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 29  14 DECEMBER 2012  PAGES 3044 TO 3165

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE

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25 the following, that more less lethal options must be
24 lethal options. Under less lethal option I'm looking to
23          The other point I looked at it was the less
22 faced with before them at that stage.
21 commanders to give information with the situation they are
20 operation itself, because the operational commander or the
19 understand this command and control situation during the
18 we assist, the training that will assist as well to
17 whereby we have an integrated operation where multi-
16 utilise them so that if we come to this type of operation
15 utilised by other police agencies. That includes outside
14 which actually whereby we’ll be checking what is currently
13 more, other less lethal weapon just to see if maybe if
12 problem. So we need just to close that gap by implementing
11 the area to make sure that spectators can be able to
10 will disperse or to move away from the position. But if you
9 fail with the teargas, what next? Now it becomes a
8 only because the main purpose of the teargas is to saturate
7 to have more options. We must not only rely to teargas
6 only because the main purpose of the teargas is to saturate
5 the situation amicably.
4 The other point I’m going to mention,
3 Chairperson, is a point which actually creates a bit of a
2 bad image to the SAPS, that during the integrated Public
1 Order Policing a gas mask must be made available to all
0 members to avoid contamination. In other words what I mean
11 here is that the gas mask is the one that we utilise to
12 make sure members are not affected with the teargas if it’s
13 being used. If one’s checking the visuals you will see
14 some of the members of SAPS, they move back, and some of
15 them, they show that they actually get affected with the
teargas. So some of those members are from the side of TRT
16 and those members are not in possession of that type of
15 equipment. So what I’m saying is at least in future let’s
14 make sure that we make those equipment available for them.
13 At the same time let’s give training to them as well how to
12 utilise them so that if we come to this type of operation
11 whereby we have an integrated operation where multi-
10 discipline are brought together, at least those members
9 must actually manage to deal with the situation properly.
8 The last point, Chairperson, I want to indicate
7 is that I think what is important, after everything we need
6 to embark on a research. The research we need to conduct,
5 it should be at least on a less lethal and lethal weapon,
4 which actually whereby we’ll be checking what is currently
3 utilised by other police agencies. That includes outside
2 South Africa. As you know very well, I mentioned from the
1 beginning that Public Order Policing as a programme after
0 ‘94, there were changes, but we learn from Belgium and I
1 think as well on less lethal weapon we need to explore and
2 see other countries as well what they are using on this
1 less lethal weapon, not only to rely to ourselves in South
2 Africa, but go out, maybe looking to places like England,
3 looking like to USA, and see what they are having so that
4 we can be able as well to say how can we close the gap if
5 one equipment fails to deal with the situation, on
25 Counsellor. It's the one, exhibit L.
24 Mr Budlender, you said you had two questions you wanted to ask last night before we adjourned –
23 It's the one, exhibit L. They first, I take it all reported what each of them had done and then L was put together after that?
22 Brig Mkhwazini: Yes, it was the information leading to the final product for exhibit L.
21 Mr Budlender SC: Yes, and your task was to listen to what the units reported as to what they had done and to consider whether they had acted correctly?
20 Brig Mkhwazini: It is correct.
19 Counsellor. We're support to go through the final, or consolidated information.
18 process you worked on the draft presentation, L, which was the output of the workshop, and you suggested some changes to it?
17 Brig Mkhwazini: Chairperson, what happened is after they have actually put the information together with everything, it was presented before all of us. We made our comments from the floor with the presentation in front and those comments we made, they were ratified, especially by Lieutenant-Colonel Scott, with some of the assistant, into that position. I was not involved like to sit down and say let's write this way, but we actually all contributed where we actually listened, but as
16 Chairperson, is that it's to be able to indicate in some areas where I can be able to indicate, I will be in that position to do that.
15 Mr Budlender SC: And you understand that when an expert gives an opinion, he or she has to do so by weighing all of the information in an independent and objective manner?
14 Brig Mkhwazini: Yes, that's my aim, Sir, that I give the truth and the only truth.
13 Mr Budlender SC: Yes, Sir, I'm afraid I'm not in a position to do that.
12 Mr Budlender SC: During those three days that you were there did you hear any one of those 80 people, approximately 80 people, express the view that things might have been done differently?
11 Brig Mkhwazini: Chairperson, what I said yesterday, mostly what I contributed at was about the Police terminology, the terms and everything. That's where I played a big role, especially on Public Order Policing side with the terminologies and all that.
10 Mr Budlender SC: About how many people were at the meeting at Potchefstroom while you were there?
9 Brig Mkhwazini: Approximately.
8 Mr Budlender SC: Yes, I was at Potchefstroom for the SAPS meeting at which the events at Marikana were analysed and discussed?
7 Mr Budlender SC: The meeting lasted for seven days.
6 Mr Budlender SC: During those three days each of the units reported on what it had done on the day in question.
5 Brig Mkhwazini: Counselor, it is correct. However, the groups were divided. People were divided into groups. They worked into groups, and our task was only to meet with them when they give the final product.
4 Mr Budlender SC: And the reports they gave were on what they had done on the day in question.
3 Brig Mkhwazini: That's correct.
2 Counsellor. It's the one, exhibit L.
1 Mr Budlender SC: You were at Potchefstroom for the SAPS meeting at which the events at Marikana were analysed and discussed?
after this event, suggested that things might have been different?

MR BUDLENDER SC: Well, I have to put a question to you, Brigadier, which is a serious question. Was this a meeting aimed at analysing what went wrong at the day, or aimed at touching together a version to put before the Commission?

BRIG MKHWANAZI: On my understanding, Counsellor, and with a letter which was sent to my province, the letter was stating that we will contribute on policies, contribute on national instructions, as well as standing orders. That's how my letter was and the explanation I received was only based on that, and on my arrival as well that's all what actually we speak on. As the groups were divided doing their tasks, coming back, giving us their product, we have to interact on that.

MR BUDLENDER SC: Let me put the question differently. Was it a meeting which had as one of its goals to identify matters which had gone wrong on the day in question?

BRIG MKHWANAZI: I would say no, Counsellor, because I think at that stage it was going to be wrong if we have a meeting that identifies mistakes, hence already the Commission has been appointed and the members who were dealing with them, these are the commanders who were involved with an operation. That is my opinion, but as I have said, on my arrival I didn't pick up any position whereby we were supposed to close the gaps except to address the issues as such.

MR BUDLENDER SC: Brigadier, I also just need to remind you that previously, on Wednesday you said you couldn't give evidence on the correctness or otherwise of the events of the 16th because you first needed to read exhibit L, is that correct?

BRIG MKHWANAZI: It is correct and the reason is, Counsellor, is that after the final product of exhibit L and brought before the Commission, I never had an opportunity to go through it. That was the reason anyway, if I never explained that.

MR BUDLENDER SC: So you wanted to remind yourself of the version of the Police which was put together at the meeting at Potchefstroom which you attended?

BRIG MKHWANAZI: Chairperson, not only that. We have gone above everything to understand because if I can only understand this exhibit L, I won't be able to answer all questions properly here. I had to go through everything that is available to acquaint myself properly.

because when I came here, the main, sole purpose for me to come here was to talk about training, of which I prepared myself about training, but when I sat here, everything was changed now that I have to as well embark on this side of the operational side. Then I have to definitely try and get myself acquainted so that I can give information if I have to give information.

MR BUDLENDER SC: Brigadier, the South African Police Service have a tremendously important and difficult task to perform for all of us.

BRIG MKHWANAZI: That's correct, Counsellor.

MR BUDLENDER SC: In order to be able to perform that task effectively, they need the trust and support of the public.

BRIG MKHWANAZI: That's correct, we cannot achieve this work without the community.

MR BUDLENDER SC: And I want to suggest to you that if something goes badly wrong, that trust and support will be promoted if the SAPS admitted frankly, and say what they will do to make sure that it doesn't happen again. Do you agree with that?

BRIG MKHWANAZI: I will agree with you, and at the same time, after the truth has been unveiled properly and a recommendation is there, I think definitely...
BRIG MKHWANAZI: It's correct. As I indicated yesterday that we have all disciplined – deployed especially on spotting event. However, on issues we face with Marikana, there was definitely a challenge that we brought a lot of discipline. However, we need just to look at it as well to say when it come to that position, how are we going actually to deal with those issues of command and control so that the vastness of the area, it need to be coordinated properly; at the end of the day we are successful.

MR BUDLENDE SC: Secondly, there is a need to conduct research and find ways of obtaining less lethal options for dealing with public order operations.

BRIG MKHWANAZI: That's correct.

MR BUDLENDE SC: And thirdly, the members who were present on that day should've been issued with gas masks.

BRIG MKHWANAZI: Yes, that's correct. I mentioned that, Counsellor, especially as a witness to the side of the Police especially if a member will indicate that he's feeling something is contaminated, then that need to be addressed, hence some of the members are not issued with gas masks because they don't work with public order policing.

MR BUDLENDE SC: Now the failure to

issue some members with the gas masks is an error or mistake, which you've identified, which happened on the day.

BRIG MKHWANAZI: It's a shortcoming, I picked it up on that day.

MR BUDLENDE SC: Have you been able to identify any other error or mistake or shortcoming of what was actually done on that day?

BRIG MKHWANAZI: Counsellor, up to so far, this is the only part I managed to come up with, unless if I've got a chance to go further as well even in going to the scene and talk with the rest of people, I will be able to come up with more information. Up to so far I got this.

MR BUDLENDE SC: I want to take you to an answer you gave yesterday to a matter that was raised with you. You will remember that you said that there was something missing from the plan, namely an adequate assessment of the risk because the risk of an attack on the Police was not mentioned. Do you remember that?

BRIG MKHWANAZI: Counsellor, what we addressed there was the risk analysis, whereby my point was that if you address the risk analysis, the risk analysis must be addressed under operational concept to say how are we going to deal with them, linking them to the execution

as well. So what the question by the counsellor yesterday was, was this part of the breaches identified, attack on the police identified under the risk analysis, and my question was, it was not addressed because if we check to the risk analysis, the plan before me, it was not actually identified.

MR BUDLENDE SC: But you said you thought there was a valid explanation for this, namely that they were, Police were anticipating that the strikers would hand over their weapons on the morning of the 16th of August.

BRIG MKHWANAZI: You're correct, Counsellor. It was my opinion that maybe it may happen that the planners, they relied to the information received that the following day the weapon will be laid down and if they will be laid down completely it shows that there's a sign of peace, of which it never happened on the day. But my answer, it cannot be exactly correct, but it's my opinion, I'm thinking of that.

MR BUDLENDE SC: Brigadier, your answer can't simply not be possibly not – I can't remember the phrase you used. I put it to you, your answer can't possibly be correct, the explanation you give, and let me tell you why. The first reason is that Colonel Scott's plan was drawn on the 14th of August before the alleged undertaking to surrender weapons on the 16th of August. So the failure to hand over weapons on the 16th can't be the reason why that risk wasn't mentioned. Or rather, sorry, let me put it differently. The expectation that weapons would be handed over on the 16th, can't be the reason why that risk wasn't mentioned on the 14th.

BRIG MKHWANAZI: With that duration, Counsellor, you are correct. It cannot be possible in that position. However, it's one of the things that I'm receiving information when I ask from people. That can be the reason as well.

MR BUDLENDE SC: But whoever may have told that to you, you agree that it's not a valid reason?

BRIG MKHWANAZI: As I have said, Counsellor, from the beginning, that there are a lot of influencing factors if you draw, or you compile an operational plan. If it was done on the 14, that was the information present from Intelligence, from informers or from anybody who can give information. If they have that information, definitely it can be difficult for me to say what was the position. But I agree with you, on the 14 to have the position to say how people will stand, how people will attack, all those type of things, maybe it can be a difficult position for the planner to say it going to happen or not, unless the information is given.
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<td>1. what created the risk was the implementation of Colonel Scott's plan. There are a lot of conclusions in that, Brigadier. It's not fair to ask you to answer yes or no. I'll try to show you in due course why I say that. Can we then move on to Standing Order 262, which I think is also -</td>
<td>1. incorporate this problem in the, to incorporate a risk analysis based on a possible attack on the Police had originally be occasioned by the alleged undertaking to hand over the weapons down, the plan would've required revision and the incorporation of the risks flowing from the fact that the weapons had not been handed over. Would you agree with that?</td>
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<td>2. Chairperson, it is correct. From the beginning I indicated the influence of factors when you plan the operation, whereby actually the whole thing comes by the information that comes continuously from Intelligence and it can come from different people on the meeting, or whatever position. Obviously there will be changes to ensure that there's some sort of plan how to deal with that type of situation. But I won't have a proper position to say what happened on the day, why it was incorporated and how they plan to deal with it, but as I mentioned from the beginning, Chairperson, I mentioned my opinion, of which they may have a different answer on that position.</td>
<td>2. [10:10] Chairperson, normally what can happen is that if the information is received through intelligence that says weapon won't be actually laid down by the participants, normally there will be, actually it will be normally be documented and maybe that document will be available as an annexure to the plan as well, if possible, but if I indicate that without having it been included, it's just my opinion, Chairperson, to say maybe it was an agreement, but I still maintain the point to say if the information is through maybe intelligence, always it's on paper, it's written, and maybe it can come up as an annexure added to the plan itself, because to go back and write it again, it won't be, occur in that way.</td>
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<td>3. MS HEMRAJ SC: Brigadier, if a plan is made and intelligence comes in which affects the execution of that plan in an effective way, surely that plan is then subject to being amended, edited, revised?</td>
<td>3. MR BUDLENDER SC: That is the operational plan compiled with effect from the 13th of August 2012. BRIG MKHWANAZI: That is the 13th, that was the date it was compiled.</td>
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<td>5.</td>
<td>5. BRIG MKHWANAZI: Yes, I've got it, Sir.</td>
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<td>6.</td>
<td>6. MR BUDLENDER SC: If you will go to the third page of that bundle -</td>
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<td>7.</td>
<td>7. BRIG MKHWANAZI: The date marked 8/08/13, that's correct, Sir.</td>
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<td>8.</td>
<td>8. MR BUDLENDER SC: That is the operational plan compiled with effect from the 13th of August 2012. BRIG MKHWANAZI: That is the 13th, that was the date it was compiled.</td>
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<td>9.</td>
<td>9. MR BUDLENDER SC: And then if you'll go to the next page, under paragraph 1.3 you'll see under risk analysis, various risks are identified.</td>
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<td>10.</td>
<td>10. BRIG MKHWANAZI: That's correct.</td>
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<td>11.</td>
<td>11. MR BUDLENDER SC: As and you pointed out yesterday, that risk does not include the risk of an attack on the Police by the strikers.</td>
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<td>13.</td>
<td>13. MR BUDLENDER SC: I want to suggest to you, and I'm going to try to show you this a bit later today, that that was an accurate risk analysis. On 13th of August there was no risk of an attack on the Police, and</td>
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<td>14.</td>
<td>14. CHAIRPERSON: I'd like to ask a question about that. You said yesterday and today that you - I'm not quite sure whether this was what you understood from other people or whether this was just your own theory, but you explained the lack of a risk analysis in Colonel Scott's plan on the basis that there had been an undertaking to lay down weapons at 9 o'clock on the 16th and therefore there was no risk of any attack by the</td>
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<td>16.</td>
<td>16. MS HEMRAJ SC: Brigadier, if a plan is made and intelligence comes in which affects the execution of that plan in an effective way, surely that plan is then subject to being amended, edited, revised?</td>
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<td>17.</td>
<td>17. BRIG MKHWANAZI: Chairperson, as I indicated yesterday that before the plan can be compiled, especially in a march or a gathering of this nature there must be a meeting that takes place. Within that meeting at least there must be information that comes out there how the gathering will be held, how the march will be held, if</td>
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1 it is a march, and there must be conditions. All that
2 information comes from the position, and Intelligence will
3 embark as well, coming through with information, indicating
4 what they pick up in the situation where the march will
5 take place, and all that. Then the plan will be compiled.
6 However, it’s a little bit difficult after the plan has
7 been compiled and it’s ready to be operationalised and
8 something comes up. That’s why I’m saying if it is on
9 writing, obviously it will come as an annexure. If it is
10 verbal there must be a way to say how to deal with that
11 position. On my position it’s a little bit difficult to
12 say what they could have done if they received that
13 information, but what I could have done myself is that if I
14 receive it on writing, will be annexure that talks to that
15 and will be a way to say how we’re going to deal with that
16 because it comes, we need to receive information
17 continuously. We plan. It doesn’t mean it will be just
18 like that. It will change. We will definitely have to be
19 flexible to deal with a new situation that comes out.
20 MR BUDLENDER SC: Brigadier, just to
21 clarify one point that I raised with you, I put to you the
22 suggestion that the report, the contingency plan of the
23 13th of August was in fact correct in its assessment of
24 risk because there was at that time no risk of an attack on
25 the Police. You remember I put that to you? I don’t ask

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1 you to comment on that; I’m just reminding you of what I
2 put. Now we know that in fact two policemen were killed on
3 the 13th of August by certain of the, apparently by certain
4 of the strikers. You’re aware of that, I think.
5 BRIG MKHWANAZI: Yes.
6 MR BUDLENDER SC: And really just what I
7 want to put by way of clarification is that the action
8 which was taken by the Police on the 13th of August on the
9 instructions of General Mpembe created an unanticipated
10 risk of an attack on the Police.
11 BRIG MKHWANAZI: Maybe Chairperson, if I
12 may ask, the instruction we are talking about is the
13 request by General Mpembe to lay down the firearm from the
14 participants?
15 MR BUDLENDER SC: I’m referring to the
16 instruction to attack certain of the strikers with teargas
17 and stun grenades.
18 BRIG MKHWANAZI: Counsellor, my comment, 19
20 it would be difficult because I’m not sure why he gave that
21 instruction, if he gave it, Sir.
22 CHAIRPERSON: Sorry, Brigadier, I have
23 difficulty with understanding that. If one looks at slide
24 79, one sees – this is under the heading “The operational
25 plan,” the plan involved –
26 BRIG MKHWANAZI: 79?
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1 BRIG MKHWANAZI: Correct.
2 MR BUDLENDER SC: On the next page, step 5 identifies information which must be collected.
3 BRIG MKHWANAZI: Which paragraph is that, Counsellor?
4 MR BUDLENDER SC: It's step 5 under paragraph 9, sub 2.
5 BRIG MKHWANAZI: Ja, I see it now, thank you.
6 MR BUDLENDER SC: And if we look at that we see that it's anticipated that in this ACCU controlled operation under 5, sub 2, there might be an outbreak of violence and under 5, sub 4, there might be firearms held presumably by the participants.
7 BRIG MKHWANAZI: Correct, Sir.
8 MR BUDLENDER SC: So from this we can conclude that POPs, or the ACCU may have operational control where violence is likely and where the participants have firearms?
9 BRIG MKHWANAZI: It is correct, Sir.
10 However, we need to ensure what type of firearm are they having in their possession, and the danger is poses to the members of SAPS during the operation, or the other members of the community. Then thereafter we have to see is it going to be sufficient only for Public Order Policing to handle that situation. If not, we can have to look to others as well.

11 MR BUDLENDER SC: I understand. Now yesterday you, and I think perhaps on the previous day, you told us about what seems to me to be a very important rule, the rule of situational appropriateness?
12 BRIG MKHWANAZI: Situational appropriateness?
13 MR BUDLENDER SC: Yes.
14 BRIG MKHWANAZI: Yes, I spoke –
15 MR BUDLENDER SC: You spoke about that.
16 BRIG MKHWANAZI: This is the rules of intervention.
17 MR BUDLENDER SC: Yes, and that's a very important rule which states that the intervention must not create a bigger problem with an outcome which is not acceptable.
18 BRIG MKHWANAZI: Okay.
19 MR BUDLENDER SC: In other words, the intervention should not aggravate the situation.
20 BRIG MKHWANAZI: Correct.
21 MR BUDLENDER SC: Now if we go to the 16th of August, just before stage 3 was commenced, that was just before 4PM on the 16th of August, at that time for the last 48 hours there had been no single incident of violence.
22 BRIG MKHWANAZI: That information I got it, Sir.
23 MR BUDLENDER SC: That's consistent with what you've been told.
24 BRIG MKHWANAZI: That's information I got it, Sir, that there were, actually there was that gap. However, there were lot of activities that were taking place which were not violently at all, yes.
25 MR BUDLENDER SC: So at the time when the operation was, or at the time when stage 3 was initiated just before 4 o'clock, there had been no violence for 48 hours.

26 MR BUDLENDER SC: And if we look at that paragraph 9, sub 2 –
27 CHAIRPERSON: - how early he'd actually 48 hours comes from, from the - there's some suggest, I think, wasn't the body found about 2:30 on the Tuesday afternoon? Something of that, I'm not quite sure -
28 MR SEMENYA SC: It does say that -
29 CHAIRPERSON: - how early he'd actually been killed, and I think Mr Budlender's 48 hours runs from about 2:30 on the Tuesday to, in fact more than 48 hours, to about 4 o'clock on the Thursday. That is 46 hours or 45 and a half. Sorry, it's 49 and a half or 50 hours. I think that's the basis of the question.
30 MR BUDLENDER SC: That is so, Chair. Brigadier, we know that the Police shootings took place after the barbed wire had been rolled out. Is that correct?
31 [10:30] BRIG MKHWANAZI: Counsellor, it's information I’m getting that after the barbed wire has been deployed, there was, okay immediately it was deployed there was a - then that's where the police officials started -
32 MR BUDLENDER SC: I want to put to you some propositions which might -
33 BRIG MKHWANAZI: Take action to make sure
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25 committed people who are the leaders of the demonstration –
24 but there is usually a relatively – core of deeply
23 shootings happened – and after – yes, I understand that,
22           MR BUDLENDER SC:          - cause that the
21 – of the crowd.
20 crowd and at the same time they fall into the same identity
19 normally people or individuals, they get absorbed into a
18 Counsellor, especially with – the crowd dynamics is that
17           BRIG MKHWANAZI:          My knowledge,
16 participants.  All I'm putting to you is that –
15 usually a relatively small core of deeply committed
14           MR BUDLENDER SC:          We must have been at
13 the same demonstration, Brigadier.  Secondly, there is
12 with you.
11           BRIG MKHWANAZI:          That's correct, I agree
10 appropriate to ask you much about it, but all I –
9           BRIG MKHWANAZI:          That's correct, I agree
8 with you.
7           BRIG MKHWANAZI:          - experienced – and
6 tell me whether I'm right – in a large demonstration the
5 people who were involved ran – from the very deeply
4 committed, to the middle group, to people who are really
3 just hangers-on – we'll come to the extent necessary to how
2 it happened – the shootings took place, although you have
1 no first-hand knowledge of that and so it may not be
410:50] BRIG MKHWANAZI: That's correct. Each
37 and every gathering there must be leaders that actually
36 lead in that gathering,
35           MR BUDLENDER SC:          The evidence from the
34 South African Police Service is that there was a relatively
33 – it was like that there was a small core group that
32 remained on the kopje at night.  Let me not put words
31 in.  The evidence from the South African Police Service is
30 that there was a small group that remained on the kopje at
29 night where they were safe than to carry them home through
28 the streets.
27 BRIG MKHWANAZI: I'm not sure,
26 Counselor, on that, where the safeness of the weapon will
25 be, I'm not sure.  I'll hear it from you.
24           MR BUDLENDER SC:          Well, if you have
23 weapons which are at risk of – which you fear might be
22 confiscated, you're not likely to walk through the streets
21 with them.
20           BRIG MKHWANAZI:          It's possible.
19           MR BUDLENDER SC:          It's a common thing,
18 Counsellor, that as long as the information is there
17 through intelligence, everything is in place, I don't think
16 police officials must hesitate to plan an operation to deal
15 with that type of a situation.  However, it will depend to
14 those involved on the day.
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22           MR BUDLENDER SC:          - cause that the
23 shootings happened – and after – yes, I understand that,
24 but there is usually a relatively – core of deeply
25 committed people who are the leaders of the demonstration -
26 counselling, that as long as the information is there
25 through intelligence, everything is in place, I don't think
24 police officials must hesitate to plan an operation to deal
23 with that type of a situation.  However, it will depend to
22 those involved on the day.
21           MR BUDLENDER SC:          If you arrested the
20 key leaders.  You agree with that?
19           MR BUDLENDER SC:          Alright, let me
18 move on.  Common sense tells us that if you could search
17 and if necessary arrest that small group of 50 on the
16 kopje at night, you would achieve a number of things.
15 Firstly, you would have a good chance of arresting some of
14 the people who are going home.  It would be more sensible for us to
13 keep those weapons with us on the kopje than to put them
12 at risk by letting them be walked through the streets by
11 people who are going home.
10           BRIG MKHWANAZI:          Counsellor, if maybe the
9 weapons being in possession of the participants are for the
8 purpose of protection, my experience tells me that it's
7 possible that they can keep with them in that position in
6 the kopje for the purpose of protection, but for the sake
5 of keeping them safe, I have a problem on that, Sir.  I
4 won't agree.  MR BUDLENDER SC:  Alright, let me
3 move on.  Common sense tells us that if you could search
2 and if necessary arrest that small group of 50 on the
1 kopje at night, you would achieve a number of things.
10 Firstly, you would have a good chance of arresting some of
9 the leaders.  You agree with that?
8           BRIG MKHWANAZI:          It's a common thing,
7 Counsellor, that as long as the information is there
6 through intelligence, everything is in place, I don't think
5 police officials must hesitate to plan an operation to deal
4 with that type of a situation.  However, it will depend to
3 those involved on the day.
2           MR BUDLENDER SC:          If you arrested the
1 core group on the kopje at night, you would stand a good
2 chance of weakening the resolve of the other participants

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BRIG MKHWANAZI: Counselor, I will say yes, arresting the group leaders will actually calm the situation, but sometimes it doesn’t work that way. The constituencies will always definitely try and fight very hard after their leaders have been arrested. That’s always, it does happen.

MR BUDLENDER SC: And if you moved at night on the core group on the koppie, you would stand a good chance, or at least a reasonable chance of confiscating some or all of the firearms.

BRIG MKHWANAZI: With the proper plan, proper information, Counselor, yes it’s possible.

MR BUDLENDER SC: So this option of moving at night on the small group who remained there, is an alternative which should’ve been considered.

BRIG MKHWANAZI: If it’s true really that they were there and the information is there, Counselor, that will work very well.

MR BUDLENDER SC: Chair, would this be a convenient time for the tea adjournment?

CHAIRPERSON: We’ll take the tea adjournment. I just want to remind everyone that the lunch adjournment will be shorter today than usual because it’s Friday. We will resume at about 13:30 and we will then adjourn at 3 o’clock to enable those who have to travel.

We’ll take the adjournment now.

[INQUIRY ADJOURNS INQUIRY RESUMES]

[11:21] CHAIRPERSON: The commission resumes. Brigadier, it’s my duty remind you that you’re still under oath. I don’t have to remind you, Mr Budlender, that you’re still cross-examining.

MR BUDLENDER SC: My memory is not great, but that much I can remember, Chairperson. Brigadier, before the tea adjournment we were talking about the option of moving at night on the small group of 50 on the koppie, you remember that?

BRIG MKHWANAZI: Yes, I remember.

MR BUDLENDER SC: And you agree that that was an alternative which should be considered on that scenario?

BRIG MKHWANAZI: Depending on the information received, as I have said, Counselor, yes it can be an option as well to deal with the situation.

MR BUDLENDER SC: And common sense tells us that it’s relatively easy to deal with a group of about 50 people because you can muster overwhelming force of numbers.

BRIG MKHWANAZI: That’s correct.

MR BUDLENDER SC: And the public order
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1 later by the 16th of August these reasons which were given for not following this strategy had fallen away. Forces called up from distance locations had arrived by then.

2 Those who were there had been oriented to the mission area, correct?

3 MR BUDLENDER SC: So the reason for not doing this on the 14th no longer existed on the 16th.

4 BRIG MKHWANAZI: That's correct.

5 However, I'm not sure, Counsellor, why after they took a decision they never go back and revisit and see what they can do. I'm not sure in that position.

6 MR BUDLENDER SC: That's a very good question. Yes, now, Brigadier, on the face of it, if you wanted to – on the face of it, it would be a lower risk strategy to confront 50 people by surprise at night than 3

7 500 people in daylight who can see it coming.

8 BRIG MKHWANAZI: You're correct, Counsellor, however maybe can I point something, especially if you deal with the spectators or – sorry with the participants during the day at that type of a – at that figure, the only way is to follow the procedures, giving warning, let the people move first on their own. There are those who will voluntarily disperse and go back home which will actually maybe allow you to have a better number to contain. That's the only part maybe you can sometime utilise as well, depending to the situation on a day as well.

9 MR BUDLENDER SC: Yes and while you're on that point, we know that in fact no such warning was ever given on the 16th of August. The intention was to give the warning after the barbed wire had been deployed but the barbed wire triggered the events which resulted in the killings.

10 BRIG MKHWANAZI: I know very well that the plan was to deploy the barbed wire after the barbed wire has been deployed then the warning be given, following the procedures. However with the situation whereby people started to breach the line as quick as possible, they couldn't give the warning.

11 MR BUDLENDER SC: If the warning had been given before the barbed wire was deployed, that may well be that some part of the crowd would've left and gone home.

12 BRIG MKHWANAZI: I'm not sure, Counsellor. It can be both ways, however, I'm not sure with the operational commander on that day, what was his assessment regarding the giving of the warning.

13 MR BUDLENDER SC: I'm just repeating what you said in your evidence a short moment ago that if you give a warning some people are likely to leave and the result is that the crowd becomes smaller and easier to manage.

14 BRIG MKHWANAZI: That's correct, the main purpose is to have people voluntarily leaving that position. At the same time you can be able to actually deal with the situation that is before you if it come to that need.

15 MR BUDLENDER SC: Now we've been talking about alternatives to the – which could've and should've been considered. Now if you thought the weapons were being kept by the people who slept in the hostel, one way of confiscating the weapons would be to cordon the hostels and not let people out until they had been searched for weapons. That would be a possibility.

16 BRIG MKHWANAZI: Normally, Counsellor, if you work with hostels you need to have a proper information intelligence wise that must come through. At the same time we need to take the – look to the situation especially with the terrain, the number of rooms that are available as well to plan properly so that if you cordon, you can be able to deal with the situation. If it's well planned and you got information properly because what is important is to know exactly where the firearms are kept then you can be in a position to deal with the situation properly but if it's not that position, always this challenging because if you talk about the hostel, it can be having a lot of rooms and it can be really an operation that will give a lot of challenge if you don't have information.

17 MR BUDLENDER SC: Yes, I can understand that searching a hostel can be a big job, but if your aim is to prevent people coming to the koppie armed, then you don't need to search the hostel, you can just stop them leaving the hostel until they've been searched.

18 BRIG MKHWANAZI: It can be an alternative, Counsellor, yes as well the information must be in place. Are they all residing in the hostel and to make sure as well the danger part of putting members in danger at that situation, hence they are armed with sharp objects. Our history tells us, we have lost a few police official in a situation whereby an assegai can be used to a police official and the police official can be killed. So we need to be very careful and maybe my option, if you ask what option can I use, it's better rather than to do it during the day than to do it at night when people are sleeping. You know very well you plan, you get information, you go in, you can actually deal with the situation.

19 MR BUDLENDER SC: Brigadier, one of the options you can consider is to cordon and search the hostels to remove any dangerous weapons in order to
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1. stabilise the area, is that correct?

2. BRIG MKHWANAZI: That's correct, Sir.

3. MR BUDLENDER SC: That would be a good thing to do.

4. BRIG MKHWANAZI: That's correct.

5. MR BUDLENDER SC: And in fact the police planned to do that. Are you aware of that?

6. BRIG MKHWANAZI: Definitely it is one of the stages.

7. MR BUDLENDER SC: Wouldn't it - well let's go to slide L82. This is also part of Colonel Scott's plan of the 14th of August, is that correct?

8. BRIG MKHWANAZI: Correct.

9. MR BUDLENDER SC: And you'll see that under stage 6 he says this is now going to come at the end of his process. In order to complete the disarming process in the Marikana area, the Karee and Wonderkop hostels will have cordon and search operations executed to remove any further dangerous weapons in order to stabilise the area.

10. So that was part of the plan.

11. BRIG MKHWANAZI: I do agree.

12. MR BUDLENDER SC: Can you think of any good reason why that shouldn't have been done before the crowd of 3 500 were confronted on the kopPie?

13. BRIG MKHWANAZI: As I have indicated, 25

1. my point in making is I'm actually dealing with the position whereby we talk of gathering procedures that we need to follow. If everything was followed properly, I don't think it was going to be a problem even to go to that position to say let's search them before they reach the kopPie because obviously the marshals will do that type of a job and police will only have to assist that's all, to make sure such things doesn't happen.

2. MR BUDLENDER SC: Brigadier, we know that this was a gathering which was not - which did not follow the procedures and the Regulation of Gatherings Act. So that doesn't help us very much, does it?


4. MR BUDLENDER SC: So all I'm putting to you is that one of the alternative strategies if you wanted to stop people coming to the kopPie armed, was to deploy a filtering police line to search those who were approaching or who were moving along approach routes.

5. BRIG MKHWANAZI: Counsellor, I do agree.

6. Not to make a problem to your question, if we check back on the 13th, that was tried already by General Mpembe and definitely it had a difficult of a result.

7. MR BUDLENDER SC: No, Brigadier, I don't think that's at all what General Mpembe attempted. General Mpembe didn't have a pre-planned and pre-organised filtering police line. He came across a group of people who were marching and he dealt with the situation ad hoc as it arose.

8. BRIG MKHWANAZI: That's correct.

9. Counsellor, but if we check the Regulation of Gatherings Act it provides for a spontaneous event. This was the same situation and it must be handled as the same as others as well. As the members intervened at that time, it's the same situation. In that type of a situation they were supposed to follow those procedures in the same way. I do agree, there was notice given, there was no notice given by the participants gathering in the kopPie. However, the procedures, hence it was spontaneous, it has to be followed in the same way. It provided, it is provided under Regulation 15 of Gatherings Act.

10. MR BUDLENDER SC: Brigadier, to sum up, we've identified several alternative choices which could have been made. We've identified a night operation at the kopPie to deal with 50 people, and we've agreed that there's no apparent reason in the document L as to why that wasn't done on the 16th.

11. BRIG MKHWANAZI: That's correct.

12. MR BUDLENDER SC: We've also agreed that an alternative option would be to search people when they came out of the hostels.
there was that we need to check when do we do it, because
if we do it during the day it may sometimes cause problem,
they are already armed.

MR BUDLENDER SC: Yes, the sensible time
to do it would be when they came out in the morning.

BRIG MKHWANAZI: If the information is
well, given plan is in place properly, I will agree with
you, Counsellor.

MR BUDLENDER SC: We've agreed that the
further option was a cordon and search of the hostels
before confronting the people on the koppie.

BRIG MKHWANAZI: Yes, Counsellor, I’m in
agreement. The only thing I’m saying is that proper
information must be, actually be obtained. Hence the
hostel got lots of rooms, know exactly where the weapons
are, then you have a proper plan and you’d be able to
search without any problem and be able to disarm whoever is
having anything in his possession at that stage.

MR BUDLENDER SC: And we've agreed that a
further option would be to deploy a filtering police line
to stop people reaching the koppie with weapons.

BRIG MKHWANAZI: My point, Counsellor,
was that if this was done in a proper way, notice given,
condition put in place, as well as marshals in place as the
people are moving to the koppie, the job for the Police was
going to be too little because they were going to manage
themselves and Police were going to assist where it is
necessary. I do agree where you said there wasn’t any
notice given and my point in making is any spontaneous
event, whatever event that comes, we need to try and follow
the procedures properly.

MR BUDLENDER SC: And on the face of it,
Brigadier, all of these would be lower risk options than
confronting 3 500 people on the koppie.

BRIG MKHWANAZI: Correct.

MR BUDLENDER SC: Thank you, Brigadier.

Can we then move on to another subject, which is the
decision making process. Now we know that as at the 16th
the strikers had been on the koppie for three or four days,
depending on when you count the starting point.

BRIG MKHWANAZI: I got that information.

MR BUDLENDER SC: The decision whether to
implement stage 3, that is the rollout of the barbed wire,
had to be taken by the people on the ground, in particular
by the overall commander.

BRIG MKHWANAZI: Normally in operations
of this nature decisions are actually taken between the
operational commander and an overall commander, because
this is about a decision that needs to be taken.

They are the people on the ground; they know what is going
on, and they are best placed to make the decision.

BRIG MKHWANAZI: It depends, Counsellor,
where the overall commander is at that stage. He may
sometimes be in a JOC, or maybe he can be somewhere, but
these are two people who must make decisions.

MR BUDLENDER SC: And it’s a decision
which must be taken at the time in question just before you
implement, in the light of all the circumstances which then
prevail.

BRIG MKHWANAZI: It will depend, because
all decision must be made based on the operational plan
that is in place, unless if it is a new information that
comes up, then that decision will be taken right at that
point and say what has to be done to deal with that
situation. But if it is on the plan, the only thing is to
say when are we activating, or should we activate paragraph
so-and-so and do what we’re supposed to do.

MR BUDLENDER SC: It would be wrong - let
me put it differently. It would be wrong to make the
decision the day before to say we’re going to implement
this strategy, regardless of what the circumstances are
tomorrow?

BRIG MKHWANAZI: Counsellor, right from
the beginning I said always there will be influencing
factors that come during the operation. You have the plan,
but it’s not Alpha and Omega. There will be some changes
every time that will give some sort of changes to say how
we deal with the situation. Obviously if you draft an
operational plan or you compile it, it will be done in time
and it must be done in time so that we get all the
necessary information in place. Come the operation, we
know exactly who to contact, what to do, especially if we
deal with issues of crowd management where people are going
to march, where people are going to have gatherings. There
you need a lot of information, who to talk to if you need
to talk with somebody amongst them. You need this
information prior. You can’t have it on the day. If you
have it on the day you can’t do anything properly. So that
is very, very important that you need to prepare yourself
in time so that you can be able to do everything properly.

MR BUDLENDER SC: Brigadier, let me cut
to the chase. It arises really from a question which
Commissioner Hemraj put to you. The decision to move and
implement a particular stage is an operational decision
which must be taken in the light of the circumstances at
that time by the people who are best able to judge them.

BRIG MKHWANAZI: Counsellor, my point of
departure was we got a plan in place that addresses the
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<td>anticipated situation. However, during the day of the</td>
<td>information it's through from the side of the Police with</td>
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<td>situation something happened; decision need to be taken</td>
<td>our own chain of command, how we have to do the job. But</td>
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<td>now, and definitely the operational commander together with</td>
<td>on political side to say now do the following, it has never</td>
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<td>an overall commander, they will take a decision to say</td>
<td>happened to my side.</td>
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<td>let's activate this type of a plan and address the</td>
<td>MR BUDLENDER SC: Yes, and if it were to</td>
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<td>situation. I agree with you.</td>
<td>happen it would be a bad thing?</td>
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<td>MR BUDLENDER SC: Yes, I understand that.</td>
<td>BRIG MKHWANAZI: Ja, for me it would be</td>
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<td>You have an operational plan, but of course you don’t</td>
<td>for the first time, Sir.</td>
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<td>implement it blindly. You look at the situation on the</td>
<td>MR BUDLENDER SC: And you would consider</td>
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<td>ground at the time before you decide to implement.</td>
<td>it to be a bad thing? That’s why it’s never happened</td>
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<td>BRIG MKHWANAZI: That’s correct,</td>
<td>before.</td>
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<td>depending to what issues that are transpiring during the</td>
<td>CHAIRPERSON: In the witness’s</td>
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<td>course of the event.</td>
<td>experience?</td>
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<td>MR BUDLENDER SC: Yes, exactly. Now</td>
<td>MR BUDLENDER SC: In the witness’s</td>
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<td>these are difficult decisions which the operational</td>
<td>experience, yes.</td>
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<td>commander and the overall commander have to make.</td>
<td>BRIG MKHWANAZI: Ja, on my opinion really</td>
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<td>BRIG MKHWANAZI: I will agree and say</td>
<td>it would be a first time to have political role players</td>
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<td>again that it depends what type of a situation actually</td>
<td>coming in and give instructions to Police how to police a</td>
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<td>that they are coming across then, but yes, decision needs</td>
<td>situation. That would be a new thing. The only thing,</td>
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<td>to be taken.</td>
<td>Counselor, that can be done if we talk about the situation</td>
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<td>MR BUDLENDER SC: My point is that these</td>
<td>of Marikana, we can look of the influential figures in</td>
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<td>are difficult decisions and they should be taken by</td>
<td>politic who can come in and talk to the people maybe to</td>
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<td>somebody with good operational experience.</td>
<td>assist, to make sure things can be actually peacefully</td>
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<td>BRIG MKHWANAZI: Correct.</td>
<td>resolved. That can be done, but not to say how the Police</td>
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<td>MR BUDLENDER SC: And if someone other</td>
<td>or the police functions must be executed on that particular</td>
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<td>Page 3093</td>
<td>Page 3095</td>
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<td>that the operational commander and the overall commander</td>
<td>a day.</td>
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<td>decided to remove the people from the koppie, that would be</td>
<td>[12:01] MR BUDLENDER SC: Brigadier, I want to be</td>
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<td>an error. It’s a decision they should make.</td>
<td>careful again to make it clear that I’m not saying that it</td>
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<td>BRIG MKHWANAZI: Counsellor, normally</td>
<td>did happen, but if it did happen that there was political</td>
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<td>what we have, we have the overall commander, we have the</td>
<td>pressure on the Police to act in a particular way in this</td>
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<td>operational commander in the province, but we have the</td>
<td>situation, that would be a new thing in your experience and</td>
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<td>provincial commissioner that is in charge of the province.</td>
<td>it would be a bad thing?</td>
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<td>These are the people most of the time that will come</td>
<td>BRIG MKHWANAZI: That’s correct, Sir.</td>
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<td>onboard because the provincial commissioner is answerable</td>
<td>MR BUDLENDER SC: Thank you. Then can we</td>
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<td>for the province. But the people operationally who will</td>
<td>move on to a new topic?</td>
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<td>actually interact in most cases in decision making in the</td>
<td>CHAIRPERSON: - move on to the new topic,</td>
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<td>intervention to the problem will be the overall commander</td>
<td>I’d like to ask a question dealing with this topic. At one</td>
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<td>as well as the operational commander.</td>
<td>point in your evidence I understood you to use the word</td>
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<td>MR BUDLENDER SC: Brigadier, I want to</td>
<td>“now” in the context of the plan having to be put into</td>
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<td>ask you a question and I want to ask it carefully because I</td>
<td>operation now, which means in this particular context the</td>
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<td>don’t want to put as a fact what hasn’t been shown. But if</td>
<td>16th of August. Did you say something along those lines?</td>
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<td>there was political pressure on the Police to remove the</td>
<td>BRIG MKHWANAZI: If I remember,</td>
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<td>people from the koppie, that would have the risk of leading</td>
<td>Chairperson, the question was about the decision making, if</td>
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<td>to the wrong decision because it’s not a political decision</td>
<td>I’m correct. My point was that the plan has to be done in</td>
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<td>that should be made, it’s an operational decision that</td>
<td>time and decision taken on the day will be between the</td>
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<td>should be made.</td>
<td>overall commander, the operational commander, to say should</td>
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<td>BRIG MKHWANAZI: Ja, Counsellor, this one</td>
<td>we activate the plan and do 1, 2, 3, as it is actually</td>
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<td>will be a challenge to me to respond on it because on my</td>
<td>written on the plan, and again the point I made was it will</td>
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<td>experience working as a police official, I never receive</td>
<td>depend during the operation itself if there's something</td>
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<td>instruction from political side. Each time we get</td>
<td>that comes at that situation to say how to deal with that</td>
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1 Because nobody maybe was aware that it will happen and what
2 decision, what steps to be followed to deal with that
3 particular problem.

4 CHAIRPERSON: The reason I ask the
5 question is, what interests me is was it considered
6 necessary for the operational plan to be put into operation
7 on that Thursday. In other words was it also possible that
8 the matter could be held over till the next day, till the
9 Friday when something could have happened overnight, as Mr
10 Budlender has suggested. Now you've agreed, if I
11 understood you. In other words, as you see it on the facts
12 that have been put before you, was there any compelling
13 operational necessity for the plan to be put into operation
14 on Thursday the 16th?

15 BRIG MKHWANAZI: The only information,
16 Chairperson, I received was that for the plan to be delayed
17 was due to the fact that there was an agreement that the
18 arms will be laid down, and that's the information I got.
19 If you look to that position, if the arms were laid down,
20 it means everything is peacefully, wasn't going to be any
21 problem that comes out. That's the only information I got.
22 I don't have another reason around that.

23 CHAIRPERSON: Apparently it must have
24 become clear in the course of the morning that if there was
25 such an agreement, as you will have heard there's debate

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1 about that, but if there was such an agreement it wasn't
2 being adhered to. The weapons were not being laid down and
3 the strikers were not prepared, despite pleas to them from
4 Mr Mathunjwa, to leave the koppie. That must have been
5 apparent at least by the middle of the day, between say
6 noon and 2 o'clock. So the question that arises then is
7 was there any compelling necessity, given that situation,
8 for the plan to be put into operation on that day?

9 BRIG MKHWANAZI: I do understand,
10 Chairperson, your question very well. However, I won't be
11 able to have a proper answer to say why they decided to
12 proceed with the plan after they have learned that people
13 are not prepared to lay down their arms. There maybe can
14 be lot of reasons around, of which maybe the people who
15 were involved on the operation said they will be in a
16 position to indicate, really, I shouldn't manage to get that
17 information exactly to say why immediately after they pick
18 it up that people are not going to lay down the arms, why
19 they decided to go and activate level 3. I'm not having
20 that information.

21 CHAIRPERSON: Thank you, Brigadier.
22 Sorry, Mr Budlender. You wanted to move on to another
23 point now. I thought that point's physically in the
24 context of the subject which you'd just been dealing with.

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1 you, Chair. Now, Brigadier, to move to a new point, you
2 made reference in your evidence-in-chief to the Goldstone
3 Commission. Do you remember that?

4 CHAIRPERSON: Correct, Sir.
5 MR BULDENER SC: That was the commission
6 of inquiry regarding the prevention of public violence and
7 intimidation.

8 BRIG MKHWANAZI: Correct, Sir.
9 MR BULDENER SC: And are you aware that
10 the commission put together a panel of experts to give it
11 advice regarding a new system of legal control of
12 demonstrations in South Africa?

13 BRIG MKHWANAZI: That's correct, Sir.
14 However, I never have an opportunity to read the report,
15 Sir.

16 CHAIRPERSON: You might find it helpful
17 in your work if you do so. It's a comprehensive report,
18 compiled by an international panel, who actually rafted the
19 Regulation of Gatherings Bill -
20 BRIG MKHWANAZI: Yes.
21 CHAIRPERSON: - which was adopted by
22 parliament.

23 BRIG MKHWANAZI: That's correct, Sir.
24 CHAIRPERSON: It was chaired, I met the
25 people concerned at the time in 1993, but the chairman was

Page 3099

1 an eminent Professor of Law from Harvard, who was very
2 largely responsible for a good deal of the thinking that
3 went into the bill and now the act, and it's all explained
4 in the book which counsel has referred to.

5 BRIG MKHWANAZI: Okay, thanks.
6 CHAIRPERSON: I think we still don't have
7 an exhibit number, so I will ask Ms Pillay once again to
8 assist us.

9 MS PILLAY: Chair, it would be TT1.
10 CHAIRPERSON: Thank you.
11 MR BULDENER SC: Brigadier, you have in
12 front of you a part of the, an extract from the report
13 which was produced by that panel.

14 BRIG MKHWANAZI: Thank you.
15 MR BULDENER SC: Perhaps we can start by
16 identifying who the members of the panel were to whom the
17 Chair referred. If you'll go to the last page but two, in
18 it's called page 69, you'll see appendix A, you see that?

19 BRIG MKHWANAZI: I see it, Sir.
20 MR BULDENER SC: And we see who the
21 people were. There was Lee Brown, who was the Commissioner
22 of Police of the City of New York, correct?

23 BRIG MKHWANAZI: Correct.
24 MR BULDENER SC: And there was Prof Dr
25 Fijnaut, F-I-J-N-A-U-T, who was a Professor of Criminology
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<th>Page 3102</th>
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<td>1 and Criminal Law from Holland, and the book tells us that</td>
<td>1 operation, and it’s said that he frequently lectures at the</td>
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<tr>
<td>2 he has written a great number of books, reports and</td>
<td>2 National Police Staff College in the United Kingdom.</td>
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<td>3 articles in the field of policing, organised crime, general</td>
<td>3 BRIG MKHWANAZI: I see that.</td>
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<tr>
<td>4 criminology and comparative and international criminal law.</td>
<td>4 MR BUDLENDER SC: I’m sure you’ll agree.</td>
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<td>5 You see that?</td>
<td>5 Brigadier, that that’s a group of very eminent people with</td>
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<tr>
<td>6 BRIG MKHWANAZI: I see that, yes.</td>
<td>6 very great knowledge of policing, including public order</td>
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<td>7 MR BUDLENDER SC: Perhaps to go back to</td>
<td>7 policing, both in theory and in practice. Would you agree</td>
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<td>8 Mr Brown, we see that Mr Brown was the president of the</td>
<td>8 with that?</td>
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<td>9 International Association of Police Chiefs. Then we have</td>
<td>9 BRIG MKHWANAZI: I do.</td>
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<td>10 Prof Don Foster. You see that?</td>
<td>10 MR BUDLENDER SC: Incidentally, have you heard</td>
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<td>11 BRIG MKHWANAZI: I see that, yes.</td>
<td>11 anything about him?</td>
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<tr>
<td>12 MR BUDLENDER SC: He was a Professor of Psychology at the University of Cape Town and he –</td>
<td>12 BRIG MKHWANAZI: No, it’s first time to hear, Sir.</td>
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<td>13 CHAIRPERSON: He still is.</td>
<td>13 MR BUDLENDER SC: I’m told he’s a former</td>
</tr>
<tr>
<td>14 MR BUDLENDER SC: - still is, and he has published, or had published and has published in the area</td>
<td>14 MR BUDLENDER SC: You see that?</td>
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<td>15 of the psychology of crowds and crowd violence, and he had acted as expert witness or consultant in 10 trials</td>
<td>15 MR BUDLENDER SC: tank.</td>
</tr>
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<td>16 involving collective violence. You see that?</td>
<td>16 MR BUDLENDER SC: policemen; he’s known as Tank Waddington. It may tell us something about him. Tank.</td>
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<td>17 BRIG MKHWANAZI: I see that.</td>
<td>17 BRIG MKHWANAZI: No, I haven’t met him,</td>
</tr>
<tr>
<td>18 Tertius Geldenhuys, who I think is now a general in the</td>
<td>18 MR BUDLENDER SC: I see tank.</td>
</tr>
<tr>
<td>19 South African Police Services.</td>
<td>19 MR BUDLENDER SC: Now would you go to the</td>
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<td>20 BRIG MKHWANAZI: I know him, Sir.</td>
<td>20 page which is printed page 37? Do you see the sub-heading</td>
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<td>21 MR BUDLENDER SC: Yes. Then we have Prof</td>
<td>21 at the foot of page 37, “Command and control of police?”</td>
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<td>22 Shearing, S-H-E-A-R-I-N-G, who was Professor of</td>
<td>22 BRIG MKHWANAZI: Correct.</td>
</tr>
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<td>23 Psychology at the University of Cape Town and he –</td>
<td>23 MR BUDLENDER SC: Now I would like to</td>
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<tr>
<td>24 CHAIRPERSON: He still is.</td>
<td>24 read a passage to you from there, and you can follow it as</td>
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<td>25 MR BUDLENDER SC: Yes. Then we have Prof</td>
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<tr>
<td>1 Philip Heymann, H-E-Y-M-A-N-N, who was an eminent professor at Harvard, director at the Centre for Criminal Justice, and has held very many senior positions in the United States government. See that? Then we have the late Adv Louw, who was an advocate of the Supreme Court of South Africa. Then we have Dr Olivier, who was the head of Conflict Analysis at the Human Sciences Research Council.</td>
<td>1 I go. Quote, “Each of the preceding scenarios presumes the effective deployment of tactics within some clearly formulated strategy. It is of the utmost importance that the policing of public order operations is characterised by thorough planning and preparation. Senior officers must consider and make contingency plans for various scenarios, from those thought to be highly probable, through to those considered possible, however unlikely. Through these means the police will avoid being surprised by unexpected events and thus retain maximum control over their own officers and the events themselves.” You see that?</td>
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<td>2 Shearing, S-H-E-A-R-I-N-G, who was Professor of Criminology and Sociology at the University of Toronto and at the University of the Western Cape, and a member of the Police Board established under the provisions of the South African Peace Accord. Then we have Mr CJ Van Der Merwe, who was the president of the Natal Municipal Association and a man clearly with a great deal of experience in local government. Then we have Dr PAJ Waddington, W-A-D-D-I-N-G-T-O-N, who had written a book called “The Strong Arm of the Law,” which was a detailed examination of police strategy and tactics in public order situations. He had been observing the policing of demonstrations on London, including negotiations between police and demonstrators, the planning, preparations and briefing for the police</td>
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<td>3 and has held very many senior positions in the United States government. See that? Then we have the late Adv Louw, who was an advocate of the Supreme Court of South Africa. Then we have Dr Olivier, who was the head of Conflict Analysis at the Human Sciences Research Council.</td>
<td>2 BRIG MKHWANAZI: I see that.</td>
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<td>4 I’m sure you’ll agree, do you agree with that?</td>
<td>4 MR BUDLENDER SC: I do agree, Sir.</td>
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<td>5 BRIG MKHWANAZI: Yes, Sir.</td>
<td>5 MR BUDLENDER SC: Good, because one of the key elements of good planning is that you provide for contingencies, in other words for what you are going to do if things don’t go as planned.</td>
</tr>
<tr>
<td>6 It tells us that he was engaged in extensive research on civil unrest and political violence in South Africa. Then we have Prof Clifford Shearing, S-H-E-A-R-I-N-G, who was Professor of Criminology and Sociology at the University of Toronto and at the University of the Western Cape, and a member of the Police Board established under the provisions of the South African Peace Accord. Then we have Mr CJ Van Der Merwe, who was the president of the Natal Municipal Association and a man clearly with a great deal of experience in local government. Then we have Dr PAJ Waddington, W-A-D-D-I-N-G-T-O-N, who had written a book called “The Strong Arm of the Law,” which was a detailed examination of police strategy and tactics in public order situations. He had been observing the policing of demonstrations on London, including negotiations between police and demonstrators, the planning, preparations and briefing for the police</td>
<td>6 MR BUDLENDER SC: Correct, Sir.</td>
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<td>7 MR BUDLENDER SC: Correct.</td>
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<td>8 BRIG MKHWANAZI: I see that.</td>
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<td>9 MR BUDLENDER SC: Do you agree with that?</td>
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<td>10 BRIG MKHWANAZI: I do agree, Sir.</td>
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<td>11 BRIG MKHWANAZI: Good, because one of the key elements of good planning is that you provide for contingencies, in other words for what you are going to do if things don’t go as planned.</td>
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<td>12 BRIG MKHWANAZI: Correct, Sir.</td>
<td></td>
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<td>13 MR BUDLENDER SC: You must anticipate the ways in which things might not go according to plan and make a plan for each of them.</td>
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<td>14 BRIG MKHWANAZI: That’s correct.</td>
<td></td>
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<td>15 MR BUDLENDER SC: If you don’t do that,</td>
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1 you don't have an adequate plan.
2 BRIG MKHWANAZI: Correct.
3 [12:21] MR BUDLENDER SC: Now let's look at the plan in this case. Would you go to L177? Do you have it?
4 And we see there, that the plan was first to - we are now talking about plan of stage 3, that's correct?
5 BRIG MKHWANAZI: That is correct, yes.
6 MR BUDLENDER SC: And the plan was to enclose the neutral area with barbed wire.
7 CHAIRPERSON: There's an attempt being made to show us slide 177, but we are in fact seeing slide 176.
8 MR BUDLENDER SC: Thank you, Chair. So the phase 1 was going to be enclose the neutral area with barbed wire, that is correct?
9 BRIG MKHWANAZI: Yes.
10 MR BUDLENDER SC: Phase was going to be to form lines, I beg your pardon, form two lines of Public Order Police with Nyalas and water canons, and then the -
11 and with the TRT and the NIU and the SDFs behind them, correct?
12 BRIG MKHWANAZI: Correct.
13 MR BUDLENDER SC: And then there was to be the use of force in a continuum, firstly the instruction to disperse, to which you have already referred us. That is correct?
14 BRIG MKHWANAZI: It is correct, Sir.
15 BRIG MKHWANAZI: Correct.
16 MR BUDLENDER SC: And then the move to water canons, stun grenade and teargas, and rubber bullets.
17 The plan was that this would lead to dispersion of the people on the koppie and thereafter they would be circled and isolated, searched for dangerous weapons and arrests made. That's what the plan was, correct?
18 BRIG MKHWANAZI: Correct, yes.
19 MR BUDLENDER SC: What was the plan, if things didn't go according to plan?
20 BRIG MKHWANAZI: In my understanding, Counsellor -
21 MR BUDLENDER SC: Sorry to interrupt you, Brigadier, but first let's take it step by step, is there anything in this plan in annexure L which says what the contingency plan was if things didn't go according to plan?
22 BRIG MKHWANAZI: I will go back to, straight to my answer, the way I wanted to place it, Counselor, that from what I have picked up and yesterday, and what was I was shown, there was a place where there were reserves put in place, in case if something goes wrong. Those reserves will be activated and be able to assist. That's what I picked up yesterday what was placed there. I think it's about two places on a holding area, as a contingency to if something happens, goes wrong.
23 BRIG MKHWANAZI: I do agree.
24 MR BUDLENDER SC: Of course, it doesn't help to have a contingency plan in your head, if you haven't told those who are implementing the plan, the members on the ground, what it is. They must know what they are going to do, if things don't go according to plan. It is correct,
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1 Counsellor, normally briefing must be given thoroughly.
2 MR BUDLENDER SC: Thank you, Brigadier, I
3 now want to move onto the looking at the plan itself to ask
4 you some questions about the plan itself. I’ll take you to
5 specific pages, if I – where I get there, I won’t have to
6 do much of that, I don’t think, but I think we know, I am
7 sure we have agreed, that the basic premise of the plan was
8 that while the razor wire was being rolled out, the
9 strikers would remain on the koppie.
10 BRIG MKHWANAZI: Information that I
11 received, Counsellor, was that after the deployment, the
12 participants will be dispersed from the koppie.
13 MR BUDLENDER SC: In other words, it was
14 anticipated that all or most of them would remain on the
15 koppie, until after the deployment of the barbed wire when
16 the dispersal would take place.
17 BRIG MKHWANAZI: That’s information I
18 got, I think so, Sir.
19 MR BUDLENDER SC: Now, we also know from
20 what happened, that that’s not what transpired, in fact
21 many people moved off the koppie once the police started
22 deploying the barbed wire.
23 BRIG MKHWANAZI: Information received
24 from my side, Counsellor, is that when the barbed wire was
25 deployed, and it was breached by some of the group of the

Page 3109
1 people, and there were some people who were actually moving
2 away as well, and they were not confronted by anybody.
3 They were able just to move in the meantime.
4 MR BUDLENDER SC: I think you’ll agree
5 also that it’s not really surprising that people
6 experienced barbed wire or razor wire as threatening, and
7 some of them would have been afraid that they were going to
8 be surrounded and encircled.
9 BRIG MKHWANAZI: It is possible, but on
10 that day, I am not sure the purpose of the barbed wire was
11 to encircle the people. I don’t think so it was that
12 purpose, Sir.
13 MR BUDLENDER SC: I understand it,
14 Brigadier, but of course the people on the koppie didn’t
15 know why the barbed wire was being put in place.
16 BRIG MKHWANAZI: Possible.
17 MR BUDLENDER SC: We have seen from the
18 statements produced by the – according to the statements
19 produced of - by IPID, of people who were there, people
20 refer to being encircled or surrounded.
21 BRIG MKHWANAZI: I hear that, Sir.
22 MR BUDLENDER SC: Now it’s, I suggest,
23 completely foreseeable that when the – as the barbed wire
24 was deployed some of the people on the koppie would want to
25 head in the direction of the settlement in which they live.

Page 3110
1 BRIG MKHWANAZI: It can be possible, Sir.
2 MR BUDLENDER SC: Well, you wouldn’t be
3 surprised if that happened, would you? You wouldn’t be
4 surprised if some people said to themselves, hang on,
5 things are getting rough here now, the barbed wire is
6 coming out, I am going home.
7 BRIG MKHWANAZI: As, Counsellor, you have
8 said that some of them may happen that they never knew what
9 was happening, it’s normal, it can be possible.
10 MR BUDLENDER SC: You wouldn’t be
11 surprised by that and in fact that was part of the plan
12 that people should leave without any force being used.
13 BRIG MKHWANAZI: It’s part of the plan,
14 of course.
15 MR BUDLENDER SC: Now, the direction of
16 the settlement, the informal settlement, where some of the
17 people lived, is north west of the koppie.
18 CHAIRPERSON: I take it Mr Budlender, if
19 you look at slide 81, you will see the koppie, you will see
20 the various police forces arraigned and then behind them,
21 is the informal settlement.
22 MR MAHLANGU: Sir, it’s 181? 81.
23 CHAIRPERSON: Well it’s various places
24 but I think the slide 81 is a convenient one.
25 BRIG MKHWANAZI: Yes, I got it, north

Page 3111
1 west.
2 MR BUDLENDER SC: Now if you’ll look at
3 that slide, Brigadier, you will see –
4 CHAIRPERSON: Mr Semenya wishes to say
5 something.
6 MR SEMENYA SC: Chair, I don’t mean to be
7 difficult, but is the proposition that the ones who were in
8 the group, passed the kraal, some of them lived in that
9 area? Are they posting that a fact?
10 CHAIRPERSON: Mr Budlender, you heard the
11 question, I am not sure it’s an objection, but it’s a
12 question which might lead to an objection if you don’t
13 answer properly.
14 MR BUDLENDER SC: Well, according to the
15 IPID statements which we have some of the strikers lived in
16 the informal settlement. Can I just finish, Chair? I put
17 it to the witness on this basis, I don’t want to give
18 evidence, but if some of – let me put it to you this way.
19 Brigadier –
20 CHAIRPERSON: Earlier on in your cross-
21 examination, you put certain propositions to the witness,
22 and asked him to assume that they are correct. So that
23 might be the way forward, to deal with this matter.
24 MR BUDLENDER SC: Brigadier, if we assume
25 that some of the strikers on the koppie lived in the
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1 informal settlement, can you make that assumption for the
2 moment. If I am wrong in that, and none of the strikers
3 came from the informal settlement, then of course what will
4 follow will be irrelevant, but can you make that assumption
5 for the moment? Right, okay, now Brigadier, can you locate
6 the koppie where the strikers were on that diagram, if I
7 have it correctly, it’s K1. Can you see that?
8 
9 BRIG MKHWANAZI: I saw it yesterday, oh, ja. That’s it.
10 
11 MR BUDLENDER SC: Alright.
12 
13 BRIG MKHWANAZI: I see it.
14 
15 MR BUDLENDER SC: Now, you can see in the
16 top right-hand corner of that, to orientate ourselves on
17 the top right-hand corner of that diagram is the north
18 sign, do you see that? It’s very small.
19 
20 BRIG MKHWANAZI: I see that.
21 
22 MR BUDLENDER SC: Sir, if we now relate
23 K1 to the informal settlement, in fact the statement is due
24 north of the koppie, can you see that?
25 
26 BRIG MKHWANAZI: Yes.
27 
28 MR BUDLENDER SC: Now we know that the
29 razor wire was extended on that yellow line, or more or
30 less on that yellow line which is shown there, can you see
31 that?
32 
33 BRIG MKHWANAZI: I see that.
34 
35 MR BUDLENDER SC: It blocks mainly the
36 easterly direction, easterly and some of the northerly. Do
37 you see that?
38 
39 BRIG MKHWANAZI: I see that.
40 
41 MR BUDLENDER SC: I think the line didn’t
42 go as far in the event, as it is shown on that plan. Do
43 you see that?
44 
45 BRIG MKHWANAZI: I see that.
46 
47 MR BUDLENDER SC: Now that razor wire was
48 being put in place as the events unfolded, correct? It was
49 being deployed
51 
52 MR BUDLENDER SC: You’re aware, I think,
53 that those - the blue and orange and red lines are
54 vehicles, marked STSNIUTRT P2, P4 and so on, those were not
55 yet in place? Do you understand that? They were still to
56 come.
57 
58 MR MKHWANAZI: Yes.
59 
60 MR BUDLENDER SC: The plan was to deploy
61 the barbed wire and then to put those units in place in
62 order disperse the people?
63 
64 MR MKHWANAZI: Yes.
65 
66 MR BUDLENDER SC: You see that? And
67 that’s in fact, it’s quite clear from the operational plan
68 that that was the intention. First we put the barbed wire
69 in place and then we roll out these vehicles and people in
70 order to carrying out the dispersal action?
71 
72 MR MKHWANAZI: I see that.
73 
74 MR BUDLENDER SC: Now if there were
75 people on the Koppie who lived in the settlement and wanted
76 to go there, the logical thing would have been for them to
77 head in a north-westerly direction, really through that
78 area where the barbed wire and the – had not reached and
79 where these other troops were going to be deployed, but
80 hadn’t yet arrived? Can you see that?
81 
82 MR MKHWANAZI: Yes.
83 
84 MR BUDLENDER SC: That would be the
85 obvious way to go home if you wanted to go home to the
86 informal settlement?
87 
88 MR MKHWANAZI: That’s correct.
89 
90 MR BUDLENDER SC: And now if you were
91 going in that direction, you couldn’t go too far West,
92 because there is a negative attraction point. There was
93 IRA2, which was the TRT and other people, you see that
94 green one? So if you were sensible in wanting to avoid
95 trouble, you wouldn’t hit straight towards them. That
96 would be trouble. You would bend around to the right
97 towards the informal settlement.
98 
99 MR MKHWANAZI: I see that, but I wonder
100 if I can explain my understanding in disperse? From the
101 situation explained to me, I would like to say I was going
102 to be happy if I will hear that the police official after
103 the deployment of the barbed wire did manage to deploy,
104 because if you do disperse, it’s not that barbed wire will
105 deploy persons on the Koppie, but police official must
106 execute dispersal. And in this position, I don’t hear how
107 police official move to the Koppie and disperse the persons
108 there. The only thing I’m seeing is the barbed wire that
109 is deployed, of which counsellor’s point is that it may
110 have aggravated the thinking of the people to say, what is
111 going to happen? Let me run away from this position. That
112 is what I think what you are saying. But at this moment I
113 don’t see what is the position of the police official if
114 they’ve got a chance to deploy, form up and disperse the
115 people, because they must be dispersed by the police
116 officials themselves, I don’t see that position. Then it
117 gives me a position to say, it’s going to be a problem to
118 keep on saying, yes, yes, you know, as I’m doing now. I
119 would like really, with due respect, to say, can I have
120 that position to say, where is the police official in this
121 position? Did they manage to deploy or they never managed
122 to deploy, then maybe I can be able to talk. That is,
123 counsellor, with due respect, excluding the police
124 officials that are on reserve, the TRT. I would like to
125 hear on the part of the public order policing where they
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1. are now and what is the position, please.
2. MR BUDLENDER SC: Let me try to show you,
4. MR MKHWANAZI: I've got it.
5. MR BUDLENDER SC: Right. Now what that
6. shows us firstly, the dotted yellow line shows us how far
7. the deployed barbed wire actually reached. It was not as
8. far as had been planned on L81, which you've been shown.
9. Can you see that? For the sake of fairness, I should – and
10. completeness, I should say that there was an attempt to
11. close that gap between the front Nyala and that first
12. kraal, but that's as far as that barbed got on the most
13. generous reading. You see that?
14. MR MKHWANAZI: I see it.
15. MR BUDLENDER SC: And this is a
16. photograph taken at about the time shortly before the
17. deployment of the barbed wire came to an end, because you
18. can see how far it's already got.
19. MR MKHWANAZI: I see that.
20. MR BUDLENDER SC: Now if you look on the
21. right of that photograph, you will see the area where the,
22. if I can call them the dispersal team were going to be.
23. The water canon, the POP units, the TRT behind them, the
24. NIU and the STF behind them, they were all going to be on
25. the right and they were going to give effect to the

1. dispersal, you see that?
2. MR MKHWANAZI: I see that.
3. CHAIRPERSON: Mr Semenya wants to say
4. something?
5. MR SEMENYA SC: Chair, I do not follow
6. this line. As far as I understand, what we have as slide
7. 81 and what we have on slide 200, firstly as I understand,
8. on slide 81 that TRP in the green on top and that one below
9. were not on site when the crowd was moving. That's not
10. where they were.
11. MR BUDLENDER SC: I think we're then not
12. at cross-purposes, Chair. If the TRT in the green block
13. hadn't arrived yet, I accept that. That actually
14. simplifies matters, Brigadier, and I'm sure Mr Semenya will
15. correct me if I'm wrong, but I put it to you that at the
16. time when the deployment of the barbed wire came to an end,
17. the people to the – police officers and members to the
18. Western side, North-Western, Western side, in other words,
19. IRA2 and the STF and the NIU and the TRT, all those people
20. we see there, they hadn't arrived yet? Right. Now let me
21. put to you where what – the conclusions I want to draw from
22. all of this. It was inevitable and predictable that some
23. of the people on the Koppie would head in a North-Westerly
24. direction towards their homes.
25. MR MKHWANAZI: Counsellor, I will agree

1. if they were all from the side of the settlement.
2. MR BUDLENDER SC: Well, those who were
3. from the settlement?
4. MR MKHWANAZI: Definitely. They will
5. have definitely want to go home.
7. MR MKHWANAZI: It's a fact.
8. MR BUDLENDER SC: That's a positive
9. attraction point as you call it?
10. MR MKHWANAZI: Yes.
11. MR BUDLENDER SC: And there was nothing
12. to stop them doing that at that time?
13. MR MKHWANAZI: Counsellor, that's
14. information I got that during the deployment of the barbed
15. wire, some of the people they were as well moving, nobody
16. stopped there.
17. MR BUDLENDER SC: And even if they were
18. armed, they could go home with their arms?
19. MR MKHWANAZI: I haven't checked on that
20. position, Sir, I would be lying, I'm not sure.
21. MR BUDLENDER SC: Well, we've see there
22. was nothing to stop them doing that. There was no-one in
23. place to stop them?
24. MR MKHWANAZI: I'm not sure. I'm not
25. certain how to answer that question really.

1. MR BUDLENDER SC: Why don't you just say
2. yes?
3. MR MKHWANAZI: I need first, I rather
4. consult and see, and hear what's happening really. I
5. couldn't pick up whether everyone with arms, everybody, but
6. I was informed that the moment the barbed wire was
7. deployed, some people were moving from the Koppie as well, nobody interfered with -
8. MR BUDLENDER SC: Well, you've seen –
9. you've heard what Adv Semenya said, that at that time the
10. TRT to the North West and the – those lines of the
11. dispersal team were not yet in place?
12. MR MKHWANAZI: During the deployment of
13. the barbed wire?
14. MR BUDLENDER SC: At the time, yes,
15. during and at the time when the deployment of the barbed
16. wire came to an end?
17. MR MKHWANAZI: Yes.
18. MR BUDLENDER SC: So at that time there
19. was nothing to stop people walking through to the informal
20. settlement with their arms, if they were armed?
21. MR MKHWANAZI: Well, I'm not sure in that
22. position, but only what I know is that they were allowed to
23. go. I'm not sure whether it was the time TRT has arrived
24. or maybe not yet arrived. I'm not sure as I was not there.
MR BUDLENDER SC: I understand,
Brigadier, you weren't there and I don't want to ask, I really don't want to ask you questions about the detail of the operation. All I want to put to you is this. That once the barbed wire was rolled out or was being rolled out, it was natural that some of the people on the Koppie would head in a North Westerly direction and try to outflank the barbed wire which was being put in place.

MR MKHWANAZI: It's possible, Sir.

MR BUDLENDER SC: And there was no contingency plan to deal with that?

MR MKHWANAZI: I won't say it wasn't there or it was there, but the main thing is, it's obvious if people see that particular situation happen, definitely would like to go out and move back to their homes. I think the objective as well from SAPS on the day, was to have people moving out from that position. I don't see any problem around that position, that definitely you would need a contingency plan to stop them, because I don't see anything that says, stop them. What I see, is to split them into smaller manageable groups, disarm the participants, that's all what I'm seeing. So I don't see a problem on that.

MR BUDLENDER SC: What I put to you, Brigadier, if that happened, the operation would succeed in part of its goal, but fail in another and important part of its goal. It could – it would succeed to that extent that it would result in some dispersal of people and people leaving the Koppie, that's correct, that's what you've just said, I think?

MR MKHWANAZI: The end result -

MR BUDLENDER SC: Yes.

MR MKHWANAZI: - to ensure that people are dispersed and disarmed. Then yes, if you say, if some can on their own walk out without weapon in their possession, yes, there will be a gap on that to say, we still have people with arms in their possession. However, at this stage I never received information to say, those who left were still having their weapons, or they were not having their weapons.

MR BUDLENDER SC: You put your finger on the point, Brigadier, that it would achieve the dispersal, but it would not achieve disarming. So if any of the people with arms chose to go in that direction, that part of the operation would not have succeeded?

MR MKHWANAZI: Counsellor, my point is, if they left the koppie with weapon and at this position I haven't heard information that says they left with weapon or without weapon, counsellor, you can inform me if they left with weapon.
MR BUDLENDER SC: And that is to the, and we see K3 which is where the koppie is, I am sorry not K3, K1, I beg your pardon. You see K1?

MR MKHWANAZI: Yes.

MR BUDLENDER SC: The koppie. And then if we move to the right behind that cordon, that was the police and media safe area, do you see that?

MR MKHWANAZI: Okay, I see that.

MR BUDLENDER SC: Behind the cordon is the police and media safe area, do you see that?

MR MKHWANAZI: I see that.

MR BUDLENDER SC: And that's to the east of koppie 1.

MR MKHWANAZI: Right, I see that.

MR BUDLENDER SC: So this time I got it right. The cordon was to prevent the people from the koppie moving in an easterly direction. Towards where the police and media safe area was.

MR MKHWANAZI: The information I got is that the cordon with the barbed wire was to protect media and as well members of SAPS. And at the same time participants were allowed to move if they move, at that stage there wasn't any problem. That's what I have got.

MR BUDLENDER SC: The only point is this, that the area, the direction which they were prevented in moving was an easterly direction. The cordon prevented the moving in an easterly direction. Is that correct?

MR MKHWANAZI: Looking to the position where the barbed wire ends, it is correct.

MR BUDLENDER SC: So the barbed wire, that barbed wire cordon was erected because it was anticipated that otherwise some of the strikers might move in an easterly direction and the aim was to prevent that.

MR MKHWANAZI: The information I got is that the barbed wire's purpose was only to protect media and police officials. I haven't received information that says it was stopping the participants to go to a certain direction. However, counsel, I do agree with the position, where it ends it may definitely cause a problem for them to go through if they have to go through. But the information I got is that they were still allowed to move whatever direction they want to move.

MR BUDLENDER SC: Let's move on. When the plan did not go as intended, things didn't proceed as intended, that left the TRT and the NIU and the STF as the back up to deal with the situation which had arisen.

MR MKHWANAZI: Counsellor, maybe if I can understand at what stage maybe we are actually referring to, where the plan actually came to a position to say now is not actually achievable.

MR BUDLENDER SC: As we have previously agreed the plan was that the people or most of them would remain on the koppie while the barbed wire was deployed.

The other police officers will be brought around with teargas, water cannons, stun grenades and so on and they would disperse the people who had remained on the koppie?

MR MKHWANAZI: That is correct.

MR BUDLENDER SC: Instead of that a substantial number of people left the koppie going in a north westerly direction, I think, but going towards, going in the direction of the cordon, of the barbed wire. Or trying to go around the barbed wire. And there was never an opportunity to do the deployment of the dispersal group which had been planned.

MR MKHWANAZI: What I understand, counsel, is that the moment the barbed wire is deployed there was a breach by some of the participants. If you mean that that is correct, there was a breach.

MR BUDLENDER SC: Well, Brigadier, there are two different views as to what happened when the barbed wire was deployed. One view is the one which you have put forward, that there was an attempt to breach the cordon. The other view was that there was an attempt to outflank, or to go around the cordon. You and I don't have to debate that, that will be dealt with by the people who were there.

But all I am putting to you, is that, that movement had the result that the next phase or the next stage, namely bringing up the people who were going to carry out the dispersal action, couldn't proceed as planned because, well we know it ended up in a shooting.

MR MKHWANAZI: That's correct, counsel, it actually disrupted the next stage of giving warning, disperse the people.

MR BUDLENDER SC: And if the TRT and NIU, and STF had to be brought into play there was a real risk of fatalities, because they are people who carry sharp weapons.

MR MKHWANAZI: It is a fact, counsel, that if you bring TRT, national intervention, as well as special task force they carry live ammunition. And to take that decision you must know exactly when and why they must intervene.

MR BUDLENDER SC: Yes, because if they do intervene, given the nature of the weapons that they carry and the nature of their functions, it's likely that some people will be killed?

MR MKHWANAZI: It is normal, it is possible. That's why I am saying your assessment must be preferred, when do you bring them in the position.

MR BUDLENDER SC: Those sharp weapons are
25 were told by the police.
24 with determined people who would not simply do what they
23 the events of the 13th August that they were dealing
22           MR BUDLENDER SC:          The police knew from
21 Sir.
20           MR MKHWANAZI:          I got that information,
19 NIU had some training in their previous life and so some of
18 training, the TRT don't have the training in it, but the
17 us by a senior police official, that the STF don't have the
16           MR BUDLENDER SC:          That was explained to
15 from that background.
14 the national intervention members, the old ones are coming
13           MR MKHWANAZI:          That is correct, although
12           MR MKHWANAZI:          That is correct, although
11 the events of the 13th August that teargas and stun
10           MR MKHWANAZI:          That is correct.
9           MR MKHWANAZI:          That is correct.
8 and stun grenades they became violent, turned on the police
7 know that on that day when they were attacked with teargas
6           MR MKHWANAZI:          That is correct.
5           MR MKHWANAZI:          That is correct.
4           MR MKHWANAZI:          That is correct.
3           MR MKHWANAZI:          That is correct.
2           MR MKHWANAZI:          That is correct.
1 strikers because they had already killed some mine

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MR MKHWANAZI: It's one of the, I would
say one of the lessons learned out of that, that those
people were really coming forward, not doing what normally
is happening with the normal crowd situation we meet every
time.

MR BUDLENDER SC: Just to make clear that
when I talk about the people I have been referring to, I am
not referring to all of the 3 500 strikers. There was
clearly a very diverse group, I am referring to some of the
people in the group. I am sure you will agree with that?

MR MKHWANAZI: Yes, maybe if I can have
clarity, which is this group, are we talking about?

MR BUDLENDER SC: I don't want to attempt
to define the group, I am just saying there were such
people amongst the bigger crowd.

MR MKHWANAZI: Okay –

CHAIRPERSON: You can assume that the
people who were involved in the engagement, if one can call
it that, on the 13th where the two policemen were killed
were part of the group who were on the koppie –

MR MKHWANAZI: The bigger group.

CHAIRPERSON: The bigger group on the
16th.

MR MKHWANAZI: Okay.

MR BUDLENDER SC: And I have listed all

the things, all the characteristics that, or some of the
characteristics that the police knew about of some of the
people in the crowds. I won't repeat all of that. Now,
and I put one more thing to you, the police believed that
certain members of the group had taken muti, and that those
members thought that they were invincible as a result.

MR MKHWANAZI: I am not sure from the
side of the police but maybe I will think on the side of
the participants themselves that maybe if definitely they
actually engaged themselves in using of muti kind of a
situation, maybe they have that belief, I am not sure about
that one really.

CHAIRPERSON: That seemed to have been
the police information, I don't know whether this is your
point, Mr Budlender, if not, forgive me. But if you look
at slide 85, 86, 87 and 90, it appears that the police were
aware of rituals having being performed, appear to have had
information which is reported in slide 85 about what the
purpose of the muti was. It was suggested that an Nyanga
had been imported to perform certain rituals.

MR MKHWANAZI: That is correct.

MR BUDLENDER SC: The police must have
believed from observing these rituals that these rituals
would make certain of the strikers less likely to back down
or to concede.
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<td>1 MR MKHWANAZI: I am not sure, counsel, what was their belief from the side of the police after actually noticing the rituals being practised, it may happen they have that belief or it may happen they never have it but from our position I never received that information that tells me clearly that it actually, it came as a belief to them that really it will make participants to actually, to conduct themselves the way the counsel is mentioning.</td>
<td>1 MR MADLANGA SC: Maybe what was reported to them, not what the police believed.</td>
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<td>2 MR BUDLENDER SC: Think for a moment about what the police probably believed. They didn't, they took great care to observe and photograph these ritual practices, you can see some of the photographs.</td>
<td>2 MR MKHWANAZI: It was reported.</td>
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<td>3 MR MKHWANAZI: I saw those.</td>
<td>3 CHAIRPERSON: Yes, I think that is a valid objection, isn't it. The next point of course, the first part is, the information was that the Nyanga had been imported for this particular reason, and that in order that a ritual should be performed, on the second paragraph it indicates the police knew that a ritual of some kind had been performed because that is seen – that’s referred to in the second paragraph of 85 and is seen in the slide 86.</td>
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<td>4 MR BUDLENDER SC: The police didn’t think these were wedding ceremonies that were being carried out.</td>
<td>4 MR BUDLENDER SC: Brigadier, this is a report or reports which reached the police and it is what the police themselves observed.</td>
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<td>5 MR MKHWANAZI: That is correct, they never thought that.</td>
<td>5 MR MKHWANAZI: It definitely looks like it is a report, of which I am struggling to understand where it was from, but it was reported, yes.</td>
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<td>6 MR BUDLENDER SC: The police thought that these were rituals carried out to make people confident and to give them confidence and to make them feel strong.</td>
<td>6 MR BUDLENDER SC: And the next paragraph tells us that the police actually observed protestors undergoing a ritual.</td>
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<td>7 MR MKHWANAZI: Counselor, as I have indicated I am not sure what was their belief after seeing this practice of rituals, I have said already that it may happen that they have some sort of belief that maybe</td>
<td>7 MR MKHWANAZI: That is correct.</td>
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<td>8 MR BUDLENDER SC: Perhaps I can just, for the sake of completeness. Could you look at L107 and L108.</td>
<td>8 MR BUDLENDER SC: Do you see that?</td>
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<td>9 MR MKHWANAZI: Yes, I see.</td>
<td>9 MR MKHWANAZI: I see that, Sir.</td>
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<td>10 MR BUDLENDER SC: It says, “it was reported that the protestors had imported an Nyanga to perform certain rituals and manufacture muti which would ensure them victory in confrontations with their opponents.” The men who gathered at the koppie, armed with knopkieries, iron rods, spears and pangas, believed the Nyanga could perform a ritual at the koppies and sprinkle them with muti to, ‘make them brave.’ That's what the police believed.</td>
<td>10 MR BUDLENDER SC: Can I read you what was said by my learned friend, Mr Semenya in his opening statement on behalf of the police, paragraph 55. I will quote to you, if you can just listen to it carefully. This is what was said on behalf of the police to the commission.</td>
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<td>11 MR MKHWANAZI: I don’t have it.</td>
<td>11 “You will hear in evidence about the dogged refusal by the protesters to disarm. You will hear about a ritual that some of them underwent in the belief that they would be invincible, invisible and invulnerable. This explains their inexplicable conduct of charging at the police with spears despite the force displayed by the police.” That is the police view of what happened.</td>
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<td>12 MR BUDLENDER SC: Do you know have 85?</td>
<td>12 MR MKHWANAZI: I hear that, Sir.</td>
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<td>13 MR MKHWANAZI: I noticed that is actually starting at page 42 which is slide 84, then comes on the other side, but I got it now, Sir.</td>
<td>13 MR BUDLENDER SC: Perhaps I can just, for the sake of completeness. Could you look at L107 and L108.</td>
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<td>14 MR BUDLENDER SC: So, what - the first paragraph on the top of slide 85 tells us what the police believed.</td>
<td>14 I am not going to take you through that, but that is further information provided by the police to the commission in its, in the police presentation in relation to the role of the sangoma. Do you see that?</td>
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<td>15 MR MKHWANAZI: I see that.</td>
<td>15 MR MKHWANAZI: I see that.</td>
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<td>16 MR BUDLENDER SC: Right, let me come back to where I was, we know that the police knew that there were violent people amongst the strikers, correct?</td>
<td>16 MR BUDLENDER SC: You have also agreed that the police knew from the events of the 13th August.</td>
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1 that teargas and stun grenades did not deter the people
2 concerned.

3 MR MKHWANAZI: Are you referring,
4 counsel, before the 16th?
5 MR BUDLENDER SC: Before the 16th, yes.
6 MR MKHWANAZI: I will say I am not sure
7 about the answer there to say yes or no, because I
8 understand the teargas was utilised on the 13th where
9 actually police officials lost their lives and some of the
10 committee members as well, lost their lives and one injured
11 from the police side. So, I am not sure, maybe, I don't
12 know if I haven't share it enough, to say really by that
13 time police were at the position to say teargas is not more
14 working at all. I haven't received that information before
15 me, Sir.
16 MR BUDLENDER SC: I don't want to go back
17 to that, Brigadier, it's on the record and we'll deal with
18 that in due course. The police knew on the 16th of August
19 from the events of the 13th of August that rubber was
20 largely ineffective against this group.
22 MR BUDLENDER SC: The police knew that
23 they were dealing with determined people who wouldn't
24 simply do what the police told them to do. They knew that
25 from what happened on the 13th of August.

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1 MR MKHWANAZI: I then received the
2 information but it is possible looking to what happened on
3 the 13th. 
4 MR BUDLENDER SC: And we've been in
5 detail through the reports which the police received and
6 the observations which they made about the rituals and the
7 use of muti.
8 BRIG MKHWANAZI: I heard about it.
9 MR BUDLENDER SC: And I want to put it to
10 you that having regard to all of those circumstances it was
11 entirely foreseeable that when the razor wire was deployed
12 these strikers would not simply stand in docile fashion on
13 the koppie waiting to be dispersed or arrested.
14 BRIG MKHWANAZI: I am not sure about that
15 point, it can be possible but normally it doesn't happen
16 that way, but yes.
17 MR BUDLENDER SC: I want to put it to you
18 that under those circumstances about the least likely thing
19 that could happen would be that these people would stand on
20 the koppie and wait to be dispersed and arrested.
21 BRIG MKHWANAZI: It is definitely
22 possible that once people see that something is happening
23 some of them really will think of moving away to avoid
24 trouble.
25 MR BUDLENDER SC: Well, some people would

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1 MR BUDLENDER SC: Brigadier, but if the
2 police, if the POPS police on the scene could not achieve
3 what they wanted with rubber bullets and teargas, it was
4 hardly likely that the reserved POPS members would achieve
5 it by the same method.
6 BRIG MKHWANAZI: Counsellor, I believe
7 the planning place was not only to address shooting rubber
8 or shooting teargas, it was to address dispersing,
9 arresting, meaning if one has to call public order policing
10 they were not only to be called to come in and do shooting,
11 but as well to perform other tasks to reinforce those
12 members who need some help.
13 MR BUDLENDER SC: Well, Brigadier,
14 perhaps you can help the commission, what you suggested,
15 that the POP members who were in the reserve areas would be
16 able to achieve that the POP members on the scene couldn't
17 achieve?
18 BRIG MKHWANAZI: Counsellor, we indicated
19 right from the beginning from your side that the POP that
20 appeared to be in a reserve were not actually indicated on
21 the plan, however what normally do happen is that if you've
22 got a reserve of a public order policing members, it is
23 only three mission to take care of. Number one, is to
24 arrest, number two will be to release members in line,
25 number three will be to reinforce, meaning if it happened
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1. BRIG MKHWANAZI: That's correct.
2. MR BUDLENDER SC: I've got some of those books here with me. I've got a book called Public order policing, Contemporary Perspectives on strategy and tactics by Mike King and Nigel Brearley, do you know that book? Do you know that book?
3. BRIG MKHWANAZI: No, Sir.
4. MR BUDLENDER SC: I've got a book called Policing public order, theoretical and practical issues edited by C Kritcher and David Waddington, do you know that book?
5. BRIG MKHWANAZI: No.
7. BRIG MKHWANAZI: No, Sir.
8. MR BUDLENDER SC: I've got a book called The strong arm of the law, which is by Professor Peter Waddington or PAJ Waddington, Tank Waddington who was a member of the committee which advised the Goldstein Commission, do you know that book?
9. BRIG MKHWANAZI: No.
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1. Interestingly the sociology of mining communities. Then, Brigadier, if you'll go to that TT2, could you just go to the table of contents of the book?
2. MR BUDLENDER SC: I am there already.
3. BRIG MKHWANAZI: I am there already.
4. Chapter 1 deals with public order policing, theoretical approaches.
5. MR BUDLENDER SC: You will see that Chapter 1 deals with theories of public disorder.
6. BRIG MKHWANAZI: Correct.
7. Chapter 2 deals with institutional foundations, the case studies and the policy implications.
8. BRIG MKHWANAZI: I see that.
9. Chapter 3 deals with the table of contents of the book?
11. BRIG MKHWANAZI: Correct.
14. BRIG MKHWANAZI: Ja, I see it.
17. BRIG MKHWANAZI: I see that.
18. Chapter 6 deals with worldwide anti globalisation protests post Seattle.
19. MR BUDLENDER SC: Chapter 6 deals with worldwide anti globalisation protests post Seattle.
20. BRIG MKHWANAZI: I see that.
21. Chapter 7 deals with the GA to Justice and Home Affairs Ministers' meeting in Sheffield in June 2005.
22. MR BUDLENDER SC: Chapter 7 deals with the GA to Justice and Home Affairs Ministers' meeting in Sheffield in June 2005.
23. BRIG MKHWANAZI: That's correct.
24. Chapter 8 is the English football fans abroad from 1990 to 2006.
25. MR BUDLENDER SC: Chapter 7 deals with the English football fans abroad from 1990 to 2006.

1. English football fans abroad from 1990 to 2006.
2. BRIG MKHWANAZI: I see that.
3. MR BUDLENDER SC: And Chapter 8 is the conclusions of the study. It includes theoretical foundations, the case studies and the policy implications.
4. BRIG MKHWANAZI: Yes.
5. MR BUDLENDER SC: Then I want you, I would ask you to go to the last two pages of TT2. You'll see and do you have them, it is a page headed table 8.1, do you have that?
6. BRIG MKHWANAZI: Yes, I see that.
7. MR BUDLENDER SC: And that is a list of factors which in Professor Waddington's opinion are likely to, - are conducive to violent confrontation in policing public order, do you see that?
8. BRIG MKHWANAZI: Yes.
9. MR BUDLENDER SC: He says on the basis of his research that these are factors which are likely to increase the risk of violence and I am going to identify some of them and ask you about them. Let me be clear that I am not asking you whether those conditions existed at Marikana in August 2012. Many of them fall outside your personal knowledge, I believe, but what I am going to put to you, to ask you is, do you agree with Professor's Waddington's opinion that if these conditions existed that...
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1 MR MADLANGA SC: Where is what?
2 MR HANABE: The paragraph.
3 MR BUDLENDER SC: Top of the page.
4 MR MADLANGA SC: Top of the page, yes.
5 Counsel if you had noticed when Hennie refers to each one of these, at the end he says it would be conducive to violent confrontation. With each one of those, so your interpretation should also convey the same meaning and -
6 MR HANABE: Thank you very much,
7 Advocate.
8 MR MADLANGA SC: - but it depends on whether you accept that I’m correct in what I’m saying.
9 MR HANABE: I will accept it, thank you.
10 MR BUDLENDER SC: Then Brigadier, the next one I want to refer to is under cultural. Do you have the sub-heading cultural?
11 BRIG MKHWANAZI: Yes, I’ve got it.
12 MR BUDLENDER SC: This one – officers from outside the locality who are unfamiliar with local customs and sensibilities and do not have a full commitment to maintaining good long term relationships or relations with the public. Do you agree that that would be a factor conducive to violent confrontation?
13 BRIG MKHWANAZI: It’s correct.
14 MR BUDLENDER SC: Paragraph 2, under cultural, special units subscribing to norms of confrontation. Did you agree that with Professor Waddington that that is a factor conducive to violent confrontation?
15 BRIG MKHWANAZI: Ja -
16 MR BUDLENDER SC: You agree?
17 BRIG MKHWANAZI: - I don’t get it right.
18 Special unit subscribing to norms of confrontation that’s still conducive to violent confrontation, special units.
19 MR BUDLENDER SC: I think the point the professor is making is that where you have in operation special units which subscribe to norms of confrontation, violent – that is conducive to violent confrontation. It seems to be quite logical, speaking as a -
20 BRIG MKHWANAZI: Ja, okay.
21 MR BUDLENDER SC: Paragraph 5 under cultural. “Mistrust and stereotyping of sections of the public due to their age, class, transgressiveness and organisation e.g. heterogeneous non-hierarchical leaderless, non-institutionalised, having a violent or unpredictable repertoires of action.” It’s rather a long statement but what it says is when the police mistrust and stereotype sections of the public for one of these reasons, that is conducive to violent confrontation, would you agree with that?
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<td>1. that especially on crowd management environment, it</td>
<td>1. arbitrate or negotiate a reduction of hostilities</td>
<td>1. conducive to violent confrontation?</td>
<td></td>
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<td>2. definitely, we need to ensure that some of these type of</td>
<td>2. BRIG MKHWANAZI:</td>
<td>2. I do agree.</td>
<td></td>
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<tr>
<td>3. units are placed in a position whereby they cannot actually</td>
<td>3. MR BUDLENDER SC:</td>
<td>3. I'm nearly finished,</td>
<td></td>
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<td>5. are kept in – we have like the reserves where it was they</td>
<td>5. symbolically significant location e.g. a frontline to be</td>
<td>5. symbolically significant location e.g. a frontline to be</td>
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<td>6. away from that position. They can only be called up if</td>
<td>6. defended by a community or subculture or no-go-area to be</td>
<td>6. defended by a community or subculture or no-go-area to be</td>
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<td>7. there's a situation. So I have a problem but I'm not sure</td>
<td>7. retaken by the police.” Do you agree that that is a factor</td>
<td>7. retaken by the police.” Do you agree that that is a factor</td>
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<td>8. how they deploy because my question was to say as well the</td>
<td>8. which is conducive to violent confrontation?</td>
<td>8. which is conducive to violent confrontation?</td>
<td></td>
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<td>9. writer is from South Africa or is not from South Africa.</td>
<td>9. BRIG MKHWANAZI:</td>
<td>9. It's correct.</td>
<td></td>
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<td>10. Yes, we have to learn from other people, I do agree, but at</td>
<td>10. MR BUDLENDER SC:</td>
<td>10. Brigadier, only 3 more,</td>
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<td>11. the same time is to say which situation are we talking</td>
<td>11. I promise. Under interactional, &quot;sudden or overdramatic</td>
<td>11. I promise. Under interactional, &quot;sudden or overdramatic</td>
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<td>12. about because the crowd in Belgium is not the same as crowd</td>
<td>12. police interventions which suggest overkill.” Do you agree</td>
<td>12. police interventions which suggest overkill.” Do you agree</td>
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<td>13. behaviour in South Africa as well. So I'm looking at that</td>
<td>13. that that is a factor which is conducive to violent</td>
<td>13. that that is a factor which is conducive to violent</td>
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<td>15. little bit – in this position I'm having a little bit of a</td>
<td>15. BRIG MKHWANAZI:</td>
<td>15. I do agree.</td>
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<td>17. MR BUDLENDER SC: I'll move on, paragraph</td>
<td>17. paragraph 6 under interactional, “dispersal tactics by the</td>
<td>17. paragraph 6 under interactional, “dispersal tactics by the</td>
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<td>18. 3 under situational. “Deployment of officers from a</td>
<td>18. police that serve only to spread the crowd geographically</td>
<td>18. police that serve only to spread the crowd geographically</td>
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<td>19. variety of different forces leading to poor coordination</td>
<td>19. and make its activities more unpredictable and less easy to</td>
<td>19. and make its activities more unpredictable and less easy to</td>
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<td>20. and blurred lines of command.” Do you agree that if that</td>
<td>20. control.” Do you agree that that's a factor which is</td>
<td>20. control.” Do you agree that that's a factor which is</td>
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<td>21. happens, that increases the risk of violent confrontation?</td>
<td>21. conducive to violent confrontation?</td>
<td>21. conducive to violent confrontation?</td>
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<td>22. BRIG MKHWANAZI: I do agree.</td>
<td>22. BRIG MKHWANAZI:</td>
<td>22. BRIG MKHWANAZI:</td>
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<td>24. situational. “Police definitions of public behaviour as</td>
<td>24. paragraph 6 under interactional, “dispersal tactics by the</td>
<td>24. paragraph 6 under interactional, “dispersal tactics by the</td>
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<td>25. sinister, illegitimate or ill-intentions.” Do you agree</td>
<td>25. police that serve only to spread the crowd geographically</td>
<td>25. police that serve only to spread the crowd geographically</td>
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<td>26. that, 6 under situational. Do you agree that if the police</td>
<td>26. and make its activities more unpredictable and less easy to</td>
<td>26. and make its activities more unpredictable and less easy to</td>
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<td>27. have this definition of the behaviour of the protestors as</td>
<td>27. control.” Do you agree that that's a factor which is</td>
<td>27. control.” Do you agree that that's a factor which is</td>
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<td>28. sinister, illegitimate or ill-intentioned, that increases</td>
<td>28. conducive to violent confrontation?</td>
<td>28. conducive to violent confrontation?</td>
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<td>29. the risk of violent confrontation? You agree?</td>
<td>29. BRIG MKHWANAZI:</td>
<td>29. BRIG MKHWANAZI:</td>
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<td>32. situational, a strategic intention by the police to</td>
<td>32. Right. Thank you and</td>
<td>32. Right. Thank you and</td>
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<td>33. engage in confrontation e.g. to clear an area or win by</td>
<td>33. just one point which is related, I'm not sure that I</td>
<td>33. just one point which is related, I'm not sure that I</td>
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<td>34. appearing to lose. Do you agree with the professor that</td>
<td>34. understood your evidence yesterday correctly. Did you say</td>
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<td>35. that is conducive to violent confrontation?</td>
<td>35. that when there is the show of force with the vehicles, the</td>
<td>35. that when there is the show of force with the vehicles, the</td>
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<td>36. BRIG MKHWANAZI: Ja, that part I'm not</td>
<td>36. police members should or should not display their arms?</td>
<td>36. police members should or should not display their arms?</td>
<td></td>
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<td>37. clear with, counsellor you can maybe indicate where it say</td>
<td>37. BRIG MKHWANAZI: They actually conduct or</td>
<td>37. BRIG MKHWANAZI: They actually conduct or</td>
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<td>38. or win by appearing to lose.</td>
<td>38. do the show of force without being having all the firearm,</td>
<td>38. do the show of force without being having all the firearm,</td>
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<td>39. MR BUDLENDER SC: Brigadier, we're again</td>
<td>39. like shotguns and all that, it can be a side firearm of</td>
<td>39. like shotguns and all that, it can be a side firearm of</td>
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<td>40. equally ignorant as far as that is concerned. Let's leave</td>
<td>40. course, but shotgun no, if they do that.</td>
<td>40. course, but shotgun no, if they do that.</td>
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<td>41. that phrase.</td>
<td>41. MR BUDLENDER SC:</td>
<td>41. MR BUDLENDER SC:</td>
<td></td>
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<td>42. BRIG MKHWANAZI: - you say agree or not.</td>
<td>42. Thank you, that's what</td>
<td>42. Thank you, that's what</td>
<td></td>
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<td>43. MR BUDLENDER SC: Let’s - no, fair</td>
<td>43. I thought you had said. Then I’m moving, you'll be pleased</td>
<td>43. I thought you had said. Then I’m moving, you'll be pleased</td>
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<td>44. enough. Shall we say a – I think it's described –</td>
<td>45. to hear, to a new topic which is negotiations. Now you</td>
<td>45. to hear, to a new topic which is negotiations. Now you</td>
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<td>45. discussed in fact in his book, but I don't want to go</td>
<td>46. train members of the South African Police Service in</td>
<td>46. train members of the South African Police Service in</td>
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<td>46. there.</td>
<td>47. negotiation.</td>
<td>47. negotiation.</td>
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<td>47. BRIG MKHWANAZI: Okay.</td>
<td>48. BRIG MKHWANAZI: Maybe I should maybe</td>
<td>48. BRIG MKHWANAZI: Maybe I should maybe</td>
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<td>48. MR BUDLENDER SC: “A strategic intention</td>
<td>49. explain this way, Counsellor, that if we talk about</td>
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<td>49. by the police to engage in confrontation, e.g. to clear an</td>
<td>50. negotiation it's not negotiation as a course on its own,</td>
<td>50. negotiation it's not negotiation as a course on its own,</td>
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<td>50. area.” Do you agree that that is a factor which is</td>
<td>51. but it's being presented together with a lecture regulation</td>
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<td>52. members. So we theme that and negotiation is being</td>
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BRIG MKHWANAZI: Counsellor if I listen properly, what is written there is that I said an interpreter has to come from the side of the police. I am not sure if I put it that way, but I don't dispute if I did, but as I am saying it cannot be a fast rule where the interpreter comes from. Can an interpreter come from the side of the people who are actually marching as well. The main thing here, the objective let's understand each other, let's solve the problem, nobody must be injured, lets have an objective being reached at the end of the day as police officials.

MR BUDLENDER SC: I understand that. It would be fine to have - it would be acceptable to have an interpreter who came from the side of the people you are negotiating with.

BRIG MKHWANAZI: From my experience, Counsellor, working in Johannesburg with different marches, COSATU, SAWATU, you name it, I never have a problem from which side a person can come from. The main thing’s the objective on the day, is to deal with the task before us and make sure that it is successful. Counsellor, maybe if I may say, Sir, that I’ve never been challenged in most of my marches I’ve actually managed before with the language, because always there will be a way how to communicate and how to move forward. So I don’t think it is a problem at all every time.

MR BUDLENDER SC: Brigadier, I am not arguing with you at all, I am agreeing with you, that the best thing is, if a negotiator can speak the language -

BRIG MKHWANAZI: Yes.

MR BUDLENDER SC: - but it’s acceptable if either side produces an interpreter, if either the police produce an interpreter or if the people they are negotiating with produce an interpreter. That would also be fine.

BRIG MKHWANAZI: I do agree in that position, but as I said, it won’t be a problem, the only thing is, will it be a problem? If there is a problem there must be a solution.

MR BUDLENDER SC: Now, when you are negotiating with a party, is it acceptable to use an interpreter who is an employee of their opponents? Do you think that would build up confidence and trust?

BRIG MKHWANAZI: In my experience, I will talk on my experience really, Counsellor, is that I never have a situation whereby I will have to take a person from that position. As you have said from the beginning, the trust must be there, you must build the trust. So if the trust is not there, will be a problem. Immediately, maybe if I bring somebody now from that position, obviously there will be a problem. Some people won’t trust, whether we are discussing in a good faith or not.

MR BUDLENDER SC: Can I come to the last aspect on negotiation. From your attendance at Potchefstroom and your reading of the papers, you know that what the police asked the strikers to do was to surrender their weapons and leave the kopjie.

BRIG MKHWANAZI: The core point I received was that the main request was that they must lay down their arms, that was the main part.

MR BUDLENDER SC: What did the police offer the strikers in return, if they did that?

BRIG MKHWANAZI: Truly speaking, Counsellor, I never have that information. What maybe, as you said, if we negotiate, give and take but I never have any information to say what was there between the people, because what I know normally is to look to say, what is the problem that need to be actually discussed or be negotiated, but in issue of what was the give and take between the two parties negotiating, in most cases, I am not sure what was discussed, because I believe, Counsellor, is that as we talk about negotiating, we are talking negotiation that is taking place before the kopjie.

MR BUDLENDER SC: Brigadier, in the papers which you read, and the meetings you’ve had, have you seen any evidence of something which the police offered the strikers in return for surrendering their weapons? Any inducement of any kind.

COMMISSIONER TOKOTA: Sorry, before you answer, when did you consider General Mpembe’s offer that, we don’t have a problem with you, give us your arms, then we will let you go.

MR BUDLENDER SC: Thank you, Commissioner Tokota, that’s, with respect, very helpful. On the 13th, General Mpembe said, look, you lay down your arms, and in return we allow you to march to the koppie and we will even escort you and make you safe there. That was an offer in return, you lay down your arms and we will help you in this way, a negotiation. Do you understand that?

BRIG MKHWANAZI: Correct, yes.

MR BUDLENDER SC: Now let’s talk about the people once they were on the koppie. The police said -

CHAIRPERSON: Mr Budlender, is this topic that’s going to take some time? Because I did say we were going to adjourn at three. And it’s three minutes to three now.

MR BUDLENDER SC: I hope to be done by three.

CHAIRPERSON: Alright.

MR BUDLENDER SC: Depending on the
cooperativeness of the Brigadier of course. Brigadier,
when you are dealing with the people who are now on the
koppie, they have their traditional weapons with them, and
they are, have some number of firearms with them. The
police have stated that people on the koppie, please hand
down – surrender your weapons. Have you seen any evidence
anywhere in the papers, or anything you’ve heard that they
were offered any reward or return or inducement if they did
that?

BRIG MKHWANAZI: Ja, as an offer in
return, I would say I couldn’t pick it up anything except
that there were times whereby during the negotiations, was
if anybody got those rifles that were taken, they can just
leave them right there where they are at the koppie.
Police will pick them after, that’s the only thing which,
to me is a sign to say no matter what had happened, leave
it there we can’t hunt off somebody who was having the
firearm and arrest and all those things.

MR BUDLENDER SC: Last question,
Brigadier, if the police had been able to say to the
strikes, you hand over your weapons, and we will bring your
employer to the koppie to speak to you, that would have
been a real inducement which might have resulted in a
successful negotiation.

BRIG MKHWANAZI: Normally it help a lot.
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