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 286 5 SEPTEMBER 2014 PAGES 37027 TO 37183



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5th September 2014

1	Page 37027	1	Page 37028 MS LE ROUX: Thank you very much, we'll
1	[PROCEEDINGS ON 5 SEPTEMBER 2014]		, , , , , , , , , , , , , , , , , , ,
2	[08:28] CHAIRPERSON: The Commission resumes.	2	follow up with the SAPS legal team for those. Mr De Rover,
3	You're still bound by your affirmation, Mr De Rover. Ms Le	3	you testified yesterday that you had consulted with
4	Roux – you took, of course, I beginning your pardon, you	4	officers Annandale –
5	took the oath. It's the other man from the lowlands who	5	CHAIRPERSON: Who is doing that? There's
6	affirmed. You are still bound by your oath.	6	something making a noise there. Please turn it off. If it
7	CEES DE ROVER: (s.u.o.)	7	goes off again I'll ask you to leave the room. I'm sorry,
8	CROSS-EXAMINATION BY MS LE ROUX (CONTD.):	8	Ms Le Roux.
9	Thank you, Chair, and let me express on the record my	9	MS LE ROUX: Mr De Rover - thank you,
10	appreciation for the early start. Good morning, Mr De	10	Chair – you testified that you had consulted with officers
11	Rover.	11	Annandale, Merafi, Mpembe, Scott and Calitz, correct, and
12	MR DE ROVER: Good morning.	12	then we've seen the call-up list. Chair, for the record
13	CHAIRPERSON: It was the least we could	13	it's UUUU11, for the members that you did your walk through
14	do, Ms Le Roux.	14	at scene 2. Other than those – and you testified that you
15	MS LE ROUX: Mr De Rover, to start with	15	had not spoken to Colonel Vermaak – other than those
16	some housekeeping, have you been able to locate your terms	16	commanders, have you spoken to any other, and those on the
17	of reference overnight?	17	call-up list, have you engaged with any other members?
18	MR DE ROVER: I have. I have indicated	18	CHAIRPERSON: Ms Le Roux, this call-up
19	them to our legal team. I've actually just mailed them	19	list – [microphone off, inaudible.]
20	across so there is a letter of the 22nd of February of this	20	MS LE ROUX: It's pre-marked as UUUU11.
21	year and, sorry, of last year, that is the letter of my	21	CHAIRPERSON: I say what exhibits are
22	appointment and it holds a tasking and there are guidelines	22	going in, you don't just give me a list of the exhibits
23	that were established March this year for continued work	23	that are before me, I've got to accept each one. I'm not
24	and that document will be made available to you via the	24	saying I'll refuse it but I'm just, let's get the rules
25	legal team.	25	right. UUUU11 is Mr De Rover's call list.
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	Page 37029		Page 37030
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Page 37031 that in the aftermath while they were standing there waiting for medical personnel to arrive to render assistance, he said that a person came walking out from between the rocks in front of him, that would be a person coming from the east walking westwards, a police sergeant, and that he later realised was Myburgh who asked him whether the person lying at Warrant Officer Swart's feet was deceased and Swart said no, he is alive and we are waiting for medical personnel. According to Swart, Myburgh then said, when the medics come can you send them in there and he points behind himself to a narrow corridor between rocks on the southern side, because I believe I may have just shot someone and I think he's dead. That is the story that Swart came with on that day. Now obviously that is, at that stage to me that's upsetting news because there was a new element there that I had not heard before. Of course at that time I think in the Commission the evidence of Myburgh had seen the light of day, his allegation that he made I think for the first time in October to, coincidence of coincidences I think, but to Lieutenant-Colonel Vermaak. I leave that as it stands but my concern now is that here is someone who makes an equally serious allegation against another police officer to what at least constitutes then an	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 22	Page 37032 steps within SAPS to alert and the legal team were there during that meeting, so steps were initiated to engage SAPS on this revelation and to request that in accordance with the procedures that apply in your national context, this situation now gets taken over because I'm an expert in your country, I have no right to question people that potentially are either witnesses of crime or suspects of crime. So if you want to know the reason why I did not speak to Myburgh, that would be another one because I can't advise him of his rights. I could talk to him if he would agree to talk to me but I still think that it would pose a precarious proposition. MS LE ROUX: Do you know whether any steps were taken as you had recommended? MR DE ROVER: Again I've, at a few corners, stated to you that I am retained as an adviser. My competence and influence or reach, if you want, does simply not extend to checking whether they do something with that information or not. MS LE ROUX: Do you know if anything has been done? MR DE ROVER: I've left this information, with the healn of the load to am at a bird load in SADS and
23	another police officer to what at least constitutes then an	23	with the help of the legal team at a high level in SAPS and
24	admission of potential use of lethal force that I think	24	I was assured that it would be given the follow-up
25	needs to be investigated. So I had on that date initiated	25	required. I have never received feedback on it.
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Page 37033 MS LE ROUX: When you say a high level, what are you referring to? MR DE ROVER: On the day I had a long telephone conversation with General Masemola and with General Mbombo. MS LE ROUX: One further question on this. Did you, when you had your, when you took notes of scene 2 - we understand you don't have them with you, they're in Australia but did you record anything relating to this Myburgh/Swart chain of events in those notes? MR DE ROVER: Ja, of course. MS LE ROUX: Okay. MR DE ROVER: Because that – but I've made the information contained therein obviously available and I know that affidavits were subsequently taken at least of Warrant Officer Swart that I am aware of, and of another TRT member who was able to corroborate the story because Swart's information with regards to Myburgh does not limit itself to the incidents on the 16th of August. He also made statements with regard to an encounter that he had with Myburgh subsequently when people were called to give – MS LE ROUX: Yes, we've seen that – MR DE ROVER: Ja, so you are aware of that. MR DE ROVER: Ja, so you are aware of that. MS LE ROUX: If I could then, if I could	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 37034 then ask you to focus on the decision to move to the tactical phase on the 16th of August. Are you aware of Lieutenant-Colonel Scott's evidence that he had two pre- conditions for moving to the tactical phase, the first being an escalation of the threat of violence and destruction by mobilising as a group to move to a pre- determined target or if all other options to resolve the situation without force were exhausted and there was no other means to restore order, are you aware that those were Lieutenant-Colonel Scott's two preconditions to initiate phase 3? You're aware of that? MR DE ROVER: Yes. MS LE ROUX: Yesterday we addressed the risk assessments that you described in your interrogatory responses, specifically those to the evidence leaders. Chair, UUUU2.5 paragraph 1.7, we don't need to go there though, and you described the risk assessment exercise as essentially looking at what you intend to do and then trying to put probabilities to outcomes and you describe in that interrogatory response how something gets ranked from likely to not likely and the like. Two questions on that. First of all, you accept that before the 1:30 JOCCOM there was no plan for stage 3 that had yet been presented and agreed. MR DE ROVER: I would politely disagree

	Page 37035		Page 37036
1	because, for two reasons. One, that effectively if you	1	JOCCOM was his Google Earth image that you've seen
2	look at what happened on the Monday, even for a short	2	with the icons on it showing the deployment of resources
3	period of time SAPS went to a stage 3. So if not, and	3	that he intended, but other than that image there was no
4	again now we come back to auditable trail but if not in	4	written plan. There was no document that spelt out in any
5	writing, at least in intention and implementation on Monday	5	detail how all the different units in the Marikana
6	temporarily I would describe what occurred, whatever the	6	operation would co-ordinate themselves, what their roles
7	trigger, but what occurred there is, in its confined	7	would be and the like. Do you accept that that is the
8	reality is a stage 3 situation. They go back –	8	evidence before this Commission?
	MS LE ROUX: Mr De Rover, I think you may	9	
9			MR DE ROVER: Chair, respectfully, no.
10	have misunderstood my question.	10	My understanding is different and I think part of it was
11	MR DE ROVER: Sorry?	11	covered by Mr Budlender yesterday when specifically asking
12	MS LE ROUX: I think you may have	12	about the detailing of disperse, disarm, arrest with
13	misunderstood my question. I just want to check –	13	regards to stage 3 and how much detail you would expect to
14	MR DE ROVER: No, I think –	14	see in writing for such a phase.
15	MS LE ROUX: - we're not missing each	15	CHAIRPERSON: No, no, no. I think that,
16	other.	16	with respect, is a different point.
17	MS LE ROUX: I think I did but please go	17	MR DE ROVER: Mm.
18	ahead.	18	CHAIRPERSON: What Ms Le Roux is putting
19	MS LE ROUX: So on the 16th of August	19	to you is, all that was put before the Commission, before
20	before the 1:30 JOCCOM the evidence before the Commission	20	the committee, the JOCCOM committee, was the concept and
21	has been that there was no written plan that detailed what	21	the Google Earth image.
22	stage 3 would look like. In concept there was a tactical	22	MR DE ROVER: Mm.
23	phase but what that would actually entail, there was	23	CHAIRPERSON: That was all. What you've
24	nothing in existence before the 1:30 JOCCOM. The only	24	said and what other evidence has been to the effect is that
25	thing Lieutenant-Colonel Scott had that he presented at the	25	when you talk about disarm, disperse and disarm, you don't
	Page 37037		Page 37038
1	Page 37037 have to spell it out because the people concerned have been	1	Page 37038 MR DE ROVER: Ja, I think - you must, I
1 2	8	1 2	
_	have to spell it out because the people concerned have been		MR DE ROVER: Ja, I think - you must, I
2	have to spell it out because the people concerned have been trained, they know exactly what those procedures involve	2	MR DE ROVER: Ja, I think - you must, I think, remember that my two statements are now one and a
2 3	have to spell it out because the people concerned have been trained, they know exactly what those procedures involve but that's not what Ms Le Roux is asking you about. Put	2 3	MR DE ROVER: Ja, I think - you must, I think, remember that my two statements are now one and a half years old. You've learned a lot in that time. I had
2 3 4	have to spell it out because the people concerned have been trained, they know exactly what those procedures involve but that's not what Ms Le Roux is asking you about. Put the question again so that the witness can understand the	2 3 4	MR DE ROVER: Ja, I think - you must, I think, remember that my two statements are now one and a half years old. You've learned a lot in that time. I had a limited time frame and of course I realise that some of
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		Ι	
1	Page 37039 explained on the basis that t was just help us to	1	Page 37040 co-ordinated, there was no contemporaneous document that
2	understand. We don't have to discuss that further, but Ms	2	set that out. If you accept that and assume that, will you
3	Le Roux is right, she has correctly summarised Lieutenant-	3	agree with me –
4	Colonel Scott's evidence on that point.	4	CHAIRPERSON: I think he said quite
5	MS BALOYI: Mr De Rover, just one further	5	fairly that what you've put to him, if it's in accordance
6	point of clarification on that, are you aware that the	6	with the evidence that's what he accepted –
7	Google Earth image that Lieutenant-Colonel Scott used for	7	MS LE ROUX: Yes.
8	the 1:30 JOCCOM and the subsequent briefing, represented	, 8	CHAIRPERSON: And my job, in a way, is to
9	what's been called the second stage configuration. So	9	make sure that what you've put is in fact in accordance
10	there was an initial encirclement plan of the koppie,	10	with the evidence.
11	secondly there was a plan that had half of an arc dealt	11	MS LE ROUX: Yes.
12	with by barbed wire and the remainder of that arc dealt	12	CHAIRPERSON: And I've ticked that block
13	with the deployment of NIU, STF and other units. And then	13	so you can carry on from there.
14	of course we have the actual stage 3 configuration which	14	MS LE ROUX: Thank you, Chair. So Mr De
15	was only barbed wire, no officers completing the arc. Are	15	Rover, accepting that, would you agree with me that there's
16	you aware that the image that he utilised was the second	16	not much value in doing a risk assessment where there isn't
17	version, the one that had half an arc of barbed wire, half	17	a proper plan that, in detail, sets out what the different
18	an arc of personnel. Were you aware of that?	18	units should be doing, how this tactical phase should be
19	MR DE ROVER: I have seen, I think, all	19	implemented because absent that detail, it's very difficult
20	those images and asked questions to it when I was shown	20	to do a meaningful risk assessment because you don't
21	them.	21	actually understand what you're assessing the risk of?
22	MS LE ROUX: Okay, so if you accept my	22	MR DE ROVER: This is where I think the
23	summarisation of the plan that he had at the time, you will	23	rubber meets the road because now if you only take
24	accept that that plan did not set out in any detail what	24	contemporaneous documentation as a basis to qualify that, I
25	role the different units would perform, how they are to be	25	would be inclined to agree with you but you are dealing
1	Page 37041 with professional police officials. That's why yesterday I	1	Page 37042 respect, it's quite as simple as that. What Colonel Scott
1 2	Page 37041 with professional police officials. That's why yesterday I did refer to Stockwell for the simple reason that here	1 2	
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1	Page 37043	1	Page 37044
1	that there was a discussion of risk and Brigadier Calitz	1	about 9 o'clock in the morning. It was a conversation
2	gave a very interesting answer when he was questioned about	2	between General Annandale, General Mpembe and General
3	that. He was asked well why didn't you hey but you know	3	Mbombo. General Mbombo was told about the risk and she
4	this is risk you're doing. We should wait until tomorrow	4	said well just do your best to make sure it doesn't happen.
5	morning, I'm summarising loosely, but that was the	5	That's as far as it went. There was no discussion at the
6	question. And he said well I couldn't have done that	6	JOCCOM at 1:30 and remember at that stage no plan actually
7	because if there'd been trouble that night then I would	7	was on the table, so there was nothing to consider in
8	have been held responsible for stalling the operation and	8	relation to the risks attached to it. And then at 2:30 –
9	therefore I said nothing. Now that was very, to use the	9	so nothing happened in the JOCCOM and as far as I can
10	word insiggewend in Dutch, maybe you do, a very	10	recall from the evidence there was no suggestion that
11	insiggewende answer and I think that's really at the root	11	anyone said hang on a second, Colonel Scott, I think he was
12	of the questions you're being asked. Am I right, Ms Le	12	Lieutenant-Colonel Scott, Lieutenant-Colonel, let's
13	Roux? Mr Semenya.	13	consider the risk first before we go ahead. That didn't
14	MR SEMENYA SC: Chair, I think that ought	14	happen either.
15	to be qualified by saying in the JOCCOM, you'd recall when	15	MS LE ROUX: Now, Mr De Rover, in your
16	this cross-examination started Ms Le Roux herself says	16	response to the interrogatories to the evidence leaders
17	there was a – General Mbombo was cautioned that there would	17	which, Chair, is UUUU2.5, paragraph 1.7 of that, this is
18	be risk associated with going tactical and if that does not	18	where you set out this risk assessment exercise for the
19	constitute some form of risk assessment that is why the	19	first time. And you conclude that answer by saying based
20	witnesses say it is not documented, but you can accept that	20	on its previous experiences in public order management SAPS
21	that would have ordinarily been a risk assessment	21	gave that scenario, the scenario being that one of the
22	discussion around going tactical.	22	possible outcomes of forcible disarmament would be injury
23 24	CHAIRPERSON: You are right. I didn't have to put that to the witness because it was mentioned	23 24	or death. So they gave that scenario a probability of not
24 25	yesterday, but that so-called risk assessment took place	24 25	likely because of its experiences of the outcomes of many operations to date they'd been different. Now I'd like to
23	yesteruay, but that so-called fisk assessment took place	20	operations to date they a been different. Now 14 like to
	Page 37045		Page 37046
1	ask you the basis of that answer. When you say that the	1	SAPS because obviously my interest is and Mr White has
1 2	ask you the basis of that answer. When you say that the SAPS gave the scenario a probability of not likely, who at	1 2	SAPS because obviously my interest is and Mr White has canvassed that, that you countenance the possibility that
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1	Page 37047	1	Page 37048
1	CHAIRPERSON: All right, I'm not	1	there to protect the POP people, to ensure that there was
2	interested in whether it could really be said that there	2 3	no loss of life on the police side. And the only way they could do it, you can't blame the TRT for doing what they
3	was a probability of not likely, never mind what they now	4	
4	say or said to you. I don't remember them saying that to	4 5	did because that's what they had to do and the only equipment they had to do it with was TRT rifles. So they
5	us by the way, but we won't go there now, they may have		
6	done. This is conceded by Colonel Scott in the passage	6	must have foreseen, this is obviously a prima facie issue I'm putting to you, but they must have foreseen the POP
7	that I think was put to you yesterday being a first time	8	
8	situation, a very unusual situation that they never had	8 9	people mightn't be affected regard been had to these
9	before. Now there are a number of factors that are		special circumstances. The muti, the conduct of the 13th,
10	relevant. They knew that these people had taken muti,	10	the information and that was really a first time situation,
11	their understanding was, it's disputed actually from the	11 12	they never dealt with this kind of situation before. I can
12	other side, but the understanding was that gave the	12	understand they dispersed and disarmed people in the past, but this let who behaved as they had behaved, who had shown
13	strikers a belief in their invulnerability or		but this lot who behaved as they had behaved, who had shown
14	invincibility. They knew how the strikers had reacted on the Monday. The intelligence that they received was that	14	themselves to be the kind of people they were, well not all
15	they were not going to lay down their arms, they were not	15 16	of them obviously, but some of them. Based on the information and so forth, I would have thought that, again
16 17	going to abandon their position on the koppie, the were	17	prima facie that to way that it was not likely that the POP
18	going to fight to retain their arms and retain their	17	people wouldn't have to do what they had to do. It was not
10	position. That was all the information, that's the	10	likely that the TRT people would have to take over, fire
20	information they had. They also foresaw as a possibility	20	shots which would have a probability of causing death or
20	that the POP with their non-lethal methods would not be	21	serious injury. That's a difficult one to accept and
22	able to deal with the situation which is why they put in	22	there's something I must tell you, I don't think you know.
23	place the TRT people. The TRT people were there for two	23	The decision to proceed then was not taken by the JOCCOM,
24	reasons. Firstly to do mopping up if the POP people were	24	it was something imposed from above, in fact from the night
25	successful, but secondly and more importantly they were	25	before. And the evidence is that at the end of the meeting
			5
	Page 37049		Page 37050
1	Page 37049 Major-General Annandale went to Brigadier Pretorius who was	1	Page 37050 they would be approached and arrested and disarmed. Now if
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1	Page 37051	1	Page 37052
1	end. So you're faced with people who've shown what they're	1	that now the operation was actually going to something that
2	capable of on the Monday and indeed in certain other	2	they knew and understood and that from experience they knew
3	incidents, obviously not all of them, but some of them,	3	they can do, they can handle. Whatever you would label it
4	people who believe they're invincible, bullets will turn	4	in terms of quality, but it seemed to be familiar
5	into water. People who the police believe or not believe,	5	territory. Disperse, disarm, arrest, now we're talking
6	police are told people who will fight to protect their	6	issues that we know, recognise that we're comfortable with
7	position and their arms. Then you look at the likelihood	7	and in terms of lessons learnt I don't think that the 14th
8	and make an assessment.	8	and the 15th were sufficiently utilised to critically look
9	MR DE ROVER: Well I think that if you	9	at how was that possible. And to maybe draw something from
10	take that you would qualify then a confrontation as very	10	that for what you planned to do on the 16th.
11	likely to happen the risk that that confrontation then	11	CHAIRPERSON: Yes there are two other
12	produces death or serious injury and I just point to the	12	points that I must put to you and that is on the 13th, of
13	Monday where whatever the trigger that caused the	13	course, the police and the strikers were in close proximity
14	confrontation, once the proximity occurred, death and	14	to each other. So that's why the police sustained – that's
15	injury occur on both sides. And that lamentable loss of	15	why the two policemen were killed and injuries were
16	mind, of life would obviously also have played on the	16	sustained. On this occasion, of course, the TRT line was
17	Monday when the incident eventually unfolded as it did.	17	further back and TRT line, members of that were able to
18	But I think that if - I still believe on what I have been	18	fire without receiving any injuries themselves which is a
19	told that there was never the anticipation that they would	19	distinguishing factor for the 13th. But there's another
20	have to deal with the group as one at the time that they	20	factor that I must put to you, I should have mentioned to
21	were confronted by that reality. I think their	21	you earlier and that was the police evidence is, again it's
22	anticipation was that if that happened it would be in	22	disputed by the other side, but we are looking at the
23	smaller numbers and in a situation that they could control.	23	police evidence this time. The police evidence is they
24	And if I can just share a personal feeling I got talking to	24	received threats during the day from the strikers, from the
25	SAPS members. In a strange way there was almost a relief	25	leader of the strikers. There was a threat that the Hippos
	5 5		
	Page 37053		Page 37054
1	Page 37053 as they recall, that's the Nyalas would be burnt. There	1	Page 37054 CHAIRPERSON: Right, can you tell us –
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	Page 37055		Page 37056
1	front was "Rules of Engagement."	1	numbers to these things, you can carry on with that
2	CHAIRPERSON: Okay, "Rules of	2	function as far as these things are concerned as well.
3	Engagement."	3	Okay, can we carry on? Now we've got the slide, yes, what
4	COMMISSIONER HEMRAJ: 12 Rules.	4	do you want to show us about the slide?
5	CHAIRPERSON: No – oh, you've changed it	5	MR DE ROVER: Now on the left-hand side
6	now. Oh, I see. So it is 12, I beg your pardon. So we	6	in the yellow square I've just attributed some qualifiers
7	can leave 13. It's UUUU12, "Rules of Engagement" and we're	7	to the behaviour as I observed it, particularly on the
8	looking, I take it we're looking at the whole thing. The	8	Monday and let me stray away from that, let's separate it
9	whole exhibit is before us now but we must look at slide 7,	9	from the 16th although that, there are other, there might be
10	you say. Alright, thank you.	10	that you say that equally applies on that day still to that
11	COMMISSIONER HEMRAJ: Is there anything	11	group –
12	else, Mr De Rover, that you've handed over that we haven't	12	CHAIRPERSON: I suggested a distinction –
13	had an opportunity to look at as yet?	13	differences.
14	MR DE ROVER: I gave an entire memory	14	MR DE ROVER: Okay. So what I saw is the
15	stick and there is a report of the previous special	15	group on the Monday was willing to be confrontational.
16	rapporteur on summary executions. There is another article	16	They appeared to be organised, they were mobile, they were
17	on crowd control of one of the authors of the Stott article	17	armed, they were violent and they showed themselves
18	but I made that available, I just don't know where these	18	volatile and whatever triggered the volatility, I know that
19	documents are.	19	that is a point of discussion but they showed that they can
20	CHAIRPERSON: May I suggest that during	20	be. Now if – I put in the middle there with a question
21	the first short break, comfort break, there can be	21	mark and I think it is important to consider that because
22	discussions between the Human Rights Commission counsel and	22	yesterday I said that SAPS has more than 100 cases open
23	the police counsel and the evidence leaders in regards to	23	between February and the 1st of August that relate, in my
24	what can go in on mere production and in fact seeing you've	24	experience at least, to extreme forms of violence that all
25	very kindly taken it upon yourselves to give exhibit	25	seem to be strike related or mining problem related in the
	Page 37057		Page 37058
1	Rustenburg area. So I put in red there, "Society	1	video, well documented, and you can trace it back to the
2	Rustenburg area. So I put in red there, "Society acceptance of contemporary forms of protest and violence"	2	video, well documented, and you can trace it back to the way POP is organised and I think that this form of protest
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2 3 4	Rustenburg area. So I put in red there, "Society acceptance of contemporary forms of protest and violence" because I submitted that in response to an interrogatory, that the incident of the Monday, if that had happened in	2 3 4	video, well documented, and you can trace it back to the way POP is organised and I think that this form of protest at Marikana and I don't know about other ones but the characteristics of protests are such that it simply
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	Page 37059	1	Page 37060
-	in the London riots they didn't shoot 34	1	aggressive mood towards the police.
	n live ammunition.	2	MR DE ROVER: Mm.
3 MR DE R		3	CHAIRPERSON: What I've, the evidence
4 MS LE RO	, , , ,	4	I've put to you indicates that Thursday was different,
	this. That's a yes or no question, you're	5	there were threats of aggression towards the police. On
6 only looking at F		6	Monday they weren't standing in a position to defend where
7 MR DE R	3 0	7	they were. They weren't defending their position, they
8 MS LE RO	•	8	were actually on their way to the koppie which they were,
9 MR DE R	•	9	according to the information that the police got, the
10 eases the discus	5	10	intelligence they got, what they were going to defend on
11 MS LE RO	1 3	11	the Thursday and they weren't actually being disarmed or an
-	ss-examination but I'd like to –	12	attempt wasn't being made to disarm them on the Thursday.
13 CHAIRPE	j, et je j	13	They may have thought that that was going to happen – I
	o put two things, put one thing actually	14	mean on the Monday but on the Thursday, according to the
-	and Adv Hemraj wants to get clarification on	15	information received, they were going to defend their
	ou carry on. Looking at the left-hand side	16	position and they were going to defend their arms and they
3	ling with the situation as you saw it in	17	were aggressive towards the police and there's evidence
	ikers, in comparison with, comparing	18	that somebody said you can't have two bulls in the same
	irsday, on Monday they were, they said they	19	place and there was talk about - there's other evidence as
	ve towards the police, there were no	20	well which indicated it was they or the police who were
21 threats to attack		21	going to be there, there wasn't room for both of them. So
22 MR DE R		22	the situation on Thursday was significantly more serious
23 CHAIRPE	, , ,	23	than it had been on Monday and in the light of what you say
	ng you. They were on their way to the	24	about Monday then a fortiori the points you make apply to
25 koppie being eso	orted by the police, they weren't in an	25	Thursday. You would agree with that, I think.
	Page 37061		Page 37062
1 MR DE R		1	with those characteristics in Pretoria and they decide they
2 CHAIRPE	RSON: Yes. Adv Hemraj wants a	2	will walk into the Union Building, I don't think that at
3 clarification, the	n we'll stop using up Ms Le Roux's time	3	this stage the South African Police has the ability to stop
4 and give her a c	hance to carry on with the cross-	4	them doing that.
5 examination.		5	COMMISSIONER HEMRAJ: None of the units
6 MS LE RO	DUX: I'd appreciate that, Chair.	6	in the South African Police?
7 COMMIS	SIONER HEMRAJ: Mr De Rover, what	7	MR DE ROVER: That comes with a price tag
8 does set piece r	nean?	8	because then you will go into your risk assessment and
9 MR DE R	OVER: Well, POP works with	9	there is plenty recent example of how such confrontations
10 standard respor	ses, like you deny access by forming a line	10	in Greece, in Turkey, in Egypt, how such confrontations end
11 or you create a	cordon or you channel or you block, those	11	when the state decides that nevertheless it will try and
12 type of response	s that are essential set piece, that I must	12	put a stop to that type of protest and, you know, then you
13 add work proba	oly better in an urban environment than in a	13	get state controlled use of lethal force, sanctions beyond
14 mund and in the	nt because structures can then be used to	14	judicial control. And I know in Egypt I think 180 people
14 rural environme			
	at you are trying to do and people can't	15	have been condemned to death -
15 complement wh			have been condemned to death – COMMISSIONER HEMRAJ: Thank you.
<ul><li>15 complement wh</li><li>16 simply walk arous</li></ul>	at you are trying to do and people can't	15	
<ol> <li>complement wh</li> <li>simply walk around</li> <li>COMMIS</li> </ol>	at you are trying to do and people can't and a line that you put up.	15 16	COMMISSIONER HEMRAJ: Thank you.
<ol> <li>complement wh</li> <li>simply walk around</li> <li>COMMIS</li> <li>the POPS in the</li> </ol>	at you are trying to do and people can't ind a line that you put up. SIONER HEMRAJ: If you think that	15 16 17	COMMISSIONER HEMRAJ: Thank you. MR DE ROVER: - because of public
<ol> <li>complement wh</li> <li>simply walk around</li> <li>COMMIS</li> <li>the POPS in the</li> <li>with what you'w</li> </ol>	at you are trying to do and people can't and a line that you put up. SIONER HEMRAJ: If you think that South African Police are unable to deal	15 16 17 18	COMMISSIONER HEMRAJ: Thank you. MR DE ROVER: - because of public protests.
<ol> <li>complement wh</li> <li>simply walk around</li> <li>COMMIS</li> <li>the POPS in the</li> <li>with what you've</li> </ol>	at you are trying to do and people can't and a line that you put up. SIONER HEMRAJ: If you think that South African Police are unable to deal a got in the left-hand side block, is there a know in the South African Police that is	15 16 17 18 19	COMMISSIONER HEMRAJ:       Thank you.         MR DE ROVER:       - because of public         protests.       COMMISSIONER HEMRAJ:       Thank you, Mr De
<ul> <li>15 complement wh</li> <li>16 simply walk around</li> <li>17 COMMIS</li> <li>18 the POPS in the</li> <li>19 with what you'v</li> <li>20 any unit that you</li> <li>21 well placed to d</li> </ul>	at you are trying to do and people can't and a line that you put up. SIONER HEMRAJ: If you think that South African Police are unable to deal a got in the left-hand side block, is there a know in the South African Police that is	15 16 17 18 19 20	COMMISSIONER HEMRAJ: Thank you. MR DE ROVER: - because of public protests. COMMISSIONER HEMRAJ: Thank you, Mr De Rover.
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<ul> <li>15 complement wh</li> <li>16 simply walk around</li> <li>17 COMMIS</li> <li>18 the POPS in the</li> <li>19 with what you'v</li> <li>20 any unit that you</li> <li>21 well placed to d</li> <li>22 MR DE R</li> <li>23 face - that's wh</li> </ul>	at you are trying to do and people can't and a line that you put up. SIONER HEMRAJ: If you think that South African Police are unable to deal a got in the left-hand side block, is there a know in the South African Police that is eal with that? OVER: Well, this is, I think you	15 16 17 18 19 20 21 22	COMMISSIONER HEMRAJ:       Thank you.         MR DE ROVER:       - because of public         protests.       -         COMMISSIONER HEMRAJ:       Thank you, Mr De         Rover.       -         CHAIRPERSON:       [Microphore off, inaudible]]         set piece, do I understand you to be surje, if I'm wrong
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1	Page 37063	1	Page 37064
1	mean what they do is certain drills, as it were, a routine	1	passes can totally change the requirements of the situation
2	they can follow but if the strikers behave in an	2	on the ground again and a solution for which you get
3	unpredictable fashion, then they're not very good at – it's	3	permission is no longer appropriate.
4	not a criticism, it's just, they're not very good at	4	MS LE ROUX: But Mr De Rover, you'll
5	improvising.	5	accept then that those commanders on the ground also need
6	MR DE ROVER: That I would hold true	6	to be fully briefed and aware of what their role and what
7	because it would, you'd have to have a high degree of	7	every other unit's role is in order to ensure that they can
8	training to be able to improvise but you'd also need the	8	make decision making without endangering or jeopardising or
9	commanders to facilitate such improvisation and typical the	9	undermining the roles of the other unit.
10	structures that SAPS has in place, you create an	10	MR DE ROVER: Ja, but you know that the
11	organisational contradiction. You have so many different	11	problem is that you're now looking at possibilities of
12	units in place that there is a need for centralised control	12	interactions that go well beyond what is planned and that
13	of those units so that they don't run rogue or riot on you,	13	the situation may dictate. I think one element that you
14	but the complexity of the situation would require that you	14	will find when you look at it is that although commanders
15	decentralise command decisions and that is where, when I	15	were responsibilised for different parts of the action,
16	talked yesterday about unravelling systems, you build it	16	they weren't authorised to make decisions. They would
17	into your operation almost that it happened this time, it	17	still be expected to ask permission before going ahead. So
18	can happen another time and maybe the next time not all	18	there is an attempt from the JOC to still, with remote
19	elements will conspire to thwart you but it will become a	19	control or central steer, control the operation and direct
20	problem. So because of the different elements there is a	20	the different entities and although commanders were briefed
21	desire to exert central command and control on the	21	on their role on the ground, i.e. my assessment is that
22	operation but an operation of this type also needs	22	they were insufficiently put in a position that they could
23	reponsibilising and authorising commanders on the ground to	23	also make their own decisions and then report back on hose
24	make decision that are necessary and not obliging them to	24	rather than reporting on a situation and asking permission
25	first ask permission from a superior because the time that	25	to do something.
	Page 37065		Page 37066
1	Page 37065 CHAIRPERSON: Can I just go back? I'm	1	Page 37066 reading and I think in the end his voice did not prevail in
1 2		1 2	5
	CHAIRPERSON: Can I just go back? I'm		reading and I think in the end his voice did not prevail in
2	CHAIRPERSON: Can I just go back? I'm sorry, Ms Le Roux, I'm breaking my promise to you but I	2	reading and I think in the end his voice did not prevail in what SAPS decided to do. His opinion is known and he
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	Page 37067		Page 37068
1	August where police members used force against strikers, it	1	eighth piece of evidence is that we've had no evidence from
2	resulted in retaliation, five people died. The second is	2	anyone in the JOCOM that they seriously thought that the
3	Lieutenant-Colonel Scott's view that there was going to be	3	so-called militant group would voluntarily just disperse
4	conflict and that the protesters being armed, emotions	4	and disarm when they were asked to do so. The ninth piece
5	running high, there was likely to be a confrontation. The	5	of evidence is Lieutenant-General Mbombo's oral evidence
6	third piece of evidence is the use of muti by the strikers	6	that she'd been warned of the risk of the TRT using live
7	and their belief that it made them somehow invincible	7	ammunition when they went tactical to try to disarm the
8	potentially to the use of force by police, which may make	8	strikers.
9	them disregard that risk in their conduct. The fourth is	9	[09:28] The tenth piece of evidence is the threats that
10	that this mindset of invincibility was in fact reflected in	10	were made from the strikers towards the police in the days
11	some of the planning. The fifth piece of evidence is that	11	before the 16th and on that day as well. So in light of
12	the police had information to suggest that there were	12	those 10 pieces of evidence –
13	firearms within the possession of the strikers who were	13	CHAIRPERSON: May I add two more before
14	present on the koppie, so there was a firearms threat. The	14	he answers?
15	sixth piece of evidence is that the intelligence available	15	MS LE ROUX: Certainly, Chair.
16	to the police by the 16th of August noted that many of the	16	CHAIRPERSON: In relation to what senior
17	mineworkers were in possession of dangerous weapons which	17	people in the police force saw as possible there is
18	they were likely to decline to surrender and they would be	18	evidence which was put to you before, I think yesterday,
19	prepared to fight if their demands were not met, including	19	that somebody ordered four funeral hearses to be, early on
20	by resisting the police. The seventh piece of evidence is	20	the morning of the Thursday to be there. They didn't come
21	Lieutenant-Colonel Scott's oral evidence that he was	21	actually, but that's not the point. There's also evidence
22	mindful that the tactical option could elicit a violent	22	that, and there's a dispute as to who was responsible for
23	response from the strikers and it was important not to send	23	it but the evidence of, I think it was Colonel Merafi – if
24	the SAPS members into what he called a blatant death trap.	24	I'm wrong with that I'll be corrected – he ordered, he
25	So he proposed a line of TRT to back up the pops. The	25	arranged for 4 000 extra rounds of ammunition to be
20	so he proposed a line of the to back up the pops. The	25	analiged for 4 000 extra rounds of animalition to be
	Page 37069		Page 37070
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1	statements but one thing I do know is that in no democratic	1	pity that he wasn't drawn to qualify that because I think
2	country an incident that doesn't only have national	2	that part of the answer that you need, one, to unearth the
3	security ramifications but definitely serious economical	3	structures behind what happened and how that happened is to
4	dimensions, does a police force decide that it is time for	4	get clarity why, in the face of such overwhelming evidence
5	whoever is there to go. That decision comes and originates	5	as you now present and that you hold the police were aware
6	from somewhere else and it may well be that that then	6	of when they were making that decision and trying to
7	becomes the subject for a discussion in a management forum	7	operationalise it, why didn't they refuse to do it, because
8	of the police but it's an order that comes from the	8	if it originated from within the police itself it would
9	executive and the police must implement that order and then	9	have been simple to stop that. And I hope that the police
10	<ul> <li>because how else, like in the face of what you say, how</li> </ul>	10	are not an entity on itself, they are agents of the state.
11	can anyone decide that you are going to do that if what, if	11	They are accountable to the executive, at first to the
12	I just accept at face value that each of those 12 points is	12	Minister for the Police, Minister for Justice and maybe
13	true, you can't implement an operation on that. Now you	13	even the President and I would hope that an incident like
14	have been given an order, international law says if an	14	Marikana in the way it escalated in that week, posed
15	order is manifestly unlawful and if you have a reasonable	15	ramifications for safety and security that well over-
16	opportunity to refuse it, you should do so. That for me	16	stepped something that you leave your police force to deal
17	now is a \$64 000 question. Is the order that was given to	17	with if you are in government and it had ramifications at
18	the police that I will take came from the executive, from	18	industrial level with the involvement of Lonmin and the
19	government, is that order an unlawful order? Can you now,	19	unions that have economic ramifications. I read in
20	on the basis of what you know because you're now asking the	20	Lonmin's annual report that that week alone cost them \$326
20	police to resolve a situation of which they could have	20	million and that one year on after Marikana, they were
22	demonstrated to the executive that it would likely produce	22	still only at 85% of pre-production capacity, of pre-
23	this result, then you have that problem and I recall your	23	Marikana production levels. So it was still costing them
23	Deputy President in answer to a question of Mr Mpofu,	24	money. So there have been all these references made. I
25	qualifying Marikana as a collective failure. It's really a	25	think it's time to then unearth who gave that order.
20		20	
	Page 37073		Page 37074
1	CHAIRPERSON: I'm glad you raised that	1	Page 37074 I think most of the people from head office were still
1 2		1 2	-
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1	o'clock already, even though that is the time that they	1	as a one-off way of dealing with it, then the least I want
2	had, most of the people would be back from the koppie – so	2	to say about that, that is unacceptable. You cannot have a
3	why Thursday? Why Thursday when you know that you can only	3	police force essentially deciding on issues that have such
4	do it after 9 o'clock? That's the question I've been	4	ramifications attached to it and consequences as Marikana,
5	asking. I haven't yet got a definitive answer. If, of	5	on its own, and place that beyond the political and
6	course, it was some order from on high not based on peace	6	judicial control that you would want to exercise before you
7	consideration, not based on knowledge of what was happening	7	go ahead. And what I then inversely, if I take that that
8	on the ground, that's a different matter. That's one of	8	is what is normal in a democratic society and therefore
9	the things we're trying to investigate. Have you got any	9	normal here, I would find it very hard to believe that
10	information you can give to us that'll help us?	10	there weapons no political or judicial guidance on that
11	MR DE ROVER: Chair, like I said, one, it	11	decision and because a higher authority made it and gave it
12	was an extraordinary session and it held people back that,	12	as an order, then you have your answer to your question as
13	in the normal structures that exist within SAPS for	13	to why it was implemented and why the haste and why the day
14	managing incidents of this kind in their initial phases,	14	and why those 12 points in the end, although raised, did
15	that that forum doesn't have a place. Now if you call that	15	not weigh heavily enough to counter the order. And hence
16	meeting, and with what I've said about police forces in a	16	my question is the order, because were the ones that issued
17	democratic society, I would be very surprised that SAPS	17	it made sufficiently aware of those 12 points and the risk
18	would have been permitted to make that decision on its own	18	that in going ahead – because then it entails a
19	alone and not guided or would not have actively sought the	19	responsibility and the line of command responsibility in
20	guidance of the executive on this prior to doing it,	20	law enforcement doesn't stop at the National Commissioner,
21	definitely when faced with the 12 elements that you have	21	it goes right through to the top because the police is not
22	just presented, that's my problem, that I would fine it –	22	an independent organisation. They are under government
23	one, if that is held because of the way people talk about	23	control.
24	it, that it's held that that was a decision that was made	24	CHAIRPERSON: Yes, there are provisions,
25	by SAPS and that forum was used to discuss it and decide it	25	though, in the Constitution and the Act which do give
1	Page 37077	1	Page 37078
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2	freedom and independence to the Police Commissioner – MR DE ROVER: Ja, but under direction of	2	proposal because of this and this and this or we want to know more information, would you have backed off? And she
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	Page 37079		Page 37080
1	MR DE ROVER: No, no.	1	society's acceptance of contemporary forms of protest and
2	CHAIRPERSON: Do you use that expression	2	violence but if it's an incident that puts at risk the
3	in Holland as well?	3	interests of a big international enterprise, that obviously
4	MR DE ROVER: Ja.	4	is of economic importance to South African Police, if it
5	CHAIRPERSON: A wrong track. It's called	5	puts at risk lives and communities and if it occasions now
6	an extraordinary session simply because some of the people	6	with regularity death and injury, I can't imagine that just
7	had gone. They were there at the meeting, the meeting	7	to be policing questions and that directions and choices
8	ended apparently, the people, some people left and then the	8	that are made are not subject to political scrutiny or
9	National Commissioner said let's now discuss this	9	political advice, at least to a National Provincial
10	information, they'd just got the information that it was	10	Commissioner, and I remember at least from the early days
11	said that the strikers might voluntarily hand down their	11	of the Commission that a lot of discussion was held about
12	arms the next morning and so she said, let's discuss it.	12	who called whom, what phone calls were made, what e-mails
13	And they then discussed it, as I said, for apparently	13	were sent, who engaged themselves on this issue. Did, I
14	something like an hour, it was minuted but it was called an	14	think the problem for me is that it is less than
15	extraordinary session because not everybody was there. So	15	transparent who involved and engaged themselves because -
16	it isn't as if they specially convened an extraordinary	16	and it's simply on my expectation of having been in many
17	session because of some order that they received from	17	countries around the world, that operations of this kind
18	elsewhere to discuss it. The extraordinary is explained in	18	are not left to the police to run there because the policy
19	the way I've given you, so let's not go on a dwaalspoor	19	that would underpin the action needs the sanctioning from
20	there. Sorry, I interrupted you but I think that's	20	the executive and the judiciary. It can't be the police
21	important information to have.	21	alone.
22	MR DE ROVER: Ja, but what I maintain as	22	CHAIRPERSON: I understand, you've made
23	my opinion is that I would expect a political direction to	23	that point. The question, I don't think in South Africa
24	a situation of this kind and I, obviously I don't live	24	the judiciary plays a role but let's not, we don't have
25	here, I don't know how you deal with that red square,	25	examining justices and so on as you have but let's not get
			00050
1	Page 37081 involved in that for the moment.	1	Page 37082 why that decision was taken, what the motivation of the NMF
2	MR DE ROVER: No, no.	2	was?
3	CHAIRPERSON: I asked you a question	3	MR DE ROVER: Ja, no, the way – I think
4	earlier, you told us how you understood, you heard about	4	it was General Mbombo who, when I asked her how that came
5	this National Management Forum decision not as part of the	5	about, that it was almost like, oh, you know, there
6	official briefing you received. It was, you used the word	6	happened to be that meeting and a few of the members
7	it was divulged to you by somebody.	7	remained behind and then we had that discussion. So, but
8	MR DE ROVER: Ja.	8	I'm already armed with at least my personal experience and
9	CHAIRPERSON: A third party, I think you	9	exposure of 22 years in 70 countries where I see this done
10	said, over a cup of coffee or tea or whatever the beverage	10	differently and I hear what she says.
11	was that you were drinking and then you went back to	11	[09:47] I have a problem accepting it as an utterance of
		1	
12	Annandale and I think you said Mbombo and put it to them.	12	how modern democracies work because the ramifications of
12 13		12 13	how modern democracies work because the ramifications of such an action would invariably come back on the
	Annandale and I think you said Mbombo and put it to them.		
13	Annandale and I think you said Mbombo and put it to them. As part of the information you received was there any	13	such an action would invariably come back on the
13 14	Annandale and I think you said Mbombo and put it to them. As part of the information you received was there any suggestion that there was an executive order which was the	13 14	such an action would invariably come back on the government, as they did after Marikana. So to imagine a
13 14 15	Annandale and I think you said Mbombo and put it to them. As part of the information you received was there any suggestion that there was an executive order which was the reason why the National Management Forum made this	13 14 15	such an action would invariably come back on the government, as they did after Marikana. So to imagine a reality that that was given a go-ahead or left to go ahead
13 14 15 16	Annandale and I think you said Mbombo and put it to them. As part of the information you received was there any suggestion that there was an executive order which was the reason why the National Management Forum made this decision?	13 14 15 16	such an action would invariably come back on the government, as they did after Marikana. So to imagine a reality that that was given a go-ahead or left to go ahead without the government having its say on it but still being
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13 14 15 16 17 18	Annandale and I think you said Mbombo and put it to them. As part of the information you received was there any suggestion that there was an executive order which was the reason why the National Management Forum made this decision? MR DE ROVER: No, I think my questions have been straightforward on the point, the answers have	<ol> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> </ol>	such an action would invariably come back on the government, as they did after Marikana. So to imagine a reality that that was given a go-ahead or left to go ahead without the government having its say on it but still being confronted now with the consequences of it, the least of which is that they pay for this Commission to now happen, I
<ol> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> </ol>	Annandale and I think you said Mbombo and put it to them. As part of the information you received was there any suggestion that there was an executive order which was the reason why the National Management Forum made this decision? MR DE ROVER: No, I think my questions have been straightforward on the point, the answers have not been. So I've raised that issue, of course I've raised	<ol> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> </ol>	such an action would invariably come back on the government, as they did after Marikana. So to imagine a reality that that was given a go-ahead or left to go ahead without the government having its say on it but still being confronted now with the consequences of it, the least of which is that they pay for this Commission to now happen, I just can't imagine a reality where that is par for the
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<ol> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> </ol>	Annandale and I think you said Mbombo and put it to them. As part of the information you received was there any suggestion that there was an executive order which was the reason why the National Management Forum made this decision? MR DE ROVER: No, I think my questions have been straightforward on the point, the answers have not been. So I've raised that issue, of course I've raised that issue because it's an important issue but the answers are not helping me.	<ol> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> </ol>	such an action would invariably come back on the government, as they did after Marikana. So to imagine a reality that that was given a go-ahead or left to go ahead without the government having its say on it but still being confronted now with the consequences of it, the least of which is that they pay for this Commission to now happen, I just can't imagine a reality where that is par for the course. CHAIRPERSON: You put that problem to those instructing you?
<ol> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	Annandale and I think you said Mbombo and put it to them. As part of the information you received was there any suggestion that there was an executive order which was the reason why the National Management Forum made this decision? MR DE ROVER: No, I think my questions have been straightforward on the point, the answers have not been. So I've raised that issue, of course I've raised that issue because it's an important issue but the answers are not helping me. CHAIRPERSON: Did you ask why the National Management Forum made the decision, to use the	<ol> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>	such an action would invariably come back on the government, as they did after Marikana. So to imagine a reality that that was given a go-ahead or left to go ahead without the government having its say on it but still being confronted now with the consequences of it, the least of which is that they pay for this Commission to now happen, I just can't imagine a reality where that is par for the course. CHAIRPERSON: You put that problem to those instructing you? MR DE ROVER: We've have discussions on

1	MR DE ROVER:	Page 37083 Ja, especially with the	1	Page 37 CHAIRPERSON: How diplomatic? What wer	
2	legal team.	Sa, especially with the	2	the ipsissima verba of the diplomatic answer?	IC I
3	CHAIRPERSON:	Yes, well never mind the	3	MR DE ROVER: I, it's, that's a long time	
4		have more information anyway.	4	ago, this discussion, Chair, and –	
5	MR DE ROVER:	Ja.	5	CHAIRPERSON: Is it recorded in your	
6	CHAIRPERSON:	Did you raise it with those	6	notes?	
7	instructing them?	Dia you ruise it with those	7	MR DE ROVER: No, there were many	
8	MR DE ROVER:	Well, I've had lengthy	, 8	informal meetings that I had, or several I should say, wit	th
9	discussions on it with Gene	0,3	9	her and I've tried to raise this but you must accept that	
10	Annandale –		10	at the time those took place I'd only been in the country	а
11	CHAIRPERSON:	And did they give you any	11	few weeks –	u
12	answers which you could u		12	CHAIRPERSON: Yes, yes. No, leave the	
13	MR DE ROVER:	Ja, that they share my	13	note point. It was just a -	
14		are not privy as eyewitnesses or	14	MR DE ROVER: Yes, I don't know, but it's	
15		formation that helps other than	15	more that my relationship with her was very much still of	fa
16	say they share that view.		16	stranger, of two strangers meeting and I asked that	
17	CHAIRPERSON:	Did you put the view to	17	question that that's a hot one if, you know, to even enter	r
18	General Phiyega?	3	18	into, to divulge to me what you're working relationships	
19	MR DE ROVER:	I did –	19	are with the executive. So I got a diplomatic answer –	
20	CHAIRPERSON:	Sorry, National	20	CHAIRPERSON: By diplomatic do you mean	n
21	Commissioner Phiyega.		21	evasive?	
22	MR DE ROVER:	Yes.	22	MR DE ROVER: Ja.	
23	CHAIRPERSON:	And what was her answer?	23	MS LE ROUX: Mr De Rover, in any of your	
24	MR DE ROVER:	A diplomatic answer and you	24	discussions with the National Commissioner did she expre	ess
25	know in fact I –		25	any reluctance to you that you participate in this	
		Page 37085		Page 37	
1	Commission process, partice	ularly the expert process?	1	not operational police people, you're trying to understand	I
2	MR DE ROVER:	ularly the expert process? No, I, and I attach value	2	not operational police people, you're trying to understand concepts, so I've used methods and I've used clarification	I
2 3	MR DE ROVER: to expressing this here beca	ularly the expert process? No, I, and I attach value ause it took me a while	2 3	not operational police people, you're trying to understand concepts, so I've used methods and I've used clarification and I've used comparisons that are not meant to justify	I
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2 3 4 5	MR DE ROVER: to expressing this here beca yesterday to realise that I w and I regret that because I	ularly the expert process? No, I, and I attach value ause it took me a while vas seen as a SAPS gun for hire would face unemployment forever	2 3 4 5	not operational police people, you're trying to understand concepts, so I've used methods and I've used clarification and I've used comparisons that are not meant to justify anything, but to explain, to give you a possibility to comprehend how certain actions on the ground can happe	l ns en,
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1	Page 37087 have done nothing rather than sit down, have a beer and get	1	Page 37088 made the suggestion on a number, a couple of occasions at
2	to work on this, but because that, because of the fact that	2	least, and I understood it was taken further, the
3	parties before this Commission also have their particular	3	suggestion I made was communicated to the parties and
4	interest at heart because of the representations that they	4	nothing happened. So that really what Ms Le Roux is about.
5	make, those discussions are prejudiced from the word go.	5	MS LE ROUX: Mr De Rover –
6	They're not objective expert discussions anymore, and	6	CHAIRPERSON: We don't expect people,
	that's why I was reluctant, because I don't feel a need to	7	experts to come like some international arbitrators do –
7 8	5	8	•
9	enter into yes, no, and arguing and actually not honestly arguing but trying to find something that derails a	8 9	MR DE ROVER: No. CHAIRPERSON: - and argue for the side
10	completely valid proposition. So that's my answer to that.	10	that's appointed them. We expect the experts to get
11	CHAIRPERSON: Sorry, what we do in the	11	together and say we genuinely can agree on the following
12	courts where there's conflict of expert testimony, what we	12	points; we genuinely disagree on these points. It narrows
13	very often do is – when we, I mean as judges – we say to	13	the debate, you see. That's what I had hoped would happen.
14	the parties look here, we accept the experts are impartial	14 15	I'm sorry it didn't, but what Ms Le Roux is probing is why
15	because they are supposed to be giving their expertise	15	it didn't happen.
16	irrespective of who's called them. We invite the experts,	16	MS LE ROUX: Mr De Rover, your answer was
17	we say can't you get the experts together to have a	17 10	that it was a bit of both and I've understood your last
18 19	discussion to see whether they can't reach agreement and what very often happens then, experts go away for a couple	18 19	answer to be describing in a sense your feeling that since
			you largely were in agreement with Mr White and Mr
20	of days, they come back with a report saying we discussed	20	Hendrickx, that it would somehow be redundant for you to
21	the matter, we agree on the following, and then set out	21	add to that. Is that a correct summary of in part your
22	what they agree on, we disagree on the following points and this expect says that and the other expect says semathing	22	explanation as to your attitude to it? But I'm interested
23 24	this expert says that and the other expert says something	23	in the other part of the both, which was, were you ever
24 25	else. That's what I had hoped could be achieved here. I thought it would save a lot of time if we did that and I	24 25	instructed not to engage, or if not instructed, were you ever, was it made clear to you that it was discouraged, or
25		25	ever, was it made clear to you that it was discouraged, or
	Page 37089		Page 37090
1	Page 37089 anything like that?	1	Page 37090 MS LE ROUX: Chair, I just have one
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1	Page 37091	1	Page 37092 problem my tactic has always been to make it bigger because
1 2	and I think you all were here, you, some of you even have a mandate that empowers you to act and I'm thinking that	2	if you make it bigger there is a bigger chance that you'll
2	there were people that engaged themselves with that	3	actually find some common ground, something that you can
	situation because they were aware of it, and the Bishop is	4	agree on, and not that you whittle it down to that
4			
5	one utterance of someone who obviously took it to heart and	5	essential key point that you forever will differ of opinion
6	decided to physically go there, and I think that more of	6	on. I look at, that's again society acceptance of forms of
7	that might, could have created other opportunities that	7	violence.
8	simply then don't eventuate, and I'm particularly looking	8	I've been in your country now one and a half
9	at the 14th and the 15th because it seemed to be days of	9	years and the last time I went home after four months it
10	relative calm there, where attempts at getting some form of	10	takes me a week to get back to normality, that I don't have
11	constructive dialogue going maybe from different	11	to lock my doors, that it's alright to leave the keys in my
12	perspectives and different actors and stakeholders who	12	car, and I don't have an electrified fence around my house
13	again in democratic societies are expected and entitled to	13	and armed response on standby. You have 1.2 million
14	engage themselves on those issues, that's a missed chance	14	registered private security providers in this country.
15	too.	15	That's to me a demonstration of how safe your country is
16	If you are, in answer to that question on 262 I	16	and an indication of how well you law enforcement is doing
17	would consider that part of trying your damndest, is that	17	because they charge you for a service that the police
18	word is permitted in this setting, to avoid that you need	18	should give you for free, and that is, there are just some
19	to deploy and put a stop to it because inevitably when you	19	factors there that I put in alignment and I think well,
20	stop talking, things become confrontational, and I've	20	people were watching the news and definitely on the 11th and
21	worked long with the United Nations; the core principle in	21	the 12th and then on the 13th you get that flashpoint that
22	any relationship is that we try and maintain constructive	22	would have made headlines. People would have seen that,
23	dialogue, however futile, because for as long as we're	23	people in government, individuals in the street. Aren't
24	talking, we're not fighting, and even if we agree to	24	people outraged? And South African Human Rights
25	disagree, and rather than focussing on the essence of a	25	Commission, you have a constitutional mandate when it comes
1	Page 37093 to protecting human rights. Is there no platform then for	1	Page 37094 alternatives to you would you comment on them and tell me
1	to protecting human rights. Is there no platform then for	1	alternatives to you would you comment on them and tell me
2	to protecting human rights. Is there no platform then for you to engage in this situation and say we can project on	2	alternatives to you would you comment on them and tell me if you'll accept them; the first would be to have waited
2 3	to protecting human rights. Is there no platform then for you to engage in this situation and say we can project on the basis of past experience that this may well lead to		alternatives to you would you comment on them and tell me if you'll accept them; the first would be to have waited until at least the following morning and implemented the
2 3 4	to protecting human rights. Is there no platform then for you to engage in this situation and say we can project on the basis of past experience that this may well lead to catastrophe? So if we talk missed opportunities, I see	2 3 4	alternatives to you would you comment on them and tell me if you'll accept them; the first would be to have waited until at least the following morning and implemented the encirclement plan which had a lower risk and therefore less
2 3 4 5	to protecting human rights. Is there no platform then for you to engage in this situation and say we can project on the basis of past experience that this may well lead to catastrophe? So if we talk missed opportunities, I see that as a big missed opportunity and as to 262, the text of	2 3	alternatives to you would you comment on them and tell me if you'll accept them; the first would be to have waited until at least the following morning and implemented the encirclement plan which had a lower risk and therefore less likelihood of the use of force; fourthly, trying to gather
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Page 37095 1 to put in line was to bring representatives from NUM and 1 Pakistani and two weeks later eight Ame	
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2 AMOL and actually act as facilitations, as a conduit 1	•
2 AMCU and actually act as facilitators, as a conduit. I 2 out, the UN pulled out of Somalia and w	
3 think that in the process the police lost their neutrality 3 So the proposition of being misundersto	ood in your role is a
4 by doing that, that from a mediator, especially when they 4 risk there.	
5 were the bearers of the bad news that there would be no one 5 [10:07] So you want the police to main	
6 else coming, that Lonmin would not be coming and that now 6 to try and maintain dialogue. I would a	t least venture you
7 it was time to go home, that there may have been a 7 need a bargaining chip, you can't just tr	ry and talk because
8 confusion on the part of the strikers because now the 8 I think the talks that were there were st	trained enough
9 police act as the speaking tube for corporate enterprise 9 whilst the police had a bargaining chip t	those talks were
10 and for that other group that obviously were not friends 10 not easy. And those talks were not safe	e, they were
11 with the people on the hill, and that some of the 11 conducted from within a Nyala. So the	conditions of the
12 aggression that then develops in fact gets directed at the 12 talks were already not very happy. So the	that is why I'm
13 police and that, I actually think that the police failed to 13 saying that if the bishop had arrived on	the 14th or the
14 recognise that as a risk, that by putting yourself as a 14 15th I'm sure he would have been welc	omed with open arms as
15 neutral intermediary and doing something on behalf of one 15 you would have been as anybody else v	who would have wanted
16 of the parties, that you may be perceived you're then doing 16 to engage probably would have been w	
17 something against another party, and that might not be your 17 a means of relieving pressure. If I was	
18 intention but that may well be the reading. That's why I 18 ground I'd be desperately looking for we	
19 refer to Operation Restore Hope in Somalia where with the 19 pressure even if I have to bring a portal	5
20 best of intentions the UN distributed food to 300 000 20 to play music or to distribute food to pe	
21 people starving, but that was a weapon of war in the hands 21 get a sense or an atmosphere that wou	
22 of General Aidid and he did take offence. He didn't care 22 have a conversation rather than adversa	
	'd like to take
24 wanted them to do, and when the UN gave them food he turned 24 the adjournment now.	F understand
25 on them and he killed UN peacekeepers. He killed 24 25 CHAIRPERSON: I would, 1	5 minutes.
Page 37097	Page 37098
1 [COMMISSION ADJOURNS COMMISSION RESUMES] 1 that the plan starts to diverge from what	
2 [10:37] CHAIRPERSON: I'm sorry, Ms Le Roux, we 2 because that Nyala was supposed to go	·
3 had a bit of housekeeping to deal with in relation to the 3 supposed to make the curve.	5
I 4 INSPECTION ON WIONDAY. IT ALE UD SOME OF VOULTIME, TOP I 4 INSTERIOUX: NOW IN THE	_
4 inspection on Monday. It ate up some of your time, for 4 MS LE ROUX: Now in the 5 which Lapologise but I'm sure you'll have fine-tuned your 5 CHAIRPERSON: I must sa	
5 which I apologise but I'm sure you'll have fine-tuned your 5 CHAIRPERSON: I must sa	y I thought the
5which I apologise but I'm sure you'll have fine-tuned your5CHAIRPERSON:I must sa6cross-examination and won't be prejudiced.6disruption point was slightly different.	y I thought the They intended to
5which I apologise but I'm sure you'll have fine-tuned your5CHAIRPERSON:I must sa6cross-examination and won't be prejudiced.6disruption point was slightly different.7MR SEMENYA SC:Chair, can I for the7keep the people on the koppie side of the side of	y I thought the They intended to :he barrier, on the
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1	Page 37099 themselves. That, I think in a nutshell, is their case.	1	Page 37100 really the first disruption and it's said in quotation
2	Am I right, Mr Semenya?	2	marks. The second one is the one you've mentioned and the
3	MR SEMENYA SC: It is so, Chair.	3	third one is the one which I think the National
4	CHAIRPERSON: [Microphone off, inaudible]	4	Commissioner meant, but you want to ask a question. Do you
5	MR DE ROVER: Chair, looking at that	5	want to ask me or – you've got more chance of getting an
6	because that has come to light after the fact but I'd put	6	answer out of Ms Le Roux.
7	that in fact the first disruption already happens when the	7	MR DE ROVER: No, no. Well, Chair, I
8	deployment of the barbed wire is done consecutively and not	, 8	know I need to address you but I know that the owners of
9	simultaneously as Lieutenant-Colonel Scott foresaw at the	9	the exhibit are the Human Rights Commission. Now I think
10	time. So if you want an earliest indication of when the	10	that that exhibit would benefit from an effort and I've
11	plan already did not, the action on the ground did not	11	checked, I'm sure SAPS is willing to come to party, if I
12	reflect what the plan said, that that would for me be the	12	can call it that, on that because I know that it will cost
13	earliest manifestation. When I asked specifically with the	13	money to do it but you can identify the command vehicles in
14	exhibits available at the time where they figured that	14	those presentations and specially the animations. Now what
15	tangibly things went different, that is at the moment Nyala	15	we saw yesterday shows camera views but those camera views
16	4 starts to arc. Is it permitted, Chair, to ask a question	16	do not equate lines of sight commanders had. If you would
17	about this exhibit because that would be a useful addition	17	use that same principle of the yellow line arcs, it would
18		18	at least permit in the animation to show what commanders at
19	CHAIRPERSON: I'm sure you can ask a	19	that time were looking at because you get a camera on
20	question. I must say I would have thought the first	20	someone's right there, I remember one sequence where
21	disruption was actually when they moved Nyala 6. I seem to	21	there's a camera here and a Nyala drives through the screen
22	remember the evidence was that Colonel Scott wasn't aware	22	left to right and we see things behind that Nyala that the
23	of it, I may be wrong on that but the original plan has	23	camera keeps focusing on, that could have been Brigadier
24	Nyala 6 in a position where it was and it was then moved at	24	Calitz's Nyala but obviously his line of sight is different
25	about 11 o'clock or 11:20 or thereabouts, so that was	25	from the line of sight that we are being presented with and
	Page 37101		Page 37102
1	I think the exhibit would benefit, for your understanding	1	may be budgetary difficulties, it's something that the
2	I think the exhibit would benefit, for your understanding but for everybody's, if for the command vehicles, those	2	may be budgetary difficulties, it's something that the parties should come to the evidence leaders to discuss
2 3	I think the exhibit would benefit, for your understanding but for everybody's, if for the command vehicles, those lines could be included and secondly I think that the	2 3	may be budgetary difficulties, it's something that the parties should come to the evidence leaders to discuss because we might be able to assist.
2 3 4	I think the exhibit would benefit, for your understanding but for everybody's, if for the command vehicles, those lines could be included and secondly I think that the exhibit would probably give rise to a number of pointed	2 3 4	may be budgetary difficulties, it's something that the parties should come to the evidence leaders to discuss because we might be able to assist. CHAIRPERSON: It sounds as if something
2 3 4 5	I think the exhibit would benefit, for your understanding but for everybody's, if for the command vehicles, those lines could be included and secondly I think that the exhibit would probably give rise to a number of pointed interrogatories for those operational commanders pursuant	2 3 4 5	may be budgetary difficulties, it's something that the parties should come to the evidence leaders to discuss because we might be able to assist. CHAIRPERSON: It sounds as if something may happen along those lines but certainly I'm sure – do
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		I	
1	Page 37103 planning to do, it is also important to note that from that	1	Page 37104 this point but I know that Brigadier Calitz was in the
2	moment till the shooting starts there is two minutes in	2	centre of his Nyala, sitting sidewards, focused on radio
	real time available to them. Now at that time you see	3	communication and occasionally looking out of the windows.
3	5		
4	vehicles moving. They're obviously on their way to their	4	Now, I know you are going to Marikana on Monday. I've
5	jump off point where that dispersal action needs to start	5	already contacted General Annandale and recommended that a
6	so their attention and direction are to get towards that	6	Nyala is there. I know you have been inside Nyalas before,
7	end of the line where they will then come around and start	7	that you had a chance but it might be good to refresh that
8	the dispersal proper. Are they actually able to observe	8	opportunity, but to play that role then and be told where
9	what the camera is showing us? And I don't want to qualify	9	he was sitting and for you to have a chance, even plot some
10	that unless we can actually draw in on the exhibit the	10	of these routes and see what can you actually see when you
11	lines of sight so that you can say, not only say look, this	11	are there because I think they are factors that, in the end
12	happens because the camera caught it, but that you can	12	when judging decisions, can be critical. And we are
13	superimpose on it a line of sight and say look, just on the	13	talking about a serious matter so if you want to invoke a
14	basis of the line of sight that commander was in a position	14	commander's responsibility you must get to a point that you
15	to observe that same fact and then you'd have a point to	15	can prove that that commander saw, or if you want I can use
16	question them and get them to speak to that because all,	16	the word "knowledge," that that commander had knowledge and
17	you've managed to identify every single vehicle there and	17	failed to act on it. And the exhibit I think supremely
18	the occupants of every single vehicle are known. So I	18	enables that possibility, so I would think that with that
19	would think that to be a very useful and worthwhile	19	in mind the exercise of Monday might even gain some
20	exercise to conduct.	20	significance on that point as well.
21	COMMISSIONER HEMRAJ: Bearing in mind	21	MS LE ROUX: And Mr De Rover, if we're
22	that some of those commanders would have been inside the	22	engaged in an exercise of suggestions for Monday, we should
23	Nyalas at the time.	23	then probably also have 328 rounds fired next to that Nyala
24	MR DE ROVER: Ja, but that's – like I	24	and see if it's possible to hear them.
25	know and that's why I don't, my opinion is second-hand on	25	MR DE ROVER: Ja, but the same applies to
		1	
	Page 37105		Page 37106
1	Page 37105 calls of cease fire, you know, that is true. I think in	1	Page 37106 MR DE ROVER: Well, it's not quite at a
1 2		1 2	-
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2	calls of cease fire, you know, that is true. I think in all fairness, rounds going off, you can, you don't have to	2	MR DE ROVER: Well, it's not quite at a damaging level but I can tell you that it's annoying if you
2 3	calls of cease fire, you know, that is true. I think in all fairness, rounds going off, you can, you don't have to test 300 rounds but multiple rounds going off at the same	2 3 4	MR DE ROVER: Well, it's not quite at a damaging level but I can tell you that it's annoying if you are forced to listen to it for a lengthy period of time.
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	Page 37107		Dogo 27109
1	at 500 metres distance plus. These systems exist. Now my	1	Page 37108 at those?
2	contention, I said that yesterday, it's not in arming up,	2	MS LE ROUX: If we could now return to my
3	it's in smarting up but you can expect your police to	3	cross-examination, you've observed annexure V2 which is
4	differentiate the approaches but the means that are	4	around the movement of strikers and you've seen the
5	available on the market are generally marketed under	5	animation that is V2A. In your statement – Chair, just for
6	euphemisms of less lethal technologies. All of them, every	6	the record it's FFF11A page 18, paragraph 33, there you
7	single one of them has multiple attested cases that they do	7	refer to the strikers repeatedly approaching the barbed
8	produce injury and death. So there is –	8	wire line and trying to breach or skirt it. Having seen
9	MS LE ROUX: Mr De Rover –	9	annexure V2, the video, and V2A the animation which
10	CHAIRPERSON: What you're suggesting –	10	indicates the position of the lead group at all times, do
11	MS LE ROUX: Mr De Rover –	11	those presentations accord with what you were told by the
12	CHAIRPERSON: Sorry, what you're	12	SAPS about the movement of strikers?
13	suggesting, we get a decibel counter and then we do	13	MR DE ROVER: Again what I was told by
14	something to simulate sound at –	14	SAPS and at the time I wrote that, that's before the 8th of
15	MR DE ROVER: Well, if –	15	March 2013, I had been shown exhibit L, that does contain
16	CHAIRPERSON: - at the relevant decibel	16	SAPS version of photographs that purport to show that they
17	reading.	17	were approaching the line. If we can hold, and I've heard
18	MR DE ROVER: I know that the contentions	18	the reservations yesterday to the videos, I have no beef
19	about the cease fire shouts, I think they are important	19	with that. What I see does not support that. So if it can
20	because you'd expect that one command of cease fire would	20	be held that your presentation is correct, then my
21	be enough for that fire to cease. Now –	21	statement on that point is incorrect.
22	MS LE ROUX: Mr De Rover, you accept that	22	MS LE ROUX: Mr De Rover, turning then to
23	there are several cease fire calls which are indicated by	23	the question of water cannons, you'll accept of course that
24	gesture, though, so –	24	water cannons are an important part of the less than lethal
25	MR DE ROVER: Ja, but are people looking	25	equipment that's available to police in crowd situations.
1	Page 37109	1	Page 37110
1	You will agree with that.	1	problem then because I referred in that response to a
2	You will agree with that. MR DE ROVER: Given that they are one of	2	problem then because I referred in that response to a number of statements. Again, I don't make these things up.
2 3	You will agree with that. MR DE ROVER: Given that they are one of two means that I would qualify as mostly non-lethal, yes.		problem then because I referred in that response to a number of statements. Again, I don't make these things up. I base myself on at least an auditable information that
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2 3 4 5 6 7 8	You will agree with that. MR DE ROVER: Given that they are one of two means that I would qualify as mostly non-lethal, yes. MS LE ROUX: And now you've seen the video presentation V3 which deals with the use of water canon on the 16th of August, does that presentation change the statement you've made about the use of water canon at	2 3 4 5 6 7 8	problem then because I referred in that response to a number of statements. Again, I don't make these things up. I base myself on at least an auditable information that people make statements, the crew of that water cannon, so I base myself on that. Clearly from what you have compiled, if we can trust that, what they say did not happen or if it happened they may actually be referring to another time
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		I	
	Page 37111		Page 37112
1	people that made that claim in that reply, that you get	1	MS LE ROUX: It's a statement by Warrant
2	them to verify now.	2	Officer Fourie –
3	[10:57] MS LE ROUX: Mr De Rover, we'll obviously	3	MR DE ROVER: No, I haven't seen that –
4	contend that those statements are false in light of the	4	MS LE ROUX: - who describes the two-hour
5	objective evidence that shows how the water cannon was not	5	crash course he gave Kruger and Dicks and that's all the
6	used on the lead group of strikers. You also in your	6	training they've had.
7	interrogatory response to CALS indicated that you had been	7	MR DE ROVER: Well, they in their
8	informed that the water cannon operators were properly	8	statements only refer to the fact that their training was a
9	trained. Have you been aware of the statement of Warrant	9	year ago and I think in another statement someone qualifies
10	Officer Fourie – Chair, it's HHH37 – where he sets out what	10	that they did receive the operator training but not the
11	he calls a two-hour crash course that Officers –	11	training on how to operate the video system.
12	CHAIRPERSON: Perhaps we could have it on	12	MS LE ROUX: Warrant Officer Kruger and
13	the screen.	13	Dicks also acknowledge their training was what they call
14	MS LE ROUX: We can, Chair. I'm just	14 15	"very limited." MR DE ROVER: Ja.
15	conscious of time. The phrase they used was "two-hour	15	
16 17	crash course that Warrant Officers Kruger and Dicks went through. It was not an official course and they would need	16 17	MS LE ROUX: Ja. Are you aware of the evidence that Warrant Officers Kruger and Dicks were not
17	to get proper training but that never took place." If you	17	expecting to have to operate the water cannot and they did
19	accept that that evidence is true, all that Kruger and	19	not receive any briefing in advance of the commencement of
20	Dicks have had is a two-hour crash course, not an official	20	the operation? Are you aware of that evidence?
21	programme, would you revise your opinion that the water	20	MR DE ROVER: It's part of their
22	cannon operators were properly trained?	22	statements, I think, where they say that it was actually
23	MR DE ROVER: The statements I saw from	23	the crew of the other cannon that told them what would be
24	Kruger and Dicks do not contain that qualification, so I've	24	expected of them.
25	obviously seen earlier versions of that. You –	25	MS LE ROUX: Yes, and you have no
	, ,		
	Page 37113		Page 37114
1	evidence to the contrary as to their preparedness to	1	then surely you can't say that teargas and stun grenades
2	evidence to the contrary as to their preparedness to participate in the operation?	2	then surely you can't say that teargas and stun grenades were ineffective against that group of strikers because
	evidence to the contrary as to their preparedness to participate in the operation? MR DE ROVER: No.	2 3	then surely you can't say that teargas and stun grenades were ineffective against that group of strikers because they had the intended effect, the strikers moved away from
2 3 4	evidence to the contrary as to their preparedness to participate in the operation? MR DE ROVER: No. MS LE ROUX: So if the evidence is	2 3 4	then surely you can't say that teargas and stun grenades were ineffective against that group of strikers because they had the intended effect, the strikers moved away from the teargas and the stun grenades that were used against
2 3 4 5	evidence to the contrary as to their preparedness to participate in the operation? MR DE ROVER: No. MS LE ROUX: So if the evidence is accepted by the Commission that the Johannesburg water	2 3 4 5	then surely you can't say that teargas and stun grenades were ineffective against that group of strikers because they had the intended effect, the strikers moved away from the teargas and the stun grenades that were used against them. Would you accept that?
2 3 4 5 6	evidence to the contrary as to their preparedness to participate in the operation? MR DE ROVER: No. MS LE ROUX: So if the evidence is accepted by the Commission that the Johannesburg water cannon operators were not properly trained, first, second	2 3 4 5 6	then surely you can't say that teargas and stun grenades were ineffective against that group of strikers because they had the intended effect, the strikers moved away from the teargas and the stun grenades that were used against them. Would you accept that? MR DE ROVER: I think it's important to
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		1	
	Page 37115		Page 37116
1	If, there was one brief aerial shot where that group is	1	or stun grenade is for a protester to move away from the
2	still I think seconds before they made the second turn that	2	teargas and the stun grenade, correct? That's the expected
3	puts them on an inverse course on the one that they	3	response of someone when they have teargas or stun grenades
4	actually were walking on, so in that shot you see many	4	used near them, it's to move away from those.
5	people actually walking away to the north and that's the	5	MR DE ROVER: Well, it depends on two
6	part that looking at it I see the two differences and I	6	factors. It depends on a possibility to move away and it
7	don't understand it. So, and I just have to leave that for	7	depends on the intention of the use. Specifically with
8	what it is.	8	teargas you're obviously dependent on wind direction
9	But I do see that the exercise of trying to	9	because if on that day a stiff breeze had been blowing
10	isolate the commanders, because I'd like to know, because	10	towards the north it would have been quite difficult to
11	the use of the teargas and the stun grenades is still	11	effectively use teargas unless you deploy it on the other
12	supposed to be subject to someone giving that order. So	12	side.
13	someone gave that order. It would be important now with	13	Now I think, and that's why I put that slide up
14	this material to try and isolate who did, especially if you	14	before; I think that SAPS' use of teargas and stun grenades
15	put, your contention is that it causes them to move towards	15	is more aimed at maintaining that separation between police
16	the police line in fact, or it forces them in that	16	and protesters, and I see much more, like knowing that and
17	direction. I would still ask why they didn't simply turn	17	knowing that preference from speaking to them, that I see
18	around and do what the rest of the crowd did and walk in	18	the use of that teargas and those stun grenades there as
19	the opposite direction. So there is a manifest difference	19	POP members trying to have that safety barrier between them
20	in the intended direction of that group and what a lot of	20	and the demonstrators. I don't think, because physically
21	other people are doing. But that's what I'm seeing	21	it would have been impossible for the strikers to move
22	yesterday, and what I'm saying now I'm saying off the cuff	22	further away because that would have only been possible if
23	on just watching that.	23	the kraal hadn't been there, they could have moved towards
24	MS LE ROUX: But let me break this down	24	a westerly direction.
25	then. The expected response to the deployment of teargas	25	So I think that I read the action, and again I'm
	Page 37117		Page 37118
1	Page 37117 saying this with respect that I've only seen that footage	1	Page 37118 MS LE ROUX: Hence my question. Are you
1 2	6	1 2	5
	saying this with respect that I've only seen that footage		MS LE ROUX: Hence my question. Are you
2	saying this with respect that I've only seen that footage yesterday, I'm looking and considering that now. I haven't	2	MS LE ROUX: Hence my question. Are you aware of any other handguns, any other guns being used by
2 3	saying this with respect that I've only seen that footage yesterday, I'm looking and considering that now. I haven't spoken to anyone about it. I can only read it as an intent	2 3	MS LE ROUX: Hence my question. Are you aware of any other handguns, any other guns being used by that group?
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1         were there and asking them, and those two combined, and again like knows your preferences is with the first one space is the two your preference is with the first one share is the what can be proven, and that you want to accept and table evens, but on because of the size of that is problematic.         Image: MRC E FOVER: Ves, but the problem with the cartridges is that even when I went there on the 26th of and table evens, but on because of the size of that is problematic.           8         For a to problematic.         Image: March I kicked up a cartridge in the same. So thow that the evidence collection at the size hearcurs of the size on problematic.           9         For a problematic.         Image: March I kicked up a cartridge in the same. So the size on the one of thos forearms had a 1 that is and the polices contenion, the way in the information for your contenion.           9         Prostend II to me is that one of thos firearms had a 1 ult magarine. Hey hard counds reads any open.         Image: March I kicked up a cartridge care is 0 and the isone and the polices contenion, the way isone 1 ult magarine. So the size of police a size and 1. I don't hir at the cartridge cares 1 were used, or whether they ware used or whether size 1 were used, or whether they ware used or whether size 1 were used, or whether they ware used or whether size 1 were used, or whether they ware used or whether size 1 were used, or whether they ware used or whether size 1 were used, or whether they ware size at size and 1 wheth there is no find and there was origo on 1 market there find and there was origo on 1 market there find and there was origo on 1 market the origo fract mark size 1 were used, or whether they ware size of market size 1 market the origo fract mark size 1 maratice to that the origo fract mark size 1 were used, or the size		Page 37119		Page 37120
<ul> <li>a) Intal what can be proven, and that you want to accept someore's testimony if it can be underpinned by such auditable evidence, but not necessarily on and of its own.</li> <li>b) The such that the be underpinned by such auditable evidence, but not necessarily on and of its own.</li> <li>b) The such that the be underpinned by such auditable evidence, but not necessarily on and of its own.</li> <li>c) that is problematic.</li> <li>c) I have that the such that the auditable evidence, but not necessarily on and of its own.</li> <li>d) that there ware other firearms there 1 think is a demonstrated by the fact that multiple firearms were stated at that score and the police's contention. The way they in presented it to me is that none of these firearms had a live said that to them, that the fact that rounds are invising doesn't necessarily say anything about when they inveg user, whether they were used or whether someone is wideline which has some value, but its rather limited instructed that three firearms were scied on what I we seen and hear olice solice on a size stay open.</li> <li>d) Min SEE FOUK: Mr De Rower, nawy opu been instructed that the grant and there is of course the instructed that the grant size firearms were scied and the only carridge that was find of the forearts were used or whether instructed that three firearms were scied on the footage? Were is work user is the courd course the is a windlement whether were there.</li> <li>MR DE ROVER: And there is of course the is different solit.</li> <li>MR DE ROVER: And there is of course the is different solit.</li> <li>MR DE ROVER: Jak</li> <li>MR DE ROVER: Jak</li> <li>MR DE ROVER: And there is of course the is different solit.</li> <li>MR DE ROVER: Jak</li> <li>MR DE ROVER: Jak</li></ul>	1	•	1	
4         March 1 Ecked up a cartridge in the sand. So I know that           5         auditable evidence, but not necessarily on and of Its own.         5           6         So That's problematic.         5           7         So my contention would still remain that the         5           8         possibility that there were other firearms there 1 think is         6           9         additable evidence, calculation at the scene back of the size and the scene back of the size and the scene and the police's contention, the way they         7           10         attat scene and the police's contention, the way they         10         CHAIRPERSON:         1 that is one scene and the scene back of the size and the scene covered to say           11         presented it to mes that fine or othors are size and the to themather of shots fired by the         10         in size of to what the put to you, isn't if'           15         were found, were they? And the same applice as is found         16         in regard to the number of shots they of the size as and the scene back of the size as and the scene back of the size as and the scene scene and the put the size as a scene 2.           16         were found, were the? And the same applice as scene and the scene back of the size as a scene 2.         10         MR SEROVES:         And the scene and the scene back of the size as a scene and the scene back of the size as a scene and the scene back	2	again like I know your preference is with the first one,	2	MR DE ROVER: Yes, but the problem with
5       auditable evidence, but not necessarily on and of its own.       5       the evidence collection at the scene because of the size         6       bo that is problematic.       5       the evidence collection at the scene because of the size         7       Sorry contention would still remain that the scene and the police's contention, the way they is demonstrated by the fact that multiple firearms were sized       10       think of General Natdoox sue of the firearm at scene 2, and yone of his cartridges of the two shots he claims to any one of his cartridges of the two shots fired by the strikes.         10       at that scene and the police's contention, the way they is a difficult to me is that none of those firearms were sized at that only one cartridge cases.       10       Dave fire firearm at scene 2, and they is correct to say the this scene case.         11       the max scene and the police's contention, the way they is any shy dind thave more than five rounds for a eight-round magnet.       10       CHAIRPERSON: I think at the cartridge case is found is scene 2, on whether show yere used or whether some one firearms is to scene 1, and think at the cartridge case is found is scene 2.       11	3	that what can be proven, and that you want to accept	3	the cartridges is that even when I went there on the 26th of
6       So that is problematic.       6       has been problematic. So I know that for example of, I         7       So my contention would still remain that the possibility that there were other filtearms there I think is       only one of his cartifiqes of the two shots he claims to have fired has been recovered.         10       at that scene and the police's contention, the way they the result to to men, that the fact that rounds are missing deent necessarily say anything about when they the were used, or whether they were used or whether somo are eight-round in simpli dirich thave more than fiber rounds for a eight-round in what tree so that or police that more of theore fiber and they owas and heard I can tagree 100% with you that the two was only one shift fired and there was only one fired and there was only one fired and there was only one shift fired and there was only one shift fired and there was only one fired and there was only one shift fired and there was only one fired and there was only one fired and there was bale. You that the stifters. The one was see in the world was there were two sources of information for you from the shift the stifters.         1       MR DE ROVER: And there is of course the fired may there with the stifters.       NM SLE ROUX: And then the exhibit that Mir early a stifter was bale. You was salexity were were that. You also sale you spect that stifters.         1       MR DE ROVER: I al.       MS DE ROUX: And then the exhibit that Mir early on the stifters.       MS DE ROUX: And then the exhibit that Mir early on the stifters.       Mas DE ROUX: No all diard in there do you in thif is only carring byou had it was town were that	4	someone's testimony if it can be underpinned by such	4	March I kicked up a cartridge in the sand. So I know that
7       So my contention would still remain that the       7       think of General Naidoo's use of the firearm at scene 2,         8       possibility that there were other firearms there 1 think is       6         10       of that scene and the polic's contention, the way they       9         11       prostend it to me is that none of those firearms had a       10       11         12       that scene and the polic's contention, the way they       10       CHAIRPERSON: I think it for correct to say         13       twe said that to them, that the fact that rounds are       13       were sold, or whether they were used or whether someone         14       missing descrit necessarily say anything about when they       14       is evidence which has some value, but it's rather limited         15       wind that no more than five rounds for a cight-round       16       is regrad to what I've put to you, limit I?         17       MR SEROVX: Mr De Rover, have you been       16       in regrad to what I've put to you, limit I?         18       the only cariting that was solf rearms steized at scene 1 and       16       is evidence which has some value, but it's rather limited         19       there was only one shoft fired and there was only one       17       MR SEROVX: So Mr De Rover, you said         21       is the rous cariting that was solf rearms steized, only ono       25       MS I'rearms the rearm	5	auditable evidence, but not necessarily on and of its own.	5	the evidence collection at the scene because of the size
8         possibility that there were other firearms were selects         8         and that score and the polices contention, the way they           11         presented it to me is that none of those firearms were selects         11         that if access contention, the way they           12         tult magazine. It hey had rounds missing. The thing is, and         12         11         that if accessarily say anything about when they           16         simply didn't have more than five rounds for a eight-round         14         score 1. S on the fact that round are           16         simply didn't have more than five rounds for a eight-round         16         is regrand to the same applies of course to           17         magazine. So these other options also stay open. So on         17         MR SEMEIVN SC: And there in the for ant agree 100% with you that           10         that there may be strikers. The one         14         Ster ROUX: So Mr De Rover, you said           11         there are after self-cound         34         Ster ROUX: So Mr De Rover, you said           11         there is dissimilar to the one we see on the addition of a 9 millimeter, which         35         SAPS about the usage of firearms by the strikers. The one           12         MR DE ROVER: And there is of course the         34         SaPS about the usage of firearms by 1PBU. So there was a signer addition of you gate addit the way in danger addition the way indig addition the way indig	6	So that is problematic.	6	has been problematic. So I know that for example of, I
9       demonstrated by the fact that multiple firearms ware selzed       9       have fired has been recovered.         10       at that scene and the polices contention, the way they presented it to me is that noe of those firearms had and it to me is that noe of those firearms had and it was adult to them, that the fact that rounds are single of course to its were found, were they? And the same applies of course to its sevidence which has some value, built is rather limited         11       wesld that to them, that the fact that rounds are single of our to you, isn't it?         12       were used, or whether they were used or whether someone         13       ive said that only one catridge cases is found         14       simply didn't have more than five rounds for a eight-round       issevidence which has some value, built is rather limited         15       were used, or whether they were used or whether someone       is evidence which has some value, built is rather limited         16       integration one is the fired and there was only one       17       MR SERMENYA SC:       And Charl Tirl may for         12       Instructed that throe firearms setzed, only one       18       Were fired?       18       18         13       Integrating that was found is a 9 millimetre, which at the sectified on the footage? Were is dissimilar to the one secon the output of the solations at mark way and the second course is solation.       18       18       18       12       10       10       24       24 </td <td>7</td> <td>So my contention would still remain that the</td> <td>7</td> <td>think of General Naidoo's use of the firearm at scene 2,</td>	7	So my contention would still remain that the	7	think of General Naidoo's use of the firearm at scene 2,
10       at that scene and the police's contention, the way they         11       presented it to me is that none of those firearms had a full magarine, they had rounds missing. The thing is, and         12       full magarine, they had rounds missing. The thing is, and         13       ive said that to them, that the fact that rounds are         14       missing desrrt necessarily say arything about when they         15       were feed, or whether they were used or whether someonic         16       simply didn't have more than five rounds for a cight-round         17       magarine. So these other options also stay open. So on         18       were feed, and there was only one shot fired and there was only one         19       there was only one shot fired and there was only one         20       firearm.         21       MS LE ROUX:       Mr De Rover, have you been         23       the only cartridge that was found is a 9 millimetre, which         24       would match the gun that we see fired on the footage?         25       Video.       21         26       MR DE ROVER:       And there is of course the         27       MR DE ROVER:       And there is of course the         28       MR DE ROVER:       And there is of course the         29       Were fired?       MR DE ROVER:       And there i	8	possibility that there were other firearms there I think is	8	only one of his cartridges of the two shots he claims to
11       presented it to me is that none of those firearms had a       11       that if one has regard to the number of shots fired by the         12       full magazine, they had rounds missing. The thing is, and       11       that if one has regard to the number of shots fired by the         14       Ives said that to them, that the fact that rounds are       11       that if one has regard to the number of shots fired by the         14       missing doesn't necessarily say anything about when they       12       source lound, were they? And the same applies of course to to         15       were used, or whether they were used or whether source       14       is evidence which has some value, built is rather limited         16       instructed that thas more flam for a eightround       16       in regard to what i ve put to you. Ism If?         16       ther great only one shot fired and there was only one       16       in fortacted that the me mere second to the tost second point to statement KK23, the description of the         14       the only cartridge that was found is a 9 millimetre, which       21       MS LE ROUX:       No ID Rover, you asid         21       MR DE ROVER: And there is of course the       22       SAPS about the usage of firearms by the strikers. The one         22       was what was selzed: we've covered that. You also said you       23       MR DE ROVER: Ja.       24         24       MR DE ROVER: Ja.	9	demonstrated by the fact that multiple firearms were seized	9	have fired has been recovered.
12       full magazine, they had rounds missing. The thing is, and       12       police at scene 1, I don't think all the cartridge cases is found         13       I've said that to them, that the fact that rounds are       is were found, were they? And thes same applies of course to         14       missing doesn't necessarily say anything about when they       is evidence which has some value, but it's rather limited         15       simply didn't have more than five rounds for a eight-round       is evidence which has some value, but it's rather limited         16       simply didn't have more than five rounds for a eight-round       is evidence which has some value, but it's rather limited         16       instructed that the fore options also stay open. So on       int erecord point to statement KKK23, the description of the         16       instructed that three firearms were selzed at scene 1 and       ith cony carring the was fund is a space on the footage?         16       is evidence which has some value, but it's rather limited.       is evidence which was usage of firearms by the strikers. The one         16       is evidence which the sum that were selzed at scene 1 and       is evidence which was usage of firearms by the strikers. The one         16       MR DE ROVER: And there is of course the       is were fired?       is were fired?         17       MR DE ROVER: And there is of course the       is were fired?       is were fired?         18       MR DE	10	at that scene and the police's contention, the way they	10	CHAIRPERSON: I think it's correct to say
13       Ive said that to them, that the fact that rounds are       13       were found, were thely? And the same applies of course to         14       missing doesn't necessarily say anything about when they       scene 2. So the fact that only one cartridge case is found         15       simply didn't have more than five rounds for a eight-round       is       is         16       simply didn't have more than five rounds for a eight-round       in regard to what I've put to you, isn't it?         17       magazine. So these other options also stay open. So on       in regard to what I've put to you, isn't it?         18       where found, were they? And thes some value, but it's rather limited         19       intervas only one shot fired and there was only one       in regard to what I've put to you, isn't it?         10       intervas only one shot fired and there was only one       in fired there is dissimilar to the one we see on the         21       MS LE ROUX: Mr De Rover, have you been       in MS LE ROUX: So Mr De Rover, you asid         23       the only cartridge that was found is a 9 millimetre, which       SAPS about the usage of firearms by the strikers. The one         24       MR DE ROVER: And there is of course the       saw shat was selezed, we've covered that. You also said you         25       MR DE ROVER: Ja.       MR DE ROVER: Ja.       most fired?         2       MR DE ROVER: Ja.       MR DE ROVER: Ja. <td>11</td> <td>presented it to me is that none of those firearms had a</td> <td>11</td> <td>that if one has regard to the number of shots fired by the</td>	11	presented it to me is that none of those firearms had a	11	that if one has regard to the number of shots fired by the
14       missing doesn't necessarily say anything about when they         15       were used, or whether they were used or whether someone         16       simply didn't have more than five rounds for a cipht-round         17       magazine. So these other options also stay open. So on         18       what I've seen and heard I cant agree 100% with you that         19       there was only one shot fired and there was only one         20       firearm.         21       MS LE ROUX: Mr De Rover, have you been         22       instructed that three firearms were seized at scene 1 and         23       the only cartridge that was found is a 9 millimetre, which         24       would match the gun that we see fired on the footage? Were         25       would match the gun that we see fired on the footage? Were         26       MR DE ROVER: And there is of course the         2       schibit of the ballistics –         3       MS LE ROUX: And hen the exhibit that Mr         4       Semenya has just mentioned.         5       MS LE ROUX: Apologies, Chair, I'm just         10       accommodate it. 1 just said to may conversation with the         6       MS LE ROUX: Apologies, Chair, I'm just         11       trying to accommodate your conversation with the struct that in ourod's what muste be an incredible emotional <td>12</td> <td>full magazine, they had rounds missing. The thing is, and</td> <td>12</td> <td>police at scene 1, I don't think all the cartridge cases</td>	12	full magazine, they had rounds missing. The thing is, and	12	police at scene 1, I don't think all the cartridge cases
15       were used, or whether they were used or whether someone       15       is evidence which has some value, but it's rather limited         16       simply didn't have more than five rounds for a eight-round       16       in regard to what I've put to you, isn't it?         17       magazine. So these other options also stay open. So on       18       MR SEERNYA SC: And Chair, if I may for         18       what I've seen and heard I cart agree 100% with you that       16       in regard to what I've put to you, isn't it?         19       there was only one shot fired and there was only one       17       MR SEEROUX: So Mr De Rover, you said         21       instructed that three firearms were seized at scene 1 and       20       video.         22       instructed that we so fired on the footage?       20       SAPS about the usage of firearms by the strikers. The one         23       would match the gun that we sce fired on the footage?       20       SAPS about the usage of firearms by the strikers. The one         2       MR DE ROVER: And there is of course the       would mash yus mentioned.       2       1       were fired?       2         2       MR DE ROVER: Ja.       A       1       were fired?       1       were fired?       2         3       MS DE ROVER: Ja.       A       1       were fired?       1       were fired? <t< td=""><td>13</td><td>I've said that to them, that the fact that rounds are</td><td>13</td><td>were found, were they? And the same applies of course to</td></t<>	13	I've said that to them, that the fact that rounds are	13	were found, were they? And the same applies of course to
16       simply didn't have more than five rounds for a eight-round       16       in regard to what I've put to you, isn't if?         17       magazine. So these other options also stay open. So on       16       in regard to what I've put to you, isn't if?         18       what I've seen and heard I can't agree 100% with you that       16       in regard to what I've put to you, isn't if?         18       what I've seen and heard I can't agree 100% with you that       16       in regard to what I've put to you, isn't if?         19       shot fired there is dissimilar to the one we see on the       10       shot fired there is dissimilar to the one we see on the         20       instructed that three firerams were select at scene 1 and       14       the only cartridge that was found is a 9 millimetre, which       21       MS LE ROUX: So Mr De Rover, you said         21       MR DE ROVER: And there is of course the       24       was what was selzed: we've covered that. You also said you         25       Semenya has just mentioned.       5       MR DE ROVER: Ja.       Page 37122         1       MR DE ROVER: Ja.       And then the exhibit that Mr       Semenya has just mentioned.       5         26       MR DE ROVER: Ja.       And then the exhibit that Mr       5       Garard retirecince to be specific with me on detail. I've,         3       greenar etitecence to ew statements that I read of people that s	14	missing doesn't necessarily say anything about when they	14	scene 2. So the fact that only one cartridge case is found
17       magazine. So these other options also stay open. So on       17       MR SEMENYA SC: And Chair, if I may for         18       what I ve seen and heard I can't agree 100% with you that       16       the record point to statement KKX23, the description of the         20       firearms.       with Differed and there was only one       10       with reverse was only one shot fired and there was only one         21       MS LE ROUX:       Mr De Rover, have you been       20       video.         22       instructed that three firearms were selzed at scene 1 and       20       Video.         23       would match the gun that was found is a 9 millimetre, which       30 SAPS about the usage of firearms by the strikers. The one         24       would match the gun that we see fired on the footage? Were       24       was what was selzed; we've covered that. You also said you         25       spoke to members that were there.       24       MR DE ROVER: And there is of course the       24         4       semenya has just mentioned.       5       general relicence to be specific with me on detail. I've,         4       trying to accommodate your conversation with the       2       MR DE ROVER: And thene the schibit that Mr       3       general relicence to be specific with me on detail. I've,         16       trying to accommodate iyour conversation with the       14       have been given warning sta	15	were used, or whether they were used or whether someone	15	is evidence which has some value, but it's rather limited
17       magazine. So these other options also stay open. So on       17       MR SEMENYA SC: And Chair, if I may for         18       what I ve seen and heard I can't agree 100% with you that       16       the record point to statement KKX23, the description of the         20       firearms.       with Differed and there was only one       10       with reverse was only one shot fired and there was only one         21       MS LE ROUX:       Mr De Rover, have you been       20       video.         22       instructed that three firearms were selzed at scene 1 and       20       Video.         23       would match the gun that was found is a 9 millimetre, which       30 SAPS about the usage of firearms by the strikers. The one         24       would match the gun that we see fired on the footage? Were       24       was what was selzed; we've covered that. You also said you         25       spoke to members that were there.       24       MR DE ROVER: And there is of course the       24         4       semenya has just mentioned.       5       general relicence to be specific with me on detail. I've,         4       trying to accommodate your conversation with the       2       MR DE ROVER: And thene the schibit that Mr       3       general relicence to be specific with me on detail. I've,         16       trying to accommodate iyour conversation with the       14       have been given warning sta	16	simply didn't have more than five rounds for a eight-round	16	in regard to what I've put to you, isn't it?
18       what I ve seen and heard I can't agree 100% with you that         19       there was only one shot fired and there was only one         20       firearm.         21       MS LE ROUX:       Mr De Rover, have you been         22       instructed that three firearms were seized at scene 1 and       18       the record point to statement KKK23, the description of the         22       instructed that three firearms were seized at scene 1 and       19       shot fired there is dissimilar to the one we see on the         23       the only cartridge that was found is a 9 millimetre, which       20       was what was seized; we've covered that. You also said you         24       would match the gun that we see fired on the footage?       Were       24       was what was seized; we've covered that. You also said you         25       you told those two facts; three firearms seized, only one       24       was what was seized; we've covered that. You also said you         26       exhibit of the ballistics -       Page 37121       Page 37122         3       MS LE ROUX: And then the exhibit that Mr       3       gronelar with the sittation that very early on SAPS members         4       have been given warning statements by IPID. So there was a       general reticence to be specific with me on detail. Ive,         6       MS LE ROUX: And then the exhibit that Mr       3       general reticence to	17		17	
19       there was only one shot fired and there was only one       19       shot fired there is dissimilar to the one we see on the         20       firearm.       20       video.         21       MS LE ROUX: Mr De Rover, have you been       21       MS LE ROUX: So Mr De Rover, you said         22       instructed that three firearms were seized at scene 1 and       21       MS LE ROUX: So Mr De Rover, you form the         24       would match the gun that we see fired on the footage? Were       22       that there were two sources of information for you from the         25       you told those two facts; three firearms seized, only one       22       sa Wash was seized; we've covered that. You also said you         26       exhibit of the ballistics –       Page 37122         1       MR DE ROVER: And then the exhibit that Mr       3       MS LE ROUX: And then the exhibit that Mr       3         4       Semenya has just mentioned.       5       MR DE ROVER: Ja.       6       there are a few statements that I read of people that said         7       trying to accommodate your conversation with the       3       ventured that if you try to present and convince a third         9       CHAIRPERSON:       I didn't intendy you to       6       there are a few statements that I read of people that said         10       accommodate it. 1 just said to my colleague – 1 may as	18		18	-
20       firearm.       20       video.         21       MS LE ROUX:       Mr De Rover, have you been       21       MS LE ROUX:       So Mr De Rover, you said         22       instructed that three firearms were selzed at scene 1 and       22       that there were two sources of information for you from the         24       would match the gun that we see fired on the footage? Were       24       that there were two sources of information for you afrom the         25       you told those two facts: three firearms seized, only one       24       was what was seized; we ve covered that. You also said you         25       would match the gun that we see fired on the footage? Were       24       was what was seized; we ve covered that. You also said you         26       exhibit of the ballistics -       1       were fired?       2         2       exhibit of the ballistics -       3       MS LE ROUX: And then the exhibit that Mr       3         3       MS LE ROUX: Apologies, Chair, I'm just       trying to accommodate your conversation with the       3       general reticence to be specific with me on detail. I've,         6       MS LE ROUX: Apologies, Chair, I'm just       they fired and they thought their life was in danger and I       ventured that if you try to present and convince a third         9       CHAIRPERSON: I didn't intend you to       accommodate in the polic knew that the struatere <td>19</td> <td></td> <td>19</td> <td>shot fired there is dissimilar to the one we see on the</td>	19		19	shot fired there is dissimilar to the one we see on the
22       instructed that three firearms were selzed at scene 1 and       22       instructed that three firearms were selzed at scene 1 and       22       instructed that three firearms were selzed at scene 1 and       22       instructed that three firearms by the strikers. The one         24       would match the gun that we see fired on the footage? Were you told those two facts; three firearms selzed, only one       22       that there were two sources of information for you from the         25       you told those two facts; three firearms selzed, only one       24       was what was selzed; we've covered that. You also said you         26       was that was selzed; we've covered that. You also said you       25       spoke to members that were there.         21       MR DE ROVER: And there is of course the       24       MR DE ROVER: I have a professional       3         3       MS LE ROUX: And then the exhibit that Mr       Semenya has just mentioned.       5       MR DE ROVER: Ja.       6       there are a few statements that I read of people that said       1       1       they fired and they thought their life was in danger and I       2       wentured that if you try to present and convince a third       9       person of imminent threat to life or serious injury, you       10       10       try to put into words what must be an incredible emotional       1       eventured that if you try to present and convince a third       9       person of imminent threat to life or serious injury, you	20		20	
<ul> <li>22 instructed that three firearms were seized at scene 1 and 23 the only cartridge that was found is a 9 millimetre, which 24 would match the gun that we see fired on the footage? Were 25 you told those two facts; three firearms seized, only one</li> <li>22 that there were two sources of information for you from the 23 SAPS about the usage of firearms by the strikers. The one 24 was what was seized; we've covered that. You also said you 25 spoke to members that were there.</li> <li>21 MR DE ROVER: And there is of course the 22 exhibit of the ballistics –</li> <li>22 mode to members that were there.</li> <li>23 MR DE ROVER: And then the exhibit that Mr 24 Semenya has just mentioned.</li> <li>24 mode accommodate your conversation with the 25 MR DE ROVER: Ja.</li> <li>25 MR DE ROVER: Ja.</li> <li>26 There are a few statements that 1 read of people that said 27 trying to accommodate your conversation with the 28 commissioner.</li> <li>31 Well tell you that – that the police knew that the strikers 21 had firearms and were entitled to factor that in, in their 21 response. But anyway, but firearms obtained in anmongst 21 well tell you what 1 rd said.</li> <li>23 MS LE ROUX: Thank you, Chair.</li> <li>24 MS LE ROUX: Mr De Rover, in any of your 25 of your cross-examination by that.</li> <li>35 MS LE ROUX: Mr De Rover, in any of your 25 of your cross-examination by that.</li> <li>36 MS LE ROUX: Mr De Rover, in any of your 20 interviews with SAPS members did anyone describe in any 21 detail shots being fired from the group? Did anyone 22 explain they saw a striker wearing this at this point, 23 discharging a weapon in this way? Any detail to the – 24 MR DE ROVER: No, and you know –</li> <li>26 MR DE ROVER: No, and you know –</li> </ul>	21	MS LE ROUX: Mr De Rover, have you been	21	MS LE ROUX: So Mr De Rover, you said
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<ul> <li>I off hem you're a suspect of murder now and you are advised to avail yourself of legal support. You are advised to he fact that you do not have to say anything if you do not wish to do so. Now personally 1 think well, if 1 cant really overse the consequences of specific well has a lot of the xyou constabilies that the available were the consequences of specific well has a lot of the veloce you the consequences and ramifications, they dam up, they don't way have the full with the popel for sone 2 necessard a mating to the consequences and ramifications, they dam up, they don't say anything.</li> <li>I cant really were the consequences of specific path, even when 1 tried to angine them.</li> <li>I was not use to say anything.</li> <li>I session 1 heid with the popel for sone 2 necessard a and you meet you. So think the problem is that there to sense nobody was prepared to nanwer, not even a question as to where we you. So think the problem is that there to sense nobody was prepared to angeet of the public official fold that that you put integrity and profesionation af a regranical formal official your can specify that subtained within the popel in that way what are the trip way what are the trip way. What are the trip way what a subtaine which you can specify you must speak.</li> <li>There is a lowners and subtained that subtained with the problem is that there to truth. You're a winters of truth and well itrat you subta and hay you that that the well that subtained and you to that thui unless we can prove that a subtained that you are aptic you are specify you and you're aptic well and thing you can speak.</li> <li>There is a lowners to popels that were there on the ground advise you of your quest to establish what now a subta hat thread that more with that status.</li> <li>Papa official point for your quest to establish what now a load that show the process to state that and that there is that it has the well popole that were there on the ground advise you of your ding bit</li></ul>				-
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1	Page 37127 silence and provides some statement and if you accept my	1	Page 37128 are then subjected to an interview by our equivalent of
2	description of a lot of the warning statements that we have	2	IPID who quiz you on what happened. And what I'm actually
3	before the Commission where they admit to killing, they	3	trying to stress is and I've seen that in may other
4	admit to shooting. But they don't give any of the details	4	countries, there's a close time correlation and requirement
5	of the circumstances that would justify that shooting.	5	between being confronted with the fact that they will treat
6	That officer is then in a very difficult position because	6	you as a suspect and the requirement to then follow up.
7	prima facie they've admitted to potentially killing	7	And here I understand that IPID's backlog runs into years.
8	somebody yet have not taken the opportunity to set out all	8	Now as a matter of international principles I think that is
9	of the detail and the circumstances that justify each and	9	unacceptable because if it's about a theft I can sort of
10	every one of the shots that they fire. You'll agree with	10	understand that your priorities are elsewhere. But if it
11	that proposition.	11	is about the intentional or accidental taking of life or
12	MR DE ROVER: Well I think it underscores	12	occasioning grievous bodily harm those are not cases that
13	the problem that we face because to – it would be up to	13	you can put on the back burner because you have a big
14	IPID then to solicit that detailed statement and I would	14	workload. And I would think that given that this incident
15	expect that to be part of what IPID does. So they've taken	15	triggered a commission of inquiry a logical consequence of
16	it on record, so they've got a start now, they've got a	16	that would be that an instruction would be given to IPID to
17	basic admission of yes I fired my weapon and an answer to	17	give those investigations priority so that it assists the
18	the question did that occasion injury and or death. And	18	Commission in it's findings.
19	that's a start. Initially you would not require more. In	19	COMMISSIONER HEMRAJ: Doesn't your
20	Holland I know that you get that stage then you have 48	20	warning, before taking a warning statement include a
20	hours because there's obviously let's say your moment	20	warning to disclose everything that might be pertinent?
22	induced confusion and stress and trauma of the incident as	22	MR DE ROVER: Well the thing is that and
22	such, so you get your initial encounter with central	22	this is where it differs in Holland. If I've been involved
23	detectives and your warning statement and then you have	23	in a shooting incident I don't get treated like a suspect
24	your 48 hours to compile your statement. But actually you	25	off the bat. Of course there's a judicial process that
20	your 40 hours to complic your statement. Dut actually you	20	on the bat. Of course there is a judicial process that
	Page 37129		Page 37130
1	Page 37129 follows, but you're a police officer, you've sworn an oath	1	Page 37130 recorded that you had not read all of the statements of the
1 2		1 2	5
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		I	
	Page 37131	1	Page 37132
1	give you a footing for a quick scan of any shooting	1	jump, lift, carry and you make them tired and you give them
2	incident and the reason why this morning I said I have the	2	then, still it's a static target and now they're tired and
3	special repertoire's report where Professor Philip Alston	3	they have to shoot. Their results drop dramatically. If
4	was special repertoire and he did a country study on	4	you take 100% of the first score then in the second similar
5	Brazil. I've worked for him in the sense that I advised	5	test they only score about 30%. Now make it more
6	him, but roles without acknowledgement or glory, but you	6	difficult, now it's a moving target and the target is
7	try and assist a special repertoire if you can. Had he's	7	shooting back at you or at least you think the target is
8	used those approaches to make quick analysis, am I looking	8	moving back at you the chances that you actually hit it
9	at something dirty or not. And the second thing that I	9	diminish dramatically because those scenarios are currently
10	think is an important lesson to take is there is, I think,	10	in SAPS not trained. Or actually not many police forces
11	an overestimation of what you think the police can do. And	11	train it. When I worked in Holland we did train it because
12	especially when it comes to use of firearms there is, I	12	we realised and were aware of the figures that when police
13	think, the biggest lesson to draw from those figures and	13	officers get confronted by an armed criminal most of them
14	from the narrative that runs around it is that if an	14	die, 75% in the US die at a distance from zero to seven
15	officer is on his own and he's supposed to fire shots under	15	yards. And that's where they score the worst results when
16	threat on average it's about 50% of those rounds that will	16	they are forced to shoot. And that doesn't make sense
17	find their target. Now that's not meant to explain	17	because that offers you a problem that you could solve
18	shootings, what it's actually meant for is to improve	18	through training. So all I've tried to do with offsetting
19	training. And SAPS trains police officials on a range with	19	the results is to say I know that the number of shots fired
20	a static target, at a set distance where your breathing is	20	is horribly high, but I can show you and there's more
21	normal and where you get, in your own time, the chance to	21	recent examples, that have come out of US from Philadelphia
22	fire at that target. And surely if you can hit it at 15	22	where four police officers fired 138 rounds into a car.
23	metres you can hit it at three. That is the base	23	The mind boggles how that happens and why that happens and
24	contention and it's erroneous because if you put officers	24	how that can ever by justifiable, but I just tried to offer
25	under stress even just by simply asking them to sprint,	25	it as a base to say please don't be distracted by the
	Page 37133		Page 37134
1	Page 37133 number at the onset. Let that not cloud your focus on you	1	Page 37134 realistic circumstances that would match possible threats
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	Page 37135		Dogo 27124
1	to it.	1	Page 37136 concerns because I don't think that SAPS training in
2	MS LE ROUX: But whatever the	2	elements is an adequate reflection of the threats and the
3	explanation, whether it was inadvertent or not you would	3	real circumstances policing every day here puts on police
4	accept that that is reckless.	4	officials. So I think they're poorly prepared. I think
5	MR DE ROVER: I've said yesterday that I	5	that my preference would be that judgment is part of active
6	think that R5 rifles do not belong in public order	6	shooting training so that you create shoot, don't shoot
7	management and if you take away the possibility for them to	7	scenarios and there's very sophisticated ones that have a
8	be used you can't have the reality that you need to deal	8	video wall that even interacts with your voice command.
9	with the consequences. And in a blanket answer automatic	9	[11:37] So you have a suspect with a knife and yo draw
10	rifle fire doesn't have a place in law enforcement, I'm	10	your weapon and you shout at the suspect will drop the
11	sorry.	11	knife and those moments allow an instructor to judge
12	MS LE ROUX: Mr De Rover, you described a	12	student response to more realistic scenarios, and I think
13	moment ago the SAPS firearm training as static target at a	13	if you separate shooting from class room that connection
14	distance, standing still and stressed. Are you aware of	14	isn't necessarily made. Like I can put 20 people in a room
15	whether the SAPS firearm training, in addition to testing	15	here that will recite for you the definition on
16	accuracy, ability to hit the target whether it also tests	16	proportionality in the use of force, but if I put them in a
17	judgment, distinguishing between a threat and a non-threat?	17	scenario where they have to use it I'm not so sure that I
18	Does it have any judgment component to it that you're aware	18	could say with as much confidence that they all will behave
19 20	of? MR DE ROVER: I think that there is	19	in proportion to what confronts them because that is a
20	theory component that police officers go through where	20 21	function of what they are capable of physically and how strong they are mentally and how they judge the requirement
22	obviously that aspect of judgment is taught to them or told	22	of that particular situation and it becomes very much
23	them you know acting in proportionality means nothing if	22	individual.
24	you can't act proportionately when the situation occasions.	24	COMMISSIONER HEMRAJ: Mr De Rover, the
25	So the problem is with operationalisation. What I see	25	removing of one finger from the trigger when you're firing,
	· ·		5 5 55 7 5.
	Page 37137		Page 37138
1	especially an automatic, is a conscious decision. There's	1	safe, single shot, three-round burst, to full automatic.
2	especially an automatic, is a conscious decision. There's some writing about that, isn't there?	2	safe, single shot, three-round burst, to full automatic. So it's virtually impossible, unless you do it
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1	Page 37139 call associative threat perception in scene 2 based on the	1	Page 37140 shooting at and why, and two of them talk about an
2	interactions you've had with members of scene 2? Do you	2	individual darting in and out with a handgun, and we found
3	limit it to scene 1?	3	on the day, but it's useless because on the day where one
4	MR DE ROVER: I see it particularly at	4	of those officers was lying and there was no cover where he
5	scene 1 and I think if you take some of the stills, or if	5	had to go down because he said shots were fired at me, I
6	you would freeze frame on some of the images of yesterday,	6	had to fall down in the grass, and there's a rock in front
7	it's worth to have a look at that and you can see that,	7	of him and it has a strike mark on it that was confirmed is
8	that some people are responding because others are, but I	8	a bullet strike mark, but that's in March 2013. I can't
9	don't necessarily think because they saw a threat	9	say when that strike mark happened, but it sort of then, on
10	themselves, and it's probably also why you get that cascade	10	face value it supports his contention and the ballistic
11	that mounds like a bell curve and then comes back down.	11	experts that were there admitted they missed that one.
12	It's a serious worry because it also, this has to do with	12	They didn't see it because they, their efforts were very
13	experience and exposure to this type of incident and	13	much focussed on recording the shots that had gone in, but
14	scenario and the problem is that now we're talking very	14	not necessarily on identifying the shots that had gone out,
15	dangerous scenarios, how can you train them, and actually	15	and the same happened on the western side where Captain
16	I'd like a reality where you don't need to train those.	16	Kidd is. There's a rock that shows at least six strike
17	MS LE ROUX: Mr De Rover, my question was	17	marks of bullets that were never recorded. Problem is now
18	do you see, do you have a view that there is associative	18	I can't say they happened, they were made on the 16th of
19	threat perception operating at scene 2 as well?	19	August. So it's, but –
20	MR DE ROVER: There is, I think there is,	20	CHAIRPERSON: Can you say which direction
21	especially –	21	they came from?
22	MS LE ROUX: And why do you say that?	22	MR DE ROVER: Sorry?
23	MR DE ROVER: Well, speaking to people on	23	CHAIRPERSON: Can you say which direction
24	the southern side that were brought there by General	24	those strike marks came from?
25	Naidoo, some of the K9 members, I asked them what were you	25	MR DE ROVER: They would have come from
	Page 37141		Page 37142
	0		
1	within the koppie because for where they are placed they	1	MR DE ROVER: Yes.
2	can't have been placed by shots from the police.	2	MR DE ROVER:Yes.CHAIRPERSON:Can we take the adjournment
2 3	can't have been placed by shots from the police. CHAIRPERSON: Ms Le Roux, I'm proposing	2 3	MR DE ROVER: Yes. CHAIRPERSON: Can we take the adjournment now, or do you want to round off the point –
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	Page 37143		Page 37144
1	injury. It doesn't say that if you feel that your	1	actually ascertain what it is they are shooting at, and I
2	colleague is firing at something that poses a threat you	2	see that replicated in law enforcement in instances.
3	just take fire in that same general direction and you take	3	CHAIRPERSON: Yes, I see. Ms Le Roux, is
4	by proxy the threat to life to also –	4	it convenient –
5	CHAIRPERSON: Is it a voluntary act?	5	MS LE ROUX: Yes, Chair.
6	MR DE ROVER: Sorry?	6	CHAIRPERSON: - for us to take the tea
7	CHAIRPERSON: Is it a voluntary act? I	7	adjournment – 15 minutes.
	can understand if my colleague is firing and if the fact	8	[COMMISSION ADJOURNS COMMISSION RESUMES]
8			
9	he's firing makes me involuntarily fire then you wouldn't	9	[12:07] CHAIRPERSON: The Commission resumes.
10	have a conscious act.	10	You're still bound by your oath, Mr De Rover. Ms Le Roux?
11	MR DE ROVER: Well, it's, ja it's more	11	CEES DE ROVER: (s.u.o.)
12	like panic spreads in a crowd. If someone starts to yell	12	CROSS-EXAMINATION BY MS LE ROUX (CONTD.):
13	fire here now others might, you know, when we see smoke	13	Thank you, Chair. Mr De Rover, I do want to just take us
14	might take that up and all of us start to scramble for the	14	back to your suggestion that the V2 video be further
15	door, and it's been compared to that, you know, that there	15	annotated with what we call sort of the commander fields of
16	is a panic reaction, if you will, that all of a sudden now	16	view so that we can see what the commanders could have
17	a police officer is firing, there must be a reason for	17	seen. I just want to confirm that the reason you think
18	that, a rationale, and others, without having properly	18	that will assist us is that it could potentially explain
19	appreciated what that is, do the same thing.	19	why those commanders were mistaken in terms of what they
20	I think it's much more readily visible in armed	20	perceived to be the intentions of the strikers or the
21	combat. There is much more footage available of it too	21	movement of the strikers. Is that what you're trying to
22	where you can see a patrol, one soldier perceives a threat,	22	explain?
23	he's not going to say guys, there's a threat on that side,	23	CHAIRPERSON: Sorry to interrupt you. It
24	he opens up fire and the immediate response of the others	24	could work the other way too, of course. It could indicate
25	is to do in the general direction the same thing until they	25	the opposite. I understand a Nyala will be available, I
		_	· · · · · · · · · · · · · · · · · · ·
	Page 37145		Page 37146
1	Page 37145 think we were told that, weren't we? There will be a Nyala	1	Page 37146 be done. You and I don't have to supervise it, Ms Le Roux.
1 2		1 2	5
	think we were told that, weren't we? There will be a Nyala		be done. You and I don't have to supervise it, Ms Le Roux.
2	think we were told that, weren't we? There will be a Nyala available at the inspection on Monday and, if so, I don't	2	be done. You and I don't have to supervise it, Ms Le Roux. MS LE ROUX: Except, Chair, we may have
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	Page 37147		Page 37148
1	perceived that that was something that shouldn't be allowed	1	to attack the police. I want you to assume that the
2	to happen at Marikana. Did she mention that to you at all?	2	intention of the individuals within that crowd changed
3	MR DE ROVER: Not at all.	3	after they saw the first few of their colleagues begin to
4	CHAIRPERSON: Not at all?	4	fall. Mr X says that's because they realised the muti
5	MR DE ROVER: Not at all.	5	wasn't working and they started to turn to run away but
6	CHAIRPERSON: Didn't mention Mr Malema's	6	just assume the fact that the intention of some of the
7	name at all?	7	individuals in the crowd changes and they turn to run away.
8	MR DE ROVER: No, not at all, Chair.	8	Would you agree with me that if that change of intention
9	This is the first time that I hear that.	9	and the effort to run away is happening where there is a
10	MS LE ROUX: Mr De Rover, I'm not sure if	10	dust cloud and therefore the police are obscured in being
11	you're familiar with the cross-examination by my learned	11	able to see that crowd or what they're doing then it would
12	friend Mr Semenya of Mr White where they dealt with this	12	not be justified to shoot at that moment in time into the
13	question of the dust cloud obscuring the strikers at the	13	dust cloud.
14	kraal.	14	MR DE ROVER: I think you need to make
15	MR DE ROVER: Mm.	15	that part of the investigation because again I can only, I
16	MS LE ROUX: Are you familiar with that?	16	know that you have your national law applying first so
17	MR DE ROVER: Not in detail but I –	17	section 49, I think, of the Criminal Procedure Act –
18	MS LE ROUX: But broadly that that –	18	CHAIRPERSON: [Microphone off, inaudible]
19	MR DE ROVER: I can see where your	19	– applies to arrests, they weren't arrested –
20	question would go, so -	20	MR DE ROVER: But –
21	MS LE ROUX: Right. So I'd like you to	21	CHAIRPERSON: Common law applies here.
22	assume that there are approximately 30 people coming around	22	MR DE ROVER: Okay. So, but –
23	the kraal. I'd like you to assume that according to the	23	CHAIRPERSON: Which is essentially the
24	evidence of Mr X but just assume, regardless of its source,	24	same as international law.
25	that at the time these 30 come around the kraal they intend	25	MR DE ROVER: Okay, but if I take that
	Deg. 27140		
	Page 37149		Page 37150
1	and if I put international legal requirements – there would	1	Page 37150 attack you and you fire a couple of shots and the first few
1 2		1 2	
	and if I put international legal requirements – there would		attack you and you fire a couple of shots and the first few
2	and if I put international legal requirements – there would obviously be an issue with a difficulty to be able to	2	attack you and you fire a couple of shots and the first few people fall, are you now – I mustn't ask you a legal
2 3	and if I put international legal requirements – there would obviously be an issue with a difficulty to be able to identify that threat. So I hear what you are saying and	2 3	attack you and you fire a couple of shots and the first few people fall, are you now – I mustn't ask you a legal question but would it not be appropriate for a reasonable
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		I	
1	Page 37151 won't have another chance, that would be one thing but if	1	Page 37152 CHAIRPERSON: The visible falling of the
2	they're sufficiently far away for you to stop to see	2	front line or some of the people in the front line and the
3	whether the first, the falling of the first lot has had any	3	end of the firing.
	influence on the rest, then I take it you'd be obliged to	4	MR DE ROVER: Ja.
4		4 5	CHAIRPERSON: And it obviously –
5	hold fire for a moment at least to see what impact that has	6	MS LE ROUX: Chair, my recollection is
6	had on those following. Would that be right? MR DE ROVER: The problem is, Chair, that	7	that the dust cloud is obscuring strikers about four
7	if I take the worst possible to be true, that it in fact	8	seconds into the volley. That's my recollection.
8		9	
9 10	lasted for 12 seconds, then there was only those 12	9 10	CHAIRPERSON: Anyway, we can look at it but the point is, my recollection, which may be faulty, was
10	seconds. The contention I, at least until yesterday	10	you can see people in the front line falling and –
12	afternoon, is that it was actually only eight and that whilst I agree with that principle it is again, can you	12	MS LE ROUX: That's in the first four
12		12	seconds, because it's by four seconds -
	make it practicable? Can you actually then apply it in	13	CHAIRPERSON: That's right, then comes
14	that time frame that was available because it was done and	14	the dust cloud. The dust cloud wouldn't be an excuse if
15 16	finished then essentially, barring that additional shot		the falling of the first line was already visible and not
	that we see fired and that I had no knowledge of until	16 17	obscured by the dust cloud. It's then a question of,
17 18	yesterday. CHAIRPERSON: We might have to see from	18	you've got to take things like reaction time and so on into
19	CHAIRPERSON: We might have to see from the video, the timing of it and so on –	19	account and you can then measure with a stopwatch the time
20	MR DE ROVER: Ja.	20	lag between the visible falling of the first line, the
20	CHAIRPERSON: - what the time lag is	20	front line, and the end of the firing. That's the point.
22	between the falling, the visible falling of the first	22	Mr Semenya?
22	group. I understand the dust cloud came later actually,	22	MR SEMENYA SC: Chair, one of the
23 24	that was my impression.	23	difficulties we had with this video tape and the narrative
24	MR DE ROVER: Ja.	24	is that there are things in the video which are not
20		25	is that there are things in the video which are not
	Page 37153		Page 37154
1	Page 37153 consistent with a theme the narrator wants and it's not	1	Page 37154 shoot if it's a dust cloud? My question is a different
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2	consistent with a theme the narrator wants and it's not mentioned as part of the narrative. Now I'm making this	2	shoot if it's a dust cloud? My question is a different one, should you shoot if before the dust cloud you see the
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	Page 37155		Page 37156
1	that is the question, so the standard is there. I think	1	MR CHASKALSON SC: But I do foresee
2	the standard of necessity is embodied in that. Now the	2	difficulties.
3	question is, can you make it operational in the context	3	CHAIRPERSON: We'll cross that bridge
4	there? Was it, like are they aware of that standard? I'd	4	when we have to.
5	hope so. And are they able to act on that standard? Is	5	COMMISSIONER HEMRAJ: Didn't you give us
6	there time to act and is it reasonable to hold them to that	6	a measurement of 12 metres? I think it was for –
7	standard in those circumstances?	7	MR CHASKALSON SC: It was 12 to Warrant
8	CHAIRPERSON: The close quarters problem	8	Officer Kuhn and –
9	we can work out the answer to on Monday, we can measure the	9	COMMISSIONER HEMRAJ: That's right.
10	distance actually between the TRT line and the place where	10	MR CHASKALSON SC: 18 to the –
11		11	COMMISSIONER HEMRAJ: To the TRT line.
12	COMMISSIONER HEMRAJ: Mr Chaskalson's	12	MR CHASKALSON SC: To the TRT line.
13	measured it -	13	COMMISSIONER HEMRAJ: Yes.
14	MR CHASKALSON SC: Chair –	14	MS LE ROUX: Mr De Rover, if I can then
15	CHAIRPERSON: He can measure it on his	15	move on to scene 2 and I don't intend to spend any
16	Google Earth, I'd like to measure it on the ground.	16	significant amount of time on it but on e aspect of scene
17	MR CHASKALSON SC: No, no, no.	17	that I wanted to canvass with you is, do you accept that as
18	Chairperson, we will have grave difficulty, that landscape	18	a point of principle that a law enforcement officials
19	has changed dramatically. So there are no markers that one	19	should consider retreat before using lethal force?
20	can see from the original time period that are still in	20	MR DE ROVER: If that is practicable,
21	existence other than the kraal itself and I can foresee a	21	yes.
22	great deal of debate between parties if we try to pin down	22	MS LE ROUX: And are you aware of the
23	the exact position. We will do our, we'll make our best	23	evidence of Lieutenant-Colonel Scott – Chair, the reference
24	attempt.	24	is say 141, page 15293 lines 17 to 25 – there Lieutenant-
25	CHAIRPERSON: Ja.	25	Colonel Scott was asked to comment about what had happened
			Dama 27150
1	Page 37157 at scene 2 and he said that he agreed with the approach	1	Page 37158 Colonel Scott's view that one it was clear the strikers had
1	at scene 2 and he said that he agreed with the approach	1	Colonel Scott's view that one it was clear the strikers had
2	at scene 2 and he said that he agreed with the approach that, "the whole operation should have been slowed down,	2	Colonel Scott's view that one it was clear the strikers had holed themselves up in koppie 3, that the police had legal
2 3	at scene 2 and he said that he agreed with the approach that, "the whole operation should have been slowed down, police officials should have backed away to a safe distance	2 3	Colonel Scott's view that one it was clear the strikers had holed themselves up in koppie 3, that the police had legal obligation or had a –
2 3 4	at scene 2 and he said that he agreed with the approach that, "the whole operation should have been slowed down, police officials should have backed away to a safe distance and negotiations should have been reignited or reinitiated,	2 3 4	Colonel Scott's view that one it was clear the strikers had holed themselves up in koppie 3, that the police had legal obligation or had a – CHAIRPERSON: No, no, no, he can't say
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		I	
1	Page 37159 spot was not just to have the police there but to actually	1	Page 37160 150. Now put 300 people there, because that would have
2	realise and I think that factor has not been emphasised	2	been the most likely spot where they would have thought
3	here a lot but there were, when that police action happened	3	themselves safe; you have sight cover and fire cover, but
4	there were 300 people there. Now you go there on Monday,	4	you do not have fire cover for fire from all directions.
4 5	you just walk around there and tell me where those 300	5	You'd have it at best for two, but not for four, and that's
6	people are going to be and where they can find cover. So	6	why I'm saying that tragic as that is, I'm mindful of the
7	whilst listening and just listening and hearing policemen	7	fact that the number because then of what you have there,
8	say that there was something of a threat and they shot at	8	at least 150 rounds flying through and there are nine
9	that threat and missed, I now picture these rounds	9	deaths there that can't be linked to an individual shooter,
9 10	travelling through that area and you, on Monday, the	9 10	that could have been much higher, and I think that the
10	foliage there is distinctly different although the	10	position in which people were found and the injuries they
12	ballistics report will give you an idea but the ballistics	12	suffered, my reading is that that – and I'm not an expert
12	report also shows you the evidence of how far and	12	
13		13	on that, so please discount if you disagree, but there
14	penetrating those rounds were. Now, there is a very		would have been normal interactions going on. So we are facing each other. I'm bending to pick something up and at
	unfortunate term in humanitarian law that calls situations	15	
16	like that collateral damage and I'm loathe to employ that, but from the stories and the reality and the geography on	16	that moment a round strikes the top of my head, and I
17	the ground, the fact is that shots were fired allegedly in	17 18	realised that standing there and that took my breath away. It's terrible.
18		10	MS LE ROUX: Mr De Rover, in your
19	self-defence. That remains to be seen and tested, whether		-
20 21	that is true. Those shots missed and then continue on their path.	20 21	statement where you determine that nine of the deaths were incidental and not intentional, we haven't seen which nine
21	[12:27] And the worst part of it is that in that centre	21	individuals you ascribe that judgment to. Would you be
22		22	able to provide us with that information?
23 24	area of koppie eventually you have shots from four directions travelling through, and I can't remember the	23 24	CHAIRPERSON: Forgive me for a moment. I
24 25	exact number I said, but that might have been in excess of	24 25	know you're running out of time. Mr De Rover, would you
25	exact number 1 said, but that might have been in excess of	23	Know you're running out of time. Wir De Kover, would you
	Page 37161		Page 37162
1	like an adjournment for five minutes? I can see you're	1	SAPS on points of disagreement in June. I just wanted to
2	very moved by what you've just said. Five-minute	2	clarify from yesterday's evidence, did you have input into
3	adjournment? Can we sit till 5 past 1, Mr Semenya?	3	that document?
4	[COMMISSION ADJOURNS COMMISSION RESUMES]	4	MR DE ROVER: Can you give me the
5	[12:34] CHAIRPERSON: The Commission resumes.	5	reference again?
6			
0	Are you able to continue now, Mr De Rover?	6	MS LE ROUX: It's JJJ178.10. It's
7	Are you able to continue now, Mr De Rover? MR DE ROVER: Sure.	6 7	MS LE ROUX: It's JJJ178.10. It's attached to Mr White's statement. It's up on the screen,
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1	Page 37163 facilitate it through the SAPS legal team. Mr De Rover, in	1	Page 37164 statement you say my own review of these incidents, you
2	your second statement FFF11A and specifically page 12 of	2	didn't actually review any incident.
3	that statement, paragraph 21 here you're dealing with a	3	MR DE ROVER: Well I did look into a few
4	section entitled The SAPS Doctrine of Maximum Force. And	4	of them. The Tatane case comes back to mind from that time
5	paragraph 21 at page 12 states "I'm aware of incidents in	5	and without qualifying that further I did not see a reason
6	recent SAPS history that have given rise to the belief that	6	to equate that to an organisational or a systemic breakdown
7	a doctrine of maximum force does exist within the	7	within SAPS.
8	organisation. My own review of these incidents leaves me	8	MS LE ROUX: But beyond that research you
9	to contend that they were indeed isolated incidents and do	9	didn't – those are the incidents in recent SAPS history
10	not provide evidence or even strong indication of an	10	that you're referring to and only those.
11	organisational breakdown within SAPS with regard to the use	11	MR DE ROVER: Yes but I think what you
12	of force and firearms culminating in the systemic and	12	read out there in my statement should probably be preceded
13	deliberate use of lethal force against civilians."	13	by the study that I did that seeks to establish how often
14	So we were interested, given that you said my own	14	does the police use lethal force. How many police
15	review of the incidents, we were interested in the review	15	officials get killed in the line of duty every year and
16	that we thought you had conducted. So in GW4A, the	16	what percentage does that represent of the total number of
17	annexure to Mr White's statement we asked you to please	17	homicides in the country. And because I'd be loathe to use
18	identify which incidents you had reviewed and then in GW4B	18	one or two incidents to elevate that to a norm or a
19	we got the response that "Mr De Rover did not examine – the	19	standard which seemed to have happened before the
20	incidents referred to are those raised in cross-examination	20	Commission. Now again that particular methodology is used
21	by various parties to claim a doctrine of maximum force	21	or was used by a previous special repertoire on arbitrary
22	within SAPS. Mr De Rover did not further examine those.	22	and summary execution, Mr Philip Olson and I can refer you
23	He rather went down the path to explain basic law	23	to the exact document and paragraph where it's set out that
24	enforcement structures and practises with regards to use of	24	he's using that. So it's not just something that I
25	force and firearms." So I just want to be clear, in your	25	developed and kept to myself but others are actually
	Page 37165		Page 37166
1	actively using it. And again it's not a – it doesn't give	1	paragraphs.
2	actively using it. And again it's not a – it doesn't give you a certainty that there wasn't a case of abuse or a	2	paragraphs. CHAIRPERSON: Perhaps you could put it in
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		1	
	Page 37167		Page 37168
1	commissioners who made statements to similar effect, I'm	1	help your argument and that obviously you're keen on
2	just glad to see that my conclusion still is that obviously	2	getting specifics that assist you. And then I just have to
3	the individual officer is aware of his duties and	3	admit that's not why I'm here. I'm not here to help you,
4	responsibilities that have to be in accordance with the law	4	I'm here to help the Commission.
5	and that there hasn't been an organisational following of	5	MS LE ROUX: Mr De Rover, my question was
6	what was indicated almost as a blank cheque to run wild.	6	whether despite disagreements between experts, as a matter
7	And it is important to note that South Africa loses, you	7	of principle, that disagreement doesn't mean either one
8	know, I think it's between 2008 and 2013 close to 800	8	lacks objectivity or impartiality does it?
9	police officials in the line of duty and that is a serious	9	MR DE ROVER: No.
10	count because I think Holland maybe loses one every 10	10	MS LE ROUX: Reasonable experts can
11	years.	11	disagree without becoming in any way partial.
12	MS LE ROUX: Mr De Rover, I'm sure you'll	12	MR DE ROVER: I had a business teacher
13	pleased to know I'm onto my final topic which is to ask you	13	who once pointed out to class in one of the first sessions
14	whether you agree with me that reasonable expert witnesses	14	that the moon in Turkey looks different from the moon in
15	can disagree on substantial matters, but that disagreement	15	Holland because in Turkey you see a lying banana and in
16	doesn't indicate that one or other of the experts is	16	Holland a standing one. He said you better not forget that
17	lacking objectivity or impartiality. Do you agree with	17	you're both looking at the moon. So at times I think it's
18	that?	18	perspectives that differ. If you come from a certain angle
19	MR DE ROVER: The term expert is not a	19	you look at an issue, you come with findings and you base
20	protected one, nor is it linked to a training that you can	20	them on your honest, expert opinion. An expert comes from
21	do. So you know I think show me an argument and I'll show	21	another angle and picks up something different. That
22	you 20 that go the other way. I think that that's a given.	22	doesn't have to bite each other, totally not, there can be
23	I've tried to offer this Commission not more of the same,	23	expert disagreement. The unenviable tasks rests with this
24	but something different and I hope it assists the	24	Commission to say where their preference lies.
25	Commission. I'm fully conscious that at times it may not	25	MS LE ROUX: And my assumingly unenviable
	Page 37169		Page 37170
1	Page 37169 task is to get you to agree with me that you can disagree	1	Page 37170 White, an attack by police?
1 2		1 2	
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Pretoria

		1	
	Page 37171		Page 37172
1	apparently we now know, we're now told and we must accept	1	suffers from pejorative and highly emotional language?
2	it.	2	MR DE ROVER: If the base contention is
3	MR DE ROVER: I accept that, so that	3	that you can compare apples and oranges then I would have
4	obviously I was mistaken in the identity of the author so	4	to agree with you, but To Serve and To Protect seeks to
5	then humbly I apologise and I think there is then sense no	5	explain concepts in an international setting and then it
6	need to continue because I was reading something that was	6	is, of course, necessary and required that you explain what
7	written by Mr White.	7	excessive force is without a quality judgment. Now my base
8	MS LE ROUX: Okay so if you accept that	8	attitude is that it may hamper the Commission that you
9	it was an error made by the legal team that that should not	9	attach that qualification to it although I can see why he
10	in any way be a basis to accuse Mr White of being un-	10	made it. And it was more along those lines that to me and
11	objective or impartial or partial.	11	I'll say that on a personal level, that those few
12	MR DE ROVER: No absolutely. So I	12	qualifiers, shambolic is the other one, just took away from
13	totally –	13	the quality of his analysis. And I found it a shame,
14	MS LE ROUX: Now the second example that	14	that's just what I thought, that I thought if those had not
15	you put up as a basis for attacking Mr White's impartiality	15	been there I'd regard that I held for his analysis and I
16	and objectivity in what you call his regular use of the	16	tried to make amends here, publicly, by acknowledging that
17	words and first one is reckless and then excessive and	17	I agree with that analysis. And that my not addressing
18	shambolic. Now with respect to excessive we have managed	18	them didn't meant that I didn't see a need to, I just
19	to find that he used it twice as a qualifier for the use of	19	didn't want to do more of the same. So his work is solid,
20	force. I did a similar exercise in the second edition of	20	I just think that those few moments that have that what
21	your book To Serve And Protect and excessive appears there	21	can't be anything else but a subjective qualifier to it
22	17 times and excessive use of force appears five times. So	22	make it, ja difficult. At least I thought that was worth
23	if Mr White can be accused of highly emotional and	23	mentioning.
24	pejorative language because he uses the word excessive	24	CHAIRPERSON: Mr De Rover, is the point
25	twice would you accept that To Serve And Protect similarly	25	that you're making now a valid one? Let me put my problem
20		20	
	Page 37173		Page 37174
1	to you about that. I understand that's the way you thought	1	in South Africa. It means foresight of possibility and not
2	and I'm not criticising you for that, but I just need to		
_	and this hot criticising you for that, but I just need to	2	caring as to whether that possibility will eventuate.
3	know whether the point you make is a sound one. If you	2 3	caring as to whether that possibility will eventuate. That's our legal term for recklessness. Now if he thought
3	know whether the point you make is a sound one. If you	3	That's our legal term for recklessness. Now if he thought
3 4	know whether the point you make is a sound one. If you want to say someone used too much force, excessive is a perfectly permissible adjective. It expresses precisely	3 4	That's our legal term for recklessness. Now if he thought the conduct of the police, again I don't know the specific context, the context of the police indicate that – he
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## Marikana Commission of Inquiry

1	Page 37175 CHAIRPERSON: Alright, okay.	1	Page 37176 thought. So I take it you - are happy to withdraw that?
2	MS LE ROUX: - that we had evidence of	2	MR DE ROVER: Chair, I'm more than happy
3	the members involved who didn't understand what it needed	3	to withdraw that and to add to it that we've actually
4	to be used for and that Brigadier Calitz was unaware of all	4	exchanged business cards and are fully intending to be in
5	of these issues relating to barbed wire. He uses it in	5	touch, so I do not see that problem occurring.
6	that context once.	6	CHAIRPERSON: You wouldn't have done that
7	CHAIRPERSON: Shambolic is the adjective	7	if you'd not regarded him as someone who is, now regard him
8	for shambles. A shambles is, things go awry rather badly.	8	as someone who is impartial and objective, is that fair?
9	Would that be not an appropriate word to use? Possibly one	9	MR DE ROVER: Sure.
10	you wouldn't use but can one criticise somebody who uses	10	MS LE ROUX: And Chair, you just stole my
11	that English word, the adjective of shambles, to describe a	11	last question, so I have no more questions for Mr De Rover.
12	shambles in the sense I've endeavoured to define?	12	CHAIRPERSON: I'm sorry to have done that
13	MR DE ROVER: Chair, with the	13	but I'm pleased – one question I want to ask. It won't
14	qualifications you give I'm happy to accept that and to	14	require a very long answer but you gave us a document in
15	apologise if that causes distress because I think it	15	Dutch, a report prepared in respect of some action by some
16	distracts from what we are trying to do. The other thing	16	people who were described by "hooligans" which I take it
17	is, I do need to point out I'm not a native English	17	means the same in Dutch as it does in English. I think
18	speaker, I'm still learning.	18	it's actually an Irish word but we haven't got Mr White to
19	CHAIRPERSON: But you do very well, if I	19	tell us whether that's correct. An incident at the Hoek
20	may say so. No, the reason I raise this with you is it	20	van Holland.
21	seems to me that $\ensuremath{Mr}$ White who is also in the field now as a	21	MR DE ROVER: Ja.
22	retired police officer giving professional advice all over	22	CHAIRPERSON: Where some hooligans
23	the world and a suggestion that he's not an impartial and	23	behaved very badly.
24	objective expert witness is something which, if it stands	24	MR DE ROVER: Yes.
25	un-withdrawn, could cause him some harm I would have	25	CHAIRPERSON: And where the police
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	Page 37177		Page 37178
1	Page 37177 appeared to have had inadequate equipment to deal with the	1	Page 37178 conscience, the next day this triggered a response from the
1 2	5	1 2	5
	appeared to have had inadequate equipment to deal with the		conscience, the next day this triggered a response from the
2	appeared to have had inadequate equipment to deal with the situation. Now can you tell us precisely what that, in a	2	conscience, the next day this triggered a response from the Queen in Holland on TV and it triggered a response from
2 3	appeared to have had inadequate equipment to deal with the situation. Now can you tell us precisely what that, in a sentence or two what that document shows and I'm going to	2 3	conscience, the next day this triggered a response from the Queen in Holland on TV and it triggered a response from politics where the actions of that group, whatever their
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1	Page 37179	1	Page 37180
1	CHAIRPERSON: I have a suggestion to	1	MR BIZOS SC: I just thought that
2 3	solve your problem. MR BIZOS SC: Yes.	2 3	although he seems to be quite versed with legal principles, that he may not have known of the rules of our profession
	CHAIRPERSON: I take it that Mr De Rover	4	and what is expected of a witness.
4 5	will be happy to provide written answers to any	4 5	CHAIRPERSON: Yes, no, as I've said I am
6	interrogatories that you may wish to address to him in	6	not going to ask him to do that. I think I'd be insulting
7	relation to matters which you regard as of great importance	7	him if I did, I don't think it is necessary. I am sure he
8	where you think his answers may well be of assistance to	8	will behave in the way you have suggested he should, okay.
9	the Commission. I take it I'm correctly expressing what	9	MR BIZOS SC: Thank you, Mr Chairman.
10	your attitude would be -	10	CHAIRPERSON: Thank you, Mr De Rover,
11	MR BIZOS SC: Well –	11	you're excused. Oh sorry, Mr Semenya, I beg your pardon,
12	CHAIRPERSON: - Mr Bizos?	12	your light is on.
13	MR BIZOS SC: I am glad but I did want to	13	MR SEMENYA SC: Chair, directly arising
14	indicate that I do not wish to lay blame on anyone but I	14	out of the cross-examination by my learned colleague Ms Le
15	would ask you, Mr Chairman, to indicate to the witness that	15	Roux in relation to justification of each and every bullet
16	the interrogatories are to be answered by him and not after	16	fired, I think my request for a ruling is now imminent and
17	consultation with our colleagues or members of the police.	17	I must place it on record because we will fail to discharge
18	We are entitled to the right –	18	that legal hurdle in the time available.
19	CHAIRPERSON: If you'd asked him the	19	CHAIRPERSON: [Microphone off, inaudible]
20	questions here when he's sitting at the witness table he	20	the ruling you want me to give?
21	would have given his answers without that. Now you're	21	MR SEMENYA SC: The ruling couched as we
22	asking for the same thing, in effect, and I'm quite sure –	22	possibly agreed with –
23	I'm not going to tell him to do that because I think I'd be	23	CHAIRPERSON: Oh, I remember what it is
24	insulting him if I told him to do that because I'm sure he	24	now. I did indicate to you in chambers, as I indicated to
25	is going to do that anyway.	25	some of the other parties, I think, that we do not consider
1	Page 37181	1	Page 37182 obviously you're free to do so. If you have 50 people who
1	it necessary and we communicated that to you and it's on the strength of that that you adopted a particular attitude	1	fire and you've got, representative come and say why they
2	to the leading of evidence here, that we didn't consider it	2	fired, the likelihood that any one of the others would have
4	necessary for every single shottist to come and explain why	4	some particular factor operating in his mind is something
5	he shot. The view we took and it's the view we hold is	5	that one will have to consider as and when it arises as a
6	that it was sufficient to have representative people from	6	possibility or as a non-possibility but anyway –
7	different groups, different situations, explaining the	7	MS LE ROUX: Chair, we would certainly –
8	situation as they saw it and explaining why in particular	8	CHAIRPERSON: If you want to address
9	cases they fired. After all, the test would be on e of	9	submissions to us at the end on the matter, obviously you
10	reasonableness and if it was reasonable for witness A to	10	can do so.
11	shoot then it would be reasonable for someone in the same	11	MS LE ROUX: When was the ruling given?
12	group as he was, witness C, to do the same. If it was	12	CHAIRPERSON: [Microphone off, inaudible]
13	unreasonable for witness A, the same would apply to witness	13	the ruling now. I communicated to Mr Semenya that was my
14	C and that was the ruling that I indicated to you in	14	attitude. If I hadn't said that, we would be here until
15	chambers. It was on the strength of that that you made the	15	the – well, if we had enough time – till sometime towards
16	decision not to call every shottist.	16	the end of next year with every single shottist coming to
17	MS LE ROUX: Chair -	17	give evidence, which would have been, in my view shared by
18	MR SEMENYA SC: I am indebted to you,	18	my colleagues, would have been unnecessary in the
19	Chair.	19	circumstances. You have obviously never had experience of
20	CHAIRPERSON: Alright. Yes, Ms Le Roux?	20	faction fighting cases. If you call every member of each
21	MS LE ROUX: And Chair, of course that	21	faction, those cases would go on forever. The procedure
22	approach will still be the subject of submissions by other	22	followed is the one that I've indicated. Anyway, if you
23	parties in connection with as to whether that -	23	want to make submissions to us on the point you may do so.
24	CHAIRPERSON: Well, you can make – ja,	24	MS LE ROUX: We will, Chair.
25	that's the ruling I gave. If you want to attack it then	25	CHAIRPERSON: Thank you, Mr De Rover. I
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1	take it you're leaving our country soon. Thank you for the	
2	evidence you've given us and we wish you bon voyage on your	
3	return home. We will now adjourn. We resume at 10 o'clock	
4	on Monday morning at forward holding area A –	
5	COMMISSIONER HEMRAJ: One.	
6	CHAIRPERSON: I'm sorry.	
7	COMMISSIONER HEMRAJ: Forward holding	
, 8	area 1.	
9	CHAIRPERSON: Ja, Adv Pingla says it's	
10	because we started at half past eight. We will resume at	
11	forward holding area 1 at 10 o'clock on Monday at Marikana.	
12	[COMMISSION ADJOURNED]	
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**RealTime Transcriptions** 

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