

# 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 ON

DAY 249

25 JUNE 2014

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1 [PROCEEDINGS ON 25 JUNE 2014]  
 2 [09:12] CHAIRPERSON: The Commission resumes. Ms  
 3 le Roux.  
 4 MS LE ROUX: Thank you, Chair. I'm not  
 5 sure if you'd like to start with swearing in Mr White or if  
 6 we should just do all the housekeeping on exhibit numbers  
 7 and then commence.  
 8 CHAIRPERSON: It's probably sensible to  
 9 do the housekeeping first.  
 10 MS LE ROUX: Chair –  
 11 CHAIRPERSON: If you want me to do it the  
 12 other way around I will.  
 13 MS LE ROUX: Chair, I'm in your hands.  
 14 We provided you with the index of documents to be used.  
 15 The new exhibits that have been provided to you include an  
 16 index to the final statement, supplementary statement, and  
 17 then an errata clarification document. So –  
 18 CHAIRPERSON: Well, the index wouldn't be  
 19 an exhibit, would it?  
 20 MS LE ROUX: Chair, I don't know – we  
 21 will be referring to it. I'm not sure if you want it to be  
 22 an exhibit or –  
 23 CHAIRPERSON: Alright, well let's make it  
 24 an exhibit. So he will be quadruple B, will he?  
 25 MS LE ROUX: Yes, Chair. I understood

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1 there was some talk of going AB, but if you want to do  
 2 quadruple B –  
 3 CHAIRPERSON: I think if we introduce a  
 4 new system then we'll only cause –  
 5 MS LE ROUX: Quadruple B –  
 6 CHAIRPERSON: BBBB1 is – how do I  
 7 describe it? Index –  
 8 MS LE ROUX: Will be the index to the  
 9 final statement of Gary White. Then Chair, BBBB2 will be  
 10 the index to the supplementary statement. BBBB3 will be  
 11 the errata and clarifications document to the final  
 12 statement of Gary White. BBBB4 will then be the  
 13 supplementary statement of Gary White, and BBBB5 will be  
 14 the statement of Constable Molatowagae.  
 15 CHAIRPERSON: How do you spell that?  
 16 MS LE ROUX: M-O-L-A-T-O-W-A-G-A-E.  
 17 CHAIRPERSON: So M-O?  
 18 MS LE ROUX: L-A-T-O –  
 19 CHAIRPERSON: L-A-T-O-W-G-A-E.  
 20 MS LE ROUX: G-A-E, correct. Then,  
 21 Chair, the final statement of Mr White has a number of  
 22 annexures attached to it. The GW6 series was marked by my  
 23 learned friend Mr Chaskalson and we did JJJ178, which is Mr  
 24 White's statement, point 1 through to point 6, for the GW6  
 25 series. The other annexures to that, GW3, Mr White's CV,

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1 the GW4 series as well as the GW8 series that deal with the  
 2 expert process, the engagement with the SAPS, those haven't  
 3 been exhibited and I'm not sure if you'd like to continue  
 4 the JJJ178 point –  
 5 CHAIRPERSON: I think it will be sensible  
 6 to do that.  
 7 MS LE ROUX: 8, 9, 10.  
 8 CHAIRPERSON: As far as I can remember in  
 9 the statement I read, are they not referred to in that way?  
 10 MS LE ROUX: Yes, they're referred to as  
 11 GW6A or so, but Chair –  
 12 CHAIRPERSON: Ja, so it will be sensible  
 13 to do that.  
 14 MS LE ROUX: Right, so then what we would  
 15 need to do, because the 6-series takes up JJJ178.1 to point  
 16 6, JJJ178.7 would then be GW3, Mr White's CV. JJJ178.8  
 17 would then be the GW4 series. JJJ178.9 would be GW8A.  
 18 178.10 would be GW8B. 178.11 would be GW9, and 178.12  
 19 would be GW10.  
 20 CHAIRPERSON: Those documents have  
 21 already been so marked?  
 22 MS LE ROUX: Yes.  
 23 CHAIRPERSON: Yes, thank you. Is that  
 24 the housekeeping over now?  
 25 MS LE ROUX: That is the housekeeping,

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1 Chair.  
 2 CHAIRPERSON: You call the witness? Mr  
 3 White, would you please stand? Are you prepared to take  
 4 the oath or do you wish to affirm?  
 5 MR WHITE: I'm prepared to take the oath.  
 6 CHAIRPERSON: Will you swear the evidence  
 7 you will give before this Commission will be the truth, the  
 8 whole truth, and nothing but the truth? Will you please  
 9 raise your right hand and say, "I swear, so help me God."  
 10 GARY WHITE: I swear, so help me God.  
 11 CHAIRPERSON: You may be seated, thank  
 12 you. Yes, Ms le Roux.  
 13 EXAMINATION BY MS LE ROUX: Thank you,  
 14 Chair. Mr White, if we could start –  
 15 CHAIRPERSON: I'm sorry, I'm reminded  
 16 that I must ask you your full names.  
 17 MR WHITE: Chair, my full name is Gary  
 18 White. There are no middle names.  
 19 CHAIRPERSON: No middle name?  
 20 MR WHITE: No.  
 21 CHAIRPERSON: I see. Alright, so we have  
 22 your full names already. Alright, thank you. Now that  
 23 important point has been disposed of we can proceed.  
 24 MS LE ROUX: Thank you, Chair. Mr White,  
 25 could I ask you to turn to what we've just marked as

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1 JJJ178.7, GW3, your CV attached to your final statement?  
 2 MR WHITE: I have it, Chair.  
 3 MS LE ROUX: Could you briefly summarise  
 4 for the Commission the positions that you held in the  
 5 police service of Northern Ireland?  
 6 MR WHITE: Mr Chairman, I was a police  
 7 officer in Northern Ireland for just over 30 years, joining  
 8 in 1982 and retiring in April of 2012. Like everyone,  
 9 police officer in the United Kingdom, all police officers  
 10 join at the lowest rank, at the rank of constable. So I  
 11 served in every rank through that period from constable  
 12 right up through to, in the last year of my service I was  
 13 temporarily promoted to the rank of assistant chief  
 14 constable, and during the course of those 30 years I've  
 15 been involved in a variety of different roles, ordinary  
 16 uniform being patrol roles. I've been a police trainer. I  
 17 have been a police prosecutor in court, a number of  
 18 specialist functions, including policy departments.  
 19 The vast majority of my career has been spent in  
 20 operational roles and a vast majority of that period was  
 21 spent in and around the North and West Belfast area,  
 22 considered to be one of the most difficult policing  
 23 environments, certainly in Northern Ireland. I served in  
 24 North and West Belfast in most ranks, including I spent a  
 25 considerable period there as the district commander with

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1 overall responsibility for the area, and then I also spent  
 2 quite a large part of my time in the role that I performed  
 3 in the last three years of my service, which was the chief  
 4 superintendent in charge of operations department. In that  
 5 role I had specialist responsibility for functions such as  
 6 public order units, armed response units, close protection  
 7 and with particular responsibility for public order. North  
 8 and West Belfast would be the area where we still would  
 9 experience quite a lot of public disorder, so again I spent  
 10 a lot of time there.  
 11 CHAIRPERSON: Yes, thank you. I take it  
 12 that's probably enough by way of a summary and then you've  
 13 already handed in the CV and he can confirm under oath that  
 14 everything in it is correct.  
 15 MS LE ROUX: Mr White, could you then  
 16 briefly describe for the Commission your current position  
 17 and the type of work that you are currently engaged in  
 18 since you've left the police service?  
 19 MR WHITE: Mr Chairman, I currently act as a  
 20 consultant. I'm a joint owner of a small company in  
 21 Belfast, but it effectively serves as an umbrella group and  
 22 then I would be contacted to various other organisations.  
 23 So I'm a policing advisor to international law and  
 24 governmental organisation called Saferworld. They are  
 25 based in London. I provide specialist policing advice to

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1 them in relation to a range of projects that they  
 2 undertake. I'm also deployable civilian expert for the  
 3 British government stabilisation unit and again I provide  
 4 policing assistance to a range of products, and then within  
 5 the Unique group itself we have been successful in winning  
 6 a number of contracts relating to policing, including I  
 7 designed and wrote a command course for the Malawi Police  
 8 in dealing with election security and issue around public  
 9 order and command.  
 10 MS LE ROUX: Mr White, in your CV I don't  
 11 think we have managed to cover it. I just wanted to ask  
 12 you to highlight your UN, your current advisory roles  
 13 relating to the UN.  
 14 MR WHITE: In February of this year,  
 15 Chair, I was invited to a meeting of experts in Geneva  
 16 looking at the UN basic principles and use of firearms.  
 17 That's an ongoing process that I hope to be involved in.  
 18 MS LE ROUX: And then Chair, Mr White's  
 19 academic qualifications and other training courses that  
 20 he's done are set out in the CV.  
 21 CHAIRPERSON: There is one other point I  
 22 thought might be relevant. In his reply to certain  
 23 questions posed to him by the SAPS he spoke about his role  
 24 in compiling some of the most recent policy documents in  
 25 Northern Ireland, the revision of the one he mentioned in

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1 his initial, or in his final statement, about which he was  
 2 asked, and he said something about that. So perhaps that  
 3 could be important –  
 4 MS LE ROUX: Yes Chair, I do intend to  
 5 cover that in the course of my –  
 6 CHAIRPERSON: You'll cover that in due  
 7 course, okay.  
 8 MS LE ROUX: - exam-in-chief. Mr White,  
 9 you've provided three statements to the Commission which I  
 10 need to get you to confirm under oath, but first if we  
 11 could just explain and set out on the record the status of  
 12 the three documents you've prepared and the circumstances  
 13 in which those had been provided to the Commission. The  
 14 first is your provisional statement, WW2, dated the 18th of  
 15 January 2013. Could you explain the status of that  
 16 statement and how it came to be before the Commission?  
 17 MR WHITE: Chair, that statement was  
 18 prepared at the request of my legal team and I understood  
 19 that stood on, through the request from the Commission in  
 20 relation to evidence I'd seen up to that point. The  
 21 process that I went through in relation to presenting  
 22 evidence to this Commission was in the first instance to  
 23 review a hard drive which had been supplied to me by my  
 24 legal team, as I understand had been supplied to them by  
 25 the South African Police. I basically having interrogated

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1 that hard drive, I made a judgment on the value of the  
 2 information within. I then put that into my provisional  
 3 statement and made certain, drew certain conclusions from  
 4 that.

5 I stress again I said in my provisional statement  
 6 that it was in fact a provisional statement and that to a  
 7 large degree the views that I'm expressing were  
 8 provisional. I was somewhat weary of providing that  
 9 statement because I was very conscious that I hadn't seen  
 10 all the evidence, but I was responding to a timeframe that  
 11 I think was helpful to the Commission.

12 MS LE ROUX: And Mr White, do you rely on  
 13 that statement before the Commission?

14 MR WHITE: In effect that statement has  
 15 been superseded, Mr Chairman, by my final statement.

16 MS LE ROUX: Mr White, with respect to  
 17 your –

18 CHAIRPERSON: So I understand the – sorry  
 19 to interrupt. I understand that everything that's still of  
 20 importance in that preliminary statement is incorporated in  
 21 the final statement, so we can read it there as it were.  
 22 Is that correct?

23 MR WHITE: Yes, Mr Chairman, I think that  
 24 my final statement effectively builds on my provisional  
 25 statement because there's additional evidence obviously

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1 that I've been made aware of. I'm confident that I don't  
 2 think that there's anything in my provisional statement  
 3 that has changed dramatically in terms of my views.

4 MS LE ROUX: Mr White, with respect to  
 5 your final statement which is before the Commission as  
 6 JJJ178 there is a document that we have now marked as  
 7 BBBB3, the errata and clarifications document. Other than  
 8 the changes set out on that document you have no further  
 9 changes to your final statement, correct?

10 MR WHITE: That's correct, Mr Chairman.

11 MS LE ROUX: Chair, if we can then  
 12 briefly look at the errata and clarifications document, the  
 13 first five paragraphs are simple typographical corrections  
 14 that Mr White picked up in his final statement. Mr White,  
 15 could I ask you to then briefly explain to the Chair the  
 16 other three clarifications that you set out in this  
 17 document clarifying your final statement?

18 MR WHITE: Yes, Mr Chairman, those issues  
 19 are listed at paragraph 6, 7 and 8 and I'll be guided by  
 20 yourself. Do you want me to go through those one by one?

21 CHAIRPERSON: I think you'd better deal  
 22 with paragraphs 6, 7 and 8 in some detail because it may be  
 23 important. It relates to really what you meant and  
 24 impressions created by some of the things you said which  
 25 you say were erroneous. So I think in fairness to

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1 everybody you should deal with that now.

2 MR WHITE: Chairman, again I'll be guided  
 3 by yourself. Would you prefer me to read it word for word  
 4 in the first instance, provide you an explanation, or would  
 5 you just like me to give you a sort of an overall  
 6 commentary in relation to that paragraph?

7 CHAIRPERSON: Overall commentary will be  
 8 enough.

9 MR WHITE: Okay, dealing with paragraph 6  
 10 then the issue was in relation to this terminology, if you  
 11 like, and paragraph 6 deals with I think this, the  
 12 terminology where I talked about the configuration of the  
 13 wire after the movement of Nyala 6 and specifically states  
 14 that the razor would, if anything, canalise protesters  
 15 towards the informal settlement. The reason I use the word  
 16 canalise was because I was directly quoting the word that  
 17 Lieutenant-Colonel Scott had used. I would have to say I  
 18 wasn't familiar with the word and I'm, you know, trying to  
 19 be very sensitive to the fact that I'm in another part of  
 20 the world. So I wasn't sure if that was a word that was in  
 21 common usage in South Africa and that –

22 CHAIRPERSON: It isn't common usage as  
 23 far as I was aware either, but it's dangerous sometimes to  
 24 adopt words other people use if you're not quite sure how  
 25 they intend them to be understood, but in any event, you

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1 can just clarify the point and we can proceed.

2 MR WHITE: And that's a lesson for me, Mr  
 3 Chairman. So that was the reason that I used that  
 4 particular word, but the intention that I was basically  
 5 just simply trying to state was that, and I refer to this  
 6 in some detail in my final statement, the original  
 7 configuration of the wire was effectively an arc which  
 8 seemed to be suggesting to people that they couldn't come  
 9 towards the informal settlement.

10 For very good reason I understand that Nyala 6  
 11 was moved and I have no issue with the fact that it was  
 12 moved, but it changed the configuration considerably. It  
 13 seemed to me therefore that the position of the wire seemed  
 14 to suggest to people that the police would have no  
 15 objection to them walking to the outside of the wire,  
 16 around sort of the edge of the wire if you like, that  
 17 that's effectively the point that I was trying to make. I  
 18 think it might have been suggested that some people may  
 19 have interpreted it either saying that the police were  
 20 almost saying to people that you must come this way,  
 21 because ultimately that's where scene 1 happened. It  
 22 couldn't be further from the truth.

23 I was just simply saying that I think the  
 24 reconfiguration of that wire therefore made, effectively  
 25 was saying to people that clearly you couldn't come to the

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1 inside of the wire, breach the wire where the police had  
 2 set up their neutral zone for the protection of their  
 3 officers and the media, but the police had no objection and  
 4 no difficulty to you walking around the outside of that  
 5 wire, which seemed to be pointing towards the informal  
 6 settlement.

7 CHAIRPERSON: Do I understand the point  
 8 you're making to be this, that you weren't suggesting that  
 9 that was the police's intention that the people should go  
 10 there. What you were suggesting and saying was that the  
 11 objective effect of the change might have conveyed such a  
 12 message to the strikers even though that wasn't the  
 13 intention of the police to convey that message? Is that an  
 14 accurate summary of what you say?

15 MR WHITE: Chairman, you've summed it up  
 16 far better than I could, exactly.

17 MS LE ROUX: Then Mr White, the point  
 18 that you clarify in paragraph 6, if you could summarise  
 19 that for the Chair?

20 MR WHITE: Yes Chair, in my statement I  
 21 had made the point that given the position of a number of  
 22 the bodies it would seem to me that there was no reasonable  
 23 explanation as to how those people would have been – other  
 24 than the fact that they were shot at that particular point  
 25 and clearly were towards the back of the crowd, I'm

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1 conscious of the comments that you in particular Chair have  
 2 made with regards to the fact that people may have been  
 3 shot and retreated to those points. I absolutely accept  
 4 that point.

5 I would only say in response that in part I was  
 6 relying on the fact that in exhibit L presentation, slide  
 7 209 which shows arcs of fire, I assumed that that might not  
 8 have been a point that was being disputed, but again I  
 9 apologise for making the assumption and I agree entirely  
 10 with yourself that it's not provable that that would be the  
 11 case.

12 MS LE ROUX: And then finally, Mr White –  
 13 COMMISSIONER HEMRAJ: Sorry, there is the  
 14 other alternative, that the deceased were in those  
 15 positions at the time and might have been hit by a stray  
 16 bullet fired from a long range?

17 MR WHITE: I think that's absolutely a  
 18 possibility, but on reflection, how I framed it in my first  
 19 statement I think might have been making a particular  
 20 presumption. I'm absolutely open to the fact that I think  
 21 that it is an open question. So I'm not saying that, you  
 22 know that, and nor do I, I think this is the point that the  
 23 Chair is making, that they were shot and they did move back  
 24 to those points, but just simply that it's an open question  
 25 and certainly I don't know.

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1 MS LE ROUX: And then finally, Mr White,  
 2 the clarification set out at paragraph 8.

3 MR WHITE: Yes, again Mr Chair, I'm  
 4 grateful for you asking me to clarify this, and this is  
 5 very much just an issue of misinterpretation from the point  
 6 of view that I'm absolutely totally convinced that this  
 7 operation was set up in terms of the dispersal with the  
 8 Public Order Police going forward. It says that in all the  
 9 planning documents and I make numerous references to that  
 10 in my statement.

11 However, in the plan that Lieutenant-Colonel  
 12 Scott provides he then says that they will be backed up by  
 13 a TRT line and then followed by a second line, which is the  
 14 NIU/STF. My point in relation to this paragraph was that  
 15 if the police were engaged consistent with Lieutenant-  
 16 Colonel Scott's plan that the POP police, the Public Order  
 17 Police might retreat to their Nyalas, I then said and then  
 18 they would be confronted by not one but two lines of police  
 19 with the TRT being the front line. In other words once the  
 20 POP had moved away then the TRT would be in the front line  
 21 followed by the – that's the point that I was making.

22 MS LE ROUX: Thank you, Mr White. If we  
 23 can then just clarify for the record the status of the  
 24 different annexures to your statement. Am I correct that  
 25 GW3, your CV, and GW10, your responses to the evidence

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1 leaders' interrogatories, were documents that you produced?  
 2 [09:31] MR WHITE: That's correct, Mr Chairman.

3 MS LE ROUX: And you have no changes to  
 4 those documents?

5 MR WHITE: No, Mr Chairman.

6 MS LE ROUX: Then with respect to the GW4  
 7 series, particularly 4C and 4E which are your response in  
 8 identifying areas of agreement and disagreement and  
 9 clarification with Mr De Rover, the SAPS expert, could you  
 10 say something about the production of those -

11 MR WHITE: Chair, I worked on those  
 12 documents in association with my legal team and that was a  
 13 process basically by Skype and telephone calls and exchange  
 14 of e-mails where basically I was asked to comment on  
 15 certain documents, make amendments to it and input into  
 16 answers to the South African Police's legal team.

17 MS LE ROUX: And then finally there's the  
 18 GW6 series attached to your final statement. Could you  
 19 explain to the Chair your role in those documents?

20 MR WHITE: Chair, I didn't have any role  
 21 in compiling those documents. My legal team advised me  
 22 that they were compiling those on the basis of factual  
 23 objective evidence that they would present to me in order  
 24 to help me understand the situation better and from which  
 25 they have invited me to draw my own conclusions.

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1 MS LE ROUX: Mr White, if we then turn to  
 2 your supplementary statement which has been marked as BBBB4  
 3 – Chair, the purpose of the statement is set out, page 1  
 4 paragraph 1.1.1 where Mr White sets out the four reasons  
 5 why he prepared the supplementary statement. Mr White, do  
 6 you have any changes to your supplementary statement that  
 7 you'd like to make?  
 8 MR WHITE: No, Mr Chairman.  
 9 MS LE ROUX: With respect to the  
 10 supplementary statement, could you briefly explain for the  
 11 Chair how you considered the evidence that forms the basis  
 12 of the supplementary statement, what you considered, what  
 13 you didn't?  
 14 MR WHITE: Again Chair, I was basically  
 15 asked to consider new evidence which was sent to me in an  
 16 electronic file and my legal team helpfully ordered that  
 17 into various folders but in the first instance I was  
 18 basically invited to review all of that evidence. However,  
 19 they had indicated to me that this was not all of the  
 20 additional evidence which had been submitted to the  
 21 Commission since the submission of my informal statement  
 22 but it was an attempt to direct me towards the more salient  
 23 points so that I could update my evidence to the Commission  
 24 because it had been some considerable time obviously since  
 25 I submitted my final statement.

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1 MS LE ROUX: So Mr White, you have not  
 2 looked at all evidence that came in since October 2013 in  
 3 compiling your supplementary statement?  
 4 MR WHITE: That would be correct, Mr  
 5 Chairman.  
 6 MS LE ROUX: And Chair, the index to the  
 7 supplementary statement that we've now marked as BBBB2 sets  
 8 out essentially the key scenes in Mr White's final  
 9 statement that he updates.  
 10 CHAIRPERSON: Please repeat the last  
 11 sentence, I didn't hear you?  
 12 MS LE ROUX: Chair, I was just –  
 13 CHAIRPERSON: Adv Hemraj was putting the  
 14 point to me.  
 15 MS LE ROUX: Yes, Chair, I was just  
 16 indicating that if you were to scan the index to the  
 17 supplementary statement which we've marked as BBBB2, that  
 18 highlights the key scenes from Mr White's final statement  
 19 that he updates in the supplementary. I don't intend to  
 20 take him through that. So Mr White, having now explained  
 21 the status of your statements before the Commission and  
 22 with the obvious caveat that you've identified, which  
 23 annexures you did not have direct input into, could you  
 24 affirm all of the statements and annexures that are before  
 25 the Commission and that the opinions expressed therein are

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1 yours?  
 2 MR WHITE: Absolutely, Chair. I've been  
 3 provided with factual evidence by my legal team from which  
 4 I have drawn my own conclusions.  
 5 MS LE ROUX: Mr White, if we could then  
 6 move into your experience as a public order officer and  
 7 commander. Chair, for the record this is set out in part 1  
 8 of Mr White's final statement. Mr White, if we could  
 9 briefly identify some of the characteristics of your public  
 10 order policing experience, what experience have you had of  
 11 policing large crowds numbering in the 100s or 1 000s?  
 12 MR WHITE: Chair, unfortunately despite a  
 13 relatively successful peace and political process in my  
 14 country, we still experience large scale public order, so  
 15 although during the early part of my career whilst the  
 16 political conflict was ongoing in Northern Ireland we also  
 17 experienced large scale public order, to a large extent the  
 18 hidden story of Northern Ireland –  
 19 CHAIRPERSON: Sorry, when you say public  
 20 order I take it you mean public disorder?  
 21 MR WHITE: Sorry, apologies Chair, it is  
 22 I suppose a police term, public disorder is absolutely what  
 23 I'm talking about.  
 24 CHAIRPERSON: Just to make an attempt to  
 25 make sure I was following, I should imagine.

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1 MR WHITE: Apologies. Yes, absolutely,  
 2 public disorder. So one of the hidden stories I suppose  
 3 from the international news in relation to Northern Ireland  
 4 is the continuance of on-street disorder which often will  
 5 be very large scale, numbering quite frequently crowds in  
 6 their 100s and often crowds in their 1 000s and also, as I  
 7 say, very serious in terms of the level of violence that  
 8 the two communities will direct towards each other and also  
 9 direct towards the police.  
 10 MS LE ROUX: Mr White, could you give  
 11 some detail with respect to the types of weapons that the  
 12 crowds you policed would carry and use?  
 13 MR WHITE: Basically running from the  
 14 scale, from the very bottom to the very top, Mr Chairman,  
 15 most police officers I'm sure experience in the course of  
 16 their career in terms of stones and bricks and bottles,  
 17 right up through to hand held weapons such as baseball  
 18 bats, long metal poles, scaffolding poles, extending on  
 19 through to Molotov cocktails – we refer to them as petrol  
 20 bombs at home in Northern Ireland – single incidents in  
 21 which there are literally hundreds and on occasions  
 22 thousands of those that would be thrown, moving on through  
 23 to numerous instances of home-made types of munitions. We  
 24 use the term of blast bombs in Northern Ireland, which is a  
 25 term which might extend to anything from a very crude

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1 device which might be a commercially bought firework which  
 2 has then been wrapped with nails or other types of shrapnel  
 3 to a more sophisticated blast bomb which might be a piece  
 4 of copper tubing with some type of black explosive powder  
 5 inside, again packed with shrapnel. The shrapnel might be  
 6 nuts and bolts, it might be metal shavings, it might on  
 7 occasions be small pennies which obviously create damage  
 8 which they explode, moving through again into, on  
 9 occasions, military grade hand grenades and then also  
 10 firearms, hand held firearms, AK47s. And also then at the  
 11 very upper scale I have dealt with public order situations,  
 12 public disorder situations, apologies Mr Chairman, whereby  
 13 we certainly have had intelligence to say that munitions  
 14 such as RPG7s have been present in the area. Now that's  
 15 not likely to be used by police on a shield line or on  
 16 dealing with public disorder but quite often the nature of  
 17 these operations and the scale of these operations means  
 18 that we bring a lot of police officers to a particular  
 19 area. We're fortunate in Northern Ireland that we still  
 20 have, our traditional vehicle that we use would be an  
 21 armoured Land rover so therefore the AK, the RPG7 would  
 22 clearly have been intended to target those. I stress that,  
 23 you know, I'm actually talking about a relatively recent  
 24 incident in the last number of years which was policed by,  
 25 on the basis of intelligence as opposed to, the RPG7 wasn't

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1 actually used.  
 2 MS LE ROUX: Mr White, you refer to a  
 3 shield line, what is that?  
 4 MR WHITE: A shield line would be a  
 5 typical policing public order tactic where literally police  
 6 officers are lined and facing the crowd with the police  
 7 officers on the front line having the protection of plastic  
 8 shields.  
 9 MS LE ROUX: Mr White, have you policed  
 10 crowds that were intent on confrontation with the police?  
 11 MR WHITE: I'm sure you can tell from my  
 12 last answer, absolutely intent on confrontation with the  
 13 police - many, many, many times over many, many years.  
 14 MS LE ROUX: Mr White, could you briefly  
 15 describe your experience with spontaneous or dynamic  
 16 policing situations?  
 17 MR WHITE: Chair, often in Northern  
 18 Ireland our disorder would be related to what we call the  
 19 marching season where one of the two communities, one side  
 20 has a particular tradition around parades and marching and  
 21 this causes tension. So the majority of the public  
 22 disorder incidents that we deal with would be in relation  
 23 to marches and I could tell you that there is likely to be  
 24 a large public disorder incident in the next couple of  
 25 weeks in Northern Ireland. It will be on the 12th July, it

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1 will be at Ardougne in North Belfast and I could almost  
 2 tell you exactly what time it's going to be. So I am  
 3 conscious of the fact –  
 4 CHAIRPERSON: To commemorate a battle at  
 5 the end of the 17th century?  
 6 MR WHITE: 1690.  
 7 CHAIRPERSON: Yes.  
 8 MR WHITE: I congratulate you on your  
 9 knowledge of history, Mr Chairman. So I'm very conscious  
 10 of the fact that I've be asked a question around  
 11 spontaneous incidents but I'm setting the scene in the  
 12 context that a lot of our public disorder incidents can be  
 13 anticipated and will be in relation to those types of  
 14 incidents which have actually been notified and the police  
 15 can prepare for. However, additionally we will also have  
 16 numerous examples of spontaneous public disorder that we  
 17 need to respond to. Sometimes those might be relatively  
 18 minor skirmishes which might be able to be resolved by a  
 19 small number of police resources being sent to the scene.  
 20 Quite often they tend to happen as a result of, and  
 21 particularly in north and west Belfast, where – forgive my  
 22 use of terminology but the sectarian geography. Belfast is  
 23 still a very segregated city, we still have a lot of what  
 24 we call peace lines, perhaps a bit of an oxymoron but these  
 25 are large walls that are built between the two communities

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1 to keep the two communities, Catholic and Protestant,  
 2 apart. I stress that they're built at the request of the  
 3 communities as a form of protection from – as opposed to  
 4 being imposed on the communities by the state. However,  
 5 the sectarian geography of particularly north Belfast is  
 6 that it's effectively, you know, a patchwork quilt of small  
 7 very polarised communities, Catholic or Protestant, with  
 8 the politics being Republican or Loyalist, living very  
 9 close to each other. Sometimes protected by peace lines  
 10 but sometimes because they're main arterial routes, that's  
 11 not possible to do and quite often spontaneous violence  
 12 will erupt between two communities confronting each other,  
 13 which the police then respond to. So I suppose the short  
 14 answer to the question of, do we have experience of dealing  
 15 with spontaneous incidents that flash like that,  
 16 unfortunately yes, over many, many years.  
 17 MS LE ROUX: Mr White, do you have any  
 18 experience in policing rural public disorder situations?  
 19 MR WHITE: I have some experience in  
 20 policing rural public disorder situations. As I've said  
 21 earlier on in my evidence, the vast majority of my  
 22 experience has been in and around the north Belfast area  
 23 but Northern Ireland is a small place and it's one single  
 24 police service that covers the whole country so yes, I have  
 25 had experience. Probably the most notable example would be

1 an area about 40 miles from Belfast called Drumcree. It's  
 2 a small rural town, it became very famous around the scene  
 3 of a particularly contested period as I've been referring  
 4 to and this is where a parade marches from a rural town  
 5 called Portadown up to this very small rural hamlet called  
 6 Drumcree to attend a church service and then it's supposed  
 7 to come back around almost the securest route. The inward  
 8 route, the return route basically takes it through a  
 9 Catholic nationalist area and in and around the early 1990s  
 10 it became very controversial, the parade was banned  
 11 initially by the police because the police had the  
 12 authority to do that in those days. The situation has  
 13 changed considerably since then, there's now a body called  
 14 the Parades Commission who make these decisions but that  
 15 particular parade over a number of six, seven, eight years,  
 16 became very much, was probably the most controversial one  
 17 that we were dealing with, which required police resources  
 18 to attend that incident from all across the country over a  
 19 number of years and quite often that policing operation  
 20 would last a number of weeks. Very rural setting, very  
 21 open farmland type area where crowds were being contained  
 22 by the use of razor wire and that type of thing – similar,  
 23 to some extent, to a limited extent I accept, to some of  
 24 the images I saw in relation to the evidence that is  
 25 currently before the Commission in relation to how razor

1 country – I've had people, you know, who might be standing  
 2 one or two people behind the person I'm trying to negotiate  
 3 with not only telling me he knows where I live but telling  
 4 me where I live and telling me where my children go to  
 5 school and obviously there's a very serious implied threat  
 6 within that. So in terms of threats, yes, absolutely –  
 7 often and regularly. In terms of threats in relation to  
 8 actually, you know, attempts to kill or injure police  
 9 officers, I've alluded to some of this earlier on but  
 10 numerous occasions where we've actually faced gunfire in  
 11 addition to all of the other issues I'm talking about like  
 12 Molotov cocktails, heavy masonry – and actually it's  
 13 interesting that a debate that goes on within the police  
 14 service or the police service that I worked in around how  
 15 the police respond to some of these threats, there's  
 16 sometimes a frustration by more junior officers who  
 17 therefore in public disorder situations are further forward  
 18 and obviously on the front line, that they sometimes say  
 19 that some of the more senior officers, particularly people  
 20 who would be in control rooms and not necessarily ever on  
 21 the ground, obviously when we talk about gunfire that  
 22 indicates a very, very serious threat that needs to be  
 23 responded to in a certain way. Blast bombs, similarly, but  
 24 you know Molotov cocktails – however, you know what's  
 25 interesting is that the police officers who are in the

1 wire has been used to barrier crowds, if you like.  
 2 MS LE ROUX: Mr White, I asked you about  
 3 crowds intent on confrontation with the police but could  
 4 you be a little bit more specific about your experience in  
 5 dealing with actual threats to the police?  
 6 MR WHITE: Could you clarify just for the  
 7 purposes of the answer, are we talking about where people  
 8 are threatening in terms of verbal, sort of making threats  
 9 that they're suggesting they intend to carry out or are we  
 10 talking about threats in relation to the types of weaponry  
 11 being used?  
 12 MS LE ROUX: Mr White, both. The way  
 13 they verbally communicate threats to you as well as did  
 14 they take any action to actually threaten the police with  
 15 weaponry.  
 16 MR WHITE: I think, Chair, in relation to  
 17 the first part of the question it would be rare in a public  
 18 disorder situation not to be threatened. You know, I mean  
 19 they're a fairly regular thing and whilst on occasions, you  
 20 know, that might be bravado by some people in the crowd,  
 21 you know, bearing in mind the second part of the answer –  
 22 you know on occasions it's a very serious threat. I  
 23 personally have had instances whereby in trying to  
 24 negotiate with crowds, you know, I've had people – I  
 25 mentioned in a previous area, Northern Ireland is a small

1 front line, you know, will actually talk about the level of  
 2 concern that they have is what some people would talk  
 3 about, the lower end of violence, i.e. masonry and things  
 4 like that. But you know if someone can get close to you  
 5 with a large block of concrete, you know, if it's so large  
 6 that they mightn't be able to strike you in the head with  
 7 it because it's, you know, it's heavy to lift you know, but  
 8 if that sort of thing was to hit your feet underneath your  
 9 shield you might never walk about. So you know it's just  
 10 interesting around how different officers being in  
 11 different roles actually perceive the difference in threat,  
 12 but with regards to threat at the higher end in terms of  
 13 being in public order situations where, you know, with  
 14 fierce gunfire, on numerous occasions, yes.  
 15 MS LE ROUX: Mr White, specifically with  
 16 regard to sharp-edged weapons?  
 17 MR WHITE: There have been occasions when  
 18 I've been involved in situations, yes, where crowds have  
 19 been armed with sharp-edged weapons. I don't know that it  
 20 would necessarily really cross to what's referred to here  
 21 as traditional weapons. We certainly don't have a  
 22 tradition, I have to say, of any type of spear but I mean  
 23 you know knives and also in terms of the parading tradition  
 24 that I was talking about earlier on, a number of instances  
 25 whereby some of those parades, one of the organisations



1 that takes part in the parade is called the Orange Order.  
 2 I'll not bore you with the details of the Orange Order but  
 3 how they dress you know, and this is very traditional,  
 4 ceremonial type dress, is you know they'll have bowler  
 5 hats, it almost looks like a banker going to the city in  
 6 London, you know, with a bowler hat and a suit and then  
 7 they wear this, what they call sash but the people at the  
 8 front of the parade will carry ceremonial swords but it is  
 9 a sword and we've had instances whereby there's been  
 10 disorder on parades where these ceremonial swords have been  
 11 used to attack police officers on numerous occasions, but  
 12 also then much more crude devices – baseball bats with  
 13 nails hammered through them, pieces of metal that have been  
 14 sharpened and then thrown at police officers. Sharp-edged  
 15 weapons in terms of, I'm not sure, I've seen a lot of  
 16 security since I've come here to South Africa around  
 17 people's homes but we have security fences where you'll  
 18 have a wall and then you'll have a device at the top which  
 19 is sort of spikes which tumble, so even if someone was to  
 20 climb up the wall and try and grab these spikes to try and  
 21 get over, you know, it's a series of individual pieces of  
 22 device which has got lots of spikes on it, so when you pull  
 23 it, it tumbles and spins so therefore you can't climb up on  
 24 it. On a number of occasions where those have been removed  
 25 from security fences and have actually been thrown from

1 commandeering has facilities such as CCTV etcetera,  
 2 etcetera, etcetera. The policy that we have says both of  
 3 those roles the person needs to be located where they  
 4 physically can exercise that function of command so it's  
 5 not specific in relation to whether he should be at the  
 6 scene or whether he should not.  
 7 The bronze commander then operational will be a  
 8 person on the ground in charge of resources. I have  
 9 numerous experience in operating all three of those roles.  
 10 We talk about these roles or these positions as being role  
 11 related, not rank related. So if I can explain. In a  
 12 large scale anticipated public disorder situation such as  
 13 for example the 12th of July, with all that's going to  
 14 happen in Belfast the gold commander will be the assistant  
 15 chief constable and the silver commander will probably be  
 16 at the level of chief superintendent. However, if you had  
 17 a relatively small football match that's going on somewhere  
 18 on a different day the gold commander might be the chief  
 19 inspector with the silver commander being an inspector and  
 20 so forth and so on. It's role related, not rank related  
 21 consistent with the nature of the operation. So therefore  
 22 I have been gold in relation to lots of quite serious  
 23 public disorder incidents. I have been silver in relation  
 24 a lot of very serious public disorder incidents. And also  
 25 I have been bronze.

1 rooftops down at police lines, so again large pieces of  
 2 metal this size protruding in a number of, at a number of  
 3 angles.  
 4 MS LE ROUX: Mr White, with respect to  
 5 your command in these operations, could you describe the  
 6 command roles that you would have as well as the number of  
 7 police officers and units under your command?  
 8 MR WHITE: As I said, sir, at the very  
 9 beginning of my evidence, because I joined as a constable  
 10 and worked my way through, I've had experience in every  
 11 single role including being the police officer on the front  
 12 line holding a shield and right up through. Specifically  
 13 in relation to command of these roles, of these types of  
 14 operations, our command system we base on a three-stage  
 15 system. We call it gold, silver and bronze. Gold would be  
 16 strategic level, silver would be tactical level and bronze  
 17 would be operational level.  
 18 [09:51] So typically the gold commander will be far  
 19 removed from the scene, perhaps in a command room sort of  
 20 over-viewing because the role of the gold commander is to  
 21 set the strategy, to resource the incident, to set the  
 22 tactical parameters and to set the style and tone. The  
 23 silver commander, depending on the circumstances, might be  
 24 at the scene or again might be in a commandeering somewhere  
 25 away from the scene, often that would be the case if the

1 When I was the chief superintendent, the district  
 2 commander for North and West Belfast typically my role  
 3 would have been a silver, typically it would have been a  
 4 silver with the assistant chief constable for Belfast being  
 5 the goal commander. In my last three years of service I  
 6 was the chief superintendent for Operations Department, as  
 7 I explained earlier on. It is unusual, in fact I think it  
 8 is unprecedented that an officer at chief superintendent  
 9 level would be on the ground performing the role of bronze  
 10 commander. The rule that I undertook, this head of  
 11 operations department was created on the day that I took  
 12 the job. It didn't exist before and I sort of say this  
 13 advisedly, when that role was being created I was  
 14 particularly selected for the role. Because it was  
 15 unprecedented for an officer of my rank to be on the ground  
 16 I made some inquiries as to what the view of the chief  
 17 constable was around that and he was very supportive. So I  
 18 performed the role of bronze commander on a number of  
 19 occasions as the chief superintendent operations. I then  
 20 gave evidence earlier on that in the last year of service,  
 21 because of the sudden retirement of my boss, I was  
 22 temporarily promoted to assistant chief constable. It is  
 23 absolutely unprecedented that an officer with the rank of  
 24 assistant chief constable would be on the ground as a  
 25 bronze commander. So I basically, in the first instance

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1 that we had a serious public disorder, anticipate a public  
 2 disorder situation. I got a phone call from the silver  
 3 commander of that operation the next day asking me to meet  
 4 him for a cup of coffee when he had said to me the Chief  
 5 had been with him on that night and the Chief had  
 6 specifically requested that for the following event which  
 7 was coming up the following week, that he wanted me on the  
 8 ground. So as assistant chief constable I also performed a  
 9 role of bronze commander on the ground which was unusual in  
 10 that as an ATC as bronze commander, the silver commander  
 11 for the operation who was a chief superintendant ranked and  
 12 then the gold commander would have also been at ATC. But I  
 13 stress it's role related, not rank related, so therefore I  
 14 was working under the authority of the silver commander.

15 CHAIRPERSON: Sorry before we move on  
 16 unless you're going to deal with this later in your  
 17 evidence, in which case you don't have to answer it now,  
 18 but you've read enough of the material relating to what at  
 19 Marikana to understand who was performing what function.  
 20 Now we had General Mpembe as the overall commander and we  
 21 had Brigadier Calitz as the operational commander. So  
 22 would Brigadier Calitz have been the equivalent of bronze,  
 23 is that right?

24 MR WHITE: I think if you would ask me to  
 25 draw a comparison with, Mr Chairman, I think, you know, Mr

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1 Calitz is probably operating in the bronze role and Mr  
 2 Mpembe in the silver role and then I would say General  
 3 Mbombo ultimately in the gold role. I have addressed this  
 4 in my statement –

5 CHAIRPERSON: Yes you said that she was  
 6 in overall command, small o, small c, though she wasn't the  
 7 overall commander capital letters, that the was function  
 8 performed by General Mpembe. So is that the point you're  
 9 making from a different angle at this point?

10 MR WHITE: Exactly, my view would be that  
 11 General Mbombo made the key decisions and people responded  
 12 to that. Therefore my analysis was that she was in overall  
 13 command, I understand the terminology that South African  
 14 Police use and that General Mpembe was the overall  
 15 commander with capital O and capital C as you say, Chair.

16 MS LE ROUX: Mr White, what role have you  
 17 played with respect to planning, the policing of public  
 18 order operations?

19 MR WHITE: Particularly, well in each of  
 20 those roles bronze, silver and gold I'm involved in  
 21 planning. I'd said earlier on, in my last answer, gold  
 22 set's the strategy, sets the strategic objectives, sets the  
 23 style and tone of the policing operation and resources.  
 24 It's then up to the silver commander to develop the  
 25 tactical plan to assist him with those strategic

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1 objectives. That's our planning process, so as I say I was  
 2 the district commander in North and West Belfast for the  
 3 best part of five years. So across all those five the  
 4 majority of the times, for the serious incidents that we're  
 5 focusing on at this moment in time I would have been  
 6 silver. So therefore I would have been responsible for  
 7 constructing the tactical plan. I didn't do that alone,  
 8 that was a planning process involving a team and depending  
 9 on the nature of the operation. It might have involved one  
 10 planning meeting, it might have involved numerous planning  
 11 meetings with various amendments being made to the plan  
 12 consistent with the type of operation that we were dealing  
 13 with and the type of threat that we were dealing with. But  
 14 again just to reiterate gold, silver and bronze involvement  
 15 in planning at all of those levels but particularly at the  
 16 level of silver which is around providing a tactical plan  
 17 for numerous operations.

18 MS LE ROUX: Mr White, to complete the  
 19 process as we understand it, what role have you played in  
 20 briefing police members who will deployed on an operation?

21 MR WHITE: Every single operation that we  
 22 plan for then requires to be briefed. I think I alluded to  
 23 this in my statement but unfortunately I can never recall –  
 24 in my statement I make a quote, my apologies, I can never  
 25 remember the source of this but it goes something along the

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1 lines of "If the people at the front end don't know the  
 2 strategy then there is no strategy." So therefore, you  
 3 know, briefing is extremely important.

4 Those briefings, the types of briefings will vary  
 5 depending on the nature of the operation but often if we're  
 6 talking about a large complex and sophisticated operation  
 7 it would have been regular practise to have what we would  
 8 call a pre-brief. So for example the operation is  
 9 happening on a Saturday, there might have been a pre-brief  
 10 on the Thursday when we bring together all of the people  
 11 who are going to be in command positions. All of the  
 12 bronze commanders and I should stress that it is unlikely  
 13 in a large operation that we would have a single bronze  
 14 commander. There are two types of bronze commanders. One  
 15 is a geographic bronze, so they own a piece of territory in  
 16 other words and responsible for things that happen in that.  
 17 The other one would be a functional bronze, so somebody who  
 18 has a specialist responsibility. So it might be functional  
 19 bronze for evidence gathering. It might be a functional  
 20 bronze around traffic issues. It might be a functional  
 21 bronze around communications or whatever it is. So all of  
 22 those people would come to the pre-brief. In addition to  
 23 that what is referred to here as POPs and the public order  
 24 teams, our public order units are effectively a unit of  
 25 around 24, 25 people. You've got 23, 23 constables,

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1 apologies the numbers aren't right, 22, 23 constables, 4 or  
 2 5 sergeants and one inspector. That's what we call a  
 3 tactical support group. The TSG, those are the people that  
 4 routinely are involved in the sheet lines that I referred  
 5 to earlier on.  
 6 So at the pre-brief the inspector of those units  
 7 that are going to be on duty on the Saturday would all  
 8 attend the pre-brief. The force lawyer would attend that  
 9 meeting, communications department would attend that and  
 10 then we'll also have an operational briefing on the morning  
 11 of the event just before we go to do whatever it is we're  
 12 going to do. But basically, you know, no ground operation  
 13 takes place without a proper briefing. If the operation is  
 14 one that we anticipate would be likely to have serious  
 15 public disorder, particularly where we anticipate the  
 16 likelihood of higher levels of force by the police, it's  
 17 good practise and it would often happen that those  
 18 briefings would be video-recorded so that we have a record  
 19 of what the officers were being told. Not just in relation  
 20 to their actual deployments but sometimes the officers will  
 21 complain about this because they get a bit fed up with it,  
 22 but we go over all of the issues in relation to human  
 23 rights, use of force, all of that, you know, because it's  
 24 really important.  
 25 Also if the operation is as I've described it

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1 would be good practise and fairly regular that we would  
 2 invite a human rights advisor to the policing board. The  
 3 policing board in Northern Ireland is an independent  
 4 organisation which was set up around police accountability.  
 5 They employ a specialist human rights barrister to monitor  
 6 police service and Northern Ireland's compliance with Human  
 7 Rights Act. The regular practise that that person would be  
 8 invited along to the briefing, in fact during the time that  
 9 I was district commander it would have been very regular  
 10 practise that the – at that stage there were two human  
 11 rights lawyers to the policing board, and both of them  
 12 would have come along frequently to planning meetings, to  
 13 briefings. And would have been present in the command room  
 14 and sometimes even on the ground in operations. One of  
 15 those lawyers was Keir Starmer, he subsequently became the  
 16 director of public prosecutions for England and Wales.  
 17 MS LE ROUX: And Mr White, with respect  
 18 to briefing during what we call a dynamic or spontaneous  
 19 policing event.  
 20 MR WHITE: Briefing in those circumstance  
 21 obviously will depend on what you're dealing the point  
 22 being that, you know as a police commander if I want people  
 23 to do things well then I need to tell them what it is that  
 24 I want them to do and importantly how I want them to do it.  
 25 So as I outlined earlier on numerous examples, a

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1 lot of experience in dealing with spontaneous public  
 2 disorder type situations, there you don't have the luxury  
 3 of having a pre-brief two days before. You don't even have  
 4 the luxury of having a brief potentially even before you go  
 5 to the scene. But, you know, at some point if I am the  
 6 commander I need to think about what it is that I'm trying  
 7 to achieve, how I'm trying to achieve it. The things that  
 8 I don't want to happen, the types of sort of tactics that I  
 9 don't want the police to use and that I do want to use.  
 10 And then have some means to communicate that to people  
 11 whether we get onto the scene and say for example, because  
 12 typically spontaneous public disorder will be as a result  
 13 of the two communities clashing as I described earlier on.  
 14 So on the way to the scene the instructions to the police  
 15 officers will be unit A and unit B will basically dismount  
 16 from their vehicles and face off people on the Catholic  
 17 side of the equation if you like. And units D and E will  
 18 do likewise on the Protestant side until we get the  
 19 situation stabilised and we think then what we're going to  
 20 do. And by process of ongoing communication briefing the  
 21 officers as to exactly what it is that you want them to do  
 22 so that they can do what you want.  
 23 COMMISSIONER HEMRAJ: Mr White, is your  
 24 bronze commander and the head of your POPs team, are they  
 25 part of the planning?

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1 MR WHITE: Absolutely. Planning  
 2 particularly for the large operations will involve a number  
 3 of people. There will be representatives from as you said,  
 4 the POPs team. They will come along, the bronze commanders  
 5 absolutely will come along. Depending on the nature of the  
 6 area, we might have some of our neighbourhood police –  
 7 community police officers come along because they will be a  
 8 valuable source of sort of community intelligence which  
 9 feeds into the plan. We also rely heavily on what we call  
 10 tactical advisors. So if it's a public order operation  
 11 that you're planning for we would ordinarily require the  
 12 input of a public order tact advisor. Public order tact  
 13 advisors in police service Northern Ireland are typically  
 14 at the rank of constable or sergeant but these are the  
 15 officers whose full time job is public order training. So  
 16 they're specialist tactical advisors, you know they  
 17 practise the tactics every day. So, you know, although I  
 18 have a lot of experience, I've been involved in helping  
 19 develop tactics or whatever but I would still often sort of  
 20 rely on their tactical expertise to advise me. The  
 21 important thing is that either during the planning process  
 22 or in the live operational – I'll come back to that in a  
 23 second, but in the planning process when we sit down to  
 24 discuss what it is that they're going to do they will offer  
 25 suggestions as to the tactics that might be appropriate.

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1 It is the role of the commander to decide what tactics that  
 2 we're going to use. But effectively that person provides a  
 3 menu and we talk through the advantages and the  
 4 disadvantages. I'm more than happy to give you an example  
 5 of how sometimes I think the tactic advisors get it wrong.  
 6 If you want me to by way of explanation.  
 7 CHAIRPERSON: If it's a short explanation  
 8 you can give it but if it's a long one I don't want to hear  
 9 it.  
 10 MR WHITE: A double planning situation in  
 11 relation to a rural incident. It was a small rural plan,  
 12 they were dealing with a controversial parade which is  
 13 likely to include a sit down protest. So people opposing  
 14 the parade were going to sit down in the middle of the  
 15 road. I asked a question of the person, I wasn't actually  
 16 involved in the planning at this stage, I was asked by  
 17 assistant chief constable to almost perform a mentoring  
 18 role. So this was a check up. As a result of the outcome  
 19 of this I ended up involved in the planning process. So I  
 20 asked him what he was going to do about this sit down  
 21 protest and he said we'll send people forward and we'll try  
 22 and negotiate with the people and whether or not we can get  
 23 them to move. Okay that's great, that's fine. What if  
 24 that doesn't work?  
 25 I've received advice from the tactical advisors

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1 that said in terms of a continuum of force the next lethal  
 2 level of force would be to bring the water canon in fusel  
 3 mode. The water canons that we have are very sophisticated  
 4 pieces of equipment in relation to a jet of water to keep a  
 5 crowd back. It can be set on what's called fusel mode  
 6 where it creates effectively a very fine mist. So if  
 7 you're involved in a sit down protest effectively the water  
 8 basically pushes the oxygen out of the air, so you would  
 9 cough and splutter and then people would get up and walk  
 10 away.  
 11 So he said that this was his next tactic that he  
 12 was going to use and I said to him you know have you ever  
 13 been in this town? I don't know if you could get a water  
 14 canon into that town, this is a small rural town, but I was  
 15 thinking about, you know, the public perception of that and  
 16 the reputation to the service. And all of those things and  
 17 I made the point to him. Tactical advisors give tactical  
 18 advice, commanders make command decisions and it would be  
 19 absolutely inappropriate in terms of raising the tensions  
 20 to bring a water canon into an event of that sort of  
 21 nature.  
 22 So tactical advisors are very important but at  
 23 the same time they don't make the decision, commanders make  
 24 the decision. However, as part of the planning process one  
 25 of the things that we do is go through a range of options

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1 and we look at what the best option is and that's recorded  
 2 and the rationale for that. We also record the rationale  
 3 as to why we have excluded it. So in the example that I've  
 4 just given you the record would show that the tactical  
 5 advisor suggested water canon for very good reasons and the  
 6 we would record the reasons as to why that wasn't going to  
 7 be the case. Tactical advisors would also be used in live  
 8 time operations. As the bronze commander on the ground I  
 9 might have a tactical adviser with me simply because, you  
 10 know, you can't be everything. You know Jack of all  
 11 trades, so when I'm dealing with even an operation that's  
 12 planned, things don't always go according to plan. In a  
 13 dynamic situation you know you have to be able to respond  
 14 to that, so again the tact advisor might say to me, Sir,  
 15 this group have now moved across here. Perhaps if you  
 16 thought about putting two units there and if we brought the  
 17 water canon here. I might say that's a very good idea,  
 18 that's great, that's exactly what we're going to do. And  
 19 virtually I might say no I don't want the water canon  
 20 brought forward because of such and such. So we would have  
 21 a variety of people including the force lawyer, including  
 22 medium communications department, all involved in the  
 23 planning process from the point of view that everyone has  
 24 something to contribute, to think about. You know, the  
 25 various aspects of the plan.

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1 MS LE ROUX: Mr White, have you had  
 2 experience of multi-day events. A protest that continues  
 3 over more than 24 hours?  
 4 MR WHITE: Chair, similarly lots of  
 5 experience of that, although I'm a retired police officer  
 6 and I'm no longer obviously involved in this but in the  
 7 area that I've been referring to, Northern Ireland and  
 8 North Belfast is a paraded that was stopped last year on  
 9 the 12th of July as a result of which there was large scale  
 10 violence. There has been a protest at the point that that  
 11 parade stopped and ever since and when I - in the last week  
 12 of June, there has been a protest camp established there  
 13 and there has been a parade every single day since that  
 14 parade was stopped in protest. Some of the parades have  
 15 resulted in further violence but just as an example that is  
 16 an incident which has been going on for nearly a year.  
 17 Drumcree that I referred to before went on for normally a  
 18 period of around two weeks at a time and an incident that  
 19 I've referred to in my statement where police officers  
 20 returned fire. The White Rock incident in 2005, serious  
 21 public disorder broke out on a Saturday afternoon at 3pm as  
 22 a result of an ongoing operation and basically we were  
 23 getting the situation calmed down about Thursday evening.  
 24 So basically it had run on for that period of time. So the  
 25 short answer again is yes.

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1 MS LE ROUX: Mr White, in your evidence  
 2 this morning you've described with respect to planning and  
 3 briefing the paper trail and recording the decision making.  
 4 Could you give a sense to the Commission of your  
 5 Participation in these accountability frameworks  
 6 that you have in Northern Ireland?  
 7 MR WHITE: Chair, not just me but I've  
 8 heard lots of people quote all the time that the police in  
 9 Northern Ireland are probably the most overseen and  
 10 accountable police services in the world and maybe we're  
 11 not, if they are not, are no longer, apologies. Maybe  
 12 they're not but I'm sure they're amongst the most overseen  
 13 and accountable police services in the world.  
 14 [10:11] So when we talk about the planning process we are  
 15 conscious of the fact that all of the decisions that we  
 16 make might at some stage be challenged and quite rightly so  
 17 at the end of the day with the Police Service, you know  
 18 with the emphasise being on service, providing a service to  
 19 the public, but there are ranges of accountability  
 20 mechanisms that the Police Service is not allowed to  
 21 respond to, the policing board have already mentioned it  
 22 and the police ombudsman's office which I think would be a  
 23 sister organisation to IPID here in South Africa, the Human  
 24 Rights Commission, Her Majesty's Constabulary, etcetera,  
 25 etcetera, etcetera. And even on occasions I have been

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1 interviewed, sometimes at length by the Health and Safety  
 2 Executive who had been basically brought in to examine the  
 3 outcome of a particular operation because maybe police  
 4 officers got hurt and in planning for all of these  
 5 operations obviously this huge issue around duty of care we  
 6 have to, our own people, our own officers who we ask to do  
 7 these very, very difficult jobs. So in terms of  
 8 accountability, are not at least of course the  
 9 accountability to the courts. again lots of experience.  
 10 MS LE ROUX: So, Mr White, in light of  
 11 all of that experience of course you've never policed in  
 12 South Africa. So how do you believe that experience can be  
 13 useful to the Commission?  
 14 CHAIRPERSON: Before you get to that can  
 15 I just ask a question –  
 16 MS LE ROUX: Of course –  
 17 CHAIRPERSON: - which is a matter perhaps  
 18 to be dealt with before you get to the point you're now  
 19 dealing with. Most of the violence or perhaps all the  
 20 violence you've dealt with, disorder you've dealt with in  
 21 your line is, I take it what is sectarian based, is it?  
 22 MR WHITE: Without doubt, Chair, the  
 23 majority would be however quite often there would be  
 24 violence, sort of inter community if you like within our  
 25 own community, within a single community, also experience

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1 with dealing with violence as a result of football which  
 2 would be widely known also within the UK.  
 3 CHAIRPERSON: The supporters of various  
 4 football clubs might after a particularly acrimonious  
 5 football match and perhaps a fair amount of liquor had been  
 6 consumed, there might be trouble, I can understand that.  
 7 The reason that I'm asking this question is, as you will  
 8 understand from what you've read this order that arose in  
 9 the case we're dealing with arose in an industrial context  
 10 in connection with what we call an unprotected strike, and  
 11 although to some extent it appears, although this may be a  
 12 matter of controversy, there was a certain amount of  
 13 antagonism directed towards the police because of the role  
 14 they were playing, but they were effectively interposing  
 15 themselves, not between two sectarian factions or even to  
 16 football club supporting factions, but between the strikers  
 17 and the employer. Now have you had any experience of  
 18 giving that kind of disorder in your alignment?  
 19 MR WHITE: I mean, I have certainly  
 20 policed industrial disputes but I would state very quickly  
 21 for the record you know, they have never sort of escalated  
 22 into anything other than maybe skirmish in relation to  
 23 violence where people are picketing outside, you know the  
 24 premises of a factory or something and there may be very  
 25 low levels skirmishes. So I make that point very clearly,

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1 but I would say that often we are dealing with a situation  
 2 where basically the police are engaging with a crowd who  
 3 have a particular angst, sometimes I think that the  
 4 complicating factor for us and this is sometimes, my  
 5 colleagues and the rest of the rest of UK I think would  
 6 acknowledge is that, quite often we're stuck between two  
 7 opposing factions that want to attack each other, whereas a  
 8 lot of the disorder that they will deal with will be  
 9 simply, you know around a crowd in opposition to the  
 10 police.  
 11 So we have this multi faceted thing where the  
 12 crowds sort of wanting to have a go at each other, the  
 13 police are in the middle trying to keep the crowds apart  
 14 and then now that the police are there, you know both sides  
 15 will direct their attention towards the police, but  
 16 certainly in relation to what I would call single identity,  
 17 protest if you like, you know those that happen and those  
 18 that sometimes happen were by, you get a lot of violence.  
 19 Yes, it does, again at home in the last couple of years  
 20 they have been dealing with a particular difficult issue  
 21 ongoing which is referred to as the flag protest. The  
 22 democratic vote by City Council was not to fly the Union  
 23 Jack 365 days a year and this caused a huge problem within  
 24 the union as community so the police have been dealing with  
 25 an ongoing very difficult situation, entirely just within

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1 the union communities, nothing to do with the Maximus  
 2 community. There is no current strike as such, it is just  
 3 between the police and the union as community. They are  
 4 annoyed, upset and responding back again to the, if you  
 5 like and the police [indistinct].  
 6 CHAIRPERSON: Thank you. Sorry, Ms Le  
 7 Roux, but I wanted to get clarity on that before you moved  
 8 on to your next point.  
 9 MS LE ROUX: Of course and, Chair, the  
 10 screen behind you is flickering and it is rather  
 11 distracting. We're told that they need to turn it off, but  
 12 can only do that in the break, so I'm not sure if we could  
 13 take our first break so that we can –  
 14 CHAIRPERSON: So why don't take the break  
 15 now then? I was proposing to take the first break at half  
 16 past ten, but if it would –  
 17 MS LE ROUX: Well, Mr White, is the  
 18 screen –  
 19 CHAIRPERSON: - to solve this problem –  
 20 MS LE ROUX: - distracting you or can we  
 21 carry on for another 15 minutes?  
 22 MR WHITE: It is not distracting me at  
 23 all, Chair.  
 24 MS LE ROUX: Okay.  
 25 CHAIRPERSON: Well, if it is not

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1 distracting you either, Ms Le Roux, I suppose we can carry  
 2 on?  
 3 MS LE ROUX: Then we'll carry on. Mr  
 4 White, all of this experience of course, you've never  
 5 policed an operation in South Africa, so could you explain  
 6 to the Commission how you believe that experience would be  
 7 of use to the Commission looking at the Marikana operation?  
 8 MR WHITE: For the record, Chair, you're  
 9 absolutely right, I haven't ever policed, in fact this is  
 10 the first time I've been in your country, so no, I haven't  
 11 policed a protest in South Africa, nor a police a protest  
 12 in any other country. Obviously I had been an observer to  
 13 protests in a number of countries particularly in the UK  
 14 but not policed them as such - my experience, potentially  
 15 offer some value to you, Chair, and your colleagues and in  
 16 the first instance when I received the hard drive and  
 17 started to engage with this evidence, one of the first  
 18 things I did was to look at sort of the policy framework.  
 19 I was actually struck by the commonalities in  
 20 relation to a lot of the policy documents of the South  
 21 African Police, the legal framework and whatever with  
 22 regards to overall principles such as, you know in relation  
 23 to the use of force, minimum force, the promotion of  
 24 concepts such as negotiation and facilitation of peaceful  
 25 protest and all of that. So, as I say I was struck by the

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1 commonality. The second issue I suppose is that if you  
 2 look at my provisional statement and my final statement,  
 3 you know the documents where I say, this is what I think  
 4 and I draw conclusions, the areas that I've handed the draw  
 5 things, I'm talking about things like Intelligence  
 6 briefing, command and control, the planning process itself  
 7 and issues of accountability.  
 8 So you know it is not situationally specific as  
 9 such, you know I'm wondering does it matter whether or not  
 10 you're dealing with a wide open space in sort of rural  
 11 South Africa, or you're dealing with the build-up of an  
 12 environmental in the middle of Belfast or wherever it is in  
 13 relation to the issues that I talk about and I draw some  
 14 conclusions from. Well, that will be for you to judge, Mr  
 15 Chairman, in relation to the value of my evidence as to  
 16 whether or not it has got any value, but I do think for the  
 17 reasons I've said that it does.  
 18 MS LE ROUX: Mr White, if we could then  
 19 deal with the question of the policy framework and you  
 20 mentioned you reviewed the documents. Chair, for the  
 21 record this is page 11, part 2 of Mr White's statement. Mr  
 22 White, could you summarise both the exercises that you  
 23 conducted, what you reviewed and then what conclusions you  
 24 reached overall? This is page 11, part 2 of your final  
 25 statement.

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1 MR WHITE: Yes, Chair, as I said the  
 2 initial part of this process was that my legal team  
 3 supplied me with a hard drive which came through the post  
 4 and I had a telephone conversation to confirm that it got  
 5 there and then basically to a large degree I spent some  
 6 time then in sort of engaging with the contents of that.  
 7 As I worked my way through you know I identified certain  
 8 policy documents and those listed at paragraph 2.2.2,  
 9 including the standing order 262 and the Public Order  
 10 Police Policy document in Crowd Management and the actual  
 11 instruction of 2012 which I think at that stage was still  
 12 in draft in relation to crowd regulation management during  
 13 public demonstrations and a number of other documents,  
 14 including the use of Force Directive for the Public Order  
 15 Police, which are all listed in Section 2 of my statement.  
 16 CHAIRPERSON: Please stop taking  
 17 photographs while we're sitting, the camera is making a  
 18 noise, it is interfering with the concentration of  
 19 everybody and I think enough photographs have been taken in  
 20 any event, please stop taking photographs now, you can take  
 21 photographs during the adjournment if you wish. Please  
 22 carry on, Mr White?  
 23 MR WHITE: Chair, I think in fairness to  
 24 the photographer, I'm not sure if he heard you, it is just  
 25 I wouldn't want him to –

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1 CHAIRPERSON: I don't know if the  
 2 photographer heard me, did you hear me? Please stop taking  
 3 photographs, it is very distracting and disturbing, it  
 4 upsets our concentration, you can do so during the  
 5 adjournment. Yes, please carry on, Mr White.  
 6 MR WHITE: So basically the documents  
 7 that I've referred to are in paragraph 2.2.2, I list them  
 8 and made some comments in relation to them. Do you want me  
 9 to give –  
 10 MS LE ROUX: Yes, Mr White, your overall  
 11 conclusion as to the policies and standing order frameworks  
 12 that governs policing and Public Order Policing in  
 13 particular in South Africa?  
 14 MR WHITE: I have a number of brief  
 15 points on that, first of all I've already commented in  
 16 relation to the commonality and secondly, the fact that, I  
 17 think I've commented in my statement that I don't think it  
 18 is the policy framework of itself contributed to the tragic  
 19 outcome of the events and that I think the policy framework  
 20 differs slightly from the policy framework in the UK and  
 21 you know it might be potentially enhanced in certain areas  
 22 around the decision making models and frameworks and a  
 23 number of sort of technical aspects, but overall you know  
 24 it seems to be a robust policy framework which, as I say,  
 25 when I read through it you know I was struck by the

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1 commonality with the policy framework that I will used to  
 2 be engaging with.  
 3 CHAIRPERSON: While you're dealing with  
 4 that can I ask you something that flows from that? You  
 5 talked about standing order general 262, have you had an  
 6 opportunity to study standing order, I think it is 251  
 7 which was produced in exhibits fairly recently in the  
 8 Commission, it deals with the use of force, particular  
 9 standing order 251, part 3. I did ask those instructing  
 10 you to draw that to your attention, I don't know if they  
 11 had the opportunity to do so?  
 12 MR WHITE: Chair, I do remember a  
 13 conversation to that effect, so I will have to apologise  
 14 and say that certainly I haven't read that document in  
 15 details since I've got here. I've read a lot of documents,  
 16 some other documents in detail since I've got here. In  
 17 fairness to my legal team, I do recall a conversation  
 18 around that and it might have been set for homework and if  
 19 it is helpful, I mean I am more than happy to have a look  
 20 at that during the break.  
 21 CHAIRPERSON: What I want to say to you  
 22 was, I'll be grateful if you look into it overnight,  
 23 because there are some questions I would like to ask you  
 24 about the interrelation between that standing order and  
 25 standing order 262 and obviously you're not, I wasn't

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1 proposing to ask you those questions, I just wanted to know  
 2 if you've read it. In view of what you've told me I'll be  
 3 grateful if you would study that overnight and if you're  
 4 able to give us some assistance on the point that I've  
 5 referred to tomorrow, you will then be able to do so.  
 6 MR WHITE: I'll be very happy to try.  
 7 CHAIRPERSON: It refers to, particularly  
 8 to the command to shoot in particular circumstances where  
 9 you have a crowd of people you are approaching, there are  
 10 some of them obviously more dangerous than others and how  
 11 that kind of situation is dealt with and there are a number  
 12 of issues that I'll be grateful if you could deal with them  
 13 in the course of your evidence. So it depends to some  
 14 extent on the interrelation between standing order 251,  
 15 part 3 and standing order 262. It also deals with the  
 16 situation we have here where the evidence is that as a  
 17 number of people approach the police line, no order is  
 18 given to shoot but the individual policemen are given what  
 19 is called, I'm not sure it is correctly but it is called a  
 20 discretion to fire, which in some cases then is followed by  
 21 an order to cease fire, how that works. I can understand  
 22 one person or two people being approached by an assailant,  
 23 having to defend themselves but where you have 50 or 60  
 24 people who are being approached, all of them potentially  
 25 targets for violence, how that situation is appropriately

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1 dealt with but anyway, I'm not expecting you to deal with  
 2 it now it is something I would like to hear your views on  
 3 tomorrow, if you're able to assist us.  
 4 MR WHITE: I'm more than happy to, Chair.  
 5 MS LE ROUX: And, Chair, I've asked my  
 6 learned friend, the evidence leaders to assist us with  
 7 identifying the exhibit. Mr White, if we can then, before  
 8 we take the break at half past, you have been asked, in  
 9 your final statement you referred to a document called  
 10 "Keeping the peace", and if I could ask you to then turn to  
 11 GW10 which we've marked this morning as JJJ178.12, these  
 12 are your responses to interrogatories directed to you by  
 13 the SAPS, if I could ask you to turn to that document? The  
 14 SAPS asked you the question and, Chair, maybe the quickest  
 15 way to do this is to read it into the record. "Mr White's  
 16 reference and use of the report called 'Keeping the peace'  
 17 requires clarification on his part. Having regard to the  
 18 fact that this report has been decommissioned in 2011  
 19 following the London riots it has been replaced by the  
 20 accepted professional practice", Chair, that's APP in the  
 21 acronyms of the police, "in the Public Order Policing."  
 22 Mr White, could you with reference to the answer  
 23 that's set out in GW10 briefly explain to the Commission  
 24 how you understand the status of keeping the peace and its  
 25 content and how it relates to the APP documents as well?

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1 MR WHITE: Firstly, Chair, my apology in  
 2 relation to my reference for keeping the peace as opposed  
 3 to APP in my statement. How this situation came about was  
 4 that when I first started to engage with the evidence I had  
 5 an informal conversation with a previous colleague just  
 6 around Police Public Order generally, this is my fault and  
 7 not his, but certainly during that conversation I've not  
 8 been aware of a change in process. Keeping the peace is a  
 9 document, particularly the 2010 version that I had an  
 10 involvement in and the development in writing off a  
 11 document that I'm very familiar with and therefore I  
 12 engaged on the process of providing my provisional  
 13 statement, subscribing my final statement on the basis of  
 14 using that as the police framework. It was only, I was  
 15 made aware by the SAPS legal team relatively recently  
 16 around this issue of APP, and then, I must say I was  
 17 horrified and I went back to check it.  
 18 I actually took the liberty of speaking to the  
 19 police college themselves and having an email back from  
 20 them clarifying the position which actually, the email  
 21 informs the response in red. So in brief points basically  
 22 it is to say this, that it wasn't as a result of the 2011  
 23 riots and keeping the peace was decommissioned in order to  
 24 move to APP. APP is effectively a sort of a bureaucracy  
 25 process. If you look at the document, keeping the peace

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1 and I actually have it here, at the back there is a list of  
 2 references and you will see the list of references. It is  
 3 quite extensive, around various other ACPOL documents  
 4 association of chief police officers and the whole idea  
 5 about APP was basically to try and condense the amount of  
 6 doctrine that's out there.  
 7 Therefore in, what its relationship with APP,  
 8 with keeping the peace is, is that to a large extent the  
 9 majority of the information on keeping the peace has moved  
 10 across under APP. Now as a learning organisation it was  
 11 written in 2010, at the very beginning of 2011, so of  
 12 course certain things have changed. So there are some  
 13 changes to what's in APP as opposed to keeping the peace  
 14 and that will be natural. APP was introduced to the Police  
 15 Service from, I think and I'm working from memory here, I  
 16 certainly wouldn't want to obviously mislead anyone, from  
 17 around I think October 2012, but it wasn't actually made  
 18 available to the public. Now you can look at it on the  
 19 website but that wasn't until the latter part of 2013,  
 20 after I have submitted my formal statement, but again I'm  
 21 not trying to use that as an excuse. I just wasn't aware,  
 22 however –  
 23 CHAIRPERSON: Sorry, there is a couple of  
 24 questions I would like to ask you, sorry, do you want to  
 25 finish what you're saying?

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1 MR WHITE: Sorry, and the last point –  
 2 CHAIRPERSON: Then I will ask you  
 3 something about it –  
 4 MR WHITE: - is basically that the email  
 5 from the police college which informed my response to this  
 6 question basically, you know clarifies the position that  
 7 there is nothing that I've said in relation to keeping the  
 8 peace which APP has not changed in terms of, you know it  
 9 had a dramatically overall, this policy because it wasn't  
 10 fit for purpose, so whatever, I'm absolutely confident of  
 11 that fact, and also you know if it is required and if it is  
 12 helpful to you, Mr Chairman, I have made a query with the  
 13 college police and I'm sure they could write to you  
 14 personally and to give you assurance of that.  
 15 CHAIRPERSON: Well, I suppose the  
 16 practical way to deal with it, if APP is available on the  
 17 web we could download it and if necessary extract it to be  
 18 made exhibits, if some of the parties wish to do that or we  
 19 ourselves and studying it if we think it is necessary. The  
 20 "keeping the peace" document, is that also available on the  
 21 web?  
 22 MR WHITE: It is my understanding it is  
 23 still available.  
 24 CHAIRPERSON: So one could compare the  
 25 documents to see if there are or if it is suggested that

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1 there are material changes, but if the doctrine in "keeping  
 2 the peace" is still the current doctrine in APP, well, then  
 3 nothing turns on this particular issue. We are interested  
 4 obviously in what we would describe as well best practice  
 5 in the context and if you as an expert in the field are of  
 6 the view that "keeping the peace" was an approximation to  
 7 well best practice, whether it was produced.  
 8 [10:31] And APP is now an acceptable statement of what  
 9 one could describe as world best practice. That would  
 10 suffice for our purposes, I would think. I don't know how,  
 11 if you wish to respond to that.  
 12 MR WHITE: Chair, I think it's up to you  
 13 to satisfy yourself as to whether or not it's world's best  
 14 practice. I'm absolutely convinced that both "Keeping the  
 15 peace" and APP, because it has been largely informed by  
 16 "Keeping the peace," absolutely represents very, very good  
 17 practice and that always decides where it sits in terms of  
 18 world practice, but it is – I'm absolutely confident that  
 19 it is very, very good practice in relation to dealing with  
 20 crowds and the types of issues that we're talking about.  
 21 MS LE ROUX: Chair, for your assistance,  
 22 "Keeping the peace" is GW2 to Mr White's final statement.  
 23 We have provided the URL where we can access APP. We'll  
 24 also, we can prepare a printout for the Commission and  
 25 provide that to you tomorrow.



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1 CHAIRPERSON: I think that would actually  
 2 be helpful. There are some people who can read these  
 3 things on their computer screen and other people with a  
 4 slightly different background have some difficulty, and I'm  
 5 one of those.  
 6 MS LE ROUX: Yes.  
 7 CHAIRPERSON: So I'd prefer a hardcopy,  
 8 if –  
 9 MS LE ROUX: Yes.  
 10 CHAIRPERSON: - I'm not being unduly  
 11 demanding.  
 12 MS LE ROUX: Mr White, with respect to  
 13 the comparisons between "Keeping the peace" and APP, you've  
 14 done that exercise, have you not? Where you compare the  
 15 content of "Keeping the peace" to APP.  
 16 MR WHITE: That's correct, since this  
 17 matter was brought to my attention obviously I wanted to  
 18 ensure that I at least satisfied myself before I tried to  
 19 satisfy yourself. So yes, I have actually created a  
 20 document myself where I've gone through the bits of  
 21 "Keeping the peace" that I make reference to within this  
 22 statement and then as far as possible I've done a read  
 23 across to APP, you know and I'm satisfied but I appreciate  
 24 that's for other people to judge that, you know, the  
 25 central tendency of my evidence based on "Keeping the

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1 peace" and that these concepts are reflected if not word  
 2 for word, which they are on occasions, then very close to  
 3 it because as I say part of the process of APP was to try  
 4 and sort of reduce bureaucracy and therefore there might be  
 5 a short and sharper version of how certainly principles are  
 6 laid out.  
 7 MS LE ROUX: And Chair, for your  
 8 assistance the majority of Mr White's reliance on "Keeping  
 9 the peace" is in part 2 of his final statement.  
 10 CHAIRPERSON: I understand. Would this  
 11 be an appropriate for us to take the short adjournment?  
 12 MS LE ROUX: Yes, Chair.  
 13 CHAIRPERSON: We'll adjourn for 15  
 14 minutes. Before – the exhibit to which I referred is in  
 15 the triple Z-series in relation to Standing Order 151.  
 16 MS PILLAY: Chair, it's ZZZ8.  
 17 CHAIRPERSON: Sorry, 251. It's ZZZ8.  
 18 It's Standing Order (General) 251 part 3. That's the –  
 19 MS LE ROUX: Thank you, Chair.  
 20 CHAIRPERSON: That's the document to  
 21 which I referred.  
 22 COMMISSIONER HEMRAJ: Can I just say  
 23 something, that the extract that was given to us didn't, it  
 24 wasn't the entire Standing Order. We were given part of it  
 25 only. We've asked for the entire document and that's not

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1 come through as yet and we would rather prefer to have the  
 2 entire document than just a part of it for our purposes and  
 3 for the purposes of Mr White to comment.  
 4 MS LE ROUX: Chair, I'm sure – we'll ask  
 5 the SAPS legal team. I'm sure we'll be able to get the  
 6 complete document.  
 7 CHAIRPERSON: Yes, the parts that I read,  
 8 which I was interested to hear discussed in the context of  
 9 comparison with 262, are contained in ZZZ8, which is an  
 10 exhibit before us. But we don't know what preceded it and  
 11 we don't know what the current status is of that Standing  
 12 Order. I assume it's still standing, as it were, but  
 13 that's a matter the police will be able to help us on. But  
 14 I'm more interested in the principles contained in both  
 15 documents and how they interrelate to each other. Anyway,  
 16 we'll take the 15-minute adjournment starting now.  
 17 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 18 [10:57] CHAIRPERSON: The Commission resumes.  
 19 Has the problem been sorted out?  
 20 MS LE ROUX: They seem to still be in  
 21 progress, Chair, but I'm told that they – so at the moment  
 22 the screen is just not operating, which is better than –  
 23 CHAIRPERSON: Alright. I must remind  
 24 you, Mr White, you're still under oath. Yes, Ms Le Roux?  
 25 GARY WHITE: (s.u.o.)

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1 EXAMINATION BY MS LE ROUX (CONTD.):  
 2 Thank you, Chair. Mr White, one final question on the  
 3 "Keeping the Peace" document. Could you describe your role  
 4 and participation in the preparation of that document?  
 5 MR WHITE: Chair, at that time the ACPO,  
 6 the Association of Police Officers in England and Wales,  
 7 and basically how it works is that various senior police  
 8 officers across the UK have a portfolio for a specialist  
 9 area as well as their day job, if you like, and Sue Sim who  
 10 was the Chief Constable of Northumbria at the time was the  
 11 ACPO lead for public order. So "Keeping the Peace" was  
 12 required to be updated. I think the previous version was  
 13 around 2001/2002. Significantly, it was being updated  
 14 because of the events of April 2009. There was a G20 event  
 15 in London in April 2009 and quite a famous incident where a  
 16 gentleman by the name of Ian Tomlinson was pushed down by  
 17 police officers and subsequently died. As a result of  
 18 that, there was an investigation carried out in relation to  
 19 the events on the day by Her Majesty's Inspector of  
 20 Constabulary and then a follow-up investigation or report  
 21 in relation to a more wider, thematic review of public  
 22 order policing in the UK. As a result of that there were  
 23 recommendations, including that "Keeping the Peace" should  
 24 be updated. The lawyer to HMIC at the time was a person  
 25 called Jane Gordon. I talked to you earlier on around how

1 the policing board in Northern Ireland had appointed two  
 2 human rights barristers to oversee issues there. One I  
 3 explained was Keir Starmer who went on to be DPP, the other  
 4 one was Jane Gordon. So basically she was involved in  
 5 writing a lot of reports in relation to Northern Ireland.  
 6 She then moved to HMIC. You can actually trace where she  
 7 has used some case studies in relation to her time in  
 8 Northern Ireland to inform those HMIC reports and therefore  
 9 she was also then involved in the process, I suppose as a  
 10 legal adviser in relation to the update of "Keeping the  
 11 Peace". The approach that Sue Sim took was basically, she  
 12 appointed an officer I think of the rank of chief inspector  
 13 Paul Orchard, if my memory serves me correctly and he co-  
 14 ordinated the process and a number of people helped him to  
 15 do that. I was one of them. I led the Northern Ireland  
 16 sort of input to that which was quite significant because  
 17 of the reasons I've said vis-a-vis Jane Gordon.  
 18 Interestingly, if you look at "Keeping the Peace" 2010, I  
 19 refer to a lengthy list of references at the back of it and  
 20 it is quite lengthy. I was just casting my eye over this  
 21 last night. So it's lots of other ACPO documents. There's  
 22 only one document where there's a specific reference to any  
 23 particular police service and it's about an aide memoire  
 24 produced by PSNI. The PSNI therefore, you know, out input  
 25 to that was quite significant. I led that input. I then

1 also acted on ongoing liaison with Paul Orchard and others  
 2 in relation to the fact that we were carrying out a sort of  
 3 editorial type function in relation to "Keeping the Peace"  
 4 documents. So I have a substantial involvement in the  
 5 development of it.  
 6 CHAIRPERSON: Thank you, yes.  
 7 MS LE ROUX: Thank you, Mr White. If we  
 8 can now turn to your evidence on Marikana and if I can  
 9 start by asking you the scope of your evidence,  
 10 particularly what events you were concentrating on and in  
 11 terms, with respect to which you've expressed your opinion.  
 12 MR WHITE: Indeed, Chair. While I've  
 13 given evidence previously about receiving this hard drive  
 14 and therefore looking at the policy framework in relation  
 15 to those documents, but in terms of actual evidence of  
 16 events, you know, my focus was directed purely and simply  
 17 to the events of in and around the 9th of August through to  
 18 the events on the 16th. That didn't look wider than that in  
 19 terms of, you know, the role of the South African Police  
 20 Service outside of Marikana or extend it either sort of  
 21 before or after that date.  
 22 MS LE ROUX: Mr White, if we then turn to  
 23 the events of the 13th of August 2012, which is the first,  
 24 those are the events in your time frame. You deal with 9th  
 25 to the 16th but the 13th is the first set of events that you

1 express conclusions on. Chair, for the record, these  
 2 commence at page 50 of Mr White's final statement part 5.  
 3 Mr White, I'd like us to canvass, in summary, your overall  
 4 conclusions about the 13th, sir, if you could take us  
 5 through different scenes that you cover and the conclusions  
 6 you draw in relation to the 13th.  
 7 MR WHITE: Chair, if it's helpful, before  
 8 I specifically refer to the 13th, to a large extent both in  
 9 relation to the 13th and the 16th which I'm sure Ms Le Roux  
 10 will be asking me about shortly, I would say I largely talk  
 11 about a number of key things which are around intelligence  
 12 available and how it was used and the planning process and  
 13 the briefing of officers and the command and control of the  
 14 actual incidents and then issues in relation to  
 15 accountability. When we come to talk around the 16th, you  
 16 know, there are issues that I raise specifically in  
 17 relation to tactics, not so much on the 13th but those are  
 18 the key things.  
 19 With that in mind then, looking at the incident  
 20 in relation to the 13th, I suppose it's fair to say nothing  
 21 hangs in a vacuum and therefore although we're  
 22 concentrating on the 13th, you look at it in the context of  
 23 obviously what's been happening in Marikana over the  
 24 previous number of days. So the first thing that struck me  
 25 was that when I was looking for plans in relation to

1 informing the South African Police's operation around this,  
 2 within the hard drive – and forgive me, I don't have the  
 3 reference immediately to hand, I don't know if you need it  
 4 at this stage but there is a plan for the South African  
 5 Police Service in relation to, I think it's Friday the 10th,  
 6 if my memory serves me correctly.  
 7 However, the plan for Saturday and the Sunday is  
 8 basically the same plan. I mean it's basically – it was  
 9 listed under different exhibits, if you like, but it was  
 10 simply a photocopy of the same plan. Therefore that seemed  
 11 to me that, both in relation to planning and intelligence,  
 12 there was no ongoing update and it struck me as odd, given  
 13 the very serious incidents that were happening across that  
 14 weekend. I know that the South African Police – certainly  
 15 my evidence is not that they didn't respond to this in any  
 16 way because I know from other evidence that there was an  
 17 increase in resources and whatever, but certainly, one, in  
 18 relation to planning and, two, in relation to the  
 19 intelligence there doesn't seem to be an ongoing interplay  
 20 with intelligence and updating the risk assessment for  
 21 example with regard to potentially attacks on police  
 22 officers and how you might mitigate that.  
 23 Also I was struck by, and this is an issue which  
 24 goes across the whole of my evidence, is the very limited  
 25 nature of the intelligence. I was presented with a

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1 document which is TT5 of the exhibits which, as I  
 2 understand, is a composite of all of the intelligence which  
 3 was available for the entire operation. I checked with my  
 4 legal team on a number of occasions to make sure that I was  
 5 reading this and I was interpreting back to the issue -  
 6 that when I was reading this as a composite of all of the  
 7 intelligence, that's exactly what it meant because there  
 8 are 10 entries on that document. I think the first three  
 9 of them refer to February and the fourth one refers to May.  
 10 One of the entries refers to the fact that a JOC has been  
 11 set up and a number of these things are referred to, the  
 12 views of senior police officers. There are two, possibly  
 13 three entries in that document which covers the whole  
 14 period including and up to the tragic events of the 16th  
 15 that would be what I would consider to be actionable  
 16 intelligence. So it seemed to me that there are clear  
 17 issues in relation to intelligence. Even if you look at  
 18 that document, there is one of the bits of information that  
 19 I would consider to be actual intelligence and there's  
 20 evidence then that I think Brigadier Engelbrecht - and I  
 21 have to apologise at this stage, my legal team, I've been  
 22 having some difficulty with pronunciation of names.  
 23 CHAIRPERSON: You got that one right.  
 24 MR WHITE: Thank you, thank you. There  
 25 was a statement from Brigadier Engelbrecht where he talks

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1 about receiving this intelligence from a handler and he  
 2 then communicates that, I think by both text and possibly  
 3 also verbally to General Mpembe. My interpretation of that  
 4 is, he thinks that this is so significant that the overall  
 5 commander needs to know and I congratulate him for doing  
 6 so. There is a subsequent reference in his statement then  
 7 to a conversation between him and General Mpembe where he's  
 8 obviously expressing some concern with regard to how that  
 9 intelligence was actioned and Mr Mpembe says, it wasn't  
 10 actioned as I would have intended.  
 11 The conclusion to be drawn there is that  
 12 obviously when that intelligence was originally given, I  
 13 think Mr Engelbrecht's expectation was - and it was around  
 14 a threat to, you know, damage property and - that there  
 15 would probably be police doubt, is a term that I would be  
 16 familiar with. In other words, maybe deploy a lot of high  
 17 profile police officers and I think this would be  
 18 consistent with what Lieutenant-Colonel Scott subsequently  
 19 goes on to talk about as his visible policing plan, in  
 20 other words lots of police officers in the area to try and  
 21 maintain stability and also in a preventative role.  
 22 So turning back to TT5, one, I was very shocked  
 23 at how little intelligence seemed to be available. Two,  
 24 even within the 10 entries very few were actually what I'd  
 25 consider to be actionable intelligence and then if you turn

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1 to one of the issues that was actionable intelligence, it  
 2 didn't seem to have been properly actioned - not my  
 3 interpretation or I think the interpretation of Brigadier  
 4 Engelbrecht.  
 5 The last thing I say in relation to intelligence  
 6 then is that at exhibit LLL11, which is, I think, the  
 7 document which is the sort of internal review carried out  
 8 by SAPS after all of these events, they highlight this  
 9 issue around the fact that intelligence was lacking and I  
 10 know that a number of other police officers have given oral  
 11 evidence to that effect as well. So in relation to  
 12 intelligence I don't think that, one, there was very much  
 13 available or certainly being brought to the attention of  
 14 the people who needed to know and, secondly, it wasn't  
 15 being actioned properly. Would you like me to move on or  
 16 do -  
 17 MS LE ROUX: Mr White, with respect to  
 18 the operation on the 13th that Major-General Mpembe led, do  
 19 you have any comment with relation to intelligence and how  
 20 it related to that operation specifically?  
 21 MR WHITE: Well, specifically I think  
 22 that the issue is that General Mpembe is asked to go and  
 23 engage with this crowd who are at the railway line, who are  
 24 armed and the information is, as I understand it, that's  
 25 coming from what's viewed on the CCTV and General Mbombo

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1 issues this instruction. So I would have expected  
 2 ordinarily that there might have been some intelligence  
 3 around, you know, who that group are, what maybe  
 4 potentially their intentions are, their makeup of it, given  
 5 the fact that it is likely that potentially this group have  
 6 been the people who have been involved in the ongoing  
 7 disorder that has taken place over the last couple of days  
 8 but I don't see any specific references to that, which  
 9 would inform a risk assessment which would be around how  
 10 likely these people would be to be violent towards the  
 11 police.  
 12 MS LE ROUX: Mr White, turning then to  
 13 planning for that operation on the 13th of August, in your  
 14 statement you make several criticisms of the police  
 15 relating to planning. Could you take the Commission  
 16 through those?  
 17 MR WHITE: Yes, I think that a lot of the  
 18 issues that I deal with in relation to planning in relation  
 19 to this particular operation are at 5.2.11 of my initial  
 20 statement - sorry, my final statement - and suffice to say  
 21 that in some of the interaction that has gone between -  
 22 CHAIRPERSON: Page 55.  
 23 MR WHITE: That is actually, correct, Mr  
 24 Chairman. In some of the interactions that have gone  
 25 between my legal team and the South African Police legal

<p style="text-align: right;">Page 31300</p> <p>1 team, you know, it's quite – I think I've been asked the  2 question to accept that this was a spontaneous incident  3 that the SAPS were responding to. In my provisional  4 statement I was actually pointing out that this was a  5 spontaneous incident that I think they were responding to  6 spontaneously. I made some comments to the fact that  7 General Mpembe's statement, the first statement of General  8 Mpembe that I read could have been read, in fact how I read  9 it was sort of suggesting that a plan had been in place and  10 a command structure had been in place. The command  11 structure that we ultimately see heading then after the 13th  12 towards the 16th, but it certainly in his original statement  13 suggests that that took place before the operation that  14 takes place on the 13th. So it was I that was identifying  15 that it was spontaneous in the first instance and it  16 absolutely was spontaneous.</p> <p>17 So the issue then becomes around planning and I  18 know that some of the criticisms have been raised in  19 relation to what I've said, that you know, the police  20 service have got this situation to deal with where you've  21 got a group of in around 2 to 300, whatever the number is,  22 it doesn't really matter if it's 2 to 300, it's a very  23 large group of people armed with traditional weapons and  24 therefore the need to go and do something about it,  25 absolutely. Absolutely totally agree and the criticism I</p>	<p style="text-align: right;">Page 31302</p> <p>1 seems to be a logical conclusion. Therefore I'm looking at  2 this on the basis that if you're going to send a large  3 group of heavily armed cops to deal with a large group of  4 heavily armed people in order to disarm them, I think that  5 requires a degree of planning, how you're going to do that  6 and you know, what you expect everyone to do.</p> <p>7 If, on the other hand, you going and saying look,  8 in the context of this situation the lesser of two evils if  9 we could just escort them back to the koppie, as  10 subsequently happens. So you're not going to disarm them,  11 you're simply going to escort – well, then I think the  12 level of planning needs to be less. And again I'm talking  13 about a dynamic plan and which General Mpembe may even just  14 hold in his head while he's getting there but it's him  15 understanding what it is that he wants to do, what he wants  16 to achieve and very, very importantly then, communicates  17 that to the people who are with him. So actually if you  18 look at my statement I talk about plan or brief. So you  19 know the criticism that seems to be sort of raised that I'm  20 suggesting that they waited a few hours until they got a  21 plan, I don't say that.</p> <p>22 So we have, and this is where General Mpembe goes  23 and again I think both in my provisional statement and also  24 in my final statement, in fact at 5.2.11 the paragraph  25 starts off, "In simple terms, I do not criticise the</p>
<p style="text-align: right;">Page 31301</p> <p>1 think that's been thrown back at me is that, you know, did  2 Mr White expect us to sit for a number of hours until we'd  3 worked through a planning process and we ruled up a plan  4 and perhaps had it photocopied and bound and whatever.  5 Nowhere in my statement do I say this. I talk about, I  6 basically say they're going to deal with this incident and  7 I think either they're going to deal with it on the basis  8 that here are 2 to 300 people who are armed and we're going  9 to disarm them in accordance with General Mbombo's  10 direction. I think if you're sending – and I think Mr  11 Mpembe took with him around 70, 80 and it was recently  12 suggested to be 100, again, I don't know what – it's a lot  13 of police officers who are obviously armed police officers.  14 So my point is that if they're going to disarm these  15 people, well then I think that needs a degree of planning  16 as to how they're going to do it. You're basically sending  17 a large number of heavily armed police officers to engage  18 with a large number of heavily armed protesters. I don't  19 know the traditions of South Africa and whatever but in all  20 that I've read it was saying if these are traditional  21 weapons, maybe they were intended to be used, maybe not.  22 There's evidence that obviously these weapons have been  23 used over the previous weekend around killing people but I  24 suspect from all that I've read that people wouldn't  25 voluntarily just lay those down and simply walk away. That</p>	<p style="text-align: right;">Page 31303</p> <p>1 decision to attend to the group on the railway line, nor  2 the decision to seek to persuade the group to voluntarily  3 disarm, nor would I criticise an intention to disarm the  4 group." So the very fact that General Mpembe goes, and I  5 couldn't understand why initially he, as the overall  6 commander, would go as opposed to sending officer Calitz  7 who is the operational commander –</p> <p>8 CHAIRPERSON: The reason he gave was that  9 Brigadier Calitz couldn't speak the vernacular language and  10 so on and he could. I think that was the main reason he  11 gave.</p> <p>12 MR WHITE: I was just about to say,  13 Chair, when I first engaged with the evidence I couldn't  14 understand why this was so and when I wrote my provisional  15 statement, but subsequently that point was clarified where  16 it's because General Mpembe potentially speaks the language  17 and I think that's entirely plausible then and of course he  18 was probably the right person to do that as opposed to  19 Calitz, so no issue there. So the issue is then that he  20 goes and attends the scene. I don't know what was in  21 General Mpembe's head at that moment in time. He talks  22 initially to the group, he negotiates with them and I think  23 I congratulate him for doing so, you know, I think that he  24 is doing his best and during the course of that time he  25 therefore then may have changed his intention from actually</p>

1 disarming, consistent with General Mbombo's direction to  
 2 him, to – as I said a few minutes ago – maybe he decides  
 3 the lesser of the two evils here is actually just let's  
 4 escort them back to the koppie. Again that's what I would  
 5 consider to be dynamic planning and I think that's entirely  
 6 appropriate in the circumstances.  
 7 [11:17] The issue is then from the evidence he says we're  
 8 now going to escort them to the koppie. At no stage do I  
 9 see any evidence of, you know, any briefing to his  
 10 officers. Now again I'm not talking about the type of  
 11 sophisticated briefing I referred to earlier on, I'm  
 12 talking about that the senior officer tells the police  
 13 officers who're going to carry out this function what he  
 14 wants them to do, because there's lots of evidence from  
 15 police officers who give conflicting reports of what they  
 16 understood they were being asked to do. So my point of  
 17 criticism –

18 CHAIRPERSON: [Microphone off, inaudible]  
 19 my understanding is that, I don't know if you've read  
 20 Colonel Merafe's evidence. Colonel Merafe says, as I  
 21 understand his evidence, that he didn't agree with the  
 22 decision which the General had made to escort them. He  
 23 thought they should have been disarmed, but he accepted  
 24 that was the General's decision and so be it, and I also  
 25 understood him to say that that was communicated to the

1 commanders, section commanders, to pass it on.  
 2 The problem of course is we know what happened  
 3 thereafter; the teargas was fired and the stun grenade, and  
 4 of course there is as you know a conflict of fact and you  
 5 very properly refrained from seeking to resolve the  
 6 conflict of fact. It's something we can't do, we have to  
 7 resolve it. But on General Mpembe's evidence he decided  
 8 that they would be escorted. He communicated that to  
 9 Colonel Merafe and that was communicated to the section  
 10 commanders, and that escorting process commenced. He was  
 11 afraid they might deviate into the informal settlement so  
 12 he sent the Nyalas along the road to protect the informal  
 13 settlement so that they couldn't go to the informal  
 14 settlement.  
 15 There's a dispute as to whether they deviated and  
 16 started going towards the informal settlement. The  
 17 evidence of Vermaak and Loest who were in the helicopter is  
 18 that they didn't. There's no evidence that we can see from  
 19 the video that they did, that they deviated to the  
 20 settlement, but Mpembe, who does seem to think that,  
 21 suggest that, or says in fact there was a deviation, but he  
 22 says it wasn't a cause for concern because he'd already  
 23 dealt with the situation by putting the Nyalas in place to  
 24 stop them getting up to any mischief in the informal  
 25 settlement.

1 He's very clear, the fact that he didn't give an  
 2 order to fire teargas. As far as he was concerned the  
 3 escorting had to continue. That had been communicated to  
 4 Merafe and the second commander. He was the only person in  
 5 terms of the Standing Order who was authorised to give any  
 6 other instruction to use force, even in the form of  
 7 teargas. He never gave such order. It wasn't necessary,  
 8 he said. If he had given it he would have given it by  
 9 radio and of course then everybody else, others would have  
 10 reacted as well. That didn't happen. The only person who  
 11 fired the teargas was someone on the extreme left who was  
 12 obviously the wrong person to give an order to if people  
 13 were deviating to the right, and as far as he, Mpembe, was  
 14 concerned, no such order was given to Kuhn.

15 You make the point that if Kuhn acted without a  
 16 proper order there should have been disciplinary steps.  
 17 That was only very belatedly done after the point was  
 18 raised when he gave evidence, but I think that's a summary  
 19 of his evidence.

20 There are of course, as you know, conflicting  
 21 versions that he did give the order and that as I said he  
 22 vigorously denies and that's an issue that we have to  
 23 resolve. But on Mpembe's version he made a decision which  
 24 he said was in accordance with the doctrine of situational  
 25 appropriateness - I'd like to get your views on that in a

1 moment – communicated that to Merafe and that was then  
 2 communicated to the section commanders.

3 As far as he was concerned nobody who was there  
 4 as part of the group of members of the police service could  
 5 have been under any misapprehension as to what had to be  
 6 done and on his version there was what amounted to  
 7 insubordination, that either acting on his own or acting on  
 8 the instruction from somebody else who had no right to give  
 9 the instruction, teargas was fired, which then Mpembe  
 10 described as the spark which caused the trouble. Baloyi  
 11 then took it upon himself to fire a stun grenade. Again  
 12 there's a dispute of fact, but on Mpembe's version Baloyi  
 13 had no right to do that either, and then of course the  
 14 trouble started.

15 So those are the facts which Mpembe has told us  
 16 and insofar as you deal in your evidence with that scenario  
 17 then the facts that you've stated, those aren't with  
 18 respect entirely correct. But anyway, I just put that to  
 19 you now because it may save a bit of time in what follows.

20 MR WHITE: Chair, if it's helpful I think  
 21 you've summarised my understanding very accurately.  
 22 However, there would just be one point, the issues around,  
 23 you know, Kuhn and follow-up disciplinary procedures, the  
 24 issues around whether it was a deviation or not. As you  
 25 say there are lots of issues of fact in there which were

1 not for me to deal with and I don't.  
 2 The reason that I offer my opinion with regards  
 3 to I don't think that this was properly thawed out, or –  
 4 and I do stress that I use the word "or" on a number of  
 5 occasions in relation to how I deal with this issue – time  
 6 or briefing. So let's, you know, as I've said I never  
 7 expected General Mpembe to have a written plan for this  
 8 dynamic situation that I identified in the first instance  
 9 as a spontaneous response to a spontaneous incident.

10 So the focus is very much on dynamic planning  
 11 that General Mpembe thinks, and as you have articulated,  
 12 Chair – and I'm more than happy to talk about the  
 13 situational appropriateness – I don't have any issues  
 14 around what he did. First of all try and instruct them to  
 15 disarm; if they'd all laid down their arms and walked away,  
 16 wouldn't that have been a fantastic outcome? Ja,  
 17 absolutely, but they didn't. So then he changed his plan.  
 18 I have no issue with that whatsoever.

19 I say "or brief." Now I'm very aware of Mr  
 20 Merafe says that initially when he was with General Mpembe  
 21 at the scene he'd said "Look, I'm the POPS commander, I'll  
 22 take over." So there was a dispute between the two of  
 23 them. However, that was resolved. General Mpembe said  
 24 "I'm in charge" and in fairness, Mr Merafe says after that  
 25 there was no confusion. Again I absolutely accept that.

1 However, the one thing that I would offer up is  
 2 that – and if you, I may not refer to these by exhibit  
 3 numbers, Chair, because I do have a difficulty with  
 4 pronunciation, but HHH30 police officer says, "Mpembe told  
 5 us to escort them. Then an instruction was given that they  
 6 must be dispersed and disarmed and CS to be used." HHH31,  
 7 there's no mention of any briefing whatsoever. "When he  
 8 arrived Mpembe's is speaking to the miners and telling them  
 9 to surrender their weapons. The General gives an order to  
 10 escort them. He then instructed us to disarm them. He  
 11 instructed us to use CS." HHH33, no mention of any  
 12 briefing whatsoever. "General give an order to escort the  
 13 strikers. The General then give an order, instruction to  
 14 block them as they were on their way to attack non-  
 15 strikers." 38, HHH38, no briefing, "Mpembe instructed us  
 16 to disarm the miners (warriors)." HHH27, "Mpembe  
 17 instructed the miners must be stopped and disarmed,"  
 18 etcetera, etcetera, etcetera.

19 CHAIRPERSON: [Microphone off, inaudible]  
 20 I put to you was on the assumption that that evidence is  
 21 rejected. Obviously if the evidence is accepted then  
 22 certain things follow and you have your views on that,  
 23 which I think you've made clear.

24 There are possible indications – I put it no  
 25 higher than that – possible indications that certain

1 members of the police who were there decided after the  
 2 event to cover up for what had happened and they made  
 3 entries in their pocketbooks, which conflict with each  
 4 other, as to the nature of the order, as to what was done  
 5 and so on. But the objective fact is that only one teargas  
 6 canister was fired, which one would have expected more if  
 7 the general order of the kind he's alleged to have made had  
 8 been given, and again the next concrete fact, objective  
 9 fact, is that Baloyi then fired a stun grenade.

10 If Mpembe is telling the truth, obviously that's  
 11 something we have to keep an open mind on till the end. If  
 12 Mpembe is telling the truth then those entries you're  
 13 referring to are false, were made as part of a conspiracy  
 14 to put the blame on Mpembe and to exonerate the people  
 15 responsible for the spark, and also to avoid investigations  
 16 into insubordination, disciplinary steps and all that kind  
 17 of thing.

18 Now whether that's so or not obviously we can't  
 19 find at this stage, but the response to what you've put is  
 20 that one possible interpretation is those allegations were  
 21 false, as I say part of a conspiracy after the event to  
 22 blame Mpembe. And of course you've read the evidence later  
 23 what happened at Roots. That was an ongoing debate, but at  
 24 this point on the assumption, which may turn out to be an  
 25 erroneous one, but on the assumption that Mpembe is telling

1 the truth on what happened, then your criticism is  
 2 important.

3 So as I've said according, it was a dynamic  
 4 situation. You don't quarrel with his attempt to persuade  
 5 the miners to lay down their arms. There may have been a  
 6 rather forlorn hope that he could succeed, but was worth  
 7 trying, I think you accept? Once it didn't work he then  
 8 had to make a decision and of course communicate it to his  
 9 men. The decision he took was not to try to disarm them,  
 10 despite the fact that certain of his officers thought he  
 11 should, but to escort them. That was not agreed with and  
 12 was ultimately disobeyed on his version. The question is  
 13 whether you can criticise him on the basis of the facts  
 14 I've put to you for what he did. If he told Merafe what  
 15 the decision was, if the officers knew, the section  
 16 commanders were told, as I think Merafe makes it clear, is  
 17 there really a problem in relation to briefing in a dynamic  
 18 situation?

19 MR WHITE: Chair, absolutely. If General  
 20 Mpembe created a dynamic plan, as I would call, in his  
 21 mind, he understood what he wanted to achieve, how he  
 22 wanted to achieve that and he communicated that through,  
 23 and it's not General Mpembe's responsibility to go and  
 24 individually tell every single officer, given the nature of  
 25 the circumstances, when these officers would have been

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1 located at various parts around the miners, because he  
 2 initially thought that potentially they were going to  
 3 disarm them.  
 4 Again I would go back to the point that I made  
 5 earlier on; if his initial intention had been to disarm  
 6 them, you know I would have thought that there should have  
 7 been some degree of briefing in relation to how that was  
 8 going to be done, thinking about well, what if they don't,  
 9 you know, are we going to forcibly disarm. So in attending  
 10 the scene, if it was his prior intention that the was going  
 11 to disarm, how was he going to do that and was that  
 12 properly communicated so that the officers could be in a  
 13 tactical configuration which give the police the best  
 14 advantage to be able to carry that plan out, if that's the  
 15 case.  
 16 However, set that aside. We now have the  
 17 situation where he negotiates with them and it's obvious to  
 18 him that in order to avoid a confrontation, which seems to  
 19 be what he's saying, is that he's not going to disarm, he's  
 20 basically going to escort, and accepting, you know, all  
 21 that you say, if he then decides this is what I'm going to  
 22 do, this is how we're going to do it, he communicates that  
 23 to effectively his number 2, Merafe, and Merafe then, his  
 24 responsibility to make sure that everyone else in a  
 25 cascading fashion is advised by Merafe, those that he

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1 tells, the sergeants or the sub-unit commanders or  
 2 whatever, the important thing is it's the people at the  
 3 front end don't know what the strategy is, there is no  
 4 strategy. So therefore there needs to be the assurance  
 5 that that gets all the way down to every single officer.  
 6 Every single officer understands, because this is a  
 7 dangerous operation. I mean these are people who allegedly  
 8 may have killed security guards and other miners during the  
 9 course of the weekend and they're all heavily armed. So  
 10 therefore does everybody absolutely understand.  
 11 I would have to say I'm aware of some of the  
 12 issues in relation to, as you refer to Chair, you know,  
 13 allegations that were made around this issue of General  
 14 Mzembe and you made reference to it in relation to Roots.  
 15 I'm not aware, I'll have to say I haven't been made aware  
 16 of the issue around that there has been potentially a  
 17 conspiracy around, with regards to lots of officers to  
 18 construct their notebooks so that it looks as if it's  
 19 Mzembe's fault, but that's just not information that I'd  
 20 previously been privy to.  
 21 But, so I would say to you that if Mzembe issued  
 22 that instruction through Merafe and received from Merafe an  
 23 assurance that it had been properly communicated and  
 24 whatever, then under those circumstances, you know, it  
 25 would be very, very difficult to point a finger of blame at

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1 General Mzembe, indeed.  
 2 The circumstances, the facts that I've engaged  
 3 with obviously have been slightly different. So I have  
 4 read statements that have been given to me by the South  
 5 African Police department, Officer XYZ, and these officers  
 6 say something very different to that. As you say, it is  
 7 your job, Chair, to work out, you know, what the truth of  
 8 all of this is.  
 9 But in offering an opinion the one thing that I  
 10 would say sort of beyond what I've already said is that I  
 11 think that there is a statement, and I don't have the  
 12 reference here now, but again at the next break I'll  
 13 certainly look for it, is that there is a statement from  
 14 one officer, I think he's relatively senior, you know, in  
 15 all of this, and he makes some point around – if my memory  
 16 serves me correct, and I'll ask for your indulgence by just  
 17 checking this in the next break – talks about when the  
 18 teargas is fired that he then said something along the  
 19 lines of that 'I then realised that General Mzembe didn't  
 20 want us to let people into the informal settlement.' That  
 21 would suggest to me that up to that point he didn't know,  
 22 that would suggest to me that up to that point then  
 23 certainly he, you know, hadn't been properly briefed and  
 24 assuming that he's not part of the conspiracy of course,  
 25 but I only say it because I think if memory serves me

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1 correctly that he's a reasonably senior officer as opposed  
 2 to perhaps these officers who might be constables or  
 3 whatever it is. So I'm more than happy to check that  
 4 reference.  
 5 COMMISSIONER HEMRAJ: Mr White, do I  
 6 understand that you've not been afforded an opportunity to  
 7 read the transcript of the evidence of Colonel Merafe where  
 8 he talks about the briefing that was conducted on the 13th  
 9 as regards the escorting?  
 10 MR WHITE: I've seen some of the  
 11 transcript of Mr Merafe. I don't know that I'd  
 12 specifically seen that bit, but I'll be more than happy to  
 13 go back and look at it, and certainly I've been directed to  
 14 and I've looked at the piece of oral evidence where Mr  
 15 Merafe talks about this dispute with regards to who's in  
 16 charge and he makes it crystal clear, as the Chairman has  
 17 already articulated, he then says after dealing with that  
 18 issue there was no confusion. I absolutely –  
 19 COMMISSIONER HEMRAJ: It just seems to me  
 20 if you had access to it you might have amended your  
 21 criticism about the lack of briefing of the decision to  
 22 escort.  
 23 MR WHITE: Potentially on the part of  
 24 General Mzembe –  
 25 COMMISSIONER HEMRAJ: Yes.

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1 MR WHITE: - as I've already explained to  
 2 the Chairman. However, I would be saying whilst it's not  
 3 for me to decide on issues of fact, but the contrary to  
 4 that was the numerous statements that I have read from  
 5 officers who were actually therefore at the front end who  
 6 were engaged in this, who say something very different, and  
 7 because I have not at this stage been made privy to this  
 8 issue of this conspiracy of cover-up by them, so therefore  
 9 I've read those statements from police officers in the  
 10 spirit of they are police officers who are telling the  
 11 truth.

12 COMMISSIONER HEMRAJ: Well perhaps at  
 13 some stage if you might be afforded an opportunity to look  
 14 at that evidence, it might inform your view about this.  
 15 There might be the other situation as well of the clarity  
 16 of the briefing, which is a completely different issue as  
 17 to whether a briefing took place or not at all.

18 MR WHITE: And again I would respond by  
 19 saying that a number of people don't make any mention of  
 20 briefing. Sometimes police officers write bad statements  
 21 and that's not to say that therefore there was no briefing.  
 22 That, I'm saying they don't make any mention of briefing,  
 23 so the issue is was there a briefing, yes or no, difficult  
 24 to decide, but then beyond that it's about the clarity of  
 25 the briefing and this is my point. This is an escorting,

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1 it's potentially a dangerous operation. Police officers  
 2 who are going to be engaged in that need to understand what  
 3 the boss wants them to do in the way that it was, and it  
 4 may well be that Mpeembe has communicated that through  
 5 Merafe and depended on Merafe making sure that that was  
 6 cascaded down, and if Merafe has come back and told him  
 7 that that's fine, that everybody knows what they're doing,  
 8 then the fault is somewhere between Merafe and the front  
 9 end as opposed to Mpeembe, if that is the case.

10 COMMISSIONER HEMRAJ: And you are aware  
 11 of the situation, Mr White, in which the escorting had to  
 12 take place? General Mpeembe was counting down to them to  
 13 lay down their weapons and the group just stood up and  
 14 carried on, and he took the decision to escort them. So he  
 15 can't really be criticised for taking the time to make any  
 16 substantial plan as regards that.

17 MR WHITE: And again, Chair, when I refer  
 18 to a dynamic plan, if the circumstances changed  
 19 instantaneously and then this is quite a big change in his  
 20 decision from disarm, here stationary, to now escort and  
 21 move, but he has to make that in a matter of seconds.  
 22 Again I fully understand that. That then becomes, how does  
 23 that now get communicated, because if the officers think  
 24 we're supposed to keep these people stationary and disarm  
 25 them, Mpeembe then decides well actually the circumstances

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1 have changed, I need to do something different, so that  
 2 those officers are not still trying to, you know, carry out  
 3 instruction 1 when he now wants them to do instruction 2,  
 4 how does that get communicated. Now ordinarily in my  
 5 experience it would be that maybe not even briefing Merafe  
 6 who goes on and tells everyone; it would be simply an  
 7 instruction on the radio from General Merafe, or telling  
 8 someone else to put the instructions on the radio that  
 9 we're now going to have to escort these people, this is  
 10 what we want to do.

11 COMMISSIONER HEMRAJ: And as regards the,  
 12 it does appear as though General Mpeembe took the decision  
 13 to negotiate with the strikers, although he had some 70  
 14 armed policemen with him, and he did not choose to go the  
 15 option of forcibly disarming. Now in those circumstances  
 16 would you still criticise him for not having had a plan?

17 MR WHITE: I don't know exactly what's in  
 18 General Mpeembe's head, but my view would be if he's  
 19 following the direction given by General Mbombo, which is  
 20 basically to go and deal with this group.  
 21 [11:37] She talks about, you know, you just can't have  
 22 these armed groups wandering about. She's basically  
 23 saying, go and disarm them. So that's what he is on his  
 24 way to do and with credit to General Mpeembe, you know,  
 25 rather than some sort of massive tactical operation, he

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1 gives them the opportunity, he negotiates with them and  
 2 gives them the opportunity to lay down their arms and I  
 3 congratulate him for that. I think, you know, in terms of  
 4 a concept of minimum use of force that's exactly and  
 5 entirely appropriate. But when he's travelling to the  
 6 scene with this in mind, because again he doesn't have  
 7 hours to do it, I think they go from the instruction to  
 8 actually arriving at the scene in somewhere like an hour  
 9 and a half, an hour and 40 minutes, something like that.  
 10 So during that period I would have expected him to be  
 11 giving some thought to what it is that he wants to do. I  
 12 would have thought that he would probably have the time to  
 13 sort of commit some of that to paper so that again it helps  
 14 other people understand him but if he doesn't, again not  
 15 overly critical of that. The point is that if he's going  
 16 to, and it's always his intention to try and negotiate the  
 17 lay down of the weapons, that's good. That's option A.  
 18 One of the things I used to talk about all the time in  
 19 terms of planning to my officers is, you know, when we deal  
 20 with a situation, how you're actually going to plan for the  
 21 thing that you absolutely anticipate happening is the easy  
 22 bit. It's what they pay you for, is thinking about what-  
 23 if. So he doesn't have an awful lot of time but actually,  
 24 did he give consideration to, right, I'm going to go and  
 25 negotiate, now what if they don't lay their weapons down?



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1 I'm still of the view that I'm going to have to carry out  
 2 General Mbombo's instruction, which is basically to disarm,  
 3 so how are we going to do that then? Where is it that I  
 4 want the officers to be? You know, what's the best way to  
 5 do that? Does he take tactical advice from someone, as  
 6 I've explained earlier on, in the hour and a half or hour  
 7 and 40 minutes that he does so.  
 8 When he gets to the scene, because of the  
 9 circumstances that he's faced with and often when you get  
 10 to a scene and you're in that conversation, then you can  
 11 feel the tension. You know that's very different from the  
 12 comfort of, you know, a command room or whatever. So he  
 13 then makes this dynamic decision that actually the  
 14 negotiation hasn't worked, we're not going to go to a  
 15 forcible disarmament as I think that could be potentially  
 16 very dangerous – I'm assuming this is what he thought –  
 17 therefore, the lesser of two evils, we're now going to  
 18 escort. I still think in that period when he's responding  
 19 to Mbombo's instruction he is going to the scene thinking,  
 20 I need to disarm these people. I'm saying where is the  
 21 evidence of planning with regards to what he was going to  
 22 do vis-a-vis option A, favourite option, what he was going  
 23 to do if, and how they were going to do that so that  
 24 everyone knows. We're sending police officers to deal with  
 25 a group of 2 or 300 people who armed with spears, pangas,

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1 you know, a dangerous operation. This is my point.  
 2 COMMISSIONER HEMRAJ: A plan if option B  
 3 was to forcibly disarm? Option B. Option A was to  
 4 negotiate. Option B was to then forcibly disarm if  
 5 negotiations did not work, then you would expect a plan to  
 6 be in there, some sort of a plan?  
 7 MR WHITE: Absolutely –  
 8 COMMISSIONER HEMRAJ: Yes.  
 9 MR WHITE: And the evidence that I've  
 10 engaged with, you know, there was no evidence which was  
 11 saying that there was a plan A to negotiate. You know,  
 12 that happens when General Mpembe gets there. He may well  
 13 have worked all of this out in mind, I suspect that he had.  
 14 I'm saying, well, where is the evidence therefore of, well,  
 15 what if. And I actually talk about it in my statement that  
 16 if the plan was around disarming, you know, and certainly  
 17 if you're going to forcibly disarm then you need to work up  
 18 a scale with regard to how sophisticated and how much  
 19 detail and how much you need to think about it in relation  
 20 to the plan. If, from the outset, the plan was we're going  
 21 to escort these people and we know that there had been a  
 22 previous interaction with security guards where the crowd  
 23 had been reasonably compliant, so if from the word go it  
 24 was that we were going to just simply escort them from  
 25 where they were back to the koppie, not try and take the

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1 arms off them, then the likelihood is maybe they might have  
 2 been compliant in relation to that. So therefore the level  
 3 of detail and how you need to communicate that with people,  
 4 on a sliding scale probably reduces some, but still I would  
 5 have expected – I certainly would have wanted anybody  
 6 working for me to say okay, so at the outset I finally  
 7 arrive here, tell the people that they can't stay in this  
 8 position, we're not going to try and take their arms off  
 9 them, the traditional weapons, we're not going to interfere  
 10 with that and we're now going to escort you back to the  
 11 koppie. I anticipate they're going to comply with that.  
 12 My challenge to people would be, well, what if, what if  
 13 they don't, then what are you going to do? And again we're  
 14 not back to the photocopier and a bound plan and all the  
 15 rest of it, but it's about clearly thinking about the what-  
 16 ifs. I think this is, from a police command point of view,  
 17 this is what they pay you for.  
 18 COMMISSIONER HEMRAJ: Thank you, Mr  
 19 White.  
 20 CHAIRPERSON: I can understand that point  
 21 but there's another point that follows from that. You  
 22 criticise him for not planning properly for how he would go  
 23 about disarming if that had to happen and it may well be  
 24 that you're right, that there was a failure to plan  
 25 properly for that contingency, but of course if he then

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1 decided not to try to disarm because he realised it  
 2 couldn't happen without serious risk of bloodshed and it  
 3 goes to the next stage which is escorting them back to the  
 4 koppie and then subject to what happened thereafter, which  
 5 we can leave aside for the moment, surely there's a lack of  
 6 a causal link between the initial failure, to which we will  
 7 refer, assuming there was such a failure, assuming he  
 8 should have planned and he didn't properly, to disarm and  
 9 how he would disarm – if that plan was abandoned and no  
 10 attempt was made to implement it and what went wrong  
 11 thereafter took place in the escorting exercise through  
 12 insubordination and so forth by people who knew very well  
 13 what they were supposed to be doing, then there wouldn't be  
 14 a causal connection between the failure, to which you have  
 15 referred, to plan properly and what happened. That must be  
 16 right, surely?  
 17 MR WHITE: Chairperson, I absolutely  
 18 agree with you, absolutely. Could I, just for a point of  
 19 clarification perhaps, read something from my statement?  
 20 This is paragraph 5.2 and point 11 sort of halfway down.  
 21 "If," and I stress it, I wasn't there, I don't know, I can  
 22 only sort of look at the evidence and try and give an  
 23 opinion from that, "If the intention in those circumstances  
 24 was to forcibly disarm and disperse the protesters, then  
 25 the operation needed to be planned and it was foolhardy to

1 attempt to disarm without proper planning. However, if the  
 2 intention was simply to escort them in order to protect  
 3 others from the potential attacks, then detailed planning  
 4 may not have been necessary but a clear briefing of that  
 5 intention was" – so I would raise the point that given that  
 6 General Mpmembe is going to carry out the order of General  
 7 Mbombo which says basically disarm, so for the reasons that  
 8 we've discussed I think he should have been planning for  
 9 that and planning for the what-ifs. He then gets there and  
 10 he's then going to negotiate with them. That's still the  
 11 part that should have been sort of option A within the  
 12 plan. At the point that he then changes his mind and says,  
 13 given all of the circumstances, situational  
 14 appropriateness, I'm now changing my mind, we're moving  
 15 very much to plan B completely, which is just simply to  
 16 escort. And absolutely, you're right, there is no causal  
 17 connection around the failure to plan for that. That's, I  
 18 make my point, if the intention is just simply to escort,  
 19 well then still, you know, there's a requirement for a  
 20 proper briefing so that the people who are going to do the  
 21 escorting understand what General Mpmembe wants - that, one,  
 22 we're going to be able to escort, we are going to escort  
 23 them and, two, if he had thought ahead and realised that  
 24 there's a potential danger point in relation to the  
 25 informal settlement and I don't want them to go there,

1 communicating that as well. As I've engaged with the  
 2 evidence, as I said, not aware of this issue around  
 3 conspiracy that perhaps all of these police officers are,  
 4 for reasons best known to themselves, telling lies, I've  
 5 read all of these statements from the officers who are in  
 6 the roles that I've described, who are saying, I wasn't  
 7 briefed, I didn't get a sort of briefing at the beginning  
 8 of this and actually this is what the instruction was. I  
 9 took that on face value.  
 10 CHAIRPERSON: Yes, but no, clearly what  
 11 you say must be right on the assumptions you make. If, on  
 12 the other hand, the officers or the members of the, police  
 13 members who were there knew very well what was supposed to  
 14 happen and they, Kuhn, either alone or on the instruction  
 15 from somebody else, deliberately deviated from that and  
 16 that caused the trouble, then you can't blame Mpmembe for  
 17 that and the criticism then doesn't apply. You have to be  
 18 able to find, even if there wasn't proper briefing, you've  
 19 got to be able to find there was a causal connection  
 20 between that and if they knew very well their job was to  
 21 escort and not to fire teargas and not to fire stun  
 22 grenades and if the teargas and the stun grenades had  
 23 caused the trouble and they knew very well they didn't  
 24 receive – this is obviously if there was no order given by  
 25 Mpmembe – then of course it's a different situation, isn't

1 it?  
 2 MR WHITE: Chair, let me say for the  
 3 record, I thought long and hard about whether or not I  
 4 would want to be involved in this whole process from the  
 5 point of view that as a police officer for 30 years as I've  
 6 described earlier on, in very, very difficult  
 7 circumstances, you know, and I had lots of experience where  
 8 people came after the fact and sort of, you know, reviewed  
 9 and tried to second guess, you know, and having been a  
 10 police officer for 30 years and I've had the privilege of  
 11 going to many different countries and there's an element,  
 12 you know, of cops are cops are cops, there's a sort of  
 13 fraternity. So I thought long and hard about all of this,  
 14 you know, in terms of engaging with the evidence which  
 15 potentially would show some criticisms and whether or not I  
 16 was prepared to stand up and say that. So you know I  
 17 didn't enter into this process wanting to criticise any  
 18 individual officer or the SAPS as an organisation. As I've  
 19 engaged with the evidence I've made these criticisms of  
 20 General Mpmembe who is the commander of this particular  
 21 operation for the reasons that I've said. For the record,  
 22 if the circumstances are actually – and it's your job,  
 23 Chair, as you've rightly said, to discover the truth of all  
 24 of this – if the truth is that Mpmembe was responding to a  
 25 direction by his boss to go and disarm this group and he'd

1 thought through a plan as to how he was going to do this  
 2 and his initial option was to negotiate, he gets to the  
 3 scene, he negotiates and that doesn't work. He makes an  
 4 instantaneous judgment that actually the safest thing for  
 5 everyone is basically that we're then going to escort this  
 6 group back to the koppie where they had intended to go or  
 7 whatever it was. He communicates that intention to his  
 8 second-in-command and asks him to make sure that all of the  
 9 officers are aware or he gives that instruction on the  
 10 radio but he satisfies himself that all of the officers are  
 11 perfectly aware of what he wants them to do in the way that  
 12 he wants them to do it. And actually in fairness to  
 13 General Mpmembe, he is foresighted enough to think about,  
 14 there's a potential danger point at the informal  
 15 settlement, I don't want people to go there and gives that  
 16 instruction as well. And then as people start to progress  
 17 and we know that for some considerable distance this is  
 18 exactly what happens, is that the police are moving along  
 19 on either side of them, they're being escorted and then  
 20 something happens because Kuhn or some other officer  
 21 disobeys that order, acts independently and as a result of  
 22 which this fracas arises where tragically two police  
 23 officers were killed, another one seriously injured and  
 24 three miners are shot. I –  
 25 CHAIRPERSON: Well, two were shot –

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1 MR WHITE: My apologies.  
 2 CHAIRPERSON: - and there's a problem  
 3 about the third one, how that happened, but we won't – it  
 4 doesn't affect the thrust of the point you're making.  
 5 MR TIP SC: Sorry, Chairperson, the  
 6 latest post-mortem evidence is that three – that it's not a  
 7 stab wound, it's a bullet wound.  
 8 MR WHITE: My apologies anyway, Chair –  
 9 CHAIRPERSON: I'm sorry, I was trying to  
 10 correct you but I've been corrected, apparently. So  
 11 anyway, the point I was making doesn't affect the thrust of  
 12 your point anyway.  
 13 MR WHITE: And the thrust of my point is  
 14 simply this, you know, this is a tragic event for all  
 15 concerned, including the South African Police department  
 16 themselves who have lost two colleagues and one, as I  
 17 understand, quite seriously injured. The point is, and I  
 18 said you know, in preface to this particular part of my  
 19 evidence, for the record, could I ascribe any blame to  
 20 Major-General Mpmembe in those circumstances? No, I  
 21 couldn't. No, I couldn't because it would seem to me that  
 22 he's done what he is expected to do, if those are the  
 23 circumstances.  
 24 COMMISSIONER HEMRAJ: Mr White, may I  
 25 just enquire how many statements you were referred to on

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1 which you based the opinion that there was no briefing as  
 2 regards the escorting?  
 3 MR WHITE: Chair, at least nine and then  
 4 I've said, if you will indulge me I'll just see if I can  
 5 check this other reference –  
 6 COMMISSIONER HEMRAJ: And that doesn't  
 7 include Colonel Merafi?  
 8 MR WHITE: No.  
 9 COMMISSIONER HEMRAJ: Thank you.  
 10 CHAIRPERSON: There's a footnote in your  
 11 report where you quote these things, but anyway – I read it  
 12 last night but I'll find it again later. I think this is a  
 13 suitable stage for us to take the tea adjournment, 15  
 14 minutes.  
 15 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 16 [12:13] CHAIRPERSON: The Commission resumes. Mr  
 17 White, you're still under oath, Ms Le Roux?  
 18 MS LE ROUX: Thank you, Chair. Chair, in  
 19 the adjournment Mr White indicated two issues that he  
 20 wanted to clarify for the Commission, I would just like to  
 21 deal with that before we continue. Mr White, firstly it  
 22 was to provide the Commission with the reference, you in  
 23 your evidence described a senior officer's evidence around,  
 24 on the 13th. Chair, we've managed to identify that as  
 25 Captain Thupe, page QQQ9.

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1 CHAIRPERSON: Sorry?  
 2 MS LE ROUX: QQQ9.  
 3 CHAIRPERSON: QQQ9?  
 4 MS LE ROUX: It says, "Consolidated  
 5 statement."  
 6 CHAIRPERSON: Alright, thank you.  
 7 MS LE ROUX: Mr White, the specific  
 8 reference, if you would like to just give that to the  
 9 chair, that you were relying on?  
 10 MR WHITE: Yes, Chair, it is QQQ9 and the  
 11 paragraph is 6.3. I do not know if it is helpful to you,  
 12 that you want me to read out the particular –  
 13 CHAIRPERSON: The particular sentence or  
 14 two if you want to read is relevant you may as well read it  
 15 now.  
 16 MR WHITE: No, I won't read the whole  
 17 paragraph, Chair. So basically he says, "I heard Warrant-  
 18 Officer Kuhn asking the general whether we should shoot  
 19 teargas and he repeated, yes, shoot. I did not hear any  
 20 command to throw stun grenades. I immediately thought his  
 21 idea was to prevent the strikers from penetrating the  
 22 informal settlement." So my interpretation of that was  
 23 therefore that Captain Thupe and makes the assessment  
 24 around the informal settlement, clearly the assumption is  
 25 that he wasn't previously aware of that and the only reason

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1 that I make reference to that particular piece is the fact  
 2 that, again I've been on side to the issues that you talked  
 3 about earlier, Chair, about the fact that it is relevant  
 4 senior officer.  
 5 CHAIRPERSON: Yes, no, I understand that.  
 6 Of course if we approach the matter on the basis that  
 7 General Mpmembe is telling the truth, he says he didn't give  
 8 instruction to shoot, then this paragraph is false.  
 9 Equally of course if we believe Captain Thupe then what  
 10 General Mpmembe says is false but that's why it depends on  
 11 which factual finding you make, in which of the witnesses  
 12 you believe, but we were discussing the matter on the  
 13 assumption which, as I pointed out may not be correct but  
 14 on the assumption that General Mpmembe is telling the truth,  
 15 if General Mpmembe is telling the truth, he didn't give the  
 16 instruction, then Captain Thupe's evidence that he gave the  
 17 instruction and the things that follow from that aren't  
 18 true.  
 19 MR WHITE: Absolutely, Chair, and that's  
 20 why I said for the record if General Mpmembe's evidence is  
 21 true, and that's an issue for you to work out, then for the  
 22 reasons that I've said and I set it out very clearly, step  
 23 by step, then would my criticism of General Mpmembe around  
 24 the 13th stand, if under all of those circumstances.  
 25 CHAIRPERSON: No, I understand that and

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1 that's the first –

2 MS LE ROUX: Yes, and then –

3 CHAIRPERSON: - correction or

4 amplification he wishes to make.

5 MS LE ROUX: Yes, and then secondly –

6 CHAIRPERSON: And what's the other one?

7 MS LE ROUX: And then secondly, Chair, Mr

8 White raised with me in the adjournment, he seems to have

9 misunderstood a question from Commissioner Hemraj and would

10 like to correct, have the opportunity to correct that.

11 CHAIRPERSON: Of course he can do so.

12 MR WHITE: Just before the break,

13 Commissioner, you asked me a question around how many

14 statements I had referred to and I think I gave you the

15 answer, nine, because you could see me actually counting

16 these up. I assumed that you were asking me when I was

17 quoting that evidence how many statements was I referring

18 to in these notes here and the answer to that is, nine. I

19 was blissfully unaware that I misinterpreted your question

20 or at least my legal team think that I have misinterpreted

21 your question, which if I'm correct in saying, it was

22 actually in comment to this overall judgment how many

23 statements had you referred to. If that's the question the

24 answer is not nine, the answer is, I don't exactly know the

25 exact figure apart, I am confident that I have read all of

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1 the statements that the police provided for the events on

2 the 13th. I don't know the exact figure but I've read a lot

3 of statements.

4 COMMISSIONER HEMRAJ: Except Colonel

5 Merafe's?

6 MR WHITE: No, I've read, I've read four

7 statements from Colonel Merafe and what –

8 CHAIRPERSON: His evidence, did you read

9 the transcript of his evidence?

10 MR WHITE: No, what I've said to you,

11 Chair, in my evidence earlier on is, I have read some

12 transcript evidence from Colonel Merafe. I know

13 specifically I read around this issue vis-a-vis who is in

14 charge and whether it should be a POP commander and I had

15 taken a note of that, because I know that Merafe says

16 specifically after that issue was resolved there was no

17 confusion, I specifically remember that. The other issue

18 in relation to his oral evidence vis-a-vis the escorting, I

19 would have to say I may have read it, I have read a lot of

20 material over this last while and also because I'm reading

21 information in relation to people who obviously I've never

22 met, sometimes it is hard, so my assurance was that with a

23 longer break, either tonight or perhaps lunch time, I will

24 go and read it. So I couldn't say for certain it is the

25 honest answer to that.

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1 COMMISSIONER HEMRAJ: These nine

2 statements, that there was no briefing.

3 MR WHITE: Yes, and that's what I was

4 referring to just there in the end.

5 COMMISSIONER HEMRAJ: I understand.

6 MR WHITE: But I made that assessment on

7 the basis that I haven't read all of the statements and

8 these are the ones I took notes of because I thought, well,

9 that's note worthy, that's odd, that these are saying that.

10 COMMISSIONER HEMRAJ: And there might be

11 other statements that do say they were briefings?

12 MR WHITE: I will be confident and I

13 stand to be corrected in this and I'll be confident if

14 probably not, because my engagement with this process as I

15 explained earlier on, I was a bit reluctant to get involved

16 in the process in the first instance. It is not to find

17 fault with the South African Police, absolutely not, so

18 therefore if there was a statement I think that was sent

19 specifically, I was briefed, here is the circumstances of

20 my briefing, etcetera, etcetera, etcetera, then I'm sure

21 that I would have taken a note of that as contrary

22 evidence. It may well be that the other ones are

23 relatively neutral with regards to this and I also made the

24 point in relation to my evidence earlier on that I make

25 reference to the fact that in a lot of these statements

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1 they talk about no mention of any briefing.

2 Now that's not to say that they said, I wasn't

3 briefed. I'm taking a note that in the statements that

4 they gave they don't say anything about a briefing. Maybe

5 they were and it's a bad statement, I don't know that but

6 the particular piece of evidence that I thought was useful

7 to me was the fact that they then said, General Mpembe told

8 us to do X, Y or Z, which is contrary to the evidence of

9 General Mpembe and that's why I've taken a note of it. I

10 fully accept that this evidence might be under question and

11 if that's the case then I refer back to the remarks I gave

12 earlier on.

13 MS LE ROUX: Thank you, Mr White. Moving

14 on to the final scene relating to the 13th of August with

15 respect to accountability for the operation on the 13th, do

16 you have any comment or conclusions you would like to place

17 before the Commission in that regard?

18 MR WHITE: Yes, Chair, accountability is

19 one of the things I've mentioned and I certainly am sure

20 I'll be talking to you more about this at a later stage, an

21 interest of being briefed, just two points. One, it

22 relates to the issue that we've just been talking about,

23 that I was struck by the overall quality of the statements.

24 In terms of accountability I would have expected to see

25 much better statements and much more detail, particularly

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1 in an incident where five people died, including two police  
 2 officers, so that is a sort of a general comment in  
 3 relation to the quality of the statements in terms of the  
 4 detail that they provide with regards to what happened.  
 5 The second issue that struck me in relation to  
 6 the 13th is that I didn't see an evidence and again I stand  
 7 to be corrected, around any sort of debrief put out into  
 8 them and I know that a number of police officers went to  
 9 see, what I would refer to as Occupation Health and  
 10 Welfare, I can't remember the specific titles used, but you  
 11 know it is around helping police officers to deal with sort  
 12 of the psychological aspects of being involved in a very  
 13 traumatic incident.  
 14 So I make the point that I know that and that  
 15 happened, but in terms of an operational briefing in order  
 16 to try and sort of identify lessons and what had gone  
 17 wrong, again I stress with all due respect to the families  
 18 of the miners who were killed, but even from the point of  
 19 view of two police officers being killed and one who has  
 20 been seriously injured, you know to do debrief with regards  
 21 to what has happened here, to learn lessons, given this as  
 22 an ongoing situation to make sure that these things don't  
 23 happen again, I was surprised that I didn't see any  
 24 evidence of that.  
 25 MS LE ROUX: Mr White, unless the

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1 Commission have any further questions on the 13th I intend  
 2 to move to the operation of the 16th. Mr White, your –  
 3 CHAIRPERSON: Proceed, Ms Le Roux.  
 4 MS LE ROUX: Thank you, Chair. Mr White,  
 5 your final statement summarises your overall conclusions  
 6 with respect to the 16th, in part that is set out at page  
 7 125, part 10. Could you briefly highlight the particular  
 8 issues that you intend to deal with, with respect to your  
 9 opinions about the operation of the 16th and then in turn  
 10 we'll take each of those, but if you could just give us  
 11 your list of issues you would like to address with respect  
 12 to the 16th?  
 13 CHAIRPERSON: So is this page 125,  
 14 paragraph 10.1.1, where is it, A and B?  
 15 MS LE ROUX: Yes, Chair, that is where Mr  
 16 White's final –  
 17 CHAIRPERSON: A and B, all the way down  
 18 to –  
 19 MS LE ROUX: Yes, Chair, and continuing  
 20 on the next two pages but, Mr White, for the purposes of  
 21 your oral evidence if you could identify the issues you  
 22 would like to address on the 16th?  
 23 MR WHITE: Again, Chair, I refer to the  
 24 remarks I gave earlier on looking at it through the lens of  
 25 issues in relation to Intelligence, planning, briefing,

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1 command and control, accountability and on this particular  
 2 issue some, specific issues in relation to tactics.  
 3 MS LE ROUX: Now, Mr White, you're  
 4 obviously aware that the SAPS' case before the Commission  
 5 is that all deaths on the 16th were caused by individual  
 6 members making their own judgment to fire shots in self or  
 7 private defence. So what is the relevance for the  
 8 Commission of assessing Intelligence, planning, briefing,  
 9 tactical issues such as in your statement, you referred to  
 10 the rationale for moving in or the deployment of the TRT  
 11 and command and control, why should the Commission be  
 12 concerned about those questions when the SAPS' case is a  
 13 self defence, a private defence case?  
 14 MR WHITE: Well, I think the very simple  
 15 answer to that is that if police officers are in a position  
 16 where they act in private defence and again, well, if they  
 17 were justified in doing so it is certainly not a matter for  
 18 me, that's a matter for the Commission, but the fact means  
 19 that police officers find themselves in a position where  
 20 they had to exercise their judgment, I don't think that you  
 21 can isolate that question and just simply then say, yes or  
 22 no, was it justified? I think from the point of view of  
 23 the organisation you then have to say, why were those  
 24 officers there? You know it was the Police Service,  
 25 because those officers to be in that particular place at

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1 that particular time, individual officers have to be able  
 2 to give a kind of, if they fired a shot you know what was  
 3 it that they fired at, the circumstances in which they  
 4 fired it and it is up to someone other than me to decide  
 5 whether or not it was justified.  
 6 The reason I say that in looking at the 16th, I'm  
 7 looking at issues of Intelligence, planning, briefing and  
 8 the same issues that I've highlighted before, is that the  
 9 question for the organisation and the question for people  
 10 in command positions is, why were they in that position?  
 11 Why did Officer X find himself/herself in that position  
 12 where therefore they had to fire their gun, because that I  
 13 think is part of understanding what happened and whether or  
 14 not it could have been avoided.  
 15 CHAIRPERSON: Well, I understood that one  
 16 of your main points, I understand one of your main points,  
 17 is that the reasons given for going over to the tactical  
 18 option as it was called, on the Thursday were not adequate.  
 19 You criticised that very strongly in various parts of your  
 20 report, so I take it you say that if the tactical option  
 21 should not have happened or be taken, if you take an  
 22 option, on the Thursday, then and they had waited until the  
 23 Friday, then obviously the deaths that took place on the  
 24 Thursday wouldn't have taken place. I take it that's, even  
 25 if those who died, died in circumstances where those

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1 responsible for their deaths were acting in self or private  
 2 defence, is that a summary of one of the main points you  
 3 make?  
 4 MR WHITE: Well, I think the simple  
 5 answer to that is, Chair, and I'm not trying to avoid it,  
 6 is that I don't know. What I'm saying is and I'm more than  
 7 happy to go through it as we work through the process to  
 8 give you detailed sort of consideration on this, is that I  
 9 do question highly the decision to go and I don't use this  
 10 terminology, again it is terminology that I've adopted in  
 11 relation to the context, to go tactical, at in and around  
 12 3:30pm on Thursday afternoon, I do question why that was  
 13 the case in quiet, very, very strongly.  
 14 After that decision was made we know that a lot  
 15 of people were killed. Is there an absolute causal  
 16 connection between the two? I can only offer you the  
 17 benefit of my experience and hopefully that is of some  
 18 value and you're trying to work out whether or not there is  
 19 an absolute causal connection between the two.  
 20 Had they waited to the next day in order to carry  
 21 out some other types of tactical plan early the next  
 22 morning with all those 44, - sorry, excuse me, 34 people  
 23 who died, I don't know. Maybe there might have been  
 24 another set of circumstances that sort of presented whereby  
 25 maybe more people would have died, maybe less people would

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1 have died, I simply don't know, but I do think that what we  
 2 have to deal with are the circumstances as they evolved and  
 3 changed and then questioned decisions that are being made  
 4 at that time, given all of the information that's available  
 5 and this is why I start off with the whole point around  
 6 Intelligence and trying to understand, like I say, why  
 7 decisions were made, the circumstances in which they were  
 8 made, the consideration been given to the consequence of  
 9 those decisions in terms of plotting out a line as to how  
 10 this situation developed.  
 11 CHAIRPERSON: Simply put, if one adopts  
 12 the "but for" approach to causation and you take out the  
 13 decision to go tactical, as you put it, as they put it, on  
 14 the Thursday, it follows that the people who died on  
 15 Thursday wouldn't have died on Thursday, they might have  
 16 died later, others may have died, more, fewer, but the  
 17 deaths on the Thursday and the circumstances in which they  
 18 took place wouldn't have happened if the decision to go  
 19 tactical on the Thursday had not been made, and I take it  
 20 that's a part of the opinion you expressed, is that  
 21 correct?  
 22 MR WHITE: Chair, all I'm saying is, I  
 23 think it was a questionable decision. I've offered that in  
 24 my provisional statement, I've said it in my final  
 25 statement, I still adhere to that point in my supplementary

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1 statement, I'm prepared to give oral evidence to that  
 2 affect. I think it was a hugely questionable decision.  
 3 The consequences of taking another decision, would that  
 4 have meant that no one would have died that day? Well, I  
 5 simply don't know why, I will maybe understand then, well,  
 6 if they didn't take that decision and they did that instead  
 7 or this instead, well, then potentially what might have  
 8 happened, I just simply, I don't know.  
 9 MS LE ROUX: Mr White, taking you back to  
 10 the question I asked you which is, why do we look at  
 11 planning, briefing, command and control, Intelligence,  
 12 etcetera, why do you do that in your statement? Is there a  
 13 legal basis in your experience or in Northern Island as to  
 14 why you don't just question why the particular individual  
 15 officer fired the rounds that they did, but you look at why  
 16 they were in that position?  
 17 MR WHITE: There is a legal basis, Chair,  
 18 and it comes from the RW McCain which went to the European  
 19 court of human rights which was the case where the British  
 20 Army, SAS shot three people in Gibraltar and the  
 21 implications of that, therefore Legal Aid are that what's  
 22 my understanding of the case is that the individual  
 23 soldiers who shot, the Human Rights Court found in their  
 24 favour that they couldn't be criticised as such for what  
 25 they did, but the criticisms were aimed at the people who

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1 had been involved in planning. In other words why were  
 2 they put in the position that they were put? So that's a  
 3 legal basis, however there is a procedural basis as well  
 4 and certainly in the context that I worked in and the  
 5 Police Service in Northern Island have their own Code of  
 6 Ethics and 4.2 of the Code of Ethics says that when  
 7 commanders are planning operations they will do so with  
 8 regard to minimising the use of force.  
 9 Now again if you look at something like general  
 10 order 262, here it talks about trying to avoid use of force  
 11 at all costs. So the reason that I think this question is  
 12 being asked is, it comes back to this point about in  
 13 looking at the situation that happened on the 16th, either  
 14 at scene 1 or scene 2, it is not sufficient to just simply  
 15 say, was the officer X justified yes or no in the  
 16 circumstances that he/she is in at that time. Yes, that's  
 17 a very important question to ask.  
 18 CHAIRPERSON: It is not the only one.  
 19 MR WHITE: Absolutely it is not the only  
 20 one.  
 21 CHAIRPERSON: Ms Le Roux, may I ask you  
 22 whether it will be possible at some stage before we're  
 23 finished with the Commission, for you to give us copies of  
 24 that judgment of the European court in the McCann case? I  
 25 remember reading about it the time it happened, but if you

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1 can do I would appreciate it.

2 MS LE ROUX: Yes, Chair, we'll do that.

3 MR WHITE: Chair, just to finish that

4 point, the case itself and then subsequently the policy

5 that has been adopted, you know makes it very clear that if

6 you're in a command position you're involved in planning

7 and operation, then you equally have the responsibility

8 that that officer has with regards to the use of force.

9 All of our policies and I think we'll come back to this at

10 a later stage, vis-a-vis the homework that you sent me

11 around, looking at this particular policy document, but

12 just to briefly say, in the UK all of the policy documents

13 on use of firearms and use of force, were written in the

14 context of the police officer makes an individual choice,

15 but it is within a framework of authority levels. So you

16 know, authority at certain senior officer level for

17 firearms to be deployed to a certain situation and then

18 that officer has to be accountable for why he gives that

19 authority under the circumstances in which he did it. So

20 individual police officer has to account for his/her

21 actions, that's the person pulling the trigger, but it is

22 also, there is a supervisor at the scene. It is also all

23 the way up to, I have explained earlier on, the gold

24 commander, the silver commander, the bronze commander and

25 everyone else that has a direct line of responsibility for

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1 that.

2 MS LE ROUX: Mr White, if I could ask you

3 to turn to page 26 of your supplementary statement and in

4 particular Section 3.3. This is where the SAPS set out

5 fairly crisply that the opinion of Mr White that the

6 Marikana tragedy occurred because of poor planning, poor

7 briefing and most importantly poor decision making is

8 contested. SAPS contend that had the attack on the police

9 at scene 1 not occurred the tragedy would not have

10 happened.

11 [12:33] Now could you summarise for the Commission what

12 you then say in response to that, because this is sort of

13 the heart of the dispute between –

14 CHAIRPERSON: Sorry, which page?

15 MS LE ROUX: Page 26 of the supplementary

16 statement.

17 CHAIRPERSON: Thank you. That's BBBB4,

18 page –

19 MS LE ROUX: Yes, Chair. And Mr White,

20 in due course we'll deal with the evidence of Mr X, but if

21 we could just deal with the way the SAPS framed the issue

22 here, that there's an attack on the police, we're not

23 engaging with the details of the Mr X evidence at this

24 stage.

25 MR WHITE: Chair, if you can indulge me

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1 I'd prefer to read this just so that there's an accurate

2 representation of what I'm saying. So the answer at 3.3.2

3 is that "This appears to be the crux of the issue between

4 SAPS and myself. I'm aware that there's conflicting

5 evidence as to whether the strikers were in fact attacking

6 the police at scene 1. I'm not qualified to resolve that

7 conflict and I accept that there is evidence on both sides,

8 but on the assumption that the strikers were attacking at

9 scene 1 as contended for by the SAPS, it is my opinion

10 that –

11 a), It is clear that the movement of the strikers

12 towards the kraal was prompted by the commence of stage 3

13 of the SAPS operation;

14 b), There was no adequate rationale to launch

15 stage 3 at 15:30 on the 16th of August;

16 c), The planning of stage 3 of the operation was

17 poor and included the deployment of SAPS members which

18 increased the risk and likelihood of the need to use lethal

19 force;

20 d), The briefing of the stage 3 operation appears

21 to have been poor so that a number of key players,

22 including those who were rolling out the barbed wire and

23 those who were operating the water cannon were uncertain of

24 their role;

25 e), The decision to send a line of in and around

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1 60 TRT members forward to confront the strikers, each with

2 the discretion to fire in self-defence, increased the risk

3 of an excessive response to any lethal threat; and also

4 f), The response to the lethal threat appears to

5 have been disproportionate."

6 MS LE ROUX: Mr White, if we can now

7 start by going through your analysis and conclusions that

8 you draw around the operation of the 16th, and using the

9 framework that you've already identified for the

10 Commission, if we start with intelligence, could you

11 explain to the Commission your key criticisms in respect to

12 intelligence and the operation on the 16th?

13 MR WHITE: Chair, in the interest of

14 brevity – and I'm seeking your guidance on this – I raise

15 some issues in relation to intelligence in relation to the

16 13th. Most of those were more general as opposed to

17 specifically to the 13th. Some of them were specific.

18 Rather than repeat those again I just make the point that

19 some of those issues were general, i.e. the TT5 and the

20 fact that, and there was very little actionable

21 intelligence on that.

22 So therefore then at this part of the evidence,

23 in addition to those remarks I would then say that

24 specifically in relation to the operation on the 16th some

25 of the intelligence is inaccurate in that specifically I

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1 would point to TT4, which are the minutes of the JOC  
 2 meeting at 6AM, and the issues here are that first of all  
 3 the information that's recorded as being the intelligence  
 4 for that meeting is exactly the same, and I'm pretty  
 5 confident word for word that as recorded as the  
 6 intelligence input at the following JOC meeting which took  
 7 place at 13:30 on the 16th.

8 The reason that I raise this is because within  
 9 the intelligence it talks about 3 000 people on the koppie  
 10 at 6AM. Now I am aware that there had been some suggestion  
 11 that this might have been a typographical error and in fact  
 12 that there were only, it should have said 300, but there  
 13 are two other pieces of evidence which point to the fact  
 14 that at in and around 8:50AM, I think one from the  
 15 occurrence book and two from Lieutenant-Colonel Scott, at  
 16 around 8:50AM there was in and around a hundred people on  
 17 the koppie at that time. I haven't seen any evidence  
 18 through reading all of these statements that at any stage  
 19 the natural pattern is that lots of people gather up on the  
 20 koppie and lots of people leave, so I think, you know the  
 21 logical conclusion is that if there are in and around a  
 22 hundred people at around 8:59AM on the koppie, then it's  
 23 extremely unlikely there would have been 300 sort of  
 24 earlier on at 6AM. So I don't know if it's a typographical  
 25 issue, but you know, even at that is to say it appears to

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1 be exactly the same intelligence which is then on offer to  
 2 the JOC for the 13:30 meeting.

3 CHAIRPERSON: I'm sorry to interrupt you.  
 4 You're now actually testifying in relation to what appears  
 5 at pages 59 to 61 of your final report.

6 MR WHITE: Yes, Chair, sorry. Apologies.  
 7 That's correct. That's –

8 MS LE ROUX: Yes, Chair.  
 9 MR WHITE: - the issue that deals with  
 10 that –

11 CHAIRPERSON: Yes, I know. I just  
 12 mention that for the – it may help us later when we read  
 13 the transcript of your evidence to realise that you're  
 14 referring to points that are made more fully on those pages  
 15 of your final report.

16 MR WHITE: Sorry, apology. I know we  
 17 should have tried to be more helpful earlier on because I  
 18 think that you had originally talked to Ms le Roux around  
 19 paragraph 10 of my statement, but I think that was just in  
 20 relation to the overall conclusions.

21 MS LE ROUX: Correct.  
 22 MR WHITE: So my apologies for not  
 23 directing you back to it. Yes, I –

24 CHAIRPERSON: You're dealing with  
 25 inadequate intelligence at paragraph 6.2 of your final

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1 report.

2 MR WHITE: That's correct.  
 3 CHAIRPERSON: Beginning at page 59.  
 4 MR WHITE: That's correct, Chair.  
 5 MS LE ROUX: Mr White, other than the  
 6 inaccuracy of the intelligence that was available, could  
 7 you summarise your comment, your criticism on how the  
 8 intelligence was then – what role it then played in the  
 9 operation?

10 CHAIRPERSON: Before we get there can I  
 11 ask you a question that's been worrying me about this point  
 12 from the time I first read your report, and that is I think  
 13 the police case is – and I'm not sure whether they  
 14 articulate it as fully as I'm articulating it now, but I  
 15 think the police case is that there were great difficulties  
 16 in getting intelligence. There was a climate of  
 17 intimidation and so forth and they had handlers who then  
 18 had informers and they were getting some information from  
 19 them, but implicit I think in what they say is it was very  
 20 difficult to get information.

21 Now I could understand that in a longstanding  
 22 situation such as you have in Northern Ireland you probably  
 23 have informers embedded in the various factions who  
 24 presumably are a regular supply, or regularly supply  
 25 information and one's read reports about grasses and super

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1 grasses and so on, we don't have to go in now, but where  
 2 you have industrial unrest arising with relatively  
 3 unprecedented levels of – or so it is alleged, I must  
 4 hasten to say – relatively unprecedented levels of  
 5 violence, murder and mayhem and intimidation and so forth,  
 6 I'm not sure that it's so easy for the police to have  
 7 informers in place. They then presumably have to approach  
 8 people who are there already to get information from them,  
 9 which is also not so easy. So I'm not sure, I just want to  
 10 give you chance to deal with this. I'm not sure that  
 11 you've dealt in your reports with the reasons for saying  
 12 that one can blame the police for inadequate intelligence.  
 13 That there was inadequate intelligence is one thing, but  
 14 whether it's something that you can lay at the police's  
 15 door in these circumstances is another. Now there may be  
 16 an answer to that, but it wasn't immediately apparent to me  
 17 and I thought I should put it to you so you can assist me.

18 One other fact – I'm reminded to remind you that  
 19 the evidence is that the 10th person who died before the  
 20 16th was Mr Twala, who was an official of NUM. I can't  
 21 remember what exactly his role was, whether he was a shop  
 22 steward or a shaft steward or something of that kind, and  
 23 the evidence seems to indicate, certainly what Mr X says  
 24 about him, which of course may not be true, at least  
 25 because he hasn't been cross-examined yet, but according to



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1 his statement Twala was found in possession of a cell phone  
 2 with a lot of airtime on it and the suggestion was that he  
 3 was, or the implicit suggestion is that he was giving  
 4 information to NUM. That may well have been the reason or  
 5 more presumably was the reason why he was killed. Whether  
 6 that evidence is true or not is another matter, but  
 7 certainly he was killed in circumstances which indicate  
 8 there must have been a reason for it and if he was a  
 9 striker and he was a NUM member, one can draw one's own  
 10 inference.

11 So anyway, I just mention that. You have a  
 12 climate of intimidation, a climate of violence, a climate  
 13 of what I called several times murder and mayhem. It is  
 14 not a longstanding sectarian dispute that's endured for  
 15 centuries where the Royal Ulster Constabulary and their  
 16 successors in title have been able to establish information  
 17 channels, if I can use that word, such as you have in  
 18 Northern Ireland. So I could imagine the police saying by  
 19 all means tell us we must have adequate information, but  
 20 will you be kind enough to tell us how we can do it, regard  
 21 being had to the sort of problems that we encountered.  
 22 Anyway, that's the point that I'd like you to deal with.

23 MR WHITE: Chair, I have read statements  
 24 from police officers in the intelligence branch where they  
 25 talk about difficulties in getting intelligence. I

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1 wouldn't dispute that at all. I'm sure that it is  
 2 difficult and maybe the circumstances are very different  
 3 for exactly the reasons that you articulate vis-à-vis the  
 4 position in Northern Ireland and longstanding and covert  
 5 human intelligence sources being sort of there. I know  
 6 that some of the evidence with the SAPS is that there was  
 7 an attempt to have an informer effectively placed. Whether  
 8 or not that was subsequently the person that you refer to,  
 9 I'm sure it will never be confirmed and that's not the  
 10 business of anybody in a public realm and these don't  
 11 confirm, don't talk about that rightly.

12 So the issue is that in a general sense I'm  
 13 looking at the circumstances from the 9th to the 16th of  
 14 August. TT5, or TTT5 – correct me, but the composite of  
 15 the intelligence, I gave evidence earlier on, has two,  
 16 possibly three entries which I would consider to be actual,  
 17 actionable intelligence. So I make the point that an  
 18 ongoing operation which is taking place over the course of  
 19 a week, that there are these, only these two pieces of  
 20 actionable intelligence struck me as extremely surprising.  
 21 I don't for one second suggest that, you know, there  
 22 weren't difficulties in gathering intelligence, but it  
 23 strikes me as extremely surprising that it's not more than  
 24 that.

25 I have engaged with the statement from a

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1 particular police officer within the Intelligence branch  
 2 and he talks about in that some of the other mechanisms  
 3 that he used, including I think they take still photographs  
 4 of people on the koppie and they take them back to the,  
 5 they interrogate the lumens, they chart out a case and  
 6 whatever. I would ask the question so what, as a result of  
 7 that, you know, what happened, you know, were you able to  
 8 identify people and was that then fed back in? Because it  
 9 doesn't say anything in terms of TTT5. He also talks about  
 10 interviewing people, including security guards and  
 11 witnesses and whatever, some of whom he says only engaged  
 12 with him on the basis that their names were kept anonymous,  
 13 and I can absolutely understand that. But again I ask the  
 14 question, but so what was the outcome of those  
 15 conversations and what did you do with it, because if I go  
 16 back to TTT5 with regards to this is a composite of all the  
 17 intelligence.

18 So I've no issue with the fact that they may have  
 19 had difficulties. I still come back to the point that of  
 20 that whole week, given the nature of this operation, given  
 21 that 10 people have died, given the fact that the police  
 22 are taking the decision to engage with a crowd of around  
 23 3 000 people, including a group of 300 who seem to be, are  
 24 armed and have certain intent, it strikes me as extremely  
 25 odd that there are 2/3 pieces of actionable intelligence.

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1 Not only that; Lieutenant-Colonel Scott in terms  
 2 of some of his statements where he talks through the  
 3 planning process, asks for information. He actually issues  
 4 what I would recognise as what's called an intelligence  
 5 requirement. He basically says, and again I don't have the  
 6 reference ready to hand but it's in the statement, Chair,  
 7 and where he talks about, you know, he asked for  
 8 information in relation to what the general picture is in  
 9 terms of the informal settlement I think it is, and he  
 10 wants to know that. He's looking for tension indicators.  
 11 I suspect that that's about police officers who might  
 12 occasionally patrol that area and might know some people.  
 13 That's about going, actively going out and talking to  
 14 people and trying to get a sense of, you know, how the  
 15 community in the informal settlement are seeing all of  
 16 this. All of this information, some of it might be  
 17 relevant, some of it might be of very little value, but  
 18 some of it might actually might be of value. The important  
 19 point is that Scott recognises that and asks for that and,  
 20 but yet gives oral evidence to say that, you know, no  
 21 information was communicated back to him.

22 CHAIRPERSON: There are two things that  
 23 occur to me in that regard, and that is the evidence is, I  
 24 think, that a special group of detectives was brought in  
 25 from Gauteng and their job was to go through the still

1 photographs, identify faces of people, particularly those  
2 bearing dangerous weapons, go back to Lonmin, ask them to  
3 say who they were, if they could identify them, which you  
4 mention that, then get the addresses of these people.

5 Then you remember part of the plan was to have a  
6 cordon and search and presumably the idea would have been  
7 once you have a list of people who got dangerous weapons  
8 and their addresses, you can then do your cordon and search  
9 and hopefully seize the weapons in their homes and which  
10 would substantially reduce the danger of dangerous weapons  
11 being used on the koppie.

12 Apart from that there's evidence of General  
13 Mpmembe on the Wednesday night, the very night, the night  
14 before the killings, a request he addressed to Mr Zokwana,  
15 obviously in ignorance of what was being decided at the  
16 National Management Forum as they were speaking that the  
17 tactical option would be exercised come what may on  
18 Thursday if the weapons weren't handed down, what Mpmembe  
19 said to Zokwana – I don't know if you read that transcript  
20 of their discussion – Zokwana said to him why don't you go  
21 and take the weapons away, and he says you can't do it, you  
22 can't, there's no way you can take weapons or an axe from a  
23 man on a koppie if you're got a rifle. You'll have  
24 bloodshed. The way you've got to deal with it is you give  
25 me, you Zokwana, get your NUM members to come back to me

1 and tell me which people in the hostels and the informal  
2 settlement have got weapons and who they are and we will  
3 then go and get the weapons from them. Zokwana said we'll  
4 do that, but you mustn't say you that we got the  
5 information for you. What obviously happened thereafter  
6 was there wasn't time for that information to come back to  
7 be fed into the plan and implemented perhaps in the cordon  
8 and search because of the decision made on the Wednesday  
9 night at the National Management Forum that tomorrow is the  
10 day when we're going to go to the tactical option if they  
11 don't lay weapons down voluntarily.

12 So those two things I put to you are relevant  
13 obviously in relation to the information they had, or were  
14 hoping to get, and the use they were going to make of it.  
15 It does seem as if – this is just a view that obviously  
16 one's got to think about; I'm not saying this is so, but it  
17 seems as if one of the problems with going over to the  
18 tactical option on Thursday was the attempts that had been  
19 made to get information which could be used in a cordon and  
20 search to disarm the people, the decision to proceed on  
21 Thursday was premature, with the consequences that  
22 followed.

23 The application for cordon and search had been  
24 made, they were going to proceed I think on the Thursday  
25 night to do the necessary, obviously based on information

1 that they were hoping to get, I take it partly from people  
2 they thought would be arrested on the Thursday, but also as  
3 a result of these two other initiatives that I mentioned.  
4 Now all these are relevant in regard to criticism addressed  
5 to the police in relation to inadequate information and  
6 intelligence and the use or non-use thereof. Would you  
7 care to comment?

8 COMMISSIONER HEMRAJ: Can I just add one  
9 thing to that? As regards to the request pertaining to the  
10 geography of the area, Colonel Scott's request, I  
11 understand there was evidence that Mr Sinclair from Lonmin  
12 was of great assistance to him in orienting him to the  
13 area.

14 MR WHITE: And again that may be so and I  
15 think that would be around, you know, sort of the  
16 configuration of the area and I think he helped in the  
17 early stages of sort of Colonel Scott drawing up his plan,  
18 but what I was referring to, just to address this  
19 particular point first, is that Colonel Scott seems to be  
20 asking for intelligence. He's asking for what I would  
21 call, you know, atmosphere information, community tension  
22 indicators from the point of view of, you know, when we  
23 start to roll the plan how are people going to respond to  
24 this, and his evidence was that he didn't get any of that  
25 back.

1 To come back to your point, Chair, yes I've read  
2 that transcript. I'm aware of all of that and I'm sure  
3 we'll come back to this point over the next couple of days  
4 around what was said at that meeting by General Mpmembe vis-  
5 à-vis if you go onto the koppie and bloodshed and all of  
6 that, which obviously again draws into question this whole  
7 issue of the decision on Thursday.

8 However, again as I've said at the opening, I  
9 don't, you know, for one second deny that I'm sure there  
10 were difficulties in all of this, and certainly, and  
11 General Mpmembe has asked that that information is brought  
12 back and obviously then that information coming back would  
13 have post-dated what happened. I accept all of that. But  
14 I'm still coming back to the point that difficulties and  
15 all, that there are 2/3 pieces of actionable intelligence,  
16 and I'm more than happy to engage with the statement of, I  
17 think it's Officer – I apologise, I can't remember his rank  
18 – Victor, who talks about a lot of these things around what  
19 they did, and my basically response will be, well yeah,  
20 well if you did all of that I'm assuming they had got some  
21 information, what did you do with it, because as I've said  
22 earlier on I've been told that TT5 represents the composite  
23 of – and so I have based this criticism on the fact that  
24 are you telling me this is the intelligence for an  
25 operation of this magnitude across a whole week?

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1 [12:53] We all have difficulties but there are certain  
 2 things that I still think you would have expected to see  
 3 moved across into somewhere – maybe this intelligence  
 4 exists somewhere, maybe it does and maybe my criticisms are  
 5 entirely wrong. I am aware of the things, everything that  
 6 you've mentioned to me, Chair, I am aware of but it seems  
 7 to me that then maybe there's a breakdown in the machine as  
 8 well because this is not getting to the people who are  
 9 making the decisions.

10 CHAIRPERSON: What went to the people  
 11 making the decision or the person making the decision, it's  
 12 a question that we still have to decide, who made the  
 13 decision on the Wednesday night, whether it was Mbombo  
 14 alone or whatever and there's a piece of evidence that she  
 15 gave herself on that point that may be relevant but if all  
 16 the information they had was what's in TT4, in TTT4, then  
 17 wasn't that enough – well, it may well be contended that in  
 18 the light of that information, to decide to do what the  
 19 decision was, to proceed to the tactical option on the  
 20 Thursday, knowing they didn't want to give up their  
 21 weapons, they wouldn't give them up, they didn't want to be  
 22 dislodged from the koppie and they'd fight to the death.  
 23 That in itself was powerful information, was it not?

24 MR WHITE: Chair, I'm absolutely  
 25 conscious of the fact that you know the evidence much

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1 better than I, but just on your last point, my  
 2 understanding of the evidence from TTT4 was that 3 000 on  
 3 the koppie, they wouldn't give up their weapons and they  
 4 would resist the police. I don't if the evidence, I don't  
 5 know if the intelligence that the JOC were taking the  
 6 decisions on were actually specifically saying we'll fight  
 7 to the death but certainly it would – Chair, you know, all  
 8 the more reason then I would have thought, to think about  
 9 is this a good idea to move forward against a crowd of in  
 10 and around 3 500, even if we identify that it's only these  
 11 300 people who will, you know, following this line of  
 12 questioning, fight to the death. I would have thought that  
 13 the sensible decision therefore is actually we just need to  
 14 hold on a little bit because as General Mpembe said in the  
 15 meeting that you referred to the night before, if we go on,  
 16 we have our rifles and they have, you know, an axe –

17 CHAIRPERSON: Axes, he said.

18 MR WHITE: - there's likely to be  
 19 bloodshed.

20 CHAIRPERSON: I seem to remember, this is  
 21 a point put to me by Adv Hemraj, that apart from TTT4 –  
 22 sorry, is it TT4? It's two T's, TT – 4, the statement of  
 23 Brigadier Engelbrecht seems to suggest that there was  
 24 considerably more information. He talks about handlers and  
 25 they were regularly receiving information. That hasn't

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1 been given to us so we don't know, well, we don't know the  
 2 details of what was given and he hasn't testified - but  
 3 he's certainly told us they did get information. Of course  
 4 there's a further problem which I think you touch on  
 5 elsewhere in your report and that is, the decision was  
 6 taken on the Wednesday night that they would proceed to the  
 7 tactical option on the Thursday if the weapons weren't  
 8 handed down voluntarily and I think the evidence is that  
 9 that decision was taken in ignorance of the intelligence  
 10 information. In other words, come what may, if the weapons  
 11 aren't handed down on Thursday we're going to go to the  
 12 tactical option. We don't know what the intelligence says  
 13 and we leave it to the JOCCOM to decide how they must do  
 14 it, that it will be done has been decided, they must do the  
 15 how. I think you criticised that quite strongly but it  
 16 also has a bearing on the question of a criticism of the  
 17 intelligence. It seems to me there's more intelligence  
 18 that we haven't been told about. You know, we've just in  
 19 broad terms, we've been told there's intelligence but it  
 20 does seem prima facie as if the intelligence didn't have  
 21 any bearing on the decision anyway.

22 MR WHITE: Chair, I'm very grateful to  
 23 you -

24 CHAIRPERSON: It's put to me that we  
 25 don't know that the intelligence wasn't taken into account

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1 but it's an inference which may be drawn but we would  
 2 obviously keep an open mind on that until all the argument  
 3 has been heard. Anyway, sorry, I'm interrupting.

4 MR WHITE: Chair, I was just about to say  
 5 I'm grateful to you because I think the last point that I  
 6 was going to make on this issue was my understanding, my  
 7 understanding of the evidence including some of the oral  
 8 evidence and been given by senior officers who I think were  
 9 involved in the decision was that actually they weren't  
 10 aware of the intelligence, of that criminal intelligence,  
 11 so therefore you know my other criticism in relation to  
 12 intelligence is exactly as you articulate it, that actually  
 13 decisions may have been made without regard to it.

14 MS LE ROUX: Chair, just rounding out, to  
 15 provide the Commission with the reference to Lieutenant-  
 16 Colonel Scott's evidence with respect to that he put out  
 17 the request for intelligence providing atmosphere and  
 18 attitude to the police and nothing came back, the oral  
 19 evidence reference for that, that Mr White referred to,  
 20 just to give you that it's day 140, the 30th of October last  
 21 year, line 18 page 15125 to line 15, 15127. Sorry, line 3,  
 22 page 15127 just so that you have the reference to oral  
 23 evidence that he was referring to. Chair, I intend to move  
 24 on to the next topic. I see we're one minute to one –

25 CHAIRPERSON: It doesn't look as if you

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1 can deal with it in a minute.

2 MS LE ROUX: No.

3 CHAIRPERSON: We'll adjourn till quarter

4 to two.

5 MS LE ROUX: Thank you, Chair.

6 [COMMISSION ADJOURNS COMMISSION RESUMES]

7 [13:47] CHAIRPERSON: The Commission resumes. Mr

8 White, you're still under oath. Before you ask your next

9 question, Ms Le Roux, Commissioner Hemraj wishes to ask the

10 witness a question. I take it you don't object.

11 MS LE ROUX: Of course not, Chair.

12 COMMISSIONER HEMRAJ: Mr White, have you

13 had an opportunity to look at the statement of Brigadier

14 Engelbrecht about the intelligence, does it have an exhibit

15 number, Ms Pillay?

16 MS PILLAY: JJJ167.

17 COMMISSIONER HEMRAJ: It's a six page

18 statement, have had –

19 MR WHITE: Yes, Chair, I've definitely

20 seen a statement by Brigadier Engelbrecht unless you're

21 going to tell me there was more than one statement by him

22 then I think we're talking about – if there's only one then

23 I guess I have seen that.

24 COMMISSIONER HEMRAJ: And he does set out

25 the information or the intelligence received in some detail

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1 and the steps that were taken around the intelligence.

2 MR WHITE: Yes, Commissioner, and I

3 actually dealt with the statement that I was referring when

4 I said that I think the ten pieces of intelligence on TTT5,

5 there were maybe two or three which I would consider to be

6 actionable intelligence. Some of the information that Mr

7 Engelbrecht's referring to actually makes up what I

8 consider then to be the entry in TTT5. He talks about

9 receiving information from an informant. He feels that the

10 information is so significant to the operation that not

11 only does he forward an SMS to Mr Mpembe but also then I

12 think he speaks to Mr Mpembe. But I referred to the

13 conversation earlier on and in my evidence where Mr

14 Engelbrecht expresses a degree of frustration subsequently

15 because he doesn't feel that intelligence has been actioned

16 in accordance with what he wished.

17 COMMISSIONER HEMRAJ: Yes that apropos

18 your point about visible policing being deployed, there

19 seem to have been discussion around that.

20 MR WHITE: That's correct, yes.

21 COMMISSIONER HEMRAJ: It does appear that

22 at PT4 there's a bit of an abridged version and it's kind

23 of spelt out in Brigadier Engelbrecht's statement as to

24 what happened around the intelligence received.

25 MR WHITE: You could be right, I would

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1 question that.

2 MS LE ROUX: Thank you, Chair. Mr White,

3 I'd now like to move onto your consideration of the

4 planning of the operation for the 16th and essentially to

5 deal with that in three parts because to assist the

6 Commission. Your statement's on the key criticisms fall

7 into what evidence you considered and if you could explain

8 that to the Commission and if that changed over the course

9 of your statement. How that changed, then if we deal your

10 criticisms relating to the procedure followed and then the

11 actual content of the plan. So if we can start with what

12 evidence did you consider when coming to your conclusions

13 around planning?

14 MR WHITE: Chair, effectively my

15 consideration around the issues in relation to planning I

16 suppose fell into three phases and consistent with the

17 three statement that I've presented to the Commission. So

18 firstly in relation to my provisional statement, I was

19 working off the information contained within the SAPS hard

20 drive that would have been presented to me. And largely

21 around planning I was looking at the statement of

22 Lieutenant-Colonel Scott. Again I read all of the

23 statements but Lieutenant-Colonel Scott I think as I had

24 identified within my provisional statement seems to be the

25 chief planner. So in relation to planning I've relied in

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1 the first instance sort of on that. And Lieutenant-Colonel

2 Scott gives information in relation to how the planning

3 process developed and I made comments in that regard. And

4 it seems to be that it's a developing plan over a number of

5 days taking into consideration change in circumstances and

6 I think that's entirely fair.

7 By the time I was completing my final statement I

8 had been exposed to further evidence. Number one,

9 Lieutenant-Colonel Scott's considerably longer, I think 149

10 page consolidated statement, where he gives an awful lot

11 more detail and also to – I had been provided by my legal

12 team with what I think is referred to as Scott's hard

13 drive. And this is the PowerPoint slides and various other

14 things. And that and evidence then started to engage much

15 more with the fact that this plan was very much – the

16 particular part of the plan that we're very interested in,

17 which is actually what got actioned at 3:30 or thereabouts

18 on the 16th is only really developed post 1:30 JOC because

19 it – sorry Chair –

20 CHAIRPERSON: Sorry, I was going to ask

21 you a question but I wanted to wait for you to finish your

22 answer first.

23 MR WHITE: Okay and so my comments in

24 relation to my final statement are engaging with that

25 evidence which is very much around that the decision is

1 made at the 1:30 JOC. And then Lieutenant-Colonel Scott  
 2 who at that particular meeting gives in indication of how  
 3 this decision might be actioned. And however, by the time  
 4 I then – on making my third statement, what's referred to  
 5 as my supplementary statement, the planning process that  
 6 I'm engaging with is different in the sense that the  
 7 evidence seems to suggest that actually the decision isn't  
 8 made at the 3:30 JOC, sorry 13:30 JOC in accordance with  
 9 General Mpmembe's rationale or criteria if you like, for  
 10 moving through to the tactical option. But actually is as  
 11 a result of actioning the decision which may have been made  
 12 on the evening of the 15th or possibly even on the 14th. So  
 13 I need to say that in terms of the phases of the evidence  
 14 that I considered in terms of the planning.

15 CHAIRPERSON: What I wanted to ask you is  
 16 have you read his evidence?

17 He was cross-examined at length about a number of  
 18 matters but in particular the plan and how the plan  
 19 developed. And when the plan finally took the form it did.  
 20 Have you read that evidence?

21 MR WHITE: Again I have read transcript  
 22 evidence of Lieutenant-Colonel Scott and if you can point  
 23 me to particular bits of that because as you say, you know,  
 24 it is very long. So I'm interested in only particular -

25 CHAIRPERSON: Yes well I haven't got my

1 Scott said, the question then arose well how this was to be  
 2 implemented. He couldn't remember, he eventually came up  
 3 with a proposal which was adopted. He said he'd originally  
 4 remembered that he had worked that out on the Thursday  
 5 morning. But he said he subsequently, around discussion  
 6 with his colleagues he realised he was mistaken, in fact it  
 7 had been discussed on the Wednesday afternoon. But he was  
 8 then cross-examined quite extensively on it and my  
 9 understanding of his evidence in the end was that well he  
 10 wasn't quite sure which of these two recollections were  
 11 correct. Well I think to be fair, he probably inclined  
 12 that the Wednesday one was right. A number of points was  
 13 then put to him which tended to indicate that that wasn't  
 14 so, that his original recollection was correct, that he'd  
 15 only worked it out on the Thursday. He was then asked what  
 16 he did on the Thursday morning, he said he couldn't  
 17 remember. It was pointed out to him that according to the  
 18 minute of the 6 o'clock meeting a contingency plan had to  
 19 be drawn up in the situation that they might not lay down  
 20 their arms, the strikers might not. Calitz had said that  
 21 he was the obvious person to do that and he was then asked  
 22 well why didn't he have anything in writing at the meeting  
 23 at 1:30. And he couldn't answer it, he said that he  
 24 couldn't remember what he did in the morning. He said  
 25 after the decision was announced by the Provincial

1 notes with me, if necessary I can have them here tomorrow.  
 2 But what happened as the case developed and as things were  
 3 obtained from his computer he then – the counsel for the  
 4 police then said that the decision to proceed to the  
 5 tactical option, as it was called, if weapons were laid  
 6 down on the Thursday, was taken on the Wednesday evening by  
 7 General Mbombo at the National Management Forum meeting.  
 8 And a minute was handed in and it appeared the minute said  
 9 that it was an extraordinary meeting of the Forum after the  
 10 main meeting had been held and item 7 on the agenda was  
 11 then discussed. And the wording was that General Mbombo's  
 12 proposal was endorsed, it was explained in the evidence,  
 13 this was the tactical option the next day if the weapons  
 14 weren't handed down. And the other Provincial  
 15 Commissioners present undertook to make resources available  
 16 if this was required. And counsel for the police service  
 17 then said that was when the decision was taken despite such  
 18 evidence as there may be to the contrary. So at that point  
 19 if it was the police case that the decision was taken at  
 20 1:30 because of an escalation on the morning of the  
 21 Thursday that case fell away and was replaced by what I've  
 22 now put to you.

23 And the evidence further was that as appeared  
 24 from the minute of the 1:30 meeting that the decision was  
 25 announced by the Provincial Commissioner. And then Colonel

1 Commissioner at the meeting, the question of how it would  
 2 be implemented arose and he waited, no one else there  
 3 raised a hand to come up with suggestions. And he then  
 4 came up with these ideas which he'd had which either  
 5 formulated the day before or that morning. He conceded  
 6 that if he'd done it in writing it would have only taken 20  
 7 minutes to have it typed, I mean to have it printed to give  
 8 out. He couldn't explain why he hadn't done that and why  
 9 he had to go to brief people in his vehicle from the screen  
 10 of his laptop.

11 But his evidence was he expected someone else to  
 12 put up a hand with a plan and they didn't and he gave his  
 13 plan. The evidence was further that after the meeting was  
 14 over Major-General Annandale asked Brigadier Pretorius who  
 15 was in charge of the JOC from an administrative side to  
 16 make an entry in the occurrence book which he made at 3:20  
 17 recording that the decision was the decision of the  
 18 Provincial Commissioner. And he stood over her while she  
 19 made that entry. Then when Lieutenant-General Mbombo came  
 20 she spoke about what happened at the National Management  
 21 Forum. He said it was her decision, it was discussed for  
 22 an hour, she couldn't remember really what was discussed,  
 23 well up to an hour she said. She was asked by Mr Budlender  
 24 whether she was aware of the intelligence reports that had  
 25 been received and she said no they had not been

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1 communicated to her. And so the implication was that a  
 2 decision had been made without reference to the  
 3 intelligence reports that had been received. And obviously  
 4 in ignorance of the fact that the following morning there  
 5 was going to be a report which I think you've seen. The  
 6 other thing I must tell you is relevant for your answer.  
 7 It had appeared while Colonel Scott was being cross-  
 8 examined and the result of the examination of his computer,  
 9 that the minutes of the 6:30 meeting were extensively  
 10 edited during the Roots conference. And the final form  
 11 which was put before us as the minutes of the meeting were  
 12 dated to some time in the Roots conference. We were then  
 13 given the handwritten notes made by the then Captain, later  
 14 Colonel Moolman at the meeting. Brigadier Pretorius who  
 15 was responsible for the minutes hadn't been there and those  
 16 minutes told, in some respect, a significantly different  
 17 story from the minutes that we had previously been given.  
 18 It's a matter that we'll have to deal with in our report.  
 19 The minutes started by saying today is D Day and they went  
 20 on to say that the time for talking was over and so forth.  
 21 So it was quite clear that the police version up  
 22 to that point was not accurate. Colonel Scott also  
 23 conceded that the plan which was in exhibit L was  
 24 supposedly the plan to be implemented on the Tuesday  
 25 already had only come into existence in the way I've

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1 described. And he was asked whether what was put in  
 2 exhibit L was accurate or was inaccurate and he conceded it  
 3 was. And he was asked why and he said well it was done  
 4 without malice, just to make it easier for the Commission  
 5 to understand how the plan evolved. That was effectively a  
 6 summary of Colonel Scott's evidence. So it's against – you  
 7 obviously haven't read all that stuff I take it.  
 8 MR WHITE: Chair, I was reluctant to say  
 9 yes because I wouldn't have wanted you to point to a  
 10 particular point that I had misunderstood or missed. And  
 11 again I'm pleased to take this as being that – I think that  
 12 when you sit and listen to someone as you're doing to me  
 13 now and as I've just done to you, you know that's very  
 14 different in terms of how you potentially recall and  
 15 recollect things as opposed to I'm reading hundreds and  
 16 hundreds and hundreds of pages of transcript of people I've  
 17 no idea even of what they look like. Could I say to you  
 18 that I don't think that you said anything to me in your  
 19 very succinct summation that I am not familiar with. For  
 20 example the handwritten note that you refer to JJJ168 I  
 21 think is the reference number. I've seen that and also if  
 22 I can say to you by of reassurance again in terms of my  
 23 engaging with the evidence, including Lieutenant-Colonel  
 24 Scott' oral evidence, if I'm not correct in saying I think  
 25 – sorry I recognise the point that you made about he said

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1 that he couldn't remember what he was doing. I think I've  
 2 read other evidence, possibly a statement from him or  
 3 somewhere else that I think actually I might be able to  
 4 help provide an answer to that because somewhere else him  
 5 saying something about he was helped to be involved in the  
 6 process around recording applications. I can't remember  
 7 where I saw that.  
 8 CHAIRPERSON: He had finished by twenty  
 9 past eight in the morning.  
 10 MR WHITE: Well I remember when I read it  
 11 I thought to myself well provides at least part of an  
 12 answer as to what he was doing if he couldn't remember.  
 13 CHAIRPERSON: He has an answer up to  
 14 twenty past eight in the morning.  
 15 MR WHITE: Indeed, Chair, but I only say  
 16 that to give you reassurance that when you said to me the  
 17 issues in his oral evidence he can't remember what he was  
 18 doing, yes I have read it and I am familiar with that. I  
 19 just didn't want to mislead you in any way. If you had  
 20 said to me have you read all of the evidence and could I  
 21 remember it all to embarrass and hopefully not embarrass  
 22 yourself, Chair, that there was a particular point that I'm  
 23 thinking well maybe I haven't read that at all. But all of  
 24 the information that you've relayed I can comfortably say  
 25 I'm familiar with.

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1 CHAIRPERSON: The reason I put these  
 2 points to you was that you were labouring under obvious  
 3 disabilities in drafting a report because there were  
 4 various versions. And the impression I got is that you  
 5 weren't quite familiar with the latest state of SAPS case  
 6 in that regard if you know what I mean. So that one of  
 7 your criticisms seem to me to relate to a previous version  
 8 which is now non est and what we are interested in  
 9 obviously is the final version as we have it from the  
 10 Colonel himself you see. That's really why I put that to  
 11 you and inasmuch as you're going to go further and discuss  
 12 the planning process and the final it's best to do it in  
 13 the light of the latest version.  
 14 MR WHITE: And in that regard and again  
 15 in terms are moving on, Chair, therefore issues I would  
 16 have in almost bullet point and headline form would be I  
 17 have made a criticism from the outside of this process that  
 18 I felt that there wasn't sufficient POP commander input  
 19 into the planning. I've said that consistently throughout.  
 20 Partly because I'm guided by some of the South African  
 21 Police Services own documents which say in an operation of  
 22 this type it should be.  
 23 CHAIRPERSON: That's also correct, it was  
 24 common cause that the POP commanders were out in the field  
 25 and when this meeting was called at 1:30 none of them were

1 there.

2 MR WHITE: I appreciate at that

3 particular time that was the case but I think it's an

4 ongoing criticism around the entire process.

5 MS LE ROUX: And Chair, if I can assist

6 at this point, section 2.3 of Mr White's supplementary

7 statement from page 7 onwards deals with the most up to

8 date version that we have of the planning process. That's

9 where his –

10 CHAIRPERSON: Page?

11 MS LE ROUX: It commences at page 7. The

12 consequences of the decision to disarm on the planning

13 process in Mr White's supplementary which has now been

14 marked as BBBB4. That entire section then updates Mr

15 White's –

16 CHAIRPERSON: Yes, yes, yes. I was

17 hoping to shorten proceedings by telling him about these

18 things because he didn't know. If I inadvertently

19 lengthened the proceedings in the process I apologise.

20 MS LE ROUX: Mr White, in your

21 supplementary statement then and again to orientate you as

22 to where we are in your evidence, we've now dealt with what

23 you considered and when. Now if I can turn to that second

24 category of your assistance to the Commission around

25 planning, it's around the procedure and process that was

1 officers in multiple units going to engage in this

2 operation, irrespective exactly how the operation rules

3 out. But given the complexity of it in terms of the

4 numbers of people, the different types of units, types in

5 terms of, you know, TRT versus NIU versus POPS, and not

6 only that, but the number of units in relation to who needs

7 to be going to the north, who needs to be going to the

8 south.

9 For me in an operation of that complexity it's

10 extremely important that not only - as I went to great

11 lengths to point out – that the people at the front end

12 know what they're being expected to do, but when it's an

13 operation that is that complex it's not only a requirement

14 that you understand what you have to do, but I think it's

15 also a requirement that you understand what everybody else

16 is doing as well and how therefore you fit into that, how

17 you complement the actions of A and B and don't contradict

18 the actions of D and C. Given the size of the operation,

19 you know, how does anyone hold that in their head, and

20 therefore for the purposes of clarity that needs to be

21 written down, so it's only fair to the police officers that

22 you're asking to go and do this job, so that it's crystal

23 clear to them.

24 On top of that, again coming back to the policy

25 framework, 262 refers to an overall written plan. So

1 followed. First in that regard is your criticism that

2 there was no written plan. Could you briefly summarise why

3 that is a problem? And in your supplementary statement,

4 page 12, paragraph 2.3.10 you also there respond to the

5 SAPS response to you saying there was no written

6 operational plan dealing with the fact that SAPS members

7 are trained and they know what they're doing. Could you

8 again briefly summarise your criticisms generally as to why

9 the absence of a written plan is problematic and then deal

10 specifically with this response you have from the SAPS that

11 they know what they're doing?

12 MR WHITE: Chair, in relation to the

13 point about why generally it's a problem if there is no

14 written plan I made the point earlier on in relation to

15 General Mpembe going to deal with a spontaneous incident

16 and I talk about dynamic planning and things that he would

17 work out in his head. And even at that he was in charge

18 of, you know, 70 or 80 police officers and going to deal

19 with a particular incident. If you look at the context

20 that we're talking about now where Scott during the course

21 of that JOC meeting then volunteers, puts his hand up and

22 said well perhaps I'll give you an explanation of how this

23 might work.

24 [14:07] And then that ultimately becomes the plan.

25 That's a plan which ultimately leads to hundreds of police

1 that's the South African Police's policy, that there should

2 be an overall written plan. But then, and again I'm sure

3 my team will keep me right with regards to the specific

4 paragraph, but it also talks about a requirement for unit

5 commanders to submit their written plans and it seems to me

6 that the South African Police Service's approach to this

7 might be slightly different from ours in that they may be

8 given, the unit commanders seem to be given an overall

9 direction and then they have to work out a plan. Our

10 process might be slightly different and I explained how

11 we've used tactical advisers with deriving at a plan, but

12 the point is that again maybe there's not time to do this,

13 but the concept and the principle that seems to be within

14 the South African Police's framework is that you know those

15 individual unit commanders have to write a written plan I

16 think for two reasons –

17 1, because then it helps them to explain to their

18 own people what it is that they want to do; but

19 2, it gives reassurance back to the overall

20 planner, commander if you like, that they understand their

21 role and that their role is going to complement what

22 everyone else is doing.

23 So there was no overall written plan and there

24 was no sub-plans, if you like, and for me in an operation

25 of this size and complexity I think that just simply allows

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1 for potential confusion and misunderstanding, and I would  
 2 suggest that that's potentially what happened.  
 3 MS LE ROUX: Mr White, with respect to  
 4 the role of Major-General Mbombo –  
 5 CHAIRPERSON: Lieutenant.  
 6 MS LE ROUX: Sorry, Lieutenant.  
 7 CHAIRPERSON: A provincial commissioner  
 8 is a lieutenant-general. Those –  
 9 MS LE ROUX: Apologies, Chair.  
 10 CHAIRPERSON: Their deputies are major-  
 11 generals.  
 12 MS LE ROUX: Yes, apologies, Chair. The  
 13 Provincial Commissioner, Lieutenant-General Mbombo, when  
 14 she – could you explain the consequence for the absence of  
 15 a written plan for her role and decision making?  
 16 MR WHITE: As I've said from the outset  
 17 in my provisional statement I see, and as I said in oral  
 18 evidence earlier on, Chair, I see General – sorry,  
 19 Lieutenant-General Mbombo as being in overall command. She  
 20 makes the key decisions and people respond to those. She  
 21 made the key decision to Mpembe he must go and deal with  
 22 this group on the Monday, and she makes the key decision,  
 23 perhaps endorsed by her colleagues at very senior level on  
 24 the 15th, maybe she made it herself on the 14th, whatever,  
 25 but the premise we're dealing with now is that she says to

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1 the JOC at 1:30 on the Thursday we're going to the tactical  
 2 option, therefore she makes the key decision, she's in  
 3 overall command.  
 4 I do make a point in my supplementary statement,  
 5 and I'll paraphrase and hopefully I've not gone too far off  
 6 track when I say it is entirely appropriate for an officer  
 7 at that level, I would see her as goal commander, strategic  
 8 commander, to delegate the responsibility of the  
 9 intricacies of planning to someone else, to people below  
 10 her, to her team, to Mpembe, to Annandale, to Lieutenant-  
 11 Colonel Scott, or whatever. That's entirely appropriate.  
 12 Where I feel that she can't do is delegate the  
 13 responsibility for the consequences of her orders. She  
 14 needs to understand what that means and I know that there  
 15 is evidence before the Commission in relation to  
 16 conversations that may or may not have taken place - and  
 17 again it's not my place to judge – where she was alerted to  
 18 the fact that it, you know, this is likely to involve  
 19 higher levels of force.  
 20 So I know that in oral evidence the Provincial  
 21 Commissioner basically said that you know, in terms of the  
 22 intricacies at the time she left that very much to the  
 23 officers below her and she sought assurances that it could  
 24 be done sort of without blood. In my opinion, and I think  
 25 that's what I'm brought here to give, that's not good

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1 enough.  
 2 We have a plan here which is setting hundreds of  
 3 heavily armed police officers to engage with a group of  
 4 thousands, many hundreds of whom, I don't know how many are  
 5 actually armed, but certainly many. There's intelligence  
 6 to say that they will resist if they're being asked  
 7 basically, or forcibly to surrender their arms, and on that  
 8 basis I don't think that you need a public order expert. I  
 9 don't think that you need to be a policing expert to work  
 10 out there is a high potential that this could result in  
 11 very high levels of force.  
 12 I don't suggest that Lieutenant-General Mbombo is  
 13 perhaps an expert herself in relation to tactics. I do  
 14 expect her to discharge her responsibilities of high office  
 15 in the police. If she is making the decision to say go,  
 16 she has to understand the consequences of that action and  
 17 she has to at least ask tell me how you're going to do  
 18 this, reassure me on this point about the bloodshed, and  
 19 that doesn't seem to have happened and I think that's a  
 20 failing.  
 21 MS LE ROUX: Mr White, briefly turning  
 22 then to the consequences of having no POP involvement in  
 23 the planning process, if you could briefly summarise for  
 24 the Commission why you think that is a problem.  
 25 MR WHITE: Chair, I think this is a

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1 general comment you, on an ongoing basis, Chair, but if I  
 2 could point to a particular issue and in the overall scheme  
 3 of things perhaps this might to some extent seem relatively  
 4 minor now, but I give you it as an example and I think that  
 5 it potentially could have had consequences and that is that  
 6 it's the issue in relation to the rollout of the razor  
 7 wire. Lieutenant-Colonel Scott wants that razor wire to go  
 8 out to protect the police resource and potentially the  
 9 media, and I think he also wanted it to go out initially  
 10 around, as sort of an indication to people, because of the  
 11 configuration of the wires the originally wanted, that you  
 12 know, we don't want you to come this way, we want you to  
 13 move back and then it's going to be followed up by police  
 14 resources that are going to disperse people to the west.  
 15 So the original arc of the razor wire again was trying to  
 16 make that statement and we talked this morning how with the  
 17 change of position of Nyala 6 the configuration of the wire  
 18 maybe indicated to people a different situation. That's  
 19 one point. It's not the point that I'm making.  
 20 In relation to the rollout Lieutenant-Colonel  
 21 Scott basically wanted this as a defensive measure, so what  
 22 he said is it needs to be rolled out simultaneously, it  
 23 needs to go very, very quickly, and there wouldn't be a  
 24 warning for it because it's supposed to be a surprise.  
 25 It's a defensive measure and therefore why would you tell



1 people that you're going to defend yourself? We'll get it  
 2 out, get it out quickly, and we'll be safe behind it, and I  
 3 can fully understand that point. You know, that's what he  
 4 was trying to achieve.

5 The reason that I say that I sort of think that  
 6 potentially if there had been POP commanders involved  
 7 there, Lieutenant-Colonel Scott I'm sure is a very  
 8 professional officer and highly skilled in lots of areas,  
 9 but if he's not ordinarily used at dealing with crowds one  
 10 of the things that we know from sort of research and  
 11 whatever is that what tends to happen with crowds is that  
 12 you, they will respond to something the police do. I think  
 13 there is evidence of this in this particular situation over  
 14 the course of the couple of days when the negotiations were  
 15 taking place, so that when the police change their  
 16 configuration what you get is – I think Mr Noki is the  
 17 gentleman, you know he comes forward as the head of the  
 18 negotiating group of five and it seems to be quite often  
 19 he's very aggressive and then credit to Mr McIntosh, I  
 20 think is the police officer who's the chief negotiator,  
 21 manages to calm him down, but it seems that when the police  
 22 do something, change their configuration, bring the mine  
 23 union leaders, this happens and he approaches.

24 So this issue around rolling out the wire, I  
 25 think it's entirely predictable that when the police change

1 but maybe you can help us.

2 MR WHITE: I'm aware that he seemed to  
 3 suggest that he would do that because again I'm familiar  
 4 with that evidence. This was the next point I was going to  
 5 deal with, Chair, in relation to this issue of the rollout,  
 6 because I think in terms of the interaction between myself  
 7 and my legal team and the SAPS legal team around some  
 8 points of disagreement there is one issue vis-à-vis sort of  
 9 the issue in relation to the wire. I say in my statement,  
 10 I think it's my final statement about no tactical  
 11 advantage. Just rather than spending time looking up the  
 12 reference, Chair, I'll ask my legal team to keep me right  
 13 on this, but I do make a comment around this simultaneous  
 14 versus consecutive and Scott I'm engaging with the point  
 15 that he wants this to go out immediately, quickly and  
 16 without warning, and I think I describe the rollout of it  
 17 as perhaps shambolic.

18 I describe the rollout of it as shambolic because  
 19 it is categorically not very slick in all happening  
 20 simultaneously, and my legal team provided me with the  
 21 evidence from, I think it's GW4 is the – I'm just asked for  
 22 the reference number in relation to confirm for me there  
 23 the movement of the vehicles, but it takes place over a  
 24 period of around nine and a half minutes. Chair, I don't  
 25 think that that's in dispute.

1 their configuration so much, that that is likely to sort of  
 2 engage a response from the crowd. You know, something has  
 3 changed, the police do something and there will be a  
 4 response from that, and I don't know that Lieutenant-  
 5 Colonel Scott properly thought that out and I think that  
 6 had he have had the benefit of somebody engaged in the  
 7 planning process who's used to dealing with crowds, that  
 8 potentially, you know, that that might have been pointed  
 9 out. So this was, you know, a criticism in relation to  
 10 that aspect –

11 CHAIRPERSON: There's a further point, of  
 12 course, and that is that because there was no POP person at  
 13 the JOC at 1:30, I take it there was no one there to say  
 14 you can't do it simultaneously. The evidence of the POP  
 15 people was it was very difficult to do it simultaneously,  
 16 it had all sorts of practical problems and we actually had  
 17 a demonstration here indicating the problems of doing it  
 18 that way. The POP people's evidence was you've got to do  
 19 it consecutively rather than simultaneously.

20 Now if Scott of course had known that the plan  
 21 required modification in that respect, he didn't complain  
 22 about the modifying, he said it was within their  
 23 discretion, but if he'd known they were going to do that  
 24 then I take it he might have revisited certain other  
 25 aspects of the plan. I'm not quite sure how he would have,

1 So my comment in relation to shambolic in  
 2 fairness was being directed against Colonel Scott's  
 3 intention that it should roll out, I think he said over the  
 4 period of about a minute and a half.

5 On top of that I then make a comment to the fact  
 6 that I can see no tactical advantage in this consecutive  
 7 rollout, but that has to be read in the context of I'm  
 8 engaging with what Scott's saying. Scott wants this to be  
 9 a surprise. I've already said I think that there are  
 10 consequences to that and I don't think that he's right in  
 11 doing that, but I'm engaging with the evidence that he's  
 12 presenting to me and saying I want it to be a surprise as a  
 13 defensive measure. On that basis I can think of no  
 14 tactical advantage that you would put this out  
 15 consecutively, full stop.

16 However, I understand the evidence from I think  
 17 Mr Makhubela, is the police officer. I forget, and  
 18 apologise, forget his rank, but he's the officer who's in  
 19 command of the rollout of the wire and he I think is the  
 20 one that talks about the terrain and because of, you know,  
 21 uneven terrain. I think he says it would actually be  
 22 dangerous to roll it out simultaneously and he's the expert  
 23 and I absolutely therefore say I'm sure that he is right.

24 The point that you make, Chair, is you know, the  
 25 fundamental issue around this is that that should have been

1 communicated back to Scott. I didn't know this when I was  
 2 reading the evidence of Officer Makhubela in relation to  
 3 all of this, in his first statement he talks about the wire  
 4 encircling the protesters, which is a third option which  
 5 was categorically not in Scott's plan, but nevertheless,  
 6 the issue that we're dealing with here is the fact that  
 7 there is a change to the plan and I'm sure absolutely for  
 8 very good reasons, I don't question that at all, you know  
 9 these are the tactical people on the ground who understand  
 10 the terrain, who understand, you know, the circumstances  
 11 that they're operating in, but the crucial aspect is that I  
 12 don't think that was communicated back to Lieutenant-  
 13 Colonel Scott and ultimately he's the chief planner and he  
 14 has given oral evidence himself to say that had he known he  
 15 may have done things differently, but he didn't know.  
 16 That's another aspect of, you know, breakdown in  
 17 communication.

18 COMMISSIONER HEMRAJ: Mr White, what  
 19 would your view be if you factor in that the crowd were  
 20 told what the purpose of the barbed wire was at the scene,  
 21 if you had to include that in your consideration?

22 MR WHITE: Absolutely, and as I said  
 23 earlier on, you know, I don't think most people who  
 24 understand sort of crowd dynamics, you know, would  
 25 recognise that quite often one of the predeterminants in

1 relation to crowd activity is what the police do. This is  
 2 why we talk about this concept of no surprises. Quite  
 3 often when you're dealing with a crowd, if police could do  
 4 something – there is sometimes the police have to do  
 5 things, say for example Scott's idea that he wanted this as  
 6 a defensive measure and while I question his rationale and  
 7 his decision on that, but let's say hypothetically that was  
 8 absolutely the right thing to do in whatever circumstances,  
 9 well of course you wouldn't tell people in advance of that  
 10 because it's supposed to be a surprise, okay, and so I  
 11 would question that in the first instance.

12 But if you're going to roll the wire out  
 13 basically in relation to the circumstances that we're doing  
 14 it now, you know, to provide for protection, then I think  
 15 that if it was made absolutely crystal clear to people –  
 16 bearing in mind though that these people had stood on this  
 17 hill for a considerable period of time, and when the Nyalas  
 18 with the wire originally came on the scene that morning in  
 19 and around 10 o'clock I think it was, that was another one  
 20 of the things that I referred to earlier on which seems to  
 21 provoke a response from the crowd and that I think Mr Noki  
 22 and some people came forward then and they were very  
 23 aggressive, because again the police have changed their  
 24 configuration. They haven't seen these wires before, so  
 25 therefore they responded. Mr McIntosh again very skilfully

1 managed to get them calmed down and then we revert back.  
 2 So therefore with that in mind, again I would say  
 3 that he should have been anticipating that there would be a  
 4 response to this and therefore if this wire has just come  
 5 out as a defensive mechanism, well then tell people in  
 6 advance of that so that there is no misperception from the  
 7 point of view of the people on the hill. You know, warn  
 8 them by use of audio in terms of loudspeakers, and if  
 9 necessary warn them by way of, you know, printed messages,  
 10 actually having a message on a board. Now I – the  
 11 Commissioners are looking at me, saying oh my goodness, how  
 12 would you do this –

13 CHAIRPERSON: Part of the problem is many  
 14 of the rock drill operators were illiterate, so I'm not  
 15 sure a message on a board would have helped.

16 MR WHITE: Apologies then. I don't maybe  
 17 fully understand the context, but I'm engaging this in the  
 18 way that what ways can we use to advise a crowd, and on  
 19 occasions when you have time, when you have a day or two to  
 20 plan in advance and you want to be able to on the basis of  
 21 accountability demonstrate that you did everything that you  
 22 possibly could to make sure the crowd were aware, well then  
 23 one of the mechanisms that you might do is actually to  
 24 print off some signs. Now I appreciate that between 1:30  
 25 JOC and 3:30 it's time to move, that's not going to be the

1 case. However, I would make the point that obviously this  
 2 operation has been running not since 1:30 JOC, it's been  
 3 running for some considerable time. But in answer to the  
 4 Commissioner's question, it was just I was trying to say  
 5 would it be a good idea? I would say not only is it a good  
 6 idea, I think it's a requirement to warn people.

7 CHAIRPERSON: I think you make the point  
 8 in your report somewhere that according to Brigadier  
 9 Calitz's evidence they did tell them at some stage that the  
 10 wire was going to be to defend the police and the community  
 11 and so on, but you made the point – I'm not quite sure  
 12 where it is, but you made the point somewhere that of  
 13 course that wasn't communicated to the whole crowd, but  
 14 just to Noki and perhaps those with him at the negotiation  
 15 Nyala. That is correct, isn't it? That's the point you  
 16 made somewhere.

17 MR WHITE: I think there are two points  
 18 in that, Chair. The first one you've summed up entirely  
 19 accurately. I think an additional point to that would be  
 20 that I would say that the conversation that takes place  
 21 between Officer Calitz and possibly McIntosh and Mr Noki  
 22 when the wire starts to come out is an explanation. The  
 23 event is already happening. Noki responds to this by  
 24 coming forward very aggressively and Officer Calitz then  
 25 says no, no, no, this is why, and I think in fairness they

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1 had had that conversation previously, as I said I think  
 2 when the Nyalas first arrived that morning with the wire  
 3 and he comes forward. So I would say, you know, those are  
 4 explanations as opposed to warnings. Some people might say  
 5 that's a semantic argument. I don't think so.  
 6 CHAIRPERSON: Yes. No, the evidence as  
 7 far as I recall, there are three points that are relevant,  
 8 I think. The first is the police themselves say that they  
 9 didn't produce the Nyalas with the wire trailers the  
 10 previous day because they kept the wire trailers out of  
 11 sight because they thought that might provoke the strikers.  
 12 So that's the first point.  
 13 The second point is that on the Thursday morning  
 14 they obviously decided this was going to be D-day and so  
 15 they arranged the field as it were so that they could  
 16 proceed on that basis. They brought the wire trailers out.  
 17 The wire trailers did arouse the anger I think of Noki and  
 18 Mr Noki came and spoke to them about it and according to  
 19 Calitz I think it was, they did explain, or he claims they  
 20 explained that they were there merely to protect the police  
 21 and the community and so on, and then subsequently when  
 22 the, at about 20 to 4 when they started unrolling the wire  
 23 then there was a further response from Noki and once again  
 24 the explanation was given. As you say, this was now after  
 25 the wire had already started being rolled out and so the

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1 crowd had already responded to it, but of course there had  
 2 been the earlier communication somewhere after 10 o'clock  
 3 in the morning.  
 4 [14:27] So I think that's the picture of all the evidence  
 5 on the point, is that right?  
 6 MS LE ROUX: Chair, if I can be of  
 7 assistance to the Commission, page 110 para – footnote 316  
 8 is where Mr White records Brigadier Calitz's evidence about  
 9 the warning being communicated to Mr Noki but perhaps not  
 10 the remainder of the crowd. Mr White, would you like to –  
 11 COMMISSIONER HEMRAJ: Just on that point,  
 12 was not the evidence that these communications with the  
 13 group of five were done over the loudspeaker? They weren't  
 14 face to face just between the two of them. I think there  
 15 was some evidence about who could or couldn't hear.  
 16 CHAIRPERSON: That's what she's referring  
 17 to, page 110, footnote 320. Yes, the point that you've  
 18 just referred to, page 110 footnote 320 the witness says,  
 19 "Brigadier Calitz now claims the purpose of the wire was  
 20 explained by loudspeaker to one of the leaders of the  
 21 protest group, Mr Noki, around 10 o'clock" and gives the  
 22 reference, "and then again around 13:30. Consolidated  
 23 statement of Brigadier Calitz, para 91. It doesn't appear,  
 24 however, that it was directly explained to the crowd as a  
 25 whole or immediately prior to the rollout." And of course

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1 that reference to 13:30 is of course two hours before the  
 2 wire was actually rolled out.  
 3 MS LE ROUX: Mr White, assuming a warning  
 4 was given to the crowd, so assume that to be a fact that a  
 5 warning was communicated to the entire crowd, what would  
 6 you expect the crowd to do in response to a warning that  
 7 the barbed wire will be deployed?  
 8 MR WHITE: That's maybe hard to say in  
 9 terms of again, if the warning is given that barbed wire is  
 10 going to be rolled out but it's purely for defensive  
 11 purposes, then it's likely that, you know, it's not going  
 12 to have an impact on the crowd. So potentially therefore  
 13 the crowd are not going to move. Now what I can't account  
 14 for, you know, is the individual sort of psychology of any  
 15 people within that crowd who might decide this is our last  
 16 chance if we want to attack the police to move forward –  
 17 you know ordinarily what happens and if you give, look at  
 18 the context of this situation, that as you describe, Chair,  
 19 these Nyalas between the wire have appeared on the scene  
 20 for the first time on Thursday morning. I think it's what  
 21 Lieutenant-Colonel Scott describes as stage 2, the show of  
 22 force but he's very specific in that they only come out on  
 23 the Thursday morning and park in their positions, not to  
 24 deploy the wire and that's exactly what has happened. My  
 25 point was that once that happened, it seemed to get a

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1 response from the crowd, Noki comes forward and this is why  
 2 we get this thing about, this explanation at around 10  
 3 o'clock that morning.  
 4 CHAIRPERSON: There's a further point, of  
 5 course, and that is, according to the evidence of the  
 6 strikers they saw this wire as, as it were, boxing them in  
 7 or creating a cage to prevent them from leaving and that,  
 8 according to the evidence, is the way they perceived it.  
 9 MR WHITE: Yes.  
 10 CHAIRPERSON: Now if that's what they  
 11 perceived then they wouldn't necessarily have been  
 12 satisfied by an explanation, no – no, that's not what it's  
 13 all about, it's just to protect the police and the  
 14 community. So the questions have been put on the  
 15 assumption that they would have accepted the explanation.  
 16 If you give an explanation, that's enough, but that's not  
 17 enough I would have thought. I'm putting a prima facie  
 18 view to you so you can shoot it down if I'm wrong but it's  
 19 not enough that an explanation is given, you've got to be  
 20 satisfied, I would have thought, that the explanation will  
 21 be accepted by those to whom you give the explanation.  
 22 Would that be – that must be right, surely?  
 23 MR WHITE: Well, I think that's entirely  
 24 correct. I think there are couple of things in this. As  
 25 you say, Chair, you have heard evidence, you've heard

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1 evidence that the strikers perceived that the wire was  
 2 going to box them in. Well, perhaps if there had have been  
 3 a proper warning before the wire was rolled out, which was  
 4 categorically stating what the purpose of the wire was for,  
 5 well, then they wouldn't have had that perception. They  
 6 would have been clear. The second point is that if we  
 7 follow this line of thought through, now that the strikers  
 8 who are on the hill have heard this warning and explained  
 9 to them, so their perception is that the wire is to defend  
 10 the police as opposed to encircle us then the question  
 11 becomes, do they accept that or do they think the police  
 12 are lying to them? So in terms of what you were saying,  
 13 you have to accept, one, that they hear the warning, two,  
 14 that they understand it, three, that they accept that this  
 15 is the case. But the point is that as it happened the wire  
 16 starts to get rolled out, there has been the warning and  
 17 clearly if there is that perception that you've advised me  
 18 of, well, then people are thinking now we're going to be  
 19 blocked in. It might to explain that Noki comes forwards  
 20 very aggressively and basically to challenge the police  
 21 about this. He's given the explanation – I stress  
 22 explanation at that stage rather than warning - about what  
 23 the wire is for but of course, as has already been alluded  
 24 to, yes, whilst that conversation, in fact I'm not sure  
 25 that that conversation takes place over the Tannoy but even

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1 if it does, how do we know that all of the other people can  
 2 hear that? You know, we can't be sure that they do, but my  
 3 issue in relation to getting engaged in this conversation  
 4 was basically that, you know, back to this point about what  
 5 Scott wanted with the wire and therefore that he didn't  
 6 want to have a warning for it but I think that he might  
 7 have misunderstood the consequences of the actions in terms  
 8 of how crowds react to things and therefore that there  
 9 should have been a warning and then beyond that these  
 10 issues in relation to consecutive versus simultaneous and  
 11 the important point, that that's not communicated back to  
 12 Scott.

13 COMMISSIONER HEMRAJ: Can I just clear  
 14 something up, please, if you'll help me? On page 110 where  
 15 you talk about the failure to give the warning and you  
 16 refer to the consolidated statement, that opinion is based  
 17 on the statements, not the transcript of Brigadier Calitz's  
 18 evidence.

19 MR WHITE: Yes, I think that's correct,  
 20 Chair, because you know I'm looking at my legal team just  
 21 to keep my right – I think at the time that I read this I  
 22 hadn't seen Calitz's oral evidence which I would have done  
 23 now and don't forget this statement was submitted in  
 24 October 2013 and obviously it's a long statement, it took a  
 25 long time to write.

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1 MS LE ROUX: Mr White, if we can then  
 2 move to the final aspect of your criticisms that fall into  
 3 this category of the procedure. So we've just finished  
 4 with no POP involvement. You also in your final statement,  
 5 and if I can direct you in your supplementary and to the  
 6 Commissioners as well, page 9 commencing at paragraph  
 7 2.3.5, there you deal with your criticism that there's no  
 8 challenge process to the plan. Could you take the  
 9 Commission briefly through those criticisms?

10 CHAIRPERSON: Paragraphs 2.3.5 and 2.3.6,  
 11 is that right?

12 MS LE ROUX: Yes, Chair, and then it  
 13 actually continues all the way through to 2.3.9 but if Mr  
 14 White could just summarise this point on the absence of a  
 15 challenge process.

16 MR WHITE: If you're ready, Chair?

17 CHAIRPERSON: Waiting for you.

18 MR WHITE: Chair, I think in answer to  
 19 this question, if I refer you back to something I said  
 20 earlier. When I give you an explanation of the concept or  
 21 the procedure, rather, that I would be used to and I  
 22 described particularly gold and silver – gold level,  
 23 strategic commander, sets the strategic objectives and then  
 24 it's the role of the silver commander, the tactical  
 25 commander to come up with the tactical plan, how are we

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1 going to achieve this, okay. And again I said that I see  
 2 Lieutenant-General Mbombo operating in the gold,  
 3 effectively gold level and therefore those very senior  
 4 people at the JOC, Annandale, Mpembe, assisted by technical  
 5 and tactical advisers, if you like, such as Scott then  
 6 operating around the silver level. So part of our process  
 7 then is, it's not a case of the gold commander says right,  
 8 you must develop the tactical plan and I'm now going off  
 9 for my tea as such. It's you must develop the tactical  
 10 plan and then part of the process is, the silver commander  
 11 comes back – we sometimes refer to it as an adversarial  
 12 briefing – so the silver commander comes back and basically  
 13 says, ma'am, sir, whatever, you know, let me show you, let  
 14 me explain to you how we're going to do this, how we're  
 15 going to achieve this and we talk through. And I've had  
 16 lots of experience where different gold commanders will  
 17 handle this differently. Some are very, very intrusive in  
 18 relation to the level of detail that they want, some are  
 19 less so but basically that is the reassurance for the gold  
 20 commander that this tactical plan meets their objectives,  
 21 that this tactical plan does what it is that they want them  
 22 to do because the bottom line is, they're ultimately  
 23 responsible and they're the ones that are issuing these  
 24 orders. So the reference there is basically that I don't  
 25 see any challenge process. What happens at JOC, in

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1 fairness to Lieutenant-Colonel Scott, is he gets told that  
 2 the decision is go, Annandale says how are we going to do  
 3 this, Scott says no-one else volunteered so I said well,  
 4 look, I've been giving this some thought, here's how we  
 5 might do this. And I don't think at any stage anyone else  
 6 inputs or anyone else raises any objections. Again I'm  
 7 looking at my legal team just for clarification. There is  
 8 a reference in one of the statements, I think it might be  
 9 Scott's perhaps, where there is actually an invitation to  
 10 challenge although that might be the JOC in the morning, if  
 11 memory serves me correct, where they go through unit by  
 12 unit and the different people who are represented there put  
 13 their say, no challenge to it. So I might be wrong in that  
 14 that might be the 6AM JOC and talking about a different  
 15 plan, but the point is that if that is the 1:30 JOC then  
 16 people are specifically asked and they say no, but it's  
 17 not, still the fact remains that Scott lays out how he  
 18 thinks this should happen and there's no evidence that  
 19 anyone contributes in any way by basically saying, I'm not  
 20 so sure about this, I'm not so sure about that or have you  
 21 also thought about – you know, it doesn't seem to be that  
 22 there's any challenge. Ultimately what he lays out,  
 23 basically people say, yes, that's fine, that's what we'll  
 24 do.  
 25 MS LE ROUX: Mr White, moving then to the

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1 category of your criticisms around the actual content of  
 2 the plan. We've dealt with the –  
 3 CHAIRPERSON: Before we get there,  
 4 there's another point and that is the contention is put up  
 5 that there was an opportunity for the POP people to  
 6 respond. When Colonel Scott went with Brigadier Pretorius  
 7 out into the field at 2:30 with his laptop and explained  
 8 the plan to them and they then had an opportunity to put up  
 9 their hands and say, no, this won't work or what about  
 10 that. That's the evidence. Brigadier Calitz, I remember,  
 11 said when this was put to him that, as far as I can recall  
 12 he wasn't entirely happy about it but I may be wrong in  
 13 thinking that, but what he did say was this, that it wasn't  
 14 for him to say no, no, we can't do this because, he said,  
 15 if something catastrophic had happened that night, the plan  
 16 hadn't been implemented because of an objection he might  
 17 have raised and something catastrophic had happened that  
 18 night, he would be responsible for it. So that was a  
 19 factor, as I understood his evidence, which induced him to  
 20 keep quiet. And that presumably would have been a factor  
 21 which would have operated on everybody. In any event, the  
 22 plan had to be implemented quite soon, it was August, the  
 23 sun was going to be setting within an hour or so, so they  
 24 had to get on with it. There wasn't time to have a lengthy  
 25 debate and – but the point is put that there was an

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1 opportunity for the POP people to come up with inputs and  
 2 responses once the plan was explained to them at 2:30.  
 3 Regard being had to the circumstances prevailing, have you  
 4 any comment about that?  
 5 MR WHITE: Chair, I think if I remember  
 6 Brigadier Calitz's evidence correctly, I think that he also  
 7 made some comment about the fact that, you know - and this  
 8 was a direction coming from the JOC, you know, and they are  
 9 the senior people so consistent with and in addition to  
 10 what you say, he makes that point. You know, this is, the  
 11 senior commander said that we're going to do this and then  
 12 the other bits that he said about, well, if it wasn't  
 13 implemented then catastrophic – so on that basis I can  
 14 actually say I have some sympathy with Brigadier Calitz and  
 15 others who were at that briefing that Lieutenant-Colonel  
 16 Scott does at 2:30, not least because he's trying to  
 17 explain this plan which has got to be, by any stretch of  
 18 the imagination, relatively complex given the number of  
 19 people that are involved and obviously a highly dangerous  
 20 plan for all the reasons that we've talked about earlier  
 21 on. On top of that I note in Scott's consolidated  
 22 statement, the 149 page statement, he actually gives quite  
 23 a lot of detail around some of the other stuff that he  
 24 covers in this briefing with regards to, I think he might  
 25 touch on things like use of force and whatever and if he

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1 has covered all that, the point is that the briefing starts  
 2 at 2:30. I know that Brigadier Pretorius is with him, she  
 3 says they're back at JOC at 15H00 although he said it was  
 4 15:15. My advice from my legal team is that it's probably  
 5 a 12 minute, 13 minute drive, something like that.  
 6 So at best this whole briefing for a very complex  
 7 operation can only have been around 30 minutes. There's a  
 8 lot of information to get over in 30 minutes. So again I  
 9 would make the point that for the two reasons that Calitz  
 10 says, plus also I don't know that there's time to do it,  
 11 I've got a lot of sympathy with anyone who would be  
 12 described as a POP commander who is huddled Lieutenant-  
 13 Colonel Scott's vehicle, trying to look at a single page on  
 14 a laptop. So I absolutely make that point but I think that  
 15 in relation to the consequence of the challenge process,  
 16 I'm assuming that Ms Le Roux is probably going to ask me  
 17 further questions on that.  
 18 MS LE ROUX: Mr White, let's move on then  
 19 to the content of the plan and particularly as we see in  
 20 your supplementary statement page 9, paragraph 2.3.7, one  
 21 of the points you make is that there was obvious risk  
 22 inherent in the plan, given the deployment of resources.  
 23 Could you summarise that concern for the Commission?  
 24 MR WHITE: Chair, very briefly – very  
 25 briefly, Chair, this was the bit that probably exercised me

1 most when I first engaged with this evidence. So going  
 2 back to the time that I'm looking at the evidence in  
 3 relation to my provisional statement, that at this meeting  
 4 including very senior people, Scott lays out this plan and  
 5 the plan basically says, to paraphrase, that the pops will  
 6 go forward to disperse. The POPS officers basically, if  
 7 they come under threat, then they will retreat to their  
 8 Nyalas and if they can't or if the Nyalas, I think he said  
 9 something about potentially being burned, then the TRT were  
 10 going to follow on behind them. Given the intelligence  
 11 that we do have, which is that here are all of these  
 12 people, potentially 3 000 and 300, the 300 who are separate  
 13 who are, as has been described by some police officers, the  
 14 warrior group who have certain intent, but even beyond that  
 15 the 3 000, there are a lot of them who are armed as well  
 16 with traditional weapons. And the intelligence is that if  
 17 you try and take the weapons off, they will resist. So the  
 18 plan, as I said, the POP officers going forward and I think  
 19 I made comment, the fact that with what I would call  
 20 proactive sort of defence in terms of things like water  
 21 cannon and rubber rounds and whatever, but they were going  
 22 forward in a line with no shields. And I made the point  
 23 very quickly that, you know, those shields do not offer  
 24 ballistic protection and I think actually how I termed it  
 25 was I said I wouldn't like to be standing behind one if

1 trying to plan for, the what-ifs, the POP are to go forward  
 2 and try and disperse people but then if they don't  
 3 disperse, if they resist as the intelligence says that they  
 4 will, then following on behind the POP is the TRT line and  
 5 the very fact then that the tactic is that you have 60  
 6 people lined up armed with R5 rifles, as I understand is  
 7 the weapons that they use, I just simply wondered that the  
 8 JOC – and this is dealing with this issue of planning and  
 9 the challenge process – at what point did someone say,  
 10 let's just be clear here, what are we asking the TRT to do?  
 11 If they have – so we're basically saying we'll line up 60  
 12 people and if they've already sort of, you know, got to the  
 13 position where the POP have moved out of the way, they will  
 14 engage with them proportionately.  
 15 [14:46] What does that mean? What is the position we're  
 16 putting these police officers in? What do we think they're  
 17 going to do? I see that as the challenge process, which  
 18 didn't happen, and to be honest with you, I was actually  
 19 shocked in terms of reading the evidence.  
 20 MS LE ROUX: Mr White, I'd then like to  
 21 move on very briefly to the issue of briefing, and Chair,  
 22 perhaps I can summarise this so we can get through this  
 23 point quickly because you have been able to cover a lot of  
 24 your briefing criticisms already.  
 25 CHAIRPERSON: Sorry, please repeat that.

1 someone was throwing a spear at me or swinging a machete or  
 2 whatever, but I would much rather have the protection of a  
 3 shield than not having any protection. Therefore it seems  
 4 to me that we're sending these officers forward into a very  
 5 difficult situation where it's clearly anticipated that  
 6 there is likely to be confrontation. The intelligence  
 7 tells us this and it seems that when they are engaged, they  
 8 will make way, they will move out of the way for their own  
 9 protection and then the TRT will follow up. And the bit  
 10 that really, really surprised me was – and I kept looking  
 11 at different statements which talked about then, and the  
 12 TRT will engage the crowd proportionately. Now my  
 13 understanding is the TRT are realistically only armed with  
 14 R5 rifles. They don't carry the less lethal options that  
 15 you use in crowd control. So the talks about the TRT and  
 16 following them the NIU and the STF will engage the crowd  
 17 proportionately. And I kept looking for someone to say, so  
 18 what does that mean? Let's put this into, forgive my  
 19 terminology here, let's put this into plain English. If  
 20 they only have R5 rifles – so what we're talking about is  
 21 shoot people. That seems to be what's going to happen and  
 22 this is the bit – the challenge process, that I think that  
 23 this plan creates, if it's not an inevitability, a high  
 24 likelihood that there are going to be very high levels of  
 25 force used in this. In the circumstances that Scott is

1 MS LE ROUX: Yes, Chair, I'm saying I'm  
 2 going to try to get through the briefing point fairly  
 3 quickly because Mr White has addressed you on that in some  
 4 detail. Mr White, so to summarise, as I understand your  
 5 key criticisms around briefing it's the absence of the  
 6 detailed written plans being available at briefing, and  
 7 then the circumstances of Lieutenant-Colonel Scott's  
 8 briefing, the van, the screen, Google Earth, 20 commanders,  
 9 etcetera, and then your evidence in the statement deals  
 10 with the examples you have of misunderstood briefing. But  
 11 why should the Commission care about the briefing? Why is  
 12 the briefing important in the Commission's role of trying  
 13 to understand what went wrong at Marikana?  
 14 MR WHITE: Put quite simply, the briefing  
 15 is important because those officers, not even the people  
 16 who were gathered around Scott's van, but the officers who  
 17 ultimately are in that TRT line, the officers who are in  
 18 the frontline of the POP, the officers who are in the water  
 19 cannon, who are actually driving it and firing the water,  
 20 everyone, everyone needs to know what it is that General  
 21 Mbombo wants, how she wants it done and to some extent what  
 22 she doesn't want to happen. Basically they need to  
 23 understand what it is that they're supposed to do and the  
 24 way that they're supposed to do it.  
 25 Now Lieutenant-Colonel Scott - who I have a lot

1 of sympathy, I think he's doing his best in the  
 2 circumstances – he briefs around 20 people, which seem to  
 3 be the commanders. They obviously, and there is evidence  
 4 that they go back and brief their own people, and I say to  
 5 you, you know, the very fact that there is, you know, this  
 6 is complicated and there is nothing written down, the  
 7 difficulty is then – I mean if I respectfully tell the  
 8 Commissioner something who tells you something, Chair, by  
 9 the time it comes back around to me, 15 people, you know,  
 10 is it going to be exactly the same message, particularly if  
 11 it's going – that's human nature.

12 So you know, the importance of briefing is linked  
 13 to the plan. You know the plan is to tell people exactly  
 14 what they're going to do and then briefing is just  
 15 basically a way of communicating that, and all of that I  
 16 think is impacted on by the rush that we're doing it. If  
 17 you remember, Chair, I said in a large complex operation, I  
 18 talked about we would have a pre-brief maybe the day before  
 19 or the day before that. I appreciate that you know we're  
 20 talking even across the whole of Marikana, the bit that  
 21 we're dealing with now, we're talking about a number of  
 22 days, not over the course of the week, but I would come  
 23 back to the point that – and I think this is one of the  
 24 issues that we didn't cover in relation to, I think there  
 25 are two fundamental issues in relation to tactics. One is

1 Thursday. If that's what you're addressing I haven't got a  
 2 problem, but if you're only worried about the why 3:30, I  
 3 don't think that merits much further consideration –

4 MR WHITE: Absolutely, Chair. It's why  
 5 Thursday, and it's because we start moving at half 3 and  
 6 I'm just simply saying, and I've said from my provisional  
 7 statement I can't understand why if you look at some of  
 8 Scott's original suggestions around there were only a small  
 9 number of people on the koppie at night time, so I mean I  
 10 actually said well why don't they move in at night. Moving  
 11 in, in the dark, would cause its own difficulties, but if  
 12 you then bring a lot of artificial light with you, you can  
 13 give yourself certain – you can use the dark as a tactical  
 14 advantage, or conversely why don't we do it at first light.  
 15 So sorry, my comment in relation to why go at half 3 is why  
 16 go on Thursday at all. The point is they went at half 3 or  
 17 thereabouts. That's why my reference to half 3, Sir.

18 CHAIRPERSON: When you've reached a  
 19 suitable stage, Ms le Roux, we'll take the tea adjournment,  
 20 but I won't dictate to you when it will be. You will tell  
 21 me when it's appropriate for you.

22 MS LE ROUX: Chair, I think there are two  
 23 related issues and then we can conclude.

24 CHAIRPERSON: I'm in your hands.

25 MS LE ROUX: Mr White, with respect to

1 this POP – sorry, TRT line, and the second issue is why go  
 2 at half 3.

3 CHAIRPERSON: [Microphone off,  
 4 inaudible].

5 MR WHITE: Why go at half 3. You know,  
 6 so 1:30 basically Annandale says how are we going to do  
 7 this, and this issue around well why do we need to do this  
 8 at half 3, because the evidence seems to be that over a  
 9 period of time at the koppie, you know, people then come  
 10 off the koppie in the evening and whatever, so Scott says a  
 11 lot of stuff in his oral evidence about why no written  
 12 plan, why didn't he give proper consideration to  
 13 potentially people going to koppie 3. There are a number  
 14 of things and he said "I just didn't have time," and I –

15 CHAIRPERSON: The answer to half past 3  
 16 is based upon the fact it had to be done today, had to be  
 17 done on Thursday, it was D-day. The Provincial  
 18 Commissioner had already announced at 9:30 to the world at  
 19 a TV media conference that we're going to deal with the  
 20 matter today. So that's why it had to be today. Once you  
 21 accept it had to be today, you can't do it much later than  
 22 half past 3 because it's winter and the sun's going to go  
 23 down in an hour or so, you know, difficulty with the light  
 24 and that sort of thing. So that's why it's 3:30.

25 The real question I would have thought is why

1 the – you've identified your concern around the deployment  
 2 of 60 TRT members. Could you also summarise your  
 3 criticisms of that deployment with respect to the weapons  
 4 that they were carrying?

5 MR WHITE: Chair, I made the point that I  
 6 don't think whatever type of firearm they were carrying  
 7 would have made it a good idea to still have, you know,  
 8 this secondary line of 60 people, whether it be a Heckler &  
 9 Koch, whether it be a – you know, I mean if it was a  
 10 firearm again I think I made myself very clear around it  
 11 seems to me that the implications are that they're going to  
 12 have to shoot people. However, you know the particular  
 13 firearms that they were carrying, I think the particular  
 14 sort of rounds – and I'm not a firearms expert, I'm not a  
 15 ballistics expert, but I understand even the SAPS policing  
 16 expert Mr de Rover has made comment around this, that they  
 17 do seem to be extremely powerful weapons to be using in a  
 18 crowd situation, and therefore that doesn't seem to be  
 19 something that's sensible.

20 MS LE ROUX: And then finally on the –

21 CHAIRPERSON: I'm sorry, while we're on  
 22 that point, you know we've got to make recommendations at  
 23 the end of this Commission. Do the Northern Ireland police  
 24 use R5s or equivalent weapons in crowd control, or some  
 25 people may say this isn't just crowd control, there's an

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1 argument that this goes beyond that, so would the Northern  
 2 Ireland police use R5s or weapons of that kind in a  
 3 situation such as we had at Marikana?  
 4 MR WHITE: No.  
 5 CHAIRPERSON: You would then I take it  
 6 recommend that we should say that that shouldn't happen  
 7 here either, and I think you do deal in your report with  
 8 the equipment that's used by the Northern Ireland police in  
 9 context of this kind. Is that correct?  
 10 MR WHITE: Chair, I talk about sort of  
 11 less lethal type of weaponry, including sort of the  
 12 attenuating energy projectile, the AEP, or some people  
 13 would still refer to plastic bullets, you know, as a sort  
 14 of a crowd control, although we don't talk about it as a  
 15 crowd control weapon because it's not about controlling  
 16 crowds, it's about identifying an individual threat within  
 17 a crowd and taking action against that, plus because of the  
 18 prevailing security threat against police officers – and I  
 19 talked about this, this morning with regards to quite often  
 20 we'll come across situations of a firearms threat within a  
 21 public order situation, meaning all police officers, just  
 22 as I see police officers here in South Africa, they all  
 23 carry a sidearm, you know, a handgun, and then depending on  
 24 the nature of the operation we will deploy long arms, as in  
 25 you know, Heckler & Koch, MP5 type weaponry, into sort of

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1 the, a public order situation as well, consistent with some  
 2 of the things that I've said in my statement, and on  
 3 occasions we might also place people who will be described  
 4 I think in laypersons' terms as snipers as well. The  
 5 specific type of weaponry that they use I'm not familiar  
 6 with, but you know the point being that 60 police officers  
 7 with, you know, these extremely powerful R5 weapons, as I  
 8 say I'm not a firearms expert but even I noticed that, I  
 9 think Mr de Rover has also commented on that.  
 10 COMMISSIONER HEMRAJ: You did mention  
 11 earlier on that in your experience sometimes in a crowd  
 12 there's an AK47 present. What would happen in those  
 13 circumstances? What would the police do? Because that's  
 14 quite a threat, isn't it?  
 15 MR WHITE: Well of course, absolutely it  
 16 is indeed, and I think I've given some indication in my  
 17 final statement about how we might engage a firearms threat  
 18 within a public order situation. So for example I mean if  
 19 there was clear evidence of, you know, whether it be an  
 20 AK47 or some type of firearm, you know that was  
 21 categorically, definitely going to be used, but a bit like  
 22 the South African Police our intelligence is not always  
 23 that good, you know, that it's going to tell you exactly  
 24 what's going to happen exactly where and exactly when, and  
 25 we need to deal with the crowd situation. You know one of

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1 the mitigating factors might be that we might have snipers  
 2 placed, but also we might have trained armed response  
 3 officers. So whilst every police officer carries a gun we  
 4 do have specialist firearms teams that respond to what we  
 5 call firearms incidents, a robbery at a petrol station,  
 6 maybe a domestic hostage situation. So these officers,  
 7 specialist firearms trained and with specialist firearms  
 8 equipment, like for example ballistic shields, ballistic  
 9 and protective helmets. So it may well be - I referred to  
 10 a shield line earlier on. It may well be that we have  
 11 police officers that are out on public order equipment,  
 12 engaging the public order threat, but we have information  
 13 intelligence to suggest that there's a simultaneous  
 14 firearms threat, those officers might be deployed at the  
 15 end of the line. So maybe one actual gun at the end of  
 16 each line who are scanning the crowd not for the bricks and  
 17 bottles and stones, but actually are looking for the  
 18 particular firearms threat that if it emerges, that they  
 19 will engage in a proportionate fashion, which hopefully  
 20 will be around first of all taking cover and warning  
 21 everybody else to taking cover, warning to the person who's  
 22 posing the threat to see if we can utilise the threat in  
 23 any way, and if necessary shoot, and if we are engaging in  
 24 that type of tactic within a plan, within the challenge  
 25 process, you know that card is on the table and everyone

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1 who signed up to that, you know we talk about the role that  
 2 they will have and everybody understands that in extreme  
 3 circumstances, well then they may have to shoot and we name  
 4 that because it's only fair to them because if we put those  
 5 officers in that place they need to know that we have  
 6 thought about all of the consequences, and if ultimately he  
 7 or she makes the decision to pull that trigger with all the  
 8 other things in place, well then, you know, they can be  
 9 reassured that they will be judged on their own actions,  
 10 but so will everyone else back up the line, and the fact  
 11 that we place them in that position in the first instance  
 12 means that very senior people were aware of the level of  
 13 threat and therefore felt that that was appropriate and  
 14 necessary to engage in.  
 15 COMMISSIONER HEMRAJ: And the number of  
 16 people carrying firearms, policemen carrying firearms,  
 17 would that be proportionate to the information you might  
 18 have about the number of firearms present in the crowd?  
 19 MR WHITE: The word that you use,  
 20 Commissioner, is exactly right, proportionate. You know,  
 21 is there an actual calculation for that? No, there is not.  
 22 It's basically about taking the intelligence, understanding  
 23 what the level of the threat is, and it may well be that if  
 24 the intelligence is very good - sometimes it's better than  
 25 others – it may be that we can isolate where we think that



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1 is going to happen and if we think we know where that is  
 2 going to happen, well first of all we'll try and utilise  
 3 that threat in other ways. As the Chairman was discussing  
 4 earlier on around the cordon, the search authorities, you  
 5 know, we might try and engage that threat by taking the  
 6 gun, getting the gun before it – but my point in dealing  
 7 with your question here is around if we can isolate where  
 8 we think that's going to happen, with the sort of tactics  
 9 and mitigation that we'll use as I have explained earlier  
 10 on around armed response officers might actually be  
 11 involved in the operation at that point, but on the points  
 12 over here where we're reasonably confident that that  
 13 ballistic threat won't materialise, well then we might just  
 14 have Public Order Police officers in shield lines.

15 MS LE ROUX: Chair, for your assistance,  
 16 Mr White, at page 115 of his statement, that's where he  
 17 deals with – of his final statement, that's where he deals  
 18 with the deployment of the TRT line with R5 rifles. Mr  
 19 White, one final question before we take the tea  
 20 adjournment, and it picks up on something that the Chair  
 21 said, which was the contention by the SAPS that this is not  
 22 a crowd management situation, that Marikana was something  
 23 other than a POP situation, would you care to comment on  
 24 that at this time?

25 MR WHITE: I think through surely my

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1 first two statements, and we haven't felt the need to  
 2 comment on my supplementary statement on this, I have said  
 3 very clearly this is a difficult, complex and dangerous  
 4 situation that the South African Police were engaging in.  
 5 I know that some of the interchange between my legal team  
 6 and the South African Police legal team I think maybe  
 7 misquotes me if it said I had said it was a relatively easy  
 8 task of dealing with 3 of 400 people. I never said that.  
 9 I've said repeatedly and consistently this is a difficult  
 10 and dangerous situation.

11 There was a crowd of around 3 300 people,  
 12 whatever it is, on the hill. This is a crowd management  
 13 situation. This is a public order/public disorder  
 14 situation into which you add additional layers of  
 15 complexity. Looking at the events that had happened over  
 16 the previous weekend in terms of the murders, looking at  
 17 the fact that a murder actually was committed on this  
 18 actual site, the gentleman that the Chairman referred to  
 19 earlier on, you know you are in the level of complexity  
 20 that two police officers have been killed and one  
 21 potentially lucky not to have been killed. You add in the  
 22 fact that there isn't, there's information that there may  
 23 well be a firearms threat because not least that the group  
 24 who have engaged on the incident on the Monday potentially  
 25 stole some firearms, etcetera, etcetera, etcetera.

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1 So you know, am I saying that this is purely and  
 2 simply a crowd management situation in like engaging with a  
 3 football match? Of course I'm not. I've said repeatedly  
 4 it's a complex, difficult situation, dangerous as well.  
 5 However, in relation to the material that I've referred to  
 6 and the expression, the opinions that I've expressed within  
 7 my statement, there are three and a half thousand people on  
 8 this hill and I don't think it's anyone's case that all  
 9 three and a half thousand people were trying to kill police  
 10 officers. You know there are people that are protesting  
 11 because it's their right to protest if they're very  
 12 aggrieved in relation to the amount of money that they're  
 13 being paid, and they're protesting and I'm sure that there  
 14 were many, many people – I've no idea what's in the minds  
 15 of everyone. I don't know if people intended to kill  
 16 police officers, nor again, that's not my position, that's  
 17 your position, but I don't think anyone would ever suggest  
 18 that everyone was intending to, and the responsibilities  
 19 that the police have in engaging with the situation are  
 20 around the safety and security of many of those people who  
 21 sat on the hill, who basically came purely and simply to  
 22 protest. I don't know how many of them there are. Is it  
 23 all of them? Is it only one of them? I don't know. The  
 24 responsibilities of the police surely in terms of the  
 25 mission statement, whatever, I'm sure of the South African

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1 Police is around providing for the safety and security of  
 2 all the people in that operation and the safety and  
 3 security of the police officers involved in that operation.

4 So is this purely and simply a crowd management  
 5 situation in the same way that we're dealing with a  
 6 football match or something else? No, it's not, but I've  
 7 never said that, and, but ultimately this is about dealing  
 8 with crowds and understanding how crowds work and  
 9 understanding how when police officers do certain things  
 10 the implications and the likely response from crowds, and  
 11 working through a system which is planned and well thought  
 12 out so that hopefully we can get to an outcome which means  
 13 everybody goes home.

14 MS LE ROUX: Chair, I think if we take  
 15 the tea adjournment now?

16 CHAIRPERSON: We'll now take the tea  
 17 adjournment, quarter of an hour.

18 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 19 [15:24] CHAIRPERSON: The Commission resumes. It  
 20 has been reported to me that some of the plugs in the  
 21 complex of buildings are not working and the result is that  
 22 those who are listening on the headphones will not receive  
 23 any translation of what the witness has said or is saying.  
 24 So the interpreter has come and we'll now have to proceed  
 25 on the basis that he's going to interpret consecutively as

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1 opposed to simultaneously, which he's able to do when the  
 2 headphone system is working. It's going to slow the  
 3 proceedings down, I'm afraid, but there's nothing we can do  
 4 about that. I'm told that there is a fair prospect that  
 5 the plugs will be working again tomorrow morning when we  
 6 resume but in the meanwhile we must proceed on that basis.

7 GARY WHITE: (s.u.o.)  
 8 EXAMINATION BY MS LE ROUX (CONTD.): Mr  
 9 White, moving then to your conclusion which, Chair, for the  
 10 record is page 112 of Mr White's final statement, paragraph  
 11 7.5. Mr White, there you conclude that in the shooting at  
 12 scene 1, you conclude that it's a prima facie  
 13 disproportionate and unjustified use of force.

14 CHAIRPERSON: Sorry, Ms Le Roux, is it –  
 15 do you have a spare copy of the report, of the final report  
 16 to give to the interpreter, I think it will assist him?

17 MS LE ROUX: Thank you, Chair, my  
 18 attorney will provide that to him.

19 COMMISSIONER HEMRAJ: Whilst you're  
 20 getting the page, Mr White, can I just ask you, the  
 21 equivalent of POPS, your POPS, do they carry arms when they  
 22 go out to crowd management situations.

23 MR WHITE: Every single police officer in  
 24 Northern Ireland carries a sidearm and the tactical support  
 25 group, which would be the opposite number I suppose of

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1 POPS, the public order group, they would. So therefore  
 2 each of them carries a sidearm and during the ordinary  
 3 course of various duties that they would do, some of them  
 4 would carry long arms.

5 COMMISSIONER HEMRAJ: The specialist  
 6 firearms officers that you would deploy, where would they  
 7 come from?

8 MR WHITE: But just to finish the point  
 9 on the TST, i.e. POPS, if we were deploying them in a  
 10 large scale public order event where we anticipated a  
 11 firearms threat as I've just described, then we wouldn't  
 12 get them to carry firearms because we would want them to be  
 13 available to have the shields and things because that  
 14 operation will be supplemented by the specialist armed  
 15 response officers that I talked to you about earlier.

16 COMMISSIONER HEMRAJ: And the specialist  
 17 firearms officers, do they come from a tactical team  
 18 background?

19 MR WHITE: We don't use that term  
 20 "tactical team." Their title is armed response unit who  
 21 are specially trained firearms officers who, again, daily  
 22 their business is to go to serious incidents like I said,  
 23 you know, a robbery where someone is using a gun and the  
 24 domestic situation where a husband takes his wife hostage  
 25 with a knife, et cetera, et cetera, et cetera. That's the

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1 function that they would do on a day by day basis.  
 2 COMMISSIONER HEMRAJ: Thank you.  
 3 MS LE ROUX: Mr White, why is your  
 4 conclusion only a prima facie conclusion?

5 MR WHITE: Chair, I put the words "prima  
 6 facie" in I think for a number of reasons, principally  
 7 because it is not my role to say, certainly not whether or  
 8 not individual police officers were justified in firing.  
 9 Only they can give an account of that and whether it's for  
 10 the Commission or anyone else to decide whether or not  
 11 that's justified, but it's certainly not for me. However,  
 12 I make the point that when you look at the cumulative  
 13 effect, I suppose, of what happened and we have somewhere  
 14 in the region of 328 rounds fired over a short period of  
 15 time, it seems to me that that, on the face of it, is  
 16 excessive and I say that for a number of reasons. One,  
 17 some of the video evidence is that it appears that it's  
 18 difficult to see that officers could see what they were  
 19 firing at. Two, a number of statements that I've seen  
 20 where police officers are actually saying that they did  
 21 fire at the crowd are not statements that I feel give a  
 22 full explanation, as I would have expected to see it, of  
 23 the circumstances in which they, you know, should or should  
 24 not be firing. And I think thirdly, the fact that a number  
 25 of police officers have given evidence to say that their

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1 weapons were on automatic and I can't think of  
 2 circumstances where engaging a crowd with live ammunition  
 3 would warrant a weapon being on automatic.

4 MS LE ROUX: Mr White, when would you  
 5 expect the police to use live rounds?

6 MR WHITE: It was put to me when would I  
 7 expect, the question is the law is very clear on this, as I  
 8 understand it, and certainly international standards are  
 9 clear. As I understand it, it's about an imminent, an  
 10 honestly held belief of an imminent threat to life, usually  
 11 someone else's. Lethal fire is used in a policing context  
 12 in circumstances of absolute necessity, last resort,  
 13 there's no other way to deal with this.

14 COMMISSIONER HEMRAJ: And in those  
 15 circumstances there's no command to shoot, it's each police  
 16 officer's discretion as to whether he's under threat or  
 17 not.

18 MR WHITE: In the context that I'm used  
 19 to dealing with, there is no command to shoot. In very,  
 20 very individual set of circumstances in the UK where that  
 21 would be different and that's in relation to suicide  
 22 bombers, I don't think that we need to go there,  
 23 overwhelmingly the position is this, the position is we  
 24 work on a system of authorities as I've explained earlier  
 25 on, but therefore the individual decision as to whether or

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1 not to shoot comes down to the officer who's pulling the  
 2 trigger, on the basis of the threat that they perceive.  
 3 COMMISSIONER HEMRAJ: If your POPS team  
 4 is attending a situation without specialist firearms  
 5 officers present and a situation develops where there's a  
 6 firearms threat to them, then the occasion might occur that  
 7 a whole lot of them might shoot if each of them felt they  
 8 were under threat.  
 9 MR WHITE: If each of them felt that they  
 10 were under threat to the extent that I've just described  
 11 then yes, that's true and I'd follow that up potentially  
 12 with reference to an example, if that's helpful, once the  
 13 translation has come. I was asked the question as to  
 14 whether or not there'd ever been anyone under my command  
 15 who had fired a shot without sort of me commanding them to  
 16 do so and I provide an example in my final statement. The  
 17 circumstances were that there was ongoing disorder that  
 18 happened across a number of days, including over a period  
 19 of time somewhere in excess of 300 rounds had been fired at  
 20 the police. The police officer that I referred to in the  
 21 example is a TST officer, i.e. POPS. We did have armed  
 22 response units involved in this operation but they weren't  
 23 at the particular place where this firearms threat  
 24 spontaneously presented itself. He was in an armoured  
 25 vehicle but the vehicle had been hit so many times that he

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1 was fearful that the glass, which is about this thick, was  
 2 just about to give way because it had been hit by numerous  
 3 rounds.  
 4 CHAIRPERSON: You indicate about, with  
 5 your fingers – will you tell us the thickness of the glass  
 6 in words because –  
 7 MR WHITE: Apologies.  
 8 CHAIRPERSON: - what you said won't be  
 9 transcribed. What you showed, rather, won't be  
 10 transcribed.  
 11 MR WHITE: Of course, Chair. The  
 12 armoured glass on a Land rover is about an inch and a half  
 13 thick. So he was concerned that the protection he was  
 14 afforded by this, the vehicle and also his colleagues, was  
 15 just about to give way. He could see the gunman where he  
 16 was firing, basically he sort of stepped beyond the door of  
 17 the vehicle and fired a round at the gunman. So this would  
 18 have been an example of how, as a TST officer, as a POPS  
 19 officer he used his personal protection weapon and when the  
 20 threat presented itself.  
 21 MS LE ROUX: Mr White, what is your  
 22 comment with respect to the number of rounds that we know  
 23 were fired at scene 1?  
 24 MR WHITE: Chair, I'm aware that there's  
 25 evidence that in and around scene 1 a number of police

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1 officers gave evidence that shots were fired at them, so I  
 2 fully engage with the fact that, as I've said before, it's  
 3 a difficult and dangerous situation which has just got a  
 4 lot more dangerous but I do understand the requirement and  
 5 this is where I talked about issues of commonality, as I  
 6 understand it that the rules of engagement, if you like, in  
 7 relation to use of firearms are not that different here in  
 8 South Africa and therefore I struggle to think how 328  
 9 rounds, given the three points that I made earlier on,  
 10 could be anything other than, on the face of it therefore  
 11 prima facie, excessive.  
 12 MS LE ROUX: Mr White, you've described  
 13 in your statement and in your oral evidence that you accept  
 14 that an individual officer could shoot to neutralise a  
 15 threat. Could you explain to the Commission the process  
 16 that you would expect that officer to go through before  
 17 discharging a single round, let alone more than one?  
 18 MR WHITE: I've already said what I  
 19 consider to be the threshold, the test as to whether or not  
 20 that officer should be firing a round. So therefore I  
 21 think it's important to understand what is the effect, what  
 22 is the intended effect of that shot. In other words, the  
 23 reason the police officer should be firing is to stop the  
 24 threat. It's not necessarily about killing someone, it's  
 25 basically this threat, this is a threat to my life, here's

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1 how it manifests, be it a spear, be it a gun, whatever it  
 2 is and therefore I'm shooting in order to protect my life.  
 3 I'm shooting to neutralise the threat. So for example in  
 4 my understanding, if someone has say, for example, that you  
 5 can identify he has fired four shots at you, is that of  
 6 itself justification for shooting even one round back? I  
 7 don't think so. The issue has to be, if they have fired  
 8 four shots at you and you have survived that, you know, is  
 9 it a case of you can take cover, you know, you can do  
 10 something else? This is about last resort.  
 11 So the point is that you're justified in shooting  
 12 to prevent a fifth round because you think he or she is  
 13 just about to fire a fifth round, not because they've  
 14 already fired four, that threat has gone. And obviously  
 15 that therefore means someone doesn't actually have to fire  
 16 a shot at you. I mean if someone is pointing a gun at you  
 17 then obviously you perceive this threat and are you able to  
 18 take cover and therefore protect yourself from it? No.  
 19 Last resort, there's nothing else you can do to protect  
 20 your life or someone else's, you may have to fire but I'm  
 21 trying to make the point that he police do not fire in  
 22 retaliation, they fire to neutralise the threat to life.  
 23 MS LE ROUX: And Mr White, under what  
 24 circ – let me rephrase the question. What would you expect  
 25 your officer who's decided they need to shoot to neutralise

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1 a threat, what would you expect them to have been in a  
 2 position to observe before they shoot?  
 3 MR WHITE: Well, I would expect them to  
 4 be able to see what the threat is that is an imminent  
 5 threat to their life or to someone else's life. What I  
 6 would expect to see is a statement at a later stage  
 7 basically outlining those circumstances.  
 8 MS LE ROUX: Now Mr White, with respect  
 9 to scene 1 we're in a fairly unique position in that we  
 10 have video footage, RRR17 the Reuters clip of essentially  
 11 the police eye view of the shooting. We don't need to play  
 12 it unless, Chair, you think it would be necessary, but from  
 13 what we observed in that video, could you comment as to  
 14 what you observed with relation to your conclusion that  
 15 says a disproportionate use of force?  
 16 [15:44] MR WHITE: Chair, I'm not a ballistics  
 17 expert and I've no expert knowledge with regard to how you  
 18 might interpret, you know, that video and I say that,  
 19 preface my remarks by that comment but I simply watched  
 20 that video in the same way that any other human being could  
 21 watch it and at some point during the video, white rounds  
 22 are clearly being fired, a high number of rounds are  
 23 clearly continuing to be fired. Whatever it is the police  
 24 officers are firing at, and they may well have been  
 25 absolutely justified, again I stress I can't make a comment

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1 on this but whatever it is that they may be firing at  
 2 disappears in the dust and as I've said, a high number of  
 3 rounds continue to be fired. So I simply make the point  
 4 that I certainly cannot see what they're firing at. It may  
 5 well be that those rounds are being fired from the  
 6 extremities of the line that – and therefore they can see  
 7 around behind the dust but I don't know that. There would  
 8 also appear to be video footage of people who are standing  
 9 in camera shot who are directing shots towards what I would  
 10 call a dust cloud. I can't say with absolute certainty  
 11 what they can see but I can say with absolute certainty  
 12 what I can't see in looking at the video images. And it's  
 13 on that point that I make this point about excessive use of  
 14 force and potentially reckless firing.  
 15 MS LE ROUX: So Mr White, once the dust  
 16 cloud is created what would you expect the officers to do?  
 17 MR WHITE: Chair, if this cloud of dust  
 18 prevents them from seeing, and I can't be the judge of that  
 19 - I'm saying it prevented me from seeing. I can't be the  
 20 judge to suggest that you might, in your wisdom, have to  
 21 try and work that out around justification, it's not for me  
 22 but if they can't see what they're firing at then basically  
 23 that statement is obvious, they can't see what they're  
 24 firing at and therefore they cannot justify firing shots  
 25 because they don't know what they're hitting and in terms

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1 of collateral damage.  
 2 CHAIRPERSON: Can it be quite as simple  
 3 as that? Can it be quite as simple as that? Assuming a  
 4 policeman or a number of policemen or ordinary individuals  
 5 are standing somewhere and they're approached by a group of  
 6 assailants of some kind and the assailants cause smoke,  
 7 they fire a smoke bomb of some sort and which means that  
 8 they can no – that the people standing, the first people I  
 9 talked about who were standing there and who were being  
 10 approached by this group of assailants can't see the  
 11 assailants and the assailants start firing at them from the  
 12 smoke cloud, are you saying that the individuals I'm  
 13 talking about who are seeking to defend themselves can't  
 14 fire, they can't do anything to defend themselves, to stop  
 15 these people firing at them from out of the dust, out of  
 16 the smoke cloud because they can't see who they're firing  
 17 at? They must just stand there, waiting to be mowed down.  
 18 Is that, that can't be right, surely?  
 19 MR WHITE: Categorically not, Chair, and  
 20 I'm grateful to you for offering a hypothetical scenario so  
 21 that perhaps I can respond in kind. So let's say this  
 22 smoke cloud has gone off and people are firing from it, do  
 23 I think that the police officers just simply need to stand  
 24 there? No, I don't. Maybe it's not a very tactical term,  
 25 the police officers may either run away, here's the first

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1 thing.  
 2 CHAIRPERSON: They could run away whether  
 3 or not there was a smoke cloud. If they could run away, in  
 4 the presence or in the absence of a smoke cloud, they must  
 5 run away because that's the law but obviously one has to  
 6 feed it that the chance of running away and escaping is  
 7 minimal –  
 8 MR WHITE: But Chair, let me engage then  
 9 with the issue of, the police officer fires a shot into the  
 10 smoke cloud that the rounds are coming out of and clearly  
 11 there is a threat to his or her life and the police officer  
 12 fires shots into that dust cloud or smoke grenade as it is  
 13 in this case. Let me just ask a question around, at the  
 14 far end of that smoke cloud, you know, inadvertently what  
 15 has happened is there are a number of schoolchildren who  
 16 are on their way home from school and four of them end up  
 17 being shot to death by the police. You know, does that  
 18 seem like an appropriate use of force by the police in  
 19 relation to these circumstances? And I say that in the  
 20 sense that if you can't see what you're shooting at, to  
 21 some extent what's the point of shooting, you know, because  
 22 the likelihood of you hitting anyone or certainly the  
 23 people that you intend to hit must be very minimal but the  
 24 issue is around collateral damage.  
 25 So perhaps, Chair, if we come back to scene 1. I

<p style="text-align: right;">Page 31432</p> <p>1 talked about a dust cloud, imagine it as a curtain as  2 opposed to a cloud and I know the police officers were not  3 able to do this but if you can imagine freezing a moment in  4 time and at a point in that video when we can't see because  5 of the dust what is happening, if you can imagine somebody  6 pulls that curtain back and we can now see what's happening  7 and let's say what that picture then reveals is perhaps  8 three or four people who have been shot in the initial  9 burst and who are now lying down because they've been shot,  10 and a lot of people behind that front line who have now  11 turned through 180 degrees and they're running in the other  12 direction. So I would ask the question then, would it be  13 justified to shoot those people? Now, if the answer to  14 that is no, and I suspect the answer has to be no because  15 they're no longer posing an imminent threat, then if we so  16 pause this moment in time, pull the dust curtain back over  17 again so that we can't see, I simply ask the question – now  18 that the dust cloud is back in place, is it justifiable to  19 fire? And Chair, I understand the reason that you asked  20 that question because I think that you're trying to be very  21 fair to police officers who are placed in a very, very  22 difficult and dangerous situation, I fully empathise. So I  23 do think that the issue, you know, prima facie this is an  24 excessive use of force. But the other issue I have is to  25 take us back to something we were talking about earlier.</p>	<p style="text-align: right;">Page 31434</p> <p>1 obligation to provide evidence not only to this Commission  2 but potentially to courts to that effect.  3 The third point on this is that another thing  4 that concerned me was the number of statements that seemed  5 changed, and people can remember things differently in  6 situations like this, high adrenaline, I fully understand  7 that point. What I have, for example the statement of an  8 officer - and I'm sure my team will be able to point me to  9 the correct reference to this, I apologise, it's not at the  10 front of my head – where this officer gives three  11 statements. In the first statement I think he talks about  12 firing 10 rounds and in the second statement he says, I  13 stood firm, I didn't fire any.  14 We also have a number of statements from police  15 officers who said, I fired X number of rounds, whether it  16 be two or three or four. In a subsequent statement from  17 them some time after, I think perhaps ballistic sort of  18 reports have been submitted where they actually say  19 actually it was eight or nine or 10, my weapon was on  20 automatic, I didn't know. I just find that unacceptable.  21 MS LE ROUX: Chair, I can certainly  22 assist Mr White on the first reference. It was Constable  23 Majambozi who had the 10 shots that we see on FFF8, the  24 discharge list, and he then in his supplementary statement  25 says I stood firm, no shots. That's VVV6, and then his</p>
<p style="text-align: right;">Page 31433</p> <p>1 What were they doing there, why were they in the  2 configuration that they were and did that play a part in  3 those officers doing what they did?  4 MS LE ROUX: Mr White, you've reviewed  5 the statements of members who shot at scene 1. Do you have  6 any comment on what you see set out in those statements  7 about why they shot at scene 1?  8 MR WHITE: Chair, I was hugely concerned  9 about the level of evidence, or description within those  10 statements in terms of the justification for shooting.  11 Furthermore, one of the things that I was very concerned  12 about is the number of statements from police officers who  13 basically said 'I was on duty at Marikana, I was in the,  14 whether it was the TRT line or the NIU line, I didn't  15 shoot, that's all I can say.'  16 One of the things I've been talking about today  17 is the issue of accountability; I have huge concerns around  18 accountability in that regard, not least because if those  19 officers were in a position where they were alongside  20 officers who shot, surely they have a moral duty to provide  21 evidence so that it helps to justify the position that the  22 officer who was standing beside him took. If on the other  23 hand they didn't think that the officer who was standing  24 beside him should have shot and perhaps that's why they  25 didn't shot, then surely they have a moral and a legal</p>	<p style="text-align: right;">Page 31435</p> <p>1 various statements are point 1 to point 4. I'll find the  2 other reference for Mr White.  3 COMMISSIONER HEMRAJ: Mr White, is it  4 only the differences in the number of shot fired that you  5 refer to when you say there are differences in their  6 statements and they have changed their versions?  7 MR WHITE: I think sometimes their  8 secondary statements that are given on occasions give some  9 more information, and whilst I would be very critical  10 around the level of information that's given initially in  11 some statements, you know, and make that point sort of full  12 stop, it's nowhere near the level of detail that I would  13 expect to see, and sometimes therefore there might be a  14 second statement which therefore gives more detail and then  15 that's on – so I'm not making a point that I think that a  16 lot of statements have been changed, you know, in order to  17 try and fabricate or whatever. I just pulled those  18 examples out for the particular reasons that I highlighted.  19 COMMISSIONER HEMRAJ: You will also note,  20 Mr White, that some of the initial statements are in the  21 nature of warning statements taken from suspects.  22 MR WHITE: Yes, Commissioner, I fully  23 appreciate that, but something, you know, occurred to me  24 that I understand the concept of a warning statement, but  25 if a police officer is giving a warning statement where</p>

1 they give an explanation, my concern is that even for their  
 2 particular position, that having given this warning  
 3 statement it seems to me that the circumstances that they  
 4 set out on the face of it fall short of being able to  
 5 justify firing a shot at someone. So therefore I would  
 6 expect even to see in a warning statement either one of two  
 7 things; either 'On the advice of my lawyer I've been  
 8 advised to say nothing,' or conversely, 'Here are the  
 9 circumstances where when I was on duty and asked to do this  
 10 very difficult role, this is what confronted me; I  
 11 genuinely feared for my life, here are the circumstances in  
 12 which I basically had to fire a round which may have killed  
 13 someone. You know, I had no alternative because of the  
 14 circumstances I've laid out, and that's what I had to do.'

15 MS LE ROUX: Then Mr White, in addition  
 16 to the circumstances would you expect your officer to  
 17 justify each round if for example they fired nine rounds,  
 18 or could they justify all nine in one explanation?

19 MR WHITE: Chair, as I say I can think of  
 20 no reason why, you know, in a crowd situation you would  
 21 ever have a weapon on automatic. Therefore the short  
 22 answer to Ms le Roux's question is simply yes, I would. If  
 23 they're firing lethal rounds, live ammunition, of course I  
 24 would expect them to justify every single round.

25 MS LE ROUX: Chair, I'm about to move on

1 to scene 2 and I know it's 2 minutes past 4. So I expect  
 2 we should –

3 CHAIRPERSON: Yes, so I would suggest  
 4 that we adjourn until tomorrow morning at 9 o'clock, and we  
 5 will try to do what we've done once before, take a shorter,  
 6 half hour lunch break to make up for some of the time that  
 7 we've lost. Hopefully the plugs will be working again and  
 8 we won't have to have consecutive translation, but  
 9 simultaneous translation, which will speed things up.  
 10 We'll now adjourn until tomorrow morning 9 o'clock.

11 [COMMISSION ADJOURNED]

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