

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 13 15 NOVEMBER 2012 PAGES 1432 TO 1557

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 15 NOVEMBER 2012]
 2 [09:38] CHAIRPERSON: The Commission resumes. Mr
 3 Mpofo, is the air conditioning not working today?
 4 MR MPOFU: Mr Chairman, yes, by the look
 5 of things it's still not working and the temperature –
 6 CHAIRPERSON: You decided to give
 7 yourself permission to –
 8 MR MPOFU: No, Chair. We assumed that
 9 until it's withdrawn it persists.
 10 CHAIRPERSON: That sounds like a good
 11 point. Yes, Mr Mpofo, the Bishop is not available today, I
 12 see you have a new witness on the witness stand.
 13 MR MPOFU: Yes, Chair.
 14 CHAIRPERSON: Or "stand" is the wrong
 15 word, the witness desk really. Who is the witness?
 16 MR MPOFU: Chairperson, we've sort of
 17 withdrawn from the arena for now. I think the evidence
 18 leaders –
 19 CHAIRPERSON: Is this the warrant
 20 officer?
 21 MR MPOFU: They're interposing the
 22 warrant officer.
 23 CHAIRPERSON: So I shouldn't have called
 24 on you.
 25 MR MPOFU: No.

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1 CHAIRPERSON: Mr Madlanga, are you back
 2 doing your work as an evidence leader?
 3 MR MADLANGA SC: Yes, we have just
 4 resurfaced, Mr Chairman. The witness in the witness stand
 5 is Warrant Officer Patrick Thibelo Thamae. I'll ask him to
 6 please spell his names.
 7 CHAIRPERSON: We had the spelling of his
 8 name from his statement which we've been handed and it's
 9 P-A-T-R-I-C T-H-I-B-E-L-O T-H-A-M-A-E.
 10 MR MADLANGA SC: Thank you, thank you Mr
 11 Chairman.
 12 CHAIRPERSON: Warrant Officer, would you
 13 please stand? Are you prepared to swear or do you wish to
 14 affirm?
 15 W/O THAMAE: To swear, Mr Chairman.
 16 CHAIRPERSON: Will you swear that the
 17 evidence you'll give before this Commission will be the
 18 truth, the whole truth and nothing but the truth, please
 19 raise your right hand and say I swear, so help me God.
 20 PATRICK THIBELO THAMAE: I swear, so help
 21 me God.
 22 CHAIRPERSON: Thank you, you may be
 23 seated.
 24 W/O THAMAE: Thank you.
 25 EXAMINATION BY MR MADLANGA SC: Mr

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1 Chairman, or rather Warrant Officer, you gave a statement
 2 and I believe you have a copy in front of you, is that so?
 3 W/O THAMAE: That's correct, Mr Chair.
 4 CHAIRPERSON: If Ms Pillay can tell us
 5 what the next letter is?
 6 MS PILLAY: Mr Chairperson, I think it's
 7 Exhibit N, N for Nellie.
 8 CHAIRPERSON: N, thank you.
 9 MR MADLANGA SC: Yes, may this statement
 10 be accepted as that exhibit, commissioners?
 11 CHAIRPERSON: If he swears, if he
 12 confirms its contents under oath it can be, not otherwise.
 13 MR MADLANGA SC: Thank you. Do you
 14 confirm that this is your statement and do you confirm that
 15 the contents are true?
 16 W/O THAMAE: That's correct, Mr Chair.
 17 MR MADLANGA SC: Amongst others, the
 18 statement refers to your experience as a member of the
 19 South African Police Service and it also refers to the
 20 training that you have received, not so?
 21 W/O THAMAE: That's correct, Mr Chair.
 22 MR MADLANGA SC: And paragraph 5 reads as
 23 follows, "On the 16th August 2012 I attended at and
 24 processed a crime scene involving Marikana CAS137/08/12 and
 25 at what has come to be known as scene 1 at Wonderkop,

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1 Marikana." You've already confirmed the truthfulness of
 2 everything there, I'm just reading it into the record. And
 3 then in paragraph 6 you says, "General Naidoo indicated
 4 some points to me," and I assume that's at scene 1?
 5 W/O THAMAE: That's correct, Mr Chair.
 6 MR MADLANGA SC: "Using those points and
 7 my own observations, I took photos and measurements of the
 8 scene. Warrant Officer Anderson" – is that spelling
 9 correct, is it not H-E? Do you know?
 10 W/O THAMAE: Really I don't know.
 11 MR MADLANGA SC: Okay. "Warrant Officer
 12 Anderson made a video recording of the scene. I compiled a
 13 photo plan using an aerial photo of the scenes. I also
 14 collected exhibits from the scene." Mr Chairman,
 15 commissioners, I want to hand up a document, a columned
 16 document which indicates the names and body numbers of the
 17 people that were killed at scene 1. May that be marked
 18 Exhibit O? We have a similar document, commissioners, in
 19 respect of scene 1. The Chairman will remember that –
 20 CHAIRPERSON: A similar document in
 21 respect of scene 2.
 22 MR MADLANGA SC: Scene 2, I'm sorry –
 23 CHAIRPERSON: You're handing us up scene
 24 1.
 25 MR MADLANGA SC: Scene 1 at the moment,

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1 yes –

2 CHAIRPERSON: And that is Exhibit O, you

3 say?

4 MR MADLANGA SC: Yes – yes. Mr Chairman,

5 you will remember that he did ask for such a document when

6 Captain Mohlaki was testifying. We'll just print it and

7 present it to the Commission. Also what I should indicate

8 to colleagues as well is that we have up there the video

9 recording or the footage of the video recording that was

10 taken by Warrant Officer Anderson, just in case some of our

11 colleagues may want that played or may want to use it in

12 cross-examination and so on. It's ready up there.

13 CHAIRPERSON: I don't want to be critical

14 but this exhibit you've handed us, Exhibit O, would be even

15 more useful if it gave us the letter numbers which are on

16 the documentary exhibit –

17 MR MADLANGA SC: May I ask to take the

18 commissioners to B17, B1-7. The commissioners will see

19 that that problem is taken care of. There, there is point

20 A which is the letter number and then it says, indicates

21 the place and position of body number and then 25. And it

22 goes all the way down.

23 CHAIRPERSON: What we'll have to do is

24 we'll have to transpose the information on B17 onto Exhibit

25 O, so that we can use Exhibit O easily but I'm sure we can

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1 – we're capable of doing that ourselves, thank you.

2 MR MADLANGA SC: Yes, thank you very

3 much. The problem is taken care of but I agree it would've

4 been perhaps much, much more user friendly if it was in the

5 manner in which the Chairman suggests. Thank you. Warrant

6 Officer, can you please briefly explain what time you

7 arrived at Marikana or the Wonderkop/Marikana area and on

8 what date?

9 W/O THAMAE: It was on the 16th of August

10 2012. We arrived at scene, what is known as scene 1, at

11 round about four o'clock.

12 MR MADLANGA SC: And before you proceeded

13 to scene 1, where had you been immediately before?

14 W/O THAMAE: We had been waiting at the

15 sports ground, south of the Marikana sports ground,

16 approximately two kilometres from where the scene was.

17 MR MADLANGA SC: And for how long had you

18 been waiting there before you proceeded to scene 1,

19 approximately?

20 W/O THAMAE: Approximately five to six

21 hours.

22 MR MADLANGA SC: Can I now take you to

23 B15, 1-5? That is the slide showing on the big screen

24 there. Can you please take the Commission through that

25 slide and explain everything that is appearing there but

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1 perhaps before you do so, B16 is a sketch plan, did you

2 prepare that?

3 W/O THAMAE: That's correct, Mr Chair.

4 MR MADLANGA SC: Now let me take you back

5 to B1-5, B15. Can you go through what is showing there or

6 perhaps – you have some colouring there or colour shading,

7 could you please indicate to the Commission what the blue

8 shading stands for?

9 W/O THAMAE: The blue shaded area on the

10 photo indicates the area where R5 rifle cartridge cases

11 were found.

12 MR MADLANGA SC: And is it so that your

13 key which explains what you depict in B15, is at B17, that

14 is B1-7?

15 W/O THAMAE: That's correct, Mr Chair.

16 MR MADLANGA SC: Now or further clarity

17 on the rifle cartridge cases, were they evenly concentrated

18 in that blue shaded area or would you say there were parts

19 where they were more concentrated than others?

20 W/O THAMAE: They were even, evenly

21 concentrated within that shaded area.

22 MR MADLANGA SC: And there is a yellow,

23 we've seen the blue – what does the yellow indicate or

24 depict?

25 W/O THAMAE: The yellow indicates the

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1 concentration of pistol cartridge cases within the blue

2 shaded area as well as the red shaded area. The

3 concentration was mixed with – on the blue shaded area it

4 was mixed with R5 – it was mixed with rifle cartridge cases

5 and then in the concentration of, in the red shaded area it

6 was in between shotgun cartridge cases.

7 MR MADLANGA SC: So the red depicts

8 shotgun cartridge cases?

9 W/O THAMAE: That's correct, Mr Chair,

10 the red indicates –

11 MR MADLANGA SC: Now going to the yellow

12 - I'll refer to it as the bigger yellow which is within the

13 blue – are you able to say whether there was more

14 concentration of the cartridge cases there in some parts or

15 as it evenly spread even there?

16 W/O THAMAE: At the area where letter D

17 is, it's where more pistol cartridge cases were

18 concentrated.

19 MR MADLANGA SC: And let's go to the red,

20 are you able to tell whether the shotgun cartridge cases

21 were more concentrated in certain parts or not?

22 W/O THAMAE: If you look at where the

23 words "scene 1" is written, from there downwards is where

24 more concentration was within the red shaded area.

25 MR MADLANGA SC: Now I will be moving to

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1 ask you for your recollection of the numbers of the
2 cartridge cases but before I do that, I just want to take
3 you to other matters. Did you find any bullets at all –
4 and by bullets I mean the whole object with the cartridge
5 case and projectile still in position. Did you find any
6 bullets anywhere? If so, where?

7 W/O THAMAE: Yes, Mr Chair. I found one
8 within the blue shaded area. It was a rifle cartridge
9 lying within the cartridge cases.

10 MR MADLANGA SC: Did you find any other?

11 W/O THAMAE: At the entrance of the
12 kraals I found a bullet. Within the blue shaded area I
13 found a bullet as well.

14 MR MADLANGA SC: So a total of how many
15 bullets, you say?

16 W/O THAMAE: Two bullets and the area
17 where letter E was, there was a pile of – what I can say
18 traditional weapons – on one of them I found a fragment.

19 MR MADLANGA SC: Were those weapons
20 arranged orderly or were they just piled together?

21 W/O THAMAE: They were just piled
22 together.

23 MR MADLANGA SC: We will come back to
24 those when we go through the exhibit that is Exhibit B.
25 Did you find any pistol cartridge case that you have not

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1 pistol cartridge cases. Are you able to tell us how many
2 you found where, in the two yellow shaded areas?
3 W/O THAMAE: At the area where – in the
4 red shaded area there, I found about five cartridge cases
5 and then in the blue shaded area about 25, 24.

6 COMMISSIONER HEMRAJ: Mr Madlanga, are
7 these pistol – are we talking about pistol cartridge cases?

8 MR MADLANGA SC: Pistol cartridge cases
9 yes, within the yellow, commissioner. My arithmetic says
10 it would have to be 26 in the other yellow shaded area, not
11 so?

12 W/O THAMAE: I'm saying about five in the
13 red shaded area and then 24, 25 in the blue shaded area,
14 taking into account that one within the body.

15 MR MADLANGA SC: Oh, taking into account
16 that one was not within the shaded areas?

17 W/O THAMAE: That's correct.

18 MR MADLANGA SC: Thank you very much,
19 thank you. I now want to take you to B40, that is four
20 zero –

21 CHAIRPERSON: Before we move on, can I
22 ask a question?

23 MR MADLANGA SC: Yes.

24 CHAIRPERSON: I notice that the red
25 shaded area appears to include a small portion of the kraal

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1 reflected within the shaded areas?

2 W/O THAMAE: That's correct, Mr Chair.

3 If you look there by the area of – where, if you look at I
4 and K where the line has pointed to the ground, round about
5 that area there was only one cartridge case of a pistol
6 that I found.

7 MR MADLANGA SC: Would this be just to
8 the right of the entrance to the kraal, as one is facing
9 the kraal in the picture?

10 [09:58] W/O THAMAE: Can you repeat again?

11 MR MADLANGA SC: The spot that you are
12 referring to, that is where you picked up the pistol
13 cartridge case, would it be to the right of the entrance to
14 the kraal?

15 W/O THAMAE: That's correct, Mr Chair.

16 MR MADLANGA SC: Do you recall the total
17 number of rifle cartridge cases that you found?

18 W/O THAMAE: That's correct, I found 210
19 rifle cartridge cases.

20 MR MADLANGA SC: Do you remember how many
21 pistol cartridge cases you found, the total?

22 W/O THAMAE: That's correct, Mr Chair, 31
23 pistol cartridge cases.

24 MR MADLANGA SC: You have two yellow
25 shaded areas that depict the spot where you picked up

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1 itself, is that correct?

2 W/O THAMAE: That's correct.

3 CHAIRPERSON: And so does that mean that
4 you found some cartridge cases in the kraal?

5 W/O THAMAE: Not in the kraal area.

6 CHAIRPERSON: So why is the – why does
7 the red shaded area include a small portion of the kraal?

8 W/O THAMAE: Mr Chair, if you can look at
9 the shaded area, the kraal is not shaded itself. It's
10 within the – outside the borders of the kraal, it is the
11 place that is shaded, not the kraal itself.

12 MR MADLANGA SC: Based on what you've
13 just said, the impression I get is that it was not intended
14 that the kraal itself should be shaded. Looking at the
15 picture it does seem indeed, as the Chairman indicates,
16 that the part of the kraal, a small part of the kraal is
17 shaded as well. So are you saying it was not intended to
18 be?

19 W/O THAMAE: No, it was not intended to
20 be.

21 MR MADLANGA SC: I will now take you to
22 B40, 44 and 45. There you will see that, starting from the
23 left hand side and looking at the weapons that are
24 appearing in full, there is a red one. So forget about the
25 other one that also has red, but is not appearing fully.

<p style="text-align: right;">Page 1444</p> <p>1 The first one that appears in full and reddish in colour, 2 do you want to tell the Commission or advise it of any 3 observations you made on that weapon, if any? 4 W/O THAMAE: On 40 if you look at the 5 weapon that is red with blue stripes on – 6 MR MADLANGA SC: Yes? 7 W/O THAMAE: I think it's number 7 from 8 the top or number 8 from the top, if you look at that 9 weapon there is something more to, what I can say the back, 10 there is something on the bottom that is attached to that 11 weapon and if you go to photo 44, photo number 44, you'll 12 see that it is a close-up of that weapon with that 13 attachment on the butt. And then if you go to 45 it is the 14 close-up indicating the fragment that I was speaking about. 15 MR MADLANGA SC: All three photographs do 16 depict that fragment. 17 W/O THAMAE: That's correct, Mr Chair. 18 MR MADLANGA SC: And how many shotgun 19 cartridges did you find or retrieve? 20 W/O THAMAE: I found 57 cartridge cases 21 of shotguns. 22 MR MADLANGA SC: Can we now go back to 23 B17 and can you please take the Commission through points A 24 to point P? 25 W/O THAMAE: Point A indicated the place</p>	<p style="text-align: right;">Page 1446</p> <p>1 W/O THAMAE: Point number C indicates the 2 place and position of body number 22 as found at the scene. 3 MR MADLANGA SC: And commissioners, that 4 was Mr Thobisile Zibambele. 5 W/O THAMAE: Point D indicates the place 6 and position of body number 21 as found at the scene. 7 MR MADLANGA SC: And that was Mr Mpangeli 8 Thukusa. 9 W/O THAMAE: Point E indicates the place 10 and position of body number 19 as found at the scene. 11 MR MADLANGA SC: And that was Mr Jackson 12 Lehupa. 13 W/O THAMAE: Point F indicates the place 14 and position of body number 20 as found at the scene. 15 MR MADLANGA SC: And that was Mr 16 Mongezeleli Ntenetya. 17 W/O THAMAE: Point G indicates the place 18 and position of body number 18 as found at the scene. 19 MR MADLANGA SC: And that was Mr Mzukisi 20 Sompeta. 21 W/O THAMAE: Point H indicates the place 22 and position of body number 14 as found at the scene. 23 MR MADLANGA SC: And that was Mr Michael 24 Ngweyi. 25 W/O THAMAE: Point I indicated the place</p>
<p style="text-align: right;">Page 1445</p> <p>1 and the position of body number 25 as found at the scene. 2 MR MADLANGA SC: Commissioners, that 3 would be Mr Khawamare Elias Monesa. Yes, continue? 4 CHAIRPERSON: It would be helpful if the 5 mouse could be used to indicate on what is on the screen, 6 where exactly these particular bodies were found. 7 MR MADLANGA SC: Can you please use, yes, 8 the pointer or mouse please? 9 W/O THAMAE: That is where the – where 10 body A was found. 11 MR MADLANGA SC: Yes, continue. The next 12 body? 13 W/O THAMAE: Point B indicates the place 14 and position of body number 24 as found at the scene. 15 MR MADLANGA SC: Can you again please 16 point and whenever you refer to each one of the bodies, 17 please point where it was exactly. 18 W/O THAMAE: That is where the body B was 19 found and if I can explain to people who maybe – if you 20 look at letter D you will see there is a line running from 21 letter B, where it ends it is the position of where the 22 body is found, as it is the case with all the other 23 alphabets. 24 MR MADLANGA SC: And commissioners, that 25 was Mr Mguneni Noki. Please proceed.</p>	<p style="text-align: right;">Page 1447</p> <p>1 and position of body number 16 as found at the scene. 2 MR MADLANGA SC: And that was Mr 3 Bonginkosi Yona or – Yona. 4 W/O THAMAE: Point J indicated the place 5 and position of body number 17 as found at the scene. 6 MR MADLANGA SC: Warrant Officer, you 7 seem to have forgotten to point at the slide. And this was 8 the body of Mr Andries Motlupula Msenyeno. 9 W/O THAMAE: Point K indicated the place 10 and position of body number 15 as found at the scene. 11 MR MADLANGA SC: And this was Mr Patrick 12 Akhona Jijase. 13 W/O THAMAE: Point L indicated the place 14 and position of body number 23 as found at the scene. 15 MR MADLANGA SC: And this was Mr Cebisile 16 Yawa. 17 W/O THAMAE: Point M indicated the place 18 and position of body number 26 as found at the scene. 19 MR MADLANGA SC: And that was Mr Bongani 20 Ndongophele. 21 W/O THAMAE: Point N indicates the place 22 and position of body number 28 as found at the scene. 23 MR MADLANGA SC: And that was Mr Babalo 24 Mtshazi. 25 W/O THAMAE: Point O indicated the place</p>

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1 and position of body number 27 as found at the scene.
 2 Point T -
 3 MR MADLANGA SC: Can you please repeat
 4 the last one, I'm sorry.
 5 W/O THAMAE: Point O -
 6 MR MADLANGA SC: No - no, before O.
 7 W/O THAMAE: Before O?
 8 MR MADLANGA SC: Yes.
 9 W/O THAMAE: Point N indicated the place
 10 and position of body number 28 as found at the scene.
 11 MR MADLANGA SC: Okay yes, let's continue
 12 to O?
 13 W/O THAMAE: Point O indicated the place
 14 and position of body number 27 as found at the scene.
 15 MR MADLANGA SC: And that was Mr John
 16 Kutsvano Ledingoane.
 17 W/O THAMAE: Point P indicated the place
 18 and position of body number 29 as found at the scene and
 19 this point is covered on the sketch plan and other photos
 20 that will follow.
 21 MR MADLANGA SC: May I refer - may I
 22 refer the Commission and my learned friends to B18, B1-8
 23 read with B16 the sketch plan. That is where P is showing,
 24 it's not showing on B15. Now - or can you point out where
 25 P is on your slide? And that was Mr Thembinkosi Gwelani.

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1 Commissioners, may I ask to hand up a revised version? My
 2 juniors have already attended to this, put in the letters
 3 and so on and may this be the same exhibit number as the
 4 earlier one?
 5 CHAIRPERSON: It replaces the earlier
 6 Exhibit O that was handed up.
 7 MR MADLANGA SC: Thank you, thank you
 8 Chair and commissioners.
 9 CHAIRPERSON: While that's being done,
 10 can I ask this question? It looks, from what we're looking
 11 at at the moment, as if body P was found quite a distance
 12 from scene 1 and scene 2 - in fact, fairly close to the
 13 informal settlement, is that correct?
 14 W/O THAMAE: That's correct, Mr Chair.
 15 It is a distance of 210 from body -
 16 MR MADLANGA SC: Not from body N?
 17 [10:18] W/O THAMAE: It's a distance of 210 from
 18 body N.
 19 MR MADLANGA SC: Now you say 210, 210
 20 what?
 21 W/O THAMAE: 210 metres, Mr Chair.
 22 MR MADLANGA SC: Then whilst we are at
 23 distances, we already have evidence from Captain Mohlaki
 24 that the distance between scene 1 and scene 2 is about 500
 25 metres. We see that this is reflected on your sketch plan

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1 as well. Do you confirm that that is the distance?
 2 W/O THAMAE: That's correct, Mr Chair.
 3 MR MADLANGA SC: Now you have already
 4 said that the weapons that you found were in a pile. Now
 5 at B40, 44, 45 and indeed at other pages of Exhibit B as
 6 well, the weapons appear to have been arranged in an
 7 orderly fashion. Was it you or somebody else who arranged
 8 them in that fashion?
 9 W/O THAMAE: That was me arranging them
 10 in that fashion.
 11 MR MADLANGA SC: And they appear from
 12 B38, continuing through 39, 40, 41, 42, 43, 44 and 45, is
 13 that so?
 14 W/O THAMAE: That's correct, Mr Chair.
 15 MR MADLANGA SC: Let me take you back to
 16 your key, B17. Number 3 in the key, you say the area in
 17 red indicates the concentration of shotgun cartridge cases
 18 as well as rubber balls, used stun grenades and 40
 19 millimetre cartridge cases. Are you able to tell how many
 20 rubber balls you found?
 21 W/O THAMAE: No, Mr Chair, I didn't count
 22 them, I just picked them up.
 23 MR MADLANGA SC: And would this be a
 24 reference to the ball that would've been fired from a
 25 rubber - or rather a shotgun cartridge?

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1 W/O THAMAE: That's correct, Mr Chair.
 2 MR MADLANGA SC: And can you tell how
 3 many the used stun grenades were?
 4 W/O THAMAE: I picked up two.
 5 MR MADLANGA SC: Now in this key you also
 6 have some distances and the first one is 2.3 metres and
 7 just above the distances you have the heading, "Distances
 8 between cartridge cases closer to body B." What I want to
 9 establish is, what exactly does the 2.3 metres refer to?
 10 It measured from where to where?
 11 W/O THAMAE: If you look at the sketch -
 12 MR MADLANGA SC: B16, commissioners.
 13 Yes, continue?
 14 W/O THAMAE: Body B was lying here and
 15 then cartridge cases were closer to body B, were in, if I
 16 can say an arc shape, they ranged from 2.3 metres to 6.1
 17 metres.
 18 MR MADLANGA SC: So in other words the
 19 cartridge case that was closest to Mr Mguneni Noki, what
 20 you refer to as body B, would have been 2.3 metres from
 21 him?
 22 W/O THAMAE: That's correct, Mr Chair.
 23 MR MADLANGA SC: And then you measured
 24 the distance between others as well and the furthest of
 25 those was 6.1 metres away.

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1 W/O THAMAE: That's correct, Mr Chair.
 2 MR MADLANGA SC: Your slide also has the
 3 bodies themselves but I will not ask you to go through
 4 those. Is there anything else that you would like to bring
 5 to the attention –
 6 COMMISSIONER HEMRAJ: Mr Madlanga, before
 7 you go on, do I understand that there were no cartridges
 8 found with regard to the other bodies in as close proximity
 9 as those to body B? Is that how I understand that?
 10 MR MADLANGA SC: That's not what was
 11 meant to be conveyed. All of those measurements were just
 12 in relation to body B only, just – not, no measurements
 13 were done at least – but the witness can respond to that –
 14 COMMISSIONER HEMRAJ: Yes.
 15 MR MADLANGA SC: - in respect of each one
 16 of the bodies.
 17 COMMISSIONER HEMRAJ: Thank you.
 18 MR MADLANGA SC: Yes, thank you. Is
 19 there anything else that I may not have covered which you
 20 would like to bring to the attention of the Commission
 21 perhaps?
 22 W/O THAMAE: The 40 millimetre cartridge
 23 cases also, I picked up some 40 millimetre, 40 millimetre
 24 cartridge cases within the blue, red shaded area.
 25 MR MADLANGA SC: And what exactly are

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1 those or what are they fired – what sort of firearm are
 2 they –
 3 W/O THAMAE: Mr Chair, I don't have an
 4 idea.
 5 MR MADLANGA SC: And you say how many of
 6 those?
 7 W/O THAMAE: There were four, Mr Chair.
 8 MR MADLANGA SC: Anything else?
 9 W/O THAMAE: No, nothing that I can
 10 think.
 11 MR MADLANGA SC: That is the evidence of
 12 the witness, commissioners, thank you.
 13 CHAIRPERSON: Mr Semenya?
 14 CROSS-EXAMINATION BY MR SEMENYA SC:
 15 Chair, thank you. Warrant Officer, can somebody place
 16 before you Exhibit L for Limo? And can I invite you to
 17 look at slide 211? Do you have the slide? The evidence,
 18 Warrant Officer, is going to be that according to the
 19 police, the munitions which were expended at scene 1 are as
 20 indicated in that document with 284 sharp point ammunitions
 21 discharged at scene 1. Do you want to comment?
 22 W/O THAMAE: I have no comment.
 23 MR SEMENYA SC: And that 533 of rubber
 24 was shot at scene 1. Correction, 522 of rubber. Any
 25 comment?

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1 W/O THAMAE: Like I indicated, I've got
 2 no comment.
 3 MR SEMENYA SC: And you have testified of
 4 two stun grenade cartridges. On our count we only have
 5 one. Can you comment on that?
 6 W/O THAMAE: What I can say is I found
 7 two at the time.
 8 MR SEMENYA SC: Okay. And we also
 9 document 10 teargas canisters that were fired at scene 1.
 10 Any comment?
 11 W/O THAMAE: If it is that 40 millimetre
 12 cartridge cases that I spoke about, I only picked up four.
 13 MR SEMENYA SC: I don't know whether this
 14 falls within the ambit of your expertise, Warrant Officer,
 15 but I think I should place the evidence before you. As I
 16 understand, you would have calculated the distance of
 17 various cartridges relative to body B, correct?
 18 W/O THAMAE: That's correct, Mr Chair.
 19 MR SEMENYA SC: And that is because body
 20 B would have been the closest of the bodies to the line of
 21 fire, correct?
 22 W/O THAMAE: It is difficult for me to
 23 comment on that because I don't know what was the line of
 24 fire or where the line of fire was situated.
 25 MR SEMENYA SC: Well, I accept that. All

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1 I'm merely saying is, the closest distance between the
 2 cartridge and the body would've been that indicated, 2.3
 3 metres.
 4 W/O THAMAE: That's correct, Mr Chair.
 5 MR SEMENYA SC: And the furthest would
 6 have been 6.1 metres.
 7 W/O THAMAE: Yes, if you take into
 8 account my explanation, the arc around body –
 9 MR SEMENYA SC: I don't know whether you
 10 want to sponsor an opinion but that would have been pretty
 11 close to the cartridges where body B was lying.
 12 W/O THAMAE: Can you repeat the question
 13 again? I don't understand the question.
 14 MR SEMENYA SC: That distance of 2.3
 15 metres is pretty short, would you agree?
 16 W/O THAMAE: That's correct.
 17 MR SEMENYA SC: The dangerous weapons
 18 appearing on your slides which you said you collected, do
 19 you recall those – from slides B40, 41, et cetera.
 20 W/O THAMAE: That's correct, I still – I
 21 do remember now.
 22 MR SEMENYA SC: Are you able to comment
 23 where, in relation to the bodies, were those collected?
 24 W/O THAMAE: As I already explained, on
 25 the photo displayed on the slide show now, if we look at

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1 letter E, where letter E is situated on that photo, that is
 2 the area where those dangerous weapons were found in the
 3 pile.
 4 MR SEMENYA SC: Well, I don't have the
 5 benefit of the pointer you use there and that screen is not
 6 necessarily helpful to me but are you able to tell us
 7 where, in relation to body B, would those weapons have been
 8 lying?
 9 MR MADLANGA SC: Mr Chairman,
 10 commissioners, I understood the witness to be saying where
 11 the letter itself – not the body.
 12 W/O THAMAE: Ja.
 13 MR MADLANGA SC: The letter itself,
 14 because there is the letter and then a line pointing to
 15 where the body is, so he said in a pile where the letter
 16 is.
 17 MR SEMENYA SC: Okay. Just help
 18 orientate me. The weapons would be lying around the letter
 19 B.
 20 W/O THAMAE: The letter E.
 21 CHAIRPERSON: E for elephant.
 22 MR SEMENYA SC: Thank you, Chair. You're
 23 not able to give us –
 24 W/O THAMAE: No, can I correct something?
 25 Sorry, it's the letter F, not E. Sorry, I didn't see

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1 clearly.
 2 MR SEMENYA SC: Help me with the
 3 orientation. Those weapons would have been behind body B
 4 where it was lying?
 5 W/O THAMAE: Not behind body B. I'm
 6 referring – the place where the letter F is, where the
 7 letter F is placed, that is the place where those
 8 traditional weapons were piled up.
 9 [10:38] MR SEMENYA SC: Warrant Officer, I am not
 10 referring to the weapons in their state of – in the heaped
 11 state they were in. I'm trying to establish where they
 12 would have been collected from.
 13 W/O THAMAE: I don't have an idea where
 14 they were collected from.
 15 MR SEMENYA SC: Oh, so you're not the one
 16 who collected them to put them in the heap in which you
 17 photographed them?
 18 W/O THAMAE: No, I'm not the one who
 19 collected them. I found them in the pile as I searched.
 20 MR SEMENYA SC: Those are the questions
 21 we have for the witness, Chair.
 22 CHAIRPERSON: Thank you, Mr Semenya. Mr
 23 Burger?
 24 CROSS-EXAMINATION BY MR BURGER SC: We
 25 have no questions, Chair, thank you.

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1 CHAIRPERSON: Mr Tip?
 2 CROSS-EXAMINATION BY MR TIP SC: Likewise
 3 no questions, thank you.
 4 CHAIRPERSON: Mr Bruinders?
 5 CROSS-EXAMINATION BY MR BRUINDERS SC:
 6 Just a few questions. Warrant Officer, can I ask you to go
 7 back to the previous question asked of you? You say the
 8 weapons were found in a pile, is that right?
 9 W/O THAMAE: That's correct, Mr Chair.
 10 MR BRUINDERS SC: You found them in a
 11 pile?
 12 W/O THAMAE: That's correct, Mr Chair.
 13 MR BRUINDERS SC: You don't know who put
 14 them there?
 15 W/O THAMAE: I don't know who put them
 16 there, Mr Chair.
 17 MR BRUINDERS SC: You then rearranged
 18 them as we see them in the photograph?
 19 W/O THAMAE: That's correct, Mr Chair.
 20 MR BRUINDERS SC: And the weapons that
 21 you found in the pile and then rearranged, were those the
 22 total number of weapons that you found at scene 1?
 23 W/O THAMAE: Ja, Mr Chair, there was a
 24 body – either body N or O – there was a traditional weapon
 25 lying alongside that body. That is the only extra weapon,

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1 besides the ones which were lying in the pile, that was
 2 found at the scene.
 3 MR BRUINDERS SC: That extra weapon you
 4 added to the pile of traditional weapons?
 5 W/O THAMAE: No, Mr Chair.
 6 MR BRUINDERS SC: Does that extra weapon
 7 not appear in your photograph at page 40, 41 to 4?
 8 W/O THAMAE: No, it doesn't appear.
 9 MR BRUINDERS SC: Why not?
 10 W/O THAMAE: Because I photographed it
 11 next to the body where it was found and then those, I
 12 rearranged them because I was looking for maybe the ones
 13 with blood on them so that I can investigate them. So that
 14 is why they were rearranged.
 15 MR BRUINDERS SC: Could you turn to B35?
 16 Have you turned to B35?
 17 W/O THAMAE: Yes, I have.
 18 MR BRUINDERS SC: That's body N.
 19 W/O THAMAE: It's body O. Oh, 36 no,
 20 sorry -
 21 CHAIRPERSON: B36 is O and one can see
 22 what looks like a weapon in the photograph. There doesn't
 23 seem to be a weapon, as far as I can see on B, near BN,
 24 near B35 which is body N. Am I right?
 25 MR BRUINDERS SC: Warrant Officer, you've

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1 heard the Chairman, there's no weapon next to N but there
2 appears to be one, well, placed rather photographically
3 across the shoulder of the body at O, is that right?
4 W/O THAMAE: Photo number 36?
5 MR BRUINDERS SC: Yes.
6 W/O THAMAE: Yes, that's correct.
7 MR BRUINDERS SC: Is that the weapon you
8 were talking about?
9 W/O THAMAE: That's correct, Mr Chair.
10 MR BRUINDERS SC: Now, what was the total
11 number of weapons that you collected?
12 W/O THAMAE: Mr Chair, I did not collect
13 them. I photographed them –
14 CHAIRPERSON: No, I'm sorry to interrupt
15 you. You didn't collect them but you rearranged them, you
16 gathered them together so you could presumably photograph
17 them altogether except for the one near body O. So what
18 counsel wants to know is what was the total number of
19 weapons that you picked up and rearranged so that you could
20 take a photograph? Is that right, Mr Bruinders?
21 MR BRUINDERS SC: Yes.
22 W/O THAMAE: I didn't count them there.
23 MR BRUINDERS SC: We can use your
24 photographs to count them for ourselves.
25 W/O THAMAE: That's correct, Mr Chair.

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1 MR BRUINDERS SC: And then according to
2 you we must add the traditional weapon, the knobkerrie at
3 body O.
4 W/O THAMAE: Come again, I didn't hear
5 clearly?
6 MR BRUINDERS SC: So to the weapons that
7 you rearranged and photographed, we must add the
8 traditional weapon at body O.
9 W/O THAMAE: That's correct, Mr Chair.
10 MR BRUINDERS SC: And that would be the
11 total, as far as you were concerned, at scene 1.
12 W/O THAMAE: That's correct, Mr Chair.
13 MR BRUINDERS SC: Can you please turn to
14 B15 and tell me when you have it.
15 W/O THAMAE: I have it.
16 MR BRUINDERS SC: That's a photograph of
17 scene 1.
18 W/O THAMAE: That's correct, Mr Chair.
19 MR BRUINDERS SC: And what we see in the
20 middle towards the top of the photograph is the kraal.
21 W/O THAMAE: That's correct, Mr Chair.
22 MR BRUINDERS SC: On the right of the
23 kraal we see what looks like a path that goes around the
24 kraal.
25 W/O THAMAE: That's correct.

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1 MR BRUINDERS SC: That leads to a road.
2 W/O THAMAE: No –
3 MR BRUINDERS SC: Or does it lead to a
4 dirt road?
5 W/O THAMAE: I – I'm not sure from which
6 direction are you looking at it. Are you looking at it
7 from the top, which is the – the top down or from what
8 direction, I am not sure.
9 MR BRUINDERS SC: Perhaps we should use
10 your pointer and look at the big screen. Now can you point
11 with your pointer at the path that goes around the right of
12 the kraal as you look at it? That's the path you're
13 pointing now.
14 W/O THAMAE: That's correct, Mr Chair.
15 MR BRUINDERS SC: And that path appears
16 to join up with what looks like a dirt road, can you point
17 that to us?
18 W/O THAMAE: From here you can see where
19 it is going and then here it reaches a dead-end –
20 MR BRUINDERS SC: No, no, go the other
21 way.
22 W/O THAMAE: Straight is a dead-end and
23 then around the kraal and then it joins, it moves to –
24 there's one going that side and then there's one also.
25 MR BRUINDERS SC: So can you just point

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1 again to the path on the right of the kraal? Now if you –
2 where you were a moment ago please, on the right side of
3 the kraal as you look at it. Yes, there. Now if you take
4 your pointer down, just there, that path appears to join
5 with what looks like a dirt road. Would that be right?
6 W/O THAMAE: That's correct.
7 MR BRUINDERS SC: Where does that dirt
8 road lead to?
9 W/O THAMAE: If you – this one, if you go
10 to your left –
11 MR BRUINDERS SC: No, please Warrant
12 Officer, we don't want to go to the left of that
13 photograph. I want to keep you to the right of that kraal,
14 do you understand?
15 W/O THAMAE: If you go straight you go to
16 the position of that body.
17 MR BRUINDERS SC: We've been through this
18 before. I want you to go – take the path down towards the
19 dirt road. Yes, have you got that? Now that dirt road –
20 I'll make it easier for you – that dirt road leads into the
21 informal settlement, not so?
22 W/O THAMAE: If you go that direction,
23 yes.
24 MR BRUINDERS SC: Correct. You confirm
25 that?

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1 W/O THAMAE: Yes, that's correct.
 2 MR BRUINDERS SC: Warrant Officer, did I
 3 hear you correctly – and forgive me if I didn't hear you
 4 correctly but did I hear you to say that you did not count
 5 the number of cartridge cases that you show on your, on
 6 that photograph?
 7 W/O THAMAE: No, I did count the number
 8 of – all the cartridge cases and I indicated shotgun 57
 9 cartridge cases, pistol 31 cartridge cases, rifle 210
 10 cartridge cases.
 11 MR BRUINDERS SC: Nothing further.
 12 CHAIRPERSON: Mr Bizos?
 13 CROSS-EXAMINATION BY MR BIZOS SC: You
 14 told us that you did not know where the line of fire was.
 15 W/O THAMAE: That's correct, Mr Chair.
 16 MR BIZOS SC: As an experienced person in
 17 gathering material which may be of assistance, did you ask
 18 anyone there, where were you policemen when you fired, in
 19 order to make it more convenient for the findings that
 20 you've made?
 21 W/O THAMAE: Like I indicated in my
 22 statement, that General Naidoo only took us through the
 23 scene and then –
 24 MR BIZOS SC: Who took you through the
 25 scene?

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1 W/O THAMAE: General Naidoo.
 2 MR BIZOS SC: General Naidoo. He was
 3 helpful, was he? 15:37
 4 W/O THAMAE: That's correct.
 5 MR BIZOS SC: Did you ask him, where were
 6 your policemen when they fired?
 7 W/O THAMAE: No, I didn't ask him.
 8 MR BIZOS SC: Why not?
 9 W/O THAMAE: It didn't come to my mind to
 10 ask him.
 11 MR BIZOS SC: Now perhaps it'll be
 12 helpful to us if you tell us how much experience you have
 13 of the behaviour of cartridges when fired. Do they fall on
 14 the spot or do they fall forwards or do they fall sideways
 15 or do they, depending on the type of gun, they shoot where
 16 they fall?
 17 W/O THAMAE: As far as I'm concerned I'm
 18 not a ballistic expert, I cannot be able to tell what
 19 distance would a firearm eject the cartridge case.
 20 CHAIRPERSON: You weren't asked the
 21 distance, you were asked the direction.
 22 W/O THAMAE: The direction –
 23 CHAIRPERSON: What Mr Bizos wanted to
 24 know was, are you able to tell us in which direction
 25 cartridge cases fall after the cartridge has been fired.

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1 That is the question, as I understood the question.
 2 MR BIZOS SC: That is the question.
 3 CHAIRPERSON: And so you haven't answered
 4 it, so will you have a go at answering it now, please?
 5 W/O THAMAE: The firearm ejects cartridge
 6 cases to the right.
 7 MR BIZOS SC: To the right. Forwards or
 8 backwards, or depends?
 9 W/O THAMAE: At this stage I can only say
 10 to the right. I don't know what angle.
 11 MR BIZOS SC: The measurements that you
 12 made at the bottom of the document that was handed in,
 13 varying from 2.3 to 5.4, these were measurements to body B,
 14 is that correct?
 15 W/O THAMAE: That's correct, Mr Chair.
 16 MR BIZOS SC: Now, am I correct in
 17 inferring that the cartridges must have been in a pile for
 18 you to make a measurement like that?
 19 W/O THAMAE: No, they were not in a pile.
 20 MR BIZOS SC: So what did you measure,
 21 one cartridge but – or a number of cartridges?
 22 W/O THAMAE: A number of cartridges.
 23 Like I indicated, they were in an arc form from around body
 24 B, they were some sort of arc shape.
 25 MR BIZOS SC: We know the weapons we have

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1 in this pile now, how sure are you that the cartridges were
 2 not piled up or moved around like the weapons were?
 3 W/O THAMAE: I cannot comment whether
 4 they were piled up or not, but I can only confirm that I
 5 found them in that position.
 6 [10:58] MR BIZOS SC: In what position, in
 7 compact or widely scattered, or in between? They were
 8 piled and there were some that may have been scattered?
 9 W/O THAMAE: A few were scattered but
 10 they were in the concentration.
 11 MR BIZOS SC: There was a concentration
 12 of them.
 13 W/O THAMAE: That's correct.
 14 MR BIZOS SC: And that is why you chose
 15 to measure to that concentrated pile of cartridges. What
 16 is the answer?
 17 W/O THAMAE: Your question is not clear
 18 to me. Can you repeat it again?
 19 MR BIZOS SC: When you say that there was
 20 a concentration – you don't like the word pile but we'll
 21 use your word, concentration – that's why you chose that
 22 spot to measure from.
 23 W/O THAMAE: That was the instruction
 24 given to me by evidence leaders, just to measure the
 25 cartridge cases closer to the body.

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1 MR BIZOS SC: Closer to one body?
 2 W/O THAMAE: To - yes, if I can say yes.
 3 MR BIZOS SC: Now the bodies, were they
 4 spread over an area?
 5 W/O THAMAE: I can't say they were
 6 spread. If you look at the photo how they were
 7 concentrated, the bodies.
 8 MR BIZOS SC: Which photo must we look
 9 at?
 10 W/O THAMAE: 15 -
 11 MR BIZOS SC: Yes. Well, it does show
 12 that outside the blue line - is that right?
 13 W/O THAMAE: Yes, outside that blue line.
 14 MR BIZOS SC: And what -
 15 W/O THAMAE: At the end of each line
 16 indicates the place where the body was lying.
 17 MR BIZOS SC: Yes.
 18 W/O THAMAE: Yes.
 19 MR BIZOS SC: Now what is the distance,
 20 what is the distance between body B and body H, what is the
 21 distance?
 22 W/O THAMAE: I did not measure the
 23 distances between the bodies.
 24 MR BIZOS SC: More or less?
 25 W/O THAMAE: More or less four metres.

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1 MR BIZOS SC: How much?
 2 W/O THAMAE: Four metres.
 3 MR BIZOS SC: And a similar distance for
 4 I?
 5 W/O THAMAE: No. For I it might be
 6 lesser.
 7 MR BIZOS SC: And if we accept your
 8 measurements and your estimates correctly, it would appear
 9 that at least some of the people that were killed may have
 10 been more than 10 metres away from the point that you
 11 measured and as you don't know where the firing line was,
 12 you can't be of any help to us how far the deceased were
 13 from the firing line.
 14 W/O THAMAE: No, on the distances, how
 15 far they were from the firing I can't -
 16 MR BIZOS SC: You can't be of any
 17 assistance.
 18 W/O THAMAE: No, I can't be of any
 19 assistance.
 20 MR BIZOS SC: Do you realise the
 21 importance of the measurements that you took? Were you
 22 told - were you told by General Naidoo or anyone else that
 23 the police shot the protesters in self-defence?
 24 W/O THAMAE: Ja, that is what I was told.
 25 MR BIZOS SC: That's what you were told.

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1 I would have thought that as an investigator, the next
 2 question would've been, show me where the policemen were
 3 that shot in self-defence.
 4 W/O THAMAE: Like I said, it never came
 5 to my mind.
 6 CHAIRPERSON: Mr Bizos, I'm proposing to
 7 take the tea adjournment round about now.
 8 MR BIZOS SC: There may be one or two
 9 more -
 10 CHAIRPERSON: If it's a convenient stage
 11 I'll do it, if you want to ask some other questions to
 12 round off this point, let's do that.
 13 MR BIZOS SC: - a couple of questions
 14 that I may want to ask. Perhaps it's an appropriate time
 15 to take the -
 16 CHAIRPERSON: The Commission will now
 17 take the tea adjournment.
 18 [COMMISSION ADJOURNS COMMISSION RESUMES]
 19 [11:31] CHAIRPERSON: The Commission resumes.
 20 Warrant Officer, I must remind you that you are still under
 21 oath. Yes, Mr Bizos?
 22 CROSS-EXAMINATION BY MR BIZOS (CONTD):
 23 You told us that there was a pile of sticks which were one
 24 on top of one another and that you rearranged them in order
 25 to photograph them. Have I got your evidence correctly?

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1 W/O THAMAE: That is correct, Mr Chair.
 2 MR BIZOS SC: You don't know where these
 3 sticks were before they were gathered and put onto a pile?
 4 W/O THAMAE: That's correct, I don't know
 5 where they were.
 6 MR BIZOS SC: We do know from footage
 7 that we have on cameras that the majority of the arms in
 8 the hands of protesters were sticks, correct?
 9 MR SEMENYA SC: Chair, that is not my
 10 understanding of scene 1 at all.
 11 MR BIZOS SC: I'm sorry, I don't
 12 understand. Is he saying -
 13 CHAIRPERSON: Mr Semenya says his
 14 understanding of scene 1 differs from yours.
 15 MR BIZOS SC: Well, we can argue you that
 16 but I want you to please assume for the purposes of my
 17 question that it appears that the majority of weapons
 18 possessed were not revolvers, they were not guns, they were
 19 not armoured vehicles, they were sticks - the majority.
 20 Would you agree with that or if you don't want to agree,
 21 assume for that purpose that I have interpreted the
 22 evidence before the Commission correctly thus far. If, in
 23 fact -
 24 W/O THAMAE: Yes, if I look at that -
 25 where, the dangerous weapons that were piled up, I could

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1 see that they were sticks, sharp objects or spears, knives
2 or pangas.

3 MR BIZOS SC: Yes.

4 W/O THAMAE: Yes.

5 MR BIZOS SC: You found no sticks in the
6 – loose in the area between where the firing line may have
7 been and where the bodies were, you found no sticks at all.

8 W/O THAMAE: Like I've already indicated,
9 the only traditional weapons that I found or dangerous
10 weapons that I have found, they were piled up at the area
11 where alphabet F on this photo is.

12 MR BIZOS SC: Beyond the bodies.

13 W/O THAMAE: If you can look at alphabet
14 F, that is where they were piled up and it's only on one
15 body, that is O, where I saw a stick only.

16 MR BIZOS SC: [Indistinct] if in fact a
17 large group of the people –

18 CHAIRPERSON: Mr Bizos, we're going to
19 have terrible trouble with the transcription of what's
20 happened if you and the interpreter talk at the same time.

21 MR BIZOS SC: I'm sorry.

22 CHAIRPERSON: So I don't know who has got
23 the preference here, but I imagine the interpreter is
24 interpreting what you've just said, it's only fair to wait
25 for him to finish before you carry on.

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1 MR BIZOS SC: I'm sorry, Mr Interpreter,
2 Mr Commissioner.

3 MR MAHLANGU: Thank you, sir.

4 MR BIZOS SC: Yes, you – if in fact there
5 was such an attack and people, 15 people were killed, you
6 would have expected quite a number of sticks in that area,
7 which would've been important evidence of sorts.

8 W/O THAMAE: If I understand you
9 correctly, are you saying a number of, those number of
10 weapons that were piled together should have been more than
11 what I found?

12 MR BIZOS SC: No, what I am saying is
13 that if the scene was not interfered with by piling up
14 things and if there had been an attack, there would've been
15 quite a number of sticks within the area next to the
16 bodies.

17 W/O THAMAE: That's correct, if that is
18 the case, if they were not removed from their original
19 positions –

20 MR BIZOS SC: Yes.

21 W/O THAMAE: We could have found them
22 there.

23 MR BIZOS SC: Yes. Now you are a crime
24 scene expert. Do you expect police officers to remove
25 objects before you get there and rearrange them?

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1 W/O THAMAE: No, that is not what I'm
2 expecting.

3 MR BIZOS SC: Is that well known
4 throughout the police force from a rookie to a general,
5 that you don't interfere with a crime scene?

6 W/O THAMAE: It's a well known thing,
7 except under exceptional circumstances.

8 MR BIZOS SC: What would – what sort of
9 exceptional circumstances would there be in interfering
10 with the place where weapons were to be found? What was
11 the hurry?

12 W/O THAMAE: It's like, when I say
13 exceptional circumstances, it depends from a member doing
14 it what are the reasons why does that specific member
15 remove or, that specific object or destruct the scene, if I
16 may so say. It depends from that, he can give explanation
17 why he or she did it.

18 MR BIZOS SC: Did you ask anybody for an
19 explanation as to why the scene was interfered with?

20 W/O THAMAE: In cases of two pistols that
21 I forgot to mention before this Commission, I received two
22 pistols from Lieutenant-Colonel Mere. He handed over two
23 pistols to me, so when handing over that two pistols he
24 told me that he was afraid that somebody might remove the
25 pistols from the scene, so that is why he removed them from

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1 the scene and kept them in their possession.

2 MR BIZOS SC: We'll come to the firearms,
3 we'll come to the firearms, but you saw no reason why the
4 sticks should've been piled up.

5 W/O THAMAE: I cannot say I see no
6 reason. It depends from people from who removed those
7 dangerous weapons, what was the reason why they removed
8 them.

9 MR BIZOS SC: You mustn't be so afraid to
10 pass judgment on the conduct of your colleagues, Warrant
11 Officer. I want to ask you this before we come to the
12 pistols. You were briefed in the morning – please tell us
13 what the person, who was the person who briefed you?

14 W/O THAMAE: Captain Mohlaki.

15 MR BIZOS SC: Tell us, to the best of
16 your ability, what he said to you and the others that were
17 briefed.

18 W/O THAMAE: He told us that the miners
19 were going to gather at 9 o'clock at the hilltop and after
20 gathering they will surrender their weapons, leave them at
21 the place of gathering and disperse peacefully and then we
22 will be called to photograph, document and process that
23 scene. And that we are falling under the group of General
24 Naidoo, he will give us an indication when to go to that
25 place of incident.

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1 MR BIZOS SC: You're crime scene
 2 specialists.
 3 W/O THAMAE: That's correct.
 4 MR BIZOS SC: Did one or other of you ask
 5 what crime do you expect to be committed, Captain?
 6 W/O THAMAE: From Captain Mohlaki's
 7 briefing it was clear that the weapons that were to be
 8 surrendered were to be documented, collected and dispatched
 9 to forensics for analysis and it is the type of work I am
 10 doing.
 11 MR BIZOS SC: I see. Did he say that he
 12 expected the weapons to be handed over politely and
 13 voluntarily or did he say that they may have to use force
 14 in order to deprive people of their weapons?
 15 W/O THAMAE: Like I said, they were going
 16 to surrender, which means they were going to leave those
 17 weapons at the place of gathering and disperse peacefully,
 18 which means it was not necessary for police to use force.
 19 MR BIZOS SC: Did you know that more than
 20 600 of your fellow policemen, armed to the teeth with very
 21 efficient killing weapons, had gathered there that morning?
 22 W/O THAMAE: Yes, I'd seen many
 23 policemen. I'm not sure of their number but there were a
 24 lot of policemen.
 25 MR BIZOS SC: You spent six hours

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1 waiting, if I understand your evidence correctly.
 2 W/O THAMAE: Yes, roughly six hours.
 3 MR BIZOS SC: Did you discuss with your
 4 fellow experts or your fellow policemen what was to be
 5 expected on this fateful day?
 6 W/O THAMAE: No, we didn't discuss
 7 anything that was work-related. It was just general
 8 discussion because we had to wait there until further
 9 instruction.
 10 MR BIZOS SC: Could you see the koppie
 11 from where you were sitting for six hours?
 12 W/O THAMAE: No, I couldn't see the
 13 koppie.
 14 MR BIZOS SC: You expected their arms to
 15 be handed over by 9 o'clock.
 16 W/O THAMAE: No, by 9 o'clock, according
 17 to the briefing, it was the time when the miners were going
 18 to start gathering. We were not given the time of
 19 dispersing.
 20 MR BIZOS SC: In a case such as this
 21 where 34 people died as a result of being shot by the
 22 police, were there special rules that had to be observed in
 23 relation to the protection of the scene?
 24 W/O THAMAE: The general rule is
 25 everything has to be preserved, so I'm expecting generally

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1 each and every thing to be, has to be preserved the same as
 2 – they must be treated equally, if I may so say.
 3 CHAIRPERSON: They must be?
 4 W/O THAMAE: They must be treated
 5 equally, all the scenes, yes.
 6 MR BIZOS SC: Was there a belief that
 7 members of the crowd may use firearms on this day?
 8 W/O THAMAE: According to the briefing it
 9 was clear that the miners were not – were only going to
 10 surrender their weapons. It was not made mention whether
 11 they are going to be used or not but what was clear was
 12 only surrender.
 13 MR BIZOS SC: Can you identify the
 14 persons that gave you the two firearms?
 15 W/O THAMAE: It was Lieutenant-Colonel
 16 Mere.
 17 MR BIZOS SC: Did he tell you that he'd
 18 dispossessed the possessors of those arms himself or
 19 whether someone else did it?
 20 W/O THAMAE: He said he personally
 21 removed them from the scene.
 22 MR BIZOS SC: Who?
 23 W/O THAMAE: He said he personally took
 24 them from the scene.
 25 MR BIZOS SC: I see. From the point of

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1 view of the investigation, would it have been important to
 2 preserve the fingerprints of anyone that was in possession
 3 of those arms?
 4 W/O THAMAE: Correctly so. They were
 5 collected, taken to our fingerprint lab, they were
 6 investigated for fingerprints and the results were
 7 negative, meaning there were no prints on both firearms
 8 found.
 9 MR BIZOS SC: Did he tell you whether he
 10 had gloves when he took them from the alleged possessors?
 11 CHAIRPERSON: He did say that he, as I
 12 understood the evidence, he didn't say he took them from
 13 the alleged possessors. The answer that you got in
 14 response to your question about that was, he said he took,
 15 he removed them from the scene.
 16 MR BIZOS SC: From – I beg your pardon.
 17 CHAIRPERSON: He removed them from the
 18 scene. You asked if he took them –
 19 MR BIZOS SC: Oh, I see.
 20 CHAIRPERSON: - whether he said he took
 21 them from the possessors –
 22 MR BIZOS SC: I'm sorry.
 23 CHAIRPERSON: And the answer was, he
 24 removed them from the scene, which is not the same thing
 25 but perhaps –

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1 MR BIZOS SC: Thank you. I missed that,
2 I'm sorry. Did he use gloves when he picked them up?
3 [11:51] W/O THAMAE: Are you referring to Colonel
4 Mere?
5 MR BIZOS SC: Yes, the person who gave
6 you the guns?
7 W/O THAMAE: I don't know if he used
8 gloves but –
9 MR BIZOS SC: When he gave them to you
10 was he wearing gloves?
11 W/O THAMAE: Yes, he was wearing gloves.
12 MR BIZOS SC: He was wearing gloves.
13 Were you wearing gloves?
14 W/O THAMAE: I was also wearing gloves as
15 it is standard procedure for LCRC members to wear
16 protective clothing, wear personal protective clothing when
17 processing crime scenes.
18 MR BIZOS SC: Do you know that a record
19 is kept in Pretoria of all guns that have come into the
20 possession of the police? They've got to be referred to
21 the forensics expert in Pretoria, did you know that?
22 W/O THAMAE: Yes, I do know all the
23 firearms are forwarded to the forensic science laboratory.
24 MR BIZOS SC: Do you know whether these
25 guns were examined by the forensic experts in Pretoria to

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1 determine who may have been in possession, including the
2 police, in the past?
3 W/O THAMAE: Yes, I know that they are
4 there for analysis.
5 MR BIZOS SC: Do you know whether that
6 process was adopted before it is suggested to the
7 Commission that these were, belonged to someone in the
8 crowd?
9 W/O THAMAE: Sorry Mr Chair, can you
10 repeat the question again? I didn't understand the
11 question clearly.
12 MR BIZOS SC: Do you know whether any
13 investigation was done by the forensics department in
14 Pretoria as to whether these guns were in the possession,
15 of whom, and more particularly maybe – as has happened in
16 the past – the police?
17 W/O THAMAE: I only know that they are
18 there for analysis but I am not aware whether they have
19 finalised their analysis or not.
20 MR BIZOS SC: I have no further
21 questions, thank you, Mr Chair.
22 CHAIRPERSON: Thank you, Mr Bizos. Ms
23 Lewis, I think you're next.
24 CROSS-EXAMINATION BY MS LEWIS: Mr Chair,
25 I don't have any questions in cross-examination.

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1 CHAIRPERSON: Thank you. Mr Mpofo?
2 CROSS-EXAMINATION BY MR MPOFU: Warrant
3 Officer, do you now accept that the scene was interfered
4 with?
5 W/O THAMAE: That's correct.
6 MR MPOFU: What time did you arrive at
7 the scene? You said about four o'clock?
8 W/O THAMAE: That's correct, Mr Chair.
9 MR MPOFU: You arrived together with
10 Captain Mohlaki, is that correct?
11 W/O THAMAE: That's correct, Mr Chair.
12 MR MPOFU: Captain Mohlaki, when I asked
13 him a question, said that from his impression it was clear
14 that the shooting had just occurred, in fact the people had
15 not even been attended to. Is that – would you confirm
16 Captain Mohlaki's evidence in that regard?
17 W/O THAMAE: I – the question is not
18 clear to me.
19 MR MPOFU: Okay. The first part is just
20 information that I'm giving you. Captain Mohlaki, when I
21 put a question to him, agreed with me that upon your
22 arrival it seemed as if the shooting had just occurred
23 within a few minutes because the persons had not even been
24 attended to. Now the question is, would your evidence
25 according with Captain Mohlaki in that respect?

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1 W/O THAMAE: That is correct.
2 MR MPOFU: Thank you. When you arrived
3 at the scene the pile had already been collected, correct?
4 W/O THAMAE: That's correct, they were
5 already there.
6 MR MPOFU: In other words, in those few
7 minutes between the shooting and your arrival, someone had
8 already interfered with the scene.
9 W/O THAMAE: That's correct.
10 MR MPOFU: And are you also aware that
11 the interference with the scene was not only confined to
12 the weapons but that some of the bodies had also been
13 moved?
14 W/O THAMAE: Yes, I've seen that on the
15 video footage.
16 MR MPOFU: Thank you. You were asked by
17 Mr Semenya about dangerous weapons. What do you describe
18 as dangerous weapons?
19 W/O THAMAE: A panga, a spear, any sharp
20 instrument, even a stick.
21 MR MPOFU: So you include a stick in the
22 group of dangerous weapons?
23 CHAIRPERSON: I think he means a
24 sharpened stick, doesn't he?
25 MR MPOFU: A sharp stick, sorry. Sorry –

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1 sorry. Yes, but you know – I'm sorry, Chairperson, I'll
 2 allow the interpreter –
 3 MR MAHLANGU: Thank you.
 4 W/O THAMAE: Yes, I'm referring to -.
 5 MR MPOFU: Thank you. And you'd agree
 6 with me that a non-sharpened stick is not a dangerous
 7 weapon?
 8 W/O THAMAE: To me it is also a dangerous
 9 weapon.
 10 MR MPOFU: So then why did you agree with
 11 the distinction? In other words, to you, whether it's
 12 sharpened or not sharpened, it's a dangerous weapon?
 13 W/O THAMAE: That's correct.
 14 MR MPOFU: Okay, would you at least
 15 concede that a non-sharpened stick is a much less dangerous
 16 weapon than a spear and a panga?
 17 W/O THAMAE: I'll rather say it will stay
 18 a dangerous weapon. I won't categorise it.
 19 MR MPOFU: I see. Okay, so they are
 20 equally dangerous in your estimation.
 21 W/O THAMAE: I'm saying they are
 22 dangerous – not equally dangerous, they are dangerous.
 23 MR MPOFU: Okay. Okay, which one is more
 24 dangerous?
 25 W/O THAMAE: I've already indicated I

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1 won't say – I won't categorise them that the one is more,
 2 less dangerous and the other one is more dangerous. They
 3 might have the same effect.
 4 MR MPOFU: Now was there any – if you go
 5 to B38 – no, I'm sorry. Oh yes, it is B38. Do you see
 6 that there are basically two rows of weapons there?
 7 W/O THAMAE: I can see that, yes.
 8 MR MPOFU: And they – well, certainly I
 9 mean I know you didn't compile this but do you think
 10 there's any logic in how the piles are arranged?
 11 W/O THAMAE: No, they were just arranged
 12 in that fashion.
 13 MR MPOFU: It's just a coincidence.
 14 W/O THAMAE: That's correct.
 15 MR MPOFU: So there's no reason why all
 16 the pangas are in row 2?
 17 W/O THAMAE: No, there is no reason.
 18 MR MPOFU: Okay. By the way, do you know
 19 who had interfered with the scene, who had created the
 20 pile?
 21 W/O THAMAE: I've already indicated that
 22 Lieutenant-Colonel Mere handed over the two firearms to me,
 23 that he allegedly said they'd come from the scene. He's
 24 the only person that I know he removed something from the
 25 scene. With regard to these dangerous weapons, I don't

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1 know who piled them up.
 2 MR MPOFU: While you were at scene 1 were
 3 you able to hear the shooting that occurred at scene 2?
 4 W/O THAMAE: There was never shooting in
 5 my – while I was at scene 1, no shooting occurred at scene
 6 2.
 7 MR MPOFU: And you were at scene 2 for
 8 what, more than an hour –
 9 CHAIRPERSON: Scene 1 or scene 2?
 10 MR MPOFU: Sorry, I'm sorry, Chairperson.
 11 You were at scene 1 for how long?
 12 W/O THAMAE: Like I indicated, we arrived
 13 at plus-minus 4 o'clock and then I left that place the
 14 following day at round about 6 o'clock in the afternoon.
 15 MR MPOFU: Okay. And your evidence is
 16 that between that 4 o'clock and let's say 6 o'clock, there
 17 was no shooting at scene 2?
 18 W/O THAMAE: Not at all.
 19 MR MPOFU: Right. This has already been
 20 covered but just again to make sure. You are not – well,
 21 given that the bodies were moved, which we've now
 22 established, given the fact that you don't know where the
 23 so-called firing line was and also given the fact that you
 24 said the bullets could fly to the right at whatever angle,
 25 you would not be able –

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1 COMMISSIONER HEMRAJ: You mean the
 2 cartridge cases to the right?
 3 MR MPOFU: I'm sorry, yes, the cartridge
 4 cases – thank you, commissioner. It would be impossible
 5 for you – also given this and if all those givens are
 6 wrong, you can correct me – given the fact that you don't
 7 know which bullet or rather which gun or which bullet
 8 killed which person – so those are the givens that I'm
 9 saying – you would not be able to estimate any distances
 10 between a shooter and a shot person, correct?
 11 W/O THAMAE: No, I won't be able to do
 12 it.
 13 MR MPOFU: Now the last issue I want to
 14 canvass with you deals with the briefing that you said you
 15 received. According to your evidence, the only thing that
 16 was going to happen there was people surrendering and you
 17 recording the scene.
 18 W/O THAMAE: That's correct, Mr Chair.
 19 MR MPOFU: At no stage was this changed
 20 to the possibility of something else happening.
 21 W/O THAMAE: No stage.
 22 MR MPOFU: And if I said to you that
 23 there'll be evidence that as early as 12 o'clock, or I
 24 think 12:05, paramedics were called to come and be on
 25 standby at the scene, would that surprise you?

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1 W/O THAMAE: Ja, that will be a surprise
 2 to me.
 3 MR MPOFU: Because from your briefing
 4 there would have been no role for paramedics, it's simply
 5 surrendering and taking of – or rather, and recording of
 6 the scene, correct?
 7 W/O THAMAE: That's correct.
 8 MR MPOFU: Okay, I'm sorry I misled you.
 9 There are two other things that I need to cover. Are you
 10 aware of allegations – I think let's put them at that level
 11 for now – that some of the people who had been shot were
 12 finished off, as it were, and shot at close range after the
 13 shooting that we saw on television?
 14 W/O THAMAE: Chair, I won't comment on
 15 those –
 16 MR MPOFU: You're not aware –
 17 W/O THAMAE: - only the pathology –
 18 CHAIRPERSON: Mr Mpofo, sorry, and the
 19 witness. Mr Semenya wants to say something.
 20 MR SEMENYA SC: I want to raise an
 21 objection, Chair.
 22 CHAIRPERSON: I understand you want to
 23 raise an objection, yes. What is the objection?
 24 [12:11] MR SEMENYA SC: Again it's very difficult
 25 to discern whether Mr Mpofo is putting it as a factual

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1 statement or a hypothesis. If he says there's going to be
 2 that evidence, he'd better say it in unequivocal terms.
 3 CHAIRPERSON: To be fair to the witness
 4 that you're cross-examining and to Mr Semenya's clients, if
 5 you were to make it clear whether what you were putting is
 6 something that you're proposing to prove in evidence or
 7 whether it's merely a hypothesis which you want to test.
 8 MR MPOFU: Well, Chair, before I answer
 9 the question I must say that I think that's very surprising
 10 –
 11 CHAIRPERSON: I don't think that you
 12 should tell us what you think, Mr Mpofo.
 13 MR MPOFU: Okay –
 14 CHAIRPERSON: I've given a ruling. The
 15 ruling I – if you wish to suggest to me that I should
 16 reconsider my ruling because you wish to address me fully
 17 on the matter –
 18 MR MPOFU: Yes, I do.
 19 CHAIRPERSON: - I'm prepared to listen to
 20 you.
 21 MR MPOFU: Thank you, Chair. Yes, Chair,
 22 simply if, as we were told yesterday, witnesses – material
 23 can be put to witnesses which is not even, does not even
 24 pretend to be evidence, I think with such an allegation
 25 made, that's how I framed the question and if I must use

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1 the word "evidence" then I will, but I thought when I say
 2 that is he aware of those allegations –
 3 CHAIRPERSON: If you meant to say, is
 4 that there would in due course be an allegation by someone
 5 –
 6 MR MPOFU: That's exactly –
 7 CHAIRPERSON: - not just speculating or
 8 hypothesising –
 9 MR MPOFU: Yes.
 10 CHAIRPERSON: But mentioning something
 11 that he or she has seen, then of course there's nothing
 12 wrong with the question. There's nothing wrong with the
 13 question even to put it as a hypothesis. All I was saying
 14 to you is, we must be clear which of the two we'd be
 15 dealing with but you've now removed the problem because you
 16 say it's not a hypothesis, it's an actual factual
 17 allegation which you're putting to the witness.
 18 MR MPOFU: Yes.
 19 CHAIRPERSON: - Mr Semenya's objection
 20 then falls away.
 21 MR MPOFU: Thank you, Chair. Ja, that's
 22 what I said. Maybe I'll repeat the question and I'll use
 23 both words.
 24 CHAIRPERSON: I think Mr Semenya still
 25 wants to say something.

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1 MR MPOFU: Oh, okay.
 2 MR SEMENYA SC: Chair, if the allegation
 3 is going to be something like it was said in the newspaper,
 4 then it mustn't be put as an allegation of that nature. If
 5 it –
 6 CHAIRPERSON: Sorry, I didn't understand
 7 Mr Mpofo to say that he was putting it on that basis. He
 8 said that – he followed it up by saying that if he has to
 9 say there will be evidence, he will say so, that it is an
 10 allegation that he's putting based upon evidence that he
 11 proposes to lead. I understood him to say that and that's
 12 why I said I thought your objection fell away.
 13 MR SEMENYA SC: My objection withdrawn,
 14 my objection would fall.
 15 MR MPOFU: Chairperson, I must say I
 16 don't appreciate my cross-examination being interrupted for
 17 no apparent reason.
 18 CHAIRPERSON: Mr Mpofo, counsel are
 19 entitled to object. If their objections are bad or fall
 20 away, they will be dealt with accordingly. I understand a
 21 cross-examiner doesn't like interruptions but there are
 22 interruptions I'm afraid one has to live with and so I
 23 don't think it necessary to make that sort of comment. If
 24 the objections are persistent and frivolous and unfounded
 25 and uncalled for, you can – I think, I hope –

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1 MR MPOFU: Thank you, Chair.
 2 CHAIRPERSON: - allow me to deal suitably
 3 with the objector, but I don't think it's necessary to make
 4 comments like that. Just please carry on.
 5 MR MPOFU: Are you aware – or rather let
 6 me put it like this again. There are also going to be
 7 allegations and evidence that some of the people were run
 8 over by the Nyalas. Did you observe anything of that
 9 nature or are you aware of such allegations and evidence?
 10 W/O THAMAE: I am not aware of something
 11 like that. I've no information and I've never noticed
 12 something like – or observed something of that nature.
 13 CHAIRPERSON: When you mean you haven't
 14 observed anything of that nature, do you mean you didn't
 15 see any Nyalas driving over bodies or do you mean that you
 16 saw nothing which could be indicative of the fact that
 17 something of that kind had happened?
 18 W/O THAMAE: Ja, I never – observed
 19 something like the tracks of the Nyalas going to the side
 20 where the bodies were lying. It's what I observed, there
 21 were no tracks like that next to the bodies.
 22 MR MPOFU: There was also a question
 23 asked to you by Mr Bizos about the majority of the weapons
 24 and I do appreciate that you arrived at the scene at a
 25 particular time but if you can just assist the Commission,

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1 can you go to slide 172? Exhibit L, thank you. Are you
 2 there?
 3 W/O THAMAE: Yes, I am, Mr Chair.
 4 MR MPOFU: Okay, apart from the man in
 5 front brandishing a panga, what would you say are the
 6 majority of the weapons there?
 7 W/O THAMAE: I'd say sticks.
 8 MR MPOFU: Thank you. Chairperson, at
 9 this time I would request that we play the video of
 10 Anderson. Chairperson, I am informed or advised,
 11 correctly, that I should – that a warning might be suitable
 12 to be issued in respect of this video, the usual warning.
 13 CHAIRPERSON: I understand that the video
 14 operators are in a position to show the video, is that
 15 correct? Mr Madlanga – Mr Madlanga did say at the
 16 beginning that he had arranged for certain videos to be
 17 shown if it was required in cross-examination. Did that
 18 refer to – is he Warrant Officer Handerson, what's his
 19 rank?
 20 MR MPOFU: He's an Adjutant.
 21 CHAIRPERSON: And is he Anderson or
 22 Henderson? There was some debate about that. I thought it
 23 was Handerson, is that right?
 24 MR MPOFU: Yes, with an H, Chairperson.
 25 CHAIRPERSON: I know it's an H, but H-A –

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1 MR MPOFU: Yes.
 2 CHAIRPERSON: Or H-E?
 3 MR MPOFU: Oh, I see. H-E.
 4 CHAIRPERSON: Is it Henderson or
 5 Handerson? Is he going to come and give evidence?
 6 MR MADLANGA SC: Mr Chair, at this stage
 7 I do not know whether it's H-E or H-A.
 8 CHAIRPERSON: Is he coming to give
 9 evidence?
 10 MR MADLANGA SC: Depending on the cross-
 11 examination –
 12 CHAIRPERSON: Well, if he comes –
 13 MR MADLANGA SC: We may or we may not
 14 call him.
 15 CHAIRPERSON: If he comes he can tell us.
 16 MR MADLANGA SC: Yes, Mr Chair.
 17 CHAIRPERSON: And are the video operators
 18 in a position to show us his video?
 19 W/O THAMAE: It is H-E, Chairperson.
 20 CHAIRPERSON: Thank you, so that's
 21 problem has now been solved. The video that is going to be
 22 shown contains graphic scenes which may well cause distress
 23 and unhappiness to the people who are close to some of the
 24 people depicted on the video. So before the video is shown
 25 we will pause for a minute to give anyone who feels that

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1 the video may cause him or her distress, to leave the
 2 auditorium. Ms Henderson – I'm sorry, Ms Lewis, I see
 3 you've turned on your microphone.
 4 MS LEWIS: Yes.
 5 CHAIRPERSON: Do you wish to say
 6 something?
 7 MS LEWIS: I do. I'm sorry to interrupt.
 8 I'm just wondering whether it could be possible to give a
 9 more specific warning and in particular to say that the
 10 bodies that will be seen are those which were found at
 11 scene 1 and, if possible, to read out the names of those
 12 people.
 13 CHAIRPERSON: Do you want me to read out
 14 the names of all the people at scene 1?
 15 MS LEWIS: Yes, Mr Chair.
 16 CHAIRPERSON: For the benefit of those
 17 who are going to have to read the transcript, the names are
 18 in Exhibit O so I won't read them out but I'll ask the
 19 interpreter, whose pronunciation will be more accurate than
 20 mine, to please the names out so that those in the
 21 auditorium who wish to be informed which bodies are likely
 22 to appear on the video, will know exactly which bodies will
 23 be shown. Thank you, Ms Lewis, for a very thoughtful and
 24 sensitive suggestion. I see some people have left the
 25 auditorium.

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1 MS LEWIS: Thank you.

2 [VIDEO IS SHOWN]

3 CHAIRPERSON: I don't think that we heard

4 very clearly what was being said. I understand it was in

5 Afrikaans. If we may start the video again and pause at

6 various stages so the interpreter can interpret, I suppose,

7 into English and into isiXhosa what is being said.

8 MR MAHLANGU: Thank you, Chair.

9 CHAIRPERSON: The volume had better be

10 turned up because we couldn't hear it very clearly.

11 [VIDEO IS SHOWN]

12 MR MAHLANGU: The person introducing the

13 video says it's a scene of a particular case. It's at

14 Marikana, it's a murder case.

15 CHAIRPERSON: Mr Interpreter, I think you

16 should also interpret into isiXhosa.

17 MR MAHLANGU: It's happening, it took

18 place on 2012, the eighth month on the 16th day at 17:52,

19 17:42.

20 [VIDEO IS SHOWN]

21 [12:31] [VIDEO IS SHOWN]

22 CHAIRPERSON: Yes, Mr Mpofo?

23 MR MPOFU: Thank you, Chairperson. Just

24 –

25 MR MADLANGA SC: Just before my learned

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1 friend commences, there are – I'm advised by my junior, Ms

2 Mojapelo, that there are three more shorter ones – much,

3 much shorter ones.

4 CHAIRPERSON: Mr Mpofo, do you want to

5 see the shorter ones now?

6 MR MPOFU: Yes.

7 CHAIRPERSON: Ja, alright. Well, let's

8 do that –

9 MR MPOFU: Maybe let's –

10 CHAIRPERSON: And then I was proposing to

11 go on till 1 o'clock or thereabouts.

12 MR MPOFU: Yes.

13 CHAIRPERSON: But if, when we've seen

14 these three shorter ones, you consider it appropriate to

15 ask for us to adjourn until after the lunch adjournment,

16 then you can do so but I'll leave it to you to –

17 MR MPOFU: Thanks, Chair.

18 CHAIRPERSON: - decide how you want to

19 run your cross-examination. I know you don't like being

20 interfered with.

21 MR MPOFU: Thank you, Chairperson.

22 CHAIRPERSON: Not that that will stop me

23 if I consider it necessary.

24 [VIDEO IS SHOWN]

25 MR MPOFU: Sorry, yes. Thank you,

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1 Chairperson, just to direct the gentleman, while he is

2 playing those three shorter ones he might as well – we also

3 had a short one of Al Jazeera, so could he just do that as

4 well?

5 CHAIRPERSON: If he's got it available to

6 show –

7 MR MPOFU: Yes, it's –

8 CHAIRPERSON: - that's fine.

9 MR MPOFU: It's ready, yes.

10 [12:51] [VIDEO IS SHOWN]

11 MR MAHLANGU: It's another case. 23

12 minutes past 12, again on the 16th August 2012.

13 [VIDEO IS SHOWN]

14 CHAIRPERSON: Mr Mpofo, I think perhaps

15 it would be appropriate at this stage for us then to take

16 the lunch adjournment. Is there another –

17 MR MPOFU: Yes –

18 CHAIRPERSON: We haven't seen the Al

19 Jazeera one yet. Is there another Henderson clip as well

20 for us to see?

21 MR MPOFU: Yes, Chair, there's a short

22 one. I thought logically let's finish with the clip –

23 CHAIRPERSON: Alright. I did say you

24 could determine when we adjourn.

25 MR MPOFU: Thank you. I'll use that

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1 power for now, Chair.

2 [VIDEO IS SHOWN]

3 MR MPOFU: Chairperson, sorry, if I may?

4 Can you play the Al Jazeera one, it's much shorter than

5 this one.

6 [13:11] [VIDEO IS SHOWN]

7 MR MPOFU: Thank you, Chairperson, that

8 would be an appropriate time for the break.

9 CHAIRPERSON: The Commission will take

10 the lunch adjournment.

11 [COMMISSION ADJOURNS COMMISSION RESUMES]

12 [14:12] CHAIRPERSON: The Commission resumes. Mr

13 Mpofo, are you now in a position to cross-examine?

14 MR MPOFU: Yes, thank you, Chairperson.

15 CROSS-EXAMINATION BY MR MPOFU (CONTD):

16 Warrant Officer, I'm going to ask you questions based on

17 the videos, hopefully avoiding having to replay the videos,

18 except if there's some disagreement between us. You would

19 agree – you would agree that there are no weapons next to

20 the bodies, any of the bodies, except of course N where

21 there's that stick?

22 W/O THAMAE: That's correct, Mr Chair.

23 CHAIRPERSON: I think you mean P.

24 MR MPOFU: Yes. Yes, by which I meant P.

25 Sorry, I made a mistake. Except for the body that has a

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1 stick, which is P, correct.
 2 W/O THAMAE: If I remember correctly,
 3 yes.
 4 MR MPOFU: It looks like both you and
 5 myself, Chair, are wrong.
 6 CHAIRPERSON: Look at B37. There's a
 7 picture of body P with a stick.
 8 MR MPOFU: Okay. So okay, the
 9 Chairperson was right.
 10 CHAIRPERSON: There's also a stick in O.
 11 MR MPOFU: Oh, that's under the body,
 12 yes. Well, it looks like a rod, yes, but – yes, I'm sorry
 13 Warrant Officer, the body you are referring to is O.
 14 W/O THAMAE: That's correct.
 15 MR MPOFU: And we might as well include P
 16 insofar as there's a rod there. Except for those two,
 17 there are no weapons among the bodies.
 18 W/O THAMAE: That's correct.
 19 MR MPOFU: Thank you. And at the
 20 beginning of each video there's reference to a murder case.
 21 Do you know who was murdered?
 22 W/O THAMAE: The bodies lying at that –
 23 at scene 1.
 24 MR MPOFU: And then the first video is
 25 taken at about 17 – is it 42 or 52?

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1 W/O THAMAE: 17:42.
 2 MR MPOFU: 42, yes. And it was already
 3 getting dark.
 4 W/O THAMAE: That's correct, Mr Chair.
 5 MR MPOFU: Do you have any reason why the
 6 video was taken almost two hours after your arrival there?
 7 W/O THAMAE: Mr Chair, if I may explain?
 8 Upon our arrival we arrived at scene 1 and we were taken –
 9 we waited for General Naidoo to arrive and then he arrived,
 10 he took us through scene 1. We went to scene 2 and then
 11 when back to scene 1 again. I think that is the reason why
 12 we took so long before we did –
 13 MR MPOFU: Okay, I see. You said that –
 14 I thought your earlier evidence was that the kraal itself
 15 was not part of the scene but would it be correct to say
 16 that there were some clothing items and even shoes inside
 17 the kraal, is that correct?
 18 W/O THAMAE: That's correct, Chair.
 19 MR MPOFU: And the stick that is on body
 20 O, I think we've now established, is sitting very nicely on
 21 his shoulders, is that correct?
 22 W/O THAMAE: That's correct.
 23 MR MPOFU: You don't know who placed it
 24 there?
 25 W/O THAMAE: That's correct, Mr Chair.

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1 MR MPOFU: But effectively that's the
 2 only dangerous weapon, on your definition, that you
 3 observed – apart from the pile, of course.
 4 W/O THAMAE: That's correct.
 5 MR MPOFU: Right. It would seem that
 6 about two hours after the – or at least after your arrival,
 7 paramedics were still treating people, is that correct?
 8 W/O THAMAE: That's correct, Chair.
 9 MR MPOFU: Some of the bodies were lying
 10 very close to the kraal, correct?
 11 W/O THAMAE: That's correct.
 12 MR MPOFU: And actually the body number
 13 L, the body of Mr Cebisile Yawa, is lying very close to the
 14 entrance of the kraal, against the kraal itself.
 15 W/O THAMAE: That's correct.
 16 MR MPOFU: And from the video, the answer
 17 which you've already given to what my learned friend Mr
 18 Bruinders asked you, is even much clearer – that the path
 19 leads to the informal settlement, correct?
 20 W/O THAMAE: That's correct, it did.
 21 MR MPOFU: The next video where there are
 22 cones – yes, that's the word I was looking for – where
 23 there are lots of cones, it says 20 minutes past 12 and can
 24 we assume that that means 20 minutes after midnight?
 25 W/O THAMAE: That's correct, Mr Chair.

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1 MR MPOFU: Now, we know that – we
 2 established before lunch that the weapons were interfered
 3 with and that the bodies were interfered with. Would you
 4 happen to know if the cartridges were interfered with as
 5 well?
 6 W/O THAMAE: That I don't know.
 7 MR MPOFU: You don't know, thank you.
 8 But you would agree with me that some of the cones are
 9 lying among the bodies?
 10 W/O THAMAE: That's correct.
 11 MR MPOFU: You saw – I think it's video
 12 number 2 or 3 – that there's actually, okay I won't put it
 13 – maybe one or two cartridges which are lying, in my
 14 estimation and you can correct me, less than 30 centimetres
 15 from the head of one of the bodies.
 16 W/O THAMAE: No, I never found a
 17 cartridge case close as that distance.
 18 MR MPOFU: Yes, I know. I'm asking you
 19 whether, on the videos, did you see a cartridge case which
 20 was lying almost 30 centimetres from the head of somebody?
 21 W/O THAMAE: I won't say it's 30
 22 centimetres.
 23 MR MPOFU: Okay, fair enough, you didn't
 24 notice. I'm saying you did not notice that in the video?
 25 W/O THAMAE: I noticed it but it was not

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1 – in my opinion it was not 30 centimetres.
 2 MR MPOFU: How many centimetres do you
 3 think?
 4 W/O THAMAE: I'll have to watch it
 5 closely again to estimate. I can't remember how far was
 6 it.
 7 CHAIRPERSON: Can you give us an
 8 estimate? Was it less than a metre, in your opinion?
 9 W/O THAMAE: Mr Chair, I don't want to
 10 mislead the Commission. I really want to watch it over
 11 again.
 12 MR MPOFU: Mr Chair, I'm sorry, I wanted
 13 to avoid this but unfortunately I'm not even sure myself if
 14 it was video 2 or 3 but it was the short one, if we may,
 15 Chair.
 16 CHAIRPERSON: What I propose to do is,
 17 round about quarter past three to take a brief tea
 18 adjournment and carry on till about four. So perhaps
 19 during the adjournment you can do that, look at it and
 20 carry on with something else in the meanwhile.
 21 MR MPOFU: Thank you, Chair. Thank you.
 22 Lastly, Warrant Officer, you saw among – that there were a
 23 lot of abandoned shoes in the veld.
 24 W/O THAMAE: That's correct, Mr Chair.
 25 MR MPOFU: Including a pair of slippers.

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1 W/O THAMAE: That's correct, Mr Chair.
 2 MR MPOFU: If you go to – I think it's
 3 15, B15.
 4 W/O THAMAE: I've found it, Mr Chair.
 5 MR MPOFU: Got it? Okay, I'm going to
 6 ask you for an estimation. If you can't give it, you can
 7 say so. That shack that you see there, how far is it from
 8 the kraal? Approximately?
 9 W/O THAMAE: 40 to 45 metres.
 10 MR MPOFU: And the last line of the –
 11 okay, let me put it like this. The south – is it south –
 12 south-most line, part of the blue line, is another let's
 13 say 15 or so metres from the shack, correct?
 14 W/O THAMAE: I don't know. I don't
 15 understand from –
 16 MR MPOFU: Okay, yes – no, no, I
 17 understand, the question is vague. You see that the blue
 18 line traverses the path?
 19 W/O THAMAE: Yes, you can see that.
 20 MR MPOFU: Yes. Now when I say the
 21 south-most point of the blue line, I mean away from the
 22 kraal towards the informal settlement. Do you understand
 23 now? Are you with me, Chair – Adjutant?
 24 W/O THAMAE: I want to – okay, I want to
 25 understand. Do you mean the south part of the shack there?

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1 MR MPOFU: No, sorry. I mean the lower
 2 part, maybe let's put it like that. Let's say the part of
 3 the blue line that is next to the red line, can we call
 4 that the higher part of the blue line? Maybe we'll use the
 5 pointer. Okay, the pointer is not going to be helpful now,
 6 I've just lost my glasses –
 7 COMMISSIONER HEMRAJ: Mr Mpofo, why don't
 8 you use one of the alphabet on the slide to –
 9 MR MPOFU: Yes, thank you, thank you,
 10 commissioner. You've got the picture now, Warrant Officer?
 11 W/O THAMAE: Yes.
 12 MR MPOFU: Okay, you see where the letter
 13 F is?
 14 W/O THAMAE: Quite correct.
 15 MR MPOFU: Yes, so let's call that the
 16 higher part of the blue line, of the blue block. Alright,
 17 now my question concerns the lower part, the lowest part,
 18 in other words opposite that. Are we together?
 19 W/O THAMAE: That's correct, Mr Chair.
 20 MR MPOFU: Yes. Now that point which is
 21 the end of the blue line or the lower end of the blue line,
 22 would you agree with me that it's another – sorry, would
 23 you agree that it's another 15 metres or more from the
 24 shack?
 25 W/O THAMAE: That's correct.

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1 MR MPOFU: Thank you. So from that – if
 2 you add the 40 or 45 and the 15, then the furthest point of
 3 the cartridges was, let's say more than 50 metres from the
 4 cluster of bodies?
 5 W/O THAMAE: That's correct.
 6 MR MPOFU: Okay, now also despite the
 7 fact that your yellow line –
 8 COMMISSIONER HEMRAJ: I'm sorry to
 9 interrupt.
 10 MR MPOFU: Sorry, sorry commissioner.
 11 COMMISSIONER HEMRAJ: Can you just go
 12 through that again because I don't follow it?
 13 MR MPOFU: Alright. Should I do it by
 14 questions or just explain it, commissioner?
 15 COMMISSIONER HEMRAJ: I think by
 16 questions, yes.
 17 MR MPOFU: Okay. You said that the shack
 18 is about 40, 45 metres from the kraal or from the bodies,
 19 correct?
 20 W/O THAMAE: That's correct.
 21 [14:32] MR MPOFU: And you agreed with me that
 22 from the shack to the lowest point of the blue line is
 23 about 15 metres or so, or more, correct?
 24 W/O THAMAE: That's correct.
 25 MR MPOFU: Therefore 40 plus 15 is 55, so

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1 the lowest, the furthest point of the blue line is about 55
2 metres or so from the bodies.
3 W/O THAMAE: That's correct.
4 MR MPOFU: Thank you. Is that better?
5 COMMISSIONER HEMRAJ: That presupposes
6 that the line from the bodies to the southernmost part is a
7 straight line.
8 MR MPOFU: Yes.
9 COMMISSIONER HEMRAJ: But it isn't.
10 MR MPOFU: Yes, I'm using the path as the
11 straight line, I mean – I think the witness understands it
12 in the same way.
13 COMMISSIONER HEMRAJ: Well, I don't.
14 MR MPOFU: Okay. Well, I can't – I'm
15 happy with that answer as it is, thank you. Or maybe just
16 for the sake of completion, this probe takes the
17 supposition – if the measurement that was given would be
18 the same if we were imagining a straight line from the
19 lowest point of the blue line to the entrance of the kraal
20 or the cluster of bodies, correct?
21 W/O THAMAE: That's correct.
22 MR MPOFU: Thank you. Thank you, now the
23 last issue and this time it's the real last one. Despite
24 your – your yellow line, which I understood to be
25 indicating where, within either the blue line or the red

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1 block as it were, the concentration of cartridges were –
2 did I understand your evidence correct?
3 W/O THAMAE: Yes, the cartridge cases of
4 the pistols.
5 MR MPOFU: Yes. Yes, what I want to ask
6 you is just for clarification. From your yellow line, your
7 yellow line seems to be outside of the path, correct?
8 W/O THAMAE: That's correct.
9 MR MPOFU: And yet when we looked at the
10 video it looked like the last concentration of the
11 cartridges were on the path, would you agree with that?
12 W/O THAMAE: No, I don't agree.
13 MR MPOFU: Okay. Okay, thank you, we
14 won't play the video now. Maybe when we do it later we
15 will show that part but the cartridge cases or cones,
16 whichever way you look at it, that were littered among the
17 bodies, how many were there approximately? Of course if
18 you can't remember then say so.
19 W/O THAMAE: Mr Chair, before I answer
20 that question I want to bring it under the attention of the
21 Commission that those cones does represent the place and
22 position of cartridge cases. However, we ran out of cones,
23 so it doesn't reflect the true indication of the place and
24 position of the concentration of the cartridge cases.
25 MR MPOFU: Thank you. Thank you very

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1 much. So from that answer we can assume that there may be
2 more cartridges than cones that we see among the bodies.
3 W/O THAMAE: That is what I was trying to
4 explain.
5 MR MPOFU: Thank you. Who brought the
6 cones?
7 W/O THAMAE: I brought some, Colonel
8 Botha also brought some, Colonel Van der Merwe and other
9 people who came to assist me.
10 MR MPOFU: Yes, you brought them with you
11 at 4 o'clock?
12 W/O THAMAE: Ja, yes, at 4 o'clock.
13 MR MPOFU: Ja, thank you very much.
14 Thank you, Mr Chairman.
15 CHAIRPERSON: Is that the end of your
16 cross-examination, Mr Mpofu, subject to –
17 MR MPOFU: Subject to –
18 CHAIRPERSON: - coming back after tea –
19 MR MPOFU: Just for that one question,
20 thank you Chair.
21 CHAIRPERSON: Is there anyone else who
22 wishes to ask questions who hasn't had an opportunity yet?
23 Mr Semenya, you want another bite but before you get to
24 another bite, let's see if there's any other counsel or
25 other representative who wants to ask a question.

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1 MR MPOFU: I'm sorry, Chairperson,
2 there's just one aspect that I forgot to put to the Warrant
3 Officer.
4 CHAIRPERSON: Mr Mpofu.
5 MR MPOFU: Yes. Page 32 – sorry, Warrant
6 Officer, B32, can you see that?
7 W/O THAMAE: That's correct.
8 MR MPOFU: The hands that are on that
9 body, would it be correct to assume that they belong to one
10 of the policemen?
11 W/O THAMAE: That is not true, it is a
12 mortuary personnel. That photo was taken when the bodies
13 were removed by mortuary personnel.
14 MR MPOFU: Yes, thank you. And is that
15 the time that you, or whoever took the pictures for the
16 evidence, were the pictures then taken at the time of the
17 removal of the bodies to the mortuary?
18 W/O THAMAE: Yes. If you can see, all
19 those bodies with white papers and numbers on those white
20 papers were taken during the time when the bodies were
21 removed from the scene by mortuary personnel.
22 MR MPOFU: Yes. And around what time was
23 it when the mortuary personnel eventually came?
24 W/O THAMAE: I might be wrong, it was
25 maybe around 2 o'clock.

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1 MR MPOFU: 2AM?

2 W/O THAMAE: 2AM on the 17th of August.

3 MR MPOFU: About 10 hours after the

4 shooting itself, correct?

5 W/O THAMAE: Approximately.

6 MR MPOFU: Yes, thanks. And those cones

7 that are on page 32 – B32, sorry – what do they represent?

8 W/O THAMAE: This – those cones were

9 placed next to each body.

10 MR MPOFU: Okay. Thank you very much,

11 Chairperson. Just one second please, Chair. Warrant

12 Officer, did you attend the 9-day conference to prepare for

13 the Commission in Potchefstroom?

14 W/O THAMAE: Ja, I went there.

15 MR MPOFU: Did you participate in it?

16 W/O THAMAE: No, I didn't participate. I

17 was never called inside.

18 MR MPOFU: Any of your colleagues from

19 LCRC who were called inside?

20 W/O THAMAE: Ja, it was only Colonel

21 Botha.

22 MR MPOFU: Thank you very much.

23 CHAIRPERSON: - questions, Mr Mpofo?

24 MR MPOFU: No, I actually said that,

25 thank you Chair.

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1 CHAIRPERSON: Does any other party

2 representative wish to ask questions before I give Mr

3 Semenya an opportunity, as he has requested it? Mr

4 Semenya?

5 MR BRUINDERS SC: Mr Chair, could I?

6 CHAIRPERSON: Oh, Mr Bruinders, yes.

7 FURTHER CROSS-EXAMINATION BY MR BRUINDERS SC:

8 Yes. Forgive me, Mr Chair, could I just ask two questions

9 about these cones? How many cones did you bring to scene 1

10 at 4 o'clock?

11 W/O THAMAE: It's 10 that I always carry

12 in the vehicle that I use.

13 MR BRUINDERS SC: And how many cones were

14 used in total at scene 1?

15 W/O THAMAE: I didn't count how many did

16 I use.

17 MR BRUINDERS SC: No, I think we all

18 accept that you used your full quota, not so?

19 W/O THAMAE: Yes, my own, I used them.

20 MR BRUINDERS SC: How many cones besides

21 – well, how many cones including yours were used at scene

22 1?

23 W/O THAMAE: Like I said, I never counted

24 how many cones I did use at scene 1.

25 MR BRUINDERS SC: The other cones were

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1 brought by the rest of the members of your team.

2 W/O THAMAE: Like I said, yes.

3 MR BRUINDERS SC: There were four of you.

4 W/O THAMAE: We are not four.

5 MR BRUINDERS SC: How many were in your

6 team?

7 W/O THAMAE: In the beginning we were

8 four, yes, and then we split into two, Captain Mohlaki and

9 Constable Molefe went to scene 2, myself and Warrant

10 Officer Henderson stayed behind at scene 1 and then we were

11 later joined by Colonel Botha and a team from provincial

12 office, about five members from provincial office and then

13 there arrived seven or eight members from Klerksdorp

14 office, two or three if I'm not mistaken from Rustenburg

15 office.

16 MR BRUINDERS SC: Now when did these

17 additional people get to scene 1?

18 W/O THAMAE: They arrived something past

19 eight in the evening.

20 MR BRUINDERS SC: Between 4 and 8 o'clock

21 it was – there were two of you at scene 1 plus, I think you

22 were joined you say by Colonel Botha and another member, is

23 that right?

24 W/O THAMAE: That's correct, Mr Chair.

25 MR BRUINDERS SC: And these are the two

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1 people you say who brought along cones with them?

2 W/O THAMAE: As members arrived at that

3 scene, because they are always also having cones in their

4 vehicles that they use, they brought along cones and they

5 took cones out of their vehicles.

6 MR BRUINDERS SC: These are the two –

7 you're now talking about the two who joined you at scene 1?

8 W/O THAMAE: I said I was joined by

9 Colonel Botha and there came people from provincial office,

10 members from provincial office –

11 MR BRUINDERS SC: Let's leave aside – I

12 understand that the rest, the provincial office,

13 Klerksdorp, Rustenburg, they all got there you say at or

14 after 8 o'clock that night.

15 W/O THAMAE: Yes, they arrived after

16 eight.

17 MR BRUINDERS SC: Before they arrived you

18 were joined by Colonel Botha.

19 W/O THAMAE: That's correct.

20 MR BRUINDERS SC: And no other evidence

21 gatherer?

22 W/O THAMAE: That's correct.

23 MR BRUINDERS SC: And when did Colonel

24 Botha join you?

25 W/O THAMAE: I cannot remember what time

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1 was it but it was maybe after two hours I was, two to three
 2 hours I was at that scene.
 3 MR BRUINDERS SC: When did you start
 4 placing the cones to show where cartridges were lying?
 5 W/O THAMAE: After I recognised the
 6 presence of those cartridge cases.
 7 MR BRUINDERS SC: When was that?
 8 W/O THAMAE: Come again, I didn't –
 9 MR BRUINDERS SC: When was that?
 10 W/O THAMAE: It was shortly before
 11 Colonel Botha arrived.
 12 MR BRUINDERS SC: And that's when you
 13 made use of the cones brought by you and your colleague who
 14 was assisting you at scene 1?
 15 W/O THAMAE: That's correct.
 16 MR BRUINDERS SC: Can you remember how
 17 many cones he brought?
 18 W/O THAMAE: I can't remember.
 19 MR BRUINDERS SC: And did you complete
 20 your setting out of the cones before the rest of the
 21 evidence gatherers arrived later on, at eight or after?
 22 W/O THAMAE: As I said, those cones were
 23 already placed when they arrived and I ran short of cones.
 24 When they arrived I requested cones from them. Myself,
 25 Colonel Botha and Warrant Officer Henderson already used

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1 what we had in our vehicle.
 2 MR BRUINDERS SC: And more or less how
 3 much was that?
 4 W/O THAMAE: If I can estimate Colonel
 5 Botha's, there can be 70 to 80 cones that he had.
 6 MR BRUINDERS SC: Is that what Colonel
 7 Botha brought, 70 to 80 cones?
 8 W/O THAMAE: Ja, round about 70, 80.
 9 CHAIRPERSON: Mr Bruinders, please
 10 forgive my lack of comprehension but if you give me the
 11 assurance that you're asking questions for a particular
 12 focused reason, I won't ask you to disclose what it is but
 13 prima facie it seems to me the point that you want to make
 14 has been made insofar as the point – is it necessary to
 15 hammer on this point any further? I know that sometimes
 16 it's important for a cross-examiner to ask a question and
 17 there's a reason and it's embarrassing to disclose it, so I
 18 won't unnecessarily stop you but haven't you taken this
 19 point about as far as it can go, if not a bit further?
 20 MR BRUINDERS SC: I won't be much longer.
 21 You say you don't remember how many cones your colleague
 22 had when he arrived on the scene?
 23 W/O THAMAE: Ja, I don't remember.
 24 [14:52] MR BRUINDERS SC: I won't pursue that any
 25 further then.

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1 CHAIRPERSON: Thank you, Mr Bruinders.
 2 Mr Semenya?
 3 MR SEMENYA SC: Warrant Officer, may we
 4 just tidy up some part of your evidence just to remove some
 5 controversy there? You'd recall you were asked about more
 6 or less what time you arrived at scene 1.
 7 W/O THAMAE: That's correct, Mr Chair.
 8 MR SEMENYA SC: And then you were asked
 9 about the weapons that were in a heap or a pile or
 10 concentrated, do you recall that?
 11 W/O THAMAE: That's correct, Mr Chair.
 12 MR SEMENYA SC: Did I hear you say at 4
 13 o'clock when you arrived those weapons were already in a
 14 heap?
 15 W/O THAMAE: That's what I said, yes Mr
 16 Chair.
 17 MR SEMENYA SC: Can I invite you to go
 18 back to B38?
 19 W/O THAMAE: I'm there, Mr Chair.
 20 MR SEMENYA SC: I seem to see at the top
 21 of the page those, the motor vehicle has its headlights on.
 22 Do you see that?
 23 W/O THAMAE: That's correct, Mr Chair.
 24 MR SEMENYA SC: When I look at that slide
 25 together with the other slides up to B45 – do you see all

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1 of those?
 2 W/O THAMAE: I see all that.
 3 MR SEMENYA SC: They are night photos,
 4 aren't they?
 5 W/O THAMAE: That's correct.
 6 MR SEMENYA SC: So between four when you
 7 arrived and your first photos, there are no day photos you
 8 took?
 9 W/O THAMAE: That's correct, there are no
 10 day photos.
 11 MR SEMENYA SC: Now Captain Mohlaki told
 12 us about something called an active scene and a passive
 13 scene. Are those phrases familiar to you?
 14 W/O THAMAE: That's correct, Mr Chair.
 15 MR SEMENYA SC: And it was his evidence
 16 that, as crime scene management experts, you do not
 17 interfere or you do not do your work during the active
 18 scene, you wait until it is passive.
 19 W/O THAMAE: That's correct, Mr Chair.
 20 MR SEMENYA SC: So according to him, does
 21 it explain why it is that the photos were taken much later
 22 after the paramedics had attempted assisting those they
 23 can?
 24 W/O THAMAE: That's correct, Mr Chair.
 25 We were giving the paramedics chance to attend to those

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1 injured people.

2 MR SEMENYA SC: So is it your distinct

3 recollection, Warrant Officer – and I'm asking you to

4 reflect – that immediately after four on your arrival, the

5 weapons were already made into a heap?

6 W/O THAMAE: That's correct, Chair.

7 MR SEMENYA SC: And you wouldn't have

8 seen who is heaping these weapons at 4 o'clock or more or

9 less?

10 W/O THAMAE: No, I didn't see who did it.

11 MR SEMENYA SC: Did you see them removing

12 them with the attendance of the medical people?

13 W/O THAMAE: I never saw them removing

14 them with the paramedics.

15 MR SEMENYA SC: And the reason would be

16 what, Warrant Officer? You would have been there.

17 W/O THAMAE: It might have happened

18 before I arrived.

19 MR SEMENYA SC: No, then I'm confused.

20 More or less we have an impression that scene 1 happens

21 near or around 4PM.

22 W/O THAMAE: I understand that but the

23 thing is, I'm explaining what I've seen, what I've found.

24 That is what I am explaining. It's not what I've seen

25 happening, it's what I found, what I came across when I

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1 arrived at that scene.

2 MR SEMENYA SC: I'm trying, with your

3 assistance, to probe your observations. More or less at 4

4 o'clock the scene 1 happens. Your evidence seems to

5 suggest, and this is what I want to tidy up, seems to

6 suggest that even before the arrival of the paramedics, the

7 weapons had already been bunched up.

8 W/O THAMAE: Upon the time of my arrival

9 the incident had already occurred. That is why I am saying

10 I found those weapons in that condition, piled up at that

11 specific place.

12 MR SEMENYA SC: Just tidy this up for me

13 then. Were the paramedics there by the time of your

14 arrival or they arrived while you were there?

15 W/O THAMAE: I found them upon my arrival

16 at the scene.

17 MR SEMENYA SC: Then maybe it is your

18 timing which is throwing me out, Warrant Officer. So we

19 can accept, by the time you arrived the paramedics were

20 already on the scene attending to the injured.

21 W/O THAMAE: That's correct.

22 MR SEMENYA SC: Let me invite you to look

23 at B14. You dealt with this evidence in relation to the

24 distances from F to the shack and the distance from the

25 shack to the end point of the blue line, do you recall that

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1 evidence?

2 MR MADLANGA SC: Is my learned friend

3 perhaps not seeking to make a reference to B15?

4 MR SEMENYA SC: Yes, B15 would be –

5 that's a pictorial element of the same –

6 CHAIRPERSON: You said B14. We looked at

7 B14 and couldn't understand what on earth you were about.

8 If you look at B15 then I think it becomes clearer, what

9 you were asking. It doesn't help to ask – it may have just

10 been a slip of the tongue on your part but B14 –

11 MR SEMENYA SC: It's my page numbering

12 which is wrong, I'm told.

13 CHAIRPERSON: Alright, well, we'd better

14 have the right numbers so we all understand the question,

15 not only the witness.

16 MR SEMENYA SC: At B15 I'm having – I'm

17 corrected, Warrant Officer – do you have that one?

18 W/O THAMAE: I do have it, Mr Chair.

19 MR SEMENYA SC: And you recall the

20 evidence about the distances?

21 W/O THAMAE: Yes, I do.

22 MR SEMENYA SC: And Commissioner Hemraj

23 was trying to point out that there could be another third

24 line which would make those points a triangle. Do you

25 follow the question?

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1 W/O THAMAE: No, I don't follow it.

2 MR SEMENYA SC: If you move from point –

3 what is it – letter F to the shack, if you draw a straight

4 line there.

5 CHAIRPERSON: From the letter or the –

6 MR SEMENYA SC: The letter, alphabet. Do

7 you recall that evidence, Warrant Officer? It's not a big

8 point. All I'm saying is, the two points, if you draw one

9 straight below them, will give you a distance different

10 than the sum of the two.

11 W/O THAMAE: That's correct.

12 MR SEMENYA SC: No further questions,

13 thank you Chair.

14 CHAIRPERSON: Before I ask Mr Madlanga if

15 he's got any re-examination, I'd like to ask a few

16 questions. You said you got there at about 4 o'clock to

17 scene 1.

18 W/O THAMAE: That's correct, Mr Chair.

19 CHAIRPERSON: Now, how certain are you of

20 the accuracy of that recollection as to the time?

21 W/O THAMAE: If I remember well, when

22 Captain Mohlaki told me that we are needed at the scene, it

23 was round about quarter to four, 10 to four and it took us

24 more or less 10 minutes or less to arrive at that specific

25 scene.

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1 CHAIRPERSON: So in other words, it
 2 sounds to me as if you've reconstructed the time of your
 3 arrival at scene 1 based upon an assumption that you were
 4 summoned from the holding area to scene 1 at 10 to four, is
 5 that correct?
 6 W/O THAMAE: That's correct, Mr Chair.
 7 CHAIRPERSON: Now, do we know from
 8 Warrant Officer Henderson's video what time it was taken?
 9 W/O THAMAE: I heard him saying 17:42.
 10 CHAIRPERSON: That was the evidence that
 11 we had earlier. Now how long after you arrived on the
 12 scene did Warrant Officer Henderson arrive? Do you know or
 13 can you only estimate or guess?
 14 W/O THAMAE: Mr Chair, we were together –
 15 myself, Warrant Officer Henderson, Captain Mohlaki and
 16 Constable Molefe, we arrived at the same time at that
 17 scene. And from scene 1, like I've explained, we were
 18 taken through scene 1, we went to scene 2 and then we went
 19 back to scene 1 again and then that was then Warrant
 20 Officer Henderson started taking a video of the scene.
 21 CHAIRPERSON: Now what you've told us
 22 about the time lapse – well, no, you've told us what
 23 happened between your arrival at scene 1 and your return to
 24 scene 1 and Warrant Officer Henderson's having started
 25 taking his video. Are you able to estimate the time lapse

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1 between your arrival at scene 1 and the commencement of
 2 Warrant Officer Henderson's video?
 3 W/O THAMAE: If I may estimate, it took
 4 us over one hour because we had also to wait for General
 5 Naidoo to arrive at scene 1 to take us through and to take
 6 us to scene 2 again and back.
 7 CHAIRPERSON: The reason I'm asking these
 8 questions, because it occurred to me that if your evidence
 9 is accurate that you didn't hear any firing or anything of
 10 that sort at scene 2 from the time you arrived at scene 1,
 11 then the only explanation one can think of is that your
 12 evidence you gave about the time you arrived at scene 1 may
 13 be mistaken. I ask you that question because if the police
 14 presentation is correct – it may not be, but if the police
 15 presentation is correct, there was a shooting incident at
 16 scene 2 at some stage shortly after seven minutes past
 17 four. I'm referring to a text slide 235, a text at 236 and
 18 slide 237. You see either you – if that's correct, if
 19 their times are correct, then either your evidence that you
 20 didn't hear any shooting at scene 2 when you got to scene 1
 21 appears to be false, or it must have been later than you
 22 told us. Do you wish to comment on that? When I said
 23 false, I didn't mean you were deliberately telling an
 24 untruth. I was using "false" in the sense of incorrect.
 25 Either you are mistaken as to the time you got there, or

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1 the evidence you gave that you didn't hear any shooting at
 2 scene 2 after you got to scene 1 isn't correct. That's the
 3 proposition I put to you and ask you to comment on.
 4 W/O THAMAE: It is true that I didn't
 5 hear any shooting and upon my arrival there was no shooting
 6 on both scenes, so everything already occurred. So with
 7 time I can say, it was still I'd say round about 4 o'clock
 8 I arrived at scene 1.
 9 CHAIRPERSON: What do you mean by round
 10 about? Round about 4 o'clock? Does that mean 4 o'clock,
 11 one minute past four or what does it mean?
 12 W/O THAMAE: Four or a few minutes after
 13 four.
 14 [15:12] CHAIRPERSON: Thank you. Mr Madlanga, do
 15 you have any re-examination of the witness or does anyone,
 16 sorry, want to ask a question based on the questions that I
 17 asked?
 18 MR MPOFU: Chair, just –
 19 CHAIRPERSON: Mr Mpofu, you've raised
 20 your hand and turned your microphone on.
 21 MR MPOFU: Yes, just one, just arising
 22 from your questioning, Chair.
 23 FURTHER CROSS-EXAMINATION BY MR MPOFU:
 24 Firstly, this issue of the timing – remember that you've
 25 been asked about the timing and you've also been asked

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1 about the pile of arms, correct?
 2 W/O THAMAE: Correct, Mr Chair.
 3 MR MPOFU: Ja, I just want to ask you one
 4 question. At B38 up to 43 – let's call that the row of
 5 arms. Shall we call that – would you work with me on that
 6 one?
 7 W/O THAMAE: That's correct, Mr Chair.
 8 MR MPOFU: Is it correct that the row of
 9 arms that we see there is a different thing to the pile of
 10 arms that you referred to and that we saw on the video?
 11 W/O THAMAE: That's correct, Mr Chair.
 12 MR MPOFU: Thanks, Chair.
 13 CHAIRPERSON: Anyone else want to ask
 14 questions flowing from the questions I asked? No. I
 15 understand that Adv Hemraj wants to ask a few questions. I
 16 think we can then take the tea adjournment, Mr Mpofu can
 17 find the section on the video that he wants to put to the
 18 witness –
 19 MR MPOFU: We've already found it, Chair,
 20 so we can – if we could play it now and get it over and
 21 done with.
 22 CHAIRPERSON: Alright. Anyway, what I
 23 meant was it's desirable that you finish your cross-
 24 examination before Mr Madlanga re-examines.
 25 MR MPOFU: Oh yes.

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1 CHAIRPERSON: But let's stand back for
 2 Commissioner Hemraj, let her ask her questions first before
 3 you ask your further questions based on the video.
 4 COMMISSIONER HEMRAJ: Warrant Officer,
 5 when I looked at the video, at the pile of traditional
 6 weapons, it appeared to me that some of them had blood on
 7 the weapons. Was that your observation?
 8 W/O THAMAE: That's correct, Chairperson.
 9 COMMISSIONER HEMRAJ: That doesn't appear
 10 from the photographs.
 11 W/O THAMAE: If I may explain further? I
 12 photographed those and then dealt with the one that had a
 13 fragment on it and then thereafter I requested Warrant
 14 Officer Opperman to investigate those dangerous weapons
 15 further.
 16 COMMISSIONER HEMRAJ: Would you go to
 17 your evidence about what you described as the arc of
 18 cartridge cases around body B? May I enquire why you used
 19 body B as the focal point for those measurements?
 20 W/O THAMAE: That is the body, according
 21 to evidence leaders they wanted to see which of the bodies
 22 was closest to a cartridge case, so they wanted the body,
 23 the cartridge case closest to one of those bodies and B
 24 happened to be one with cartridge cases closer to it.
 25 COMMISSIONER HEMRAJ: But if you look at

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1 your sketch plan on B16, the bodies appear to be in very
 2 close proximity, don't they? The bodies appear to be very
 3 close together.
 4 W/O THAMAE: That's correct.
 5 COMMISSIONER HEMRAJ: So would some of
 6 those distances, would they also apply to some of the other
 7 bodies in that, in that very close proximity to body B?
 8 W/O THAMAE: I don't understand the
 9 question.
 10 COMMISSIONER HEMRAJ: You've given us a
 11 range of distances from body B to the cartridge cases
 12 between 2 and 6.1. There are other bodies lying close to
 13 B.
 14 W/O THAMAE: That's correct, Mr Chair.
 15 COMMISSIONER HEMRAJ: And I know you said
 16 you didn't measure any of the other distances but would the
 17 position of some of those cartridge cases, would they also
 18 relate in terms of distance, similar distances to the other
 19 bodies lying close by?
 20 W/O THAMAE: The position of those
 21 bodies, I can say with that – in relation to that arc they
 22 were, they were also lose but B was the closest.
 23 COMMISSIONER HEMRAJ: Yes, thank you very
 24 much.
 25 CHAIRPERSON: Thank you. Can I ask you

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1 one question flowing from that, the answers you gave to
 2 Commissioner Hemraj. You said that you measured from body
 3 B because that's what the evidence leaders asked you to do.
 4 Now that can't be right because you made the measurements,
 5 surely, on the 16th August. The evidence leaders only came
 6 on the scene in September, a month later. So somebody – so
 7 it couldn't have been the evidence leaders who asked you to
 8 measure from B, body B on the 16th of August, it must have
 9 been somebody else. Now who was that?
 10 W/O THAMAE: That is correct. The scene
 11 was measured a long time ago on the 16th but what they asked
 12 me is to give them the distance of the closest body because
 13 I had a measurement already, just to give them that.
 14 CHAIRPERSON: Yes, no, but you said you
 15 measured from the body to the cartridge cases. The
 16 question is who asked you to measure or did anybody ask you
 17 to measure from the closest body to the cartridge cases?
 18 W/O THAMAE: That, I did it myself on the
 19 day, nobody asked me.
 20 CHAIRPERSON: Have you got other
 21 measurements, similar measurements from other bodies to
 22 cartridge cases?
 23 W/O THAMAE: If I use the programme that
 24 I've used to determine the measurements, I can get the
 25 measurements from any of those cartridge cases. I have all

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1 those measurements.
 2 CHAIRPERSON: Thank you very much. Mr
 3 Mpofo, are you ready now for your video-based question?
 4 MR MPOFU: Yes, Chairperson.
 5 [VIDEO IS SHOWN]
 6 MR MPOFU: Thank you. Warrant Officer –
 7 sorry, I see that the big screen doesn't show the video,
 8 can you use that one or have you got it in front of you?
 9 W/O THAMAE: Yes, I had to check
 10 something on my photo as well.
 11 MR MPOFU: Oh okay, but after that can
 12 you then look at that screen, I think it's the nearest one
 13 to you.
 14 W/O THAMAE: That's correct.
 15 MR MPOFU: Can you see it?
 16 W/O THAMAE: Yes, I do.
 17 MR MPOFU: Would you agree with me now
 18 that that cartridge is lying less than 30 centimetres from
 19 that body?
 20 W/O THAMAE: That is not the body at that
 21 blanket and that blanket was not lying near the body.
 22 MR MPOFU: Alright, how far was the
 23 blanket from the body – if you can remember, of course?
 24 Approximately?
 25 W/O THAMAE: If you can look at F and you

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1 see the line indicating, where the line – the line that
 2 indicates the place and position of the body.
 3 MR MPOFU: Yes.
 4 W/O THAMAE: And you go to the blue line,
 5 that is where that blanket is placed –
 6 MR MPOFU: Okay –
 7 W/O THAMAE: It’s –
 8 MR MPOFU: Just to clarify because of the
 9 earlier confusion. When you say F, do you mean the letter
 10 or the point?
 11 W/O THAMAE: You see the letter F?
 12 MR MPOFU: Yes.
 13 W/O THAMAE: There is a line indicating,
 14 where this line here ends it indicates the place and
 15 position of the body.
 16 MR MPOFU: The position of the body, not
 17 the letter, correct?
 18 W/O THAMAE: If you move back from where
 19 the line ended, if you move back towards F you can see
 20 there, that is the place and position of that blanket –
 21 displayed on the screen.
 22 MR MPOFU: Okay, thank you. So wherever
 23 that blanket was, one thing that is definite is that it was
 24 on the other side of that path, closer to the kraal,
 25 correct?

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1 W/O THAMAE: I don’t understand when you
 2 say at the other side of the path.
 3 MR MPOFU: No sir, I’m sure you
 4 understand. Listen, you see where the path is in front of
 5 the – the path in front of the kraal which has – or let’s
 6 put it like this. The end of the blue line, the part that
 7 coincides with the end of the blue line, you see that?
 8 W/O THAMAE: Yes, I do.
 9 MR MADLANGA SC: For the record,
 10 commissioners, if it could be indicated that this debate
 11 relates to B15.
 12 MR MPOFU: B15 yes, thank you. Thank
 13 you, Mr Madlanga. Do you see that?
 14 W/O THAMAE: Yes, I do.
 15 MR MPOFU: So the blanket, as it were,
 16 was between that blue line and the kraal.
 17 W/O THAMAE: You see underneath that line
 18 that goes to F, just outside that blue line, it is where
 19 that blanket is situated.
 20 MR MPOFU: Thank you, so it’s outside the
 21 blue line.
 22 W/O THAMAE: That’s correct.
 23 MR MPOFU: And the blue line, according
 24 to you, is where all the cartridges are, inside the blue
 25 line. Correct?

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1 W/O THAMAE: That’s correct.
 2 MR MPOFU: Thank you.
 3 CHAIRPERSON: - examination on this extra
 4 point?
 5 MR MPOFU: Yes, thank you, Chair. Maybe
 6 I might as well just ask this question. That would then
 7 mean that there were some cartridges that fell outside of
 8 the blue line?
 9 W/O THAMAE: It might be possible. That
 10 blue line was just made to make it easier for the
 11 Commission to understand the layout of the R5 cartridge
 12 cases.
 13 MR MPOFU: Thank you. Yes, thank you,
 14 Chairperson.
 15 CHAIRPERSON: Thank you. We’ll take the
 16 tea adjournment now, then Mr Madlanga can re-examine. I
 17 don’t know how long you’re likely to be. Well, then let’s
 18 do it. If you’re going to be very short, let’s do it now.
 19 RE-EXAMINATION BY MR MADLANGA SC: Thank
 20 you, commissioners. Just one question in re-examination
 21 and then something I should have done in chief. Maybe I
 22 should start with the latter. Warrant Officer, you confirm
 23 that on the 1st of October 2012 you participated at an
 24 inspection in loco, is that so?
 25 W/O THAMAE: That’s correct, Mr Chair.

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1 MR MADLANGA SC: And you pointed out
 2 various spots to the Commission.
 3 W/O THAMAE: That’s correct, Mr Chair.
 4 MR MADLANGA SC: And do you confirm the
 5 correctness of everything that you pointed out on that day?
 6 W/O THAMAE: That’s correct, Mr Chair.
 7 MR MADLANGA SC: And now the re-
 8 examination. From scene 1, let us say you are right at
 9 scene 1, if any shooting took place at scene 2 whilst you
 10 were at scene 1, would you have heard that or not?
 11 W/O THAMAE: My answer can be yes and no.
 12 If I explain why, on that day the wind was blowing and my
 13 experience, the experience has taught me that different
 14 firearms make a different amount of noise. So it will
 15 depend which firearm was used to fire. If it is a firearm
 16 maybe that can make a loud noise when a shot is fired, yes,
 17 I possibly, maybe I would have but if it is a firearm with
 18 a low noise, I wouldn’t have.
 19 MR MADLANGA SC: Let us say it was
 20 hundreds of shots with an R5 rifle.
 21 W/O THAMAE: Under those circumstances I
 22 would have heard.
 23 MR MADLANGA SC: No further questions,
 24 commissioners, thank you.
 25 CHAIRPERSON: Right, we’ll take the tea

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1 adjournment now. Well, perhaps before we take the tea
 2 adjournment, what's happening next? This is your witness.
 3 Have you got any more witnesses? The witness can be
 4 excused, I take it? I take it you'd like to be excused,
 5 Warrant Officer. You're excused.
 6 [NO FURTHER QUESTIONS – WITNESS EXCUSED]
 7 CHAIRPERSON: Right, so that's out of the
 8 way. Mr Mpfu is, my understanding was that the Commission
 9 was adjourned on Friday till Wednesday to enable Mr Mpfu
 10 and Ms Barnes to consult with certain of their clients so
 11 they could give evidence. It was indicated to us that they
 12 needed this time just to prepare them, to let them see the
 13 videos and so on. And originally it was indicated, I
 14 understood, that they might be prepared to start leading
 15 witnesses on Tuesday but we thought it wiser to give them a
 16 chance to Wednesday. Bishop Seoka came yesterday, you've
 17 interposed a witness now, what's going to happen next?
 18 [15:32] MR MADLANGA SC: Mr Chairman, the police
 19 presentation would have continued with a witness that would
 20 touch on training, but Mr Semenya would be in a better
 21 position to explain that and my understanding is that they
 22 still want to precognize that witness and that they would
 23 only be in a position to lead that witness tomorrow but
 24 coming back to the issue that the Chairman is raising, I
 25 would ask the Chairman to raise that issue with my learned

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1 friends directly, with Mr Mpfu and today it's Mr Bruinders
 2 who is present. Both of them have had discussions with me
 3 but if the Commission is so inclined, I would ask the
 4 Commission to ask my learned friends to explain what the
 5 position is as of now.
 6 CHAIRPERSON: Mr Bruinders, can you
 7 explain to us what the position is as of now?
 8 MR BRUINDERS SC: Yes, we sent an e-mail
 9 this morning to the evidence leaders in which we attempted
 10 to set out what the position is. I was not here, so as I
 11 understood it there was some request that Mr Mathunjwa be
 12 led. We've sent a fairly lengthy e-mail and perhaps we
 13 should – I should perhaps read it to you or we should make
 14 it available to you to read over the tea adjournment.
 15 CHAIRPERSON: The point of value was that
 16 the – my understanding was that we postponed on Friday
 17 until Wednesday to enable AMCU and Mr Mpfu's clients to be
 18 ready to start giving evidence on Wednesday and that's what
 19 was communicated to me was going to happen.
 20 Yesterday Bishop Seoka gave evidence, led by Mr
 21 Mpfu. I expected – then I was told about the witness we
 22 heard today who wasn't available earlier, but I assumed
 23 that either you or Mr Mpfu was going to led the next
 24 witness, so what's happening? What happened to the
 25 undertaking or understanding or whatever it was that

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1 occurred earlier?
 2 MR BRUINDERS SC: Mr Chair, as I
 3 understand it, the undertaking was not that AMCU was
 4 prepared to subject Mr Mathunjwa to cross-examination
 5 before he's seen the statements from the key witnesses who
 6 will potentially present evidence prejudicial to him, his
 7 evidence and to AMCU and before he's seen further documents
 8 which are apparently going to be discovered, like a Lonmin
 9 hard drive that might contain prejudicial information. As
 10 we understand it, once he gets into the witness box now
 11 he's going to be subjected to cross-examination for a long
 12 period of time. He submitted a statement, his statement of
 13 what he's going – his evidence essentially, which is
 14 incomplete but it's been submitted. Incomplete because, of
 15 course, he has not been – he hasn't seen the statements
 16 from the other key witnesses, but AMCU was prepared to do
 17 that because we had promised that we were going to submit
 18 statements to the evidence leaders. We have not seen any
 19 statements from any of the other key witnesses being led by
 20 any of the other parties – none, Mr Chair, we haven't
 21 received any to date.
 22 His difficulty, and we understand, and his
 23 reluctance is this, he says if I get into the witness box
 24 and I'm cross-examined and versions are put to me as a
 25 surprise in cross-examination and I haven't seen statements

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1 and I don't know what I must face and I'm reluctant to be
 2 subjected to cross-examination under those conditions – so
 3 what my e-mail says or what [inaudible] e-mail says is
 4 this, is give us the statements of – we named six witnesses
 5 because we can tell from the evidence that they are key
 6 witnesses in relation to his evidence and in relation to
 7 the issues he's going to be cross-examined on – give us
 8 those statements and the statements of anybody else who
 9 will lead evidence or present evidence prejudicial to the
 10 case of AMCU, give us the additional documents that we
 11 understand are going to be presented and he will then
 12 subject himself to cross-examination within two day after
 13 that.
 14 Mr Chair, might I just say that leading him is
 15 very, very simple. He's got a statement, he'll confirm
 16 that and then he'll be available for cross-examination. As
 17 you can anticipate, if he's presented with a surprise in
 18 cross-examination, something that he simply hasn't been
 19 precognized on or had an opportunity to consider, we can't
 20 – we can't consult with him –
 21 CHAIRPERSON: Yes, you don't have to
 22 elaborate on that. I don't believe in litigation by
 23 ambush. I don't believe that commissions should operate on
 24 the same basis either, so I haven't got a problem with
 25 that, you don't have to explain further. Mr Mpfu, we gave

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1 you some time to prepare your witness as well, what's
2 happened there?

3 MR MPOFU: Well, Chairperson, certainly I
4 did bring a witness yesterday but apart from that, Chair,
5 the position is as follows. We – well, firstly I made no
6 undertaking so I'm not covered by any undertaking. I think
7 you, Chairperson, called it a non-promise and that was
8 because I made all the disclaimers but be that as it may,
9 one undertaking I did make was that I will try to assist Mr
10 Madlanga as far as I can, which I've started to do by
11 bringing the witness yesterday.

12 As far as further witnesses are concerned, Chair,
13 on this side of the table, as it were, we had our own
14 arrangement that we had made in relation to how we were
15 going to assist and briefly it went something like this,
16 that I would call the Bishop, after that then I understand
17 there's going to be a family presentation, after that there
18 would be Mr Mathunjwa which Mr Bruinders has covered, and
19 then thereafter I would consider my position as to which,
20 if any, of the further witnesses I was prepared to call.

21 Now, where my personal position stands or at
22 least that of my team, Chair, is that – two things. If we
23 call any further witnesses we'd like to do that after the
24 Bishop and once again unfortunately I have to make a non-
25 promise. Of the other witnesses, if we call any one of

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1 them it will be after the others have gone but, Chair, I
2 just want to say this, we really sincerely want to assist
3 and I think that Mr Bruinders has put it more eloquently.
4 Obviously that is subject to not prejudicing our cases, so
5 if we seem to be difficult it is not –

6 CHAIRPERSON: You don't have to
7 elaborate.

8 MR MPOFU: Yes.

9 CHAIRPERSON: I indicated to you my
10 aversion to litigation by ambush, commission by ambush.

11 MR MPOFU: Thank you, Chair.

12 CHAIRPERSON: It's not fair to a witness
13 to put him or her in a witness box [indistinct] been, not
14 necessarily told what to say but precognized and given an
15 opportunity to know what's going to be put, seeing the
16 videos and so on. I understand all that. I don't think
17 you need elaborate on that further.

18 MR MPOFU: Thank you, Chair.

19 CHAIRPERSON: Ms Lewis, is there anything
20 you wish to say on this aspect? You appear for the
21 families, don't you?

22 MS LEWIS: I do, Mr Chair. Simply that I
23 am ready to present the families' case. I understood that
24 there was an objection from Mr Semanya, I'm not sure
25 whether that is still the case. If it is, then perhaps he

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1 should be given the opportunity to place that on record and
2 I'll respond to it.

3 CHAIRPERSON: Well, you could put these
4 things on record, alternatively, this kind of housekeeping
5 is generally best done outside the Commission chamber, as
6 it were. So I suppose we can now take the tea adjournment.
7 You and Mr Semanya can have a friendly chat over a cup of
8 tea and you can come back and you can announce what's going
9 to happen and then we can take the – then we can adjourn
10 till tomorrow.

11 MR MPOFU: Chair, can I – Chairperson,
12 while you are at it, let me just tidy up two more points.
13 Mr Burger and I have also entered into another side deal.
14 Mr Burger is unfortunately not able to be here between
15 Monday, Tuesday and Wednesday and I had intended to call
16 the Bishop back on Monday, so I've agreed to accommodate Mr
17 Burger. So whatever happens, I'm just doing it for the
18 benefit of the other colleagues, particularly the evidence
19 leaders. Whatever arrangements are done must take into
20 account that the Bishop who is now no longer being called
21 back on Monday - because of what I call the discussions
22 between myself and Mr Burger – but on Thursday. What might
23 happen if we are pressed and there's an unnecessary gap is
24 that plan B of that arrangement would be that I would
25 recall the Bishop maybe on Wednesday so that he can be

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1 cross-examined by other people but will have to call him
2 again on Thursday for Mr Burger. If that happens, that
3 might resolve whatever time lapses. If it doesn't, then
4 he'll be back on Thursday. Obviously that's also subject
5 to his own availability which I have not checked yet.

6 CHAIRPERSON: Mr Semanya, I want to take
7 the tea adjournment so you could have a chat to Ms Lewis
8 but if the answer is simply yes, we don't have to waste any
9 time. Do you have any objection to her calling her
10 witnesses tomorrow?

11 MR SEMENYA SC: Indeed I do, Chair, but
12 also may I make a point here that one respects the aversion
13 against litigating by ambush or witnesses coming and
14 testifying blinded to certain elements they otherwise, with
15 precognition, could have tidied up – but that, too, applies
16 to the SAPS. We keep bringing witnesses, at this point
17 we're not aware of the versions that they are to meet. Mr
18 Mpofo got us to release people on bail because he had to
19 consult with them urgently and once he has done that we'll
20 be able to cross-examine. Not one statement of the 260-odd
21 people that he represents has been given to us. It's just
22 not fair. It's either what is good for the goose is good
23 for the gander, but that's not in the interests of the
24 Commission. To the extent that this is investigative, it
25 is inquisitorial, we all need to be placing what we have

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1 before you, Chair, without gamesmanship typical of
2 litigation and trials.

3 CHAIRPERSON: Ms Lewis, have you made the
4 statements of your witnesses available to Mr Semenya?

5 MS LEWIS: Mr Chair, just to clarify the
6 manner in which we'll be presenting the families' case, we
7 will be doing it by way of a PowerPoint presentation. That
8 is because the family members feel strongly about having
9 their stories presented to the Commission but also, Chair,
10 the family members do not feel up to testifying themselves
11 and so what we propose to do is to present their stories by
12 way of a PowerPoint presentation. Chair, that will all
13 then be confirmed in affidavits and submitted to the
14 Commission by, at the latest, the middle of next week. And
15 so, Chair, it's not unlike the manner in which Mr Semenya
16 has presented his case to date. We are presenting a
17 PowerPoint presentation and it will – we have very
18 thoroughly confirmed the statements that appear in the
19 presentation with the family members. We've spent the last
20 two days doing that. So then it will simply be a matter of
21 putting that – of confirming that in an affidavit and
22 submitting that to the evidence leaders.

23 Chair, at that point, if any of the parties feel
24 that they need to cross-examine one of the family members,
25 they can make an application to the Commission for the

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1 particular family member to be subpoenaed in order to be
2 cross-examined. We may present submissions at that point
3 to say that it's not necessary or inappropriate but
4 certainly that is an option and it will then be for the
5 Commission to decide whether the family members or
6 individual family members need to be called to be cross-
7 examined. But certainly, Mr Chair, my submission is that
8 there can be no prejudice to Mr Semenya in presenting the
9 families' case in the manner in which I've described. And
10 Chair, it seems as if it would help all of the other
11 parties and the Commission too, because it doesn't seem as
12 if there are other witnesses at this stage.

13 CHAIRPERSON: All very unsatisfactory
14 that in the middle of November, in the case of a Commission
15 that started at the beginning of October, there are still
16 not witnesses available. The police presentation was
17 presented on the clear understanding that the witnesses who
18 – every statement in the police presentation was capable of
19 being backed up by evidence under oath and the witnesses
20 concerned could be cross-examined. You're now presenting
21 something slightly different but perhaps – I don't know
22 whether Mr Madlanga wishes to say something at this stage
23 or Mr Semenya or any of the other parties, but let me give
24 Mr Madlanga a chance first.

25 MR MADLANGA SC: Thank you, Mr Chairman,

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1 commissioners. I'm not going to be addressing myself to
2 what Ms Lewis has just said. I'm going to address myself
3 to what Mr Mpofu said. Commissioners, I'm quite astounded
4 by what Mr Mpofu says. For him to say that there was a
5 non-promise by him is most certainly not the agreement that
6 he and I reached. Mr Chairman, may I refer the Commission
7 to page 12 –

8 CHAIRPERSON: Sorry to interrupt you.

9 MR MADLANGA SC: Yes.

10 CHAIRPERSON: Last week he spoke about a
11 non-promise but I understood that thereafter that non-
12 promise had hardened into something stronger, but the non-
13 promise part is correct as it was of last Friday, but you
14 say something happened thereafter.

15 MR MADLANGA SC: Mr Chairman, what
16 happened is – let me read what appears at page 1246 of the
17 record and that was on Friday. This is what the Chairman
18 says at line 8. "I understand that the proposal is that in
19 order to give some of the representatives an opportunity to
20 consult fully with their clients, you will be giving
21 evidence. It's proposed that we should resume on
22 Wednesday. Mr Madlanga, would you like to say something
23 about that?" And then I respond, "Thank you, Chairman,
24 commissioners, that is so indeed, Commissioners, and that
25 arises from the discussion that I had with Mr Mpofu and Ms

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1 Barnes which was quite fruitful and I must thank my
2 colleagues for us having been able to reach agreement but
3 quite understandably, and based on what they had said in
4 argument, on what was Tuesday, I understand their request
5 and I have accepted it and I hope the Commission accepts
6 that as well, that is that we only resume on Wednesday."

7 In context, on the Tuesday in argument what my
8 two learned friends had said was that they were not ready,
9 they needed time to prepare and then the agreement that we
10 reached before I made this announcement before this
11 Commission was that on Wednesday of this week they would be
12 ready to lead their evidence. I don't say it, that,
13 categorically here but the fact that I even say it was
14 quite fruitful and so on and so on, it relates to an actual
15 agreement. We were long past the "non-promise" as at that
16 stage there was agreement that they would lead their
17 witnesses from yesterday already. Now what was the content
18 of that agreement? Mr Mpofu I hope will not say that that
19 was not the agreement but if he says it was not, I was
20 referring to an agreement here, most obviously, and if he
21 says there was not, I would have expected him in open
22 Commission to say there was no such agreement. What did he
23 think I was going on about at the page, or rather the
24 quotation that I've just referred to? Now what was that
25 agreement? This is what it was. Mr Mpofu, talking to me

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1 telephonically, said that – or perhaps let me take one step
 2 backwards. The Commission will recall that we indicated
 3 that we had asked for five witnesses from Mr Mpofo's list,
 4 or rather a list, some – from Mr Mpofo's clients. Now
 5 coming back to the point I was making, now in the
 6 telephonic conversation Mr Mpofo said of the five people
 7 you referred to, I am only going to lead one of those and
 8 then I will lead a second witness and you probably know him
 9 – and he was referring to me – and he said that was the
 10 witness who had been interviewed on a Carte Blanche
 11 programme. So two witnesses, and then he said plus the
 12 Bishop.
 13 [15:52] Ms Barnes, we did not get into any details as to
 14 which witnesses would be led exactly but with her as well,
 15 the understanding was that she too, or her client too would
 16 be ready to lead witnesses as from yesterday. Clear
 17 agreement, confirmed by what I've just read to the
 18 Commission now. So this non-promise, I just have no idea
 19 what it is about. So I would like Mr Mpofo to explain what
 20 I was referring to and if he says it was not what I've just
 21 explained here, what then did he think it was and why did
 22 he not there say, no, I have not reached any fruitful
 23 arrangement or agreement with Mr Madlanga, I do not know
 24 what he's talking about. Why did he not say so?
 25 Mr Chairman, commissioners, I can see my learned

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1 friend is heating up and cannot even wait for me to finish
 2 with my submissions. Now Mr Chairman, I would like my
 3 learned friend to indicate whether he will be leading any
 4 other witnesses besides the Bishop and if he will, by when
 5 will he be doing so. And – and, if he will be, how many
 6 witnesses will he be leading? The agreement, the agreement
 7 that Mr Mpofo and Ms Barnes and I reached went so far as to
 8 say that they would give me the list of the witnesses that
 9 they would be calling and their statements on Monday, this
 10 past Monday. That was part of the agreement. None of that
 11 has been honoured. Sorry, we do have a statement from Mr
 12 Mathunjwa that has been provided by AMCU.
 13 MR MPOFU: And from the Bishop.
 14 MR MADLANGA SC: Yes – yes, thank you
 15 very much, Mr Mpofo, thank you very much, and from the
 16 Bishop – yes, I must say so.
 17 MR MPOFU: Chairperson, I think there's
 18 just a lot of heat, smoke without any fire.
 19 CHAIRPERSON: There was certainly
 20 specific reference made which calls for –
 21 MR MPOFU: Well, I'm going to –
 22 CHAIRPERSON: Whether that's heat or
 23 smoke or fire –
 24 MR MPOFU: It's smoke.
 25 CHAIRPERSON: But answers are required.

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1 MR MPOFU: Yes.
 2 CHAIRPERSON: And I just answers, I don't
 3 want metaphorical -
 4 MR MPOFU: Well, Chairperson, with the
 5 greatest respect, I have to – I'm going to respond to
 6 everything that has been put because I have to.
 7 Chairperson, the smoke in what has been said is the
 8 following. I have been at pains here, and I've said this
 9 to you Chairperson, on the record, that I will not be
 10 forced to lead any witnesses and the Chairperson agreed
 11 with me. What I said in that context is that I will try to
 12 assist as much as I can in the impasse that has happened
 13 between the SAPS and the evidence leaders. The agreement –
 14 the issue of the postponement till Wednesday is something
 15 that I requested. I'm the first person who came with the
 16 idea of the Wednesday, Chairperson, so that was the
 17 agreement that Mr Madlanga and I had reached. We even had
 18 to say whether I should make the request or he should make
 19 the request and we agreed that he should make the request,
 20 as opposed to me putting it to the Chair. That was an
 21 agreement between us.
 22 What, Chairperson, I did not agree with anybody,
 23 whether inside or outside of the Commission, is a
 24 commitment that says I'm going to call Mr X or Mr Y. And
 25 I'm explaining that as follows, Chairperson. In the three

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1 days or four days that the Chairperson kindly allowed us,
 2 we have – as I indicated in my earlier address – consulted
 3 with what I might call a pool of potential witnesses. We
 4 have not come to any – for the reasons that the Chairperson
 5 said I should not elaborate on, which are obvious – we have
 6 not been able to say of those three witnesses, which one we
 7 are able to call at this stage, except for the Bishop.
 8 So as I said earlier, the record will show that
 9 before Mr Madlanga spoke I said, Chairperson, that the
 10 arrangement that we have on the side was that the
 11 sequencing – to accommodate this concern of mine of
 12 weighing up which witnesses, if any, to call, was that
 13 after the Bishop, the other parties which are a part of the
 14 broader arrangement would interpose their witnesses.
 15 Obviously we hadn't foreseen the fact that the Bishop will
 16 be broken into those pieces. I have not said – so I don't
 17 know what this is all about – I have not said at any stage
 18 that I'm not going to call any witnesses but equally I have
 19 not said that I'm going to call one.
 20 So if that is what is causing consternation,
 21 well, then tough luck because I cannot go further than to
 22 say that I have a pool of witnesses, some of whom or one or
 23 two of whom I might call but it might be tactically not
 24 proper for me to call either one of those at this stage.
 25 Mr Chairman, if I can just say one thing and this

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1 is what I was trying to say – much as we would like to
2 assist and we don't want to see waste of the Commission's
3 time, but Chairperson the people that I represent, some of
4 them have murder charges hanging over their bodies and I
5 cannot simply call them just to fill a gap. So I'm making
6 those kinds of considerations and I'm appealing that I'm
7 allowed to do so. Within those constraints I am aware that
8 there are time issues. I will assist when I can but I will
9 not do so to the prejudice of my clients.

10 CHAIRPERSON: Of course it goes further
11 than that. Mr Madlanga has said that you gave an
12 undertaking. Initially it was described as a non-promise.
13 He says it hardened into a promise, an undertaking which
14 you've now welshed on. That's what he says.

15 MR MPOFU: Well, Chairperson –

16 CHAIRPERSON: Now you haven't dealt with
17 that point at all.

18 MR MPOFU: Well, if that is the position,
19 Chairperson, then I take the strongest possible exception
20 to any suggestion that I have ever said this – perhaps on
21 the issue of the Bishop – that any of what I call the pool
22 of witnesses that I'm still considering, is certainly going
23 to come here, to anybody and if anybody will want to – it's
24 very unfortunate that we have to have this kind of exchange
25 but you know I would, I can go under oath on that one,

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1 Chair, if I have to and if I made such an undertaking,
2 well, somebody has to prove it. And if I did, I'm
3 withdrawing it right now.

4 CHAIRPERSON: If you have an undertaking
5 I'm not sure can withdraw it but I have no jurisdiction
6 over counsel who give or do not give undertakings and then
7 don't abide by them. That's a matter for the Bar Council -

8 MR MPOFU: Ja.

9 CHAIRPERSON: - not for me and if –

10 MR MPOFU: Or make accusations.

11 CHAIRPERSON: Sorry, I beg your pardon?

12 Yes - no. So insofar as there is a dispute as to what
13 happened, that's a matter for the Bar Council, not for this
14 Commission but we are nevertheless in the unfortunate
15 position that the work of the Commission, as has been
16 planned and foreseen would proceed, is apparently not able
17 to proceed and that is a very serious matter because this
18 Commission costs a lot of money every day and I would be
19 failing in my duty if I didn't do my utmost to ensure that
20 the time is usefully used. I just want to say – discuss
21 something shortly with my -

22 Mr Madlanga, insofar as there's this unfortunate
23 difference between you and Mr Mpofo, you will agree that I
24 have no jurisdiction to deal with that. That's a matter
25 for the Bar Council, not for me. the question is, how can

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1 we fruitfully and gainfully use tomorrow and – Friday. I
2 understand there's going to be a meeting between the
3 parties' representatives on Friday afternoon, so we won't
4 be sitting Friday afternoon but we – sorry, that's
5 tomorrow. Sorry, I was caught off balance by the fact that
6 we started on Wednesday. Tomorrow we're only sitting in
7 the morning.

8 I don't know how long Adv Lewis's presentation
9 is. She does say that she proposes to provide affidavits
10 from all the family members to support all the allegations
11 in presentation and that if any party wishes one of the
12 deponents to give evidence and be cross-examined, the
13 witness would be available, but what is your response to
14 that suggestion of hers?

15 MR MADLANGA SC: I have no objection to
16 that proposal, Mr Chair, but as I indicated earlier, at
17 least there is the one witness that I understand my learned
18 colleague Mr Semenya proposes to call. So that witness too
19 will take part of tomorrow.

20 MR BRUINDERS SC: Mr Chairman, could I –
21 if you could just give me an opportunity here? I think it
22 is important that AMCU does place this on record. It is
23 prepared – it's going to call Mr Mathunjwa and that is its
24 main witness and it doesn't propose to call another
25 witness. If, during the course of evidence, it becomes

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1 necessary to calculation somebody to rebut a fact that Mr
2 Mathunjwa can't deal with, well, we've got to deal with
3 that at that time but the point is this, we undertook – all
4 of us – a long time ago to provide witness statements by
5 the 19th of October already. I understand that the parties
6 could not do that then because a host of documents came in
7 at that time and afterwards that made it very difficult to
8 provide statements on the 19th of October because of course
9 the witnesses have to at least know what's in those
10 statements and in the documents and so on. But AMCU has
11 now bitten the bullet and even though there are still
12 documents to come in, it has provided Mr Mathunjwa's
13 statement to all the parties. It is prepared to put him
14 up, to have him subjected to cross-examination two days
15 after we get – we've told people what statements we require
16 and we've said that there's been talk about a Lonmin hard
17 drive and we said if there's any other documentation that
18 you want to discover, do so as soon as you can because two
19 days after that he will subject himself to cross-
20 examination. So it's not as though things can't move
21 ahead. Mr Mathunjwa can't be expected, as you know and I
22 think you've confirmed this, to subject himself to cross-
23 examination if he at least knows what it is he is to expect
24 from people when they're cross-examining.

25 CHAIRPERSON: Mr Semenya, this witness of

1 yours, how long is he likely to be?
 2 MR SEMENYA SC: Chair, maybe before I
 3 answer that, can we dispel this thing that in the
 4 Commission there are parties and cases to be made by
 5 various individuals because –
 6 CHAIRPERSON: There are parties, there’s
 7 no doubt – that’s a way of describing the persons or
 8 instances or bodies that are being permitted to
 9 participate, because they are parties in that sense. I
 10 agree with you, we’re not here for people to make cases.
 11 This is an investigative process, we’re here to investigate
 12 but there are parties because they – you are appearing for
 13 one of them. But anyway, carry on.
 14 MR SEMENYA SC: Chair, you asked the
 15 question to my learned colleague Ms Lewis whether I have
 16 seen that presentation. The answer has not been given but
 17 it’s a short one. I haven’t seen that presentation. I
 18 would like to interrogate it and inform our position in
 19 relation thereto. Thirdly –
 20 CHAIRPERSON: That’s the answer to the
 21 question of her presentation. Your witness?
 22 MR SEMENYA SC: Thirdly, addressing the
 23 question of the witness, it should be able to occupy the
 24 morning.
 25 CHAIRPERSON: Right, we will adjourn

1 until 9:30 tomorrow morning.
 2 [COMMISSION ADJOURNED]
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