

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

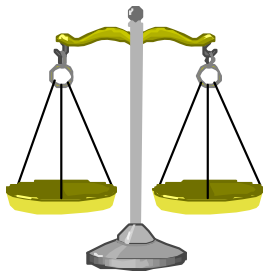
THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 238

2 JUNE 2014

PAGES 29730 TO 29926



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1 [PROCEEDINGS ON 2 JUNE 2014]
 2 [09:03] CHAIRPERSON: The Commission resumes.
 3 Before I remind the Constable that he is still under oath,
 4 I'll ask Mr Wesley to read out the time allocations for
 5 today.
 6 MR WESLEY: Thank you, Chair. Chair, in
 7 respect of the witness we presently have, Constable
 8 Sebatjane, the families are busy with their cross-
 9 examination. There's an hour and a quarter left of the
 10 families' cross-examination. That's to be followed by 30
 11 minutes by the injured and arrested parties, Mr Mpofu's,
 12 then we have re-examination. There will be 15 minutes re-
 13 examination. Following Constable Sebatjane we will be
 14 recalling -
 15 CHAIRPERSON: Colonel Classen.
 16 MR WESLEY: - Colonel Classen. In
 17 respect of Colonel Classen, AMCU have two hours of cross-
 18 examination -
 19 CHAIRPERSON: Before you get to AMCU, I
 20 think the evidence leaders still have some time.
 21 MR WESLEY: Yes, the evidence leaders
 22 will be five minutes or 10 minutes. That's correct, Chair,
 23 I apologise. Then AMCU will be following that, cross-
 24 examination for two hours followed by the families who have
 25 an hour and a half. There will then again be 15 minutes

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1 re-examination, Chair.
 2 CHAIRPERSON: No notification was
 3 received from the injured and arrested persons by the time,
 4 the time limit stipulated and so they will not be cross-
 5 examining.
 6 MR MPOFU: Chair -
 7 CHAIRPERSON: Yes, Mr Mpofu?
 8 MR MPOFU: Well, Chairperson, that is
 9 true. That is a result of a misunderstanding. I thought
 10 that Classen was treated as the other witnesses were, the
 11 parties would among themselves allocate time.
 12 CHAIRPERSON: Yes. The position, Mr
 13 Mpofu, is we indicated times by which applications had to
 14 be made. When that time ended we allocated the time which
 15 we considered appropriate among the parties. The only way
 16 I could accommodate you is taking time away from other
 17 people who have already got it and have already prepared
 18 for it. In future please ensure that you apply in good
 19 time. Lieutenant-Colonel - sorry, I beg your pardon -
 20 Constable, you are still under oath.
 21 EDWARD MALISELA SEBATJANE: (s.u.o.):
 22 MR NTSEBEZA SC: It's quite a promotion,
 23 Mr Chairman.
 24 CHAIRPERSON: Rapid - it didn't last very
 25 long. Mr Ntsebeza, you can proceed with your cross-

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1 examination. An hour and a quarter I believe is the time
 2 you have left.
 3 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):
 4 Thank you, Mr Chairman. Can we put up exhibit L slide 247?
 5 Now Constable, that is the position that the SAPS are
 6 taking and if you read the caption they say the incident
 7 occurred at approximately between 18 minutes past four and
 8 20 minutes past four and they say Mr Mpumza first ran,
 9 charged they say, at the NIU as you can see and then he
 10 changed direction and approached police members on the
 11 north-western side where he was fatally wounded. Do you
 12 see that?
 13 CONSTABLE SEBATJANE: Yes, I see, sir.
 14 MR NTSEBEZA SC: And you do know that -
 15 and you testified that at that time you were probably now
 16 in this area when he was making that U-turn from the
 17 eastern side towards the western side. Am I right?
 18 CONSTABLE SEBATJANE: The turn that he
 19 did, he was turning in that direction and that he came down
 20 that over there.
 21 MR NTSEBEZA SC: Yes, I'll come to that.
 22 In fact if you go to exhibit TTT6, if we could go to
 23 exhibit TTT6, if we could go to slide 9 - do you see slide
 24 9? It's on there, on the screen. Now we say, because we
 25 agree with you that there was a time when he came out and

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1 then made a U-turn when he was confronted by NIU forces and
 2 he didn't, we will submit, run straight this way. He first
 3 ran into that bush which has got a blue circle. Do you
 4 dispute that?
 5 CHAIRPERSON: When you say this way, you
 6 said he didn't run this way, do you mean -
 7 MR NTSEBEZA SC: Towards the western -
 8 CHAIRPERSON: - a point slightly, on the
 9 slide slightly below the white circle which is depicted on
 10 the extreme right-hand side of your version of the slide,
 11 is that correct?
 12 MR NTSEBEZA SC: You have no basis to
 13 dispute that, would you?
 14 CONSTABLE SEBATJANE: Are you saying that
 15 he went and sat in that tree?
 16 MR NTSEBEZA SC: Yes. We will argue that
 17 he ran and sought, and we'll tell you why, and hid for
 18 probably 10 to 12 seconds in that bush before he came out
 19 as we indicate along the yellow dotted lines, out, and when
 20 he came out of that bush which is in that dotted, in that
 21 circle, blue circle towards -
 22 CHAIRPERSON: The circle being the circle
 23 on the extreme right-hand side of your version of the
 24 slide.
 25 MR NTSEBEZA SC: Indeed, Mr Chairman.

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1 CHAIRPERSON: I should have made it
 2 clear, I beg your pardon, on your version of the slide
 3 there are two circles on the right-hand side. The one is
 4 the white circle, dotted circle, and the other is a solid
 5 red circle –
 6 MR NTSEBEZA SC: The white circle is the
 7 bush –
 8 CHAIRPERSON: It's the white circle, yes.
 9 MR NTSEBEZA SC: The white circle
 10 representing the bush and the red circle we may just
 11 indicate so that, you know, the Constable has got some
 12 orientation, the red circle is where we say he fell.
 13 MS BALOYI: Chairperson, just so that I
 14 understand what you expect, Mr Ntsebeza says that we will
 15 say that he ran straight. Is he putting it as a fact, is
 16 he going to be presenting evidence from which that appears?
 17 CHAIRPERSON: I understand the position
 18 to be, just based on the documents we've got, that they've
 19 analysed some of the photographs –
 20 MR NTSEBEZA SC: Yes.
 21 CHAIRPERSON: - and they will argue that
 22 that's what appears from the photographs. In other words
 23 they won't lead direct evidence but they will lead
 24 circumstantial evidence or put it, not necessarily lead but
 25 put it by way of photographs from which they will ask us to

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1 draw the inference. Am I right, Mr Ntsebeza?
 2 MR NTSEBEZA SC: That is so, Mr Chairman.
 3 CHAIRPERSON: I think –
 4 MS BALOYI: Thank you, Chair.
 5 CHAIRPERSON: - that's the explanation
 6 that you wanted.
 7 MS BALOYI: To deal with my –
 8 CHAIRPERSON: Yes.
 9 MR NTSEBEZA SC: So in slides 9 and 10 of
 10 TTT6 you will see the position that we will arguing is the
 11 position likely to have been taken by Mr Mpumza. Do you
 12 have any comment to that?
 13 CONSTABLE SEBATJANE: Not at this moment,
 14 sir.
 15 MR NTSEBEZA SC: Yes. In fact if you
 16 went to the same exhibit, slide 8, we are going to argue
 17 that slide 8 –
 18 CHAIRPERSON: Perhaps you should tell the
 19 witness what slide 8 shows so that he can follow.
 20 MR NTSEBEZA SC: Mr Chairman?
 21 CHAIRPERSON: Perhaps you should tell the
 22 witness what slide 8 is –
 23 MR NTSEBEZA SC: Yes, yes.
 24 CHAIRPERSON: So that he can follow.
 25 MR NTSEBEZA SC: Yes, Mr Chairman. Slide

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1 8 of this exhibit is, they are still shots taken from
 2 exhibit I2 which is a video which was shown last week, that
 3 we would show – the video itself is I2 by Captain Ryland –
 4 and Mr Chairman the circles, the blue circles are what we
 5 claim are indications, one is the bush in which Mpumza ran
 6 into, the one that we showed in slides 9 and 10. Two, we
 7 actually show that opposite that power line that you will
 8 see a figure there which we say represents Mpumza, Mpumza
 9 darting into that bush and that is also in 3, 4, 5. Now
 10 when you had these documents and presentations –
 11 CHAIRPERSON: Mr Ntsebeza, I don't want
 12 to interrupt you unduly but on what basis do you say that
 13 this person in the circle is Mr Mpumza or is likely to be,
 14 I think you said, Mr Mpumza? Is there a factual basis –
 15 MR NTSEBEZA SC: Well, Mr Chairman –
 16 CHAIRPERSON: - something which will
 17 enable us to find that your suggestion that it is Mr Mpumza
 18 or is likely to be Mr Mpumza, is correct?
 19 MR NTSEBEZA SC: Firstly, Mr Chairman, we
 20 will argue that the times coincide with the times that have
 21 been accepted as having been the time when Mr Mpumza was
 22 killed, if you would, if one –
 23 CHAIRPERSON: No, no, I think I've got
 24 that point and you say that's firstly. And secondly?
 25 MR NTSEBEZA SC: The second one, Mr

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1 Chairman, is that in the video itself you can actually see
 2 and this video, we argue, is taken by Captain Ryland. We
 3 know that Captain Ryland was there taking photographs and
 4 in that video we can actually hear voices as in fact it is
 5 reflected in one of the slides in this presentation, "Fire,
 6 fire" and it is on that – "one's to your left, there he is,
 7 run," and we will say those are the four, certainly the
 8 four police persons that Captain Ryland talks about –
 9 CHAIRPERSON: Alright. I understand,
 10 thank you.
 11 MR NTSEBEZA SC: Yes.
 12 CHAIRPERSON: You may proceed with your
 13 cross-examination.
 14 MR NTSEBEZA SC: Yes. Now we're saying
 15 on the strength of these slides we are going to put, we are
 16 going to argue that Mr Mpumza was rushing into that bush
 17 and we can actually see him getting into that bush as we
 18 indicated. What is your view to that? Because the
 19 question is, in these slides as well as in the video which
 20 I believe you had gone through, Mr Mpumza is running into
 21 that bush which is indicated also on slides 9 and 10 of –
 22 CHAIRPERSON: We haven't seen slides 9
 23 and 10 –
 24 MR NTSEBEZA SC: We have, Mr Chairman –
 25 CHAIRPERSON: But anyway the witness, I

1 want to make sure the witness understands what you're
 2 saying. Do you understand what counsel is putting to you?
 3 This is from the video which Captain Ryland took at the
 4 time when, according to the other evidence, Mr Mpumza was
 5 shot and he says that – and the sounds that one, the sound
 6 track of the video also indicates that there was a shooting
 7 happening at the time. Perhaps he can point with his
 8 pointer the particular points that he's referring to, to
 9 enable you to follow so you can answer.

10 MR NTSEBEZA SC: Yes, Mr Chairman. One
 11 represents the bush into which Mr Mpumza ran. And then
 12 here one can actually see a silhouette and we argue that
 13 that is Mr Mpumza darting into the bush.

14 CHAIRPERSON: Mr Ntsebeza, in the case of
 15 the first slide you showed the circle around the bush.
 16 You're now showing a yellow circle in slide 2. You say if
 17 one looks very carefully in that yellow circle one can see
 18 the silhouette of a person, right.

19 MR NTSEBEZA SC: And we argue that that
 20 is Mr Mpumza.

21 CHAIRPERSON: Is it possible, I know the
 22 pixels sometimes cause a problem but is it possible to zoom
 23 in perhaps on that circle, either the – well, it's the same
 24 circle basically in slides 2,3, 4, 5 and 6 from what we can
 25 see at the moment – to see whether the person has got

1 MR NTSEBEZA SC: Yes.
 2 CHAIRPERSON: Mr Ntsebeza is going to
 3 argue that that person we can see in those yellow circles
 4 there is actually Mr Mpumza and that's the area he says
 5 where he ran and so on, where you shot. Now how do you
 6 respond to that contention?

7 CONSTABLE SEBATJANE: It is true that
 8 this person was there but he did not go there and get under
 9 a tree.

10 MR NTSEBEZA SC: No, we don't say we went
 11 into, under a tree. We say he went into the bush for a
 12 couple of seconds. That's what we say in slide 7 –

13 CHAIRPERSON: Sorry, Mr Ntsebeza, let's
 14 not you and me talk over each other. Are you prepared to
 15 accept that the person we can see there on the screen is Mr
 16 Mpumza?

17 CONSTABLE SEBATJANE: I wouldn't say it
 18 with certainty. I am not sure, Chair.

19 MR NTSEBEZA SC: Would you be able to
 20 refute that we say it is Mr Mpumza?

21 CONSTABLE SEBATJANE: If you'd repeat the
 22 question, sir?

23 MR NTSEBEZA SC: Would you dispute when
 24 we say that it is in fact Mr Mpumza? We will argue it is
 25 Mr Mpumza.

1 dreadlocks or anything else which confirms the contention
 2 that it is indeed Mr Mpumza, clothing or whatever. Maybe
 3 the pixels will cause a problem and we can't see it but –

4 MR NTSEBEZA SC: I doubt if it will show
 5 to that extent that it is a man with dreadlocks but –

6 CHAIRPERSON: Your argument is this is
 7 someone moving around in that area at the relevant, at the
 8 very time and at a time when, according to the soundtrack,
 9 there was talk of shooting. So you say that prima facie at
 10 least that indicates Mr Mpumza.

11 MR NTSEBEZA SC: And in fact –

12 CHAIRPERSON: That's your argument.

13 MR NTSEBEZA SC: Yes, Mr Chairman, and in
 14 fact in the video, in the clip one can actually see that
 15 kind of silhouette darting into the bush. So that in – the
 16 strictures of time are such that sometimes you are torn
 17 between whether you should play the video backwards and
 18 forwards but –

19 CHAIRPERSON: You see the real point is
 20 whether the witness can understand what's going on in a way
 21 that enables him to deal appropriately and practically with
 22 what you're putting to him. So let's – you understand the
 23 discussion between Mr Ntsebeza and myself?

24 CONSTABLE SEBATJANE: Chair, I hear when
 25 he speaks.

1 CONSTABLE SEBATJANE: I am not denying
 2 it.

3 MR NTSEBEZA SC: Yes.

4 CONSTABLE SEBATJANE: I cannot say it's
 5 him or it's not.

6 MR NTSEBEZA SC: That is why in slide 7
 7 of the same exhibit, third paragraph 222 you say, "It is
 8 probable that Mr Mpumza attempted to hide in the large
 9 bushes marked with a blue circle on the following pages,
 10 for approximately 10 to 12 seconds before attempting the
 11 dash which led to his death." Would you disagree with
 12 that?

13 CONSTABLE SEBATJANE: Yes.

14 MR NTSEBEZA SC: Well, that's what we
 15 will argue. Now we say what he did by getting out of that
 16 bush where he was hiding was because he was scared. He was
 17 frightened because he realised that he was now being
 18 trapped. Would you disagree with that?

19 CONSTABLE SEBATJANE: Yes.

20 MR NTSEBEZA SC: We will say that he was
 21 trapped because there was a Nyala that had been called at
 22 pretty much that time.

23 [09:22] If you will look at page 6 of exhibit OOO11.
 24 Exhibit OOO11, 16:19:11. You can actually see there that a
 25 Nyala is being called for. "This side, this side call this

<p style="text-align: right;">Page 29742</p> <p>1 Nyala, call the Nyala this side.”</p> <p>2 CHAIRPERSON: Constable, do you see that?</p> <p>3 It’s near the top of the slide.</p> <p>4 MR NTSEBEZA SC: “Call the Nyala this</p> <p>5 side, call the Nyala this side.”</p> <p>6 CHAIRPERSON: OO:29, you see that?</p> <p>7 Captain Ryland – or you though it’s Captain Ryland saying,</p> <p>8 “This side, call the Nyala this side, call the Nyala this</p> <p>9 side, call the Nyala this side.” That’s the passage that</p> <p>10 Mr Ntsebeza – you got that? Constable, have you got it?</p> <p>11 CONSTABLE SEBATJANE: I’m trying to look,</p> <p>12 Chair.</p> <p>13 CHAIRPERSON: Tell us when you find it –</p> <p>14 MR NTSEBEZA SC: Right on page 6 of</p> <p>15 that –</p> <p>16 CHAIRPERSON: Tell us when you’ve found</p> <p>17 it, because I don’t want the cross-examination to continue</p> <p>18 till you’ve found it. While he’s looking for it I want to</p> <p>19 ask a question, not of the witness but perhaps the</p> <p>20 representatives of the evidence leaders. According to</p> <p>21 document A576, which is the part of exhibit A, post mortem</p> <p>22 report done on Mr Mpumza, it is said in paragraph 4.1,</p> <p>23 after the wounds have been described it is said “One bullet</p> <p>24 was discovered within the clothes. A bullet and two bullet</p> <p>25 fragments were retrieved from the tissues of the thighs.”</p>	<p style="text-align: right;">Page 29744</p> <p>1 CHAIRPERSON: That’s what it says.</p> <p>2 MR WESLEY: I will get back to you.</p> <p>3 CHAIRPERSON: That’s what it says. Yes,</p> <p>4 I understand the information may not be available now, but</p> <p>5 it’s obviously evidence we’re going to need at the end, so</p> <p>6 it would be helpful if we get it now, or particularly while</p> <p>7 the witness is with us because it may have relevance to the</p> <p>8 kind of questions he’s being asked.</p> <p>9 MR WESLEY: I’ll do my best, Chair.</p> <p>10 CHAIRPERSON: It’s not in relation</p> <p>11 necessarily to what’s on the screen at the moment, but</p> <p>12 nevertheless, an overall question relating to this</p> <p>13 particular death.</p> <p>14 MR WESLEY: I’ll do so, Chair.</p> <p>15 CHAIRPERSON: Thank you, Mr Wesley. Yes,</p> <p>16 please proceed, Mr Ntsebeza. But before you do that let me</p> <p>17 ask the question; Constable, have you found the relevant</p> <p>18 page?</p> <p>19 CONSTABLE SEBATJANE: I don’t find it,</p> <p>20 Chair. Page 9 –</p> <p>21 CHAIRPERSON: Do you mind just then</p> <p>22 looking at the screen?</p> <p>23 CONSTABLE SEBATJANE: No problem, Sir.</p> <p>24 CHAIRPERSON: Alright.</p> <p>25 MR NTSEBEZA SC: Thank you, Mr Chairman.</p>
<p style="text-align: right;">Page 29743</p> <p>1 And then a few sentences later, “The features of most of</p> <p>2 the wounds were consistent with those caused by a high-</p> <p>3 velocity firearm. There were no shotgun wounds.” Now the</p> <p>4 witness doesn’t know the answer to this, but can the</p> <p>5 evidence leaders either tell us now or ascertain for us by</p> <p>6 reference to the ballistic evidence whether the bullets</p> <p>7 that are referred to were identified – my understanding is</p> <p>8 that all the bullets that were retrieved were examined by</p> <p>9 the ballistic experts and endeavours were made to link them</p> <p>10 to particular firearms.</p> <p>11 In the case of most of the R5s the bullets</p> <p>12 unfortunately disintegrated and it wasn’t possible to link</p> <p>13 any deceased with any firearm, but in this case, and if</p> <p>14 it’s correct as is said here that a bullet was discovered</p> <p>15 in the clothes and two bullet fragments were retrieved from</p> <p>16 the tissues of the thighs, it should be possible to link</p> <p>17 the bullets found in the body of Mr Mpumza with one or</p> <p>18 other of the firearms. If you can’t tell me the answer now</p> <p>19 I understand, but I’d be grateful if that information could</p> <p>20 be given to us.</p> <p>21 MR WESLEY: Chair, the ballistics have to</p> <p>22 date not been able to link any of the bullets, but in this</p> <p>23 specific regard can I redo it? Can I do another check just</p> <p>24 to make very, very sure, because this was as far as I</p> <p>25 remember a whole bullet which was found.</p>	<p style="text-align: right;">Page 29745</p> <p>1 Now we think that is evidence of a Nyala being called at</p> <p>2 about that time and there were four of you who were closing</p> <p>3 in on the bush, that would indicate that, and you were</p> <p>4 closing in on him from the north-west side. If we could go</p> <p>5 back to slide 9, slides 9 and 10. Can we have the slide</p> <p>6 up, please? Yes. So the scenario is that he is in the</p> <p>7 bush in that circle –</p> <p>8 CHAIRPERSON: By “the bush” you mean the</p> <p>9 bush which is below the word “southern” in the middle of</p> <p>10 the slide, and below the vehicle, I think it’s a Canter –</p> <p>11 MR NTSEBEZA SC: No, no, the – here –</p> <p>12 CHAIRPERSON: Which bush are you talking</p> <p>13 about?</p> <p>14 MR NTSEBEZA SC: Western.</p> <p>15 CHAIRPERSON: Mmmm?</p> <p>16 MR NTSEBEZA SC: Below western.</p> <p>17 CHAIRPERSON: Oh, I see. The smaller</p> <p>18 bush below western.</p> <p>19 MR NTSEBEZA SC: Yes.</p> <p>20 CHAIRPERSON: Not the bigger bush. So</p> <p>21 those photographs you’re referring to relate to what</p> <p>22 happened, you say, on the extreme right-hand side of this</p> <p>23 slide. Is that correct?</p> <p>24 MR NTSEBEZA SC: Yes, Mr Chairman. We</p> <p>25 are saying he’s here for those 10 – he’s in the bush below</p>

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1 the word "western" –

2 CHAIRPERSON: If you say "here" you're

3 pointing to the bush under the word "western"?

4 MR NTSEBEZA SC: Yes. Yes, Mr Chairman.

5 CHAIRPERSON: In fact the bush in the

6 white dotted circle.

7 MR NTSEBEZA SC: In the white dotted

8 circle, and we're saying they are advancing towards that

9 bush, and I thought that was the evidence also that was led

10 by the witness in chief, and we will say from the western

11 side there was also a Nyala, the one that had been called,

12 "Call the Nyala this side, this side." In other words he

13 was entrapped between a Nyala which possibly was that one

14 or a Nyala that would have come from that side just below

15 western, there –

16 CHAIRPERSON: The vehicle you're now

17 pointing to is the one below the W of western.

18 MR NTSEBEZA SC: Yes, Mr Chairman. So

19 there was a movement from you advancing on him and there

20 was a movement from the Nyala from the other side.

21 CHAIRPERSON: What do you say about that,

22 Constable? Do you agree with that?

23 CONSTABLE SEBATJANE: Chair, I do not

24 agree with this. If it is being said that he went, ran and

25 hid there, he moved from that point where I'm pointing, in

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1 this direction that I'm indicating, and that is where he

2 came across the NIU –

3 CHAIRPERSON: I'm sorry to interrupt.

4 Sorry, you're now pointing to the big circle – sorry, the

5 big bush below the word southern and the larger red circle

6 to the left of that. You say he came out from the bush,

7 the big bush under the word southern, or thereabouts, went

8 to the large red circle, was faced by the NIU. That's what

9 you're saying? That's what you're pointing. Is that

10 correct?

11 CONSTABLE SEBATJANE: Chair, what I'm

12 saying, Chairperson, I am saying if it was a person who was

13 indeed running away, why did he not run into that place

14 over there where there were no policemen, where I'm now

15 indicating?

16 CHAIRPERSON: What you're now indicating

17 is the area below the large red circle and below the – I

18 take it it's a burnt area of veld, a black area immediately

19 below the large red circle. You're pointing to an area

20 below that, you say why didn't he run there. Is that

21 correct?

22 CONSTABLE SEBATJANE: That's correct,

23 Chairperson.

24 MR NTSEBEZA SC: Now the fact that he was

25 being chased by you is confirmed in paragraph 27 of exhibit

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1 TTT9 by Captain Greyling who says that the four of you, and

2 I assume that that would have been you, Buthelezi, Mabe,

3 and someone else, were chasing Mpumza who then was blocked

4 from fleeing by another Nyala and that caused Mpumza to

5 turn around again towards the four of you?

6 CHAIRPERSON: Sorry, you dropped your

7 voice. Caused him to turn around, and then I lost you.

8 That caused him to turn around?

9 MR NTSEBEZA SC: To turn around again

10 towards the four, or three of you –

11 CHAIRPERSON: Four of them.

12 MR NTSEBEZA SC: And that is contained in

13 exhibit TTT9 where Captain Greyling in paragraph 27 says –

14 CHAIRPERSON: This is the affidavit of

15 Captain Greyling. You see paragraph 27? Perhaps I can

16 read it aloud for those who can't follow it, because it can

17 be interpreted as I read it. "During this incident I

18 became aware of about four police officers chasing a

19 striker with an assegai. Another Nyala blocked the striker

20 from fleeing, which resulted in him [the striker] turning

21 around and with the assegai above his head stormed the

22 police officials who were chasing him. He was about five

23 metres away from the nearest police official when this

24 official opened fire on the striker, killing him almost

25 instantly. Lieutenant-Colonel McIntosh tried to revive the

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1 striker, but he was already dead."

2 Now the point being made is that we know that

3 Lieutenant-Colonel McIntosh tried to revive Mr Mpumza, gave

4 him first-aid and paramedical attention. So the argument

5 is that Lieutenant – sorry, I'll rephrase that. The

6 argument is that Captain Greyling is therefore talking

7 about the incident when Mr Mpumza was shot. He says that

8 this person, who presumably is Mr Mpumza, was being chased.

9 He was blocked in the area to which he was running, so he

10 had to turn around. He then stormed the four police

11 officials who were chasing him and when he was about five

12 metres away from the nearest one that one opened fire on

13 him and killed him almost immediately.

14 Now that's not the account that you've given of

15 the killing of, of the circumstances in which Mr Mpumza met

16 his death. What Mr Ntsebeza wants to know from you is

17 what's your response to what Captain Greyling has

18 described?

19 MR NTSEBEZA SC: Especially, Mr Chairman,

20 from the point of view that Mr Greyling says whilst on the

21 one hand the four of them were chasing him, there was also

22 a Nyala that was blocking him, something which no-one else

23 other than Captain Greyling says.

24 CONSTABLE SEBATJANE: Firstly, Mr Chair,

25 we were three. The four people he's speaking about I don't

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1 know. I don't know where he gets the fourth person.
 2 Secondly, I did not see any Nyalas blocking him. The
 3 Nyalas that I saw are those that were behind us.
 4 MR NTSEBEZA SC: Well, you've seen the
 5 pictures. We've –
 6 CHAIRPERSON: I'm sorry. Have you
 7 finished your answer?
 8 CONSTABLE SEBATJANE: I'll leave it
 9 there, Chairperson.
 10 MR NTSEBEZA SC: No, I mean obviously
 11 Captain Greyling would not have any reason to invent what
 12 happened and it so happens that it also accords with our
 13 proposition as to what probably happened there, so we'll
 14 argue that. Now we want to tell you why we say Mpumza was
 15 running towards the east, running towards the west, getting
 16 into the bushes. Mpumza was a desperately frightened man
 17 at the time. You agree that at this time, we all know that
 18 at this time 17 people had been killed in scene 1.
 19 CONSTABLE SEBATJANE: I did not know that
 20 at the time, Chairperson.
 21 MR NTSEBEZA SC: I mean the first volley
 22 of shots in scene 1 had left a number of people dead there.
 23 You agree with that, don't you? We now know.
 24 CONSTABLE SEBATJANE: I was not on scene
 25 1.

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1 MR NTSEBEZA SC: Now certainly a lot more
 2 people had been killed in scene 2, and if Mpumza was the
 3 last person, as we'll argue he was the last person to be
 4 killed, there were about 16 more people who had been killed
 5 in scene 2 on that koppie. You won't dispute –
 6 CHAIRPERSON: Are you putting that as a
 7 fact, Mr Ntsebeza? What evidence do you rely on for the
 8 contention that Mr Mpumza was the last to be killed at
 9 scene 2?
 10 MR NTSEBEZA SC: Mr Chairman, the times
 11 that have been indicated by exhibit L247, 20 past 4,
 12 thereabouts, and Captain Ryland's video, they seem to
 13 coincide about the time when Mpumza was killed, and it
 14 seems to me it's arguable that –
 15 CHAIRPERSON: I understand it being
 16 arguable, but you mustn't put it as a fact, as you did, to
 17 the witness that –
 18 MR NTSEBEZA SC: I tried to –
 19 CHAIRPERSON: - Mr Mpumza was the last
 20 person who was killed. I think you must put it in a
 21 slightly different way so as to illustrate that it's a
 22 hypothesis, which may be correct, but it's a hypothesis.
 23 MR NTSEBEZA SC: Yes –
 24 MS BALOYI: Chair, in addition to that
 25 can I just check that is Mr Ntsebeza putting it as a fact

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1 that Mr Mpumza was aware that 16 people or whatever number
 2 had been killed in koppie 3 by the time of his death?
 3 MR NTSEBEZA SC: He probably was aware.
 4 CHAIRPERSON: He's not putting it as a
 5 fact. He's putting it as a probability, which may or may
 6 not stand scrutiny at the argument stage.
 7 MR NTSEBEZA SC: Well, Mr Chairman, we'll
 8 argue that he probably saw people being killed. He was in
 9 koppie – that's why he was dashing out and he was met with
 10 this NIU line. So there is at least an objective basis for
 11 that.
 12 CHAIRPERSON: No, you don't have to go
 13 that far. All you've got to say surely is that there had
 14 been a fair amount of gunfire from the police side and
 15 anyone who was in the koppie would have, even if he didn't
 16 know that the gunfire had had fatal consequences, would
 17 know it might have done and if it was directed at him it
 18 might have. So you don't have to put it as strongly as you
 19 to establish the point that you're trying to make.
 20 MR NTSEBEZA SC: Thank you, Mr Chairman.
 21 Constable, what I want really to put to you is that far
 22 from this man having been the kind of aggressor that in
 23 your statements, including the one you made a fortnight
 24 ago, that you make him out to be. Our argument will be
 25 that this was a frightened man. He was like a frightened

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1 rabbit, darting this way and that way in an attempt to
 2 escape being gunned down in the manner in which the others
 3 had been gunned down at scene 2, which he probably saw
 4 happened. What do you say to that?
 5 CONSTABLE SEBATJANE: I wouldn't know
 6 that.
 7 MR NTSEBEZA SC: You don't dispute that,
 8 do you?
 9 CHAIRPERSON: He said he wouldn't know.
 10 MR NTSEBEZA SC: Oh, you wouldn't know.
 11 Now we will be saying that as soon as he came out there, in
 12 an endeavour to escape being shot there's a Nyala, there's
 13 you coming out there, when you saw him you gunned him down,
 14 and when I say "you" I mean the three of you, one of you
 15 using an R5 rifle. What do you say to that?
 16 CONSTABLE SEBATJANE: That is not true.
 17 I only acted in self-defence.
 18 MR NTSEBEZA SC: You know, one of the
 19 things that struck me when you said Mr Mpumza was literally
 20 on top of you, and you indicated how he was poised to stab
 21 at you, and we now know that he was also shot by the person
 22 with an R5 rifle, I want to put it to you that it's
 23 improbable that Mr Mpumza could have been shot by your
 24 colleague using an R5 rifle whilst he was poised on top of
 25 you because your colleague would not have wanted to risk

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1 shooting at Mpumza in that position because he might miss
 2 and hit you. So it's improbable that there was ever a
 3 situation where Mpumza was poised to strike at you with his
 4 spear when he was shot with an R5 rifle by your colleague.
 5 [09:42] Do you want to contest that?
 6 CHAIRPERSON: Do you understand the
 7 question or do you want it repeated in a simpler form?
 8 CONSTABLE SEBATJANE: If it could be
 9 repeated in a way in which I would understand it, Sir?
 10 MR NTSEBEZA SC: The question is this, in
 11 your evidence last week you gave a detailed account of how
 12 Mpumza was poised on top of you with an assegai in his left
 13 hand and you kept on making manoeuvres by shifting to the
 14 right, to the left but what you created, you created an
 15 impression of a person who was so close to you, literally
 16 on top of you, do you recall that evidence you gave in
 17 chief?
 18 CONSTABLE SEBATJANE: I do remember that.
 19 MR NTSEBEZA SC: Now you also considered
 20 that in the course of your shooting Mpumza another person
 21 who had an R5 rifle there shot at Mpumza and that was Mr
 22 Mabe, do you recall that evidence?
 23 CONSTABLE SEBATJANE: I only knew that
 24 evening that Mabe had also fired a shot.
 25 MR NTSEBEZA SC: Yes, but you know your

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1 evidence then was that he shot and used an R5 rifle, he was
 2 the one who was carrying an R5 rifle, is that right?
 3 CONSTABLE SEBATJANE: That is so.
 4 MR NTSEBEZA SC: So I am saying to you
 5 your version is improbable to that extent because if you
 6 say Mabe shot at Mpumza whilst he was trying to stab at you
 7 in the manner you described, it is unlikely that he would
 8 have done so because he would not have wanted to take the
 9 risk of shooting at two moving targets in the way you
 10 described, because he might miss Mpumza and hit you. So I
 11 am saying it never happened in the way you described.
 12 CONSTABLE SEBATJANE: I did not say, Sir,
 13 that Mabe fired a shot, it was Mabe who mentioned later
 14 that he had fired a shot.
 15 MR NTSEBEZA SC: Ja, we know now
 16 according to you that Mr Mabe used the R5 rifle and I say
 17 in your description of how it all happened from the
 18 beginning to the end, Mabe would only have shot at Mpumza
 19 at the time that he was trying to stab you in the manner in
 20 which you described the stabbing incident last week. Do
 21 you agree with that?
 22 CONSTABLE SEBATJANE: I don't know, I am
 23 not sure if I understand you clearly, Sir.
 24 MR NTSEBEZA SC: What I am putting to
 25 you, Constable, is that your evidence was that the entire

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1 incident of the shooting of Mabe in terms of your own
 2 evidence and in your statements, happened whilst you were
 3 wrestling, not really wrestling, but whilst Mpumza was
 4 trying to stab you at close quarters, at which you, and you
 5 said during that period you shot ten times aiming at his
 6 upper body. Now we know both from you say in your
 7 statement as having been something that you discovered
 8 later on, that during that incident, during that episode
 9 Constable Mabe who had an R5 rifle also shot at Mpumza, do
 10 you understand thusfar?
 11 CONSTABLE SEBATJANE: Up to thusfar, yes,
 12 I understand you.
 13 MR NTSEBEZA SC: Yes, now we also know
 14 that it was an R5 rifle because the post-mortem report says
 15 most of the wounds were of high velocity, so there is no
 16 question really about the R5 having been used at that time.
 17 Now what I am putting to you is that it is unlikely that
 18 Mabe could have shot at Mpumza in the circumstances you
 19 described of the attack and the reason I say so is that he
 20 would never have taken the risk to shoot at you because he
 21 could have missed you, I mean could have missed Mpumza and
 22 he could have shot at you.
 23 CHAIRPERSON: Do you understand the point
 24 that has been made?
 25 CONSTABLE SEBATJANE: I do, Sir.

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1 CHAIRPERSON: Now what is your answer to
 2 it? Was there a danger while you were struggling with Mr
 3 Mpumza, that Constable Mabe might have shot you instead of
 4 Mr Mpumza, was there that risk?
 5 CONSTABLE SEBATJANE: Chair, I would
 6 explain it in this way, when Mpumza arrived there we were
 7 walking in a basic line. I changed causing the basic line
 8 to form an L-shape. This means when I fired the shot and
 9 if there was shooting, there wouldn't have been the
 10 possibility of shooting at one another because our bullets
 11 would have met in a triangle. That is why any of my
 12 bullets did not hit any of the policemen, that is how I can
 13 explain.
 14 CHAIRPERSON: So your bullets, none of
 15 your bullets hit any of the policemen, that I think we
 16 know, no post-mortems on any of the policemen and no injury
 17 reports either, but what Mr Ntsebeza is putting is, was
 18 there not a risk at one of the policeman and in particular
 19 Constable Mabe, that bullets might have hit you? That's
 20 his point, what do you say about that?
 21 CONSTABLE SEBATJANE: What I'm saying,
 22 Chairperson is, the manner in which we were standing then,
 23 that L-shape, there would not have been a possibility of
 24 Mabe shooting and hitting me.
 25 MR NTSEBEZA SC: Well, I just want to

<p style="text-align: right;">Page 29758</p> <p>1 remark that in your evidence in chief you didn't talk of an 2 L-shape. I certainly got the impression that you said it 3 was a straight line and you were so many paces, one from 4 each other in a straight line, and now you come with an L- 5 shape which is in fact what we argue in the additional 6 slide which we have been privy to look at in the last 96 7 hours or 48 hours, 72 hours. So that's the first thing you 8 know, that you never talked about an L-shaped formation. 9 You talked about a straight line formation. Suddenly this 10 is new evidence that you are now leading, it still doesn't 11 subtract from what I was saying, that if the killing 12 happened in the manner you described it would have been 13 unthinkable that Mabe would have shot at Mpumza whilst he 14 was trying to stab at you at close quarters. 15 CHAIRPERSON: Do you have any comment to 16 make in a response to that proposition as put to you by 17 counsel? 18 CONSTABLE SEBATJANE: Yes, Chairperson. 19 I did not speak of an L-shape but in my statement I said Mr 20 Mpumza came facing us and at the time that I attempted to 21 arrest him I approached him from the back. It is how the 22 L-shaped formation came about. 23 MR NTSEBEZA SC: Now I think I've made 24 the point, Mr - 25 COMMISSIONER HEMRAJ: Before you move on</p>	<p style="text-align: right;">Page 29760</p> <p>1 might have been fired? 2 MR WESLEY: I'll do so. 3 COMMISSIONER HEMRAJ: Thank you. I'm 4 sorry to have interrupted you, Mr Ntsebeza. 5 MR NTSEBEZA SC: Yes, Mr Chairperson. 6 Now I don't know whether, Commissioner, the Exhibit A does 7 not assist paragraph 4 of Exhibit A on page 000019 where 8 they say, "The chief post-mortem findings were that 9 multiple gunshot wounds of the chest, abdomen and thighs 10 with one wound perforating the chest cavity, no perforation 11 of the abdominal cavity and multiple wounds perforating 12 both right and left and femoral and thighs, chest wounds 13 enter in front of the chest, abdominal wound enter in front 14 or on the side and wounds on the thighs enter in front and 15 at the back. One bullet was discovered within the 16 clothes," which is what the chairman referred to. "The 17 bullet and two bullet fragments were retrieved from the 18 tissues of the thighs. Approximately 12 wounds were 19 identified as entrance wounds and all had no signs of range 20 of fire. The features of most of the wounds were 21 consistent with those caused by a high velocity firearm. 22 There were no shotgun wounds in this body." 23 COMMISSIONER HEMRAJ: The point I was 24 making is that there is no, if there is any indication that 25 there was any entrance wounds caused by anything but a high</p>
<p style="text-align: right;">Page 29759</p> <p>1 can I just clarify something? When Constable Mabe told you 2 about the shooting did he in fact tell you that he shot at 3 Mr Mpumza at the time that you say he was attacking you? 4 CONSTABLE SEBATJANE: Yes, Chairperson, 5 he said to me he was shooting at Mpumza in the legs to 6 avoid him proceeding forward towards me. 7 COMMISSIONER HEMRAJ: No, the question 8 is, did he say that he was shooting him at the time that 9 he, as you say he was attacking you? 10 CONSTABLE SEBATJANE: Yes, Chair. 11 COMMISSIONER HEMRAJ: And if that is the 12 case then when he was shooting Mr Mpumza he would be about 13 the same distance that you were away from him, about two or 14 three paces? 15 CONSTABLE SEBATJANE: Yes. 16 COMMISSIONER HEMRAJ: Yes, thank you. Mr 17 Wesley, I wonder if you could assist us with, - the post- 18 mortem report is a bit unhelpful in this respect in that it 19 says the features of most of the wounds were consistent 20 with those caused by a high velocity firearm and could you 21 obtain some clarity before this witness hopefully finishes 22 his cross-examination about which is the wounds and not 23 consistent with a high velocity firearm, and if so, what 24 calibre of weapons might have caused them and thirdly, if 25 there is any indication as to what, from distance that</p>	<p style="text-align: right;">Page 29761</p> <p>1 velocity firearm, bearing in mind that the witness said he 2 fired at such close range at the chest with - 3 MR NTSEBEZA SC: Yes - 4 CHAIRPERSON: - a 9 millimetre, that's 5 what I was hoping that we could get an answer to. 6 MR NTSEBEZA SC: Indeed. 7 COMMISSIONER HEMRAJ: Yes. 8 MR NTSEBEZA SC: In fact we - 9 CHAIRPERSON: The further, sorry, Mr 10 Ntsebeza, there is a further point. What he said, 11 approximately 12 wounds were identified as entrance wounds 12 and all had no signs of range of fire. Now, and then on a 13 subsequent page he sets out the 12 wounds in paragraph 4 of 14 his report and in respect of each one he says there is no 15 sign of a range of fire on this wound. Now in the case of 16 wounds that were inflicted by a firearm very close to the 17 body there are signs of range of fire, bits of carbon and 18 bits of tattooing and so forth. So the question is, what 19 was the minimum distance from which these wounds were 20 inflicted? In other words what does he mean by no sign of 21 range of fire? Is he able to tell us the minimum distance 22 from which these firearms were fired which caused these 23 wounds and obviously we can't ask the witness that, but 24 that is the sort of information we could get. The 25 textbooks tell us things about these things but we need to</p>

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1 have some factual evidence.

2 MR NTSEBEZA SC: Yes, Mr Chairperson,

3 while we are proceeding on the basis that what that means

4 is that no wounds were inflicted in close range, one metre

5 or less.

6 CHAIRPERSON: The question is, and on

7 the, - no, no, no, I don't know, we can't take judicial

8 notice of those things, we're not qualified and on page 2

9 of the report, at the end of para 2 he said, "No soot or

10 grease staining was identified on any of the clothes of the

11 deceased," which is also an indication that whatever shots

12 were fired were not fired from close range. The question

13 that I asked before, but I'm not going to ask the witness

14 because I'm not so impractical to think he can give answer,

15 is, what would be close range in this case and to what

16 extent is the evidence we can get in response to that

17 query, consistent with or inconsistent with the version of

18 this witness, but these are matters that we have to get some

19 help from others, but let me ask the witness a question

20 nevertheless if you will allow me, Mr Ntsebeza? When you

21 fired shots at the deceased, what was the closest distance

22 your firearm was from him when you fired?

23 CONSTABLE SEBATJANE: The first shot I

24 fired, Sir, he was near me but I stepped back, two or three

25 paces backwards before shooting the first bullet. The

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1 others, I fired them whilst retreating backwards.

2 COMMISSIONER HEMRAJ: So what are you

3 saying now, what is the distance that you were from Mr

4 Mpumza at the time you fired the shots? Is it greater now

5 than the two or three metres, two or three paces you said

6 earlier?

7 CONSTABLE SEBATJANE: Between two or

8 three paces or slightly more than that.

9 COMMISSIONER HEMRAJ: Thank you.

10 MR NTSEBEZA SC: Now that seems to be,

11 what you have just said and it is something that you said

12 also in your testimony last week, since we are at odds with

13 what De Rover said in Exhibit FFF11A, paragraph 51, if you

14 could have that up, because De Rover seems to be giving an

15 encounter or an account, it is paragraph 53, -

16 CHAIRPERSON: Page?

17 MR NTSEBEZA SC: Paragraph 51.

18 CHAIRPERSON: We're near there. No, it

19 doesn't look like 51, does it? That's a totally different

20 point, Mr Ntsebeza.

21 MR NTSEBEZA SC: 11, it is Exhibit

22 FFF11A, so I'm -

23 CHAIRPERSON: It is not the exhibit we

24 are looking at, no. It is a supplementary statement by Mr

25 De Rover, so if we could have that one up?

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1 MR NTSEBEZA SC: Now we assume that Mr De

2 Rover was giving this account -

3 CHAIRPERSON: Well, let's get the

4 document up. Now what is on the screen at the moment is

5 the wrong document, this is FFF11 being shown at the

6 moment, what we need is the next one which is FFF11A.

7 That's what we want to see.

8 MR NTSEBEZA SC: Paragraph 51?

9 CHAIRPERSON: Of FFF11A which is not on

10 the screen at the moment.

11 MR NTSEBEZA SC: Yes. Are we not able to

12 get to 51?

13 CHAIRPERSON: Well, if we can't get it,

14 it is pointless -

15 MR NTSEBEZA SC: It says the pathology

16 report -

17 CHAIRPERSON: It is pointless waiting for

18 it.

19 MR NTSEBEZA SC: Ja.

20 CHAIRPERSON: Okay, read it again from

21 the beginning, if we're not going to get it on the screen

22 it is pointless waiting for it, let's just carry on. Read

23 it slowly and clearly for us, please?

24 MR NTSEBEZA SC: What is in that

25 paragraph is this, "The individual identified as Body C,"

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1 we now know that's Mpumza, "died well away from koppie 3 to

2 the north after initially obeying an order from a TRT

3 member to lay down his weapons and place his hands upon his

4 head.

5 [10:02] As the TRT member holstered his sidearm and

6 approached the suspect, placed him in handcuffs, the

7 suspect suddenly grabbed his spear and lunged, attempting

8 to stab the TRT member in the throat, narrowly missing. In

9 the" - and this is the important part - "in the ensuing

10 struggle the TRT member drew his firearm and, ducking and

11 weaving, shot several times at the attacking suspect, at

12 times feeling his weapon touch upon his attacker's body."

13 Now we are saying, Captain -

14 CHAIRPERSON: Let's just go on to the

15 next bit. "Pathology reports suggest that of the 10 rounds

16 fired, possibly only one hit his attacker. More likely all

17 rounds fired at close range missed. It was in fact another

18 TRT member who fired at and killed body C, saving his

19 colleague's life in doing so." So that's the full

20 paragraph.

21 MR NTSEBEZA SC: Yes, that's the full

22 paragraph.

23 CHAIRPERSON: Now there's some

24 information in that paragraph which doesn't appear in the

25 statements that we've got from you as exhibits but we know

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1 that one or two of your statements are missing. The facts
 2 that are contained in that paragraph of Mr De Rover's
 3 report, were they contained in one of your statements that
 4 is missing?
 5 MR NTSEBEZA SC: I understand that there
 6 was one, there's one statement which cannot be accounted
 7 for and that's the statement –
 8 CHAIRPERSON: I'm not asking you, Mr
 9 Ntsebeza, I'm asking the witness. I've got –
 10 MR NTSEBEZA SC: Mr Chairman, you're
 11 looking in my direction.
 12 CHAIRPERSON: He may remember what was in
 13 the statements that he made initially if he's re4minded by
 14 the detail that is contained in Mr De Rover's report. Are
 15 you following this debate, Constable? Mr De Rover says
 16 certain things in paragraph 51 of his supplementary report
 17 which don't appear from the statements that you made or
 18 from your evidence. The question therefore arises, where
 19 did he get it from? Now we know that one, at least, of
 20 your statements is missing. Now that you are reminded by
 21 having read to you what Mr De Rover says, can you tell us
 22 whether the detail he gives was contained in one of your
 23 statements that's missing?
 24 CONSTABLE SEBATJANE: In my first
 25 statement, yes, this is mentioned that I did touch him, my

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1 gun did touch him.
 2 MR NTSEBEZA SC: What first statement is
 3 that?
 4 CONSTABLE SEBATJANE: It's the statement
 5 I made shortly after this incident, Chair.
 6 MR NTSEBEZA SC: So the information that
 7 De Rover relies upon obviously comes from you. Now, is
 8 that right?
 9 CONSTABLE SEBATJANE: That is correct,
 10 Chair.
 11 MR NTSEBEZA SC: Yes and so you – the
 12 version, your version is that he was at close quarters, you
 13 actually could even feel your firearm against his body. Do
 14 you confirm that?
 15 CONSTABLE SEBATJANE: As I have
 16 explained, I said this was before the shoot – before I
 17 fired that I took a few steps back, two or three steps
 18 before firing.
 19 MR NTSEBEZA SC: No, don't be evasive,
 20 with due respect.
 21 CHAIRPERSON: Mr Mpofu – sorry, I beg
 22 your pardon, Mr Ntsebeza. Mr Mpofu, I apologise to you.
 23 Mr Ntsebeza, don't make comments, just ask questions. It's
 24 for us to decide at the end of the day whether he is being
 25 evasive. Counsel's function is to put questions, not make

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1 comments.
 2 MR NTSEBEZA SC: Well, I can say the same
 3 thing, Mr Chairman, but I put it to you that you said, and
 4 you have just confirmed it, that when you shot at Mr Mpumza
 5 it was at such close range that you could actually feel the
 6 firearm against his body. Do you disagree?
 7 CONSTABLE SEBATJANE: Not at that time of
 8 the shooting. I pulled out my firearm, when I stretched my
 9 arm that is when I touched him. It was at that time that I
 10 pulled the trigger and shot. I took steps backwards before
 11 firing.
 12 MR NTSEBEZA SC: Well, De rover says it
 13 very, very clearly. "In the ensuing struggle the TRT
 14 member drew his firearm and, ducking and weaving, shot
 15 several times at the attacking suspect, at times feeling
 16 his weapon touching upon his attacker's body," feeling his
 17 firearm touching upon his attacker's body.
 18 CONSTABLE SEBATJANE: That is how Mr De
 19 Rover put it. This touching came before, not at the stage
 20 that he mentions, not when Mr De Rover mentions it.
 21 MR NTSEBEZA SC: Well, we don't have the
 22 luxury of time. We have made the point and we will argue
 23 that at least at this point you are being evasive and that
 24 it is clear what you meant there, that you were at such
 25 close range even as you discharge your firearm. And the

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1 second point further about that is that if you were firing
 2 at such a close range as you claim you did and you could
 3 feel your weapon touch his – you could not have missed.
 4 What do you say to that?
 5 CONSTABLE SEBATJANE: There are so many
 6 things that can happen while shooting. It doesn't just
 7 mean taking a gun, pointing at a person and shooting. Many
 8 other things can happen.
 9 MR NTSEBEZA SC: Yes.
 10 CHAIRPERSON: Mr Ntsebeza –
 11 CONSTABLE SEBATJANE: That – I'm sorry,
 12 Chairperson, that's not how, the interpretation was not
 13 what I said. I said there are several manners that are
 14 used in shooting, it's not just a question of taking out a
 15 gun and shooting at a person.
 16 MS BALOYI: Chairperson, if may assist?
 17 The witness says there are several factors that affect the
 18 shooting, it's not just pulling out a firearm and pointing.
 19 MR MAHLANGU: "Factors" is the word.
 20 CHAIRPERSON: Mr Ntsebeza, I don't want
 21 to interfere unnecessarily but as time either has been or
 22 will soon be reached when you've got all the material on
 23 record you need for your argument, you don't have to go on
 24 repeating the point over and over again but it's for you to
 25 judge whether that time has been reached.

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1 MR NTSEBEZA SC: Mr Chairman, I would
 2 like to put certain inconsistencies between him, his
 3 statement and the other statements and I just want to
 4 highlight them and indicate to him why we – but before we
 5 get there can you tell me what does it mean when you say
 6 “tkemothobile”? Now you say, it’s a, I think a Sepedi
 7 word, Mr Chairman, spelt what – T-K-E-M-O-T-H-O-B-I-L-E.
 8 CHAIRPERSON: Pronounce it for us again?
 9 MR NTSEBEZA SC: Tkemothobile. Now I’ll
 10 give you the context, it is some exclamation that one can
 11 hear in the video I2 and I saw that it was also transcribed
 12 in, not in exhibit OOO11 but there was some transcript, I
 13 think there was an agreement between the injured and
 14 arrested and the evidence leaders or, and the SAPS and it
 15 appears that it was an agreed version that there is, there
 16 is in that video someone who says “tkemothobile.” I just
 17 wanted to know from this witness. I am sure Mr Mpofu will
 18 deal in depth with it as a person who had agreed the
 19 version but can I just ask from you, “tkemothobile,” I’ve
 20 crushed him, is that what it means? I have ground him,
 21 I’ve crushed him, I’ve broken him, “Ek het hom gebreek.”
 22 CONSTABLE SEBATJANE: In Sepedi, Chair,
 23 one word can have very many different meanings. The word
 24 “tkemothobile” could be, I shot at him.
 25 MR NTSEBEZA SC: I’ll leave Mr Mpofu to

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1 deal with that aspect. Mr Chairman, can I just deal with
 2 some of – the first inconsistency between your evidence has
 3 just been pointed out and that is relevant to what Mr De
 4 Rover said. Secondly, your account seems to be at odds
 5 with exhibit UUU2 which is Kidd’s statement and his
 6 testimony. You will see that Captain Kidd says there were
 7 two spears and he doesn’t talk to the witness putting, I
 8 mean to Mpumza putting down his weapons and picking them up
 9 again. Do you have a comment to make about that? Captain
 10 Kidd told this Commission that Mpumza had two spears. At
 11 one stage it appears that, but he corrected that, it
 12 appeared that he said he had two spears in each hand but it
 13 was corrected. He said he had two spears and he didn’t
 14 mention the fact that he had put down his weapons and then
 15 started to pick them up again.
 16 CHAIRPERSON: What exactly did you say?
 17 I don’t remember it precisely the way Mr Ntsebeza has put
 18 it. What do you say happened? He went down. He was no
 19 longer standing upright, he went down. Did he go down on
 20 his knees?
 21 CONSTABLE SEBATJANE: Yes, that is
 22 correct.
 23 CHAIRPERSON: What happened to the spears
 24 that he had?
 25 CONSTABLE SEBATJANE: His spears were

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1 next to him.
 2 CHAIRPERSON: Did he no longer have them
 3 in his hands?
 4 CONSTABLE SEBATJANE: He went on his
 5 knees, the spears were right down there where he was.
 6 CHAIRPERSON: But was he still holding
 7 them?
 8 CONSTABLE SEBATJANE: Yes, still holding
 9 them.
 10 CHAIRPERSON: That’s different from what
 11 Mr De Rover says. He says that you said that he suddenly
 12 grabbed his spear and lunged. That means he wasn’t holding
 13 it at the time, that he grabbed it and he initially, in the
 14 previous sentence he says “The individual identified as
 15 body C,” that’s Mr Mpumza, “died well away from koppie 3 to
 16 the north after initially obeying an order from a TRT
 17 member to lay down his weapons and place his hands upon his
 18 head.” So it would appear that according to the statement
 19 that Mr De Rover saw, you said that this person initially
 20 lay down his weapons, placed his hands upon his head and
 21 thereafter suddenly grabbed his spear. That’s not what
 22 you’re telling us.
 23 CONSTABLE SEBATJANE: It is not in that
 24 manner, Chair. That’s why I say I don’t know where Mr De
 25 Rover got what he wrote there.

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1 MR NTSEBEZA SC: Well, De Rover can only
 2 have – when he was talking with what you people in the SAPS
 3 call body C and it’s Mr Mpumza, he could have got that
 4 account from you.
 5 CONSTABLE SEBATJANE: Yes, Chair, that’s
 6 what I said to him, that he went down on his knees. His
 7 spears were there whilst he was on his knees. I did not
 8 mention that he had thrown them on the ground.
 9 CHAIRPERSON: Did I hear you say “That’s
 10 what I said to him?” Did you actually have an interview
 11 with Mr De Rover?
 12 CONSTABLE SEBATJANE: Correct, Mr De
 13 Rover did speak to us.
 14 MR NTSEBEZA SC: The point we are making
 15 here –
 16 CHAIRPERSON: No, no, Mr Ntsebeza. He
 17 spoke to you, did you speak to him? Did you give him an
 18 account of what happened when Mr Mpumza was killed?
 19 CONSTABLE SEBATJANE: I did, Chairperson,
 20 a month after this incident happened. It was months,
 21 months after the incident.
 22 MS BALOYI: Chairperson, about the
 23 interpretation, perhaps the witness should be given the
 24 opportunity to say what it is he’s saying. He keeps saying
 25 the weapons “Kgausi.” Now that is not the same as –

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1 CHAIRPERSON: Perhaps you should spell
 2 those words for the benefit of the transcribers because the
 3 ipsissima verba may well be important.
 4 MR MAHLANGU: "Kaufi" is spelt –
 5 MS BALOYI: Chair, I'm told it is K-G-
 6 CHAIRPERSON: Mr Mahlangu?
 7 MR MAHLANGU: K-G-A-U-, K-G-U, no,
 8 K-G-A-U-F-I.
 9 CHAIRPERSON: Thank you, Mr Mahlangu.
 10 MS BALOYI: S-W-I, Chair.
 11 MR MAHLANGU: S-W-I.
 12 CHAIRPERSON: Can you tell us, seeing
 13 you're here to interpret from the vernacular, what does
 14 that word mean? No, no, I'm asking you, Mr Mahlangu?
 15 MR MAHLANGU: It means near.
 16 MR NTSEBEZA SC: Mr Chairman, I am being
 17 told that I've got five minutes but I really need to put
 18 these inconsistencies.
 19 CHAIRPERSON: Well, a bit of time has
 20 been taken up with waiting for slides and questions were
 21 asked by the Commissioners, or two of them, so I'll allow
 22 you to put the inconsistencies but do so as crisply as you
 23 can.
 24 MR NTSEBEZA SC: I will try, Mr Chairman.
 25 Now the third inconsistency is between your evidence in

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1 your statement and in the Commission with what McIntosh
 2 says, Colonel McIntosh says in exhibit HHH14. He also does
 3 not say that Mr Mpumza put his weapons down and then picked
 4 them up again.
 5 CHAIRPERSON: Which paragraph in Colonel
 6 McIntosh's statement are you referring to?
 7 MR NTSEBEZA SC: Mr Chairman, let me come
 8 back to that question because I don't have the reference on
 9 hand.
 10 CHAIRPERSON: Move to the next
 11 inconsistency in the meantime.
 12 MR NTSEBEZA SC: Yes, yes, Mr Chairman.
 13 Fourthly, you yourself have not mentioned, not even in your
 14 consolidated statement, the following. One, that Mr Mabe
 15 also shouted or at least – ja, at Mpumza. I think in your
 16 consolidated statement you say this, that Mpumza charged at
 17 you and Buthelezi as Buthelezi alleges in his statement and
 18 I'll take you to the place. Do you understand the
 19 question? The question is, you have never mentioned
 20 anywhere that Mpumza at one stage charged at you and at
 21 Constable Buthelezi. What do you say to that?
 22 CONSTABLE SEBATJANE: In my statement,
 23 yes, I don't say that but if I remember on Friday I did
 24 mention that Mpumza was at one stage facing Buthelezi. Why
 25 it came about that Buthelezi says he was charged, he's

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1 possibly referring to the time when he sprung up. That's
 2 how I can explain it.
 3 MR NTSEBEZA SC: Ja, but if that is so,
 4 the question I'm asking is why have you never given this
 5 account.
 6 [10:22] An account which says that Mpumza charged at you
 7 and at Buthelezi.
 8 CONSTABLE SEBATJANE: I was speaking what
 9 happened to me on my side.
 10 MR NTSEBEZA SC: If we went to UUU6.2,
 11 UUU6.2, and that would be Buthelezi's, I think additional
 12 statement, UUU6 –
 13 CHAIRPERSON: Mr Ntsebeza, I don't think
 14 he's quarrelling with you. He says he was concentrating on
 15 what was, in fact the chap was storming at him, running at
 16 him, so he's not disputing the point you're putting that in
 17 fact he was also charging at Buthelezi, but he just says he
 18 didn't mention that because he was concentrating on
 19 himself. So I think your point insofar as it has any merit
 20 has been made.
 21 MR NTSEBEZA SC: Mr Chairman, can I just
 22 – just one question. Are you saying that you didn't see
 23 what Buthelezi says happened, that firstly this man charged
 24 at him and then went on to you?
 25 CONSTABLE SEBATJANE: Yes. I did not see

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1 him charging at Buthelezi.
 2 MR NTSEBEZA SC: Now sixthly, you have
 3 never mentioned in your statement or in your evidence that
 4 both Mabe and Buthelezi ever fired at Mpumza and they both
 5 claim to have done so. What do you give that account to?
 6 CONSTABLE SEBATJANE: It's true I did not
 7 say it, but I mentioned that Mabe shot, this was after the
 8 incident had happened. I have not seen Buthelezi since the
 9 16th and did not talk to him. I did not see him shoot.
 10 MR NTSEBEZA SC: Yes, what I'm saying is
 11 you only mention only Mabe, you don't mention Buthelezi.
 12 You only mention only Mabe and that is in a statement you
 13 made a fortnight ago where you say Mabe, you hear that Mabe
 14 had also shot at that scene and had shot to save your life,
 15 but you don't mention Buthelezi. Why don't you?
 16 CONSTABLE SEBATJANE: As I have already
 17 explained, Chairperson, Mabe told me that evening, this is
 18 because me and Mabe work at the same unit. I have not met
 19 Buthelezi since that day, Chairperson.
 20 MR NTSEBEZA SC: Yes, now eighthly, you
 21 don't seem – there are these inconsistencies, and perhaps
 22 you can tell us why there are. You say that Mpumza had his
 23 spear in his left hand. That's what Mr Mabe also says, but
 24 as I've already told you, Captain Kidd says he had two
 25 spears, one in each hand. Lieutenant-Colonel McIntosh says

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1 the spear was in his right hand. Buthelezi says that he
 2 was carrying a spear and a steel pipe, and he doesn't say
 3 which in which hand, and he says Mpumza wanted to stab him,
 4 which is why he shot him twice. Now can you explain all
 5 these inconsistencies, if you are able to?
 6 CONSTABLE SEBATJANE: I would not be able
 7 to explain other people's reasons, Chair. I spoke about
 8 what pertained to me.
 9 MR NTSEBEZA SC: You appreciate of course
 10 that they cannot all be correct and true?
 11 CHAIRPERSON: Yes, Mr Ntsebeza, you put
 12 the inconsistencies. He says he can't explain it. I don't
 13 think you need take that point any further. It's an
 14 inconsistency. What it's value is, is a matter to be
 15 considered later.
 16 MR NTSEBEZA SC: Finally, Mr Chairman,
 17 finally on the inconsistencies, now Mabe's version – and
 18 you'll find that in paragraph 5 of UUU5 – is that Mpumza
 19 had a spear in his left hand and a kierie in his right
 20 hand. He says "Mpumza came running uncontrollably out of
 21 the hill towards us," that you'll find in paragraph 5, and
 22 then he says, "Mpumza charged at Mabe's colleague." Now
 23 it's not clear whether this is in reference to Buthelezi or
 24 to you, but he says, "He charged with both hands raised as
 25 a form of attacking." Now can you confirm this, or do you

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1 say Mabe is not giving a correct reflection of what
 2 happened at the time?
 3 CONSTABLE SEBATJANE: I don't know how to
 4 explain this further, Chairperson, because I've already
 5 said that I cannot speak how other people observed. I'm
 6 only speaking what I saw happening, the way I saw it.
 7 MR NTSEBEZA SC: Now Mr Chairman, I don't
 8 know if I have got another –
 9 CHAIRPERSON: I said I'll give you extra
 10 time to put the inconsistencies. I think you've now done
 11 that. You were going to go back to one of them, but you
 12 didn't have the reference. Perhaps we'll take the – I
 13 think that's really the end of your cross-examination,
 14 subject to the fact that when you find that reference, if
 15 you do, I'll give you a chance to put it to the witness. I
 16 think we'll now take the first comfort break, we'll take
 17 the comfort break and thereafter I think it's Mr Mpofu
 18 who's got half an hour. Is that right, Mr Mpofu?
 19 MR MPOFU: It seems to be right, Mr
 20 Chair.
 21 CHAIRPERSON: Very well, we'll take the
 22 comfort break.
 23 MR MPOFU: It's a long story.
 24 CHAIRPERSON: I like short stories.
 25 Let's take the comfort break.

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1 [COMMISSION ADJOURNS COMMISSION RESUMES]
 2 [10:46] CHAIRPERSON: The Commission resumes. I
 3 understand Mr Ntsebeza has now obtained the reference that
 4 he was looking for earlier, so you're still under oath,
 5 Constable.
 6 EDWARD MALISELA SEBATJANE: (s.u.o.)
 7 CHAIRPERSON: Mr Ntsebeza, you can finish
 8 your cross-examination now in respect of that
 9 inconsistency, before Mr Mpofu starts.
 10 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):
 11 Mr Chairman, yes, I'm told it's paragraph 28 of HHH14. Mr
 12 Chairman, can I just on privilege, it won't be, I can
 13 promise you, Mr Chairman, it's the exhibit that we had
 14 introduced, it's a new exhibit. All I just want to find
 15 from the witness is whether in respect to exhibit UUU4,
 16 screenshots from exhibit I2, now there are various slides
 17 there, especially from slide 4, Mr Chairman, where we
 18 locate the witness in slide 4 and in slide 5, slide 6,
 19 slide 7. Now I'm proceeding on the basis that the witness
 20 went through this presentation in consultation as well as
 21 over the weekend when he had time to study both the
 22 captions in that presentation, as well as the indications.
 23 Particularly, Chair, we are keen to know whether the
 24 witness is able to throw light on slides 8 and 9. We are
 25 locating you in slide 9 –

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1 CHAIRPERSON: Now you see, Constable, I
 2 think it's probably better on the screen, but the screen to
 3 your left is probably clearer than the one behind me.
 4 MR NTSEBEZA SC: Yes.
 5 CHAIRPERSON: What we have on the screen
 6 at the moment is slide 9 of exhibit WWW4 and there's an
 7 arrow indicating what the people who put this presentation
 8 together say is Mr Mpumza's body, and there's another arrow
 9 pointing at someone, they say that's you. Do you agree?
 10 CONSTABLE SEBATJANE: I could agree that,
 11 yes.
 12 MR NTSEBEZA SC: That is you?
 13 CHAIRPERSON: Also Mr Mpumza as well?
 14 CONSTABLE SEBATJANE: Yes.
 15 CHAIRPERSON: Right, now let's go back to
 16 slide 9. That's slide 8. Sorry, that's slide 9. Let's go
 17 back to slide 8. Now what they say is that on the left-
 18 hand side halfway up the page, very close to the edge of
 19 the slide there's a man standing and there's a rectangle in
 20 which the following words appear, "Constable Sebatjane
 21 appears to have his back to the camera, he's facing north-
 22 east." Do you agree that that's you?
 23 CONSTABLE SEBATJANE: From that photo I
 24 would not be sure that is me.
 25 MR NTSEBEZA SC: All that we are going to

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1 argue from all of this is that when we analyse the times at
 2 which the shot was taken by Captain Ryland, we will argue
 3 that at no stage – if we could go to, if we go to – where’s
 4 the slide where you said you are in? Yes, slide 9.
 5 Throughout all, in this presentation I think one of the, I
 6 submit that what we will be arguing is that the analysis is
 7 going to show that all of these shots were taken in a
 8 period of about seven seconds or so and at no stage do we
 9 find you either on your back or falling or in any way
 10 suggesting, as you suggest in your statement, that there
 11 was an occasion when you fell. In other words we dispute
 12 your version that you ever fell in the manner in which you
 13 claim. What do you say to that?
 14 CONSTABLE SEBATJANE: Chair, I think I
 15 have explained on Friday that after falling I rolled away
 16 and then I stood up again when I pointed my firearm at him.
 17 I explained this on Friday.
 18 MR NTSEBEZA SC: And in those seven
 19 seconds, if you look at the distance at which you are at,
 20 our submission will be that that distance shows that you
 21 certainly were not within two metres from Mpumza.
 22 Approximately five metres, which is what Captain Greyling
 23 says, which is what some other accounts say, five metres is
 24 the distance you ever were at within Mr Mpumza. I’m sure
 25 you disagree with that, unreasonably.

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1 CONSTABLE SEBATJANE: Looking at these
 2 photos I will explain this way; I said I rolled away from
 3 Mr Mpumza and then came up. That is how I explained it,
 4 Chairperson.
 5 MR NTSEBEZA SC: That’s new evidence, and
 6 Mr Chairman, my last question; additional slides show the
 7 way, I think it’s – I don’t know what exhibit number it is,
 8 it’s additional slide UUU, it shows the positions that you
 9 were at – ja, there you are. The white dot is –
 10 CHAIRPERSON: No, no, I don’t understand
 11 what’s going on. What are the two white dots?
 12 MR NTSEBEZA SC: The white dots are
 13 representing Mr Mpumza. That’s the direction which he
 14 took. You’ll recall Mr Chairman, he said he got out of
 15 that bush.
 16 CHAIRPERSON: Yes, I think in the light –
 17 MR NTSEBEZA SC: And that’s where he
 18 fell.
 19 CHAIRPERSON: - of an earlier slide we
 20 saw, this is from a different angle. So the two white
 21 circles are Mr Mpumza. The bottom left-hand corner of the
 22 slide there’s a Nyala, that’s the one we saw on the earlier
 23 photograph close to the bush where you say Mr Mpumza ran
 24 into, and then we’ve got some red dots, red circles, and –
 25 MR NTSEBEZA SC: No, the red –

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1 CHAIRPERSON: Three of them have got
 2 blue, three of them are effectively red balls with blue
 3 circles around them, and the other two are red balls with
 4 blue circles around them but yellow arrow sticking out.
 5 Now can you explain to us what those are quickly?
 6 MR NTSEBEZA SC: Yes, Mr Chairman. Thank
 7 you very much, Mr Chairman, for the indulgence. Now where
 8 to the left of the white circle, or the white dot, that is
 9 where we place Mr Sebattjane.
 10 CHAIRPERSON: I take it you’re referring
 11 to the lower white dot, the one in the middle of the slide?
 12 MR NTSEBEZA SC: Ja, or the three to the
 13 top, Mr Chairman, the very lowest, the lower one. Mr
 14 Chairman, if I could use –
 15 CHAIRPERSON: I’m sorry, I’m not
 16 following you. You tell me there’s two white dots. Are
 17 you referring to the white dot –
 18 MR NTSEBEZA SC: This dot is where Mpumza
 19 darted from in this direction and in other words in the
 20 picture that’s where he was in the bush.
 21 CHAIRPERSON: So the dot where he’s in
 22 the bush is the one to the left in the middle of a darkened
 23 area. That’s where the long arrowhead ends.
 24 MR NTSEBEZA SC: Yes.
 25 CHAIRPERSON: And then the second white

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1 dot where the short arrowhead ends, what’s that?
 2 MR NTSEBEZA SC: That is where his body –
 3 CHAIRPERSON: Alright.
 4 MR NTSEBEZA SC: He was shot and killed
 5 here.
 6 CHAIRPERSON: Alright. Then we’ve got
 7 next to that dot, white dot, we’ve got essentially two red
 8 balls with blue circles around them and a third one up,
 9 further up, red ball with blue circles. What are they?
 10 MR NTSEBEZA SC: The first red ball is
 11 that red ball, that is where we put –
 12 CHAIRPERSON: That’s the one closest to
 13 the blue arrowhead, yes.
 14 MR NTSEBEZA SC: That’s where we put the
 15 witness.
 16 CHAIRPERSON: Yes, and the other two?
 17 MR NTSEBEZA SC: This other one is
 18 Buthelezi.
 19 CHAIRPERSON: Buthelezi is the one
 20 diagonally to the left, fairly close to the dot that
 21 indicates where the witness was, and then is the one at the
 22 top Mabe?
 23 MR NTSEBEZA SC: Yes, and that one is
 24 Mabe.
 25 CHAIRPERSON: Alright, okay, and then

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1 there are two other blue circles with red balls inside with
2 yellow arrows. What are they?

3 MR NTSEBEZA SC: They are POP members.

4 CHAIRPERSON: And at the top there's a
5 red rectangle with a yellow arrow pointing into it on the
6 left side. What's that?

7 MR NTSEBEZA SC: That's a Nyala.

8 CHAIRPERSON: That's a Nyala. That's
9 another Nyala. I see.

10 MR NTSEBEZA SC: Mr Chairman,
11 incidentally the witness, though it was new evidence, had
12 talked about an L-formation, that they formed an L-
13 formation and one can see that that is how the L comes
14 about, but it is clearly not what he had said in his
15 evidence-in-chief that they formed a straight line,
16 baseline.

17 CHAIRPERSON: Before he answers the
18 question can I ask you this question; these dots that we've
19 got on the photograph, how do you get them? If one looks
20 at the photograph unadorned by these dots, can one see
21 objects or shapes there which you've now supplemented in
22 this way?

23 MR NTSEBEZA SC: Mr Chairman, they are
24 based certainly on the video, but if they also can be
25 related to what we have just shown the witness, those

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1 screenshots, the screenshots of exhibit – that is now
2 exhibit UUU4, screenshots from exhibit I2, those quite
3 clearly, you remember where in slide 9 for instance the
4 witness said "That is me," in slide 9, if you can show the
5 slide –

6 CHAIRPERSON: [Microphone off, inaudible]
7 understand that. Alright, let's not spend more time on it.
8 Let's ask the witness, let's go back to the slide we were
9 looking at a moment ago where the dots, you understand
10 what's being put? What's being put is the long blue
11 arrowhead is against a white dot, they say that's where Mr
12 Mpumza was first, and he then, in the bush and they say he
13 then ran out of the bush diagonally to the right and he
14 ended up where the second white dot is and he says that's
15 where he fell and died, and they say the nearest red ball
16 with the blue circle around it represents your position.
17 Now do you agree with that?

18 MR NTSEBEZA SC: And Mr Chairman, before
19 he replies, if he can relate it to slide 9 which we have
20 just shown him, of exhibit WWW4. Ja, you read that
21 additional slide in relation to this, you can see where we
22 put him, where we put the Nyala, where we put Mr Mpumza's
23 body.

24 CHAIRPERSON: I'm sorry, Mr Ntsebeza,
25 that slide we saw a moment ago, that one on at the moment,

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1 WWW8, I asked you the question and you haven't yet answered
2 me; these dots that you plotted onto the slide, what are
3 they based on? They can't be based simply on the slide 9
4 we looked at because it doesn't contain any of the other
5 information. The original of that slide, the
6 unsupplemented one, does that indicate shapes which are
7 visible where, shapes of people which are visible where
8 you've enhanced them by putting blue circles and white dots
9 and so forth? What's the answer to that?

10 MR NTSEBEZA SC: Mr Chairman –

11 CHAIRPERSON: Or is this just your own
12 idea that that's where they should be, these dots?

13 MR NTSEBEZA SC: Indeed they do, Mr
14 Chairman.

15 CHAIRPERSON: Do what?

16 MR NTSEBEZA SC: That is why I say this
17 particular slide, the additional slide, relates to slide
18 number 9 of the previous –

19 CHAIRPERSON: I understand that slide 9
20 gives what we see is Mr Mpumza's body and the witness
21 standing. So that would be the top right-hand white dot
22 and the red ball with the blue circle around it. That
23 information I can understand in some way or other could be
24 said to come from slide 9, but the other dots, where do
25 they come from? Is there an original of this slide which

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1 shows in the places where you've put in these dots and
2 arrows and things, that show some shapes from which one can
3 say your enhancement of this slide is based on those
4 shapes? That's a simple question.

5 MR NTSEBEZA SC: Yes, Mr Chairman, I
6 understand how simple it is. I think in that very
7 presentation there would be slides UUU4, there would be
8 slides which we put –

9 CHAIRPERSON: Well, is there an original
10 slide of the one that we now see as WWW8 without any
11 markings on it which will be introduced subsequently, from
12 which one can see that there are shapes where you've put in
13 these dots and red balls and circles and so on? There must
14 be an, it's obviously an aerial photograph of some kind.
15 It must be based on something, taken from either a
16 photograph or a slide taken from a video. Now if you don't
17 know the answer then obviously we must leave it and perhaps
18 we can be told later, but I take it someone didn't just get
19 this photograph –

20 MR NTSEBEZA SC: Yes.

21 CHAIRPERSON: - and put on some dots –

22 MR NTSEBEZA SC: Now I understand where
23 the Chair is coming from. We don't have an original slide
24 like this slide, but we have plotted in slides 4 to 9 of
25 exhibit UUU4 those positions, but I understand –

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1 CHAIRPERSON: Well, if this is your
 2 plotting I don't see how the witness can deal with it. The
 3 witness – I don't know we can put it then to the witness.
 4 I can understand you may be able subsequently to provide
 5 extra information which will help us to understand it, but
 6 I don't know if the witness can give us any guidance on the
 7 matter.
 8 MR NTSEBEZA SC: Well, Mr Chairman, the
 9 witness can, at best can say this is an approximate
 10 position –
 11 CHAIRPERSON: Well, let's ask him that.
 12 You've heard the debate between Mr Ntsebeza and myself.
 13 Now are you able to throw any light on the matter? Does
 14 this agree with, this depiction on the slide with your
 15 understanding of what happened on the day? You see, they
 16 say Mpumza ran from the right-hand side to the head of the
 17 long blue arrow. They say that's where he hid in the bush.
 18 They say he then ran diagonally to the right to the spot
 19 where the second white dot is, and that's where he died,
 20 and they say you and your two colleagues are in that sort
 21 of L-shape thing at the top there with the three red balls
 22 with blue circles. You are the closest one, and they say
 23 the other two red balls with blue circles and yellow arrows
 24 sticking out, they are POP people, and they say the top red
 25 rectangle with the yellow arrow going into it is another

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1 Nyala. Can you help us, is that what happened, or is that
 2 the positions of the various people that I've mentioned,
 3 the objects I've mentioned, on the day, or can't you help
 4 us?
 5 CONSTABLE SEBATJANE: No, Chair, if I
 6 remember, Friday I said Constable Mabe was on my right-hand
 7 side, by Constable Buthelezi. If it is being said that
 8 person I indicate now, if that it is said it was me, it
 9 would mean Constable Mabe would then be on my left-hand
 10 side. That's not how it happened.
 11 CHAIRPERSON: Right, on your left-hand
 12 side presupposes you're facing a particular direction, but
 13 on your left-hand side as we see it on the slide, that's
 14 the red ball with the blue circle around it which is
 15 closest to you, you say that would be Mabe and that wasn't
 16 Mabe. Is that what you're saying?
 17 CONSTABLE SEBATJANE: The person who was
 18 between us was Constable Mabe and on the other side
 19 Buthelezi.
 20 [11:06] But it is now being put to me that the one on my
 21 left is Buthelezi and not Mabe, which is not correct.
 22 CHAIRPERSON: I got it wrong. The red
 23 ball with the blue circle around it nearest you would be
 24 Mabe and the other one would be Buthelezi, is that correct?
 25 CONSTABLE SEBATJANE: That's how it is

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1 supposed to be, yes.
 2 CHAIRPERSON: Are the distances depicted
 3 on the slide more or less correct?
 4 CONSTABLE SEBATJANE: No, Chairperson.
 5 The last person is too far, if they say that was him.
 6 MR NTSEBEZA SC: Is that the L shape that
 7 you referred to in evidence today, do those three dots
 8 represent the L shape that you said today was the way in
 9 which you were?
 10 CONSTABLE SEBATJANE: No.
 11 CHAIRPERSON: I think that's the end of
 12 it, Mr Ntsebeza.
 13 MR NTSEBEZA SC: It is, Mr Chairman.
 14 CHAIRPERSON: You've got about as far as
 15 you can go and perhaps – ja, we won't put it any
 16 differently. Mr Mpofo, you've got half an hour.
 17 CROSS-EXAMINATION BY MR MPOFU: Thank
 18 you. Thank you, Chairperson. Good morning Constable.
 19 CONSTABLE SEBATJANE: Good morning,
 20 Chair.
 21 MR MPOFU: Can we just start with what
 22 you observed around the koppie, koppie 3 which is where the
 23 incidents that you were describing just now occurred.
 24 Would it be correct that at that stage that koppie was
 25 surrounded by police personnel?

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1 CONSTABLE SEBATJANE: If you could give
 2 me the time, at what time?
 3 MR MPOFU: Well, as at the time of the
 4 events that you have just described involving Mr Mpumza,
 5 the koppie was completely surrounded and there were
 6 helicopters flying above it, correct?
 7 CONSTABLE SEBATJANE: That is true.
 8 MR MPOFU: And there was a lot of
 9 activity. There were water, there was water being sprayed
 10 in there, there was a lot of shooting, different types of
 11 gunshots. You even heard sounds of bullets flying over
 12 your head, correct?
 13 CONSTABLE SEBATJANE: Yes, it happened
 14 before we arrived at the mountain, I heard that whilst we
 15 were still down there when people were being arrested.
 16 MR MPOFU: Okay, yes and subsequent to
 17 that shooting activity and the water and so on, you
 18 observed people being arrested, correct?
 19 CONSTABLE SEBATJANE: The people who were
 20 arrested, Chairperson, were arrested before we met Mpumza.
 21 MR MPOFU: Yes. Ja, that's exactly what
 22 I'm saying so the sequence of events is, there was this lot
 23 of shooting and activity, then you observed some arrests
 24 and then the episode with Mr Mpumza, is that the sequence?
 25 CONSTABLE SEBATJANE: I did not see any

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1 shooting on the mountain.

2 MR MPOFU: No, the shooting, whether you

3 saw it or whether you felt it doesn't matter but when there

4 were bullets flying above your heard, that happened, the

5 next thing that happened were the arrests and the next

6 thing was the Mpumza episode. Is that the sequence in

7 which they occurred?

8 CONSTABLE SEBATJANE: That is true.

9 MR MPOFU: And you said that at some

10 stage you assisted with the arrests. Was that also in the,

11 was that before the Mpumza episode?

12 CONSTABLE SEBATJANE: That was before the

13 Mpumza episode.

14 MR MPOFU: And at that stage, given the

15 fact that the koppie was surrounded, the protesters were

16 trapped inside the koppie, correct?

17 CONSTABLE SEBATJANE: I would not be able

18 to say they were trapped because I did not see them.

19 MR MPOFU: Okay, let's just say then they

20 wouldn't have been able to escape either the shooting or

21 the arrest without having to go through some or other

22 police presence.

23 CONSTABLE SEBATJANE: How the whole

24 mountain was surrounded at that time, Mr Chairperson, I did

25 not see. I am speaking of the side on which I was where I

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1 could observe policemen.

2 MR MPOFU: Well, I thought – my first

3 question was whether the place was surrounded, to which you

4 agreed. Surrounding cannot mean a part. It can mean

5 surrounding the entire place.

6 CONSTABLE SEBATJANE: As I have already

7 explained Chairperson, I saw the police on the side on

8 which I was. I do not know if there were police on the

9 other side.

10 MR MPOFU: Okay. So in any event, on the

11 parts that you could see, it was covered by police

12 presence. In other words, no-one could have escaped either

13 the arrests or the shooting without attracting the

14 attention of the police on your side of the mountain,

15 correct?

16 CONSTABLE SEBATJANE: Chairperson, people

17 could go through. I did not say the police were such that

18 they were holding hands there, stopping. There was space

19 between them.

20 MR MPOFU: No Constable, please let's be

21 serious. I'm not talking about people holding hands. You

22 said that they had surrounded the place. I am even

23 granting you the idea that the surrounding that you are

24 describing only covered the parts that you could see. I am

25 saying on that portion of the mountain, without the police

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1 holding hands and from the mere fact that they were holding

2 guns, lethal guns, a person could not have escaped through

3 that part, correct?

4 CONSTABLE SEBATJANE: The way I saw it,

5 Chairperson, people could go through there, the way I saw

6 it.

7 MR MPOFU: So are you disputing then the

8 evidence of Captain Greyling that there were attempts to

9 block people using Nyalas and that kind of thing or even

10 chasing them?

11 CONSTABLE SEBATJANE: I wouldn't be able

12 to give evidence to that effect. I don't know what was

13 happening there, I did not have a radio.

14 MR MPOFU: And you can't dispute Captain

15 Greyling's evidence as well that Mr Mpumza's movements were

16 affected by the Nyala that was trying to block him?

17 CONSTABLE SEBATJANE: I would not agree

18 with that because I did not see the Nyala.

19 MR MPOFU: Ja, but the fact that you did

20 not see it doesn't mean it wasn't there, correct?

21 CONSTABLE SEBATJANE: I saw Mr Mpumza, I

22 did not see him going towards a Nyala nor did I see its

23 presence there.

24 MR MPOFU: Yes, I am accepting that you

25 did not see it but I'm saying if Captain Greyling saw it,

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1 it means it was there, correct, unless if he's lying.

2 CONSTABLE SEBATJANE: That's how he puts

3 it.

4 MR MPOFU: And if, assuming Captain

5 Greyling is correct then, it would be possible that Mr

6 Mpumza would not have been anywhere near you had he not

7 been blocked by a Nyala from his intended path, correct?

8 CONSTABLE SEBATJANE: The way I saw him

9 coming towards us, directly to us, he could have turned to

10 any, and to the left or the right.

11 MR MPOFU: Okay. Just on the issue of,

12 you said he lunged at you and then you rolled away and then

13 he lunged at you again, is that the correct sequence?

14 CONSTABLE SEBATJANE: No.

15 MR MPOFU: Alright. How far were you

16 from him when he approached you for the first time when he

17 tried to stab you?

18 CONSTABLE SEBATJANE: It could have been

19 between two and three paces.

20 MR MPOFU: And the second time after you

21 had rolled away?

22 CONSTABLE SEBATJANE: When I rolled away,

23 Chairperson, Mr Mpumza was already lying on the ground.

24 MR MPOFU: Yes, so let's say you rolled a

25 further three metres away, so you would now have been about

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1 six metres away from him.

2 CONSTABLE SEBATJANE: When I rolled I

3 was, I was actually getting, moving away from him, so that

4 even if he jumped up I would be a distance away from him.

5 MR MPOFU: Yes and you achieved that. In

6 other words, after you rolled you were even further away

7 from him than when he had initially tried to attack you,

8 correct?

9 CONSTABLE SEBATJANE: Yes.

10 MR MPOFU: And yet even though you were

11 now at a safer distance, you shot at him more times than

12 the first when he was closer to you, correct?

13 CONSTABLE SEBATJANE: When I jumped up,

14 Chairperson, after he was lying there, I didn't fire shots

15 again. I only pointed my firearm at him.

16 MR MPOFU: Ja, but after that you shot at

17 him again, correct?

18 CONSTABLE SEBATJANE: I am saying no, not

19 whilst he was lying down, not when Mpumza was lying down.

20 MR MPOFU: No, nobody said that. I said

21 you, you say he jumped again after he had rolled away and

22 you shot him again, correct?

23 CONSTABLE SEBATJANE: Possibly show me on

24 my statement where I mentioned that, sir?

25 MR MPOFU: Did you fire any shots after

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1 the rolling episode?

2 CONSTABLE SEBATJANE: Not after rolling,

3 Chairperson, because Mr Mpumza was lying down. I only

4 looked at him whilst my gun was pointed at him.

5 MR MPOFU: And then?

6 CONSTABLE SEBATJANE: That's when the

7 other Captains arrived, Ryland, Kidd, McIntosh and the

8 other members.

9 MR MPOFU: Okay, if we have time we'll

10 come back to that. I'm just going to accept your

11 invitation to show you the statement but for now, when

12 Captain Kidd gave you the initial instructions he did not

13 tell you about approaching the koppie, the other koppie,

14 the bigger koppie, koppie 1 or did he?

15 CONSTABLE SEBATJANE: No, he did not. He

16 said we should move forward towards the mountain and at

17 that time I did not know there was a koppie 1 and a koppie

18 2.

19 MR MPOFU: Yes, okay fine. So his

20 initial instruction was that you must move forward towards

21 the koppie.

22 CONSTABLE SEBATJANE: Yes.

23 MR MPOFU: Did he explain why you must

24 move forward towards the koppie?

25 CONSTABLE SEBATJANE: At the time what we

Page 29800

1 were doing when forming the basic line, it was with the

2 intention to protect the settlement.

3 MR MPOFU: No, but the settlement was

4 behind you. You couldn't do both things. You couldn't be

5 moving forward towards the koppie and moving backward to

6 protect the koppie – rather the shacks, sorry.

7 CONSTABLE SEBATJANE: The instruction was

8 that we move forward.

9 MR MPOFU: Only?

10 CONSTABLE SEBATJANE: Yes.

11 MR MPOFU: I'm asking you this because

12 this thing about protecting the settlement only emerged

13 after Roots as far as Captain Kidd is concerned. So you

14 also agree that you were told to move forward towards the

15 koppie, that was the main instruction.

16 CONSTABLE SEBATJANE: Yes.

17 MR MPOFU: The second issue was that you

18 were to disarm people and allow them to pass, correct?

19 CONSTABLE SEBATJANE: It was told to us

20 by Captain Kidd before the formation of the basic line. He

21 said when these people are being dispersed from the

22 mountain and they are coming, instruct them to leave their

23 weapons there before allowing them into the settlement.

24 MR MPOFU: Yes. Captain Kidd did not

25 instruct you to arrest anybody, correct?

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1 CONSTABLE SEBATJANE: Not at the time –

2 if I still remember well, he did speak of an arrest at the

3 time.

4 MR MPOFU: And as it happened you did not

5 arrest anybody. The people complied and disarmed upon your

6 request, your requests.

7 CONSTABLE SEBATJANE: That is true.

8 MR MPOFU: And you were told to ensure

9 that they do not proceed into the informal settlement while

10 they were armed, correct?

11 CONSTABLE SEBATJANE: That is true.

12 MR MPOFU: How were you going to ensure

13 this?

14 CONSTABLE SEBATJANE: - the manner which

15 we did, instructing the people to do, to put down their

16 arms and they obeyed.

17 MR MPOFU: And if they had not obeyed, if

18 they refused, what were you instructed to.

19 CONSTABLE SEBATJANE: There was no

20 instruction.

21 MR MPOFU: Yes well, when you accept –

22 there was an instruction, it was, you must ensure that when

23 they are armed they don't go past. I'm asking you how did

24 you understand that to mean, what did you understand that

25 to mean? Ensure, how were you going to ensure, by what

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1 means?
 2 CONSTABLE SEBATJANE: If you could just
 3 ask the question again, sir.
 4 MR MPOFU: According to your statement
 5 you were instructed to ensure that armed protesters do not
 6 proceed into the informal settlement. I'm simply asking
 7 you how you were going to ensure that, by using what?
 8 CONSTABLE SEBATJANE: We gave them
 9 instructions to lay down their arms. Fortunately they
 10 agreed with us, they obeyed the instructions.
 11 MR MPOFU: Yes, I'm saying if they did
 12 not obey, how were you going to ensure that they did not
 13 proceed to the informal settlement?
 14 [11:26] CONSTABLE SEBATJANE: I don't know if I
 15 were to talk now about if this had happened because
 16 unfortunately for us such a thing did not happen, we did
 17 not say it.
 18 MR MPOFU: No, we can't speak about "if"
 19 because if you are saying you were instructed to ensure you
 20 must have understood that to mean something. Do you
 21 understand the question?
 22 CONSTABLE SEBATJANE: Could you repeat
 23 the question?
 24 MR MPOFU: If you were instructed to
 25 ensure something, if they said to you, you must ensure that

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1 these prisoners don't escape, you must know what that
 2 means. You can't just say, well, I'll just ask them
 3 nicely, what if they don't obey.
 4 CONSTABLE SEBATJANE: I would have left
 5 him to go.
 6 MR MPOFU: So you would have disobeyed
 7 the order, you would not have ensured that the people don't
 8 go into the informal settlement while they were armed?
 9 CONSTABLE SEBATJANE: When I joined the
 10 police, Mr Chairman, the training given to me was, if you
 11 want to arrest a person and you foresee some danger you
 12 would leave that person until such a time that you are able
 13 to arrest him where there is no danger.
 14 MR MPOFU: But if you had taken that
 15 approach you would not have protected the people in the
 16 informal settlement, do you agree, because you've allowed
 17 armed gangs to - the informal settlement against your
 18 instructions?
 19 CONSTABLE SEBATJANE: One other thing
 20 what could be done, Chairperson is, if you see such people
 21 proceeding with such things you would follow them to see to
 22 it that they do not injure other people.
 23 MR MPOFU: I see, and if you did that
 24 then you would not, you could not do that and at the same
 25 time be proceeding towards the hill which you were also

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1 instructed to do, correct? You would have had to turn away
 2 from the koppie.
 3 CONSTABLE SEBATJANE: It would have been
 4 that way, yes.
 5 MR MPOFU: So one way or the other you
 6 would disobey an instruction from your superiors?
 7 CONSTABLE SEBATJANE: I would not say it
 8 is disobedience, it would depend on the circumstances
 9 existing at that time.
 10 MR MPOFU: Did you participate in the
 11 events of the 13th when people were killed, policemen and
 12 protestors?
 13 CONSTABLE SEBATJANE: No, I wasn't there.
 14 MR MPOFU: Did you know about it?
 15 CONSTABLE SEBATJANE: I came to know
 16 about it on the 15th of August.
 17 MR MPOFU: How did you get to know about
 18 it?
 19 CONSTABLE SEBATJANE: We were informed at
 20 the parade.
 21 MR MPOFU: Who informed you at the parade
 22 about the killings of the 13th and what did they say?
 23 CONSTABLE SEBATJANE: On the 15th, Chair,
 24 we had just arrived, I don't remember really who the person
 25 was who was telling us.

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1 MR MPOFU: Was this your first parade
 2 when you arrived, when you were being briefed?
 3 CONSTABLE SEBATJANE: Yes.
 4 MR MPOFU: And Captain Kidd, when he was
 5 briefing you he also told you that these people had killed
 6 innocent people and policemen, correct?
 7 CONSTABLE SEBATJANE: I don't remember
 8 him talking, I don't remember Captain Kidd talking in that
 9 manner.
 10 MR MPOFU: Do you remember him saying
 11 that these were dangerous people?
 12 CONSTABLE SEBATJANE: Not that much.
 13 MR MPOFU: Not that much dangerous or not
 14 that much what?
 15 CONSTABLE SEBATJANE: I don't remember
 16 his words very well, because this happened some time ago,
 17 Chairman, it is long, I don't remember everything that was
 18 said and how it was said.
 19 MR MPOFU: Yes. Okay, well, other
 20 policemen will say that he said that these people were
 21 dangerous and they had killed innocent people including two
 22 policemen, 18 innocent people and two policemen. You
 23 wouldn't dispute that?
 24 CONSTABLE SEBATJANE: If the other
 25 policemen say so that is possibly how they heard him

Page 29806

1 saying.

2 MR MPOFU: Alright, the next issue that I

3 want to deal with is, you would agree that the police have

4 a duty to treat citizens with dignity, correct?

5 CONSTABLE SEBATJANE: Yes.

6 MR MPOFU: And be respectful towards the

7 people that they deal with?

8 CONSTABLE SEBATJANE: That is true.

9 MR MPOFU: There is evidence of members

10 of the police who were laughing around the dead bodies

11 there. You would agree that's not a respectful thing to

12 do, correct?

13 CONSTABLE SEBATJANE: I don't know how to

14 explain this, Sir.

15 MR MPOFU: Well, you don't have to

16 explain anything.

17 CHAIRPERSON: Sorry to interrupt, there

18 is two points, the first is, were policemen laughing around

19 the dead bodies? Can you tell us whether that is correct?

20 CONSTABLE SEBATJANE: Chair, if I could

21 be shown that kind of evidence.

22 CHAIRPERSON: Well, you were there, you

23 were there where some dead bodies were, were you not, on

24 the 16th?

25 CONSTABLE SEBATJANE: I don't remember

Page 29807

1 this well, Chairperson, that's why I'm saying if I could be

2 reminded just a little.

3 MR MPOFU: Ja, look, I'm saying to you it

4 is common cause, this evidence was already played to

5 another policeman, I think it was Colonel Botha or

6 somebody, and I'm told that it was also played to you in my

7 absence, but just assume that there is objective evidence

8 accepted by SAPS and ourselves that people were laughing

9 there, I'm saying if that happened you would agree that

10 that is not consistent with what you and I have agreed is

11 the duty of a policeman, correct?

12 CONSTABLE SEBATJANE: I don't see it as a

13 sin.

14 CHAIRPERSON: Constable, you don't see it

15 as a?

16 CONSTABLE SEBATJANE: As a sin.

17 CHAIRPERSON: Not as a sin, but if the

18 dead bodies, people who had been shot, killed, and the

19 policemen come along and laugh at it, that wouldn't be the

20 right thing to do, would it?

21 CONSTABLE SEBATJANE: They were possibly

22 laughing about other things, Sir, -

23 CHAIRPERSON: If they were laughing about

24 the dead bodies that would be unacceptable behaviour, do

25 you agree?

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1 CONSTABLE SEBATJANE: I agree with that,

2 Chairperson.

3 MR MPOFU: Okay, we agree on that, that

4 if they were talking about other things, cracking jokes,

5 separate jokes, would that be acceptable to you shortly

6 after people had just been killed when there are people

7 lying around wounded? Do you agree that that is also in

8 African culture and particularly disrespectful?

9 CONSTABLE SEBATJANE: I don't know how to

10 respond that question, about this thing.

11 CHAIRPERSON: I take it you're familiar

12 with some of the basic principles of African culture,

13 particularly as it affects the group from which you come,

14 the Bapedi, is that right?

15 CONSTABLE SEBATJANE: Yes, Chair, it is

16 true, Chair.

17 CHAIRPERSON: Alright, now according to

18 the standards and rules and values of the Bapedi people, is

19 it appropriate if somebody has just been killed, dead

20 bodies lying or a number of people just been killed, dead

21 bodies lying on the ground, for people present there to

22 crack jokes, is that part of Bapedi culture?

23 CONSTABLE SEBATJANE: It isn't,

24 Chairperson.

25 MR MPOFU: And that would even extend to

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1 a funeral when the people had died a long time ago, when

2 you are around the grave site it would be unacceptable to

3 be cracking jokes and laughing around in that setting,

4 correct, because of the respect to those who have departed,

5 correct?

6 CONSTABLE SEBATJANE: That is true.

7 MR MPOFU: So it would not be sufficient,

8 it would still be unacceptable even if those people were

9 not laughing at the person who is inside the coffin, if

10 they were making their own jokes, that would still be

11 inappropriate, correct, at the grave site?

12 CONSTABLE SEBATJANE: I would agree with

13 you, Sir.

14 MR MPOFU: It is also not appropriate for

15 members of the police to be insulting or churning out

16 expletives at citizens, correct?

17 CONSTABLE SEBATJANE: Just repeat the

18 question, Sir?

19 MR MPOFU: Is it also inappropriate in

20 your estimation for members of the police to be insulting

21 towards citizens that they are either arresting or dealing

22 with?

23 CONSTABLE SEBATJANE: That would be

24 against the, I mean the feelings of any policeman.

25 MR MPOFU: Yes, and it would also be

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1 similarly unacceptable for them to insult the people who
 2 are dead or injured or seriously injured, correct?
 3 CONSTABLE SEBATJANE: Just repeat, Sir?
 4 MR MPOFU: Would it be equally
 5 unacceptable for policemen to be insulting towards dead
 6 people and those who are seriously injured?
 7 CONSTABLE SEBATJANE: It wouldn't be the
 8 right thing.
 9 MR MPOFU: You are the person who fired
 10 according to your own version about nine or ten bullets
 11 towards Mr Mpumza, correct?
 12 CONSTABLE SEBATJANE: That's true.
 13 MR MPOFU: There is nobody else according
 14 to your knowledge who fired about nine to ten shots towards
 15 Mr Mpumza?
 16 CONSTABLE SEBATJANE: That's true.
 17 MR MPOFU: So if somebody during that
 18 episode said the following words, "that mother fucker, I
 19 shot him at least ten times," it can only be the person who
 20 had shot at least ten times, correct?
 21 CONSTABLE SEBATJANE: As explained on
 22 Friday that the words that were indicated on the screen, I
 23 don't remember that being me saying such words.
 24 MR MPOFU: Well, even accepting that you
 25 don't remember which I will dispute, but let's now for now

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1 say that you don't remember, all I'm saying to you is that
 2 to jog your memory, would it be reasonable to say the only
 3 person who could say those words is the only person who
 4 shot the person about ten times?
 5 CONSTABLE SEBATJANE: I would agree with
 6 you.
 7 CHAIRPERSON: I'm told you've got five
 8 minutes, Mr Mpofo, you'll bear that in mind?
 9 MR MPOFU: Chairperson, ja. Chairperson,
 10 there is a problem with it, particular –
 11 CHAIRPERSON: Because you asked Mr
 12 Budlender for half an hour, we granted you half an hour and
 13 you've got half an hour, so let us not waste –
 14 MR MPOFU: No, Chairperson, that's not
 15 what happened, that's why I was saying, I was hoping to
 16 avoid this by just finishing within the time, but what
 17 actually happens is that I asked for an hour and I was
 18 given an hour, there was a miscommunication between Mr
 19 Lewis. I thought it was explained to Ms Pillay because
 20 what had been said was that there was an hour available
 21 between myself and the LRC and the LRC indicated they were
 22 not going to cross-examine and I then took the hour that
 23 was available, but I'll still, I just want to place that on
 24 record, Chairperson. I don't have much to go but there is
 25 that –

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1 CHAIRPERSON: Carry on as quickly as you
 2 can.
 3 MR MPOFU: Thank you, Chairperson.
 4 Alright, so the mother fucker that you would be referring
 5 to would be Mr Mpumza, correct, that's the only person who
 6 was shot that time?
 7 CONSTABLE SEBATJANE: I would say, yes.
 8 MR MPOFU: And then you also said
 9 [African language] boss, correct?
 10 CONSTABLE SEBATJANE: We mentioned on
 11 Friday that the voice being heard on the tape is not mine.
 12 MR MPOFU: No, you were not asked about
 13 this on Friday.
 14 CONSTABLE SEBATJANE: I was asked a
 15 question when the transcript, Captain Ryland's transcript
 16 was being discussed.
 17 MR MPOFU: No, those words do not appear
 18 in that transcript, anyway, look, let's not waste time.
 19 You were not asked about this on Friday, I'm telling you.
 20 I'm saying that, - okay, let me ask you it in the same way
 21 because you had also denied the first one which you have
 22 now admitted. If you said, someone said [African language]
 23 in the context of what was happening there it could be a
 24 person who had shot Mr Mpumza, correct?
 25 CHAIRPERSON: Mr Mpofo, I didn't

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1 understand him to say he admitted saying it, I understand
 2 his case has always been he didn't say them.
 3 MR MPOFU: Chairperson, I'm saying he
 4 just admitted having said –
 5 CHAIRPERSON: I think you asked him a
 6 double question and you've got an answer –
 7 MR MPOFU: No, it is not. I just –
 8 CHAIRPERSON: I'm not sure which of the
 9 double question he is answering –
 10 MR MPOFU: No, it is not a double
 11 question, Chairperson.
 12 CHAIRPERSON: Anyway, carry on.
 13 MR MPOFU: I just said he had denied the
 14 mother fucker incident which he has now admitted, that is
 15 what I am saying.
 16 CHAIRPERSON: You see, I understood him –
 17 MR MPOFU: Well, he said the only person
 18 is the one who shot, he is the only person who shot him.
 19 CHAIRPERSON: You –
 20 MR MPOFU: I don't know what –
 21 CHAIRPERSON: No, no, no, no, he is not
 22 the only person who shot, he conceded, as I understood it,
 23 the person who said, who used that word and then said, I
 24 shot ten times, obviously must be the person who fired.
 25 MR MPOFU: Yes, that's all I'm saying.

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1 CHAIRPERSON: He agreed to that, but he
 2 didn't agree that it was him.
 3 MR MPOFU: Oh, who shot ten times –
 4 CHAIRPERSON: No, no, no, -
 5 MR MPOFU: Mr Constable?
 6 CHAIRPERSON: He fired shots, we know
 7 that.
 8 MR MPOFU: Yes.
 9 CHAIRPERSON: We also know that according
 10 to his evidence he fired ten shots but with a pistol.
 11 MR MPOFU: Yes.
 12 CHAIRPERSON: Somebody else fired as
 13 well, an R5.
 14 MR MPOFU: No, he said no one else shot
 15 ten times. I asked him that question to close that very
 16 gap.
 17 CHAIRPERSON: But that's not consistent
 18 with the PM report.
 19 MR MPOFU: Well, were there 18 shots then
 20 on the PM report? He said, he correctly said nobody else
 21 shot ten times, Chairperson, I don't understand what's the
 22 difficulty with this.
 23 CHAIRPERSON: No, the question of course
 24 is whether his shot hit the target in each case, whether
 25 each of these shots hit the deceased. That's something

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1 which is not clear.
 2 MR MPOFU: No.
 3 CHAIRPERSON: Anyway, let's not argue
 4 about it further, let's just carry on with your cross-
 5 examination.
 6 MR MPOFU: Anyway would you agree
 7 similarly that the person who would say the words, [African
 8 language], I have destroyed him or crushed him, would be a
 9 person who had shot Mr Mpumza? "[African language]" means
 10 I, correct?
 11 CONSTABLE SEBATJANE: Yes, Chair, but I'm
 12 not the only person who shot at Mr Mpumza.
 13 MR MPOFU: Ja, well, don't, - you're just
 14 grabbing at what the Chairperson did not understand you
 15 correctly, your previous answer to be. I'm saying, would
 16 you agree that a person who used the words [African
 17 language] would be a person who had shot Mr Mpumza, yes,
 18 no?
 19 CONSTABLE SEBATJANE: Yes, it could be
 20 that person who shot at Mr Mpumza.
 21 MR MPOFU: Yes, and unlike the previous
 22 confession which I will argue you correctly made, this one
 23 just says, I shot him, it doesn't say how many times it
 24 shot him. That's the only difference, correct?
 25 CONSTABLE SEBATJANE: What I stressed,

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1 Sir.
 2 [11:45] I stressed that the voice heard on the tape is
 3 not mine.
 4 MR MPOFU: So, but that language of
 5 "tkemothobile" suggests some sort of satisfaction with what
 6 one has done, some triumphalism, correct?
 7 CONSTABLE SEBATJANE: No.
 8 MR MPOFU: Why would anybody say that
 9 they had destructed or destroyed a human being? Is that
 10 appropriate as far as you are concerned? Is it like
 11 shooting a pumpkin?
 12 CONSTABLE SEBATJANE: Let me explain
 13 again that in the language Sepedi one word can have
 14 different meanings.
 15 MR MPOFU: Yes, this one means
 16 destruction and crushing in the same mode as shooting at a
 17 pumpkin.
 18 CONSTABLE SEBATJANE: What I understand
 19 that person who is speaking there saying, "I shot at him, I
 20 shot him."
 21 MR MPOFU: So why did he then not say
 22 (Sepedi words)? Why do they choose something that suggests
 23 something more, destruction and unwarranted satisfaction?
 24 CONSTABLE SEBATJANE: Sepedi has got many
 25 words. I am a Pedi, one uses the word that he feels like

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1 using.
 2 MR MPOFU: So, but the person chose a
 3 particular word, is that correct? Instead of saying "I
 4 shot him" they chose a word which means that I've destroyed
 5 him?
 6 CONSTABLE SEBATJANE: Chair, I think the
 7 person who used those words is the person, if the person
 8 could be looked for and found he would be in a better
 9 position to explain why he used those words.
 10 MR MPOFU: No, I'm asking you because you
 11 are there. I am saying if somebody says, whether it is you
 12 or someone else, another policeman, "ai, tkemothobile boss,
 13 ai, tkemothobile jong, tkemothobile, ja, ja" – is that,
 14 you're saying that's just like saying I shot him?
 15 CONSTABLE SEBATJANE: That's how I
 16 explained it.
 17 MR MPOFU: And would you, you wouldn't
 18 agree that's an inappropriate choice of words from a
 19 policeman, any policeman, whether it's you or someone else?
 20 CONSTABLE SEBATJANE: That's how I
 21 explain it. I am unfortunately not in a position to answer
 22 on behalf of another person who was saying he also shot, he
 23 also fired shots.
 24 MR MPOFU: The National Commissioner, who
 25 is also Pedi-speaking found those words inappropriate.

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1 Would you disagree with her?

2 CONSTABLE SEBATJANE: As I have said,

3 Sepedi has many different, words in Pedi have many

4 different means. You could possibly explain it that way, I

5 see it otherwise.

6 MR MPOFU: And if another policeman said,

7 "Ja, that muti shit does not work here baba," is that

8 appropriate language from a policeman?

9 CONSTABLE SEBATJANE: From what you have

10 said now, I don't see anything wrong.

11 MR MPOFU: Really? So is this what they

12 teach you at police college?

13 CONSTABLE SEBATJANE: As I have said,

14 people's feelings are different. Possibly the person using

15 those words at the time was expressing his feelings.

16 MR MPOFU: And someone who says (Sepedi

17 words), that's also acceptable to you?

18 CONSTABLE SEBATJANE: I don't know where

19 you are getting those words, I have not come across them.

20 MR MPOFU: If those words were said,

21 would they be acceptable?

22 CONSTABLE SEBATJANE: I did not use – I

23 can as such not respond, reply on behalf of other people.

24 MR MPOFU: If they were not said by you

25 but by another policeman, would they become acceptable?

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1 CONSTABLE SEBATJANE: I don't know what

2 you mean by that, possibly you can give me some

3 explanation.

4 MR MPOFU: Constable please, we are not

5 playing games here. Are you being serious that the words

6 that I've used, all the insulting words that I've used you

7 don't, you cannot answer whether they are acceptable or not

8 from a professional police about a citizen of South Africa?

9 Is that what you are telling the Commission?

10 CONSTABLE SEBATJANE: Mr Mpofo and Chair,

11 as I have said, people have different feelings. Me, since

12 I started in the police I don't remember using such words

13 on any citizen.

14 MR MPOFU: Do you not use these words

15 against citizens yourself?

16 CONSTABLE SEBATJANE: I don't ever

17 remember using them and there was no training from the

18 police to refer to people –

19 MR MPOFU: Yes and is the reason why you

20 as Constable Sebatjane don't use these words against

21 citizens because they are clearly unacceptable?

22 CONSTABLE SEBATJANE: I will again say it

23 depends on how the person feels.

24 MR MPOFU: No, I'm saying you don't use

25 these words, irrespective of how you feel, correct?

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1 CONSTABLE SEBATJANE: I will again

2 respond in this way. I was not brought up to be a person

3 that uses vulgar language, even today I don't use such

4 words.

5 MR MPOFU: Yes, and the reason you don't

6 use vulgar language is because it's a bad thing to do

7 against another human being. That's how you were brought

8 up, correct?

9 CONSTABLE SEBATJANE: That's what my

10 parents taught me, yes.

11 MR MPOFU: And therefore if someone was

12 brought up by bad parents who do this thing, you didn't

13 find it acceptable, correct?

14 CONSTABLE SEBATJANE: Different people,

15 different types of races, people using those words, to some

16 it is their daily practices.

17 CHAIRPERSON: Are you near the end of

18 your cross-examination?

19 MR MPOFU: I am, Chairperson.

20 CHAIRPERSON: Alright.

21 MR MPOFU: And either in your training or

22 your upbringing is it acceptable also to be making sounds

23 that kind of relive the shooting of the person, "Blom,

24 blom, blom, ka-ka-ka-ka-ka?" Is that also, would you

25 associate that with a showing of sympathy?

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1 CONSTABLE SEBATJANE: If you could

2 explain to me those words that you have just used, what

3 their Pedi equivalent would be.

4 CHAIRPERSON: What he says is they're not

5 words, they're intended to be sounds imitating gunshots and

6 – that's the point you make, Mr Mpofo, am I right?

7 MR MPOFU: That's correct, Chairperson.

8 CONSTABLE SEBATJANE: Chairperson, to

9 imitate the sounds of guns, that's things that we do on a

10 daily basis.

11 MR MPOFU: Yes, I know you do it on a

12 daily basis. I'm asking you whether is it acceptable

13 behaviour in relation to the citizen of South Africa or

14 not?

15 CONSTABLE SEBATJANE: Relation to people

16 of South Africa I can say – relating to the people of South

17 Africa I don't know. In my training as a policeman – the

18 different sounds of guns, that if a gun is being shot, you

19 are being shot with a firearm, you must know what firearm,

20 what calibre it is.

21 COMMISSIONER HEMRAJ: Yes, but if those

22 sounds were mentioned shortly after someone has shot a

23 number of times, it does rather sound like bragging,

24 doesn't it?

25 CONSTABLE SEBATJANE: Possibly he was

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1 explaining how he, what sound he heard, how the sound went.
 2 I wouldn't say in that manner he was bragging.
 3 MR MPOFU: And similarly it might also
 4 sound like bragging if someone says, "Sebatjane het slaat
 5 hom 10, hy het die mag leeggemaak." Mag being the
 6 magazine, that he emptied it, he hit him 10 or gave him 10.
 7 That's also not – that's more consistent with bragging than
 8 with an expression of sympathy, isn't it?
 9 CONSTABLE SEBATJANE: I don't know what
 10 that person intended or meant. If that person could be
 11 asked possibly he would be in a better position to say what
 12 he was saying.
 13 MR MPOFU: You don't know?
 14 CONSTABLE SEBATJANE: I wouldn't say I
 15 know.
 16 MR MPOFU: Thank you, Chairperson.
 17 CHAIRPERSON: Thank you. I think it's
 18 re-examination but we'll take that after tea. How long is
 19 your re-examination likely to be?
 20 MS BALOYI: Chair, it should be less than
 21 15 minutes.
 22 CHAIRPERSON: We'll take the tea
 23 adjournment now.
 24 [COMMISSION ADJOURNS COMMISSION RESUMES]
 25 [12:15] CHAIRPERSON: The Commission resumes. Mr

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1 Mpofo, what you're now saying doesn't have to be
 2 interpreted. I understand you've reached some kind of
 3 agreement with the SAPS representatives, to do what?
 4 MR MPOFU: Chairperson, there's just,
 5 there's one question and one proposition that I need to
 6 put. It won't take long. I was just –
 7 CHAIRPERSON: If you say it won't take
 8 long, it will take longer for us to get an interpreter than
 9 for you to put the point. Here comes one of the
 10 interpreters.
 11 MR MPOFU: Oh yes, thank you. Constable,
 12 you're still under oath.
 13 EDWARD MALISELA SEBATJANE: (s.u.o.)
 14 CHAIRPERSON: Mr Mpofo, I'll allow you to
 15 put this one proposition and one question to the witness.
 16 MR MPOFU: Thank you, Chairperson.
 17 CHAIRPERSON: [Microphone off, inaudible]
 18 it short.
 19 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
 20 Ja, I will. I will, Chairperson. Constable, just two
 21 things: I just want in fairness, because to allow you a
 22 chance to comment on a proposition of what I'm going to
 23 argue in relation to the last line of questioning that you
 24 and I were engaged in. You understand that?
 25 CONSTABLE SEBATJANE: I understand,

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1 Chair.
 2 MR MPOFU: Yes, the most important thing
 3 is this, Constable; I'm going to argue that not only is the
 4 language that you and I have discussed – I don't want to go
 5 through it again – I've said to you it's inappropriate and
 6 obviously I'm going to argue that it's inappropriate, but
 7 the point I want to make is that I'm going to go further in
 8 my argument and say the kind of language you used and the
 9 kind of triumphalism and the bragging is inconsistent with
 10 someone who had been acting in self-defence, which is a
 11 separate proposition from it being inappropriate from a
 12 cultural point of view. Would you like to comment?
 13 MS BALOYI: Chairperson –
 14 CHAIRPERSON: Ms Baloyi wants to say
 15 something. Yes, Ms Baloyi?
 16 MS BALOYI: Chairperson, unless I missed
 17 something in the cross-examination, is it being put to this
 18 witness that the list of inappropriate language that Mr
 19 Mpofo listed, is it being attributed to this witness?
 20 CHAIRPERSON: No, no, well yes, of course
 21 they use the word "self-defence," you see. If this
 22 language was possibly used by somebody else who fired shots
 23 in private defence, then you'd have to go further. Perhaps
 24 you should. I mean the way the question is posed –
 25 MR MPOFU: Yes.

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1 CHAIRPERSON: - it presupposes the
 2 assumption that this witness said those things, which he's
 3 denied.
 4 MR MPOFU: Yes, yes.
 5 CHAIRPERSON: But perhaps if you
 6 reformulate the question and deal with private defence,
 7 then I think you'll get past the objection.
 8 MR MPOFU: Thank you, Chairperson. Or
 9 let me do it in two parts. The first part which I will
 10 attribute to you, which is "That mother fucker, I shot him
 11 10 times. I shot him at least 10 times," that part we are
 12 going to attribute to you. I'm going to say that language
 13 is inconsistent with someone acting in self-defence. Do
 14 you understand that?
 15 CHAIRPERSON: What's your comment? It's
 16 put to you, well firstly it's put to you, you used those
 17 words, and it's put on a further basis, I think if you had
 18 used those words it would be inconsistent with the
 19 suggestion that you had shot in self-defence. What do you
 20 say about that proposition?
 21 CONSTABLE SEBATJANE: I will disagree
 22 with him, Chair.
 23 CHAIRPERSON: In what respect?
 24 CONSTABLE SEBATJANE: Firstly, Chair, I
 25 didn't use those words. Secondly –

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1 MR MPOFU: No, sorry, that interpretation
 2 was incorrect. He said "a kegopule ke rekisamang."
 3 CONSTABLE SEBATJANE: I don't remember
 4 using those words.
 5 MR MPOFU: Yes, sorry, Chairperson, so he
 6 says firstly he doesn't remember –
 7 CHAIRPERSON: Firstly you don't remember
 8 using the words, and secondly?
 9 CONSTABLE SEBATJANE: Well, they do
 10 depend on a state of a person, if he's frightened or he's
 11 worried, he can use some other language, other words.
 12 CHAIRPERSON: The one proposition, I
 13 understood you – you've got one more question?
 14 MR MPOFU: Yes. Yes. No, I was breaking
 15 that into this – and then what I will also suggest is that
 16 the other words, not those ones that I say I'm attributing
 17 to you, which may or may not have been said by you but I
 18 can't show that they were said by you, that those words
 19 would also be inconsistent with somebody who was acting in
 20 private defence of somebody else. What would you say to
 21 that?
 22 CONSTABLE SEBATJANE: I'll answer you by
 23 saying that those words are not coming from me. It's not
 24 my words.
 25 MR MPOFU: Yes, I'm accepting for the

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1 purposes of the question that they are not your words.
 2 That's why I'm using "private defence." I'm saying if they
 3 were not said by you, they would still also not be
 4 consistent with somebody acting in private defence of
 5 somebody else.
 6 CONSTABLE SEBATJANE: Thus, Chair, I have
 7 said that if you could find that particular person, he's
 8 the one who will come and explain how did it come about
 9 that he used those words.
 10 CHAIRPERSON: I don't think you'll get
 11 anymore out of the witness than that. It seems to be very
 12 largely a question of opinion, which you can argue at the
 13 end of the matter, but I don't want to hamper you, but you
 14 know –
 15 MR MPOFU: No, I accept that –
 16 CHAIRPERSON: You can take the witness so
 17 far, but you can't take him any further.
 18 MR MPOFU: Yes. Thanks, Chairperson.
 19 Then the other proposition which I was asked to put to you
 20 during the break was you have said that one of the reasons
 21 that you did not, you yourself don't use words like this is
 22 because of your upbringing. In other words you would not
 23 want to disgrace yourself or your family, correct?
 24 CONSTABLE SEBATJANE: Well, I said that
 25 the way how I was brought up, that is not the way in which

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1 my parents taught me.
 2 MR MPOFU: You are aware of the sentiment
 3 in South Africa, given our past, that as a black person
 4 you'd be expected to be more sympathetic to a fellow black
 5 person, correct?
 6 CONSTABLE SEBATJANE: Could you just
 7 explain what do you mean that, so that in which way are you
 8 saying that –
 9 MR MPOFU: Okay, Constable, look, I'm on
 10 borrowed time so I don't want to waste your time. Are you
 11 aware of the general sentiment in South Africa, given our
 12 unfortunate past, that it is generally expected for you as
 13 a black person to be more sympathetic or more empathetic
 14 towards another black person?
 15 CONSTABLE SEBATJANE: On what grounds are
 16 you being sympathetic to that person?
 17 MR MPOFU: So what I'm saying to you now,
 18 you've never heard this? It's the first time you hear this
 19 in your life?
 20 CONSTABLE SEBATJANE: I hear it from you,
 21 yes.
 22 MR MPOFU: Ja, no then I believe you.
 23 Given that context, what I was asked to put to you is
 24 whether you don't think it's disgraceful to you as a
 25 person, and as a black person in particular, that you were

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1 insulting these people while Colonel McIntosh was assisting
 2 them, was assisting Mr Mpumza, that you were busy churning
 3 out insults? Do you think that is – I was asked to put to
 4 you whether you don't think that's a disgrace to you and
 5 your family in particular as a black person?
 6 CONSTABLE SEBATJANE: I'm going to repeat
 7 myself that those voice in that tape is not mine.
 8 MR MPOFU: But you agree that the
 9 appropriate thing would be what Colonel McIntosh did, which
 10 was to assist the wounded person rather than insult them,
 11 correct?
 12 CONSTABLE SEBATJANE: I do agree with you
 13 that any member of the force at the scene, if there's any
 14 injured person, he's supposed to help that person.
 15 MR MPOFU: Yes, that's not my question.
 16 I'm saying to you would you agree that what members of the
 17 force would be expected to do would be to join Colonel
 18 McIntosh in assisting the wounded person as opposed to be
 19 standing around and hurling insults at the wounded or dying
 20 person? Would you agree with that?
 21 CONSTABLE SEBATJANE: The members of the
 22 force, they would be in a position to help McIntosh if they
 23 had undergone the first-aid training.
 24 MR MPOFU: And if they hadn't undergone
 25 the first-aid training then theirs would be to stand and

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1 look on as he was assisting the person, rather than
 2 insulting the person, correct?
 3 CONSTABLE SEBATJANE: No, theirs is
 4 supposed to ask for an assistant.
 5 MR MPOFU: But theirs is not to insult
 6 the wounded or dying person. Would you agree it's
 7 disgraceful to do so?
 8 CONSTABLE SEBATJANE: I agree with you,
 9 Chair.
 10 MR MPOFU: Thank you, Chairperson.
 11 CHAIRPERSON: Ms Baloyi, re-examination?
 12 RE-EXAMINATION BY MS BALOYI: Thank you,
 13 Chair. Constable, the incident in which Mr Mpumza was shot
 14 at, and we have evidence that Constable Mabe also shot; now
 15 at the time that Constable Mabe shot, do you know whether
 16 at that point you were on your feet or you were lying on
 17 your back?
 18 CONSTABLE SEBATJANE: I wouldn't be able
 19 to say at what stage it was, whether I was still lying down
 20 or on my feet or where.
 21 MS BALOYI: And do you know where
 22 Constable Mabe was standing at the time, in relation to Mr
 23 Mpumza and in relation to you when he fired at Mr Mpumza?
 24 Do you know?
 25 CONSTABLE SEBATJANE: Just repeat the

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1 question, please.
 2 MS BALOYI: Do you know where Constable
 3 Mabe was standing at the time that he fired at Mr Mpumza?
 4 Do you know where he was standing –
 5 CONSTABLE SEBATJANE: I think he was
 6 standing –
 7 MS BALOYI: Do you know where he was
 8 standing in relation to you?
 9 CONSTABLE SEBATJANE: He would have been
 10 on my right-hand side.
 11 COMMISSIONER HEMRAJ: Did you see him at
 12 that time, or are you just surmising that that's where he
 13 would have been?
 14 CONSTABLE SEBATJANE: Before the shooting
 15 started, Chairperson, he was on my right-hand side.
 16 MS BALOYI: And when he shot at Mr
 17 Mpumza, did you see him at that point?
 18 CONSTABLE SEBATJANE: No, I did not see
 19 him.
 20 MS BALOYI: Thank you, Chair, no further
 21 questions.
 22 CHAIRPERSON: Thank you. Constable,
 23 we'll excuse you at this stage on the basis that if it
 24 becomes necessary to call you back, that you'll come back
 25 without our having to subpoena you, but on that basis, if

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1 you're prepared to agree to that, you're excused.
 2 CONSTABLE SEBATJANE: Thank you,
 3 Chairperson.
 4 [NO FURTHER QUESTIONS – WITNESS EXCUSED]
 5 CHAIRPERSON: Mr Mathibedi, I understand
 6 you're now going to call, or going to recall Colonel
 7 Classen. Is that correct?
 8 MR MATHIBEDI SC: That's correct, Chair.
 9 CHAIRPERSON: Colonel Classen, I must
 10 remind you that you're still bound by the oath that you
 11 took last week.
 12 LITTLE JOE RONNY CLASSEN: Yes, Mr Chair.
 13 CHAIRPERSON: Ms Pillay, I understand you
 14 have further questions in cross-examination on behalf of
 15 the evidence leaders.
 16 CROSS-EXAMINATION BY MS PILLAY (CONTD.):
 17 I do, Chair. Thank you. Good morning, Colonel.
 18 COLONEL CLASSEN: Morning, Ma'am.
 19 MS PILLAY: Colonel, when you concluded
 20 your testimony on Thursday last week you indicated that you
 21 were called to appear before the, what we call the
 22 Mkhwanazi task team, or the task team which Brigadier
 23 Mkhwanazi was part of. Do you recall that?
 24 COLONEL CLASSEN: Yes, I remember, Chair.
 25 MS PILLAY: Now can you tell us – we know

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1 that the task team sat on different dates at different
 2 venues. Do you recall specifically when you appeared
 3 before the task team and where you appeared before them?
 4 COLONEL CLASSEN: I don't recall the
 5 exact date, but I've got two – I think two, there was a
 6 time that I was called to Potch. I don't recall the
 7 building where it was, but it was away from where we all
 8 met, where all the commanders met where we were all called
 9 for that presentation.
 10 MS PILLAY: And do you recall if it was a
 11 hotel?
 12 COLONEL CLASSEN: Yes, it was a hotel.
 13 Thank you.
 14 MS PILLAY: Now thus far the evidence
 15 indicates that it was either the Burgers Park Hotel or
 16 Elgro Hotel. Do any of these names ring a bell with you?
 17 COLONEL CLASSEN: Not at all, thank you,
 18 but it was a hotel, Ma'am.
 19 MS PILLAY: Now can you tell us before
 20 you appeared before the task team, what was your
 21 understanding of the nature of the process?
 22 COLONEL CLASSEN: Well, I just thought it
 23 was an ordinary process where they wanted to know what was
 24 my involvement within the whole Marikana situation.
 25 MS PILLAY: And can you describe to us

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1 once you were at the hotel and you appeared before the task
 2 team, specifically what is it that they asked of you?
 3 COLONEL CLASSEN: I can't recall all of
 4 it, but what I was asked is, as I said just now that what
 5 was my role, where was I, did I understand the whole
 6 exercise. That's about most of the things that we talked
 7 about.
 8 MS PILLAY: So when you say that they
 9 asked you whether you understood the whole exercise, which
 10 exercise are you referring to?
 11 COLONEL CLASSEN: The briefing, how
 12 everything was supposed to work out, was I okay with the
 13 results, and so forth.
 14 MS PILLAY: Now do you recall if any
 15 questions were asked specifically by members of the panel?
 16 COLONEL CLASSEN: I can't recall the
 17 exact questions, but there were questions asked, but not
 18 that much.
 19 MS PILLAY: And can you give us an idea
 20 of the type of questions that were asked?
 21 COLONEL CLASSEN: As I said, where were
 22 you when this happened; did you understand the whole
 23 planning; did the, did you guys act according to the plan.
 24 MS PILLAY: And were any concerns raised
 25 by members of the panel about your conduct on the day?

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1 COLONEL CLASSEN: No, not at all. They
 2 just, they were actually quite fine with us – well, with
 3 me, sorry.
 4 MS PILLAY: Did any members of the panel
 5 raise concern about the conduct of TRT on the day?
 6 COLONEL CLASSEN: Not so much concerns,
 7 or I was more questioned that do you feel you guys acted
 8 right; did you understand the planning; did you guys act
 9 according to the planning, as I said.
 10 MS PILLAY: And how long did your
 11 interview last?
 12 COLONEL CLASSEN: Not more than 30
 13 minutes.
 14 MS PILLAY: And during your interview
 15 were you referred to any documents, any diagrams?
 16 [12:35] MR CLASSEN: Documents, no, no, no, not
 17 that I know.
 18 MS PILLAY: Were you referred to any
 19 diagrams, any presentations?
 20 MR CLASSEN: No, no, it was just a type
 21 of a photograph of how the Nyalas were standing and how the
 22 planning should have been, that's all.
 23 MS PILLAY: And were you asked to explain
 24 your movements in relation to that photograph?
 25 MR CLASSEN: Yes, I was asked to do that.

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1 MS PILLAY: And do you know whether any
 2 notes were kept by any members of the panel during the
 3 interview?
 4 MR CLASSEN: No, that I can recall, it
 5 was very informal, more a question and we talked about it,
 6 how things went about it.
 7 MS PILLAY: And after your interview did
 8 you have any other dealings with the review panel?
 9 MR CLASSEN: Negative, Ma'am, except for
 10 working with Colonel Mokhari but that had nothing to do
 11 with the Marikana situation.
 12 MS PILLAY: I'm sorry, can you just
 13 clarify, working with Colonel Mokhari in relation to what?
 14 MR CLASSEN: Working under him like we go
 15 to other operations, you know where he'll be in charge and
 16 then that was about it.
 17 MS PILLAY: Alright. Thank you, Chair,
 18 no further questions from our side.
 19 COMMISSIONER HEMRAJ: Was any comment
 20 made by any of the panellists about this being more than
 21 just a POPS' operation?
 22 MR CLASSEN: No, Ma'am, I was more just
 23 questioned, when I arrived there they just questioned me
 24 and asked if I'm okay, did we go according to the plan and
 25 all that, that was about it, Ma'am.

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1 CHAIRPERSON: Were you, as far as you
 2 know were you the only SAPS member who went to see the task
 3 team that day when you went?
 4 MR CLASSEN: No, negative, Mr Chair, I
 5 wasn't the only one.
 6 CHAIRPERSON: Wasn't the only one, who
 7 else went?
 8 MR CLASSEN: I remember, I think Colonel
 9 Mere went there, that's one person that I can mention
 10 because I remember he went there.
 11 CHAIRPERSON: Was he interviewed before
 12 you or after you?
 13 MR CLASSEN: That I can't recall, we just
 14 missed each other there because when I arrived he was also
 15 around there, so I don't know if he went in but when I left
 16 he was gone.
 17 CHAIRPERSON: I see, thank you. Mr Gotz,
 18 you were going to do the main cross-examination of this
 19 witness today I believe?
 20 CROSS-EXAMINATION BY MR GOTZ: Yes, thank
 21 you, Chairperson, and good day to the panel and Lieutenant-
 22 Colonel Classen, good afternoon to you. My name is Anthony
 23 Gotz, I am going to be asking a few questions on behalf of
 24 AMCU.
 25 MR CLASSEN: Good afternoon, Sir.

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1 MR GOTZ: Lieutenant-Colonel Classen, I
 2 would like to refer first of all to your witness statement,
 3 RRR10. There is no need to go there but in paragraph 5 of
 4 that witness statement you refer to having a number of
 5 members under your command and control on the 16th of August
 6 2012. One of those members is Constable Majombozi, do you
 7 know Constable Majombozi?
 8 MR CLASSEN: Yes, I do, Mr Chair.
 9 MR GOTZ: Constable Majombozi is the
 10 person who was referred to last week as the person who had
 11 changed their witness statement at Roots as to how many
 12 shots have been fired, is that correct?
 13 MR CLASSEN: That's correct.
 14 MR GOTZ: By him on the day, initially he
 15 said that he fired ten shots and that is indeed what the
 16 discharge sheet reflects. At Roots he changed his witness
 17 statement to say that he didn't fire any shots at all,
 18 correct?
 19 MR CLASSEN: That's correct.
 20 MR GOTZ: I would like to look at
 21 Constable Majombozi's training records, they're to be found
 22 in a folder marked Exhibit LLL25 and it is a separate Excel
 23 spreadsheet with Constable Majombozi's training records, if
 24 we can have that up on the screen? I'm wondering whether
 25 it is possible to increase the slide slightly. I think

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1 that's good enough. Now these are quite difficult to read
 2 and I'm going to ask for your assistance, Lieutenant-
 3 Colonel. Perhaps we can start towards the bottom of the
 4 document where, the last entry you'll see relates to an
 5 entry for 2012 and you'll see in that line, three from the
 6 bottom you will see 2012/05/07 and then it has got the mark
 7 3513 and then it says, "Maintenance shooting practice
 8 medium risk group." It then gives the institution as being
 9 the East Rand Provincial Training, Gauteng and then it
 10 indicates the result completed to fail. Do you see that?
 11 MR CLASSEN: Yes, I do, Chair.
 12 MR GOTZ: What I just want to ask you is,
 13 how does it come about that Constable Majombozi having
 14 failed his maintenance shooting practice in May of 2012, is
 15 permitted to accompany you on an operation such as the one
 16 that he had to attend on the 16th of August 2012?
 17 MR CLASSEN: Yes, thank you, Chair. I
 18 see that that's the only, that's the last entry that they
 19 have and if he had failed and I knew about it I would not
 20 allow I'm to, but just speaking to that I also know that
 21 just after that he was sent back to go for the use of
 22 firearm, that's also not on record there, that he actually
 23 had to go there for a week due to the fact that he failed
 24 just that shooting and he passed that other one.
 25 MR GOTZ: I would like to understand this

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1 a bit more, Lieutenant-Colonel, you'll see that Constable
 2 Majombozi on that document is reflected as having gone for
 3 maintenance shooting practice medium risk group on a number
 4 of occasions, two to three years prior to that entry of May
 5 2012. We count in the region of ten courses that he has
 6 gone in the two to three years. Is that normal?
 7 MR CLASSEN: Yes, it is.
 8 CHAIRPERSON: Now it looks like an annual
 9 test, I see for what's on the slide at the moment on the
 10 screen, he went to a test, shooting practice medium risk
 11 group on the 6th of November 2009 and he passed or he
 12 completed the course it says. Then he went back a year,
 13 approximately a year later, the 18th of November 2010,
 14 maintenance shooting practice medium risk group, results
 15 uncompleted. He then went the following year but earlier
 16 this time, the 13th of May 2011, maintenance shooting
 17 practice medium risk group and he passed that, completed it
 18 and passed it and then the next one is the one, it is also
 19 relevant I suppose, the 14th of February 2012, maintenance
 20 shooting practice medium risk group, this time he passed,
 21 completed it and passed and then went again three months
 22 later, the 7th of May 2012, that's the reference, that's of
 23 course what Mr Gotz is referring to, and that time he
 24 failed. So what goes on, do you have to go one a year, do
 25 you have to go once a quarter? What happens if you don't

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1 pass, is your firearm taken away, how do these things work,
 2 I don't understand?
 3 MR CLASSEN: Okay, thanks, Mr Chair, it
 4 is a quarterly shooting practice. Quarterly we have to go
 5 and shoot to keep up our skills in shooting and if you
 6 don't pass you either get sent back, like after this one
 7 that he failed here in 2012 on the fifth month, the 7th of
 8 May he was sent back and then he went for a full use of
 9 firearm course which is actually a week. So on this medium
 10 risk group it is only one shooting session where you go for
 11 an hour or so, but after that as I said he went for the
 12 whole shooting thing where –
 13 CHAIRPERSON: For a week, when was that?
 14 MR CLASSEN: A week, it is on the sixth
 15 month.
 16 CHAIRPERSON: June?
 17 MR CLASSEN: In June, in June 2012, in
 18 2012 –
 19 CHAIRPERSON: So a month after the one he
 20 failed he then went back for a whole week course and he
 21 passed that?
 22 MR CLASSEN: That's correct, Mr Chair.
 23 CHAIRPERSON: That was because before the
 24 event at Marikana?
 25 MR CLASSEN: That is correct, Mr Chair.

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1 COMMISSIONER HEMRAJ: What is medium
 2 risk?
 3 MR CLASSEN: Medium risk, okay, let me
 4 just try and explain it. It is more based on, I don't want
 5 to sound a bit bad here but it is more based on the fact
 6 that it is not something so of high quality where you just
 7 shoot at targets, you get into different positions of
 8 shooting, you might be in a prone position, kneeling,
 9 sitting, you know those types of positions.
 10 COMMISSIONER HEMRAJ: And the proficiency
 11 is tested on what type of firearm?
 12 MR CLASSEN: On a 9 millimetre, it can
 13 either be a Z88 Beretta or the PX.
 14 CHAIRPERSON: A pistol, a sidearm?
 15 MR CLASSEN: That's correct, a sidearm
 16 and on the R5.
 17 MR GOTZ: So what you're telling us,
 18 Lieutenant-Colonel, is that this is essentially a target
 19 practice that you as members of the TRT are obliged to
 20 attend every quarter?
 21 MR CLASSEN: That's correct, Mr Chair.
 22 MR GOTZ: And I'm getting, and is the
 23 picture in my mind correct that effectively you're put in a
 24 shooting range, you're told to lift and cock your gun and
 25 then targets will pop out, as it were, from behind

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1 obstacles and you are expected to shoot at them, is that
 2 correct?
 3 MR CLASSEN: Not to the extreme where
 4 targets are popping up, but yes, we shoot at targets.
 5 MR GOTZ: Well, I mean is there a
 6 circumstance where you are trained in a target, as it were,
 7 emerging from behind an obstacle or do you simply see a
 8 static target in a field 50 metres away?
 9 MR CLASSEN: Yes, in this instance it is
 10 a static target 50 metres, 30 metres, 20 metres and so on.
 11 MR GOTZ: And do I understand that the
 12 reason, I think you may have given it already, that you are
 13 asked to attend this just to keep your shooting skills up,
 14 does that mean that this is repeated over and over again to
 15 make sure that you know and understand how to shoot?
 16 MR CLASSEN: That's correct, Chair.
 17 MR GOTZ: It is a bit mystifying to me as
 18 to how one fails a maintenance shooting practice course.
 19 What is the reason for the failure, does one, does
 20 Constable Majombozi just not hit enough targets or what is
 21 the reason for that?
 22 MR CLASSEN: I would not know, I can't –
 23 MR GOTZ: Okay –
 24 MR CLASSEN: - answer that one on his
 25 behalf.

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1 MR GOTZ: Sorry, and just to pick up on
 2 one last aspect, I must say I hadn't seen any reference to
 3 a course that he did in June, but I managed to check that
 4 reference or his training references, training records
 5 again over lunch. If he had not passed the subsequent
 6 course it would not be appropriate for him to have been
 7 involved in the operation on the 16th of August, correct?
 8 MR CLASSEN: That's correct.
 9 MR GOTZ: Is there a standing order to
 10 that effect, that a member who has failed one of these
 11 maintenance training courses should not be permitted to
 12 attend operational duties until such time as they had
 13 attended a subsequent course?
 14 MR CLASSEN: I can't remember the
 15 standing order, I don't know of it but yes, according to me
 16 as his commander I wouldn't allow him to go on such an
 17 operation.
 18 MR GOTZ: Are these the only maintenance
 19 courses that TRT members go on?
 20 MR CLASSEN: No, it is not.
 21 MR GOTZ: What other maintenance courses
 22 do they go on?
 23 MR CLASSEN: There are refresher courses
 24 where you go almost through the whole process that you
 25 started on as a TRT member.

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1 MR GOTZ: Can I ask you this, we have an
 2 interest in the TRT training manuals for the various
 3 courses. Now I understand that in order to join the TRT
 4 you have to go through essentially three modules, the first
 5 module being an urban phase module, the second being a
 6 rural phase module and the third being a firearm's module,
 7 is that broadly correct?
 8 MR CLASSEN: That's correct.
 9 MR GOTZ: And are there training manuals
 10 that apply to each of those phases?
 11 MR CLASSEN: Yes, there are training
 12 manuals that apply to that.
 13 MR GOTZ: And in those training manuals
 14 is the basic training that TRT receives in relation to
 15 various different scenarios set out?
 16 MR CLASSEN: Yes, there are.
 17 MR GOTZ: Chair, just to place on record
 18 that we have asked the SAPS for copies of those training
 19 manuals, we haven't yet received a response as to whether
 20 those could be made available.
 21 CHAIRPERSON: Who did you ask?
 22 MR GOTZ: Well, there was an initial
 23 request quite some time ago when we heard that Lieutenant-
 24 Colonel Classens was to give evidence, which is,
 25 approximately a week ago we reiterated that request.

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1 CHAIRPERSON: Alright.

2 MR GOTZ: I must say –

3 CHAIRPERSON: He is Classen in the

4 singular, but never mind.

5 MR GOTZ: I beg your pardon.

6 CHAIRPERSON: Mr Mathibedi, you heard

7 what Mr Gotz said and will you see to it that, will you ask

8 those instructing you to see to it that Mr Gotz and his

9 team receive the documents they had asked for?

10 MR MATHIBEDI SC: Chairperson, I've

11 indicated to Mr Gotz that Mr Semenya should read those

12 documents because there is an indication from the client

13 that those documents are not made for public consumption.

14 CHAIRPERSON: Well, Mr Gotz is scarcely a

15 member of the public. He is an officer of the court, he is

16 an advocate representing a client before this Commission.

17 It is clearly a matter where any exclusion of the public of

18 access to these manuals doesn't apply. So I suggest you

19 can convey that message to those who instruct you.

20 MR MATHIBEDI SC: Thank you, Mr

21 Chairperson.

22 CHAIRPERSON: Carry on, Mr Gotz.

23 MR GOTZ: Thank you, Chair. Sorry, I

24 didn't want to suggest that there hadn't been any of the

25 discussions that Mr Mathibedi –

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1 CHAIRPERSON: No, I didn't understand

2 that, I just thought that if you hadn't got them, I would

3 try to help you to get them.

4 MR GOTZ: Yes, yes –

5 CHAIRPERSON: So I've done my best.

6 MR GOTZ: Thank you.

7 CHAIRPERSON: Well, not necessary my

8 best, I haven't done my best yet but I've done something to

9 try and help you.

10 MR GOTZ: But I just want to record that

11 my learned friend, Mr Mathibedi, has been speaking to me

12 and cooperating in that regard.

13 CHAIRPERSON: I would have expected

14 nothing else.

15 MR GOTZ: Lieutenant-Colonel Classen, I

16 think that's correctly pronounced now, I would like to move

17 on to the term that you referred to in your witness

18 statements as the rules of engagement. Now you've been

19 asked various questions about this and I don't want to

20 repeat the content of it but perhaps just for recordkeeping

21 or for record purposes, when my learned friend, Ms Pillay

22 was cross-examining you on behalf of the evidence leaders

23 you gave quite a lucid explanation as to what your

24 understanding of the rules of engagement were, if I can

25 give that reference and if you want to see it upon the

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1 screen we can get it. It is 236, page 29604 is the start

2 of the questioning and your explanation appears at 29605

3 where you explained the rules of engagement in your

4 understanding and I'll just read this to you, as I say, -

5 okay, it is 29605, starting at line 3 where you say, "This

6 is how we do things, warn the person –

7 CHAIRPERSON: Okay, first, I think it is

8 only fair to read the previous sentence. "Please just

9 don't go and shoot at people, we are not here to shoot

10 people. This is how we do things, warn the person, shoot

11 into the ground, keep warning the person and then when you

12 see there is something which should happen then go below

13 the knee, but I also added there that, which I doubt, that

14 anything can go wrong." That's the whole passage, isn't

15 it?

16 MR GOTZ: Yes, indeed, thank you, Chair.

17 Now, Lieutenant-Colonel Classen, these rules of engagement,

18 which we've heard about from a number of witnesses and

19 which you describe in those terms in the passage on the

20 screen, are they written down anywhere?

21 MR CLASSEN: Not that I can recall but I

22 cannot actually say that's how they are written but that's

23 what we talked about when we were in training.

24 MR GOTZ: And which training course would

25 reflect or teach you the so called rules of engagement?

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1 MR CLASSEN: I can go to POPS, POPS can

2 also bear this knowledge of the rules of engagement and

3 then we talked about swot courses, that you don't get in

4 the SAPS anymore, those were tactical courses that we used

5 to go on, that we used to refer to as refreshes courses, so

6 –

7 MR GOTZ: Sorry, I didn't mean to

8 interrupt you but I'm particularly interested in the

9 courses that the TRT receives, or the training that the TRT

10 receives. Are you saying that this is not training that

11 the TRT receives, one receives this as a basic training

12 prior to TRT training?

13 MR CLASSEN: It can also come out in

14 basic training because it is a simple rule of engagement,

15 it is what policemen do. You don't just shoot at people.

16 MR GOTZ: Is it something that TRT is

17 specifically trained in?

18 MR CLASSEN: I wouldn't say trained, but

19 know about.

20 MR GOTZ: Yes, but Lieutenant-Colonel

21 Classen, where do they get their knowledge from, is it

22 because they have received prior basic training as police

23 people or is it because of the fact that they received

24 training as members of the TRT.

25 MR CLASSEN: Basic police training,

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1 that's also in basic police training where you have to know
 2 those rules of engagement.
 3 MR GOTZ: Do I understand from that that
 4 when one joins the TRT one does not receive a specific
 5 training or instruction as to the rules of engagement.
 6 [12:55] CAPTAIN CLASSEN: No, not that I know of.
 7 MR GOTZ: Despite the fact that you have
 8 set out in, as I indicated, relatively clear terms what
 9 your understanding of the rules of engagement were, what is
 10 quite interesting is that Captain Loest, when I asked him
 11 the same question, reflected a quite different
 12 understanding and perhaps for that purpose we can go to the
 13 transcript on day 230 on page 28453. I beg your pardon,
 14 well, in fairness, 28453 and we can start at line 22,
 15 21/22. You'll see from the context, Lieutenant-Colonel
 16 Classen, that what I'm doing here is I am reading two
 17 Captain Loest the paragraph from your statement where you
 18 explain that you called your members, accompanied by PH,
 19 TRT and Soweto TRT to be briefed. You told them what the
 20 plan was and that if anything should go wrong, the rules of
 21 engagement to be considered strictly and then I say, "I
 22 wanted to ask you what your understanding is of the rules
 23 of engagement to which Lieutenant-Colonel Classen refers.
 24 Do you know what those are?" And Captain Loest says, and
 25 this is at 28454 line 3, "According to my knowledge, that

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1 was what I explained yesterday, that we would have a
 2 standoff and we would stay in our positions unless we are
 3 being attacked and then each member would then act in self-
 4 defence." And then I asked him, "Are the rules of
 5 engagement which he says need to be considered strictly,
 6 are those written down for the members anywhere?" And he
 7 says, "According to my
 8 12 knowledge, no, not that I know of." Do you
 9 see, Lieutenant Classen, that the explanation that he gives
 10 or his understanding of rules of engagement is quite
 11 different from yours. He doesn't say one gives a verbal
 12 warning first, then a warning shot, then constantly telling
 13 the person being warned – well, as you put it, keep warning
 14 the person and then when you see that something could
 15 happen then go below the knee, which is effectively shoot
 16 below the k nee. He reflects none of that, do you see
 17 that?
 18 COLONEL CLASSEN: Yes, I can see that.
 19 MR GOTZ: He's got a very different
 20 understanding of what the rule –
 21 CHAIRPERSON: I don't know if it's fair
 22 to say it's a totally, a very different understanding. The
 23 question is, what does he understand by the words "then
 24 each member would then act in self-defence?" It's possible
 25 – I don't want to suggest answers to anybody but it's

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1 possible that his understanding of the rules of engagement
 2 as expressed in the passage I've read may not be very
 3 different from what the witness has spelt out in his
 4 explanation. So I don't think you can put it that it's
 5 completely or a totally different or fundamentally
 6 different understanding of the rules. I think, I don't
 7 want to stop you following this line but I think the
 8 question should be reformulated.
 9 MR GOTZ: Let me see whether I can
 10 rephrase the question. Do you see that when I say to
 11 Captain Loest, "Do you know what the rules of engagement
 12 are," what he seems to be saying is his knowledge and
 13 understanding of what the instructions on the day were. He
 14 is not talking there about rules of engagement in the sense
 15 of principles of the way in which a member of the SAPS
 16 ought to deal with a situation where one is called upon to
 17 act in this way. Do you see that, Lieutenant-Colonel
 18 Classen?
 19 COLONEL CLASSEN: Just speak up? I
 20 couldn't hear you there, sir.
 21 MR GOTZ: I beg your pardon, let me
 22 repeat the question. The way I read Captain Loest's
 23 explanation of the rules of engagement, he is talking about
 24 his understanding of the instruction on that particular
 25 day. So what he says, my knowledge, that was what I

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1 explained yesterday, we would have a stand-off and we would
 2 then stay in our positions unless we are being attacked and
 3 then each member would then act in self-defence. He seems
 4 to be talking not about a principle which is applied
 5 generally in various different circumstances, but he is
 6 talking about the instruction which he understood members
 7 needed to adhere to on the day. Would you agree with that?
 8 COLONEL CLASSEN: I agree with that but I
 9 also need to add that Captain Loest is just putting it
 10 straightforward where I am getting the members into
 11 understanding that don't just do anything, wait, warn and
 12 then go over to action.
 13 MR GOTZ: You see, Lieutenant-Colonel
 14 Classen, what he is talking about when he says "that was
 15 what I explained yesterday," is his understand of what the
 16 TRT would do in order to back up POPS and you can see that
 17 in the transcript of day 229 and the reference is 28313 and
 18 we can start at line 15 where my learned friend Ms Baloyi
 19 says to Captain Loest, "What was your briefing to your
 20 members?" And Captain Loest says, "That the members would
 21 at some stage get an instruction to form up and form a
 22 basic line and if at some stage things would happen that
 23 the POPS line would be broken and the protesters would come
 24 through, we would stand our ground and not act at all. We
 25 will not get a command to do anything but just to stay in a

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1 basic line and to keep the protesters at bay." So
 2 effectively what Captain Loest is explaining is that the
 3 instruction that he gave to his members and what we will
 4 argue his understanding of the rules of engagement were,
 5 was that the TRT members, if the POPS line was broken by
 6 the strikers, that the TRT line would simply have a stand-
 7 off or would stand their ground and not act at all. Do you
 8 see that?
 9 COLONEL CLASSEN: Yes, I do.
 10 MR GOTZ: So the briefing that he gave to
 11 his members is, I would submit and we will argue, quite
 12 different from the one that you gave to your members,
 13 correct?
 14 COLONEL CLASSEN: That's correct.
 15 MR GOTZ: Chair, I see it's three minutes
 16 past one.
 17 CHAIRPERSON: We'll adjourn now for
 18 lunch. We will resume at quarter to two.
 19 [COMMISSION ADJOURNS COMMISSION RESUMES]
 20 [13:47] CHAIRPERSON: The Commission resumes.
 21 Lieutenant-Colonel, you're still under oath. Mr Gotz?
 22 LITTLE JOE RONNY CLASSEN: (s.u.o.)
 23 CROSS-EXAMINATION BY MR GOTZ (CONTD.):
 24 Thank you, Chair. If we may revert to the passage that we
 25 had on screen just prior to lunch, it was on day 229,

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1 transcript 28313 from line 17. If you'd just have a look
 2 at that again, Lieutenant-Colonel Classen, and look at that
 3 and tell me this, in which of the TRT modules, training
 4 modules are TRT members trained to stand their ground and
 5 not act at all when a large group of people armed with
 6 dangerous weapons is moving towards them?
 7 COLONEL CLASSEN: I don't know of such
 8 manual.
 9 MR GOTZ: I beg your pardon?
 10 COLONEL CLASSEN: I do not know of such
 11 manual.
 12 MR GOTZ: What you're telling us is that
 13 TRT members are not trained to stand their ground and not
 14 act at all when a large group of people armed with
 15 dangerous weapons are moving towards them, correct?
 16 COLONEL CLASSEN: That's correct.
 17 MR GOTZ: What you're effectively telling
 18 us is that Captain Loest gave an instruction to his members
 19 of the TRT to do something, to act in a particular way for
 20 which they have received no training, correct?
 21 COLONEL CLASSEN: I wouldn't say correct
 22 but that's what he said.
 23 MR GOTZ: Isn't that the necessary
 24 implication of the evidence that you're telling us?
 25 COLONEL CLASSEN: Just repeat that

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1 please, sir?
 2 MR GOTZ: Lieutenant-Colonel Classen,
 3 you've just told us that the TRT do not receive training to
 4 stand their ground and not act at all when a group of
 5 people armed with dangerous weapons is approaching them,
 6 correct?
 7 COLONEL CLASSEN: That's what I said.
 8 MR GOTZ: We hear from Captain Loest that
 9 that's precisely the instruction that he gave to his
 10 members, do you see that?
 11 MR GOTZ: It follows that Captain Loest
 12 gave an instruction to his members to act in a way which
 13 they are not trained to act in at all, correct?
 14 COLONEL CLASSEN: Yes. It's therefore
 15 that I said yes, I see him saying that but instructions are
 16 given in whatever way he sees it, so if that's how he saw
 17 it I will go with it.
 18 MR GOTZ: Now, I think we can argue the
 19 point. Lieutenant –
 20 CHAIRPERSON: Sorry, Mr Gotz, if I could
 21 just interpose. What Captain Loest said, you won't get a
 22 command at all, you must just stand your ground, not act at
 23 all, you won't get a command to do anything but – I'm
 24 quoting now – "but just to stay in a basic line and to keep
 25 the protesters at bay." Now how do you keep them at bay?

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1 What, if you don't get a command as to what to do, you must
 2 just stay in a basic line – well, that's easy I suppose,
 3 stay in a line – and keep the protesters at bay. Now what,
 4 how do you do that? If the protesters, as they are called,
 5 are minded to come through and they've got weapons and
 6 they're not minded to hand them over, then how do you keep
 7 them at bay and don't you need some kind of instruction as
 8 to what to do? I could understand if there was basic
 9 training that you get when you join the TRT in a course
 10 called "Keeping protesters at bay, how to do it" then it's
 11 enough just to say that but if there isn't such a course
 12 and no such instruction, what is the TRT member to do when
 13 he has stayed in the basic line but the protesters don't
 14 want to be kept at bay? How does he, what does he do?
 15 COLONEL CLASSEN: Yes, Mr Chair, it's
 16 therefore that I also saw that he added somewhere within
 17 the transcript where he said that only in self-defence must
 18 these guys or the members act. Keeping them at bay I can
 19 only say the mere presence as a force multiplier should
 20 have been sufficient for the members not to come towards
 21 us. That is how I saw it, I see it, sorry.
 22 MR GOTZ: Lieutenant-Colonel Classen, I
 23 may come back to this point in the light of answers that
 24 you may give in response to further questions but can we
 25 move on? I asked you over the weekend to have a look at a

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1 presentation that we've prepared called "The movement
 2 around," "of the protesters around the small kraal." It's
 3 exhibit RRR14, if we can have that up on screen. Now
 4 Lieutenant-Colonel Classen, I don't want to spend a great
 5 deal of time with this presentation with you because we
 6 have put it to other witnesses but let's have a look at –
 7 did you get an opportunity to look through this
 8 presentation over the weekend?
 9 COLONEL CLASSEN: Yes, I did.
 10 MR GOTZ: And was there anything that
 11 struck you as being incorrect in the presentation?
 12 COLONEL CLASSEN: Well, I don't know
 13 about incorrect, I just looked at it. I didn't look at it
 14 on the basis of something being incorrect.
 15 MR GOTZ: Well, can we look at page 4 of
 16 the presentation? What we've done in this presentation is
 17 identified the time when the call to form the basic line by
 18 the TRT members is heard for the first time and we've
 19 identified that time as 15:52:32. Now Lieutenant-Colonel
 20 Classen, you will know by now that the TRT volley, as we
 21 commonly refer to it, commenced at 15:53:50 and so we hear
 22 the call to form the basic line from the TRT, on our
 23 calculations, one minute and 18 seconds before the TRT
 24 line. Do you see that?
 25 COLONEL CLASSEN: I do, Mr Chair.

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1 MR GOTZ: Do you have any basis on which
 2 to dispute that?
 3 COLONEL CLASSEN: No, I don't.
 4 MR GOTZ: And then what we also hear on
 5 exhibit JJJ194.16, eight seconds later at eTV time 15:52:40
 6 the media is ordered to go away. So what one hears on a
 7 loudhailer is the media being told "Go away" and the exact
 8 words are "Media, go away, go away, go away" and that point
 9 is repeated a little while later on the audio of the clip.
 10 Lieutenant-Colonel Classen, what I want to ask you is
 11 whether you heard at the time that you were forming the
 12 basic line, someone from SAPS telling the media to go away?
 13 COLONEL CLASSEN: No, I did not hear
 14 anybody saying that.
 15 MR GOTZ: Given the fact that the media
 16 was told to go away more than a minute before the TRT
 17 opened fire, you would agree with me that there was ample
 18 opportunity for the person using the loudhailer to also say
 19 to the strikers, stop, put down your weapons, don't come
 20 any closer. Correct?
 21 COLONEL CLASSEN: Just repeat that
 22 please, sir?
 23 MR GOTZ: Given the fact that the media
 24 is told on a number of occasions "Go away" by means of a
 25 loudhailer more than a minute before the TRT opened fire,

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1 you would agree with me that there is ample opportunity for
 2 strikers to be told, stop, put down your weapons, don't
 3 come any closer.
 4 COLONEL CLASSEN: I would agree with it
 5 but as I said to you, I did not hear the person saying that
 6 on that day.
 7 CHAIRPERSON: We understand you didn't
 8 hear the media being told to go away but it's audible on
 9 the video.
 10 COLONEL CLASSEN: On the video, yes sir.
 11 CHAIRPERSON: And it's over a minute
 12 before the volley.
 13 COLONEL CLASSEN: Correct.
 14 CHAIRPERSON: So clearly the person who
 15 gave that instruction to the media did so for a reason and
 16 the reason I would – maybe we could find out who it was but
 17 the obvious reason, I would think, is it's not safe for the
 18 media to stay because something is going to happen, right?
 19 So some event which necessitated telling the media to go
 20 away was anticipated to be likely to happen soon. Do you
 21 agree with that?
 22 COLONEL CLASSEN: I agree with it.
 23 CHAIRPERSON: Now what Mr Gotz says,
 24 well, if that is so and some event of that kind was
 25 anticipated as being likely to happen, there would have

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1 been time for that same person to have said, given, sent a
 2 message to the approaching strikers that they must go away
 3 and turn around and not proceed further and they didn't do
 4 that. That's your point, is it?
 5 MR GOTZ: Exactly, Chair.
 6 CHAIRPERSON: Well, I mean the witness
 7 obviously can only agree with you that that didn't happen
 8 but I don't know what – ja, there was sufficient
 9 opportunity for it to be done, do you agree with that?
 10 COLONEL CLASSEN: Yes, I agree that there
 11 was sufficient –
 12 CHAIRPERSON: That's your point, is it?
 13 MR GOTZ: Yes indeed. Can we look at
 14 exhibit JJJ197 which is a short clip which shows the TRT
 15 forming up? Well, perhaps I should ask you the question
 16 before I give the answer. So let's have a look at JJJ197.
 17 CHAIRPERSON: Does it need a warning?
 18 MR GOTZ: No, it doesn't at all, Chair.
 19 CHAIRPERSON: No, I see. I understand
 20 it's only the Provincial Commissioner speaking at half past
 21 nine in the morning so we don't need a warning for that?
 22 MR GOTZ: That's a relatively short part
 23 of the clip. There's actually, the relevant part comes in
 24 a couple of seconds afterwards, Chair.
 25 CHAIRPERSON: It's one that necessitates

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1 a warning?

2 MR GOTZ: No, none at all.

3 CHAIRPERSON: Alright, I won't give one

4 then.

5 MR GOTZ: So if we can play the clip.

6 [VIDEO IS SHOWN]

7 MR GOTZ: Perhaps we can play that

8 relevant portion again which is after the Provincial

9 Commissioner gives her speech. I see on the big screen

10 it's relatively dark and, Lieutenant-Colonel Classen, to be

11 fair it may be useful for you to look at one of the smaller

12 screens so if we can play it again. I'll tell the operator

13 just to pause at one of the relevant points so –

14 CHAIRPERSON: Let's put on record the

15 relevant time -

16 MR GOTZ: I will do so.

17 CHAIRPERSON: - at which you're telling

18 the operator to stop so that – at the moment we're looking

19 at, it was 03, now it's 04. When must the operator stop?

20 MR GOTZ: Well, if we can just play the

21 clip and I'll tell him when to stop.

22 [VIDEO IS SHOWN]

23 MR GOTZ: If we can stop there. Now

24 Lieutenant-Colonel Classen, that, if I can assist you, is a

25 view of Nyala 4 having just reached the corner of the kraal

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1 having deployed its barbed wire. Would you agree with

2 that?

3 COLONEL CLASSEN: Yes, I would agree with

4 that.

5 MR GOTZ: And you can see on the other

6 side of Nyala 4 the strikers moving around the kraal,

7 correct?

8 COLONEL CLASSEN: That's correct, Mr

9 Chair.

10 MR GOTZ: Now if we can just go a little

11 bit further, play on, the camera then pans, seeing the POPS

12 Nyalas and then if we can simply stop there, that'll be

13 correct.

14 CHAIRPERSON: It's 00:11.

15 MR GOTZ: At that point in time, and you

16 would have heard the person speaking say that specialised

17 military units were called in – I'm not sure that the TRT

18 would necessarily qualify as that – would you agree with me

19 that the people on the screen are the TRT, some of the TRT

20 members moving up?

21 COLONEL CLASSEN: Are you referring to

22 the people that I see right now on screen?

23 MR GOTZ: Yes, indeed.

24 COLONEL CLASSEN: Then it's just got to

25 play a little bit so I can just see whether their helmets

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1 are the same as ours. No, those are POPS members.

2 MR GOTZ: Okay, I'm happy to accept that.

3 Were you in front of those POPS members or behind them,

4 Lieutenant-Colonel Classen?

5 COLONEL CLASSEN: Behind the POPS

6 members.

7 MR GOTZ: And how far behind them were

8 you?

9 COLONEL CLASSEN: Well, we were still

10 running towards them so I wouldn't be able to estimate.

11 MR GOTZ: Well, on our assessment you

12 were very – at this point in time you were probably 20 to

13 25 metres behind them, would that be a fair assessment?

14 COLONEL CLASSEN: It is possible.

15 MR GOTZ: You, at this point in time,

16 have been told that you must move up, correct?

17 COLONEL CLASSEN: That's correct, Mr

18 Chair.

19 MR GOTZ: And you are moving up in the

20 same direction as these POPS members towards the kraal,

21 correct?

22 COLONEL CLASSEN: That's correct, Mr

23 Chair.

24 MR GOTZ: If these are POPS members then

25 the person not wearing a helmet but carrying an R5 is

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1 likely to be Warrant Officer Kuhn, correct?

2 COLONEL CLASSEN: It looks like him.

3 CHAIRPERSON: Tell me where is – have you

4 got a pointer? Can you point Warrant Officer Kuhn to us

5 because I don't see him?

6 MR GOTZ: As I understand it, I can –

7 sorry, this is – Chair, out of those grouping of people, my

8 eyes are not that great but there is a gentleman who is not

9 wearing a helmet but has got a Captain on who is carrying

10 an R5 rifle, in our assessment. Yes indeed, so it'll be

11 that gentleman.

12 CHAIRPERSON: There's a group of SAPS

13 members on the screen, six of them walking one behind the

14 other more or less and it's the second from the left I

15 think is the person referred to. Is that correct, Mr Gotz?

16 MR GOTZ: Yes indeed, Chair. Then can we

17 look at the position a couple of seconds later – Chair,

18 perhaps I can reflect that, we haven't yet been able to

19 identify precisely the time, the eTV time of this video so

20 we do know that it is after the Nyala 4 has deployed its

21 barbed wire and as the TRT and POPS lines are moving up

22 towards the kraal but we are unable at this point to

23 identify precisely what the time is. I just wanted to

24 place that, to place that on record. I want to move them

25 to the strikers moving around the edge of the kraal and for

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1 that purpose can we look at JJJ194.16? Lieutenant-Colonel
 2 Classen, we don't have to look at the entire clip but what
 3 I did want to highlight – sorry, just from the beginning
 4 portion of this – that those two Nyalas that you see racing
 5 around the kraal are likely to be the same Nyalas that we
 6 saw racing around the kraal in the previous clip JJJ197,
 7 correct?
 8 COLONEL CLASSEN: It is difficult to tell
 9 but yes, I would agree.
 10 MR GOTZ: If we can then forward the
 11 video to one minute and four seconds and if we can just
 12 play that.
 13 CHAIRPERSON: Do we know what time this
 14 is, Mr Gotz?
 15 MR GOTZ: Yes Chair, at one minute and
 16 four seconds it's 15:53:17.
 17 CHAIRPERSON: Thank you.
 18 MR GOTZ: I think that the operator has
 19 got the video on slow motion. I wanted to make the point
 20 that the strikers are moving slowly but that seems to
 21 exaggerate the point that I wanted to make.
 22 CHAIRPERSON: It's now been put on
 23 normal.
 24 MR GOTZ: Now Lieutenant-Colonel Classen,
 25 at this point in time the strikers have moved around the

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1 kraal and they are approaching what we know as the northern
 2 edge of the small kraal. Did you see them approaching in
 3 that direction?
 4 COLONEL CLASSEN: Yes, I did.
 5 MR GOTZ: You at this point in time have
 6 already formed the basic line, correct?
 7 COLONEL CLASSEN: That's correct.
 8 MR GOTZ: You're all, in other words you
 9 are all lined up where you are ultimately lined up when, as
 10 we put it, the TRT volley erupts, correct?
 11 [14:07] COLONEL CLASSEN: That's correct.
 12 MR GOTZ: You saw the strikers moving
 13 slowly towards the kraal, correct?
 14 COLONEL CLASSEN: I've seen that.
 15 MR GOTZ: Again at this point in time at
 16 15:53:17, which is some 30 seconds before the TRT – sorry,
 17 before the TRT volley, you would agree with me that there
 18 is an opportunity to tell the strikers do not come any
 19 closer, effectively to give them a warning, correct?
 20 COLONEL CLASSEN: That's correct.
 21 CHAIRPERSON: 33 seconds, isn't it?
 22 Wasn't the volley at –
 23 MR GOTZ: Indeed, 33 seconds.
 24 CHAIRPERSON: So this is 17. So it's 33
 25 seconds.

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1 MR GOTZ: 33 seconds before the TRT
 2 volley. So what happens next, Lieutenant-Colonel Classen,
 3 is that the strikers reach the edge of the kraal and as
 4 that happens you would have seen no doubt that the Nyalas
 5 move up in a line, as it were, creating a corridor between
 6 the Nyalas and the kraal, correct?
 7 COLONEL CLASSEN: That's correct.
 8 MR GOTZ: At that moment in time, and
 9 perhaps what we can do to illustrate the point is show the
 10 first couple of seconds of JJJ194.17, there are a number of
 11 POPS members outside of their Nyalas. Did you see that?
 12 Did you see the POPS members outside of their Nyalas?
 13 COLONEL CLASSEN: Yes, the –
 14 CHAIRPERSON: On this one we can see one.
 15 This slide we can see one member.
 16 MR GOTZ: Indeed, and Lieutenant –
 17 CHAIRPERSON: I think there's another
 18 slide showing two, but this particular slide shows one.
 19 MR GOTZ: Yes. Can you give us a sense
 20 of the number of POPS members who are outside of their
 21 Nyalas at this point in time? And just to give you a
 22 reference, this is 15 seconds before the TRT opens fire,
 23 the TRT volley.
 24 COLONEL CLASSEN: Is this according to
 25 what we see now, or –

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1 MR GOTZ: No, I'm asking, I'm
 2 particularly interested in what you saw, Lieutenant-Colonel
 3 Classen. How many POPS members did you see outside of
 4 their Nyalas?
 5 COLONEL CLASSEN: I can't recall how many
 6 there were, but there were a few.
 7 MR GOTZ: There were a few. Did you see
 8 any of the strikers make any movement towards the POPS
 9 members who were situated on this side of the Nyalas here?
 10 COLONEL CLASSEN: Coming towards the
 11 Nyalas as it's standing now, or in –
 12 MR GOTZ: Yes, in other words – sorry,
 13 just to be clear, you can see at the moment there's a POPS
 14 Casspir on the right-hand side of the screen and there's a
 15 Nyala on the left-hand side of the screen. Did you see any
 16 movement by the strikers towards the POPS members who are
 17 standing between the Nyala and the POPS Casspir?
 18 COLONEL CLASSEN: Okay, I just want a bit
 19 of clarity. Are you referring to now as it happens now, or
 20 then? Or where I'm seeing on the screen right now?
 21 MR GOTZ: Well, again I'm particularly
 22 interested in your perceptions and what you saw. We'll
 23 argue on the basis of the objective evidence that there
 24 wasn't any movement of the strikers towards the POPS
 25 people, in other words that there was no attack on the POPS

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1 members by the strikers. But I was interested in your
 2 impressions.
 3 COLONEL CLASSEN: Sir, from where I was
 4 standing I could not see the miners coming towards the POPS
 5 members from where I was. In other words if I was on the,
 6 where the Casspir was on the right-hand side, they were not
 7 coming towards me and the POPS members that are this side,
 8 but the POPS members were all spread out in a line, as you
 9 see how the Nyalas are moving.
 10 MR GOTZ: Now let's then move to exhibit
 11 RRR17, which is really from the TRT's perspective what one
 12 sees as the strikers round the edge of the kraal and move
 13 towards the TRT line. So just to orientate ourselves,
 14 Lieutenant-Colonel Classen, what we see here is the line of
 15 TRT members. You've got Captain Loest on the left-hand
 16 side with the funny looking helmet. We understand that the
 17 person in the middle is Constable Erasmus. We're not quite
 18 sure who the person to his right is, and you are on the far
 19 right of this line, correct?
 20 COLONEL CLASSEN: That's correct, Mr
 21 Chairman.
 22 MR GOTZ: The Nyala that you see above
 23 Constable Erasmus's head, that is Papa4, correct? Well,
 24 I'm not sure that you know that, but it's not yet moved
 25 into position. Did you see that Nyala move into position?

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1 COLONEL CLASSEN: Yes, I did see the
 2 Nyala move into position.
 3 MR GOTZ: And the Nyala to its left is
 4 the Nyala known as Papa19 only because it's got Papa19
 5 sprayed on its roof, but it is actually Papa10. That is at
 6 this point stationary. Did you see that vehicle being
 7 stationary at this point in time?
 8 COLONEL CLASSEN: Yes, I did.
 9 MR GOTZ: So it seems to us that at this
 10 point in time the gap between Papa, what is Papa5 and the
 11 Nyala in front of it is sufficiently large for you to be
 12 able to see the strikers through that gap, correct?
 13 COLONEL CLASSEN: That's correct, Mr
 14 Chairman.
 15 MR GOTZ: But as the time elapses, that
 16 gap gets closed off, correct?
 17 COLONEL CLASSEN: I wouldn't say closed
 18 because I can't really recall that.
 19 MR GOTZ: Well, we can see it happening,
 20 if you want, and I'm not suggesting that it gets closed off
 21 completely, but certainly the gap between the Nyala that
 22 you see on the far right and the Nyala that you see above
 23 Constable Erasmus's head, that gap gets closed as that
 24 Nyala moves up into the line, correct?
 25 COLONEL CLASSEN: Okay.

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1 MR GOTZ: Did you say correct?
 2 COLONEL CLASSEN: I'm just saying okay
 3 because I'm not certain about that.
 4 MR GOTZ: Okay. Well, we can watch the
 5 video and see that that, and watch how that happens. So if
 6 we can play the video from this point, and what I'll ask,
 7 it's now 15:53:28. What I –
 8 CHAIRPERSON: Any warning needed?
 9 MR GOTZ: Chair, I'm going to stop it
 10 just before the – I'm going to ask the operator to stop at
 11 15:53:48.
 12 CHAIRPERSON: That's two seconds before
 13 the volley.
 14 MR GOTZ: That's two seconds before the –
 15 Chair, perhaps a warning is in order, just in case the
 16 finger slips and we're not able to catch it at that, so –
 17 CHAIRPERSON: We're going to see a video
 18 which may well contain images of the people at scene 1
 19 being shot down on the 16th of August 2012. The friends and
 20 relations and loved ones of those people may find these
 21 images are likely to cause them emotional distress and
 22 pain, and I will ask that this video not be shown until 30
 23 seconds have expired from the time I have stopped speaking
 24 to give anyone who wishes to leave the chamber before the
 25 video is shown the opportunity to do so. The 30 seconds

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1 start now. 30 seconds have expired. The video may be
 2 shown.
 3 [VIDEO IS SHOWN]
 4 MR GOTZ: You see at this point that
 5 Nyala that we've identified as Papa5 then moves up. The
 6 Nyala which is marked Papa19 on its roof then follows and -
 7 if we can stop it there - and do you see that that Nyala at
 8 approximately 15:53:48 has moved up into its position? If
 9 we can just rewind it slightly, the video? You see that
 10 Nyala Papa19, also known as Papa10, has moved up off the
 11 road where it was previously behind Papa5. Did you see
 12 that happening, Lieutenant-Colonel Classen?
 13 COLONEL CLASSEN: I do, Chair.
 14 MR GOTZ: What I mean when I – perhaps
 15 that question is ambiguous. Did you see it happening on
 16 the day?
 17 COLONEL CLASSEN: No, I wasn't paying
 18 attention to the Nyala. I was paying attention to the
 19 miners.
 20 MR GOTZ: Well, that's the point I want
 21 to get to because the point is that at this point,
 22 15:53:48, your view of the strikers is in fact from where
 23 you are sitting, where you are standing rather, is in fact
 24 obscured, correct?
 25 COLONEL CLASSEN: That's correct, but

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1 it's temporarily, I think.

2 MR GOTZ: Yes, I'm not suggesting that in

3 a second or so they wouldn't pop out into view, but at this

4 point in time your view of the strikers is obscured,

5 correct?

6 COLONEL CLASSEN: That's correct.

7 MR GOTZ: And in fact depending upon

8 where you are in the line, a TRT member's view of the

9 strikers may be obscured for quite a bit of this 10 second

10 - of this period, correct?

11 COLONEL CLASSEN: Correct, but also

12 bearing in mind that these guys are stretched. They're not

13 just bundling on one bundle, they are stretched.

14 MR GOTZ: When you say they're stretched,

15 you mean that they are stretched out in a line, correct?

16 COLONEL CLASSEN: Yes, in a line, but

17 also bundled.

18 MR GOTZ: I beg your pardon?

19 COLONEL CLASSEN: They are, yes, in line,

20 but they are bundled.

21 MR GOTZ: Bundled?

22 CHAIRPERSON: They are in a line and

23 bundled, he says.

24 MR GOTZ: Okay.

25 COMMISSIONER HEMRAJ: Ja, in a group, but

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1 spread out.

2 COLONEL CLASSEN: That's correct, Chair.

3 CHAIRPERSON: [Microphone off, inaudible]

4 MR GOTZ: That line stretches some 40 or

5 50 metres down the road, does it not?

6 COLONEL CLASSEN: I wouldn't be able to

7 tell.

8 MR GOTZ: It is quite some distance.

9 We're not talking five metres. It's a lengthy line,

10 correct?

11 COLONEL CLASSEN: That's correct.

12 MR GOTZ: Have you ever been in a line

13 that long before, Lieutenant-Colonel Classen?

14 COLONEL CLASSEN: Yes, I have been.

15 MR GOTZ: In what circumstances? In

16 circumstances similar to this?

17 COLONEL CLASSEN: Are you referring to

18 the miners, or right there at that instance there, because

19 we were also in line there.

20 MR GOTZ: Let me move on, Lieutenant-

21 Colonel Classen. I'm not sure that the point is that

22 relevant. Can I ask you this; the people in the front of

23 that line, there we saw Captain Loest, Captain Loest has

24 identified Sergeant Browning and various other members.

25 They have a relatively good view of the strikers, do they

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1 not?

2 COLONEL CLASSEN: I would think so.

3 MR GOTZ: I beg your pardon?

4 COLONEL CLASSEN: Yes, I would think so

5 because –

6 MR GOTZ: You would think so.

7 COLONEL CLASSEN: Yes.

8 MR GOTZ: Sorry, I'm having difficulty

9 hearing you and perhaps you're having difficulty hearing

10 me. But when you spoke about the rules of engagement,

11 Lieutenant-Colonel Classen, one of the first principles

12 that you identified is that a warning must be given to the

13 people who may be approaching you, correct?

14 COLONEL CLASSEN: That's correct.

15 MR GOTZ: That would be an oral warning,

16 a shout to say stop, don't come any closer, correct?

17 COLONEL CLASSEN: That's correct.

18 MR GOTZ: That warning would ordinarily

19 be given perhaps in a language that the strikers would

20 understand, correct?

21 COLONEL CLASSEN: It depends on the

22 situation, once more.

23 MR GOTZ: There was, you would agree with

24 me, a 10, probably a 10 to 15 second window for members in

25 the TRT line to shout such a warning to the strikers as

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1 they approached them, correct?

2 COLONEL CLASSEN: Correct.

3 MR GOTZ: No such warning shout was in

4 fact given, correct?

5 COLONEL CLASSEN: Not that I know of.

6 MR GOTZ: I'd also like to then play the

7 video from 14 seconds, which is from 15:53 and probably

8 around 42, with the sound up. If we can just go back one

9 second. Now this is, if we can play it with the sound,

10 this is approximately eight seconds, we can go back further

11 if you like, Lieutenant-Colonel Classen, but this is a

12 convenient point. With the sound up, and I'd simply ask

13 you to close your eyes and listen to the soundtrack and

14 identify the point at which you hear any warning shot being

15 fired at the strikers. And what I mean by warning shot –

16 CHAIRPERSON: If he has his eyes closed,

17 how would he be able to distinguish a warning shot simply

18 by hearing it?

19 MR GOTZ: Well –

20 CHAIRPERSON: A shot is a shot, surely.

21 MR GOTZ: Well –

22 CHAIRPERSON: I can understand if he sees

23 it, he could see the direction of the shot, he can see

24 what's being fired and so on, but the difficulty I would

25 have thought to identify a warning shot if you have got

Page 29878

1 your eyes closed.

2 MR GOTZ: Well, Lieutenant-Colonel

3 Classen, let's unpack that a little bit. We put the

4 questions to Captain Thupe and I'll put the same questions

5 to you. You would agree with me that a warning shot to be

6 a true warning shot must be a shot which gives the person

7 being warned some opportunity to change their course of

8 conduct, in other words to surrender or change their

9 direction or stop running towards you, correct?

10 COLONEL CLASSEN: That's correct.

11 MR GOTZ: And so one would expect then

12 before a volley of shots rings out from the TRT to hear or

13 see some shot being fired some perhaps five, six, maybe

14 four seconds before the TRT volley rings out, which gives

15 the strikers an opportunity to change their conduct,

16 correct?

17 COLONEL CLASSEN: That's correct.

18 MR GOTZ: So we can do it my way, or you

19 can look at the video and I'd like you to see whether you

20 can identify whether or not such a warning shot was in fact

21 fired before the TRT volley commenced. So let's play the

22 video.

23 [VIDEO IS SHOWN]

24 Lieutenant-Colonel Classen, wouldn't you agree

25 that there wasn't in fact any warning shot that was fired

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1 at the strikers before the TRT volley commenced, correct?

2 COLONEL CLASSEN: I would agree, and also

3 add that I don't think it was needed then because there was

4 two shots fired before the volley.

5 MR GOTZ: No, Lieutenant-Colonel Classen,

6 the two shots that are fired before the volley, I'm not

7 sure which you're referring to. There are two shots that

8 are fired by Warrant Officer Kuhn, and that is what one

9 hears in the millisecond prior to the TRT, millisecond

10 before the TRT volley rings out. Are those the two shots

11 that you're referring to?

12 COLONEL CLASSEN: Negative, no.

13 MR GOTZ: The only other two shots that I

14 know of are shots that you have alleged came from the

15 strikers. That's in terms of one of the paragraphs of your

16 witness statement, I think it's paragraph 11 of your

17 witness statement where you say – I beg your pardon, sorry.

18 Paragraph 10, the last sentence of your witness statement

19 where you say two shots were fired by the strikers. Are

20 those the shots that you are referring to?

21 COLONEL CLASSEN: That's correct.

22 MR GOTZ: Did you see those shots being

23 fired?

24 COLONEL CLASSEN: No, I did not see the

25 shots being fired.

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1 MR GOTZ: You can't dispute our analysis

2 that only one of the shots was fired by the strikers?

3 COLONEL CLASSEN: I can't dispute, but I

4 know what I heard.

5 MR GOTZ: Well, you heard two shots

6 coming from that direction, correct?

7 COLONEL CLASSEN: That is what I heard,

8 Sir.

9 MR GOTZ: You also said in response to a

10 question by Commissioner Hemraj that you saw POPS members

11 firing in front of you, correct?

12 COLONEL CLASSEN: That's correct, firing

13 rubber bullets.

14 MR GOTZ: Did you see, there was a

15 Warrant Officer Mthimkulu who we know fired three shots.

16 He fired shots from a direction directly in front of you.

17 COLONEL CLASSEN: No, not that I know of.

18 Warrant Officer Mthimkulu? No.

19 MR GOTZ: But let's return to the

20 principle. You're not seriously suggesting, Lieutenant-

21 Colonel Classen, that because of the fact that you heard

22 two shots coming from some distance in front of you - 30 to

23 40 metres - 10 seconds before you opened fire, that there

24 was no need to comply with what you said were the sensible

25 rules of engagement?

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1 COLONEL CLASSEN: Sir, you say 10 seconds

2 before that. I don't think it was 10 seconds.

3 MR GOTZ: Well, we know as a matter of

4 fact, and the evidence in this Commission is in fact that

5 those shots were fired 10 seconds before the TRT opened

6 fire?

7 [14:26] MR CLASSEN: Well, that's not what I

8 heard there. That is not what I heard, sorry Sir.

9 MR GOTZ: According to you how many

10 seconds before was it, 12 seconds?

11 MR CLASSEN: No, that's not what I said.

12 MR GOTZ: Sorry, I'm asking you a

13 question.

14 MR CLASSEN: Okay.

15 MR GOTZ: How many seconds before the TRT

16 opened fire did you hear shots from that direction?

17 MR CLASSEN: I cannot pinpoint on it but

18 it could have been two to three seconds.

19 CHAIRPERSON: Can we perhaps hear him on

20 this video clip?

21 MR GOTZ: I beg your pardon, Chair?

22 CHAIRPERSON: Can we hear those shots on

23 this video club?

24 MR GOTZ: We can, Chair, it is rather

25 indistinct but if we go to 15:53:40 –

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1 CHAIRPERSON: We can turn the volume up.
 2 MR GOTZ: And turn the volume up one can
 3 hear those shots. So if we can rewind the video to 15:53,
 4 perhaps go back a couple of seconds to 15:53:35, with the
 5 volume up?
 6 [VIDEO SHOWN]
 7 MR GOTZ: No, it is rather indistinct,
 8 but you do in fact hear two shots that are fired. There is
 9 a lot of background noise, one of those sounds that you
 10 hear is almost certainly a stun grenade that goes off.
 11 There is also teargas that's being fired from the left and
 12 various POP members are firing shotguns with rubber rounds
 13 and that's a lot of noise that you hear.
 14 CHAIRPERSON: Did you hear the shots, the
 15 two shots that we refer to?
 16 MR CLASSEN: Not as yet, I wanted him to
 17 play it –
 18 CHAIRPERSON: I wanted you to see if you
 19 could hear them.
 20 MR CLASSEN: Okay.
 21 CHAIRPERSON: Because you gave us an
 22 estimate, it was less than 10 seconds.
 23 MR CLASSEN: That is correct.
 24 CHAIRPERSON: And I didn't hear them
 25 either but the fact that I didn't hear them doesn't prove

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1 anything, but you didn't hear them either?
 2 MR CLASSEN: Not as yet.
 3 CHAIRPERSON: So your impression is that
 4 it was a shorter period than 10 seconds.
 5 MR CLASSEN: That is my –
 6 MR MPOFU: Sorry, Chairperson, the
 7 witness said two to three seconds specifically.
 8 CHAIRPERSON: That's correct, yes.
 9 MR GOTZ: But in any event, Lieutenant-
 10 Colonel Classen, I think the point remains, in the 10
 11 seconds prior to this, 10 or 15 seconds there is an
 12 opportunity for members of the TRT line to fire warning
 13 shots or, - to fire warning shots, correct?
 14 MR CLASSEN: That's correct.
 15 CHAIRPERSON: Before you go on, what is
 16 the function then of the firing of rubber balls and the
 17 firing of stun grenades or a stun grenade and the firing of
 18 teargas? Do they not communicate some kind of warning to
 19 people?
 20 MR CLASSEN: It communicates some kind of
 21 warning and also to disperse them, to show them that you
 22 guys are overstepping your boundaries now.
 23 MR GOTZ: We're looking at things
 24 particularly from the TRT perspective and an instruction
 25 that you gave to your members in relation to what you refer

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1 to as the rules of engagement and perhaps we can short
 2 circuit this by saying as far as the TRT members were
 3 concerned there was no member of the TRT line that complied
 4 with what you refer to as the rules of engagement, correct?
 5 MR CLASSEN: Sir, it is therefore that I,
 6 you know you said that you did not hear the two shots and I
 7 thought you were going to let the video play more, that you
 8 can hear it just before the volley.
 9 MR GOTZ: Well, we can hear that, we can
 10 show that again but I suspect, Lieutenant-Colonel Classen,
 11 that the two shots that you're referring to are actually
 12 the two shots that are being fired by Warrant-Office Kuhn
 13 at 15:53:49 and half a second, but we can play the video
 14 again if you prefer. So let's go back to 15:53:42, that's
 15 fine and just play it again.
 16 [VIDEO SHOWN]
 17 MR GOTZ: Did you hear that, it is a
 18 bang-bang and then you hear the TRT volley going off almost
 19 immediately, correct?
 20 MR CLASSEN: Yes, I did hear that.
 21 MR GOTZ: And those two shots are in fact
 22 those that are fired by Warrant-Officer Kuhn, those are not
 23 shots fired by the strikers.
 24 CHAIRPERSON: That's what counsel is
 25 putting to you, do you agree with it?

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1 MR CLASSEN: No, I don't agree that –
 2 CHAIRPERSON: Is it something that's
 3 apparent to you from the video?
 4 MR CLASSEN: Just repeat that, Mr Chair?
 5 CHAIRPERSON: Is that something that is
 6 apparent to you from the video that what counsel is putting
 7 to you is correct?
 8 MR CLASSEN: No, I don't think it was
 9 Warrant-Officer Kuhn's shots.
 10 MR GOTZ: Chair, I'm not sure that I can
 11 debate the matter further with this witness and ideally we
 12 would like to have Warrant-Officer Kuhn here. There is in
 13 fact other evidence in the Commission confirming that those
 14 two shots came from Warrant-Officer Kuhn, but I don't need
 15 to take it further than that.
 16 CHAIRPERSON: Well, Warrant-Officer Kuhn
 17 is down to come, there is as I understand it a possibility
 18 that he may not be able to come because of the state of his
 19 health, but at the present I'm advised he is down to come.
 20 We've got statements from him as well. What is this other
 21 evidence that says those two shots are definitely Warrant-
 22 Officer Kuhn's?
 23 MR GOTZ: Sorry, Chair?
 24 CHAIRPERSON: What is the other evidence
 25 upon which you rely which you said has already been before

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1 us, that those two shots, the one just before the volley,
 2 were Warrant-Officer Kuhn's shots?
 3 MR GOTZ: Chair, I'll have to find the
 4 references for you but both Lieutenant-Colonel Scott as
 5 well as, I forget his rank, Brigadier Calitz testified to
 6 the fact that Warrant-Officer Kuhn initiated, as it were,
 7 the shooting on the 16th with those two shots.
 8 CHAIRPERSON: Well, I hope you won't
 9 regard me as being unfair, but I'm astonished to hear you
 10 make that statement, because my understanding was that
 11 Brigadier Calitz had already left the scene by then. I had
 12 doubts sometimes whether that was correct but anyway,
 13 that's his evidence, that he left and as far as I know
 14 Colonel Scott was in the JOCCOM, in the JOC the whole time.
 15 So any views they would express on the matter would have
 16 been opinions only based upon the videos. There is
 17 certainly, neither of them is able as far as I know, to
 18 give direct evidence on that point.
 19 MR GOTZ: Chair, that is –
 20 CHAIRPERSON: I put that to you, I know
 21 it is –
 22 MR GOTZ: No, Chair –
 23 CHAIRPERSON: - a critical comment but I
 24 think it is only fair that I should put it to you so that
 25 you can put me right if I'm wrong.

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1 MR GOTZ: Chair, that is absolutely
 2 correct, both of them testified on the basis of what they
 3 had observed on the videos as I understood and I suspect
 4 that, again I'll have to find the reference that
 5 Lieutenant-Colonel Scott did so also upon enquiry and
 6 discussion, but that would simply make it hearsay as well
 7 as opinion evidence.
 8 COMMISSIONER HEMRAJ: May I just enquire
 9 whether they were looking at this very same video when they
 10 made those comments?
 11 MR GOTZ: Chairperson, yes, this video,
 12 obviously we've added the ETV time at the bottom but the
 13 underlying video was the same.
 14 CHAIRPERSON: You see his back and you
 15 see smoke coming from the front of him and I mean the point
 16 you're making of course is that the rules of engagement as
 17 this witness explained them to his men, his members,
 18 weren't complied with.
 19 MR GOTZ: Yes, indeed.
 20 CHAIRPERSON: And I think you've made
 21 that point already.
 22 MR GOTZ: Yes.
 23 CHAIRPERSON: That box you can tick.
 24 Whether of course a warning would have helped, made any
 25 difference in the light of this teargas and this stun

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1 grenade and the rubber balls is of course a matter that may
 2 have to be argued at a later stage, but if you are busy
 3 with a limited point that the rules of engagement as this
 4 witness explained them, were not complied with, then I
 5 think you can move on, speaking for myself, I think prima
 6 facie you've established that on his evidence?
 7 MR GOTZ: Yes. Chair, I'm happy to move
 8 on. I did want to put a brief to you, Lieutenant-Colonel
 9 Classen, hopefully without having to go through the
 10 relevant videos but what we see in these videos is that as
 11 the strikers approach, as the strikers approach the TRT
 12 line there are a number of members of the TRT line who lift
 13 their weapons and aim them at the approaching strikers.
 14 Was that your impression as well?
 15 MR CLASSEN: I wasn't paying attention to
 16 them aiming the firearms at that moment, I was looking at
 17 the miners.
 18 MR GOTZ: Well, again perhaps we can test
 19 your memory of the situation and you're no doubt aware of
 20 what other members were doing around you, did you see
 21 members, either members under your command or other members
 22 who were around you, lifting their weapons and aiming them
 23 at the strikers as the strikers approached?
 24 MR CLASSEN: I didn't see them because I
 25 wasn't paying attention to them doing that.

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1 MR GOTZ: Perhaps if we can just give one
 2 example of that, if we can have a look at Exhibit AAA and
 3 then the reference, Chair, is VTS04.1VOB. I think it will
 4 be in the AAA1 to 6 folder and then it will be AAA4 and
 5 then if we can go to 1 minute and 4 seconds on this clip
 6 and play it from here. So, Lieutenant-Colonel Classen,
 7 what we see here is members of the TRT line approaching the
 8 road. What you will then see as we, in the next clip is
 9 the line of TRT members and what I would like you to do is
 10 to focus on what you see they do for the next five or six
 11 seconds. I'm going to submit to you that what they do is,
 12 they lift their weapons and aim them at the strikers as the
 13 strikers approach, so if we can play the clip?
 14 [VIDEO SHOWN]
 15 MR GOTZ: Now I know that's relatively
 16 quick but did you see them lift their weapons and aim them
 17 at the strikers?
 18 CHAIRPERSON: I think we can it again in
 19 slow motion?
 20 MR GOTZ: Ja, it does work better in slow
 21 motion.
 22 CHAIRPERSON: At about what point in the
 23 video are we expected to see it?
 24 MR GOTZ: So –
 25 CHAIRPERSON: At the moment it is 1.04?

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1 MR GOTZ: Yes, so the reference starts at
 2 1.05 and if we can stop it at 1.0.11. Do you see that,
 3 Lieutenant-Colonel Classen?
 4 MR CLASSEN: Sir, I'm still not sure that
 5 they're lifting their firearms towards the –
 6 CHAIRPERSON: Let's have a look at it
 7 again, I must confess I was interested to see that for a
 8 while, the channel was blocked and I was concentrating on
 9 that, that's another issue, but I didn't look at the-
 10 MR GOTZ: Yes, and –
 11 CHAIRPERSON: The members with their
 12 rifles, could we have that again, please? I'm sorry, it is
 13 my fault.
 14 MR GOTZ: So if we could just stop it for
 15 a moment and let me give an indication which may assist.
 16 In the centre of the screen you will see a relatively tall
 17 SAPS officer with a beret, that is Erasmus. He is holding
 18 a pistol and you will see that he lifts his hands and aims
 19 his pistol at the strikers by virtue of the fact that his
 20 right arm which is presently at his side, is then, ends up,
 21 pointed at the strikers. You'll see the person to his
 22 right who is a relatively short squat man in a helmet,
 23 braced himself and then aimed his R5 rifle at the strikers.
 24 It is less distinct but you'll see a similar movement from
 25 the people to the left, including I might add, Captain

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1 Loest who is the person to the right, - to the left of
 2 Lieutenant-Colonel Erasmus, - I beg your pardon, of
 3 Constable Erasmus.
 4 CHAIRPERSON: I don't actually see whose
 5 has fired because remember Loest's evidence was he didn't
 6 fire at all, but unless, - and it was never put to him in
 7 cross-examination that that evidence wasn't true, but never
 8 mind, let's look at this slowly and try to be careful and
 9 see everything we can see.
 10 [VIDEO SHOWN]
 11 MR GOTZ: Do you see what we are seeing,
 12 Lieutenant-Colonel Classen?
 13 MR CLASSEN: I find it hard to actually
 14 say something there because I know these guys even from the
 15 rear when they are pointing or aiming at somebody, you will
 16 be able to tell.
 17 COMMISSIONER HEMRAJ: Can you tell from
 18 their body language which, I guess is what Mr Gotz is
 19 asking us to infer.
 20 MR CLASSEN: I hear that because even
 21 when he referred to the gentleman with the beret, if he is
 22 aiming you will see his arm actually going a bit higher and
 23 the guy that's leaning into the weapon is not aiming at
 24 people, he is getting ready, you can see that. He is
 25 getting ready as he is just, how can I say, positioning

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1 himself.
 2 MR GOTZ: But the point is, Lieutenant-
 3 Colonel Classen, getting ready for what? Is it not that
 4 they're anticipating that the strikers are going to break
 5 through the POP line at this point in time?
 6 MR CLASSEN: But, Sir, I thought your
 7 question was, they're aiming at the people, that is what I
 8 was, - you asked me about aiming at people and that's what
 9 I answered.
 10 MR GOTZ: Well, we certainly see them –
 11 CHAIRPERSON: I understood you to
 12 suggest, maybe I misheard you, that one could see on this
 13 that they're actually not aiming at, but firing at the
 14 people who approached him. Well, I saw neither but the
 15 scope I think for the argument, that perhaps they were
 16 pointing at, but whether they actually pulled the trigger
 17 is another matter.
 18 MR GOTZ: Yes, Chair.
 19 CHAIRPERSON: But if there is something
 20 that I didn't see that I should see, I'll be happy to be
 21 shown I'm wrong.
 22 MR GOTZ: Chair, I don't want to be
 23 misunderstood, I'm not suggesting that any of the SAPS
 24 members in this line at this point in time can be seen
 25 actually firing at the strikers. What –

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1 CHAIRPERSON: I think you mentioned
 2 Captain Loest, Captain Loest emphatically he never fired at
 3 all.
 4 MR GOTZ: Yes, indeed.
 5 CHAIRPERSON: And that was never
 6 challenged in cross-examination, so–
 7 MR GOTZ: Indeed.
 8 CHAIRPERSON: So we can accept that at
 9 least at this stage, that whatever Captain Loest is doing
 10 on the video he is not firing shots.
 11 MR GOTZ: Yes, indeed and I'm almost
 12 certain that I didn't misspeak but I apologise if I did.
 13 My –
 14 CHAIRPERSON: Maybe it is my fault, maybe
 15 I misunderstood you.
 16 MR GOTZ: The allegation is simply that
 17 the members in this line can be seen essentially bracing
 18 themselves and then pointing their firearms, I would say
 19 aiming but I'm happy to accept pointing their firearms at
 20 the strikers as the strikers approached them. Do you want
 21 to comment on that, Lieutenant-Colonel Classen?
 22 MR CLASSEN: No, I can't comment on that.
 23 COMMISSIONER HEMRAJ: Mr Gotz, to be
 24 fair, all you can see in this screen shot or this video is
 25 the backs of the members and what you're really putting is

1 that the inference should be drawn from the positions of
 2 their bodies that they're aiming the firearms but you can't
 3 actually see any of the firearms on the screen.
 4 [14:46] MR GOTZ: Yes, with respect, I think
 5 that's 90% correct, Commissioner Hemraj. I'm taking it one
 6 step further and saying -
 7 COMMISSIONER HEMRAJ: Is the other 10%
 8 the firearm pointing towards the ground on the extreme left
 9 of this, of the shot?
 10 MR GOTZ: It's actually the position of
 11 their right arms mostly, which you can see go up as the
 12 strikers approach so at the beginning of that clip you can
 13 see them all, you can see their right arms relaxed almost
 14 to their sides and as the clip progresses their right arms
 15 lift and what I would submit is certainly that's consistent
 16 with them lifting their weapons and pointing them at the
 17 strikers, but I'm not sure, I think we've taken up enough
 18 time in this, on this point. I'm not -
 19 CHAIRPERSON: The point of the exercise
 20 is you can always argue it again later. At the moment
 21 you're trying to get from the witness, and the reason I
 22 allowed you to ask the questions was, the witness was
 23 there.
 24 MR GOTZ: Yes.
 25 CHAIRPERSON: And he knows the people so

1 that document, Lieutenant-Colonel Classen?
 2 CHAIRPERSON: The letters reserved for
 3 this witness are VVV and as far as I can see we've got up
 4 to VVV6.7 so - is that right?
 5 MS PILLAY: That's correct, Chair.
 6 CHAIRPERSON: So this will be VVV7.
 7 MR GOTZ: Thank you, Chair. Lieutenant-
 8 Colonel Classen, what we've done here is simply taken a
 9 screen shot, in effect a photograph of the screen of the
 10 video which is RRR17 at various points in time and the time
 11 that's relevant is the eTV time that you see on the bottom
 12 of the screen. Can we look at slide 2? The person at the
 13 front of the group of strikers that you see there is a
 14 person by the name of Mr Noki. Do you know about him?
 15 COLONEL CLASSEN: No, I don't, Chair.
 16 MR GOTZ: He's the person who was
 17 carrying the green blanket through most of the day of the
 18 15th and the 16th. Does that ring a bell?
 19 COLONEL CLASSEN: Yes, it does, Chair.
 20 MR GOTZ: He, at this point in time, you
 21 can actually see is leading the group of strikers, can you
 22 see that?
 23 COLONEL CLASSEN: I can see that, Chair.
 24 MR GOTZ: At this point in time we will
 25 submit that he has his green blanket over his head and you

1 he is perhaps in a better position to see things either in
 2 your favour or against you on the videos than any of us
 3 here in the chamber, so that's why I allowed you to ask the
 4 questions but I suspect that you've got as much out of him,
 5 if you've got anything out of him at all, as you're ever
 6 likely to get. And to be fair to him, I'm not suggesting
 7 that he's stonewalling you or anything like that.
 8 MR GOTZ: No.
 9 CHAIRPERSON: My impression is that he is
 10 prima facie giving you honest, candid answers on what he
 11 can see and can't see but if you want to carry on a little
 12 bit more I'll allow you but I don't think, frankly, you're
 13 going to get anywhere.
 14 MR GOTZ: No Chair, I'm happy to move on
 15 and again perhaps this is a matter that can be dealt with
 16 by way of some sort of professional analysis. Perhaps we
 17 can go back to the exhibit RRR17 and deal with one minor
 18 point before I close my cross-examination. Chairperson,
 19 perhaps to assist this and hopefully it will go relatively
 20 quickly, we have prepared an additional exhibit. We didn't
 21 deal with it at the outset in our housekeeping session but
 22 we've prepared an exhibit which is entitled "Screen shots
 23 from exhibit RRR17." It's simply a series of screen shots
 24 taken from the video which is up on the screen and perhaps
 25 we can mark that as an exhibit. Have you got a copy of

1 can see that relatively clearly from this screen shot.
 2 COLONEL CLASSEN: Did you say over his
 3 head?
 4 MR GOTZ: Over his head, yes.
 5 COLONEL CLASSEN: Can we zoom in a bit
 6 please?
 7 MR GOTZ: Sure. Would you agree with
 8 that assessment?
 9 CHAIRPERSON: Sorry, before you carry on,
 10 I seem to remember at one point in the cross-examination a
 11 six was hit by the counsel representing the families who
 12 showed that there were two people with green blankets and
 13 that the SAPS and I think even the evidence leaders had
 14 assumed that one of those persons with the green blanket
 15 was Mr Noki, in fact it wasn't. So I'm not - I just raise
 16 that by way of a caution. The counsel for the families
 17 will be able to tell you because it's their six that they
 18 scored, be able to tell you who it was. Mr Ntsebeza, you
 19 were cross-examining on the point, I think?
 20 MR NTSEBEZA SC: Mr Chairman, there was
 21 an error that had been made in identifying Mr Magidiwana.
 22 I think it was during the cross-examination by Mr Ngalwana
 23 where an error was made in identifying Magidiwana who
 24 survived that volley, but was injured. He didn't have a
 25 blanket. There was only one person who has always been

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1 wearing a blanket a green blanket and that was Mr Noki. Mr
2 Magidiwana had a sweater or - ja, yes.
3 CHAIRPERSON: [Microphone off, inaudible]
4 MR MPOFU: Chairperson –
5 CHAIRPERSON: I just want to make sure
6 the person we're looking at is not Magidiwana who was the
7 subject of the mistaken identification, but Mr Noki.
8 MR NTSEBEZA SC: That's a blanket, Mr
9 Chairman, certainly.
10 MR MPOFU: Chairperson, if I may assist
11 here? This point actually came in my cross, in my re-
12 examination of Mr Magidiwana and it's best illustrated in
13 L206 and 208.
14 MR NTSEBEZA SC: Exhibit L?
15 MR MPOFU: Exhibit L.
16 CHAIRPERSON: That's fine and -
17 MR MPOFU: - identify Mr Magidiwana as
18 number 1 in L206 and then assuming those were the same
19 numbers, they go to 208 and they put number 1 – yes, he is
20 number 1 but they say it's, rather Mr Ngalwana assumed that
21 that was Mr Noki in his cross-examination and then Mr
22 Magidiwana cleared it up that it was him.
23 CHAIRPERSON: Number 1 in both 206 and
24 208 is wearing a green –
25 MR MPOFU: A green – that's correct.

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1 CHAIRPERSON: It's a green jacket, I
2 think or –
3 MR MPOFU: Yes.
4 CHAIRPERSON: - an anorak or something of
5 the sort.
6 MR MPOFU: Yes and Mr Ngalwana, I can't
7 remember the exact words, he probably said can you see Mr
8 Noki there at number 1 and Magidiwana clarified that it was
9 actually himself.
10 CHAIRPERSON: I just raised that because
11 I didn't want us to go off on a dwaalspoor as far as the
12 green clad person who is in this particular exhibit we're
13 looking at now, VVV7 page 2. As long as it's clear that's
14 Mr Noki and not Mr Magidiwana we can carry on.
15 MR GOTZ: And Mr Noki is also
16 identifiable from the fact that he is wearing blue jeans
17 and a white shirt, which you'll agree with me matches the
18 person who is in the lead of the strikers in this
19 photograph or this screen shot, correct?
20 COLONEL CLASSEN: Just repeat that again
21 please?
22 MR GOTZ: The person that you see leading
23 the group of strikers is wearing a white shirt and blue
24 jeans and he is, we would submit, also carrying a green,
25 bright green blanket which at this point in time looks like

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1 it is over his head, correct?
2 MR MATHIBEDI SC: Sorry, Chairperson –
3 sorry Chairperson, before the witness can answer, what's
4 the basis of stating that Mr Noki had a green blanket over
5 his head because from this video it is not clear.
6 CHAIRPERSON: I think it's common cause
7 from the evidence that we've had over the long months we've
8 been sitting in this Commission that Mr Noki was known as
9 the man with the green blanket and on the day on which he
10 died, the 16th of August, he was wearing, he had a green
11 blanket I think. I think that's common cause, I don't
12 think counsel has to show that from the photograph. I
13 think he's accepting it as a common cause fact and he's now
14 trying to apply that common cause fact to what we see on
15 the screen. Whether we'll see it is a matter –
16 MR MATHIBEDI SC: The point I'm making is
17 that, it's the blanket over the head.
18 CHAIRPERSON: Oh, the blanket over the
19 head. No – no, it's certainly not common cause that he
20 ever had a blanket over his head. What is common cause is
21 that in those, in the group of strikers near the front or
22 at the front of this advancing column of strikers, the one
23 with the green blanket as opposed to a green top was Mr
24 Noki. I think that's –
25 MR MATHIBEDI SC: That's common cause.

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1 CHAIRPERSON: That's common cause. No, I
2 think the extra bits were just extra frills that Mr Gotz
3 added that he doesn't need for the point he's making.
4 MR GOTZ: Chair, whether or not he had a
5 green blanket over his head at this point is not ultimately
6 material for my –
7 CHAIRPERSON: That's why I said – you
8 agree, you're giving a concurring judgment again. Carry
9 on?
10 COMMISSIONER HEMRAJ: But Mr Gotz, does
11 the video actually show Mr Noki in the front of the group
12 or does it show some other persons in the front and Mr Noki
13 on the right, slightly behind the others?
14 MR GOTZ: No Chair, as far as I'm
15 concerned we're absolutely convinced that Mr Noki is
16 probably half a metre in front of anybody else at this
17 stage.
18 CHAIRPERSON: I don't think anything
19 turns on it, does it?
20 MR GOTZ: No, I don't think so.
21 CHAIRPERSON: Let's carry on with things
22 that are material.
23 MR GOTZ: What I simply wanted to put to
24 you and understand, Lieutenant-Colonel Classen, I'm really
25 interested also in your perceptions on the day and what you

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1 saw, what we see in the video and it's what we've tried to
 2 do through this series of screen shots and we can go
 3 through it one by one, is that what Mr Noki does is he
 4 moves from right to left as we're facing him and it looks
 5 as though he is attempting not to come straight towards the
 6 police in front of him but in fact to get onto the road and
 7 that is the direction that he is moving. So from where one
 8 sees him here at the lead, he moves to his right and he
 9 ends up essentially behind what is Papa9 and it looks like
 10 he is attempting to get onto the road that one sees in
 11 front of us. That is our impression and what I wanted to
 12 get from you, Lieutenant-Colonel Classen, is whether you
 13 saw that on the day when you observed the strikers emerge
 14 from behind that Nyala?

15 COLONEL CLASSEN: Did I see them
 16 attempting to get on the road?

17 MR GOTZ: Yes, indeed.

18 COLONEL CLASSEN: No, that's not what I
 19 saw.

20 MR GOTZ: If one looks through the
 21 presentation that we've prepared you would agree with me
 22 that that is certainly the direction that he appears to be
 23 moving, so you've got a copy before you but we can also go
 24 through it on the screen. As one goes through the
 25 presentation one sees him moving closer and closer and it's

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1 most distinct from page 7 onwards. He's moving from right
 2 to left, he's not coming straight towards the police in
 3 front of him. He would be moving effectively to his left
 4 onto the road, do you see that? Would you agree with our
 5 assessment, Lieutenant-Colonel Classen?

6 COLONEL CLASSEN: No, I can't agree with
 7 that.

8 MR GOTZ: Well, I simply put it to you
 9 that we will argue that this presentation does make it
 10 clear. One can also watch the video in slow motion, that
 11 what Mr Noki does in the final seconds is he does not come
 12 straight towards the police but actually moves off to his
 13 left in an apparent attempt to get onto the road behind
 14 Papa19, Papa10.

15 CHAIRPERSON: Is this the – are you
 16 moving on to a new point now? Is this the culmination of
 17 this point?

18 MR GOTZ: Chair, I –

19 CHAIRPERSON: The reason I say that is
 20 I'm proposing to take the tea adjournment at this stage but
 21 if it's not convenient for you and you want a bit more time
 22 to round off this point I'll give it to you.

23 MR GOTZ: Chair, I'm happy for us to take
 24 the tea adjournment. I think I may be finished but let me
 25 just see what I can – there are a couple of points to wrap

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1 up.

2 CHAIRPERSON: Well, we'll take the tea
 3 adjournment now and it'll give you a chance to go through
 4 your notes and assess your situation and then we'll carry
 5 on after tea -

6 MR GOTZ: Thank you, Chair.

7 [COMMISSION ADJOURNS COMMISSION RESUMES]

8 [15:19] CHAIRPERSON: The Commission resumes.
 9 Lieutenant-Colonel, you're still under oath.

10 LITTLE JOE RONNY CLASSEN: (s.u.o.)

11 CHAIRPERSON: Mr Gotz.

12 CROSS-EXAMINATION BY MR GOTZ (CONTD.):
 13 Chair, thank you, I am almost done, but if we can – I just
 14 wanted to give a couple of additional references to some of
 15 the points that I was making. Lieutenant-Colonel Classen,
 16 if we can just go back to that video that we've been
 17 focussing on, RRR17, and to turn to the timestamp 15:53:43,
 18 and that will be 15 seconds into the video. Okay, so if we
 19 can just stop it there. Lieutenant-Colonel Classen, you'll
 20 see on the left-hand bottom corner a rifle with a
 21 telescopic sight. That is an R1 rifle, correct?

22 COLONEL CLASSEN: I can't tell if it's an
 23 R1 rifle.

24 MR GOTZ: It's in fact an R1 rifle being
 25 carried by Sergeant Browning. What you'll see, if we play

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1 the clip in slow motion for the next couple of seconds, is
 2 that Sergeant Browning lifts his R1 rifle and what we see
 3 is that he aims it in the direction of the strikers, which
 4 I must confess are at this point obscured by the Nyala
 5 Papa19 in front of him, but he nevertheless does in fact
 6 aim the R1 rifle in the direction of the strikers and you
 7 can see that in the next three or four seconds. So if we
 8 can, the eTV stamp is 15:53:43 and if we can play the next
 9 couple of seconds. Did you see that? He lifted the R1
 10 rifle and aimed it in the direction of the strikers.

11 COLONEL CLASSEN: I saw him lifting it.

12 MR GOTZ: And he would be aiming in the –

13 CHAIRPERSON: [Microphone off, inaudible]
 14 now at 15 or 16 seconds, where was the, what you call the
 15 R1 rifle, where was it pointing?

16 MR GOTZ: So the R1 rifle is being
 17 carried by the SAPS member in the bottom left-hand corner.

18 CHAIRPERSON: We're now looking at 15
 19 seconds into the video.

20 MR GOTZ: Yes.

21 CHAIRPERSON: Where is the R1 rifle
 22 pointing?

23 MR GOTZ: At this point it is slightly
 24 lifted, so if one goes back a second –

25 CHAIRPERSON: Slightly lifted and

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1 slightly downwards. I mean I, you know, is the bottle half
 2 empty or half full? What's the story here?
 3 MR GOTZ: At this point it's not fully
 4 lifted, but it is being lifted at this point in time,
 5 Chairperson.
 6 CHAIRPERSON: You may be right. It's
 7 still pointed down.
 8 MR GOTZ: Would you agree with our
 9 assessment that Sergeant Browning does in fact lift his R1
 10 rifle and point it at the strikers?
 11 COLONEL CLASSEN: I wouldn't, I can't say
 12 pointing. He's lifting it, yes.
 13 MR GOTZ: Then finally, Lieutenant-
 14 Colonel Classen, you gave some evidence on Thursday when
 15 you testified that you had been affected by teargas, tear
 16 smoke that had been fired at the strikers. You'll see at
 17 this moment in the video just to the right of Papa19, which
 18 is the Nyala in front of you, just to the right-hand side
 19 you'll see in fact two clouds of – well, a cloud of tear
 20 smoke and you'll see also just over the left shoulder of
 21 Warrant Officer Kuhn, who's the man standing in front,
 22 you'll see another teargas canister going off. Do you see
 23 that?
 24 COLONEL CLASSEN: Yes, I do, Mr Chair.
 25 MR GOTZ: If you were affected by the

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1 teargas you will accept that, no doubt that there were
 2 other members within the basic line that you were in that
 3 were also affected by the teargas, correct?
 4 COLONEL CLASSEN: That's correct, Chair.
 5 MR GOTZ: They would have experienced it
 6 in the same way as you did, in other words they would have
 7 had to have forced – well, they would have closed their
 8 eyes at certain point in time and suffered the general
 9 effects of tear smoke, namely tears and possibly temporary
 10 blindness, correct?
 11 COLONEL CLASSEN: That's correct.
 12 MR GOTZ: And of course the people at
 13 whom the teargas was being fired would be in a far worse
 14 position, correct? Those are the strikers, correct?
 15 COLONEL CLASSEN: Just repeat that last
 16 one, Sir.
 17 MR GOTZ: The people at whom the teargas
 18 was being fired, the strikers that you see just rounding
 19 the point of the kraal at this moment in the video, would
 20 also be affected by the tear smoke, correct?
 21 COLONEL CLASSEN: That's correct, Chair.
 22 MR GOTZ: And in fact they would probably
 23 be experiencing it – bad English, but in a – they would be
 24 experiencing it more acutely than you, correct?
 25 COLONEL CLASSEN: In what sense acutely,

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1 Sir?
 2 MR GOTZ: Well, in the sense that they
 3 would have been more directly affected by the teargas,
 4 given the fact that the gas was being fired at, or the
 5 smoke canisters were being fired at them, correct?
 6 COLONEL CLASSEN: I can agree, but also
 7 add that it will affect us all the same way. The second
 8 you get in contact with it, it affects you.
 9 MR GOTZ: And so I think the consequence
 10 of that is they would also be blinded and possibly have
 11 their eyes closed and suffering the effects, such as tears,
 12 etcetera, that one generally experiences with teargas,
 13 correct?
 14 COLONEL CLASSEN: That's correct, Sir.
 15 MR GOTZ: Sorry, Chair, if you'll just
 16 give me a moment. Thank you, Chair, those are my
 17 questions. I think I'm slightly short of the time period
 18 and I'm happy to donate it to –
 19 CHAIRPERSON: Well, yes, I should know.
 20 It shows you the allocation you got was a generous one.
 21 Who's going to cross-examine on behalf of the families? Mr
 22 Ntsebeza?
 23 CROSS-EXAMINATION BY MR NTSEBEZA SC:
 24 Yes, Mr Chairman. Good afternoon, Lieutenant-Colonel. I
 25 see you nod; I'm sure you are saying good afternoon.

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1 COLONEL CLASSEN: Good afternoon to you
 2 too, Sir.
 3 MR NTSEBEZA SC: I'm Ntsebeza and I'm
 4 representing some of the families whose relatives died on
 5 that 16th of August 2012. I would like us to look at
 6 exhibit B15, where we are going to be locating some of the
 7 people who died. Now where would you place the TRT line in
 8 this exhibit B?
 9 COLONEL CLASSEN: Just come again with
 10 the question, please, Sir.
 11 MR NTSEBEZA SC: Where would you put your
 12 line, TRT line, in this exhibit B? We now know that this
 13 at the corner here, this is the shack that you were talking
 14 about when you give your evidence-in-chief, and that's the
 15 wire that comes down and then comes down this way in the
 16 corner there. This is the kraal that we have been talking
 17 about. Where would you put your line?
 18 COLONEL CLASSEN: Okay, Mr Ntsebeza, I'm
 19 just trying to get the question. Is that now before or
 20 where we were, had to stand behind the koppie or –
 21 CHAIRPERSON: Mr Ntsebeza, the evidence
 22 is that the line, some of them at least moved backwards at
 23 some stage.
 24 MR NTSEBEZA SC: Yes.
 25 CHAIRPERSON: So I think the witness is

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1 entitled to know from you at what time precisely you want
 2 him to indicate the position of the line.
 3 MR NTSEBEZA SC: The time of the
 4 shooting, Mr Chairman, is the time that I –
 5 CHAIRPERSON: Time of the volley.
 6 MR NTSEBEZA SC: The time of the volley.
 7 CHAIRPERSON: Fusillade.
 8 COLONEL CLASSEN: The time of the volley,
 9 is it okay if I use the pointer, Mr Chair? Thank you.
 10 CHAIRPERSON: And then I'll try to put
 11 into words what you've shown us, unless Mr Ntsebeza does it
 12 for me.
 13 COLONEL CLASSEN: Thank you so much, Mr
 14 Chair.
 15 MR NTSEBEZA SC: Yes, fair enough.
 16 CHAIRPERSON: How would you describe
 17 that, Mr Ntsebeza?
 18 MR NTSEBEZA SC: Well, it's a straight
 19 line and relative to the kraal it seems to me to be in
 20 front of the kraal as you look at the picture, and
 21 stretches from the far left to the far right.
 22 CHAIRPERSON: It seems to be parallel to
 23 the road, doesn't it? There's a road that runs from a
 24 point about three-quarters of the way up the left-hand side
 25 of the slide - is that right? – and then continues down

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1 past the, what we call the corridor, past the shack and
 2 going into the bottom right-hand corner of the slide. It
 3 seems to be parallel with that, but if that north indicator
 4 is correct, slightly to the south of the road. Would you
 5 agree with that? Do you agree with that, Lieutenant-
 6 Colonel?
 7 COLONEL CLASSEN: That's correct, Mr
 8 Chair.
 9 MR NTSEBEZA SC: Mr Chair, I think it
 10 will be even clearer in a slide which forms part of our new
 11 presentation, but we'll give it an exhibit number when we
 12 get to it. Now you see in that picture, or in this slide
 13 that there is M, the letter M, I don't know how far the
 14 arrow goes, but if it goes as far as here, the letter M
 15 seems to indicate the place where Mr Nqongophele's body
 16 was. Do you see that?
 17 COLONEL CLASSEN: I see that, Mr Chair.
 18 MR NTSEBEZA SC: You see –
 19 CHAIRPERSON: He doesn't know whose body
 20 it was, but you –
 21 MR NTSEBEZA SC: Yes.
 22 CHAIRPERSON: It does have letters
 23 indicating positions where bodies were found and one just
 24 to the right as one looks at the photograph of the, what I
 25 think is the entrance to the kraal, is M.

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1 MR NTSEBEZA SC: I just want you to bear
 2 this in mind. Our submission will be that Mr Nqongophele's
 3 body, that Mr Nqongophele was not shot and killed at that
 4 place. We will show you where we think he was killed. It
 5 is to the back of the kraal somewhere in that area, but
 6 we'll get to that. I just wanted you to keep that in mind.
 7 Our contention is that even though his body may have been
 8 located there, that is not where he was shot and killed.
 9 Would you disagree with that, given where you were shooting
 10 as the TRT?
 11 COLONEL CLASSEN: Could you please just
 12 repeat that, Sir?
 13 MR NTSEBEZA SC: Would you disagree when
 14 we say given that you said the TRT line was stretching from
 15 left to right along this area, it is unlikely that Mr
 16 Nqongophele was shot there and killed there?
 17 COLONEL CLASSEN: I would agree with you,
 18 Sir.
 19 CHAIRPERSON: That would be on the
 20 assumption that what you put to him is correct, namely that
 21 he was at the back. Is that so? I mean on what basis is
 22 the likelihood posited?
 23 MR NTSEBEZA SC: The simple proposition
 24 I'm putting is that if there was this TRT line, and we now
 25 know that the strikers had gone around the kraal and were

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1 approaching to the right-hand side of the picture of the
 2 kraal as we look at it, and they were shot in that area
 3 just near the mouth of the kraal as we see it, it is
 4 unlikely – that's all we are saying – it's unlikely that
 5 this TRT line would have shot and killed Mr Nqongophele
 6 where his body was found, and the witness has agreed, I
 7 understand the position to be so.
 8 CHAIRPERSON: Perhaps the witness can
 9 explain to me on what basis he agrees. I'm not saying it's
 10 necessarily wrong; I just don't understand.
 11 COLONEL CLASSEN: Yes, Mr Chair, from –
 12 if the line was as I have shown where it is, it wouldn't be
 13 possible for us to kill him from where he, from where Mr
 14 Ntsebeza say the body's lying. So in other words we did
 15 not kill him from where M is pointed at now, where it is
 16 right now.
 17 MR NTSEBEZA SC: In fact we will – if we
 18 can put up, I believe that we can put up, Mr Chair, a new
 19 exhibit entitled "M's position," if we could put that up on
 20 the screen. Now what exhibit number will we give it? If
 21 we could give it exhibit number VVV8, Mr Chairman.
 22 CHAIRPERSON: Sorry, what is the exhibit?
 23 MR NTSEBEZA SC: VVV8.
 24 CHAIRPERSON: How do I describe it?
 25 MR NTSEBEZA SC: "M's position." It's

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1 actually Nqongophele's position. We'll want a warning, Mr
 2 Chair.
 3 CHAIRPERSON: I've entered that in my
 4 book.
 5 MR NTSEBEZA SC: We'll need a warning, Mr
 6 Chair.
 7 CHAIRPERSON: I'm told we –
 8 MR NTSEBEZA SC: In fact the very first
 9 page –
 10 CHAIRPERSON: I'm told we're going to see
 11 an image of one of the people who was killed at scene 1 on
 12 the 16th and it may well be that the friends and loved ones
 13 and relations of the person whose body we're going to see
 14 will experience extreme emotional distress if they see this
 15 image on the screen, so I ask that it not be shown until 30
 16 seconds have expired after I've finished speaking. 30
 17 seconds starts now. 30 seconds is over. We can now see
 18 the video, see the, whatever is to be shown on the screen.
 19 MR NTSEBEZA SC: Now Mr Chairman, I
 20 believe that the original photo for this is –
 21 CHAIRPERSON: Yes, sorry, I was writing
 22 the name of the deceased on my exhibit. What did you say,
 23 Mr Ntsebeza? Forgive me, I wasn't listening.
 24 MR NTSEBEZA SC: Mr Chairman, I believe
 25 that the original photo from which this was taken is

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1 JJJ5062, that is for the first one, the one with the body,
 2 and then for the second page, which I'll come back to, it's
 3 JJJ10.4549. That is now just for the source. Now if we go
 4 back to the one with the body, that is Mr Nqongophele's
 5 body, what we want you to take note of are the barrels
 6 which I am pointing out, and behind the barrels there are
 7 police officers.
 8 CHAIRPERSON: Barrels in the top left-
 9 hand corner of the photograph and immediately above them
 10 are a number of people who I presume are members of the
 11 police service, about nine people I think, possibly 10.
 12 I'm not sure if there's another one behind.
 13 MR NTSEBEZA SC: Now if we were to go to
 14 the second slide.
 15 [15:39] Let's zoom in. The yellow represents the TRT
 16 line, you see that, Colonel?
 17 COLONEL CLASSEN: I do, Chair.
 18 MR NTSEBEZA SC: And then of course the,
 19 you get the kraal there. Can we zoom in so that we can
 20 show here these are the barrels that you saw in the
 21 previous picture, in the –
 22 CHAIRPERSON: The object in the red
 23 circle.
 24 MR NTSEBEZA SC: And behind the red
 25 circle there are the police officers who we saw in the

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1 other slide but they were visible only with their boots and
 2 feet. You see that? You want us to zoom there so that we
 3 can, these are the barrels and these are the police
 4 officers.
 5 COLONEL CLASSEN: Sir, are those police
 6 officers?
 7 MR NTSEBEZA SC: That's what I'm putting
 8 to you.
 9 COLONEL CLASSEN: Well I'm struggling to
 10 see those are police officers because if you go a bit left,
 11 far left that looks like human images, the far left.
 12 MR NTSEBEZA SC: Okay.
 13 COLONEL CLASSEN: Where the cursor is
 14 now.
 15 MR NTSEBEZA SC: Okay but would we be in
 16 agreement that that barrel is the same barrel that you see
 17 in the previous picture?
 18 COLONEL CLASSEN: It's a bit difficult
 19 but I would agree with it, I can't say.
 20 MR NTSEBEZA SC: And we say the body
 21 which you saw in the previous slide is the one which is now
 22 in this circle. You see that?
 23 COLONEL CLASSEN: I see that.
 24 MR NTSEBEZA SC: And that is why
 25 therefore we say Mr Ndongophele was shot here and that is

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1 why we contest that he was shot and found and his body was
 2 where it was next to the kraal. If we could go to the
 3 other slide, yes go up a little bit, up, no then the next
 4 slide. Yes, that slide.
 5 CHAIRPERSON: Coming out at page 2 of
 6 exhibit VVV8?
 7 MR NTSEBEZA SC: Yes. Now that's why we
 8 say the, Mr Ndongophele would be there it is, in relation
 9 to your line over the kraal to the left of the kraal, to
 10 the back of the kraal. That would be the where the body is
 11 and that would be where the barrels were and we will
 12 contend that the position marked in exhibit B was where he
 13 was moved after he had been shot here, he was moved to
 14 where exhibit B puts him at, for medical attention. Would
 15 you be able to dispute that?
 16 COLONEL CLASSEN: I wouldn't know, Sir,
 17 honestly I wouldn't know, Chair.
 18 MR NTSEBEZA SC: We'll get there but we
 19 are simply saying, let's assume that this is so. I will
 20 tell you the objective evidence on which we rely for saying
 21 so. Now if we assume that this where he was shot our
 22 contention would be that he was clearly not shot by the TRT
 23 line in that volley. Because the distance from here to
 24 there is about 90 to 100 metres and there is the kraal that
 25 must be taken into account. If as we will argue that is

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1 his body there we will be submitting that it's unlikely
 2 that he was killed by a volley from the TRT line in that
 3 first volley. We'll even go so far as to submit that he
 4 may have been shot by somebody in a Nyala in this area as
 5 the people were fleeing to the second scene. Do you
 6 disagree with that?
 7 COLONEL CLASSEN: Once more I wouldn't be
 8 able to say then, Mr Chair.
 9 MR NTSEBEZA SC: Are you saying it is
 10 likely that he was shot by people from here if that is his
 11 body there?
 12 COLONEL CLASSEN: No, that's not what I'm
 13 saying.
 14 MR NTSEBEZA SC: So do you agree that
 15 it's improbable that he was shot by people from the TRT?
 16 COLONEL CLASSEN: Once more, Mr Chair, I
 17 wouldn't be able to say that.
 18 CHAIRPERSON: The point when the TRT
 19 people appear to have done their shooting in a particular
 20 place when they were in the basic line and if this
 21 deceased's body was found where, in the yellow circle there
 22 then, unless he somehow, well and if that was where he was
 23 shot then indications that he was probably shot by one of
 24 the POP people when one of the Nyalas went past there on
 25 the way to koppie 2 and koppie 3. Is that the proposition

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1 you're putting?
 2 MR NTSEBEZA SC: That's the proposition.
 3 CHAIRPERSON: The evidence is that some
 4 of those Nyalas after, well the suggestion is that
 5 Brigadier Calitz's Nyala left shortly before what's been
 6 called the volley, went off in the direction of what's
 7 called koppie 2 and then koppie 3 and other Nyalas followed
 8 as well. Now what Mr Ntsebeza is putting to you is that if
 9 this deceased was shot where the yellow circle is the
 10 indications are that he was not shot by someone from the
 11 TRT but shot by someone from the POP in one of those
 12 Nyalas. Is that the proposition?
 13 MR NTSEBEZA SC: That's the proposition.
 14 CHAIRPERSON: Do you agree with that?
 15 On the basis of indications are, not that it definitely is
 16 so, I mean you –
 17 COLONEL CLASSEN: Okay on the basis of
 18 indication I agree, Mr Chair.
 19 MR NTSEBEZA SC: Yes, and we further make
 20 the point that if it is so, and I think it is verifiable
 21 that the distance between that line, your line and where
 22 his body is, is about 100 to 150 metres, he would not have
 23 posed a threat to the TRT line justifying him being shot in
 24 the manner that he was.
 25 COLONEL CLASSEN: Excuse me, Mr Ntsebeza,

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1 just repeat that please, Sir.
 2 MR NTSEBEZA SC: We say if he was shot by
 3 the TRT then at that distance between the TRT line and him
 4 he would not have been posing a threat to any of the TRT
 5 members that would justify him being shot.
 6 COLONEL CLASSEN: I agree.
 7 MR NTSEBEZA SC: Now I'd like us to go to
 8 exhibit A just to show his injuries. Exhibit A page 599B
 9 and 599F. Now whilst we are trying to locate that, I can
 10 tell you that that exhibit says he was shot once in his
 11 forehead above his right eye with a high velocity firearm.
 12 He was shot once in his forehead. He was not trying to
 13 stop anyone who is killing, who is advancing at you. Shot
 14 once in his forehead above his right eye. It lacerated the
 15 left frontal brain, fractured the frontal aspect or the
 16 skull and lacerated the left eye. You see that report?
 17 COLONEL CLASSEN: I do, Mr Chair.
 18 MR NTSEBEZA SC: And our submission would
 19 be that a gunshot wound to the head in that fashion will
 20 almost always result in a fatality of the victim. You
 21 would agree with that?
 22 COLONEL CLASSEN: I agree, Mr Chair.
 23 MR NTSEBEZA SC: And there is no report
 24 that says any weapons were found in the vicinity of Mr
 25 Ndongophele and if that is so we will be strong in our

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1 submission that in those circumstances he was not
 2 presenting any threat to anyone, let alone to TRT people as
 3 far as 100 to 150 metres away as we have now indicates.
 4 I'm sure you would agree with that?
 5 COLONEL CLASSEN: I would agree, I also
 6 don't know weapons but I would agree.
 7 MR NTSEBEZA SC: Now, so we are now done
 8 with Mr Ndongophele. I would like us to look at Mr
 9 Mtshazi. Mr Mtshazi in exhibit B has been shown as what,
 10 as exhibit M, body M. But for now between you and me and
 11 the Commission we'll call him Mr Mtshazi. Now if we could
 12 go back to exhibit B so that we can locate Mr Mtshazi
 13 because we would like to make exactly the same point about
 14 Mr Mtshazi as we have just been making about Mr
 15 Ndongophele. You've seen that, Ronny, I mean Colonel
 16 Classen –
 17 COLONEL CLASSEN: What did I see there,
 18 Mr Ntsebeza?
 19 MR NTSEBEZA SC: Where we put what is
 20 called body M here, where we now know that that is Mr
 21 Mtshazi.
 22 COLONEL CLASSEN: I see that, Mr Chair.
 23 MR NTSEBEZA SC: Yes. Now we can see
 24 also that in relation to the TRT line again he was on the
 25 other side of the kraal. Your line would be here, if we

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1 could show that same slide that we, your line would be
 2 here, the kraal there and there, your line would be here so
 3 you would be on the other side of the kraal, thereabouts.
 4 You see that?
 5 COLONEL CLASSEN: I see that, Chair.
 6 MR NTSEBEZA SC: And we simply make the
 7 same point we made that in relation to the TRT line at
 8 least Mr Mtshazi at that distance on the other side of the
 9 kraal was clearly not posing a threat to the TRT line from
 10 that distance and position. Would you agree with that?
 11 COLONEL CLASSEN: I do, Chair.
 12 MR NTSEBEZA SC: Now again if we look at
 13 the, at exhibit FFF20 or if we went to the annexure to the
 14 summary, page 7, page 7 of the summary. Mr Chairman, we'll
 15 have to find somebody to go and assist the operator to,
 16 what we are actually looking for is –
 17 CHAIRPERSON: How long is this going to
 18 take, I see it's 3 minutes to 4. If we can deal with this
 19 point before we adjourn it will be a good thing but if we
 20 can't then perhaps we can resume it in the morning. But
 21 I'm in your hands.
 22 MR NTSEBEZA SC: Yes, Mr Chairman, we
 23 will take, let's do it in the morning then.
 24 CHAIRPERSON: Alright.
 25 MR NTSEBEZA SC: I never -

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1 CHAIRPERSON: No I think we've found
 2 what we need now, I think. Is this –
 3 MR NTSEBEZA SC: We are –
 4 CHAIRPERSON: Page 20 of the exhibit
 5 FFF20, is that what we want?
 6 MR NTSEBEZA SC: If you go to number 28.
 7 All we want to show again that this is the high velocity
 8 gunshot wound. Number 28 relates to Mr Mtshazi, if we can
 9 blow that thing all, well not blow up, Mr Chairman, didn't
 10 like that word. If we can enlarge it so that we can see
 11 that what we say it does, it actually is. Gunshot wound,
 12 cervical spine, high velocity, right to left. Now if we
 13 went to exhibit A, Mr Chairman, just to round off Mtshazi
 14 in respect of wounds he suffered. Exhibit A page 616A,
 15 paragraphs 4.1, 4.4.
 16 [15:59] CHAIRPERSON: [Microphone off, inaudible]
 17 of the exhibits? What page of the post mortem report?
 18 MR NTSEBEZA SC: It's page 616A. I
 19 think, Mr Chairman, it's put up there on the screen where –
 20 CHAIRPERSON: No, no, we've got the post
 21 mortem report, but you're now referring to a passage in
 22 that and I'm asking you which page of the post mortem
 23 report.
 24 MR NTSEBEZA SC: It's paragraph 4, there
 25 you are, Mr Chairman, paragraph 4 –

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1 CHAIRPERSON: You mean "Blue and green
 2 discolouration, decomposition, change of abdomen," that
 3 can't be what you mean?
 4 MR NTSEBEZA SC: Yes.
 5 CHAIRPERSON: I suspect that further on
 6 in the post mortem report we'll have detailed paragraphs –
 7 there we are, so there we go. It's now page 2 of the
 8 report and you were referring to 4.1, what's known as wound
 9 A. Is that correct?
 10 MR NTSEBEZA SC: And then 4.4 where –
 11 CHAIRPERSON: 4.4 gives the track.
 12 MR NTSEBEZA SC: Track of the wound. I
 13 mean 4.4 says that wound "perforates the right side of the
 14 face and upper cervical vertebrae in a downwards right to
 15 left and backwards direction," basically shot in his right
 16 cheek. Would you agree, Colonel? In a downward direction,
 17 like somebody was standing above him. Do you see that?
 18 COLONEL CLASSEN: I see that, Mr
 19 Ntsebeza.
 20 MR NTSEBEZA SC: Yes. Again it's our
 21 contention that, like we have already indicated, he could
 22 not have posed any threat to TRT. I think you did concede
 23 that, and that the probability, again given where he was
 24 found, or where he was shot, is that he might have been
 25 shot by someone in a Nyala, a passing Nyala which was

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1 driving after protesters were running to scene 2. Would
 2 you disagree with that analysis?
 3 COLONEL CLASSEN: Just come again there,
 4 Mr Ntsebeza.
 5 MR NTSEBEZA SC: I say given (a), where
 6 his body was found; (b), relative to the TRT line which it
 7 is not probable is the one that could have shot him at this
 8 distance on the other side of the kraal, the probabilities
 9 are that he was shot by someone in a passing Nyala as the
 10 mineworkers were running towards koppie 2, koppie 3, scene
 11 2, and that he was shot at close range – or there was no
 12 blackening or range of fire –
 13 CHAIRPERSON: I don't know about close
 14 range, but –
 15 MR NTSEBEZA SC: Ja.
 16 COLONEL CLASSEN: It's a possibility.
 17 MR NTSEBEZA SC: Are you wanting to say
 18 it's a possibility more than a probability?
 19 CHAIRPERSON: Are you an expert on
 20 possibilities versus probabilities in this context?
 21 COLONEL CLASSEN: No, I'm not an expert,
 22 Mr Chair.
 23 MR NTSEBEZA SC: Mr Chair, 4 o'clock has
 24 come.
 25 CHAIRPERSON: Would you like me to

1 adjourn until tomorrow morning 9 o'clock?
2 MR NTSEBEZA SC: I would request you, Mr
3 Chairman, to –
4 CHAIRPERSON: Request granted.
5 [COMMISSION ADJOURNED]
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29827:4 action 29853:12 activity 29793:9,17,23 acutely 29907:24,25</p>	<p>add 29853:9 29879:3 29890:25 29908:7 added 29848:13 29857:16 29887:12 29901:3 addition 29751:24 additional 29758:5 29776:11 29783:6,8 29787:21 29788:17 29895:20 29904:14 adhere 29853:7 adjourn 29854:17 29922:19 29926:1 ADJOURNED 29926:5 adjournment 29822:23 29903:20,24 29904:3 ADJOURNS 29780:1 29822:24 29854:19 29904:7 admitted 29812:22 29813:1,4,14 advancing 29746:8,19 29900:22 29920:13 advised 29885:19 advocate 29846:16 aerial 29789:14 affect 29769:17 29908:7 affidavit 29748:14 Africa 29819:8 29821:13,16,17 29828:3,11 African 29808:8,12 29812:9,22 29815:7,9 29815:16 afternoon 29837:22,25 29908:24,25 29909:1 aggressor 29752:22 ago 29752:24 29777:13 29787:9,25 29805:16 29809:1 29845:23,25 agreed 29770:15,18 29795:4 29802:10 29807:10 29814:1 29913:6 agreement 29770:13 29823:3 29916:16 agrees 29913:9 ai 29817:12,13 aim 29888:13 29889:12 29889:16 29905:6 aimed 29890:23 29905:10 aiming 29756:5 29888:16,22 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