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COMMISSION OF ENQUIRY INTO THE OCCURRENCES
AT SHARPEVILLE (AND OTHER PLACES) ON THE 21ST MARCH, 1960.

SUBMISSIONS PRESENTED TO THE COMMISSION
ON BEHALF OF THE
BISHOP OF JOHANNESBURG

JOHANNESBURG.
15th JUNE, 1960.

VOLUME I.

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SUBMISSIONS ON BEHALF OF THE BISHOP OF JOHANNESBURG.

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SUBMISSIONS ON BEHALF OF THE BISHOP OF
JOHANNESBURG

A.

INTRODUCTION.

1.

In the early afternoon of 21st March 1960, at least 75 white policemen fired more than 700 bullets from Sten sub-machine guns, service rifles and service revolvers at short range into a crowd of unarmed Africans who had gathered together outside the Sharpeville Police Station. 69 Africans were killed and about 180 Africans were wounded. These events were followed by the proclamation of a state of emergency in all the most populous areas of the Union; and they have not escaped the attention of the outside world. The purpose of these representations is not to dwell upon the horror of the killing and wounding, in time of peace, of 250 unarmed civilians by the South African Police. It is to assist the Commissioner in his task of ascertaining why the shooting took place and whether there was any justification for it, and thus to help ensure - in so far as that may be done by the ascertainment and publication of the truth - that such events will not occur again in South Africa.

2.

This Commission was appointed by the Governor-General to inquire into and report upon the events which took place in the Districts of Vanderbylpark,

Evaton/....

Evaton and Vereeniging (including Sharpeville), on 21st March, 1960. The representatives of the Bishop of Johannesburg who appeared before the Commission were instructed only on the events which took place at the Sharpeville Police Station during the morning and early afternoon of that day, and did not lead evidence or cross-examine witnesses in connection with the events at Vanderbylpark and Evaton. These submissions relate mainly to the happenings at the Sharpeville Police Station. Reference will be made to the evidence of what took place elsewhere only in so far as that may throw light on what took place at the Sharpeville Police Station.

3. On 8th April, 1960, the Bishop of Johannesburg submitted a memorandum to the Commissioner. Since the commencement of the sittings of the Commission on 11th April he has been represented by attorneys and counsel at the hearings of the Commission. In view of certain questions which were put to witnesses in the course of the hearing it is desirable to explain the interest of the Bishop in this Commission.

4. As is stated in the memorandum, after the Bishop had received news of the shooting of Africans in Sharpeville on 21st March, 1960, he had inquiries made about the happenings there in the interest of those members of his own Church who were residents of Sharpeville. As a result of those inquiries the Bishop instructed attorneys to take steps to protect the interests of persons who had been wounded and of the families

of/...

of persons who had been killed. Those attorneys took statements from witnesses. The information which reached the Bishop as a result of these inquiries tended to cast considerable doubt on the correctness of the official version of the Sharpeville shooting; and the Bishop thought it essential that the evidence available to him should be placed before this Commission - not only on behalf of the wounded and the dependants but also in the general public interest. It was evident, however, that the wounded and the dependants would not themselves be in a position to instruct attorneys and counsel to appear at the lengthy hearings which were expected. The Bishop therefore took steps to instruct attorneys and counsel to appear in order to ensure as far as it lay within his power, that the full facts were placed before the Commission, and through the Commission before the general public.

5. The Bishop's memorandum referred to the difficulties which were being experienced in bringing essential witnesses before the Commission, owing partly to the Emergency Regulations and partly to the action which had been taken by the South African Police against people who had been wounded at Sharpeville. The memorandum also referred to the difficulties which had been put by the police in the way of the investigations of his attorneys, culminating in the summary arrest and detention under the Emergency Regulations of two of the attorneys who were acting for him. In the memorandum the Bishop asked for the assistance of the Commissioner in bringing witnesses before the Commission and in

preserving/...

preserving evidence. This assistance, it is desired to place on record, was at once given by the Commissioner. With his aid the Bishop's attorneys and counsel were able to interview witnesses who were in Sharpeville Township, in the hospitals at Baragwanath and Vereeniging and in some cases in prison. Many potential witnesses, however, were not available. Some could not be traced; others were unwilling to come forward because of the police policy of prosecuting on charges of public violence persons who had been present at the gathering outside the Sharpeville Police Station, and asked that they be not subpoenaed for fear of reprisals by the authorities. Whether their fears were justified is something which need not now be decided. The Commission is assured, however, that these fears were expressed and that they were genuinely felt.

6. The representatives of the Bishop were able to lead about 30 witnesses who had been present at the gathering, including many who had themselves been wounded in the shooting. They were also able to obtain the evidence of a press photographer who was present before, during and after the shooting; and they were sufficiently instructed to cross-examine police and other witnesses who were called by Mr. P.J. Classens, Q.C., who was appointed to assist the Commissioner.

7. Mr. Classens was not assisted by other counsel or by attorneys and had limited facilities for seeking out witnesses. He had in the main to rely

on/...

on statements which had been obtained by members of the Criminal Investigation Department with the object of prosecuting on charges of public violence a number of those who had taken part in the gathering at the Police Station. These C.I.D. officers were also available to instruct Mr. Classens during the hearing. It will be seen, therefore, that through the force of circumstances Mr. Classens found himself in the position of presenting what amounted to the police case and of cross-examining only those witnesses, called by counsel for the Bishop, whose evidence in general differed from that of the police. This is not necessarily a matter for regret. On the contrary, the witnesses called by counsel for the Bishop were thoroughly cross-examined by an experienced senior counsel; and the police case has been fully and adequately presented to the Commission. It is, however, also clear that but for the investigations and representations of the Bishop of Johannesburg the Commissioner would have had before him, in effect, only one side of the case, namely the official police side.

8. The Commissioner has asked counsel to consider whether a sufficient number of witnesses have testified before the Commission to allow reasonably reliable findings to be made on the matters in issue. With regard to the events at Vanderbylpark and Evaton counsel for the Bishop are not able to make any submissions. They were not in a position to lead evidence or to cross-examine the witnesses (who were for the most part police witnesses) on these issues. This applies as well, to a large extent, to the evidence of the events

in/...

in Sharpeville during the night of 20th to 21st March and the early morning of 21st March. The Commissioner himself called and led the evidence of Tsolo and More, two of the leaders of The Pan African Congress in Sharpeville, and they were cross-examined by Mr. Claassens, but counsel appearing for the Bishop were not instructed on and did not enter upon any discussion of their political objectives. Although then some evidence was led and there was some cross-examination on the political background of the events on 21st March, and in particular on the policy and plans of the Pan African Congress, it is submitted that it did not prove possible to investigate these issues sufficiently fully for any reliable conclusions to be drawn. Nor is there enough reliable evidence before the Commission to enable any findings to be made on the general economic and political situation as it affects Africans living in a township such as Sharpeville. With regard to the Sharpeville shooting itself, although it was not possible for the reasons given above to obtain all the evidence which it might have been desirable to call, it is submitted that sufficient evidence of all kinds was obtained to enable the Commissioner to make findings on the main issues before him.

B.

THE ISSUES.

9.

Attached to the Bishop's memorandum is a copy of the official police report on Sharpeville which was read to the House of Assembly by the Hon. the Prime Minister on the evening of 21st March, 1960. This report is to be found in the Weekly Hansard No. 10 of 1960 in Column 3962. It is before the Commissioner. The main allegations made in it can be summarized as follows:-

- (a). The crowd was of the order of 20,000 people.
- (b). The crowd was in a riotous and aggressive mood.
- (c). The crowd was brandishing weapons at the police.
- (d). The crowd stoned the police.
- (e). The crowd charged the gate in the wire fence surrounding the police station.
- (f). Shots were fired at the police from the crowd.
- (g). The officer in charge of the police, Lt.-Col. G.D. Pienaar, gave no order to fire.
- (h). Immediately the firing started the crowd turned tail and ran away.

(i)./...

8.

(i). The firing was stopped immediately.

(j). After the crowd had fled a variety of weapons was found on the scene.

In addition it was not suggested in the official police report that any order to disperse had been given, or that the crowd had been warned that force would be used, or that any warning shots were fired.

10. Not all of these allegations were disputed. When the hearing commenced, the following points were not disputed by the police:-

(a) That no order to disperse the crowd was given.

(b) That no warning shots were fired.

(c) That the senior officer gave no order to fire.

(d) That as soon as the shooting began the crowd turned and fled.

11. There were, however, a number of material issues which were raised in the Bishop's memorandum and which became the subject of controversy in the evidence:-

(a) That the crowd was not a crowd of 20,000 people, but of about 5,000.

(b)/...

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- (b) That the crowd was good-humoured and not aggressive.
- (c) That it was unarmed.
- (d) That while a few stones may have been thrown by individuals, there was no general stoning of the police and certainly no stoning which constituted a threat to their lives or safety.
- (e) That there was no satisfactory evidence that shots had been fired at the police.
- (f) That the gathering at no time charged the gate or made any attack on the police station or the surrounding enclosure.
- (g) That some people in the crowd on the western side of the police station turned and fled even before the first shots were fired.
- (h) That after the crowd turned and fled, intense firing continued into the fleeing crowd for some time.
- (i) That there was no satisfactory evidence that the crowd when it fled left weapons on the scene.

In addition, as the evidence developed, a number of other issues were raised, particularly with regard to the events shortly before and during the shooting.

These /...

These matters will be discussed in detail below.

12. The Bishop's memorandum, having summarized the evidence which was available to him, stated:

"IN GENERAL ALL THE EVIDENCE TO WHICH I HAVE REFERRED SUGGESTS:-

- A. THAT THE FIRING BY THE POLICE WAS AN UNNECESSARY USE OF FORCE;
- B. THAT THE FIRING WAS DELIBERATELY CONTINUED INTO THE BACK OF THE FLEEING CROWD AFTER ANY SEMBLANCE OF DANGER TO THE POLICE MUST NECESSARILY HAVE DISAPPEARED;
- C. THAT THE FIRING CAN ONLY BE REGARDED AS PUNITIVE AND NOT IN SELF DEFENCE."

It is submitted that the evidence has established each of these propositions conclusively and beyond any reasonable doubt and that a finding to this effect is inescapable.

13. This argument will deal with the various facets of the evidence which bear on the issues in dispute. In particular it will deal with:-

(a)/...

- (a) The events during the night of 20th 21st March and the early morning of 21st March in so far as it may be relevant to events at the police station.
- (b) The nature, mood and behaviour of the crowd at the police station and the reasons why the crowd remained there until the shooting.
- (c) The activities of the police at the police station and the armament at their disposal.
- (d) More particularly, the activity of the police at the police station during the last half hour or forty-five minutes before the shooting, including the action taken by Lt.-Col. Spengler and Lt.-Col. Pienaar.
- (e) The commencement of the shooting and the reasons for it.
- (f) The nature and duration of the firing.
- (g) The results of the firing.
- (h) The attitude of the police towards Africans.
- (i) Fabrication of evidence by the police.
- (j) Lack of justification for the shooting.

Before dealing with the facts, however, it may be convenient to discuss the general circumstances/...

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circumstances in which the police are legally entitled to use force against a crowd and especially the circumstances in which they are justified in using firearms.

C.

USE OF FIREARMS BY THE POLICE TO
DISPERSE CROWDS.

14. All civilized systems of law recognise that the use of firearms against a crowd - and especially against an unarmed crowd - is the last expedient of the civil or military authorities. The use of firearms is tolerated only if it is absolutely necessary, and only in so far as it is absolutely necessary, to put a stop to or to prevent serious crime. If such necessity arises, firearms must be used with all ordinary skill and caution, so as to do the least possible harm.
15. These principles were laid down (not for the first time) by the Committee (which included Lord Justice Bowen) which was appointed to inquire into the disturbances at Featherstone in 1893, when a crowd attacked the Ackton Colliery (see Dicey's Law of the Constitution, 8th-ed., 1923, Note VI, pp. 512-516; Appendix I hereto). The same principles were applied by the Government of the United Kingdom in the case of General Dyer, whose troops fired on an unarmed crowd of Indians at Amritsar on 13th April, 1919, and who was as a result put on half pay and later ordered to retire from the Army (see the debate in the House of Commons on 8th July, 1920, reported in 131 H.C. Deb. 5s., cols. 1705 - 1814 and especially the speech of Mr. Winston Churchill, then Secretary of State for War and Air, at cols. 1725 - 1728, 1731; Appendix II hereto).

16. . .

The same principles have been part of

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the law of South Africa for many years. Under section 7 and 8 of the Riotous Assemblies and Criminal Law Amendment Act, No. 17 of 1956 (formerly sections 4 and 5 of the Riotous Assemblies Act, No. 27 of 1914), the police are entitled to disperse crowds by force, but only in the following circumstances:

- (a) The crowd must have -
 - (i) killed or seriously injured some person; or
 - (ii) attempted to kill or seriously injure some person; or
 - (iii) shown a manifest intention of killing or seriously injuring some person; or
 - (iv) destroyed or done serious damage to valuable property; or
 - (v) attempted to destroy or do serious damage to valuable property; or
 - (vi) shown a manifest intention of destroying or doing serious damage to valuable property.
- (b) A police officer of or above the rank of inspector or captain must have called upon the crowd to disperse, and endeavoured for that purpose to obtain the attention of the crowd by lawful means deemed by him most suitable, and ordered them three times in a loud voice to depart forthwith, and informed them that force would be used unless they did depart within a time specified by him.

(c)/...

(c) Thereafter a police officer of or above the rank of inspector or captain must have ordered the police under his command to disperse the crowd and for that purpose to use force.

(d) The degree of force which may be used must not be greater than is necessary for dispersing the crowd, and must be moderated and proportionate to the circumstances of the case and the object to be attained.

(e) Firearms or other weapons likely to cause serious bodily injury or death must not be used to disperse a crowd until -

(i) weapons less likely to cause such injury or death have been used and the crowd has not been dispersed; or

(ii) any member of the crowd has done one of the acts referred to in sub-paragraph (a) above.

(f) Firearms or other weapons likely to cause serious bodily injury or death must be used with all reasonable caution, without recklessness or negligence, and so as to produce no further injury to any person than is necessary for the attainment of the object aforesaid.

16.

17.

The provisions referred to in paragraph 16 above do not affect or derogate from the rights conferred or duties imposed on the police under any other statute or under the common law to assist in the dispersal of riotous gatherings or in the prevention and suppression of riotous and seditious acts (sec. 6 of the 1914 Act; sec. 9 of the 1956 Act). Similarly, in England, the military may act, even though one hour has not elapsed since the reading of the Riot Act, if the necessities of the case demand such action. In this country the police should comply with the provisions of the Riotous Assemblies Act unless it is absolutely necessary for them to take more immediate and stringent action.

18.

The Emergency Regulations were not in force on 21st March, 1960: they were first promulgated on 30th March, 1960 (Proclamation No. 90 of 1960, published in G.G. Ex. No. 6403/1960 dated 30th March, 1960). The provisions of Reg. 3 (Proclamation No. 92 of 1960, published in G.G. Ex. No. 6405/1960 dated 1st April, 1960; Appendix III hereto), which deals with "dispersal of Gatherings or Processions", are however of some significance. The circumstances under which a crowd may be forcibly dispersed by the police are greatly relaxed. It is,

however, /...

however, even now required that a magistrate or police officer

"shall endeavour to draw the attention of such persons in a manner which appears to him best suited to the circumstances and..... shall command them in a loud voice to disperse or to discontinue the conduct in question forthwith and shall warn them that if they fail to disperse or discontinue such conduct within a space of time stipulated by him, force will be used."

Only after such command has been "uttered thrice" and the crowd has failed to disperse may force be used. Moreover "the degree of force so used shall so far as possible be limited to the achievement of the objects for which it is applied ". "Firearms or other weapons likely to cause serious bodily injury shall not be used unless in the opinion of the magistrate, commissioned officer or authorized officer" (viz. a police officer of a rank not lower than the rank of sergeant duly authorised thereto by a commissioned officer) "such a course is essential in the public interest or for the protection of life or property". It is not surprising that even in a state of emergency these standards of behaviour are

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18.

still required of the police; for without them there would result what Macaulay called "the most frightful of all spectacles, the strength of civilization without its mercy".

19.

The Standing Orders of the S.A. Police relating to the use of Arms (Appendix IV hereto) specifically enjoin members of the Force to render obedience to the principles which have been set out above. The opening sentence of Reg. 741 makes it clear that -

"...members are entrusted with arms for their own preservation and that of their barracks and prisoners..."

and that -

"... It cannot be too strongly impressed on every policeman how essential it is, not only to guard against the slightest misuse of his arms, but to observe the utmost forbearance that humanity, combined with prudence, can dictate, before incurring the moral as well as legal responsibility of firing upon the people - a measure which should never be resorted to until every other means shall have failed to ensure the preservation of peace and good order."

According/...

According to Lt. Claassen (pp. 887, 892), this doctrine forms part of the training of every member of the Force. So too, Reg. 746 warns policemen that if they use fire-arms they must -

"be well prepared to prove that they acted with becoming humanity, caution and prudence, that they were compelled by necessity alone to have recourse to their arms, and that no more force, or no more dangerous weapon, was used than was necessary in the circumstances."

Reg. 748 lays down the salutary ultimate principle, or "final warning" as it is called:-

"When in doubt, do not fire."

20.

Standing Orders provide the following guidance of a more specific kind for members of the Force:-

- (a) Whenever the police, acting under orders, shall receive directions to fire, they must not on any account do so except by regular word of command from their senior officer or other senior present (Reg. 745 (4)).
- (b) The senior officer present must give all

his/...

his attention to the supervision of the men acting under his orders and must give deliberate word of command to fire a specific number of rounds (Reg. 745 (5)).

- (c) No greater number of men are to be detailed to fire than is considered absolutely necessary (Reg. 745 (6)).
- (d) The officer in command must exercise the utmost forbearance, consistent with the safety of the party, before he gives the order to fire and must, in every instance, exercise a humane discretion as to the extent of such firing (Reg. 745 (7)).
- (e) The firing ought to be at the leaders of the riot or at the assailants of the Force, and, if possible, with effect (Reg. 745 (2)). In other words, it ought not to be indiscriminate. (Reg. 745 (3)).
- (f) No shot must be fired after the necessity for firing has ceased to exist (Reg. 745 (8)).
- (g) It follows that the officer in command must -
 - (i) ascertain all the relevant facts of the emergency in order to enable himself to exercise a proper discretion:

It./...

Lt. Claassens, pp. 889, 898;

- (ii) guard against the slightest misuse by his men of their arms:

Lt. Claassen, p. 889;

Cf. Capt. Coetzee, p. 963;

- (iii) ensure that he deploys his men so that his commands can be communicated to them in all the circumstances of the emergency:

Lt. Claassen, pp. 889, 891.

These conclusions, which were endorsed by Lt. Claassen, a police officer of 30 years experience, demonstrate the practical steps which must be taken if any genuine attempt is to be made to apply Standing Orders. They are implicit in Standing Orders and are to be found clearly expressed in the relevant provisions of the Queen's Regulations for the Army, a copy of which is annexed hereto (Appendix V hereto).

- (h) For the guidance of policemen not under the command of a senior the following are the circumstances laid down in which they may use their own discretion to open fire:-

- (i) If their stations or barracks are attacked;

(ii)/...

22.

- (ii) If an attempt is made to deprive them of their arms and their prisoners;
- (iii) to defend themselves or another person or persons from death or serious injury, or another person or persons from an unlawful attack;
- (iv) To effect the arrest or prevent the escape of a prisoner in certain circumstances.

(Reg. 742).

- (i) Whenever the circumstances can be met by firing merely to wound or maim, great care should be exercised not to kill; but if a policeman believes on reasonable grounds that he is in imminent danger of death, he is justified in firing to kill (Reg. 743).

21.

It is implicit in Standing Orders that the provisions thereof should be known not only to officers - that goes without saying - but also to all members of the Force (Lt. Claassen, pp. 897, 892). They should also so familiarize themselves with the handling of their arms that they have perfect control over them - and, it may be interpolated, over themselves - in action

(Regs./...

(Regs. 741, 743 and 746).

22. Standing Orders contain no directions as to the use of automatic weapons - a somewhat surprising omission in view of the fact that at Sharpeville a large number of non-commissioned police officers and constables were equipped with, and used, Sten sub-machine guns, and the fact that the "Saracens" were equipped with, though their crews did not use, their formidable Browning machine guns. It appears from paragraph 82 of the Report of the Nyasaland Commission of Inquiry (the Devlin Report; Cmnd. 814, p. 41) that in the Federation of Rhodesia and Nyasaland the only member of the police force who is authorised to carry a Sten gun is a platoon commander in the Police Mobile Force (i.e., the Special riot squad of the police, vide para. 73). "Clear instructions" are given that it is never to be used on "automatic" unless "in a desperate emergency". That Commission pointed out that "the Sten gun although set for single shots, i.e., repetition, may easily fire a burst" and that it "is for this reason an undesirable weapon for use where there are crowds".

23. Sharpeville is an African township situated to the west of Vereeniging. Its population is approximately 36,000 people, of whom 8,655 are adult males, 6,943 adult females and 20,863 children under the age of 18 years (Labuschagne, p. 425).

24. The police station is situated not far from the western boundary of the township, near the intersection of the two main thoroughfares, Seeiso Street and Zwane Street. Each street has double carriage-ways separated by an island; and the two streets meet at an acute angle at a traffic circle west of the police station. Seeiso Street is the principal thoroughfare leading to the municipal offices on the eastern boundary of the township and thence to Vereeniging itself. It runs in a direction somewhat north of east, while Zwane Street runs in a direction roughly east from the traffic circle. The police station is at the intersection of Zwane Street and a tarred road which runs from Zwane Street to Seeiso Street. This road is on the western boundary of the police station; and it was in this road and Zwane Street to the south that the crowd congregated.

25. The police station stands in its own grounds and consists of a building containing a charge office, cells and other offices and having an enclosed yard at the back (that is on the north side) in which vehicles may be parked. Access to this yard is gained through a large iron gate in a wall on the western side of the building. To the west of the building is a fairly large open space planted with grass. The grounds are enclosed by a 4'6" diamond mesh wire fence in which

there/...

there are two gates - a small gate on the southern side or Zwane Street side giving access to the charge office, and a large double gate on the western side approximately in the middle of the western fence. From this gate a driveway leads to an iron gate in the western wall of the police station building. On the south side the police station building is very close to the fence. The gates in the fence are no higher than the fence itself. Neither gate has a lock.

26. Opposite the police station on the western side of the tarred road connecting Seeiso and Zwane Streets is a municipal clinic which is also surrounded by a fence. This fence on its eastern side corresponds both in length and height with the fence of the police station on the western side. The fence of the clinic and the fence of the police station are approximately 25 paces apart. This tarred road is narrow, and runs north to south at that point but curves away slightly to the west some little distance to the north of the police station. On both the police station side and the clinic side there is a rough though not stony pavement. It is only at the intersection with Zwane Street that these pavements have kerbstones.

27. North of the police station, on the road connecting Zwane and Seeiso Streets and after it curves to the west, there is a block of shops (on the eastern side of the road), and a municipal library (on the western side). There is an open grass field between the shops and the police station and another between the

library/...

library and the clinic. The grass field north of the police station extends for some considerable distance to the east to an area in which there are houses. This field is criss-crossed by a number of pathways.

28. The features described above can be seen on Exhibits B and B. 1., which are aerial photographs of the police station taken from the south, and Exhibits J and K, which are aerial photographs of the police station taken from the north. These photographs were taken between 11 and 11.30 a.m. on 21st March, 1960.

E. EVENTS DURING NIGHT OF 20TH - 21ST
MARCH AND EARLY MORNING OF 21ST MARCH

29. The police gave evidence of clashes with groups of Africans during the night of 20th - 21st March and the early morning of the 21st. Their evidence was that Africans in Sharpeville were compelled by intimidation to leave their houses and join meetings and processions. They allege that groups of Africans stoned police detachments and in one instance fired upon them. The stoning and the alleged shooting are said to have taken place in Seeiso Street near the Municipal Offices. At a very early stage in the hearing counsel representing the Bishop pointed out that they were not instructed on these events and could not cross-examine or lead evidence on them. See Record, p. 176. In consequence the police evidence on these events was not tested by cross-examination nor were witnesses called to rebut it.

30. However a few African civilian witnesses who were called either by Mr. Claassens or by counsel for the Bishop (to give evidence on other points dealt with some of the events of the night and early morning. Their evidence is sufficient to show that the police version of events was not contradicted. Thus the witnesses Moses Smith and Simon Masheledi gave evidence that during the night peaceful meetings of Africans had been attacked and violently dispersed by the police without any provocation and without any

inquiry/...

inquiry as to their intention (see Masheledi, p. 2211; Moses Smith, p. 2028). Further doubt was cast on the police version by the evidence of a number of Africans, including officials, who were called by Mr. Claassens to give evidence of intimidation.

31. Sgt. Nxumalo, an African police sergeant attached to the Native Affairs Department, Vereeniging, said that he was woken up in the middle of the night and told to join a procession in connection with passes. He was threatened with violence if he refused (p. 1065). He then joined the crowd of African people outside, and saw that some of them were youngsters (p. 1068). But as soon as the police came on the scene the whole crowd ran away (p. 1065). He saw no violence used against the police. Bernard Xingwana, a clerk in the office of the Bantu Affairs Commissioner at Vereeniging, was also woken up in the middle of the night and told to join a crowd outside. He said that when he explained that he worked for the Bantu Affairs Commissioner he was told that he was "just the sort of person they wanted to have with them" (p. 1069).

When/...

When the police came the crowd ran away and he remained with the police. He saw them disperse other groups of Africans (p. 1070). Later another large crowd of Africans was approached by the police. A discussion between the leader and a police officer followed as a result of which the officer told them to go to bed and that he would try and arrange in the morning for this leader to speak to the people (p. 1071). Xingwana gave no evidence of any violence. The witness Francis Motshoahole testified that he too had been called from his house the previous night (p. 937). Two windows of his house had been broken but he was told by members of the crowd outside that "tsotsis had done this and that it would be repaired the next day" (p. 938). While he was with the crowd a contingent of police came on the scene. He was struck on the head by a stone or other object and fell to the ground. He did not know who did this (pp. 938-9) and could not see whether it was a civilian or a member of the police. However as, still dazed, he was getting to his feet, an African constable assaulted him by striking him with a stick.

32. Thus the evidence of these three Africans called by Mr. Claassens to give evidence of intimidation provides no support for the allegation that the African gatherings were violent during the night. The evidence of the assault on the last-named witness, indeed, supports the evidence of Masheledi that the violence came from the police. It seems reasonably clear that there was some intimidation; but there is not sufficient evidence to ascribe it to any particular person or group (see Masheledi, p. 2234; Tsolo, p. 2505).

33. It is necessary to refer briefly to the evidence of the alleged shooting and throwing of stones by Africans at the police. The evidence of the shooting is far from clear. It seems that if there was any shooting, it took place in Seeiso Street fairly close to the Municipal Offices. Nobody was hurt by the shooting and it is by no means clear from where the shooting came. It should however be remembered that some members of the police admittedly fired without orders (see Maj. van Zyl, p. 183-4). H/Const. Heyl said that he saw some policemen firing near the hostel and was told that they were firing in retaliation; but this was not investigated further (pp. 543-5). He saw no Africans firing. Nor did any other police witness.

34. It is reasonably clear that in the early morning some stones were thrown in Seeiso Street but this seems to have been the work of a few young men or even children (see Moses Smith, p. 2019). Sgt. Nxumalo, who was stoned in that vicinity in the early morning, said (p. 1066) that the people who threw stones at him were "all youngsters". Mr. Olivier who came in the early morning to find some of his employees and saw a motor car stoned, also said that it was the work of boys (p. 2622). It is submitted, however, that the police evidence on the point is greatly exaggerated. This is obvious notwithstanding the absence of cross-examination. Thus Sgt. Grobler said that hundreds of stones were thrown at the police; but he knew only of one policeman who was injured, namely Const. Coetzee (p. 82). Moreover, it appears from his evidence that the stone-throwing occurred

only/...

only after the police had charged the crowd with batons (p. 82). Major van Zyl also spoke of hundreds of stones being thrown; but he too could not mention anyone apart from Const. Coetzee who had been hurt by a stone (p.84). H/Const. Heyl too says that only Coetzee was injured (p. 516). Capt. Cawood also spoke of stoning. He said that Sgt. Scheepers was hit by a stone on his shoulder but was not seriously hurt (p. 148). Although at that time the police detachment was not large - there were 20 whites and 35 non-whites - and the crowd was numbered in thousands (see Capt. Cawood, p. 153), the police suffered only these two casualties.

35. We must refer (in parenthesis) to the evidence that immediately after the shooting at the police station, at about 1.50 p.m., the "Rand Daily Mail" motor car was apparently stoned and shot at in Seeiso Street. This may have been an outburst of resentment at the manner in which they drove through the crowd (cf. Robinson, pp. 1549, 1557-8). Be that as it may, it took place almost immediately after the shooting at Sharpeville police station and two miles away (Sacks, p. 1596; Robinson, p. 1559). This would suggest that the people responsible had no connection with the crowd at the police station. Moreover the evidence that the marks on the car were caused by bullets was extremely thin and unconvincing. It amounts to hardly more than a police suggestion after the event (Robinson, p. 1560).

36. It is submitted, therefore, that although

some/...

some stones seem to have been thrown, probably by youngsters, in Seeiso Street near the Municipal Offices many hours before the shooting, there is not sufficient evidence to enable the Commissioner to determine who was responsible or how serious the incident was. The evidence suggests that it was trivial and had no connection with the later events at the police station.

37. However the crowd in Seeiso Street may have behaved, it is clear from the evidence of Moses Smith (p. 2020) and Masheledi (p. 2202) that an effort was made by members of The Pan African Congress to bring an end to any unruly behaviour. Masheledi himself reported to the police that there was trouble between the police and Africans in Seeiso Street (p. 2202-3). Moses Smith stated that one Qwadi specifically went to Seeiso Street because of a report which had been received about what was taking place. He states (p. 2020), that Qwadi "explained to them that this pass campaign was not a campaign where they are going to fight and if they intend fighting they must go back to their homes. In other words, if they did not intend fighting they must go along with him to the police station because they were not going to fight". This evidence is consistent with the police evidence that the crowd in Seeiso Street dispersed after they had been spoken to by one Qwadi Teketse (see Labuschagne, pp. 394, 436). It is therefore clear that the persons who wished to surrender themselves for arrest tried to dissuade irresponsible people from committing irresponsible acts.

38.

In the light of the above submissions and of the criticisms of the police evidence which will later be made, it is submitted that the un-cross-examined evidence of the police on the events of the night of 20th - 21st March and the early morning of 21st March should be treated with considerable reserve.

F. THE NATURE, MOOD AND BEHAVIOUR OF
THE CROWD AT THE POLICE STATION.

39. The crowd which gathered outside the police station on 21st March, 1960, was concentrated mainly on the southern and western sides of the police station between the small gate on the southern side and the large gate on the western side. People were also standing along the fence on the north side and along the entire southern fence; and there were a few stragglers at the south-eastern corner and along part of the eastern fence. This can clearly be seen on Exhibits B, B.1., J. and K.

40. The police witnesses have given various estimates of the size of the crowd; but these estimates are based mainly on the picture which presented itself from the position of these witnesses at ground level inside the police station fence. In the nature of things they could not from this position accurately assess how dense the crowd was behind the rows of people immediately in front of the fence; and most of them assumed that the crowd was thickly packed between the police station fence on the west and the clinic fence and also that it extended across the entire width of Zwane Street to the south. That the crowd was not so

closely/...

closely packed either on the west or on the south is clear from the evidence of the African witnesses who were in the crowd. See for example, Abraham Kaole (p. 1688), Benjamin Maroo (pp. 1709, 1710), Matthews Mashiya, (p. 1734). This also appears from the evidence of Const. Sneigans who was standing on a Saracen armoured car parked in the grounds of the police station, and had from his elevated position a view of the crowd on the west (see Sneigans, p. 2390). The fact that the crowd did not extend across the street to the west of the police station or across Zwane Street is even more clearly demonstrated by the evidence of Berry and Hoek and the photographs which they took, particularly Exhibits BBB and CCC which were taken by Hoek after 1 p.m. and within half an hour of the shooting, when according to the police evidence the crowd was at its greatest (see Hoek, pp. 1587 - 9).

41. Regard being had to the population of Sharpeville (para. 23 above) and to the photographs, it is submitted that the figure of 20,000 given by the Hon. the Prime Minister to the House of Assembly (para. 9 above), and by the police witnesses to this Commission, is a gross exaggeration. The probability is that no more than 5,000 to 7,000 persons were gathered together and in fact that the estimate of 5,000 given by the witness Berry can be accepted as reliable (see Berry, pp. 2100 - 2102).

42. The evidence of the police, the details of which are referred to later, was that whilst the crowd as a whole was hostile and aggressive, the only threat to the police station came from the people assembled outside the western fence. It is submitted that in fact the crowd was not a hostile one and that there was no threat to the police station. The nature of the crowd can be assessed from the photographs and from the evidence of the photographers, Berry and Hoek, and of the African witnesses who were in the crowd. It is clear that the crowd was a mixed one. It consisted of men both young and old, and of women and children of all ages.

43. The police evidence also suggests that the crowd was an armed and dangerous mob brandishing weapons. Both the photographs referred to and the evidence of the Africans, which will later be analyzed in detail, give the lie to this suggestion. Twenty-nine Africans were called by counsel for the Bishop to give evidence; and the Commissioner himself called certain other African witnesses whose evidence is relevant to this issue. The effect of all this testimony is summarized in a schedule which is annexed hereto (Appendix VI). To this schedule are attached a number of diagrams on which are indicated as far as possible the position of each witness at the material times before the shooting and, in those cases where the witness was wounded, the position where that occurred. The references in the record to the evidence on which the diagrams are based are set out in the second column headed "Position and whether wounded". In column 3 of the schedule headed "Reason why present" are set

out/...

out the references in the record to the evidence of each witness why he or she went to the police station and remained there until the shooting. In column 4 under the heading "The nature of the crowd" are set out the references to the evidence relevant to the question whether this was an "armed mob" and how the crowd reacted to the police before the shooting, at the time of the arrests and when the shooting commenced. The schedule does not, however, deal with the questions whether an attack was in fact made on the police station and whether stones were thrown; these topics are the subject of a separate analysis. It is nevertheless significant that not a single one of these witnesses understood that there was to be an attack on the police station or saw any such attack actually made.

44. As will be seen from the schedule, these witnesses represent a body of persons of widely different ages and occupations. They include persons who were wounded in the shooting and persons who escaped injury; persons who have been detained in hospital since the shooting; persons who are awaiting trial on certain charges and have been in gaol since the shooting; persons who were arrested and have since been released; and persons who were never arrested at all. These witnesses also include persons who were present because they wished to participate in a protest against the pass laws; persons who were present because they had been intimidated; persons who were present because of idle curiosity; persons who were present because they heard that some address was to be made; and some persons who were at no

time/...

time part of the gathering itself. The schedule and annexed diagrams also show that these persons arrived at different times and took up different positions in the vicinity of the police station. Few, if any, of these witnesses can have had any contact with each other since the events of 21st March, 1960. In the few cases where this question was investigated it was even found that some of the witnesses have different tribal affiliations and speak different languages - for example, Joshua Motha was a Zulu and Abraham Kaole was a Makgathla. Merely as examples of the differences alluded to above, reference may be made to the following witnesses:-

- (a) Moses Smith and Simon Masheledi, who were members of the Pan African Congress and wished to participate in a demonstration against passes.
- (b) Joshua Motha, a bus driver who was present because of intimidation.
- (c) Abraham Kaole, who went to the police station out of curiosity.
- (d) Robert Maja, a Presbyterian minister of religion who was looking for a fellow minister.
- (e) Brown Thabe, a salesman who was passing the police station and stopped to ascertain what was taking place.

All these persons denied that the crowd was a hostile one and said that they did not see people armed with weapons in the crowd. It is certain these people

can/...

can have no common motive to misrepresent the position. Their evidence is corroborated not only by the photographs but also by the evidence of Lt. Col. Spengler, Mr. Labuschagne (the location superintendent) and the press photographers Hoek and Berry.

47. It will also be seen from the schedule that while the African witnesses went to the police station for a number of widely differing reasons, most of them had heard a report that there was to be an address or statement made by an official at approximately 2 o'clock; and they stayed at the police station for this reason. This belief was freely discussed not only at the police station but also in other parts of the township on the morning of 21st March, 1960. It was heard, for example, by Lechael Musibi while he was at his home (see pp. 1878 - 9). John Nteso heard it before he got to the police station (p. 2348). Adam Sakwane went to the police station because he heard passers-by mention this (pp. 1660, 1670). Moses Shabangu overheard a similar discussion (pp. 1721 and 1725). Most of the African witnesses heard, while at the police station, that an address was expected. This appears from the schedule but reference may be made here to the evidence of Brown Thabe (pp. 1787, 1793), Abraham Tinane (p. 2181), Koos Radebe (a witness who was called by the Commissioner) (p. 2249) and Joshua Motha who stated that on the arrival of the last vehicles which entered the police station:

"We/...

"We heard someone say, 'Well, here is the big man; here is the big man' and we all thought that was the man. We all drew nearer."
(pp. 1918 - 1919).

The two female witnesses called by the Commissioner at the end of the hearing also heard reports to the effect that a statement would be made (see Agnes Matshoahole, p.2740; Maggie Moteba, (p. 2797)).

47.

The origin of this belief can be traced to the discussion between Tsolo and Lt. Visser. A large number of witnesses say that Tsolo announced to the crowd immediately after his discussion with Visser that they were to wait as an address would be made at 2 o'clock. This information was repeated by Tsolo at various points along the fence and was also communicated by him to other people, who then repeated it to the assembled crowd. That some discussion took place between Tsolo and Visser is common cause. Tsolo alleges that Visser made this statement to him while Visser denies this emphatically. It is submitted that the only conclusion which can be drawn from the evidence is that Visser said something to Tsolo, either

exactly/...

41.

exactly in the terms set out above, or in terms which led Tsolo to believe that there would be an address at approximately 2 o'clock.

48.

Reference has already been made to the evidence of members of the crowd that Tsolo said "The Europeans say we must wait". This is confirmed by the evidence of Edwin Litelu an African detective inside the police grounds, who not only overheard this statement but believed it to be probably true (pp. 2686 - 77). And Lt. Col. Spengler confirms that whatever its source this belief was known on 21st March to have been held by the Africans. The following is an extract from his evidence under cross-examination on p. 1247:

"Do you know that some of them were told to go to the Police Station because they could expect an announcement during the day? --- Ek het gehoor daar het sulke gerugte rondgegaan; maar deur wie dit versprei is, weet ek nie.

DIE VOORSITTER: Van wie het U dit gehoor? --- Na die skietery
het/...

het iemand daar in dhe Polisie-
stasie gesê hulle verstaan dat
die Naturelle was gesê om
Polisie-stasie toe te kom, hulle
sou toegesprek word, daar.

Het U dit dieselfde dag gehoor?

--- Dieselfde dag.

Van wie; van 'n Polisieamptenaar,
of van 'n burgerlike? --- Dit
was van 'n Polisieman gewees."

It must be borne in mind that the intention of Tsolo and of the persons under his control was to surrender themselves for arrest. Visser does not claim either to have refused outright to arrest Tsolo or to have told him to go away. Visser's own conduct clearly suggested that he envisaged that the crowd would remain where they were. According to his own evidence, he told Tsolo to tell the people to stand back from the fence and not to lean on it as they were damaging it. This statement is confirmed by Tsolo and other police witnesses; and according to the evidence of the people outside the fence, Tsolo did pass on Visser's instructions to them. Again,

Visser/...

Visser asked Tsolo to ask some members of the crowd to get off the roof of the clinic where they were sitting and Tsolo in this case too passed on his instructions (see Det. Sgt. Pieterse p. 2670 and Sgt. Nkosi, pp. 2715 - 6). This is consistent only with an expectation of the continued presence of the crowd.

49.

Tsolo's conduct is also consistent only with the conclusion that some statement of the kind to which he deposes was made to him by Visser. He did at once convey this message to the crowd. He told the crowd to stand back from the fence; he saw to it that those persons who were on the clinic roof got off it. At some stage he left the police premises in order to have something to eat and later returned. Finally, H/Const. Heyl (when recalled by the Commissioner for further examination p. 2602), said that he saw Visser and Tsolo walk towards the fence while still conversing with one another and that Tsolo then spoke to the group of Africans at the fence, some of whom thereupon sat down - conduct which plainly suggested a decision to wait for some

future/...

future happening.

50.

The only contrary evidence is that of Visser himself and of a member of his staff who was called by the Commissioner to testify to the conversation which took place. The latter witness, Det. Sgt. Pieterse, gave a version so nearly resembling Visser's as to lead to conclusion that he must have discussed the matter with Visser. Pieterse, however, denied having had any discussion at any time either with Visser or anyone else either about this conversation or about anything else that took place at Sharpeville (pp. 2678 - 2680). This is so improbable as not to warrant belief. Even Det. Sgt. Pieterse could not exclude the possibility that Visser had informed Tsolo that a senior officer was coming when he, Pieterse, was out of ear shot. In all the circumstances, therefore, it is submitted that Visser's denial cannot be accepted. As he himself admitted when recalled, he was anxious to get reinforcements and expected to be relieved in due course by a uniformed officer. He felt he could not disperse the crowd and it is submitted that he told Tsolo to wait for a senior officer in order to avoid taking any immediate decision.

51.

There are differences in the evidence of some of the witnesses as to the time when they heard that a statement was to be made by an official. Thus John Nteso (pp. 2348, 2355) claimed to have heard it at approximately 8.30 in the morning. It is submitted, however, that no great accuracy can be expected of

witnesses/...

witnesses who have no ready means of telling the hour of the day. The evidence analyzed above suggests that Tsolo's discussion with Visser was the origin of the belief on the part of members of the crowd that an address would be made. There were also other references by policemen to the need to await the arrival of a senior officer and to the possibility of an address on the 21st. The witness Xingwana (p. 1071) says that during the previous night a police officer told one of the groups of Africans that they must go to sleep and that he would try to arrange that a leader talk to them the next day. When Tsolo spoke to Sgt. Nkosi before Visser's arrival, he was told to wait till an European officer arrived (see Tsolo pp. 2489/2490, Masheledi p. 2217, Sgt. Nkosi p. 2711). Tsolo communicated this information to the crowd immediately. During all the period when people were congregated at the police station, people were arriving and leaving (see the evidence referred to in the next paragraph and Masheledi p. 2222). A report in terms very similar to the statement repeated to the crowd by Tsolo could therefore easily have been made to persons in other parts of the location even before Visser's arrival. The evidence of the statement which Xingwana heard may also in this way have given rise to a similar belief that the Africans would be addressed by someone on the 21st.

52.

Even if Tsolo merely misunderstood what Visser said to him (or even, for that matter, if his evidence of what Visser said is rejected), there is no doubt that the crowd did believe that an official statement was to be made to them. This supplies the reason why the crowd remained outside the police station. It negatives the suggestion of any hostile intention, which is an inference drawn by the police merely from the fact that the crowd was present. It explains the activities of the crowd in singing and shouting while waiting for two o'clock. It explains why some persons in the crowd left the police station at various times and came back later (see Benjamin Maroo, p. 1702; Peter Molife, pp. 1746 - 7, 1763; Joshua Motha, p. 1918; Peter Lenyatso, p. 1863 - 4). It was not disputed by the police witnesses that Tsolo himself went off for lunch. When he returned, he says, he asked a police officer whether the high official had arrived and was answered with a curse (p. 2492). It also explains why the witnesses were at a loss to understand or explain the shooting and why there was no reaction from them when Tsolo and More were taken into the police station. The strength of the conviction of the Africans that they were required to wait for an announcement by an official or a police officer is well

illustrated/...

illustrated in the evidence given by Brown Thabe, a Sharpeville salesman, who was himself shot when running from the police station. The Commissioner asked him to explain the meaning of the word "tsotsi", which had been frequently used by police witnesses and others to describe certain young Africans. The following dialogue took place:

"Perhaps you can tell me something about a word that has often been used here, and that is the word "tsotsi"; have you heard the word "tsotsi" being used? ---

In my language, yes, I would be able to explain to your Lordship what this word "tsotsi" is.

I would like you to do so ---

A tsotsi is a person who has no truth in him, and if you ask him, for instance, to do so and so, he would make that promise but he does not keep it.

Reference has been made in the evidence to the fact that there are tsotsi's in Sharpeville? ---

May I explain to you in a different way so that your Lordship can follow what I mean when explaining it.

We/...

We got there to the Sharpeville Police Station to listen to our fathers, that is the police. Instead of giving us an answer to what we were waiting for, they fired on us. That is "tsotsi". That is what the Europeans call tsotsis." (p. 1808).

53.

That the crowd was not a silent one is clear. People were speaking to one another, singing songs (different songs in different parts of the crowd: see D/Sgt. Pieterse, p. 2673) and shouting slogans such as "Afrika". Some of the police witnesses have described the crowd as exceptionally noisy. The degree of noise is of course a matter of individual impression but attention can be directed to the evidence of Edwin Litelu (p. 2686) and Sgt. Nkosi (p. 2715). However, while there may have been a noise the crowd was at all times good-humoured. This was the evidence of many African witnesses, from whom two particularly impressive ones may be singled out. One is the Rev. R. Maja, a Presbyterian Minister (p. 2357). The other is Benedict Griffiths, one of the wounded men seen by the Commissioner in hospital, and himself the son of a policeman (p. 1943). It is significant that members of the crowd were able to carry on conversations with one another and that some of them heard the order to load

and/...

and the shout of "skiet". The noise therefore could not have been an insuperable problem if an order to disperse had at any time been contemplated. Nor could it have been such that proper orders could not have been effectively given to the men formed up inside the police station grounds.

The Unreliability of the Police Evidence of
the Situation.

54.

It is clear that the crowd did not at any stage before the arrival of the Saracens attack the police, although over many hours there was neither a sufficiently large force to overawe them nor any defensive dispositions which might have held them back. It is also clear that at no time before the arrival of the Saracens did the police behave as they would inevitably have done had they felt themselves to be in danger from the crowd. These facts alone cast grave doubt on the reliability of the police evidence that the crowd was riotous. When they are considered in conjunction with other aspects of the evidence, to which reference will be made in the succeeding paragraphs, it is submitted that the police evidence on this point must be rejected as essentially untrue. Some of the police evidence may be mere exaggeration, born of prejudice towards and ignorance of the Africans whom they saw at Sharpeville or even of inexperience and nervousness. This may, for example, explain why some policemen interpreted shouts of "Afrika" as evidence of aggression: and it may explain why the high spirits of the youngsters when the aeroplanes flew over (so vividly described by the local Presbyterian Minister, the Rev. R. Maja at pp. 2357 - 8)

were/...

were misinterpreted by some policemen as evidence of riotousness. Regrettably, however, much of the police evidence about the crowd can only be described as untruthful - as a deliberate and, one is driven to say, a concerted attempt to mislead the Commissioner about the state of the crowd and to provide some sort of justification for the tragedy which later ensued. Constables van Niekerk (pp. 708 - 9) and Olivier (pp. 2651 - 2) provide perhaps the most extreme examples of this type of evidence.

55.

Firstly, the police evidence is completely contradicted by the absence of defensive preparations by the police against attack. If this was a dangerous crowd, the inactivity of the police and the absence of defensive measures are completely inexplicable. The officers and N.C.O.'s in charge were experienced men. The only explanation of their failure to take any measures defensive or offensive is that there was nothing in the behaviour of the crowd to warrant such measures. All the police did was to ask certain Africans who were inside the fence to tell the crowd to stand back from the fence, which the crowd apparently did when they were so requested.

56.

Secondly, the police evidence is contradicted by the fact that there was in

fact/...

fact no attack on the police throughout the period before the arrival of the Saracens, either by the crowd as a whole or even by any wild or excitable individuals. The gates were not locked, the fence was a minor obstacle. There was no line of armed policemen and no line of Saracens; yet there was no attack. It is not credible that this crowd, having neglected its opportunities for five hours, decided to make an attack on a line of armed riflemen and Sten-gunners, and in the teeth of four Browning machine guns.

57.

Thirdly, the details of the police evidence of the riotous behaviour of the crowd do not withstand the simplest critical analysis. Throughout the record the theme is constantly repeated that the crowd was riotous and aggressive and took up a threatening attitude. But what does this evidence amount to? There were shouts of "Afrika"; there were thumbs-up signs; and there was the singing of songs. There was shouting, apparently of words or slogans the meaning of which the police did not understand and did not try to ascertain. A few policemen say that they heard shouts of "Cato Manor" and "police dogs" by some unidentified individuals; but it is not easy to be sure that during the singing and shouting of slogans they correctly heard these remarks;

nor/...

nor do these remarks appear to have been general. No doubt the crowd was noisy. No doubt the crowd was shouting political slogans. But the real crux of the police complaint about the crowd seems to be that the crowd were lacking in that respect and humility which the police apparently expect from their African fellow-citizens. There was, of course, a little police evidence that some of the crowd were waving sticks. On further enquiry, however, the stick-waving (if any) was found to be confined to a few individuals; and other evidence which will be referred to later makes it impossible to accept that "the crowd" was brandishing sticks. Moreover, one is again reminded of the fact that this allegedly riotous crowd allowed the police vehicles to enter the police station grounds unmolested: no policeman was injured and no police vehicle was damaged. The police evidence is also contradicted by a circumstance to which the police themselves deposed, namely, that a considerable part of the crowd was only at the police station by reason of intimidation (cf. Capt. Cawood, p. 175). This evidence was not only given by some of the African witnesses, but was confirmed by the observations of some of the policemen, for example, Capt. Coetzee (p. 972). The police evidence on this point suggests that there were many members of the crowd who had no particular determination

to/...

to remain at the police station and who might even have been glad to get away.

57.(a)

Fourthly, the police evidence is contradicted by the experiences of at least three white men who passed among or through the crowd at 1 o'clock or shortly after 1 o'clock, namely Berry, the "Drum" photographer, Hoek the "Rand Daily Mail" photographer, and Labuschagne the superintendent of the Sharpeville Township. Berry walked through the crowd to the fence. He had no difficulty in getting through and he met with no hostility. The crowd seemed to him to be friendly (pp. 1821 - 1824). Hoek did not get out of his car but he stopped among the crowd near the police station. He thought the crowd was noisy and excitable but he saw no signs of hostility (p. 1590). These men were, of course, not policemen; nor was Labuschagne. But Labuschagne was in Sharpeville Township the personification of officialdom and authority. It was he who as superintendent was responsible for the practical application of the pass laws, for it was he or his colleagues in his department who had to decide whether any African might enter or must leave the township. He had been standing quietly for an hour or more with Capt. Coetzee's men, but at about 1 o'clock he decided to leave them and to enter the

police/...

police station. He walked through the crowd and climbed over the fence. He met with no hostility: on the contrary he was greeted in a friendly manner and chatted with members of the crowd (p. 397 and pp. 429, 440). Moreover, Sgt. Nkosi, the uniformed charge-office sergeant at Sharpeville police station went off duty shortly after 1 p.m. He left the police station by the south gate and walked alone through the crowd. He was not molested in any way (p. 2715).

58.

Fifthly, the police evidence about the crowd is completely inconsistent with the press photographs which have been placed before the Commission. Berry's photographs show police vehicles arriving. They show the crowd near the fence and at the fence itself on both the southern and the western sides. The pictures speak for themselves. The crowd is not a riotous or an angry crowd. It is lively and perhaps noisy. Many of the people in the photographs appear to be merely curious about what is going on (see Exhibits L, M, O to S, LLL to NNN). The same can be said of the photographs taken by Hoek. Some people are trying to see over the heads of those in front of them: some are strolling about: some are sitting on the pavement (see Exhibits BBB and CCC). The photographs taken by the photographers of the

"Golden/...

"Golden City Post" and the "Star" which were obtained by the Commissioner and are in his possession clearly show the scene as the Saracens and other vehicles drove towards the police station. Some people are waving; some are giving the thumbs-up sign; some are shouting; but the vehicles have a clear passage. There is no sign of aggression or riotous behaviour. Most important, all these pictures show beyond dispute that this was an unarmed crowd. The photographs were taken at different points and at different times by different photographers. They show an occasional individual with an ordinary walking-stick. One does not see sticks being brandished at the police: indeed, there seem to be many more umbrellas than sticks. There seem to be many women and children in the crowd. Above all, the crowd depicted in these photographs is not a fanatical crowd or a frenzied crowd. These are not people who have come to commit murder, still less suicide in a desperate unarmed attack against the tremendous firing power of the police. These photographs fully corroborate the evidence of the African witnesses (see for example, William Molatule, p. 2074; Brown Thabe, p. 1806; Joshua Motha, p. 1925) that the crowd was not armed even with sticks. This was also the evidence of Mr. Labuschagne (p. 412) and Lt. Col. Spengler (p. 1271).

59.

The evidence given by Africans who were part of the crowd has already been dealt with. It is clear from their evidence that the crowd was not hostile or aggressive. As against their evidence one has the evidence of the police. But every piece of independent and objective evidence is consistent with the version of the African witnesses and inconsistent with the version of the police. For example, the evidence of the photographers is consistent with the evidence of members of the crowd and inconsistent with the evidence of the police. The photographs themselves are consistent with the evidence of members of the crowd and inconsistent with the evidence of the police. The fact that the vehicles entering the police station were unmolested and that no attack whatsoever was made on the police even when they were a comparatively weak and unarmed force, is consistent with the evidence of members of the crowd and inconsistent with the evidence of the police. The inactivity of the police and their failure to take defensive measures is consistent with the evidence of the members of the crowd and inconsistent with the evidence of the police themselves. In these circumstances one must unfortunately conclude that no the slightest credence can be given to the account by the police of riotous behaviour during the morning. Certainly the evidence of the African witnesses cannot/...

cannot be rejected. All that can be said is that it was a large crowd, and was making a certain amount of noise.

60.

The police evidence contains contradictions which can hardly be accounted for by individual variations in power of observation or memory. Vivid accounts were given by Capt. Brummer and Capt. van der Linde of their difficulties in driving their Saracens through the crowd. One wondered on listening to their evidence how it was possible that the Saracens drove through the crowd without running down dozens of pedestrians. Indeed, Capt. Brummer had some difficulty in explaining this in cross-examination. Sgt. van den Bergh, on the other hand, who drove in with Capt. van der Linde, said bluntly that he had no difficulty in getting in to the police grounds (p. 1039). So too, Const. Arnold, who was called at a late stage on another point (he was the driver of Capt. Brummer's own Saracen and was indeed looking through the same periscope as Capt. Brummer), also admitted that he drove in without difficulty (p. 2515).

61.

Another example is the evidence of Maj. van Zyl about the dangerous and threatening aspect of the crowd at the time (about 11.30 a.m.) when he paid his visit to the police

station/...

station. Asked what there had been to keep such a crowd from pouring through the unlocked gate, he was driven to say that at least twenty policemen had to be kept at the gate to prevent the crowd from coming in and that this number had to be increased (pp. 217 to 218). It is submitted that this piece of evidence was palpably a fabrication. The aerial photographs taken at about the same time show four or five policemen chatting unconcernedly a little way from the gate. Other evidence shows that the gate was in fact opened and closed at will by individual Africans coming in and going out. Capt. Theron himself (p. 295), not only saw no policemen at the gate but found it unnecessary to station one there. At a subsequent stage one or two African constables (who did not carry firearms) were stationed at the gate. Major van Zyl's evidence on this point is not important in itself; but it is a good illustration of the lengths to which the police were driven in the attempt to reconcile their picture of a threatening mob with the objective facts which emerged in the evidence.

62.

The findings therefore which it is submitted that the Commissioner should make are:-

- (a) that the crowd was never as large as the police suggest

but/...

but comprised only some 5,000 people;

- (b) that it surrounded the police station only in the sense that the people were standing along the fence waiting for an address;
- (c) that the crowd was never an integrated one with a single motive or intention;
- (d) that the crowd was unarmed; and
- (e) that it was never a hostile or aggressive crowd on the point of attacking the police station.

G. THE POLICE FORCES AT SHARPVILLE POLICE STATION.

NUMBERS AND ARMAMENT:

63. The shooting at the police station took place at approximately 1.45 p.m. The police themselves made available to the Commission the details of the forces which were then present at the police station. This information is to be found in the three schedules prepared by Capt. van den Bergh of the C.I.D. which are before the Commission as Exhibits VVV, WWW and XXX.

64. At the time of the shooting Lt.-Col. Pienaar had under his command within the perimeter of the police station, 115 uniformed white policemen - officers, N.C.O's and constables. Of these 15 were armed with Sten guns and 66 were armed with .303 calibre service rifles. The rest of the white policemen were armed with .38 calibre service revolvers and many of the Sten gunners and riflemen also carried these revolvers. In addition there were present in the perimeter 77 African policemen (including four sergeants) who were armed with batons or assagais, and 16 white C.I.D. men armed with automatic pistols or revolvers. Lt.-Col. Pienaar also had at his disposal, inside the perimeter fence, 4 "Saracens" (armoured troop carriers), each armed with a .300 calibre Browning machine-gun with a firing rate of approximately 1200 rounds per minute.

65. OUTSIDE/...

65. Outside the perimeter fence on the south-east, another contingent of 91 policemen was drawn up across Zwane St. under the command of Capt. Coetzee. Sixty-two of these policemen were Africans armed with batons and assagais. The remaining 29 policemen were white and were armed with 4 Sten guns, 18 rifles and 17 revolvers.

66. 297 Policemen (158 White and 139 African) were therefore available to Lt.-Col. Pienaar, either inside or just outside the police station. The white policemen had between them 19 Sten guns, 84 rifles, 102 revolvers, 13 automatic pistols and over 8,000 rounds of ammunition. In addition there were the machine guns on the four "Saracens", each with an ample supply of ammunition.

THE BUILDING-UP OF THE POLICE FORCES.

67. During the previous night, police attached to the Vereeniging District (which includes Sharpeville) under the command of Maj. van Zyl, the District Commandant of the Vereeniging District, patrolled Sharpeville.

68. During that night, it appears, meetings of groups of Africans (which were no doubt illegal because they were held without the permission required in terms of the Township Regulations) were dispersed by baton charges. The police activity continued against gatherings of Africans,

including/...

including possibly some very large gatherings, in the streets of Sharpeville after dawn, but when a crowd began to gather outside the Sharpeville Police Station between 7 a.m. and 8 a.m. there were no white and only a few non-white police on duty at the police station. The N.C.O. in charge was Sgt. Nkosi. See the evidence of Tsolo (p.2489) and Moses Smith (p.2061) and of Sgt. Nkosi himself (p. 2711).

69.

The first white policemen did not arrive until about 9.30 a.m., when H/Const. Heyl of Vereeniging and Sgt. Grobler, the Sharpeville Station Commander, arrived at the police station with a few white constables. Between that time and the arrival of Lt. Visser of the Vereeniging C.I.D. with a small reinforcement at about 10.30 a.m., the total force at the Sharpeville Police Station did not exceed six white policemen (including Heyl and Grobler) and six non-white policemen (see Sgt. Grobler, pp. 85 to 86; H/Const. Heyl, pp. 523 to 525). These numbers are significant in relation to the size of the crowd which had gathered. Although the estimates of Grobler and Heyl may be exaggerated (5,000 and 3,000 respectively), it is clear not only from their evidence but also from the evidence of Sgt. Nkosi, Tsolo, Moses Smith and others, that from 8 a.m. onwards a considerable number of Africans gathered outside the police station. It is also undisputed that the persons

who/...

who regarded themselves as the leaders of the crowd, namely Tsolo and Moré, were already there at that time. Consequently, had the crowd wished to attack the police station or the policemen inside, the force which was present could not possibly have prevented such an attack. The numbers speak for themselves; but the point was specifically made by H/Const. Heyl (p. 525) and by Det.-Const. Edwin Litelo (P.757).

70.

Apparently, small numbers of African constables arrived at the Police Station from time to time, but at approximately 10.30 a.m. H./Const. Heyl sent a message to the police contingents which were stationed near the Municipal Offices in Sharpeville describing the situation at the police station as he saw it. Following this message, at some time between 10.30 and 11 a.m., Lt. Visser with a few more white and non-white policemen arrived at the police station (see H./Const. Heyl p. 527, Lt. Visser, p. 468.)

71.

The uniformed men with Lt. Visser were under the direct command of H/Const. Malan of Johannesburg. Lt. Visser, with gross exaggeration, estimated the crowd at that time to have been 8,000. It is however clear that the crowd must have been a very substantial one. It is also clear that while Lt. Visser was the senior officer present (that is to say, until the arrival of Capt. Theron at about 11.45 a.m.) only about 25

armed/...

armed white policemen were there, with apparently about the same number of African policemen. It is obvious that during this period it was not the strength of the police forces which kept out any would-be attackers. Reference may in this regard be made to the evidence of Lt. Visser when he was recalled and further examined (p. 2591).

72.

At about 11.30 a.m., Capt. van der Linde, accompanied by Major van Zyl, took two Saracens to the police station. He placed one of them (which was under the direct control of Sgt. van den Bergh) in position inside the fence near the south-western corner. He then returned with Maj. van Zyl to the Municipal Offices taking the other Saracen with him. At about 11.45 a.m. Capt.

Theron arrived at the police station and from that time until the arrival of Lt.-Col. Pienaar he was the senior uniformed officer present at the police station. Up to the time of his arrival it appears that there were not more than 30 white and 30 non-white policemen at the police station (see Capt. Theron, p. 282, Capt. van der Linde, pp. 774/5, Sgt. van den Bergh, p. 1038). Capt. Theron brought with him about 25 white and African policemen. It was at about this time that a flight of military aircraft flew low over the crowd at the police station, possibly in an attempt to disperse or at least overawe them. None of the pilots was called and their precise intention

is/...

is not clear. It seems, however, that after making a number of runs over the crowd these aircraft flew away and did not return.

73.

At some time during the morning Capt. Coetzee brought his contingent of white and African policemen into position in Zwane Street, opposite the south-east corner of the police compound. As he was already in position when the military aircraft flew over (see Labuschagne, p. 396), it would appear that he must have arrived at approximately 11.30 a.m. However, he did not see the arrival of Capt. Theron (see Capt. Coetzee p. 964), and Capt. Theron was unaware that Capt. Coetzee and his men were nearby (see Capt. Theron p. 287).

74.

Shortly after 1 o'clock Capt. Brummer arrived in charge of three more Saracens. Also in his party were Lt.-Col. Spengler and Col. Prinsloo of the Special Branch of the C.I.D., and Lt. Freemantle leading another uniformed detachment. This party drove past Capt. Coetzee's contingent—see for example Exhibit LLL. Shortly afterwards Lt.-Col. Pienaar arrived together with Lt. Claassen and a further contingent of uniformed men. They were the last arrivals at the police station before the shooting. It may be that some contingents other than those mentioned arrived during the morning, of which no evidence was given. At all events, by the time when the last police vehicle had entered the police station, Lt.-Col. Pienaar

had/...

had under his immediate command a force of white armed policemen roughly equivalent to an infantry company and in addition a force of over 70 African constables. At hand outside the fence were Capt. Coetzee's forces. The reinforcements had come from a number of stations in the Witwatersrand area and each contingent had with it either an officer, a Head Constable or a Sergeant (see the Schedule Exhibit VVV).

75.

The various contingents of police and their officers arrived in a variety of police vehicles including troop carriers, vans and ordinary motor cars. In order to enter the police station grounds through the double gate on the west side, all these vehicles had to pass through the crowd. Although some of the officers and men (particularly Capt. Brummer and Capt. van der Linde) speak of opposition to the passage of the vehicles and of the difficulty which they had in getting in to the police station perimeter, the fact is that all these vehicles and all these policemen passed through the crowd and into the police station uninjured and unmolested, and that they were able to do so without any use of force. On their drive through the crowds it was not necessary for them to use any weapon or to knock down any African pedestrian. Even more significant is the fact that Capt. Coetzee's detachment alighted from its vehicles, which were parked in the road near the police station, and took up
their/...

their positions in the road. They did not have the protection of a fence. Although Capt. Coetzee gave evidence of some hostile individuals whom he noticed in the crowd, it is quite clear that this contingent, although surrounded by Africans, was not attacked by the crowd. No stones were thrown at any of Capt. Coetzee's men and throughout the two hours or more during which they remained in that position they suffered no injury or damage to property (see Capt. Coetzee, pp. 961-2). Their relationship with the crowd is shown by a photograph taken some time before the shooting by a photographer of the "Star". One of the policemen is sitting on the ground. The crowd, a short distance away, appears to be taking no notice of them.

76.

Perhaps the most striking feature of the evidence of the situation at the police station during the morning, up to the time when Capt. Brummer arrived with the Saracens, is the picture it gives of complete inactivity on the part of the police. Apart from the flight of the aircraft overhead (which appeared to have no connection with what was happening on the ground), one can say that throughout that period (that is to say, a period of at least five hours), the police took no action of any kind. Lt. Visser had a conversation with one of the leaders of the Pan African Congress, Tsolo. For the rest, the police were apparently content to stand or stroll about the grounds of the police station, or in the inner/...

inner yard or in the police station itself. There is no evidence of any attempt to get the crowd to disperse whether by persuasion or by other means. Furthermore, throughout those hours the police took no measures for the defence of the police station. No dispositions were made; the police were not lined up nor were they placed in defensive positions. They were left at their leisure throughout.

77.

The significance of these facts lies in the light which they cast on the real nature and mood of the crowd at the police station. It is not credible that, if this small force of policemen had been surrounded by a huge and hostile crowd, they would have strolled about with rifles slung, smoking and chatting, some outside the police station, some inside, without any control or command being exercised over them. Yet the police officers themselves admit that that is how their men were comporting themselves (see, for example Capt. Theron, p. 287; Capt. van der Linde, p. 795; Capt. Brummer, p. 835). This is also borne out by the photographic evidence. The aerial photographs, Exhibits B, B.1, J and K taken by the "Star" photographer Von Below, at some time between 11 and 11.30 a.m., show a crowd of fair size around the fence. There is a group of four or five policemen chatting to each other near the gate. The other policemen are apparently in the yard or inside the police station. There is not/...

not a sign of any preparation for defence. Even more striking are the photographs taken by Berry, the "Drum" photographer. These photographs were taken within thirty minutes of the shooting. They show policemen with rifles slung, in no sort of order, often with their backs to the crowd, in attitudes of complete unconcern. Those taken at the same time of the crowd on the south side show no policemen on that side save for two African constables, also with their backs turned to the crowd, also unconcerned and in casual attitudes. Neither the double gate on the west side nor the small gate on the south side was ever locked or barred. There was nothing to prevent anyone coming in or going out of those gates. Capt. Theron did not even station a guard on the west gate (p. 285), and the evidence shows that throughout the morning not only vehicles but individual members of the crowd went in and out of this gate.

78.

Capt. Theron was apparently not sufficiently concerned about the situation even to do a round of the perimeter. He remained on the west side and did not go into the police station to see who was there or what force he had (see Capt. Theron, pp. 286 to 288). Moreover, Major van Zyl left Lt. Visser, a C.I.D. officer, in charge until 11.45 p.m. He himself, apart from paying a short visit with Capt. van der Linde at about 11.30 a.m., did not return at all. Although he was the senior uniformed officer in Sharpeville

until/...

until the arrival of Lt.-Col. Pienaar in the township at about 1 p.m., he was content to leave Capt. Theron in charge of the police station from 11.45 a.m. onwards. He did not think it necessary after 11.30 a.m. to go anywhere near the police station, as one might have expected him to do had the crowd there been in a dangerous or explosive mood.

H. EVENTS AT SHARPEVILLE POLICE STATION
FROM THE ARRIVAL OF CAPTAIN BRUMMER
TO THE ARRIVAL OF LT.-COLONEL PIENAAR.

79. At about 1 p.m. or shortly after, Capt. Brummer arrived with three Saracens. In the same party were Col. Prinsloo and Lt.-Col. Spengler of the Special Branch of the C.I.D. and Lt. Freemantle leading a further contingent of uniformed police. All these officers and men drove as usual through the west gate and kept their vehicles inside the police station grounds. Capt. Brummer and other officers gave a somewhat lurid account of the wildness of the crowd and the difficulty of getting through the crowd. See especially Capt. Brummer at pp. 803 and 804. But again, no policeman was injured and no vehicle was damaged; and as already pointed out the evidence of Capt. Brummer was contradicted by his own driver, Const. Arnold (see para 60 above).

80. Capt. Brummer's evidence is even more completely and effectively contradicted by the photographs of the crowd and of some of the vehicles approaching or entering the police station, taken shortly after Capt. Brummer himself had arrived. Two of the photographs taken by Berry, Exhibits "L" and "M", show one of the police cars entering the west gate. The gate is wide open, a few policemen are standing next to the motor car smiling, chatting or smoking. Their weapons are slung and they are paying no attention to the

crowd/...

crowd. The crowd itself is clearly seen. They are crowding the fence at either side of the gate but making no attempt at all to enter, although the opening is wide and unobstructed. A few of the people in the crowd are shouting or singing, and some are holding up their thumbs in the "Afrika" sign. There are no sticks either being carried or waved in the air; but there are many umbrellas held aloft as sunshades. There are women and children together with men in the crowd, leaning against the fence in order to see better what is going on inside. The crowd at the fence look more like sightseers than rioters.

82.

The same may be said of the crowd at the fence clearly seen in Exhibits "O" and "P". Here, too, the police are standing about talking; some have their backs to the crowd, while others are looking casually at the crowd. The crowd itself again shows no sign whatsoever of wanting to get over the fence. It appears to be merely inquisitive. Standing close against the fence are many women and children.

83.

The photographs taken of the crowd in Zwane Street watching the arrival of the police vehicles, for example Exhibits "S", "MMM" and "NNN" are also revealing. In these photographs too, people are giving the thumbs-up sign, and one or two African men are holding walking-sticks, but most of the crowd is looking quietly at the police

vehicles/...

74.

vehicles. The people are not aggressive and the photographs show a holiday crowd, not a fighting mob.

84.

These photographs are important not only because they demonstrate the unreliability of the evidence of Capt. Brummer and the other members of the police who gave evidence of the nature of the crowd on their arrival, but also because Lt.-Col. Pienaar agreed (pp.1425-6) that the photographs Exhibits "L" and "M" depict the crowd as he saw it on his arrival. These photographs do not merely show the true nature of the crowd; they also demonstrate Lt.-Col. Pienaar's distorted view of the people with whom he was proposing to deal.

85.

Capt. Brummer was in command of the three Saracens and the men in them and his activities when he arrived deserve special consideration.

86.

The official report of the occurrences at Sharpeville made no mention of any order to disperse, and the police in giving evidence did not claim that any order to disperse was given before the firing. But Capt. Brummer stated that he addressed the crowd, or attempted to address it. His evidence is particularly interesting. He says that as soon as he arrived he could see that the situation at the police station was critical. Indeed, he felt that the crowd was

clearly/...

clearly intending to invade the police station and attack the police (p. 806). He saw that the police were not drawn up in any sort of order (pp. 834 to 835) but he did not report to the senior officer present (indeed he did not even know or find out who he was - see pp. 802 to 803); nor did he attempt to discuss the situation or obtain any information from any other officer or N.C.O. He did not know whether any steps had been taken by anyone to disperse the crowd or whether the senior officer present had any plan in mind or had had any dealings with the crowd. On his own initiative he simply took a battery-operated loud-speaker and walked to the fence and addressed the crowd. He spoke to them in English in the first place. He told them that they were looking for trouble and that they had better go or they would get hurt. Then, apparently realising that they might not have understood him, he said "Hamba", a word in a Bantu language meaning "go" or "clear off". This is all he said (pp. 804 and 819). The crowd did not however listen to him but simply shouted "Afrika" and other slogans.

87.

Capt. Brummer's few words to the crowd were not, of course, an order to disperse such as is contemplated in Section 7 of the Riotous Assemblies Act, 1956; nor apart from the Statute can it be taken seriously as an order to disperse. He had not consulted with or taken over from the commanding officer, who, for all he knew, might

have/...

have been senior to himself; he did not know whether this officer was in fact prepared to use force. Nor did he make any serious effort to communicate with the crowd. He did not attempt to obtain the assistance of an interpreter although there were many African policemen and N.C.O.'s present through whom the crowd could have been addressed; nor did he attempt to make contact with those African members of the Pan African Congress who were actually inside the fence and who apparently had the ear of the crowd. Capt. Brummer himself claims that he spoke several times to various parts of the crowd, but no African who gave evidence saw or heard him do so; although some saw him holding the loudspeaker. See e.g. Moses Tshabangu (p. 1724); Mishack Mkwonazi (p.1969). The evidence of Const. van den Bergh who had handed the loudspeaker to Capt. Brummer is inconclusive on this point. It is sufficient to say that Capt. Theron specifically and positively said that Capt. Brummer spoke only once, and that was to the crowd on the south side and not the west side, although the police officers all state that if there was any danger it was from the crowd on the west side(pp.289 to 290).

88.

Before leaving the question of Capt. Brummer's alleged attempt to speak to the crowd, one must refer to his evidence that he was asked by Col. Prinsloo to calm the crowd. This may

have/...

have been so, although Col. Prinsloo himself did not give evidence, despite the fact that he was the senior police officer present. Having given that evidence, however, Capt. Brummer found himself in a difficulty, for he had to admit that he had not told Col. Prinsloo that he had tried to speak to the crowd and failed. (pp. 822 to 823). If in fact he had made a serious attempt to disperse the crowd he would surely have reported it to his superior officer.

89.

Apart from this one incident, Capt. Brummer's evidence is important for the clue which it gives as to the weight which can be attached to the police evidence about the state of the crowd during the last 30 or 40 minutes before the shooting. As stated above, Capt. Brummer claimed that he found a critical situation at the police station. The crowd, he said, was in a fighting mood and intended to attack the police. But although the police were not drawn up in line and were in no sort of defensive formation, he himself did not put them into line; nor did he try to find Capt. Theron in order to suggest that they be put into line. Although he spoke to Col. Prinsloo, who was the senior officer present, he did not express his fears or ask permission to have the men lined up. Lt.-Col. Pienaar only arrived about 10 minutes after Capt. Brummer; but Capt. Brummer took no action during that time to deploy the men although he was in fact the senior

uniformed/...

uniformed officer present, being senior to Capt. Theron. (And as will be seen, Lt.-Col. Pienaar himself only ordered the men to form up some 10 to 15 minutes after his own arrival.) This complete lack of activity on Capt. Brummer's part is quite inconsistent with his evidence of the mood and intentions of the crowd. Moreover, it is contradicted by the photographs already referred to. In the photograph Exh. "L" Capt. Brummer himself is seen standing in front of a car and apparently directing the driver as he enters the police station. He is apparently quite unconcerned by the fact that the gate is wide open, that the police are not drawn up and that their arms are not at the ready. This officer claimed that the crowd was in a fighting mood and had one purpose only, to get inside the fence and deal with the police. This photograph shows what he saw and how he was acting; it is the best possible commentary on his evidence and on the evidence of other members of the police who spoke in similar, if not quite as vivid terms, about the crowd at the western gate and fence.

I. LT.-COLONEL PIENAAR'S ARRIVAL.

90. At about 1 o'clock or very shortly afterwards, Lt.-Col. Pienaar arrived at Sharpeville and almost immediately went on in his motor car to the Sharpeville police station. In his car with him was Lt. Claassen and following in troop carriers were further police reinforcements.

The Time of Arrival:

91. It will be convenient to attempt to fix the time of Lt.-Col. Pienaar's arrival. Capt. van der Linde said (p.777) that Lt.-Col. Pienaar arrived at about 1 o'clock; but it may be more satisfactory to try to fix the time by working backwards from the time of the shooting. When the enquiry started it appeared to be assumed by most witnesses that the shooting took place at approximately 1.30 p.m., but it would appear now that it must have taken place at 1.45 p.m. or even a little later.

92. Berry, the "Drum" photographer, a most careful witness, places it at between 1.40 and 1.50 p.m. He left his position near the police station within two or three minutes of the end of the shooting. It took him and his driver a further few minutes to find their way to the main exit, but they left the township probably 10 minutes, and certainly not more than 15 minutes

after/...

after the shooting. As they left the township Berry looked at his watch and saw that it was 2 p.m. (pp. 1835 - 6). His evidence is confirmed from two quite independent sources. An African witness Benjamin Maroo left the crowd at about 1 p.m. and went to his house, which was not far away, in order to listen to the wireless. He listened to two news services and left his house at about 1.20 p.m. He had been back at the police station for some time before the shooting started. His evidence strongly suggests that the shooting was between 1.45 p.m. and 1.50 p.m. (pp. 1696, 1702). The other source of confirmation is the evidence of the despatch of ambulances. Mr. Labuschagne, the location superintendent, rushed off by car to the Municipal Offices as soon as the shooting had stopped and immediately saw to the sending of a radio message to the Vereeniging Fire Station for ambulances (p. 418). And according to Capt. van der Linde, a wireless message was sent from the police station immediately after the shooting asking for ambulances (see van der Linde, p. 781). The wireless message was immediately sent out, and both the recollection of Mostert and the occurrence book at the fire station (referred to by the chief of the local Fire Brigade, Mr. van Vuuren) show that the time of this call was 1.50 p.m. (Mostert p. 2533; van Vuuren p. 2535).

was at Sharpeville for about 30 minutes before the shooting took place. This appears from his own evidence (p. 1512) and it is confirmed by a number of other witnesses. Reference may be made to the evidence of Major van Zyl, p. 197 Capt. Theron, p. 260, and Lt. Claassen pp. 908 and 911.

94. Consequently one can place the time of his arrival at the police station itself at about 1.15 p.m.

Lt.-Colonel Pienaar's Arrival:

95. Lt.-Col. Pienaar, like some of the other witnesses, gives evidence of the difficulty which he had in driving his car into the police station grounds. He was followed by Capt. van der Linde's Saracen which did not remain at the police station but returned to the Municipal Offices. He was also followed by three troop carriers.

96. Both Lt.-Col. Pienaar and Lt. Claassen stated that their car was struck with sticks by members of the crowd. Under cross-examination they had some difficulty in explaining how, in the face of a crowd surrounding and obstructing their car, they were able to go forward without knocking anybody down. Lt.-Col. Pienaar attempted to explain that people in front of the

car/...

car were pushed aside but not knocked down (pp.1438 - 1440). Their car, they say, was completely surrounded by the crowd. Nonetheless the crowd did not attempt to open the doors or to drag the occupants out and they were not molested.

97.

The western gate was opened wide to allow the entrance not only of their car, but also of the three troop carriers which followed (see Lt. Claassen, p. 876). The gate remained open while all the vehicles entered. Lt. Claassen stated that the crowd burst in through the gate; but under cross-examination he could not explain what had happened to this invading force of which there is no other evidence. He eventually conceded that although the gate was open for "quite a few minutes" while the car and the troop carriers came through, the crowd did not rush through the gate (pp. 906-7).

98.

In describing his progress towards the police station, Lt.-Col. Pienaar said that quite close to the police station he had seen a small car surrounded by Africans who were bouncing it about. He concluded that there were white people in the car who were being assaulted and killed. He did not see whether the occupants of the car were white, or indeed whether there was anyone in the car at all; but he assumed that the car was being attacked and the white occupants

being/...

being murdered. However, he took no steps to send them aid or investigate the incident afterwards (pp. 1329. 1433-4). This piece of evidence too, is an interesting indication of Lt.-Col. Pienaar's fears and assumptions. There is no other evidence of an attack on that motor car. Indeed all the evidence suggests that no such attack took place. It was not observed by any other policeman. Lt. Claassen did not see it happen. No sign of a damaged car or murdered or even injured occupants was found afterwards. The matter was thoroughly investigated by Capt. van den Bergh of the C.I.D., from whose evidence it appears that no such incident ever took place.

Lt.-Colonel Pienaar's Activities:

99.

In order to understand the acts and omissions of Lt.-Col. Pienaar when he arrived at the police station, it is necessary to keep in mind the information which he was given when he arrived at the Municipal Offices. When he arrived there he received a report from Maj. van Zyl. Part of what Maj. van Zyl told him he misunderstood. For the rest he accepted completely and uncritically Maj. van Zyl's assessment of a situation which he ought to have judged for himself. He understood from Maj. van Zyl that

"things were looking ugly there and that the station was surrounded by about 20,000 natives" (p.1328),

and that it was dangerous to go to the police station

without/...

without a Saracen escort. He also understood from Maj. van Zyl (quite wrongly) that earlier that morning attempts had been made to disperse the crowd at the Sharpeville police station by means of a baton charge and tear-gas and that the crowd at the police station had fired shots at the police (pp. 1327, 1388, 1442-3). It is common cause that this information was quite incorrect - the incidents referred to by Maj. van Zyl had happened elsewhere, many hours earlier. But in consequence Lt.-Col. Pienaar went to the police station in the belief that he was coming to face

"a most dangerous situation" (p.1443).

His misconceptions and misunderstandings about the situation with which he had to deal influenced his mind and to a large extent explain his conduct after he arrived at the police station. His erroneous belief that tear-gas and a baton charge had been unsuccessfully employed at the police station earlier was one of the factors which (he admitted) influenced him in deciding what he could and could not do after his arrival (p. 2559).

100.

When Lt.-Col. Pienaar got out of his car at the police station he spoke to Capt. Theron, the uniformed officer who had been in charge since 11.45 a.m. As has been pointed out, he had already made up his mind that he had to face a dangerous situation. He did not discuss/...

discuss the situation with Capt. Theron or any of the other officers or attempt to obtain reliable information of what had occurred at the police station before his arrival. He had only one conversation with Capt. Theron, which was short enough to be repeated here. Lt.-Col. Pienaar asked what things looked like and what Capt. Theron thought about the situation. Capt. Theron replied, "Colonel, you can see for yourself". Nothing further was said by either (see Capt. Theron, p. 305). and Lt.-Col. Pienaar did not have any conversation whatsoever with Capt. Brummer (see Capt. Brummer, p. 821).

101.

Some 10 to 15 minutes after his arrival Lt.-Col. Pienaar gave the order that the men should fall in. That is all he said (see Capt. Theron, pp. 305 to 306 and Lt. Freemantle, p. 847). Later, as the same references and the evidence of others who were present show, Lt.-Col. Pienaar gave the order to load five rounds. Lt.-Col. Pienaar stated in evidence that after he gave his first order he was personally occupied in deploying his men. There is not, however, a tittle of other evidence to corroborate this statement. According to Capt. Theron (p. 305) it was not Lt.-Col. Pienaar but Lt. Freemantle who placed the men in line following Lt.-Col. Pienaar's order. This is corroborated by Const. Pennekan (p. 595). Nor do Lt. Freemantle or Lt. Claassen support Lt.-Col. Pienaar on this point.

No. witness claims to have seen Lt.-Col. Pienaar do anything of the sort. Capt. Theron states categorically that Lt.-Col. Pienaar did nothing whatsoever, save to say

"Tree aan" - "line up", and later
Load 5 rounds".

This witness states quite positively that Lt.-Col. Pienaar did nothing other than give his two orders. He did not speak to the men at all (see Capt. Theron, pp. 260 and 307 - 308). Reference may also be made to Lt. Freemantle, p. 847, and Lt. Claassen, p. 878.

J. THE SITUATION IMMEDIATELY BEFORE
 THE SHOOTING.

102. The Police Line.

In carrying out Lt.-Col. Pienaar's order to line up the police fell into some confusion, some of them thinking that they were required to fall in in ranks of three, but they were eventually put into single line by officers and N.C.O.'s. The line which formed up consisted of about 70 white policemen; the remainder of the force was apparently standing somewhere behind that line. They stood on the west side facing the fence. There was no line drawn up along any of the other fences. Their position as pointed out at the inspection in loco seems to have been only three to four paces from the fence, although Lt.-Col. Pienaar claims that he moved them a little further back. At all events, it is clear that this line was much closer to the fence than it was to the police station buildings.

103. The police admit that the men in the line were not divided into sections, nor were any of the officers or N.C.O.'s detailed to take charge of any particular group. The men did not even remain together in the contingents in which they had arrived at the police station. All, including the Sten-gunners, were left to choose

their/...

their own positions in the line. Lt.-Col. Pienaar did not arrange with his officers or N.C.O.'s any chain of command; nor were any signals pre-arranged.

104.

Some time after this line was drawn up, Lt.-Col. Pienaar ordered his men to load 5 rounds. He did not elaborate on this order. In fact many of the men had already loaded their firearms with the full number of rounds which can be held in the magazines of the rifles and the cylinders of the revolvers, i.e., 10 rounds and 6 rounds respectively. Sten-gun magazines are issued with 25 rounds already in them and Lt.-Col. Pienaar's order presumably did not apply to the Sten-gunners. The Sten-gunners loaded by inserting magazines into their weapons. Lt.-Col. Pienaar explained in evidence that he knew that many of the men must already have loaded, but he gave his order partly to frighten the crowd and partly as an indication to his men that if they had to fire they should not fire more than 5 rounds (p. 1333). If the latter was indeed the intention underlying his cryptic order, it was unfortunately, if not surprisingly, not understood by his men.

105.

The position of the police just before the shooting, therefore, was that about 70 uniformed men were standing in line close to the west fence and facing it. They had their
firearms/...

firearms ready. Lt.-Col. Pienaar had placed himself in the line somewhat north of the double gate. Some officers were behind the line and at least one (Capt. Theron) was in front of it. Outside in Zwane Street, Capt. Coetzee had his men lined up, but he did not know what was happening at the police station. Capt. Brummer, Lt.-Col. Spengler and Col. Prinsloo knew of Capt. Coetzee's contingent, having passed it on their way to the police station, but Lt.-Col. Pienaar himself did not know that Capt. Coetzee and his men were nearby. There seems to have been no reason why the two contingents could not have kept in touch with each other, but the fact is that they did not. Capt. Coetzee at this time was moving about among his men, speaking to those who appeared to be tense and calming them, telling them firmly that nobody was to shoot save on his order (p. 963). At the police station there was no officer or N.C.O. performing a like office, although according to Lt. Visser the constables seemed to be discontented and impatient and many were apparently under a strain having been on duty continuously since the previous night (pp. 497 - 498).

106. Lt.-Col. Spengler.

During the half hour before the shooting, Lt.-Col. Spengler, assisted by Sgt. Wessels also of the Security Branch, arrested

two/...

two of the leaders of the Pan African Congress who had been present in the police station grounds most of the morning, namely Tsolo and More. Later Lt.-Col. Spengler went to the west gate and brought in a man from the other side of the gate. His object in arresting these three men was, he said, to question them, although he also appears to have thought that the arrests might quieten the crowd. Other witnesses, for example Sgt. Grobler, Capt. Theron, Lt. Visser and Labuschagne, the location superintendent, had felt that to arrest people who were acting as leaders of the gathering would be unwise and perhaps provocative. However, Lt.-Col. Spengler says that the arrests which he made did not seem to affect the crowd. He, presumably, had the best opportunity of observing this and he is borne out by the African witnesses, including Tsolo and More themselves. As some of the African witnesses pointed out, the whole object of the leaders in going to the police station was to get themselves arrested. Tsolo and More submitted to their detention perfectly calmly. There was no question of their calling on the crowd for assistance and no attempt was made to rescue them or to interfere with their arrest.

107.

There was some conflict in the evidence concerning the arrest of the third man who was taken in at the gate. Some of the African witnesses said that they saw him assaulted by

some/...

some member or members of the police force. Lt.-Col. Spengler said that the man, after coming inside apparently changed his mind and tried to return to the crowd, whereupon he held him by the shirt and prevented him from doing so (pp.1300 (s) - (t)). Some of the policemen said that they saw a scuffle, but denied that there was any assault. Fortunately, it does not appear to be essential for the Commissioner to resolve this dispute of fact because, as will be shown in more detail later, the arrest of the third man, whether he was assaulted or not, excited very little reaction from the crowd. Some of the police said that the crowd shouted loudly on this arrest and some of the Africans confirmed that people in the crowd near the gate shouted to the police that they might arrest the man but should not molest him (see John Nteso, pp. 2353 - 2354). Some of the police also thought that they saw an attempt made to pull this man back; but whether or not this is so, the attempt could not have been very serious as nothing came of it, and the man was taken into the police station without any difficulty. Lt.-Col. Spengler himself describes the incident in detail and his evidence will be referred to in para. 122 - 129 below.

108.

After the third man had been taken into the police station, Lt.-Col. Spengler again went down to the gate to bring in another man

and/...

and it was almost immediately after this that the shooting began. However, before dealing with this final incident it will be convenient to deal with the mood and activities of the crowd on the other side of the fence in the period before the shooting.

109. The Crowd and the Fence.

The size of the crowd has been dealt with in paras. 40 and 41 above. Although the police estimates would appear to be inflated, there was undoubtedly a crowd of some thousands of whom a large part was standing on the sidewalk outside the western fence. The photographs taken by Hoek at about 1.15 p.m. from the vicinity of the south-western corner looking north, show that the street itself was not, as some of the police suggested, packed with people, although there were people standing or walking in the street. See Exhibits BBB and CCC. The crowd, as one can see from Berry's photographs, was pressed fairly closely against the fence; but it must be remembered that he himself had no difficulty in getting through to the fence on the south side and that on the west side it was possible for individuals to walk along the fence between the fence and the crowd - presumably by asking people to step back or stand aside (see Sgt. van den Bergh, p. 1039, Lt.-Col. Spengler p. 1300 (i), Elias Lidia, p. 2279).

110.

There can be no doubt that there was some pressure on the fence. Berry's photographs show people leaning against it in order to look over it and along it. Some of the policemen said in evidence that they thought that the people standing in front at the fence were deliberately trying to push it down. There is no indication of this in any of the photographs; and when the policemen who gave this evidence were cross-examined the reasons which they gave for saying that they saw an attempt to push down the fence were unconvincing. They had to concede that it was much easier to get through the gates or jump over the fence than to push it down, yet the Africans did neither of these things. Nor were these witnesses convincing on what was actually being done to push down the fence. For example, Sgt. van den Bergh claimed that the people in the front row were trying to push the fence over with their hands. Cross-examined (p. 1053) he said that he saw only three or four people doing this. Most of the policemen who spoke about attempts to push down the fence were compelled to concede that they did not see anybody making a deliberate attempt to damage the fence, and that the pressure on the fence was simply the natural result of a large number of people standing close to it and in some cases being pushed from behind by others who wished to get a better view of what was going on inside. (See also Labuschagne, p. 413).

111. Irrespective of the concessions which were wrung from the police witnesses, an attempt to push over the fence would have been a most unlikely and unrewarding occupation. It would have been slow and difficult. It might have resulted in those at the fence being trampled by those behind them. And there were so many easier ways of getting into the police station, for example by walking through the completely unguarded south gate or by climbing over the completely unguarded south, east and north fences. Finally, as Berry's photographs show, many of those standing closest to the fence were women and children.

112. At the inspection held by the Commissioner, the fence, particularly on the western and southern sides could be seen to be bent inwards in places. One African witness said that the fence had been bent before the 21st March by the large crowd which had attended the opening of the new police station by the Minister of Native Affairs (see Daniel Dkobe, p. 2262). This may be so, but it is not disputed that pressure on the fence on the 21st March must have caused it to bend inwards. However, the question before the Commissioner is whether this fence was ever pushed over to such an extent that it was in danger of immediate collapse. There was much evidence on this point by the police, and perhaps in no other part of

the/...

the evidence is such systematic exaggeration to be found. Many of the policemen claimed that the fence had been bent over to an angle of 45° . Some, such as Sgt. Oosthuizen (p. 1004) and the indefatigable Capt. Brummer (p. 812), said that the fence had been virtually pushed down flat. They did not, of course, explain how in these circumstances people were able to stand against the fence, nor does any member of the crowd appear to have taken advantage of the flattening of the fence to get over it.

113.

But in rejecting their evidence, the Commissioner may rely not only on its inherent improbability nor only on Berry's photographs, but also on the direct evidence of Sgt Grobler the Station Commander at the Sharpeville Police Station. He admitted that the fence as it now stands is exactly the same as it was when the shooting took place on 21st March (p.115). The Commissioner and counsel were able to see the fence. In some places it is bent inwards but nowhere to an angle of more than 10° from the vertical and in most parts very much less. Moreover, the fence on the west side, south of the big gate, is now to all intents just as it appears in Berry's photographs, Exhibits L, M, O and P, and in Robinson's photographs taken from inside the fence immediately after the shooting. That section is scarcely bent at all. To the north of the gate the fence was bent inwards in places to an angle of about 10° from the vertical.

But/...

But a careful examination of Exhibit M shows that it was already in that condition before Lt.-Col. Pienaar arrived. At the inspection it looked no different - see also Exhibit A. The photographs taken immediately after the shooting by Robinson, the "Rand Daily Mail" photographer show that the southern (Zwane Street) fence was slightly bent but that it was upright on the west side south of the gate. His photographs show that the fence was nowhere bent inwards any more than it is to-day. As a fence it is quite intact.

114.

Consequently, it is clear that right up to the time of the shooting the fence was standing as a barrier between the crowd and the police. It was not, of course, an insuperable barrier as people could have climbed over it. Possibly, if they had wanted to do so in the face of the guns, they could with some struggle have pushed it down. But the important point is that the police were dealing with a crowd which was behind an obstacle. This crowd could not have made a sudden concerted rush on the police. Before that could be done the people in the crowd would either have had to climb over, or to have succeeded in pushing the fence down bodily. And there is no evidence that at the time of the shooting there were any people doing either of these things.

115. The Crowd was Unarmed.

The crowd was unarmed. Indeed, apart from Consts. van Niekerk and Olivier whose evidence has already been mentioned (see para. 54) nobody claims to have seen people in the crowd carrying any weapons other than ordinary sticks, and there were very few of those. This is positively stated by Labuschagne, the location Superintendent at p. 412, and by Lt.-Col. Spengler at p. 1271. It is borne out by the photographs of Berry and Hoek and also those taken by the photographers of the "Star" and the "Golden City Post" which were obtained by the Commissioner. On these photographs, which show many sections of the crowd, one sees only an occasional man with an ordinary walking-stick. (see para. 58 above).

116.

The case that the crowd was armed is founded entirely on the police allegation that after the shooting a variety of weapons was left on the field. There was direct evidence that after the shooting the police found one man with a knife; but nobody saw anyone at the fence carrying a knife or any other weapon. The weapons alleged to have been collected were shown to the Commissioner; but there was no evidence as to where these weapons were found, when they were found or who collected them.

The/...

The haul itself is not impressive. It consists of about a dozen sticks, one knobkerrie, two or three hatchets or picks and about ten pieces of iron some of which might be classed as weapons but others of which (see Sgt. Grobler p. 129) were ordinary pieces of iron such as might be found lying about on waste ground. The collection also included two coloured umbrellas and a bicycle pump in working order.

117.

It is submitted that the Commissioner cannot accept that this collection of sticks and pieces of iron and hatchets was left behind by members of the crowd. One does not know where it came from. Part of the collection may have been taken by police who searched nearby houses and backyards. Witnesses who came on the scene immediately after the shooting, such as the Rev. R. Maja, did not see weapons of any sort lying about (p. 2360). Robinson of the "Rand Daily Mail" arrived at the police station and began to take photographs before any of the policemen had come out of their perimeter (p. 1550). None of his photographs shows any sticks or other potential weapons lying in the road, although he took photographs of the places (to the west and south-west of the police station) where the crowd had been thickest and the casualties heaviest. It will

be/...

be remembered that it was from this direction that the police alleged that an attack was feared. Robinson recalls having noticed a few sticks lying about (p. 1563), but he does not speak of having seen any hatchets, picks or pieces of iron and none are seen on his photographs. The Commissioner cannot accept that the objects shown to him came from the possession of the crowd outside the police station. Even if a few individuals were carrying these objects, however, it is perfectly obvious that the gathering outside the police station cannot be described as an armed crowd.

The Mood of the Crowd before the Shooting.

118.

Detailed reference has already been made to the mood of the crowd during the morning up to the time of the arrival of Lt.-Col. Spengler together with Capt. Brummer and the Saracens at the police station. It has been shown that until then the crowd was peaceful. It is necessary now to deal only with the question whether between Lt.-Col. Spengler's arrival and the shooting the mood of the crowd or of any substantial section of it changed for the worse.

119.

Some of the policemen said that the crowd became more noisy during the half hour before the shooting, but there is nothing to suggest that the crowd was different in any

way/...

way from what it had previously been. Berry's photographs were taken after the arrival of Capt. Brummer. They do not show a riotous or aggressive crowd. Neither Lt.-Col. Spengler nor Lt.-Col. Pienaar claims that the mood of the crowd was different at the time of the shooting from its mood when they first arrived. Indeed, Lt.-Col. Pienaar said specifically (p. 1421 - 2) that the temper of the crowd was the same throughout the half hour before the shooting, and he also agreed that the crowd shown on the photographs Exhibits L and M was as he had seen it during that period (p. 1425 - 6).

120.

In spite of this clear statement it is desirable to deal with the suggestion that the arrests made by Lt.-Col. Spengler provoked the crowd and in some way turned it from a peaceful one to a dangerous one. There are a number of witnesses who say that the crowd grew angry when Lt.-Col. Spengler made his arrests. See for example, Capt. Theron, p. 259; Sgt. Oosthuizen, pp. 1004 - 1017; Labuschagne, pp. 407 - 412. This point has already been touched on in paras. 106 and 107 above, where it is pointed out that although Lt.-Col. Spengler's arrest of the third man might have produced a slight reaction, his evidence and that of the Africans in the crowd show that there was no serious reaction to the arrests./...

arrests. See for example, John Nteso, p. 2355. This is confirmed by Lt.-Col. Pienaar, who specifically denies that Lt.-Col. Spengler's actions provoked the crowd (p. 1471).

121.

In this connection one does not have to rely merely on what the witnesses, including Lt.-Col. Spengler, say about the temper of the crowd. The best evidence is to be found in Lt.-Col. Spengler's actions. Lt.-Col. Spengler twice went down to the main gate and opened it in order to bring a man in. It is surely obvious that he would not have done so had the crowd been dangerous. A careful consideration of Lt.-Col. Spengler's own evidence will show that the crowd with which he was dealing was neither dangerous nor threatening.

122.

This is Lt.-Col. Spengler's description of his actions. He says that he went to the gate where he found an African whom he wished to question. He told the African constable at the gate to open the gate and called the man in. The crowd at that time was a little more noisy than it had been, but Lt.-Col. Spengler did not think that it was intending to storm the police station. As he says, if he had thought so he would not have opened the gate (p.1300 (r)).

As/...

As the gate was opened and the man came in, some of the crowd were pushed against the gate by the weight of the people behind them. There was no difficulty in pushing them back by closing the gate against them (p. 1300 (s)). There were, he says, shouts of "Cato Manor", and this person at that stage decided to return to the crowd; but Lt.-Col. Spengler detained him. (The exact details of this slight scuffle are, as stated in para. 107, in dispute, but the dispute is irrelevant here.) After the African had been taken into the police station Lt.-Col. Spengler returned and stood at the gate. He then went back to the offices and again returned to the gate. At the gate he saw an African wearing a red shirt. This man was raising his thumb in the air and shouting "Afrika" and "Freedom" which evoked a spontaneous response from the crowd. Lt.-Col. Spengler then invited him to come inside, again telling the African constable to open the gate. The crowd was right up against the gate and its mood and temper were no different from what they had been when Lt.-Col. Pienaar had first arrived (p. 1300 (w)). There were women and children present. Lt.-Col. Spengler did not think that it was dangerous to open the gate because, although it was a noisy crowd, it was in his opinion

not/...

not a violent crowd (p. 1300 (x)). The man in the red shirt apparently thought better of coming in and fell back into the crowd, so Lt.-Col. Spengler told the African constable to close the gate. Lt.-Col. Spengler was naturally extremely close to the crowd through all these events, and it was his view that they were not angered by the removal or the arrest of their leaders (p. 1300 (x)). He remained at the gate looking for another leader or suspected leader to invite inside, until one came forward and surrendered himself (p. 1300 (aa)). This must have been less than a minute before the shooting. Lt.-Col. Spengler again ordered the gate to be opened and it was opened as it had been before (p. 1300 (b)). Consideration of his account of what then happened will be deferred for the time being.

123.

One can sum up Lt.-Col. Spengler's observations by saying that the crowd was noisy but not violent or dangerous. One can sum up his actions by saying that he was prepared not only to stand at the gate but also to open it even though the crowd was pressed up against the other side of it. It is submitted that no evidence could show more positively that the crowd was not there to attack the police or the police station.

It/...

It was indeed put to several of the policemen who had described the crowd as "dangerous" and "aggressive" that a police officer of Lt.-Col. Spengler's experience would never have made his arrests at the gate if the crowd was in fact dangerous. They were not able to gainsay this. See for example, Sgt. Grobler, pp. 111 - 112; Lt. Visser, p. 498.

124.

Immediately before the shooting began the police were in line with their rifles, revolvers and Sten-guns ready, facing the crowd on the west side. Supporting them were the four Saracens with their Browning machine guns. In front of them behind an intact fence, was a noisy but unarmed crowd which had not at any stage behaved violently and which had made no effort to enter the police station or to attack any policeman.

K.

HOW THE SHOOTING BEGAN.

125.

The shooting began just as Lt.-Col. Spengler had opened the double gate to allow the fourth man to enter. It started with a few individual shots, probably from somewhere between the centre and the left flank of the line; and then a full volley commenced which did not stop until more than 700 rounds had been fired and the whole crowd had dispersed.

126.

Lt.-Col. Pienaar says firmly that he gave no order to fire. He is supported in this by a number of other policemen who would have heard an order had he given it. The Commissioner, it is submitted, can safely find that he gave no order to fire. Some of the constables in the line allege that they heard someone in their own ranks say

"Shoot",

in Afrikaans. All the officers and N.C.O.'s who gave evidence denied having given any sort of order to shoot. But there is evidence from Africans who were outside the fence that they did hear a policeman shout "Shoot", in Afrikaans. (See, for example Benedict Griffiths, p.1942; Joshua Motha, p. 1930; Mishack Mkwanzazi, p. 1969). It would appear, therefore, that a policeman in the line, although he had no authority to do so, called out "Skiet", which some constables may have taken as an order to

fire/...

fire. The person who did this has not come forward and it is not possible to ascertain his identity or his reasons for shouting the word "Skiet".

127.

In any event the majority of the policemen who gave evidence say that they fired for other reasons. Some claim to have fired on their own responsibility when stones were thrown; others say that on hearing shots from elsewhere in the line they assumed that an order to fire had been given. Some, to their credit, did not fire at all. In this category were most of the Head Constables and Sergeants. The inference is that the more experienced and steadier men saw no reason for firing at that stage. Lt.-Col. Pienaar conceded this (p.2567), and said

"If I had been armed I would have not then fired myself and I think I can explain why. As I have said, I would have waited for a more wholesale attack."

128.

It is submitted that there was no reason whatsoever for firing on the crowd. The officer-in-command, on whom lay the responsibility of judging the situation, did not give an order. He would not go further than to say that he was considering ordering five or six men to fire at a limited section of the crowd.

He/...

He had not decided to do so and would not have fired himself (see Lt.-Col. Pienaar, pp. 1338, 1408, 1411, 2567). Those men who did fire, however, and also some who did not, have given the Commission a number of reasons to justify their shooting. They give four main reasons. First, that they heard shots from the crowd; second that the crowd was rushing the fence; third that stones were thrown at them; and fourth that a mob was rushing in upon them through the double gate. It is submitted that the four reasons given to explain the shooting provide no justification for it, either individually or taken together. The four reasons given can be dealt with in order.

129. Shots from the Crowd.

Some, but not all, of the policemen say that just before the shooting they heard one or two dull reports from somewhere outside the fence which sounded like shots fired from a revolver or a small bore rifle. There was no unanimity as to the direction from which these reports came, save that they came from somewhere outside the police station fence. Berry, the photographer, also heard a report which sounded to him like a revolver shot. He judged that it came from somewhere to the north-west of the police station. There were at that

time/...

time contingents of police outside the police station, and it may well be that in a township of the size of Sharpeville, some of the inhabitants possessed firearms. It is not possible to say who fired the shots, if indeed it can be accepted that the reports were made by firearms. Lt.-Col. Pienaar himself (pp. 1480-2) says that he is not sure that these reports were in fact revolver shots. Neither he nor anyone else saw anyone in the crowd with a firearm. He agreed (p. 1482) that it would be quite wrong to say that the crowd opened fire on the police. Indeed it is difficult to understand how anyone standing in the middle or at the back of that crowd could have fired from there at the police. Certainly no policemen heard any bullets flying past him and there was no bullet damage to any property, nor was any policeman shot. It is submitted that the police could not genuinely have believed that they were being fired on by the crowd.

130. Did the Crowd Rush the Fence?

The state of the fence has already been dealt with. At the time of the shooting it was intact and it is clear that nobody attempted to climb over it, even where it was unguarded. It is difficult to understand in what way the crowd is alleged to have rushed

the/...

the fence. The crowd had throughout the morning been close to the fence. Did those in front hurl themselves bodily at the fence? No policeman goes so far as to say that. Nor does any policeman explain whether the women and children in front were taking part in the rush or not. Were the people in front of the crowd overwhelmed by the onrush of those at the back? No policeman claims to have seen that. In short, the most that one can obtain from any of the policemen is an allegation of a vague forward movement of part of the crowd. No policeman has given any clear description of what the people on the other side of the fence were actually doing. When these police witnesses were pressed to explain why they had fired they said, in relation to the fence, not that it was being broken down, or that the crowd was launching an attack, but that they feared that the fence might collapse. See for example, Sgt. Grobler, p. 95; Labuschagne pp. 410, 413; H/Const. Heyl p. 536; Const. Struwig, p. 660 - 661; Lt. Freemantle, p. 851; Lt. Claassen, p. 880. Det. Sgt. Edwin Litelu, one of the few African policemen who gave evidence said that the crowd came "with force" against the fence. Asked by the Commissioner to explain this, he said,

"They were leaning over the fence with their bodies and the fence bent inwards." (p. 760).

131.

The evidence of Lt. Claassen is typical of the evidence of the white policemen on this point. He was asked whether in his opinion the shooting was necessary. He said that the crowd had begun to throw stones, that their attitude was threatening. The fence had already bent inwards, and

"there was the danger that the wire could fall at any time and thus they would have come over the police grounds like a tidal wave and overwhelmed us".
(p. 880).

But like the other witnesses, he does not and cannot say that the crowd at the fence was attacking or manifesting a clear intention to attack. He feared that if the fence fell they would attack; but the fence did not fall. It is interesting in this connection to refer again to the official report issued on the evening of 21st March. It concludes by saying that

"there is no doubt that if the police had not fired they would possibly have been overwhelmed".

One cannot take even the strongest police evidence on this point further than that.

132.

Other policemen, from ordinary constables such as Booyens (see for example p. 1057) to Lt.-Col. Pienaar, said that the only point of attack was the gate. Lt.-Col. Pienaar stated this categorically (pp. 1496 - 7). It will be necessary in due course to consider whether what took place at the gate was indeed an attack; but in so far as Lt.-Col. Pienaar says that there was no attack elsewhere, his evidence is in accordance with that of the African witnesses and many of the other policemen. It is submitted that it is impossible for the Commissioner to find that there was any attack or rush on the fence. On this point there is no reason to reject the evidence of Lt.-Col. Pienaar and the witnesses who support him.

The Stone-Throwing.

133.

Nearly all the police witnesses claim that immediately before the shooting, stones were thrown by the crowd at the police. They say, with varying degrees of emphasis, that they were heavily stoned. On the other hand most of the African witnesses who were on the west side of the police station, some of them fairly close to the fence and the gate, deny that stones were thrown. One African witness says that he

did/...

did see a few stones thrown by children (see Mishack Makwanazi, p. 1952); and another said that he heard later that some stones had been thrown by children (see Simon Mashedi, p. 2208). Those African witnesses who did not see any stones say that had there been a hail of stones they would have seen it but it is possible that a few stones might have been thrown without their seeing. See Simon Mashedi, p. 2231. In view of the fact that one of the Africans did see a few stones thrown and that others later heard (presumably from civilians and not from the police) that some stones had been thrown, the Commissioner would be justified in holding that there were some stones thrown. The problem is the extent of the stone-throwing. The police evidence on the seriousness of the stone-throwing is, however, subject to the following criticisms.

- (a) Sgt. Grobler said that after the shooting he directed some of the policemen to collect all the stones which they could find in the police grounds. As a result of this he produced before the Court a four-gallon drum almost full of stones (pp. 126 - 128). Although Sgt. Grobler claimed that there are

normally/...

normally no stones in the grounds of the police station, it is difficult to understand why police ground should be so favoured. The whole operation of picking up stones is strange. The police case would have been more convincing if the stones had been left in situ to be seen by press photographers and journalists when they arrived on the scene. The Commissioner, it is submitted, cannot accept that all the stones in the tin were thrown into the police grounds by the crowd. Evidence was given by a witness Joshua Malema that as he was lying wounded outside the police station, he saw two constables pick up two or three stones and throw them back over the fence into the police station (pp. 2241 - 6). This witness was a simple and, it is submitted, obviously an honest man. He did not appear to know the significance of what he saw (pp. 2245 - 6). His evidence was challenged only on the basis that his memory might be at fault, but he had no doubt of what he had seen. This incident is most significant. It not only casts doubt on the genuineness of the tin

of/...

of stones as an exhibit, but it suggests that there were policemen who were conscious of the fact that there were not enough stones inside the police station grounds to justify what they had done.

- (b) It is difficult to understand where the crowd could have found stones to throw. There are no doubt stones on the side-walk outside the fence as there are inside. The photographs show this. But nobody saw people stoop to pick them up, nor throughout the morning does anyone, either policeman or civilian, claim to have seen any African carrying a stone. (Const. Olivier, it is true, said that every African had a stone in his hand; that there was a bombardment of the police station on the south side; and that the police in Zwane Street had also been stoned. His evidence, which is contradicted by all other witnesses was, it is submitted, obviously untruthful and will be referred to again in another context - see Part M. Before the alleged stoning the police were in line facing the crowd and only a few yards away. One would have expected the police to see where

the/...

the stones were obtained and who was throwing them. But there is again only vagueness on this point.

(c) A hail of stones at a fairly closely packed line of policemen must have caused casualties. But according to the official report there were only three policemen injured, and they only slightly. There was hearsay evidence that nine other policemen were hit by stones but did not suffer any injury. Lt.-Col. Pienaar himself saw only one man injured, and he had a slight cut which did not require medical attention (p. 1341). Moreover, there were many vehicles in the police station grounds on the west side. No damage was done to these, nor was any damage to the police station caused by stones. It is clear that what stone-throwing there was was not a serious threat to the lives or safety of the police.

(d) It is not clear what section of the crowd is alleged to have been concerned in the stone-throwing, but there is some reason to believe that such stones as were thrown were thrown at the gate and may have been connected with Lt.-Col. Spengler's

activities/...

activities there. Labuschagne (p. 406) is definite that the stones were thrown at Lt.-Col. Spengler.

- (e) Det.-Const. Edwin Litelu was the only one of the 77 African policemen inside the police station grounds who was called to testify on the situation when the police opened fire. It is significant that he saw no stones thrown (p. 756).

134.

It is submitted that the proper finding is that only a few stones were thrown, probably by children. There is no ground for finding that the crowd stoned the police. This submission is supported not only by the evidence of the African witnesses but by the evidence of Const. Simeon van den Bergh, one of the sten-gunners standing in line and watching the fence. He is a man of riper experience than the average constable, having had military service before the war, and having served through the war in the merchant navy, when he was mentioned in despatches. He did not fire, having heard no order to do so, and having seen no reason to do so. Asked to describe how the shooting started, he said:

"Well, there was shouting coming

from/...

from the opposite side, and the fence was being pushed and we just sort of stood there. One or two stones came over from their side, and the next thing I knew I just heard firing. Before I knew where I was it was all over and done with." (p. 2700).

The evidence of Const. van den Bergh tallies with that of Mishack Mkwanazi, who was on the other side of the fence (pp. 1952 - 3).

The Incursion at the Gate.

135.

Many policemen said in evidence that immediately before the shooting, a crowd of Africans rushed in through the double gate, as though to attack the police. African witnesses who were nearby dispute that there was any inrush or attack through the gate. Nor did Det.-Const. Litelu see any such attack (pp. 759 - 60). It appears to be probable that there was some movement of the crowd at the gate but that it was an involuntary movement, and not a deliberate incursion.

136.

A few references will indicate the nature of the police evidence of the

alleged/...

alleged incursion. Capt. Theron said that a part of the crowd had "stormed in" while Lt.-Col. Spengler was at the gate, and had pushed him aside (pp. 258, 264, and 313). Capt. Brummer (p. 809) said that a group of Africans had "burst" through the gates. Sgt. Oosthuizen said that some of the Africans had "crowded in" through the gate forcing it open (p. 1004). Const. Booysen (p. 1057) said that the crowd had "burst in at the gate". Later he said that on the stones being thrown, the police had to fall back and those who had burst in at the gate advanced even further inside (pp. 1061 to 1062).

137.

The evidence of Mr. Labuschagne is far more restrained. He said that Lt.-Col. Spengler opened the gates and could not get them closed because there were people between them (pp. 451 - 452). Lt.-Col. Spengler's evidence, too, makes it doubtful whether there was anything that could be called an attack at the gate. He first said that at the time he thought there was an attack. A crowd of fifty or more Africans pressed forward against the partly opened gate pushing it back and thereby pushing him over (p. 1220). He thought that when the shooting began,

these/...

these people ran away (p. 1221). In cross-examination a clearer picture emerged. He said that a group of Africans pushed against the gate; he was just behind the end of one of the gates which was pushed against him so that he fell into a half-sitting position (p. 1300 (cc)). He was surprised to hear the shooting break out (p. 1300 (dd)). He estimates that about fifty or seventy Africans were inside the line of the fence between the two gates and he agrees that they "surged forward under pressure from the back" (p. 1300 (cc)), and that it appeared that they had merely been pushed from behind (p. 1300 (ff)). He did not see what happened to these Africans during the shooting, and assumes that they must have gone back (p. 1300 (gg)). He did not see any of them hit by the firing and he could not deny that they may have run back even before the firing started. He had an impression of people surging in and immediately surging back (p. 1300 (hh)). This evidence in itself strongly suggests that what took place was not an incursion but an involuntary movement, exactly like the one which had taken place previously at the same place, and which had ended with those who had come forward being pushed back without difficulty

or/...

or resistance by two African constables
(Lt.-Col. Spengler, p. 1300 (s)).

138.

Lt.-Col. Pienaar in his evidence-in-chief also spoke of the crowd bursting in through the gate (pp. 1337 to 1338). He said that he thought it was an attack. But in cross-examination he qualified this view. He agreed that just as the crowd had previously come in through the gate a yard or two and then gone back, so they might have done again. He had not made up his mind to give an order to fire and he was waiting to see whether this was really an attack or whether the crowd would fall back as they had previously done (pp. 1407 and 1408). He therefore agreed that the shooting which followed was premature (p. 1408). He was not in a position to disagree with Lt.-Col. Spengler's description of the group at the gate as having surged in as though pushed from behind (pp. 1479 - 1480). He could not say what had happened to them and agreed that they must have run out. They were not shot while inside the gateway (pp. 1515 - 1516).

139.

The great difficulty which the police witnesses had to face in justifying the allegation of an incursion at the gate

was/...

was that they could not explain what had happened to the Africans who were alleged to have run in. It must be remembered that the line of policemen was only a few paces from the fence. Yet it is clear that none of the Africans reached the line of policemen, nor did any policeman have to grapple with them. If the gate was the point of attack and a large crowd had rushed in one would have expected some of them to be shot. Yet every policeman agrees there were no bodies inside the fence or even in the gateway; nor was any blood seen inside or in the gateway; nor was any weapon or piece of clothing found there. Nor were any dead or wounded found even outside the gate. Mr. Labuschagne saw the body of an elderly woman a few yards outside the gate (pp. 452 to 453). Lt.-Col. Spengler said that there were no bodies immediately in front of the gate but that he, too, saw the body of a woman on the pavement a little to the side of the gate (p. 1300 (hh)). There is no other evidence of anybody having fallen anywhere near the gate. A few further references will show the complete inability of the police witnesses to account for the fate of those who had allegedly stormed in at the gate. Capt. Theron could only say that he did not know what had happened to

these/...

these people (pp. 326 - 327). Capt. Brummer (p. 830) and Sgt. Oosthuizen (pp. 1015 - 1016) were equally unable to explain. H/Const. Heyl (p. 583) said there were no dead or wounded nearer than three to four yards from the fence and no one alongside the fence. Mr. Robinson's photographs confirm this. Finally none of the police witnesses who themselves opened fire alleges that he fired at the group in the gateway. Consequently even if the police evidence stood uncontradicted, the Commissioner would not be justified in finding that there was any attack at the gate.

140.

It is again submitted, therefore, that whether one considers the above four points individually or together, one cannot find any justification for the shooting. The weaknesses in the police evidence of an attack on them have been demonstrated. Every African witness, whether called by Counsel for the Bishop or by Mr. Claassens, denies that there was any attack on the police. The probabilities are overwhelmingly in favour of their evidence and against there having been any attack on the police.

The Probabilities:

141. (a) Neither Lt.-Col. Pienaar nor any

other/...

other officer gave an order to fire, which prima facie suggests that there was no need to fire. Furthermore, it is noteworthy that most of the head constables and sergeants and older constables, such as Const. S. van den Bergh, did not fire at all, nor did any officer (see Capt. van den Bergh, p. 2561).

- (b) Not only was there no order to fire, but the immediate reaction of some of the officers was to shout "Stop" and to attempt to stop the shooting. Lt.-Col. Pienaar said that he shouted to his men to stop firing almost at once (pp. 1338 - 1340). As soon as Lt.-Col. Spengler could get to his feet after he had been pushed over at the gate he shouted "Stop" and grabbed the gun of the man nearest him in order to stop him firing (pp. 1222, 1304 - 5). Mr. Labuschagne, who was behind the line and close to Lt.-Col. Pienaar, says that as soon as the shooting started Lt.-Col. Pienaar and Capt. Theron shouted "Stop", and so did he (pp. 407 and 417). Mr. Labuschagne is not a police officer and naturally had no concern with

police/...

police discipline. His spontaneous reaction is therefore significant. Not only did he shout "Stop", but he caught hold of the shoulders of the men in front of him in order to try to stop them shooting (pp. 406 and 456). Capt. Theron also reacted immediately, and as soon as he heard the first shots he shouted "Stop" (pp. 271 and 324). These reactions refute the suggestion that the shooting was necessary in self-defence.

(c) The crowd was unarmed, the police heavily armed. The suggestion that an unarmed crowd which had for several hours watched a small and undeployed body of police without molesting it would attack a heavily armed line of police and Saracens is not merely improbable but fantastic.

(d) No bodies were found inside the fence or on the fence. Nor, save possibly for a few in the south-west corner, were there any on the side-walk. This is contrary to what one would expect if the shooting had taken place to stop an attack which was being launched on the gate and on the fence.

(e)/...

(e) As will appear fully later, the overwhelming majority of those killed and wounded were shot from the back. Others were shot from the side, but only a handful were shot in the front of their bodies or heads. This again is not the pattern that one would expect to find if an attacking crowd had been fired upon.

142.

It may be that the noise, an involuntary forward movement of the crowd at the gate, the size of the crowd and its closeness to the fence, and the throwing of one or two stones had impelled some of the less steady men to fire, and that others had followed suit for one reason or another. But it is not possible to find that there was any attack or any danger threatening the lives of the police. There was nothing even to justify the firing by five or six men at the gate which Lt.-Col. Pienaar was contemplating. There was certainly nothing to justify the protracted and indiscriminate firing on the crowd which in fact took place. The short and clear answer to the question whether shooting was necessary is contained in two statements made by the two senior officers, Lt.-Col. Spengler and Lt.-Col. Pienaar. Lt.-Col. Spengler said,

"I/...

126.

"I was surprised to hear the
shooting" (p. 1300 (dd)).

And Lt.-Col. Pienaar said,

"If I had been armed I would have
not then fired myself"(p. 2567).