

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

SUBMISSIONS PRESENTED TO THE COMMISSION

//
ON BEHALF OF THE

BISHOP OF JOHANNESBURG.

JOHANNESBURG.

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VOLUME 2.

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THE SHOOTING

143. Whether or not there was any reason to start firing at all (and it is submitted that there was not), there can be no doubt that the intensity and duration of the firing are impossible to justify on any grounds. Lt.-Col. Pienaar had in mind that five or six men might be called upon to shoot, but none of the police witnesses has been able to suggest that there was need for over seventy men, including eleven Sten-gunners, to fire on the crowd. The reasons why Lt.-Col. Pienaar failed so signally to limit the number of men who fired and the number of rounds which they fired will be considered later. At this stage of the argument, it is submitted that whether or not there had been any danger to the police, there was no justification whatever for the wholesale use of fire-arms by a line of over seventy men.

144. What is even more horrifying than the number who fired is the intensity and duration of the firing. The firing was so unnecessarily and unconscionably protracted that one is driven, however reluctantly, to the conclusion that some at least of the men who fired were doing so in order to inflict the maximum possible injury on the crowd.

145. When the firing began the crowd turned and ran away as fast as it could, bearing in mind its density and the confusion which must have reigned. But the firing continued until the crowd was completely dispersed. There is some dispute on points such as the precise length of time that the firing continued, and whether

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the crowd broke immediately or only after a few seconds; but there are a number of undisputed facts which may be set out at once before the details are discussed.

- (a) Over 70% of the wounds inflicted were inflicted from the rear.
- (b) Some individual policemen fired over 50 rounds each.
- (c) Some members of the crowd ran 100 yards or more before they were hit.
- (d) There was firing in directions from which it is common cause that no danger was feared, i.e., towards the north and north-east from the police station grounds and to the west or north-west from Capt. Coetzee's contingent outside the police grounds.

146. The nature and duration of the shooting will be analyzed under the following headings :-

- (a) The crowd's reaction to the shooting (paras. 147-148).
- (b) The duration of the shooting (paras. 149-152).
- (c) The nature of the shooting (paras. 153-158).
- (d) The wounds inflicted (paras. 159-167).
- (e) The position of the bodies (paras. 168-172).

(a) The Crowd's Reaction to the Shooting:

147. All the African witnesses who were themselves in

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the crowd at the time of the shooting state unequivocally that apart from some individuals who did not move at once because they appeared not to realize what was taking place, the crowd turned and ran immediately the first shots were fired. See for example Adam Sakwane, p. 1663; Abraham Kaole, p. 1680; Matthews Mashiya, pp. 1731 and 1742; Brown Thabe, p. 1789; Joshua Motha, p. 1931; Mishack Mkwanzazi, p. 1953; Benedict Griffiths, p. 1943; and the Rev. Robert Maja, p. 2359. The crowd ran in all directions, some people running into each other or falling over the bodies of dead or wounded people. (See, for example, Brown Thabe, p. 1807.) Some witnesses suggest that some people began to run even before the first shots were heard, when the unidentified policeman shouted "Skiet", or perhaps when some policemen aimed their fire-arms. See Benedict Griffiths, p. 1942; Daniel Dkobe, pp. 2260, 2271. This would accord with Lt.-Col. Spengler's concession that the people in the gateway might have run away before the shooting started (p. 1300(gg)). In any event, it was hardly disputed that as soon as the firing started the greater part of the crowd, and certainly that part of it which was near the fence, turned and ran. But there was some dispute in the evidence as to whether the section of the crowd at the back, i.e., further away from the fence, came forward for a few seconds before scattering. Some policemen said that that is what the people at the back of the crowd seemed to be doing. But even they did not suggest that those people were pressing forward in order to attack the police. The improbability of an attack by the unarmed crowd on the line of armed police

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has already been dealt with (para. 141 above). That any such attack should have been made after the firing had commenced is incredible. Indeed, apart from some vague statements by Const. Struwig (pp. 674-675), the only witness who claimed that there was an attack in the face of the firing was Const. Saaiman, who gave evidence of a suicidal attack made by members of the crowd in the face of the firing (p. 2768). His evidence is not corroborated; and it is submitted that this witness was obviously untruthful. The other police witnesses admit that save for some hesitation, due probably to failure to realize what was taking place, the crowd fled at once. They did not allege that any attack was being pressed home in the face of the firing. (See for example Sgt. Grobler, p. 101, Capt. Theron, pp. 338, 342, 344, Lt. Claassen, p. 921.) The following extracts from the evidence of Lt.-Col. Pienaar give a good idea of the limits of the police evidence on this issue.

"Some of them flung round immediately, others bore forward for a few seconds longer and then the whole lot scattered in all directions."
(p. 1338).

"Is it not a fact that broadly speaking the crowd turned and ran when the first shot on the left of the line was fired? - No, they broke up. Some of them turned and fled and in other sectors they seemed to bear forward for a second or two before they too fled." (p. 1528).

148. Some of the witnesses, such as Capt. Brummer (p. 813) and Lt. Freemantle (p. 848) speak of some of

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the crowd as "milling about" before they turned and ran. See also Const. van Niekerk at p. 695. Other constables stated clearly that the crowd scattered immediately (see Const. Fouche, p. 739, and Const. Booysen, p. 1063). This was also the definite observation of H/Const. Heyl (pp. 537 and 539) and of Mr. Labuschagne (pp. 416, 417 and 457). Mr. Labuschagne's description of the crowd as the first shots were fired is worth noting. He said that when the first shots were fired "they all ran", and that it put him in mind of a cornfield struck by a whirlwind. He specifically disavowed any suggestion that the crowd was trying to get over the fence in the face of the police guns. There is no doubt, therefore, that if there was ever any danger it had passed within two or three seconds of the commencement of the firing.

(b) The Duration of the Shooting:

149. In spite of the immediate reaction of the crowd, the shooting went on until the whole crowd had been dispersed and no one was left near the police station apart from the dead and wounded. The police themselves concede this. (See for example H/Const. Heyl, p. 538; Mr. Labuschagne, p. 416.)

150. The precise length of time which the shooting lasted is naturally not easy to fix. Members of the police force, judging by ear and from memory, gave estimates ranging from 10 seconds or even less (see Lt.-Col. Pienaar, pp. 1340 and 1485-6) to 20 to 30 seconds (see for example Capt. van der Linde, p. 777). The latter was also Mr. Labuschagne's estimate

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(pp. 416-7). There was some attempt to fix the duration of the shooting by an investigation of the time it takes to fire 10 rounds with a .303 rifle. Maj. van Zyl, an experienced shot, thought that if any sort of aim were taken it would be a very rapid shot indeed who could fire 10 rounds in under 40 seconds (pp. 197, 222, etc.). He stated too that any man firing at a large crowd would be expected as far as possible to take aim at individuals, and not to fire indiscriminately (pp. 233-5). However, tests carried out by Lt. Freemantle showed that a man firing a .303 rifle at point-blank range without aiming can empty his magazine (i.e., 10 rounds) in 15 to 16 seconds. The 6 rounds held by a .38 service revolver can be fired off in under 4 seconds. A Sten gun magazine can also be emptied in under 4 seconds and the magazine can be changed in about 4 seconds (pp. 852-5). Consequently, policemen who fired indiscriminately into the crowd without directing their shots could have achieved a very rapid rate of fire. But it must be borne in mind, first that the men did not begin or cease fire simultaneously, and second that more important than the duration of the shooting was its deliberation and persistence.

151. If a time is, however, to be fixed, the most reliable evidence is that of Berry, the "Drum" photographer. He was sitting in a motor car when the firing started. It was only when he heard the firing begin that he got out of the car and began to take photographs. He took three photographs with a camera with a long focus lens, which he then put back on the front seat of

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the car. He moved forward a few yards from the car and took two more photographs with a second camera. He then heard bullets whistling and knelt down in the grass. He went on taking photographs from this position until there was a pause in the firing. (In this regard he is corroborated by a number of witnesses, for example Joshua Motha, p. 1921; Michael Musibi, p. 1877; Daniel Dkobe, p. 2261; and Robinson of the "Rand Daily Mail" (p. 1356), who also noticed a pause in the firing.) During this pause he stood up and moved forward a few yards but the firing started again, so he crouched down and continued to take photographs until the firing stopped. During the firing he took 12 photographs, namely Exhibits E, T to Z, AA to DD (pp. 1829, 1831, 2115). Berry also described his actions in taking the photographs. In each case he had to focus the camera as the people whom he was photographing were running towards him. He had to aim the camera and after each photograph he had to advance the film manually. Between photographs he paused and in some cases took the camera away from his eye. He later re-enacted and timed the motions which he had gone through during the shooting. Allowing for the fact that the shooting might have stopped without his realizing it before he took his last photograph, it is clear that the shooting lasted not less than 40 to 45 seconds (pp. 1833-4 and 2116-7).

152. It is unnecessary to dwell on the enormity of firing into a fleeing crowd for three-quarters of a minute.

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(c) The Nature of the Firing:

153. The police fired on the crowd with .303 rifles, .38 revolvers and Sten guns. A rifle magazine holds 10 rounds; a revolver takes 6 rounds in its cylinder; and a Sten gun magazine is loaded with 25 to 28 rounds. In the returns of ammunition expended, the Sten gun magazine is taken to hold 25 rounds. See Maj. van Zyl, p. 199, Const. van Niekerk, p. 692 and the Schedules of Capt. van den Bergh, especially Exhibit "VVV". A Sten gun is re-loaded by putting in a new magazine; the magazine of the .303 rifle is re-loaded by inserting a further 10 rounds which are carried in clips of five; a revolver is re-loaded by breaking it open, letting the empty shells drop out and placing six more rounds individually in the six holes in the cylinder.

154. It was stated by Lt. Freemantle, who is a small-arms instructor, that a Sten gun should be fired in single rounds unless there is an extreme emergency, in which case it should be fired in bursts of three or four shots (p. 867). He explained that a Sten gun magazine can be fired off in one burst if the user keeps his finger on the trigger, but that this is not the way in which the police are instructed to use it. Used in that way, Lt. Freemantle said, it would cut its victims to pieces (p. 868). However, the evidence given by some men who had fired Sten guns was that they had fired off their magazines in one long burst. See, e.g., Sgt. Oosthuizen, pp. 1021-2. Although Standing Orders require that as far as possible firing should be directed to specific targets, namely those individuals who are actively leading or participating in an attack,

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the evidence showed that many of the policemen fired into the crowd at random, without taking aim.

155. The figures compiled by Capt. van den Bergh showed that 11 men with Sten guns between them fired 326 rounds, 46 men with rifles fired 251 rounds, and 15 men with revolvers fired 128 rounds. In addition, two C. I. D. men fired one round each with their automatic pistols. These figures do not take into account any firing by Capt. Coetzee's men outside the perimeter.

156. Some of the policemen who were called said that the number of rounds shown on the ammunition returns as having been fired by them was incorrect. Thus Const. Pennekan said that he had only fired 2 rounds and had told his Station Commander that he had fired 10 rounds "by mistake" (pp. 589, 603-7, 619, 636). Const. Sneigans said that he had not fired at all and that his ammunition return showed 35 rounds only by reason of an inexplicable error on the part of one of his colleagues who had put in the report (pp. 2412-4). Const. Saaiman said that he had fired only 6 rounds but had reported that he had used 12, in order to obtain 6 extra rounds for himself (pp. 2784-2788). The evidence of all three of these men was quite unconvincing.

157. The ammunition returns however are sufficiently comprehensive to show conclusively the nature of the firing by the police, even if the figures of the witnesses referred to above are ignored.

(a) At least 7 men fired 10 rounds each with their

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rifles, and one man fired 12 rounds. This man must have re-loaded his rifle after emptying his magazine.

- (b) At least four men fired 12 rounds each from their revolvers and one man fired 9. In each of these cases the man concerned must have fired all 6 rounds from his magazine, broken open his revolver, taken the cartridges from his pocket or pouch and placed 6 of them individually in the cylinder. He must then have closed the breach and resumed firing.
- (c) Several of the Sten-gunners appear in the returns as having fired 50 rounds each, that is two complete magazines. One fired 57 rounds. He had to put in a third magazine, and he fired 7 rounds from it before he ceased firing.
- (d) The most revealing figures in the returns are those of the men who used two weapons. Thus, two of the men each fired two complete magazines from their Sten guns; then, changing the Sten gun for a revolver, fired 6 rounds with that. One man fired a complete magazine with his Sten gun; he then took his revolver, fired 6 rounds from it, broke it open, re-loaded it, and fired two more rounds.

158. Whatever the reason for opening fire, these returns show a deliberation and a persistency which can be explained only on the basis of a desire to inflict as much injury as possible. The officers apparently tried to stop the firing, but in the case of some of

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their men they did not succeed in doing so before unnecessary deaths and injuries had been caused. Some men who did open fire stopped after firing only one or two rounds. They presumably collected themselves, saw that there was no danger and stopped firing. But the men referred to above continued a merciless and inexcusable fire. Certainly Lt-Col. Pienaar found it impossible to explain why any man should have fired 57 rounds (pp. 1535-1536).

(d) The Wounds Inflicted:

159. In the course of the shooting 69 people were killed and 186 wounded. Post-mortem examinations were performed on the 69 killed by Drs. Friedman (in 52 cases; p. 1120), Steyn (in 15 cases: p. 1142), and Lambinon (in 1 case). 38 of the wounded were treated at the Vereeniging Hospital (p. 1146) and 148 at the Baragwanath Hospital (p. 1164). The findings on the post-mortem examinations and the available information in regard to the wounded were analyzed by the doctors concerned and classified on the basis of the direction and anatomical position of each bullet wound. This information is to be found collated in Exhibits H. 1 to H. 4. The post-mortem performed by Dr. Lambinon does not feature in this collation. The body examined by him had been clearly shot in the back.

160. Many of those killed and injured had suffered more than one bullet wound. Some of the external and internal injuries were so extensive that an enquiry into their cause was desirable. It appears from the evidence that

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these wounds were caused either by ricochets or by the fragmentation of conventional bullets or by reason of the fact that the Sten-gun bullets might have entered in a "tumbling" position. It appears that Sten-gun bullets in particular do tremendous damage to human tissue and may split on striking bone. Rifle bullets may also split on striking bone. (See Lt. Freemantle, passim; Dr. Friedman, p. 1126.) Consequently, although it appeared that some policemen may have had available to them ammunition other than official issue which they had bought for themselves (see Maj. van Zyl, p. 195; and Const. Saaiman, p. 2783), it is not suggested that there is any reason to find that anything other than conventional ammunition was used. In this, at least, there is cause for relief.

161. It is unnecessary to dwell on the nature of the wounds inflicted. What is important is the evidence which was given of the anatomical position of each wound. Attached hereto as Appendix VII is an analysis of the medical evidence. It is quite clear that well over 70% of the wounds entered the legs, body or head from the back. In common parlance, well over 70% of the dead and wounded were shot in the back.

162. Wounds in the head were classified separately, because it was suggested that the head is a relatively mobile portion of the anatomy, and that a man running away from the police station may have looked back and been struck in the front of his head. Thus a wound in the front of the head would not necessarily mean that the person hit was not running away. But common sense tells

one that a person who is coming forward in attack is unlikely to be looking behind him. Thus the Commissioner may accept that a man who was shot in the back of the head was probably running away at the time; certainly he would not have been carrying out an attack on the police station. Ricochets were also separately analyzed, because they are not necessarily conclusive as to the direction of the firing.

163. While a wound in the arm may tell very little about the circumstances in which it was received, the direct evidence of some of the people who were wounded in the arm (for example Benjamin Maroo, p. 1698; David Khoali, p. 2737 and Samuel Mashabane, p. 2342) is that they were wounded when running away. In the case of persons shot in the back of the leg the clear inference (supported by much direct evidence) is that they were shot when running away.

164. Of those who were not shot in the back, a number were shot from the side. When this fact is related to the scene as described in Part D hereof, it is clear that the crowd on the west was compelled by the presence of the clinic fence to run sideways to the direction of fire for at least some distance and therefore even people shot in the side were in all probability running away. The remarkable fact which emerges from the medical evidence is that not more than 15% (at the very most) of the wounds were inflicted clearly from the front. This percentage shows how few people were shot while facing the police station. Some, of course, would have been shot from the front by unexpected firing before they

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could turn to run. But had the firing been in the face of an attack, and continued only so long as the attack was pressed, one would have expected a very high proportion, perhaps an overwhelming majority, of the bullets to have entered from the front. The small number of people who were in fact shot from the front suggests that immediately on the firing of the first few shots the crowd turned and ran, if indeed some people in the crowd did not turn and flee before the shooting began.

165. The analysis of the wounds of the persons treated at Baragwanath, based as it is on the largest number of cases, is statistically the most reliable. Regard can therefore be had to the evidence of Dr. Keen as to the anatomical position in which the most numerous and most serious injuries were found. These he stated to be at the buttock level. It is submitted that the conclusion to draw from this fact is that a large number of the injuries were caused by the use of automatic weapons which are fired from the waist. See Lt. Freemantle, p. 868. It is therefore not possible, on the evidence, to conclude that the fire was in general directed high or low to avoid serious injury to the members of the crowd.

166. The fact that for practical purposes 3 out of every 4 wounds can be said to have been inflicted from behind must be found to have been the result of firing being directed into the backs of a retreating crowd. Lt.-Col. Pienaar's suggestion that the high percentage of injuries so inflicted was probably due to ricochets is shown, by the separate analysis of wounds caused by

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ricochets, to be completely without foundation.

167. What has been set out above clearly supports the evidence given by persons in the crowd that immediately the shooting started the crowd as a whole turned and ran. It further suggests that Labuschagne's simile of a whirlwind striking a field of corn is an accurate one; and that it must therefore be concluded on the medical evidence that the firing, whatever the cause for it having started, continued into the back of a fleeing crowd for an unreasonable and unmerciful length of time.

(e) The Position of the Bodies:

168. It has already been pointed out that there were no bodies lying close to the fence, as one would have expected there to be had the crowd been attacking when the firing started. Nor were there even bodies on the side-walk directly in front of the west fence, save possibly for the body of an elderly woman seen by Mr. Labuschagne and Lt.-Col. Spengler. There appear to have been a few bodies on the extreme south-west corner of the side-walk in front of the police station. Otherwise the bodies were in the roadway to the south-west and north-west of the police station and in Zwane Street. Some were near the clinic, some near the shops to the north-west of the police station, and some in the large field to the north and north-east of the police station. It is noteworthy that the bodies in the roadway appear to have been to the south-west and the north-west. Little was said of bodies in the roadway directly in front of the police station. In this connection reference may

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be made to the photographs put in by Mr. Robinson of the "Rand Daily Mail", and his evidence at pp. 1572 and 1574.

169. Mr. Harold Sacks, who is a crime reporter for the "Rand Daily Mail" and a personal friend of Lt.-Col. Pienaar (p. 1530), suggested that he saw bodies lying near the fence, although Mr. Robinson (p. 1574) did not. But when Mr. Sacks was shown photographs taken by Mr. Robinson and asked to indicate where, according to his recollection he had seen bodies lying near the fence, he said that they were "round the corner", i.e. on the south on Zwane Street side (pp. 1612-1613). Nobody else saw bodies lying near the fence on the south side of the police station. Moreover, the photograph Exhibit "KK", taken by Mr. Robinson when he and Mr. Sacks first arrived at the police station before any policemen had moved out of the police grounds and before any bodies were moved (p. 1550), shows the fence and the side-walk on the south side of the police station. There are no bodies to be seen.

170. Another of Robinson's photographs, Exhibit "SS", shows bodies lying in the field to the north of the clinic. This is a considerable distance to the north-west of the police station. There was also evidence of bodies being found in the field to the north and north-east of the police station, far away from the fence. Berry, the "Drum" photographer, immediately after the shooting took some photographs of the body of a woman lying in that field. Two of these photographs, Exhibits "FF" and "GG" were taken with the camera facing the north-west corner of the police station. They show that the

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body was well over 100 yards from the fence. See also Berry's evidence at pp. 1832-1833.

171. It is of course possible that people who were shot might have run some distance before falling dead, but it is more probable that most of them dropped where they were shot, particularly when hit by rifle or Sten-gun bullets which have tremendous stopping power - see the evidence of Lt. Freemantle, pp. 868-9. There is direct evidence, too, that many of the people shot had run for long distances before they were hit by bullets. See for example the evidence of the witness Benjamin Maroo, (pp. 1698, 1712) who was wounded on his own estimate 60 - 70 yards but more probably over 100 yards north-east of the police station. He had run this distance before being shot. He saw the body of an old man about the same distance away (p. 1699). The Rev. R. Maja saw people hit when they were well over 100 yards from the police line (pp. 2359-60). Other witnesses described how they were shot and fell and when lying on the ground were again hit by bullets. This is borne out by the evidence of Dr. Friedman (pp. 1130-1).

172. The comparative absence of bodies near the fence and the profusion of bodies at distances of 100 yards and more away from the fence, also supports the conclusion that the shooting continued for a considerable time into the backs of a crowd that had long before taken to flight.

Conclusion:

173. All the factors dealt with above plainly contradict the opinion expressed by some of the police

/officers ...

officers that the shooting did not continue for longer than was necessary. Lt.-Col. Pienaar did not dispute that more men had fired than he had ever contemplated, but he said that the firing went on for only about three seconds after he had given the order to stop (p. 1340). He explained that "once fire has started you cannot stop it with press-button precision. The men are only human, they are liable to get excited, they must form their own judgment" (p. 1340). One may agree with Lt.-Col. Pienaar that it is difficult to stop concerted firing by a line of over 70 men with press-button precision, especially when the officer commanding has given no prior instructions, has arranged no system of signals or chain of command and the men are left virtually leaderless and uncontrolled. But whatever Lt.-Col. Pienaar's responsibility for the undue continuation of the shooting (which will be a matter for separate consideration later), the facts summarized above are an indictment of the individual policemen who used their guns with such devastating effect. They reflect not only on their judgment, but also, to use words of the police Standing Orders, on their forbearance and humanity.

174. The nature of the wounds, and the figures in the ammunition returns are in themselves an adequate commentary on the police concerned. But the most glaring example of deliberate and unnecessary firing is the shooting by men standing on top of the Saracens at the crowd on the north and north-east side of the police station. From the evidence of Brown Thabe (p. 1791), Abraham Tinane (p. 2184), and John Nteso (pp. 2353-4) it is clear that there was also firing in a southerly
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direction. Another illustration is provided by the actions of some of the men in Capt. Coetzee's detachment outside the fence on the south-east side of the police station. It is common cause that there was no danger apprehended by the police in any of those situations. The account of the shooting from the top of the Saracens and at the south-east (which will be dealt with in the succeeding paragraphs) also well illustrates a most deplorable feature of the proceedings before the Commission - the deliberate fabrication or suppression of evidence by policemen, including officers, in an attempt to conceal the truth about the Sharpeville shooting.

HOOPER INVESTIGATOR

M. THE SHOOTING FROM THE NORTH FENCE AND THE SOUTH-EAST

175. The line of policemen was drawn up facing only the west side. There was no line on the north side or on the south side. There was a large crowd along the southern fence which contained a small unguarded gate; and there was a smaller, but still fairly large, crowd along the fence on the north of the police station. No police witness has claimed that there was any attack on the police on the south side, nor has it been suggested that there was any danger to the police from the northern side of the police station. Lt.-Col. Pienaar could not give any reason for the shooting to the north (p. 1517). Lt. Claassen, who was towards the north of the police line, agreed that there was no threat to the police from the north or north-east (p. 928).

176. What took place on the north side of the fence is most clearly shown in the series of photographs Exhibits "E" and "T" to "DD" taken by Berry. To the north of the police station is an open field crossed by paths and dirt roads. When the shooting began Berry was sitting in a motor car in this field. He was looking south-west towards the north-west corner of the police fence. Inside the fence at that corner three of the Saracens were standing. Berry's actions when the shooting began have already been described. His first three photographs were taken with a long-focus lens and they give a clear view of policemen standing on top of the Saracens.

177. On top of the Saracen to the left of the photographs and close to the police station building, stands

a man who has been tentatively identified as Sgt. Horne. There is no evidence that Sgt. Horne fired any shots and it is not suggested that he did. He is, however, a not unimportant figure because in all the photographs up to Exhibit "Z" he is seen standing looking towards the west or south-west with his back to the photographer and to the crowd on the north side. It is abundantly clear from his demeanour that no danger was apprehended from the people on the north side, whom he was ignoring completely.

178. On the other two Saracens three policemen are standing. The one on the left wearing an overall is Const. Theron, who was armed with a revolver. In the middle is Const. Sneigans, who was armed with a Sten-gun. On the right is a policeman who has not given evidence, and who has not been identified. The demeanour of these men as shown on the first three photographs is also significant. It must be remembered that before taking the first photograph, Exhibit "T", Berry had had to get out of the car and focus and aim his camera. Consequently, the shooting had continued for a few seconds before this photograph was taken. It shows Const. Theron looking towards the north-west, Const. Sneigans looking towards the west and the third man looking north or north-west with his arms folded. In the second photograph which, judging from internal evidence, must have been taken about two seconds later, Const. Theron has turned away from the camera and is looking towards the west. In the third photograph, which on internal evidence (i.e., the position of the people who were running), must have been taken after a further interval of some seconds, all three

/policemen ...

policemen are looking towards the west, ignoring the crowd behind them. But in this photograph (Exhibit "E"), the third policeman is seen to have a pistol in his hand. Visible just above the turret on the right hand Saracen, is the head of Sgt. Kok who, when the photograph was taken, was sitting at the Browning machine-gun (see Sgt. Kok, p. 1091). These policemen are obviously unconcerned about the crowd at the north fence. In these three photographs the crowd which includes women and children has already begun to run from the fence towards the north or north-east. Some do not seem to realize what is happening, as they are smiling. There are some who are still standing quietly watching the police. There is not the slightest sign of any aggression.

179. To sum up, the first three photographs, Exhibits "T", "U" and "E" show that there was no attack on the north, that most of the crowd was running away and that the policemen on top of the Saracens (who presumably had the best view of the situation) did not regard themselves as being in any danger.

180. It was after taking Exhibit "E" that Berry changed his camera. His next photograph, Exhibit "V", discloses a remarkable scene. The crowd is still running away from the police station and those nearest the camera would appear to be at least 50 yards or even further away from the Saracens. But the men on top of the middle and right-hand Saracens have now turned towards them. Const. Theron is standing pointing a revolver, Const. Sneigans is pointing a Sten-gun and the third man is pointing his revolver. They appear to be

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in the act of firing. They can be seen in the same attitudes in Exhibit "W", but in this photograph it is even more obvious that the third man is aiming his revolver at the crowd. Moreover, Const. Sneigans with his Sten-gun pointed towards the crowd has now swung round as though following the movement of the crowd, which is running towards the north-east. In the next photograph, Exhibit "X", Const. Sneigans is seen to have turned still further to his right and to be almost facing the camera, i.e., the north-east. His Sten-gun is still pointed towards the crowd in the firing position. It will be recalled that it was at about this stage that Berry heard bullets whistling around him, and dropped to his knees (see Berry, p. 1830). In Exhibit "X" the third man can no longer be seen, and Const. Theron no longer appears to be aiming his revolver. These two men do not make any further appearance on the photographs; but in Exhibit "Y", with the crowd even further away from the police station, one sees Const. Sneigans apparently in the act of re-loading his Sten-gun. In the next photograph, Exhibit "Z", it is difficult to see him clearly, but he is still standing there with something in his hands; and Berry's evidence is that after the pause in the firing (see paragraph 151 above), the shooting started again and he again took a kneeling position. As has already been stated a number of bodies were later seen in that field. The people whom the Rev. R. Maja saw shot must have been shot by bullets fired in a north-easterly or east-north-easterly direction. Benjamin Maroo was shot twice after he had crossed this field; and the body which he saw was in the same field. See paragraph 177 above.

181. There can be little doubt therefore that the people who were shot on the north-east side of the police station were shot by the policemen standing on the Saracens. Cf. the evidence of Sgt. Kok, p. 1104. The photograph Exhibit "E" also shows policemen standing in front of one of the Saracens near the north-west corner of the fence. One of those was probably Const. Steynberg, who fired 57 rounds from his Sten-gun. Sgt. Kok said that Steynberg was standing in front of the Saracens in a position where he might have shot towards the north-east (p. 1108). The Commissioner cannot avoid finding that there was shooting from the north-west corner of the police station into the crowd on the north-east; and he must find, it is submitted, on the evidence of the police themselves, that there was no danger from that side and no justification for shooting in that direction. Those persons who were killed on the north-east side would appear to have been wilfully murdered.

Constables Sneigans and Theron:

182. Const. Sneigans and Const. Theron were called to give evidence. It is submitted that they were both untruthful witnesses. Const. Sneigans said that he had had a Sten-gun which he had loaded but placed at his feet. He could not remember whether he had picked it up during the shooting (p. 2389). But he said that he had had no reason to shoot and that he did not shoot (pp. 2401-2). Under cross-examination he also said that he had no reason to point his gun and that it was impressed upon policemen never to point fire-arms unnecessarily (p. 2405). He was then shown the photographs above

/referred ...

referred to, namely Exhibits "E" and "T" to "Z". He agreed that they showed him in the attitude of shooting; they showed him swinging his gun round as if to follow the fleeing crowd, i.e., just as he would have appeared had he in fact been firing his Sten-gun into the crowd. He could give no explanation why he should have acted in that manner (pp. 2405-9). Although he had said in his examination in chief that he had checked his ammunition and found that it was all intact, he admitted under cross-examination (p. 2412) that he might have fired without realizing it - a somewhat unlikely absence of mind. On further cross-examination it transpired that on the original ammunition returns he was shown as having fired 35 rounds, i.e., one magazine plus 10 rounds (p. 2413). He said that this was an error on the part of another policeman called Meyer who had given these figures to the Station Commander. He could not explain why Meyer had made such an error; nor could he explain why, even if Meyer wrongly thought that he had seen him firing, he should have put in a specific number of rounds as having been fired (p. 2413). Sneigans later made a statement in which he denied having fired at all, and was called upon for an explanation by Capt. Brummer. After he had seen Capt. Brummer his 35 rounds were deleted from the ammunition returns (pp. 2412-5). The Commissioner put to Sneigans a signed statement made for the purpose of this enquiry. In this statement he had not only denied having fired his Sten-gun, but had also denied that he had even loaded it, whereas in his evidence before the Commissioner he had admitted that his Sten-gun had been loaded (pp. 2425-6). In view of Berry's evidence and photographs and in view of the

/admissions ...

admissions wrung from Sneigans in cross-examination, it is submitted that Sneigans was obviously untruthful and was attempting to conceal the fact that he had fired 35 rounds in a situation in which he was not justified in firing at all. The number of 35 rounds, i.e., more than one magazine, is consistent with the picture of Sneigans on Exhibit "Y", where he is seen apparently re-loading his gun.

183. Const. Theron admitted having fired two shots with his revolver at a time when the crowd was already running away. He saw no attack on the police station on the north side. His excuse for firing was that some 70 yards away from the police station he saw that a group of Africans had stopped running. He said that he thought that they might be thinking of turning back towards the police station in order to attack the police (p. 2432). They did not in fact do so. He says that he fired his two shots over the heads of the crowd in order to deter that particular group (pp. 2431-2). His explanation is patently ridiculous. At that time there was so much firing and the noise was so great that he claims to have been unaware whether Sneigans, who was within a few feet of him, was firing (pp. 2433, 2441). He admitted that those Africans who had been near the fence were not attacking and that he did not fear any attack from them. After all, he pointed out, there were two Browning machine-guns pointing in that direction to deal with them (pp. 2438-40). He could not explain why a group of unarmed Africans who had already run away would return and attack the police (pp. 2435-6). Nor could he explain why, if they were not deterred by the tremendous volume

/of ...

of the shooting which was already in progress, they would be deterred by a further two revolver shots fired in the air (p. 2442). Nor did he explain why he did not wait to see what they in fact did (pp. 2455-7). According to him they had 70 yards to cover before getting to the fence. The scene on the photograph which he pointed to in justification of his fear of a counter-attack in no way supported him. One must conclude that his firing was wanton and inexcusable.

184. The third man who is seen in the photographs firing his revolver was never identified. There is no reason to doubt that he was firing at the crowd. Consequently there were at least three men firing quite unnecessarily to the north and north-east of the police station.

The Concealment of the Facts:

185. The police did not know of Berry's photographs until the 9th day of the hearing. By that time several N.C.O.s and officers had already given evidence. On that day one photograph, Exhibit "E", was put to Capt. Brummer. On the 15th day of the hearing the remainder of the photographs were put to Lt.-Col. Pienaar. Berry himself only gave evidence some days later. The variations in the police case with regard to the firing by the men standing on top of the Saracens provide a clear demonstration of the concealment of the facts by certain of the police witnesses, and also of a calculated adjustment by them of their evidence to meet each new turn in the case. The details of the "trimming" by the police witnesses to meet

/the ...

the evidence of the photographs and of Berry will be found in Appendix 8 hereto. It is enough to give here a broad outline of the police evidence on this point.

186. Police officers and N.C.O.s who were in a position to see the Saracens originally denied that there had been any men standing on top of them, let alone firing from them. In particular, Capt. Brummer, who was in command of them and who claimed to have kept his eye on them before and during the shooting, denied that there had been anyone standing on top of them during the shooting. He would, he said, have seen them had they been there. His whole duty before and during the shooting was to keep his Saracens under observation and under control (pp. 814-6). There is no possibility therefore that he did not notice the men on the Saracens. When Berry's first photograph became known, the suggestion made by police witnesses such as Capt. Brummer himself and Sgt. Kok was that the photograph could not relate to the time of the shooting even though the crowd in the foreground was running away. When all Berry's photographs of the shooting were put to Lt.-Col. Pienaar, he experienced surprising difficulty in seeing what the men on the Saracens had in their hands and what they were doing. Not until Berry had given evidence was it put that the police would concede that the men shown in the photographs were there during the shooting; but it was said that their evidence would be that they had only fired a few shots over the heads of the crowd. Thus the police evidence in summary was that there were no policemen on top of the Saracens; alternatively, if there were policemen on top of the Saracens, they were not there

/during ...

during the shooting; alternatively, if they were there during the shooting, it was not admitted that they were firing; alternatively, if they were firing they were not firing very much and only in the air. Pleading in the alternative is permissible, but evidence in the alternative condemns itself. Concealment usually implies that there is something to conceal.

The Shooting to the South-East of the Police Station:

187. Capt. Coetzee's contingent was lined up across Zwane Street to the south-east of the police station. The evidence of Capt. Coetzee was that he had some trouble from individuals who were taunting and abusing his men, but that there was no attack upon them although they were not behind any fence or other obstacle. He was sure that none of his men had fired. Had they fired he would have seen it (pp. 962 and 963). But evidence was later given by a simple and somewhat incoherent African constable who had been under his command. He recalled that there had been some shooting by Capt. Coetzee's men and that he had seen a little boy who had been holding a piece of wire in his hand, shot directly in front of them (see Const. Maruping, p. 1116). Two African civilians who had been in the crowd also gave evidence that there had been firing from Capt. Coetzee's contingent both to the west along Zwane Street and to the north-east past the back of the police station (see Abraham Tinane, pp. 2185, 2197-8; and William Molatule, pp. 2074-5, 2079). After this evidence had been given Capt. van den Bergh, the C.I.D. officer assisting Mr. Claassens, made further

/investigations ...

investigations and found two members of Capt. Coetzee's contingent who admitted that after the shooting from inside the police station had started they had fired their rifles at the crowd. These men were Constables Els and Olivier.

188. Const. Els had been stationed on the top of a lorry. When the crowd fled from the police station, many people ran down Zwane Street towards the east. Const. Els said that he had been afraid when he saw these people running towards him and had fired two shots into the side-walk in front of them (pp. 2630-1). Const. Els is only eighteen years old, and it may be that the sound of the firing and the sight of the crowd running frightened him. Unfortunately, as the Commissioner himself brought out, Const. Els had previously, in a sworn statement to the C.I.D., suggested that it was earlier in the day, and elsewhere, that he had fired his rifle (pp. 2639-40).

189. Const. Olivier was standing in Zwane Street on or near the island in the middle of it. He too said that he saw the fleeing crowd running towards him. Although many had already run past without doing any harm, he apprehended danger from a large group some 20 or 25 yards away (pp. 2645-7). He therefore fired four shots along the island (into the ground, he claims) although he received no order to do so. In order to excuse his action, Const. Olivier said that the people who were running towards the police in Zwane Street were throwing stones as they ran (pp. 2651-2), and that all the Africans in Zwane Street were carrying stones in

/their ...

their hands. Moreover, he said that before the shooting he himself had seen a tremendous hail of stones thrown by the crowd at the police on the south side of the police station (pp. 2651, 2654-60). This part of his evidence was quite false. It is contrary to the evidence of Capt. Coetzee and all other witnesses from Capt. Coetzee's contingent. None of Capt. Coetzee's men were hit by a stone. Nobody else saw any stoning or stones in Zwane Street. Indeed, Det.-Const. Pieterse, who at the time of the shooting was on the south side and who was called after Const. Olivier, confirmed that there was no stoning on that side (p. 2675). Const. Olivier's evidence is, it is submitted, a blatant piece of perjury. Const. Olivier admitted seeing a boy shot in Zwane Street but denies that his firing could have done this. He said at first that he did not go up to this boy (p. 2648), but later he says that he did and that this boy was lying dead with a stone in his hand (pp. 2656-8). He did not observe where he had been hit. His story of the stone in the boy's hand is improbable and is contradicted by Const. Maruping. If Const. Olivier was in fact the only member of Capt. Coetzee's contingent who fired along the island in Zwane Street, the probability is that he unlawfully shot and killed the little boy.

190. It is beyond doubt that Const. Els and Const. Olivier were not in any danger of attack and that no attack was in fact made upon them or their contingent. Their firing was unnecessary, and notwithstanding their denials probably did some damage. The youth and nervousness of Const. Els might in some measure excuse

/him, ...

him, but there appears to be no excuse for Const. Olivier, who deliberately fired four shots from his rifle into a crowd which was trying only to get away from the police.

191. Thus both on the north side of the police station and on the south, it is clear that there was unnecessary and patently unlawful firing by some members of the police force.

N.

ATTITUDE OF THE POLICE TOWARDS AFRICANS

192. It must be conceded that some of the policemen may have thought they saw hostility and danger although none existed, and one asks why this should be. A consideration of the police evidence in general suggests the answer to this question. Sometimes expressed in the police evidence and sometimes implicit in it is an attitude of mind which regards Africans, or at least a crowd of Africans, not as fellow-citizens whom it was the duty of the police to protect and help, but as potential enemies. This attitude is not merely one of prejudice against the Africans: it is an unhappy mixture of hatred, contempt and fear. The police regarded these people as a "mob", not as a collection of individuals; and as a mob which understood only the argument of force. There was a great deal of talk by the police about the crowd becoming more and more "opstandig", a word which can perhaps be best translated into English as "rebellious". But when an attempt was made to analyze in what way the crowd was rebellious, the answer was that they shouted their slogans and sang their songs. On the rare occasions when any policeman spoke to any of the Africans he was prone to construe as evidence of a rebellious or riotous mood, statements which coming from a white man could never have been considered objectionable. Thus Det.-Sgt. Pieterse (known familiarly in Vereeniging as "Piet"), when asked to give an example of hostile and insulting behaviour, said that an African at the fence called to him "Old Piet". He replied, "It's your own fence that you are damaging", to which the African replied, "You people will repair it"

/(p. 2673). ...

(p. 2673). It became clear in the course of the police evidence that many members of the police expect unquestioning deference from all the Africans with whom they deal. When they did not find it at Sharpeville, they interpreted the lack of it as riot and rebellion.

193. The few African witnesses who before or after the shooting were spoken to by the police at all were addressed in general curtly and even harshly. See for example the evidence of Tsolo (p. 2492); Samuel Mahlase (p. 1904); and Daniel Dkobe (p. 2268). But even more noteworthy as an example of the mental attitude of the police than their few conversations with individual Africans, is the complete absence of any real attempt to communicate with the leaders of the crowd. It is unthinkable that the police surrounded for many hours by a white crowd would have failed to make any sort of contact with the leaders. They would have found out what the crowd wanted and why it was there. If they had thought it desirable that the people should go they would have found some means of telling them so. But at Sharpeville there was no attempt to establish contact, apart from Lt. Visser's conversation with Tsolo and possibly the activities of Lt.-Col. Spengler at the gate. The white policemen heard remarks in the vernacular from the crowd; but it did not occur to them to ask any of their African colleagues what was being said. Nor did it occur to them to send a member of the African police to speak to the crowd. This was not for lack of opportunity. The reason why there was no attempt to speak to the crowd was that the police did not think in terms of speaking to an African crowd, of negotiating with them or of persuading

/them. ...

them. During the morning someone from the crowd brought in a case of cold drinks to the police. The evidence does not explain who he was or what prompted the gesture; but the police automatically took what might well have been a friendly gesture as an insult. See Capt. Theron, pp. 300-301. That it was not impossible to talk to a crowd is amply demonstrated by the success of Mr. Knutze at Vanderbylpark on the same day, and even by Mr. Labuschagne's overtures which were interrupted by the efforts of Lt.-Col. Spengler and Sgt. Wessels. (See Labuschagne, pp. 444 and 445.)

194. There are many other indications of the contempt and hostility which the police displayed towards the African crowd. In the first place there is the free use by certain policemen of the word "tsotsi" as applied to young Africans. Typical of this is the evidence of Capt. Coetzee at p. 953. The word "tsotsi" means, apparently, a young criminal, hooligan or vagabond. The harmfulness of this attitude of mind was adequately demonstrated by the evidence of Brown Thabe (p. 1808) and the Rev. R. Maja (p. 2366-8).

195. One may also refer to the case of a policeman on duty at the police station who equipped himself with a sjambok. The point is not that the sjambok was used - apparently it was not - nor that the policeman who carried it, Const. Beyl, was obviously an untruthful witness. The point rather is that no policeman would dare carry a sjambok while facing a white crowd. This policeman must have been seen by many other policemen, including N.C.O.s and officers; yet apparently no

/action ...

action was taken in spite of the admitted irregularity of his conduct.

196. It is necessary also to refer to the claim made by several police officers that they "know the Natives", or "know the Bantu". See, for example, Capt. Theron, p. 278; Capt. Brummer, p. 806; Capt. Coetzee, p. 957; and particularly the instructive sentence in the evidence of Capt. Coetzee that in former years "the Bantu (sic) were not as rebellious as they are today". The facile generalisation implicit in the phrase "the Bantu" is astonishing. One can hardly imagine any police officer speaking in such terms of any section of the white population. This type of preconception explains why officers such as Capt. van der Linde and Maj. van Zyl assumed, more than two hours before the shooting at a time when the crowd had been standing at the police station for over three hours without having done anyone any harm, that that crowd would resort to bloodshed and that it would be necessary for the police to fire upon them. (See Maj. van Zyl, pp. 187 and 209, Capt. van der Linde, p. 790.)

197. Perhaps the most revealing piece of evidence was Lt.-Col. Pienaar's remarkable statement that "the Native mentality" (which he claims to know) "does not allow them to gather for a peaceful demonstration ... For them to gather means violence" (p. 1415). This remarkable combination of ignorance and racial prejudice naturally throws a great deal of light on the acts and omissions of Lt.-Col. Pienaar himself. But coming as it does from a senior and presumably responsible police

/officer ...

officer with over 30 years' experience, it reveals more about the police attitude to the crowd and does more to explain why the police fired upon the crowd than perhaps any other single piece of evidence.

198. Before leaving the topic of the police attitude to the Africans, one must reluctantly refer to the evidence of what took place after the shooting. A number of African witnesses deposed to statements made by policemen after the shooting to the persons who were lying wounded. This evidence shows that some of the white policemen displayed attitudes ranging from indifference to sheer callousness. This evidence came from among others such an impressive witness as Joshua Motha, the bus driver who was abducted the previous night, (p. 1923). One recalls also Sgt. Wessels' unfortunate joke about the "corpse" with no mark on him. See Sacks, p. 1620. The evidence of African witnesses who were present after the shooting seems to show that apart from supervision by officers, the only persons who took direct action to aid the wounded and to remove the dead bodies from the scene were civilians and non-white policemen. There is no evidence that the white policemen themselves rendered personal attention to the wounded. This is borne out by all the photographs taken afterwards by various photographers. See the evidence of Robinson, the "Rand Daily Mail" photographer (a witness who was well disposed towards the police) at p. 1566, which is directly confirmed by the evidence of Capt. Theron at p. 354. The object of referring to this evidence is not to suggest that all the white policemen are cruel or callous men - obviously they are not and there is no

/doubt ...

doubt that many of them were shocked at the scene before their eyes after the shooting - but this evidence once again points to the extent to which white policemen are cut off, for whatever cause, from any real sympathy for or understanding of the individual African human beings with whom they have to deal.

199. It is for the same reason that one must refer to the fact that there has been no official expression of horror, shame or even regret for the tragedy from the police force (see Lt.-Col. Pienaar, p. 1526). Nor did any police witness during the course of the hearing express any of these sentiments.

200. The factors referred to in paras. 192-199 above must, it is submitted, be taken into account when the Commission considers why the police fired and the extent to which they fired. They go some way to explain how, for example, an individual policeman could fire a complete Sten-gun magazine into the crowd, reload with another magazine, empty that into the crowd and then draw a revolver and fire another six rounds before ceasing fire.

O. FABRICATION OF EVIDENCE BY THE POLICE

201. Reference has already been made to many examples of fabrication or concealment of evidence by the police. These examples show that quite apart from instances of incorrect statements due to failures in observation or preconceived but honestly held ideas, there have been too many instances of police witnesses attempting to mislead the Commissioner. Some of the examples already given and other examples are collected in Appendix VIII hereto.
202. The Commissioner's attention is drawn to the Appendix for two reasons. Firstly, it suggests that the evidence of certain witnesses should be approached with considerable caution. Secondly, it suggests an inference. If a witness conceals material facts or fabricates evidence, he usually does so with a purpose. Those who have nothing to conceal or to excuse do not have to resort to concealment or fabrication. If a party in a case has recourse to perjury, it is strong evidence that he knows that his case is a bad one (see Moriarty vs. London, Chatham & Dover Railway Co. (1870), L.R. 5 Q.B. 314; R. v. Simon, 1929 T.P.D. 328, at p. 333.) One of the most striking aspects of the police case was that despite intensive and able investigation by Capt. van den Bergh of the C. I. D. and his assistants, it did not prove possible to find out which man or men had fired first. According to Capt. van den Bergh, although he or his assistants had interviewed everyone who was known to have fired, nobody was prepared to admit having fired the first shot (pp. 2461-2) or having shouted "Skiet" (p.2478). The inference from this is not difficult to draw.

/203. On ...

203. On this aspect of the case there are two further observations to be made. In the first place, some of the untruthful statements made by police witnesses could not have been exposed but for the photographs taken by the press photographers who were present before, during and after the shooting, and in particular Berry of "Drum" and Robinson of the "Rand Daily Mail". The course of the proceedings before this Commission has again shown how well the public interest is served by a free Press with an unrestricted right of access to important events. If reporters had not been permitted to enter Sharpeville Township, or if the photographers had not been permitted to take their photographs, or if their cameras and films had been confiscated by the police (as has sometimes happened on other occasions), the police might have found it easier to justify their shooting; but the truth would have suffered.

204. In the second place, the proceedings before this Commission have shown the value of cross-examination of witnesses before a Commission. Counsel for the Bishop had no right to cross-examine: it was for the Commissioner to decide whether they should be allowed to do so. The Commissioner allowed the fullest opportunity for cross-examination. It is respectfully submitted that the course which the proceedings took amply demonstrated the wisdom of his decision and that but for cross-examination much which has been exposed might still have lain hidden.

P. WAS THE CONDUCT OF THE POLICE JUSTIFIABLE?

205. It remains to consider whether the conduct of the police who fired into this crowd, and of the officers in command of them, can be justified in accordance with the principles which are set out in Section C of this argument.

206. The very first question which has to be asked is: Was the crowd attacking anything or anybody? As Mr. Winston Churchill said in the debate on the Amritsar shooting (Appendix 2):

"Surely that is the question. Are they trying to force their way forward to the attack of some building, or some cordon of troops or police, or are they attempting to attack some band of persons or some individual who has excited their hostility? Is the crowd attacking? That is the first question which would naturally arise".

This way of approaching the matter is also required by the provisions of Section 7 (1) (b) of the Riotous Assemblies Act, 1956.

Were/...

Were the crowd or any members of the crowd killing or seriously injuring any person? Were they attempting to kill or seriously injure any person? Did they show a manifest intention of killing or seriously injuring any person? Were they destroying or doing serious damage to any valuable property? Were they attempting to destroy or do serious damage to any valuable property? Did they show a manifest intention of destroying or doing serious damage to any valuable property? In short, was the crowd attacking? There is only one answer to this question, and that is "No".

207.

The second "great simple fundamental question" is this: Was the crowd armed? Was it armed with lethal weapons? The answer to this question is likewise clearly "No".

208.

The third question is: Was this crowd ever ordered to disperse? Was it warned that unless it dispersed, force would be used? Section 7 (1) of the Riotous Assemblies Act (and even Regulation 3 of the Emergency Regulations) requires that an order to disperse and a warning that force will be used must be given three times before force may be used. At

Sharpeville the crowd was never ordered to disperse, nor was it ever warned that force would be used.

209.

When it was put to Lt.-Col. Pienaar that he could have tried to give an order to disperse, he said:

"I did not have any time to do that. I would very much have liked to".

The following revealing exchange then took place between Lt.-Col. Pienaar and counsel for the Bishop:

"You would very much have liked to, but in the whole of that half-hour - and we now know what you did during that half-hour - in the whole of that half-hour you could not have spared a minute-and-a-half in order to make this humane effort? ---

"No, I could not.

"And you have no explanation for that except the explanation you have already given us? ---

"It would not have taken minutes to make other arrangements.

"I/...

"I am suggesting, Colonel, that you could have climbed on to a Saracen in your striking uniform, held up your hand for silence - and perhaps they would have been silent, and then you could have said, 'Now, go home or you are going to be shot'. You could have done that, couldn't you? ---

"The only explanation I can give is that time did not permit that.

"You could have done that, couldn't you? ---

"I could, yes.

"And your only excuse is that you were too busy doing the other things that you have told us about? ---

"Yes.

"You could have detailed some other officer to make that effort, couldn't you? ---

"I could have. I did not think of that.

"Is there any reason why you did not?

"I just did not think of it at the moment."

(pp. 1510 - 1511).

210.

Earlier in his evidence, in answer to a question by the Commissioner, he referred to the report which Maj. Van Zyl had made to him when he entered the location, "that he had had trouble previously that morning and he had tried to disperse ~~them~~ with batons and tear-gas and I took it, then, that the necessary was done, that they were first warned". Even if Lt.-Col. Pienaar had been correct in assuming that Maj. Van Zyl had "done the necessary", the warning had been given more than 5 hours earlier, to a different crowd, at a different place some two and a half miles away from the Sharpeville Police Station. The police may not shoot upon a crowd at one place without first giving an order to disperse and warning the crowd that force will be used, merely because they think that a warning may have been given to a different crowd at a different time and a different place.

211.

Lt.-Col. Pienaar seems to have thought that if an order to disperse had been given, the crowd would not have heard it on account of the noise. No doubt a noisy crowd is harder to disperse than a silent crowd. It must however be common experience that a crowd which has to be dispersed is a noisy rather than a silent one. Many methods of conveying an order to disperse and a warning would have suggested themselves to a competent and conscientious/...

conscientious police officer. Even if a voice would not have carried to the back of the crowd, the front rows could have been addressed. Their reaction would soon have communicated itself to those behind. An officer could have walked round the perimeter with one or more African N.C.O.'s and conveyed the warning through them; and an attempt could have been made to communicate with the crowd through its leaders. A banner could have been held up in front of the crowd with a warning written on it in the vernacular. The uttering of the word "hamba" by one officer at one point on the perimeter of a crowd is not the only known means of giving a warning to disperse.

212.

As far as is known, it has not happened before in any civilized country, at any rate in this century, that a large contingent of police, armed not only with service revolvers and service rifles but also with Sten guns, has fired into a crowd without first giving an order to disperse and a warning that force will be used. The rule that such order and warning must be given is founded upon common humanity and common sense. At Sharpeville on 21st. March, 1960, that rule was totally disregarded without any justification by Lt.-Col. Pienaar.

213.

The fourth question which has to be asked/...

asked is: What other means were used against this crowd before the police opened fire? Section 8 (1) of the Riotous Assemblies Act provides that firearms must not be used to disperse a crowd until weapons less likely to cause serious bodily injury or death have been used and the gathering has not been dispersed (or unless or until any of the members of the crowd have done any of the things set out in paragraphs (a) and (b) of the sub-section). The Standing Orders of the South African Police are also perfectly explicit on this point. Regulation 741 provides that firing upon the people is "a measure which should never be resorted to until every other means shall have failed to ensure the preservation of peace and good order". What other means, then, could have been used to disperse this crowd? What other means did the police attempt to use?

(a) Not only was the crowd never ordered to disperse or warned that force would be used against it, but none of the police officers present at the police station, with the possible exception of Capt. Brummer, ever attempted to address the crowd.

(b) Apart from the somewhat inconclusive conversation which Lt. Visser had with Tsolo and from the somewhat unorthodox

methods/...

methods which Lt.-Col. Spengler and Sgt. Wessels used in order to make contact with the leaders of the crowd, none of the police officers present ever attempted to find out who the leaders were, or to speak to them, or to persuade them to tell the crowd to go home. Lt.-Col. Pienaar had previously employed this expedient in order to disperse a crowd at Dube, and with success. He said, however, that at Sharpeville he would not have dealt directly with the leaders of the crowd because "from past experience, it is generally in most cases useless". He conceded that the effort would have done no harm but said that he did not even make the attempt because he thought it probably would not succeed (pp. 1383 - 1385).

- (c) Another possible channel of approach to the crowd was through an official whom they knew and respected. Such an official was present from about 1 p.m. onwards in the person of the location superintendent, Mr. Labuschagne. Lt. Visser knew Mr. Labuschagne (p. 466) and could have drawn Lt.-Col. Pienaar's attention to his presence. Lt.-Col. Pienaar did not think of inquiring whether there was anyone present who knew/...

knew the local people (pp. 1511 - 1512). He said that there was no opportunity to do this, but that if he had had time he might have done so (p. 1385). To use the good offices of a local official is a matter of common sense and experience. It is specifically provided for in Reg. 1167 of the Queen's Regulations (Appendix V), which states that if troops have to be used against a civil population, the local magistrate or justice should accompany each division of troops. As Lord Justice Bowen's Commission on the Ackton Colliery disturbances said:

"One salutary practice is that a Magistrate should accompany the troops. The presence of a Magistrate on such occasions, although not a legal obligation, is a matter of the highest importance. They know nothing, probably, of the locality or of the special circumstances. They find themselves introduced suddenly on a field of action and they need the counsel of the local justice who is is presumably familiar with the details of the case".

In the circumstances which existed at Sharpeville, the appropriate person to fulfil/...

fulfil this function was Mr. Labuschagne or some other municipal official. Indeed, this method of handling a crowd had been used successfully at Vanderbijlpark that very morning by Capt. Cawood when he invoked the assistance of Mr. Knutze. Lt.-Col. Pienaar himself had been to the Vanderbijlpark area and had spoken to Capt. Cawood and had learned that a crowd of over 12,000 had been persuaded to disperse (pp. 1325 - 1326). A little reflection might have suggested to Lt.-Col. Pienaar that methods of persuasion might be effective as well as humane and civilized. However, as has been pointed out in Section N, Lt.-Col. Pienaar had certain assumptions about the mentality of a native "mob" which may have precluded him from giving consideration to the merits of persuasion. It is noteworthy that he did not even bother to inquire why the crowd were there and what they were waiting for. Had he understood that they were expecting to be addressed his whole approach would surely have been different - and the tragedy of Sharpeville might have been avoided.

- (d) Before they opened fire into this crowd the police did not use any "weapons less likely to cause serious bodily injury or/...

or death". Lt.-Col. Pienaar did not know, nor did he inquire, whether fire-hoses or tear gas were available at the Sharpeville Police Station (p. 1375). He did not attempt a baton charge because he thought that it would be useless and that at least a bayonet charge would be necessary (p. 1383). He did not explain why he did not order his men to fix bayonets. Nearly 300 men were available for a baton charge (though of course he did not ascertain how many men he had under his command). If it was feared that a baton charge might meet with resistance, a force with batons could have been supported by a reserve of men with fixed bayonets to meet any possible counter-attack by the crowd. No attempt was ever made to do any of these things. It is significant that the baton charges carried out by Maj. Van Zyl the previous night and in the early morning did not meet with any resistance. Capt. Cawood, who that very morning had been surrounded at Vanderbijlpark Police Station by a very large crowd of Africans, had carried out a baton charge with a small force of police from inside the police station fence. This charge was successful; the police suffered no casualties and the crowd very few (Capt. Cawood, pp. 161 - 162).

Once/...

Once again, the reason for the failure to try less drastic measures at Sharpeville seems to have been the lack not of time or opportunity, but of reflection, initiative and humanity. The one officer who appears to have displayed all these qualities on 21st. March, Capt. Cawood, met with signal success. Unfortunately, he was not in command at the Sharpeville Police Station.

214.

Standing Orders require an officer in command of armed policemen to exercise "the utmost forbearance" and "a humane discretion" (Reg. 745 (7)). He must therefore take the trouble to ascertain all the relevant facts of the emergency in order to enable himself to do these things (para. 20 (g) (i) above). Lt.-Col. Pienaar arrived at the Sharpeville Police Station under an erroneous impression as to what had already happened there. When he got there he did nothing to verify the information which he already had. He obtained no information as to the situation from Capt. Theron and Capt. Brummer, who were the senior officers at the police station when he arrived (see para. 117 above). He did not know how many men he had under his command (pp. 2561 - 2562); he did not know what armaments were at his disposal (p.1494);

nor/...

nor did he take steps to inform himself as to any of these matters. All he did was to deploy a large number of armed policemen in a single line near to the fence and the crowd on the western side of the police station. In this way he disabled himself from exercising the "humane discretion" with which he was entrusted in terms of Standing Orders.

215.

The officer in command of armed policemen must give all his attention to the supervision of the men acting under his orders (Standing Orders, Reg. 745 (5)), and must guard against the slightest misuse by his men of their arms (para. 20 (g) (ii) above). To this end he must ensure that he deploys his men in such a way that his commands can be communicated to them in all the circumstances of the emergency (para. 20 (g) (iii) above). Where, as at Sharpeville, the senior officer has under his command an armed force which is the equivalent of a company of infantry, it is elementary that he cannot hope to exercise direct personal command over them all and that he must divide them up into sections under the command of junior officers and, if necessary, N.C.O.'s (cf. the Queen's Regulations, Appendix V hereto, Regulations 1176 - 1178).

Unlike/...

Unlike Capt. Coetzee, who moved about among his men in an effort to calm them and told them firmly that nobody was to shoot save on his order (p. 963), Lt.-Col. Pienaar addressed neither his officers nor his men, although he realized that that was a vital precaution to be taken (p. 1367). He made no attempt to divide his men into sections under subordinate commanders because "the situation was too tense to allow me to divide up" (p. 1500). Though he knew it was desirable for him to do this, he claimed that he could not have made these arrangements in the short space of time available to him (p. 1501). He simply busied himself in deploying his men in a straggling single line about 70 yards long without providing for any chain of command whereby they could be kept under control. Moreover, as appears from paragraph 101 above, Lt.-Col. Pienaar's own part in the deployment of the men was apparently confined to giving the simple order to line up and, later, to load 5 rounds. This long line of men simply stood facing the crowd at a distance of a few paces, with lethal weapons in their hands. Their deployment, if such it may be called, was not that of a body of men whose purpose was to defend themselves or their station against imminent attack: it more closely resembled that of a firing squad, save that a firing squad normally consists

of/...

of only a few men under proper control. Lt-Col. Pienaar's line was designed to bring the maximum fire power possible to bear upon the crowd, instead of the minimum fire power necessary as Standing Orders require.

216.

The officer in command of armed policemen must detail no greater number of men to fire than is absolutely necessary (Standing Orders, Reg. 745 (6)). He must give a deliberate word of command to fire a specific number of rounds (Reg. 745 (5)). The firing ought to be at the leaders of the riot or at the assailants on the force and, if possible, with effect (Reg. 745 (2)). In other words, the firing must not be indiscriminate (Reg. 745 (3)).

These injunctions were disregarded by Lt.-Col. Pienaar. Instead of detailing a small number of men to fire a small number of rounds at a specific objective, he confronted the crowd with the major part of his force. Lt.-Col. Pienaar's complete failure to make proper arrangements for the control of his men and for the control of any firing which might have become necessary is eloquently proclaimed by the following passages from his evidence:

"Did you have any plan whereby you could limit it (the firing) to less than/...

than 5 rounds when the time came,
if necessary? ---

"No. That is the normal order.
It is left to the discretion of the
men whether they should fire one or
five rounds" (p. 1493).

"Do you perhaps not see the importance
in a tense situation like that, of
being able to arrange for firing by
a small group of men...? ---

"No, I don't see how I could have
arranged that in that short space of
time.

"Do you agree that that would be
desirable? ---

"It would be desirable, yes.

"Well, you certainly made no provision
for that sort of order? ---

"No; there was no time to make that
provision". (pp. 1500 - 1501).

"Did you have it in mind that you would
attempt some well-directed shooting at
the first people who broke through the
gate or fence? ---

"Yes; that is what I had in mind.

"That is what you had in mind, but you
made no specific arrangements for en-
suring that, did you? ---

"No." (pp. 1508 - 1509).

It.-Col./...

Lt.-Col. Pienaar did not deny that it would have been proper to organize his men in a proper command structure. His only excuse for not having done so was that he had no time (pp. 1367, 1371, 1499 - 1501, 1506 - 1507). In fact he had at least 30 minutes, quite apart from the fact that if his men had been under proper control there might well have been no shooting at all. Lt.-Col. Pienaar said (p. 1449)

"the time was too short for running around looking for officers..."

In fact, his officers were waiting on him. There was no need for him to "run around" looking for them. All that was needed was a few words. Although given every opportunity to do so, Lt.-Col. Pienaar was quite unable to explain how he spent his 30 minutes at the police station.

217.

Of the 75 men who fired into the crowd, no fewer than 11 used Sten guns. Most of these fired not single shots but bursts. It does not appear that Lt.-Col. Pienaar took any steps to ascertain how many of the men under his command were armed with Sten guns; nor did he do anything to prevent them from using these weapons. As has already been pointed out (para. 22 above), in the Federation of Rhodesia and Nyasaland only platoon
/commanders...

commanders in the Police Mobile Force are authorised to carry Sten guns. Clear instructions are given that these weapons are never to be used on "automatic" except "in a desperate emergency". Apparently similar instructions are given, or are supposed to be given to the South African Police (see para. 154 above.) At Sharpeville there was no desperate emergency; a number of these formidable weapons were in the hands of constables; and they were used to fire devastating bursts of bullets into the midst of an unarmed crowd. The conduct of the police in this regard is inexcusable.

218.

If a superior officer is present, the police under his command may not open fire except by regular word of command from the senior officer present (Standing Orders, Reg. 845 (4)). At Sharpeville the police opened fire on the crowd without any regular word of command having been given by Lt.-Col. Pienaar or any other officer. A heavy burden of responsibility and guilt lies not only upon Lt.-Col. Pienaar for his failure to control and supervise his men, but also on the individual policemen who fired. Although Lt.-Col. Pienaar himself was not disposed to admit any criticism of his men, it appears from other evidence that he

was/...

was very conscious of their failure and his own responsibility for it. Mr. Sacks, a personal friend of his who saw him immediately after the shooting, said that he realized that Lt.-Col. Pienaar was in an invidious position:

"Why was he in an invidious position?"

"Well, he is a disciplined man; he was supposed to have disciplined men under him and men who shoot without orders..."

"And did he seem very conscious of that fact? ---"

"Oh, yes." (p. 1610.)

The truth is that many of the policemen who fired into the crowd showed themselves to be undisciplined, ignorant or unmindful of the Standing Orders governing the Force, reckless of the consequences of their shooting and in some cases utterly merciless and callous. Their conduct proclaims their guilt.

219.

Policemen under the command of officers have no right to open fire without orders. Even if an attack is being launched on the police, it is for the senior officer to decide if and when to open fire. But, even if no officer or N.C.O. had been present the constables

would/....

would not have been entitled to fire. The police station was not being attacked. No attempt was being made to deprive the police of their arms or their prisoners. The police were not defending themselves or anyone else from death or serious injury, nor were they defending anyone from unlawful attack. Nor were any of the other special circumstances in which the police may fire without orders from a superior officer present (see Standing Orders, Reg. 742).

220. Whenever the circumstances can be met by firing merely to wound or maim, the police must exercise great care not to kill (Standing Orders, Reg. 743). At Sharpeville the police took no care whatever not to kill. On the contrary they fired recklessly and indiscriminately into an unarmed crowd which was not attacking them. They made no serious attempt to aim their fire at people whom they believed (even if mistakenly) to be leaders of a riot or actual assailants, as laid down by Standing Orders (Reg. 745 (2)), by Queen's Regulations (Reg. 1180) and by the humanity expected of a disciplined, civilised force (see Maj. Van Zyl, pp. 233 - 236). They must have known that their shooting would result in many deaths. They killed 69 people. No justification or even extenuation can be found for such conduct.

221.

No shot must be fired after the necessity for firing has ceased to exist (Standing Orders, Reg. 745 (8)). At Sharpeville the police went on firing into the back of the crowd long after it had turned and begun to flee from the scene. They fired their automatic weapons in tremendous and devastating bursts. There were those who fired 10 shots with their rifles; who fired a second magazine from their Sten guns; and who used both a Sten gun and a revolver. The only problem is to find suitable words of condemnation for conduct of such enormity. Here indeed was a terrible manifestation of "frightfulness" and "the strength of civilization without its mercy".

The names of some of the individual policemen who perpetrated these dreadful deeds are known. They have shown themselves unfit to be entrusted with firearms of any kind, let alone highly dangerous automatic weapons. Apart from any other steps that may be taken against them, it is to be hoped that none of them will again be let loose upon the public with firearms in their possession.

222.

But a heavy burden of responsibility for this tragedy also lies upon the shoulders of Lt. Col. Pienaar, for his dispositions were such that once the shooting had started he and his officers were quite unable to stop it immediately (p. 1506). This appears from the

following/...

following passage in Lt. Col. Pienaar's evidence (pp. 1505 - 1506):

"Apart from the fact that your order was to load 5 rounds, had you no means whatsoever of ensuring that the firing would stop as soon as it was no longer necessary? ---

"Only by word of mouth - command.

"That is not a very good idea in a noisy place with a line of men strung over a long distance, is it? ---

"No it is not.

"In fact, it is useless, isn't it, in that situation? ---

"I would not say it is useless. We stopped the fire very soon.

"Some of the men, you had reason to believe, would have had full magazines? ---

"I had reason to believe that; I can't say that it was so.

"You also knew that some of the men had Sten guns? ---

"Yes.

"Which, of course, carries on? ---

"Yes.

"Ability/...

"Ability to stop the shooting if it began was vitally necessary in the interests of humanity, was it not? ---

"Yes.

"But you had no effective arrangement whereby you could stop the shooting once it had started? ---

"Not with press button precision.

"Not with any sort of precision? ---

"Right.

"In fact, you told us yesterday you really left it to the discretion of your men to stop when they thought it appropriate? ---

"Under these circumstances, if a command became impossible, they must use their own discretion.

"Do you suggest there is no way of doing this sort of thing? ---

"There is no way of?

"Of making arrangements so that you can stop fire when necessary? ---

"If I had had the time, I could have made different arrangements."

The Queen's Regulations (Appendix V) explicitly state that which is implicit in Reg. 745 (8) of the Standing Orders of

the/...

the South African Police, namely that officers or men required by necessity to fire must perform their duty

"in such a manner as to be able to cease fire the instant it is no longer necessary"

(Reg. 1179).

Both Lt. Col. Pienaar and his subordinates failed in this respect. Lt. Col. Pienaar placed the responsibility for the number of rounds fired on the individual policemen (see paragraph 221 above and the evidence at p. 1506). Every policeman who uses a firearm is, no doubt, personally responsible for ensuring that he fires no shot more than is absolutely necessary. But the primary responsibility was Lt. Col. Pienaar's.

"In all cases the officer or other person in command.....must, in every instance, exercise a humane discretion as to the extent of such firing" (Reg. 745 (7)).

The Queen's Regulations explicitly state that it is for the commanding officer to decide on the number of rounds to be fired (Reg. 1174). Any other rule would be unthinkable in a disciplined and trained force. Lt. Col. Pienaar's attempt in the witness box to disclaim this responsibility is only less deplorable than his failure to assume it at Sharpeville.

223.

It is submitted that had the men been more sensibly deployed, the firing could not only have been promptly stopped, but need never have begun. The evidence is that not only Lt. Col. Pienaar's men but also those under Capt. Coetzee and Capt. Cawood (p. 164) showed a tendency to open fire without orders which the latter two officers had to take stern measures to curb. One obvious way to prevent this is to keep armed men as far away as possible from the crowd, and to keep them in groups under the close control and supervision of officers, N. C. O.'s or senior men. This ensures not only fire control if firing becomes necessary, but also, as far as possible, that panicky and unreliable men will not fire of their own accord. Lt. Col. Pienaar's unwieldy and ill-placed line was calculated to have the opposite result; and it did.

224.

When Lt. Col. Pienaar was cross-examined, he was asked this question:-

"Do you think that you have learnt any useful lesson from the events in Sharpeville?"

He replied:-

"Well, we may get better equipment."
(p. 1385).

225.

It is true that Lt. Col. Pienaar had in mind less drastic and not more drastic weapons. But the tragedy of Sharpeville cannot be so lightly dismissed. The truth is that the police at Sharpeville disregarded both the letter and the spirit of their own Standing Orders and disobeyed the law of the land:

The officers made no attempt to persuade the crowd by non-violent means to disperse.

The officers failed to order the crowd to disperse.

The officers failed to warn the crowd that if it did not disperse force would be used.

The officers made no attempt to use any form of force less drastic than firearms.

The officers failed to supervise and control the men under their command.

The officers took no steps to ensure that if shooting started it would be limited and controlled and could be stopped.

The constables started shooting without receiving an order to do so.

Many/...

193.

Many of the constables shot to kill and not merely to wound. They did kill 69 people, including 8 women and 10 children (Exhibit XXX).

The shooting was indiscriminate and continued long after the crowd had turned and fled. The 180 wounded included 31 women and 19 children (Exhibit XXX).

There was no necessity for the police to open fire on the crowd, and therefore no justification for the conduct of the police.

226.

In short, the evidence shows that the lesson of Sharpeville is not that the police should be given "better equipment". A recurrence of Sharpeville will not be prevented by supplying the police with a better type of tear gas or by equipping their Saracens with a more effectual kind of loudspeaker. It is beyond the scope of this argument to examine in any detail the deep-seated racial fears and tensions which erupted in so violent a form at Sharpeville. The evidence does suggest, however, that more tragedies of this kind may well occur unless there is a radical change for the better in the attitude of many white members of the Force towards the African population of this country.

227./...

227.

Among those killed at Sharpeville were many breadwinners; and many of those who were wounded have been seriously disabled. It should not be left to private charity to try to supply the needs of the survivors and the dependants of the dead; nor should these people be left to bring a multiplicity of actions for damages in the Civil Courts. What is called for, it is submitted, is a recommendation by the Commissioner that the Government should pay adequate compensation to all these people. Such a recommendation, and its prompt and ready acceptance by the Government, would be a practical first step towards undoing some part of the harm which was done at Sharpeville on 21st March, 1960.

R. S. Welsh Q.C.

S. Kentridge.

C. Flewman.

Counsel

M. Parkington.

Solicitor

APPENDIX I.

LAW OF THE CONSTITUTION - A.V. DICEY
EIGHTH EDITION (1923) NOTE VI, pp. 512 -
516.

DUTY OF SOLDIERS CALLED UPON TO DISPERSE AN
UNLAWFUL ASSEMBLY

On 7th September 1893 Captain Barker and a small number of soldiers were placed in the Ackton Colliery, in order to defend it from the attack of a mob. A body of rioters armed with sticks and cudgels entered the colliery yard, and with threats demanded the withdrawal of the soldiers. The mob gradually increased, and broke the windows of the building in which the troops were stationed and threw stones at them. Attempts were made to burn the building and timber was actually set on fire. The soldiers retreated, but were at last surrounded by a mob of 2,000 persons. The crowd was called upon to disperse, and the Riot Act read. More stones were hurled at the troops, and it was necessary to protect the colliery. At last, before an hour from the reading of the Riot Act, and on the crowd refusing to disperse, Captain Barker gave orders to fire. The mob dispersed, but one or two bystanders were killed who were not taking an active part in the riot. Commissioners, including Lord Justice Bowen, afterwards Lord Bowen, were appointed to report on the conduct of the troops. The following passage from the report is an almost judicial statement of the law as to the duty of soldiers when called upon to disperse a mob :-

"We pass next to the consideration of the all-important question whether the conduct of the troops in firing on the crowd was justifiable; and it becomes essential, for the sake of

/clearness,

clearness, to state succinctly what the law is which bears upon the subject. By the law of this country every one is bound to aid in the suppression of riotous assemblages. The degree of force, however, which may lawfully be used in their suppression depends on the nature of each riot, for the force used must always be moderated and proportioned to the circumstances of the case and to the end to be attained.

"The taking of life can only be justified by the necessity for protecting persons or property against various forms of violent crime, or by the necessity of dispersing a riotous crowd which is dangerous unless dispersed, or in the case of persons whose conduct has become felonious through disobedience to the provisions of the Riot Act, and who resist the attempt to disperse or apprehend them. The riotous crowd at the Ackton Hall Colliery was one whose danger consisted in its manifest design violently to set fire and do serious damage to the colliery property, and in pursuit of that object to assault those upon the colliery premises. It was a crowd accordingly which threatened serious outrage, amounting to felony, to property and persons, and it became the duty of all peaceable subjects to assist in preventing this. The necessary prevention of such outrage on person and property justifies the guardians of the

/peace in

peace in the employment against a riotous crowd of even deadly weapons.

"Officers and soldiers are under no special privileges and subject to no special responsibilities as regards this principle of the law. A soldier for the purpose of establishing civil order is only a citizen armed in a particular manner. He cannot because he is a soldier excuse himself if without necessity he takes human life. The duty of magistrates and peace officers to summon or to abstain from summoning the assistance of the military depends in like manner on the necessities of the case. A soldier can only act by using his arms. The weapons he carries are deadly. They cannot be employed at all without danger to life and limb, and in these days of improved rifles and perfected ammunition, without some risk of injuring distant and possibly innocent bystanders. To call for assistance against rioters from those who can only interpose under such grave conditions ought, of course, to be the last expedient of the civil authorities. But when the call for help is made, and a necessity for assistance from the military has arisen, to refuse such assistance is in law a misdemeanour.

"The whole action of the military when once called in ought, from first to last, to be based on the principle of doing, and doing without fear, that which is absolutely

/necessary to

necessary to prevent serious crime, and of exercising all care and skill with regard to what is done. No set of rules exists which governs every instance or defines beforehand every contingency that may arise. One salutary practice is that a magistrate should accompany the troops. The presence of a magistrate on such occasions, although not a legal obligation, is a matter of the highest importance. The military come, it may be, from a distance. They know nothing, probably, of the locality, or of the special circumstances. They find themselves introduced suddenly on a field of action, and they need the counsel of the local justice, who is presumably familiar with the details of the case. But, although the magistrate's presence is of the highest value and moment, his absence does not alter the duty of the soldier, nor ought it to paralyse his conduct, but only to render him doubly careful as to the proper steps to be taken. No officer is justified by English law in standing by and allowing felonious outrage to be committed merely because of a magistrate's absence.

"The question whether, on any occasion, the moment has come for firing upon a mob of rioters, depends, as we have said, on the necessities of the case. Such firing, to be lawful, must, in the case of a riot like the present, be necessary to stop or prevent such serious and violent crime as we have alluded to;

/and it

and it must be conducted without recklessness or negligence. When the need is clear, the soldier's duty is to fire with all reasonable caution, so as to produce no further injury than what is absolutely wanted for the purpose of protecting person and property. An order from the magistrate who is present is required by military regulations, and wisdom and discretion are entirely in favour of the observance of such a practice. But the order of the magistrate has at law no legal effect. Its presence does not justify the firing if the magistrate is wrong. Its absence does not excuse the officer for declining to fire when the necessity exists.

"With the above doctrines of English law the Riot Act does not interfere. Its effect is only to make the failure of a crowd to disperse for a whole hour after the proclamation has been read a felony; and on this ground to afford a statutory justification for dispersing a felonious assemblage, even at the risk of taking life. In the case of the Ackton Hall Colliery, an hour had not elapsed after what is popularly called the reading of the Riot Act, before the military fired. No justification for their firing can therefore be rested on the provisions of the Riot Act itself, the further consideration of which may indeed be here dismissed from the case. But the fact that an hour had not expired since its reading did not incapacitate

/the troops

the troops from acting when outrage had to be prevented. All their common law duty as citizens and soldiers remained in full force. The justification of Captain Barker and his men must stand or fall entirely by the common law. Was what they did necessary, and no more than was necessary, to put a stop to or prevent felonious crime? In doing it, did they exercise all ordinary skill and caution, so as to do no more harm than could be reasonably avoided?

"If these two conditions are made out, the fact that innocent people have suffered does not involve the troops in legal responsibility. A guilty ringleader who under such conditions is shot dead, dies by justifiable homicide. An innocent person killed under such conditions, where no negligence has occurred, dies by an accidental death. The legal reason is not that the innocent person has to thank himself for what has happened, for it is conceivable (though not often likely) that he may have been unconscious of any danger and innocent of all imprudence. The reason is that the soldier who fired has done nothing except what was his strict legal duty.

"In measuring with the aid of subsequent evidence the exact necessities of the case as they existed at the time at Ackton Hall Colliery, we have formed a clear view that the troops were in a position of great embarrassment. The with-

/drawal of

drawal of half their original force to Nostell Colliery had reduced them to so small a number as to render it difficult for them to defend the colliery premises effectively at night-time. The crowd for some hours had been familiarised with their presence, and had grown defiant. All efforts at conciliation had failed. Darkness had meanwhile supervened, and it was difficult for Captain Barker to estimate the exact number of his assailants, or to what extent he was being surrounded and outflanked. Six or seven appeals had been made by the magistrate to the crowd. The Riot Act had been read without result. A charge had been made without avail. Much valuable colliery property was already blazing, and the troops were with difficulty keeping at bay a mob armed with sticks and bludgeons, which was refusing to disperse, pressing where it could into the colliery premises, stoning the fire-engine on its arrival, and keeping up volleys of missiles. To prevent the colliery from being overrun and themselves surrounded, it was essential for them to remain as close as possible to the Green Lane entrance. Otherwise, the rioters would, under cover of the darkness, have been able to enter in force. To withdraw from their position was, as we have already intimated, to abandon the colliery offices in the rear to arson and violence. To hold the position was not possible, except at the risk of the men being seriously hurt and their force crippled. Assaulted by

/missiles on

missiles on all sides, we think that, in the events which had happened, Captain Barker and his troops had no alternative left but to fire, and it seems to us that Mr. Hartley was bound to require them to do so.

"It cannot be expected that this view should be adopted by many of the crowd in Green Lane who were taking no active part in the riotous proceedings. Such persons had not, at the time, the means of judging of the danger in which the troops and the colliery stood. But no sympathy felt by us for the injured bystanders, no sense which we entertain of regret that, owing to the smallness of the military force at Featherstone and the prolonged absence of a magistrate, matters had drifted to such a pass, can blind us to the fact that, as things stood at the supreme moment when the soldiers fired, their action was necessary. We feel it right to express our sense of the steadiness and discipline of the soldiers in the circumstances. We can find no ground for any suggestion that the firing, if it was in fact necessary, was conducted with other than reasonable skill and care. The darkness rendered it impossible to take more precaution than had been already employed to discriminate between the lawless and the peaceable, and it is to be observed that even the first shots fired produced little or no effect upon the crowd in inducing them to withdraw. If our conclusions on these points be, as we believe them to be, correct, it follows that the

/action of

action of the troops was justified in law."

Report of the committee appointed to inquire into the circumstances connected with the disturbances at Featherstone on the 7th September 1893 (c. - 7234).

APPENDIX II
HOUSE OF COMMONS
THE PARLIAMENTARY DEBATES.

Official Report

Seventh Volume of Cession 1920.

8th July 1920. Columns 1726/1731

MR. CHURCHILL :

.....I agree absolutely with what my right hon. Friend has said and the opinions he has quoted of the Adjutant-General in India, of the distasteful, painful, embarrassing, torturing situation, mental and moral, in which the British officer in command of troops is placed when he is called upon to decide whether or not he opens fire, not upon the enemies of his country, but on those who are his countrymen, or who are citizens of our common Empire. No words can be employed which would exaggerate those difficulties. But there are certain broad lines by which, I think, an officer in such cases should be guided. First of all, I think he may ask himself. Is the crowd attacking anything or anybody? Surely that is the first question. Are they trying to force their way forward to the attack of some building, or some cordon of troops or police, or are they attempting to attack some band of persons or some individual who has excited their hostility? Is the crowd attacking? That is the first question which would naturally arise. The second question is this : Is the crowd armed? That is surely another great simple fundamental question. By armed I mean armed with lethal weapons.

.....

/Armed men

Armed men are in a category absolutely different from unarmed men. An unarmed crowd stands in a totally different position from an armed crowd. At Amritsar the crowd was neither armed nor attacking. (Interruption). I carefully said that when I used the word "armed" I meant armed with lethal weapons, or with firearms. There is no dispute between us on that point. "I was confronted", says General Dyer, "by a revolutionary army". What is the chief characteristic of an army? Surely it is that it is armed. This crowd was unarmed. These are simple tests which it is not too much to expect officers in these difficult situations to apply.

.....

But there is another test which is not quite so simple, but which nevertheless has often served as a good guide. I mean the doctrine that no more force should be used than is necessary to secure compliance with the law. There is also a fourth consideration by which an officer should be guided. He should confine himself to a limited and definite objective, that is to say to preventing a crowd doing something which they ought not to do, or to compelling them to do something which they ought to do. All these are good guides for officers placed in the difficult and painful situation in which General Dyer stood.

My right hon. Friend (Sir E. Carson) will say it is easy enough to talk like this, and to lay down these principles here in safe and comfortable England, in the calm atmosphere of the House of Commons or in your armchairs in Downing Street or Whitehall, but it is quite a different business on the spot, in a great emergency, confronted with a howling mob, with a great city or a whole province quivering all around with excitement. I quite agree.

/Still these

Still these are good guides and sound, simple tests, and I believe it is not too much to ask of our officers to observe and to consider them. After all, they are accustomed to accomplish more difficult tasks than that. Over and over again we have seen British officers and soldiers storm entrenchments under the heaviest fire, with half their number shot down before they entered the position of the enemy, the certainty of a long, bloody day before them, a tremendous bombardment crashing all around - we have seen them in these circumstances taking out their maps and watches, and adjusting their calculations with the most minute detail, and we have seen them show, not merely mercy, but kindness to prisoners, observing restraint in the treatment of them, punishing those who deserved to be punished by the hard laws of war, and sparing those who might claim to be admitted to the clemency of the conqueror. We have seen them exerting themselves to show pity and to help, even at their own peril, the wounded. They have done it thousands of times, and in requiring them, in moments of crisis, dealing with civil riots, when the danger is incomparably less, to consider these broad, simple guides, really I do not think we are taxing them beyond their proved strength.

.....

I say I do not think it is too much to ask a British officer in this painful, agonising position, to pause and consider these broad, simple guides - I do not even call them rules - before he decides upon his course of conduct. Under circumstances, in my opinion, infinitely more trying, they have shown themselves capable of arriving at right decisions. If we offer these broad guides to our

/officers in

officers in these anxious and dangerous times, if there are guides of a positive character, there is surely one guide which we can offer them of a negative character, there is surely one general prohibition which we can make. I mean a prohibition against what is called "frightfulness".

What I mean by frightfulness is the inflicting of great slaughter or massacre upon a particular crowd of people, with the intention of terrorising not merely the rest of the crowd, but the whole district or the whole country.

.....

.....as we contemplate the great physical forces and the power at the disposal of the British Government in their relations with the native population of India, we ought to remember the words of Macaulay -

"and then was seen what we believe to be the most frightful of all spectacles, the strength of civilisation without its mercy."

Our reign in India or anywhere else has never stood on the basis of physical force alone, and it would be fatal to the British Empire if we were to try to base ourselves only upon it.

APPENDIX III

Regulation 3 of the Emergency Regulations

DISPERSAL OF GATHERINGS OR PROCESSIONS

3. Whenever as the result of a gathering, procession or the conduct of certain persons, whether lawful or prohibited a magistrate or commissioned officer is of the opinion that the public safety or the maintenance of public order is or may be thereby endangered, or that such gathering, procession or conduct could result in life or property being exposed to danger, such magistrate or commissioned officer or a police officer of a rank not lower than the rank of sergeant duly authorised thereto by a magistrate or commissioned officer, may order the persons so gathered or conducting themselves or forming the procession to disperse or to discontinue such conduct and to this end he shall endeavour to draw the attention of such persons in a manner which appears to him best suited to the circumstances and he 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. The command shall be uttered thrice and if the persons in question fail to disperse or to discontinue the conduct within the time specified such magistrate, commissioned officer or authorized police officer may order the gathering or procession to be dispersed or the conduct to be terminated by the use of force: Provided that the degree of force so used shall as far as possible be

/limited to

limited to the achievement of the objects for which it is applied; and provided further that 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 police officer such a course is essential in the public interest or for the protection of life or property.

APPENDIX IV

STANDING ORDERS FOR THE SOUTH AFRICAN POLICE

USE OF ARMS

741. The Force being, from the nature of the service, much detached and acting necessarily in small parties, its members are entrusted with arms for their own preservation and that of their barracks and prisoners; but 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.

742. An emergency gives no time for study and little for thought and yet a policeman is expected by the public to act instantly and without fear; it will, therefore, assist policemen to know under what circumstances they are justified in using their revolvers, rifles, bayonets or batons in their own discretion and without orders from a superior officer :-

- (a) If their stations or barracks are attacked;
- (b) If an attempt is made to deprive them of their arms and their prisoners;
- (c) To defend another person, or persons, unlawfully attacked, from death or serious injury;

/(d)

- (d) To defend themselves from death or serious injury;
- (e) To effect the arrest or prevent the escape (when other means are insufficient) of a prisoner convicted of serious crime, or of a person who has committed or is reasonably suspected of having committed an offence included in the first schedule to Act No. 56 of 1955. In this connection special attention is drawn to the provisions of Section 37(2) of the Act.

Although the escape or attempt to escape of a person in lawful custody on a charge of having committed an offence is punishable by imprisonment exceeding 6 months without the option of a fine (56/1955/39) and is therefore included in the first schedule to Act No. 56 of 1955, the shooting act, for fleeing or resisting, a person who has committed or is accused of having committed only a petty offence, is most strictly forbidden, but when such person dangerously assails the police, or when an attempt is made to rescue by violence a prisoner of any grade (whether convicted or not) the situation instantly changes and a policeman must meet force with force, and use his revolver or baton as a last means of protecting himself and upholding the law.

743. Whenever the circumstances can be met by firing

/merely to

merely to wound or maim great care will be exercised not to kill, and a policeman must familiarize himself with the handling of his arms, so that he may have perfect control over them in action. If, however, a policeman believes on reasonable grounds that he is in imminent danger of death, he is justified in firing to kill.

744. (1) A policeman should be sufficiently armed when performing duty in dangerous localities and should not hesitate to use his arms when necessary for self-preservation.

(2) In areas where, with the approval of the D.C. it is deemed necessary or expedient to send a non-European policeman out armed with a revolver the station commander must assure himself that the man understands the handling of firearms, that he is fully aware of the circumstances under which firearms may be used by him, and that he can be relied upon to exercise a sound discretion before resorting to such use.

745. (1) Special provision is made in Act No. 27 of 1914 for the suppression of riotous assemblies and every European should be conversant with the provisions of Sections 4 and 5 thereof though it should be noted (Section 6) that nothing in the Act affects or derogates from any right conferred or duty imposed upon 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.

/(2)

- (2) Whenever the necessity for firing unfortunately arises, it ought to be at the leaders of the riot, or at the assailants of the Force, and, if possible, with effect.
- (3) Firing over the heads of a mob is forbidden, as a harmless fire, instead of intimidating, will give confidence to the daring and the guilty, while comparatively innocent persons in the rear may probably be injured. Care must always be taken not to fire upon persons separated from or not assisting the rioters or assailants.
- (4) Whenever the police, acting under orders, shall receive directions to fire, they must on no account do so except by regular word of command from their senior officer or other senior present.
- (5) It is of the greatest importance that the officer or other senior present should give all his attention to the supervision of the man acting under his orders and, therefore, he should not, except in cases of extreme necessity, fire himself but should give deliberate word of command to one or more of his men to fire a specified number of rounds.
- (6) No greater number of men are to be detailed to fire than is considered absolutely necessary.
- (7) Should the officer or other policeman in charge alone be armed and the necessity for firing

/arises he

arises he should hand over his weapon to a steady man of his party. In all cases the officer or other person 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.

- (8) No shot must be fired after the necessity for firing has ceased to exist.

746. It should be constantly borne in mind that, however well justified a policeman may consider himself in firing, the act, with all its accompanying circumstances, whether the result be attended by loss of life or otherwise, must become the subject of investigation. Those who may be placed in such a situation must, therefore, 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.

747. Although the police are to observe the utmost caution and forbearance in using their arms, yet should any attempt be made to force an entrance into their station or barracks, or to deprive them of their arms, they ought in those purely defensive situations to act with the utmost firmness and determination and to resist by every means in their power the loss of their station, their barracks, their prisoners, or their arms.

748.

748. This important question cannot be covered by any set of fixed rules, but must be left in a great measure to individual discretion and common sense based upon the main principles herein enunciated and a final warning is given - when in doubt, do not fire.

APPENDIX V

THE QUEENS REGULATIONS FOR THE ARMY.

1164. "When troops are called out in aid of the civil power at home, the general or other officer to whom the application is made for assistance will immediately telegraph the fact to the War Office and to the G.O.C. in Chief. The commander of the party will report daily in writing to the War Office, as well as to the officer commanding the station from which he has been detached, the progress of the service on which he is employed.

1165 (a) Except in case of great and sudden emergency (as explained in para 1182) an officer will not order out or take out troops for the purpose of aiding in the suppression of riot, the maintenance of the public peace, or the execution of the law, or of assisting the civil power in case of an expected riot, without the requisition in writing, or by telegram, of the civil authority.

(b) The civil authority by whom the requisition should be made is :-

In the Metropolitan Police District, the Commissioner or an Assistant Commissioner of police.

In English counties a county magistrate. The magistrate's requisition will in ordinary circumstances be forwarded by the chief constable, but in an emergency, a requisition may be accepted if made by the magistrate direct or by

/the chief

the chief constable.

In English cities and boroughs, the mayor, or in case of emergency, any magistrate having jurisdiction in the city or borough.

In Scotland, the sheriff having jurisdiction in the place where the services of the troops are required. (N.B. In Scotland, the sheriff is a permanent stipendiary judicial officer. He corresponds very closely with a Recorder of the English system. J.C.)

In Northern Ireland, the inspector general, or deputy inspector general of the Royal Ulster Constabulary, or a sheriff or resident magistrate, or an officer of the Royal Ulster Constabulary.

- (c) In cases when a disturbance of the peace takes place in or near a station where troops are quartered, the military authority will, subject to the general obligations imposed by the common law, exercise his discretion as to the necessity of complying with the requisition of the civil authorities.
- (d) When troops are requisitioned from a distance, the military authority will make all arrangements for their despatch, but will not send them until he has received authority from the War Office, or, in the case of troops located in Northern Ireland, from the G.O.C. Northern Ireland District. On arrival at the place to which troops were requisitioned, the O.C. the troops will, subject to the obligations of the common law as above stated, exercise his discretion as to the necessity

/for intervention.

for intervention. When troops are dispatched, the civil officer who requisitioned them will be informed of their numbers and when they may be expected to reach their destination.

- (e) The responsibility for deciding as to the strength and composition of the force detailed rests with the military authorities. If the civil officer indicates what force is required, this will serve only as a guide to aid in estimating the force necessary. Whenever possible, sufficient officers will be included in the force to ensure that an officer is in command of each sub-unit or detachment.

1166. The Chief Constable of a county, or riding, or the watch committee in the case of a borough or city, etc., is the civil authority to whom the O.C. the troops will look to make such arrangements for accommodation, food, and other immediate requirements, and for meeting the troops at the station, or conducting them to the place where their assistance is required. In Northern Ireland the Inspector General or Deputy Inspector General of the Royal Ulster Constabulary, or the city commissioner of the police, Belfast, or an officer of the Royal Ulster Constabulary, is the civil authority for these purposes.

If the troops are likely to remain for more than a short time, the O.C. should, after arrival, review the arrangements for their accommodation, food, etc., and consider whether any economy could be

/effected by

effected by making alternative arrangements for accommodation and by using the ordinary army sources of supply for food, stores, etc.

1167. The chief constable will also arrange that a magistrate shall meet the troops, either at a station, or at some place on the way to the scene of the riot or apprehended riot. In the event of the troops being divided so as to act in different places, one magistrate will accompany each division of the troops; but in any case where there are more magistrates than one present, one only will act with the commander of the troops detailed for this duty.

1168. The commander will consult with the magistrate and with the senior police officer present, and decide as to the disposition of the troops. He will move his force to the place to which he may be directed by the magistrate in regular military order, with the usual precautions. He will not permit the troops to be scattered, detached or posted in a situation where they would not be able to act in their own defence. The magistrate will accompany the troops and remain as near their commander as he can.

1169 (a) Should the disturbance amount to a riot, it will be the duty of the magistrate, if both he and the troops are present, to read or cause to be read the proclamation under the Riot Act, if circumstances permit, and it has not already been done, and to call upon everybody present to assist in the suppression of the riot.

/(b)

(b) Before the proclamation is read, the "alarm" should, where possible, be sounded on a bugle, so as to call attention to what is about to be done.

1170. The reading of the proclamation under the Riot Act is important, both as conveying a distinct warning to the crowd, and as involving the legal consequence that those who do not disperse within one hour are guilty of felony; but it must be understood that, to justify damage to persons or property, it is not necessary to wait for the proclamation to be read, much less to wait till one hour has expired after it has been read.

1171. If the magistrate concludes that the police are unable to cope with the riot, and that the situation demands the active interference of the troops, then, whether the proclamation has been read or not, it is his duty at once to request the commander of the troops to take action. This request should be made distinctly, and if possible in writing, although it will be sufficient if given by word of mouth.

1172. When thus requested, it will be the duty of the commander to take such military steps as in his opinion, the situation demands. In doing so, he will have absolute discretion regarding the action to be taken, the arms, including firearms, which the troops shall use, and the orders which he shall give, including the order to fire. But the magistrate and commander are each responsible, respectively, for anything done or ordered by them

/that is

that is not justified by the circumstances of the case.

1173. If the commander thinks it unnecessary to take immediate action, it is not obligatory on him to do so, nor will he continue any action longer than he thinks absolutely necessary.
1174. All orders to the troops will be given by their commander. They will on no account fire except by his word of command. If it becomes necessary to order them to fire, he will exercise a humane discretion in deciding both the number of rounds and the point of aim.
1175. A commander of troops on every occasion when employed in the suppression of riots, or the enforcement of the law, will take the most effectual means, in conjunction with the magistrates, for explaining beforehand to the crowd that, in the event of troops being ordered to fire, their fire will be effective.
1176. When the detachment does not exceed 20 files, it will be told off into four sections. If it exceeds 20 files it will be told off into more sections than four.
1177. If the commander is of opinion that a slight effort will attain the object, he will give the command to one or more selected soldiers to fire; the fire of each of the other sections, if required, will be given only on the regular word of command of the commander.

/1178.

1178. If it is necessary for more sections than one to fire at a time, the commander will clearly indicate to the troops what subordinate commander is to order any of the sections to fire. An order to any one or more selected soldiers or to a particular section to fire will be given only by the commander indicated.
1179. If it becomes necessary to fire, officers and soldiers have a serious duty which they must perform with coolness and steadiness, and in such manner as to be able to cease fire the instant it is no longer necessary.
1180. Care will be taken to fire only on those persons who can be seen to be implicated in the disturbance. To fire over the heads of a crowd has the effect of favouring the most daring and guilty, and of sacrificing the less daring, and even the innocent.
1181. The magistrate and the troops will both remain at the place of disturbance until it is decided by the magistrate and the commander that they can withdraw with safety.
1182. The statements given above refer to the normal case in which the military are present in consequence of an application made by the civil authorities, and the occasions when a commander would be justified in taking action without having received such an application are very rare. It is, however, possible for extraordinary cases to arise of immediate and pressing danger - when violent crimes

/ are being

are being or are likely to be committed - which in the opinion of the commander, demand his immediate interference. In these emergencies, he should take such action as he thinks necessary, although he has not received any direction from a magistrate, whether the absence of such direction is due to a magistrate not being present or to any other cause.

APPENDIX VI

EVIDENCE OF PERSONS IN THE CROWD.

NAME, AGE AND OCCUPATION:	POSITION AND WHETHER WOUNDED:	REASON WHY PRESENT:	NATURE OF CROWD:
<p>1. <u>ADAM SAKOANE</u> Employed by Gersacs Engineering. Heard no one working. (p. 1660-1668)</p>	<p>Stood on South Western corner at kerb (p. 1665) Wounded in buttock while running to South Western corner of Zwane Street intersection. (p.1666/7).</p>	<p>Went to Police Station because he heard that an address was to be made at 2 o'clock. (p.1660-1670). Arrived at approximately 11 o'clock. (2½ hours).</p>	<p>Crowd did not wish to fight (p.1664). Crowd speaking and singing hymns, not shouting. (p. 1674, 1677). There were no sticks. (p. 1674, 1677). The crowd were just standing against the fence (p. 1675). Crowd not annoyed at the arrests. (p. 1676). Witness ran and crowd ran (ps. 1665, 1672/3) when the shooting started.</p>
<p>2. <u>ABRAHAM KAOLE</u> Employed by SAFIM. (p.1678). Married man with children. (p. 1693). Prevented from going to work. (p. 1679). A member of Makgathla Tribe.</p>	<p>At Police Station twice (p. 1684). Stood on side walk in front of Western fence of Police Station - a little South of main gate. (ps. 1679, 1682). Wounded in shoulder slightly from behind as turning to run. (p.1692).</p>	<p>Went to the Police Station because he saw people moving in that direction. (p. 1679, 1682). Heard that there was to be an address about passes. (p. 1685). At Police Station for approximately 2½ hours (p. 1685).</p>	<p>The crowd was not thick in the street. (p.1688). Saw no weapons (p.1681). Did not go to attack Police (p. 1681). There was noise from talking, not from shouting (p. 1689). The crowd was a mixed one (p. 1693). The crowd did not become excited at arrests. (p.1695). The crowd ran when shooting started (p. 1680).</p>
<p>3. <u>BENJAMIN MAROO</u> Approx. age 20 years. In employment (p. 1696). Prevented from going to work. (p. 1699).</p>	<p>At Police Station twice (p. 1701.) First occasion 11.30 - then in Zwane Street (p. 1702) for 1½ hours. Second occasion - North Eastern corner of Clinic fence, (p. 1709). Wounded after he had run houses are. (Witness estimate 60-70 yds., probably 100 yds. (p.1699).</p>	<p>Went to Police Station because he had heard that there was going to be an address. (p. 1703,1707,1709).</p>	<p>Just before the shooting the crowd was calm (p. 1713). The crowd was not thickly packed where he stood (p. 1709/10). The crowd was noisy (p. 1709). The people were not affected by the arrests. (p. 1714). Started to run on first firing (p. 1710).</p>

NAME, AGE AND OCCUPATION:	POSITION AND WHETHER WOUNDED:	REASON WHY PRESENT:	NATURE OF CROWD:
<p>4. <u>MOSES SHABANGU</u> Approx. age 20 years. Employed. Heard that no one was going to work. (p.1715). Afraid to go to work (p. 1720).</p>	<p>On fence on Northern-side about 10 yards from corner post (p. 1716). Wounded after had run North as far as Cafe and on the East of it. (p. 1719).</p>	<p>People passing his house said (in discussion amongst themselves) that people were going to the Police Station. Went because he felt like going (p. 1721). Time uncertain - but present from arrival of Saracens (p. 1722). Had impression crowd were waiting for an address by Commandant. (p. 1725).</p>	<p>Crowd on North side not tightly packed (p. 1716) and majority women (p. 1716). Bantu were not cross (p. 1726). There was a noise but it was singing (p. 1726). Nothing to indicate that they were cross with the Police. (p. 1727). Ran when shooting started (p. 1719).</p>
<p>5. <u>MATTHEWS MASHIYA</u> Approx. age 30 years. Employed by Union Liquid Air (p. 1736). On sick leave.</p>	<p>Lefthand side of big gate about 3 paces from wire (p. 1728). Wounded right buttock from the rear (p. 1732). Had crossed the street towards Clinic. (p. 1741).</p>	<p>On sick leave - brother told him people had to go to Police Station. Went at about midday (p. 1728, 1738). Did not hear that high ranking Officer was going to address people (p. 1741). Did not know what gathering was about (p. 1741).</p>	<p>People raised arms and shouted "Afrika" (at arrest immediately before shooting) (p.1731) but showed no displeasure (p. 1734). Before shooting the crowd was not armed (p. 1732). Passed comfortably through crowd to position taken up (p. 1734). Did not see anyone trying to get into gate (p.1738). No pushing from rear (p.1739). Could see not reason for Police to be afraid of crowd. (p. 1740.) When firing started - ran away. (p. 1731, 1742).</p>
<p>6. <u>PETER MOLIFE</u> Wine Steward - Riveira Hotel. Approx. age 26 years.</p>	<p>Went to Police Station first at 9.30 a.m. (p. 1745) - Zwane Street. Went to eat at approx. 12 o'clock. Returned after 15 minutes and stood near the big gate. Not wounded - arrested just before shooting (p. 1749).</p>	<p>Wanted to take part in campaign (p. 1745). Tsolo told crowd that address would be at 2 o'clock. (p. 1746, 1764, 1765). In Zwane Street at that time (p. 1746) of this announcement.</p>	<p>Crowd was singing (p. 1748) and happy. While witness was at small gate people were happy. (p. 1763). When he was arrested there was no change in mood of crowd. Some shouted "submit" (p. 1772). Could hear order "Shoot" (p.1782). Did not see crowd strike Pienaar's car (p.1779) but gave way and there was no unfriendliness. Did not hear insults at Police or "Cato Manor". (p. 1779).</p>

NAME, AGE AND OCCUPATION:	POSITION AND WHETHER WOUNDED:	REASON WHY PRESENT:	NATURE OF CROWD:
7. <u>BROWN THABE</u> Employed - Salesman. (p. 1808).	Southernside of Police Station in Zwane Street near South Western corner of Police Station fence. (p. 1787/8). Wounded. Cheek grazed by bullet from behind. On Southern pavement of Zwane Street (p. 1790) at time.	Was on his way to work when found a crowd at Police Station (p. 1795). Stayed to find out what was happening. (p. 1798). Heard that an address was to be made (p. 1787 and 1793).	Crowd singing (p. 1791, 1803). Saw no one with sticks (p. 1806). Crowd turned and ran when firing started. (p. 1789).
8. <u>SIMON IOFAFA</u> Approx. age 30.	At time of shooting on South Western corner of Police Station - two paces from fence. (p. 1844/5). Flesh wound when running West in Zwane Street near corner of Clinic (p. 1847).	Went to Police Station out of curiosity. (p. 1861). Arrived when Aeroplanes flew over and was then on South side (p. 1844). Later went to Cafe and returned to South Western corner (p.1844/5). Heard that there was to be an address about passes (p.1848,1861).	Crowd moved back from fence when asked to do so. (p. 1845). Crowd satisfied and happy. (p. 1851). Just standing and shouting (p. 1852, 1858). Saw no sticks. (p. 1852). Ran away when shooting started. (p. 1846, 1856).
9. <u>PETER LENYATSO</u> Approx. age 25. Employed (p. 1873).	Moving about. Near Western gate at one stage (p. 1862). Near South Western corner when Police formed up. Near North Western corner when shooting started (p. 1862-4). Not wounded.	Went away in course of morning to have something to eat. (p.1863, 1871). Heard that there was to be an address (p. 1863, 1870). Walking in road and on North Western corner when shooting started (p. 1873).	Saw no reason for Police to fire on crowd (p. 2009/10). Ran across field North of Police Station when firing started (p. 1865). Saw no weapons after shooting. (p. 1868).
10. <u>LECHAEL MUSIBI</u> School-teacher.	On road between Police Station and Shops (p. 1877, 1880). Wounded in Left Leg.	Did not intend to join crowd (p. 1880-. Was cycling past Police Station when shooting took place (p. 1876). Had heard that there was to be an address at 2 p.m. (p. 1876, 1878/9).	Did not think that there would be any fighting or shooting as he was passing the Police Station (p. 1886). Mood of the crowd was calm (p. 1898).

NAME, AGE AND
OCCUPATION:

POSITION AND WHETHER
WOUNDED:

REASON WHY PRESENT:

NATURE OF CROWD:

11. SAMUEL MAHLASE
Approx. age 26.

In tarred road on South (p. 1902, 1912).
Went to the Police Station to see what was happening. (p. 1901). Shot near Southern pavement of Zwane Street. (p. 1907). Wounded in leg from behind.

At time of shooting some of crowd singing others quiet. (p. 1913).

12. JOSHUA MOTHJA
Bus-driver. 40 years.
A member of the Zulu Tribe.

Stood near big gate (p. 1918), about two paces from the fence. (p. 1926). Wounded in leg as turning.

Went to the Police Station because of intimidation. (p. 1916 and 1918). Heard that there would be an address (p. 1917) and later heard people saying that the "bigman" had arrived.

Before the shooting the crowd shouted "Afrika" (p. 1926). The crowd did not try to get into the Police Station. (p. 1922). Police had no reason to fear the crowd. (p. 1926). Crowd appeared to be pleased before the shooting (p. 1925). Nothing to indicate that they were annoyed and no sticks. (p. 1925). Crowd ran when shooting started (p. 1931) but witness hesitated because of Police behaviour (p. 1938).

13. BENEDICT GRIFFITHS
Aged 17 years.
Prevented from going to work.

Standing between Police Station and Clinic - six or seven paces from the gate and near to the fence (p. 1941).
Badly wounded.

Went to Police Station to hear what was going to be said (p. 1940). Went to Police Station at approx. 1 o'clock. (p. 1948).

Crowd were singing (p. 1946). Did not have impression crowd were attacking Police (p. 1943). Crowd was moving away before shooting (p. 1942) and ran when shooting started. Did not hear crowd express annoyance with Police. (p. 1949).

14. MISHACK MAKWANAZI
Approx. age 25 years. Employed but on leave. (p. 1972).

Against the fence on Western side near gate (p. 1950/1).
On South of gate midway to corner. (p. 1954).
Not wounded but fell down and lay still until after shooting. (p. 1971).

Went to Police Station because of circular (p. 1973). Waited because he had heard that there would be an address at 2 o'clock. (p. 1951).

Crowd singing but not angry with Police (p. 1954). No annoyance at first - two arrests (p. 1968). Not fighting merely went there to listen to European (p. 1969). When first three shots fired - all people ran away and so did witness.

NAME, AGE AND OCCUPATION:	POSITION AND WHETHER WOUNDED:	REASON WHY PRESENT:	NATURE OF CROWD:
15. <u>STEPHEN LEHOBO</u> Employed by Dry Cleaner - was told not to go to work on the 21st (p. 1975).	Left home at 12.30 - stood between Police Station and Clinic (p. 1974). Ran South. Wounded on Southern side of Zwane Street. (p. 1975). One wound in left buttock.	Went to look for a child (p. 1974). Did not know purpose of gathering (p. 1977).	Crowd not armed (p. 1974). No attack on the Police (p. 1974). Did not see stoning (p. 1974). Crowd was laughing and singing and raising their hands (p. 1980). Too much noise to ask what was happening. (p. 1981).
16. <u>SIMON MAKHOBA</u> Aged 22. Employed by Dry Cleaners - could not go to work because there were no buses. (p. 1982).	Stood near Western fence towards Northern side (p. 1982, 1984). Ran North, wounded some distance away (p. 1984). One wound in left heel.	Saw crowd and joined out of curiosity. (p. 1982).	Did not see stoning. (p. 1983). People were not trying to attack the Police (p. 1984). Crowd did not get annoyed at arrests. (p. 1985). They were "in a happy mood, singing". (p. 1986).
17. <u>GEORGE QTWAYA</u> Employed. Aged 22. Prevented from going to work by people at bus-stop. (p. 1988).	Arrived at 12.30. Stood between Police Station and Clinic (p. 1989). Ran North West, wounded twice, in back and left thigh. (p. 1990). Fell at Library fence. Wounded a third time while lying there. (p. 1991).	Went to Police Station because he saw a crowd. (p. 1994). Remained because he wanted to hear what was to be said about passes. (p. 1989).	Crowd was happy. (p. 1989). Saw no stoning. (p. 1990).
18. <u>GEELBOOI MOFEKENG</u> Aged 21. Employed by Milling Company.	Arrived at 12.15 p.m. or 12.30 p.m. (p.1998). Stood in front of Clinic. Started to run North - wounded at place where he stood (p. 1999). Two wounds in left side. At main gate and inside fence. Tried to run away but fell in vicinity of main gate. (p.2026). Not wounded.	"People were being called" (p. 1997). Heard that an address would be made at 2 p.m.	Saw children throwing stones but not at Police. (p. 1998).
19. <u>MOSES SMITH</u> Employed as Chauffeur.	F.A.C. member and participant in demonstration. Followed Tsolo to Police Station early in the morning (p. 2018). Helped to bring another group about 10 a.m. (p. 2021). Heard about an address to be given at 2 p.m. (p. 2024).	Crowd were singing and laughing, not hostile, not abusing police (p.2023). No reason for police to fire. Saw no stoning. (p.2028). Shouting of "Afrika" at time of arrests. (p. 2045). Saw no sticks (2056) Crowd was not hostile (p.2061). No change in mood at time of arrests. (p. 2066).	Crowd were singing and laughing, not hostile, not abusing police (p.2023). No reason for police to fire. Saw no stoning. (p.2028). Shouting of "Afrika" at time of arrests. (p. 2045). Saw no sticks (2056) Crowd was not hostile (p.2061). No change in mood at time of arrests. (p. 2066).

NAME, AGE AND OCCUPATION:	POSITION AND WHETHER WOUNDED:	REASON WHY PRESENT:	NATURE OF CROWD:
20. <u>WILLIAM MOLATUPE</u> Employed but on leave on 21st March.	At South Eastern corner when shooting took place. At main gate at one time, later in Zwane Street. Not wounded. Was on Northern side after shooting and saw corpse there. (p.2076).	No reason given for presence.	Crowd "in a happy mood". A few people with walking sticks. (p. 2074).
21. <u>ABRAHAM TINANE</u> Aged 35 years. Employed on re-pairing of electrical equipment.	At police station from 8 a.m. (p. 2186). Standing at first near main gate. (p. 2186). Later standing on South side, in sight of main gate. (p. 2182). Ran South-East. Saw Coetzee's detachment firing. (p. 2185).	Saw crowd - had heard of demonstration. (p. 2188). Heard Tsolo say there was to be an address later. (p. 2181).	Crowd was singing (p. 2181/2). Some pushed towards the front. (p. 2183). Heard no shots from crowd. (p. 2185). Crowd unarmed (p. 2186). Saw no stoning. (p.2190). Heard no abuse of the police. (p.2191). Mood of crowd unchanged throughout. (p. 2190/1).
22. <u>SIMON LUKAS MASHELIDE</u> Aged 21 years. Employed as delivery boy.	Arrived early in the morning. Stood near main gate. (p. 2201). Was also inside fence. (p.2205) ran to clinic fence and lay down there. (p. 2207).	Member of P.A.C. Knew of plan to surrender at Police Station (p.2200/1). Stayed "to help keep order". (p.2202). Was told that a high official would come at 2 p.m. (p. 2204).	Heard no shots from crowd. (p. 2208). Heard later about stoning by children but did not see it. (p.2208). No plan to attack Police. (p.2208). Women and children were there out of curiosity. (p.2222). No incitement to attack only singing (p.2232.) "They were all happy". (p. 2238).
23. <u>JOSHUA MALEME</u>	Wounded on the corner of Zwane Street. (p. 2241).	Unknown.	Knows of no reason why Police fired. (p. 2240).
24. <u>KOOS RADEBE</u> Aged 47 years. Unemployed.	Arrived at 8 a.m. Left during morning and came back (p.2248). Stood near Southern gate. (p.2250).	Had been told about the demonstration (p. 2249.) Heard Tsolo say that an address was to be made later. (p. 2249).	The crowd was not hostile to the Police (p. 2248). No offensive words shouted. (p. 2250).

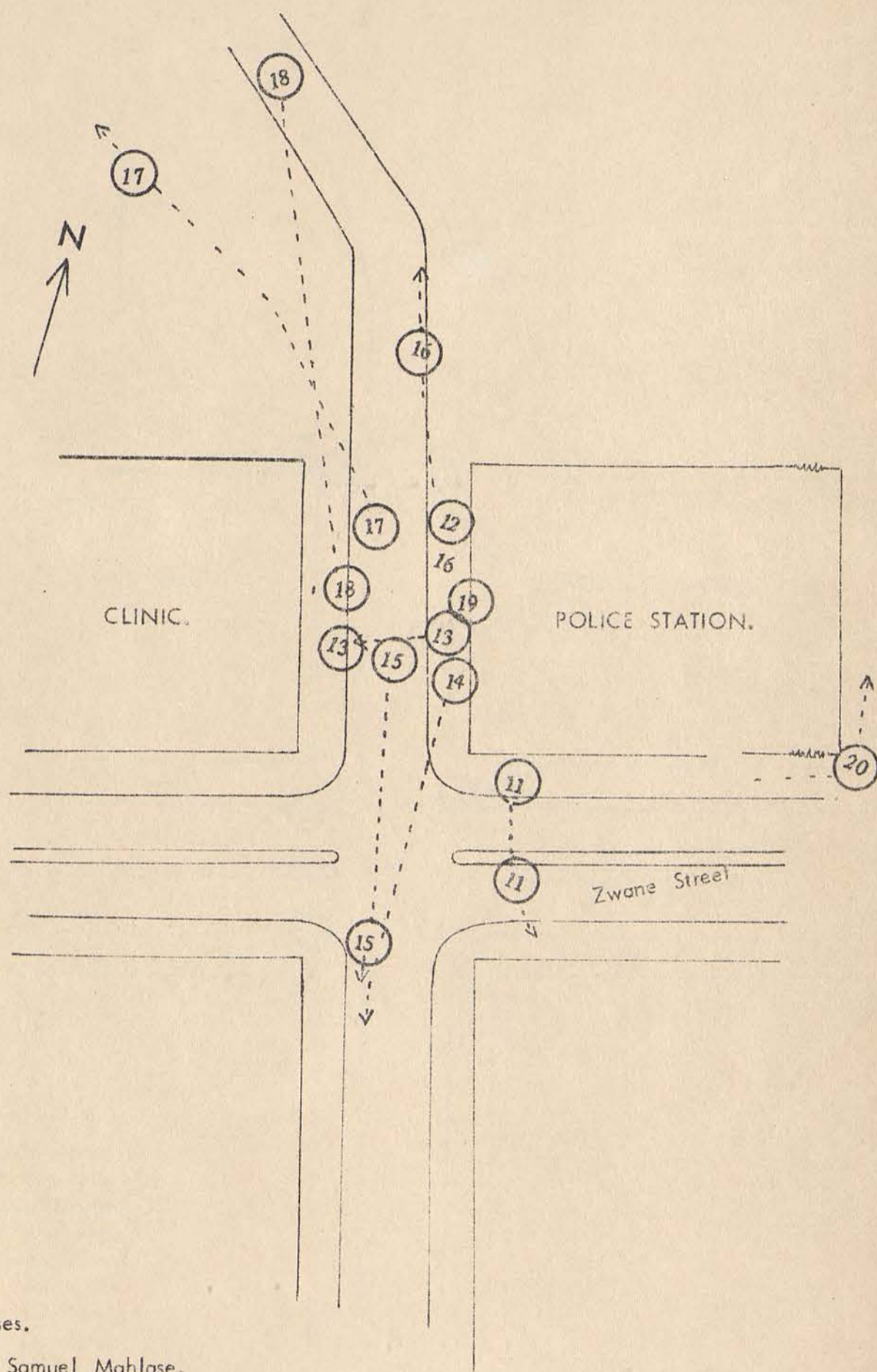
NAME, AGE AND
OCCUPATION:

POSITION AND WHETHER
WOUNDED:

REASON WHY PRESENT:

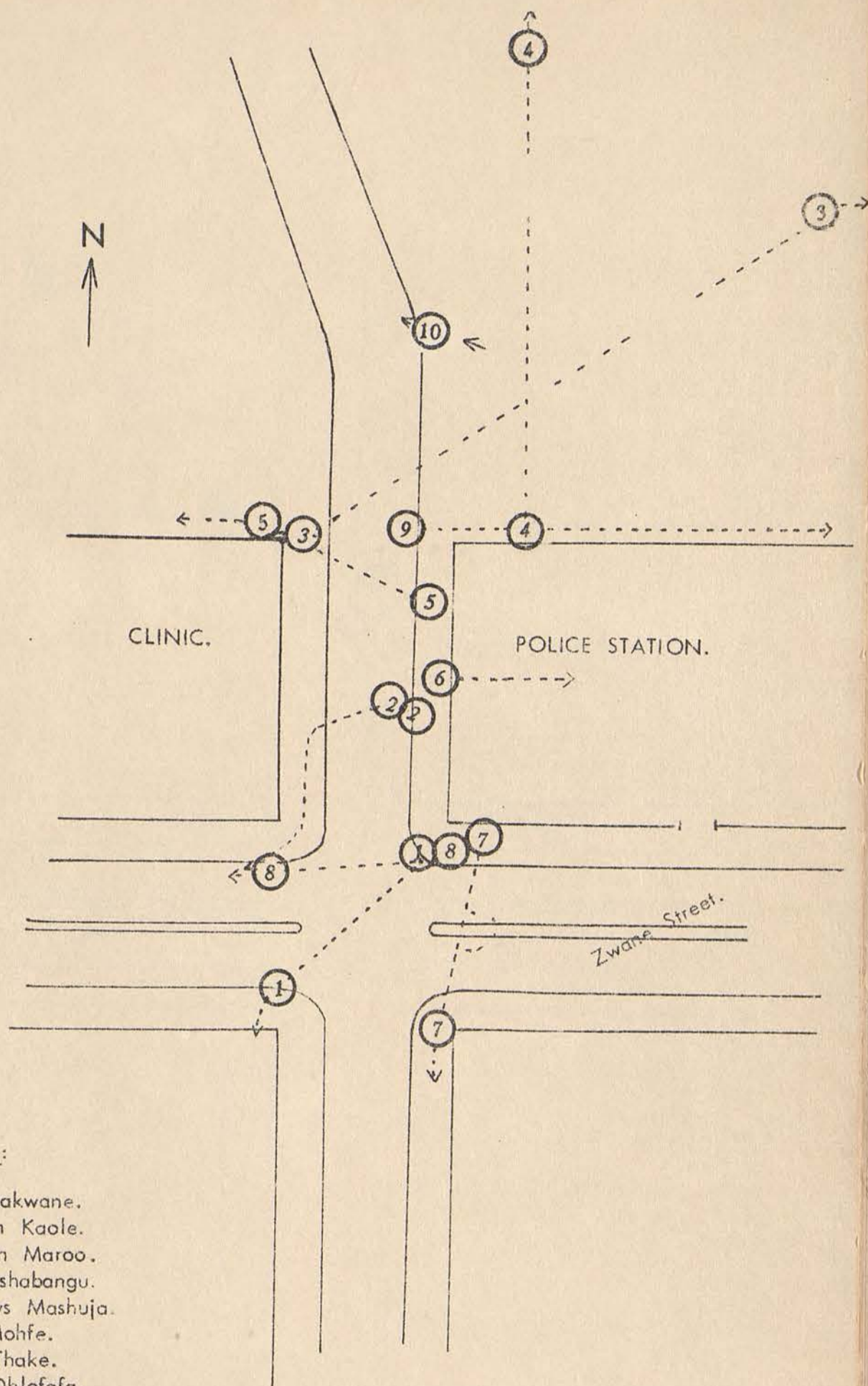
NATURE OF CROWD:

25. DANIEL DEKOB
Approx. age 28
years.
Near to big gate on the Northern side (p. 2260). Wounded - had run to the Western side of the road (i.e. on the Clinic side). (p. 2268).
26. ELLAS LELIA
Approx. age
26 years.
Dress Designer.
Was at the Police Station early then Seeiso Street. Got back to Police Station at about 10 o'clock (p. 2276). Moved about between large and small gates. (p. 2279).
27. SAMUEL MASHABINI
Approx. age 30.
Employed by
African Cables.
Near to big gate (p. 2338) about 2½ yards from fence. Wounded. Crawled towards Clinic (p. 2340) then got up - injured in arm while running away. (p. 2342).
28. JOHN NTESO
Aged 54 years.
Sells Coal and Wood
on his own account.
(p. 2344).
Stood at South fence between small gate and South Western corner (p. 2344). Wounded when at the fence of a house on Southern side of Zwane Street. (p. 2353).
29. REV. R. M. J. A
Elderly.
Ordained Minister
of the Presbyterian
Church.
Walked among people (p. 2357). Not wounded. Was in Zwane Street (p. 2371) and around Police Station. (p. 2373), some time before the shooting.
- Went to the Police Station to hand in a receipt in connection with a criminal charge he had brought. (p. 2258). Told that there would be an address at 2 p.m. (p. 2259).
- Wanted to observe events. (p. 2273) as material for a book. Heard that there would be an address at 2 o'clock. (p. 2278).
- Went to Police Station because heard rumour that everyone should go there. (p. 2337). While at Police Station heard that an address would be given. (p. 2337).
- Went to the Police Station at time when Aeroplanes flew over (p. 2344). Wanted to find out why his children had been stopped from going to work. (p. 2347). Heard crowd to be addressed before arrived at Police Station (p. 2347/8).
- Went to look for a fellow clergyman. (p. 2357). Aeroplanes flew over while in crowd (p. 2357). Heard it being said by crowd that there was going to be an address (p. 2364 and 2370).
- No one tried to get into the Police Station or threw stones or attempted to attack the Police. (p. 2261). Crowd at gate not very thick. (p. 2260). Some of crowd turned on shout of "skiet" even before first shot. (p. 2271).
- Crowd was at no time hostile or aggressive. (p. 2288). People were not armed or anxious to get at Police. (p. 2289). Crowd had been shouting all morning but did not shout louder when arrests were made. (p. 2317). Nothing happened before Police shot. (p. 2334).
- Saw no stones thrown. (p. 2340). Did not see crowd trying to get into Police Station. Did not see crowd become restive when arrests took place. (p. 2341). People gave way for vehicles to enter (p. 2341). Saw no sticks.
- Crowd did not wish to attack the Police (p. 2346). Crowd singing, raising hands and shouting "Afrika" (p. 2346). Saw no stones thrown at Police. (p. 2347). Crowd where he stood protested about assault (p. 2352) and were annoyed. But this was before the shooting (p. 2353) and there was no attempt to get into Police Station (p. 2355). Saw no one trying to get in at the gate (p. 2352). There was a noise as the people were singing (p. 2354).
- Crowd did not seem aggressive (p. 2357) or hostile to the Police. Crowd was happy - saw no weapons (p. 2363 and 2366). Singing was not organised (p. 2358). Saw no sticks (p. 2360). People started to run with first report of the fire-arms. (p. 2359).



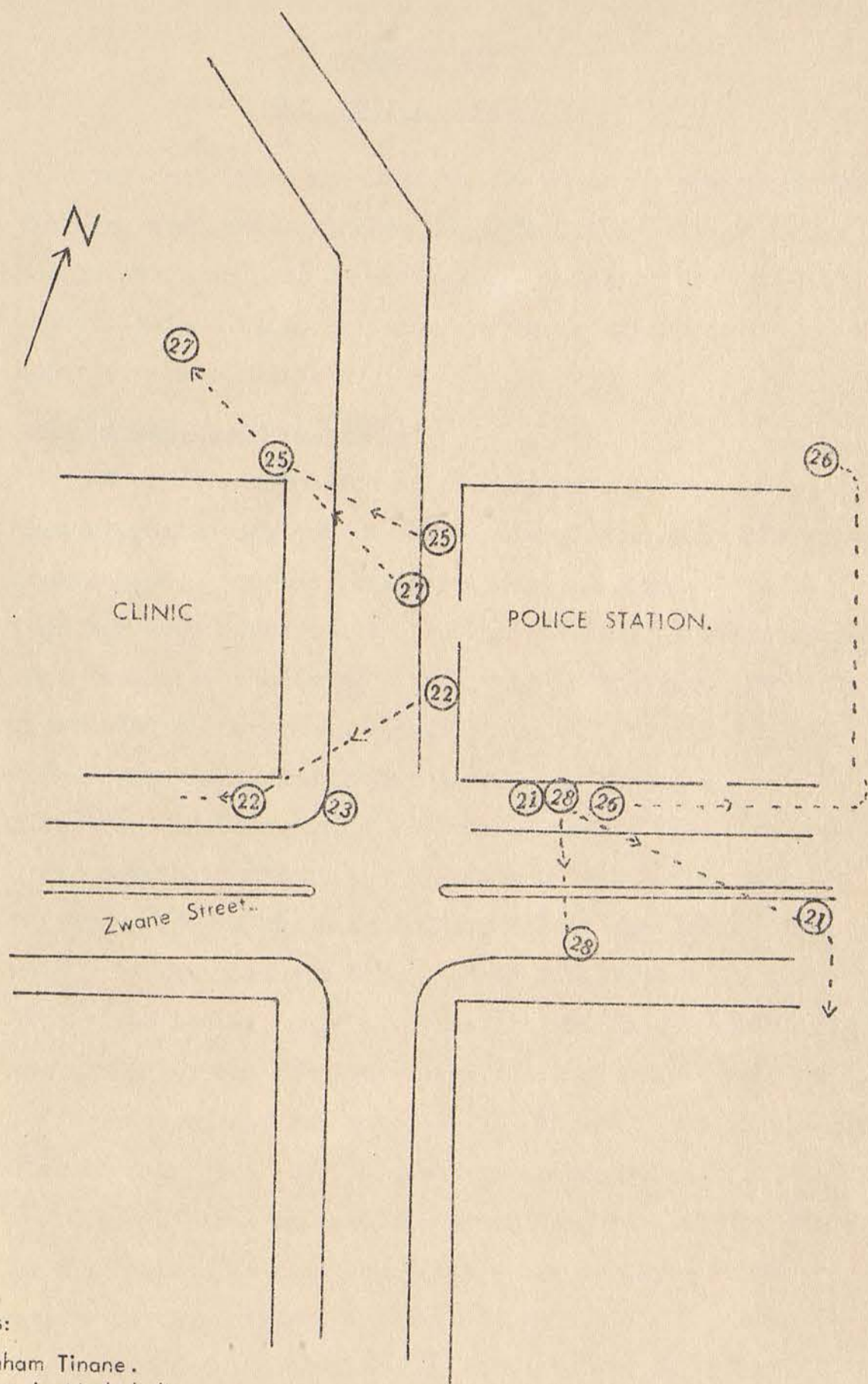
Witnesses.

11. Samuel Mahlase.
12. Joshna Matha.
13. Benedict Griffiths.
14. Meshack Mkwanaji.
15. Stephen Lehobo.
16. Simon Makhoba.
17. George Qtwaya.
18. Geeboy Mofokeng.
19. Moses Smith.
20. Wilham Molatuli.



Witnesses:

1. Adam Sakwane.
2. Abraham Kaole.
3. Benjamin Maroo.
4. Moses Ishabangu.
5. Matthews Mashuja.
6. Peter Mohfe.
7. Brown Thake.
8. Simon Dhlofafa.
9. Peter Lenjalso.
10. Lechael Musibi.



Witnesses:

21. Abraham Tinane.
22. Simon L. Mashedi.
23. Joshua Malema (It is not clear where he was before shooting).
24. Koos Radebe.
25. Daniel Dikobo.
26. Elias Lelia.
27. Samuel Mashobani. (crawled to point where shot.)
28. John Nieso.
29. Rev. R. Maja. (walked round Police Station).

APPENDIX VII

THE MEDICAL EVIDENCE

THE contention advanced in the Bishop's Memorandum was that the available evidence suggested that a large number of people had been shot in the back. Exhibits H(1) to H(4) show that this is so but some further analysis of these reports is necessary.

EXHIBIT H(1) - DR. FRIEDMAN:

IN cross-examination of Dr. Friedman it was put to him that approximately 68% to 70% of the wounds were inflicted from behind. In fact the percentage is higher. Adding together Paragraphs 1 and 2 in Exhibit H(1) it will be seen that seven (7) wounds were inflicted in the trunk from the front, while Paragraphs 4 and 5 show that twenty-six (26) wounds were inflicted from behind. Of the wounds classified in Paragraph 7 as "miscellaneous" it appears from cross-examination that two (2) were in the perineum, thirteen (13) in the head and six (6) in the arms. The two wounds in the perineum were clearly inflicted while the victim was facing away from the fire and in all probability while the persons concerned were crawling away. Of the thirteen wounds in the head, eight (8) were from behind, the direction of four (4) could not be determined and one (1) was directly from side to side. None were from the front to the back. In category 9 there are twenty-six (26) wounds in the buttocks and legs. Ten (10) were between the crest of the ilium and the gluteal fold (p. 1132). Of these nine (9) were from behind and the direction of one (1) could not be determined. Of the nine between the gluteal fold and the knee three (3) were from the front to the back, four (4) from the back and two (2) had a sideways direction

/(p. 1132).

(p. 1132). Of the seven (7) wounds between the knee and the ankle - two (2) were from the front, four (4) from the back and one (1) had a direction from the side (p. 1133). It will therefore be seen that of the ninety-six (96) wounds found by Dr. Friedman, twenty-seven (27) should be discounted in an attempt to assess accurately the probable position of the persons shot in relation to the line of armed men (i.e. the sixteen (16) wounds classified as ricochets, six (6) wounds in the arm, four (4) in the head which are undetermined and one (1) in the buttock which is undetermined).

There were, therefore, sixty-nine (69) wounds where the direction could be accurately determined - fifty-three (53) of these or 77% of the total were from behind, four (4) were from the side and twelve (12) were from the front.

EXHIBIT H(2) - DR. STEYN:

DR. STEYN found a total of twenty-one (21) wounds only - one (1) was clearly from the front (Paragraphs 2 and 3). Adding Paragraphs 3 and 4 it will be seen that five (5) wounds in the trunk were from behind. In Dr. Steyn's analysis he has classified as ricochets in Paragraph 5 wounds which may have been caused by tumbling bullets (p. 1144), and for this reason the anatomical positions of these injuries have been included in the analysis which follows. Of the five (5) wounds so classified the direction of three (3) were from behind while two (2) were from the side. Of the six (6) wounds classified as "miscellaneous" in Paragraph 7, two (2) were in the head and both these were from behind (p. 1145). The Commissioner's attention is directed to the fact that the record of the cross-examination on the medical evidence appears to have

/been incorrectly

been incorrectly transcribed. This can clearly be seen by the comparison of Exhibit H(2) with the figures given on Page 1143. The correct position is that in category 9 there were four (4) wounds in the buttocks and legs - two (2) were in the buttocks and from behind while one (1) was in the leg from behind.

To ascertain the probable position of the bodies in relation to the direction of fire, one should exclude six (6) wounds (i.e. four (4) in the category "miscellaneous" and two (2) ricochets). Therefore thirteen (13) wounds out of the fifteen (15) or 87% where the direction could be determined were inflicted from behind.

EXHIBIT H(3) - DR. SWANEPOEL:

EVIDENCE in regard to the wounded who were treated at the Vereeniging Hospital was given by Dr. Swanepoel. Any conclusion on the basis of his evidence is less certain than it is in the case of the Post Mortem reports because Dr. Swanepoel was obliged to rely only on the reports of other Doctors (p. 1146). He did not examine the patients himself and was unable to classify the wounds on the basis of the angle at which the bullet entered for reasons to which no possible exception can be taken (p. 1147). Similarly the question of what constituted a ricochet may well have required laborious reconsideration which was not insisted on (p. 1149). In determining how far the pattern which emerges from the Post Mortem findings is repeated in those wounded, it has been considered advisable to exclude in the case of Dr. Swanepoel's evidence, all wounds said to be from side to side and all wounds said to be ricochets, in addition to those where no direction could be determined.

Dr. Swanepoel found a total of forty-eight (48) wounds,

/two (2)

two (2) of those entered the trunk from the front and six (6) from the back. All the wounds in Paragraph 6 classified as "miscellaneous" were in the arms and no detailed information as to the direction of those wounds was available (p. 1150). Of the wounds classified under Paragraph 9 as shots in the buttocks or legs, one (1) was in the buttock (i.e. from behind) and one (1) was in the corresponding anatomical position from the front; seven (7) were in the thigh, five (5) being from behind; four (4) were in the lower leg, one being from the front, one from the side, one from behind and one undetermined. In result therefore, there should be discounted the seventeen (17) wounds classified as ricochets, the ten (10) wounds in the arms and one (1) in the lower leg, i.e. in all twenty-eight (28) wounds. Of the twenty (20) wounds in which a direction can be clearly determined, thirteen (13) were inflicted from behind. This implies that 65% of the wounds were inflicted at a time when the persons concerned were facing away from the firing.

It is appreciated that there must be statistically less certainty about this analysis by reason of the large number of wounds excluded from consideration. It will, however, be observed that the high percentage of wounds from behind is consistent with the trend of those disclosed in the Post Mortem findings, and it is submitted that the figure of 65% can therefore be regarded as a conservative but safe guide. Furthermore, it appears that there was no differentiation on the grounds either of the nature or of the severity of the wounds in the allocation of patients to the Vereeniging and Baragwanath Hospitals and the analysis of the wounded treated at Baragwanath which follows supports the conclusion that an overwhelming number of wounds were inflicted from behind.

EXHIBIT H(4) - DR. P. KEEN:

NONE of the uncertainty which has been referred to in regard to the report of Dr. Swanepoel arises in this case. Dr. Keen was able by an examination of the patients to satisfy himself about the direction and point of entry of practically every wound reported on (p. 1165). Exhibit H(4) contains a full analysis of the wounds and discloses that 73% of them were sustained by patients either from behind or when standing or running sideways or lying down. It should be noted that if the wounds classified as having a sideways direction were to be regarded as unsafe for the purpose of drawing a conclusion about the position of the wounded at the time of shooting, Dr. Keen's analysis would show that 75% of the wounds were inflicted from behind. It should also be borne in mind that while ricochets were excluded from the above assessment, fourteen (14) of them were inflicted from behind and one (1) from the front. To include these in the analysis would raise the total of wounds from behind to 77%.

APPENDIX VIII.THE CONCEALMENT AND FABRICATION OF
EVIDENCE BY THE POLICE

In the course of the hearing before the Commission, it emerged on a number of occasions that members of the police had fabricated evidence or had concealed facts from the Commissioner. A number of examples of this are given below :-

1. OPENING FIRE

Despite questions to the police witnesses by counsel and by the Commissioner himself, it proved impossible to ascertain the identity of the policemen who first fired. It also proved impossible to discover the identity of the policeman who had shouted "Skiet". These questions were also thoroughly investigated by detectives of the C.I.D., but they too failed to find the policemen concerned. No policeman would admit to having fired the first shot or to having shouted "Skiet". Nor did any policeman interrogated by the C.I.D. identify any of his neighbours in the police line as being responsible either for firing the first shots or shouting "Skiet" (see Capt. van den Bergh, pp. 2461-2, 2478).

If the men who were the first to fire and the man who shouted "Skiet" had felt that they were justified in doing so, they would presumably have come forward as it was their duty to do. As it is, one must presume that they have some motive for concealment.

2. FIRING FROM THE TOP OF THE SARACENS.

In part "M" of the argument which dealt with the firing by the policemen standing on top of Saracens, it is submitted that police witnesses attempted to conceal the fact that policemen standing on top of the Saracens fired to the north and the north-east. The truth emerged only after the photographs taken by Berry had been produced. It is illuminating to consider in detail the different stages of the police evidence on this issue.

(a) The first stage (before any photographs had been disclosed to the police):

In the early stages of the hearing Berry's photographs were not shown to the police witnesses. A number of them were asked whether there had been policemen on top of the Saracens at any time, and particularly during the shooting. In every case there was a denial that men had been standing on the Saracens at any time. Sgt. Grobler said that if any policeman had been standing on the Saracens and shooting, especially to the north or north-east, he would have seen this (p.122). Lt. Claassen, who at the time he gave his evidence, had not seen any photographs, was standing near the north of the police line also said that he would have noticed it if men had been firing from the top of the Saracens or even standing there holding their weapons (p.928). Capt. Brummer was in command of the Saracens. He said that he had devoted most of his attention to the three Saracens on the right of the line,

/i.e.

i.e., those standing towards the north (p.814). He was sure that there was nobody on top of the Saracens. He watched the Saracens until the shooting had ended (p.814). Had there been anyone standing on them and shooting he would have seen them (p.815). He was keeping them under observation during the shooting and saw nobody (p.816).

(b) The second stage (after the photograph Exhibit E had been shown to Capt. Brummer):

Towards the end of his cross-examination, Capt. Brummer was shown Berry's photograph, Exhibit E, which showed policemen standing on top of the Saracens. At least one had a weapon in his hand and the crowd was already running away. Capt. Brummer then said that these photographs could not have been taken during the shooting. He had no doubts about that (pp. 837 - 838, 843). On the following Monday Sgt. Kok, who was in charge of one of the Saracens, was called to give evidence on the photograph Exhibit E. He agreed that men had been standing on top of the Saracens during the shooting (pp. 1085 - 1086). Indeed he said that he himself was there during the shooting, and that he alone was on top of his Saracen (p.1088). The photograph Exhibit E shows Sgt. Kok's head just above the turret at the time the photograph was taken. He was sitting inside the turret peering over the top. Therefore, said Sgt. Kok, the photograph must definitely have been taken before the shooting.

/He was

He was standing on the top of his Saracen throughout the shooting and did not get into it again until the shooting was over (pp.1090 - 1091). When it was put to him that the people in the photograph were running away, he suggested that perhaps they were "putting on a show" for the photographer (p.1092).

(c) The third stage (after all Berry's photographs had been disclosed to the police):

The full series of Berry's photographs was put to Lt.-Col. Pienaar. In the light of what the photographs showed he could hardly deny that they had been taken during the shooting. However, in the witness-box he was remarkably reluctant to concede what the photographs obviously showed, namely, policemen on the top of Saracens holding weapons as though they were firing (pp. 1518 and 1521). In view of what the photographs themselves show and of the concessions later made by two of the policemen shown in the photographs, Lt.-Col. Pienaar's apparent inability to make out what the men in the photographs were doing or even what they had in their hands, is extremely unconvincing.

(d) The fourth stage (after Berry's evidence):

Berry himself was called to give evidence. He put it beyond reasonable doubt that the men standing on top of the Saracens had not only been pointing firearms at the crowd, but firing them. When, after some days, he was recalled for cross-examination by Mr. Claassens, it was

/disclosed

disclosed for the first time that the policeman shown on the photograph holding a sten-gun would say that he had not fired it, and that one of the policemen seen holding a revolver would say that he only fired two shots and those in the air (pp. 2113 - 2114). Subsequently Const. Sneigans was called as a witness and admitted that he appeared in the photograph holding his sten-gun, pointing it and following the fleeing crowd with it as he would have done had he been firing. He was unable to explain why if he was not firing he had done this (see part M of the argument). Const. Theron admitted that he was firing his revolver but he claimed to have fired two shots only and those in the air. The third man seen to be firing a revolver in the photograph was not identified, although in Exhibits U and V his face can be seen more clearly than those of the other men.

It is submitted that these various stages of the police evidence provide the clearest evidence of deliberate concealment and fabrication.

It is beyond doubt that Capt. Brummer, whose main task was to supervise his Saracens and to place himself in a position where he could convey orders to their crews, must have seen the men standing on top of them. It is abundantly clear too, it is submitted, that Const. Sneigans was attempting to conceal the fact that he had fired - and for obvious reasons. Const. Sneigans' failure to explain why he was holding his sten-gun in a firing position, the

/discrepancy

discrepancy between his evidence before the Commission and his original sworn statement and the fact that he had been originally shown in the ammunition returns as having fired 35 rounds, all point to his untruthfulness (see part M of the argument). Before altering his ammunition report it appeared that he discussed the matter with Capt. Brummer (p.2415). Although Capt. Brummer was asked whether he had any knowledge or had made any enquiries as to the number of rounds fired by any of the Saracen men, he said he had no information at all on these matters (pp. 816 - 817). It was clearly Capt. Brummer's duty to mention to the Commissioner the fact that in the ammunition reports relating to the men under his command, there had been this important alteration. His failure to do so can be explained only on the basis of a deliberate intention to hide facts from the Commissioner. This conclusion is fortified by the other instances in which this officer's evidence was refuted by other witnesses. For example, the evidence of the difficulties which his Saracen allegedly had in getting through the crowd and entering the gate of the police station, was firmly contradicted by his own driver (see Const. Arnold, p.2515). His statement that he had attempted to address the crowd through a loud-speaker on several occasions was denied by those African civilian witnesses who saw him and also by Capt. Theron (see paras. 87 to 88 of the argument). Nor was his evidence borne out by Const. S. van der Bergh, the policeman who was deputed to carry the loud-speaker (see Const. van den Bergh, p.2698).

3. THE FIRING BY MEN IN CAPT. COETZEE'S DETACHMENT

In part M of the argument, reference is made to Constables Els and Olivier, the two men under Capt. Coetzee's command who fired their rifles after the crowd had begun to flee from the police station. That part of the argument, it is submitted, demonstrates clearly -

- (a) That Const. Els in a previous sworn statement said that he fired his rifle elsewhere and at a different time. In that statement he concealed the fact that he had fired while he was in Zwane Street. (pp. 2639 - 2640).
- (b) That Const. Olivier dishonestly attempted to justify his shooting on the basis that the detachment on the south side of the police station had been stoned. The untruthfulness of his evidence is clear. He had to admit that the stoning to which he deposed must have been seen by Capt. Coetzee and the other men in the line, some of whom must presumably have been hit by stones (pp. 2651 - 2652); but neither Capt. Coetzee nor any other witness saw anything of the sort. His account of a hail of stones being thrown at the south side of the police station was also an invention. Neither Capt. Coetzee nor any of the other witnesses saw it. His evidence on this point was directly refuted by Det. Sgt. Pieterse who not only was in the best position to see stoning on the south side, but who would have been a victim of any such stoning. He saw no stones at all (p.2675).

/It will

It will be remembered that Capt. Coetzee stated quite positively that no one in his detachment fired:

"Did any of your men fire?...No.
Are you sure of that?...I am sure. I should have seen it. I was three paces behind my line of men who had fire-arms. At the moment the first shot, when that revolver or sten-gun went off, I screamed to my men because there was a terrific noise, to stand fast, "Don't shoot. We don't know what happened there", and my men stood fast.

And they did not shoot?...No."

(p.963).

It is now clear that he had no right to say so.

4. THE AMMUNITION RETURNS

There were three examples of unsatisfactory police evidence of the official ammunition returns compiled by the various Station Commanders whose men had been at Sharpeville.

(a) Const. Pennekan.

It will be recalled that Maj.van Zyl had put in the ammunition returns for the men of the Vereeniging area. This showed Const. Pennekan as having fired 10 rounds with his rifle (p.206). Earlier Maj.van Zyl had said that it would take a man about 40 seconds to fire 10 rounds from a rifle, even if he were aiming only in the general direction of a crowd (p.197). This obviously

/made nonsense

made nonsense of his estimate that the shooting had only lasted 10 seconds. A comparison of his evidence at p. 197 with his attempt to resolve the discrepancy (pp. 222-225) does him little credit. However, H/Const. Heyl under whose direct command Const. Pennekan falls, was thereafter called to give evidence. He said that the ammunition return was incorrect with regard to Pennekan (pp. 566 to 567). He told the Commissioner that he had taken up the matter with Pennekan when the return had first been made and had challenged the possibility of his having fired 10 rounds. Pennekan at that stage had insisted that the figure of 10 rounds was correct (p.567). Subsequently, according to H/Const. Heyl, Const. Pennekan had told him that he had in fact only fired three or four rounds (p.568). The Commissioner immediately had Const. Pennekan called. Pennekan said that in fact he had only fired two rounds (pp. 589 - 590). He said that he had given the figure of 10 rounds in error. But he was completely unable to explain how he had come to put in a figure of 10 rounds (i.e., a complete magazine), whereas he had fired only two (pp. 603 - 605). He insisted that he had only fired two and that in his bandolier, which normally held 50 rounds, 48 would still be found (p. 604). Further, he denied having told H/Const. Heyl that he had fired three or four rounds, and denied that after his first return was put in he had ever discussed the matter with H/Const. Heyl

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(p. 607). The Commissioner immediately sent a detective with Const. Pennekan to fetch his bandolier. It proved to have not 48, but 46 rounds in it (p. 636).

(b) Const. Sneigans.

His evidence with regard to his ammunition return has already been discussed elsewhere. He could not explain why (as he alleged), another policeman should have put in a return of 35 rounds on his behalf if he had not in fact fired at all. It has also been pointed out that the figure of 35 rounds fits in with the photograph Exhibit Y which shows him apparently putting a new magazine into his sten-gun (see Sneigans, p. 2408).

(c) Const. Saaiman.

According to the ammunition returns he fired 12 shots with his .38 revolver (see Capt. van den Bergh, p. 2685). Const. Saaiman testified that he had fired only 6 rounds. He admitted that he had originally made a statement to the effect that he had "used" 12 rounds, but says that he had done so in order to obtain an additional 6 rounds for himself (pp. 2784 - 2786). He said that he deliberately made this incorrect statement because at Sharpville Police Station, some time after the shooting, 12 rounds had been stolen from him presumably by another policeman (p. 2786). It is submitted that his evidence before the Commission was false and that the Commissioner must conclude that he in fact fired 12 rounds at the crowd.

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It is submitted that these three instances suggest deliberate attempts to minimise the number of shots actually fired, and the duration of the shooting. This was the pattern of a great deal of the police evidence. It was defeated by the figures in the ammunition returns, by the photographs and evidence of Berry and by the African civilian witnesses. Thus H/Const. Heyl (p.569) and Lt.-Col. Pienaar (pp. 1486 and 1489) asserted that the firing had lasted for so short a time that it would not have been possible for any man to fire 10 rounds from his rifle. They suggested that it must have lasted under 10 seconds. The other evidence referred to shows not merely that their estimates were unreliable, but that they were attempting to minimise the duration and intensity of the shooting.

5. THE CROWD AT THE FENCE

The exaggerations in the police evidence of the extent to which the fence was bent inwards has been dealt with in the argument in paragraphs 109 to 114. It is submitted that some of the policemen deliberately gave false evidence in connection with the state of the fence. Apart from the examples given in the paragraphs referred to, reference may also be made to the evidence of Const. Pennekan. He was standing in front of the western fence to the south of the gate (pp. 587, 593). He said that the fence was pushed flat (p.599). At the inspection it was seen that the part of the fence in front of which Const. Pennekan was standing was the least bent, and was in fact virtually undamaged. It is this part of the fence, too, which is most clearly shown on the photographs of Robinson

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taken immediately after the shooting (see especially Exhibit 00).

Const. Struwig also attempted to justify the shooting on the grounds that the fence was being pushed over - in his case to an angle of 45° (p. 681). When it was pointed out to him that the fence was still there and had been inspected, he agreed that it was now upright, but said that two or three hours after the shooting a number of policemen had pushed it upright. He did not explain how this operation was performed, nor who ordered it, nor why so important a piece of evidence as the fence should be tampered with by the police to their disadvantage (p.683). His evidence is not only improbable but it is contradicted by other and more reliable evidence. Sgt. Grobler is the Station Commander at Sharpville. He assured the Commissioner that the fence today is exactly as it was after the shooting (p.116). The photographs taken by Robinson immediately after the shooting also show that the fence then was as it is today. The officers were at Sharpeville Police Station for some hours after the shooting and none of them gave evidence in support of Const. Struwig.

It would appear to have been the police "line" that the fence was being pushed over. Not only was this contradicted by the objective evidence and by the probabilities, but some of the grosser exaggerations by the less intelligent witnesses completely expose the hollowness of the police case on this point.

5. STONES AND WEAPONS

There has already been an analysis in part K of

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the argument. The general police evidence of heavy stoning was contradicted not only by the African witnesses and by the absence of casualties, but also by two police witnesses, both of whom were somewhat out of the ordinary. Det./Const. Edwin Litelu was the only African policeman to be called as a witness to the shooting. Const. S. van den Bergh was not only far more experienced than the average policeman, but was called at a late stage to give evidence on a different point. As in the case of the fence, there would appear to have been an agreed police version with regard to the stoning. This was exposed not only by the absence of casualties to the police and the African witnesses from the crowd, but also by Det./Const. Litelu and Const. S. van den Bergh, each of whom may have been unaware of the general version of the stoning which was being given by police witnesses. On this aspect the more outrageous exaggerations of the less intelligent police witnesses proved to be self-defeating. Reference has already been made to the evidence of Const. Olivier in connection with stoning in Zwane Street. Another example of this type of exaggeration is to be found in the evidence of Const. van Niekerk. He was on the west side near the fence facing the crowd. He said that all the Africans in the crowd were armed (p.709). He was bound to admit that all the other policemen must have seen this (p.710). Needless to say, no other policeman went as far as this.

This type of exaggeration is, it is submitted, born of an uneasy consciousness that the facts truly

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stated would not justify the shooting. It is of a piece with the action of the two policemen who, after the shooting, threw some stones from the roadway into the police station grounds (see Joshua Malema, pp. 2241 - 2243).

The same can be said of the evidence of Const. Saaiman who testified that he had seen numerous sticks and other weapons such as axes outside the police station after the shooting, especially at the corner of Zwane Street and the street running on the west of the police station (pp. 2776 - 2777). He was shown the photographs taken by Robinson after the shooting, especially Exhibits JJ, LL, OO and PP. He agreed that the places where he had seen and picked up sticks and where he had seen and picked up an axe, were shown on these photographs. He said that the reason they were not seen on the photographs was that the police, including himself, must have picked them up before the photographs were taken. The axe which he picked up would have been seen on the photograph had the photograph been taken before he did so (pp. 2778 - 2779). Unfortunately for Const. Saaiman, it is clear not only from the nature of the photographs themselves but also from the direct evidence of Robinson that all these photographs were taken before anything had been moved. They were taken at the time when the police had not yet left the police station grounds (see Robinson, p.1550). Const. Saaiman must have been well aware that his evidence on this topic was false. It was again a stupid and therefore an easily exposed attempt to bolster up a poor case.

6. CONST. BEYL

Const. Beyl was the policeman shown on Berry's photographs, Exhibits L and M, standing in front of the main gate of the police station shortly before the shooting carrying a sjambok. He admitted that he had had a sjambok earlier in the morning. But he said that he had not had it in his hand after 10 a.m., when he had put it away in the police station office, and that at the time when Capt. Brummer arrived he no longer had it in his possession (pp. 2609, 2611). Consequently, when shown the photograph Exhibit L (on which Capt. Brummer appears) he denied that he was the man shown in that photograph carrying a sjambok (p. 2611). It was only after a great deal of cross-examination that he admitted that it was he who was seen on the photograph carrying a Sjambok and that he had in fact kept it in his possession (p. 2614). This incident is in itself of very little importance. It is referred to as yet another example of facile untruthfulness by a police witness which was eventually exposed by irrefutable photographic evidence.

The above examples of concealment and fabrication cover an unfortunately large number of policemen of various ranks. In most of these cases false evidence was exposed because of the existence of photographs or other objective and undeniable facts. It is submitted that the examples given are sufficiently disquieting to require that in general police evidence, where it is in dispute, must be regarded with reserve if not active suspicion.