I would say I couldn't pick it up anything except	
12	that there were times whereby during the negotiations, was	
13	if anybody got those rifles that were taken, they can just	
14	leave them right there where they are at the koppie.	
15 16	Police will pick them after, that's the only thing which, to me is a sign to say no matter what had happened, leave	
17	it there we can't hunt off somebody who was having the	
18	firearm and arrest and all those things.	
19	MR BUDLENDER SC: Last question,	
20	Brigadier, if the police had been able to say to the	
21	strikes, you hand over your weapons, and we will bring your	
22	employer to the koppie to speak to you, that would have	
23	been a real inducement which might have resulted in a	84
24	successful negotiation.	0 A 2010
25	BRIG MKHWANAZI: Normally it help a lot.	the field
	Page 3165	10 mile
1	MR BUDLENDER SC: Thank you, Chair, that	
2 3	is all I have for the moment. A R C H I V E F O [14:58] CHAIRPERSON: Mr Semenya, you did	RJUSTICE
4	[14:58] CHAIRPERSON: Mr Semenya, you did indicate that we were going to get some documents which you	
5	didn't have last time. Now you may well have them now but	
6	all I am saying to you is, perhaps you can give them to us	
7	on Tuesday morning?	
8	MR SEMENYA SC: Thank you, Chair.	
9	CHAIRPERSON: If they're ready by then, I	
10	take it they are ready now, you don't have to give them to	
11	us now.	
12	MR SEMENYA SC: I'll do my best, Chair.	
13	CHAIRPERSON: The commission will then	
14	adjourn until ten o'clock on Tuesday morning.	
15	[COMMISSION ADJOURNED]	
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