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 19 23 NOVEMBER 2012 PAGES 2008 TO 2129

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE

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23rd November 2012
Marikana Commission of Inquiry
Rustenburg

1 [PROCEEDINGS ON 23 NOVEMBER 2012]
2 [09:32] CHAIRPERSON: The commission resumes. I was informed last night that the bishop has rearranged his schedule, good morning, Bishop -
3 RT REV SEOKA: Yes.
4 CHAIRPERSON: - so that he can finish off his evidence, to use the words that were much used yesterday, to finish off his evidence today. Bishop, it is not necessary but nevertheless I have to do it, to remind you you’re still under oath.
5 RT REV SEOKA: Yes.
6 CHAIRPERSON: Thank you. Mr Bizos, it is your turn now to cross-examine. There were some things you wanted to clarify, did you intend to clarify them outside the auditorium, as it were?
7 MR BIZOS SC: Mr Chairman, I think that what I said was that although there are matters disposed of by the bishop, we would rather examine the persons that he interacted with, rather than with the bishop.
8 CHAIRPERSON: Okay, I misunderstood you but now you’ve removed my misunderstanding, thank you.
9 MR BIZOS SC: Thank you.
10 CHAIRPERSON: Is there anybody else who wishes to cross-examine before I invite the evidence schedule, good morning, Bishop -
11 CROSS-EXAMINATION BY MR GUMBI: Thank you very much, Chairperson. Bishop, I hope you are in the position to see where I am sitting?
12 CHAIRPERSON: You know it is probably a good idea that he should be able to see you and you should be able to see him directly. I see, well, Mr Tip isn’t here today, so perhaps you would like to sit in Mr Tip’s seat, also Mr Nkosi Thomas SC, so you can sit in the seat of either of those absent SC’s and cross-examine as if you’re an SC already. I see you followed my example, not for my - but in the alternative form by sitting in Mr Bruinders’ SC seat.
13 CHAIRPERSON: Yes.
14 MR GUMBI: Thanks very much, Chairperson.
15 CHAIRPERSON: Bishop, let me start by introducing myself to you. My name is Louis Gumbi and I am instructed by Mduduzi Attorneys and I represent POPCRU in this proceeding.
16 CROSS-EXAMINATION BY MR GUMBI: Yes,
17 RT REV SEOKA: Yes.
18 MR GUMBI: But I presume that’s what you mean?
19 CHAIRPERSON: Yes, yes, Chairperson, thanks for that.
20 RT REV SEOKA: Yes.
21 CHAIRPERSON: What is called the South African Church Council of South Africa?
22 MR GUMBI: Yes.
23 CHAIRPERSON: By the bishop, we would rather examine the persons that he interacted with, rather than with the bishop.
24 MR BIZOS SC: Mr Chairman, I think that what I said was that although there are matters disposed of by the bishop, we would rather examine the persons that he interacted with, rather than with the bishop.
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33 CROSS-EXAMINATION BY MR GUMBI: Yes,
34 RT REV SEOKA: Yes.
35 MR GUMBI: There are certain propositions...
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1. That I wanted to put to you, you will agree or you will disagree with me, thereafter we'll move on. As a church leader will you agree with me that in South Africa police officers, they are killed in the line of duty, that's the public domain information, you can find it through a newspaper or watching television and listening to radio, you cannot deny that?

RT REV SEOKA: Yes.

MR GUMBI: Are you aware, Bishop, that since 2005 up to date almost 690 police officers that have been killed in the line of duty and the majority of those police officers are POPCRU members, are you aware of that?

RT REV SEOKA: No, I am not aware of that.

CHAIRPERSON: You were asked two questions, perhaps the question should be broken up. The first question is the statistic, the number, and the second one was about the majority of POPCRU members. You said, no, and I don't know, were you saying no to both propositions? Are you aware of the fact, as it has been put to you, that, I think he said 690, is that right?

MR GUMBI: Yes.

CHAIRPERSON: Approximately 690 police officers, which I take it he means commissioned officers as well as constables, sergeants and warrant officers, was not a representative of anybody, so I hear what you are saying.

CHAIRPERSON: Bishop, that's not quite a direct answer to the question. Mr Gumbi says, do you accept or are you aware that one reason, one of the reasons for the high rate of crime in South Africa is the fact that the public, the community generally tend to distrust the police, is that an accurate summary of your question?

MR GUMBI: Yes, Chairperson, thanks.

CHAIRPERSON: But he doesn't say that's the only cause or even the main cause for the high crime rate, but he suggests to you that is one of the causes and he wants your comment on that.

RT REV SEOKA: It could be but I don't see really how the mistrust contributes towards crime.

MR GUMBI: Can you dispute it, Bishop, if I put it to you that you are one of the leaders who can play an active role in the fight against crime in this country?

RT REV SEOKA: Yes, that's true.

MR GUMBI: To sum up my propositions, Bishop, are you aware again that most of those members who are killed in the line of duty, they are breadwinners in their home, are you aware of that?

RT REV SEOKA: Yes.
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MR GUMBI: And you are also aware that the South African Police Services have a special fund for widows and orphans of those members who are killed in the line of duty? In fact the SAPS has gone beyond their constitutional mandate and they are taking care of those families of those members who are killed in the line of duty, you are aware of that?

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MR GUMBI: And you further testified in this proceeding that before you went to Marikana you weren't aware that there were two police officers that were killed on the 13th of August 2012, do you remember that?

RT REV SEOKA: I remember.

MR GUMBI: Are you aware that those widows of those police officers who are killed in the line of duty, they are in this commission, they are attending this commission and they want to know the circumstances under which their husbands were killed, that's why they are here, are you aware of that?

RT REV SEOKA: I would expect them to be here.

MR GUMBI: Can I refer you to Exhibit L, Bishop?

RT REV SEOKA: F?

MR GUMBI: Exhibit L, slide number 52, 53 and 54.

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1 and 54? Exhibit L, slide number 52, 53 and 54, Exhibit L, slide number 52, 53, 54 and slide number 55?

RT REV SEOKA: Yes.

MR GUMBI: Do you see the bodies of those police officers depicted in those slides?

RT REV SEOKA: Yes.

MR GUMBI: And those police officers, they were killed on the 13th of August 2012?

RT REV SEOKA: Yes.

MR GUMBI: And one of the police officers who was there, who was attacked by this group of armed mine strikers you saw yesterday, will come and testify before this commission and he will tell this commission the circumstances under which he was attacked by a group of those striking miners. Okay, based on those propositions that I've just canvassed with you, Bishop, don't you think that the best way to get rid of these is to retract that statement and apologise to those widows whose husbands were killed in the line of duty and to those orphans whose fathers were killed in the line of duty?

RT REV SEOKA: I have no problem with that, but as I explained yesterday, it is not every police that I referred to.

CHAIRPERSON: I take it what Mr Gumbi means is, insofar as what you said, could it be interpreted as referring to the deceased breadwinners of his clients, not his clients, the deceased breadwinners, members of the South Africa Police Services who were killed on the 13th of August, insofar as it could be interpreted as referring to them, that's not what you intended and if it was so interpreted, you wish to retract and withdraw, that's what he is putting to you. How do you respond to that? Am I putting your point correctly?
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<td>person to me died. The IDT people and the locksmith people</td>
<td>became very suspicious, I never trusted him again. At one,</td>
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<td>came long before the actual police came when the first</td>
<td>even today there is no report of how the person died.</td>
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<td>message was to the police station. When ultimately they</td>
<td>MR MPOFU: Thank you, Bishop –</td>
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<td>came and talked to us and given all the evidence, until</td>
<td>RT REV SEOKA: And I've got many more</td>
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<td>today we are not getting an answer from the police,</td>
<td>examples I can give you, but this is the one that is very</td>
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<td>something with the station commander who promised that</td>
<td>close to my heart.</td>
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<td>there will be no stone left unattended and actually later</td>
<td>MR MPOFU: Yes, I am sure you have other</td>
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<td>said to me over the phone they are closing on the person</td>
<td>examples, Bishop, and I just would like to capture all of</td>
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<td>but they would not tell us who the suspect is. I've made</td>
<td>them by the following question, given what you told the</td>
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<td>several attempts to try and get an answer from the police,</td>
<td>commissioner about your interactions with the police in the</td>
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<td>ultimately I went to the police station, the station</td>
<td>past 30 years or so, would you say as an individual your</td>
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<td>commander was ever absent and ultimately I got somebody</td>
<td>interactions with the police compared with the general</td>
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<td>second in command and then I was told who the investigator</td>
<td>population are average, above average or below average?</td>
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<td>was, and I told them what the problem was and I was told,</td>
<td>MR MPOFU: I think it is above</td>
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<td>be patient, he'll be with you and ultimately he did come.</td>
<td>average.</td>
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<td>MR MPOFU: Okay –</td>
<td>MR MPOFU: Thank you. You know the</td>
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<td>RT REV SEOKA: He came to my house, I</td>
<td>police before 1994 at least, were known to have something</td>
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<td>need to finish this one because I think it is very</td>
<td>called a dirty tricks department, which among other things</td>
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<td>critical, through you, Chairperson, and he comes with the</td>
<td>is to dig up people’s affairs as it were, and to your</td>
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<td>file and he shows the suspect and asked certain questions.</td>
<td>knowledge and given some of the questions that were put to</td>
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<td>I said, but have you done the following? He says, well, I</td>
<td>you, would you say that everything has changed since 1994?</td>
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<td>am doing it. That was about a Friday. He said he was</td>
<td>RT REV SEOKA: A lot has changed, but</td>
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<td>going to come and see me sooner. On the Sunday I was here</td>
<td>there is still a lot of old elements of the old system that</td>
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<td>in Rustenburg doing confirmation and that policeman called</td>
<td>we have inherited and that's probably where the problem is.</td>
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<td>me. He asked if I could borrow him R15 000 as a fact and I</td>
<td>MR MPOFU: And seeing that somebody</td>
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<td>MR MPOFU: Yes.</td>
<td>even today there is no report of how the person died.</td>
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<td>CHAIRPERSON: As is my duty.</td>
<td>MR MPOFU: Thank you, Bishop –</td>
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<td>MR MADLanga SC: We have no questions for the bishop, Chairman, Commissioners, thank you.</td>
<td>RT REV SEOKA: And I've got many more</td>
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<td>CHAIRPERSON: Mr Mpofo, do you have any questions in re-examination?</td>
<td>examples I can give you, but this is the one that is very</td>
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<td>RE-EXAMINATION BY MR MPOFU: Yes, thank you, Chairperson. Bishop, I am just going to ask you a few</td>
<td>close to my heart.</td>
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<td>questions to clarify some of the issues that were raised with you under cross-examination. You've just testified</td>
<td>MR MPOFU: Yes, I am sure you have other</td>
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<td>just now that you are sorry effectively for any deaths that would have occurred, is that correct?</td>
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<td>RT REV SEOKA: I did allude to one instance yesterday at Marikana Police Station. I think a child could be arrested but he/she does not deserve to be handcuffed. I have heard of an instance where a close</td>
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<td>just expand on the issues that have led to your mistrust, qualified as it is.</td>
<td>MR MPOFU: Thank you. You know the police before 1994 at least, were known to have something called a dirty tricks department, which among other things is to dig up people’s affairs as it were, and to your knowledge and given some of the questions that were put to you, would you say that everything has changed since 1994?</td>
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<td>RT REV SEOKA: I did allude to one instance yesterday at Marikana Police Station. I think a child could be arrested but he/she does not deserve to be handcuffed. I have heard of an instance where a close qualification that you've made that you were not qualified as it is.</td>
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1 had an experience in the past –
2 MR MPOFU: Yes –
3 CHAIRPERSON: - or perhaps experiences
4 where statements he has made to the police weren’t properly
5 recorded. All of us who have been involved in motor
6 accidents sometimes had similar experiences. I am not sure
7 that that particular aspect of matters is going to assist
8 us at all to answer the questions we have to answer.
9 MR MPOFU: Thank you, Chair.
10 CHAIRPERSON: So perhaps you’re
11 exercising a wise discretion and not persisting with the
12 question.
13 MR MPOFU: I am not, I am not,
14 Chairperson. Okay, thank you, Chairperson. Let’s just
15 move to something, from the cross-examination of the past
16 few days and I think even this morning, there has also been
17 a further subtext that would suggest that you cared less
18 about the ten deaths that occurred prior to the 16th. Now I
19 would like you to answer this question. Why did you go to
20 Marikana in the first place on the 16th?
21 RT REV SEOKA: Through you, Chair, I have
22 already addressed this issue that through media I became
23 aware that people had died. I didn’t know who they were, I
24 was just concerned that people have died and that something
25 needed to be done to stop further deaths, I’ve said that.

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1 the media reports on the growing tensions and loss of life
2 in Marikana, Wonderkop I decided to visit the area on 16
3 August 2012 to try and assist in averting further loss of
4 life. And then you also, paragraph 36, you say, "If this
5 tragedy can provide the platform from which long-term
6 solutions can be found to the ills of the mining industry,
7 in particular - and South African society in general, then
8 the approximately 46 lives of the deceased persons will not
9 have been lost in vain.” Both those statements, in both
10 those statements where you talk about further loss of life
11 and where you talk about 46 persons who had lost their
12 lives, would those statements be consistent with a
13 discrimination between the depth that this commission is
14 concerned with.
15 RT REV SEOKA: I think for me it’s
16 consistent in linking up the two. Death is death, and I
17 was motivated by death to move in. I moved in and I’m
18 hoping that this platform here would actually help us to
19 come together as a nation and see how we can deal with the
20 past in order to correct the future, to avoid this thing
21 happening. It’s painful, it doesn’t matter how you look at
22 it, people died. People have subsequently died in the
23 Western Cape, yesterday evening people died in
24 Carletonville, how many more must die before we do
25 something about it? The time is now, we have to act

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1 together as a nation. Enough is enough. One death is too
2 much.
3 MR MPOFU: Thank you, Bishop. It was
4 also suggested to you among other things that it was
5 reasonable, I think was the word that was used, for Lonmin
6 to adopt the attitude that it would not talk to what they
7 referred to as criminals in your testimony, because ten
8 people had been murdered. Now in your view, those ten
9 murders, would they have been the reason to talk or the
10 reason to refrain from talking?
11 RT REV SEOKA: I think my recollection is
12 that I said it was more the reason why we should have
13 allowed another opportunity of intervention and talk to
14 each other. As I said just now, one death is too much.
15 You cannot wait for another death before you do something.
16 So I think it was unreasonable, I think it was insensitive
17 because the further death of 34 people would have been
18 averted.
19 MR MPOFU: Thank you, Bishop. You also
20 were questioned about the necessity of patience. Did
21 anybody ever tell you why it was so urgent that the stand-
22 off had to be resolved on the 16th and not on the 17th or
23 the 18th, any other time.
24 RT REV SEOKA: If the question again
25 could be repeated, Sir, I’m not sure?
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1 MR MPOFU: Now I think the Bishop has
2 also asked about the element of patience and the ability to
3 let things take their time. Did anybody, either before or
4 after these tragic events ever explain to the Bishop why
5 this stand-off had to be resolved by the 15th, on the 15th
6 and not on the 17th and not on the 18th, not on the 19th?
7 RT REV SEOKA: No, nobody did.
8 MR MPOFU: And I take it you were not
9 aware that that morning the Provincial Commissioner had
10 made a statement to the effect that today was D-day?
11 RT REV SEOKA: No, I only got to know
12 about it when I saw it in the clipping here.
13 MR MPOFU: Thank you. It was also
14 suggested to you that the use of the words suggesting that
15 the mineworkers were criminals would be denied by Mr Kgotle
16 to whom you ascribe those words. Now when that is done,
17 that is just lawyer speak to say either that what you are
18 saying is not correct or that you might be making a
19 mistake. Could what you are saying about the use of those
20 words by Mr Kgotle be a result of either a deliberate
21 untruth on your part or a mistake?
22 RT REV SEOKA: I think the statement was
23 motivated by anger, I think there was a lot of anger there.
24 CHAIRPERSON: You're not answering Mr
25 Mpofu’s question. Mr Mpofu says it’s been suggested to you

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1 that your evidence on that point is not correct. He says
2 there are two possible explanations, either you
3 deliberately made it up or you’re mistaken. Now he’s
4 asking you to comment what you say about the allegation,
5 either that what you said in that regard was incorrect
6 because you made it up or it was incorrect because you were
7 mistaken. I think that's the question, Mr Mpofu.
8 MR MPOFU: That’s exactly it, Chair. In
9 other words could you be mistaken or making it up that Mr
10 Kgotle said those words to you?
11 RT REV SEOKA: Those were his words. I
12 find it interesting that yesterday those words were
13 attributed to Kgotle’s colleague, not him, but those were
14 his words, he was the one that spoke most, the other two
15 were almost on the quiet side.
16 MR MPOFU: Yes, in fact, ja, you
17 mentioned the issue of Mr Mokoena having used those exact
18 words on an SAFM programme as was revealed by my learned
19 friend, Mr Ntsebeza. The fact that Mr Mokoena used those
20 exact words that you ascribe to Mr Kgotle, does that
21 strengthen or weaken your –
22 CHAIRPERSON: Mr Mpofu, I don't know that
23 this is a question that’s necessary to ask in re-
24 examination, it’s a point you can raise in argument, and, and
25 but I don’t think you need any buttressing by the Bishop on

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1 whether that's good argument or not, it’s an argument,
2 which you’ll presumably advance at the proper time. I
3 don't think the point is strengthened by the fact that the
4 Bishop agrees with the argument. So I suggest you move on
5 to something.
6 MR MPOFU: Thank you, Chairperson. Thank
7 you, well actually Sir, can I then ask you that, the last,
8 to round off that point, can I simply say that evidence
9 will also be led later that that language –
10 CHAIRPERSON: I’m not sure it’s helpful
11 to say evidence will possibly be led.
12 MR MPOFU: Not possibly?
13 CHAIRPERSON: Evidence will be led, I
14 presume, depending on what the evidence will be, it might
15 be appropriate to put it to the witness to get his comment
16 in anticipation, as it were, but I’m not sure that it’s
17 appropriate to say evidence may be led. If that evidence
18 is led, what do you say, I don’t know that –
19 MR MPOFU: That will, Chairperson.
20 CHAIRPERSON: You said possibly, if you
21 withdraw the word “possibly” I will let you carry on.
22 MR MPOFU: Yes, I withdraw it. Okay,
23 evidence will be led that this language of criminals and
24 dastardly acts and so on was prevalent within the
25 leadership of Lonmin and it went right up even to the board

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1 of that organisation, and that language was also
2 transmitted to the state organs. Is that, what would be
3 the effect of that in respect of what you ascribe to Mr -
4 CHAIRPERSON: This sounds like a point on
5 which you’re asking the Bishop’s opinion and I’m not sure
6 that he’s an expert to give evidence on the effect of
7 language of that kind. In his opinion, it’s a matter
8 possibly in which we all can express opinions but I’m not
9 sure that he’s got any special expertise to enable him to
10 give opinion evidence on the point. Again it’s a point you
11 can argue, I’m not suggesting that you can’t argue it, and
12 I’m not suggesting it’s even a bad point because it may
13 well be a good point, once we’ve heard all the arguments.
14 But I don’t know if the case is taken any further, with
15 respect by getting the Bishop to agree or not agree to the
16 point you are now putting.
17 MR MPOFU: Okay, Chairperson, I won’t
18 push it much further, except to say that what I was asking
19 the Bishop is not exactly his opinion, I’m just asking him
20 in relation to his conviction that Kgotle said or did not
21 say the words that –
22 CHAIRPERSON: He said that’s what was
23 said. You put it to him that it was suggested it wasn’t
24 said, it’s either a mistake or a fabrication on his part.
25 He said no, that’s what was said, so his evidence on the
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point is clear. I don't know if it's taking any further
re-examination by getting him to repeat it or to underline
it or anything of that kind. It's on record, that's what
he said. It apparently is disputed by the Lonmin witnesses
and we may or may not have to decide at the end of the day,
which of the two sets of witnesses on the point is correct,
but I don't know, if you're asking these questions to this
witness is going to help us.

Mr Mpofu: Thanks, Chairperson. Alright,
going back to the issue of the ten deaths. Once again
there was an underlying assumption or a sub-text as I have
referred to it earlier that these ten deaths, as it were,
were on the one side, namely the employer and the state as
opposed to the other side, namely the employees. Now given
that, could it surprise you that actually of those ten
deads, there were 5:5, given the configuration that I was
saying, in other words five deaths were on the side of the
employees and another five on the side of the –

Chairperson: No Mr Mpofu, I don't
understand the relevance of that question. Even if it was
only, ten deaths are ten deaths, ten too many, but even if
five of them were from one side and five were from another,
does it really assist us to take that point any further?

Mr Mpofu: Ja, Chairperson, you know, it
only assists us, well if the next, if you can allow me for

the next question, Chairperson, it will be clear.

Chairperson: I'll hear the next question
first before I give a ruling.

Mr Mpofu: Yes, yes. Okay, given the
balance that I've just said to you, and the suggestion that
because of the deaths, it was reasonable not to want to
negotiate, the workers, who had lost an equal number of
people, what was their attitude to negotiations?

Rev Seko: I think talking to the
management, I did say that the workers' report has lost
some of their members, but they were willing to talk,
whereas the other side had lost its members but not willing
to engage with the workers.

Mr Mpofo: Then there was evidence about
time, which I'm not going to come right, whether you were
there at half past 1 or half past 2 and so on, but what was
important in that evidence was that you had testified, both
in chief and under cross-examination that you were told
that the area was cordoned off, when you made your request,
did you know if this was the truth or not, that the area
had been cordoned off?

Rev Seko: I believe it was true
because of the atmosphere where we were and the take-off of
the helicopters towards the koppie. But also I did say
that the Chaplain alluded to something that they have been
asked, all the members of his group, I can't remember the
word but clergy, social workers and medical personnel were
asked to be on standby.

[10:32] Mr Mpofo: Yes, and given the fact that
this reason was one of the main reasons why you were
prevented from going back to the copy, what would your
comment be if I tell you that the evidence will be that the
Police allowed and escorted Mr Mathunjwa to address the
workers at the koppie at 15:35?

Chairperson: Sorry, Mr Mpofu, again I
don't understand how any comments that the Bishop may make
on that particular point are going to assist you to decide
the points that we have to decide at the end of the day.

Mr Mpofo: Well Chairperson, with the
greatest respect, the Commission surely has to decide the
question of whether or when the area was cordoned off, and
I'm simply probing that point, whether if someone
subsequent to him being told that it was cordoned off was
actually allowed in there.

Chairperson: That is a point for
argument -

Mr Mpofo: Well, it can't be but –

Chairperson: It's a point for argument.

You're simply trying to be able to say this is my argument
and the Bishop agrees with it. Well, even if the Bishop
doesn't agree with it, if it's a good argument it's a good
argument, and if it's a bad argument the fact that the
Bishop agrees with it isn't going to help you. These are
argumentative points which you will be able to raise at the
appropriate time. You'll also be able to ask witnesses
directly involved with the matter about them, but just
putting the argument to the Bishop and saying what's your
comment on this, in the hope that he will say he agrees,
with respect isn't going to help us at all to answer the
questions that we've been asked to answer.

Mr Mpofo: Okay.

Chairperson: So I don't think that
question can be allowed.

Mr Mpofo: Chairperson, I respect your
ruling, but if I can make one more attempt. The only
relevance that I'm placing on this, Chairperson, is simply
that the Bishop, the most important thing about the
Bishop's evidence is him being stopped from going back and
I'm simply exploring whether given the fact that the place
may not even have been cordoned off, what impact that would
have on his attitude to him being stopped. This is the
most crucial aspect of his evidence.

Chairperson: My colleague, Commissioner
Tokota wishes to ask you a question.

Mr Mpofo: Yes, I'm sorry.
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1. MR TOKOTA SC: Ja, given the purpose of
the re-examination, what point are you trying to clarify
here which is not clear, arising from the cross-
examination?
2. MR MPOFU: Yes, thank you.
3. MR TOKOTA SC: In other words, what would
one allow the question, Chairman, but no, on a
serious note, what Lonmin's thesis of their cross-
examination of the Bishop was, was simply this, you can
reduce it to the following proposition. That you cannot
blame Lonmin for your non-return to the koppie simply
because it was the Police that had cordoned off the area.
Now if it turns out that the area was not cordoned off,
(1), or at least not inaccessible, such that Mathunjwa was
allowed to go there at 15:35, surely that is not what
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1. MR TOKOTA SC: If you can try and assist
us in that regard it will save us a lot of time.
2. MR MPOFU: Yes, I'll assist you and save
a lot of time, Commissioner. Yes, well in addition to what
you have said to the Chairperson, namely that the gravamen
really of the Bishop's evidence centres around this issue
of being disallowed to go back on the basis of this
cordoning off allegation, (1). (2), to answer your
question about which party raised it, Lonmin has said – in
fact the whole thesis of Lonmin's cross-examination of the
Archbishop was that he cannot –
3. CHAIRPERSON: Archbishop Makgoba isn't
here. The Bishop of the Diocese of Pretoria is at the
moment in the witness box.
4. MR MPOFU: I thought that if I promote
him you might allow the question, Chairman, but no, on a
serious note, what Lonmin's thesis of their cross-
examination of the Bishop was, was simply this, you can
reduce it to the following proposition. That you cannot
blame Lonmin for your non-return to the koppie simply
because it was the Police that had cordoned off the area.
Now if it turns out that the area was not cordoned off,
(1), or at least not inaccessible, such that Mathunjwa was
allowed to go there at 15:35, surely that is not what
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1. MR TOKOTA SC: But he has already
conceded that the placed was cordoned off. You asked him
if he believed it and he said yes -
2. RT REV SEOKA: No. No, no, no, -
3. MR MPOFU: No, no, please, he says, I
asked him whether what, did he believe it, and he says he
believes, he doesn't say it was cordoned off, he says he
saw helicopters, or what have you. That's fine. Now I'm
saying in respect of that answer, if I then told him that
someone else, that I went there, let's say, without being
stopped, what impact would that have on that issue. He
didn't say it was cordoned off, please. He says because
they stopped –
4. CHAIRPERSON: Okay, sorry, let me ask the
question. Bishop, you were told that the area was cordoned
off and you couldn't go, and therefore you went away. If
you had known that somebody else was allowed there after
you left, would you have gone? Would you have left, or
would you have stayed and made a further attempt to go back
to the area?
5. RT REV SEOKA: I would have actually
tried to persuade both management and Police to allow me to
go back.
6. MR MPOFU: I'm indebted to the
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1. Chairperson. Finally, Bishop, there were two issues which
were also put to you, I think by Lonmin. One of them was a
suggestion that you were actually not stopped from going
back and I just wanted to refer you to paragraph 15 of your
statement. Well, firstly start at paragraph 14. It says,
you say Mr Mokoena said, "Bishop, you can no longer return
to the koppie. The place has been cordoned off and is now
a security risk zone, or words to that effect," and then at
15 you say, "At being stopped from returning to the
workers, I was very concerned that we would lose their
trust," and so on. So really I think the question is
simply whether from your subjective point of view you felt
that you had any choice of returning to the koppie.
2. RT REV SEOKA: I had a strong desire to
go back there, but I realised that I couldn't because I
understood Mokoena to be the senior officer of the mine on
whose property I was at, at the time, and therefore I would
not undermine or ignore or disobey what he was telling me.
3. MR MPOFU: Thank you.
4. RT REV SEOKA: But I must say, through
you, Chair, that I regretted having not gone back. It was
regrettable, especially when I received that call and when
I read and heard on the news what had happened, because I
was not allowed to go back. You see, Chair, if the
telephone that I received just after 4 came from the person...
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1. I suspect it came from, can anybody in this room imagine
2. what that is doing to me? I can hear that voice all the
3. time I think about what happened on the day. Sir, I still
4. hear the voice even as I testify here, and yesterday I did
5. approach Mr Madianga to say to him they need to provide a
6. psychologist in this process because this is not a child's
7. play, it's a very heavy burden that some of us are
8. carrying. I have gone a step further by approaching the
9. chairperson or president of the Psychological Society of
10. South Africa, to see if they can provide services to this
11. Commission, even if it's for free. I'll be the first
12. patient of these people, but those widows seated there, their
13. children, their friends, their families, all those
14. workers who were affected, should be assisted by people who
15. can actually take this burden out of them.
16. CHAIRPERSON: Bishop, would it be correct
17. if I were to say that you are in effect now making a
18. recommendation to this Commission that it should in its
19. report recommend that attempts should be made, or efforts
20. should be made to ensure that all those who are affected by
21. the tragic consequences of what happened should be given
22. the opportunity of receiving psychological counselling and
23. therapy?
24. RT REV SEOKA: Yes, Sir, Chair, I would
25. have said that at the end of my testimony, but I felt

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1. compelled by what senior counsel is saying to bring it up
2. now, because it hurts.
3. CHAIRPERSON: Yes, well he's not yet
4. senior counsel, but he won't object to you trying to give
5. him the promotion that he tried to give you.
6. MR MPOFU: According to the Bar Council I
7. am, Chairperson. But thank you –
8. CHAIRPERSON: That recommendation you've
9. made, we will seriously consider when we compile our final
10. report in the matter. Mr Mpfu, do you have any further
11. questions?
12. MR MPOFU: Just one, Chair. Thank you,
13. Bishop, and I take it that would go to all the victims of this tragedy.
14. RT REV SEOKA: Indeed, but I also want to
15. include all those clergy persons who were there subsequent to the massacre because I know that some of them were
16. affected by what they experienced as they engaged, trying
17. to counsel some of those workers.
18. MR MPOFU: And in that similar vein, and
19. given your experience even subsequent to the events and
20. your interactions with most of the affected persons, what
21. impact did you observe on those survivors who did not lose
22. their lives but were merely injured and witnessed their
23. fellow workers being killed in front of their eyes?

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1. RT REV SEOKA: Most of those who
2. survived, who were part of that group, some of them are
3. limping, you know, still nursing their, the wounds. They
4. are very traumatised. Yesterday about lunchtime – don't
5. ask me what time it was, but about lunchtime because we
6. were out there eating –
7. MR MPOFU: People were eating.
8. RT REV SEOKA: People were eating all
9. over the place. A man did approach me with his wife and a
dughter and he was not coherent, he was trying to speak to
me, asking if I could help with the problems they are still
faced with and I took his particulars and promised that
maybe when he's in a better state of mind I could call him
and see what his problem was. But he was devastated. He's
traumatised, confused, and looking for help, and that's the
kind of person that would have been referred to the
psychologist or such professional people to assist. I
don't think I have those skills myself. My skills are different as a priest to those of a psychologist. Some of them, Sir, have told me continuously they live in fear
because of that day's experience.
10. [10:52] MR MPOFU: Yes, thank you. Your
11. activities after the 16th in making peace at the, in this
12. conflict will form part of the second phase of the
13. Commission. But if you can just round off this point by,

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1. given your interactions with the players, about what other
2. you might have had to deal with in addition to what you've
3. just said, in respect of the fact that those survivors, or
4. some of them, were subsequently charged with the murder of
5. their own –
6. CHAIRPERSON: No, no, Mr Mpfu, I don't
7. know that this arises at this stage.
9. CHAIRPERSON: And the answer is going to
give is going to give on this point aren't going to help us
in regard to the particular questions we're busy with at
the moment, so I'm not going to allow the question, but –
10. MR MPOFU: Okay, Chairperson. No, I was
11. just asking in terms of the level of –
12. CHAIRPERSON: No, no, I understand why
13. you were tempted to ask the question. I sympathise a lot,
but I must try to keep things in check.
14. MR MPOFU: Yes, thank you, Chairperson.
15. CHAIRPERSON: Any more questions?
16. MR MPOFU: Yes, one more.
17. CHAIRPERSON: Finally and in conclusion.
18. MR MPOFU: Seriously one more,
19. Chairperson. There was also a suggestion which was made, I
think by Mr Semenya, that when you spoke to the Provincial
Commissioner, you did not, as it were, say to her what you
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25 Mr Farmer was not available, somebody senior should have
address the workers, because that is what we had asked. If
provide security for the management to go back with us and
negotiate with management whatever you want to negotiate,
saying, because she then answers by saying, “You can
she must come and address them on their demands.
I don't know whether understood what we were
saying, because she then answers by saying, “You can
negotiate with management whatever you want to negotiate,
but security is our concern and it’s non-negotiable.”
All we were wanting to persuade her to do is to
provide security for the management to go back with us and
address the workers, because that is what we had asked. If
Mr Farmer was not available, somebody senior should have
been available and Mokwena appeared to be such a person.
that I thank you.

CHAIRPERSON: Thank you, Bishop, for that comment. I want to make – I said I was going to say something myself, it's really in addition to the thanks that you expressed to various people, and that’s, I think it's also appropriate to place on record, in the light of what you’ve said, that the Department of Social Development has also played a role from the very beginning of the sessions of this Commission, in giving assistance to the family members and others who have been in attendance and arranged for them to receive counselling and therapy and so, and it's only – whether they also need assistance from psychologists, and whether the Department Services go as far as that is something I don't know at this stage, but certainly it’s appropriate I think at this stage, in the context, to pay tribute and express our gratitude to the Department for all that that have done in making it possible for the family members to, not only come here to be in attendance, but giving them counselling and assistance during, what has sometimes been a very harrowing and unpleasant aspect for them, namely seeing the slide that have been seen the videos that have been seen, which brought back very sad and heart rendering memories to them.

On that note, we will take the tea adjournment.

RT REV SEOKA: On that note, I would like to ask, because I don't recall that we have ever respected those who lost their lives, just to stand for a second in respect of the miners who died.

CHAIRPERSON: A leader of the church for us to do it again, let's have a have one minute silence.

May their souls rest in peace.

RT REV SEOKA: Amen.

[COMMISSION ADJOURNS COMMISSION RESUMES]


Yesterday at some stage in the cross-examination various documents were referred to which were in either the police hard drive or the Lonmin hard drive and I said we would have a housekeeping session this morning, getting those documents, marking them and having them handed in formally as exhibits, but Ms Pillay who had taken upon herself the onerous task of being the clerk of the papers is not with us today, but I understand from her leader, Mr Madlanga, that she will be here on Monday. So I’ve asked him to ask her to take that matter in hand, so we will deal with it as first business on Monday. We will be starting on Monday at ten o'clock, but in order to make up for the lost time we will only have a half hour lunch break and we'll resume at half past one, as we will today, but I want to say this, that Mr Burger showed us, with respect, how this thing is done.

If a cross-examiner intends to refer in cross-examination to documents which are in one or other of the hard drives or to some other document that isn't even in the hard drive, the appropriate way to do it so have copies prepared in advance and then when the appropriate moment arrives, to give the documents to the witness and also to the commission and if it is not in the hard drive, to the other parties as well and I would expect in future all cross-examiners who are going to refer to documents to follow that practice. Mr Madlanga, I think the next witness is to be called by Mr Semenya, is that correct?

MR SEMENYA SC: That’s indeed correct, Chair, we beg leave to call Warrant Officer Wessels. His names in full, Albert Olckers Wessels, Olckers spelt O-L-C-R-S, Wessels, W-E-S-S-E-L-S and Albert, A-L-B-E-R-T, Warrant Officer.

CHAIRPERSON: Sorry, I think at this stage we’re at Exhibit HH, I think that’s correct. We have got what amounts to a CV of Warrant Officer Wessels, which was given to us. It isn’t really a summary of his evidence, it is more a summary of his CV, I don’t know whether there is a statement you’re going to hand in, or are you just going to hand in his CV but in any event, his CV, I take it, will be Exhibit II, double I.

MR SEMENYA SC: That’s correct, Chair.
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25 page be?
24           MR SEMENYA SC:          And how big would a
23 normally the pistol only takes one magazine at a time.
22           W/O WESSELS:          The amount of magazines,
21 is capable of what?  How many magazines would it carry?
20 turn, in relation to a pistol normally that type of firearm
19           MR SEMENYA SC:          Let's just take them in
18 shotgun –
17 automatic pistol, secondly a revolver, third a pump action
16 as numbered on this page, firstly there is a pistol, a semi
15           W/O WESSELS:          In order of appearance and
14 the capabilities of the various firearms on B59?
13 expertise can you tell us what appears there and what are
12           MR SEMENYA SC:          Based on your area of
11           W/O WESSELS:          I do, thank you, Sir.
10 Officer?
9 joined the Ballistic Section since 2000 as an examiner of
8           MR SEMENYA SC:          And you say that you
7 Chairperson.
6           W/O WESSELS:          Yes, that's the one.
5 you?  Yes, that's the one.
4 W/O WESSELS:          Yes, I do.
3 Chairperson.
2           W/O WESSELS:          Based on your area of
1 as a pistol, is that correct?
2 W/O WESSELS:          That is correct, Mr
3 Chairperson.
4 MR SEMENYA SC:          And you explained that a
5 pistol would have a magazine, correct?
6 W/O WESSELS:          That is correct, Mr
7 Chairperson.
8 MR SEMENYA SC:          And depending on what
9 magazines, they contain different quantities of ammunition.
10 W/O WESSELS:          That is correct, in this
11 particular case this magazine that comes standard with this
10 particular firearm would contain 15 rounds, but there are
12 also extended or larger capacity magazines available.
11 MR SEMENYA SC:          Can you just tell us, in
12 short that is, the functionality of this firearm?
13 W/O WESSELS:          The pistol on the screen
14 depicted there isn't, but if there is it would, I think
13 it to highlight and refer to specifically, but he has already
12 confirmed it is correct, so I take it you don't have to go
11 through it line by line.
10           W/O WESSELS:          That is correct, Mr
9 SEMENYA SC:          Okay, let's get –
8 Chairperson:          I am sorry to interrupt,
7 you said a copy of this page, of Exhibit B in slide form
6 which can be put up for people in the auditorium to see, if
5 there isn't there isn't, but if there is it would, I think
4 be helpful.
3 MR SEMENYA SC:          Mr Chairperson, perhaps
2 the solution would be to quickly have it taken up there and
1 set up, when I met the crimes scene experts it was ready
20 through it if you would like me to.
19 MR SEMENYA SC:          Chair, if we –
18 CHAIRPERSON:          I see Mr Wesley is on his
17 arrangement was made for that.
16 CHAIRPERSON:          I see Mr Wesley is on his
15 way, so I take it if we give him a minute or two we can
14 then have this picture screened for the benefit of those in
13 CHAIRPERSON:          - so that they can follow
12 you.  Thank you, Mr Wesley, perhaps you should go back
11 again then to the first –
10 MR SEMENYA SC:          Warrant Officer, we have
9 on the screen at the top left corner what you referred to
8           W/O WESSELS:          The normal firing sequence
7 for a semi automatic pistol would start with the magazine
6           MR SEMENYA SC:          And how big would a
5 magazine be?
4           W/O WESSELS:          The amount of magazines,
3 normally the pistol only takes one magazine at a time.
2 MR SEMENYA SC:          Let's just take them in
1 turn, in relation to a pistol normally that type of firearm
is capable of what?  How many magazines would it carry?
11 MR SEMENYA SC:          Chair, if we –
10 W/O WESSELS:          Based on your area of
9 expertise can you tell us what appears there and what are
8           MR SEMENYA SC:          And you explained that a
7 model of firearm.  In this case it appears to be a Beretta
6 92SB.
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<tr>
<td>1 inserted into the handgrip, the slide cocked to the rear to</td>
<td>1 position.</td>
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<tr>
<td>2 feed around into the chamber. This movement of cocking the</td>
<td>2 [11:48] MR SEMENYA SC: Then the fire-arm will be</td>
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<td>3 slide would also then cock the hammer towards the rear.</td>
<td>3 ready for, to discharge another bullet, if the trigger is</td>
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<td>4 Upon applying pressure on the trigger the hammer will move</td>
<td>4 pulled.</td>
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<tr>
<td>5 forward and strike the firing pin situated in the slide of</td>
<td>5 W/O WESSELS: It can only fire the next</td>
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<tr>
<td>6 the pistol. The force imparted by the hammer towards the</td>
<td>6 shot on another application of force towards on the trigger</td>
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<td>7 firing pin will drive the firing pin forward which in turn</td>
<td>7 or pulling of the trigger.</td>
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<td>8 will striker the primer of the chamber cartridge. When the</td>
<td>8 MR SEMENYA SC: Are you able to tell us</td>
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<td>9 firing pin strikes the primer the primer will ignite with</td>
<td>9 what factors would influence what direction of the</td>
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<td>10 the priming compound, which will then in turn ignite the</td>
<td>10 cartridge and what distance?</td>
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<tr>
<td>11 propellant charge situated inside the cartridge case. This</td>
<td>11 W/O WESSELS: There are various factors</td>
</tr>
<tr>
<td>12 propellant gas that is formed by the burning propellant</td>
<td>12 that can play a role in the ejection of the particular</td>
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<tr>
<td>13 will then drive the bullet from the cartridge case down the</td>
<td>13 cartridge case. Firstly the direction and the area where</td>
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<td>14 barrel of the firearm and out towards the target. Also</td>
<td>14 it is ejected to is determined by the position of firstly</td>
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<td>15 during this process some of the resultant gas will be used</td>
<td>15 the extractor and also then very importantly, of the</td>
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<td>16 and act upon the cartridge case inside the chamber to drive</td>
<td>16 ejector. On this particular firearm the extractor is on</td>
</tr>
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<td>17 the slide and the barrel backwards for a short distance.</td>
<td>17 the right hand side, if you’re standing behind the weapon,</td>
</tr>
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<td>18 MR SEMENYA SC: Is that what explains the</td>
<td>18 the extractor is on the right hand side of the slide and</td>
</tr>
<tr>
<td>19 jacking movement of the firearm?</td>
<td>19 the ejector is on the left. When the slide pulls the</td>
</tr>
<tr>
<td>20 W/O WESSELS: That is correct, Sir, it is</td>
<td>20 cartridge case from ejector, pulls the cartridge case from</td>
</tr>
<tr>
<td>21 part of it.</td>
<td>21 the chamber, it strikes the ejector on the left hand side</td>
</tr>
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<td>22 MR SEMENYA SC: What happens to the</td>
<td>22 and it’s in turn thrown towards the right out of the</td>
</tr>
<tr>
<td>23 cartridge?</td>
<td>23 pistol. Factors that might influence the distance and</td>
</tr>
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<td>24 W/O WESSELS: After the short period of</td>
<td>24 direction would be whether or not the firearm is correctly</td>
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<td>25 travel the barrel unlocks, mechanically unlocks from the</td>
<td>25 maintained, if it’s well-oiled or not. This will determine</td>
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<td>1 slide, the barrel then stops and the slide on its own</td>
<td>1 the slide velocity or the way, the quickness of the</td>
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<td>2 continues the rearward movement. During this movement the</td>
<td>2 movement towards the rear. Another factor would be the</td>
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<tr>
<td>3 slide will cock the hammer to the fully cocked position,</td>
<td>3 velocity of the cartridge case or determined by the amount</td>
</tr>
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<td>4 towards the rear. It will also then by the use of the</td>
<td>4 of propellant or the charge used for the manufacture of the</td>
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<td>5 extractor that’s situated in the slide, will drag or pull</td>
<td>5 ammunition.</td>
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<tr>
<td>6 the fired cartridge case from the chamber of the barrel and</td>
<td>6 MR SEMENYA SC: If the firearm is well-oiled, how far would the cartridge be ejected?</td>
</tr>
<tr>
<td>7 move it, holds it while it moves rearward with the slide.</td>
<td>7 W/O WESSELS: Sir again, this is, even</td>
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<tr>
<td>8 This will then pull the fired cartridge case along, out of</td>
<td>8 though it might be well-oiled, the other factors we will</td>
</tr>
<tr>
<td>9 the chamber until it strikes the ejector also situated on</td>
<td>9 still come to will also play a role. I would expect though</td>
</tr>
<tr>
<td>10 the frame. This will in turn eject the fired cartridge</td>
<td>10 that a well-maintained and a well-oiled firearm where the</td>
</tr>
<tr>
<td>11 case from the pistol.</td>
<td>11 slide would be moving easier on the frame, if we can call</td>
</tr>
<tr>
<td>12 MR SEMENYA SC: And to which side of the</td>
<td>12 it, or more smoothly on the frame, we can call it that way,</td>
</tr>
<tr>
<td>13 firearm would the cartridge be ejected?</td>
<td>13 would eject the cartridge case in a longer distance than a</td>
</tr>
<tr>
<td>14 W/O WESSELS: In this particular model,</td>
<td>14 frame that, or a slide that was dry and sticking and not</td>
</tr>
<tr>
<td>15 Sir, the cartridge case will be ejected towards the right</td>
<td>15 moving smoothly across the frame of the pistol.</td>
</tr>
<tr>
<td>16 and slightly to the rear. During the rest of the movement</td>
<td>16 MR SEMENYA SC: A pistol like this, when</td>
</tr>
<tr>
<td>17 of the slide or during the rearward movement of the slide,</td>
<td>17 fired, what happens with residue?</td>
</tr>
<tr>
<td>18 the recoil spring underneath the slide is compressed. Once</td>
<td>18 W/O WESSELS: The residue that is</td>
</tr>
<tr>
<td>19 the slide reaches the utmost or the rearmost position of</td>
<td>19 developed during the firing process, most of it is during</td>
</tr>
<tr>
<td>20 its travel, the recoil spring will then force the slide</td>
<td>20 the cycling action of the slide, some of, or most of the</td>
</tr>
<tr>
<td>21 forward again, it will strip the next round from the</td>
<td>21 action or the residue will be blown out of the action, but</td>
</tr>
<tr>
<td>22 magazine, the extractor will take hold of the rim from the</td>
<td>22 some of it will still adhere towards, or on the slide and</td>
</tr>
<tr>
<td>23 cartridge case and feed it into the chamber. As the slide</td>
<td>23 on the working surfaces of the firearm. It would however,</td>
</tr>
<tr>
<td>24 and the barrel connects, it again moves forward for a short</td>
<td>24 with my experience in these matters, it would take a</td>
</tr>
<tr>
<td>25 period until it returns to battery in the ready-to-fire</td>
<td></td>
</tr>
</tbody>
</table>
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1. MR SEMENYA SC: Should the evidence get there, Warrant Officer, what would happen to the person discharging the firearm in relation to the residue?
2. W/O WESSELS: Some of the residue would be deposited on the hands or on the arms of the firearm, of the person holding the firearm.

MR SEMENYA SC: There is also elements like tattooing, can you explain to us?

W/O WESSELS: Sir, tattooing is actually found only in wound ballistics. This is when the firearm was in such close proximity to the wound or to the person or the target that some of the unburnt and partially burnt propellant power particles is actually blown into or onto the target, and in the case of a human victim will create small secondary wounds around the main entrance wound. This would however only be found in very close contact shots.

MR SEMENYA SC: With a pistol is the distance determinable where a tattooing would occur? Are we able to determine?

W/O WESSELS: It is possible to determine to a certain extent within a bracket, not direct, down to the last centimetre but within a reliable bracket, we can determine how far the pistol with that particular ammo, or ammunition would create that pattern of tattooing.

W/O WESSELS: I would expect tattooing to be, occur in a bracket from about one or two centimetres from the target up to a maximum distance, again depending on the firearm ammunition used of maximum 15 to 20 centimetres.

MR SEMENYA SC: Is there anything you can, you wish to add in relation to a pistol?

W/O WESSELS: I would just like to add that another factor that will affect the distance of ejection of the cartridge case will be the way that the pistol was held. If there is enough support towards the rear of the pistol, and the pistol is held in a firm grip, then the cartridge case should be ejected further than when it’s not supported completely and the cycling of the slide is not completed in a satisfactory manner.

MR SEMENYA SC: It may be what distance, if the grip is firm?

W/O WESSELS: Normally, it would depend on, again like I said the specific firearm and the specific ammunition used. All these factors will play a part. It is difficult to say exactly how far it would go. Again we can make a distance bracket where we would expect to find the ejection of the cartridge cases. I would say that in a pistol of this type as depicted by the picture, I would expect it at about a 3 o’clock facing towards the front, and towards the right of the shooter and a distance of about 1 to maybe five metres maximum.

MR SEMENYA SC: And the effective range of the bullet discharged out of a pistol would be in what bracket range?

W/O WESSELS: Sir, the cartridge is capable of being fired accurately at quite a distance. The biggest problem, and what is normally used is 50 metres. It is however much further effective and can be lethal much further than that. Normally the biggest problem found with the effectiveness of the firearm is the interface between the person doing the shooting and the firearm itself. So the cartridge is capable of lethality, much further than 50 metres, but the effective use depends on the skill of the operators.

MR SEMENYA SC: The second example, Warrant Officer, we have there is a revolver.

W/O WESSELS: That is correct, Chairperson.

MR SEMENYA SC: Can you in summary tell us the functionality of a revolver?

W/O WESSELS: The revolver differs from the pistol in that it does not eject the cartridge cases by itself. It’s normally a manual ejection of the cartridge cases. It also does not use a magazine in the sense of the word of the pistol, but rather has a cylindrical cylinder which contains between five, up to a maximum of about eight rounds.

MR SEMENYA SC: It too will fire one bullet per pressing of the trigger, would it, Warrant Officer?

W/O WESSELS: It is the same as the pistol there, Mr Chairperson, it will only discharge one round for each separate pull of the trigger. 

MR SEMENYA SC: Subject to the skill of the person discharging it, what would be the bracket range of effectiveness with a revolver?

W/O WESSELS: It would be much the same as a pistol, Mr Chairperson, around 50 metres for effective use.

MR SEMENYA SC: Anything more you would want to tell us about the revolver, Warrant Officer?

W/O WESSELS: There are though some smaller sub-calibre revolvers which have larger cylinder capacities. These would be in the small calibre such as the 22 long rifle and they can contain up to 10 or 12
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<tbody>
<tr>
<td>1 rounds even in a single cylinder. Most commonly found</td>
<td>1 ammunition, would be 100 metres.</td>
</tr>
<tr>
<td>2 though are six shot and five shot revolvers.</td>
<td>2 MR SEMENYA SC: Is there anything else</td>
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<tr>
<td>3 MR SEMENYA SC: And at the top right</td>
<td>3 you would like to testify about a shotgun?</td>
</tr>
<tr>
<td>4 corner of this slide there, we have a shotgun, is that</td>
<td>4 W/O WESSELS: I think this will do for</td>
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<tr>
<td>5 right, Warrant Officer?</td>
<td>5 now.</td>
</tr>
<tr>
<td>6 W/O WESSELS: That is correct. It</td>
<td>6 MR SEMENYA SC: Can we now talk about the</td>
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<tr>
<td>7 appears to be a pump action shotgun.</td>
<td>7 example appearing at the second column on the left, the</td>
</tr>
<tr>
<td>8 MR SEMENYA SC: How does that work?</td>
<td>8 assault rifle.</td>
</tr>
<tr>
<td>9 W/O WESSELS: Again the pump action</td>
<td>9 W/O WESSELS: We can continue.</td>
</tr>
<tr>
<td>10 shotgun will only fire or discharge a single shot for every</td>
<td>10 MR SEMENYA SC: Can you explain how this</td>
</tr>
<tr>
<td>11 single deliberate pull on the trigger. The mechanism of</td>
<td>11 one functions?</td>
</tr>
<tr>
<td>12 the pump action shotgun as depicted here requires that the</td>
<td>12 W/O WESSELS: The basic premises of the</td>
</tr>
<tr>
<td>13 round be fed from the magazine which is the tube under the</td>
<td>13 assault rifle in semi-automatic mode is very close to that</td>
</tr>
<tr>
<td>14 barrel. I don't know if it's clearly visible to everybody.</td>
<td>14 of the semi-automatic pistol. If we can define an assault</td>
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<tr>
<td>15 The picture actually depicts the shotgun, what looks like</td>
<td>15 rifle, the definition of an assault rifle is a rifle</td>
</tr>
<tr>
<td>16 two barrels, one on top of each other, two cylindrical</td>
<td>16 capable of fully automatic fire or selective fire,</td>
</tr>
<tr>
<td>17 objects. The bottom cylindrical object is a tube magazine</td>
<td>17 chambered for an intermediate cartridge.</td>
</tr>
<tr>
<td>18 which contains the rounds. By working or pumping the fore-</td>
<td>18 MR SEMENYA SC: Warrant Officer, let us</td>
</tr>
<tr>
<td>19 end, that is the wood, what appears to be wood and with the</td>
<td>19 at least try and anticipate the evidence here. There will</td>
</tr>
<tr>
<td>20 little lines across it, halfway between the action and the</td>
<td>20 be mentioned made of an R5, of an R1, and can you tell us</td>
</tr>
<tr>
<td>21 barrel by manipulating the front grip towards the rear,</td>
<td>21 what we're looking at now?</td>
</tr>
<tr>
<td>22 that will eject, dispense cartridge, cartridge case from</td>
<td>22 W/O WESSELS: The firearm depicted in</td>
</tr>
<tr>
<td>23 the action and eject it through the ejection port which is</td>
<td>23 this slide, in this photo, is what appears to be a Vector</td>
</tr>
<tr>
<td>24 situated on the, which is the white area on the slide.</td>
<td>24 made R4 rifle. This is the slightly bigger brother in the</td>
</tr>
<tr>
<td>25 MR SEMENYA SC: And what type of</td>
<td>25 sense that, of the R5, and when I say slightly bigger it</td>
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<td>1 ammunition, would be 100 metres.</td>
<td>1 means that the barrel is longer, slightly longer than that</td>
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<td>2 MR SEMENYA SC: Is there anything else</td>
<td>2 of the R5, but in other respects it is very similar to the</td>
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<tr>
<td>3 you would like to testify about a shotgun?</td>
<td>3 R5 rifle.</td>
</tr>
<tr>
<td>4 W/O WESSELS: I think this will do for</td>
<td>4 MR SEMENYA SC: And an assault rifle of</td>
</tr>
<tr>
<td>5 now.</td>
<td>5 this type would have a magazine contained what amount of</td>
</tr>
<tr>
<td>6 MR SEMENYA SC: Can you explain how this</td>
<td>6 ammunition?</td>
</tr>
<tr>
<td>7 one functions?</td>
<td>7 W/O WESSELS: For the R4 and the R5</td>
</tr>
<tr>
<td>8 W/O WESSELS: The basic premises of the</td>
<td>8 rifles there are two magazines available. Most commonly</td>
</tr>
<tr>
<td>9 MR SEMENYA SC: And can you tell us more</td>
<td>9 found is a 35-round magazine, taking 35 rounds. There is</td>
</tr>
<tr>
<td>10 W/O WESSELS: In most cases, Sir,</td>
<td>10 also a 50-round magazine available, but it's not</td>
</tr>
<tr>
<td>11 depending on the specific shotgun and the shotgun depicted</td>
<td>11 encountered as much.</td>
</tr>
<tr>
<td>12 in this picture, ejection will be towards the right and</td>
<td>12 MR SEMENYA SC: And can you tell us more</td>
</tr>
<tr>
<td>13 then slightly towards the rear, depending on how quick or</td>
<td>13 about how it functions, what would happen, you said it is</td>
</tr>
<tr>
<td>14 how hard the action is manipulated by the operator.</td>
<td>14 automatic. You would mean what by that?</td>
</tr>
<tr>
<td>15 [12:08] ADV SEMENYA SC: Subject to the state of</td>
<td>15 W/O WESSELS: It is capable of both semi-</td>
</tr>
<tr>
<td>16 maintenance of the shotgun and the used, what would be the</td>
<td>16 automatic fire, which is the same as we described with the</td>
</tr>
<tr>
<td>17 bracket range of the cartridge when it's ejected?</td>
<td>17 pistol. Basically it means that a single shot will be</td>
</tr>
<tr>
<td>18 W/O WESSELS: I would expect it to be</td>
<td>18 discharged for every single deliberate pull on the trigger.</td>
</tr>
<tr>
<td>19 from, anywhere from one, not really further than two metres</td>
<td>19 The fully automatic capability means that the firearm will</td>
</tr>
<tr>
<td>20 away from the shooter, or the position that he was standing</td>
<td>20 continue to discharge ammunition, or fire rounds in that</td>
</tr>
<tr>
<td>21 at.</td>
<td>21 sense of the word, as long as the trigger is held back.</td>
</tr>
<tr>
<td>22 MR SEMENYA SC: Depending on the</td>
<td>22 Upon release of the trigger, it will stop firing, but as</td>
</tr>
<tr>
<td>23 ammunition used, how far is its effective range?</td>
<td>23 long as the trigger is held towards the rear it will</td>
</tr>
<tr>
<td>24 W/O WESSELS: I would say the maximum</td>
<td>24 continue firing rounds as long as there are rounds</td>
</tr>
<tr>
<td>25 effective range, again as you said, depending on</td>
<td>25 remaining in the magazine.</td>
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</tbody>
</table>
MR SEMENYA SC: And would it emit cartridges, and if so, in what direction?

W/O WESSELS: It will eject the cartridge cases as the firing process continues. Normally with the R4 and the R5 family of assault rifles the cartridge case is ejected slightly towards the front and towards the right of the shooter.

MR SEMENYA SC: And the bracket range where the cartridge would fall would be what?

W/O WESSELS: If we can first start with the direction, it would be in the bracket, if we’re facing 12 o’clock, I would place the ejection of the cartridge cases from about 1 o’clock up to about 3 o’clock and sometimes even 4, depending on the factors that we mentioned with the pistol, which also plays a part here. Again the ejection, or the distance of ejection could be from about two metres up to a distance of 20 metres, depending on various factors.

MR SEMENYA SC: And the effective range of the bullet fired from this firearm?

W/O WESSELS: Again as is the case with the pistol and the revolver, the cartridge, or the bullet remains lethal for a much longer distance than what we would call the effective range. Again depending on the training and the skill of the operator, the effective range would be 3 to 400 metres.

W/O WESSELS: Maybe not so much on the assault rifle, but just a slight clarification on ejection patterns, if I may. The position of the cartridge cases can indicate to an extent where the shooter was standing. However, there are other factors that should always be taken into account, which may affect where the cartridge case comes to a stop. Firstly, these cartridge cases are cylindrical. That must mean that they can roll if there is a slight slope. There is also other interfering objects which may influence where the cartridge case comes to a stop. If I may use the example of throwing a tennis ball in a room, if I throw it towards one corner of the room it can bounce off something, completely change its direction, hit another wall and completely change the direction again, coming to a stop which is out of all proportion of where it was initially started from. This may also be a factor in where cartridge cases are found. Another factor which can also happen is cartridge cases being kicked around inadvertently by people on the crime scene or on a scene. Yes, that’s basically what could influence the landing, or the position where a fired cartridge case ends up.

MR SEMENYA SC: And the example 5 of a rifle?

W/O WESSELS: The example shown here is a bolt-action rifle, fitted with a telescopic sight. This also fired only a single shot for every single depression of the trigger. It’s also manually operated in the sense that none, the workings of the action is not influenced by the working mechanism or the gas used during the discharge of the firearm, but is manually performed by the person operating the firearm. It’s thus necessary for the person to manually lift and open the bolt, pulling, by pulling the bolt towards the rear it extracts the fired cartridge case. By pushing the bolt forward, it will then again strip a round from the magazine and load that road into the chamber. These mechanisms, or motions are all performed by the shooter himself.

MR SEMENYA SC: Just for my edification, the R1 would fall in which of these two?

W/O WESSELS: The R1 will be the same and the operation will be very similar to that of the assault rifle, which is the one on the left, number 4.

MR SEMENYA SC: I don’t think there will be much evidence on the rifle on 5. Shall we then talk about, in short though, example number 6, the submachine gun?

W/O WESSELS: The submachine gun is classified again as very much the same as an assault rifle, except that it must be capable of selective fire, which means semi-automatic or automatic fire, and it must be chambered for a pistol calibre cartridge. It is thus the same as an assault rifle, capable of firing more than a single shot with a single depression of the trigger as, in full automatic mode, or in semi-automatic mode will only fire a single shot for a single depression of the trigger. It normally has a selector as the, same as the assault rifle, which can be selected to which mode it is adjusted.

MR SEMENYA SC: Warrant Officer, I also do not expect any evidence of the use of a submachine gun. Can we talk about the example of a homemade firearm, number 7, as an example.

W/O WESSELS: Homemade firearms come in all shapes and sizes, depending on the ingenuity of the person manufacturing them. The one depicted here is one commonly encountered. It is made in a backyard workshop or, in, by somebody with limited amount of knowledge and a limited amount of tools. They are mostly crudely made and they use some type of mechanical action to discharge a single shot.

MR SEMENYA SC: Yes, Warrant Officer, that’s what we have on the screen now.

W/O WESSELS: That is correct, Mr...
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Chairperson. In this particular instance it appears to be a simple piece of water pipe, which will accept any number of cartridges, attached to a block of wood and everything wrapped together by simple tyre, or the inside inner tube of a tyre to keep it together. It appears to have a nail used as a firing pin. This would probably be either struck with an object or propelled forward by use of a spring. This is, however, only one example of a vast array of homemade firearms that's commonly encountered.

W/O WESSELS: Teargas would be fired from what type of firearm?

MR SEMENYE SC: And things like teargas shells.

W/O WESSELS: Pellets would be discharged out of what type of ammunition?

MR SEMENYE SC: Pellets will be discharged by, most commonly found shotguns. The 12-guage, Sir would be.

MR SEMENYE SC: What's a 12-guage, we have been using that word now for the second time, what's a 12-guage?

W/O WESSELS: The 12-guage, Sir would be the same cartridge or a similar cartridge than the one discharged by, most commonly found shotguns.

W/O WESSELS: The 12-guage cartridge is not, there's no extractor or ejector mechanism, it's simply a basic pipe, the cartridge case also does not fit precisely as in the case of a chamber. Normally the fired cartridge case will get stuck in the end of the pipe and will remain there until forcefully, normally forcefully or manually removed by the person doing the shooting.

CHAIRPERSON: Mr Semenya, am I correct in thinking that judging what appears at slide 261 and 263 of exhibit L, there's no mention of homemade firearms being retrieved by LCRC? Am I correct?

MR SEMENYE SC: Well Chair, there is only evidence, looking at the post mortem reports, of somebody who would have died of pellet wounds. What type of ammunition would be fired from a homemade firearm?

[12:28] W/O WESSELS: Just about anything, any calibre that can be fitted into the specific device can be fired from it or will be attempted to fire from it. What is commonly mostly found in my experience is the 12-guage shotgun as it is easy to manufacture a firearm, or homemade firearm that fits around the cartridge and it's easily found as well.

W/O WESSELS: Normally because the cartridge is not, there's no extractor or ejector mechanism, it's simply a basic pipe, the cartridge case also does not fit precisely as in the case of a chamber. Normally the fired cartridge case will get stuck in the end of the pipe and will remain there until forcefully, normally forcefully or manually removed by the person doing the shooting.

MR SEMENYE SC: That is correct, Mr Officer.

CHAIRPERSON: That also depicts the fired cartridge cases in most cases. As can be seen from the circular one on, I would call it about 9 o'clock, which shows the indentation on the primer in the centre of the cartridge case. Also these cartridge cases do not contain any bullets which differentiate them from being cartridges. The cartridge would contain a bullet propellant and a primer.

MR SEMENYE SC: These are sometimes called spent cartridges?

W/O WESSELS: That is a commonly misused term.

MR SEMENYE SC: And the next section of the slide deals with cartridge cases, number 9, Warrant Officer.
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25 some of its variations. The models have adapted as the
24 force or the police service. Among them is the Beretta and
23 there are several different firearms issued to the police
22 W/O WESSELS: At this moment in time,
21 types? If it's different types, what types?
20 South African Police? Is it Berettas or is it different
19 you tell us what type or types of pistols are issued to the
18 left hand, I'm sorry, sorry Chairperson, thank you. Can
17 the firearm on the top right hand corner is a Beretta, did
16 W/O WESSELS: Thank you. Mr Madlanga, do
15 you say so the pistol?
14 the Beretta, it appears to
13 you say so, the pistol?
12 the firearm on the top right hand corner is a Beretta, did
11 Yes, thank you Mr Chairman. Warrant Officer, you said that
10 W/O WESSELS: Thank you, Mr Madlanga, do
9 in your question. So what I'm trying to establish is with the ones
8 pistils, it would be very similar. As described before, the
7 W/O WESSELS: In the 92 family and 228
6 W/O WESSELS: Same principles will apply also the same effect of how
5 W/O WESSELS: That is correct. These
4 MR SEMENYE SC: And the next section,
3 MR SEMENYE SC: Before you deal with
2 MR SEMENYE SC: Before I interjected, you
1 W/O WESSELS: They are all in the same
12 MR SEMENYE SC: Are they also similar in
11 W/O WESSELS: They are all in the same
10 W/O WESSELS: They are all in the same
9 W/O WESSELS: They are all in the same
8 W/O WESSELS: They are all in the same
7 W/O WESSELS: They are all in the same
6 W/O WESSELS: They are all in the same
5 W/O WESSELS: They are all in the same
4 W/O WESSELS: They are all in the same
3 W/O WESSELS: They are all in the same
2 W/O WESSELS: They are all in the same
1 W/O WESSELS: They are all in the same

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21 CHAIRPERSON: Thank you. The top left hand corner.
20 CHAIRPERSON: Thank you. The top left hand corner.
19 Chairperson.
18 Chairperson. It shows what appears to be fired bullets.
17 It shows what appears to be fired bullets.
16 CHAIRPERSON: Thank you Mr Chairman.
15 CHAIRPERSON: Thank you Mr Chairman.
14 W/O WESSELS: Warrant Officer?
13 MR SEMENYE SC: And the next section,
12 MR SEMENYE SC: And the next section,
11 MR SEMENYE SC: And the next section,
10 MR SEMENYE SC: And the next section,
9 MR SEMENYE SC: And the next section,
8 MR SEMENYE SC: And the next section,
7 MR SEMENYE SC: And the next section,
6 MR SEMENYE SC: And the next section,
5 MR SEMENYE SC: And the next section,
4 MR SEMENYE SC: And the next section,
3 MR SEMENYE SC: And the next section,
2 MR SEMENYE SC: And the next section,
1 MR SEMENYE SC: And the next section,

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21 CHAIRPERSON: Warrant Officer, you said that
20 CHAIRPERSON: Warrant Officer, you said that
19 the 12-gauge or a shotgun type cartridge.
18 the 12-gauge or a shotgun type cartridge.
17 the 12-gauge or a shotgun type cartridge.
16 the 12-gauge or a shotgun type cartridge.
15 the 12-gauge or a shotgun type cartridge.
14 the 12-gauge or a shotgun type cartridge.
13 the 12-gauge or a shotgun type cartridge.
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9 the 12-gauge or a shotgun type cartridge.
8 the 12-gauge or a shotgun type cartridge.
7 the 12-gauge or a shotgun type cartridge.
6 the 12-gauge or a shotgun type cartridge.
5 the 12-gauge or a shotgun type cartridge.
4 the 12-gauge or a shotgun type cartridge.
3 the 12-gauge or a shotgun type cartridge.
2 the 12-gauge or a shotgun type cartridge.
1 the 12-gauge or a shotgun type cartridge.

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21 MR SEMENYE SC: Before you deal with
20 MR SEMENYE SC: Before you deal with
19 MR SEMENYE SC: Before you deal with
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21 CHAIRPERSON: CHAIRPERSON: CHAIRPERSON:
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25 centimetre away.

W/O WESSELS: We actually spoke about the effect of tattooing and at what distance with this would be found. Tattooing as I said before is when partially or unburnt powder particles are deposited as small wounds around the entrance wound. 1 centimetre from, would in this instance describe that the barrel, the front of the barrel would be within 1 centimetre of the entrance hole or from the target.

MR SEMENYE SC: Okay, so you don't mean 1 centimetre.

W/O WESSELS: It would need at least 1 centimetre, that means even if it's held right against the flesh of the victim –

MR SEMENYE SC: Okay, so you don't mean if it's 1 centimetre away from the victim. So even if it's held right against.

W/O WESSELS: No, it would need to be 1 centimetre away.

W/O WESSELS: On both the R4 and the R5 say per minute, per second?

W/O WESSELS: That is correct.

W/O WESSELS: It would need at least 1 centimetre.

MR SEMENYE SC: Okay, so you don't mean if it's 1 centimetre away from the victim. So even if it's held right against.

W/O WESSELS: No, it would need to be 1 centimetre away.

MR SEMENYE SC: Away, away, okay.

CHAIRPERSON: Sorry, can I interpose my question?

MR SEMENYE SC: Yes, yes.

CHAIRPERSON: Am I correct in thinking it's 10 millimetres to 1 centimetre, is that right?

W/O WESSELS: That is correct.

CHAIRPERSON: So if a pistol were held 5 millimetres, in other words half a centimetre away from the victim and fired, will you expect to find residue?

W/O WESSELS: I would still expect to find residue but I would not necessarily expect to find tattooing as there would not be enough time for the unburnt particles to actually spread enough to create a circular tack or indicate tattooing.

MR SEMENYE SC: Can you please just explain, Warrant Officer, the rate of fire of the R4 and the R5 say per minute, per second?

W/O WESSELS: On both the R4 and the R5 as well as the R1, the rate of fire is between 600 to 700 rounds per minute.

MR SEMENYE SC: No further questions, Commissioners, thank you.

CHAIRPERSON: Any questions from Lonmin?

MR MOTAU SC: Thank you, Mr Chairman,

CHAIRPERSON: Any questions from the AMCU side?

MR NTSEBEZA SC: No questions, Chair.

CHAIRPERSON: Any questions, Mr Bizos?

CROSS-EXAMINATION BY MR BIZOS SC: Thank you, Chair. I would like to start off with the firearm number 3, the shotgun. The ammunition used in the cartridges, on the left slide in Annexure A, am I correct?

W/O WESSELS: It appears to be the same, yes.

MR BIZOS SC: Yes, and the contents of the cartridge, are they pallets as an attempt is made in paragraph, in square 11 to depict them pictorially?

W/O WESSELS: The shotgun cartridge can contain either rubber balls, it can contain pellets as depicted in number 11, it could also contain a solid bullet commonly known as a slug.

MR BIZOS SC: Yes, I want for the purposes of my questions now to deal with pellets. Am I correct in saying that there is birdshot with approximately 70 pellets in the cartridge, am I correct in that?

W/O WESSELS: According to my knowledge, Sir, that is still with these different types of cartridges –

MR BIZOS SC: Yes, but let's start with birdshot?

W/O WESSELS: The shotgun cartridge can contain either rubber balls, it can contain pellets as depicted in number 11, it could also contain a solid bullet commonly known as a slug.

MR BIZOS SC: Yes, I want for the purposes of my questions now to deal with pellets. Am I correct in saying that there is birdshot with approximately 70 pellets in the cartridge, am I correct in that?

W/O WESSELS: According to my knowledge, Sir, that is still with these different types of cartridges –

MR BIZOS SC: Yes, but let's start with birdshot?

W/O WESSELS: With birdshot I would expect more than 70 pellets –

MR BIZOS SC: How much more?

W/O WESSELS: Well, in my knowledge or my experience I would consider birdshot going down from about number 4, in the size of the pellets, towards number 7, that would be anywhere in number from about 260 to 400.

MR BIZOS SC: Yes, but the 70 is the minimum.

W/O WESSELS: Depending on which reference you use, it could still be seen as birdshot depending on –
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1. MR BIZOS SC: Yes, for comparative purposes –
2. CHAIRPERSON: The interpreter hasn't had a chance to interpret this.
3. MR BIZOS SC: Pardon?
4. CHAIRPERSON: The interpreter –
5. MR BIZOS SC: Oh, I am sorry. The other shot in hunter's terms is buckshot, is that correct?
6. W/O WESSELS: That is correct.
7. MR BIZOS SC: How many pellets are there in SSG shot?
8. W/O WESSELS: That is what would be expected, however –
9. MR BIZOS SC: Is that so?
10. W/O WESSELS: I will agree that the rubber ball to be less harmful than birdshot.

1. MR BIZOS SC: Well, there may be differences, but generally speaking we have birdshot, buckshot, SSG. Which pellets would be the most dangerous if used against, as we are concerned with human beings here, would be the most dangerous to direct at human beings?
2. W/O WESSELS: The larger shot, this would, as the size of the balls increase or as the –
3. MR BIZOS SC: Yes –
4. W/O WESSELS: There is also less space inside –
5. MR BIZOS SC: The more dangerous?
6. W/O WESSELS: Of course being bigger they have a bigger –
7. MR BIZOS SC: Yes –
8. W/O WESSELS: Availability or –
9. MR BIZOS SC: Now with birdshot how much damage, if any, is done to a human being if shot with birdshot, say at 20 to 50 metres, how much damage would the birdshot do?
10. W/O WESSELS: That is difficult to explain.

1. W/O WESSELS: Birdshot can still remain lethal at that distance, it depends on the area of the target that it strikes.
2. MR BIZOS SC: Yes.
3. W/O WESSELS: It also depends on whether it still has enough retained velocity, but mostly will be dependent on the area that it strikes. It would be less than the bigger amount or the bigger shot, such as the buckshot or the SSG, but it is still in the right circumstances completely capable of being fatal.
4. MR BIZOS SC: The further it travels the more it spreads and the less and less damage it can do to the body of a human being?
5. W/O WESSELS: That is what would be expected, however –
6. MR BIZOS SC: Is that so?
7. W/O WESSELS: That is what would be expected, Sir, I have personally witnessed a small pellet travelling from a ricocheted, from a steel plate, coming back a distance exceeding 50 metres and still lodging with a wound track of up to about 6 centimetres in the upper arm of one of the spectators. It is thus clearly dangerous to a much further extent and I think we should always remember that there is no non lethal ammunition. There is lethal ammunition and less lethal ammunition but there is no none.
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[COMMISSION ADJOURNS COMMISSION RESUMES]


MR BIZOS SC: Warrant Officer Wessels, I think that we have agreed that the least damaging shooting that may be directed by members of the police force at a crowd are, is the use of birdshot, would you agree?

W/O WESSELS: When we’re talking about shot pellets, then it would be less likely to cause a serious wound than the larger pellets, Mr Chair.

MR BIZOS SC: You would agree, subject to that minor modification that you are making?

W/O WESSELS: Yes I will.

MR BIZOS SC: Yes. Where were you on the 16th August?

W/O WESSELS: Which year?

MR BIZOS SC: This year.

W/O WESSELS: If I remember correctly, Mr Chairman, I was actually on leave.

MR BIZOS SC: You were on leave, you were not in Marikana?

W/O WESSELS: No, I was never at the scene. As a matter of fact, I do not even know where it is.

MR BIZOS SC: I want you to accept an assumption for the purposes of subsequent questions, that 34 people were killed and over 80 were seriously wounded on that day as a result of police action. Although we haven’t got a complete report from the ballistics department, from the post mortem reports that we have in our possession and the information that we have received from those that have reports of the persons wounded, not a single one with a possible exception of one, which is not very clear, was injured by birdshot. If you accept that as the facts, would you agree that the police did not appear to have used the safest way in which to control people that they wanted to disperse from a gathering?

MR SEMENYA SC: Chairperson, the proposition is not accurate. There was lots of rubber used.

MR BIZOS SC: Birdshot.

MR SEMENYA SC: No, but rubber is less –

MR BIZOS SC: No, birdshot, birdshot is not rubber. We’re going to come to the rubber, if the use of rubber bullets, I’ve said, I hope the clarification deals with the objection, Mr Chairman.

CHAIRPERSON: Let the witness answer the question as you formulated it, as long as you promise me you’ll carry on and deal with the rubber balls as well.

MR BIZOS SC: Yes, I will deal with them.

There isn’t a single victim of birdshot, either in death or serious wounding, except of a possibility where the post mortem report is not very clear and we make that concession. What is the answer to the question or do you want me to repeat it?

W/O WESSELS: Sir, it would be very difficult for me to agree with the assumption since I did not see what cartridges were taken up or what wounds were caused or what ammunition was used at the day. I cannot, I do not feel comfortable expressing whether the wounds were caused by birdshot or by anything else if I do not have those particular facts and I do not have the knowledge of them.

CHAIRPERSON: I think you were asked to make an assumption that no one was killed by birdshot, although Mr Bizos did say there’s one possible exception. So let’s put the exception aside. Apart from the exception, he says there were no, it’s quite clear that no one else, no one was killed by birdshot, that’s the premise upon which the question is based. So we understand you weren’t there, we understand you haven’t seen the PM reports, we understand you’re speaking from a position of considerable disadvantage. But nevertheless the question’s been put to you, I think you understand it, and Mr Bizos, perhaps you could repeat the relevant part again for the witness so he can give us a focused answer.

MR BIZOS SC: Yes.

CHAIRPERSON: We must also give the interpreter a chance to interpret it all.

MR BIZOS SC: May I just say before I repeat the question, you come from a scientific background, Warrant Officer Wessels, you’re accustomed to make an assumptions and express an opinion on the correctness or otherwise the assumption. Please do not be reluctant to express a view as an expert that you are if you are asked to make assumptions, please. I put the question again. If in fact there is no evidence except for one instance possibly that anybody was killed or seriously injured as a result of the birdshot firing, will you agree that it is apparent that the police did not use birdshot in order to disperse the crowd that they wanted to disperse on the 16th August this year?

W/O WESSELS: If there’s no evidence of birdshot being used or anybody injured then I agree that it appears that no birdshot was used on the day.

MR BIZOS SC: Warrant Officer Wessels, you’re avoiding part of the question, that it would then...
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<td>1 appear that the police did not use one of the safer ways of</td>
<td>1 reference somewhere in the SAPS presentation to justify</td>
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<td>2 dismantling or dispersing the crowd, what do you say to</td>
<td>the, what you've just put to the witness. In other words</td>
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<td>3 that?</td>
<td>4 I'm not disallowing the question at this stage, but I'm</td>
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<td>4 W/O WESSELS: It would appear that no</td>
<td>5 saying to you if I'm going to allow it, you must, in</td>
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<td>5 birdshot was used, it is a safer option than buckshot but</td>
<td>6 fairness to what Mr Semenya said, give us the page or the</td>
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<td>6 cannot say whether there was any other thing that were not</td>
<td>7 slide where that appears.</td>
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<td>7 safe to use or less lethal.</td>
<td>8 MR BIZOS SC: Well, Mr Chairman, I can't</td>
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<td>8 MR BIZOS SC: Why don't you answer the</td>
<td>9 put my finger on the precise page or the two exhibits</td>
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<td>9 question?</td>
<td>10 produced by the police as to what they're going to contend</td>
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<td>10 W/O WESSELS: I have a bit of difficulty</td>
<td>11 the events of the 16th August were. I thought that it was</td>
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<td>11 in understanding your question, Sir. I agree that it</td>
<td>12 common cause, both in their reports and in the, some of the</td>
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<td>12 appeared that no buckshot was used. Having no experience</td>
<td>13 videos that we have seen, that there were shots at people.</td>
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<td>13 in riot control or ways of dispersing a crowd, it is</td>
<td>14 What is the objection, that –</td>
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<td>14 difficult for me to say which would be the – and not being</td>
<td>15 CHAIRPERSON: There's no problem about</td>
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<td>15 on the scene at that day – would be difficult for me to</td>
<td>16 that, it's quite clear, they shot at people, they killed</td>
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<td>16 make a statement about what would be the best. I can agree</td>
<td>17 them.</td>
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<td>17 with you that it appears that no buckshot was used but</td>
<td>18 MR BIZOS SC: Yes.</td>
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<td>18 that's how far I can go.</td>
<td>19 CHAIRPERSON: Mr Noki has got about eight</td>
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<td>19 MR BIZOS SC: I will not repeat the</td>
<td>20 MR BIZOS SC: Yes.</td>
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<td>20 question, Warrant Officer, but we will argue that you are</td>
<td>21 CHAIRPERSON: But the question that you</td>
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<td>21 reluctant to express an opinion in the field in which you</td>
<td>22 asked is premised on the assumption that it's the police's</td>
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<td>22 are an expert about the conduct of your colleagues.</td>
<td>23 version that they fired those powerful rifles at people</td>
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<td>23 CHAIRPERSON: Mr Bzos, you could argue</td>
<td>24 simply to disperse them, and that I think is the basis of</td>
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<td>24 it later, but when you argue it you have to bear in mind</td>
<td>25 Mr Semenya's objection. As far as I can remember from the</td>
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<td>25 evidence is given that he's not an expert in this</td>
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<tr>
<td>1 particular field of public order policing and crowd</td>
<td>1 opening statement, it was said that these weapons were</td>
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<td>2 control. In the light of that you can still argue the</td>
<td>2 fired by the policemen concerned on the basis of private</td>
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<td>3 matter at the appropriate time.</td>
<td>3 defence, in other words either defending themselves or</td>
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<td>4 MR BIZOS SC: I'll leave it at that, Mr</td>
<td>4 defending their colleagues. It was not suggested, as I</td>
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<td>5 Chairman, thank you. I want to ask you what you say about</td>
<td>5 remember it, that it was, that those powerful rifles were</td>
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<td>6 R4 and R5? They are very powerful weapons, are they not?</td>
<td>6 used simply for purposes of crowd dispersal, but if I'm</td>
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<td>7 W/O WESSELS: Yes they are.</td>
<td>7 wrong, Mr Semenya will correct me.</td>
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<td>8 MR BIZOS SC: Discharged against human</td>
<td>8 MR SEMENYA SC: At no stage is there a</td>
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<td>9 beings in a crowd, can hardly be for the purposes of</td>
<td>9 version on the part of the police that an R5 rifle was</td>
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<td>10 disturbing them. If they were discharged against them, it</td>
<td>10 fired for dispersing the crowd, nowhere.</td>
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<td>11 was for the purpose of killing them.</td>
<td>11 MR BIZOS SC: Mr Chairman, do the police</td>
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<td>12 W/O WESSELS: It's a difficult question</td>
<td>12 - do not admit that on scene 1 these weapons were used and</td>
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<td>13 for me to answer, Sir. I do not pretend to know what was</td>
<td>13 discharged against people? Whether it was self-defence or</td>
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<td>14 the purpose of discharging the firearm. I do know that</td>
<td>14 not is another matter, we can argue about that at the end</td>
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<td>15 discharging a firearm of that calibre at anybody can create</td>
<td>15 of the case. Are they denying that they discharged these</td>
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<td>16 a lethal wound.</td>
<td>16 powerful arms against the crowd?</td>
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<td>17 MR BIZOS SC: Again, I will ask you to</td>
<td>17 CHAIRPERSON: Mr Bzos, I think the</td>
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<td>18 make the assumption that the reason given by your</td>
<td>18 answer to the question that you've addressed to Mr Semenya,</td>
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<td>19 colleagues in the police force was that they fired in order</td>
<td>19 which isn't really for me to answer, but I think the answer</td>
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<td>20 to disperse the crowd and disarm them.</td>
<td>20 may be found in slide 283 of exhibit L. You remember the</td>
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<td>21 MR SEMENYA SC: Objection. Nowhere in</td>
<td>21 shots were fired, as I understand it, in stage 3 and what</td>
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<td>22 the SAPS evidence is that R5s were fired to disperse the</td>
<td>22 is said in the second bullet in slide 283 is as follows,</td>
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<td>23 crowd.</td>
<td>23 &quot;Even when stage 3 of the operational plan was implemented,</td>
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<td>24 CHAIRPERSON: Mr Bizos, if you want to</td>
<td>24 the use of live ammunition was never an option and the use</td>
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<td>25 persist in asking the question, you'll have to give us a</td>
<td>25 of minimum force if negotiation is not successful, with the</td>
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The unfortunate reality was that the aggression of the crowd left the SAPS with no other choice than to act in private defence, defending their own lives and the lives of others.” Now that appears to be their case. Whether that’s correct or not, is one of the matters we have to decide. Whether the plan, operation plan was flawed for various reasons, then the situation should never have arisen is another question, but, which we’ll have to come to. But the case of the police on this point as I read it, is what I read you, that they acted not to disperse the people, but in private defence, defending their own lives and the lives of others. If there’s something else that I’ve left or I’ve misread it, I hope Mr Semenya will correct me.

MR SEMENYA SC: That is indeed our case, Chair.

W/O WESSELS: The term military weapon is designed for military use.

MR BIZOS SC: I’ll defer the question in view of the objection and put something else to you, and I may return after your answers to the question. Now R4, is it a military weapon or not?

W/O WESSELS: It is currently in use by the South African National Defence Force.

MR BIZOS SC: South African?


MR BIZOS SC: Is it a military weapon?

W/O WESSELS: It is, it’s main purpose was designed for military use.

MR BIZOS SC: Why don’t you just answer the question? Is it a military weapon? Why are you so afraid to admit the obvious?

CHAIRPERSON: Just let him answer the question. If he prevaricates and is evasive, leave it to me to give him a go, don’t take it upon -

MR BIZOS SC: I’m sorry.

CHAIRPERSON: I understand one gets excited sometimes and it’s difficult not to be. I’m not criticising you, but just carry on quietly.

MR BIZOS SC: Thank you.

CHAIRPERSON: [Latin].

MR BIZOS SC: Yes.

[13:54] MR BIZOS SC: Yes, and what is R5, is it a military weapon?

W/O WESSELS: The term military weapon is what I am having trouble to define, Mr Chairperson. If it means that it is in use by a military organisation or institution, then yes, but I do not have a clear clarification of what a military weapon is for myself.
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25 suggest that these questions can more profitably be asked
24 intervention unit or the tactical response team, I would
23 the functions of the special task force or the national
22 he wasn't there, he was on leave. He is not an expert in
21           CHAIRPERSON: But the witness has told us
20 of the 3 000 that were there?
19 the intention was to disperse and disarm some of the people
18 they doing in an area where there was a labour dispute and
17 or R5s. Would you like to answer the question, what were
16 there on the 16th of August this year, armed with either R4s
15           MR BIZOS SC: We know that they were
14           W/O WESSELS: As far as I have knowledge,
13           MR BIZOS SC: No, with respect –
12 should ask for the witness to be protected.
11           MR SEMENYA SC: Chair really, I mean
10 amongst police officers to wear blinkers?
9 the experience or the training for such an event.
8 by the normal policeman on the street who might not have
7 incidents which might not be able to be handled correctly
6 Sir, they resolve more advanced or more dangerous type
5 knowledge about.
4 step up from the tactical response team members, slightly
3 far as I have knowledge, that they are again slightly a
2           W/O WESSELS: Again as far as I know, as
1 they do?

MR BIZOS SC: And what do the tactical response team do in the police?
W/O WESSELS: As far as I am aware of, one task force unit they might not always be quick enough
to respond to a scene and at least there will be somebody
to take charge in the meantime and provide a more
experienced level of knowledge that the normal policemen on
the ground might not have.

W/O WESSELS: As far as I am aware of, as far as I have knowledge, that they are again slightly a
more advanced training, again to assist with high risk or
higher risk than again the people in the street who have
knowledge about.

MR BIZOS SC: And what does the K9 unit do?
W/O WESSELS: K9 unit again, it makes use
of dogs with the tracking of suspects, finding of various
data and assist with any K9 operations that might be
needed.

MR BIZOS SC: Yes. Now the rifle number
W/O WESSELS: It appears to most common
usage, it is for hunting purposes and sporting purposes.

MR BIZOS SC: I beg your pardon, I didn’t
hear that?
W/O WESSELS: In most common usage as it
appears there, it would be for hunting or sporting
purposes.

MR BIZOS SC: Would it also be used if
there was a need for it to be used by sharp shooter to take
out, if I may use the expression, any particularly
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MR BIZOS SC: Are there any fundamental differences between the R4 and R5 and the AK47's?

W/O WESSELS: The basic method of operation are very much the same. The biggest difference between them, Sir, is the calibre.

MR BIZOS SC: They have one thing in common, to cause death?

W/O WESSELS: Ja, they are certainly both capable of causing death, yes.

MR BIZOS SC: Now, in connection with rubber bullets, do you know whether the courts in our country have expressed any view about the use of rubber bullets?

W/O WESSELS: No, I'm not aware of any specific instance.

MR BIZOS SC: Are you aware whether our courts have expressed any view about the use of lethal force?

W/O WESSELS: I'm aware that it has been stated that lethal force should be a last resort, and there should be levels of escalating force and it should be used last.

MR BIZOS SC: In your training, have you been referred to any of the passages in the Law Reports or in the Statutes of what lethal force means, what self-defence means? Have you been trained in that at all?

W/O WESSELS: I am stated to go and perform my firearms competency within the next week or two, Sir, where I do believe that these subjects will be handled and be better explained to me.

MR BIZOS SC: Are you aware whether there has been any controversy among lawyers, or among the police in the recent past, about the use of rubber bullets and under what circumstances they should be used?

W/O WESSELS: I'm aware of a letter stating that – circulated amongst the nodal point emails, that, as far as I can remember correctly, and I'm speaking under – I might be wrong, that the use of rubber bullets should be stopped until further notice.

MR BIZOS SC: Can you remember whether that was directed, if my memory serves me correctly, by the minister before or after the 16th of August?

W/O WESSELS: As far as I can remember, the letter also stated, if I can just continue with me previous statement, that the use of rubber bullets should be –

MR BIZOS SC: I'll help you at least revisit it.

W/O WESSELS: And also it should be –

CHAIRPERSON: - Offisier, u mag u
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1. The 20th of December 2011, which we're going to get on Monday.
2. MR BIZOS SC: Yes.
3. CHAIRPERSON: It was qualified by a subsequent letter, which is before us, Exhibit S, which was dated the 20th of July 2012, whereas I understand, it was explained rubber was stopped altogether in December 2011 and then it was subsequently qualified and rubber came back in the form, not of rubber bullets, but of rubber balls in terms of this letter of the 20th of July 2012, which was just under a month before the 16th of August. Now, that information is already before us. Now I don't know what point, with respect, is served by asking this witness, who's not in that division, doesn't know anything about it, these questions. It doesn't –
4. MR BIZOS SC: I accept that.
5. CHAIRPERSON: - Mr Bizos, I'm sorry. MR BIZOS SC: I accept that.
6. CHAIRPERSON: - But I'm not saying that in a critical sense, but I'm just pointing out to you my approach to the point.
7. MR BIZOS SC: Yes, no I raised it because the witness wanted the matter of the rubber bullets in one of his previous answers, and that is why I raised it. How reliable are R4's and R5's? Do they often jam?

1. W/O WESSELS: They were designed to work under adverse conditions, and in that case they certainly are very reliable. Given proper maintenance, they are probably one of the most reliable rifles, or assault rifles on the market.
2. MR BIZOS SC: And not likely to jam? W/O WESSELS: Not given – not likely to jam given correct operation and correct maintenance.
3. MR BIZOS SC: Can you give us some idea of how many bullets can be discharged by an R4 or R5 in eight seconds, more or less?
4. W/O WESSELS: I can quickly try and work it out.
5. MR BIZOS SC: Please try.
6. W/O WESSELS: I would expect it anywhere in the region of about in eight seconds, on full automatic fire, anywhere between 30 to 70 rounds.
7. MR BIZOS SC: 30 to 70, yes. I just want to go through the notes that I have not left anything out, Mr Chairman. You don't know much about the water canons, presumably, nor about gas or –
8. W/O WESSELS: No, that's not my area of expertise, unfortunately.
9. MR BIZOS SC: I think I'll leave it there, Mr Chairman, thank you.
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MR MUSI: Now, you also referred to tattooing, permit my ignorance, I don't know what is you would find on the body of the person who was firing?

CHAIRPERSON: Alright, proceed.

W/O WESSELS: Yes, I do.

MR MUSI: Now, does that apply to all the firearms that were referred to in the document earlier?

W/O WESSELS: It applies to all of them, yes.

MR MUSI: Now, the residue, how do you obtain or get hold of the residue that is left on a person?

W/O WESSELS: The residue is collected by use of a residue or a PR collection kit. Unfortunately, again, that falls under the scientific analysis unit, and we have a basic knowledge of how it is collected, I do not unfortunately know how it is analysed as it falls out of my expertise, again.

MR MUSI: So you’re able to obtain that residue within a period of how long?

W/O WESSELS: As far as I have received instruction in this, it depends on a couple of factors.

The residue is very fine. It is easily lost by wiping the hands against clothing, or by washing the hands. Even factors such as wind can determine how much can be found and for how long it can be found. So it’s normally necessary to, as quickly as possible, as far as my knowledge goes, to try and test for this.

MR MUSI: Is it possible to obtain residue on the following day?

W/O WESSELS: As far as my knowledge goes, it would highly unlikely to find enough.

CHAIRPERSON: No, I’m not clear on the question. Are you referring to residue on the hands of the person who fired, or residue on the body of the victim who was fired at?

MR MUSI: I’m referring to residue that you would find on the body of the person who was firing?

CHAIRPERSON: Firing?

MR MUSI: Firing.

CHAIRPERSON: The user of firearms?

MR MUSI: Yes.

CHAIRPERSON: Okay.

MR MUSI: Now, you also referred to tattooing, permit my ignorance, I don’t know what is tattooing. Now, were you involved – let me start there,
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2016

1. Also that we as humans are three-dimensional; we have
curves and protrusions and angles which may affect even a
straight-on looking shot to have elongated area as it
passes through a roundness on the body. It would be
possible to say whether a high velocity bullet, such as a
rifle bullet, caused a particular type of wound, versus
whether a handgun or a shotgun pellet or a handgun bullet
causd a certain wound, but it would be very difficult to
determine a specific calibre from looking at a wound.

MR MMUSI: So you would be able to make a
determination whether it would have been fired from a
shotgun or maybe assault rifle? Do I understand you to –
W/O WESSELS: It would be easy to, or
not, I wouldn't call it easy, but it would give a relative
accurate indication of whether it was a high velocity, like
a rifle bullet, or a lower velocity, like a shotgun pellet
or a handgun bullet.

MR MMUSI: Mr Chairman, I wish to refer
the witness to several photographs, three of them.

W/O WESSELS: Is that the same person?

MR MMUSI: No, that photo is not the same
or not. We have that evidence.

MR MMUSI: Yes, if we can show the same
photo –

CHAIRPERSON: Warrant Officer, if you
want to get out of your chair for a moment and go and have
a look at the screen and come back, or perhaps it might be
an idea, you're going to also save time if you're going to
show a number of photographs –

MR MMUSI: That's what I'm doing –

CHAIRPERSON: Perhaps if you go and stand
near the screen, look at them and then when you've shown
the photographs, he can then return to the witness seat and
proceed to give his answers.

MR MMUSI: Yes. In fact, in order to
save time, we can show the witness photo number 2736.
Perhaps maybe before you respond, just for the benefit of

2017

1. photographs are not nice, so the families of those that
passed on, on the 16th, if they could, we would give them a
minute to leave the room.

W/O WESSELS: If we can maybe just,

MR MMUSI: Yes, if we can show the same
photo –

MR MMUSI: That's what I'm doing –

CHAIRPERSON: Warrant Officer, if you
want to get out of your chair for a moment and go and have
a look at the screen and come back, or perhaps it might be
an idea, you're going to also save time if you're going to
show a number of photographs –

MR MMUSI: That's what I'm doing –

CHAIRPERSON: Perhaps if you go and stand
near the screen, look at them and then when you've shown
the photographs, he can then return to the witness seat and
proceed to give his answers.

MR MMUSI: Yes. In fact, in order to
save time, we can show the witness photo number 2736.
Perhaps maybe before you respond, just for the benefit of

2018

1. all of us, if you can be shown photo number 2739, so that
you've got a broader perspective of these photos.

W/O WESSELS: Is that the same person?

MR MMUSI: No, that photo is not the same
person, Brigadier.

CHAIRPERSON: May I interrupt for a
moment? These photographs are not yet before us, are they?

MR MMUSI: They're just in the hard drive.

MS PILLAY: Yes.

CHAIRPERSON: So would you please arrange
between now and Monday to have copies made from the hard
drive of the photographs to which you are referring, and
then speak to Ms Pillay and she can arrange exhibit
numbers, so as part of the housekeeping exercise on Monday
they can be handed in as exhibits and duly lettered, so
that at a later stage when we revisit the evidence and read
the transcript we'll know what exactly we're referring to.

MR MMUSI: I'll do so, Mr Chairman.

MR SEMENYA SC: Chair, I don't know
whether we need to go this graphic because the post-mortem
reports do indicate whether these were high velocity wounds
or not. We have that evidence.

CHAIRPERSON: I'm inclined to agree with
you, but the cross-examiner is entitled to ask questions if
he wants to. You know the point Mr Semenya makes, it's not...
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24 you, if there's some reason other than simply establishing
23 admit. That is I understand his case. So as I said to
22 this witness by these photographs, we are prepared to
21 Service counsel said the facts you want to establish from
20 on this part of the case is the Police Service. The Police
19 case, though this is not a court case, the party concerned
18 to confirm that the admission made is correct. Now in this
17 that fact, then you don't need the highly qualified expert
16 debate, only a highly qualified expert can give evidence on
15           CHAIRPERSON: That can't be a good point.
14 clarity, it's this witness.
13 an expert. So if there was anyone who could give us better
12 Mr Semenya is saying, but the witness that is before us is
11 you are now showing were caused by high-velocity assault
10 rifles. That's not in issue in the case, as I understand
9 disputed that the injuries to the people in the photographs
8 will be readily admitted by Mr Semenya.
7           MR MMUSI: Mr Chairman, I appreciate what
6 Mr Semenya is saying, but the witness that is before us is
5 come out of a folder, they're on the SAPS hard drive. They
4 come out of a folder called "BBC South Africa,
3 Lonmin/Marikana clashes." So I would arrange, I have
2 already arranged them to be put on a separate folder.”
1 referring to the pistol screen fired, or the rifle?

24 able to –
23 play the photos. If we can start with this one, are you
22 appears to have been carried by the STF. If you can just
21 identified. So I'd ask that you'd be shown a photo, which
20 you to identify one rifle, or firearm which was not
19 identified. So I’d ask that you’d be shown a photo, which
18 appears to have been carried by the STF. If you can just
17 you asking me about the pistol or the rifle?
16 holding a rifle, the witness wants to know from you, are
15 you asking me about the pistol?
14 W/O WESSELS: The image is slightly
13 small.
12 MR MMUSI: Maybe just to save time I
11 would request that the witness be shown two other
10 photographs so that he is able to identify that and then we
9 can respond, because that's my final question. Can you
8 MR MMUSI: Yes, Mr Chairman, these photos
7 to be a Beretta Px4 pistol.
6           W/O WESSELS: The first firearm appears
5           MR MMUSI: I am asking about the pistol,
4           W/O WESSELS: I'm sorry, Sir, are you
3           CHAIRPERSON: On the photographs there's
2 someone holding a pistol.
1 14:54] CHAIRPERSON: There's someone behind him
22 MR MMUSI: Maybe just to save time I
21 on the photographs there's
20 W/O WESSELS: The image is slightly
19 small.
18 MR MMUSI: I am asking about the pistol,
17 you asking me about the pistol or the rifle?
16 you asking me about the pistol?
15 of that particular firearm.
14 W/O WESSELS: No, there is no photograph
13 does it appear there?
12 that we referred to in B59 where we saw several firearms,
11 MR MMUSI: Does it appear in the document
10 W/O WESSELS: That is correct.
9 MR MMUSI: If you indicated in your evidence in chief that, that is
8 one of the latest?
7 MR MMUSI: I take it would be the one
6 to be a Beretta Px4 pistol.
5 W/O WESSELS: The first firearm appears
4 [VIDEO SHOWN]
3 And then the last photo?
2 [VIDEO SHOWN]
1 play the next photo?

16 due to experiments that I have done myself, I have seen
15 that it's possible to fire about between four and seven
14 rounds per second.
13 MR MMUSI: Just one last aspect. I want
12 you to identify one rifle, or firearm which was not
11 identified. So I’d ask that you’d be shown a photo, which
10 appears to have been carried by the STF. If you can just
9 play the photos. If we can start with this one, are you
8 able to –
7 MR MMUSI: Now if I can take you a step
6 back, earlier on you were asked how many shots could be
5 fired from the assault rifle in the space of eight seconds.
4 Now are you in a position to tell us in an estimated form
3 how many shots would be fired from the assault rifle in a
2 second if it is in fully automated mode?
1 W/O WESSELS: I would say in a second,
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| 1. name for it, it appears to be a full automatic canon of some sort. I also cannot really determine the calibre of the rounds from this particular angle, unfortunately it falls out of my scope of work again.  
2. CHAIRPERSON: May I enquire whether it is suggested that that canon like firearm was used at Marikana during the period covered by this inquiry, namely, the space of the inquiry, from the 9th to the 16th of August this year?  
3. MR MMUSI: No, that is not the evidence, Mr Chairman, and that concludes my cross-examination.  
4. MR SEMENYA SC: Then, Chair, my objection must be a very strong one, why are we being shown an item of this type when it bears no relevance to the issues we're dealing with?  
5. MR MMUSI: Mr Chairman, the evidence was shown for two reasons, that, - no, no, I am saying the photographs were shown for two reasons. First, we earlier on referred to B59 and took a considerable amount of time.  
6. Now the first photograph which depicts the firearm Px4 does not appear in B59. Now during the period of the 9th to the 16th the firearm or the machine, I don't know what it is, which appears to have been carried by the members of the FPF, is also not on B59. It is not for the purposes of saying that it was used. Now that would tell you that B59 is incomplete.  
7. CHAIRPERSON: I think the objection of Mr Semenya relates to the canon like firearm, and I understand the point about the other firearms which were allegedly used, admittedly used, I understand that and I don't think the objection relates to them, the objection relates to the picture we're now seeing which has a caption, please open fire to South African miners and there are people in, what looks like kaki uniforms, camouflage uniforms standing on, what I think is the back of a vehicle of some sort, with a vehicle that looks like some kind of K canon. You are asked, is it suggested that a weapon of that kind was used or a canon of that kind was used at Marikana from the 9th to the 16th of August and you say, no. So Mr Semenya says, well, what's the point of that? It might create a misleading impression in the media but it certainly doesn't take the case any further as far as the inquiry in which we're engaged. He didn't quite say that but I think that is what he was suggesting. Now do you wish to answer that point?  
8. MR MMUSI: Mr Chairman, I thought I understood the evidence of the witness to be about weapons that are being used by the South African Police Service, because he is an expert. Now that would have in my view included that particular firearm, not that it was used during that particular period to say, in our possession these are the firearms that we possess. Now you would know that Px4 is not on –  
9. CHAIRPERSON: That canon like firearm, what, - has it got anything to do with the inquiry on which we are presently engaged with regard to the questions to which we are asked to answer relating to what happened between the 9th and the 16th at Marikana?  
10. MR MMUSI: Mr Chairman, I would not take it any further.  
11. CHAIRPERSON: No, we haven’t – can you take it any distance at all? Is it proper to try to take it any distance at all if it creates a thoroughly misleading impression?  
12. MR MMUSI: Mr Chairman, I’ve been very clear to say that it is not our suggestion that the firearm was used to kill the protestors. We are not saying that.  
13. We are saying –  
14. CHAIRPERSON: What are you saying then?  
15. MR MMUSI: What we are saying is that during the, if I can put it in a proper context, during the period of the 9th to the 16th, as it is Mr Semenya’s case, the police put certain preparations or they put certain arrangement in place and one of those would have been that weapon that is created by STF, it is not a photograph that was taken elsewhere other than at the scenes of Marikana.  
16. Now I wouldn't understand –  
17. CHAIRPERSON: It has a caption that says, police open fire on South African miners, not that the police put a weapon in place or some kind of defensive weapon, the suggestion is, police open fire on South African miners, that’s what it says and that creates an impression which I understand to be not an impression which you intend to create. You hasten to ensure us that that's not so, so the question is, what's that doing before us?  
18. MR MMUSI: Mr Chairman, I believe Mr Semenya’s case is going to be that we put certain, we made certain arrangements, we called different units and one of the units would be the STF and when they were called, that is what they came carrying and it does not take our case anywhere, but it is a fact that during the said period, when that photo was taken they were there. I mean I don't understand Mr Semenya’s objection really. That is all, Mr Chairman.  
19. CHAIRPERSON: Mr Semenya, what do you say in response to what is now being put?  
20. MR SEMENYA SC: Chair, in that event I request a direction from the commission, that this photograph must not be published in the media conveying the connotation that it was used all. It is inflammatory.
and it is irrelevant to the proceedings.

CHAIRPERSON: I am not sure that I have power to issue directions to the media as to how they are to report, but what I can do is, I can say to them that we expect them to maintain the high standards which we normally enjoy from the media, and that a picture of that kind with that caption if published would create, without any further comment, would create a misleading impression and I can say that if that were to be done, that would be improper journalism and would fall far short of the standards which one has come to expect from the media in matters of this kind. Does anyone want to add to that?

MR SEMENYA SC: Nothing beyond –

CHAIRPERSON: Did I overstate the case?

MR SEMENYA SC: It can still be overstated.

CHAIRPERSON: Sorry?

MR SEMENYA SC: It can still be overstated.

CHAIRPERSON: No, no, overstated is like I go too far, you mean I could have gone further, is that what you say? Alright, the media representatives have heard what I had to say. I trust you won't disappoint us. Before we adjourn I just want to ask, is there anyone who wants to cross-examine? You already had a chance. You didn't cross-examine but you were afforded the opportunity.

Anyway the reason I asked the question is if no one else wants to cross-examine and there is no re-examination we can excuse the witness. If someone wants to cross-examine it can stand over until Monday.

MR NTSEBEZA SC: Mr Chairman, I want to cross-examine on behalf of the families, I was asked –

CHAIRPERSON: Normally counsel who appears for two parties, even temporarily, only has one bite of the cherry, but if you overlooked that I wouldn't want the families to be prejudiced. We'll adjourn until 09:30, - no sorry, we'll adjourn until ten o'clock on Monday and you can then cross-examine the witness, you'll be back then, Warrant Officer? Thank you, the commission adjourns.

[COMMISSION ADJOURNED]
I have reviewed the document and transcribed the text as requested.