

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 209

28 MARCH 2014

PAGES 25781 TO 25863



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<p style="text-align: right;">Page 25781</p> <p>1 [PROCEEDINGS ON 28 MARCH 2014] 2 [09:19] CHAIRPERSON: The Commission resumes. 3 Luitenant Kolonel, ek moet u daaraan herinner dat u nog 4 steeds gebonde is deur u plegtige bevestiging. 5 SALMON JOHANNES VERMAAK: Dis korrek, 6 Voorsitter. 7 CHAIRPERSON: Mr Gumbi – 8 MR GUMBI: Thank you very much, 9 Chairperson – 10 CHAIRPERSON: Are you ready to proceed 11 with your cross-examination, or is this like Mr Bizos, is 12 just an examination? 13 CROSS-EXAMINATION BY MR GUMBI (CONTD.): 14 Thanks very much, Chairperson, I'll continue with my 15 examination. Good morning, Lieutenant Colonel. 16 COLONEL VERMAAK: Morning, Sir. 17 MR GUMBI: Let us recap the testimony we 18 had yesterday with you when we adjourned. Yesterday when 19 we adjourned we were busy with this aspect of the heated 20 debate between General Mpembe and members. You said 21 members they were complaining and they were asking why 22 General Mpembe took over from Lieutenant Colonel Merafe. 23 Still remember that? 24 CHAIRPERSON: I'm sorry, just to get 25 clarity, we're at Roots, are we?</p>	<p style="text-align: right;">Page 25783</p> <p>1 accusations because they believed that they worked with 2 Lieutenant Colonel Merafe and they regarded him as an 3 experienced POP member? I mean commander. 4 KOLONEL VERMAAK: Die lede wat in die 5 groep was het dit so genoem, ja. 6 MR GUMBI: Okay, do you know of any – you 7 said, still remember when you were dealing with your 8 shortcomings, that is exhibit 00010, you regarded 9 Lieutenant Colonel Merafe as an experienced POP commander 10 in dealing with mine unrest situations. Still remember 11 that? 12 KOLONEL VERMAAK: Dit is korrek. 13 MR GUMBI: Do you know of any mine unrest 14 incident handled by Lieutenant Colonel Merafe which 15 resulted to the death or injury of a police officer? Do 16 you know? 17 KOLONEL VERMAAK: Nee, ek dra nie kennis 18 van so enige voorval nie. 19 MR GUMBI: Have you ever provided Air 20 Wing support to Lieutenant Colonel Merafe on mine unrest 21 POP situation? 22 KOLONEL VERMAAK: Dis positief. Ons het 23 verskeie kere vir hom bygestaan al. 24 MR GUMBI: Let's deal with General 25 Mpembe. Do you know of any mine unrest situation, POP</p>
<p style="text-align: right;">Page 25782</p> <p>1 MR GUMBI: Yes, in his group. 2 CHAIRPERSON: This is the heated debate 3 at Roots in the group. 4 MR GUMBI: Yes, in the group. 5 CHAIRPERSON: On, I think it was the 5th 6 of September. Is that right? 7 MR GUMBI: Yes, 5th of September. 8 KOLONEL VERMAAK: Dis korrek, Voorsitter. 9 MR GUMBI: Yes, and General Mpembe, when 10 we adjourned you said he responded that he's a senior and 11 he doesn't need instruction to take over. Still remember 12 that? 13 KOLONEL VERMAAK: Dis korrek. 14 MR GUMBI: And you further testified that 15 members believed that Lieutenant Colonel Merafe could have 16 handled the situation better than General Mpembe. Still 17 remember that? 18 KOLONEL VERMAAK: Voorsitter, ek sal nie 19 kan sê of, wat die lede geglo het nie. Hulle het, daar was 20 wel wat hulle ongelukkigheid oor uitgespreek het maar ek 21 kan nie sê dis al die lede wat daardie gevoel gehuldig het 22 nie. 23 MR GUMBI: Yes, I'm saying some of the 24 members. Right, would I be correct if I were to elaborate 25 a little bit on that point that members raised those</p>	<p style="text-align: right;">Page 25784</p> <p>1 situation handled by General Mpembe? 2 KOLONEL VERMAAK: Voorsitter, ek het 3 reeds getuig en gesê ek dra nie kennis van enige van die 4 tonele waarby hy was wat ek ook teenwoordig was nie. 5 MR GUMBI: At Roots now, you testified 6 that you play the video footage of the 13th and you review 7 and analyse it in order to ascertain this allegation that 8 members they were less equipped to confront strikers near 9 the railway line. Still remember that? 10 KOLONEL VERMAAK: Dis korrek. 11 MR GUMBI: I wanted to carry that 12 exercise, you know, play that video footage of the 13th 13 before this Commission. What we'll do, we'll play the 14 video footage of the 13th. We'll start with Z1 and I would 15 like you to have a look at the video footage, you analyse 16 it. If you want to stop it you stop. Where the police 17 officers are shown, then you tell the Commission your 18 observation whether the member depicted there is fully 19 equipped or less equipped. 20 CHAIRPERSON: Are we going to have to 21 look at the whole of Z1 or are there particular sections of 22 Z1 which you will indicate by giving us the actual 23 reading – 24 MR GUMBI: What I wanted to – 25 CHAIRPERSON: - of the video clip –</p>

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1 MR GUMBI: Yes, may I –

2 CHAIRPERSON: - so we can concentrate the

3 discussion.

4 MR GUMBI: Yes.

5 CHAIRPERSON: Because I imagine we don't

6 have to see the whole thing. You're interested in people

7 having equipment and so on, aren't you?

8 MR GUMBI: Yes. Yes, Chairperson. What

9 I wanted, I'm suggesting let us play the video footage –

10 CHAIRPERSON: All the footage?

11 MR GUMBI: Yes.

12 CHAIRPERSON: How long is it going to

13 take?

14 MR GUMBI: I don't know.

15 CHAIRPERSON: Just to see what equipment

16 people have got? I mean that's ridiculous. I'm not going

17 to allow that. If there's something particular you want

18 to, particular footage you want to refer to obviously you

19 have the fullest right to go ahead with that, but it's

20 totally ridiculous to expect us to sit here and watch the

21 whole thing just for particular little things that are

22 going to be picked out, a couple of minutes worth of

23 footage.

24 MR GUMBI: Chairperson –

25 CHAIRPERSON: And you've seen the –

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1 MR GUMBI: Yes, Chairperson –

2 CHAIRPERSON: Have you seen the footage

3 already? Have you looked at it privately?

4 KOLONEL VERMAAK: Dis korrek, Voorsitter.

5 CHAIRPERSON: Sorry?

6 KOLONEL VERMAAK: Ek het dit al gesien.

7 CHAIRPERSON: You have seen it, yes.

8 Alright, and now without our looking at it can you answer

9 the question Mr Gumbi's putting to you? He suggests to

10 you, well you heard what he said.

11 KOLONEL VERMAAK: Voorsitter ja, dis nie

12 nodig om die hele video te speel nie. Die paar "clips" wat

13 daar is sal voldoende wees om te kan kommentaar lewer op.

14 CHAIRPERSON: Tell us what the commentary

15 is and if necessary we can all look at – it's an exhibit,

16 we can all look at it privately later. I'm concerned about

17 time. What is your commentary? Is it in relation

18 particularly to the point that Mr Gumbi's made?

19 KOLONEL VERMAAK: Dis positief,

20 Voorsitter. Dis nie nodig om die hele videoband te speel

21 nie.

22 COMMISSIONER HEMRAJ: So what are your

23 observations? Now that you've seen the video on your own,

24 what are your observations about the question that's been

25 put to you?

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1 KOLONEL VERMAAK: Voorsitter nee, ek

2 volstaan by dit wat ek gesê het rondom die tekort van die

3 mense wat nie voldoende onluste toerusting by hulle gehad

4 het nie. Op hierdie video "clip" ek dink gaan dit 'n

5 minuut of twee wees waar dit baie duidelik uitgewys kan

6 word.

7 CHAIRPERSON: Is this right near the

8 beginning of the clip?

9 KOLONEL VERMAAK: Ekskuus, Voorsitter?

10 CHAIRPERSON: Is this right near the

11 beginning of the clip? It's not somewhere in the middle?

12 KOLONEL VERMAAK: Ja, daar waar hulle

13 begin onderhandel het.

14 CHAIRPERSON: No, let's look at the first

15 couple of minutes and see whether we can see enough for you

16 to make the comment.

17 MR GUMBI: Chairperson, my difficulty, I

18 thought about the time and how to save time on this

19 particular aspect. My difficulty is the witness that is

20 testifying, I cannot consult with him and analyse the video

21 footage, then we know those aspects we're going to zoom in.

22 That's why I'm compelled –

23 CHAIRPERSON: You don't have to analyse

24 it.

25 MR GUMBI: Yes.

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1 CHAIRPERSON: He says if we look at the

2 first couple of minutes at the beginning we'll see enough

3 for him to be able to comment.

4 MR GUMBI: Yes.

5 CHAIRPERSON: So let's do that and if

6 we've looked at it for two or three minutes and we still

7 haven't seen enough then maybe we must go back to the

8 drawing board and rethink the matter, but let's try that

9 procedure.

10 MR GUMBI: Yes, but when I prepared this

11 line of cross-examination I thought about the time,

12 Chairperson.

13 CHAIRPERSON: Yes, I know you did, but I

14 thought about it too and I made a suggestion which the

15 witness seems to accept. Let's try it my way first to see

16 whether we can achieve what you want to achieve.

17 MR GUMBI: Yes, Chairperson.

18 [VIDEO SHOWN]

19 KOLONEL VERMAAK: If you can go back a

20 little bit.

21 CHAIRPERSON: Perhaps you can go back a

22 bit.

23 MR GUMBI: Yes.

24 CHAIRPERSON: Is that –

25 KOLONEL VERMAAK: Dis korrek, Voorsitter.

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1 CHAIRPERSON: - the section you had in
2 mind?

3 KOLONEL VERMAAK: Op daardie foto kan 'n
4 mens –

5 CHAIRPERSON: Perhaps zoom in a bit to
6 see it more clearly, unless the pixels take over now and
7 interfere.

8 MR GUMBI: Yes, Chairperson.

9 KOLONEL VERMAAK: Op daardie foto –

10 CHAIRPERSON: This is 10:30 we're looking
11 at.

12 KOLONEL VERMAAK: Op daardie foto is NIU
13 lede. Nie een van hulle het 'n lang wapen by hom nie, nie
14 'n R5 of 'n haelgeweer.

15 CHAIRPERSON: What have they got on their
16 heads?

17 KOLONEL VERMAAK: Dis 'n helmet.

18 CHAIRPERSON: It is a helmet?

19 KOLONEL VERMAAK: That's correct.

20 CHAIRPERSON: I don't see anybody with a
21 shield.

22 KOLONEL VERMAAK: No.

23 CHAIRPERSON: Are there shields? Surely
24 a shield is important if you're dealing with this kind of
25 operation?

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1 KOLONEL VERMAAK: Dis 'n belangrike deel
2 van jou toerusting, Voorsitter.

3 CHAIRPERSON: Is there other equipment
4 which you think they should have had –

5 KOLONEL VERMAAK: Gas masks –

6 CHAIRPERSON: - which you as a POP man of
7 many years experience would have insisted on your people
8 having if you went on an operation like this?

9 KOLONEL VERMAAK: Ja, Voorsitter,
10 gasmaskers, baie belangrik.

11 CHAIRPERSON: Anything else?

12 KOLONEL VERMAAK: Basies op hierdie
13 stadium is dit die gasmaskers, die skilde, en dan nou hulle
14 haelgewere wat hulle dan nou verskeie rubber of traanrook
15 mee kan afvuur.

16 CHAIRPERSON: Is that what you want to
17 get on record?

18 MR GUMBI: Yes, Chairperson.

19 CHAIRPERSON: Your point made now?

20 MR GUMBI: Yes, Chairperson –

21 CHAIRPERSON: Without having to see the
22 whole video?

23 MR GUMBI: Yes, Chairperson.

24 CHAIRPERSON: Okay, so can we move on to
25 the next point then, seeing you've made this point.

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1 MR GUMBI: Yes, Chairperson.

2 CHAIRPERSON: I don't want to be accused
3 of having railroaded you or prevented you from putting
4 things on record that you want to put on record. You've
5 got a duty to your client; you must carry it out and I
6 mustn't stop you, but if this is enough as far as the video
7 is concerned, we can move on.

8 MR GUMBI: Thanks, Chairperson.

9 Lieutenant Colonel, that's only, these were footage you
10 analysed on the 13th? I mean at Roots when you were
11 analysing the video of the 13th.

12 KOLONEL VERMAAK: Dis hierdie video wat
13 ek na verwys het waar ons by Roots oor verskil het en wat
14 toe later dan nou bevestig het soos wat ek dit nou uitgewys
15 het.

16 MR GUMBI: And General Mpenbe was present
17 when you carried out this exercise?

18 KOLONEL VERMAAK: Dis reg.

19 MR GUMBI: And Captain Thupe again was
20 present?

21 KOLONEL VERMAAK: Herhaal net van Kaptein
22 Thupe.

23 MR GUMBI: Was he present when you
24 carried out this exercise?

25 KOLONEL VERMAAK: He was present.

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1 MR GUMBI: And what about Lieutenant
2 Colonel Merafe?

3 KOLONEL VERMAAK: Merafe was also there.

4 MR GUMBI: After this exercise then your
5 group resolution or finding was that members were less
6 equipped. Is it not so?

7 KOLONEL VERMAAK: Can you just formulate
8 the question again for me?

9 MR GUMBI: I'm saying after you carried
10 out this exercise then the group came to a conclusion that
11 indeed the members they were less equipped before
12 confronting the group of strikers.

13 KOLONEL VERMAAK: Dis korrek.

14 CHAIRPERSON: I take it that conclusion
15 applied not only to – are these NIU people that we see on
16 the screen here?

17 KOLONEL VERMAAK: Dis korrek. The POP as
18 well, Sir.

19 CHAIRPERSON: POP as well. Yes, no
20 that's the point I was making. It wasn't only the NIU
21 people who weren't properly equipped –

22 KOLONEL VERMAAK: No.

23 CHAIRPERSON: - it was the POP people as
24 well.

25 KOLONEL VERMAAK: It was, POP is ook

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1 gewees.

2 CHAIRPERSON: Yes, and Lieutenant Baloyi

3 of course is a POP man.

4 KOLONEL VERMAAK: Dis reg.

5 CHAIRPERSON: And what was Lieutenant

6 Lepaaku? Was he also POP?

7 MR GUMBI: Yes, he was POP.

8 CHAIRPERSON: Okay.

9 MR GUMBI: Okay, let's move on now in the

10 interest of time. Have a look at exhibit GGG3. Right, go

11 to the attendance register of the 6th of September 2012.

12 Are you in possession of that? Yes, when we analyse there

13 we see the National Commissioner is there, General Mbombo

14 was there –

15 CHAIRPERSON: Sorry to interrupt you, Mr

16 Gumbi. This is the 6th of September.

17 MR GUMBI: Yes.

18 CHAIRPERSON: Is there a particular

19 reason why you've chosen the 6th of September?

20 MR GUMBI: Yes, I'm having that.

21 CHAIRPERSON: Alright, okay.

22 MR GUMBI: Yes. You see the attendance

23 register of the 6th of September, we see the National

24 Commissioner was there, Lieutenant General Mbombo was

25 there. You see that?

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1 KOLONEL VERMAAK: Dis positief,

2 Voorsitter.

3 MR GUMBI: And when you go to entry

4 number 12 we see Captain Thupe is there also again.

5 KOLONEL VERMAAK: Dis reg.

6 MR GUMBI: Entry number 15 we see

7 Lieutenant Colonel Merafe is also there.

8 KOLONEL VERMAAK: Dis korrek.

9 MR GUMBI: Same applies Major General

10 Annandale and Lieutenant Scott, all of them they were

11 there.

12 KOLONEL VERMAAK: Dis korrek.

13 CHAIRPERSON: Colonel Scott didn't sign

14 his name, but so his name is written there.

15 MR GUMBI: Yes.

16 CHAIRPERSON: And General Annandale's

17 name is written there, he also didn't sign his name. So

18 I'm not sure that this document proves he was there on the

19 6th of September. He was supposed to be there. He may have

20 been there. Can you tell us whether he was there on the 6th

21 of September, General Annandale?

22 KOLONEL VERMAAK: Dis korrek, hulle was

23 daar gewees, Voorsitter.

24 CHAIRPERSON: And Scott as well?

25 KOLONEL VERMAAK: Dis korrek, Voorsitter.

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1 CHAIRPERSON: Thank you.

2 MR GUMBI: Okay, let's move on,

3 Lieutenant Colonel Vermaak. Can I refer you to exhibit

4 JJJ156? Are you in possession of that document, JJJ156?

5 CHAIRPERSON: Sorry, before you move on

6 to that, you're not on this list of the 6th of September,

7 are you? Or have I missed you? Are you sure you were

8 there on the 6th?

9 KOLONEL VERMAAK: Ek was daar gewees,

10 Voorsitter, want ons het van daar af na die SAUK toe gery

11 om na die videobande te gaan kyk.

12 CHAIRPERSON: Your name is not on the

13 list though. Is that just an omission?

14 KOLONEL VERMAAK: Dis moontlik dat dit

15 kan gewees het dat hy nie by my uitgekome het nie,

16 Voorsitter.

17 CHAIRPERSON: I see. Alright, anyway,

18 you tell us under oath you were there, so –

19 KOLONEL VERMAAK: Dis korrek.

20 CHAIRPERSON: Alright.

21 KOLONEL VERMAAK: Die dagboek sal dit ook

22 bevestig.

23 CHAIRPERSON: Alright.

24 MR GUMBI: Can I proceed, Chairperson?

25 CHAIRPERSON: Yes, yes, please do so. I

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1 was just checking, I see on the 5th his name is in the

2 register and he signed it, but it didn't on the 6th – but he

3 told us he was there and there's no reason to doubt his

4 word on that, I would think.

5 MR GUMBI: Thanks very much, Chairperson.

6 May I refer you to exhibit JJJ156, Lieutenant Colonel? Are

7 you in possession of that document?

8 KOLONEL VERMAAK: Oukei.

9 MR GUMBI: Then it's dated 5th of

10 September 2012.

11 KOLONEL VERMAAK: Ek sien dit.

12 MR GUMBI: And it had a watermark "Draft

13 22, 5th of September 2012." You see that?

14 KOLONEL VERMAAK: Dis korrek.

15 MR GUMBI: So can we assume, can I assume

16 on behalf of my clients – but before we can go to that

17 let's go to page 18 of that document. You see that?

18 Paragraph 2, still with the facts surrounding the death of

19 the late Warrant Officer Lepaaku and injury of Lieutenant

20 Baloyi, it's written there –

21 KOLONEL VERMAAK: Ek sien dit.

22 MR GUMBI: - if I can read it on record,

23 paragraph 2 of page 18, "To prevent them from entering the

24 settlement the police utilised teargas and stun grenades to

25 channel the protesters away from their intended path.

<p style="text-align: right;">Page 25797</p> <p>1 Captain Thupe (TRT commander) heard Major General Mpembe 2 issue a command for stun and teargas, after which Warrant 3 Officer Kuhn fired a shotgun CS grenade." You see that? 4 KOLONEL VERMAAK: Ek sien dit, 5 Voorsitter. 6 MR GUMBI: Then we have another document 7 again. On these allegations you must understand, 8 Lieutenant Colonel, that I'm focussing on facts surrounding 9 the death of my client and injury of my clients. Let's go 10 now HHH28, see that? Are you in possession of that 11 document? 12 KOLONEL VERMAAK: Ek sien dit. 13 MR GUMBI: It's also dated 5 September 14 2012. Then – 15 CHAIRPERSON: Is it in your list? The 16 first document. It's the very first document. 17 [09:39] MR GUMBI: Yes, it's dated 5 September 18 2012 and when you go to paragraph 3 of that document again, 19 page 35 of that document paragraph 3, it reads as follows – 20 I'm focusing on the command, right, "To prevent them from 21 entering the settlement the police used teargas and stun 22 grenades to disperse, discouraging them from their intended 23 path." Right. "Major-General Mpembe issued command for 24 stun and teargas after which Warrant Officer Kuhn fired 25 shotgun and CS rifle grenades," do you see that?</p>	<p style="text-align: right;">Page 25799</p> <p>1 instruction, although he had previously mentioned that 2 General Mpembe had given the instruction in relation to the 3 following and the monitoring. 4 MR GUMBI: Yes, Chairperson. 5 CHAIRPERSON: But in any event you say 6 that they didn't change direction. You were in the 7 helicopter above and the suggestion that they changed 8 direction and went to the informal settlement, you say is 9 incorrect? 10 KOLONEL VERMAAK: Dis korrek, Voorsitter. 11 CHAIRPERSON: And you say that in fact 12 you couldn't understand why teargas had been fired because 13 there was no reason to do so. 14 KOLONEL VERMAAK: Dis korrek. 15 CHAIRPERSON: So this story that they 16 changed direction towards the informal settlement wasn't 17 correct. 18 KOLONEL VERMAAK: Volgens my waarneming – 19 CHAIRPERSON: As we see in this exhibit 20 HHH28, page 35, is that correct? 21 KOLONEL VERMAAK: Volgens my waarneming 22 was dit geen afwyking van die rigting waarin hulle geloop 23 het nie. 24 MR GUMBI: Okay, thanks very much, 25 Lieutenant-Colonel. Then on the 6th of September 2012, I've</p>
<p style="text-align: right;">Page 25798</p> <p>1 KOLONEL VERMAAK: Dis korrek. 2 MR GUMBI: Would I be correct that 3 there's a difference between these two documents but all of 4 them they are dated 5 September 2012? The first one with 5 the water mark "Draft," Captain Thupe, his name is there 6 and General Mpembe his name is there and he is being 7 described as the person who issued a command. Do you see 8 that, it says "Draft?" 9 KOLONEL VERMAAK: Dis korrek. 10 MR GUMBI: The second draft now, the name 11 of Captain Thupe is not there. Do you see that? 12 KOLONEL VERMAAK: Ek sien dit, 13 Voorsitter. 14 CHAIRPERSON: I notice that in exhibit 15 HHH15.1 which you've give us, Captain Thupe doesn't say 16 that General Mpembe gave the instruction, he simply says – 17 he does refer to General Mpembe having given an instruction 18 that the group be followed and monitored but he then says, 19 "While following and monitoring them the protesters changed 20 direction" – his participle is floating there but we won't 21 worry about that. "While following," I take it he means 22 "while we were following and monitoring them the protesters 23 changed direction and went straight towards the informal 24 settlement, then instruction was given for firing the 25 teargas." He doesn't say that General Mpembe gave the</p>	<p style="text-align: right;">Page 25800</p> <p>1 indicated to you that the attendance register, the 2 attendance register reflects the name of General Phiyega, 3 Mbombo, they were there to discuss this. Can we assume 4 that they were in possession of these two reports, that is 5 the first one, the draft dated 5 September 2012, that is 6 JJJ156? It was a memorandum by them, a written memorandum. 7 KOLONEL VERMAAK: Voorsitter, daar was 8 voorligting deur kolonel Scott en Visser aan die offisiere 9 gegee. Presies uit watter dokument uit kan ek nie nou 10 bevestig nie. 11 CHAIRPERSON: Do you know whether hard 12 copies were available, the documents which Mr Gumbi 13 referred to or whether they were simply like some other, 14 something else previously where it was only on the laptop 15 of Colonel Scott? 16 KOLONEL VERMAAK: Dis korrek, Voorsitter. 17 MR GUMBI: Yes. No, I understand, 18 Lieutenant-Colonel. So we can say maybe they were in 19 possession of JJJ156 or it's possible that they were in 20 possession of HHH28, you don't know that? Do you agree 21 with me? 22 KOLONEL VERMAAK: Dis korrek. 23 MR GUMBI: You testified in evidence-in- 24 chief that, I think Adv Pillay when she was leading you in 25 evidence-in-chief she asked you about the difference</p>

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1 between HHH28 and exhibit L as far as slide 47 is
 2 concerned. Do you still remember that?
 3 KOLONEL VERMAAK: Herhaal net weer u
 4 vraag asseblief?
 5 MR GUMBI: I'm saying when Adv Pillay was
 6 leading you in evidence-in-chief she made a comparison of
 7 exhibit HHH28. She referred you to page 35 of exhibit
 8 HHH28, do you still remember that?
 9 KOLONEL VERMAAK: Dis korrek.
 10 MR GUMBI: And she also referred you to
 11 exhibit L –
 12 CHAIRPERSON: No, no, she didn't, I did.
 13 MR GUMBI: Yes, Chairperson.
 14 CHAIRPERSON: I did.
 15 MR GUMBI: Thanks very much for that
 16 correction, Chairperson.
 17 CHAIRPERSON: You mustn't blame Ms Pillay
 18 for things that I did.
 19 MR GUMBI: Yes. Thanks very much,
 20 Chairperson, for correcting me. The Chairperson also made
 21 a reference to exhibit L slide 47, do you still remember
 22 that?
 23 KOLONEL VERMAAK: Dis korrek.
 24 MR GUMBI: Then in your evidence-in-chief
 25 you testified that when you saw those two differences, then

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1 you confronted Lieutenant-Colonel Scott.
 2 KOLONEL VERMAAK: Dis korrek.
 3 MR GUMBI: Then when you confronted
 4 Lieutenant-Colonel Scott then he informed you that you
 5 cannot dictate to him how to do the presentation to be
 6 presented before this Commission, is that correct?
 7 KOLONEL VERMAAK: Hy het vir my gesê ek
 8 kan nie vir hom sê waar hy sy goed moet gebruik nie en dat
 9 dit so voorgelê is aan die bestuur.
 10 MR GUMBI: Yes. What else he said? I'm
 11 interested in that one.
 12 KOLONEL VERMAAK: Dit was hoofsaaklik oor
 13 die verskil wat op die tye van die foto's is wat ons
 14 waargeneem het en dan die verskil van, op die een verslag
 15 was dit gewees dat generaal Mpembe 'n opdrag gegee het en
 16 in die ander verslag toe was dit verwyder gewees.
 17 MR GUMBI: Will you agree with me,
 18 Lieutenant-Colonel, if I put the following proposition to
 19 you, that the information that is contained on exhibit
 20 HHH28, paragraph 35 – I mean page 35 paragraph 3, deals
 21 with the information surrounding the death of the late
 22 Warrant Officer Lepaaku and the injury of Lieutenant
 23 Baloyi, agree with me?
 24 KOLONEL VERMAAK: As ek dit net op die
 25 skerm kan kry?

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1 MR GUMBI: You can put up HHH28, page 35,
 2 paragraph 3.
 3 CHAIRPERSON: I think the reference to
 4 Lieutenant Lepaaku and indeed Lieutenant Monene is in die
 5 last paragraph on the screen.
 6 MR GUMBI: Chairperson, I'm dealing with
 7 the information, what transpired before attack.
 8 CHAIRPERSON: Yes, yes, I know. I'm just
 9 pointing out to him that the reference to two members of
 10 the police died at the scene, the one died at the scene, it
 11 changed later.
 12 MR GUMBI: Yes, Chairperson.
 13 CHAIRPERSON: One died at the scene and
 14 one died in hospital later.
 15 MR GUMBI: Yes.
 16 CHAIRPERSON: That's a reference to
 17 Lieutenants Monene and Lepaaku.
 18 MR GUMBI: Yes.
 19 CHAIRPERSON: And then a bit further down
 20 I think, not on the screen but there's a passage or
 21 reference somewhere to the fact that Lieutenant Baloyi was
 22 injured.
 23 MR GUMBI: Yes, I understand that,
 24 Chairperson. My question is focusing –
 25 CHAIRPERSON: It looks as if the witness

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1 hasn't got the whole document but I don't think he's unduly
 2 prejudiced because it is on the screen.
 3 MR GUMBI: Yes, Chairperson. Let us
 4 focus on the facts dealing with what transpired before they
 5 were attacked. So those facts that are contained on page
 6 35, on page 35 paragraph 3 of exhibit HHH28 –
 7 CHAIRPERSON: They're not necessarily
 8 facts, they're alleged facts, aren't they?
 9 MR GUMBI: Alleged facts, yes.
 10 CHAIRPERSON: And they were facts, some
 11 of them were facts or alleged facts which weren't persisted
 12 in by the police.
 13 MR GUMBI: Yes, Chairperson.
 14 CHAIRPERSON: Which didn't find their way
 15 into the final presentation document. This is just a
 16 draft.
 17 MR GUMBI: That's a draft, Chairperson, I
 18 agree. Do you see that?
 19 KOLONEL VERMAAK: Dis korrek.
 20 MR GUMBI: You'll agree with me those
 21 facts are important.
 22 KOLONEL VERMAAK: Dit is positief.
 23 MR GUMBI: Then the information, you will
 24 agree with me when I put to you that the information
 25 surrounding the death of the police officer or injury of

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1 the police officer is important information and is no-one
 2 authorised to tamper with that information. Will you agree
 3 with me as a police officer?
 4 KOLONEL VERMAAK: Ek kon u vraag nie baie
 5 duidelik hoor nie. U kan net vir my herhaal asseblief.
 6 CHAIRPERSON: What do you mean by
 7 tampered with? Allegations were made, incorporated into an
 8 early draft and subsequently modified to some extent in
 9 relation to the command by Major-General Mpembe. Is that –
 10 but what exactly do you mean by the word “tampered?”
 11 MR GUMBI: If we can maybe try and expand
 12 on that one. Let’s deal with exhibit HHH28, maybe let’s
 13 deal with exhibit – let’s start with 156, the first draft.
 14 COMMISSIONER HEMRAJ: Before you do that,
 15 Ms Pillay are there only two versions of this narrative or
 16 are there more on the hard drive that was downloaded? I
 17 seem to think there might be more than two versions.
 18 MS PILLAY: Commissioner Hemraj, I know
 19 that the two exhibits are a draft of the narrative and the
 20 final version but I’m not sure if on the hard drive there
 21 are earlier drafts of the narrative. Mr Chaskalson says
 22 that none of the drafts were on the hard drive and if there
 23 are drafts, it’s on the extended hard drive which we
 24 eventually received.
 25 COMMISSIONER HEMRAJ: [Microphone off,

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1 inaudible] – was downloaded eventually.
 2 MS PILLAY: That’s right.
 3 CHAIRPERSON: The police archive,
 4 effectively. There was the hard drive which the police
 5 made available, which was supposed to contain all the
 6 important documents. The later, after Lieutenant-Colonel
 7 Scott made his computer available, the police archive
 8 became available which indicated another, other material
 9 documents that hadn’t been included in the police hard
 10 drive for some or other reason. Now, does the police
 11 archive contain other drafts apart from the two that we
 12 have discussed?
 13 MS PILLAY: We’ll look into it and revert
 14 to you on that.
 15 MR GUMBI: Thank you very much,
 16 Chairperson.
 17 MS PILLAY: Chair, just to add a final
 18 point on HHH28, this is the final narrative, not
 19 necessarily a further draft of exhibit L because the two
 20 documents are completely separate documents.
 21 MR GUMBI: Thanks very much, Adv Pillay,
 22 for clarifying that.
 23 CHAIRPERSON: Of course to help Mr Gumbi,
 24 Mr Gumbi is establishing a pattern, as I understand it –
 25 MR GUMBI: Yes, Chairperson.

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1 CHAIRPERSON: - or trying to establish a
 2 pattern.
 3 MR GUMBI: Yes.
 4 CHAIRPERSON: And he’s going to, once
 5 he’s got all the relevant facts on record or the relevant
 6 allegations that were recorded on the various drafts, on
 7 record –
 8 MR GUMBI: Yes.
 9 CHAIRPERSON: - then he will be able, at
 10 the end of the day, to put up an argument for which he’s
 11 endeavouring to lay the groundwork at the moment, is that –
 12 it’s the groundwork at the moment, is that right?
 13 MR GUMBI: Yes, Chairperson. Let’s deal
 14 with the first draft so that we’ll see the pattern, how the
 15 information surrounding the death of the late Warrant
 16 Officer Lepaaku and injury of Lieutenant Baloyi was
 17 handled. The first draft is a draft dated 5 September
 18 2012. It’s saying Captain Thupe heard Major-General Mpembe
 19 issuing command for stun grenade and teargas, after which
 20 Warrant Officer Kuhn fired shotgun CS rifle grenade,” do
 21 you see that?
 22 KOLONEL VERMAAK: Ek sien dit.
 23 MR GUMBI: Second draft, we have another
 24 draft again – I wouldn’t say the second draft or a second
 25 draft, let’s say the report, the document, let’s call it a

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1 document, HHH28 –
 2 MS PILLAY: Chair, just to emphasise that
 3 HHH28 is not a draft, it’s the final document.
 4 MR GUMBI: Yes. Thanks very much, Adv
 5 Pillay, that’s what I saying, to say that document –
 6 CHAIRPERSON: That is –
 7 MR GUMBI: Yes.
 8 CHAIRPERSON: - is partly correct because
 9 the final version of course is L and the narrative in L,
 10 isn't it?
 11 MR CHASKALSON SC: No, Chairperson.
 12 There are two separate documents. L is a PowerPoint
 13 presentation. The narrative is a text document that goes
 14 with L and that is what the people presenting L would use
 15 to speak to L. So it’s not a version of L, it’s a document
 16 to be used alongside L.
 17 CHAIRPERSON: I see. I see, because
 18 there is some, quite a lot of narrative of course in L, but
 19 you say the narrative we’re now busy with is effectively
 20 supplementary material to be used in conjunction with L.
 21 Is that what you’re saying?
 22 MR CHASKALSON SC: Yes, Chairperson.
 23 COMMISSIONER HEMRAJ: Not all of this
 24 narrative makes its way into exhibit L.
 25 MR CHASKALSON SC: And conversely, there

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1 is some narrative in exhibit L or some material in exhibit
 2 L that isn't in these narratives.
 3 COMMISSIONER HEMRAJ: Yes.
 4 MR GUMBI: Oh, thanks very much. Let's
 5 move on. Document dated 5 September 2012, HHH28, when you
 6 compare the two, the name of Captain Thupe is not there and
 7 General Mpmembe is still considered as the person who issued
 8 command on that day, do you see that?
 9 KOLONEL VERMAAK: Ek sien dit.
 10 MR GUMBI: Then again exhibit L, you
 11 don't see any name of General Mpmembe whatever there, do you
 12 see that again? Slide 45, if we can put up exhibit L and
 13 then slide no. 47, 47. It's not there. General Mpmembe,
 14 any allegation of command is not there, you see that?
 15 KOLONEL VERMAAK: Dis korrek.
 16 MR GUMBI: Let's move on now then, if I
 17 can wrap up this aspect, then we had exhibit L that was
 18 presented before this Commission around October 2012, the
 19 one I referred to, exhibit – slide number 47 dealing with
 20 circumstances surrounding the death of the late Warrant
 21 Officer Lepaaku and injury of Lieutenant Baloyi. Let's
 22 move on, based on that pattern. You testified that on the
 23 21st of January 2013 you had a meeting with the National
 24 Commissioner, do you still remember that?
 25 KOLONEL VERMAAK: Dis korrek, Voorsitter.

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1 MR GUMBI: In that meeting you presented
 2 exhibit triple zero 10, that is the information note you
 3 compiled.
 4 KOLONEL VERMAAK: Dis korrek.
 5 CHAIRPERSON: I think we called it triple
 6 O, 10.
 7 MR GUMBI: Yes, triple O10.
 8 CHAIRPERSON: I was hauled over the coals
 9 when I referred to it as triple zero, the document, the
 10 exhibits in that series as triple zero. I got into big
 11 trouble, so let's not carry on with that. Mr Chaskalson
 12 did seem to indicate he wanted to say something, I don't
 13 know whether –
 14 MR GUMBI: Yes.
 15 CHAIRPERSON: - I misinterpreted it. Is
 16 there something you wanted to say, Mr Chaskalson, at this
 17 point?
 18 MR CHASKALSON SC: Yes, Chairperson.
 19 There are several other versions of the memorandum or
 20 drafts of the memorandum that are on Lieutenant-Colonel
 21 Scott's hard drive that I don't think have been entered as
 22 exhibits yet. The two that we have looked at are a draft
 23 of the 9th, of the 5th of September and the final version of
 24 the 7th of November. On the hard drive there are also
 25 drafts on the 11th of September, the 12th of September, the

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1 18th of September and the 30th of October.
 2 CHAIRPERSON: Perhaps –
 3 MR CHASKALSON SC: I can't, I can't
 4 confirm whether these are different documents because it
 5 may be that it was just the same document saved on a
 6 different day. I haven't done a comparison.
 7 CHAIRPERSON: If Mr – I take it Mr Gumbi
 8 is going to be going on with his cross-examination till the
 9 first comfort break.
 10 MR GUMBI: Yes.
 11 CHAIRPERSON: So it may be helpful, while
 12 the rest of us are being comforted, if he has a look at
 13 those documents on perhaps your computer, Mr Chaskalson,
 14 and if there's some material in it he wants to use then
 15 he'll be able to do so.
 16 MR GUMBI: Yes, I would like to compare
 17 those documents, Chairperson, because we're using only
 18 these three documents for our cross-examination –
 19 CHAIRPERSON: If it relates to the point
 20 he's busy with.
 21 MR GUMBI: Yes, yes, Chairperson, I will
 22 do that but we can proceed with our cross-examination in
 23 the meantime. Lieutenant-Colonel, we were busy dealing
 24 with this aspect of OOO10, the information note you
 25 presented to the National Commissioner on the 21st January

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1 2013, do you still remember?
 2 KOLONEL VERMAAK: Dis korrek, Voorsitter.
 3 MR GUMBI: And you further testified that
 4 General Mbombo was present also again.
 5 KOLONEL VERMAAK: Dit is korrek.
 6 MR GUMBI: Let's go to page 16. I'm
 7 interested to, facts or information surrounding the death
 8 of my client and injury of my client. Page 16. If you go
 9 down there below, number 3, go down there where it begins
 10 with "On the incident of the 13th August 2012," do you see
 11 that?
 12 KOLONEL VERMAAK: Dis korrek.
 13 MR GUMBI: Can I read those with the beg
 14 of the – with the leave of the Chairperson can I read that
 15 information on record?
 16 CHAIRPERSON: Yes, you may.
 17 [09:59] MR GUMBI: Thanks very much. It reads as
 18 follows, General. "On the incident of 13 August 2012,
 19 Monday, the allegations by members that Major-General
 20 Mpmembe gave instruction that the members must leave their
 21 firearms in the Nyalas, on the videos it could show clearly
 22 the members that were standing on the railway line track" –
 23 let me read it as it is – "on the railway track did not
 24 have proper riot gear with them. Due to the incident prior
 25 to this day it was reckless not to take it into

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1 consideration. The members were not properly in line,
 2 followed the group and why not with the armoured vehicles.
 3 The instruction of Major-General Mpembe that teargas and
 4 stun grenades must be thrown triggered the assault in the
 5 SAPS. Major-General Mpembe denied at Roots that he was not
 6 aware who gave instruction but after Captain Thupe from TRT
 7 Rustenburg said that he was next to the General when the
 8 question was, the instruction was given, only after that
 9 Major-General Mpembe acknowledged that it was him. Major-
 10 General Mpembe was also confronted by POP members why he
 11 took charge at unrest scene while the senior POP commander
 12 (Lieutenant-Colonel Merafe) was on the scene and it is
 13 against standing order 262." Do you see that?
 14 KOLONEL VERMAAK: Dis korrek.
 15 MR GUMBI: And this document was
 16 presented to the National Commissioner and to General
 17 Mbombo.
 18 KOLONEL VERMAAK: Dit is korrek,
 19 Voorsitter.
 20 MR GUMBI: When you presented this
 21 information before the National Commissioner, any
 22 undertaking from the National Commissioner to probe this
 23 allegation further on the 21st January 2013? Was there any
 24 undertaking?
 25 CHAIRPERSON: Sorry, you dropped your

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1 voice. I didn't hear the last sentence. Could you repeat
 2 the question –
 3 MR GUMBI: Yes, I'm saying –
 4 CHAIRPERSON: - a little bit louder,
 5 please?
 6 MR GUMBI: Yes, Chairperson, thanks. I'm
 7 saying on the 21st January 2013 when you presented this
 8 information in black and white before the National
 9 Commissioner, was there any undertaking from the National
 10 Commissioner to prove this allegation further?
 11 KOLONEL VERMAAK: Daar was van die
 12 Nasionale Kommissaris af geen ondernemings ten opsigte van
 13 enige aspek wat ek in die verslag aan hulle genoem het nie.
 14 Hulle het wel voor die tyd vergader voordat ek tot die
 15 vergadering toegelaat was, so – maar teenoor my persoonlik
 16 was daar geen ondernemings gegee. Ons het net die dokument
 17 bespreek en toe is ek verskoon.
 18 MR GUMBI: Yes, but you will agree with
 19 me, Lieutenant-Colonel, that information surrounding the
 20 death of the police officers, especially the police
 21 officers on duty, is crucial information, is important
 22 information that needs to be investigated. You are an
 23 experienced POP commander and a police officer. Do you
 24 agree with me?
 25 KOLONEL VERMAAK: Mnr die Voorsitter, as

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1 ek dalk kan vra dat hy vir my asseblief net nader aan die
 2 mikrofoon kan praat, sy woorde raak weg en dan kan ek nie
 3 die vrae behoorlik hoor nie.
 4 MR GUMBI: I do apologise for that,
 5 Lieutenant-Colonel, I will do that. I'm saying the
 6 information regarding the death of the police officer,
 7 especially when he is killed in the line of duty or he is
 8 injured in the line of duty, is important information to be
 9 investigated thoroughly. You will agree with me.
 10 KOLONEL VERMAAK: Dis korrek.
 11 CHAIRPERSON: I'm sorry – [microphone
 12 off, inaudible] – very soft.
 13 MR GUMBI: Yes.
 14 CHAIRPERSON: [Microphone off, inaudible]
 15 MR GUMBI: I will do that, Chairperson.
 16 Up to date, Lieutenant-Colonel Merafe, I mean Lieutenant-
 17 Colonel Vermaak, have you ever been summoned to appear
 18 before any internal inquiry probing this incident of the
 19 13th of August 2012?
 20 KOLONEL VERMAAK: Nee.
 21 MR GUMBI: Despite the fact that you were
 22 an eye witness, you saw this incident from the helicopter.
 23 KOLONEL VERMAAK: Dis korrek.
 24 MR GUMBI: You know the National
 25 Commissioner, when she was testifying before this

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1 Commission, we cross-examined her on behalf of our client
 2 and we presented crucial information, especially on this
 3 critical aspect of police killing in South Africa and the
 4 high level of stress in the SAPS. So I wanted to move from
 5 that basis, then she didn't dispute whatever material we
 6 presented before this Commission on this aspect. Let's
 7 move again. What I wanted to do, I wanted to compare her
 8 testimony before this Commission in relation to exhibit
 9 OOO10. In that respect, Lieutenant-Colonel, can I refer
 10 you to exhibit, to the statement she presented before this
 11 Commission. If you can be in position of exhibit FFF2 and
 12 FFF3, the statement of the National Commissioner presented
 13 before this Commission.
 14 KOLONEL VERMAAK: Ek het dit.
 15 MR GUMBI: And what we will do, we will
 16 compare this information note you presented before her on
 17 the 21st of January 2013. Right, go to the last page of
 18 FFF2, the statement of the 7th of March 2013, page 9.
 19 KOLONEL VERMAAK: Ek het hom.
 20 MR GUMBI: You see there it's dated 7
 21 March 2013. Then it was commissioned – it is not
 22 commissioned, this one, do you see that?
 23 KOLONEL VERMAAK: Ek sien.
 24 MR GUMBI: We have another one, FFF2
 25 again and this one is commissioned if you go to page 9 of

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1 that statement.

2 COMMISSIONER HEMRAJ: Mr Gumbi, my copy

3 of this exhibit FFF2 has a page 10 where a commissioner of

4 oaths has signed. Do you perhaps not have that page in

5 yours?

6 MS PILLAY: Commissioner Hemraj, I think

7 the first statement Mr Gumbi was referring to is actually

8 FFF2A.

9 COMMISSIONER HEMRAJ: I see.

10 MR GUMBI: Yes, 2A. I do apologise, yes.

11 We've got a signed version and an unsigned version but both

12 of them –

13 MS PILLAY: 2A is not commissioned.

14 MR GUMBI: Is not commissioned, yes. The

15 other one is commissioned but also it's dated 7 March 2013.

16 Do you see that, Lieutenant-Colonel? Then it was

17 commissioned by the Deputy National Commissioner, do you

18 see that, Lieutenant?

19 KOLONEL VERMAAK: Dis korrek.

20 MR GUMBI: Then the meeting you had

21 wherein you presented OOO10 was on the 21st of March 2013,

22 do you see that?

23 KOLONEL VERMAAK: Dis korrek. 21st of

24 January.

25 MR GUMBI: I mean 21st of January 2013.

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1 Right, when you go through these two statements, when you

2 check the incident of the 13th of August 2012 there is no

3 indication in her statement as presented to this Commission

4 that on the 21st of January 2013 I had a meeting with

5 Colonel, Lieutenant-Colonel Vermaak, he presented me with

6 this information about the incident of the 13th of March

7 2013. It's not there. We are dealing with statements

8 alone. Do you see that?

9 KOLONEL VERMAAK: Ek sien.

10 MR GUMBI: Both statements, the

11 commissioned statement and un-commissioned statement, she

12 doesn't deal with this aspect, yet she was in possession of

13 your information note and you had a meeting with her on the

14 13th, on the 21st of January 2013. Do you see that?

15 KOLONEL VERMAAK: Ek sien dit.

16 MR GUMBI: Let us assume that maybe she

17 made a mistake by not including this information in her

18 statement but she testified –

19 CHAIRPERSON: Why would she have made a

20 mistake? It was hearsay.

21 MR GUMBI: Yes –

22 CHAIRPERSON: She didn't have to put in

23 all the hearsay reports that she'd heard over the period.

24 In para 12, I think it's para 12 of both of the statements

25 or all the statements, there are a whole, we had – Mr

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1 Burger took us through them in his very detailed focused

2 cross-examination but para 12 I think was the same in all

3 of them, she was simply reporting that she was told that

4 there had been trouble at Marikana, that people had been

5 killed in the week before the 13th of August and that on the

6 13th there had been further deaths, five deaths including

7 two police officers. That's all she said. It wasn't

8 incumbent upon her to give any of the details of what

9 happened. That would have been hearsay. That would in any

10 event have been dealt with by other evidence before the

11 Commission from people who could give direct evidence. So

12 on what basis are you contending that she made a mistake or

13 may have made a mistake in not including that hearsay

14 material in her various, the various versions of her

15 statement?

16 MR GUMBI: I was still proceeding with my

17 line of cross-examination, Chairperson, having rendered –

18 CHAIRPERSON: I know you're proceeding

19 with your cross-examination –

20 MR GUMBI: Yes.

21 CHAIRPERSON: - but I'm seeking clarity

22 on what basis you are putting to the witness that the

23 National Commissioner may have made a mistake. I think

24 it's necessary that we understand that and the witness

25 understands that, so that we get an answer to it which can

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1 help us.

2 MR GUMBI: Fair enough, Chairperson. Let

3 me rephrase my question.

4 CHAIRPERSON: Yes, I think –

5 MR GUMBI: I will try as much as I can to

6 stick to the facts relevant to my clients. Fair enough,

7 Lieutenant-Colonel, that information is not there. Let's

8 move again to her testimony before this Commission, the

9 National Commissioner.

10 KOLONEL VERMAAK: Ek bevestig dat daardie

11 inligting nie in die verklaring vervat is, maar ek kan nie

12 enige kommentaar lewer op die rede hoekom dit nie daarby

13 ingesluit is nie.

14 MR GUMBI: Fair enough, I accept that,

15 Lieutenant-Colonel. Her testimony before this Commission,

16 she never canvassed this aspect, even omitting the meeting

17 she had with you. It was never ever canvassed to say I had

18 a meeting with Lieutenant-Colonel Vermaak, he gave me

19 further information about the incident of the 13th, maybe

20 I'm investigating it, I will provide further reports on it.

21 She never said that in this Commission.

22 KOLONEL VERMAAK: Ek moet aanvaar wat u

23 vir my sê, Voorsitter.

24 MR GUMBI: I'm saying don't you find it –

25 if I can pursue that, my line of cross-examination again,

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1 Chairperson, on that aspect – don't you find it very
2 strange –
3 CHAIRPERSON: No – no, Mr Gumbi, we've
4 had this point often before. What this witness finds
5 strange or doesn't find strange is of really no concern to
6 the Commission. I can understand you may wish to argue at
7 some point that it is strange, that it's a matter which
8 merits the attention of the Commission and consideration by
9 the Commission, but whether this witness finds it strange
10 or not doesn't really take it any further. This is a
11 ruling I've given over and over again in respect of
12 questions asked by all, by a number of the counsel here and
13 I don't think I should depart from the principle underlying
14 that ruling in respect of the question you've just asked.
15 MR GUMBI: I accept your ruling,
16 Chairperson. Let's deal with another senior police officer
17 who was present again who testified before this Commission,
18 Chair. You've said General Mbombo was there when you
19 presented this document before the National Commissioner.
20 KOLONEL VERMAAK: Dis korrek.
21 MR GUMBI: And again the statement of
22 General Mbombo presented before this Commission, he doesn't
23 say we had a meeting with Lieutenant-Colonel Vermaak, he
24 provided us with this information about the incident of the
25 13th of August 2012, she doesn't say that.

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1 KOLONEL VERMAAK: Ek hoor wat u vir my
2 sê, Voorsitter.
3 MR GUMBI: This includes her testimony
4 before this Commission, she never dealt with this aspect.
5 KOLONEL VERMAAK: Ek hoor wat u sê.
6 MR GUMBI: To round off this aspect,
7 Lieutenant-Colonel, as a police officer I hope you will
8 assist me. I'm not arguing the law with you but I'm trying
9 to tell you what the law is. According to the Police
10 Service Amendment Act are you aware that the National
11 Commissioner is empowered to initiate inquiry if a member
12 is killed in the line of duty or injured in the line of
13 duty?
14 KOLONEL VERMAAK: Dit is korrek.
15 MR GUMBI: And when General Mbombo
16 testified before this Commission she made mention that she
17 appointed General Mpembe, I mean General Mpembe to
18 investigate this. That was her testimony.
19 KOLONEL VERMAAK: As dit so vermeld is
20 deur haar kan ek nie kommentaar daarop lewer nie.
21 MR GUMBI: Yes, and we know for a fact
22 that on the 13th – on the 5th of September 2012 at Roots
23 members accused General Mpembe of having issued command on
24 the 13th of August 2012.
25 KOLONEL VERMAAK: Dit is korrek.

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1 Voorsitter.
2 MR GUMBI: And yet General Mpembe is
3 appointed to investigate himself.
4 KOLONEL VERMAAK: Ek kan ongelukkig nie
5 enige kommentaar lewer oor besluite wat my Provinsiale
6 Kommissaris neem om mense aan te stel om ondersoek te doen
7 nie.
8 MR GUMBI: Okay. These information notes
9 OOO10, do you know whether it was shared among the
10 commanders who were involved in the operation of the 13th of
11 August 2012, do you have knowledge of that?
12 KOLONEL VERMAAK: Negatief. Die enigste
13 mense wat ek weet afskrifte van dit gehad het was die mense
14 wat vermeld was in die vergadering die betrokke dag en dan
15 het ek dit agterna weer aan die police se regsspan
16 oorhandig en hulle daarop gewys van die verslag wat ek
17 opgestel het.
18 MR GUMBI: Okay. Can we also assume that
19 General Mpembe was in possession of this document before he
20 took the stand before this Commission?
21 KOLONEL VERMAAK: Ek kan ongelukkig nie
22 daaroor enige afleidings maak nie.
23 MR GUMBI: Let me move on to another
24 aspect. I'm not going to continue deliberating on this
25 aspect. I think I've made my point and it is up to the

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1 Commission to decide on it. When we were cross-examining
2 General Mpembe before this Commission we presented
3 information that is an extract from the pocket book,
4 statement of police officers who were there on the 13th of
5 August 2012, some of them they fingered him as a person who
6 issued instruction on that day. In that regard if I can
7 refer you to those exhibits we presented, I think they are
8 in your file, you have read it. Not all of them have
9 mentioned General Mpembe as a person who issued command on
10 the 13th but some of them they said General Mpembe, some of
11 them they're saying the command was issued. We've got the
12 statement of Captain Thupe, we've got an extract from
13 Constable Mathavha's pocket book, that is exhibit HHH24,
14 we've got HHH29, the statement of Constable Joseph
15 Sekgweleya. We've got HHH30, the statement of Constable
16 Mguye. We've got the statement of Constable Mahume, HHH31.
17 We also have a statement of Warrant Officer Mkhabele,
18 HHH33. We've got also a statement of Tawana, HHH37.
19 [10:19] All those documents, we made use of all those
20 documents to confront General Mpembe during our cross-
21 examination. At Roots on the 5th of September 2012, were
22 you in possession of this information when you discuss
23 about the incident of the 13th?
24 KOLONEL VERMAAK: Ek was betrokke by
25 daardie vergadering.

<p style="text-align: right;">Page 25825</p> <p>1 MR GUMBI: I beg your pardon, Lieutenant 2 Colonel? I didn't get the answer. 3 KOLONEL VERMAAK: Ek kan nie hoor wat jy 4 vra nie, mnr die Voorsitter. 5 MR GUMBI: I'm saying all those documents 6 we used when we were cross-examining General Mpmembe, when 7 you were at Roots were you in possession of all this 8 information I refer you to, the statement, extract from 9 this pocketbook? 10 KOLONEL VERMAAK: Ek het die inligting 11 tot my beskikking gehad wat ek voor die Kommissie oor 12 getuig het. Die weergawe van die lede, dis elke lid se eie 13 ervaring hoe hy dit ondervind het. My weergawe het ek 14 vermeld in my verklaring, asook in hierdie verslag. 15 MR GUMBI: So will I be correct that when 16 you compiled OOO10, your information notes, when you 17 presented all this information before the National 18 Commissioner you also didn't have, you were not in 19 possession of this information? 20 KOLONEL VERMAAK: Voorsitter nee, ek was 21 in besit van geen enige dokumentasie toe ek daardie verslag 22 opgestel het ten opsigte van die 13de nie. Ek het nie 23 toegang gehad tot enige lid se verklaring nie. Ek het ook 24 nie enige lid se verklaring aangevra nie want ek respekteer 25 dit dat dit sy persoonlike weergawe is wat hy moet voor die</p>	<p style="text-align: right;">Page 25827</p> <p>1 Chairperson. 2 CHAIRPERSON: We'll take the comfort 3 break now. Let's try to be back in quarter of an hour. 4 [COMMISSION ADJOURNS COMMISSION RESUMES] 5 [11:26] CHAIRPERSON: - break than we had 6 intended because Mr Gumbi, after seeing the documents that 7 were on the computer, earlier drafts of the narrative, 8 decided to put them in as exhibits and the evidence 9 leaders, I understand Ms Pillay actually assisted him in 10 having copies made of the relevant documents and she's 11 given us copies of them and they've been marked in 12 anticipation OOO19.1, OOO19.2, OOO19.3, OOO19.4. The first 13 document is, OOO19.1 has a computer – how would one 14 describe this document, Ms Pillay? 15 MS PILLAY: Chair, it's the list of 16 properties. 17 CHAIRPERSON: List of properties, I see. 18 And then part of – 19 MS PILLAY: Just before the – 20 CHAIRPERSON: Explain to us what they are 21 and then I'll just write them in my book as – 22 MS PILLAY: Chair, OOO19.1 is the 23 properties of, I believe it's the folder from Colonel 24 Scott's hard drive. 25 CHAIRPERSON: So will I call it</p>
<p style="text-align: right;">Page 25826</p> <p>1 Kommissie getuig. 2 MR GUMBI: When did you become aware 3 about the existence of these statements and pocketbook from 4 the members who were involved in the operation of the 13th 5 August 2012? 6 KOLONEL VERMAAK: Die verklarings het ek 7 vir die eerste keer onder oë gehad nadat u vir my die lêer 8 beskikbaar gestel het. 9 MR GUMBI: Chairperson, I see it's 20 10 past 10 now. I think I'm about to round off – 11 CHAIRPERSON: We're supposed to go on 12 until half past 10, but – 13 MR GUMBI: Yes. 14 CHAIRPERSON: - if you would like me to 15 take the comfort break at this stage so you can look at 16 those extra documents that Mr Chaskalson's going to show 17 you on the police archive – 18 MR GUMBI: Yes, yes, Chairperson. 19 CHAIRPERSON: - and it would be 20 convenient for you if we took the comfort break now, I 21 will – 22 MR GUMBI: Yes, so that we'll have a look 23 at it. 24 CHAIRPERSON: - accede to your request. 25 MR GUMBI: Yes, thanks very much,</p>	<p style="text-align: right;">Page 25828</p> <p>1 properties in folder from Colonel Scott's hard drive. Is 2 that right? 3 MR CHASKALSON SC: Chairperson, can I 4 just correct that? I have taken from Colonel Scott's hard 5 drive and Colonel Visser's hard drive all of the drafts of 6 the memorandum that I could find and put them into one 7 directory. Sometimes they have the same file name but have 8 been saved on a later date, changed and saved on a later 9 date. So I then created separate – for instance if one 10 goes into the 6 September directory there one will find a 11 file which has the same name, Memorandum 2012-09-05, which 12 was actually saved again on the 6th of September after it 13 had been amended again. So the subdirectories are there to 14 accommodate files with the same file name which were saved 15 on different dates and after they'd been amended. 16 CHAIRPERSON: Alright, okay. 17 MR CHASKALSON SC: But this, all of the 18 documents here were taken either from Colonel Visser's hard 19 drive or from Colonel Scott's hard drive. 20 CHAIRPERSON: Alright, so it sounds to me 21 the sensible way to do it is OOO19.1 is extract from draft 22 memo, we'll just call it memo, is it? Draft memo, draft 23 narrative, draft narrative and can I say as at 5/9/2012? 24 That's the first one. 25 MS PILLAY: Chair, if I can just explain</p>

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1 the bundles before we mark it, just to make it –

2 CHAIRPERSON: Sorry?

3 MS PILLAY: If I can just explain the

4 bundles before we mark it, just to make sense of them.

5 CHAIRPERSON: Yes, alright.

6 MS PILLAY: The first bundle, 19.1 is

7 what you see the list of memoranda that you see on the

8 first property stage.

9 CHAIRPERSON: Yes.

10 MS PILLAY: The second one, 19.2 is – and

11 you'll see at the top there that's the file properties for

12 Visser copy, so the file, the sub-file called Visser copies

13 is what's in 19.2, and the third, 19.3 is the 6th of

14 September. So if you look at the first bundle, if you look

15 at 19.1, the first stage –

16 CHAIRPERSON: Yes.

17 MS PILLAY: - where you see 6th of

18 September, that's 19.3, and 19.4 is the 17th of September.

19 CHAIRPERSON: I see. Alright, well

20 you've described them for us, so I think I don't have to

21 repeat that and that will be on record explaining what

22 these exhibits are, that's OOO19.1 to OOO19.4. Thank you

23 very much for assisting in that regard. Mr Gumbi, your

24 housekeeping has been done; your exhibits have been marked.

25 Check that the witness - ek moet u daaraan herinner dat u

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1 nog steeds gebonde is deur u plegtige bevestiging.

2 SALMON JOHANNES VERMAAK: Dis korrek,

3 Voorsitter.

4 CHAIRPERSON: Mr Gumbi, I take it the

5 witness has got copies as well, has he? You have?

6 KOLONEL VERMAAK: Dis korrek.

7 CHAIRPERSON: Right, Mr Gumbi, proceed

8 with your cross-examination.

9 CROSS-EXAMINATION BY MR GUMBI (CONTD.):

10 Thanks very much, Chairperson. Lieutenant, let us deal

11 with the first, with exhibit OOO19.1. Are you in

12 possession of that?

13 CHAIRPERSON: Ja, you referred to the

14 witness as lieutenant. He didn't take exception, but I so

15 on his behalf.

16 MR GUMBI: I do apologise.

17 CHAIRPERSON: Please get his rank right.

18 MR GUMBI: I do apologise, Chairperson.

19 Are you in possession of that document?

20 KOLONEL VERMAAK: Dis korrek.

21 MR GUMBI: Then let's go to properties,

22 properties there it's written 2012-09-05 9:55. You see

23 that?

24 KOLONEL VERMAAK: Ek sien dit.

25 MR GUMBI: Then when you go to attached

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1 page, that's page 17, and you go to paragraph 3 there, you

2 see that?

3 CHAIRPERSON: Sorry to interrupt you.

4 We've just been handed a fifth document, which is part of

5 the series, which has been marked OOO19.5 and I ask Ms

6 Pillay to shortly describe it for us for the purposes of

7 the record, then you can proceed with your questioning.

8 MR GUMBI: Yes, thank you very much,

9 Chairperson.

10 MS PILLAY: Chair, the fifth, 19.5 is the

11 21st of September file. It's the excerpt from the 21st of

12 September file.

13 CHAIRPERSON: Thank you.

14 MR SEMENYA SC: Chair, we really feel

15 excluded. We don't have the documents you're having at

16 all.

17 MR MPOFU: We also feel excluded.

18 CHAIRPERSON: The documents which have

19 been handed in, obviously we haven't got copies for the

20 various parties, but we will have them made available

21 either later today or by Tuesday.

22 MS PILLAY: Chair, the copies will be

23 here in a few seconds.

24 CHAIRPERSON: They'll be here in a few

25 seconds. Well, I don't know about a few seconds. That's

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1 probably overoptimistic, but they will be here before the

2 close of business today and so certainly if there's to be

3 further cross-examination on this material the other

4 parties will be in possession of copies and of course Mr

5 Semanya will be able to re-examine if he wishes to do so on

6 these documents as well.

7 MR MPOFU: Thank you, Chairperson, for

8 now I think we can survive with using the screen.

9 MR GUMBI: Thanks very much, Chairperson.

10 CHAIRPERSON: Yes well, you have been

11 appearing for survivors from the beginning of the

12 Commission. You're now one of them yourself.

13 MR MPOFU: [Microphone off, inaudible]

14 MR GUMBI: Thanks very much, Chairperson.

15 Lieutenant-Colonel, I refer you to that property with the

16 date 2012-09-05, then you see the time there is 9:55. You

17 see that?

18 KOLONEL VERMAAK: Ek sien dit.

19 MR GUMBI: And you go there the next

20 page, page 17 attached to that properties, then you go to

21 the third paragraph there. You see that? Third paragraph

22 starts with the sentence, "On their way to the koppie."

23 You see that?

24 KOLONEL VERMAAK: Ek het hom.

25 MR GUMBI: Can I read it for record?

<p style="text-align: right;">Page 25833</p> <p>1 Reads as follows, "On their way to the koppie they changed 2 direction towards the village. To prevent them from 3 entering the village a command was given of gas grenade. 4 Then Warrant-Officer Kuhn confirmed the command to Captain 5 Thupe and the teargas was used to disperse the group and 6 prevent them from entering the village." That was the 7 version of the SAPS around that time, that is the 5th of 8 September 2012, 9:55. You see that? 9 KOLONEL VERMAAK: Ek sien dit. 10 MR GUMBI: Then again when you move on, 11 the next document, that is October, it's 30 October 2012, 12 you see that? Go to the page relevant to that properties, 13 to that property. When you go to paragraph 2 it reads as 14 follows, "To prevent them from entering the settlement the 15 police utilised teargas and stun grenade to channel the 16 protesters away from their intended path. Captain Thupe 17 heard General Mpembe issue the command for stun and 18 teargas, after which Warrant-Officer Kuhn fired a shotgun 19 CS rifle grenade." You see that? 20 KOLONEL VERMAAK: Dit is korrek. 21 MR GUMBI: So it was the version of the 22 SAPS on the 30th of October 2012 at about 10. Then we move 23 to the next properties, property again is dated 2012-09-18, 24 18th of September 2012 at 9:24. Are you in possession of 25 it? 9:24.</p>	<p style="text-align: right;">Page 25835</p> <p>1 Voorsitter. 2 MR GUMBI: So that was the version of 3 SAPS on the 12th of September 2012, 12:49. Let's move to 4 the next property again. On the 5th of September, 2012-09- 5 05, that is the 5th of September 2012 around 20:22 – 6 KOLONEL VERMAAK: Ek het hom. 7 MR GUMBI: Go to paragraph 2 again. Let 8 me read that paragraph on record. "To prevent them from 9 entering the settlement the police utilised teargas and 10 stun grenade to channel the protesters away from their 11 intended path. Captain Thupe (TRT commander) heard Major- 12 General Mpembe issue a command for stun grenade and 13 teargas, after which Warrant-Officer Kuhn fired the 14 shotgun, CS rifle grenade." That was the version of SAPS 15 on the 5th of September 2012, around 20:22, dealing with 16 this aspect surrounding the death of the late Warrant 17 Officer Lepaaku and injury of Lieutenant Baloyi. You see 18 that? 19 KOLONEL VERMAAK: Ek sien dit. 20 MR GUMBI: Let us move to another 21 exhibit, that is OOO19.2. Are you in possession of that 22 document, Lieutenant-Colonel? 23 KOLONEL VERMAAK: Ek het hom. 24 MR GUMBI: It's for October 2012. Let's 25 start with that one, the properties written 2012-10-17,</p>
<p style="text-align: right;">Page 25834</p> <p>1 KOLONEL VERMAAK: Ek het hom. 2 MR GUMBI: It reads as follows, "To 3 prevent them from entering settlement the police utilised 4 teargas and stun grenade to disperse, discouraging them 5 from their intended path. Major-General Mpembe issued a 6 command for stun grenade and teargas, after which Warrant- 7 Officer Kuhn fired shotgun and CS rifle grenade." You see 8 that? 9 KOLONEL VERMAAK: Ek sien dit, 10 Voorsitter. 11 MR GUMBI: That was the version of the 12 SAPS on the 18th of September, around 9:24. Let's move to 13 the next property. September, it's written as follows, the 14 date, 2012-09, 12 September, 12:49. 12:49. Are you in 15 possession of that page? 16 KOLONEL VERMAAK: Ek het hom voor my. 17 MR GUMBI: Go to page 3, I mean to 18 paragraph 2. It reads as follows, "To prevent them from 19 entering the settlement the police utilised teargas, stun 20 grenade to disperse, discouraging them from their intended 21 path. Captain Thupe (TRT commander) heard Major-General 22 Mpembe issue a command for stun and teargas, after which 23 Warrant-Officer Kuhn fired a shotgun CS and rifle grenade. 24 Do you see that? 25 KOLONEL VERMAAK: Ek sien dit,</p>	<p style="text-align: right;">Page 25836</p> <p>1 16:48. Do you see that? 2 KOLONEL VERMAAK: Ek sien dit, 3 Voorsitter. 4 MS PILLAY: 16:48 is the last page in 5 this bundle. 6 MR GUMBI: Yes, it is the last page. 7 Yes, the last page, thank you very much, Adv Pillay. You 8 are in possession of that page? Page 26 of 22 – 9 KOLONEL VERMAAK: Dis korrek. 10 MR GUMBI: Paragraph 2, I think let me 11 read it on record. "To prevent them from entering the 12 settlement the police used teargas and stun grenade to 13 disperse, discouraging them from their intended path. 14 Major-General Mpembe issued a command for stun grenade and 15 teargas, after which Warrant-Officer Kuhn fire a shotgun, 16 CS rifle grenade." You see that? 17 KOLONEL VERMAAK: Ek sien dit. 18 MR GUMBI: So we accept – okay, that was 19 the version of the SAPS on the 17th of October 2012 at 20 16:48. Let's move to another one, the next properties. 21 It's written 2012-10-15. The timeframe there is 11:42. So 22 it's the 15th of October 2012. 23 MS PILLAY: It's the second-last page of 24 19.2. 25 MR GUMBI: Second page of – yes.</p>

<p style="text-align: right;">Page 25837</p> <p>1 KOLONEL VERMAAK: Ek het hom. 2 MR GUMBI: Chairperson, I'm a little bit 3 confused here. 4 MS PILLAY: No, it's 11:42, it's the next 5 page. 6 MR GUMBI: 11:42 according to my bundle, 7 yes, I'm in possession of it. 11:42, then the next page is 8 20:45 and in this bundle I have the other one, 13:23. I 9 don't know whether, Adv Pillay, you are in possession of 10 the same document. 11 MS PILLAY: 13.3 is the first page of 12 this bundle. 13 MR GUMBI: Okay, let me leave that one, 14 Chairperson. I will fix it. Let me deal with the 15 information that is at my disposal. I do apologise for 16 this minor mistake, Lieutenant-Colonel. Let us focus, let 17 us take the SAPS version as it was on the 8th of October 18 2012. Go to 2012-10-08, 13:23. Are you in possession of 19 that document? 20 KOLONEL VERMAAK: Ek het hom, Voorsitter. 21 MR GUMBI: It's page 32 of 107, is 22 written there at the bottom. 13, 32 of 107. You see? 23 Then when you go to paragraph 3 it's written, "To prevent 24 them from entering the settlement the police utilised 25 teargas and stun grenade to disperse, discouraging them</p>	<p style="text-align: right;">Page 25839</p> <p>1 MR GUMBI: Yes, we'll deal with that, 2 Commissioner, when we go through these records. Let's deal 3 with this one first then we'll go to 19.4. Are you in 4 possession of OOO19.3? 5 KOLONEL VERMAAK: Ek het dit, Voorsitter. 6 MR GUMBI: You go to page 20 there, page 7 20 of 66, paragraph 3 is written, "To prevent them from 8 entering the settlement the police utilised teargas, stun 9 grenades to disperse, discouraging them from their intended 10 path. Captain Thupe, TRT commander, heard Major-General 11 Mpmembe issue a command for stun grenades and teargas after 12 which one Warrant Officer Kuhn fired a shotgun rifle 13 grenade." Do you see that? 14 KOLONEL VERMAAK: Dit is korrek. 15 MR GUMBI: So when you compare the two, 16 let's start with 19.2, the previous one I referred to, this 17 one is dated the 6th of September 2012, 13:45 is the version 18 of the SAPS, "Captain Thupe, TRT commander, heard General 19 Mpmembe issue a command." That was the 6th of September 20 2012, do you see that? 21 KOLONEL VERMAAK: Ek sien hom. 22 MS PILLAY: Chair, maybe just to assist 23 Mr Gumbi, the change comes in from the 17th of September at 24 16H00 which is OOO19.4. That's when the reference to 25 Captain Thupe is removed from all of the documents.</p>
<p style="text-align: right;">Page 25838</p> <p>1 away from their intended path. Major-General Mpmembe issued 2 a command for stun grenade and teargas, after which 3 Warrant-Officer Kuhn fired the shotgun, CS rifle grenade." 4 You see that? 5 KOLONEL VERMAAK: Ek sien dit. 6 MR GUMBI: That is SAPS version on the 8th 7 of October 2012 at about 13:23. Let's go to another 8 property again. Again on that same day, 2012-10-08, 20:45, 9 that is the 8th of October 2012, it's quarter to 9, 20:45, 10 you go to paragraph 3 again. 11 KOLONEL VERMAAK: Ek het hom. 12 MR GUMBI: Can I read it for record. "To 13 prevent them from entering the settlement the police 14 utilised teargas and stun grenade to disperse, discouraging 15 them from their intended path. Major-General Mpmembe issued 16 a command for stun and teargas, after which Warrant-Officer 17 Kuhn fired the shotgun, CS rifle grenade." You see that? 18 KOLONEL VERMAAK: Dis korrek. 19 MR GUMBI: That is OOO19.2. Can you move 20 on again to another document, OOO19.3. 21 COMMISSIONER HEMRAJ: Mr Gumbi, isn't it 22 clear from these documents that after a certain date the 23 information about Captain Thupe is omitted from all of the 24 following versions? 25 [11:45] Isn't that the position?</p>	<p style="text-align: right;">Page 25840</p> <p>1 MR GUMBI: Yes, I was heading towards 2 that, Chairperson, that's why I wanted to fill out this 3 one, then I will move to OOO19.4. Let's deal with these 4 two documents first. The version of the SAPS, 6th of 5 September 2012 the name of Captain Thupe, TRT commander 6 from Rustenburg, he heard General Mpmembe issue a command, 7 teargas, after which Warrant Officer Kuhn fired shotgun CS 8 rifle grenade, the version of the SAPS during that time. 9 Then when you go to the version of the SAPS on the 10th of 10 October 2012, I mean on the 8th of October 2012, 20:45 – 11 objection? 12 MR SEMENYA SC: Chair, will it become 13 apparent at a certain point what this document has to do 14 with this witness? 15 CHAIRPERSON: Yes, I was – thought that I 16 could foresee what questions were going to be asked by Mr 17 Gumbi flowing from these documents but if he doesn't ask 18 those questions I will, because I can see there are things 19 that the witness may be able to help us on in respect of 20 some at least of the documents, but I was initially shared, 21 I initially shared your concern but then it struck me that 22 – I must always assume counsel has a reason for asking 23 questions but when it occurred to me what the questions 24 might be, I thought if he doesn't sketch plan them I'll ask 25 them so I think we must be patient. Mr Gumbi, I understand</p>

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1 he's got a case to put, it's important that he be given
 2 full opportunity to put it. I suspect his clients may be
 3 present too and it's important that they see that he's
 4 given ample opportunity. So there isn't another cross-
 5 examiner who will take over after he's finished today, so
 6 he may as well use the time available to satisfy himself
 7 and his clients that he's doing full justice to his case.

8 MR GUMBI: Thank you very much,
 9 Chairperson. I was busy dealing with these aspects,
 10 comparing the two documents, the version of the SAPS on the
 11 6th of September 2012 with regard to the version of the SAPS
 12 on the 8th of October 2012. I pointed out, Lieutenant-
 13 Colonel, that the name of Captain Thupe is removed from
 14 this document, you see that?

15 KOLONEL VERMAAK: Ek sien dit,
 16 Voorsitter.

17 MR GUMBI: Can I go to OOO19.4 again so
 18 that you can put all these exhibits on record. Are you in
 19 possession of that document, Lieutenant-Colonel?

20 KOLONEL VERMAAK: Ek het hom.

21 MR GUMBI: The version of the SAPS on –
 22 it's written, if I can read the properties firstly, 2012-
 23 09-17 at 16H00. That is the 17th of September 2012. You go
 24 to page 29 of 102, you go to paragraph 2. It reads as
 25 follows about the incident of the 13th of August 2012, "To

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1 prevent them from entering the settlement, the police
 2 utilised teargas and stun grenades to disperse,
 3 discouraging them from their intended path. Major-General
 4 Mpembe issued a command for stun grenades and teargas,
 5 after which Warrant Officer Kuhn fired a shotgun CS rifle
 6 grenade." Do you see that?

7 KOLONEL VERMAAK: Ek sien dit.

8 MR GUMBI: The same applies when you see,
 9 if I can refer you to OOO19.5, let's finish it and read
 10 all, the content of all these exhibits on record. The
 11 version of the SAPS, 21st September 2012 at around 13:30, if
 12 you read the properties, 2012-09-21, 13:30. Go to page
 13 29/102. You go to paragraph 2 of that document, are you in
 14 possession of it?

15 KOLONEL VERMAAK: Ek het hom.

16 MR GUMBI: Let me read the content of
 17 that paragraph on record, "To prevent them from entering
 18 the settlement, the police utilised teargas and stun
 19 grenades to disperse, discouraging them from their intended
 20 path. Major-General Mpembe issued a command for stun
 21 grenades and teargas, after which Warrant Officer Kuhn
 22 fired a shotgun CS rifle grenade." Do you see that?

23 KOLONEL VERMAAK: Ek sien dit, ja.

24 MR GUMBI: So based on this document,
 25 Warrant Officer – I mean Lieutenant-Colonel Vermaak, you

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1 testified before this Commission that you identify some of
 2 the difference between the version of the 5 of September
 3 2012, 5 September 2012 vis-à-vis the version of the SAPS as
 4 far as exhibit L slide 47 is concerned.

5 KOLONEL VERMAAK: Dis korrek.

6 MR GUMBI: Based on that then you
 7 confronted Lieutenant-Colonel Scott.

8 KOLONEL VERMAAK: Dis korrek.

9 MR GUMBI: You know our concern,
 10 Lieutenant-Colonel Vermaak, is that it's clear when one is
 11 analysing this document that the information surrounding
 12 the death of the late Warrant Officer Lepaaku and injury of
 13 Lieutenant Baloyi, someone in the South African Police
 14 Services tampered with. Do you agree with me after
 15 undergoing this exercise?

16 KOLONEL VERMAAK: Voorsitter, nee, ek kan
 17 nie – ek kan nie 'n comment –

18 CHAIRPERSON: Before you ask the
 19 question, Mr Semenya wants to say something.

20 MR SEMENYA SC: Well, we couldn't
 21 understand what the question is. What is tampering?

22 CHAIRPERSON: Yes. The point raised by
 23 Mr Semenya I think deserves an answer. What exactly do you
 24 mean by tamper?

25 MR GUMBI: If I can rephrase my question

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1 –

2 CHAIRPERSON: I think you should.

3 MR GUMBI: Someone removed certain
 4 information. Do you agree with me?

5 KOLONEL VERMAAK: As 'n mens na die
 6 dokumente kyk soos wat dit nou voorgehou was, dan is dit so
 7 dat daar wel 'n naam verwyder is van die dokument af.

8 MR GUMBI: And when you check also
 9 against exhibit L, I've dealt with that one that was
 10 presented in this Commission as far as October 2012 is
 11 concerned, you don't see any name of anyone there on slide
 12 47. Do you see that? Exhibit L, slide 47, you don't see
 13 any name there. General Mpembe's name there, do you see
 14 it? I don't see it.

15 CHAIRPERSON: I don't think you need ask
 16 a question like that because the answer is self-evident,
 17 isn't it?

18 MR GUMBI: Yes.

19 CHAIRPERSON: We all see the name isn't
 20 there, so what's the question from which you hope to
 21 extract some information from the witness to assist us?

22 MR GUMBI: Fair enough, Chairperson. So
 23 if I can move on from this in trying to wrap up my cross-
 24 examination, when you met the National Commissioner on the
 25 21st of January 2013, did you raise this with her that you

<p style="text-align: right;">Page 25845</p> <p>1 identified these differences?</p> <p>2 KOLONEL VERMAAK: Ek het die probleme</p> <p>3 soos wat ek dit in die inligtingsnota aan hulle verskaf</p> <p>4 het, het ons punt vir punt dit bespreek, Voorsitter.</p> <p>5 MR GUMBI: No, but it doesn't address my</p> <p>6 question. I'm saying if you can allow me, Lieutenant-</p> <p>7 Colonel, to put my question. 21st of January 2013 you met</p> <p>8 the National Commissioner, nè, do you agree with me? It's</p> <p>9 on record. It's also on record that before you met the</p> <p>10 National Commissioner on the 21st of January 2014 you</p> <p>11 confronted Lieutenant-Colonel Scott when you identified</p> <p>12 these differences between exhibit L as far as slide 47 is</p> <p>13 concerned vis-à-vis the information, the report, earlier</p> <p>14 version of what happened.</p> <p>15 KOLONEL VERMAAK: Dis korrek.</p> <p>16 MR GUMBI: So when you met the National</p> <p>17 Commissioner on the 21st of January 2013, did you inform her</p> <p>18 that, I confronted Lieutenant-Colonel Scott and I asked him</p> <p>19 about these differences between exhibit L and the earlier</p> <p>20 version of the incident of the 2013, of August 2012? Did</p> <p>21 you inform her?</p> <p>22 KOLONEL VERMAAK: Voorsitter, as ek dalk</p> <p>23 net 'n oomblik gegee kan word dat ek net daardie</p> <p>24 inligtingsnota van my kan kry.</p> <p>25 MR GUMBI: Thanks very much. It should</p>	<p style="text-align: right;">Page 25847</p> <p>1 beskikbaar te stel vir die Nasionale Kommissaris omdat ek</p> <p>2 nie bewus was van watter inligting sy het en watter sy nie</p> <p>3 het nie.</p> <p>4 MR GUMBI: In conclusion, Lieutenant-</p> <p>5 Colonel, do you have knowledge whether these drafts I</p> <p>6 presented before this Commission was ever-ever shared with</p> <p>7 operational commanders who were involved in the operation</p> <p>8 of the 13th of August 2012?</p> <p>9 KOLONEL VERMAAK: Mnr die Voorsitter, ek</p> <p>10 dra nie kennis van dat hierdie dokument aan enige</p> <p>11 operasionele bevelvoerder voorgehou was vir enige</p> <p>12 kommentaar of aanbevelings nie.</p> <p>13 MR GUMBI: Thanks very much, Chairperson,</p> <p>14 that will be our cross-examination on behalf of –</p> <p>15 CHAIRPERSON: No more questions?</p> <p>16 MR GUMBI: - the late Warrant Officer</p> <p>17 Lepaaku and Lieutenant Baloyi.</p> <p>18 CHAIRPERSON: There are no more</p> <p>19 questions?</p> <p>20 MR GUMBI: Yes, Chairperson.</p> <p>21 CHAIRPERSON: Thank you. I'd like to ask</p> <p>22 you a couple of questions, if I may, on this matter while</p> <p>23 we're busy with it. You were present in the group on the</p> <p>24 5th of September when this topic was discussed, is that</p> <p>25 correct??</p>
<p style="text-align: right;">Page 25846</p> <p>1 be on –</p> <p>2 CHAIRPERSON: Your information note is</p> <p>3 OOO10 and you deal on page 17 with the alleged</p> <p>4 acknowledgement by General Mpembe that he gave the</p> <p>5 instruction, but I don't see any reference there to a</p> <p>6 discussion with Colonel Scott. Am I correct?</p> <p>7 MR GUMBI: Yes.</p> <p>8 KOLONEL VERMAAK: Dit is positief, in</p> <p>9 hierdie dokument was dit nie vervat nie. Ek het meer</p> <p>10 gekonsentreer op die operasionele tekortkominge en sekere</p> <p>11 administratiewe aspekte rondom die operasionele diens,</p> <p>12 Voorsitter.</p> <p>13 MR GUMBI: Yes, I accept that maybe you</p> <p>14 didn't include it in this document but did you convey it to</p> <p>15 the National Commissioner maybe verbally to say, I noted</p> <p>16 these differences, I confronted Lieutenant-Colonel Scott?</p> <p>17 Did you inform her?</p> <p>18 KOLONEL VERMAAK: Ons het sekere aspekte</p> <p>19 bespreek wat nie in hierdie dokument vervat was nie, veral</p> <p>20 onder andere was die kwessie rondom die argument wat ek met</p> <p>21 General Mpembe gehad het, om net vir die Nasionale</p> <p>22 Kommissaris agtergrond te kon gegee het waarom dit ook</p> <p>23 gegaan het. Ek was nie seker of al daardie inligting aan</p> <p>24 haar oorgedra was nie en dit is een van die redes wat ek –</p> <p>25 wat my aangespoor het om hierdie dokument op te stel en</p>	<p style="text-align: right;">Page 25848</p> <p>1 KOLONEL VERMAAK: Dis korrek, Voorsitter.</p> <p>2 CHAIRPERSON: And who was keeping notes?</p> <p>3 Was Colonel Visser present or –</p> <p>4 KOLONEL VERMAAK: Voorsitter, in die</p> <p>5 groepie wat opgebreek was, was daar geen notas gevat nie.</p> <p>6 CHAIRPERSON: Yes?</p> <p>7 KOLONEL VERMAAK: Nadat ons daar verdaag</p> <p>8 het, het generaal Mpembe na kolonel Visser en kolonel Scott</p> <p>9 toe gegaan, hy het met hulle daarvoor gaan praat. Ek het</p> <p>10 later ook na hulle toe gegaan en vir hulle net gemeld van</p> <p>11 die argument wat ons gehad het en waarom dit gegaan het</p> <p>12 sodat hulle ook kennis dra daarvan, veral gesien in die lig</p> <p>13 van dat daar, die bewering gemaak was dat generaal Mpembe</p> <p>14 die opdrag gegee het dat daar moet traanrook geskiet word,</p> <p>15 want tot en met van dit plaasgevind het en tot en met</p> <p>16 daardie dag, was daar niemand wat enige verantwoordelikheid</p> <p>17 gevat het vir die opdrag wat gegee was nie en toe daardie</p> <p>18 dag met daardie vergadering toe het kaptein Thupe die</p> <p>19 mededeling gemaak. So ek het dit aan hulle genoem en toe</p> <p>20 het ek my verder onttrek van die proses.</p> <p>21 CHAIRPERSON: What time did that</p> <p>22 discussion take place? Well, there were two discussions,</p> <p>23 weren't there? First of all, you broke away, there was a</p> <p>24 breakaway group and thereafter there was a report or</p> <p>25 reports, there were reports to Colonels Visser and Scott,</p>

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1 but what time did the breakaway group take place?
 2 KOLONEL VERMAAK: Ons het net na teetyd,
 3 dit was in die omgewing van so half-elf se kant wat ons
 4 bymekaar gekom het en ek glo nie daardie bespreking was 'n
 5 uur aan die gang gewees nie, toe het dit opgebreek. En die
 6 generaal het eerste na kolonel Scott-hulle toe gegaan, so
 7 as ek 'n tydgleuf moet gee sou dit gewees het tussen teetyd
 8 en etenstyd wat dit plaasgevind het, Voorsitter.
 9 CHAIRPERSON: Well, the reason I asked
 10 you the question is, if one looks at exhibit OOO19.1 one
 11 sees a note at the top of the first page, "Date modified
 12 2012/09/05" and then "09:55." So that appears to indicate
 13 that that, this page, page – no, no, I understand those
 14 were the notes which emanate from the evidence leaders but
 15 I take it they're accurate.
 16 MR CHASKALSON SC: They are accurate,
 17 Chairperson, but I think I know where your questioning is
 18 going and I think both for the witness and the Commission
 19 and Mr Gumbi and his client it may be important that I've
 20 just discovered elsewhere on Captain Visser's, Colonel
 21 Visser's hard drive what is like an earlier draft of this
 22 memorandum which was dated the 30th of –
 23 CHAIRPERSON: August.
 24 MR CHASKALSON SC: 30th of August, last
 25 saved 2nd of September, and the version in the document that

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1 you are looking at now, the gas grenade version –
 2 CHAIRPERSON: Yes.
 3 MR CHASKALSON SC: - is from that
 4 document and I think it needs to be put before the
 5 Commission. I just wasn't aware of it when we prepared
 6 this bundle earlier. Can I arrange for a copy of the
 7 relevant pages to be produced?
 8 CHAIRPERSON: Yes. Well, if it reads the
 9 same then we can accept for the moment that that's what it
 10 says.
 11 MR CHASKALSON SC: Chairperson, it's a
 12 different, it isn't the same sort of a format.
 13 [12:05] What it is, is, what it appears to be is Colonel
 14 Visser's early notes giving rise to what became a draft of
 15 the narrative. So I think the parties should see this
 16 document.
 17 CHAIRPERSON: Perhaps you can read it
 18 into the record quickly.
 19 MR CHASKALSON SC: Yes.
 20 CHAIRPERSON: We can get the copies
 21 later, but if you can read it into the record quickly?
 22 MR CHASKALSON SC: Chairperson, the
 23 document is entitled "Preparation for the Inquiry, 2012-08-
 24 10 until 2012-08-16 2000," and that's the file name. The
 25 front page says "Memorandum," and it says, "Enquiries

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1 Colonel Visser, telephone," Colonel Visser's telephone
 2 number is given, date 2012-08-30. The date on which it was
 3 saved, or this version of the document was saved was the 2nd
 4 of September.
 5 The relevant passage from this document appears
 6 on page 16 and it's a series of bullet points. The first
 7 says, "A decision was taken to disarm and disperse the
 8 group before they could reach the koppie where a big group
 9 was already gathered."
 10 Next bullet point – sorry, when I say the first
 11 bullet point, it's the first bullet point that I'm quoting.
 12 There is a whole series that come before that that are not
 13 necessarily relevant. "Major-General Mpmembe indicated to
 14 them they will not be allowed to join the group at the
 15 koppie and must surrender their weapons."
 16 Next bullet point, "The group refused and burst
 17 through the police line, continuing to the koppie."
 18 Next bullet point, "Realising that a violent
 19 confrontation will take place if the persons are disarmed
 20 and arrested since they were armed with firearms and
 21 dangerous weapons, including pangas, knobkieries, assegais,
 22 knives, etcetera, they were allowed to proceed."
 23 Next bullet point, "Major-General Mpmembe then
 24 give instruction to let the group proceed to the koppie but
 25 to follow behind them and prevent them entering an informal

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1 settlement to the left of their route to the koppie to
 2 prevent incidents of looting and endangering innocent
 3 lives."
 4 Next bullet point, "On their way to the koppie
 5 they changed direction towards the village."
 6 Next bullet point, and this is the key, "To
 7 prevent them from entering the village a command was given
 8 of gas grenade."
 9 Next bullet point, "Warrant-Officer Kuhn
 10 confirmed the command to Captain Thupe and teargas was used
 11 to disperse the group and prevent them from entering the
 12 village."
 13 Next bullet point, "The group dispersed in all
 14 directions and during this three police officials were
 15 attacked."
 16 So that wording that one sees in this document on
 17 the screen now, the morning of 5 September, is in this
 18 earlier draft dated 30 August, but saved on 2 September.
 19 CHAIRPERSON: I take it you can't throw
 20 any light on that. I thought that, the impression I got
 21 from the document we had was that that was what was said in
 22 the breakaway group, but can you answer that? Was this
 23 what we now hear, what we now see here on the screen, which
 24 we see in the earlier document that we'd been handed –
 25 KOLONEL VERMAAK: Dit is –

<p style="text-align: right;">Page 25853</p> <p>1 CHAIRPERSON: "To prevent them from 2 entering the village a command was given of 'gas grenade.' 3 Warrant-Officer Kuhn confirmed the command to Captain Thupe 4 and teargas was used to disperse the group." Was anything 5 of that kind said at the breakaway group – 6 KOLONEL VERMAAK: Dit was so gestel by 7 die wegbreekgroep, Voorsitter. Ek het gou net in my 8 dagboek gekyk. Ek het die inskrywing net na 10 gemaak, so 9 dit – 10 CHAIRPERSON: Can you read that for us, 11 please? 12 KOLONEL VERMAAK: "Generaal Mpembe 13 vergader met PC en rolspelers. 'Faceless, illegal march,' 14 Merafe wat Kuhn, Generaal sê niemand het gesê hy vat oor 15 nie. Dreig dat hy die intimidasie klagte gaan maak omdat 16 ek hom ingelig het van die dreigemente. Kaptein Thupe 17 bevestig generaal Mpembe het opdrag gegee dat een skok en 18 een CS gegooi word. Generaal Mpembe ontken dit." 19 CHAIRPERSON: That's not the same as 20 this, you see. What this is, that the command was given of 21 gas grenade, no mention of stun grenades, just gas grenade, 22 and then it goes on, "Warrant-Officer Kuhn confirmed the 23 command to Captain Thupe and teargas was used to disperse 24 the group to prevent them from entering the village." 25 Now you'll remember you said to us that Captain</p>	<p style="text-align: right;">Page 25855</p> <p>1 document considered it might be wise to leave Thupe's name 2 out of it so that it's stated directly that's what General 3 Mpembe said. But anyway, these are matters that you can't 4 help us on. 5 KOLONEL VERMAAK: Dis korrek, Voorsitter. 6 CHAIRPERSON: Right, now then the other 7 thing I want to ask you about, seeing we're dealing with 8 this – 9 MR MPOFU: Chairperson, just maybe could 10 I make a suggestion that this new document, so that it's in 11 the same place as the others, would be 19.1A or something 12 like that? 13 MS PILLAY: Chair, I think it should be 14 19.6, OOO19.6. 15 MR MPOFU: Okay, thank you. 16 CHAIRPERSON: OOO19.6. Had you described 17 the document for us, please? For the record, it's – 18 MS PILLAY: Chair, it's an extract from 19 the draft of the narrative dated 30th of August. 20 CHAIRPERSON: From the computer of 21 Colonel Visser and saved on the 2nd of September. Is that 22 right? Am I right? 23 MS PILLAY: An extract from the document 24 prepared by Colonel Visser, dated 30th of August. 25 CHAIRPERSON: And then saved on the 2nd of</p>
<p style="text-align: right;">Page 25854</p> <p>1 Thupe had said that he was next to General Mpembe. Now 2 according to the evidence we have General Mpembe was on the 3 far right, that's facing the koppie, and Kuhn was on the 4 far left and if of course Thupe was standing next to Mpembe 5 and Kuhn was able to communicate with Thupe there's no 6 reason why he couldn't have communicated with Mpembe. 7 So the indications are that this piece of 8 information which we have in what one can call the first 9 draft appears to indicate that Thupe wasn't near Mpembe, 10 but was indeed close to Kuhn, and when the command was 11 given, which was only gas grenade and not stun grenade, 12 Kuhn confirmed it to Thupe. But anyway, you can't throw 13 any light on that? 14 KOLONEL VERMAAK: Nee, ek kan nie daar – 15 CHAIRPERSON: And it would appear that 16 Colonel Visser may be able to help us on that. 17 KOLONEL VERMAAK: Dit kan moontlik wees. 18 CHAIRPERSON: But what then happened of 19 course was we've seen various changes and Captain Thupe 20 then is mentioned at some stage as having said that he 21 heard Major-General Mpembe give the command for stun and 22 teargas, after which one shotgun CS rifle grenade, that's 23 teargas, was fired by Kuhn. No-one else seems to have 24 responded to the command, which is in itself interesting, 25 but thereafter for some reason whoever drafted this</p>	<p style="text-align: right;">Page 25856</p> <p>1 September. Is that right? 2 MS PILLAY: Saved on the 2nd of September. 3 CHAIRPERSON: Alright, thank you. 4 Anyway, thank you for that suggestion, Mr Mpofo. As you 5 see it's been adopted. The other point I want to raise 6 with you at this point is the question of what you said in 7 your information note and compared with what you said in 8 your affidavit, which is LLL8. In your earlier statement, 9 which is GGG17, you didn't mention what had happened at 10 Roots. You mentioned it, however, in your affidavit which 11 was handed in when you gave evidence before us, which is 12 LLL8. That's an affidavit which you made on the 21st of 13 January this year and in that statement is, the passage 14 that I want to refer you to is at the foot of the 15 penultimate page, the page that's, or actually no, it's the 16 anti-penultimate page. The pages aren't numbered. The 17 last page is just the attestation certificate. The 18 penultimate page is a continuation of para 12 and para 13, 19 but the passage that is relevant is the passage at the foot 20 of the anti-penultimate page. It's more or less in the 21 middle of paragraph 12. 22 Having dealt with the intimidation case that was 23 going to be opened against you and your decision not to 24 make any further inputs because the General would take them 25 in a hostile way, you then say, "Die kwessie het ter sprake</p>

<p style="text-align: right;">Page 25857</p> <p>1 gekom van wie die traanrook en skokgranate gegooi het en 2 wie die opdrag gegee het. Kaptein Thupe het toe opgestaan 3 en vir die generaal gesê dat hy wat die generaal is, is die 4 een wat die opdrag gegee het. Die generaal het dit 5 aanvanklik ontken. Drie weke na die voorval, waarop 6 niemand wou erken wie die opdrag gegee het nie, hy het toe 7 erken dat dit moontlik hy kon wees maar hy dit nie kon 8 onthou nie. Die kwessie het toe weer ter sprake gekom van 9 die lede wat ontplooi was by die groep," and the question 10 of their equipment, and so on.</p> <p>11 So what you say in your affidavit of the, which 12 was put before this Commission, of the 21st of January this 13 year, it doesn't coincide with what you say in your 14 information notes, which is exhibit OOO10 at page 17 15 because there you say, let me read that to remind 16 everybody, at the top of the page, "The instruction from 17 Major-General Mpmembe that a teargas and stun grenade must 18 be thrown, trigger" – I take it you mean triggered – "the 19 assault in this," it should be on, "the SAPS. Major- 20 General Mpmembe denied at Roots that he was not aware who 21 gave the instruction, but after Captain Thupe from TRT 22 Rustenburg said he was next to the General when the 23 instruction was given, only after that Major-General Mpmembe 24 acknowledged that it was him."</p> <p>25 So there's a difference. According to your</p>	<p style="text-align: right;">Page 25859</p> <p>1 is –</p> <p>2 CHAIRPERSON: And from what you now tell 3 us it appears that what you say in your affidavits is the 4 correct version –</p> <p>5 KOLONEL VERMAAK: Dis korrek –</p> <p>6 CHAIRPERSON: - and what's in the 7 information note is incorrect.</p> <p>8 KOLONEL VERMAAK: Dis korrek.</p> <p>9 CHAIRPERSON: Yes, now I must tell you 10 that Major-General Mpmembe's version of this exchange 11 between Captain Thupe and himself at Roots differs from 12 yours. What he says is that, he denied it, that he gave 13 the instruction. He says Captain Thupe then stood up and 14 said, "General, you gave the instruction," and he denied it 15 and then he asked Thupe, you know, why he said it, or 16 pressed him on the matter.</p> <p>17 KOLONEL VERMAAK: Dit is –</p> <p>18 CHAIRPERSON: And Thupe said well, he 19 didn't hear it himself but he was told by somebody else and 20 he couldn't remember – yes, he heard it being said that it 21 was General Mpmembe who'd given the instruction, but that he 22 himself wasn't able to confirm it. In other words he was 23 saying it was hearsay, and that's where the matter was 24 left. So that, and I must also tell you that General 25 Mpmembe made notes also at, or according to his evidence</p>
<p style="text-align: right;">Page 25858</p> <p>1 information, although admittedly it looks like there's 2 something wrong with the syntax because the sentence gets a 3 bit out of line, but what you say there is that Major- 4 General Mpmembe acknowledged that he was the one who gave 5 the instruction, whereas in your affidavits before us you 6 say he initially denied it, but subsequently conceded he 7 might possibly have given it but he couldn't remember it. 8 Now there's a difference between those two statements, 9 isn't there?</p> <p>10 KOLONEL VERMAAK: Soos wat ek hom daar 11 gestel het, Voorsitter, dat hy dit eerste ontken het en 12 nadat kaptein Thupe hom direk gekonfronteer het daarmee en 13 daar 'n gesprek tussen hom, Kuhn en generaal Mpmembe 14 plaasgevind het, het generaal Mpmembe gesê as dit hy was wat 15 dan dit gegooi – ag, die instruksie gegee het, kan hy dit 16 nie onthou nie.</p> <p>17 CHAIRPERSON: Well, that's the point. So 18 he didn't acknowledge it. At first he denied it 19 emphatically, and then according to you he later said well, 20 it could be so but he couldn't remember it, but that's 21 certainly not an acknowledgement that he gave the 22 instruction. There's a difference between saying I can't 23 remember and saying I definitely didn't do it. Isn't that 24 so?</p> <p>25 KOLONEL VERMAAK: Ja, ek stem saam dit</p>	<p style="text-align: right;">Page 25860</p> <p>1 gave notes at Roots in the session and he produced his 2 diary and his notes were in accordance with what he told 3 us. So it does look as if – you've read us your 4 contemporaneous notes, which of course doesn't address this 5 matter. It does look actually as if your recollection of 6 what exactly happened at Roots may not be entirely accurate 7 and clear. How would you respond to that?</p> <p>8 KOLONEL VERMAAK: Mnr die Voorsitter, 9 nee, wat daar gebeur het, daar was 'n argument tussen 10 kaptein Thupe en generaal Mpmembe, tussen hulle twee, waarby 11 A/O Kuhn op 'n stadium ook aangesluit het en sy kommentaar 12 gelewer het. Generaal Mpmembe het vir kaptein Thupe gevra, 13 "Nou waar was ek gewees?" Toe het hy vir hom gesê hy was 14 langs hom gewees. Hy het gehoor die generaal het die 15 opdrag gegee. Ek het verder nie rêrig aan daardie gesprek 16 deelgeneem nie omdat ek nie daar op die grond was om dit 17 self te kon hoor nie, want dit het 'n redelike argument, en 18 dit was 'n groot dispuut van die begin af gewees hoekom is 19 die traanrookgranaat dan nou afgevuur, en toe het kaptein 20 Thupe met daardie byeenkoms, het hy toe nou opgestaan en 21 gesê maar die generaal het die opdrag gegee, hy was langs 22 hom gewees toe hy dit gesê het, en Kuhn het nog nadat die 23 opdrag gegee is weer gevra het hy reg gehoor. Dit is hulle 24 weergawe daar gewees daardie betrokke dag. Maar toe het ek 25 my klaar van daardie punt af onttrek want ek was nie daar</p>

1 nie. Ek het vir hulle gesê ek kan nie betrokke raak by
 2 iets wat ek nie self persoonlik daar ondervind het nie.
 3 CHAIRPERSON: Ja, you see the interesting
 4 thing - of course you can't help us on it - is the original
 5 information which Colonel Visser got, but anyway, that's a
 6 matter that we can't, we mustn't waste time taking up with
 7 you because you can't assist us.
 8 MR CHASKALSON SC: Chairperson, if I can
 9 just add one last aspect to the chronology that may help.
 10 Now that I've known what file I'm looking for, files called
 11 "Preparation for the Inquiry," I've found an earlier draft
 12 on the 30th of, dated 30th of August, again saved on the 31st
 13 of August, that says nothing about the 13th, nothing at all.
 14 So it seems that this information relating to what happened
 15 on the 13th was conveyed to Colonel Visser somewhere between
 16 the 31st of August and the 2nd of September.
 17 CHAIRPERSON: These are matters we'll
 18 obviously have to take up with him because it's obviously
 19 quite an important matter. Alright, well I just wanted to
 20 deal with that matter, following up from Mr Gumbi, while it
 21 was all fresh in my memory, and I understand that Mr
 22 Ntsebeza, who is going to be the next cross-examiner, isn't
 23 here today and to be fair it was anticipated that Mr Gumbi
 24 would be busy the whole morning, because that was his
 25 prediction, but he didn't realise that I was going to cut

1 him as short as I did, and Mr Mpofu indicated to me that he
 2 might be able to use up the available time, but he then
 3 came to see me later and said on reflection he thought he'd
 4 been overconfident and he'd like to withdraw his offer to
 5 cross-examine today.
 6 So we're going to have to adjourn now, but before
 7 we do that I want to say that I've received this morning
 8 the police's further replying affidavit in the in-camera
 9 application, which I take it has been made available to the
 10 other parties. If it hasn't, I'm sure it will be before
 11 much longer. So we'll be in a position to deal with the
 12 in-camera application on Tuesday when we resume.
 13 On Monday we're having the seminar in the
 14 afternoon. Well, it's the first of the seminars we're
 15 holding in relation to phase 2. The topic I understand is
 16 going to be "Collective bargaining in the Platinum
 17 industry." So the Commission won't be sitting. The
 18 seminar starts at 3 o'clock in the afternoon. I gather
 19 it's premises on the University of Wits Campus and there is
 20 a main room and there's an overflow room as well. It looks
 21 as if roughly the same number of people who can attend in
 22 this chamber will be able to attend there.
 23 But we will resume the Commission itself on
 24 Tuesday morning at 9 o'clock and we will deal with the in-
 25 camera application, the resumption of the argument. I

1 understand that some of the opposing parties wish to
 2 supplement their earlier submissions in the light of the
 3 affidavits that have been produced and thereafter Mr
 4 Semanya will reply and we will then proceed with your
 5 evidence –
 6 COLONEL VERMAAK: Thank you.
 7 CHAIRPERSON: - and if Mr Ntsebeza is
 8 here to cross-examine you he will do so, and if he isn't,
 9 someone else will. But you're excused until – well,
 10 there's debate as to how long the argument will take on
 11 Tuesday. The optimistic - or pessimistic, whichever way
 12 you look at it – assumption is it will be teatime, and the
 13 pessimistic or optimistic assumption is it will be
 14 lunchtime. But would you be on standby for round about
 15 teatime to come through, if necessary –
 16 KOLONEL VERMAAK: Dis korrek, ek sal –
 17 CHAIRPERSON: - to resume your evidence.
 18 KOLONEL VERMAAK: Dis reg.
 19 CHAIRPERSON: On that note then we will
 20 adjourn until – the Commission itself will adjourn until
 21 Tuesday morning at 9 o'clock.
 22 [COMMISSION ADJOURNED]
 23 .
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