

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 213

8 APRIL 2014

PAGES 26212 TO 26372



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64 10th Avenue, Highlands North, Johannesburg
P O Box 721, Highlands North, 2037
Tel: 011-440-3647 Fax: 011-440-9119 Cell: 083 273-5335
E-mail: realtime@pixie.co.za
Web Address: <http://mysite.mweb.co.za/residents/pak06278>



<p style="text-align: right;">Page 26212</p> <p>1 [PROCEEDINGS ON 8 APRIL 2014] 2 [09:21] CHAIRPERSON: You're still bound by the 3 terms of your affirmation. 4 SALMON JOHANNES VERMAAK: Affirms. 5 CHAIRPERSON: Ms Lewis, I understand 6 you're taking over from your learned leader. 7 MS LEWIS: That's correct, Chair. 8 CHAIRPERSON: Did he write out the 9 questions for you which he was going to ask last week? 10 MS LEWIS: Chair, he didn't. I'll have 11 to abandon those. 12 CHAIRPERSON: Oh, well I don't know that 13 I should tell him when he comes back. Anyway, please 14 proceed with your cross-examination. 15 CROSS-EXAMINATION BY MS LEWIS: Good 16 morning, Colonel. 17 COLONEL VERMAAK: Good morning. 18 MS LEWIS: Colonel, for the most part I'm 19 just going to be tidying up issues from Friday and the 20 first issue I would like to deal with relates to slide 23 21 of our PowerPoint presentation. So if we could have that 22 up on the screen, please. I think it's exhibit OOO23. 23 Colonel, you'll remember, and I'm not going back, I just 24 want to orientate both you and I and the Commission. 25 You'll remember that on Friday we went through the</p>	<p style="text-align: right;">Page 26214</p> <p>1 there's one circle. 2 COLONEL VERMAAK: That's correct. 3 MS LEWIS: And Colonel, what I also want 4 to put to you is that this slide confirms that we are 5 correct about the position of Mr Sokanyile's body. What 6 you see on this slide, as it is set out in our 7 presentation, is that Mr Sokanyile's body is more or less 8 in a direct line with the cartridge cases. You see that? 9 COLONEL VERMAAK: I do. 10 MS LEWIS: And Colonel, if we go to the 11 next page – sorry, could we go to page 11? – you'll see 12 that the measurement there is for the body across the 13 stream from the cartridge cases is 74.4 metres. You see 14 that? 15 COLONEL VERMAAK: Yes. 16 MS LEWIS: Now before I proceed to deal 17 with the next issue, Chair, could I ask that the 18 translation that we have had made of the Colonel's 19 statement LLL8, could I ask that that be made an exhibit? 20 I've lost track of the numbers, Chair, so I'll have to ask 21 Ms Pillay. 22 MS PILLAY: Chair, it will be OOO31. 23 CHAIRPERSON: I'm wondering if we 24 shouldn't make it LLL8.1 or something like that. It seems 25 a bit of a nuisance when you're going through the exhibits</p>
<p style="text-align: right;">Page 26213</p> <p>1 measurements between the cartridge cases. You remember? 2 COLONEL VERMAAK: That's correct. 3 MS LEWIS: And we put to you on that 4 basis that what we are dealing with is a diameter of 12 to 5 13 metres. You remember? 6 COLONEL VERMAAK: I remember. 7 MS LEWIS: Now Colonel, the additional 8 point that I want to put to you is that we are going to 9 argue that even if the red circle on this slide of our 10 presentation was say two to three metres smaller or bigger 11 or up or down or to the left or right, it has no bearing on 12 the main point that we put to you, which was that no 13 cartridge cases were found at the place where you said your 14 members shot from. Do you wish to comment? 15 COLONEL VERMAAK: I accept that. 16 MS LEWIS: Colonel, can I ask you then to 17 – or can I ask that slide B10, exhibit B10 be placed on the 18 screen, please. Colonel, I'm sure you're aware, but 19 exhibit B was the crime scene pack, the crime scene 20 information for the various scenes and what I want to put 21 to you is that if you look at B10 you'll see that we are 22 correct about the cartridge cases; there was only one 23 location. You see that? 24 COLONEL VERMAAK: I see that. 25 MS LEWIS: It says "Cartridge cases," and</p>	<p style="text-align: right;">Page 26215</p> <p>1 and you've got to page so many pages on to find the 2 translation. So translation of Lieutenant-Colonel 3 Vermaak's statement LLL8 will be LLL8.1. Would that - 4 let's see - 5 MS LEWIS: Thank you, Chair. 6 CHAIRPERSON: Let's get permission from 7 Ms Pillay. Will that be okay, Ms Pillay? 8 MS PILLAY: That's fine, Chair. 9 CHAIRPERSON: I'm indebted to you for 10 that and it will be so marked. Adv Hemraj makes the point 11 that I should ask whether the translation is accepted as 12 accurate by – well, I suppose the real person to ask is the 13 witness, isn't it? Lieutenant-Colonel, have you read the 14 translation? 15 COLONEL VERMAAK: Yes, Chair. 16 CHAIRPERSON: Are you happy with the 17 translation? 18 COLONEL VERMAAK: Ja, I've got it – 19 CHAIRPERSON: Happy with the – 20 COLONEL VERMAAK: Thank you, Chair. 21 CHAIRPERSON: Are you happy with it? 22 COLONEL VERMAAK: Yes. 23 CHAIRPERSON: Yes, it's accurate? It's 24 what you would have said if you'd put it in English? 25 COLONEL VERMAAK: Ja, that's correct.</p>

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1 CHAIRPERSON: Alright. Okay, you can
 2 carry on, Ms Lewis.
 3 MS LEWIS: Chair, can I also just for the
 4 record state that it has been, it was translated by Mr
 5 Mahlangu and he has certified the translation.
 6 CHAIRPERSON: Well, we have his
 7 imprimatur as well as that of the witness, so we're doubly
 8 confident that it's correct.
 9 MS LEWIS: Can I ask then that we turn to
 10 paragraph 7 on page 4, in more or less the middle of the
 11 paragraph the sentence, or the section that I'm going to
 12 deal with begins as follows, "I instructed Captain Loest to
 13 get the members together." Colonel, can you see where I'm
 14 reading from?
 15 CHAIRPERSON: I can't see it on the
 16 screen. It must be further on because what we see here is
 17 he's still in the air. There we go. There we go.
 18 MS LEWIS: Page 4.
 19 CHAIRPERSON: There it is. It's on page
 20 4.
 21 MS LEWIS: Thank you.
 22 CHAIRPERSON: "I instructed Captain Loest
 23 to get the members together so that we can get order, and
 24 then I and the group of SAPS members comprising TRT and POP
 25 members followed the group up to where they went through a

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1 water stream and began to shoot at us with the R5 rifle and
 2 apparently a shotgun. The members fired back at the
 3 attackers." That's the passage?
 4 MS LEWIS: Correct, thank you, Chair.
 5 Colonel, you see from that paragraph, what that paragraph
 6 conveys to us is that as you came through the river you saw
 7 Mr Sokanyile's body. Do you confirm that that's what your
 8 statement says?
 9 COLONEL VERMAAK: No, I never said I saw
 10 his body when we're approaching. We only saw the body
 11 after we have went through the stream.
 12 MS LEWIS: I accept that, but what I'm
 13 putting to you is what this paragraph says is that as you
 14 came through the stream, as soon as you'd gone –
 15 CHAIRPERSON: I'm not sure it says that.
 16 In fact it was my fault; I stopped reading at the wrong
 17 point. I stopped reading at "The members fired back at the
 18 attackers." The next sentence is, "We followed the group
 19 across the stream, photo 4944, and came across the person
 20 with the white overalls who was already dead. He was lying
 21 on a panga and a knobkierie, photo 1446. I posted members
 22 to secure the scene and returned to the original scene."
 23 So he doesn't say what you've just put. It's not
 24 inconsistent with what you put, but I'm not sure that it's
 25 necessarily precisely the way you put it. So perhaps we

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1 should give the witness a chance to comment.
 2 COLONEL VERMAAK: Chair, I stick to the
 3 statement that when, after we went through the stream we
 4 saw the body lying on the ground.
 5 MS LEWIS: Alright, can we then move on
 6 to your testimony on this point. Will you put up – or can
 7 I ask that day 205 at page 25245, lines 5 to 13 be put up,
 8 please?
 9 CHAIRPERSON: What page are you – I think
 10 you said 245. That can't be right.
 11 MS LEWIS: Sorry, 25245.
 12 CHAIRPERSON: 25245. We've now got that
 13 on the screen. What line do you want?
 14 MS LEWIS: Lines 5 to 13.
 15 CHAIRPERSON: What he says, can I
 16 translate? The question put by Ms Pillay was, "At the time
 17 that you saw this you were still in the air, this was
 18 before you had landed?" The witness answers, "That's
 19 correct, yes. We were still in the air. To come back to
 20 the following-up operation, or the pursuit operation, when
 21 we came closer to the 'spruit' of the stream there was from
 22 the other side shot at us with a shotgun and an R5. The
 23 members or a member who was with me answered the fire but
 24 the group disappeared between the houses. We were then
 25 through," I suppose it should be "We then went through the

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1 stream and when we were through the stream, when we were
 2 once again on level ground we noticed that there was a
 3 white – ag, a person in a white overall lying on the
 4 ground." That's the passage you wanted?
 5 MS LEWIS: So Colonel, as the Chairperson
 6 has just translated what you said in your testimony was
 7 that as you went to through the stream and as soon as you
 8 came again to level ground you saw Mr Sokanyile's body. Do
 9 you confirm that?
 10 COLONEL VERMAAK: That's correct.
 11 MS LEWIS: And Colonel, do you confirm
 12 the correctness of that?
 13 COLONEL VERMAAK: I've pointed out as I
 14 could remember, but I didn't have the exact GPS reading as
 15 the LCRC members have, so I have to accept what they
 16 pointed out in their plans.
 17 MS LEWIS: Well Colonel, on the basis
 18 then of that testimony we put to you that you can't – the
 19 probabilities are that you're not correct about where you
 20 say your members shot from. The probabilities are that you
 21 must have shot from more or less where the cartridge cases
 22 were found. Do you wish to comment?
 23 COLONEL VERMAAK: We were never shooting
 24 at the person that we get on the ground. We were shooting
 25 into another direction and I've pointed out where I can

<p style="text-align: right;">Page 26220</p> <p>1 remember where we were when I instructed the one person 2 with a R5 to shoot back to the attackers. 3 MS LEWIS: Can I ask that OOO23, slide 23 4 be put on the screen again, please? You see, Colonel, what 5 we put to you on the basis of certain landmarks and what 6 you then conceded was that that small circle was in fact 7 where Mr Sokanyile's body was found. You see that? 8 COLONEL VERMAAK: Yes, I accept that, as 9 the LCRC members draw it up in their plan. 10 MS LEWIS: Now Colonel, if we put that 11 together with your, the portion of your testimony that I've 12 just read to you where you say that as you went through the 13 stream and you came onto level ground you saw Mr 14 Sokanyile's body – 15 CHAIRPERSON: No, Ms Lewis, you're doing 16 it again. You use the phrase "as you went through the 17 stream," which implies that it was while he was going 18 through the stream. He said they went through the stream 19 and when they were once again on level ground they saw the 20 body, which is slightly different. So, but you heard the 21 way I've reframed Ms Lewis's question. 22 COLONEL VERMAAK: That's correct. 23 CHAIRPERSON: How do you respond to it? 24 COLONEL VERMAAK: Yes, Chair, it is while 25 we were going through the stream we reach a flat ground.</p>	<p style="text-align: right;">Page 26222</p> <p>1 CHAIRPERSON: Is there a pointer in the 2 house? We had so many pointers last week and the pointers 3 have disappeared. What's happened to them? Mr Wesley is 4 normally a pointer possessor. 5 MS PILLAY: Chair, while we're waiting 6 for the pointer, I think it's important for us to emphasise 7 the witness's answer and the evidence leaders' position in 8 relation to the slides. The witness has said that the 9 positioning of the little circle, which is where the team 10 for the families say that Mr Sokanyile's body was, is 11 correct if it accurately reflects where LCRC says the body 12 was. So in other words it doesn't accept the correctness 13 of this positioning unless it's an accurate reflection of 14 where LCRC said the body was found. 15 CHAIRPERSON: Well, don't they put the 16 body at the red circle? 17 MS PILLAY: Not necessarily, Chair. I 18 think this is the families' team's interpretation of where 19 the body was – 20 CHAIRPERSON: Oh, I'm sorry, I was under 21 the misapprehension that that's where the body was put by 22 the LCRC people. Is that not right? Because you say the 23 body was where, or you thought the body was where the word 24 "body" appears. Is that correct? 25 COLONEL VERMAAK: That's correct, Chair.</p>
<p style="text-align: right;">Page 26221</p> <p>1 That is where we saw the person was lying. 2 CHAIRPERSON: So as I understand 3 correctly that you were where the words "SAPS members" 4 appear on the photograph. 5 COLONEL VERMAAK: That's correct, more or 6 less in that vicinity. 7 CHAIRPERSON: Yes, that's your group more 8 or less there. 9 COLONEL VERMAAK: That's correct, Chair. 10 CHAIRPERSON: Well, I take it Ms Lewis 11 will say to you that's not actually very far from the 12 orange circle, and we know that your bearings were a bit 13 wrong because you thought the body was where the word 14 "body" appears. Is that right? 15 COLONEL VERMAAK: That's correct. That 16 is where I – 17 CHAIRPERSON: So on your version you 18 thought you walked from where "SAPS members" is – 19 COLONEL VERMAAK: That's correct. 20 CHAIRPERSON: - more or less in a 21 straight line, I take it, to where the word "body" appears. 22 Is that right? 23 COLONEL VERMAAK: Chair, if I can get the 24 pointer I will show to you exactly the place that I have 25 cross the river.</p>	<p style="text-align: right;">Page 26223</p> <p>1 CHAIRPERSON: In black. 2 COLONEL VERMAAK: That's correct. 3 MS LEWIS: But Colonel, with reference to 4 exhibit B10 we've just confirmed that that is where the 5 LCRC people place Mr Sokanyile's body. 6 CHAIRPERSON: Ms Pillay, you'd better 7 look at B10 and see whether it's right. I must confess, my 8 impression was what Ms Lewis has just told us, but it 9 wouldn't be the first time I was wrong, if I was wrong. 10 MS PILLAY: Chair, the complication is 11 that B10 is a different photograph, so we'll have to go 12 through the exercise of seeing if the positioning is 13 exactly the same. 14 CHAIRPERSON: Well, is it an exercise 15 that has to be performed with the Lieutenant-Colonel in the 16 box, at the witness table? 17 MS PILLAY: Not exactly, no Chair, as 18 long as our reservation is noted. 19 CHAIRPERSON: Yes, of course I think Ms 20 Lewis may well say she would like it clarified because it's 21 important for her cross-examination. But anyway, I mustn't 22 tell her what she must do. She's getting advice from Mr 23 Gotz, which perhaps is better than any advice she gets from 24 me. 25 MS PILLAY: Chair, the families' team is</p>

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1 aware of our reservations in relation to their positioning
 2 of Mr Sokanyile's body.
 3 CHAIRPERSON: Let's have a look at B10.
 4 Could we see B10, please?
 5 MS PILLAY: Chair, Mr Chaskalson suggests
 6 that B10 be inverted so that the positioning is more or
 7 less the same as the previous slide.
 8 CHAIRPERSON: Yes, I think that's – let's
 9 just find out if Ms Lewis – this is her cross-examination,
 10 so we mustn't be unduly intrusive. Are you happy that we
 11 invert B10, Ms Lewis?
 12 MS LEWIS: Yes, Chair.
 13 CHAIRPERSON: That is easier said than
 14 done to invert the thing. It hasn't been inverted yet.
 15 You see, we can't see the body on what's on the screen at
 16 the moment anyway, but I'd be interested to see where it is
 17 in relation to the curves in the course of the stream.
 18 MS LEWIS: Could I perhaps ask before we
 19 do this that with reference to the previous slide we ask
 20 the Colonel to indicate where he crossed the stream?
 21 CHAIRPERSON: Let's go back to the
 22 previous exhibit then and the Colonel will tell us where he
 23 crossed the stream, if he can remember. Now we've got the
 24 previous exhibit back. Can you indicate to us where you
 25 crossed the stream, as far as you can recall?

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1 [09:41] COLONEL VERMAAK: Chair, if you see the
 2 place where we marked the members. If you take a straight
 3 line, there's a big tree there more or less in the middle
 4 of the photo. Just at the back of the big tree it looks
 5 like two big rocks that is lying there.
 6 CHAIRPERSON: On the extreme – well, in
 7 fact if one goes from the place where you indicated the
 8 SAPS members, it looks as if there's a path that goes some
 9 of the distance, then there's a fork it would seem in the
 10 direction of the stream, it's a fork and what, the clearer
 11 path is on the left-hand side which is not so far away from
 12 that orange circle but there's a fainter path on the right.
 13 COLONEL VERMAAK: That's correct.
 14 CHAIRPERSON: That's the one you're
 15 referring to, I think. If one goes along that path, on the
 16 bank of the stream there's a tree.
 17 COLONEL VERMAAK: That's correct.
 18 CHAIRPERSON: In the stream itself there
 19 are what look like two rocks.
 20 COLONEL VERMAAK: That's correct, sir.
 21 CHAIRPERSON: And then the path continues
 22 on the other side.
 23 COLONEL VERMAAK: That's correct.
 24 CHAIRPERSON: And the body, according to
 25 the, what is written on the photograph in black type, the

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1 body is close to that path.
 2 COLONEL VERMAAK: That's correct, sir.
 3 CHAIRPERSON: So that's where you thought
 4 the body was.
 5 COLONEL VERMAAK: That's what I thought,
 6 yes.
 7 CHAIRPERSON: And that's where you,
 8 that's the route you think you followed –
 9 COLONEL VERMAAK: No –
 10 CHAIRPERSON: - going towards the body.
 11 COLONEL VERMAAK: I'm for sure because
 12 why, I remember I slipped on the two rocks when I jumped to
 13 get over the stream.
 14 COMMISSIONER HEMRAJ: Colonel, at the
 15 time you gathered the members together to follow that group
 16 you could still see them across the river.
 17 COLONEL VERMAAK: They were this side,
 18 still on the –
 19 COMMISSIONER HEMRAJ: On the same side as
 20 you were.
 21 COLONEL VERMAAK: As we were.
 22 COMMISSIONER HEMRAJ: How many of them
 23 were there?
 24 COLONEL VERMAAK: I can't say how many
 25 but they were in sort of a line going to the informal

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1 settlement, not one group of people. They were stretched
 2 over about a distance, I can say 50 metres about –
 3 COMMISSIONER HEMRAJ: Did anyone there
 4 appear to be carrying anyone?
 5 COLONEL VERMAAK: No, I couldn't see at
 6 that stage.
 7 COMMISSIONER HEMRAJ: And when they
 8 crossed the river did you lose sight of the group?
 9 COLONEL VERMAAK: Ja, they went into the
 10 informal settlement. That is when, just before we crossed
 11 the river we were shot at from the person I pointed out
 12 there on the picture, Commissioner.
 13 COMMISSIONER HEMRAJ: And when you
 14 actually did cross the river, what happened to the entire
 15 group? Did they just disappear?
 16 COLONEL VERMAAK: They disappeared into
 17 the houses.
 18 COMMISSIONER HEMRAJ: I see, thank you.
 19 CHAIRPERSON: We still haven't got an
 20 inverted copy of B10 which is what – now we have, ah,
 21 that's good, that's good.
 22 MS LEWIS: Sorry, Chair, could I just ask
 23 one follow up question on the basis of the Colonel's
 24 response?
 25 CHAIRPERSON: Ask as many as you like,

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1 within limits.

2 MS LEWIS: Colonel, with reference to the

3 explanation that you've just given, if you were shooting in

4 the direction of the arrow why did you not cross the stream

5 in that direction?

6 COLONEL VERMAAK: The road that we

7 followed was for me the most practical one at that stage to

8 cross the river and this person has run away, they

9 disappeared into the houses, they were disappearing into

10 the houses. Some of the members did want to follow the

11 group but I stopped them to enter the houses due to the

12 fact that I said to them we might be let into an ambush and

13 it will not be safe to follow the people on the ground when

14 we don't have an armoured vehicle with us.

15 MS LEWIS: Alright, now before we compare

16 the previous slide to B10, the second follow up point that

17 I want to put to you is that your explanation of where you

18 crossed or your testimony makes sense on the basis of the

19 route that you've just pointed out if the body was where

20 you originally said it was because the point at which you

21 indicated you crossed is more or less in line with where

22 you say Mr Sokanyile's body was.

23 COLONEL VERMAAK: That's correct.

24 MS LEWIS: But if the body is where we

25 have placed it then your testimony isn't really consistent

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1 with that because it wouldn't have been a case of simply

2 going through the stream and as you came onto the even

3 ground, seeing Mr Sokanyile's body. Do you want to comment

4 on that?

5 COLONEL VERMAAK: Yes. If you can

6 remember, I said that is more or less that I could remember

7 after 18 months, where we found it. So the possibility

8 that it is not the exact place, I do agree on that. I have

9 to take the specific place as where the LCRC have marked it

10 with the GPS reading.

11 MS LEWIS: Colonel, I'm not sure –

12 CHAIRPERSON: Sorry, if you look at B10 –

13 sorry, can I just put this point first before you make – if

14 we compare this photograph with the previous one, you'll

15 notice there's a white car there more or less in the middle

16 of the photograph.

17 COLONEL VERMAAK: That's correct.

18 CHAIRPERSON: And above it to the right

19 is the circle, the cartridge case circle.

20 COLONEL VERMAAK: That's correct, Chair.

21 CHAIRPERSON: Now if one goes down from

22 that white car one sees a clump of, it looks like trees, I

23 suppose. You say you were on the other side of those

24 trees. In other words, you were – looking at this

25 photograph upside down, you were below those trees.

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1 COLONEL VERMAAK: Ja, on the right-hand

2 side.

3 CHAIRPERSON: On the right-hand side, ja.

4 COLONEL VERMAAK: That's correct.

5 CHAIRPERSON: Then if one looks there one

6 sees the path which is of course much clearer in the

7 photograph, one sees the path, one sees the fork in the

8 path, one sees the right-hand path which is not as clearly

9 defined as the left-hand one but the right-hand one, if one

10 follows the right-hand one to the stream one actually comes

11 to a tree and there's more or less, just after that there's

12 the bend in the stream. So that appears to be the stream

13 that you pointed out where you say you crossed, you slipped

14 on the rocks.

15 COLONEL VERMAAK: That's correct, Chair.

16 CHAIRPERSON: And then more or less in a

17 straight line following the path that you were on, one

18 comes to the body slightly to the left.

19 COLONEL VERMAAK: That's correct, Chair.

20 CHAIRPERSON: But I must confess that's

21 my prima facie impression of the photograph, whereas if one

22 compares the upside down version of B10 with the witness,

23 with the exhibit we saw before – but I just put that to

24 you, Ms Lewis, because you probably want to deal with it in

25 your follow up cross-examination.

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1 COLONEL VERMAAK: Chairperson, if I can

2 just indicate, when the photo was taken it was – I don't

3 know exactly how many days after the incident but at that

4 stage we put Colonel Botha in the helicopter, I was myself

5 on the ground where the bakkie is parked and he was

6 indicating to the members on the ground more or less where

7 they have to stand. So at that point we don't have

8 specific marked areas. Colonel Botha said he wants just to

9 give an overview picture of more or less what happened

10 there.

11 MS LEWIS: So Colonel, are you saying

12 that this photograph and the estimate of where the body

13 was, is not necessarily correct.

14 COLONEL VERMAAK: That's correct.

15 MS LEWIS: Now I just want to go back to

16 the question I asked you before that. I'm not sure you

17 answered it. I understand what you said about it being 18

18 months ago and you may not be correct as to where the body

19 was but the question that I put to you was that in light of

20 the route that you've indicated to us as to where you

21 crossed the stream, that would be consistent with your

22 testimony if the body was where you have placed it because

23 what your testimony says is that you crossed the stream and

24 when you came onto even ground you saw Mr Sokanyile's body.

25 So the point that I'm putting to you is that that

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1 explanation doesn't make sense if Mr Sokanyile's body was
 2 where we have placed it. Would you like to comment on
 3 that?
 4 COLONEL VERMAAK: No, I won't agree with
 5 that. I know where I crossed the river or the stream
 6 exactly and that is where I have pointed it out. What I do
 7 agree on is the possibility of where Mr Sokanyile was
 8 lying. As I explained that we didn't have at that stage a
 9 GPS, it's not part of our equipment, so I pointed out more
 10 or less where I can remember it was. If that point is
 11 being pointed out by LCRC on the basis of GPS readings, I
 12 have to accept that.
 13 MS LEWIS: Thank you, Colonel, we'll
 14 leave the rest of this for argument.
 15 CHAIRPERSON: [Microphone off, inaudible]
 16 - if you look at exhibit OOO25, photograph number 2, that's
 17 the photograph of the body in situ. Now I know these were
 18 taken in August 2012 but there are various trees there. I
 19 would think that one might be able, if one went to the
 20 scene and tried to put oneself in the position where the
 21 photographer was and looked at the various trees, you might
 22 be able to get accuracy as to where the body was. I'm
 23 surprised that a plantekenaar who is a Captain doesn't get
 24 fixed points. If a thing like a body is important, you get
 25 a couple of - you get three fixed points, you can identify

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1 it later but he's just point A and he hasn't got any
 2 measurement. He's got one measurement I think from point A
 3 to point B and that's it and that's hopeless. I hope
 4 someone will tell him in future when you have a point,
 5 please take several fixed points because that's the way you
 6 identify where, in the event of a dispute where a
 7 particular point was. But anyway, be that as it may, one
 8 of these days I think we're going to have to have another
 9 inspection and would you please make a note to remind me
 10 when we do that, that we must try to go to the scene
 11 depicted in photo 2 here and see whether we can't line up
 12 the trees and identify where the photographer was and in
 13 that way possibly get some kind of clarity on this point.
 14 Unless there's a GPS reading - is there actually a GPS
 15 reading they've got?
 16 COLONEL VERMAAK: Normally Colonel Botha
 17 makes, marks with a GPS reading for reference later.
 18 CHAIRPERSON: We haven't got it here,
 19 have we?
 20 COLONEL VERMAAK: No.
 21 CHAIRPERSON: I don't know whether
 22 Captain -
 23 COLONEL VERMAAK: I don't know -
 24 CHAIRPERSON: - he doesn't need to take
 25 two or three fixed points to identify it.

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1 COLONEL VERMAAK: No, not -
 2 MS LEWIS: Chair - sorry.
 3 CHAIRPERSON: Yes?
 4 MS LEWIS: Colonel, sorry, I didn't mean
 5 to interrupt you.
 6 CHAIRPERSON: Colonel, do you want to say
 7 something before -
 8 COLONEL VERMAAK: No, no, she can
 9 continue.
 10 CHAIRPERSON: - Adv Lewis continues?
 11 Yes, Adv Lewis.
 12 MS LEWIS: Chair, could I just ask that
 13 that slide, slide 7 of OOO23, be placed on the screen
 14 please? Simply to point out, Chair, that on the basis of
 15 the photograph that's precisely the exercise that we have
 16 performed and that's the basis on which we have said that
 17 Mr Sokanyile's body is where it is. Also for the purposes
 18 of the record, Chair, although we'll leave this for
 19 argument, it is possible to plot a number of these, of the
 20 landmarks on this slide, in particular the footpaths on the
 21 exhibit B10 but we'll leave that for argument.
 22 CHAIRPERSON: I still would like to see
 23 it myself on the ground, as it were. I don't trust these
 24 plots, plotters.
 25 MS LEWIS: Chair, I will make a note of

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1 that for the next inspection. Can I then ask that we
 2 return to Mr Yende's statement? There's effectively, I
 3 think, a new statement now or at least a new page. The
 4 previous manuscript statement was OOO29.1. Colonel, have
 5 you now had the opportunity to read the entire statement?
 6 COLONEL VERMAAK: This new one or the old
 7 one?
 8 CHAIRPERSON: I think what Ms Lewis
 9 means, now that we've got the missing page, have you read
 10 the missing page and while you were busy reading the
 11 missing page should you not have read the other pages we
 12 had before, to get it in sequence? That's the point.
 13 COLONEL VERMAAK: Chair, I didn't get a
 14 copy of the -
 15 CHAIRPERSON: Let's just do it now
 16 quickly, it will save time. Where do we start, what
 17 paragraph number in the statement?
 18 MS LEWIS: Well, Chair, the paragraph
 19 that I'm going to refer to is paragraph 6. I think the
 20 missing paragraphs were 4 and 5 and I'm not actually sure
 21 whether -
 22 CHAIRPERSON: Let's go back to 4 and have
 23 a look at them and then read the whole thing in sequence.
 24 MS LEWIS: Chair, before we do that, I'm
 25 not sure whether the technical people have the full

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1 statement.

2 CHAIRPERSON: Well, we've got 4 on the

3 screen at the moment.

4 MS LEWIS: Yes, we do.

5 CHAIRPERSON: So 4 continues then on the

6 next page. Have we not got that? Alright, well, let's

7 read it aloud, shall we? 4 reads, "All of a sudden" – this

8 is the bit where they're in the middle of the field, isn't

9 it – "All of a sudden I saw" something "male," is it? Can

10 you read this? Have you got a typed version? "All of a

11 sudden I saw one male in red T-shirt, red T-shirt and grey

12 pants, running away from the group of those armed men."

13 I've now been given a typed copy which will make my task

14 much easier. "All of a sudden I saw one male in red T-

15 shirt and grey pants running away from the group of those

16 armed men. I drove off pursuing him but the man

17 disappeared in the few shacks around the area. Then I

18 drove back, whereby I noticed that group of men was also

19 walking on an open field with a single line of police on

20 the left and on" – now we go to the insert page where we

21 have to try to decipher this handwriting – "and on," is it

22 on the right, "and a police chopper also," is it on the

23 air? Good gracious. "I made a U-turn so I was (something)

24 in the front on the right-hand side of the field. Then all

25 of a sudden I heard the sound of explosion" – I don't know

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1 what the next word is.

2 COMMISSIONER HEMRAJ: Twice.

3 CHAIRPERSON: - "explosion twice," that

4 sounds like stun grenades. I used to read police

5 statements quite regularly in my younger days but I've lost

6 the skill of deciphering these handwritings. "Then all of

7 a sudden I heard the sound of explosion twice. Then" – is

8 there someone in the house who is better equipped reading

9 this handwriting than I am? Is there perhaps a doctor in

10 the house who can help us?

11 MS LEWIS: Chair, I have deciphered some

12 of it. There are some words that I'm missing.

13 CHAIRPERSON: Well, please help us.

14 MS LEWIS: But I could try –

15 CHAIRPERSON: Please help us.

16 MS LEWIS: So from paragraph 5, "Then all

17 of a sudden and heard sounds of explosives," the Chair has

18 filled in "twice" – "there on the field the group of miners

19 want to" and then I'm missing the next two words, "running

20 also approaching the police. On the far right as I was in

21 the front, I saw a group of miners in a circle formation.

22 I drove," I'm missing the next word, "to that side. As I

23 approached they started to run away but others remained.

24 That was where I could," gap, "that they were hitting and

25 hacking the police officer to a," I can't read the next

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1 word, "that was," another blank, "the road and the field.

2 I had to step out of the road. Then all the people were

3 away, I jumped," I'm missing the next word, "to the police.

4 [10:00] He was on the ground. His service pistol was

5 taken, his face badly hacked. I tried to take his boots

6 off, but a captain came, tried to resuscitate me and said

7 do we know it's," something, something, "the boot. The

8 group was" –

9 CHAIRPERSON: Running.

10 MS LEWIS: Sorry, I've moved on to

11 paragraph 6.

12 CHAIRPERSON: Yes, "The group was running

13 again."

14 MS LEWIS: "The group was running again

15 on the other side of the road about 50 metres. It was then

16 I was asked to," something, "the group away for the

17 emergency people to come to the scene. There was also few

18 police on the field on foot walking next to the Nyala with

19 something in the dip there is a river where the group

20 approached the river. I noticed a male," and then we can

21 go back to our previous typed copy.

22 CHAIRPERSON: [Microphone off, inaudible]

23 MS LEWIS: I noticed a male in a brown

24 long jacket up to his knees with a blue overall pants with

25 a long gun kneeling and pointing it in our direction and I

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1 jumped off the Nyala to tell the police on foot, Warrant-

2 Officer Makhubela. While I was on the ground I heard shots

3 coming from the direction of that group of men, as they all

4 turned around and started approaching us, taking few steps

5 and stop, but still shooting towards us. I also retaliated

6 back to stop them shooting on the ground. The incident

7 took few minutes. They started to sign and go left. I

8 fired 12 rounds as we POP members were carrying shotguns in

9 my Nyala. That was to make sure that they don't come back

10 to the scene for the paramedics to continue to help all

11 those injured, but let them continue going ahead or

12 possibly away."

13 And then paragraph 7, "But my eyes were, was or

14 were always on that guy who was having a long firearm

15 because he kept on dancing, remaining behind from that

16 group, and ran back to join them. On the other side of the

17 river there was the body of a man left behind. We all

18 jumped the river to go and see him. He was lying with his

19 front on the ground. Underneath him there was a stick or

20 panga. Paramedics were also summoned as he as

21 injured/dead. I stood guard at the scene till the mortuary

22 van came and took the body."

23 So Colonel, that's the best that we've been able

24 to do with that statement and the questions that I want to

25 put to you are the following. Now you've said that you

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1 posted four members to secure the scene, correct?

2 COLONEL VERMAAK: That's correct.

3 MS LEWIS: And after you posted them you

4 went back to the first scene where the first incidents had

5 occurred, and when you came back the same members who you

6 had posted were there, correct?

7 COLONEL VERMAAK: Yes, I went back to

8 fetch a Nyala as there was no armoured vehicles to protect

9 the members at that stage.

10 MS LEWIS: And –

11 MR VAN AS: Sorry, Mr Chairperson, I've

12 just got a message from the people doing the audio. Won't

13 you please just step away from the mike a bit? Apparently

14 Ms Lewis's voice is not coming through clearly. I've been

15 asked to convey that message.

16 CHAIRPERSON: Well, if we could ask her

17 to say something by way of testing [Microphone off,

18 inaudible] –

19 MR VAN AS: Perhaps if she could just –

20 apparently it's screaming, was the word that was used, and

21 Nicole, you need to move away from the mike a bit, please.

22 MS LEWIS: Okay.

23 MR VAN AS: Thank you, Mr Chairman.

24 CHAIRPERSON: Is she now coming through

25 loud and clear?

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1 MS LEWIS: Let me try with the next

2 question, Chair. Now Colonel, the other thing that you've

3 told us is that as far as you are aware there were no other

4 SAPS members at that second scene, correct?

5 COLONEL VERMAAK: That is correct, for

6 while we were posting the people there, after we left the

7 scene with the members guarding the crime scene there I

8 cannot confirm if anybody afterwards also went to that

9 scene except me and the SAPS lawyer, Moolman.

10 CHAIRPERSON: Captain Moolman.

11 COLONEL VERMAAK: Captain Moolman.

12 CHAIRPERSON: Captain Moolman, yes. She

13 was on the scene from the very beginning I believe –

14 COLONEL VERMAAK: That's correct.

15 CHAIRPERSON: Some of the time she was in

16 a motorcar because there was objection taken to her

17 presence, but that was while you were still in the air, so

18 you wouldn't know about that.

19 COLONEL VERMAAK: No, that's correct,

20 Chair.

21 MS LEWIS: But Colonel, what you've said

22 to us, I just want to – I'm not sure that I'm understanding

23 you now. What you've said to us is that when you came back

24 from the first scene – so I assume that's when you come

25 back with Captain Moolman, correct?

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1 COLONEL VERMAAK: That's correct.

2 MS LEWIS: When you came back – sorry, to

3 the second scene where Mr Sokanyile's body was, you said

4 that there were only, it was the same members there who you

5 had left.

6 COLONEL VERMAAK: Ja, I've left the

7 members there. I came back and I saw them that they were

8 still there.

9 MS LEWIS: There were no other members,

10 correct?

11 COLONEL VERMAAK: No.

12 MS LEWIS: So Colonel, then clearly the

13 only members who would have been guarding that scene were

14 the members that you posted.

15 COLONEL VERMAAK: Ja, that's correct.

16 MS LEWIS: Alright, now if we look at

17 paragraph 7 towards the end – sorry, of Yende's statement,

18 I'll read it again. "On the other side of the river there

19 was a body of a man left behind. We all jumped the river

20 to go and see him. He was lying with his front on the

21 ground. Underneath him there was a stick or panga.

22 Paramedics were also summoned as he was injured/dead. I

23 stood guard at the scene till the mortuary van came and

24 took the body." Now Colonel, what I'm going to put to you

25 is that he must have been one of the members who you posted

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1 to secure the scene. Do you want to comment?

2 COLONEL VERMAAK: If I read his statement

3 as you read it to us he also said there was a Nyala with

4 them and definitely when we were on the ground no Nyala was

5 close to us at all.

6 MS LEWIS: Yes Colonel, I agree with you.

7 The rest of the statement is extremely confusing and in

8 view of your response perhaps we should just briefly go

9 through it in a schematic fashion. So if we start at

10 paragraph 3, "A message was relayed to us that the people

11 had gathered in the bush next to a railway line. Then we,

12 the police," so paragraph 3 is clearly talking about when

13 the protesters were next to the railway line. You'll

14 agree?

15 COLONEL VERMAAK: That's correct, at that

16 stage I was in the air, so I cannot confirm exactly what

17 happened there next to the railway line.

18 MS LEWIS: Now paragraph 4, he seems to,

19 it seems to still relate to when the protesters were at the

20 railway line. He says that he went in pursuit of a man

21 that he saw in a red T-shirt and grey pants, running away

22 from that group. Do you agree with that interpretation?

23 COLONEL VERMAAK: Yes, I can and – yes, I

24 agree, but maybe I must just highlight it that in this

25 paragraph he said he was driving the vehicle. Later on he

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1 said he was jumping with the other members over the stream.
 2 So I don't know when he left his Nyala and where did he
 3 left it, because why normally the driver of the vehicle did
 4 not leave the vehicle. He stay with the vehicle if he is
 5 needed somewhere. So I, there's something not quite
 6 correct in that statement.
 7 MS LEWIS: Colonel, I agree with you on
 8 that. He seems to clearly conflate the first and the
 9 second scene. The only thing to me that is clear in his
 10 statement is that when he talks about guarding a body he's
 11 talking about Mr Sokanyile's body, but I think let's go
 12 through it step by step. So the reason that I say that in
 13 paragraph 4 he's still clearly, the main group of
 14 protesters is still next to the railway line and he says he
 15 goes in pursuit of one of them. Is that, if we look at the
 16 next paragraph, paragraph 5, which is not in this typed
 17 statement but from what I have he said, "There all of a
 18 sudden and heard sound of explosives there on the field and
 19 the group of miners want to running, also approaching the
 20 police." So in this paragraph he then seems to be talking
 21 about what I'll refer to for the sake of convenience as the
 22 main incident, the incident where the teargas and the stun
 23 grenades are thrown and the confrontation occurs. You
 24 agree?
 25 COLONEL VERMAAK: That's correct.

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1 MS LEWIS: Then in the next paragraph, in
 2 paragraph 6 he says, "The group was on the other side of
 3 the road about 50 metres, was then I was asked to the group
 4 away for the emergency people to come to the scene." So
 5 Colonel, here he seems to be saying that he sees the
 6 protesters on the other side of the road, but he's now
 7 helping to secure the scene and to attend to the people who
 8 were wounded, or wounded or injured at that scene of the
 9 main confrontation. Would you agree with that?
 10 COLONEL VERMAAK: That's correct.
 11 MS LEWIS: Then, and this is where it
 12 gets extremely confusing, then he says, "There was also few
 13 police on the field on foot walking next to the Nyala with
 14 something in the dip there is a river where the group
 15 approached the river. I noticed a male in," but –
 16 CHAIRPERSON: Is that something not a
 17 colonel?
 18 MS LEWIS: Sorry?
 19 CHAIRPERSON: Is that something not a
 20 colonel? "There was also police, maybe some police in the
 21 field on foot," I think that's on foot walking, "next to
 22 the Nyala with," is it not perhaps "with the colonel in the
 23 dip there is a river." Is that word not perhaps colonel?
 24 MS LEWIS: That could possibly be.
 25 CHAIRPERSON: But you know something; I

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1 wonder whether we're not wasting good time here. Perhaps
 2 we must send for the Constable Yende and find out what
 3 exactly he has to say and I don't want to tend to be unkind
 4 to him, but perhaps he should give evidence in his own
 5 language and we'll have it interpreted, and then it may
 6 well be that in the light of what he says you may want
 7 Lieutenant-Colonel Vermaak to come back. But I think it's
 8 a bit unfair to him to cross-examine him on a rather
 9 disjointed, unclear statement, unclear both in meaning and
 10 in writing, and he can't really – you can't do your best
 11 with it and he can't do his best either. So we'll get him
 12 in and if he comes and gives evidence which advances the
 13 cause that you're busy arguing for at the moment the
 14 Colonel may have to come back and answer it. I think
 15 that's the best way, don't you think?
 16 MS LEWIS: Yes, thank you, Chair, I
 17 agree.
 18 CHAIRPERSON: Yes, we may not even have
 19 to get him back to give evidence. What could happen is the
 20 evidence leaders and Mr Semanya's team could sit down with
 21 the witness and take a proper statement from him perhaps
 22 with the benefit of Mr Mahlangu or another interpreter
 23 present, and when we have that we may even have – I'm
 24 conscious of time problems. We may not need him back, that
 25 you may get a proper statement which you can then put to

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1 Lieutenant-Colonel Vermaak and either make the point you're
 2 making or see it disappear before your eyes.
 3 MS LEWIS: Thank you, Chair. Colonel,
 4 we've provided you with a new document this morning; it's a
 5 SAPS15 record for the POP Johannesburg unit for the 13th,
 6 and we've also provided copies to the Commissioners. Do
 7 you have that?
 8 COLONEL VERMAAK: I have it.
 9 MS LEWIS: Have you had a chance to
 10 peruse it?
 11 COLONEL VERMAAK: I go through.
 12 MS LEWIS: Alright, Colonel - can I first
 13 request, Chair, that this be made an exhibit?
 14 CHAIRPERSON: Ms Pillay will have to
 15 assist me. What is the next exhibit number?
 16 MS PILLAY: Chair, it's 00031.
 17 CHAIRPERSON: 00031, and how do we
 18 describe this? Commanders report?
 19 MS LEWIS: SAPS15 for the 13th.
 20 CHAIRPERSON: Okay, alright, 00031 is
 21 headed "Commanders report" but it's an SAPS15 dated
 22 13/8/2012 and it's Warrant-Officer, is this the gentleman
 23 who's referred to by Yende? Yes, he's Yende's commanding
 24 officer, but it's Warrant-Officer Makhubela. So it's a
 25 report by Warrant-Officer Makhubela. Well, that's it. He

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1 was the member in charge of the group of which Yende was a
 2 member. Yende refers to him in his statement and he, and
 3 Yende's name is in the document. Alright, have you seen
 4 the document?
 5 COLONEL VERMAAK: That's correct, Chair.
 6 MS LEWIS: Alright, now Colonel, the
 7 reason that we're putting this document to you is if you'll
 8 recall on Friday we were dealing with the ballistics report
 9 and the discharge sheets, which shows that Mogale and Yende
 10 fired the 9mm, or the 9mm cartridge cases that were found
 11 at the second scene where Mr Sokanyile's body is found are
 12 linked to the serial number of the guns listed on the
 13 discharge sheet for Mogale and Yende. You remember?
 14 COLONEL VERMAAK: I remember.
 15 MS LEWIS: And you raised a point to say
 16 but it's possible that other members on that day may have
 17 used their guns and so what we needed to do was check the
 18 SAPS15 forms. You recall that? If I understood you
 19 correctly.
 20 COLONEL VERMAAK: That's correct.
 21 MS LEWIS: Now if you look at the SAPS15
 22 you'll see that Constable – on the first document Constable
 23 Mogale is the first person entered on the form, correct?
 24 COLONEL VERMAAK: Correct.
 25 MS LEWIS: And if you go to the next page

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1 you will see that the first serial number that's listed is
 2 serial number Q036933. You see that?
 3 COLONEL VERMAAK: Yes.
 4 MS LEWIS: Now Colonel, the only way we
 5 can make sense of this document, the only way it would make
 6 sense and that it would be of any use is that that must
 7 mean that that gun was the gun that was issued to Constable
 8 Mogale. In other words the rows must correlate. Would you
 9 agree with that?
 10 COLONEL VERMAAK: Yes.
 11 MS LEWIS: Now if we go back to the
 12 discharge sheet, to HHH23, we will see that Mogale is
 13 number 13 on this list. Colonel, have you –
 14 COLONEL VERMAAK: I agree.
 15 MS LEWIS: Have you located that?
 16 COLONEL VERMAAK: Yes.
 17 MS LEWIS: And the serial number here is
 18 the same as the serial number that's listed on the SAPS15.
 19 COLONEL VERMAAK: I agree.
 20 MS LEWIS: So Colonel, then based on your
 21 evidence I take it you'll agree that Mogale did indeed fire
 22 those cartridge cases that were found at the scene and
 23 linked to this gun, correct?
 24 COLONEL VERMAAK: According to the SAPS15
 25 and also the discharge sheet, yes.

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1 MS LEWIS: Thank you, and then if you
 2 look at the second-last, again the first document of the
 3 SAPS15, the second-last person who's listed there – oh
 4 sorry, on the first page, we'll see that that's Constable
 5 Yende. You see that?
 6 COLONEL VERMAAK: Yes.
 7 [10:20] MS LEWIS: And we see that the serial
 8 number for the firearm that was issued to him is Q049587.
 9 Do you see that?
 10 COLONEL VERMAAK: That's correct.
 11 MS LEWIS: And if we go back to HHH23, to
 12 number 15, you'll see that the serial number correlates.
 13 Can you see the serial number on the discharge form is also
 14 Q049587?
 15 COLONEL VERMAAK: That's correct.
 16 CHAIRPERSON: So he had his own firearm
 17 that day and –
 18 COLONEL VERMAAK: That's correct.
 19 CHAIRPERSON: He didn't borrow anybody
 20 else's or lend his to anybody else.
 21 COLONEL VERMAAK: That's correct, Chair.
 22 CHAIRPERSON: Can we take a five minute
 23 break at this stage? I understand we're having, there's an
 24 extended tea at 11 o'clock because it was an important
 25 event in the life of one of our colleagues yesterday – no,

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1 not yesterday, on Sunday, the former Van Riebeeck Day which
 2 some people would now call Hemraj Day. So we'll take a
 3 five minute break now and we'll then carry on till 11
 4 o'clock when we celebrate Hemraj Day.
 5 [COMMISSION ADJOURNS COMMISSION RESUMES]
 6 [10:39] CHAIRPERSON: The Commission resumes.
 7 One of the difficulties with this Commission is, you take a
 8 five minute adjournment and then you have all sorts of
 9 housekeeping matters to have to attend to. So that's the
 10 reason for the delay, for which I apologise. I'm also
 11 reminded that we did send out a request as to what the
 12 views of the participants are as to whether we can sit on
 13 Friday, as we had already intended not to, then take off
 14 Maundy Thursday instead, that's the following Thursday for
 15 those who don't know what Maundy Thursday is and thereby
 16 extend the Easter weekend. There are reasons why I'd like
 17 to be at a meeting on Maundy Thursday which I thought was
 18 taking place on Friday. So I'd like to rule that we will
 19 sit on Friday and not next Thursday but on the other hand
 20 some people say I should just use my Chairman's prerogative
 21 and press myself on the Commission but I think that would
 22 be a bit unfair if people have made arrangements they can't
 23 possibly change. So please, we'd like to – and I gather a
 24 communication was sent out, could we please have responses
 25 thereto by lunch time? So I can then say what we're going

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1 to do, but if possible, I'd like to sit on Friday and then
 2 not sit on Maundy Thursday next week, alright.
 3 Lieutenant-Colonel, after that long introductory
 4 preamble I must remind you, in case you've forgotten,
 5 you're still bound by your affirmation. And Ms Lewis,
 6 you're moving on to another point, I trust?
 7 MS LEWIS: Yes.
 8 CHAIRPERSON: Mr Mpofu wants to cross-
 9 examine today and finish today, so he's going to give us an
 10 example of how to do a short, sharp, focused cross-
 11 examination which we're looking forward to with great
 12 anticipation. Yes, Ms Lewis.
 13 MS LEWIS: I'll try and learn from him,
 14 Chair.
 15 SALMON JOHANNES VERMAAK: (affirms
 16 further)
 17 CROSS-EXAMINATION BY MS LEWIS (CONTD.):
 18 Can I ask that exhibit LLL8 or 8.1 rather, be placed on the
 19 screen, paragraph 7. The sentence that begins, "While you
 20 were circling to land." I think it's further down – sorry,
 21 no, if we can just go back? Yes. "While we were circling
 22 to land I noticed a small group of protesters and one of
 23 them had an R5 rifle and realised that it must be one of
 24 the policemen's weapons. They were also carrying a man in
 25 white overalls across the river and I realised that the

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1 person was injured and that they were removing him from the
 2 scene." Now you have confirmed of course that that person
 3 was not or could not have been Mr Sokanyile, correct?
 4 COLONEL VERMAAK: That's correct.
 5 MS LEWIS: Can I ask that exhibit OOO23
 6 be placed on the screen, slide 3? Colonel, is it possible
 7 with reference to this slide – if not, we may have to go to
 8 one of the previous ones but could you – or perhaps that's
 9 better, I'm sorry. Could we go to slide 2? Could we go to
 10 slide 2? Colonel, can you show us with reference to the
 11 slide, the area over which your helicopter was circling at
 12 the time that you saw the protesters?
 13 CHAIRPERSON: Well, he said that he saw
 14 the protesters or, as you call them strikers, I prefer to
 15 call them – quite a lot during that afternoon. I think
 16 you'd have to make the question more specific than that.
 17 MS LEWIS: Yes, thank you, Chair. When
 18 you saw the group of protesters that was carrying the
 19 protester in the white overalls and within that group there
 20 was also a protester with an R5 rifle. Now can you give us
 21 an indication of the circumference, as it were, where the
 22 helicopter would have been circling or would have been
 23 circling over? Where –
 24 COLONEL VERMAAK: Chair, it will be
 25 really very difficult to point out exactly where the

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1 helicopter was because why, we are circling a big area but
 2 as I can remember, I'm going to try to point out, it was in
 3 the direction where you will see the letters "body," more
 4 or less in that circle area.
 5 CHAIRPERSON: [Microphone off, inaudible]
 6 circle areas there. The CAS115/08/2012, that's in an oval.
 7 Now the body, in the middle of that oval just below the
 8 numbers actually, the CAS number, is the stream, right? So
 9 he was on the, above the stream as we see it on the
 10 photograph, the body was –
 11 COLONEL VERMAAK: Chair –
 12 CHAIRPERSON: Is that right?
 13 COLONEL VERMAAK: - we are circling. If
 14 I'm –
 15 CHAIRPERSON: You see what we've got is
 16 near the foot of the photograph, the bottom photograph, we
 17 see a larger oval also the same colour orange with
 18 CAS119/08/2012 on it. That's the place at what's called
 19 the initial attack. That's what I call sometimes the field
 20 of engagement. And then the other oval indicates where
 21 there's the stream and beyond the stream where Mr
 22 Sokanyile's body was found. Now I think what Ms Lewis
 23 wants you to tell us is, this group of people you saw, one
 24 of whom or perhaps two of whom were carrying the person in
 25 the overalls, where did you see them? As you were circling

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1 in your helicopter, obviously your helicopter is circling
 2 all the time so you can't say where you were unless she
 3 asks you the precise second where you were at some critical
 4 moment but where was this group, can you tell us where you
 5 saw this group who were carrying the person in the
 6 overalls? Where did you see them as you were circling? Is
 7 that what you want to know?
 8 MS LEWIS: Thank you, Chair, that's much
 9 better than my question so I'll be happy if the witness
 10 answers that question.
 11 COLONEL VERMAAK: Chair, they were on the
 12 other side of the road, the gravel road there. You'll see
 13 that big open field, you will see a small tree and then the
 14 big open field, so they were not far from that tree. I
 15 think –
 16 CHAIRPERSON: There are a whole lot of
 17 trees on that, that was –
 18 COLONEL VERMAAK: No, the small one –
 19 CHAIRPERSON: There are a whole lot of
 20 small trees. Now which one do you mean? We've got a
 21 gravel road running from right to left across the
 22 photograph, is that the one you're talking about?
 23 COLONEL VERMAAK: That's correct.
 24 CHAIRPERSON: Right, and on the left-hand
 25 side there's a motor car.

<p style="text-align: right;">Page 26256</p> <p>1 COLONEL VERMAAK: That's correct, Chair.</p> <p>2 CHAIRPERSON: Well, I take it it's a</p> <p>3 motor car, I don't know, it may be a Nyala or something</p> <p>4 else. And then there are a number of trees along the side</p> <p>5 of that road, one of them opposite the motor car and the</p> <p>6 others all the way towards the right. Now I take it you're</p> <p>7 not talking about one of those trees?</p> <p>8 COLONEL VERMAAK: No. You will see on</p> <p>9 number 5 if you are counting from the left-hand side, just</p> <p>10 above him there is a small tree.</p> <p>11 CHAIRPERSON: Yes, I see that.</p> <p>12 COLONEL VERMAAK: And more to the right –</p> <p>13 CHAIRPERSON: Sorry, that tree is the</p> <p>14 one, if you were – look at the letters CAS of the reference</p> <p>15 to 119/08/2012, you put your pointer more or less at the</p> <p>16 "A" of CAS and you move it up –</p> <p>17 COLONEL VERMAAK: That's correct.</p> <p>18 CHAIRPERSON: You go through a tree on</p> <p>19 the side of the road and then beyond that there's a little</p> <p>20 tree. Is that what you're talking about?</p> <p>21 COLONEL VERMAAK: That's correct, Chair.</p> <p>22 CHAIRPERSON: Now we're on the same</p> <p>23 wavelength. Is that where you saw them.</p> <p>24 COLONEL VERMAAK: They'd just passed that</p> <p>25 tree.</p>	<p style="text-align: right;">Page 26258</p> <p>1 effect?</p> <p>2 COLONEL VERMAAK: Let us try again,</p> <p>3 that's it. As I explained, the first time that we saw them</p> <p>4 they were moving in the direction of the river. Later on</p> <p>5 they cross the river. I think what I actually mean there</p> <p>6 is that they were in the direction of the river and later</p> <p>7 then we found them on the other side of the river.</p> <p>8 CHAIRPERSON: Sorry, Colonel, let's get</p> <p>9 clarity on this. I can understand while you were circling</p> <p>10 you were looking down and seeing what was happening.</p> <p>11 COLONEL VERMAAK: That's correct, Chair.</p> <p>12 CHAIRPERSON: And when you first saw this</p> <p>13 group, one of whom or more than one of whom was carrying</p> <p>14 the man in the white overall, where were, where was the</p> <p>15 group?</p> <p>16 COLONEL VERMAAK: Chair, this is what I</p> <p>17 explained. That small tree –</p> <p>18 CHAIRPERSON: The small tree, alright.</p> <p>19 COLONEL VERMAAK: That's correct, about</p> <p>20 20 to 30 metres on the other side, to the river's side.</p> <p>21 CHAIRPERSON: Alright and then you went</p> <p>22 on circling?</p> <p>23 COLONEL VERMAAK: We went on circling,</p> <p>24 that's –</p> <p>25 CHAIRPERSON: And did you see them from</p>
<p style="text-align: right;">Page 26257</p> <p>1 CHAIRPERSON: And in which direction were</p> <p>2 they moving? Were they going straight up or were they</p> <p>3 going slightly to the left or slightly to the right or –</p> <p>4 COLONEL VERMAAK: Slightly to the left-</p> <p>5 hand side, there where CAS115/8/2012 is, that was the</p> <p>6 direction more or less that they were moving.</p> <p>7 MS LEWIS: Alright. Well, Colonel, I</p> <p>8 must confess that then I'm confused because let me read to</p> <p>9 you what you say. You say, "While we were circling to</p> <p>10 land, I noticed a small group of protesters and one of them</p> <p>11 had an R5 rifle and realised that it must be one of the</p> <p>12 policemen's weapons. They were also carrying a man in</p> <p>13 white overalls across the river and I realised that the</p> <p>14 person was injured and that they were removing him from the</p> <p>15 scene." So Colonel, from your statement it seems as if at</p> <p>16 the point at which you saw them while you were circling to</p> <p>17 land, they were already in the vicinity of the river.</p> <p>18 COLONEL VERMAAK: No.</p> <p>19 MS LEWIS: Could you clarify that?</p> <p>20 COLONEL VERMAAK: No, I don't think that</p> <p>21 is exactly what I mean. What I mean is when we had spotted</p> <p>22 them for the first time they were moving in the direction</p> <p>23 of the river.</p> <p>24 MS LEWIS: So do we need to amend your</p> <p>25 statement? Do we need to amend your statement to that</p>	<p style="text-align: right;">Page 26259</p> <p>1 time to time as they proceeded across that field there?</p> <p>2 COLONEL VERMAAK: That's correct, Chair.</p> <p>3 CHAIRPERSON: And did they ultimately get</p> <p>4 to the river?</p> <p>5 COLONEL VERMAAK: Yes.</p> <p>6 CHAIRPERSON: And you see them crossing</p> <p>7 the river?</p> <p>8 COLONEL VERMAAK: Not at that stage but</p> <p>9 after they have, crossing the river we could still see</p> <p>10 where they have the person in the white overall.</p> <p>11 CHAIRPERSON: I see. So when you said in</p> <p>12 your statement, the Afrikaans version, "Hulle het ook 'n</p> <p>13 persoon oor" – let's go back. "Terwyl ons ge-circle het om</p> <p>14 te land," while we were circling to land, "het ek 'n</p> <p>15 groepie optoggangers opgemerk," I noticed a group of people</p> <p>16 proceeding across, proceeding, "en gesien dat een van</p> <p>17 hulle," and saw that one of them "n R5 geweer het," had an</p> <p>18 R5 rifle "en besef dat dit een van die polisiemanne se</p> <p>19 wapens moet wees," and realised it must be one of the</p> <p>20 policemen's vehicles. "Hulle het ook 'n persoon in 'n</p> <p>21 witness oorpak gedra oor die rivier." Now they also</p> <p>22 carried a person in a white overall over the river, "en het</p> <p>23 ek ook besef die persoon beseer moet wees," and I also</p> <p>24 realised the person must be injured, "en dat hulle hom van</p> <p>25 die toneel af gaan verwyder." They were going to remove</p>

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1 him from the scene. When you say, "Hulle het ook 'n
 2 persoon in 'n witness oorpak gedra oor die rivier" you
 3 create the impression that you saw them actually carrying
 4 him over the river.
 5 COLONEL VERMAAK: No, sir, he did –
 6 CHAIRPERSON: I understand you to say
 7 that that was an inference you drew from the fact that
 8 you'd seen them with him on one side of the river and later
 9 you saw him –
 10 COLONEL VERMAAK: On the other.
 11 CHAIRPERSON: - they were with him on the
 12 other side of the river.
 13 COLONEL VERMAAK: That's correct, Chair.
 14 CHAIRPERSON: Is that the way –
 15 COLONEL VERMAAK: That is correct. I can
 16 maybe just mention between, we saw them, we saw the attack
 17 on the policeman, we threw teargas and stun grenades, so
 18 there was a few minutes that we didn't see them, we were
 19 concentrating on the scene where the policemen were
 20 attacked. And after that we have to circle around again so
 21 that the pilot could land the helicopter.
 22 CHAIRPERSON: Where did you land? Can
 23 you see on this photograph where you landed?
 24 COLONEL VERMAAK: Chair, it is – if I can
 25 remember, I know Warrant Officer Monene was lying there.

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1 We were in a straight line next to this path here, so that
 2 was more or less down to the left-hand side of the picture.
 3 CHAIRPERSON: What you've shown is, on
 4 this photograph on the left, bottom left corner of the
 5 photograph there is a path that proceeds up from a point
 6 about a quarter way across the bottom, up towards the left-
 7 hand side about a third of the way up. And you indicate
 8 that you landed, the helicopter landed somewhere near that
 9 path more or less in line with the left-hand side of the
 10 orange oval which has the letters CAS119/08/2012 on it, is
 11 that right?
 12 COLONEL VERMAAK: That's correct.
 13 CHAIRPERSON: And you say that, I think
 14 you indicated that Warrant Officer Monene was round about
 15 the 2012 on the inscription CAS118/08/2012.
 16 COLONEL VERMAAK: That's correct, Chair.
 17 CHAIRPERSON: So that's where you landed.
 18 COLONEL VERMAAK: That's correct, Chair.
 19 CHAIRPERSON: Right, and – but you'd seen
 20 this group of course while you were still in the air.
 21 COLONEL VERMAAK: That's correct, Chair.
 22 CHAIRPERSON: While you were circling,
 23 looking for a place to land?
 24 COLONEL VERMAAK: That's correct, Chair.
 25 CHAIRPERSON: Yes, does that introduce

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1 some clarity into the situation, Ms Lewis? You don't look
 2 too impressed with that.
 3 MS LEWIS: Colonel, I've heard what you
 4 had to say about the fact that it was an inference that you
 5 drew but it's certainly not the impression that's created
 6 by your statement. The impression that's created by your
 7 statement is that while you were circling to land, you saw
 8 them at the river. Do you accept that?
 9 COLONEL VERMAAK: They were on their way
 10 to the river when we saw them the first time, as I
 11 indicated where we saw them for the first time and then
 12 after we have circled, after we have acted to assist the
 13 policemen on the ground, when we circled again then we
 14 spotted that they are close to the river.
 15 MS LEWIS: Colonel, I'm sorry I'm
 16 confused again. Are you saying that you circled to land,
 17 landed, assisted the police officers –
 18 COLONEL VERMAAK: No.
 19 MS LEWIS: - and then got back in your
 20 helicopter and circled again?
 21 COLONEL VERMAAK: No. If you read my
 22 statement you will see we – from the helicopter we were
 23 above the policemen when we threw the grenades and, the
 24 stun grenades and the tear smoke.
 25 MS LEWIS: Alright, now the second last

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1 question that I asked you, you still haven't answered. I
 2 accept the explanation that you give for what's in your
 3 statement. Well, I don't accept it but I've heard what you
 4 have to say on that point but the simple point that I'm
 5 putting to you and I want to know whether you agree or you
 6 disagree, the point that I'm putting to you is whether, is
 7 that that is not the impression that's created by your
 8 statement. The impression that's created by your statement
 9 is a very clear one and it's that you saw the protesters,
 10 when you were circling to land you saw that particular
 11 group of protesters at the river. Could you comment on
 12 that question please?
 13 COLONEL VERMAAK: Chair, as we have
 14 explained, they were on the way to the river and we had
 15 spotted them then when they were later over the river.
 16 MS LEWIS: Alright, Colonel, I'll leave
 17 that for argument. And the second point that I want to put
 18 to you is a related question. The second point is that you
 19 say something very specific in this sentence. It's not
 20 about heading in the direction of the river being near the
 21 river, what you say is, "They were carrying a man in white
 22 overalls across the river." That's a very specific
 23 inference to draw from the fact that they're at the
 24 position of the road, headed in that direction. Could you
 25 comment on that?

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1 COLONEL VERMAAK: No, I explained where
 2 we saw them the first time.
 3 MS LEWIS: Is that your comment, Colonel?
 4 COLONEL VERMAAK: That's correct.
 5 MS LEWIS: On – now Colonel, there was a
 6 discussion between you and the Chairperson in relation to
 7 whether there could have been another group of police
 8 officers that also pursued protesters in the direction of
 9 and at the stream, do you recall that?
 10 COLONEL VERMAAK: I do.
 11 MS LEWIS: And specifically there was a
 12 discussion between you and the Chairperson about the fact
 13 that another group could have been there before you were
 14 there or after you were there. Do you recall that?
 15 COLONEL VERMAAK: That's correct.
 16 [10:59] MS LEWIS: Now Colonel, I put it to you
 17 that if there was another group who was responsible for Mr
 18 Sokanyile's death, and that's really the only other group
 19 we would be interested in. If there was another group that
 20 went down to the river and who was actually responsible for
 21 Mr Sokanyile's death, they could only have been there
 22 before you, correct? Because when you got there you found
 23 the dead body.
 24 COLONEL VERMAAK: Can I just say that
 25 it's never been proved that it was the police who was

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1 killing the person. It could also be the protester who had
 2 the R5 who was shooting at the police. So up to now nobody
 3 could exactly point out that one of that policemen have
 4 killed the deceased.
 5 MS LEWIS: Well Colonel, that's the first
 6 time that that suggestion has been made and there's
 7 absolutely no basis for it, but let's put that aside. If
 8 it was a group of police officers and if there was another
 9 group of police officers who went to that scene, in
 10 addition to your group, that group had to have been there
 11 before you because when you went there you found the dead
 12 body. Do you accept that?
 13 COLONEL VERMAAK: I repeat again my
 14 answer that I've given to you. Nobody could prove here
 15 that that person was shot by a policeman. If there was a
 16 group they should have been before us there, but we can't
 17 say the police have shot that person.
 18 CHAIRPERSON: Let's take things step by
 19 step. There are actually two points. There was a group,
 20 we know, at the – we've got the wrong slide up to make the
 21 point, but I think you'll know what I mean when I put the
 22 question.
 23 COLONEL VERMAAK: That's correct.
 24 CHAIRPERSON: There was a group at the
 25 oval circle – sorry, at the orange circle on this side as

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1 it were of the river. There was a group there –
 2 COLONEL VERMAAK: That's correct, Chair.
 3 CHAIRPERSON: And they did fire. We know
 4 that because there were cartridge cases.
 5 COLONEL VERMAAK: That's correct.
 6 CHAIRPERSON: Now you say your group
 7 didn't go there and your group, they fired shots, or it's
 8 something I will ask you about that in a moment. The shots
 9 were fired or a shot was fired, I'm not sure which. I'll
 10 ask you about that in a minute. Your group wasn't at that
 11 spot. So the cartridge cases that were found there didn't
 12 come from your group. That's what you told us.
 13 COLONEL VERMAAK: According to me, yes,
 14 Chair.
 15 CHAIRPERSON: Okay. So there must have
 16 been another group. Now from the time you were there in
 17 the vicinity and went over the river and found the body and
 18 that kind of thing, there was no reason for any group of
 19 police with Yende and the others to be at that spot firing.
 20 So it's so overwhelmingly probable that one can accept it
 21 as a fact that that group must have been there before you
 22 were there, if you are correct in saying it wasn't your
 23 group. That must follow.
 24 COLONEL VERMAAK: That is correct, Chair.
 25 CHAIRPERSON: That's the first point. I

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1 think we actually debated that on Friday. The next
 2 question is whether somebody in that group did not possibly
 3 kill Mr Sokanyile, and the answer to that must be use, it's
 4 possible, or it can't be excluded –
 5 COLONEL VERMAAK: That's –
 6 CHAIRPERSON: - and there's in fact an R5
 7 cartridge case there.
 8 COLONEL VERMAAK: That's correct.
 9 CHAIRPERSON: Which could be the
 10 cartridge case, it doesn't follow it was.
 11 COLONEL VERMAAK: That's correct.
 12 CHAIRPERSON: It's certainly a
 13 possibility.
 14 COLONEL VERMAAK: That's correct.
 15 CHAIRPERSON: There is I suppose also the
 16 possibility – where it fits in on the scale of
 17 probabilities is a matter we don't have to debate at the
 18 moment, but there is a possibility I suppose that by
 19 accident while a member of the striking group was firing
 20 with the R5, because you say shots were being fired by the
 21 R5 by that group you were approaching, that there was by
 22 mistake, as it were, one of his one colleagues was shot.
 23 COLONEL VERMAAK: That's correct.
 24 CHAIRPERSON: That's a possibility as
 25 well.

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1 COLONEL VERMAAK: That's correct.

2 CHAIRPERSON: So where it fits in on the

3 scale of probability we don't have to debate. That's also

4 clear, isn't it?

5 COLONEL VERMAAK: That's correct, Chair.

6 CHAIRPERSON: Right, now what I'm

7 interested in, and I hope Adv Lewis will forgive me if I

8 interrupt, is how many shots were fired by your group?

9 COLONEL VERMAAK: Chair, there where I

10 was it, I instructed one member to fire with his R5 and he

11 only shot one shot to the person who had the firearm.

12 CHAIRPERSON: Well you see, the

13 difficulty I've got with that is in your statement, both in

14 the later version LLL8 and the earlier version GGG17 you

15 say – well, let's start with GGG17. It's in paragraph 5

16 and it's about line 13, if one goes down paragraph 5.

17 It's, I think we can pick it up two lines earlier where it

18 says, "Ons het die groep gevold tot waar hulle deur 'n

19 waterstroom beweeg het" – We followed the group till where

20 they moved through a stream – "en op ons begin skiet het" –

21 and began shooting at us – "met die R5 geweer en

22 vermoedelik 'n haelgeweer" – with the R5 rifle and

23 presumably a shotgun. "Die lede het teruggeskiet op die

24 aanvallers." And the same, we find exactly the same

25 wording in your later statement, which is LLL8. It's the

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1 third page of that statement and it's the fourth line.

2 Now in both your statements you said "Die lede

3 het teruggeskiet." The members fired back. Now that's not

4 one member firing one shot. Now when things were clear in

5 your memory I take it you made the statement GGG17, which

6 you made on the 30th of August 2012. So if there's a

7 conflict between what you now say and what you said on the

8 30th of August 2012 then I would think the probabilities are

9 that what you said on the 30th of August 2012 is more

10 correct. What do you say about that?

11 COLONEL VERMAAK: Chair, I only gave one

12 person instruction to fire with the R5. I must admit it

13 was a mistake there to refer to members, but I remember I

14 gave one person specifically an instruction and there was

15 nobody else who was shooting from that specific point.

16 CHAIRPERSON: Yes, you see the difficulty

17 with that of course is that you repeated the statement, you

18 see. You made – I can understand you made a mistake on the

19 30th of August, but you then repeat the statement again in

20 your statement which you made earlier this year, which is

21 LLL8. So I mean that's got to be explained. But before we

22 take that one further, I think in fairness we must say that

23 it's not clear whether Mr Sokanyile died because he was

24 shot with an R5. The post mortem report is unclear on the

25 matter. It simply says that he had a "Gunshot wound left

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1 cheek entrance wound, gunshot exit wound left neck."

2 Now I was going to suggest – I was going to wait

3 until you're finished, but I may as well do it now – that

4 Mr Nkosi, who is the State pathologist – sorry, I beg his

5 pardon, Dr Sobantu Andrew Nkosi who was the State

6 pathologist who did the post mortem on Mr Sokanyile, he

7 simply describes the wounds as, in the passage I read,

8 "Black adult male," this is exhibit A and we're not quite

9 sure of the number, but the clever people will find that

10 out for us. But the relevant passage reads, "Black adult

11 male with a history of gunshot injuries. Gunshot wound

12 left cheek entrance wound, gunshot exit wound left neck.

13 Gunshot neck spinal cord injuries." Now I was going to

14 suggest that someone interview Dr Nkosi and find out from

15 him whether this was a high-velocity injury or one that

16 could have been caused by a 9mm pistol, because the cross-

17 examination at the moment seems to be proceeding on the

18 assumption that it was an R5, and it may well be an R5, we

19 don't know. But it may be that Dr Sobantu Andrew Nkosi can

20 tell us that it definitely was an R5 or it definitely was a

21 9mm weapon, or he can't say, but that's obviously something

22 we need clarity on.

23 But anyway, but you still haven't answered yet my

24 point about "Lede het teruggeskiet." That's your

25 description end of August 2012 and you repeat it under oath

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1 in your statement made earlier this year. How do you

2 explain that?

3 COLONEL VERMAAK: Chair, the explanation

4 that I have is that I did a mistake to refer to members.

5 What happens through this incident, through, I made a

6 statement and afterwards I used that same statement. First

7 it was only the 13th and then the statements of the 16th,

8 then the compiled one of the 13th, 16th, so you use the same

9 statement as the main one and then you add the other

10 information that is needed to the statement. So that is

11 the only explanation that I can give at this stage that I

12 referring to the, in the statements to the members.

13 CHAIRPERSON: Thank you. Ms Lewis, we're

14 going to have this tea party to celebrate this important

15 historical event, anniversary which was being celebrated on

16 Sunday. Do you want to ask any questions before we

17 commence the party, or you're going to keep your powder dry

18 till afterwards?

19 MS LEWIS: Chair, I just want to place on

20 record that we've just received a supplementary statement

21 from Constable Mguye, which is directly relevant to this

22 current line of cross-examination and so we'd also like

23 during the tea adjournment to make copies of that and to

24 give it to Colonel Vermaak.

25 CHAIRPERSON: I'm sure no-one can object

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1 to that. Mr Semenya? We'll take the tea adjournment.
 2 [COMMISSION ADJOURNS COMMISSION RESUMES]
 3 [12:08] CHAIRPERSON: The Commission resumes.
 4 Lieutenant-Colonel, you're still bound by your affirmation.
 5 SALMON JOHANNES VERMAAK: (affirms
 6 further)
 7 CHAIRPERSON: Have you had an opportunity
 8 to read the statements that were given to you before the
 9 adjournment?
 10 COLONEL VERMAAK: That's correct, Chair.
 11 CHAIRPERSON: Yes, I want to place on
 12 record that we have come back later than we intended to
 13 because we were given some statements to read which the
 14 witness has also been given, supplementary statements by
 15 Constable Sekgweleya and a supplementary statement by
 16 Sergeant Mguyi which I take it will be handed in, in due
 17 course. Yes, Mr Budlender?
 18 MR BUDLENDER SC: Chair, I wanted to say
 19 something about that, about what has happened this morning.
 20 We received at 10:39 this morning from the SAPS legal team,
 21 those two statements which were made yesterday by Constable
 22 Sekgweleya and Sergeant Mguyi. They are people who
 23 previously made statements and these statements have
 24 plainly been prepared in response to the evidence given by
 25 Lieutenant-Colonel Vermaak in chief and in cross-

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1 examination and it seems to us that this process is
 2 fundamentally unfair to the witness. The SAPS legal team
 3 have chosen no longer to represent or to produce him as a
 4 witness, depending on which it is. He knew what the
 5 evidence was with which he had to deal from his
 6 consultations with the SAPS legal team and from the
 7 statements which have been submitted to the Commission and
 8 on that basis he chose not to have legal representative.
 9 He knew what he was facing and what the case was that he
 10 was facing. He chose not to have legal representative but
 11 instead to have his evidence submitted through us. Now
 12 he's in effect ambushed by new evidence which is produced
 13 in response to his evidence in the middle of his evidence
 14 and by witnesses who are SAPS members who have previously
 15 made statements and, what is more, different statements,
 16 they're rather different. They also make allegations about
 17 General Mpmembe who has already given evidence. He is also
 18 prejudiced. These things can't be put to him. And Chair,
 19 we are really concerned about this manner of proceeding.
 20 We recognise that occasions do arise when further
 21 enquiry has to be made in response to evidence that has
 22 been given but this is not a proper way to do it, we
 23 submit, in particular by a party who apparently regards a
 24 witness as hostile or adverse, with whom it has consulted
 25 and with whom it's had every opportunity to deal with these

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1 matters, to produce witnesses in the middle of the
 2 evidence. These two SAPS members will now also have to
 3 give evidence. They have a good deal to explain.
 4 That will further prolong phase 1 but it will
 5 also be irremediably prejudicial to at least Colonel
 6 Vermaak and General Mpmembe. But Chair, you have repeatedly
 7 in the course of these proceedings stressed to the parties
 8 that evidence must be put, produced up front, must be made
 9 available to everybody so there are no surprises. Parties
 10 were required to submit their statements, including the
 11 SAPS to whom you've specifically referred and we are
 12 concerned about this manner of proceeding. One can imagine
 13 this is not going to be the end of it. What will happen
 14 when, during the course of the Lonmin evidence, Mr Mpofu
 15 produces witnesses who contradict what the Lonmin witnesses
 16 have to say, witnesses who have previously given evidence?
 17 What is going to - if we're going to go on this way, this
 18 will become indefinitely prolonged and it's also very
 19 unfair to the witnesses concerned. It's particularly
 20 unfair, Chair, where the witnesses, the statements are made
 21 by people who are known to the party, who have already made
 22 statements and now make different statements. It's
 23 particularly unfair when it's made in response to the
 24 evidence of a party who has consulted with the witness who
 25 is now giving evidence. We don't know what the solution is

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1 to this but it seems to us this is an unfair and
 2 prejudicial way to proceed.
 3 CHAIRPERSON: Mr Semenya, I gather that
 4 what Mr Budlender has said is directed really to the SAPS.
 5 He suggests that the production of these statements which
 6 were only deposed to yesterday amounts to a kind of ambush,
 7 contrary to all the procedures being followed up to now.
 8 What do you say about that?
 9 MR SEMENYA SC: Chair, I said to Mr
 10 Budlender that I saw those statements this morning and it
 11 did not occur to me that a proper treatment thereof would
 12 be to put a shredder in respect of those statements purely
 13 because I want to comply with time lines and suborn
 14 evidence, I was not going to do that. I made obvious to Mr
 15 Budlender that I find the process also disturbing but it is
 16 one about which I can do very little but to come clean and
 17 that's why I do - you would see those statements also have
 18 in them content that is very damaging to the case of my
 19 client, about which I have not even taken instructions
 20 either on them. But Chair, again I suspect the other thing
 21 is the treatment of the evidence of the Colonel has been a
 22 very vexed issue in our fold because, unlike Mr Budlender
 23 contending we deem him to be a hostile witness, we don't.
 24 There are just aspects of his evidence which is in
 25 contradiction with the evidence of other witnesses, that's

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1 what it is and it has also presented us with the dilemma
2 whether or not we lead his evidence or whether we cross-
3 examine him on the evidence we think is not consistent with
4 our understanding of the other versions on specific
5 matters. And the answers to those vexed questions have not
6 been easy.

7 You would see, Chair, also what I confront this
8 morning is a letter which the Colonel wrote to you raising
9 certain issues about me and what I do or I don't know and
10 it is information given to you by a witness who is under
11 cross-examination. It also raises very difficult issues
12 about how one treats that because you don't find it in the
13 normal course of conduct of litigation, at least as far as
14 I know, but there are difficulties which I think may be a
15 function of this being a Commission and we'll take
16 directions from you, Chair. I can only say that we had no
17 intention of undermining the witness or impeaching him for
18 that matter and certainly not through an ambush.

19 CHAIRPERSON: To deal with the letter
20 point that you raise, we got a letter last week, I was
21 going to mention it later on when the SAPS started to
22 cross-examine, counsel on behalf of the SAPS. We got a
23 letter from the witness saying he wanted to make a
24 statement before the SAPS counsel, whoever, which he will
25 be, cross-examined him and I – the letter was given to us

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1 through the evidence leaders. I asked the evidence leaders
2 to reply by saying I didn't think that was an appropriate
3 procedure and if there's anything he wanted to be dealt
4 with in re-examination it could be done at the appropriate
5 time. I haven't kept a copy of the letter. I have ensured
6 that it's in the custody of the secretary of the
7 Commission. I don't think it's appropriate for me to have
8 regard to it. If your counsel, when the witness is cross-
9 examined, deals with it, well then so be it but I thought
10 that was the appropriate way to deal with it and I also
11 indicated that you were to be told we got the letter and
12 that was our attitude.

13 So I think we can leave that where it is for the
14 moment. As far as the other point is concerned, there are
15 serious questions of procedure. I mean we've laid down a
16 procedure which we thought was fair, that witnesses – if a
17 witness was going to be cross-examined, the witness should
18 be cross-examined on material which is already before us.
19 This is pursuant to a suggestion that you in fact made at
20 an early stage. It's worked very well up to now, it's
21 designed to ensure that there's no ambush, witnesses aren't
22 taken by surprise, that where the shoe pinches attempts are
23 not made at a late stage to deal with the situation. And
24 of course this incident that's happened now raises the
25 question as to whether we should continue with that

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1 procedure, how we should deal with this matter.

2 You gave us statements of 80 witnesses who the
3 police wanted to put before us, indicating that many of
4 them would simply be put before us by way, as affidavits
5 and others would have to give oral evidence. I can't
6 remember whether we got earlier statements from these
7 witnesses, did we? We did. Anyway, these are now new
8 statements and I don't think these were witnesses you
9 indicated were going, you'd want to give oral evidence, am
10 I right? Am I wrong?

11 MR SEMENYA SC: You are right in that
12 regard, Chair.

13 CHAIRPERSON: But I don't know whether
14 anyone, whether Mr Budlender has any reply but I –

15 MR MPOFU: Chair, before that, I think we
16 are also here –

17 CHAIRPERSON: Sorry?

18 MR MPOFU: No, I'm saying before there's
19 any reply we would also want to say something about this.

20 CHAIRPERSON: Yes, alright. Well, okay,
21 before you – let me take some advice from my right-hand and
22 my left-hand, then I'll look at you. Mr Mpofo, what I was
23 going to say before you – well, let me hear you first and
24 then we'll see whether we are thinking alike.

25 MR MPOFU: Yes. Thank you very much,

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1 Chairperson. No, Chairperson, just to put the matter in
2 perspective. Although the statement originated from SAPS,
3 we are the ones who distributed it. So I can understand
4 why it was directed to Mr Semenya but in actual fact –

5 MR BUDLENDER SC: Sorry, Chair, no.
6 That's not correct, maybe we both distributed it.

7 MR MPOFU: Well –

8 MR BUDLENDER SC: We received it from
9 SAPS with a request to distribute and if you did so, sir,
10 we've both done so.

11 MR MPOFU: Maybe we have, yes.

12 CHAIRPERSON: You see, the statements
13 were deposed to yesterday.

14 MR MPOFU: Yes.

15 CHAIRPERSON: And they were apparently
16 prepared by members, I take, of the police legal team. Mr
17 Semenya didn't know about them but I assume members of the
18 police legal team or police people, because I see the – I'm
19 not sure if both of them, but the one I looked at the
20 commissioner was Captain Heidi van Heerden. So they have
21 got police fingerprints all over them but what I was going
22 to say to you, Mr Mpofo, was I am concerned, as I have been
23 from the beginning, that witnesses shouldn't be ambushed.

24 Now I'm not suggesting you –

25 MR MPOFU: No.

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1 CHAIRPERSON: - are guilty of deliberate
 2 ambush –
 3 MR MPOFU: Fair enough.
 4 CHAIRPERSON: But I wonder whether the
 5 fairest thing is to say to the witness that we seriously
 6 suggest to him that he gets legal, independent legal
 7 advice. I understand, I'm not sure whether the police have
 8 agreed to it yet but I would imagine the police are
 9 certainly morally obliged to enable him to get legal
 10 representation as they were representing him at an earlier
 11 stage and if he is to be cross-examined on these statements
 12 then he should be cross-examined in the presence of his own
 13 legal representative who can, if necessary, raise the
 14 necessary objections and so on. He may well, once he's
 15 considered the matter, decide that he doesn't want his own
 16 legal representation. That would be his own election, but
 17 we normally advise people who are in a situation such as
 18 the one he is in to get legal advice because firstly, one
 19 tries to advise oneself – there are two problems, firstly,
 20 if you are someone who is not trained in the law there's a
 21 problem about not being able to give proper advice but even
 22 if you are a lawyer yourself, we have a saying that if you
 23 act for yourself you've got a fool for a client and a fool
 24 for an advocate because you can't have the necessary
 25 objectivity which is required.

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1 So my own instinctive reaction is, as I have
 2 indicated to you but I don't know whether you have any
 3 comment and I must also ask Ms Lewis actually who has been
 4 sitting there very patiently and quietly in the corner,
 5 she's actually busy cross-examining the witness at the
 6 moment.
 7 MR MPOFU: Yes. Thank you, Chairperson.
 8 Maybe let me again put the matter in perspective. What
 9 happened is that the statement was distributed by SAPS this
 10 morning. Upon receiving it, we made at least a copy for
 11 him for obvious reasons because the issue of fairness was
 12 going to arise and during the first comfort break we gave
 13 him a copy. It then afterwards transpired that Ms Lewis
 14 was also intending to ask questions on it and we discussed
 15 that separately during the tea break and so that's, our
 16 interest in it is that upon seeing it we immediately felt
 17 that he should have a copy even before we gave a copy to
 18 the Commissioners.
 19 The reason, Chairperson, why these statements
 20 cannot be ignored on the technicalities of –
 21 CHAIRPERSON: I think you've addressed me
 22 on that.
 23 MR MPOFU: Ja.
 24 CHAIRPERSON: The first object of this
 25 Commission, as has been stressed over and over again –

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1 MR MPOFU: Is to get the truth.
 2 CHAIRPERSON: - as I told your clients
 3 the other day, is to find the truth.
 4 MR MPOFU: Absolutely.
 5 CHAIRPERSON: And the death of Mr
 6 Sokanyile is one of the issues which is an important aspect
 7 for us to investigate.
 8 MR MPOFU: True.
 9 CHAIRPERSON: Clearly that's so. Equally
 10 though, I've stressed over and over again that in our
 11 pursuit of the truth we will endeavour at all times to act
 12 fairly to everybody affected and it would be unacceptable
 13 for a Commission of this kind, which is in search of the
 14 truth, to seek to find the truth by unfair means and
 15 ambushes and things of that kind. So those are the two
 16 factors we've got to bear in mind.
 17 MR MPOFU: I hear.
 18 CHAIRPERSON: But the point you make is
 19 we can't ignore these statements.
 20 MR MPOFU: Ja.
 21 CHAIRPERSON: It's unfortunate it
 22 happened the way it has. That's something else that may be
 23 looked at in due course. Particularly unfortunate at this
 24 stage where we're nearing the end of our present term of
 25 operation, I think I can say this because I don't think

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1 it's a secret anymore, we have asked for an extension. The
 2 statement to be issued by the Presidency in that regard
 3 hasn't yet been issued so it wouldn't be appropriate for me
 4 to say any more than that but if we get an extension it'll
 5 certainly be the last extension that we'll get and so time
 6 is very precious and to go essentially on side issues or
 7 what may, what look like side issues maybe, at a late stage
 8 when they've got an enormous amount of work still to do,
 9 the witnesses to hear, is unfortunate. But on the other
 10 hand we've got to get the truth and no-one is suggesting
 11 that you're guilty of an ambush but it could have the
 12 effect of that, that's the problem.
 13 MR MPOFU: Yes. Chairperson, no, I agree
 14 fully. I don't even have to re-traverse the ground you
 15 have covered. The only issue that I wanted to raise really
 16 is that we have, in practice here we have, statements have
 17 been produced by a party even while that party is cross-
 18 examining, subject to what the Chairperson correctly says
 19 which is that the witness must either have a day or two to
 20 look at the statement, depending on its significance.
 21 In this case SAPS has not even started to cross-
 22 examine so the opportunity for the witness to deal with the
 23 statement is ample and I think the only cure would be to
 24 say to all of us that – and assuming that the witness has
 25 not read the statement and he needs legal advice and so on

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1 – is that we should deal with it only after those things
2 have happened but not that it should be kicked out because
3 that would be inherently unfair given the contents of the
4 statement. And that's based, Chairperson –

5 CHAIRPERSON: Sorry, I hope I won't be
6 accused of delivering a concurring judgment in respect of
7 what you've just said but what you're suggesting, as I
8 understand it, is that the witness shouldn't be cross-
9 examined at this stage by anybody on these statements.

10 They were produced by the police who intend to cross-
11 examine him. I'm not sure what the position is with regard
12 to the police. I was informed that the members of the
13 existing team wouldn't cross-examine because they consulted
14 with the witness but that outside counsel would be briefed
15 to do the cross-examination. Is that correct, Mr Semenya?

16 MR SEMENYA SC: That's indeed correct.

17 CHAIRPERSON: Has such a counsel been
18 briefed?

19 MR SEMENYA SC: There are efforts at
20 engaging some counsel.

21 CHAIRPERSON: I see. So the problem is,
22 of course, when will the cross-examination of the witness
23 happen at the instance of SAPS. At the moment we've got Ms
24 Lewis still cross-examination, then Mr Mpofo, then Mr Gotz.
25 I don't know whether Lonmin proposes to cross-examine, do

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1 is the following. We share the evidence leaders' concerns
2 about the procedure and so we would have no objection to
3 the procedure that the Chair has suggested, that this issue
4 be reserved until the Colonel has had the opportunity to
5 take legal advice. If the Commission had taken a different
6 stance and had found that these statements should be
7 admissible now, then I would have been duty-bound to put
8 certain paragraphs to the witness, but we have no objection
9 to what the Chair has suggested.

10 Chair, from a practical point of view the line of
11 cross-examination that I was dealing with dealt with the
12 whole issue about whether there was a second group or not,
13 and so from a practical point of view I think it would be
14 better for me to reserve my right to return to that issue
15 once the issue of the statements has been resolved, and I
16 would then proceed to deal with my final topic.

17 CHAIRPERSON: You heard the debate. What
18 is your attitude? Do you wish to – presumably the police
19 will pay. Do you wish to get independent legal advice
20 before you are cross-examined on these matters, on these
21 statements, or would you like to think about it? In other
22 words I'm not asking you to make a decision now. You may
23 say yes, I would like legal advice, you may say I wouldn't,
24 or you may say I'd like to think about it. Those are the
25 three options as I understand it.

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1 they? No?

2 MR VAN AS: We don't have, I don't have
3 instructions to cross-examine.

4 CHAIRPERSON: So then presumably the next
5 cross-examination would be on behalf of the police but Ms
6 Lewis, do you agree with Mr Mpofo's suggestion that you
7 should on consideration refrain from cross-examining on
8 these statements, as he will do also and the time to cross-
9 examine on them will be when the police cross-examine, or
10 cross-examines on behalf of the police.

11 [12:28] MS LEWIS: Chair, I do. The families –

12 MR MPOFU: Okay sorry, before everybody
13 agrees with me let me restate what I was saying.

14 CHAIRPERSON: Did I incorrectly state
15 what you want?

16 MR MPOFU: Yes, sorry, Chairperson.

17 CHAIRPERSON: Oh, forgive me.

18 MR MPOFU: No, no, what I was saying is
19 that neither one of us should cross-examine on this
20 statement unless and until the witness has read it
21 properly, as usual, or if he needs to seek further legal
22 advice, that he has done so. But I was certainly not
23 barring Ms Lewis, and certainly not myself, from dealing
24 with the statement when I do the cross-examination.

25 MS LEWIS: Chair, the families' position

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1 COLONEL VERMAAK: Chair –

2 MR BUDLENDER SC: Chair, can I suggest a
3 further option?

4 CHAIRPERSON: Yes.

5 MR BUDLENDER SC: That with the leave of
6 the Commission he might wish to consult with Ms Pillay with
7 regard to those matters first, if she's given leave to
8 consult with him on them.

9 CHAIRPERSON: That's a possibility. Of
10 course you see if the rules have been complied with, the
11 practice that we've adopted, then that statement would have
12 been on the table before you started your evidence-in-chief
13 and the counsel who led you would have had an opportunity
14 to traverse these matters with you. Alright, you heard the
15 four options. Which do you want?

16 COLONEL VERMAAK: Chair, I'll – my choice
17 is Mrs Pillay, to have a meeting with her. As I said in
18 the beginning when I start testifying I think it's unfair
19 to bring in a lawyer or a advocate at this stage, if I see
20 how the police is struggling to get somebody to assist them
21 now, how difficult it's going to be for me. So I said to
22 you my whole thing is the truth, nothing but the truth, and
23 I trust the Chairperson and the Commissioners in that
24 regard.

25 CHAIRPERSON: Alright. Okay, so that

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1 seems a way forward. So what we'll do is - Ms Lewis, you
 2 say you've got another point you're going to cross-examine
 3 on?
 4 MS LEWIS: I have a final point, Chair.
 5 CHAIRPERSON: Final points, plural?
 6 MS LEWIS: A final issue. A final issue.
 7 CHAIRPERSON: Alright. Final issue. You
 8 reserve your cross-examination further on this point. Mr
 9 Mpopfu will then follow you, again avoiding this point on
 10 the same basis, and so will Mr – we haven't asked him yet;
 11 Mr Gotz, you're going to fall in line as well, will you?
 12 MR GOTZ: Chairperson, I don't have
 13 cross-examination on the topics raised by the statements.
 14 MR GOTZ: So you're not involved in this
 15 debate. Alright, now I take it that you're going to –
 16 well, you don't know, Mr Semenya, but presumably your
 17 counsel, if you can find one, may well cross-examine on
 18 these issues, on the statements. That's the idea, that's
 19 why the statements were produced, I take it. If you can't
 20 answer the question –
 21 MR SEMENYA SC: I will leave it to his or
 22 her best judgment.
 23 CHAIRPERSON: Sorry?
 24 MR SEMENYA SC: I'll leave it to his or
 25 her best judgment, Chair.

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1 CHAIRPERSON: Yes, I see, alright. So it
 2 sounds as if there's a possibility it may well form the
 3 basis of cross-examination on behalf of the SAPS, in which
 4 case the consultation with Ms Pillay can take place after
 5 Ms Lewis and Mr Mpopfu have finished their, what I can call
 6 their preliminary cross-examination. Is that right? That
 7 seems appropriate. Are you happy with that, Lieutenant-
 8 Colonel?
 9 COLONEL VERMAAK: I'm happy, thank you,
 10 Chair.
 11 CHAIRPERSON: Alright. Alright, Ms
 12 Lewis –
 13 MS LEWIS: Thank you, Chair.
 14 CHAIRPERSON: - you can proceed on the
 15 basis we've discussed.
 16 MS LEWIS: Thank you. Can I ask that
 17 exhibit GGG17 be put on the screen, please? Paragraph 5.
 18 Colonel, this is one of your earlier statements. I think
 19 this is one of the statements that was made on the 30th of
 20 August. Is that correct?
 21 COLONEL VERMAAK: That's correct.
 22 MS LEWIS: Alright, and then the relevant
 23 passage that I want to refer you to begins "Ek het 'n paar
 24 lede." Have you got that?
 25 CHAIRPERSON: [Microphone off, inaudible]

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1 begin on the second page on which this paragraph appears.
 2 MS LEWIS: Yes. Yes, Chair.
 3 CHAIRPERSON: Where is it?
 4 MS LEWIS: It's towards the middle of the
 5 page.
 6 CHAIRPERSON: "Ek het 'n paar lede, wat
 7 onbekend is?"
 8 MS LEWIS: Yes, Chair.
 9 CHAIRPERSON: Alright. You'll see the
 10 passage is, describes how the helicopter landed and you
 11 then say that you went through one of the injured, you ran
 12 to one of the injured persons at the Nyala vehicle to give
 13 assistance, and you say photo 4352. The man was already
 14 dead and you saw from his nameplate that he was Monene,
 15 photo 1441. It was at 14:24. Major-General Mpmembe
 16 appeared on the scene where the member was dead and he was
 17 clearly very upset and all that he could say to you was
 18 that his policemen were killed.
 19 Then comes the passage that Ms Lewis refers to.
 20 You got a few members – "n paar" I take it means a few,
 21 not two – a few members, who were unknown to you, together
 22 and you then followed the group on foot. You followed the
 23 group to where they moved through a stream and began to
 24 shoot at you with the R5 rifle and presumably a shotgun. I
 25 think I've translated this passage before. The members

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1 shot back at, or returned the fire of the attackers. We
 2 followed the group then through the stream, photo 4944, and
 3 then came upon a person who was already dead. He was lying
 4 with a panga and a knobkierie under him, photo 1446. Is
 5 there anymore that I must read, Ms Lewis?
 6 MS LEWIS: That was the passage that I
 7 wanted to refer to, thank you, Chair. Could we go to your
 8 later statements, LLL8.1? In this statement the relevant
 9 passage is in paragraph 7 and it starts, "While we were
 10 circling," and once we've located it I will read it to you.
 11 "While we were circling to land I noticed a small group of
 12 protesters and one of them had an R5 rifle, and realised
 13 that it must be one of the policemen's weapons. They were
 14 also carrying a man in white overalls across the river and
 15 I realised that the person was injured and that they were
 16 removing him from the scene." And then a few sentences
 17 down it says, "I got a few unknown members together and we
 18 followed the group on foot in order to get the injured
 19 together and also to see if the R5 rifle had possibly been
 20 dropped." You see that, Colonel?
 21 COLONEL VERMAAK: I saw it.
 22 MS LEWIS: So Colonel, what I want to put
 23 to you is, the first point I want to put to you is that
 24 your earlier statement says nothing about having seen the
 25 protesters carrying an injured person in white overalls.

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1 Do you agree?

2 COLONEL VERMAAK: To which earlier

3 statement did you refer to? The one of the 30 August –

4 MS LEWIS: The statement that I've just

5 read to you, yes.

6 COLONEL VERMAAK: The one of 30 August?

7 MS LEWIS: Yes.

8 COLONEL VERMAAK: Or the one of January?

9 MS LEWIS: No, the – sorry, the 30 August

10 statement, the earlier one, GGG17. The one where the

11 Chairperson read the relevant paragraph to you.

12 COLONEL VERMAAK: Can we just go back to

13 that one, please?

14 MS LEWIS: I'm sure we can. Could we –

15 ja.

16 CHAIRPERSON: I'm sorry, Ms Lewis will

17 forgive me if I interrupt. The way to do it is to look at

18 your two statements, the original text, and you will see

19 that there an addition in the later one. GGG17, paragraph

20 5 says, "Terwyl ons gesirkel het om te land het ek 'n

21 groepie optoggers opgemerk en gesien dat een van hulle

22 'n R5 geweer het en besef dat dit een van die polisiemanne

23 se wapen moet wees. Direk nadat ons geland het, het ek na

24 die een beseerde," and so on.

25 Now the later statement, exhibit LLL8 is more or

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1 less the same as that, but there's an addition and that's

2 the point that she's putting to you. Now para 7 it reads,

3 the relevant passage reads, "Terwyl ons gesirkel het om te

4 land het ek 'n groepie optoggers opgemerk en gesien dat

5 een van hulle 'n R5 geweer het en besef dat dit een van die

6 polisiemanne se wapen moet wees," so far exactly the same

7 as the previous statement. Now there's a new sentence.

8 "Hulle het ook 'n persoon in 'n wit oorpak gedra oor die

9 rivier en het ek ook besef dat die persoon beseer moet wees

10 en dat hulle hom van die toneel af gaan verwyder." Next

11 sentence, "Direk nadat ons geland het," and so on. So that

12 sentence about the person in the white overall who's being

13 carried over the river is an addition to your later

14 statement LLL8. It wasn't in the earlier statement, GGG17.

15 That's Ms Lewis's point.

16 COLONEL VERMAAK: Chair, this is correct.

17 After consultations with the legal team of the SAPS it was

18 pointed out that some of the information was not in the

19 statement and then I sit down and try to write a full

20 statement, referring to as much as possible detail, and

21 that is why I, in January I wrote that last one. I do

22 agree that on that point of members, of lede, I did explain

23 to the Chair that while you're busy compiling the final –

24 CHAIRPERSON: Statement.

25 COLONEL VERMAAK: - statement you use the

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1 previous ones - they call it copy and paste, I think you

2 are familiar with that – and I think that is why that

3 specific word continue in the other statements as well,

4 Chair. It was not on purpose, but yes, from my side it is

5 a mistake. I should have notice that difference in the two

6 words, but that is how it happens.

7 CHAIRPERSON: Well, the real question is

8 which of the two, insofar as there's a difference, which of

9 the two is right?

10 COLONEL VERMAAK: Chair, the last one

11 that I have wrote in January, I accept that one as the

12 final statement that I have made.

13 MS LEWIS: Colonel, I hear what you say

14 about the final statement, but I just want to be sure that

15 I understand your explanation. What were you saying about

16 two words? I'm not sure if we're talking about the same

17 inconsistency. Can you just clarify for me –

18 COLONEL VERMAAK: There where I said the

19 members, I gave instruction for members to shoot, it was

20 actually a member.

21 CHAIRPERSON: The "lede," in the

22 statement he's got "lede" and he copied and pasted it,

23 whatever the appropriate expression is.

24 MS LEWIS: Colonel, that's not the

25 inconsistency that I'm referring to though. The

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1 inconsistency that I'm referring to is that in your earlier

2 statement you don't say anything about having seen that

3 particular group of protesters carrying an injured person

4 in white overalls. That's the inconsistency that I'm

5 referring to. Do you want to comment on that?

6 COLONEL VERMAAK: Yes, I've explained

7 that after consultations we realised that some of the

8 information is not in my previous statement and that is why

9 that specific one was mentioned later in my statements. It

10 was not left out on purpose, but after we consult and we

11 sit and work through everything again we realise – or I

12 realise that I've left it out and it was a very important

13 point to mention in the statement.

14 MS LEWIS: Now Colonel, there's another

15 inconsistency and the explanation may be the same, but I

16 need to put it to you. The other inconsistency is that

17 your earlier statement does not say anything, it doesn't

18 provide any reason for why you pursued the particular

19 group. So in other words the addition, the second addition

20 in your later statement is that you pursued the group in

21 order to try and recover the R5 and to see what happened to

22 the injured protester. That doesn't appear in your earlier

23 statements.

24 COLONEL VERMAAK: I think this statement

25 is more or less a supplementary statement after I've

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1 realised that information is not in that statement, and at
 2 that stage I draw up my own statement. As I testified
 3 earlier, every time they want new information then it's a
 4 new statement and every time it's a new statement it create
 5 problems, and then I said, after there was a consultation
 6 with Mr Pretorius I said I stick to my statement. They
 7 also sent me the last supplementary statement and I did not
 8 sign it. I said to them I will stay with the statement
 9 that I draw up in January this year.

10 MS LEWIS: Alright Colonel, setting aside
 11 for now, because we'll get to it, but setting aside for now
 12 the explanation that you've given, do you accept that the
 13 impression that's created by your first statement is simply
 14 that upon seeing the police officers being killed and
 15 landing the helicopter you went in pursuit of that group of
 16 protesters that you'd seen? You simply gave chase.

17 COLONEL VERMAAK: Yes, correct.

18 MS LEWIS: Do you accept that that's the
 19 impression?

20 COLONEL VERMAAK: Ja, if you read that
 21 statement all alone with all the other statements, that is
 22 the impression that could be created, but I can assure you
 23 that was not the reason for following that policemen.

24 CHAIRPERSON: Is your complaint – sorry,
 25 Ms Lewis. Is your – complaint is the wrong word – is the

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1 point you're making based on the fact that there was this
 2 omission to mention the gentleman in the overalls?
 3 [12:48] MS LEWIS: Twofold, Chair. The,
 4 essentially the point is that there's an omission of an
 5 explanation of the reasons for going in pursuit of the
 6 particular group of protesters. It's only in the later
 7 statement that the Colonel says he went in order to
 8 retrieve the R5 rifle and see what had happened to the
 9 injured protester, to paraphrase him. And so if you look
 10 at the first statement, the impression that's created is
 11 that he simply decided to give chase, as it were. There's
 12 no reason provided for that.

13 CHAIRPERSON: Of course have you looked
 14 at exhibit HHH6? That's the statement which he made on the
 15 4th February 2013. It doesn't entirely address the point
 16 but it's halfway there. Anyway perhaps we could put that
 17 up? HHH6, in that statement he says that he made a
 18 statement – I'm translating from the Afrikaans, he made a
 19 statement on the 30th of August in connection with the
 20 events at Marikana on the 13th and the 16th. He says this
 21 statement is supplementary to the said statement which was
 22 made on the 30th of August and he adds to paragraph 5, I
 23 think in respect of the 13th, "While we circled over the
 24 scene in order to land, I noticed a group of" –
 25 optogangers – "strikers proceeding and saw that one of

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1 them had an R5 and realised that it was one of the
 2 policemen's vehicles." That it must be one of the
 3 policemen's vehicles, sorry, weapons. "I also noticed that
 4 the group was apparently – I'm not sure what the verb is –
 5 "Ek het ook opgemerk dat die groep is vermoedelik stakers
 6 saam met hulle," I'm not quite sure what that word is but –

7 COLONEL VERMAAK: Sleep.

8 CHAIRPERSON: Sleep? Oh, thank you. "I
 9 also noticed that the group was apparently dragging an
 10 injured striker with them. The injured person – was
 11 dragging a striker with them. The injured person had a
 12 white overall on. I realised that the R5 rifle could be
 13 used against the members and that the injured person must
 14 not be taken by them from the scene because it was a crime
 15 scene." I think that's a –

16 COLONEL VERMAAK: That's correct.

17 CHAIRPERSON: - reasonably rough but
 18 accurate translation of what he said. So he had already
 19 made one and a half of the two points that you're dealing
 20 with in his statement, supplementary statement on the 4th of
 21 February 2013.

22 MS LEWIS: But Chair, this is also a
 23 later statement. It was made in February 2013 and so the
 24 same complaint –

25 CHAIRPERSON: I understand that but it's

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1 not quite as recent a fabrication as you would contend if
 2 one has got a statement already made in February 2013 where
 3 he supplements his statement by the passage that I've
 4 endeavoured to translate. I thought in fairness I should
 5 put that but I'm not stopping you from asking the question.

6 MS LEWIS: Thank you, Chair. Colonel,
 7 was this, this supplementary statement HHH6, was that also
 8 drafted after consultation with the SAPS legal team?

9 COLONEL VERMAAK: That's correct, that is
 10 some of the information that they have noticed that was not
 11 in my original statements. That's why I said that at one
 12 stage I decided I couldn't go on making statements, as you
 13 heard the Commissioner said, I think I'm the one with all –
 14 Ms Pillay said I'm the one with the most statements in the
 15 Commission.

16 MS LEWIS: Chair, could I just have one
 17 minute to confer with my colleague? Alright, Chair, then
 18 that concludes my cross-examination and I –

19 CHAIRPERSON: Subject to the reservation
 20 that you –

21 MS LEWIS: Subject to the reservation and
 22 I would also like to reserve my right to return to this
 23 issue as well.

24 CHAIRPERSON: Why is that? No, you can't
 25 do that. I understand the other one but no, you've got to

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1 cross-examine now. You can't have –
 2 MS LEWIS: Alright.
 3 CHAIRPERSON: - counsel reserve your
 4 rights to cross-examine on all sorts of points. That's not
 5 the way forward.
 6 MS LEWIS: Chair, then let me –
 7 CHAIRPERSON: Do you withdraw the second
 8 reservation or do you want to carry on, on this issue now?
 9 MS LEWIS: Chair, then I'll put the
 10 conclusion that we draw from the inconsistency between the
 11 statements and, which we will argue at the end of the
 12 proceedings for –
 13 CHAIRPERSON: Okay, well, okay do it
 14 then.
 15 MS LEWIS: - for the Colonel to comment.
 16 CHAIRPERSON: Do it then. You don't have
 17 to make a speech about it.
 18 MS LEWIS: Colonel, the conclusion that
 19 we draw is that the version in your later statement was put
 20 in your later statement in order to come up with an
 21 explanation for why the protester in the white overalls was
 22 shot. In other words, what you were trying to do was place
 23 him at the original scene where the confrontation took
 24 place and say that he was then carried to the second scene
 25 and dumped there to avoid or to move away from a conclusion

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1 that he was in fact shot at the second scene where you and
 2 a group of members were. Would you like to comment?
 3 COLONEL VERMAAK: No thanks.
 4 CHAIRPERSON: I don't think that's an
 5 appropriate answer. The proposition has been put to you,
 6 she asks you really do you agree with it or do you disagree
 7 with it?
 8 COLONEL VERMAAK: I don't agree with it.
 9 CHAIRPERSON: You don't agree. Alright,
 10 so she's given you an opportunity to deal with the point so
 11 at the end of the day if they argue that then your counsel
 12 won't be able to, or whoever is arguing on your behalf
 13 won't be able to say that they have been taken by surprise.
 14 COLONEL VERMAAK: Thank you, Chair. I
 15 think we have worked through that point and I don't agree
 16 with –
 17 CHAIRPERSON: You don't agree with what
 18 she put –
 19 COLONEL VERMAAK: - the conclusion that
 20 they come to.
 21 CHAIRPERSON: Well, it's either a good
 22 point or a bad point, we don't have to decide that now. Is
 23 that the end of your cross-examination, subject to the
 24 other reservation?
 25 COLONEL VERMAAK: Thank you, Chair.

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1 CHAIRPERSON: Mr Mpofu, you've got three
 2 minutes.
 3 MR MPOFU: Chairperson, yes, while we are
 4 still in the process of withdrawing things, I withdraw my
 5 promise to finish today, Chairperson.
 6 CHAIRPERSON: I don't know that promises
 7 can be withdrawn. Pacta sunt servanda.
 8 MR MPOFU: Yes, I'll do my best,
 9 Chairperson. Chair, I think I might as well put this on
 10 the record. If, in the unlikely event that I don't finish,
 11 then Mr Gotz has said he'll do the half day tomorrow.
 12 Thank you, Chairperson.
 13 CROSS-EXAMINATION BY MR MPOFU: Colonel,
 14 good afternoon.
 15 COLONEL VERMAAK: Good afternoon, sir.
 16 MR MPOFU: Before lunch I think I'm just
 17 going to lay the ground for you just on one aspect. Our
 18 case, as I always start with all the witnesses, our case is
 19 based on what we call three game-changers, one being the
 20 event of the 11th where the two people were shot, which as I
 21 understand you were not involved in that.
 22 COLONEL VERMAAK: At the 12th?
 23 MR MPOFU: On the 11th, 11th, where the
 24 two people were shot outside NUM offices. Okay so that –
 25 the third one, if I may jump, is the issue of what we

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1 allege to be political interference which was causally
 2 linked to the tragedy and I understand you were also not
 3 involved with discussions at that level.
 4 COLONEL VERMAAK: No, not at all, sir.
 5 MR MPOFU: Yes. So which means that with
 6 you I will only deal with the second game-changer which is,
 7 on our version at least, which is on the events of the 13th
 8 of August. Would you agree that the events of the 13th
 9 played a major role in shaping the events of the 16th, to
 10 such an extent that one could almost say that had the
 11 events of the 13th not occurred, things would have gone
 12 differently on the 16th?
 13 COLONEL VERMAAK: I wouldn't say that.
 14 MR MPOFU: Did you, in your own statement
 15 you said that – for example, I'm talking exhibit GGG17,
 16 GGG17 paragraph 7 which we will deal with in another
 17 context but when you were talking about for example the
 18 giving of the instructions on the 16th which ultimately led
 19 to the fatalities, you say there in the middle - paragraph
 20 7, Chair, it's the third sentence or so.
 21 CHAIRPERSON: The third sentence being,
 22 "Brigadier Calitz het weer vir die lede opdrag gegee om
 23 optrede te loods" –
 24 MR MPOFU: Ja.
 25 CHAIRPERSON: "Dit het amper voorgekom

<p style="text-align: right;">Page 26304</p> <p>1 asof die lede nie gehoor het nie.”</p> <p>2 MR MPOFU: And the next one.</p> <p>3 CHAIRPERSON: And the next one, “Weens</p> <p>4 die voorval op Maandag, 13 Augustus, waar die drie</p> <p>5 polisielede onder the helikopter doodgekap was, het ek</p> <p>6 besef dat die lede sal moet optree om hulle te beskerm.”</p> <p>7 Brigadier Calitz again gave the members the order to mount</p> <p>8 or launch an operation. It almost appeared as if they</p> <p>9 didn't hear, as if the members didn't hear. Because of the</p> <p>10 incident on Monday, the 13th of August, where the two police</p> <p>11 members had been hacked to death under the helicopter, I</p> <p>12 realised that the members would have to act in order to</p> <p>13 defend themselves.</p> <p>14 MR MPOFU: Yes. Do you understand what</p> <p>15 I'm saying that if – and it's not just you, that even in</p> <p>16 your own mind in the giving of the instructions, something</p> <p>17 looming large in your head were the events of the 13th if</p> <p>18 one reads that sentence, correct?</p> <p>19 COLONEL VERMAAK: Chair, it was my</p> <p>20 perception. It has never been dealt with anybody else</p> <p>21 except myself that was, think about what happened on the</p> <p>22 13th and I saw that that same incident is going to happen</p> <p>23 again maybe.</p> <p>24 MR MPOFU: Yes.</p> <p>25 COLONEL VERMAAK: So it wasn't part of</p>	<p style="text-align: right;">Page 26306</p> <p>1 they were turned back by Lonmin security, correct?</p> <p>2 COLONEL VERMAAK: What I know and what I</p> <p>3 reported to the JOC is when we fly over them the people</p> <p>4 were sitting next to the railway line, close to a pipeline</p> <p>5 and a bridge. The Lonmin people or security were on the</p> <p>6 bridge itself. No-one was close to the people there and</p> <p>7 what we observed, they were sitting next to the railway</p> <p>8 line.</p> <p>9 MR MPOFU: Peacefully.</p> <p>10 COLONEL VERMAAK: Ja, well, what we</p> <p>11 observed it was peaceful.</p> <p>12 MR MPOFU: Thank you.</p> <p>13 COLONEL VERMAAK: Except the fact that</p> <p>14 they had some dangerous weapons.</p> <p>15 MR MPOFU: Yes. And before we break for</p> <p>16 lunch I just want to ask you one, one issue because this</p> <p>17 cross-examination, there's a long version and the short</p> <p>18 version.</p> <p>19 CHAIRPERSON: Can we have the short one</p> <p>20 please, Mr Mpofu?</p> <p>21 MR MPOFU: Yes. I promise to go the</p> <p>22 short version depending on your answer to these questions,</p> <p>23 these next two questions. Is it true, would it be fair to</p> <p>24 say, if one summarises your evidence, that one of the</p> <p>25 things that you say is that if your numerous warnings, and</p>
<p style="text-align: right;">Page 26305</p> <p>1 any discussion.</p> <p>2 MR MPOFU: Yes. No – no, I accept that,</p> <p>3 Colonel. All I'm saying to you is a simple proposition</p> <p>4 that in your mind, if it also happened in other people's</p> <p>5 minds that is their business, I'm just talking about you</p> <p>6 but in your mind the events of the 13th played such an</p> <p>7 important role that what might or might not have been the</p> <p>8 fatal instructions or instructions around that time were</p> <p>9 given bearing in mind what had happened on the 13th.</p> <p>10 COLONEL VERMAAK: You must remember I</p> <p>11 only relayed the instructions from the ground. I did not</p> <p>12 give any instructions from my side. Instructions were</p> <p>13 given by the operational commander and I only repeated it</p> <p>14 to make sure that the people on the ground could hear it.</p> <p>15 MR MPOFU: Yes. And we don't know,</p> <p>16 whatever was operating in his mind, as I say, he has</p> <p>17 testified about that but when you repeated his</p> <p>18 instructions, what was operating on your mind, among other</p> <p>19 things, were the events of the 13th.</p> <p>20 COLONEL VERMAAK: I was afraid for the</p> <p>21 same incident happening on the 13th.</p> <p>22 MR MPOFU: Yes, thank you. Now, on the</p> <p>23 13th were you aware – you were aware that the group, that</p> <p>24 the group of 100 or 200, the estimates vary, you were aware</p> <p>25 that that group had proceeded relatively peacefully until</p>	<p style="text-align: right;">Page 26307</p> <p>1 I don't want to go into them, had been taken seriously, the</p> <p>2 tragedy would probably have been avoided.</p> <p>3 COLONEL VERMAAK: That's true. I –</p> <p>4 MR MPOFU: The second one – okay, that</p> <p>5 takes away almost two hours of cross-examination. That</p> <p>6 means it's a good answer, yes. The second one is, if it</p> <p>7 was not completely avoided and you were the operational</p> <p>8 commander, the fatalities and injuries would have been –</p> <p>9 could either have been avoided or substantially reduced,</p> <p>10 correct?</p> <p>11 COLONEL VERMAAK: Chair, I have mentioned</p> <p>12 it when I was questioned by Mrs Pillay that I couldn't give</p> <p>13 them an assurance –</p> <p>14 MR MPOFU: Sure.</p> <p>15 COLONEL VERMAAK: - that they would not,</p> <p>16 people die or injured, but in my belief I think it would be</p> <p>17 lesser.</p> <p>18 MR MPOFU: Substantially reduced.</p> <p>19 COLONEL VERMAAK: Yes.</p> <p>20 MR MPOFU: Thank you. We can have lunch,</p> <p>21 thank you, Chairperson.</p> <p>22 CHAIRPERSON: Thank you, Mr Mpofu, for</p> <p>23 that. We'll now take the lunch adjournment. We'll start</p> <p>24 again I think about, if we can, about ten to two.</p> <p>25 [COMMISSION ADJOURNS COMMISSION RESUMES]</p>

<p style="text-align: right;">Page 26308</p> <p>1 [14:04] CHAIRPERSON: The Commission resumes. 2 Before I remind the Lieutenant-Colonel that he's still 3 bound by his affirmation, I can now announce we will not be 4 sitting on next Thursday, morning Thursday, and of course 5 we'll be sitting on the Wednesday only in the morning 6 because we have a seminar in the afternoon. We will be 7 sitting on Friday, but it will of course as usual be a half 8 day and we will stop, and in fact we have been asked to sit 9 for half an hour shorter than usual, so we'll adjourn at 10 12:30. So that puts a heavier burden on Mr Mpofu than he 11 otherwise would have had. You're still bound by your 12 affirmation, Lieutenant-Colonel. 13 SALMON JOHANNES VERMAAK: Affirms. 14 CHAIRPERSON: Mr Mpofu is now going to 15 show us how a streamlined, focussed advocate who believes 16 that brevity is the soul of wit is going to cross-examine. 17 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 18 Yes, Chairperson. Thank you. With your help, of course, 19 Colonel, so far we're on track for the short version of the 20 cross-examination. Before we come back to the issue of the 21 13th, again I just want to ask you some broad, make some 22 broad propositions and see if we agree. It would be fair 23 to say that as an experienced crowd management specialist 24 you are generally opposed to the idea of using live 25 ammunition during crowd management operations, correct?</p>	<p style="text-align: right;">Page 26310</p> <p>1 tell me this; there was some suggestion, you remember those 2 big guns that were brought by the STF, I think it was 3 called the Scorpion that were – 4 COLONEL VERMAAK: Ja, the vehicle is a 5 Scorpion. 6 MR MPOFU: The vehicle is a Scorpion with 7 a big barrel, which some witness told us would be able to 8 demolish a building. You know – 9 COLONEL VERMAAK: Yes, yes. 10 MR MPOFU: You know what I'm talking 11 about, the big gun? 12 COLONEL VERMAAK: Yes. 13 MR MPOFU: Ja. 14 COLONEL VERMAAK: I know what you are 15 talking about. 16 MR MPOFU: Ja, the bazooka, and there was 17 a story – and I'm using that word advisedly – there was a 18 story that the bullets that were to be used for that big 19 bazooka were empty, if I'm using the correct term. Did you 20 ever hear anything like that? 21 COLONEL VERMAAK: Chair, no, I cannot 22 comment on that. 23 MR MPOFU: No, but did you ever hear 24 that – 25 COLONEL VERMAAK: I didn't hear anything</p>
<p style="text-align: right;">Page 26309</p> <p>1 COLONEL VERMAAK: That is correct, Chair. 2 MR MPOFU: And you are also aware that 3 the definition of crowd management in the police includes 4 the management of non-violent and violent protests? 5 COLONEL VERMAAK: That's correct. 6 MR MPOFU: So, but obviously there are 7 exceptions, but if you were in charge you certainly would 8 not have ordered 50 TRT people with R5s to be on the 9 frontline of protecting the police enclosure, correct? 10 COLONEL VERMAAK: Yes, Chairperson, I 11 have already wrote a letter where I bring it under the 12 attention of the PC and General Mpembe that I have got a 13 concern about the TRT members at public order events. 14 MR MPOFU: Yes, and – no, thank you, yes. 15 No, that's correct, and just by extension of logic, if you 16 have a problem of the even mere presence of TRT people at 17 crowd management events, then I'm sure you would have a 18 bigger problem to have TRT, and on to of it NIU, and on top 19 of it STF. That would even be worse, correct? 20 COLONEL VERMAAK: Yes, although I'm not 21 part of that decision – 22 MR MPOFU: Sure. 23 COLONEL VERMAAK: - that was made. In 24 normal circumstances yes, it will not be the ideal. 25 MR MPOFU: Thank you. Alright, now just</p>	<p style="text-align: right;">Page 26311</p> <p>1 about that. 2 MR MPOFU: - that story, no? 3 COLONEL VERMAAK: Yes. 4 MR MPOFU: Okay. Good. Then the next 5 point that I wanted to deal with was, again it would be 6 fair to say that – and I'm now asking you again as a crowd 7 management specialist – that in South Africa at least at 8 the heart of the prescripts that have to be followed in 9 crowd management is standing order 262, correct? 10 COLONEL VERMAAK: That's correct. 11 MR MPOFU: Right, and we know that in 12 this case at least Colonel Scott was candid enough to say 13 that he did not know anything about standing order 262 14 before he drew the plan. 15 COLONEL VERMAAK: That's correct, Chair. 16 MR MPOFU: Ja, and I think your evidence 17 is that even at Roots that admission was made that 262 was 18 not taken into account. 19 COLONEL VERMAAK: No, it was at Mpuang, 20 the 28th of October. 21 MR MPOFU: Okay, yes, yes. Sorry, but 22 anyway, but subsequently that concession was made in 23 October, correct? 24 COLONEL VERMAAK: That's correct, Chair. 25 MR MPOFU: The next similar point, just</p>

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1 introductory points, is that I know you are an experienced
 2 crowd management person, but you would agree that this was
 3 one of the most serious standoffs even in your career,
 4 correct?
 5 COLONEL VERMAAK: That's correct. I was
 6 involved in a long time at mine unrest –
 7 MR MPOFU: Yes.
 8 COLONEL VERMAAK: - circumstances. I
 9 have even letters of appreciation of the mines that is
 10 available if needed.
 11 MR MPOFU: Yes.
 12 COLONEL VERMAAK: And every time we
 13 succeed to handle it without any deaths caused by the
 14 police.
 15 MR MPOFU: Yes, correct. Ja, no I think
 16 that's true. I think you and I, our paths once crossed
 17 maybe indirectly. You were also involved in the Vryburg
 18 situation, correct? In the late 90s.
 19 COLONEL VERMAAK: That's correct.
 20 MR MPOFU: Yes. Right, now considering
 21 that this was one of the most, the tensest standoffs, you
 22 would agree with me that as it was building up it became
 23 clear that there are only two ways that this thing is going
 24 to end; it will either end peacefully through negotiations,
 25 or it will end through bloodshed.

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1 COLONEL VERMAAK: Chair, if some
 2 information was considered, I won't say that it would have
 3 been succeed with negotiations, but according to me there
 4 was other methods that could be used to approach the whole
 5 operation.
 6 MR MPOFU: Yes, the best of those other
 7 methods, or the best outcome would have been a peaceful
 8 negotiated –
 9 COLONEL VERMAAK: Ja.
 10 MR MPOFU: - outcome, correct?
 11 COLONEL VERMAAK: Ja.
 12 MR MPOFU: Yes. On the other extreme it
 13 would be bloodshed and mayhem –
 14 COLONEL VERMAAK: That's correct, Chair.
 15 MR MPOFU: - which nobody wanted,
 16 correct?
 17 COLONEL VERMAAK: That's correct.
 18 MR MPOFU: Ja, now given that situation,
 19 it's one of the worst situations, or tensest situations you
 20 have seen; it clearly is going to end either in peace or in
 21 bloodshed, you would agree that a high premium, or a high
 22 price would have to be placed in effort to make it end
 23 peacefully, correct?
 24 COLONEL VERMAAK: That is correct.
 25 MR MPOFU: And one of the ways in which

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1 that would have to be done would be by deploying specialist
 2 negotiators who know how to handle those kind of
 3 situations, correct?
 4 COLONEL VERMAAK: That is correct, Chair.
 5 MR MPOFU: But in this case SAPS did the
 6 exact opposite. They brought negotiators who had no idea
 7 of dealing with this kind of situation, correct?
 8 COLONEL VERMAAK: That is correct. There
 9 was available, as I have mentioned prior.
 10 MR MPOFU: Yes, and there are, to your
 11 knowledge within the police services in general there are
 12 people who would specialise in this kind of negotiation,
 13 correct?
 14 COLONEL VERMAAK: Yes, in the North West
 15 province there is Brigadier Calitz, Colonel Merafe itself,
 16 who's a unit commander, Colonel Johnny du Plooy, he is now
 17 redeployed to Sun City as the station commander but he is
 18 still a lot of involved in crowd management.
 19 MR MPOFU: Okay, where is Colonel du
 20 Plooy currently deployed?
 21 COLONEL VERMAAK: At Sun City police
 22 station.
 23 MR MPOFU: Okay. Right, so even it's
 24 better than what I was – because I was talking people being
 25 available in South Africa. You are saying they were even

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1 available in the North West itself.
 2 COLONEL VERMAAK: That's correct.
 3 MR MPOFU: And the person that was
 4 brought then at face value was completely inappropriate.
 5 What we know is that, A, he was a hostage negotiator; and
 6 B, a specialist in child protection.
 7 COLONEL VERMAAK: That's correct.
 8 MR MPOFU: Both of which were irrelevant
 9 in the Marikana situation, correct?
 10 COLONEL VERMAAK: That is correct.
 11 MR MPOFU: So again the deployment of the
 12 wrong expertise obviously could have had a serious
 13 contributory effect to the outcome.
 14 COLONEL VERMAAK: Ja, if you look at
 15 standing order 262 there's a specific paragraph that is
 16 saying all the members that is utilising there must have
 17 crowd management –
 18 MR MPOFU: Experience.
 19 COLONEL VERMAAK: - experience and
 20 training.
 21 MR MPOFU: Yes.
 22 COLONEL VERMAAK: It stipulate training.
 23 MR MPOFU: Good. Okay, thank you. Now
 24 Ms Lewis and you went through this, so I won't waste time
 25 on it, but I just want for my own clarity, did you give

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1 instructions – or rather, you have admitted that you gave
 2 instructions to at least one person to use live ammunition
 3 on the 13th.
 4 COLONEL VERMAAK: That is correct, Chair.
 5 MR MPOFU: And your evidence is that it
 6 was not more than one person.
 7 COLONEL VERMAAK: That's correct, Chair.
 8 MR MPOFU: And it was in a situation
 9 where you were observing the situation on the ground at
 10 that point and you asked them to engage, correct?
 11 COLONEL VERMAAK: Yes, that is where a
 12 protester was firing at us –
 13 MR MPOFU: Yes.
 14 COLONEL VERMAAK: - with the R5.
 15 MR MPOFU: And if you, I mean you may not
 16 remember, but can you remember specifically - and you'll
 17 see the importance of this - exactly the words that you
 18 used to give that instruction?
 19 COLONEL VERMAAK: If I could remember
 20 correctly I've asked him to shoot at the protester with the
 21 R5 to protect us.
 22 MR MPOFU: Yes, okay. Something to that
 23 effect, correct?
 24 COLONEL VERMAAK: That's correct, Chair.
 25 MR MPOFU: Ja, now you appreciate that

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1 words are very important in the context of an operation
 2 because you know in the heat of a moment, or in a combative
 3 situation you can't be giving long sentences. There are
 4 certain words which are understood, which are code words,
 5 correct?
 6 COLONEL VERMAAK: On the radio you try to
 7 keep your conversation as short as possible, but make sure
 8 that the people understand what you are meaning.
 9 MR MPOFU: Very good. So you use code
 10 words which are understood in the business?
 11 COLONEL VERMAAK: No, not exactly code
 12 words.
 13 MR MPOFU: No, no, I don't mean in the
 14 sense that they are secret, but shortened –
 15 COLONEL VERMAAK: Yes.
 16 MR MPOFU: - shortened sentences or
 17 shortened words, ja.
 18 COLONEL VERMAAK: Yes.
 19 MR MPOFU: Correct?
 20 COLONEL VERMAAK: Yes.
 21 MR MPOFU: Alright, because there's no
 22 time for long explanations.
 23 COLONEL VERMAAK: No, all the people was
 24 working on one channel, so you try to keep it short as
 25 possible.

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1 MR MPOFU: As possible, yes. So for
 2 example if somebody says "Engage," depending on who you are
 3 addressing they will know what that means?
 4 COLONEL VERMAAK: Yes, if you give the
 5 instruction to POP to engage they know what steps do we
 6 follow.
 7 MR MPOFU: Thank you. In fact you've
 8 answered my next question, yes, which is that if you say
 9 "engage" to POP they'll know what you mean. If you say
 10 "engage" to TRT they also will know what you mean, correct?
 11 COLONEL VERMAAK: That's correct.
 12 MR MPOFU: Ja, and when you say "engage"
 13 to TRT you can't be meaning that they must spray water.
 14 COLONEL VERMAAK: No, negative. They are
 15 only issued with R5s and 9mm pistols.
 16 MR MPOFU: Live ammunition.
 17 COLONEL VERMAAK: Live ammunition, that's
 18 correct.
 19 MR MPOFU: Yes, right. Now the other
 20 word, or words that I would like you to decode for me is
 21 again the language you used when you were flying with the
 22 helicopter, I'm now talking on the 16th. Interestingly you
 23 used the word, you said there were "18 bodies" that were on
 24 the floor.
 25 COLONEL VERMAAK: That's correct, Chair.

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1 MR MPOFU: On the ground, sorry.
 2 COLONEL VERMAAK: That's correct.
 3 MR MPOFU: Ja, and again in your circle
 4 people would know that "bodies" mean either dead people or
 5 injured people.
 6 COLONEL VERMAAK: That is correct,
 7 otherwise if people are arrested we refer to them to
 8 suspects.
 9 MR MPOFU: Yes, correct. So the word
 10 "bodies" connotes either dead bodies or injured people.
 11 COLONEL VERMAAK: That's correct.
 12 MR MPOFU: So anybody who got a message
 13 that there are 18 dead – rather, I'm sorry, there are 18
 14 bodies on the ground would have understood that there are
 15 18 people who are either dead or seriously injured?
 16 COLONEL VERMAAK: That's correct.
 17 MR MPOFU: Right, now will it be fair to
 18 say that – okay, no, no, let's not – sorry, we'll come back
 19 to the 16th. I just wanted that clarification. Let's just
 20 go back to the 13th. You would agree that – or let me put
 21 it this way; you've already said that that group on the 13th
 22 looked peaceful when they were near the path. Were you
 23 aware that when Major-General Mpembe started to engage them
 24 they said repeatedly that they were not fighting with the
 25 police?

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1 COLONEL VERMAAK: No, I'm not aware of
2 that. I only heard that he was requesting interpreter to
3 assist him with Fanagalo.
4 MR MPOFU: Yes, okay, but you have read
5 exhibit L.
6 COLONEL VERMAAK: Yes, I've done it.
7 MR MPOFU: And some of the statements
8 that Mr Gumbi took you through.
9 COLONEL VERMAAK: That's correct.
10 MR MPOFU: Yes, so even if you may not
11 have heard it on the 13th, which I accept because you were
12 in a helicopter, you did hear subsequently that they
13 repeatedly said that they were not fighting with the
14 police?
15 COLONEL VERMAAK: When I saw the video it
16 was said that is what the people said to the General.
17 MR MPOFU: Yes, and that their issue was
18 with Lonmin and they wanted to be addressed by Lonmin.
19 COLONEL VERMAAK: That's correct.
20 MR MPOFU: And that the only reason that
21 they were carrying the weapons was because they had been
22 attacked by NUM and they were carrying those things for
23 self-protection?
24 COLONEL VERMAAK: Yes Chair, this is all
25 information that I get afterwards.

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1 MR MPOFU: Subsequently, yes. Fair
2 enough. Okay, now I'm saying this because I'm building up
3 to this. The crucial issue about the 13th seems to be this
4 – well, there are two issues; one is who sparked the
5 violence, and the second one is why, why was it sparked in
6 the first place, and I think from the videos, I'm sure
7 you've looked at the videos so we don't have to play them
8 again, it's clear that, you would agree that there's no
9 sign of this deviation to the settlement?
10 COLONEL VERMAAK: Chairperson, the people
11 were walking in a, spread out in the field.
12 MR MPOFU: Yes.
13 COLONEL VERMAAK: I really don't know
14 which settlement was referred to.
15 MR MPOFU: Ja, but –
16 COLONEL VERMAAK: But in the direction
17 that they were walking there was a couple of informal
18 houses –
19 MR MPOFU: In front of them.
20 COLONEL VERMAAK: In front of them, but
21 more or less on the right flank of them, if you're -
22 [14:23] MR MPOFU: Yes.
23 COLONEL VERMAAK: - looking at, from the
24 back in the direction that they were walking.
25 MR MPOFU: Yes, you're quite right, yes.

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1 In fact let's take it step by step. In fact, I have put it
2 to another witness – I can't remember, I think it must have
3 been Major-General Mpembe but you would be in a better
4 position since you were in the sky, to answer this question
5 – that in the, if you take the line in which they were
6 walking to the mountain, it's not possible that they would
7 not have gone through some or other residential area before
8 they reached the mountain –
9 COLONEL VERMAAK: That is correct.
10 MR MPOFU: - would you agree?
11 COLONEL VERMAAK: That is correct.
12 MR MPOFU: So this idea that they were
13 shot because they were – or rather, firstly, if they were
14 being escorted to the mountain then they had to go through
15 a residential settlement.
16 COLONEL VERMAAK: That is correct.
17 MR MPOFU: Ja. So it's just an excuse
18 that is being made. Sorry, that's a comment that I'm
19 making. The second issue is this, and you've correctly
20 pointed out, the only residential areas that one could talk
21 of were either on their straight line or on the right-hand
22 side, correct?
23 COLONEL VERMAAK: That's correct, Chair.
24 MR MPOFU: To the left of them there was
25 no residential area, it was only the Karee shaft or

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1 something like that, or some tower. I might be not calling
2 it correctly.
3 COLONEL VERMAAK: Ja, but that is more at
4 the back of where they already have come from.
5 MR MPOFU: Of where they were, they had
6 already passed it.
7 COLONEL VERMAAK: That's correct.
8 MR MPOFU: Yes, but certainly there was
9 no other residential areas –
10 COLONEL VERMAAK: In front of them just
11 opposite the gravel road, to that big open field area there
12 were single houses standing alone but –
13 MR MPOFU: Yes, actually –
14 COLONEL VERMAAK: - if you cross the
15 river, that was the first informal settlement they have to
16 pass.
17 MR MPOFU: Yes, correct. And that was
18 ahead of them.
19 COLONEL VERMAAK: That's correct, Chair.
20 MR MPOFU: But interestingly, if you go
21 to L46 – and that's a reflection of a whole lot of other
22 documents, I'm just using this one because we've used it
23 more, more often. As I said already, I'm going to argue
24 that the idea of preventing them from going into a
25 settlement is nonsensical because they had to do that but

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1 I'll show you that it's even worse than that. If you look
2 at the bullet number 5 on L46 it says, "The police were to
3 follow the armed protesters, preventing them from entering
4 an informal settlement to the left of their route to
5 prevent possible incidents of looting and to safeguard
6 innocent lives." We would agree immediately that that is
7 ridiculous.

8 COLONEL VERMAAK: No, to the left was
9 that single houses standing apart from each other. The
10 first informal settlement was straight over the river on
11 the right-hand side.

12 MR MPOFU: And on the right, ja.

13 COLONEL VERMAAK: That's correct, Chair.

14 MR MPOFU: There was no informal
15 settlement on the left.

16 COLONEL VERMAAK: Not that I'm aware of.

17 MR MPOFU: Thank you. Well, I also feel
18 like laughing but unfortunately that's the version of the
19 police. In any event, you are – I'm going back to what I
20 have already asked you. As I said, we'll play the video if
21 we have to but are you aware – and if you're not, you're
22 not, we'll have to show you the video – that at least, the
23 protesters shortly before the chaos broke out, were moving
24 in a straight line. This is a matter that Mr Madlanga went
25 into some detail with General Mpembe and I think he agreed

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1 with him that they were proceeding straight on, as you can
2 see on the video and you can then see the teargas coming
3 in. Even after that they continue in a straight line and I
4 think another teargas canister and then the chaos starts.
5 And I might be wrong about the gaps in between but do you
6 agree that that was the sequence of events?

7 COLONEL VERMAAK: Yes, the straight line,
8 I must just get clarity on that, it was not that they
9 followed each other –

10 MR MPOFU: No.

11 COLONEL VERMAAK: - it was –

12 MR MPOFU: No – no.

13 COLONEL VERMAAK: - they were spread over
14 an area.

15 MR MPOFU: Fair enough.

16 COLONEL VERMAAK: That's correct.

17 MR MPOFU: But the general direction was
18 not to the left or to the right.

19 COLONEL VERMAAK: That's correct, Chair.

20 MR MPOFU: Thank you. Chairperson, I've
21 lost my notes. I think the cross-examination is going far
22 ahead of me. I'm already on page 4. No, I'm not asking
23 for a break yet, Chairperson. When I get to the point
24 where I need those particular notes I'll –

25 CHAIRPERSON: I thought you were just

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1 asking for congratulations, I was wondering whether –
2 MR MPOFU: Yes, I was fishing for
3 congratulations, Chairperson. Right, okay, so we've dealt
4 with engage and the bodies. Then the next issue, General –
5 well, you deserve that promotion – Colonel, is the issue of
6 paragraph 7 of GGG17, is it 17 or 19? 17, GGG17 and I know
7 that Ms Pillay went through this with you, so again it
8 won't, we're not going to take long. No, sorry, I'm on the
9 wrong exhibit. Yes. Paragraph 7, yes. You remember we
10 dealt with this in the context of the issue of Monday the
11 13th.

12 COLONEL VERMAAK: Paragraph 7 I think is
13 referring to the 16th.

14 MR MPOFU: Yes, yes. Ja, ja, that's
15 where we are now. Alright, no, I think you are right,
16 thank you. Let me, before we get to the 16th, finish with
17 the matters of the – or no, you've dealt with the
18 instructions that you have given. Ja, no, that's fine.
19 That's as far as at least my cross-examination on the 13th,
20 subject Chairperson, subject to the issue of those
21 statements which we might revisit about –

22 CHAIRPERSON: As I understand it, what
23 we've agreed at the moment is the SAPS counsel, when he or
24 she arrives, will – may or may not deal with it. If he or
25 she does then there may be nothing left to ask,

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1 alternatively there may be something.

2 MR MPOFU: Thank you, Chairperson. But
3 your position on that, like Ms Lewis's, is reserved.

4 MR MPOFU: Yes. That's correct,
5 Chairperson. Before we deal with this paragraph, we'll
6 just leave it there, there's just something which I wanted
7 to clear out with you and again I won't belabour it. I
8 won't even use the photographs because they were used with
9 you before. You remember when, what the police call
10 incident 2 which is when the people were blocked by Nyala
11 number 4 from going through the path to, that joins the
12 kraal and the veld?

13 COLONEL VERMAAK: That's correct, Chair.

14 MR MPOFU: Ja, this is now, we are now on
15 the 16th, yes. And the – well, the version of the people
16 that I represent is that at that point they were accessing
17 that road, you know the road to Nkaneng that runs in front
18 of the kraal. You can't dispute that because –

19 COLONEL VERMAAK: I cannot comment on
20 that.

21 MR MPOFU: But you also can't dispute it
22 because –

23 COLONEL VERMAAK: I cannot dispute it.

24 MR MPOFU: Yes. The next thing is that
25 then we all know that they went around the kraal.

<p style="text-align: right;">Page 26328</p> <p>1 COLONEL VERMAAK: That's correct –</p> <p>2 MR MPOFU: You observed –</p> <p>3 COLONEL VERMAAK: - after they have been</p> <p>4 stopped the first time then –</p> <p>5 MR MPOFU: At that road, ja.</p> <p>6 COLONEL VERMAAK: Ja.</p> <p>7 MR MPOFU: Now, and you'll correct me if</p> <p>8 I'm wrong, I understood you to be saying that when they</p> <p>9 went they made a big loop, as it were, around the kraal.</p> <p>10 COLONEL VERMAAK: That's correct, Chair.</p> <p>11 MR MPOFU: Okay. Now their version is</p> <p>12 that they literally went around, around the kraal and I</p> <p>13 think there's even a video where we can see them walking</p> <p>14 around the kraal. We can see them through a lot of</p> <p>15 obstructions but you can see their heads. What do you say</p> <p>16 to that?</p> <p>17 COLONEL VERMAAK: Chair, I can only</p> <p>18 comment on what I've seen and that is what I also have</p> <p>19 taken the photos of.</p> <p>20 MR MPOFU: Yes. So maybe a compromise,</p> <p>21 is it possible or if I say to you it may well be that</p> <p>22 there's a group that made that big loop but that the people</p> <p>23 who were in front literally walked alongside the kraal, you</p> <p>24 wouldn't dispute that.</p> <p>25 COLONEL VERMAAK: It could be a</p>	<p style="text-align: right;">Page 26330</p> <p>1 route that was being used by the protesters, also just</p> <p>2 shortly before the tragedy, if you go to slide 1931 and</p> <p>3 1923 of exhibit L and again I'm asking you this because you</p> <p>4 would have had a better view than most people, in those two</p> <p>5 slides – in fact in 193 it's even better because the</p> <p>6 writing, SAPS's own writing answers what I am going to say.</p> <p>7 It says, "Protesters organised group remain with others on</p> <p>8 the koppies while a number of protesters are departing."</p> <p>9 And that is depicted by the white line, can you see that?</p> <p>10 COLONEL VERMAAK: That's correct.</p> <p>11 MR MPOFU: The second white line.</p> <p>12 There's another white line with a circle. I'm talking</p> <p>13 about the one without the circle.</p> <p>14 COLONEL VERMAAK: That's correct.</p> <p>15 MR MPOFU: And that the arrow of that</p> <p>16 white line is exactly on the path that you and I are</p> <p>17 discussing now.</p> <p>18 COLONEL VERMAAK: That is correct.</p> <p>19 MR MPOFU: And you can see that there</p> <p>20 are, the people that they say are departing are using that</p> <p>21 path, correct?</p> <p>22 COLONEL VERMAAK: Yes. Most of the</p> <p>23 people at that stage used that road but there was also</p> <p>24 other people who was going to the back and more to the</p> <p>25 right side of the picture.</p>
<p style="text-align: right;">Page 26329</p> <p>1 possibility, sir.</p> <p>2 MR MPOFU: Yes, thank you. Now, we can</p> <p>3 now go to paragraph 7. You, obviously you don't know – oh,</p> <p>4 you've already said you can't dispute that they were</p> <p>5 accessing the path but, so you'd agree that there are two</p> <p>6 possibilities and it's not for you obviously to judge, that</p> <p>7 when the people were going to that path – or no, sorry, let</p> <p>8 me take one step further, one step back as the Chairperson</p> <p>9 accuses me of doing. You are aware that before Nyala 4</p> <p>10 closed that road, other people had used that road to escape</p> <p>11 to Nkaneng. The road, by that road I mean the road in</p> <p>12 front of the kraal.</p> <p>13 COLONEL VERMAAK: I know that they used</p> <p>14 that road before the barbed wire was thrown out, where they</p> <p>15 walked from the koppie back to the informal settlement and</p> <p>16 vice versa.</p> <p>17 MR MPOFU: And to the koppie.</p> <p>18 COLONEL VERMAAK: That's correct.</p> <p>19 MR MPOFU: Yes, so that was the popular</p> <p>20 route to and from the koppie between the koppie and</p> <p>21 Nkaneng.</p> <p>22 COLONEL VERMAAK: Ja, that was more or</p> <p>23 less the main route that they were using.</p> <p>24 MR MPOFU: The main route, correct. Okay</p> <p>25 and apart from the fact that it was what you call the main</p>	<p style="text-align: right;">Page 26331</p> <p>1 MR MPOFU: Yes, no, I accept that but I'm</p> <p>2 saying as you and I have agreed, this was the main route</p> <p>3 that they chose.</p> <p>4 COLONEL VERMAAK: That's correct, Chair.</p> <p>5 MR MPOFU: Yes and that, incidentally,</p> <p>6 that arrow that we are talking about now is literally where</p> <p>7 the people were killed, correct?</p> <p>8 COLONEL VERMAAK: That's correct.</p> <p>9 MR MPOFU: Ja. And it is for that reason</p> <p>10 that one cannot, and as you correctly have done, one cannot</p> <p>11 dispute the fact that people accessing that road would be</p> <p>12 using it for the purposes of going to Nkaneng, correct?</p> <p>13 COLONEL VERMAAK: That's correct, Chair.</p> <p>14 MR MPOFU: And their version once again,</p> <p>15 similarly, is that once the – once Nyala 4 closed that</p> <p>16 road, obviously the only other way to access that road will</p> <p>17 be to negotiate the kraal to go back to that road. You</p> <p>18 would agree with that? I mean, sorry, sorry Colonel. I'm</p> <p>19 saying apart, save from going through the kraal and taking</p> <p>20 off the –</p> <p>21 COLONEL VERMAAK: Bushes.</p> <p>22 MR MPOFU: - what do you call that, the</p> <p>23 wood, the only, the easiest way to go back to that road</p> <p>24 would be to go around the kraal, correct?</p> <p>25 COLONEL VERMAAK: Yes, but they also</p>

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1 could enter the settlement on the left-hand side where it
 2 was open. There was no police at that area, so it was a
 3 totally open space to the right-hand of this picture.
 4 MR MPOFU: Yes. No, I'm not even
 5 debating that with you. For the purposes of this question
 6 let's assume that you are correct. I'm not talking about
 7 accessing the squatter camp. I'm saying if they wanted to
 8 access that road, the only way would be to go around the
 9 kraal, correct?
 10 COLONEL VERMAAK: That, if they want to
 11 use the main route, that's correct, sir.
 12 MR MPOFU: Yes, thank you. Now – and you
 13 would agree that neither you nor I at this stage can enter
 14 into their heads directly but if, if they were negotiating
 15 that kraal it could either be for the purposes of accessing
 16 the road as I've described or for the purposes of wanting
 17 to attack the police, that that's the million dollar
 18 question, correct?
 19 COLONEL VERMAAK: Yes, Chair. I cannot
 20 give you an answer on that question.
 21 MR MPOFU: Yes. And you and I at this
 22 stage would not be able to say that they were going there
 23 with the intent of accessing that road or to attack anyone,
 24 correct?
 25 COLONEL VERMAAK: That's correct.

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1 MR MPOFU: Thank you. And you would
 2 agree again, and I'm just asking you out of common sense,
 3 the best way to know – I mean if someone were to say now
 4 I'm appointing you, Colonel Vermaak and Mpofo, to try and
 5 solve this problem, the best way to determine what, which
 6 of these intentions they had would be what they do once
 7 they reach that road. If they would turn left, then we
 8 would know that they were going home. If they cross
 9 towards the police then we might say they might be
 10 attacking, correct?
 11 COLONEL VERMAAK: That is also a
 12 possibility.
 13 MR MPOFU: Yes.
 14 COLONEL VERMAAK: We cannot say this –
 15 MR MPOFU: Yes.
 16 COLONEL VERMAAK: - which one was their
 17 decision.
 18 MR MPOFU: It's possible, that's good
 19 enough, ja. Are you aware – again I'm asking you because
 20 of the vantage point that you had – are you aware that the
 21 members of TRT actually advanced or charged or ran towards
 22 that position next to that road from some other position.
 23 [14:43] COLONEL VERMAAK: No, Chair. I wasn't, I
 24 didn't see. Let me put it that way.
 25 MR MPOFU: You didn't see that. Okay,

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1 alright, after the break I'll show you a very short clip
 2 from EEE16, but it's – or I may not even because it's
 3 already been considered by other witnesses. Okay, but if
 4 you're not aware, you're not aware. But what you are
 5 certainly aware of is that the TRT members were supposed to
 6 be a hundred metres behind POP, correct?
 7 COLONEL VERMAAK: Chair, no, I wasn't
 8 aware of that –
 9 MR MPOFU: Of that as well, okay.
 10 COLONEL VERMAAK: - because why I was not
 11 at the briefing at the afternoon.
 12 MR MPOFU: Oh yes, yes. Yes, you were
 13 not aware of the plan –
 14 COLONEL VERMAAK: That's correct, Chair.
 15 MR MPOFU: Yes, and in fact you were
 16 operating on the wrong plan. You thought the plan was
 17 encirclement, whereas it was whatever it was, correct?
 18 COLONEL VERMAAK: That's correct, Chair.
 19 MR MPOFU: Yes, okay, now eventually we
 20 go to the paragraph 7 that we've been waiting for. Now the
 21 most important thing about this, Colonel, and I need your
 22 assistance here, is that – alright, the first one is you
 23 say, "Die groep het terugbeweeg en weer hergroepeer aan die
 24 ander kant van die kraal en die polisiemanne weer om
 25 ongeveer 15:55 aangeval." We've already said that that

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1 assumption may be wrong about the attack, but that was the
 2 movement. Is that correct?
 3 COLONEL VERMAAK: That's correct.
 4 MR MPOFU: Ja. "Dit was duidelik uit die
 5 lug waargeneem dat die groep nie gaan toegee nie.
 6 Brigadier Calitz het weer vir die lede opdrag gegee om 'n
 7 optrede te loods." So Calitz gave an instruction for them
 8 to launch an offensive, correct?
 9 COLONEL VERMAAK: Yes, he –
 10 MR MPOFU: Ja.
 11 COLONEL VERMAAK: His instruction was
 12 that they must engage.
 13 MR MPOFU: Engage. Yes, it was "engage,"
 14 ja. "Dit het amper voorgekom asof die lede nie gehoor het
 15 nie." That was your impression, right or wrong, but you –
 16 COLONEL VERMAAK: That's correct.
 17 MR MPOFU: - they didn't hear, yes. Now
 18 this is the – that's why I said we'll come back to this in
 19 a different context. You say, "Weens die voorval op
 20 Maandag 13de Augustus waar die twee polisielede onder die
 21 helikopter doodgekap was het ek besef dat die lede sal moet
 22 optree om hulle te beskerm." Now very, very important. So
 23 because of the incident of the 13th where members had been
 24 killed you realised that they would have to act, correct?
 25 COLONEL VERMAAK: That's correct.

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1 MR MPOFU: And we know that we are not
 2 talking about the 13th, we are talking about the situation
 3 where if those members who had been killed had live
 4 ammunition they would have used it, correct?
 5 COLONEL VERMAAK: On the 16th?
 6 MR MPOFU: On the 13th.
 7 COLONEL VERMAAK: On the 13th?
 8 MR MPOFU: Ja. No, I'm just saying your
 9 reference point, for your reference point in this context
 10 to be the 13th it must mean that this was a dangerous
 11 situation almost calling for live ammunition, correct?
 12 COLONEL VERMAAK: No, not necessarily.
 13 If I say the people have to act or repeat the instruction
 14 of Brigadier Calitz, according to us it's a crowd
 15 management situation and if people have to act it is crowd
 16 management members and they have specific steps that they
 17 must follow.
 18 MR MPOFU: Yes, no that I appreciate and
 19 I agree with you. I'm asking you a more specific question.
 20 I'm saying if at the point at which you say Calitz gave the
 21 instruction to engage and it looked like the members could
 22 not hear, what came to your mind was the tragedy of the 13th
 23 where members had been killed, correct?
 24 COLONEL VERMAAK: That's correct because
 25 why they were going straight to the police –

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1 MR MPOFU: Yes, you don't know –
 2 COLONEL VERMAAK: - where the police line
 3 was.
 4 MR MPOFU: Yes. Yes, no, no, sorry to
 5 interrupt you. Ja, no I accept that, but I'm saying that
 6 this was a situation which in your mind called for the
 7 police to protect their lives, correct?
 8 COLONEL VERMAAK: That's correct.
 9 MR MPOFU: Ja, and that is why you
 10 repeated the instruction to engage.
 11 COLONEL VERMAAK: Ja, when Brigadier
 12 Calitz gave the instruction I saw that members either did
 13 not hear it or I don't know what the other reason could be.
 14 That is why I repeat his instruction on the radio and after
 15 I've repeat the instruction from the air you could see that
 16 the police was, there was some movement between them.
 17 MR MPOFU: Okay, so either in response to
 18 Calitz's instruction or to yours, the next thing in your
 19 statement is that there were 18 bodies down, correct?
 20 COLONEL VERMAAK: That's correct, Chair.
 21 MR MPOFU: Alright, and did you ever
 22 establish whether the members had reacted to your
 23 instruction or Calitz's, or both?
 24 COLONEL VERMAAK: Just repeat.
 25 MR MPOFU: Were you ever able

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1 subsequently to establish whether the members in engaging
 2 had been responding to your instruction or Calitz's
 3 instruction, or both?
 4 COLONEL VERMAAK: No, what we, or what I
 5 heard from the members is that they were afraid for their
 6 lives and according to them also on the ground they feel
 7 that they were attacked by the members, or by the
 8 protesters – excuse me – and that is why they have act, or
 9 engage.
 10 CHAIRPERSON: When you said in your
 11 statement that you repeated Brigadier Calitz's command or
 12 order, when you say, "waarop ek gesien het dat die lede
 13 optree" – whereupon I saw that the members were acting –
 14 now what exactly did you see them doing and which members
 15 are you talking about? Are you talking about the people in
 16 the Nyalas or the POP people near the Nyalas, or what
 17 members are you talking about, and what exactly did you see
 18 them doing which caused you to say that they were acting,
 19 and you used the verb –
 20 COLONEL VERMAAK: Chair, when those, when
 21 we, when I repeat the instruction then I saw a lot of dust.
 22 We couldn't see exactly who was acting as we're not aware
 23 that there was TRT members between the POP members, but
 24 normally it would be POP members in the frontline to handle
 25 a crowd. So for the fact that I saw this dust and

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1 commotion on the ground I believe that the police have act
 2 against the protesters and then afterwards that we circle
 3 again we saw the bodies that was lying there.
 4 CHAIRPERSON: So when you saw the dust, I
 5 take it that could have been caused by live ammunition
 6 being fired in the ground, or rubber being fired in the
 7 ground.
 8 COLONEL VERMAAK: Yes, and also the
 9 people who was approaching the police, because why it is
 10 very dusty area there.
 11 MR MPOFU: Ja, but obviously –
 12 CHAIRPERSON: Sorry, the further point –
 13 MR MPOFU: Sorry, Chairperson.
 14 CHAIRPERSON: The other point I wanted to
 15 put to you - Adv Hemraj reminds me - the evidence was, as
 16 far as I can remember it, that the POP people weren't
 17 actually among the TRT people, or vice versa. Originally
 18 we were brought under the impression, and this was a plan,
 19 I think, that there'd be a line of POP people and then
 20 behind them would be a line of TRT and if the POP people
 21 came under attack and couldn't handle the situation they
 22 would get into their Nyalas and the TRT people would be
 23 there to protect them. It subsequently appeared that that
 24 wasn't right, that what happened was that at the relevant
 25 time the POP people were either in the Nyalas or next to,

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1 you know, between the Nyalas. There was one POP man, Kuhn,
 2 whom you can see on the video, standing in front with an R5
 3 I think, but that was all, and then behind them in turn,
 4 behind him was a line of TRT people who all had their R5s
 5 at the ready and who almost simultaneously – I say almost;
 6 it wasn't exactly simultaneously – started firing. That's
 7 the evidence that we have.

8 COLONEL VERMAAK: That's correct.

9 CHAIRPERSON: You of course can't really
 10 comment on that, I take that, because of all you could see
 11 was –

12 COLONEL VERMAAK: Members on the ground.

13 CHAIRPERSON: - members on the ground,
 14 ja. Not members on the ground, well you could see the
 15 members on the ground standing up the first time round –

16 COLONEL VERMAAK: Yes.

17 CHAIRPERSON: - and then when you came
 18 around the second time –

19 COLONEL VERMAAK: Yes.

20 CHAIRPERSON: - then you saw –

21 COLONEL VERMAAK: Yes.

22 CHAIRPERSON: - the dead bodies, but you
 23 must then have seen the line of TRT police –

24 COLONEL VERMAAK: Yes, then there was a
 25 line. We, the first time that we saw the line was back

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1 where the Nyalas and the soft-top vehicles was. They were,
 2 I think they were standing parade there, I believe, and the
 3 next time that we could see is when the bodies were down.

4 MR MPOFU: Yes. Yes, no that's quite
 5 correct. In fact the clips that I'm going to show you will
 6 corroborate what you are saying, that they were forming up
 7 in parade or whatever somewhere else, and then they ran to
 8 the basic line, but you've already said you hadn't seen
 9 that part and I'll show it to you after the break. But I
 10 think the importance of what you are saying is this; it's
 11 clear, or it will be, maybe I'll also show you that part on
 12 the video, that the big dust happened at the time when the
 13 fatal shooting was being done by the TRT. You must have
 14 subsequently seen that on TV or –

15 COLONEL VERMAAK: I did saw it on TV,
 16 yes.

17 MR MPOFU: Yes.

18 COLONEL VERMAAK: I believe that was part
 19 of the reason for –

20 MR MPOFU: The actual killing.

21 COLONEL VERMAAK: No, not, for the dust.
 22 You asked me for the dust, the reason for the dust.

23 MR MPOFU: Yes, I'm saying the dust was
 24 part of the shooting by the TRT, in short terms.

25 COLONEL VERMAAK: That's correct.

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1 MR MPOFU: Ja. Ja. Pardon? That's
 2 correct?

3 COLONEL VERMAAK: That is correct.

4 MR MPOFU: Yes, now so this is what I'm
 5 saying to you. In fairness to you, you knew that, as a
 6 crowd management man you knew that, or rather you thought
 7 that the people who would be on the frontline would be POP
 8 people.

9 COLONEL VERMAAK: That's correct.

10 MR MPOFU: You had no idea that in the
 11 context of that particular moment the people on the
 12 frontline were TRT people.

13 COLONEL VERMAAK: No.

14 MR MPOFU: Yes, so when you and – or
 15 rather when you repeated Calitz's instruction to engage, in
 16 your mind you thought that the people who are going to
 17 engage would be the POP people because they should be in
 18 front, correct?

19 COLONEL VERMAAK: That's correct. That
 20 is, that was just after the incident on the other side of
 21 the kraal –

22 MR MPOFU: Correct.

23 COLONEL VERMAAK: - and there we saw they
 24 shoot teargas and stun grenades and the water cannon.

25 MR MPOFU: Ja.

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1 COLONEL VERMAAK: So we do accept then on
 2 this side it would be the same people.

3 MR MPOFU: Absolutely. Okay. Now this
 4 is very important, Colonel. I want to – you'll forgive me
 5 if I take you through it again. You observed the, I call
 6 it the blocking of the road and I know that that might be
 7 disputed. You observed the blocking of that space, let's
 8 say between the kraal and Nyala 4, or by Nyala 4, and that
 9 whole effort was spearheaded by POP, correct?

10 COLONEL VERMAAK: That's correct.

11 MR MPOFU: Yes, and it was a "successful"
 12 attempt to ward off the protesters, correct?

13 COLONEL VERMAAK: That is correct.

14 MR MPOFU: By the POP.

15 COLONEL VERMAAK: That's correct.

16 MR MPOFU: When they went around the
 17 kraal to re-access the road, at least on their version, in
 18 your mind the people who were in front were POP?

19 COLONEL VERMAAK: That's correct. That I
 20 already said.

21 MR MPOFU: Now you know that you were
 22 wrong; it was actually TRT.

23 COLONEL VERMAAK: That's correct.

24 MR MPOFU: So when you issued the
 25 instruction, or reissued the instruction to engage you were

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1 not yourself asking TRT to shoot; you were asking POP to,
 2 let's say use rubber bullets or whatever they use.
 3 COLONEL VERMAAK: Because at that stage
 4 there was already Nyala vehicles –
 5 MR MPOFU: Yes, yes.
 6 COLONEL VERMAAK: And that is why I
 7 believe that the people would know I'm talking to the POP
 8 members because why they were the closest with their
 9 vehicles to the point where the shooting took place.
 10 MR MPOFU: Yes, and at that stage they
 11 were –
 12 CHAIRPERSON: [Microphone off, inaudible]
 13 MR MPOFU: Sorry, Chairperson.
 14 CHAIRPERSON: Mr Semenya –
 15 MR MPOFU: Oh, sorry, sorry.
 16 CHAIRPERSON: - wants to object to
 17 something.
 18 MR SEMENYA SC: Chair, you would remember
 19 how an invidious position we sit. For that reason we would
 20 expect if evidence is not in accordance with previous
 21 evidence, at least the evidence leaders must correct it.
 22 CHAIRPERSON: My understanding is –
 23 MR MPOFU: I don't know –
 24 CHAIRPERSON: - the evidence, what you're
 25 putting isn't entirely correct in accordance with the

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1 previous evidence, but I was proposing to take the tea
 2 adjournment now because it's 3 o'clock and I thought when
 3 we saw the video we would see whether my recollection was
 4 correct that what you're putting isn't quite in accordance
 5 with the evidence. Alternatively we may see that what you
 6 are putting is in accordance, in which case –
 7 MR MPOFU: No, Chairperson, that's –
 8 CHAIRPERSON: - the objection falls away.
 9 MR MPOFU: No, no, no, what is incorrect,
 10 I'm saying the witness in his mind – how does Mr Semenya
 11 know what was in his mind? He says in his mind he thought
 12 the instruction was to POP. None of us, neither me or you,
 13 nor Mr Semenya, it's only the witness and he says that he
 14 thought he was giving the instruction to POP. I don't know
 15 what he's talking about. He mustn't interrupt my cross-
 16 examination.
 17 CHAIRPERSON: Mr Semenya, you've still
 18 got your light on. You'd better motivate your objection.
 19 You're entitled to motivate it as a party even if it's not
 20 one of your witnesses who's being cross-examined.
 21 MR SEMENYA SC: Chair, Mr Mpofu must
 22 understand that his comments are agitating to his clients
 23 and it is important that I get protected here.
 24 CHAIRPERSON: I'm saying motivate your
 25 objection.

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1 MR SEMENYA SC: No, I –
 2 CHAIRPERSON: So then Mr Mpofu can deal
 3 with it and I said you're entitled to object to a question
 4 put which you say is incorrect –
 5 MR SEMENYA SC: It is incorrect –
 6 CHAIRPERSON: - to a party who is not, to
 7 a witness, even if that witness is not a witness whom
 8 you've called, if you think the answer may well prejudice
 9 your client. So you're entitled to object and to motivate
 10 the objection. Shall we take the tea adjournment now?
 11 Would you like to motivate it after we've taken the
 12 adjournment?
 13 MR MPOFU: Yes.
 14 MR SEMENYA SC: No Chair, I can motivate
 15 it now.
 16 CHAIRPERSON: Alright, do –
 17 MR SEMENYA SC: The evidence that Mr
 18 Mpofu is saying is that there were no POP but only TRT when
 19 that crowd came, you also made the observation that even Mr
 20 Kuhn was there. So this is not correct. He knows it. I'm
 21 not talking about the mind of the witness at all.
 22 MR MPOFU: Chairperson, with the greatest
 23 respect to Mr Semenya, I have not disputed the fact that,
 24 as the witness has clearly said it there were those other
 25 Nyalas which were facing west, or rather the POP members

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1 facing west in between the Nyalas. The only issue I'm
 2 canvassing with this witness is that he was not aware that
 3 the people who would quite literally cause the dust were
 4 the TRT people. He thought, and that's why I traced this
 5 thing to Nyala 4, he thought that similarly as it happened
 6 with the blockage of the road at, on the other side of the
 7 kraal, that the people who should be – whether they were or
 8 not is another matter, but the people who should be on the
 9 frontline, or would respond to his command would be POP.
 10 It turns out – and that's the point I was with now – it
 11 turns out that it was the TRT that responded.
 12 CHAIRPERSON: Let me try to solve the
 13 problem by asking a question from a slightly different
 14 angle. Am I correct in thinking – if I'm wrong don't
 15 hesitate to say so. Am I correct in thinking that you
 16 thought that there were two parallel lines of police
 17 members which were across the entrance as it were to that –
 18 you've got the kraal on the one side and you've got a fence
 19 with a corrugated iron house on the other and there was a
 20 passage as it were between them, and am I correct in
 21 thinking you thought that at the mouth as it were of that
 22 passage there were two – or close to it there were two
 23 parallel lines. The first one, the one closest to the
 24 strikers consisted of POP members and the second one behind
 25 was TRT people, or were you not even aware that there were

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1 TRT –

2 [15:03] COLONEL VERMAAK: Chair, I wasn't even

3 aware of the TRT line. We observed the people there in the

4 front and we take it for, that it must be POP members as it

5 is a crowd management situation. So I wasn't really aware

6 of the second line.

7 CHAIRPERSON: Basically, you know, I'm

8 not talking about odd people standing around, I'm talking

9 about a line of people.

10 COLONEL VERMAAK: Yes.

11 CHAIRPERSON: Did you see a line of

12 people which were –

13 COLONEL VERMAAK: No.

14 CHAIRPERSON: - in front of the opening

15 to that passage or what exactly did you see?

16 COLONEL VERMAAK: No, Chair. We saw a

17 line of people there. You must still remember we were

18 circling around the specific area there, so it might be

19 possible that you see the people from a side that it looks

20 like one line and maybe they were not too far from each

21 other and if you could observe it from the top you could

22 see there's two lines but as we were circling it looked

23 like if there was only one line at that stage.

24 CHAIRPERSON: Now when you came back –

25 MR MPOFU: Sorry, Chairperson –

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1 CHAIRPERSON: - when you saw the body –

2 sorry, could I just? When you came back and saw the body,

3 did you at that point see a line?

4 COLONEL VERMAAK: That's correct, Chair.

5 CHAIRPERSON: Across, as it were,

6 slightly on the Nkaneng side but across the opening of that

7 passage.

8 COLONEL VERMAAK: That's correct, Chair.

9 CHAIRPERSON: That line, and that line we

10 know was a TRT line.

11 COLONEL VERMAAK: Yes, that we know now.

12 CHAIRPERSON: Now the previous time when

13 you went around there you said you saw a line, was it the

14 same line or was it a different line or can't you tell?

15 COLONEL VERMAAK: I can't say exactly,

16 Chair.

17 MR MPOFU: Okay look –

18 CHAIRPERSON: With your permission, may

19 we take the tea now, Mr Mpofu?

20 MR MPOFU: If you just allow me one

21 question, Chairperson, I promise.

22 CHAIRPERSON: Alright.

23 MR MPOFU: One. I was just trying to –

24 unfortunately I almost interrupted the Chairperson. What I

25 wanted to clarify is, although we talk about one line, two

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1 lines and so on, some of it comes from what the plan was

2 supposed to be but in actual fact at what the Chairperson

3 calls the mouth of that gap there was one line, on

4 everybody's version and it was the TRT line. The only

5 point is that you thought, you did not even think that

6 there were any TRT people there, correct?

7 COLONEL VERMAAK: That is correct.

8 MR MPOFU: Thank you, Chairperson.

9 CHAIRPERSON: Do you agree with that? Do

10 you agree with the proposition counsel has put to you?

11 MR MPOFU: Yes, he said that's correct.

12 COLONEL VERMAAK: Yes, yes, Chair.

13 CHAIRPERSON: Alright. We'll take tea,

14 then I think it might be an idea for us to see the video

15 clip. If it's the one I think it is, many of the problems

16 we're debating will in fact fall away. Let's take the tea

17 adjournment now.

18 MR MPOFU: Thank you.

19 [COMMISSION ADJOURNS COMMISSION RESUMES]

20 [15:23] CHAIRPERSON: The Commission resumes.

21 Lieutenant-Colonel, you're still bound by your affirmation.

22 SALMON JOHANNES VERMAAK: Affirms.

23 CHAIRPERSON: Mr Mpofu, are we now going

24 to see the video clip?

25 CROSS-EXAMINATION BY MR MPOFU (CONTD.):

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1 Yes, Chairperson. Yes, we might as well start with that,

2 yes. Can we play AAA6 from 25 seconds – oh, warning,

3 Chairperson.

4 CHAIRPERSON: Yes, well we're giving a

5 warning to enable those who may be affected by this to

6 leave and to give the police an opportunity, police

7 representatives an opportunity to come. I understand we're

8 going to be seeing a video clip which shows some of the

9 people who were killed at Marikana on the 16th of August.

10 Those who were their loved ones and relatives may well find

11 seeing these clips to be emotionally distressing and so I'm

12 going to ask that the clips not be shown until a minute

13 elapses from the end of what I'm saying, to enable those

14 who feel they may be emotionally upset by this to leave the

15 chamber. The minute starts now. Right, the minute has

16 expired. You can now show the clip.

17 MR MPOFU: It's AAA6 starting at 25

18 seconds.

19 CHAIRPERSON: Thank you.

20 [VIDEO IS SHOWN]

21 MR MPOFU: Stop, please.

22 CHAIRPERSON: Stopping at 40.

23 MR MPOFU: Yes.

24 CHAIRPERSON: We've seen a series of

25 members of the police service, it looks as if they're

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1 wearing black, sort of berets. Would that be members of
 2 the TRT?
 3 COLONEL VERMAAK: That's correct,
 4 Chairperson.
 5 CHAIRPERSON: And they've been running
 6 across the screen from left to right.
 7 COLONEL VERMAAK: That's correct.
 8 CHAIRPERSON: Carrying weapons, I take it
 9 those are R5s, are they?
 10 COLONEL VERMAAK: That's R5s.
 11 MR MPOFU: Okay, that's covered. Let's
 12 move on.
 13 [VIDEO IS SHOWN]
 14 Stop, please. Alright –
 15 CHAIRPERSON: Now stopping at 55. We
 16 heard gunshots –
 17 MR MPOFU: That's correct, Chairperson.
 18 CHAIRPERSON: - on the soundtrack.
 19 MR MPOFU: Yes. Colonel, all I wanted to
 20 ascertain here, and I say you may or may not have observed
 21 these things from the sky, but now you've seen that the TRT
 22 members ran from somewhere - we don't know where they came
 23 from - towards that position, correct?
 24 COLONEL VERMAAK: That's correct.
 25 MR MPOFU: And when they got there they

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1 formed a line.
 2 COLONEL VERMAAK: That's correct.
 3 MR MPOFU: Yes, and then – oh, we might
 4 as well while we are here, and after the shooting, that's
 5 when the dust starts to show up, correct?
 6 COLONEL VERMAAK: We saw the dust. I
 7 cannot say if it was before or after the shooting.
 8 MR MPOFU: Okay, can we rewind a little
 9 bit?
 10 CHAIRPERSON: Some of the dust may of
 11 course have been caused by firing into the ground.
 12 COLONEL VERMAAK: That's correct, Chair.
 13 MR MPOFU: Yes, that's why I'm saying
 14 firing to wherever, whether it was to people or to the
 15 ground, but it was after the gunfire, the sounds, correct?
 16 COLONEL VERMAAK: Yes.
 17 MR MPOFU: Thank you.
 18 COLONEL VERMAAK: I assume.
 19 MR MPOFU: Okay, thank you.
 20 CHAIRPERSON: You assume. Did you not
 21 hear the gunfire?
 22 COLONEL VERMAAK: No, I didn't hear any
 23 gunfire, Chair.
 24 MR MPOFU: Sorry, you didn't hear the
 25 gunfire?

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1 COLONEL VERMAAK: No, I was in the
 2 helicopter and you can't hear –
 3 MR MPOFU: Oh, yes. No, no, no, I'm
 4 sorry, we are talking at cross purposes. I was shocked,
 5 ja. You heard it now. You didn't hear it on that day,
 6 correct?
 7 COLONEL VERMAAK: That's correct.
 8 MR MPOFU: Okay.
 9 CHAIRPERSON: He's not in the helicopter
 10 anymore. Probably wishes he was.
 11 MR MPOFU: Alright, you can carry on.
 12 [VIDEO IS SHOWN]
 13 Stop – oh, it's finished anyway. Alright, can
 14 you then go to AAA9 and start at 1 – rather, at 1:50 I
 15 think. I hope I'm correct.
 16 [VIDEO IS SHOWN]
 17 Alright, ja, and just pause it right there, ja.
 18 CHAIRPERSON: We can, we could, well the
 19 present shot, which is 2 minutes 18 seconds, we could
 20 before that see some Nyalas on the side. We did see, I
 21 think Warrant-Officer Kuhn standing in front with a firearm
 22 and then we saw others behind him with firearms, firing.
 23 Is that what you saw too?
 24 COLONEL VERMAAK: That's correct, Chair.
 25 MR MPOFU: Yes.

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1 COLONEL VERMAAK: Maybe I can just
 2 mention when you start with the video clip the first two
 3 shots, it sounds like the rubber –
 4 MR MPOFU: Yes.
 5 COLONEL VERMAAK: - the shotguns with the
 6 rubber.
 7 MR MPOFU: Thank you very much. That
 8 solves another mystery.
 9 CHAIRPERSON: It was explained to us that
 10 the sound of a shotgun with rubber is different from I
 11 think a shotgun with pellets, and also of course different
 12 from the sound of a rifle.
 13 COLONEL VERMAAK: That's correct, but
 14 that sounds for me with the rubber rounds.
 15 MR MPOFU: Yes, thank you. Again as a
 16 crowd management expert you know what it sounds like by
 17 now, correct?
 18 COLONEL VERMAAK: That's correct.
 19 MR MPOFU: Yes, because, and unlike, the
 20 journalist I think was suggesting that it was from the
 21 protesters, but in any event we are going to argue that ja,
 22 those first two shots were from rubber rounds. You confirm
 23 that?
 24 COLONEL VERMAAK: That's correct.
 25 MR MPOFU: Right. Okay, so let's – and

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1 here in this video the relationship between the firing and
 2 the dust is clearer. You see they fire and then the dust
 3 erupts, correct?
 4 COLONEL VERMAAK: That is correct.
 5 MR MPOFU: Ja. Now before I talk to you
 6 about the line, which is really what this is about, these
 7 shots that we have here is even more interesting because
 8 here you have a member of POP, signified by that blue line,
 9 actually behind the TRT line, correct?
 10 COLONEL VERMAAK: That's correct, the one
 11 on the right-hand side of the picture.
 12 MR MPOFU: Yes.
 13 CHAIRPERSON: Which is 2 minutes 18
 14 seconds.
 15 MR MPOFU: Yes, we –
 16 CHAIRPERSON: The policeman whose back we
 17 can see on the extreme right-hand side of the –
 18 COLONEL VERMAAK: That's a POP member.
 19 CHAIRPERSON: - with the blue helmet.
 20 COLONEL VERMAAK: That's correct, Chair.
 21 MR MPOFU: Thank you, Chairperson. Now
 22 the line, the TRT line which clearly is the one that shot
 23 and caused the dust, as I said, literally and figuratively,
 24 is the line that you could see from above but which you
 25 couldn't identify whether it's NIU or whoever it was,

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1 correct?
 2 COLONEL VERMAAK: That is correct.
 3 MR MPOFU: Yes, but from your experience
 4 you would have expected a line in front like that to be
 5 POP, correct?
 6 COLONEL VERMAAK: That's correct.
 7 MR MPOFU: Yes, so when you were giving
 8 the – or when you were repeating Calitz's instruction, in
 9 your mind the people who were standing there were POP,
 10 correct?
 11 COLONEL VERMAAK: That is correct.
 12 MR MPOFU: And it turns out now, we all
 13 know because we've seen, you know, with the benefit of
 14 hindsight, as one of the witnesses would say – I think it
 15 was Brigadier Calitz. With the benefit of hindsight we
 16 know that the people who indeed caused the dust, or shot at
 17 the people were TRT, correct?
 18 COLONEL VERMAAK: That's correct.
 19 MR MPOFU: And according to you and I
 20 they shouldn't even have been there in the first place.
 21 COLONEL VERMAAK: According to me it
 22 should have been POP members in the front with crowd
 23 management.
 24 MR MPOFU: Yes, thank you. Thank you
 25 very much. I think it's clear now. The second, the next

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1 point, just to round off this point, again both you and I
 2 don't know where the people when they were running, where
 3 they were running from, but you said the last time you had
 4 seen them they were on a parade nearby, parading, correct?
 5 COLONEL VERMAAK: Ja, the first time that
 6 I saw them it was more or less in the middle where all the
 7 vehicles were parked.
 8 MR MPOFU: Yes.
 9 COLONEL VERMAAK: That is where I saw
 10 them the first time in a line.
 11 MR MPOFU: Yes.
 12 COLONEL VERMAAK: And afterwards we saw
 13 them at the kraal after the shooting and the bodies were
 14 down –
 15 MR MPOFU: That's correct.
 16 COLONEL VERMAAK: - we saw the line
 17 there, but at that stage I did not know exactly that it was
 18 TRT or POP or NIU members.
 19 MR MPOFU: Thank you. So even when –
 20 yes, no, after the shooting, you're right, they continued
 21 in a line formation towards the bodies, as it were. You
 22 are saying you saw again that it was members. You didn't
 23 know which unit.
 24 COLONEL VERMAAK: That's correct. I only
 25 saw the line of people there.

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1 MR MPOFU: Yes.
 2 COLONEL VERMAAK: Or members.
 3 MR MPOFU: Yes, and if we go to slide
 4 L191, just as I said to round off that point, L191, you
 5 have to look very – or well, you don't have to look
 6 carefully; we can zoom. If you – can we zoom where there
 7 were 110-metre line, the two black lines meet more or less?
 8 You see the 100-metre line, Colonel?
 9 COLONEL VERMAAK: Yes.
 10 MR MPOFU: Ja, the black line. Behind
 11 that, depending where you stand, is some kind of formation
 12 or parade of people there, correct?
 13 COLONEL VERMAAK: That is correct.
 14 MR MPOFU: And that is –
 15 COLONEL VERMAAK: That's one of the
 16 photos that I've taken.
 17 MR MPOFU: Oh, it's your own photo, yes.
 18 COLONEL VERMAAK: Yes.
 19 MR MPOFU: And that is where the TRT line
 20 was when you last saw them?
 21 COLONEL VERMAAK: That's correct.
 22 MR MPOFU: Thank you. Okay, thank you.
 23 Now again, and I don't want you to speculate because you
 24 were far away, but you have seen subsequently that when the
 25 line that you and I have been discussing was formed, there

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1 were instructions being given, "Basic line, basic line,"
 2 things like that, correct?
 3 COLONEL VERMAAK: I cannot comment on
 4 that –
 5 MR MPOFU: Okay, that's fine.
 6 COLONEL VERMAAK: - instruction.
 7 MR MPOFU: You haven't – okay, I don't
 8 have to show you that. That's almost common cause, ja.
 9 Alright. You wouldn't know, or you – well even then you
 10 obviously didn't know, but do you know now maybe from your
 11 engagement at Roots why the TRT members charged forward
 12 towards the mouth of that gap?
 13 COLONEL VERMAAK: Yes, I've heard that
 14 afterwards.
 15 MR MPOFU: Yes, well firstly, they must
 16 have done so under somebody's instruction.
 17 COLONEL VERMAAK: That's correct.
 18 MR MPOFU: Do you know who it was?
 19 COLONEL VERMAAK: No.
 20 MR MPOFU: No, okay, but obviously they
 21 couldn't just all do the same thing; something must have
 22 instructed them.
 23 COLONEL VERMAAK: I believe so, Chair.
 24 MR MPOFU: Thank you. So all in all, and
 25 in fairness to you, if one looks at what we have covered

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1 now and reads it together with paragraph 7 of your
 2 statement, it looks like something like this happened;
 3 there was an instruction to engage which in your mind was
 4 directed at POP, correct?
 5 COLONEL VERMAAK: Yes, that's correct.
 6 MR MPOFU: And that instruction was at
 7 least from your point of view a repetition of Brigadier
 8 Calitz's instruction, which you thought might not have been
 9 heard properly.
 10 COLONEL VERMAAK: That is correct.
 11 MR MPOFU: But what we know is that
 12 Brigadier Calitz himself did not suffer from the same
 13 handicap as you because he was on the ground, so he knew
 14 who's TRT and who's POP, correct?
 15 COLONEL VERMAAK: Yes, he was aware of
 16 the plan as well.
 17 MR MPOFU: Yes, so where you thought that
 18 line was made of POP, he knew that it was made of TRT,
 19 correct? He should have known.
 20 COLONEL VERMAAK: He should have known.
 21 MR MPOFU: Yes. In fact to be fair to
 22 him, his evidence is that he knew – and there's a
 23 particular photograph, but I don't want to test Mr
 24 Chaskalson's memory, that there's a particular photograph
 25 where his Nyala is actually almost going through the TRT

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1 line. So if his Nyala went through that line he would have
 2 known who they were, correct?
 3 COLONEL VERMAAK: I cannot really say
 4 where his vehicle was because why at that stage we didn't
 5 concentrate on the numbers on top of the vehicles –
 6 MR MPOFU: Yes, no, I –
 7 COLONEL VERMAAK: So if it was testified
 8 and evidence was given before the Commission then I'll have
 9 to accept it.
 10 MR MPOFU: Then you'll accept that, if it
 11 was his Nyala, even though I accept that you don't know it
 12 for a fact, but if it was his Nyala that drove through that
 13 line then he would have obviously seen that these were TRT
 14 people?
 15 COLONEL VERMAAK: I cannot say what he
 16 should have seen, but to speculate from my side what he
 17 should have seen on that specific day, I really don't know
 18 and I don't want to speculate on it.
 19 MR MPOFU: No, I understand. I
 20 understand. You don't want to implicate other people. I'm
 21 saying to you that his own evidence is that he knew, he saw
 22 – I asked him that question specifically – he saw that TRT
 23 line forming and I used that photograph to reiterate the
 24 fact that his Nyala went through it. All I'm asking you is
 25 if it was his Nyala indeed that went through it, then you

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1 would have seen that this is TRT or this is STF or whatever
 2 it was.
 3 COLONEL VERMAAK: If he testified that
 4 it, that he did saw it, then I have to accept that is what
 5 he saw that day.
 6 MR MPOFU: Yes. Thank you, Colonel.
 7 Right, Colonel, ja, just to round off, I want to ask you in
 8 your experience – or let me put it this way.
 9 [15:43] In your own mind you are sure that when you gave
 10 an instruction for the firing of live ammunition on the
 11 13th, it was to only one person, to a "leed," not to "lede."
 12 COLONEL VERMAAK: That's correct, Chair.
 13 CHAIRPERSON: A "lid."
 14 MR MPOFU: That's correct. A "lid" not
 15 "lede," correct?
 16 COLONEL VERMAAK: That's correct, Chair.
 17 MR MPOFU: And you say insofar as you
 18 used the plural in your statement it was a mistake.
 19 COLONEL VERMAAK: That's correct, Chair.
 20 MR MPOFU: Okay. Who was that "lid?"
 21 COLONEL VERMAAK: No, I don't know him.
 22 It was members that Captain Loest was –
 23 MR MPOFU: In charge of.
 24 COLONEL VERMAAK: I asked him to get
 25 people together to assist me and that was part of the group

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1 that was assisting me but I don't know them personally.
 2 MR MPOFU: Fair enough. Okay, but can
 3 you then assist the Commission maybe as to which unit that
 4 member was from? Well, I suppose if he had an R5 –
 5 COLONEL VERMAAK: He was TRT.
 6 MR MPOFU: Yes. If he had an R5 it was
 7 TRT.
 8 CHAIRPERSON: Sorry, no – no, the
 9 evidence is that the POP unit, there's one member who has
 10 an R5.
 11 MR MPOFU: At least.
 12 CHAIRPERSON: The one at least, yes, but
 13 I wanted to ask you another question. How many, I think
 14 you did tell us before but I've forgotten the answer, how
 15 many people went with you? How many people did Captain
 16 Loest send to you, as it were, to accompany –
 17 COLONEL VERMAAK: - got the eight members
 18 who were going with me, Chair.
 19 CHAIRPERSON: And he should, he – well,
 20 we don't know, I can't remember what his statement says,
 21 I'll look at it tonight but he should be able to tell us.
 22 COLONEL VERMAAK: That's correct, Chair.
 23 I can just mention I did identify the member as a TRT
 24 member by the uniform that he was wearing.
 25 MR MPOFU: Yes, okay. So you know that

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1 it was a member of the TRT?
 2 COLONEL VERMAAK: That's correct, Chair.
 3 MR MPOFU: Okay. Then I wanted just to
 4 ask you about information about your previous, your career.
 5 I mean it's fair to say that you started during the
 6 apartheid era.
 7 COLONEL VERMAAK: That's correct, 1981.
 8 MR MPOFU: '81 yes. And the –
 9 CHAIRPERSON: '89 or '81?
 10 COLONEL VERMAAK: 1981.
 11 CHAIRPERSON: '81.
 12 MR MPOFU: '81, Chair. And so you are
 13 one of the best people to know the difference between the
 14 methods that were used under the apartheid era and those
 15 that are used now, correct?
 16 COLONEL VERMAAK: That's correct.
 17 MR MPOFU: And in your career as – so
 18 that means you must have been involved in what was called
 19 the instability unit, I think, something like that.
 20 COLONEL VERMAAK: That's correct, it's
 21 got a few different names.
 22 MR MPOFU: Internal stability unit.
 23 COLONEL VERMAAK: That's correct.
 24 MR MPOFU: Sorry, I think that's what we
 25 called it, the instability unit, ja. Okay and which was

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1 later transformed after various other transformations into
 2 POP.
 3 COLONEL VERMAAK: It was –
 4 MR MPOFU: It was CCU and then –
 5 COLONEL VERMAAK: That's correct, Chair.
 6 MR MPOFU: It became POP. And during
 7 that long career straddling both the apartheid era and the
 8 constitutional era, you have been accused various times of
 9 disciplinary issues, correct?
 10 COLONEL VERMAAK: Just repeat the
 11 question for me?
 12 MR MPOFU: You have been accused of
 13 disciplinary transgressions before.
 14 COLONEL VERMAAK: I'm not sure what you
 15 are referring to.
 16 MR MPOFU: Have you ever been accused –
 17 accused, I don't mean found guilty but have you ever been
 18 accused in disciplinary processes?
 19 COLONEL VERMAAK: There was incidents
 20 where there was complaints filed by people during our crowd
 21 management operations but not specifically charged,
 22 disciplinary, on that.
 23 MR MPOFU: Okay, so the complaint was
 24 filed, investigated and no charges were –
 25 COLONEL VERMAAK: That's correct, it was

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1 registered and people were appointed to investigate but I
 2 was not disciplinary charged on that.
 3 MR MPOFU: Okay. Well, to put it mildly,
 4 would it be fair to say that you were not very popular with
 5 the activists in the old West Rand during the – when you
 6 were in charge or when you worked in the ISU?
 7 COLONEL VERMAAK: I don't think I was
 8 popular to any group because why, I have acted against at
 9 that time the ANC, I acted against the AWB, so –
 10 MR MPOFU: No, ja.
 11 COLONEL VERMAAK: - a lot of political
 12 parties, but we only comply with the law.
 13 MR MPOFU: Yes, no, I accept that.
 14 Unfortunately I did not interact with the AWB. So you
 15 would say groups including the activists in what was called
 16 the democratic movement.
 17 COLONEL VERMAAK: That's correct.
 18 MS PILLAY: Chair, may I lodge an
 19 objection on two bases, firstly the basis on which Mr Mpofo
 20 is putting these questions to the client, to the witness,
 21 and secondly the relevance of these questions to what it is
 22 the witness is testifying about.
 23 CHAIRPERSON: Yes, Mr Mpofo?
 24 MR MPOFU: Chairperson, I don't – maybe
 25 to save time I'm not going to ask any more questions in

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1 this line so it's not going to –
 2 CHAIRPERSON: Well, I won't rule on the
 3 objection.
 4 MR MPOFU: Yes, thank you, Chair. The
 5 last thing I want to ask you, General – rather, Colonel –
 6 is this, and again I'm drawing from your experience, you
 7 would agree with me and I think on one of the incidents
 8 that you've referred to were faction fights in Vaal Reefs
 9 which I'm also a little bit familiar with.
 10 COLONEL VERMAAK: That's correct.
 11 MR MPOFU: Ja. You would agree that in
 12 those situations it is the duty of the police, if there are
 13 factions or two sides to a conflict, it's the duty of the
 14 police to be what one might call an honest broker, to be
 15 neutral, correct?
 16 COLONEL VERMAAK: Yes, the police must be
 17 neutral.
 18 MR MPOFU: Yes and neither of the two
 19 groups must think that the police are siding with the one
 20 faction against the other, correct?
 21 COLONEL VERMAAK: That's correct –
 22 MR MPOFU: It's a very –
 23 COLONEL VERMAAK: - that's very
 24 important.
 25 MR MPOFU: Yes, exactly. That's a very

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1 important principle of crowd management and trying to reach
 2 a peaceful solution, correct?
 3 COLONEL VERMAAK: Especially where there
 4 is faction fights, yes.
 5 MR MPOFU: Yes, but similarly in any
 6 conflict situation, domestic fight, as a policeman you come
 7 into that situation, you can't take the one side or the
 8 other, you must –
 9 COLONEL VERMAAK: That is correct.
 10 MR MPOFU: You must be seen to be
 11 neutral.
 12 COLONEL VERMAAK: That's correct.
 13 MR MPOFU: And one of the biggest
 14 mistakes or problems that you can cause is to be seen to be
 15 siding with one of the warring factions, correct?
 16 COLONEL VERMAAK: Well, if the people or
 17 one of the groups believes that you are siding with the
 18 other side, yes, it can make it very difficult to find
 19 solutions.
 20 MR MPOFU: Yes. Thank you, Chairperson,
 21 I have nothing further.
 22 CHAIRPERSON: I think the next cross-
 23 examiner is supposed to be Mr Gotz on behalf of the, of
 24 AMCU, is that right? Is that correct?
 25 MS PILLAY: Yes, Chair. Mr Gotz is going

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1 to be the next cross-examiner but he will start tomorrow
 2 morning. Mr Mpofu had given an assurance that he'd take
 3 the rest of the day.
 4 MR MPOFU: No, I didn't but yes, Mr Gotz
 5 can be – left under the impression that I would take the
 6 rest of the day and I have looked at the time, it's now
 7 five minutes or six minutes to go, so even if he was here I
 8 think he would have started tomorrow.
 9 CHAIRPERSON: I don't want to start, to
 10 create a precedent with counsel. I expect the next counsel
 11 to be available when cross-examination stops. We can't
 12 just make an optimistic or pessimistic, as in this case,
 13 prediction and then just not come.
 14 MR MPOFU: Thank you, Chairperson, I must
 15 apologise on his behalf.
 16 CHAIRPERSON: I'm not criticising Mr –
 17 MR MPOFU: He's a victim of my own –
 18 CHAIRPERSON: I hope the message will be
 19 conveyed to Mr Gotz and everyone else here will note the
 20 message as well that in future if someone is not here when
 21 the time for his or her party to cross-examine arises, that
 22 party will forfeit the right to cross-examine. I've now
 23 issued a warning to that effect and which I hope will be
 24 heeded. We will now adjourn until tomorrow morning at 9
 25 o'clock. I must inform you that we're going to be sitting

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1 until 12. We're having the seminar in the afternoon and
 2 I'm informed that the technician has to get from here to
 3 Wits University campus in order to make the necessary
 4 arrangements. It didn't happen last week because we didn't
 5 sit in the morning but it will happen tomorrow. So we will
 6 adjourn then until nine tomorrow morning here and we will
 7 sit until 12 o'clock and we will then sit in the afternoon,
 8 not as a Commission but listening to a seminar. What's the
 9 seminar about, Mr Chaskalson, and who is going to speak?
 10 MR CHASKALSON SC: The seminar is on
 11 migrancy. I can't tell you exactly who is going to speak.
 12 I do have a programme but I don't have the names at my
 13 fingertips.
 14 CHAIRPERSON: I didn't expect you to have
 15 the names on your fingertips, I expect you to have the
 16 names on your computer but –
 17 MR BUDLENDER SC: I can help –
 18 CHAIRPERSON: Mr Chaskalson, fingertips
 19 or a computer –
 20 MR BUDLENDER SC: Professor Francis
 21 Wilson and Mr Gavin Hartford and then a member of the
 22 Marikana community and a mineworker.
 23 CHAIRPERSON: And the Chairman, I
 24 understand, is to be Professor Peter Alexander of the
 25 University of Johannesburg.

1 MR BUDLENDER SC: That's correct, Chair.
2 CHAIRPERSON: Who is the main author of
3 the book Marikana: A View from the Mountain and a Case to
4 Answer.

5 MR BUDLENDER SC: Chair, that was the
6 latest intelligence I received but these things do change
7 from time to time. No, that hasn't changed.

8 CHAIRPERSON: I mentioned that for those
9 who are not aware of what's happening. The first seminar I
10 thought was a very helpful one and I trust that tomorrow's
11 one will be equally so. It's a way of informing the
12 Commission as to a number of the important facts relating
13 to what we call phase 2, the socio-economic background
14 which gave rise to the problem and it's a way of receiving
15 an enormous amount of information in a short time. It's
16 far more efficient and expeditious than sitting for a week
17 or two in the Commission with cross-examination and
18 examination-in-chief and re-examination and I say that with
19 due respect to those who are responsible for that. We'll
20 now adjourn till tomorrow morning.

21 [COMMISSION ADJOURNED]

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23 .
24 .
25 .



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