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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 225

08 MAY 2014

PAGES 27723 TO 27858



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1 [PROCEEDINGS ON 8 MAY 2014]
 2 [10:11] CHAIRPERSON: The Commission resumes. We
 3 had hoped to commence this extended period of operation of
 4 the Commission promptly at 9 o'clock this morning, but we
 5 were not able to do so because the premises were still
 6 being got ready for us because they were used yesterday and
 7 until a few minutes ago for the purposes of the election.
 8 So I apologise to those who've been waiting since 9
 9 o'clock, expecting us to begin.

10 Before I remind the witness that he's still bound
 11 by the terms of the affirmation he made, I understand that
 12 we're going to have argument which was foreshadowed in our
 13 proceedings last month, and that is an objection on behalf
 14 of the Ledingoane family to firstly cross-examination by Mr
 15 Semenya of the witness on a transcript of his consultation
 16 with Adv Wesley, and I understand from the heads which
 17 we've been given that the objection is now wider than that
 18 and the objection is to any cross-examination by counsel
 19 representing the SAPS of this witness.

20 There's a third point as to the admissibility of
 21 the evidence given so far in cross-examination by the
 22 witness. That matter stands over until the end, if I
 23 understand the heads correctly. I've received heads from
 24 Mr Bizos and also from – for which I'm grateful – and also
 25 from the police, which I'm also grateful, and I've also

1 been given copies of two authorities relied on by Mr Bizos,
 2 namely the State versus Dintwe and Another, 1985 (4) SA
 3 539, Bophuthatswana decision, and State versus Moseli and
 4 Another, an Orange Free State decision reported in 1969 (1)
 5 SA 646. Mr Bizos?

6 MR BIZOS SC: Thank you, Mr Chairman.
 7 I'm accustomed to standing up –

8 CHAIRPERSON: If you feel happier
 9 addressing the Commission standing up, you may do so, but
 10 if you prefer to follow the procedures that's been followed
 11 by everybody else and you yourself previously –

12 MR BIZOS SC: Thank you.

13 CHAIRPERSON: - of sitting down, you're
 14 also free to do that.

15 MR BIZOS SC: Mr Chairman, thank you. As
 16 indicated by you, Mr Chairman, we have in our notice of
 17 motion on the last page of our application called for not
 18 what our original objection was when we had hardly seen the
 19 document and when we did not have an opportunity of
 20 actually going into the law. We thank you for giving us
 21 the opportunity to do so and to enable us to put down in
 22 writing and annex judgments which support our submission.

23 It is correct as you indicated, Mr Chairman, that
 24 we ask for an order that counsel representing the SAPS may
 25 not cross-examine Lieutenant-Colonel Vermaak, and secondly

1 that the document headed "Transcript, Adv Wesley, Colonel
 2 Vermaak and Mr Pretorius" is admissible into evidence only
 3 we submit with the consent of both the evidence leaders and
 4 Lieutenant-Colonel Vermaak, and finally that the
 5 admissibility of the evidence that has already been
 6 obtained under the cross-examination of Lieutenant-Colonel
 7 Vermaak by Adv Semenya SC can be determined by the
 8 Commission following closing argument.

9 May I say, Mr Chairman, that to the credit of my
 10 learned friend Mr Semenya, and even before he actually came
 11 to the conclusion that it would be questionable at least as
 12 to whether he should cross-examine Mr Vermaak, was a
 13 correct one and a pity that it was not followed because of
 14 the circumstances set out in the heads of argument of the
 15 respondent, SAPS.

16 Let me say at the outset, Mr Chairman, something
 17 about the SAPS saying that our client and we as the Legal
 18 Resources Centre, who you will recall said that it will
 19 consider as a party to these proceedings in terms of its
 20 constitution and the right to defend people's rights, it is
 21 absolutely incorrect, Mr Chairman, for them to say that we
 22 have no locus standi to raise objections about the conduct
 23 of any other party to these proceedings and how the justice
 24 can best be served by our making a submission such as this,
 25 that the police have in the circumstances not the right to

1 cross-examine Colonel Vermaak at all.

2 Mr Chairman, the function of every one of us here
 3 according to what is on the board there is to seek the
 4 truth and I would like to believe that that is a function
 5 of the police force and also the persons who are
 6 representing it. There can be no doubt that Colonel
 7 Vermaak was their client. I do understand that to be
 8 denied on any basis, and without wishing to alarm Colonel
 9 Vermaak, he has a personal interest in this because on what
 10 we have set out based on his evidence, the attitude to him
 11 by the police team and the other possible accused, like the
 12 three other senior officers that have already given
 13 evidence – Annandale, Scott, Calitz – are we to accept a
 14 situation that if any witness like Mr Merafe or like
 15 Colonel Vermaak don't toe the line, they will be dropped
 16 and they will be cross-examined? I don't want to develop
 17 that, but it is obvious that that cannot be so. It is not
 18 in the interest of truth and it is not in the interests of
 19 justice, Mr Chairman, and I do not wish to say anything
 20 further in relation to our locus standi. He may, as it is
 21 suggested in his evidence, which we reproduce in part in
 22 our heads of argument, what it amounts to is this; follow
 23 the line or we are going to ditch you. This would serve as
 24 a very bad example, Mr Chairman, to the other police
 25 officers that are about to be called – toe the line or we

1 will drop you and we will cross-examine you. It is only to
 2 be stated, Mr Chairman, in order to be rejected as a
 3 possibility.
 4 So this objection of stopping Mr Semenya or any
 5 other counsel cross-examining Colonel Vermaak on anything
 6 else is well-founded. We may be partly to blame of not
 7 having thought so earlier on, but that would be no reason
 8 to continue with the irregular cross-examination of Colonel
 9 Vermaak.
 10 The head note of the first case to which we have
 11 referred you to and we have provided with copies of –
 12 CHAIRPERSON: Yes, I have received it and
 13 I've already I think expressed my gratitude to you for
 14 that.
 15 MR BIZOS SC: Yes. The Moseli case, Mr
 16 Chairman, in the Orange Free State, the judgment of his
 17 lordship Mr Justice Erasmus, I will read the English
 18 translation of the head note, Mr Chairman, which I submit
 19 is absolutely spot on. "A Court will not allow the same
 20 advocate to defend two accused with material conflicting
 21 interests on a capital charge, nor to continue to defend
 22 one irrespective of his or their attitude after such
 23 interests have come to light." Now it may well be, Mr
 24 Chairman, that my learned friend may be constrained to say
 25 this is not a trial. The fairness in which all legal and

1 judgement of the single judge court.
 2 And finally, Mr Chairman, in the Bophuthatswana
 3 General Division, the case of Dintwe – if I pronounce it
 4 correctly – the head note reads in English, "The duty of
 5 the legal practitioner who represents two accused on a
 6 criminal trial and finds halfway through the case that
 7 there is a conflict of interest between the two accused, is
 8 that he must withdraw altogether from the case. This is so
 9 because if he continues to represent one of the accused he
 10 will be obliged to cross-examine the other, as well
 11 possibly other witnesses. He cannot do this properly
 12 without making use of information gained from his former
 13 client, the other accused. To make use of such information
 14 would amount to a flagrant breach of the confidential
 15 attorney and client relationship, which the law jealously
 16 protects. On the other hand he may find that in attempting
 17 not to prejudice his former client he limits his cross-
 18 examination to the prejudice of the accused he's continuing
 19 to represent."
 20 These are the authorities that we are relying on
 21 and we tend to agree with the difficulty that the police
 22 counsel team will find themselves in. There are numerous
 23 witnesses. Some of them, and particularly the senior
 24 officers, are potential accused in a criminal trial in the
 25 future. The Commission's function is to ascertain the

1 quasi legal tribunals are to operate apply to all of them,
 2 including commissions in our respectful submission, and it
 3 would be substantially unfair to put an onus on Mr Vermaak
 4 as to whether he should allow the document to go in or not.
 5 It is true that having gone through it and
 6 advisedly - and I'll be quite frank and I don't want to
 7 keep it under wraps – we have perused the document and we
 8 submit that in the main the document really supports
 9 Colonel Vermaak's constituency, but that is quite by the
 10 way. It is not for us to decide on behalf of the legal
 11 representatives of the police as to whether they want to
 12 cross-examine him to any good effect in order to advance
 13 their case.
 14 This matter was considered sufficiently important
 15 for the matter to be referred to a full bench of the Orange
 16 Free State Provincial Division, Mr Chairman, and again I
 17 want to read the review proceedings before two judges which
 18 reads, "Where the Court during a trial on a capital charge
 19 was satisfied that certain irregularities had completely
 20 prejudiced both accused and that they had not had a fair
 21 trial, the Court granted an application by the defence for
 22 the Court to declare its proceedings void, withdraw from
 23 the case, which was part-heard, and leave the matter in the
 24 hands of the Attorney-General to take further steps at his
 25 discretion," so that it is really a confirmation of the

1 truth. It requires the truth from every witness,
 2 irrespective of the identity of his or her attorney.
 3 What is not permitted, Mr Chairman, and it sets a
 4 very dangerous possibility, that those that are to follow
 5 may well say Oh, we are subpoenaed to give evidence before
 6 the Commission. If we do not keep to the lines contained
 7 in exhibit L - and need I remind the Court with respect
 8 that it has told my learned friend that he must make up his
 9 mind on which version he is eventually going to rely? –
 10 puts them in a difficulty, but that is their difficulty.
 11 They must find a solution for it. They cannot, and I use
 12 the word "deliberately" threaten potential witnesses that
 13 you toe the line or we will ditch you. It discourages
 14 people from telling the truth, which is the fundamental
 15 principle upon which this Commission is involved in.
 16 We submit that to say that this is not a trial is
 17 not a defence to our application, that this is for the
 18 witness to decide is not fair in terms of the authorities
 19 that we have referred to, and also never mind the strict
 20 legal position; we have been here for a very long time.
 21 The cross-examination of witnesses has been lengthy, not
 22 the fault of the police representatives, possibly the fault
 23 of many of us, including me. So time limits have been set
 24 for us. It is in the interests of everyone concerned to
 25 move on in accordance with the rules that you have recently

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1 put out for us to consider, and I think that we of
 2 necessity have to agree that in the absence of any future
 3 extension that we should follow those rules strictly.
 4 To allow my learned friend Mr Semenya to cross-
 5 examine the witness on a new document of – I have numbered
 6 the pages, Mr Chairman, as almost 50, and where in the
 7 heads of argument of the police say that Mr Pretorius was
 8 not really his attorney, I don't know what he was. I took
 9 the trouble of counting the number of interventions of Mr
 10 Pretorius during the recording of that examination. I
 11 accept Mr Pretorius's statement that we did not know when I
 12 made my original submissions about burying the document,
 13 apparently I was wrong and didn't know about what had
 14 happened. I accept what he says in the heads of argument
 15 for the State that he recorded it with the knowledge of
 16 the, if I read it correctly.
 17 [10:31] The witness and the knowledge of Mr Wesley that
 18 was there, but there can be no doubt that although most of
 19 his interruptions, contribution, questions are petty, there
 20 are nevertheless sufficient grounds to believe that he was
 21 there in his capacity as the witness's attorney and for
 22 those reasons, with respect, I would submit that we are
 23 entitled to the order in terms, that we set out in our
 24 heads of argument. Thank you for a patient hearing, Mr
 25 Chairman.

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1 CHAIRPERSON: Thank you, Mr Bizos. Mr
 2 Semenya, are you going to – I've been given heads of
 3 argument on behalf of the SAPS. They weren't, there's no
 4 name at the end of them. Are you going to argue or is one
 5 of your colleagues going to do so?
 6 MR SEMENYA SC: My learned colleague is
 7 going to present argument.
 8 MR MATHIBEDI SC: Thanks, Mr Chairman.
 9 Mr Bizos has correctly pointed out that it is the function
 10 of this Commission to establish the truth as what would
 11 have occurred. Now we submit, Mr Chairman, that that can
 12 only happen if all the evidence is placed before the
 13 Commission and by cross-examining Lieutenant-Colonel
 14 Vermaak, that's what the police seek to do, Mr Chairman.
 15 Now it is neither the police intention nor the
 16 legal team, to selectively put any version before the
 17 Commission. It is the SAPS responsibility, and the legal
 18 team, to place all the information, all the versions before
 19 the Commission, irrespective of whether or not they are in
 20 conflict with one another. At the end of the day it is the
 21 responsibility of the Chairperson and the Commissioners to
 22 make a finding on all the information that has been placed
 23 before the Commission. And it is not correct, Mr Chairman,
 24 for my colleague to argue that –
 25 CHAIRPERSON: I think your learned friend

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1 is a more appropriate –
 2 MR MATHIBEDI SC: Thanks, Mr Chairman.
 3 It is not correct for Mr Bizos to argue that Mr Pretorius
 4 did not represent Lieutenant-Colonel Vermaak in the
 5 relevant proceedings as an attorney. Mr Pretorius was
 6 there to protect both the interests of Lieutenant-Colonel
 7 Vermaak and the South African Police Services. Now, the
 8 other aspect is that there is no evidence that any of the
 9 SAPS members have been told that if you don't toe the line
 10 you are going to be ditched. And of importance, Mr
 11 Chairman, is the fact that even Lieutenant-Colonel Vermaak
 12 was advised that the South African Police Services is
 13 prepared to fund an attorney or an advocate of his choice.
 14 Now that was surely intended to make sure that he does not
 15 suffer any prejudice.
 16 And with the issue of the irregularities we
 17 respectfully submit that Lieutenant-Colonel Vermaak was
 18 duly advised of his rights by the Commission. He was told
 19 that he is entitled to consult with an attorney or advocate
 20 of his choice to be advised as to whether or not the legal
 21 team of SAPS can cross-examine him and he said he doesn't
 22 want to consult any attorney or advocate of his choice.
 23 Actually, instead he was prepared to be led by an advocate,
 24 by an evidence leader.
 25 Now we respectfully submit that the consultation

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1 which occurred between Lieutenant-Colonel Vermaak, the
 2 advocate – sorry, evidence leaders – and Mr Pretorius,
 3 occurred in terms of regulation 5 and 7 which entitles
 4 evidence leaders or the investigators of the Commission to
 5 conduct any interviews with any of the South African Police
 6 Services witnesses or member, which has happened, and
 7 arising therefrom, that consultation, the process has been
 8 that the relevant evidence leaders will prepare a
 9 statement, make it available to the South African Police
 10 Services legal team which, in turn, the statement is made
 11 available to the relevant member for signature if he is
 12 satisfied with the contents thereof.
 13 We respectfully submit that it is in that context
 14 that the consultation was held. We respectfully submit
 15 that it is misplaced for any argument to be presented that
 16 during that consultation Adv Wesley was either SAPS or
 17 Lieutenant-Colonel Vermaak's legal representative. We know
 18 that they attended the consultation in their capacity as
 19 designated officials in terms of regulation 5. Now what
 20 SAPS legal team seeks to do is to cross-examine Lieutenant-
 21 Colonel Vermaak with the information or evidence that was
 22 gained during that consultation and there is also an
 23 undertaking by SAPS legal team that any evidence that was
 24 obtained during a consultation with Lieutenant-Colonel
 25 Vermaak will not be utilised to cross-examine Lieutenant-

<p style="text-align: right;">Page 27735</p> <p>1 Colonel Vermaak.</p> <p>2 Now, reference has been made or reliance is made</p> <p>3 to the matter of State versus Dintwe at page 6 of the heads</p> <p>4 of argument. Now I'm going to read line 5 of the quotation</p> <p>5 which reads as follows, "He cannot do this properly without</p> <p>6 making use of information gained from his former client,</p> <p>7 the other accused." I have already indicated that any</p> <p>8 information that was obtained during the consultation with</p> <p>9 Lieutenant-Colonel Vermaak will not be used. To make use</p> <p>10 of such information will amount to a flagrant breach of the</p> <p>11 confidential attorney and client relationship which the law</p> <p>12 jealously protects.</p> <p>13 Now we submit that because that consultation did</p> <p>14 not occur in the context of attorney and client</p> <p>15 relationship because of the presence of the evidence</p> <p>16 leaders, that consultation occurred in terms of regulation</p> <p>17 7. That being the case, we respectfully submit that SAPS</p> <p>18 legal team is entitled to cross-examine Lieutenant-Colonel</p> <p>19 Vermaak using any information that was obtained during that</p> <p>20 consultation and this is what SAPS legal team seeks to do</p> <p>21 and, Mr Chairman, for this contention to hold water we</p> <p>22 respectfully submit that it should be establish that the</p> <p>23 consultation was held with the view to – was held, one, in</p> <p>24 confidentiality, two, with a view to instituting legal</p> <p>25 proceedings which we respectfully submit that that is not</p>	<p style="text-align: right;">Page 27737</p> <p>1 Now the other aspect is to ensure that there is no</p> <p>2 prejudice to Mr Vermaak as he testified, I've already</p> <p>3 indicated what measures have been put in place and we</p> <p>4 respectfully submit that this is not a situation wherein</p> <p>5 the SAPS legal team is representing two accused persons.</p> <p>6 We submit that the legal team in this matter represents the</p> <p>7 interests of the South African Police Services. We</p> <p>8 respectfully submit that the argument advanced that the</p> <p>9 South African Police Service legal team is not entitled to</p> <p>10 cross-examine Lieutenant-Colonel Vermaak based on the fact</p> <p>11 that there is an attorney and client relationship, we</p> <p>12 respectfully submit that that argument does not hold water.</p> <p>13 That's my argument, Mr Chairperson.</p> <p>14 CHAIRPERSON: Yes, thank you very much.</p> <p>15 Mr Bizos, do you –</p> <p>16 MS LE ROUX: Chair, before –</p> <p>17 CHAIRPERSON: Yes?</p> <p>18 MS LE ROUX: Chair, before Mr Bizos</p> <p>19 replies if I could just place two short submissions on the</p> <p>20 record for the Human Rights –</p> <p>21 CHAIRPERSON: You haven't given us any</p> <p>22 heads.</p> <p>23 MS LE ROUX: No, we don't have heads.</p> <p>24 They're very short –</p> <p>25 CHAIRPERSON: Alright.</p>
<p style="text-align: right;">Page 27736</p> <p>1 applicable in this matter. And the other point is that we</p> <p>2 submitted that there are no parties before this Commission.</p> <p>3 Any person who testifies, testifies such as a witness.</p> <p>4 CHAIRPERSON: Well, the argument that</p> <p>5 there were no parties before this Commission was dealt with</p> <p>6 in the application, receiving the evidence of Mr X from a</p> <p>7 remote venue and it was rejected. I found there are</p> <p>8 parties, so that's not a point you can rely on.</p> <p>9 MR MATHIBEDI SC: Thank you, Mr Chairman,</p> <p>10 I'll –</p> <p>11 CHAIRPERSON: I don't know whether I'm</p> <p>12 strictly speaking bound by that but I'm not satisfied I was</p> <p>13 wrong in so holding. In other words, I'm only raising with</p> <p>14 you the fact that you can't argue that the witnesses, that</p> <p>15 there are no parties before this Commission. There are,</p> <p>16 but not every witness of course is a party and I'm not sure</p> <p>17 that the correction I've endeavoured to express undermines</p> <p>18 the main thrust of your argument.</p> <p>19 MR MATHIBEDI SC: Thanks, Mr Chairman.</p> <p>20 Maybe let me rephrase my point. We submitted that</p> <p>21 Lieutenant-Colonel Vermaak is testifying as a witness</p> <p>22 before this Commission. Now that being the case, the rule</p> <p>23 of attorney and client, we respectfully submit, is not</p> <p>24 applicable not only because of that but also because of the</p> <p>25 fact that the interview was held in terms of regulation 7.</p>	<p style="text-align: right;">Page 27738</p> <p>1 MS LE ROUX: - submissions, Chair.</p> <p>2 Firstly it's to note that the Human Rights Commission,</p> <p>3 obviously I don't intend to take the legal arguments made</p> <p>4 by my learned friend Mr Bizos any further but I do wish to</p> <p>5 record that the Human Rights Commission shares the concerns</p> <p>6 raised by the LRC regarding the fairness of SAPS reliance</p> <p>7 on the recording within the context of the erstwhile</p> <p>8 professional relationship with Lieutenant-Colonel Vermaak.</p> <p>9 The second submission is merely to note that, and it's</p> <p>10 confirmed in the SAPS heads of argument that we've obtained</p> <p>11 this morning, at paragraph 5 and then at paragraph 19 the</p> <p>12 principle is announced as well that if it is in the</p> <p>13 interests of fairness and justice that all relevant</p> <p>14 information be provided to the Commission and where there</p> <p>15 have obviously been other meetings between the evidence</p> <p>16 leaders and members of the SAPS, and we understand that</p> <p>17 this recording may not be the only recording of such</p> <p>18 meetings the Human Rights Commission will seek disclosure</p> <p>19 of any other records, whether they're audio or written,</p> <p>20 from both the evidence leaders and the SAPS in the event</p> <p>21 that the Commission finds that this recording is relevant</p> <p>22 and admissible and can be used in Commission proceedings.</p> <p>23 That is, those are our submissions, Chair.</p> <p>24 MS BARNES: Thank you, Chair. Might I</p> <p>25 just state on behalf of AMCU that we support the</p>

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1 application made by the Legal Resources Centre and we align
 2 ourselves with the submissions made by our learned friend
 3 Mr Bizos. Thank you, Chair.
 4 CHAIRPERSON: Thank you. Does anybody
 5 else wish to either align him or herself or not align him
 6 or herself with the arguments that have been advanced? Mr
 7 Ntsebeza, you raised your hand but I see also Ms Lewis has
 8 got her light on, so are you waiving your seniority in her
 9 favour or what's going to happen?
 10 MR NTSEBEZA SC: [Microphone off,
 11 inaudible]
 12 CHAIRPERSON: Ms Lewis?
 13 MS LEWIS: Mr Chair, on behalf of the
 14 families we support the representations made by the LRC and
 15 we align ourselves with that for the reasons stated by Mr
 16 Bizos.
 17 CHAIRPERSON: Thank you. Does anybody
 18 else wish to align himself or herself or not align himself
 19 or herself with what's been said? No. Mr Bizos, do you
 20 wish to reply?
 21 MR BIZOS SC: Very briefly, Mr Chairman,
 22 I want to thank our colleagues for the support that they
 23 have expressed. In reply I want to pose the question, Mr
 24 Chairman, are the police saying that they do not regard the
 25 witnesses that they are calling to give a version, whether

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1 for or against the interests of the police officials,
 2 and/or the victims, that the people that they are
 3 consulting are not their clients –
 4 CHAIRPERSON: Sorry, you said they wanted
 5 to pose a question. I'm trying to write it down, I'm not
 6 sure I've got it correctly. I started writing, are SAPS
 7 saying that they do not regard the witnesses they are
 8 calling to give a version –
 9 MR BIZOS SC: They have consulted with –
 10 CHAIRPERSON: - then you went ahead of my
 11 pen. Would you repeat it?
 12 MR BIZOS SC: - not their clients. Who
 13 are they acting for? And I submit to try and limit the
 14 word, the meaning of the word "client" to an accused or a
 15 litigant in the civil proceedings, is not a proper
 16 interpretation of the word, Mr Chairman. People that
 17 consult us require guidance from us, among other things,
 18 what is to their best interest. And the admission that the
 19 police team invited the Colonel to have an attorney,
 20 presumably nominated by them, was rejected. They wanted to
 21 find another attorney for them – what did they mean by that
 22 if they did not consider themselves as the attorney for the
 23 witness? Mr Chairman, I'm prepared to assume the version
 24 of the police team is correct. I think that we should –
 25 CHAIRPERSON: I just want to make sure

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1 I've recorded this last submission correctly. You say when
 2 they, that's the police, offered to find another attorney
 3 for the Colonel –
 4 MR BIZOS SC: That was an admission that
 5 they were the attorneys of record, that they were his
 6 attorneys.
 7 CHAIRPERSON: [Microphone off, inaudible]
 8 – that was an admission that they were, up till then –
 9 MR BIZOS SC: His attorneys. Mr
 10 Chairman, I am even prepared, for the purposes of this
 11 argument, that Colonel Vermaak said let's get on with it.
 12 I don't really blame him because he probably, he probably
 13 having had an admonition from the Commissioner of Police
 14 and called names and accused of doing skelm things, had had
 15 enough of it and he wanted to get away with, from it all.
 16 That does not mean that he has abandoned any of the
 17 privileges that he has or that he really did not want to be
 18 advised by another legal representative. I think that the
 19 Commission should protect him. He has the right to consult
 20 the person who led him, for advice, but that is not
 21 something that this Commission has to decide. It's the
 22 right of the witness and the right of the evidence leaders
 23 to jointly decide what his attitude is but I emphasise the
 24 fact that the authority says that even if he consents, he
 25 can't consent to an unfair way of being treated. Yes, they

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1 were there, with respect, to protect – who is this, sorry –
 2 informed that it was said that the police at a stage said
 3 that they were there to protect SAPS and Vermaak. There is
 4 no substance, in our submission, to the objections raised
 5 by the police in their heads of argument or in their oral
 6 argument. Thank you, Mr Chair.
 7 [10:51] CHAIRPERSON: Mr Chaskalson – sorry, Mr
 8 Budlender, you indicated to me in chambers this morning
 9 that the evidence leaders did not propose addressing the
 10 Commission on this matter, is that correct??
 11 MR BUDLENDER SC: That is correct,
 12 Chairperson.
 13 CHAIRPERSON: I understand before the
 14 witness waived his rights to object to being cross-examined
 15 by Mr Semenya he did consult with the evidence leaders.
 16 MR BUDLENDER SC: He consulted, yes, with
 17 Ms Pillay.
 18 CHAIRPERSON: Yes.
 19 MR BUDLENDER SC: That's correct.
 20 CHAIRPERSON: I think it's appropriate
 21 for us to take the first comfort break at this stage and
 22 which will – it's almost 11 o'clock. Actually we'll make
 23 it the tea break and I will consider the matter during that
 24 time and if I'm in a position to give my ruling thereafter,
 25 I'll do so. Otherwise I'm afraid it will have to stand

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1 over but we will now take the tea adjournment.
 2 [COMMISSION ADJOURNS COMMISSION RESUMES]
 3 [11:26] CHAIRPERSON: The Commission resumes. I
 4 have considered the arguments that were advanced this
 5 morning in support of and against the application brought
 6 by the Legal Resources Centre on behalf of the Ledingoane
 7 family, and I've come to the conclusion that the ruling
 8 sought by the LRC in paragraph 21 of their heads of
 9 argument cannot be granted. The application therefore is
 10 refused. My reasons will be given in the final report of
 11 this Commission, unless they are required earlier.
 12 Colonel, you're still bound by the affirmation you made.
 13 SALMON JOHANNES VERMAAK: That's correct,
 14 Chair.
 15 CHAIRPERSON: Mr Semenya.
 16 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):
 17 Thank you, Chair. Can I ask that we go to the transcript,
 18 the last day of the hearing, on page 27719, the 30th of
 19 April 2014. Colonel, you will see against line 8 I ask
 20 you, and it reads there, "Thank you. Thank you, Chair.
 21 Colonel, did you in response to Commissioner Hemraj's
 22 question to you say that you were told that there is
 23 inadequate information to implement your plan?" Do you see
 24 that?
 25 COLONEL VERMAAK: That's correct.

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1 MR SEMENYA SC: And to that you say,
 2 "No," and then I go, "Okay, we'll start with that on the
 3 record when we resume. I intend to be good to my word
 4 there." You see that?
 5 COLONEL VERMAAK: That's correct. I can
 6 only mention the "No" was that there was no information. I
 7 didn't say no, there was not mentioned any information was
 8 given.
 9 MR SEMENYA SC: No, no, no, Colonel,
 10 please. I asked you directly, "Did you in response to
 11 Commissioner Hemraj's question say that you were not told
 12 that there is inadequate information to implement your
 13 plan?" You say, "No." That's not what you answered. Now
 14 can I take you to the relevant portion of the transcript?
 15 Can I invite you to look at page 27714 –
 16 CHAIRPERSON: I'm told someone's – sorry
 17 to interrupt you, Mr Semenya. I'm told someone has his or
 18 her phone on. I'd be grateful if it were put off, and if
 19 it's not put off and it rings I will ask the owner thereof
 20 to leave the chamber. I don't know what I'll do if it's Mr
 21 Semenya, but we'll cross that bridge if we get there.
 22 MR SEMENYA SC: Yes. Can we now go to
 23 page 27714, and we go to line 17 of that page. There,
 24 Colonel, you'll see Commissioner Hemraj asks you, "Yes, now
 25 Colonel, when you, your view, whenever you put it forward"

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1 – and this is reference to whether there should be a cordon
 2 and search – "all the others had a separate view. Now did
 3 they simply ignore what you said, or did they point out to
 4 you that there might be certain difficulties with what you
 5 were suggesting?" There your answer is, "Chair, there was
 6 only once, I think it was on the 15th if I remember
 7 correctly, where I was told that they haven't got
 8 information to go and cordon and search the hostel and then
 9 I explained to them why did I still suggest that it must be
 10 done." You see that?
 11 COLONEL VERMAAK: That's correct.
 12 MR SEMENYA SC: So in one breath I ask
 13 you did you just give this information to the Commissioner
 14 Hemraj and you say no. Is there an explanation, Colonel?
 15 COLONEL VERMAAK: There was nobody who
 16 was accepting my proposal and I –
 17 MR SEMENYA SC: But you heard my
 18 question –
 19 COLONEL VERMAAK: I also says on a, I did
 20 see it on the transcript that I said Brigadier Engelbrecht
 21 at one stage said that they don't have any information and
 22 they have got a problem to obtain information.
 23 MR SEMENYA SC: And then to that question
 24 I asked you the next.
 25 "Did you just say no, no information was given to you, the

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1 reasons were not offered why your idea should not carry?"
 2 and you say no. Now my question to you is, Colonel,
 3 please, how do you explain just giving conflicting answers
 4 to the same question?
 5 COLONEL VERMAAK: The answer was no, they
 6 didn't give any information and they said they haven't got
 7 any information.
 8 MR SEMENYA SC: No, but that's not an
 9 answer to my question now. I'm saying can you explain the
 10 conflicting versions you're giving?
 11 COLONEL VERMAAK: I think if you read it
 12 in the right context you will see that was the meaning at
 13 the end of the day.
 14 MR SEMENYA SC: Chair, I placed before
 15 you and circulated to colleagues what I propose to mark as
 16 exhibit OOO39, which is a AVL report of the motor vehicle
 17 belonging to, or under the control of Colonel Vermaak.
 18 CHAIRPERSON: Sorry, Mr Semenya,
 19 according to my notes OOO39 is the Helicopter Operations
 20 Manual, section 10 updated version. So the new document
 21 will therefore be OOO40.
 22 MR SEMENYA SC: I thank you, Chair.
 23 CHAIRPERSON: Am I right, Ms Pillay?
 24 MS PILLAY: Chair, according to my
 25 records the updated version of the Helicopter Operations

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1 Manual is 00038.
 2 CHAIRPERSON: Oh, well I – no, but there
 3 were two, you see. One was put in –
 4 MS PILLAY: That’s correct, Chair,
 5 that’s –
 6 CHAIRPERSON: - which was the old one,
 7 the original issue.
 8 MS PILLAY: That’s 37. That’s 00037.
 9 CHAIRPERSON: Well, my notes say that’s
 10 38. My notes say 37 is complaints of misconduct against
 11 Colonel Vermaak.
 12 MS PILLAY: Oh, I see. That 00037, I was
 13 under the impression that it wasn’t properly marked as yet
 14 because the document had to be amended still, Chair.
 15 CHAIRPERSON: Oh well, I didn’t mark it.
 16 MS PILLAY: Or you marked it as –
 17 CHAIRPERSON: So I’m right, okay. So it
 18 is 00040, AVL report. Is that what it’s called, AVL
 19 report? Of, this is now 40, 00040, AVL report, of whose
 20 vehicle? Is this the witness’s vehicle?
 21 MR SEMENYA SC: That’s will be the
 22 evidence. Colonel, can you confirm BSN395B is your
 23 vehicle?
 24 COLONEL VERMAAK: That’s correct.
 25 MR SEMENYA SC: You’ll see in terms of

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1 this document it records the movement of your vehicle on
 2 the 16th.
 3 COLONEL VERMAAK: I saw this document,
 4 yes.
 5 MR SEMENYA SC: You will see against the
 6 time 07:00:38 the vehicle starts, correct?
 7 COLONEL VERMAAK: I saw that.
 8 MR SEMENYA SC: And the ignition is off
 9 again at 07:37:16. You see that?
 10 COLONEL VERMAAK: I saw it.
 11 MR SEMENYA SC: And it is on the 16th.
 12 COLONEL VERMAAK: That’s correct.
 13 MR SEMENYA SC: You told the Commission
 14 on this day you were in the JOC.
 15 COLONEL VERMAAK: That is correct.
 16 MR SEMENYA SC: How do the two lie
 17 together, Colonel?
 18 COLONEL VERMAAK: We had a problem with
 19 the AVL and it was reported to the fleet manager, but at
 20 that stage there was no money to, in the North West to
 21 repair AVLS, they only have a contract to install them. So
 22 I also want to point out on this document, as you can see
 23 at the 15th – no, excuse me, on the 16th, “05:00:57 GPS
 24 unlocked, ignition off.” Now I don’t understand why should
 25 I GPS unlocked and ignition off. Then we go on to the 16th,

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1 “07:37:16 ignition off,” and then just the second, just
 2 under it, 07:53:57, start again. So there’s definitely a
 3 problem with this record. What –
 4 CHAIRPERSON: There’s a further point,
 5 isn’t there? The GPS is unlocked and the ignition is off
 6 apparently at shortly after 5AM.
 7 COLONEL VERMAAK: That’s correct, Chair.
 8 CHAIRPERSON: And then the vehicle only
 9 starts up two hours later.
 10 COLONEL VERMAAK: That’s correct.
 11 CHAIRPERSON: Now that’s a bit unlikely
 12 that you’d unlock the GPS at 5 o’clock and done nothing
 13 again until 7.
 14 COLONEL VERMAAK: Precisely, Chair.
 15 MR SEMENYA SC: So your evidence is that
 16 this record is incorrect?
 17 COLONEL VERMAAK: That’s correct.
 18 MR SEMENYA SC: And you can’t point us to
 19 the technical error of the instrument?
 20 COLONEL VERMAAK: I know that there are
 21 some vehicles that are experiencing problems. I also know
 22 that Captain Visagie from Rustenburg, who is also AVL
 23 manager, have mentioned to me that the AVL is not correct;
 24 their times from time to time differ from what actually is
 25 and according to the report that is being printed out.

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1 MR SEMENYA SC: But if the transcript is
 2 proved correct then your evidence before this Commission
 3 would be false, or incorrect?
 4 COLONEL VERMAAK: No.
 5 MR SEMENYA SC: No, no, I’m saying –
 6 COLONEL VERMAAK: I don’t agree.
 7 MR SEMENYA SC: - if the instrumentation
 8 of the movement of your car is correctly reflected and can
 9 be explained and it is found to be correct, it must by
 10 reason follow that your evidence before the Commission that
 11 you were in the JOC at the relevant time cannot be correct?
 12 COLONEL VERMAAK: No, I will not agree
 13 with you. I’m not a technical person and I’m only just –
 14 CHAIRPERSON: I’m sorry to interrupt you,
 15 but that must be right what counsel is putting to you. If
 16 you were driving – if it’s correct, remember you say it’s
 17 incorrect and I understand that, but if you were driving
 18 from, you started up your vehicle for the first time at 38
 19 seconds after 7AM on the 16th and you then drove all the way
 20 through until 7:37:16 and you drove along the old N4 road
 21 and you followed the rest of the route that’s set out here
 22 against the various times, then you couldn’t have been in
 23 the JOC if you were driving your vehicle as depicted on the
 24 document. So obviously if the document is right there’s
 25 something, your evidence that you were at the JOC at that

<p style="text-align: right;">Page 27751</p> <p>1 time can't be correct. Your argument – not your argument – 2 your evidence is that this is wrong – 3 COLONEL VERMAAK: That's correct, Chair. 4 CHAIRPERSON: - and you were in the JOC. 5 But if it's right then your evidence is contradicted, but 6 your contention, as I understand it, is it isn't right. Am 7 I correct? 8 COLONEL VERMAAK: That's correct, Chair. 9 CHAIRPERSON: Ja, am I right? 10 COLONEL VERMAAK: That's correct, Chair. 11 If I can, I, if you only can have also a copy of the 12 minutes of the JOC on that morning then we can see if I was 13 in the JOC and if I was late in the JOC it should have been 14 minuted because why the chairperson is not allowing people 15 to attend late to the JOC meetings. 16 COMMISSIONER HEMRAJ: Do I understand 17 that this system has correctly recorded the locations, but 18 not the times? Is that what you're saying, or is all of it 19 wrong? 20 COLONEL VERMAAK: Chair, the, I believe 21 the locations could be – no, it couldn't be correct because 22 why if you go and compare it then with the GPS you will 23 establish precisely where it was at that stage. So 24 according to me it is possible that the GPS reading is also 25 not correct.</p>	<p style="text-align: right;">Page 27753</p> <p>1 15th. The evidence is – perhaps I should clarify the 2 question a bit for you slightly because it's a little bit 3 truncated. The evidence before us is that at a meeting of 4 the National Management Forum of the police held on the 5 Wednesday evening, according to the minute – now there's a 6 dispute about it, but according to the minute she made a 7 proposal which was endorsed by those present, which was all 8 the provincial commissioners and some others from head 9 office, that a tactical option should be undertaken. She 10 gave her evidence that what was agreed, although the minute 11 doesn't actually say that, was that that would happen on 12 the Thursday. 13 The police version is it was her decision and 14 they've got some explanations about the minute and so on, 15 but what is common cause, or rather what is clear on the 16 police version is that the decision to act, to implement 17 the tactical option on the Thursday was made at the 18 Management Forum meeting on the Wednesday night in the 19 absence of any information as to what the state of play 20 was, what was happening, who was where, who was doing what 21 on the Thursday. It was taken the night before, based 22 obviously on what had happened before that, or it was 23 understood possibly to be what was going on at that moment. 24 That's the basis of the question. 25 Now what you were asked by Mr Semenya was that</p>
<p style="text-align: right;">Page 27752</p> <p>1 MR SEMENYA SC: GPS is also not correct, 2 you say? Colonel? 3 COLONEL VERMAAK: Yes. 4 MR SEMENYA SC: Okay. Can I invite your 5 answer to this question. Until Marikana police history is 6 that the use of teargas had never previously provoked an 7 attack on the police. Am I right? 8 COLONEL VERMAAK: That's correct. 9 MR SEMENYA SC: And as far as the police 10 were concerned there was no historical basis to think that 11 that would happen on the 16th, or even on the 13th? 12 COLONEL VERMAAK: That's correct. 13 MR SEMENYA SC: Okay. Can I take you 14 back to your evidence; you say the decision by the PC that 15 the people must be disarmed was irresponsible. That is on 16 the 15th. 17 COLONEL VERMAAK: If she has all the 18 information before her I would agree that that was not the 19 correct decision to be taken. 20 MR SEMENYA SC: No, I'm asking was it 21 your evidence that the decision by the PC on the 15th to say 22 armed people must be disarmed was irresponsible? 23 COLONEL VERMAAK: On the 15th or the 16th? 24 You just said – 25 CHAIRPERSON: I think it relates to the</p>	<p style="text-align: right;">Page 27754</p> <p>1 decision, which he describes as the Provincial 2 Commissioner's decision, the Commission may – it's not 3 clear at this stage – may find it was more than just the 4 Provincial Commissioner's decision, but anyway that 5 decision was an irresponsible decision. That's what Mr 6 Semenya's putting to you. 7 COLONEL VERMAAK: That is correct, Chair. 8 I do agree that it was irresponsible to take certain, a 9 route to take the day before when they don't have, even on 10 the 15th not the necessary information. 11 MR SEMENYA SC: Can I ask that we look at 12 page 25670, 27th of March 2014, of the transcript? And can 13 I invite us to look at line 23 onwards. Are we able to 14 flight the page of the transcript 27th March 2014, page 15 25670, against line 23. There, Colonel, you say, 16 "Voorsitter, ek dink die vraag is tweeledig op hierdie 17 stadium. Die gedeelte oor die besluit wat vooraf geneem is 18 om die volgende dag 'N optrede te loods en jy weet nie 19 daardie dag wat jy daardie besluit neem wat die volgende 20 dag eers gaan gebeur nie. 21 [11:46] My mening is dis onverantwoordelik om so 'n 22 opdrag uit te reik want jy het nie inligting wat die 23 volgende dag vir jou inhou nie. So my mening is, jy kan 24 nie 'n vorige dag waar jy met 'n situasie of 'n plofbare 25 situasie sit 'n besluit neem en sê môre gaan ek so optree."</p>

<p style="text-align: right;">Page 27755</p> <p>1 Then the Chairperson says, "Sorry to interrupt you. So you 2 are saying it is irresponsible to say on Wednesday, 3 Thursday will be D-day, even if that language wasn't used 4 on Wednesday, that was the idea conveyed and you say that's 5 irresponsible. Do you see that? 6 COLONEL VERMAAK: That's correct. 7 MR SEMENYA SC: So you ascribe as 8 irresponsible the decision of the PC, or it may later prove 9 to be more, the decision that they must be disarmed and you 10 say you can't take that type of decision particularly 11 because you don't know what the following day may unfold. 12 COLONEL VERMAAK: That is correct. 13 MR SEMENYA SC: It's a very serious 14 criticism by somebody senior as you are, Colonel. Do you 15 accept that at least? 16 COLONEL VERMAAK: I do accept. 17 MR SEMENYA SC: Now let us look at the 18 context. You do know that the Provincial Commissioner when 19 she took the decision, she did not prescribe how the people 20 were to be disarmed, correct? 21 COLONEL VERMAAK: Chair, I wasn't present 22 when she made the instruction. 23 MR SEMENYA SC: No, but I – 24 COLONEL VERMAAK: And I can't say what 25 was her instruction on that stage precisely.</p>	<p style="text-align: right;">Page 27757</p> <p>1 9 and 10 on the page we're looking at was, he's saying it's 2 irresponsible to say on Wednesday, Thursday will be D-day. 3 That's what the witness said. He also said you can't say 4 that a general command or order to disarm is in itself 5 irresponsible, it depends on the circumstances. So I think 6 you should reformulate your question to put it precisely to 7 the witness. 8 MR SEMENYA SC: For the PC to say on a 9 Wednesday police must disarm armed people the following 10 day, you say that's irresponsible? 11 COLONEL VERMAAK: That is correct. 12 MR SEMENYA SC: Okay. And you say you do 13 know, or don't you, that at that time the PC is not saying 14 how they should be disarmed, correct? 15 COLONEL VERMAAK: Chair, are you 16 referring to the 15th or the 14th, the night – 17 MR SEMENYA SC: No, to the 15th, Colonel. 18 COLONEL VERMAAK: The first – 19 MR SEMENYA SC: Ja, what the PC doesn't 20 do is how those people, does not instruct how those people 21 must be disarmed, correct? 22 COLONEL VERMAAK: That is correct. 23 MR SEMENYA SC: And you still maintain 24 it's irresponsible still? 25 COLONEL VERMAAK: That's correct.</p>
<p style="text-align: right;">Page 27756</p> <p>1 MR SEMENYA SC: No, but at least even 2 with the lack of information, you describe as irresponsible 3 for the PC to act, to make that decision. 4 COLONEL VERMAAK: To disarm people, yes. 5 MR SEMENYA SC: What is irresponsible 6 about the police disarming people who are bearing dangerous 7 weapons? What's irresponsible about that as a decision? 8 COLONEL VERMAAK: I'm talking about a 9 specific day, not in normal circumstances. We already have 10 people been dying up to that date under violent 11 circumstances, Chair, and we know that the people who were 12 gathering at the koppie were aggressive, they were all 13 armed, information was given by me from experience when 14 these people went to a sangoma and they go through a 15 ritual, they believed that they will not die. And maybe if 16 we go back to Mr X's statement, actually he confirmed every 17 word that I say, the warnings that I gave to the JOCCOM. 18 MR SEMENYA SC: The question was, what is 19 irresponsible about a decision of the PC saying people must 20 be disarmed? What's irresponsible in it? 21 COLONEL VERMAAK: I just answered the 22 question. Irresponsible – 23 CHAIRPERSON: Mr Semenya, the question 24 you're putting isn't entirely in accord with what the 25 witness said. What he said was, as I summarised it at line</p>	<p style="text-align: right;">Page 27758</p> <p>1 MR SEMENYA SC: Okay. I thought I 2 understood your evidence to be that you also were of the 3 opinion that the people must be disarmed. 4 COLONEL VERMAAK: No, I said not at that 5 stage because why, you can't go and try to unarm a group of 6 3 000 people at once. I said when the people were walking 7 to the koppie and away from the koppie they were all armed 8 and the police could, if they want, unarm those people. 9 MR SEMENYA SC: Colonel, I'm asking a 10 simple question. Were you of the view or weren't you of 11 the view that the people must be disarmed? 12 COLONEL VERMAAK: You said that I said 13 they must be unarmed – 14 CHAIRPERSON: No – no, never mind what he 15 said. The question is a fairly straightforward one. Were 16 you of the view that the people had to be disarmed and I 17 understood you to say yes, because you said that – but the 18 question really relates to something different. Was it 19 sensible to try to disarm them on the koppie or was it more 20 appropriate to try to disarm them somewhere else when they 21 weren't on the koppie, either by taking their arms away 22 from their homes after a cordon and search or taking it 23 from them while they were en route to the koppie or en 24 route from the koppie. 25 COLONEL VERMAAK: That's –</p>

<p style="text-align: right;">Page 27759</p> <p>1 CHAIRPERSON: That's the distinction that 2 - 3 COLONEL VERMAAK: That is correct, Chair. 4 MR SEMENYA SC: No – no, Colonel, that's 5 not my question. 6 COLONEL VERMAAK: Well, then me – the 7 Chair and I don't understand the question. 8 MR SEMENYA SC: No, that's not my 9 question. The PC did not say people must be disarmed at 10 the koppie, she didn't do that. She didn't say that. She 11 didn't even say how they should be disarmed but you 12 maintain that that decision is irresponsible. Now I'm 13 testing you. Weren't you of the mind as well that the 14 people must be disarmed? 15 COLONEL VERMAAK: The decision to unarm – 16 well, can I answer the question, Chair? The decision to 17 unarm the people at the koppie, the instruction to disarm 18 them is when they were at the koppie all the time, so where 19 else would they go and unarm them? 20 MR SEMENYA SC: At least on your version 21 that there'd be a cordon and search of the hostel. 22 COLONEL VERMAAK: That's correct. 23 MR SEMENYA SC: People did not even go 24 there. 25 COLONEL VERMAAK: That is correct is,</p>	<p style="text-align: right;">Page 27761</p> <p>1 decided the how the disarmament was to happen, am I 2 correct? 3 COLONEL VERMAAK: That is correct, but I 4 must also state that according to information the PC was in 5 the JOC when they started implementing the plan. 6 MR SEMENYA SC: And you know the PC was 7 not part of the plan on the how it should be done, correct? 8 COLONEL VERMAAK: I can't comment – 9 MR SEMENYA SC: You were in the JOC, you 10 – 11 COLONEL VERMAAK: Chair, I cannot comment 12 on that because why, I wasn't in the JOC when they made 13 that decisions. 14 MR SEMENYA SC: No, but you were there 15 when the plan was discussed. Was the PC there? 16 COLONEL VERMAAK: Excuse me? 17 MR SEMENYA SC: You said you were there 18 when the plan was discussed. 19 COLONEL VERMAAK: The morning. The 20 afternoon, the afternoon there was a different plan that 21 was conveyed to members on the ground by Colonel Scott. So 22 I wasn't there in the afternoon when that decisions were 23 taken. 24 MR SEMENYA SC: Were you ever, was the PC 25 ever present when the plan on the "how" was discussed?</p>
<p style="text-align: right;">Page 27760</p> <p>1 that was – 2 MR SEMENYA SC: She did not say how – 3 COLONEL VERMAAK: - the suggestion. 4 MR SEMENYA SC: The PC did not say how, 5 when – no, no, did not say how the people must be disarmed. 6 Am I right? 7 COLONEL VERMAAK: Chair, I think the 8 people who took that decision would, might answer you on 9 that question. I gave my input, I tell them that it will 10 be dangerous to try to unarm the people on the koppie. 11 MR SEMENYA SC: No, I accept that, 12 Colonel. I'll do the last thing. You accept that it is 13 the JOC that decided how the people were to be disarmed by 14 going to stage 3? 15 COLONEL VERMAAK: That's correct. 16 MR SEMENYA SC: And it is the "how" that 17 you are criticising, am ii correct? 18 COLONEL VERMAAK: They could only decide 19 on unarming the people due to the instruction that they got 20 from the PC. 21 MR SEMENYA SC: It is – 22 COLONEL VERMAAK: They would not act, as 23 it is clear before the Commission, act on their own without 24 consulting with the PC. 25 MR SEMENYA SC: It is the JOCCOM that</p>	<p style="text-align: right;">Page 27762</p> <p>1 COLONEL VERMAAK: Chair, I don't know if 2 Mr Semenya doesn't understand my answer – 3 CHAIRPERSON: No, I think I understand 4 what he's up to. What he's saying is, he's asking you 5 this. Your evidence is that what you call the new plan was 6 discussed in the JOC in the afternoon. What he wants to 7 know from you is, was the PC there at that stage? You 8 yourself have told us you weren't there so you obviously 9 can't know from your own knowledge whether the PC was there 10 when the new plan, as you call it, was discussed in the JOC 11 – 12 COLONEL VERMAAK: that is – 13 CHAIRPERSON: - in the afternoon. 14 COLONEL VERMAAK: That's correct. 15 CHAIRPERSON: You may have heard some 16 hearsay later, I don't know but certainly from your own 17 knowledge you can't say whether the PC was there when what 18 you call the new plan was discussed in the afternoon at the 19 JOC before the tactical option was implemented. That's 20 correct, isn't it? 21 COLONEL VERMAAK: That's correct, Chair. 22 CHAIRPERSON: So Mr Semenya is correct 23 when he puts that to you. 24 COLONEL VERMAAK: Yes, if you put it that 25 I didn't know if she was there, that is true.</p>

<p style="text-align: right;">Page 27763</p> <p>1 MR SEMENYA SC: No – no, I'm going 2 further than that, Colonel. I'm saying all occasions when 3 you were present and the plan was discussed, did you see 4 the PC there at any stage? 5 COLONEL VERMAAK: Now your question is 6 clear. No. 7 MR SEMENYA SC: And yet you still say the 8 decision is irresponsible, when she did not participate in 9 how it should be implemented. 10 MS PILLAY: Chair, if I could just 11 indicate and in fairness to the witness, any questioning 12 around his testimony that the decision of the PC was 13 irresponsible must be done in the context of the evidence 14 at the time and the question asked by Mr Bizos at the time, 15 because the question around the decision of the PC was a 16 very specific question. 17 CHAIRPERSON: Let's have a look in the 18 transcript in the passage immediately preceding – 19 MS PILLAY: Chair, it's page 25670. 20 CHAIRPERSON: Sorry, 25? 21 MS PILLAY: 25670. 22 CHAIRPERSON: Let's have a look at that 23 page and see whether your objection is correct. What line 24 – are you referring to line 14 and following? 25 MS PILLAY: Picking up from line 14.</p>	<p style="text-align: right;">Page 27765</p> <p>1 MR SEMENYA SC: Okay. Now if I also 2 understand your evidence, really the criticism is the, how 3 the disarmament is to happen, it's not the fact that the 4 people must be disarmed. 5 COLONEL VERMAAK: No, no. I don't say 6 how they must unarm them. I said the fact that they, under 7 that circumstances, tried to unarm the people was 8 irresponsible. I never said a way, how they must do or 9 should have done it. 10 MR SEMENYA SC: I'm a little confused 11 now. I thought the suggestion you made in the JOC was, we 12 must go and disarm these people but we should do it rather 13 with a cordon and search first. 14 COLONEL VERMAAK: Chair, I think then Mr 15 Semenya must refer to the date which he is asking the 16 question of. 17 MR SEMENYA SC: I'm not sure that it 18 matters but is there an answer to my question, that the 19 thrust of your objection, the thrust of your objection was, 20 to disarm the people it is preferable the cordon and search 21 of hostels must happen first. Was that not the basis of 22 your objection? 23 COLONEL VERMAAK: Yes. I said they must 24 first consider a hostel search and disarm the people if 25 they could get any arms during that process.</p>
<p style="text-align: right;">Page 27764</p> <p>1 CHAIRPERSON: So Mr Bizos says, "Colonel, 2 I'm going to suggest to you that common sense where you 3 have a volatile situation and a decision taken beforehand 4 that at a certain time on the afternoon of the 16th there 5 will be a force used which would inevitably result in the 6 loss of life, that a senior officer should have been there 7 in order to control the situation and not have persons not 8 in overall authority to control it, but people to start 9 shooting on their own initiative." And that's when you 10 replied by saying the question was "tweeledig," it was a 11 twofold question and you dealt with the decision, that part 12 of the question which related to the decision taken the 13 previous day, is that correct? 14 COLONEL VERMAAK: That's correct. 15 CHAIRPERSON: That's the context in which 16 the question was asked. Well, now that the context has 17 been cleared up I think Mr Semenya can proceed without any 18 unfairness to the witness. 19 MR SEMENYA SC: Yes. Colonel, there's no 20 doubt that you are saying that the decision taken by the PC 21 is irresponsible for a particular reason. You mention it 22 in the transcript, that you cannot take such a decision 23 without knowing what, how the day will unfold the following 24 day. That's the reason you offered. 25 COLONEL VERMAAK: That's correct.</p>	<p style="text-align: right;">Page 27766</p> <p>1 MR SEMENYA SC: So that they must be 2 disarmed, you were in agreement. You just did not approve 3 the how it was to happen that was suggested by JOCCOM, that 4 was decided by JOCCOM. 5 COLONEL VERMAAK: Not the how, the date 6 and the circumstances under what they want to do it. 7 MR SEMENYA SC: Okay. 8 COLONEL VERMAAK: I can – I've got an 9 aerial photo of the hostel and I think it will be, assist 10 you to see the circumstances totally differ from the koppie 11 and the 3 000 people sitting on the koppie, Chair. 12 MR SEMENYA SC: Okay, let's attempt 13 another area. I understand your evidence to be this, that 14 once the people had undergone the muti ritual, they became 15 impis. Is that the word you used, correct? 16 COLONEL VERMAAK: They believed that, 17 yes. They're not becoming that. That's a belief from 18 their side. 19 MR SEMENYA SC: And in that state of mind 20 they would think that they are invincible, correct? 21 COLONEL VERMAAK: Correct, Chair. I just 22 want to mention now, we're going on specific points that 23 were also discussed with me with the interviews with the 24 legal team and as we said, we're not going to that route to 25 discuss things that was already been discussed with them</p>

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1 during consultations.

2 MR SEMENYA SC: No, I'm repeating your

3 evidence, Colonel. I don't know why you're going there.

4 CHAIRPERSON: - points in your statement,

5 you see. The statement you made which was put in as an

6 exhibit is something different and obviously you can be

7 asked questions about things that are in the statement,

8 there's nothing confidential about that, there's no

9 privilege attaching to that. It was a statement made for

10 submission to the Commission, so counsel is perfectly

11 entitled to ask you about that, I think. He can't ask you

12 anything about things that he discussed with you in his

13 consultation with you because he undertook not to do that

14 and I wouldn't allow that anyway, but he's not asking you

15 about that. As I understand it, he's asking you – am I

16 correct, Mr Semenya – about material which is contained in

17 the various statements you made for submission to the

18 Commission. Perhaps it would help the witness if you drew

19 his attention to a particular passage in one of those

20 statements so that he could focus on the point that you're

21 dealing with.

22 MR SEMENYA SC: Colonel, I can do that

23 but are you having difficulties in the question I put to

24 you?

25 COLONEL VERMAAK: Well, that point was

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1 also been discussed during our interviews but yes, you can

2 continue with the question.

3 MR SEMENYA SC: You are of the view, this

4 is your evidence, that in that state of mind they would

5 think themselves invincible, correct?

6 COLONEL VERMAAK: That's correct.

7 MR SEMENYA SC: Okay. Now, would a

8 shield that is being used by the POP members be adequate

9 protection against that impi-like people?

10 COLONEL VERMAAK: On the 16th, no. That's

11 why we said it is an irresponsible decision that was taken.

12 MR SEMENYA SC: Would a helmet be

13 adequate protection against an impi-like people, as you

14 describe them?

15 COLONEL VERMAAK: If we look at the

16 incident on the 16th, no, it will not really make a

17 difference.

18 MR SEMENYA SC: Would the teargas be

19 adequate protection against an Impi-like people like those?

20 [12:05] COLONEL VERMAAK: I cannot say –

21 MR NTSEBEZA SC: Mr Chairman, I don't

22 really want to intervene. I would like for the record to

23 be clear what is meant when it is referred to people who

24 are Impi-like.

25 CHAIRPERSON: Mr Ntsebeza, this is a

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1 phrase the witness himself used. What the witness said in

2 his statement and in his evidence was that when the people

3 have taken muti, they think they're invincible and they

4 become – I think that was more or less the word he used –

5 they become an impi. It's a shorthand expression that he

6 used to describe a militant group. In LLL8 which has been

7 handed in, in his evidence, earlier before he gave

8 evidence, in paragraph 9 he quotes in full the text message

9 which he sent to Brigadier Garnett on Tuesday the 14th,

10 where he says the following. I'll read it in Afrikaans,

11 then I'll translate it. "06:37 Móre brigadier," good

12 morning Brigadier, "jammer ek is so vroeg met 'n boodskap."

13 Sorry I'm so early with a message. "Hierdie offisiere het

14 geen ondervinding van mynonluste nie." These officers have

15 got no experience of mine unrest. "Hierdie lot sal nou

16 baklei tot die dood toe omdat hulle by die toordokter was

17 en glo hulle dat geen koeël hulle kan doodmaak nie." This

18 lot – the reference now is not to the officers but to the

19 strikers, hierdie lot, this lot will now fight until the

20 death because they've been to the witchdoctor – the

21 sangoma, I take it – and they believe that no, "dat geen

22 koeël hulle kan doodmaak nie," that no bullet can kill

23 them. "Hulle is nou impi's." They are now impis. So

24 that's the phrase the witness used and that's the basis of

25 the question. I understand possibly why you raise some

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1 kind of query in regard to it but I think it's clear in the

2 context of what this witness has already said, to which Mr

3 Semenya is clearly referring.

4 MR NTSEBEZA SC: I understand, Mr

5 Chairman.

6 MR SEMENYA SC: So the question, Colonel,

7 was, would the teargas be adequate protection, faced with

8 the impi-like people as you described them?

9 COLONEL VERMAAK: Chair, if we can just

10 go back to the 13th, it was clear there that teargas

11 couldn't stop the people. They continued with their

12 attack. With that information in mind it is also a part of

13 an irresponsible decision being taken to go and try to

14 unarm 3 000 people on a koppie while you already know that

15 teargas didn't make any differ.

16 MR SEMENYA SC: Would rubber bullets,

17 which is the highest form of force available to POP, be

18 adequate protection against the impi-like people, as you

19 describe them?

20 COLONEL VERMAAK: No, Chair. I have also

21 mentioned at one stage they believed that bullets can do

22 nothing to them and I also mentioned that the people is

23 wearing – wat is komberse in Engels?

24 MR SEMENYA SC: Blankets.

25 COLONEL VERMAAK: Blankets and out of the

<p style="text-align: right;">Page 27771</p> <p>1 police experience, experience when trainers test the 2 effectiveness of bullets, rubber, when people is wearing 3 blankets, they knew that will not be effective to stop the 4 crowd. 5 MR SEMENYA SC: So – 6 CHAIRPERSON: Apart from that – sorry, 7 apart from that, on the 13th were rubber balls fired? 8 COLONEL VERMAAK: That's correct, Chair. 9 CHAIRPERSON: Did they help? 10 COLONEL VERMAAK: No, Chair. 11 MR SEMENYA SC: So no official POP 12 equipment would be able to manage the impi-like people when 13 they're in that formation, correct? 14 COLONEL VERMAAK: That is correct. 15 MR SEMENYA SC: In fact, you even put it 16 higher and say even the STF would falter here. 17 COLONEL VERMAAK: That's correct because 18 why, they don't have any experience of crowd management. 19 They only have sharp ammunition and to use sharp 20 ammunition, according to me, that's a failure. 21 MR SEMENYA SC: So the answer to my 22 question is, no POP equipment would be adequate to deal 23 with the threat. 24 COLONEL VERMAAK: At the 16th. 25 MR SEMENYA SC: Yes.</p>	<p style="text-align: right;">Page 27773</p> <p>1 And the fact that you had been involved in the Stilfontein 2 incident is reflected inter alia in the IRIS report. So 3 again it's a matter which you could be asked about, even if 4 you'd never consulted with the police, isn't that correct? 5 COLONEL VERMAAK: That's correct. 6 CHAIRPERSON: Alright. So what does the 7 video show? You say you gave a video, never mind the fact 8 that you gave them a video, you didn't give it to us so 9 tell me, what did his video of the Stilfontein incident 10 show? 11 COLONEL VERMAAK: Chair, just after the 12 incident, as I already testified, that I always have my 13 video operators with me, it was shown where the people were 14 shot dead. It was shown where we go through the hostel and 15 searched for people who have been wounded during that 16 incident. We did get some people in the hostel rooms who 17 was wounded. That specific video was never been published 18 or given to anybody else except for the investigating 19 officers and now for the legal team of the police. 20 MS BARNES: Chair, I'm sorry to interrupt 21 but we're a little bit concerned. As we understand it, the 22 arrangement is that Adv Semenya cross-examines this witness 23 but on the basis that nothing that was discussed at 24 consultations between the two is dealt with in cross- 25 examination. Now this is the second time –</p>
<p style="text-align: right;">Page 27772</p> <p>1 COLONEL VERMAAK: Yes. 2 MR SEMENYA SC: Okay. Can I invite you 3 to look at one of the incidents which you commanded, the 4 Stilfontein one? That's in '93, am I correct? 5 COLONEL VERMAAK: That's correct. 6 MR SEMENYA SC: Chair, can we now have 7 this document marked OOO41, the IRIS report? 8 CHAIRPERSON: The IRIS report re incident 9 at Stilfontein and what was the date? 10 MR SEMENYA SC: It's 1993 – are you able 11 to assist us with the date, Colonel? 12 CHAIRPERSON: Well, let's just say IRIS 13 report re incident at Stilfontein in 1993. That's probably 14 good enough for the purposes of identifying the exhibit. 15 MR SEMENYA SC: Thank you, Chair. 16 COLONEL VERMAAK: Chair, can I only make 17 a comment on that and I haven't got a problem to answer 18 questions to that but that specific incident was discussed 19 with the evidence – ag, with the police lawyers. I even 20 gave them a copy of a video of that day. 21 CHAIRPERSON: The fact that you've 22 discussed it with the lawyers is something that I think we 23 should keep away from. The video you gave them was 24 obviously not a confidential video, it was something that 25 could be easily a matter of public record, could it not?</p>	<p style="text-align: right;">Page 27774</p> <p>1 CHAIRPERSON: Yes, yes, I hear you but of 2 course if it's common cause that there was a Stilfontein 3 incident and that appears from the IRIS report, he can 4 obviously ask about that because that's not, there's 5 nothing confidential about that – 6 MS BARNES: Our concern – 7 CHAIRPERSON: He obviously can't put to 8 the witness, at our consultation you told me X, Y, Z, that 9 would be out. 10 MS BARNES: Chair, our concern is that 11 this is the second time now that this witness is, 12 apparently in an effort to protect himself, is referring to 13 the fact that these matters were discussed in consultation 14 and that he is therefore not comfortable answering the 15 questions and it seems as though he's nevertheless required 16 to answer the questions. We're just worried about the 17 unfairness to the witness. 18 CHAIRPERSON: I must confess I can't see 19 any unfairness at all. Mr Semenya is perfectly entitled to 20 ask about an incident, which is a matter of record in the 21 IRIS reports, that this witness was involved in. If there 22 was a video which was taken, the video itself can't be a 23 privileged document, can't be a confidential document. I 24 don't see any unfairness in the witness being asked about 25 that.</p>

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1 MS PILLAY: Chair, just to demonstrate –
 2 CHAIRPERSON: To whom was the video
 3 given?
 4 COLONEL VERMAAK: To Mr Pretorius.
 5 CHAIRPERSON: And only to Mr Pretorius?
 6 COLONEL VERMAAK: That's correct, Chair.
 7 CHAIRPERSON: Where had it been before
 8 that?
 9 COLONEL VERMAAK: In my possession.
 10 CHAIRPERSON: In your official capacity?
 11 COLONEL VERMAAK: That's correct, Chair.
 12 CHAIRPERSON: So in your official
 13 capacity as a member of the SAPS you had a video –
 14 COLONEL VERMAAK: That's correct, Chair.
 15 CHAIRPERSON: - taken for the SAPS –
 16 COLONEL VERMAAK: That's correct.
 17 CHAIRPERSON: - and if anyone in the SAPS
 18 had asked you long before Marikana, had asked you about the
 19 Stilfontein incident –
 20 COLONEL VERMAAK: No, Chair.
 21 CHAIRPERSON: - they would have seen the
 22 video, would they?
 23 COLONEL VERMAAK: Never.
 24 CHAIRPERSON: On what basis could you –
 25 if they had, if someone had come to you in 2010 and said

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1 look here, there was an incident at Stilfontein, we see it
 2 in the IRIS report, have you got a video about it, you'd
 3 have said yes, right?
 4 COLONEL VERMAAK: I will consider to whom
 5 I'm giving it, Chair.
 6 CHAIRPERSON: Yes, well, but if a member
 7 of the SAPS had come from, say, head office and asked you
 8 about it, you would have given it to him, wouldn't you?
 9 COLONEL VERMAAK: Ja, for them I will
 10 give it.
 11 CHAIRPERSON: It wouldn't have been
 12 confidential even in relation to another member of the
 13 SAPS.
 14 COLONEL VERMAAK: No.
 15 CHAIRPERSON: No.
 16 MS PILLAY: Chair –
 17 CHAIRPERSON: And did you give it to the
 18 evidence leaders as well?
 19 COLONEL VERMAAK: It was asked for Mr
 20 Pretorius and he undertook that he will give it –
 21 CHAIRPERSON: So the evidence leaders
 22 asked for it also?
 23 COLONEL VERMAAK: I mentioned it to them.
 24 CHAIRPERSON: And the evidence leaders
 25 obviously, you didn't have any basis for saying the

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1 evidence leaders can't see it.
 2 COLONEL VERMAAK: No, no.
 3 CHAIRPERSON: Alright, so you can carry
 4 on –
 5 MS PILLAY: Chair, just to understand the
 6 witness's concerns, I think it's important to ask him the
 7 basis on which the Stilfontein incident was discussed with
 8 his then legal representative.
 9 CHAIRPERSON: Isn't it more relevant to
 10 know on what basis the Stilfontein incident was discussed
 11 with the evidence leaders? That wasn't a privileged
 12 consultation, that's why I refused the application that we
 13 heard earlier.
 14 MS PILLAY: Well, Chair, I think in this
 15 particular instance it was a privileged consultation and if
 16 the witness could clarify the basis on which he discussed
 17 the Stilfontein incident with his then legal representative
 18 –
 19 CHAIRPERSON: No, no –
 20 MS PILLAY: I think –
 21 CHAIRPERSON: I'm not interested in the
 22 basis upon which he discussed it with his then legal
 23 representative, that would be privileged. I don't think we
 24 can go there but if it was also discussed with the evidence
 25 leaders then there isn't a problem in relation to the

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1 discussion with the evidence leaders, and that's the only
 2 part I'm concerned with. Any questions relating to
 3 discussions between Mr Semenya and his team with the
 4 witness relating to the Stilfontein incident I will not
 5 allow to be asked. The witness has the surety of knowing,
 6 the certainty of knowing that that won't happen but
 7 inasmuch as he mentioned it to the evidence leaders and in
 8 fact they then asked for the video and he said, he either
 9 said or impliedly consented to Mr Pretorius handing over
 10 the video to the evidence leaders, there's no privilege.
 11 MS PILLAY: With the exception, Chair,
 12 that the information comes to or it derived, it comes to
 13 the knowledge of this present team as a result of a
 14 privileged consultation. That is the concern.
 15 CHAIRPERSON: But the evidence – did the
 16 evidence leaders, are you suggesting that the evidence
 17 leaders would have been precluded from – assuming he'd been
 18 called as a witness for the SAPS, they hadn't executed the
 19 volte face which subsequently took place, he'd given
 20 evidence as an SAPS member, are you saying that the
 21 evidence leaders couldn't have asked him about the
 22 Stilfontein incident?
 23 MS PILLAY: Had we known about it we
 24 could have asked it. The issue is on what basis he brought
 25 the Stilfontein incident to the attention of his legal

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1 representative, that's the issue, Chair.
 2 MR SEMENYA SC: Chair, if I may?
 3 CHAIRPERSON: Yes, Mr Semenya.
 4 MR SEMENYA SC: The witness has testified
 5 here that Marikana was not an exception. It happened in
 6 Stilfontein and it is that Stilfontein we are getting into
 7 with my line of questions. I can't see why it would be
 8 objectionable.
 9 CHAIRPERSON: Mr Semenya, you'll forgive
 10 my saying what you can't see isn't relevant but you submit
 11 that there's nothing unfair about it, yes. Anything
 12 further you want to say, Ms Pillay?
 13 MS PILLAY: Chair, we've raised our
 14 concerns.
 15 CHAIRPERSON: I've noted them. You may
 16 proceed, Mr Semenya, but please make sure you keep away
 17 from anything that took place while you were consulting
 18 with the witness.
 19 MR BUDLENDER SC: May I ask for a ruling,
 20 Chair? May I ask for a ruling whether counsel for the
 21 South African Police Services is entitled to cross-examine
 22 the witness on the basis of information which was derived
 23 from a privileged conversation with the witness, that's the
 24 question.
 25 MR SEMENYA SC: I'm not –

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1 MR BUDLENDER SC: Is he entitled to
 2 cross-examine the witness on the basis of information which
 3 he derived from the witness during a privileged
 4 conversation?
 5 CHAIRPERSON: No, the ruling is he is not
 6 allowed to but that doesn't – no, no, that doesn't preclude
 7 him asking questions about matters which the witness
 8 himself mentioned to the Commission. He talks about, the
 9 mere fact that he had a consultation with him in which
 10 Stilfontein was discussed doesn't preclude him, in my
 11 ruling, from asking questions about Stilfontein because the
 12 Stilfontein incident was something he mentioned as part of
 13 his ordinary evidence. Otherwise the whole question of
 14 Stilfontein and its relevance, which he himself raised in
 15 his ordinary evidence, can't be investigated.
 16 MR BUDLENDER SC: Chair, may I ask for a
 17 further ruling? If the South African Police Service are
 18 aware of the existence of a video because of a
 19 communication which was made during a privileged
 20 conversation with the witness, are they entitled to call
 21 for that video?
 22 CHAIRPERSON: Well, if the video was
 23 mentioned to Mr Wesley in circumstances where Mr Wesley
 24 would have been entitled to have used it if he had cross-
 25 examined the witness if the witness had given evidence as

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1 an SAPS member, I don't see a problem. So the ruling I
 2 give is that depending upon the circumstances in which the
 3 video was mentioned, if it was mentioned also in non-
 4 privileged circumstances such as in a consultation with Mr
 5 Wesley, the questions may be asked.
 6 COLONEL VERMAAK: Chair, if I may put
 7 some light on the – when I was consulting with the police
 8 legal team I was asked if there's any other serious
 9 incidents where I was involved in because why, I must
 10 remember during the Commission they will go into my history
 11 to make sure if there was other serious incidents where I
 12 was in charge or where I have taken some decisions. Now I
 13 mentioned to them that I have got a video of it and I was
 14 asked if it is possible that I can give a copy to them. It
 15 was only mentioned, well, to Mr Wesley that there is a
 16 video of my involvement in that and thereafter I gave it to
 17 Mr Pretorius and nobody else asked me any questions again
 18 on it.
 19 CHAIRPERSON: Mr Wesley was told about
 20 it?
 21 COLONEL VERMAAK: It was, I think on the
 22 day of meeting with me and Mr Pretorius, after everything
 23 was finished I just mentioned it that there was such a
 24 video and it could maybe assist them as well because why,
 25 there was a problem, well, some problems about the radios

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1 and how clear the radios in the Nyala is during an
 2 operation and I said to them maybe that can assist them if
 3 they want to use –
 4 CHAIRPERSON: The information you gave
 5 about the video was not given in confidence to the police
 6 on a confidential basis, it was given to them so that they
 7 could use it further to investigate certain matters, is
 8 that right?
 9 COLONEL VERMAAK: That's correct. That
 10 was, that was –
 11 MR SEMENYA SC: Colonel, I don't intend
 12 to ask you anything about the video and I'll not ask you
 13 anything about what you would have said to me or to any
 14 members of the legal team in consultation, trust me. Do
 15 you have the document, which is an IRIS report, before you,
 16 Colonel?
 17 COLONEL VERMAAK: No, I haven't got it.
 18 MR SEMENYA SC: You don't?
 19 COLONEL VERMAAK: No.
 20 CHAIRPERSON: You can put it on the
 21 screen, Mr Semenya. Adv Hemraj will give you her copy.
 22 MR SEMENYA SC: Where does it start?
 23 Chair, do we have it as exhibit OOO41?
 24 CHAIRPERSON: It's written in my book,
 25 triple zero – no, it's triple O actually.

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1 MR SEMENYA SC: OOO.

2 CHAIRPERSON: OOO41 and I've described it

3 as "IRIS report re incident at Stilfontein in 1993."

4 MR SEMENYA SC: Yes. Colonel, this

5 report was entered into the IRIS system by yourself, am I

6 right?

7 COLONEL VERMAAK: No, negative. You can

8 see on the top –

9 MR NTSEBEZA SC: Mr Chairman, I thought

10 that it was going to be put up on the screen.

11 CHAIRPERSON: I asked for it to be put up

12 on the screen because I haven't got a copy and Adv Hemraj

13 has given her copy to the witness. Adv Tokota's copy is

14 apparently going to find its way to the machine operator.

15 Sooner or later we'll get it.

16 [12:25] I hope the time spent on it is going to be

17 profitable.

18 COLONEL VERMAAK: Chair, I can in the

19 meantime answer Mr Semenya. On the top –

20 MR NTSEBEZA SC: We want to be part of

21 the whole testimony.

22 CHAIRPERSON: Mr Semenya would prefer to

23 see with his own eyes rather than hearing it with his own

24 ears when you read it to him. I beg your pardon - Mr

25 Ntsebeza. Are we going to see the document now, Mr

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1 Pretorius?

2 MR PRETORIUS: It's not scanned,

3 unfortunately.

4 CHAIRPERSON: How long is it going to

5 take to scan? Mr Semenya, I don't know what other arrows

6 you've got in your quiver. Are there other questions you

7 can ask the witness in the meanwhile then we can come back

8 to this after lunch?

9 MR SEMENYA SC: Indeed, Chair. We –

10 CHAIRPERSON: Now let's – I'm also asked

11 whether we took a five-minute interval, a sort of belated

12 comfort break, whether that wouldn't assist us to see the

13 document. How long will it take for this document to be –

14 MR SEMENYA SC: Chair, I can address

15 other matters.

16 CHAIRPERSON: Alright, you'll take other

17 arrows from your quiver.

18 MR SEMENYA SC: Thank you, Chair, yes. I

19 take it you are also critical about the negotiations that

20 the police were doing with the strikers. Am I right,

21 Colonel?

22 COLONEL VERMAAK: Can you just repeat

23 your question, please?

24 MR SEMENYA SC: I'm correct that you are

25 very critical about how the negotiations were conducted by

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1 the police with the strikers?

2 COLONEL VERMAAK: My criticism was on who

3 was used, not how. If you can remember I said –

4 CHAIRPERSON: You also criticised the

5 fact that it hadn't been tape recorded, so we didn't have a

6 record of what was said. That's right also, isn't it?

7 COLONEL VERMAAK: That's correct, Chair.

8 CHAIRPERSON: Were those the two bases of

9 your criticism?

10 COLONEL VERMAAK: Chair, no. The fact

11 that the person who did the negotiations was trained as a

12 hostage negotiator and he didn't have experience or trained

13 in Public Order Police negotiations.

14 MR SEMENYA SC: Yes, Colonel, but we do

15 know that you don't know what negotiations, how those

16 negotiations were held?

17 COLONEL VERMAAK: No, I haven't got the –

18 I don't, as the Chair said, there's no minutes has been

19 taken or a full video was taken during this negotiations.

20 CHAIRPERSON: I must tell you that a

21 video has recently surfaced, very recently surfaced, which

22 deals with some at least of the negotiations, which is

23 something that I didn't know about until last night and you

24 don't know about at all, but something will come of that

25 later. But I think what Mr Semenya is putting to you, I

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1 think - it probably sounds correct - your criticism about

2 Colonel McIntosh being used as a negotiator was more an

3 objection in principle. You felt it's not appropriate for

4 a hostage negotiator, a hostage trained negotiator, if I

5 can call him that, to do these negotiations because they

6 were negotiations of a different kind.

7 COLONEL VERMAAK: That's correct, Chair.

8 CHAIRPERSON: But you would have to

9 concede that not knowing what exactly Lieutenant Colonel

10 McIntosh says and how he went about the negotiations, in

11 fact he may have overcome the disabilities that he suffered

12 from as a hostage trained negotiator and negotiated

13 properly. That's something you can't comment on. Is that

14 right?

15 COLONEL VERMAAK: No, that's true.

16 MR SEMENYA SC: In fact you are saying

17 you were available, you are the one who was supposed to be

18 used to negotiate. Am I right?

19 COLONEL VERMAAK: I never said that.

20 MR SEMENYA SC: I'll find it in the

21 record. Let's go forward.

22 COMMISSIONER HEMRAJ: He said, Mr

23 Semenya, that he and certain other officers are used to do

24 the negotiating on behalf of the POPS unit.

25 CHAIRPERSON: The passage that's

<p style="text-align: right;">Page 27787</p> <p>1 relevant, let's look at it. My recollection is not the 2 same as your, but you may be right and I may be wrong. 3 Let's just check our recollections by looking at the 4 transcript. 5 MR SEMENYA SC: Anyway, let's proceed. 6 After lunch I'll get there and show you where you say, jy 7 was eintlik beskikbaar, but we'll get there. Colonel, can 8 I take you forward – 9 CHAIRPERSON: We're now in business as 10 far as exhibit OOO41 is concerned. There's what looks 11 suspiciously like an IRIS report on the screen and I think 12 it's the one which relates to the incident at Stilfontein. 13 In fact it says so in terms, and it was something that 14 happened on the 11th of August 1993, almost five years, just 15 over five years before the incident at Marikana that's 16 brought us here today. 17 COLONEL VERMAAK: No, it's longer. 18 1993 – 19 CHAIRPERSON: No, not five years. Well, 20 my arithmetic is letting me down. Nine years. Nine years. 21 Yes, I take the correction and ask forgiveness. We've now 22 got it in front of us. Is there anything you want to ask 23 about it, Mr Semenya? 24 COLONEL VERMAAK: Chair, I think it's 19 25 years. 1993.</p>	<p style="text-align: right;">Page 27789</p> <p>1 Mine's hostels. 2 MR SEMENYA SC: Colonel, we'll come to 3 that perhaps after lunch. I was still exploring with you 4 this negotiation criticism you have. Brigadier Calitz was 5 part of the team that was doing the negotiation. Correct? 6 COLONEL VERMAAK: I don't know if he took 7 part as a negotiator or as a operational commander, but 8 according to me he was present there at the place where 9 Colonel McIntosh did negotiate with the people. 10 MR SEMENYA SC: Brigadier Calitz was part 11 of the negotiating team, was he not? 12 COLONEL VERMAAK: I don't know. 13 MR SEMENYA SC: Brigadier Calitz has the 14 experience on negotiations as you do? 15 COLONEL VERMAAK: That's correct. 16 MR SEMENYA SC: There was also a 17 psychologist that was present in the negotiating team 18 there. You accept that? 19 COLONEL VERMAAK: If you say so, yes, I 20 accept it then. 21 MR SEMENYA SC: Now you say that you are 22 critical of the involvement of Colonel McIntosh. 23 COLONEL VERMAAK: Especially due to the 24 fact that he only finish his training in April and from 25 April to August according to me he was never being exposed</p>
<p style="text-align: right;">Page 27788</p> <p>1 CHAIRPERSON: Yes, did I say 1993? Yes, 2 I got it wrong. It's nine years – sorry, that's right – 3 COLONEL VERMAAK: 19, Chair. 4 CHAIRPERSON: Oh, 19 years? 5 COLONEL VERMAAK: That's correct, Chair. 6 CHAIRPERSON: Yes, really, I'm making 7 more and more mistakes as I go on. 19 years before – 8 COLONEL VERMAAK: That's correct. 9 CHAIRPERSON: - the Marikana incident. 10 COLONEL VERMAAK: That's correct. 11 CHAIRPERSON: And it was on the 11th of 12 August, but there was, that's the incident where there were 13 fights, as it's put, between the inmates of the hostel, was 14 it, and SAPS. Is that right? SAPS actually. Is that 15 right? That's the 11th. There were four incidents recorded 16 on this document. The one is a gathering at 17 Hartbeesfontein on the 1st of July. Then there was an 18 attack at the Scott Hostel, Stilfontein, on 13th July. Then 19 the hostel was damaged by striking workers on the 8th of 20 August 1993, and on the 11th of August 1993 there were 21 fights between the inmates of the hostel and the police. 22 Is that correct? 23 COLONEL VERMAAK: Correct, Chair, but it 24 is at different places. The last one was at Springvale and 25 the other were at Hartbeesfontein Mine and Stilfontein</p>	<p style="text-align: right;">Page 27790</p> <p>1 to Public Order Police negotiations. 2 MR SEMENYA SC: Now I have had a look at 3 the material which is used for training. Are you able, 4 when you find the time, to give us POP specific negotiation 5 trainings that are offered at the South African Police 6 Service? 7 COLONEL VERMAAK: Yes, I was on that 8 courses and if you go back to my CV you will also see that 9 there is some certificates that I have attended for POP 10 negotiations. 11 MR SEMENYA SC: And I put it to you that 12 the training that is offered, it is actually called 13 "Hostage negotiation course." That's the one you attended. 14 COLONEL VERMAAK: No. 15 MR SEMENYA SC: Are you able to tell us – 16 okay, I take it you have never attended a hostage 17 negotiation course at all. 18 COLONEL VERMAAK: That's correct. 19 MR SEMENYA SC: You don't know its 20 content. Correct? 21 COLONEL VERMAAK: I said to you I didn't 22 attend. 23 MR SEMENYA SC: I'm just trying to – 24 COLONEL VERMAAK: Then I should, for sure 25 don't know what the content is, Chair.</p>

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1 MR SEMENYA SC: And therefore you don't
 2 know how it differs with that of POP.
 3 COLONEL VERMAAK: That's correct.
 4 MR SEMENYA SC: And whether or not it
 5 would be adequate to use those skills in a POP environment,
 6 you're not able to express a view?
 7 COLONEL VERMAAK: One of my members also
 8 attend the hostage negotiation course with Colonel
 9 McIntosh. We have decided several times since he came back
 10 from the hostage negotiations and according those
 11 discussions that I had with her they never address any
 12 Public Order Police incidents.
 13 MR SEMENYA SC: Colonel, you are familiar
 14 with the provisions of Standing Order 259, are you?
 15 COLONEL VERMAAK: Yes.
 16 MR SEMENYA SC: Chair, can this be marked
 17 exhibit OOO42?
 18 CHAIRPERSON: 259?
 19 MR SEMENYA SC: Standing Order 259.
 20 COLONEL VERMAAK: If I can maybe also
 21 have a copy. It was just emailed to me.
 22 COMMISSIONER HEMRAJ: Before we get
 23 there, could I just ask you, Colonel, if you look at your
 24 CV, under courses taken there are two courses on
 25 negotiations, one in 1993 on advanced negotiations and one

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1 in 1998 on intensive negotiations.
 2 COLONEL VERMAAK: That's correct, Chair.
 3 COMMISSIONER HEMRAJ: That would be the
 4 last course you would have attended on negotiations –
 5 COLONEL VERMAAK: 1998, yes, that's
 6 correct, Chair.
 7 CHAIRPERSON: [Microphone off, inaudible]
 8 have a look at my copy of – have you got one now?
 9 COLONEL VERMAAK: I've got one, thank
 10 you, Chair.
 11 CHAIRPERSON: Is this the right one, Mr
 12 Semenya? I see it's headed "Rapid response services and
 13 radio-equipped vehicles." Is this the standing order we're
 14 supposed to see?
 15 MR SEMENYA SC: We'll focus at paragraph
 16 11, Chair.
 17 CHAIRPERSON: Paragraph 11. Paragraph 11
 18 is "Transmission of messages by radio." Is that the
 19 passage? Yes, I've already written it in my book, SO
 20 (General) 259. I'd better describe it, Rapid response
 21 services and radio-equipped vehicles, OOO42, and our
 22 attention is drawn to page 7 thereof, going on to page 8,
 23 which is a section headed "Transmission of messages by
 24 radio." Is that correct?
 25 MR SEMENYA SC: Have you undergone this

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1 training, Colonel?
 2 COLONEL VERMAAK: When you did your
 3 police training as a student this radio procedures is also
 4 being part of your training as a student and there were
 5 some circulars on, at a later stage regarding specific
 6 issues that people ignore on this standing order.
 7 MR SEMENYA SC: Sorry? What was your
 8 last statement?
 9 COLONEL VERMAAK: There was circulars,
 10 letters where National and Provincial Offices remind the
 11 people to stick to this standing order.
 12 MR SEMENYA SC: Thank you. So I think
 13 your answer to my question is yes, you underwent this
 14 training in relation to the use and transmission of
 15 messages by radio?
 16 COLONEL VERMAAK: That's correct.
 17 MR SEMENYA SC: Clause 1 of it, 11.1 says
 18 to us that "All instructions, messages, reports and
 19 conversations over the air must be short, distinct, and in
 20 English."
 21 COLONEL VERMAAK: That's correct.
 22 MR SEMENYA SC: Your communication over
 23 the radio on the 16th, did it comply in your view with this,
 24 Colonel?
 25 COLONEL VERMAAK: Absolutely, yes.

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1 MR SEMENYA SC: So the evidence that the
 2 radio was occupied for long duration of time by yourself
 3 and Brigadier Calitz is incorrect?
 4 COLONEL VERMAAK: That is not correct.
 5 If you might listen to the video of Lonmin Mine you would
 6 hear many occasions that there was no conversations between
 7 me and anybody else.
 8 MR SEMENYA SC: You say your
 9 communication on the video we'll find it was short,
 10 distinct, and in English?
 11 COLONEL VERMAAK: That was requested from
 12 my side. I was giving it back to the operational manager –
 13 ag, commander, and there was not any other discussions
 14 except for what you see on the ground, you give feedback to
 15 him, and also if he give you an request you convey it to
 16 the members on the ground. So I will say yes, with
 17 paragraph 1 I do, did it the way that it is expected.
 18 MR SEMENYA SC: 11.2 then says, "The
 19 dispatcher or member in a radio-equipped vehicle must have
 20 his or her message complete and ready before the start of
 21 the transmission." Did you comply with that?
 22 COLONEL VERMAAK: Chair, under the
 23 circumstances of that operation you only give through what
 24 you saw. What they exactly mean by you must have your
 25 message complete and ready before the start, I think the

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1 moment that I start talking on the radio I give the
 2 information correctly through with no unnecessary
 3 conversations on the radio.
 4 MR SEMENYA SC: And an example is given
 5 under clause 11.5 there of the standing order. Am I
 6 correct?
 7 COLONEL VERMAAK: 5, which –
 8 MR SEMENYA SC: Clause 11.5.
 9 COLONEL VERMAAK: The whole one?
 10 MR SEMENYA SC: Yes, they give examples
 11 there about how this communication should happen. Am I
 12 right?
 13 COLONEL VERMAAK: That's correct.
 14 MR SEMENYA SC: You are aware that the
 15 evidence of people like General Annandale is that bodies,
 16 the word "bodies" did not convey to them the seriousness of
 17 the observations you were making?
 18 COLONEL VERMAAK: Well, if he don't
 19 understand that, I cannot stand in for what the General
 20 understand with it. To, for me when you say "bodies down"
 21 you count them and go around and you count them again and
 22 there is more than the first time, I think your common
 23 sense will tell you there's something wrong.
 24 MR SEMENYA SC: No, I'm just saying you
 25 do accept that the evidence by General Annandale is the

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1 word "bodies" conveyed something different. You accept
 2 that?
 3 COLONEL VERMAAK: If he understand it
 4 different, I cannot stand in for that.
 5 [12:45] MR SEMENYA SC: But what it is here,
 6 Colonel, is that you could have said, couldn't you, that
 7 persons appear injured or dead?
 8 COLONEL VERMAAK: Chair, I was sitting
 9 300 feet above the scene.
 10 MR SEMENYA SC: You could have said
 11 people appear injured or dead, Colonel, could you?
 12 COLONEL VERMAAK: No. How must I decide
 13 that? Because why there is members on the ground who are
 14 supposed to give that feedback to the JOC.
 15 MR SEMENYA SC: You were incapable of
 16 making your announcement in those terms?
 17 COLONEL VERMAAK: As bodies, or what
 18 announcement?
 19 MR SEMENYA SC: That the people down
 20 there appear injured or dead.
 21 COLONEL VERMAAK: No. I cannot –
 22 MR SEMENYA SC: But I thought –
 23 COLONEL VERMAAK: I cannot say they are
 24 injured or dead. I'm not on the ground, Chair.
 25 MR SEMENYA SC: But that's what you said.

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1 You say you know, and this was your evidence, I looked at
 2 those people; they were lying in unnatural position.
 3 That's not how people lie when they are arrested. And you
 4 were also clear, distinct mind, that they may be injured or
 5 dead.
 6 COLONEL VERMAAK: But I can't give for a
 7 fact that they were injured or dead.
 8 MR SEMENYA SC: No, I'm not –
 9 COLONEL VERMAAK: That I cannot give as a
 10 fact.
 11 MR SEMENYA SC: No, I didn't say you must
 12 give anything as a fact, Colonel. I'm asking, you could
 13 have conveyed, couldn't you, that people appear injured or
 14 dead?
 15 COLONEL VERMAAK: Chair, you just refer
 16 me to 11.1, that conversations must be short. If I report
 17 there bodies down, I accept that the people who is on the
 18 scene, standing 10 metres away from the scene, would start
 19 talking on the radio and give feedback to the JOC. So I
 20 comply with the transmission of messages on the radio.
 21 Although I said yes, the people were lying in unnatural
 22 ways, I believed that the people who was on the ground
 23 should support me and say people are dead or people are
 24 serious injured. for that information I didn't have.
 25 MR SEMENYA SC: No, I'm not talking about

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1 the people who were on the ground, Colonel. I'm just
 2 asking, saying that people appear dead or injured would
 3 have, you say, contravened clause 11.1?
 4 COLONEL VERMAAK: No, I must – I said to
 5 you I give through that there are bodies down. There's a
 6 difference between bodies and suspects arrested. If people
 7 have been arrested there's a specific way that they were
 8 handled and the picture that we have of that incident is
 9 not people who have been arrested, for specific reasons,
 10 and I will point it out later on, if needed.
 11 CHAIRPERSON: Mr Semenya, I don't know
 12 what the purpose of this cross-examination is, but I have
 13 been informed that we will in due course receive evidence
 14 to the effect that when Brigadier Pretorius heard him on
 15 the radio – I think I'm summarising the evidence correctly
 16 – she immediately sent a message to IPID and said things
 17 are very, very bad, you'd better come. So if that evidence
 18 comes, if that evidence is – if I've correctly summarised
 19 it, it would seem that what he said, cryptic though it was,
 20 was enough to convey to Brigadier Pretorius and thereby to
 21 IPID that things were very, very bad and that the matter
 22 must be dealt with accordingly. If you in other words are
 23 criticising him for not saying enough and being responsible
 24 for the delay in response, then the criticism is going to
 25 miss the mark because of something that you may not know

<p style="text-align: right;">Page 27799</p> <p>1 about, which I've now told you about. If of course you've 2 got another purpose in asking the question, I won't stop 3 you. 4 MR SEMENYA SC: Chair, you remember the 5 other criticism about the operation related to 6 communication? I'm just trying to see the quality of 7 communication, whether there is compliance. 8 CHAIRPERSON: If you've got another 9 purpose for asking the question other than imputing blandly 10 him for the fact that there was a delay in the matter being 11 reported to IPID, you may proceed. 12 MR SEMENYA SC: What Standing Order 259 13 intends to do is to convey a method by which messages 14 relayed over a radio are succinct, they are clear and they 15 admit of no ambiguity. Am I right? 16 COLONEL VERMAAK: That's correct. 17 MR SEMENYA SC: And then I come back to 18 you. When it was distinct in your mind that those people 19 appear injured or dead, you could simply have said so. 20 COLONEL VERMAAK: Chair, I've already 21 answered that question. 22 MR SEMENYA SC: Well, let me refer you to 23 your answer, and we find that on the transcript day, 25 24 March 2014, page 25368. 25 MS PILLAY: Chair, it's day 206.</p>	<p style="text-align: right;">Page 27801</p> <p>1 teruggaan na een, die foto's toe waar die oorledenes gelê 2 het." 3 CHAIRPERSON: I'll translate that as 4 follows, "Chairperson, or Chair, at that stage it was clear 5 to me that the persons who were lying there were either, 6 must be either injured or dead, or killed, because they lay 7 in an unnatural, for them it was clear that they lay in an 8 unnatural position and also the fact, if we can go back to 9 one, the photos where the deceased persons were lying." 10 MR SEMENYA SC: So it is clear as I read 11 your evidence that you were satisfied that these people are 12 seriously injured or dead. 13 COLONEL VERMAAK: Chair, that is why I 14 used the word "bodies." That's a common word that is being 15 used when you see people down and it is clear to you that 16 they are not suspects who are arrested or people who is 17 trying to run away from the police, hiding somewhere. 18 CHAIRPERSON: [Microphone off, inaudible] 19 incapacitated, either fatally or not. 20 COLONEL VERMAAK: That's correct. 21 MR SEMENYA SC: You say that's a word 22 commonly used? 23 COLONEL VERMAAK: Under Air Wing, yes, to 24 describe what we saw from the air. 25 MR SEMENYA SC: It is a word commonly</p>
<p style="text-align: right;">Page 27800</p> <p>1 CHAIRPERSON: Which line must we look at? 2 MR SEMENYA SC: If we look at, from line 3 19, says Ms Pillay there, "And the next report, 18 bodies 4 are down, chopper 1 reporting this is at the back of the 5 koppie, other people are running towards Karee Hostel." Ms 6 Pillay, then your answer is, "Dis korrek." Ms Pillay 7 continues, "That correctly reflects as you reported?" Your 8 answer, "Dis korrek." Ms Pillay, "Report and next report" 9 – no, sorry. 10 CHAIRPERSON: [Microphone off, inaudible] 11 MR SEMENYA SC: No, no, Chair, my 12 mistake. Can I ask we go to page 25370. 13 CHAIRPERSON: Line? 14 MR SEMENYA SC: And if we may start at 15 the top of the page, says Ms Pillay there, it is recorded, 16 "That's also erroneous, it should be chopper 1 reporting 17 two bodies down. Now Colonel, if we can just deal with 18 your report that there were bodies down. I think it's now 19 the second line that you see on the screen, 18 bodies down. 20 Can you just tell us what it is you meant when you said 21 that there were 18 bodies down?" Your answer, "Voorsitter, 22 op daardie stadium was dit vir my duidelik dat die persone 23 wat daar lê of beseer of gedood moet wees want hulle het in 24 'n onnatuurlike, van hulle was dit duidelik dat hulle in 'n 25 onnatuurlike posisie gelê het en ook die feit, as ons kan</p>	<p style="text-align: right;">Page 27802</p> <p>1 used and understood in the Air Wing? 2 COLONEL VERMAAK: That is correct. 3 MR SEMENYA SC: Explain that. What does 4 that mean? 5 COLONEL VERMAAK: Can you maybe put your 6 question more clear, please? 7 CHAIRPERSON: He asks what do you mean by 8 saying that that expression is commonly understood in the 9 way you've described in the Air Wing. What exactly do you 10 mean by that? 11 COLONEL VERMAAK: Chair, if I can refer 12 to other mine unrest where we were flying and we saw on the 13 ground, say for instance a person is lying in the veld, 14 then you will call the OPS Room, or if it is an operation 15 you will call the operational commander or the closest 16 vehicle to the incident and you will inform them that you 17 saw a body lying in the veld. 18 MR SEMENYA SC: Is it a word that is 19 commonly used and understood in POP operations? 20 COLONEL VERMAAK: It's not every day that 21 so many people were killed, but as I said to you now in 22 operations at mine unrests this is the word that we have 23 used. 24 MR SEMENYA SC: Commonly used, you say? 25 COLONEL VERMAAK: That's correct.</p>

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1 MR SEMENYA SC: When on a different
 2 occasion did you use this word, Colonel?
 3 COLONEL VERMAAK: Chair, I have just said
 4 on the previous unrest that was on the mines there were
 5 people were killing when they were on their way to work or
 6 coming back from work, where they were lying in a road or
 7 in the veld. There were incidents. I don't have that
 8 particular dates now with me, but at the strikes at Impala
 9 we have experienced that.
 10 MR SEMENYA SC: And you would call from
 11 the chopper up there and say to OPS there's a body down?
 12 COLONEL VERMAAK: Ja, we saw a body lying
 13 in the veld.
 14 MR SEMENYA SC: No, I'm talking about
 15 radio communication now. I don't ask whether or not you
 16 come to JOCCOM and announce your observations. I'm talking
 17 about radio transmission.
 18 COLONEL VERMAAK: That is what I transmit
 19 to the JOC.
 20 MR SEMENYA SC: So you say we can go back
 21 to the records of the SAPS and find where you used the word
 22 "bodies" that was understood to mean persons are dead?
 23 COLONEL VERMAAK: Well, if you can get
 24 records of all this, yes, you can try to see if you can get
 25 hold of them.

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1 MR SEMENYA SC: You haven't received any
 2 ALEO training, have you, Colonel?
 3 COLONEL VERMAAK: No.
 4 MR SEMENYA SC: Would this be a
 5 convenient stage, Chair?
 6 CHAIRPERSON: Yes, we'll take the lunch
 7 adjournment. We will be back at quarter to 2. Yes, we'll
 8 try to be back at quarter to 2. We've got a meeting with
 9 the evidence leaders relating to these new videos that have
 10 surfaced, and also with the secretary of the Commission
 11 relating to another matter. So we'll try to be back by
 12 quarter to 2. We'll certainly be back as soon thereafter
 13 as we can.
 14 [COMMISSION ADJOURNS COMMISSION RESUMES]
 15 [14:17] CHAIRPERSON: These housekeeping
 16 exercises in chambers take longer than we thought, but we
 17 apologise to those who have been waiting for some time for
 18 us to come back. Lieutenant-Colonel, you're still bound by
 19 your affirmation.
 20 COLONEL VERMAAK: That's correct, sir.
 21 SALMON JOHANNES VERMAAK: (affirms
 22 further)
 23 CHAIRPERSON: Mr Semanya?
 24 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):
 25 Thank you, Chair. Colonel, we had just cleared with you

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1 that you have no ALEO training at all.
 2 COLONEL VERMAAK: Chair, before I can
 3 answer that question I just want maybe to go back to the
 4 previous question about standing order 259. If you can
 5 look on the bottom of that page, at the bottom of the page
 6 you will see there division visible policing – no, no, you
 7 can stop there – amended by consolidation notice 16 of
 8 2012. There is no date that it is being a new consolidated
 9 notice. You will also observe that this is visible
 10 policing and not operational response services under which
 11 we are falling and also, Chair, you will see rapid response
 12 service and radio equipped vehicles.
 13 CHAIRPERSON: The first paragraph which
 14 is headed "Background" reads, "This order regulates the
 15 functioning of 10111 call centres and flying squad units in
 16 the South African Police Service." Then it's got
 17 definitions and roles, responsibilities of relief
 18 commanders 1011 call centre, a lot more about that and then
 19 they talk about the flying squad. In para 6, roles and
 20 responsibilities of members, flying squad and then 7, the
 21 duty record deals with the transmitter of the relevant
 22 10111 call centre transmitter and then para 8 deals with
 23 the register to be kept by every 10111 call centre attached
 24 to a flying squad. 9 deals with procedure to be followed
 25 when registering complaints, that's complaints received at

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1 10111 call centres. And then we've got 10, despatch of
 2 radio equipped vehicles and then presumably the reference
 3 to transmission of messages by radio refers to messages
 4 sent from radio equipped vehicles, is that correct?
 5 COLONEL VERMAAK: That's correct, Chair.
 6 CHAIRPERSON: Would this relate to what
 7 we used to call in the old days, vangwaens?
 8 COLONEL VERMAAK: That's correct.
 9 CHAIRPERSON: I don't know what the
 10 modern politically correct term is but paddy wagons is the
 11 other expression, which have got radios.
 12 COLONEL VERMAAK: That is the vehicles
 13 who attend to complaints.
 14 CHAIRPERSON: What are they called today?
 15 COLONEL VERMAAK: Patrol vehicles, Chair.
 16 CHAIRPERSON: Patrol vehicles. And so
 17 this deals with them.
 18 COLONEL VERMAAK: That's correct, Chair.
 19 CHAIRPERSON: Patrol vehicles with
 20 radios.
 21 COLONEL VERMAAK: That's correct, Chair.
 22 CHAIRPERSON: It doesn't apply to air
 23 wing, does it?
 24 COLONEL VERMAAK: No, Chair. This has
 25 been drawn up by the division visible policing.

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1 MR SEMENYA SC: Ja, that tells us about
 2 the document. Are you saying anything in that document
 3 differs when it comes to transmission over the radio by air
 4 wing?
 5 COLONEL VERMAAK: There's no specific
 6 document like this for the air wing at this stage. I
 7 believe there will be after this Commission, considered to
 8 write a specific document also for the air wing.
 9 MR SEMENYA SC: What I'm asking, Colonel,
 10 is the prescripts that are in that document, are they the
 11 same as would happen in relation to how air wing should
 12 communicate over radio?
 13 COLONEL VERMAAK: Not all of them is
 14 applicable on the air wing.
 15 MR SEMENYA SC: Those as –
 16 COLONEL VERMAAK: Some are in paragraph
 17 5, if you can – no, 11, 11.5 an example of radio
 18 conversations. Yes, that is also an indication for us how
 19 to talk onto the radio.
 20 MR SEMENYA SC: And you told us you had
 21 that in basic training anyway.
 22 COLONEL VERMAAK: That's correct.
 23 MR SEMENYA SC: So can we go back to
 24 where we were? You have told us you have no ALEO training
 25 at all.

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1 COLONEL VERMAAK: That is correct.
 2 MR SEMENYA SC: And I take it that you
 3 have flown in the police choppers and the ALEO many times?
 4 COLONEL VERMAAK: That is correct, Chair,
 5 since 2006 for eight years. I've been nine years the
 6 commander of the air wing and for eight years I did duties
 7 as a crew ALEO.
 8 MR SEMENYA SC: Without training?
 9 COLONEL VERMAAK: That is correct. In-
 10 service training by the ALEOs at the unit.
 11 MR SEMENYA SC: I don't understand. Are
 12 you saying you obtained training through other ALEOs?
 13 COLONEL VERMAAK: That is correct.
 14 CHAIRPERSON: He said he received in-
 15 service training by the ALEOs. He didn't attend, as I
 16 understand him, a formal training course but he picked up
 17 his training, I take it on the job as it were, in-service
 18 training from other ALEOs. Is that –
 19 COLONEL VERMAAK: That is correct –
 20 CHAIRPERSON: - a correct summary of what
 21 you said?
 22 COLONEL VERMAAK: That's correct, Chair.
 23 MR SEMENYA SC: Chair, may I invite us to
 24 mark as exhibit OOO43 a circular on airborne law
 25 enforcement officers, SAPS air wing. Do you have the

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1 document?
 2 COLONEL VERMAAK: I've got it, Chair.
 3 MR SEMENYA SC: It says there in specific
 4 terms –
 5 CHAIRPERSON: I've marked this copy you
 6 gave me OOO43 and I've described it as "Airborne law
 7 enforcement officers SAPS air wing – circular."
 8 MR SEMENYA SC: Thank you, Chair. It
 9 says under background, "The crew of the airborne law
 10 enforcement aircraft consists of a pilot and an ALEO" and
 11 in parenthesis it says something else, do you see that,
 12 Colonel?
 13 COLONEL VERMAAK: I saw it.
 14 MR SEMENYA SC: Right, and then says "The
 15 inherently high risk nature and requirements of airborne
 16 law enforcement dictate that the aircraft is manned by the
 17 full crew, i.e. pilot plus ALEO."
 18 COLONEL VERMAAK: That is correct.
 19 MR SEMENYA SC: "The one complements the
 20 other and neither is able to complete a given task in a
 21 safe and successful manner without the other."
 22 COLONEL VERMAAK: That is correct.
 23 MR SEMENYA SC: "The only exception to
 24 this may, under extreme circumstances, be that of VIP
 25 transport from a prepared and secured landing zone to

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1 another prepared and secured landing zone." That's the
 2 exception.
 3 COLONEL VERMAAK: That is correct.
 4 MR SEMENYA SC: "The ALEO is an essential
 5 member of the flight crew whose presence is required for
 6 every police task that the chopper may be called upon to
 7 do." Is that right?
 8 COLONEL VERMAAK: That is right.
 9 MR SEMENYA SC: "They fly the same number
 10 of hours as the pilot and they experience the same risk of
 11 injuries due to mechanical failure or pilot error as does
 12 the pilot and they are often called upon to arrest and
 13 subdue suspects singlehandedly." Correct?
 14 COLONEL VERMAAK: It's correct.
 15 MR SEMENYA SC: And if you go to the last
 16 page of the – 1, page 4 rather, under "Training and
 17 experience," under the heading "Training and experience,"
 18 page 4 at the bottom it reads – under the heading "Training
 19 and experience" at the top there, is that the end of page
 20 3? Is it – yes. You see there it says, Colonel, "Fully
 21 trained and experienced ALEOs cannot be replaced by normal
 22 police officers or untrained ALEOs for the following
 23 reasons" and it cites a whole number of them.
 24 COLONEL VERMAAK: That's correct.
 25 MR SEMENYA SC: And yet as an untrained

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1 person you have been flying, as you say, for eight years as
 2 an ALEO?
 3 COLONEL VERMAAK: That's correct, Chair,
 4 if I can just ask if the operator can put up the SOP about
 5 air wing, paragraph 3.4.3? This is not - the standing
 6 operations procedures as it is in the document itself, if
 7 they can just go to that for me.
 8 CHAIRPERSON: What are you referring to,
 9 this very document we've got?
 10 COLONEL VERMAAK: No, that is not the
 11 document before you, Chair. There is a document, standing
 12 order procedures. They just asked me questions in
 13 paragraph 11 -
 14 CHAIRPERSON: Is that an exhibit?
 15 COLONEL VERMAAK: Ja.
 16 CHAIRPERSON: You see what we have as
 17 exhibit OOO 38 is an extract from the Helicopter Operations
 18 Manual of the South African Police Service Air Wing. The
 19 second we've got is section 10 which deals with dangerous
 20 goods and weapons. Are you referring to a section of that
 21 document?
 22 COLONEL VERMAAK: To that document, yes,
 23 Chair.
 24 CHAIRPERSON: I think all that we have as
 25 an exhibit, as far as I know, is - which is exhibit OOO38,

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1 is section 10 of the document but if the -
 2 COLONEL VERMAAK: Chair, if you maybe can
 3 allow me, I've got it in front of me.
 4 CHAIRPERSON: Alright, if you've got a
 5 copy of that document, is there another section of it?
 6 COLONEL VERMAAK: That's correct, Chair.
 7 CHAIRPERSON: What section number?
 8 COLONEL VERMAAK: 5, 1.
 9 CHAIRPERSON: Section 5?
 10 COLONEL VERMAAK: That's correct, Chair.
 11 CHAIRPERSON: And what is the heading?
 12 COLONEL VERMAAK: "Flight crew
 13 composition."
 14 CHAIRPERSON: Yes, go on. We've got
 15 chapter 4 at the moment in front of us. The document we're
 16 now looking at, it's not an exhibit but we can make it one.
 17 It's headed "South African Police Service Air Wing
 18 Helicopter Operations Manual, Chapter 4, Training." Is
 19 that what you refer to?
 20 COLONEL VERMAAK: No, no, Chair. It's
 21 under, I think section 1.
 22 CHAIRPERSON: So we go, the same document
 23 right near the beginning, is that correct?
 24 COLONEL VERMAAK: That's correct, Chair.
 25 CHAIRPERSON: Alright. This document is

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1 described on the screen as exhibit OOO37. According to my
 2 notes OOO37, as I mentioned earlier, is "Complaints of
 3 misconduct against Lieutenant-Colonel Vermaak." We were
 4 given two sections of the Helicopter Operations Manual, the
 5 original one and the revised one, but only relating to
 6 section 10, dangerous goods and weapons but it take it that
 7 it's part of the same document.
 8 COLONEL VERMAAK: That's correct.
 9 MS PILLAY: Chair -
 10 CHAIRPERSON: Presumably the whole thing
 11 was scanned.
 12 MS PILLAY: OOO38.
 13 CHAIRPERSON: Yes, so it's OOO38. So
 14 it's the original issue of the Helicopter Operations
 15 Manual. We only looked at section 10.
 16 COLONEL VERMAAK: That's correct.
 17 CHAIRPERSON: But you're now referring us
 18 to section 5.
 19 COLONEL VERMAAK: That's correct, Chair.
 20 CHAIRPERSON: It's the same document.
 21 COLONEL VERMAAK: The same document.
 22 CHAIRPERSON: But we've only got copies
 23 of section 10 which I've marked OOO38 but presumably hard
 24 copies can be provided in due course. Anyway, let's not
 25 waste time, let's look at the document on the screen and

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1 then you can tell us what it is that you wanted us to see.
 2 COLONEL VERMAAK: At (D) you will see,
 3 Chair, "At least one qualified and trained ALEO is on
 4 flight duty during these flight operations. When operat -"
 5 CHAIRPERSON: You're going too fast for
 6 us. What you're reading from isn't on the screen. Let's
 7 just get that.
 8 COLONEL VERMAAK: I think he was there
 9 now.
 10 CHAIRPERSON: - section 5, "Flight crew
 11 composition" and then are you referring us to 5.1(C)?
 12 COLONEL VERMAAK: (D).
 13 CHAIRPERSON: (D), oh, D for Dennis. "At
 14 least one qualified and trained ALEO is on flight duty
 15 during police flight operations. When operationally
 16 necessary, flights may be conducted when an ALEO is not
 17 available. This is only permissible in exceptional
 18 circumstances" - exceptional circumstances being underlined
 19 - "when an experienced SAPS member is available to carry
 20 out command and control for the operation. Prior to such a
 21 flight permission must be granted by the section commander,
 22 helicopters." That's the passage you're referring us to?
 23 COLONEL VERMAAK: That's correct, Chair.
 24 CHAIRPERSON: What do you want to tell us
 25 about that?

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1 COLONEL VERMAAK: Chair, there's also a
2 document, an approval document that I received from the
3 section head, helicopters, in 2006 that gave me permission
4 that I can act as a crew in exceptional circumstances and
5 also that I must only inform him that I'm going to operate
6 as a crew on the helicopter. In my – you can go to my
7 telephone bills and you will see that I did phone Colonel
8 Obie Oberholzer where I informed him about the situation at
9 Marikana.

10 MR SEMENYA SC: It escapes me, sorry. On
11 the 16th of August 2012 you say you got permission to fly as
12 a crew?

13 COLONEL VERMAAK: I already obtained it
14 on the 13th. Why? I also have to arrange it. We only have
15 three crews at North-West air wing, Warrant Officer Mentz,
16 Warrant Officer Kleynhans and Sergeant Venter. Warrant
17 Officer Mentz was family responsibility leave at that
18 stage, his mother-in-law died. Warrant Officer Kleynhans
19 had a heart attack, he was off sick and that is why I get
20 the permission from Colonel Oberholzer to act as an ALEO on
21 the R44 with only the exceptionals, we will not do confined
22 landings, we will not do slinging or hoisting but the R44
23 helicopter is not capable to do that sort of operations.

24 MS PILLAY: Chair, may I just enquire,
25 Chair, given – having regard to the fact that there's

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1 precious little time available for this Commission to
2 complete its task, what the relevance of this line of
3 questioning is to the terms of reference and to the
4 questions which this Commission has to deal with?

5 CHAIRPERSON: It sounds a fair question,
6 Mr Semenya, how do you answer it?

7 MR SEMENYA SC: Chair, the relevance of
8 this is, as we will argue, that the witness – and I want to
9 use that word with respect, I'm not meaning it in any
10 negative connotation – acted independent of any police
11 structures that control their conduct and at the best of
12 times, acts like a maverick.

13 CHAIRPERSON: Sorry?

14 MR SEMENYA SC: Acts like a maverick,
15 somebody who just does as they please and this is the
16 relevance of this line of questioning.

17 CHAIRPERSON: He's building up to a
18 submission at the end, Ms Pillay, that the witness falls
19 under that description although he says it with the
20 necessary respect, so I suppose – it would be relevant, I
21 suppose, in regard to an assessment of this evidence. As
22 long as you confine it to reasonably narrow limits I'll
23 allow you to proceed for the time being.

24 MR BIZOS SC: Mr Chairman, have I
25 permission to make an observation and ask the Commission

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1 whether the curtailment of times that are proposed to take
2 place applies now or, if not, why not -

3 CHAIRPERSON: No, no, I can answer your
4 question –

5 MR BIZOS SC: I merely want to submit, Mr
6 Chairman, that the cross-examination that we have heard
7 today may be described by some, kicking for touch –

8 [14:37] CHAIRPERSON: Yes, well, I don't know but
9 the answer to your question is this, I didn't consider it
10 appropriate to impose time limits or anything of the kind
11 in relation to this witness because he started giving
12 evidence before the extension came into operation and those
13 concerned with planning his cross-examination would not
14 have taken into account concerns of time and the amount of
15 time available. So I don't think it's fair, and anyway, I
16 allowed everybody else ample time, I didn't think it fair
17 to impose restrictions on the police who, as we can see,
18 consider it necessary to attack the witness to some extent
19 in the hope, I take it, of persuading the Commission in the
20 end not to accept all of his evidence. So that's the
21 answer to your question, that's the reasoning for it, but
22 I'm sure that Mr Semenya is as anxious as we are that we
23 should finish our work in the allotted time and I'm sure he
24 will bear that in mind and confine his cross-examination
25 only to matters that he regards as strictly necessary.

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1 MR BIZOS SC: We will patiently listen to
2 him, but I do hope that the end of his cross-examination is
3 not too far away.

4 CHAIRPERSON: It depends upon what
5 material he's able to extract from the witness and I don't
6 know if I may – if you'll permit me, Mr Bizos – say I don't
7 think it's appropriate for counsel to refer to other
8 counsel's cross-examination as kicking for touch. Whether
9 he kicked for touch, whether he succeeded in getting touch,
10 whether the ball went into the hands of the witness on the
11 field of play and he proceeded to score a try, these are
12 all matters that we can only know the answer to at the end
13 of the inquiry. So please carry on, Mr Semenya.

14 MR SEMENYA SC: Thank you, Chair.
15 Colonel, are you offering that as an explanation for what
16 you were doing in Marikana? Are you?

17 COLONEL VERMAAK: Chair, there is
18 specific requirements stipulated by the SOPs that must be
19 adhered to. I did adhere to that specific requirements.
20 This was an exceptional circumstances. I did contact the
21 chief of helicopters operations, Colonel Oberholzer, and I
22 don't know what else should I have done.

23 MR SEMENYA SC: Colonel, are you giving
24 this as an explanation or authorisation for what you were
25 doing in Marikana in the chopper?

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1 COLONEL VERMAAK: Chair, yes.

2 MR SEMENYA SC: Okay. Let me test that.

3 As I read it those exceptional circumstances are when an

4 experienced SAP member is available to carry out command

5 and control for the operation. I thought you said you were

6 not doing that.

7 COLONEL VERMAAK: You must read the

8 whole, in the whole context. Command and control is where

9 the vehicles must be placed and they must go as requested.

10 MR SEMENYA SC: No, no, no, Colonel, we

11 spent a lot of time in your evidence saying 'All I was is

12 an eye in the sky. I was never in command and control.'

13 COLONEL VERMAAK: Not of the operation.

14 I was not in command of the operation.

15 MR SEMENYA SC: Do you say what that

16 provides for, Colonel? It provides for an experienced SAP

17 member under exceptional circumstances where they must give

18 command and control.

19 COLONEL VERMAAK: Chair, am I not –

20 MR SEMENYA SC: Is that not correct?

21 COLONEL VERMAAK: Am I not the

22 experienced policeman?

23 MR SEMENYA SC: I have –

24 COLONEL VERMAAK: I thought after 34

25 years in the police, 16 years in the POP and nine years in

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1 the Air Wing, I should have been an experienced policeman.

2 CHAIRPERSON: The problem is the words

3 "command and control" are ambiguous in this context. It

4 doesn't say command and control over what. Mr Semanya

5 seems to suggest it means command and control of the

6 operation –

7 COLONEL VERMAAK: No, Chair –

8 CHAIRPERSON: - in respect of which the

9 helicopter is in attendance. Your interpretation I gather

10 is slightly different. What is your interpretation?

11 COLONEL VERMAAK: It is command and

12 control if the operational commander asked you, say for

13 instance where you're doing chop shops and vehicles must be

14 lead in to specific areas, then you are in command of

15 directing those vehicles and you are also in command and

16 control of the Air Wing members who's working together.

17 MR SEMENYA SC: Colonel, I must accept

18 the correctness of your evidence when you say in Marikana

19 in the helicopter you were never in command and control of

20 the operation. Am I right?

21 COLONEL VERMAAK: That's correct.

22 MR SEMENYA SC: I suggest therefore to

23 you that this does not offer an explanation for breaching

24 the circular where it says, when it says a member like

25 yourself cannot replace a trained ALEO.

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1 COLONEL VERMAAK: Chair, go back to the

2 reason why I act as a crew on the helicopter, is due to the

3 fact that there was only one crew available. I haven't got

4 the power to cancel their leave and I couldn't tell to

5 Warrant Officer Kleynhans you were not supposed to have a

6 heart attack, and that is why I phoned the chopper chief of

7 the South African Police Service and I informed him about

8 the problems that we have in Marikana and I also ask his

9 permission to act as a crew. That is my answer.

10 MR SEMENYA SC: All of that you did not

11 inform JOC about, did you? JOCCOM.

12 COLONEL VERMAAK: Of course, yes. The

13 JOC know about it. They know. I give my strength, the

14 choppers that I have, the vehicles that I have, and also

15 the manpower that I have available there at Marikana.

16 MR SEMENYA SC: And therefore they make

17 Colonel Fritz the air commander for the operation.

18 Correct?

19 COLONEL VERMAAK: I wasn't aware that he

20 was appointed as the Air Wing, or the air, command in the

21 air because why they never informed me about it.

22 MR SEMENYA SC: Now if you are in JOCCOM,

23 all JOCCOMS, are you are telling me, then you would have

24 known. But anyway, let's move forward.

25 COLONEL VERMAAK: No, I will answer,

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1 Chair.

2 MR SEMENYA SC: Okay.

3 COLONEL VERMAAK: Mr Semanya forget the

4 afternoon JOCCOM, I wasn't there.

5 MR SEMENYA SC: Okay. So you even

6 allocate which helicopter will go at what height, at what

7 level, and who's going to do that. All that you do without

8 any training.

9 COLONEL VERMAAK: Chair, I have already

10 mentioned that I have been nine years at the Air Wing. The

11 ALEOS gave me in-service training and I was the only Air

12 Wing commander in the South African Police Service –

13 MR SEMENYA SC: Nobody ever measured your

14 competence to do that –

15 COLONEL VERMAAK: No, can I answer –

16 MS PILLAY: Chair, I think the witness

17 should be given an opportunity to complete his answer.

18 CHAIRPERSON: Ms Pillay is right, Mr

19 Semanya. I think you must give him a chance.

20 COLONEL VERMAAK: I was the first non-

21 pilot commander in the South African Police appointed in

22 2005. Since 2006, after I get that letter of authority

23 from Colonel Oberholzer, I assist where needed as an ALEO

24 with the permission of Colonel Oberholzer. I can also

25 point it out that due to manpower problems that we have, we

<p style="text-align: right;">Page 27823</p> <p>1 haven't got at the Air Wing North West a unit operations 2 officer. I also did that as part of my duties. I was a 3 commander. I drove the fuel for the choppers where they 4 are needed. I act as a crew where there is not people 5 available, and in the same time I act as a unit operations 6 officer, and it is clear, it said, "When exercising a day- 7 to-day operation control the unit operation officer shall 8 anticipate flight requirements and provide essential 9 information timeously, convey the PIC any information 10 necessary for the safe conduct of the flight, not allow a 11 flight to commence if any requirements of operational 12 control have not been met." That is my question, Chair. 13 MR SEMENYA SC: Why you were allocating 14 aircraft at different feet levels, is that the answer to 15 that question? 16 COLONEL VERMAAK: That's correct. 17 MR SEMENYA SC: Okay. In fact, Colonel, 18 when General Mpmembe tells you not to go to the river and 19 follow the people, you told us you defied that, right? 20 COLONEL VERMAAK: Chair, I don't know if 21 it is now fair to go back to that specific question, 22 because – 23 MR SEMENYA SC: No, I'm leading up to 24 something. 25 CHAIRPERSON: I'm here to ensure that</p>	<p style="text-align: right;">Page 27825</p> <p>1 MR SEMENYA SC: You don't consider it 2 insubordination, do you? 3 COLONEL VERMAAK: Chair, if General 4 Mpmembe or anybody should have been, have a problem with it, 5 it is now almost 18 months plus after it, nobody come to me 6 and tell me I commit an offence in connection with 7 regulations or standing orders. So I don't know if that 8 question is really applicable, but that is how I saw it. 9 MR SEMENYA SC: You don't consider it 10 insubordination? It's a simple question. 11 COLONEL VERMAAK: Yes. 12 MR SEMENYA SC: Okay. 13 CHAIRPERSON: I think you meant no. You 14 don't consider it that you were guilty of insubordination? 15 COLONEL VERMAAK: Chair, no, I didn't – 16 CHAIRPERSON: Your case is – 17 COLONEL VERMAAK: I didn't see me guilty 18 as – 19 CHAIRPERSON: Your case was you found a 20 major-general who was in a, according to your evidence in a 21 very emotional state – 22 COLONEL VERMAAK: That is correct, Chair. 23 CHAIRPERSON: - who appeared on your 24 evidence to be incapable of exercising any command. 25 COLONEL VERMAAK: That is correct.</p>
<p style="text-align: right;">Page 27824</p> <p>1 fairness prevails. Some people may think I don't always do 2 it properly, but I do my best. If a question is unfair I 3 will disallow it or counsel will object and I will consider 4 the objection, but – 5 COLONEL VERMAAK: Thank you, Chair. 6 CHAIRPERSON: - that's my department. 7 You look after yours. Now he's entitled to go back to ask 8 you about going to the river and so on, as long as he 9 doesn't repeat what he asked you before, in which case 10 he'll get into trouble not for asking unfair questions, but 11 for asking repetitious questions. But I think we must, 12 he's a very senior, experienced counsel. I think he knows 13 what he's doing. 14 COLONEL VERMAAK: Thank you, Chair. 15 MR SEMENYA SC: I've quoted your evidence 16 correctly, right? 17 COLONEL VERMAAK: Just repeat it. 18 MR SEMENYA SC: That you went to the 19 river to follow the strikers, despite, or in spite of 20 General Mpmembe telling you not to. 21 COLONEL VERMAAK: I have testified what 22 the emotional state of the General was at that stage. It 23 was clear that he couldn't give anymore guidance to the 24 people on the ground and that is why I did take the 25 decision to go and secure the crime scene.</p>	<p style="text-align: right;">Page 27826</p> <p>1 CHAIRPERSON: I think Merafe had already 2 gone away, had he not? Or he'd taken one of the injured 3 people to hospital. Is that right? 4 COLONEL VERMAAK: That's correct, Chair. 5 CHAIRPERSON: Were you the senior officer 6 on the scene there after – 7 COLONEL VERMAAK: At that stage, yes 8 Chair. 9 CHAIRPERSON: So normally if there's a 10 crisis of some kind to be handled by the police, who must 11 take command? 12 COLONEL VERMAAK: Chair, normally the 13 senior officer at the scene, but if you look at the crowd 14 management Standing Order 262 it said also a person who 15 have been a trained POP member – 16 CHAIRPERSON: You had that experience. 17 COLONEL VERMAAK: I have that experience, 18 Chair. 19 CHAIRPERSON: And in your opinion, as I 20 understand you - whether it's correct or not is another 21 matter – General Mpmembe was incapable of carrying out his 22 functions at that stage because of his emotional state? 23 COLONEL VERMAAK: That is correct, Chair. 24 CHAIRPERSON: And you endeavoured to full 25 the breach.</p>

<p style="text-align: right;">Page 27827</p> <p>1 COLONEL VERMAAK: That's correct.</p> <p>2 MR SEMENYA SC: Colonel, I understood you</p> <p>3 to say in POP operations rank has no relevance whatsoever.</p> <p>4 Was it not your evidence?</p> <p>5 MS PILLAY: Chair, I don't recall that as</p> <p>6 being the witness's evidence. If Mr Semenya could please</p> <p>7 point us to the part of the transcript where that's</p> <p>8 recorded?</p> <p>9 CHAIRPERSON: I'm sorry, repeat the</p> <p>10 question again, let's see if –</p> <p>11 MR SEMENYA SC: Was it your evidence,</p> <p>12 Colonel, that in POP operations rank does not matter; an</p> <p>13 operation of a POP nature must be led by a POP commander?</p> <p>14 Was that not your evidence?</p> <p>15 COLONEL VERMAAK: That's correct.</p> <p>16 MR SEMENYA SC: And that was a POP</p> <p>17 operation at the time that you intervene as an Air Wing</p> <p>18 commander. Am I right?</p> <p>19 COLONEL VERMAAK: That is correct, but I</p> <p>20 have the training, as every POP member have.</p> <p>21 MR SEMENYA SC: Why don't you hand it</p> <p>22 over to the POP commander that is there?</p> <p>23 COLONEL VERMAAK: There was no POPS</p> <p>24 commander at that stage. Colonel Merafe left the scene.</p> <p>25 MR SEMENYA SC: Why don't you advise</p>	<p style="text-align: right;">Page 27829</p> <p>1 COLONEL VERMAAK: No.</p> <p>2 CHAIRPERSON: [Microphone off, inaudible]</p> <p>3 mean you agree –</p> <p>4 COLONEL VERMAAK: No, there was no –</p> <p>5 CHAIRPERSON: You agree with what counsel</p> <p>6 is putting to you?</p> <p>7 COLONEL VERMAAK: That's correct, Chair.</p> <p>8 MR SEMENYA SC: And according to the</p> <p>9 planning it was anticipated that a whole number of people</p> <p>10 would move on their own and it is only the belligerent</p> <p>11 group of people that may offer resistance. Correct?</p> <p>12 COLONEL VERMAAK: Chair, I cannot answer</p> <p>13 what the plan of the afternoon was. It was not shared with</p> <p>14 me.</p> <p>15 MR SEMENYA SC: No, I'm talking about the</p> <p>16 discussions on the dispersal, or the encirclement, or</p> <p>17 whatever part of the planning you were part of. There was</p> <p>18 never an intention for instance to encircle 3 000 people.</p> <p>19 Am I right?</p> <p>20 COLONEL VERMAAK: In the beginning it was</p> <p>21 the intention to encircle all the people and left only a</p> <p>22 space open for the people, or the persons who want to lay</p> <p>23 down their dangerous weapons, and they will be allowed to</p> <p>24 walk freely out of that encirclement.</p> <p>25 MR SEMENYA SC: Are you saying there was</p>
<p style="text-align: right;">Page 27828</p> <p>1 JOCCOM?</p> <p>2 COLONEL VERMAAK: Must I wait until he</p> <p>3 came back? It was –</p> <p>4 MR SEMENYA SC: There was –</p> <p>5 COLONEL VERMAAK: The JOC was informed.</p> <p>6 MR SEMENYA SC: Okay. Anyway, the</p> <p>7 evidence will point to the fact that the PC had already</p> <p>8 appointed an overall commander, had appointed an</p> <p>9 operational commander for that operation in Marikana.</p> <p>10 COLONEL VERMAAK: The PC also gave me the</p> <p>11 permission that I can for General Mpembe's own safety take</p> <p>12 him away to the JOC. So that is also applicable.</p> <p>13 MR SEMENYA SC: Okay –</p> <p>14 COMMISSIONER HEMRAJ: Colonel, when you</p> <p>15 went up towards the river you left Captain Loest in charge</p> <p>16 of the scene, didn't you?</p> <p>17 COLONEL VERMAAK: That's correct, Chair.</p> <p>18 COMMISSIONER HEMRAJ: He's a TRT person?</p> <p>19 COLONEL VERMAAK: He's also POP.</p> <p>20 COMMISSIONER HEMRAJ: Is he POP?</p> <p>21 COLONEL VERMAAK: That's correct, Chair.</p> <p>22 MR SEMENYA SC: Could I tidy up some few</p> <p>23 things, Colonel? There is no previous history where</p> <p>24 unfurling a barbed wire triggers an attack on the police.</p> <p>25 Am I right? According to your experience.</p>	<p style="text-align: right;">Page 27830</p> <p>1 a plan to encircle 3 000 people, Colonel -</p> <p>2 COLONEL VERMAAK: That's correct.</p> <p>3 MR SEMENYA SC: - at any stage?</p> <p>4 COLONEL VERMAAK: That's correct.</p> <p>5 MR SEMENYA SC: Alright, and this is what</p> <p>6 day? The 14th?</p> <p>7 COLONEL VERMAAK: 14th is, it was</p> <p>8 discussed, Chair.</p> <p>9 MR SEMENYA SC: You know, Colonel, you</p> <p>10 give your answers in a, shall I say non-responsive way, and</p> <p>11 it makes it difficult to follow. I'm asking you a direct</p> <p>12 question. Was it on the 14th when the encirclement of 3 000</p> <p>13 was discussed?</p> <p>14 COLONEL VERMAAK: I said to you it was</p> <p>15 discussed. The encirclement was discussed on the 14th.</p> <p>16 MR SEMENYA SC: No, but that's not my</p> <p>17 question. I'm asking of the 3 000 people. I'm using that</p> <p>18 word deliberately, that we are going to encircle 3 000</p> <p>19 strikers.</p> <p>20 COLONEL VERMAAK: Chair, there were 3 000</p> <p>21 people on the koppie. Now are you asking me the question,</p> <p>22 how will they then only encircle the group in front without</p> <p>23 involve the people at the back?</p> <p>24 MR SEMENYA SC: Because it was</p> <p>25 anticipated that the majority of the people will go on</p>

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1 their own. It is only the belligerent group which would
 2 have to be tackled. That was the decisions at the JOCCOM –
 3 COLONEL VERMAAK: Well, that is very,
 4 very big risk that you take if you anticipate that all the
 5 people will walk freely from the koppie.
 6 MR SEMENYA SC: And by the way, you were
 7 moved from POP operations by General Mpembe, right? In
 8 2005.
 9 COLONEL VERMAAK: Just say again, please?
 10 MR SEMENYA SC: You were transferred to
 11 Air Wing by General Mpembe, were you not?
 12 COLONEL VERMAAK: No, he was – it wasn't
 13 him who transferred me. He requested, due to the fact that
 14 there was big problems at the Air Wing in the North West.
 15 The commander at that stage was temporarily transferred to
 16 Nelspruit due to the fact that there was an investigation
 17 against him.
 18 [14:57] And then it was discussed as a pilot project that
 19 the police is going to move away from pilots as commanders
 20 for the simple reason normally the senior pilot is also the
 21 commander of the unit, and Brigadier Van der Colff decided
 22 to appoint me after a request from General Mpembe to be
 23 transferred as an operational experienced officer, and I
 24 act for six months as acting and I was evaluated in that
 25 six months and thereafter I was permanently appointed.

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1 MR SEMENYA SC: Just see if you can keep
 2 your questions short. I haven't asked a whole host of
 3 things that you're talking about. I want to be able –
 4 COLONEL VERMAAK: You were –
 5 MR SEMENYA SC: I want to be able to use
 6 every drop in the bucket.
 7 CHAIRPERSON: Yes, I've said this to
 8 other witnesses and I'm afraid I have to say it to you as
 9 well; it's a good idea to confine your answers to the
 10 questions, and strictly to the question. I know sometimes
 11 when a question is asked you think you can see what other
 12 questions are coming and you try to get in advance and
 13 answer them. It's never a good idea for a witness because
 14 a clever cross-examiner sends the wrong messages to the
 15 witness sometimes. Just answer the questions that you're
 16 asked and do so as briefly as you can so that neither you,
 17 nor the cross-examiner, nor I, can be criticised for
 18 wasting time.
 19 COLONEL VERMAAK: Thank you, Chair.
 20 MR SEMENYA SC: You are aggrieved about
 21 being transferred to the Air Wing. Am I right?
 22 COLONEL VERMAAK: Yes, I was transferred.
 23 MR SEMENYA SC: You see, the question is
 24 you were aggrieved about the transfer. Now your answer is
 25 "I was transferred."

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1 CHAIRPERSON: No, no, no, I think, I must
 2 confess I thought you said "You agreed that you were." So
 3 I thought he answered yes. No, you and I both missed the
 4 question. The question is you are aggrieved, in other
 5 words you are dissatisfied –
 6 COLONEL VERMAAK: That's correct.
 7 CHAIRPERSON: - about the transfer to the
 8 Air Wing.
 9 COLONEL VERMAAK: That's correct.
 10 CHAIRPERSON: That's the question. Is
 11 that correct?
 12 COLONEL VERMAAK: That's correct.
 13 MR SEMENYA SC: To this day that position
 14 that you are dissatisfied still obtains, Colonel. Am I
 15 right?
 16 COLONEL VERMAAK: Can you please just put
 17 your question again, please?
 18 MR SEMENYA SC: Your disquiet about being
 19 posted at the Air Wing still maintains to this day?
 20 COLONEL VERMAAK: Chair, no. I don't
 21 want to make it a long story –
 22 CHAIRPERSON: The answer is, he put to
 23 you you're still dissatisfied and you say no.
 24 COLONEL VERMAAK: I'm not –
 25 CHAIRPERSON: That's the answer –

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1 COLONEL VERMAAK: I'm not dissatisfied –
 2 CHAIRPERSON: That's an answer to the
 3 question.
 4 COLONEL VERMAAK: I was never being
 5 dissatisfied.
 6 CHAIRPERSON: That's an answer to the
 7 question. Let counsel ask the next one.
 8 MR SEMENYA SC: It was General Mpembe who
 9 refused your request to be moved from Air Wing. Am I
 10 right?
 11 CHAIRPERSON: [Microphone off, inaudible]
 12 question –
 13 COLONEL VERMAAK: No.
 14 CHAIRPERSON: The first question is did
 15 you request to be moved from Air Wing? At any stage after
 16 you were sent to the Air did you request to be sent, to be
 17 taken away from the Air Wing and sent somewhere else?
 18 COLONEL VERMAAK: Chair, no.
 19 CHAIRPERSON: So there was therefore no
 20 request for General Mpembe to refuse.
 21 COLONEL VERMAAK: Chair, there was an
 22 incident between myself, my members and General Mpembe
 23 whereafter he threatened that he will transfer me and after
 24 I gave a written explanation to the Provincial
 25 Commissioner, General Bhika at that stage, he overruled the

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1 decision of General Mpenbe and he put me back in my post as
2 commander.

3 MR SEMENYA SC: Of the Air Wing?
4 COLONEL VERMAAK: Of the Air Wing, yes.
5 MR SEMENYA SC: Not of the POP, right?
6 COLONEL VERMAAK: No, I was at the Air
7 Wing.
8 MR SEMENYA SC: Yes, and then you also
9 applied for the position of Air Wing commander recently.
10 Correct?
11 COLONEL VERMAAK: Chair, I don't know
12 what is it relevant –
13 CHAIRPERSON: No, no, no, I must decide
14 relevance. He asked you whether it's correct that you
15 recently applied for the position of Air Wing commander.
16 The answer is –
17 COLONEL VERMAAK: Chair, there was a lot
18 of discussions between me and the legal team about it. Mr
19 Pretorius even –
20 CHAIRPERSON: No, no, no, but that's not
21 a relevant answer. It's a simple question. Did you apply
22 for appointment as Air Wing commander recently?
23 COLONEL VERMAAK: Chair, the post has
24 been advertised in a senior post.
25 CHAIRPERSON: And did you apply for it?

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1 COLONEL VERMAAK: I did apply for it.
2 CHAIRPERSON: So that's the answer to the
3 question.
4 COLONEL VERMAAK: That's correct.
5 CHAIRPERSON: Right, carry on, Mr
6 Semenya.
7 MR SEMENYA SC: And when you did not get
8 that position you were dissatisfied about it when it was
9 given to somebody else. Am I right?
10 MS PILLAY: Chair, can we get just
11 clarity and an undertaking; as I understand Mr Semenya's
12 undertaking he won't be cross-examining on material that
13 was canvassed during consultations with the witness. Now
14 can we get clarity that this was not canvassed with the
15 witness during consultations?
16 CHAIRPERSON: [Microphone off, inaudible]
17 the fact that it was canvassed would be a reason for
18 preventing the question being asked. If Mr Semenya
19 received information independently to the effect that he's
20 just put, then the fact that it may have been canvassed in
21 consultation wouldn't prevent him from asking the question.
22 He would be prevented from asking any follow-up questions
23 based upon any answers he got, but if he got the
24 information independently and he considers it relevant to
25 the argument he wants to put up later in regard to

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1 acceptability of the witness's evidence, he's entitled to
2 ask the question. Mr Semenya, please proceed.
3 MR SEMENYA SC: Thank you, Chair.
4 MR BIZOS SC: Mr Chairman, if I heard the
5 witness correctly, the most likely source of information
6 was Mr Semenya's attorney.
7 MR SEMENYA SC: No, no.
8 CHAIRPERSON: No, no, no. No, Mr Bizos,
9 I don't think it appropriate for you to intervene like
10 that. Mr Semenya is acting for the police. The police
11 have decided they don't like some of the evidence he's
12 given and that his credibility must be attacked. There's
13 no reason to believe that any information such as that he
14 applied for a post recently and didn't get it, which might
15 be a reason for suggesting certain things in argument, that
16 that was privileged information.
17 The most likely source for the information I
18 would imagine would be someone like the Provincial
19 Commissioner or one of the deputy commissioners, but I
20 don't think we need go there now. That's pure speculation
21 which is unjustified, and I think we can accept the
22 integrity of Mr Semenya, who's undertaken not to use any
23 material that he got in consultation, and the questions he
24 put are clearly capable of being derived from information
25 he obtained independently. There's no reason to suspect

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1 him of behaving badly. So I think Mr Semenya can carry on.
2 MS PILLAY: Chair, just a final caution
3 to express the witness's position. If the witness was
4 consulting with Mr Semenya as his counsel and Mr Pretorius
5 as his attorney, and was forthright and open during that
6 consultation on the assumption that those consultations
7 were privileged, to be able to now draw a fine line between
8 information which was purely given during that
9 consultation, information derived from that consultation,
10 and information obtained outside of that consultation, we
11 submit it's a purely, it's an artificial exercise.
12 CHAIRPERSON: I'm afraid I don't agree.
13 I can quite understand that those in the police who don't
14 like the witness's evidence because he's critical of them
15 would wish their counsel to argue at the end of the day
16 that his evidence should not be accepted, are personally
17 capable of getting information from an independent source
18 and giving it to Mr Semenya to ask questions of the
19 witness. I'm sure the witness in any event is capable of
20 looking after himself on these matters. Mr Semenya, please
21 proceed.
22 MR BIZOS SC: Mr Chairman –
23 MR SEMENYA SC: Just for the record,
24 Chair, the fact that the witness had applied for that
25 position, it's an official known position of the SAP.

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1 CHAIRPERSON: I realise that, Mr Semenya.
 2 That's why I overruled the objection. Mr Bizos, what have
 3 you got to do with this cross-examination?
 4 MR BIZOS SC: No, Mr Chairman, because
 5 the witness said Mr Pretorius, and he was stopped from
 6 saying –
 7 CHAIRPERSON: I'm aware of that –
 8 MR BIZOS SC: - what he said on the basis
 9 of your ruling. It doesn't take too much to persuade me
 10 that Mr Pretorius did not keep it a secret to himself, he
 11 transmitted it to counsel, Mr Semenya. So what is the –
 12 CHAIRPERSON: To use your expression, Mr
 13 Semenya, it doesn't take too much for me to come to the
 14 conclusion that Mr Semenya would have obtained this
 15 information from an independent source. The fact that this
 16 post was advertised, the fact that the witness applied for
 17 the job and didn't get it for reasons presumably that some
 18 other candidate is better than he, is a matter that's not a
 19 secret in the police force. It's not something, the
 20 knowledge of which would be confined only to the witness
 21 and Mr Pretorius and Mr Semenya could only acquire it that
 22 way. The more probable explanation is the one I put
 23 forward. I think Mr Semenya can proceed.
 24 MR SEMENYA SC: Colonel –
 25 CHAIRPERSON: Well, let's take tea as

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1 soon as you've dealt with this point. I take it you've
 2 established what you wanted to establish.
 3 MR SEMENYA SC: I have. I have.
 4 CHAIRPERSON: He applied for the job; he
 5 didn't get it. You will argue later that that's a reason
 6 for rejecting his evidence. We may find or may not find,
 7 but we may find that it's not a reason for rejecting his
 8 evidence, that the views he express in any event had
 9 largely been expressed earlier I think. When did you apply
 10 for this job?
 11 COLONEL VERMAAK: Chair, there was two
 12 rounds that it has been advert. In 2012, September was the
 13 first round. I was called in for an interview. After all
 14 the other posts has been filled of people who was also with
 15 me for interviews they withdraw the post for the Air Wing
 16 commander at North West. After that I have put –
 17 CHAIRPERSON: When was the second round?
 18 COLONEL VERMAAK: The second round was in
 19 the beginning of – this, I think it was in the beginning of
 20 this year, Chair.
 21 CHAIRPERSON: After you had made your
 22 statements and after you had spoken to the National
 23 Commissioner and expressed your views as to, the critical
 24 views as to the operation at Marikana?
 25 COLONEL VERMAAK: That's correct, Chair.

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1 CHAIRPERSON: So I take it one can
 2 assume, subject to what may be said by others, that the
 3 views you expressed weren't occasioned by any
 4 disappointment at not being appointed. They in fact were
 5 expressed prior to any disappointment you may have
 6 suffered. Is that correct?
 7 COLONEL VERMAAK: That's correct, Chair.
 8 I –
 9 CHAIRPERSON: I think we can take the tea
 10 adjournment now?
 11 [COMMISSION ADJOURNS COMMISSION RESUMES]
 12 [15:32] CHAIRPERSON: The Commission resumes.
 13 You're still bound by your affirmation, Colonel.
 14 COLONEL VERMAAK: Thank you, Chair.
 15 SALMON JOHANNES VERMAAK: (affirms
 16 further)
 17 CHAIRPERSON: Mr Semenya?
 18 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):
 19 Thank you, Chair. Colonel, on the 16th with your Blackberry
 20 you took, I guess, 48, 38, three eight, photos.
 21 COLONEL VERMAAK: Chair yes, maybe if we
 22 can just finalise the previous question regarding the fact
 23 that I was not promoted in the post, if you will allow me.
 24 CHAIRPERSON: You were asked the question
 25 and you conceded it but it was obviously, the fact that the

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1 post had been advertised was general knowledge in the
 2 police, the fact that you didn't get it was general
 3 knowledge in the police, the fact that you'd already
 4 expressed your criticisms of the Marikana operation
 5 preceded that. That was the point at which we concluded.
 6 I don't know, we're not really interested in the background
 7 to your non, not being appointed.
 8 COLONEL VERMAAK: No.
 9 CHAIRPERSON: The question really was, as
 10 I saw it, was directed to try to suggest that your critical
 11 views might have been influenced in some way and I thought,
 12 prima facie, that that was eliminated by the questions
 13 about when the criticisms were expressed, which preceded
 14 this aspect. So I don't think we need to explore it any
 15 further but if Ms Pillay wishes to deal with the matter in
 16 re-examination we can only leave it to her good judgment.
 17 COLONEL VERMAAK: It is only one short
 18 point but I will wait for – thank you, Chair.
 19 CHAIRPERSON: Alright, what's the short
 20 point? Let's see how short it is.
 21 COLONEL VERMAAK: Chair, I attended on
 22 the 20th a consultation with Mr Semenya and Mr Pretorius.
 23 In that consultation –
 24 CHAIRPERSON: No, no, I'm sorry, I'm
 25 sorry, Colonel. I don't think it appropriate for us to

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1 listen to anything that happened at the consultation or
 2 what happened immediately prior to or immediately after the
 3 consultation. These are matters covered by privilege and I
 4 don't think it will help us at the end of the day when we
 5 have to write our report to be burdened by knowledge in
 6 that regard, but if Ms Pillay considers it necessary to
 7 deal with it in re-examination obviously that's a different
 8 matter.
 9 COLONEL VERMAAK: Okay, I will –
 10 MR NTSEBEZA SC: Mr Chair, can I just
 11 seek to get a sense of – I've been sitting here trying to
 12 understand the basis on which this cross-examination by
 13 SAPS of Colonel Vermaak has been and I daresay I do
 14 understand the agreed basis to have been that if it happens
 15 that the witness either indicates or it is manifest that
 16 what he is going to be cross-examined on is something that
 17 was canvassed with the witness at a time when the witness
 18 was consulting and therefore that is privileged, then he
 19 wouldn't be asked on that basis. I do understand now for
 20 the last two hours that I've been listening that there
 21 seems to be a basis which I would like, Mr Chairman with
 22 your permission, to place on record as being a basis which
 23 we will argue on at the end of the day. It seems to me
 24 that the basis that has now been laid is that if it is
 25 possible to obtain, on an independent basis, something

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1 which had been canvassed during cross-examination, it can't
 2 be said that what was canvassed in cross-examination –
 3 CHAIRPERSON: Sorry, do you mean
 4 canvassed in consultation? You said cross-examination.
 5 MR NTSEBEZA SC: In consultation, I'm
 6 sorry, Mr Chairman. It seems to me that the basis is that
 7 if there is an independent third source for what is being
 8 put in cross-examination to a witness, even if it is
 9 something that might have arisen during cross-examination,
 10 I mean during consultation, that it is a legitimate basis.
 11 We will want to argue at the end of the day that that is a
 12 very tenuous basis because it's going to be difficult to
 13 determine which is which and on behalf of the families and
 14 AMCU we will seek to be permitted to argue at the end of
 15 the day that, you know, when a witness then, where it is
 16 not clear whether it was from an independent source or it
 17 is something that came during consultation, that when the
 18 witness then says, raises it and says no, but this is
 19 something that was privileged that was canvassed during
 20 consultation, Mr Chairman, we will want to submit that that
 21 should be respected and it should not be subjected to
 22 speculation as to whether it could have arisen from a third
 23 source.
 24 CHAIRPERSON: We'll hear your arguments
 25 at the end on the point but I would mention one point to

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1 you to consider when preparing your arguments on the point
 2 that if the witness in his statement, intended to be put
 3 before the Commission, refers to an incident say like
 4 Stilfontein, one would expect that aspect to be covered in
 5 consultation but it wouldn't mean that the former legal
 6 representative would be precluded from asking questions
 7 about the topic if it was a topic which was in any event
 8 there on the statement the witness had himself prepared to
 9 be put before the Commission. The witness would obviously
 10 have to be careful about the questions he asks but the
 11 topic itself wouldn't necessarily be entirely out of bounds
 12 – but anyway, that's a matter for you to consider. I'm
 13 just expressing a prima facie view for you to think about,
 14 it's a matter to be considered when you prepare your
 15 argument on that part of the case.
 16 MR NTSEBEZA SC: Thank you, Mr Chairman,
 17 but on this recent point – and this is where I would also
 18 want to focus, where the Chair ostensibly was preventing or
 19 indicating probably in the witness's own interests that if
 20 the witness, if I can use the phrase mero motu wants to
 21 raise issues that arose out of consultation, it would
 22 appear to me, with respect, that this is again an instance
 23 where the witness, to the extent that what was canvassed
 24 with him in consultation was privileged information, if he
 25 consciously takes the decision that he's waiving that

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1 privilege, I cannot understand that there should be any
 2 basis, there should be a basis on which he should be
 3 prevented from waiving that privilege, subject of course to
 4 the Chair indicating to him that if he is insisting on
 5 disclosing in the course of his testimony something which
 6 took place during consultation, he must be aware that he is
 7 waiving whatever privilege there could have been .
 8 CHAIRPERSON: No, I understand the point
 9 you make, Mr Ntsebeza –
 10 MR NTSEBEZA SC: The privilege is his and
 11 if he says yes -
 12 CHAIRPERSON: - but there are two points
 13 I would put to you again for consideration. The first is,
 14 I have a duty and a power to exclude evidence which I
 15 consider to be either irrelevant or not sufficiently
 16 relevant to assist us to write our report but I didn't say
 17 the witness couldn't deal with the matter. I said I wasn't
 18 prepared to hear it as part of his answers in cross-
 19 examination but I also indicated that if his counsel – I
 20 beg your pardon, I must phrase it more delicately – counsel
 21 who led his evidence, not his counsel but the counsel who
 22 led his evidence considers it necessary to deal with it, or
 23 desirable or appropriate to deal with the topic in re-
 24 examination, that would be a different matter. So I didn't
 25 stop him but at this stage I don't think it'll help us to

<p style="text-align: right;">Page 27847</p> <p>1 write our report and I thought it would possibly open areas 2 in regard to what happened in consultation and didn't 3 happen and so on, which would (a) take a lot of time and 4 would produce no fruitful results. So that was the basis 5 for what I said but as I said, I didn't stop it completely, 6 I said it can be raised if necessary in re-examination, but 7 nevertheless you will bear those points in mind also when 8 you prepare your argument on this point. Mr Semenya? 9 MR NTSEBEZA SC: Thank you, Mr Chairman. 10 MR SEMENYA SC: Thank you, Chair. The 11 number of BBM photos you took on the 16th, am I right that 12 there would be about 38? 13 COLONEL VERMAAK: I haven't got it in 14 front of me but there was quite a number of photos, yes. 15 MR SEMENYA SC: Now I just want to 16 understand, you would have sent them to the JOC, got 17 confirmation that they are there and went to the next one. 18 COLONEL VERMAAK: That is correct, Chair. 19 I informed the JOC that I'm sending a Blackberry photo 20 through and then they confirmed back to me they received 21 it. 22 MR SEMENYA SC: With each and every one 23 of the 38? 24 COLONEL VERMAAK: That is correct. 25 MR SEMENYA SC: Well, the evidence will</p>	<p style="text-align: right;">Page 27849</p> <p>1 exception, as the SAPS contends it was. The applicability 2 – 3 CHAIRPERSON: Okay – okay. You don't 4 have to spell it out. Ms Pillay, I think that answers your 5 question. Mr Semenya, continue? 6 MR SEMENYA SC: Colonel, I just want us 7 to go where the report – I think it is the third folio 8 where it starts, "Staking deur werkers." "n Staking deur 9 werkers," if I read it out, "van die Springvallei Melkery 10 binne die Springvallei-nywerheidsgebied is alreeds vir die 11 afgelope paar weke aan die gang. Van die hostelle van die 12 melkery word deur privaat kontrakteurs gehuur en deur hulle 13 werkers asook mynwerkers bewoon. Een van die privaat 14 kontrakteurs, 'n blankeman van Vryburg, vermoedelik 'n 15 sekere mnr Van Vuuren, het gedurende die oggendure van 16 bogenoemde datum by die hostelle opgedaag om van sy werkers 17 te gaan haal. 'n Groep van ongeveer 1 500 swart persone 18 het op daardie stadium voor die hostelle saamgedrom toe die 19 blankeman asook 'n tweede blankeman, vermoedelik 'n mnr 20 Smit, en nog 'n swartman by die hostelle opgedaag het. Een 21 van die blankemans, vermoedelik mnr Van Vuuren, asook die 22 swart vragmotorbestuurder, is deur 'n groep swart persone 23 uit die vragmotor waarin hulle gery het getrek en deur die 24 aanvallers doodgekap. Die ander blankeman, vermoedelik 'n 25 mnr Smit, het daarin geslaag om te ontvlug en ontvang tans</p>
<p style="text-align: right;">Page 27848</p> <p>1 be that only 11 images were sent to Brigadier Pretorius and 2 two of those were repetitions, so there were in total nine 3 of the images that you sent on the 16th. 4 COLONEL VERMAAK: No – 5 MR SEMENYA SC: Through your Blackberry. 6 COLONEL VERMAAK: If you could draw the 7 bill or the itemised billing of the Blackberry, I believe 8 that it can show on that how many I sent and where did I 9 send it to. 10 MR SEMENYA SC: Okay, can we deal with 11 the Stilfontein event now and it's exhibit OOO41, if we 12 have it on the screen. 13 MS PILLAY: Chair, once again may I just 14 enquire what the relevance is of this information which 15 dates back to 1993? 16 CHAIRPERSON: Yes, I've got it wrong, 17 it's 19 years ago. Sorry, it was 19 years old in 2012 when 18 the events at Marikana took place. 19 MS PILLAY: That's correct, Chair. 20 CHAIRPERSON: Mr Semenya, what's your 21 answer to Ms Pillay's – 22 MR SEMENYA SC: Well, we know – 23 CHAIRPERSON: - understandable query. 24 MR SEMENYA SC: Not only did the witness 25 testify about it, the witness also says Marikana was not an</p>	<p style="text-align: right;">Page 27850</p> <p>1 mediese behandeling in die plaaslike hospitaal. Lede van 2 die plaaslike honde-eenheid het op die toneel opgedaag, 3 waarop die hostelbewoners op hulle afgestorm het. Die hulp 4 van die plaaslike ABS is ontbied, waarop die lede van ABS 5 ook bestorm is en verskeie skote op hulle gevuur is. Van 6 die swartes het sersant Van der Westhuizen se haelgeweer 7 van hom afgeneem. Kaptein Vermaak van ABS eenheid 26 het 8 met 'n seksie op die toneel opgedaag. Daar is met 9 onbekende vuurwapens deur die hostelbewoners op hom gevuur, 10 waarop hy teruggevuur het en twee van die aanvallers, 11 swartmans, doodgeskiet het. Die hostelbewoners het weer op 12 die lede van ABS afgestorm en met onder andere die 13 gesteelde haelgeweer en 'n ander onbekende kaliber 14 handwapen op die lede gevuur. Die lede het weer opgetree 15 en nog vyf swart persone, waaronder 'n swartvrou, 16 doodgeskiet. Al die oorledenes is bo 18 jaar. Die 17 gesteelde haelgeweer en 'n .357 Magnum rewolwer is by van 18 die oorledenes gevind." I read it correctly – 19 CHAIRPERSON: Do you want me to translate 20 it into English? Can we go back to the beginning, please? 21 A strike by workers of the Springvale Dairy within the 22 Springvale industrial area is already on the go for the 23 past two weeks. Some of the hostels are the dairy are 24 controlled by private contractors and occupied by their 25 workers as well as mineworkers. One of the private</p>

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1 contractors, a white man of Vryburg, presumably a certain
 2 Mr Van Vuuren, appeared or arrived at the hostels during
 3 the morning hours of the said dates, abovementioned dates,
 4 to fetch some of his workers. A group of approximately
 5 1 500 black persons had assembled together at that stage in
 6 front of the hostels when the white man, together with a
 7 second black man, presumably a Mr Smit and another black
 8 man appeared or arrived at the hostels. One of the white
 9 men, presumably Mr Van Vuuren, also as the black lorry
 10 driver were pulled out of the lorry by, in which they had
 11 travelled by a group of black people and they were chopped
 12 to death by the attackers. The other white man, presumably
 13 a Mr Smit, succeeded in escaping and he is presently
 14 receiving medical treatment in the local hospital. Members
 15 of the local dog unit appeared on the scene, whereupon the
 16 hostel inmates charged at them or stormed them. With the
 17 help of the – the ABS was the POP in those days, is that
 18 correct, Colonel? The help of the local POP was called
 19 for, whereupon the members of the POP were also attacked or
 20 rushed at and various shots were fired at them. Some of
 21 the blacks took Sergeant Van der Westhuizen's shotgun from
 22 him. Captain Vermaak of the POP unit 26 arrived with a
 23 section on the scene. There was fired with unknown
 24 firearms by the hostel inmates at him, whereupon he
 25 returned the fire and two of the attackers, black men – and

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1 shot two of the attackers, namely black men. The hostel –
 2 shot dead, I beg your pardon, doodgeskiet, shot dead. The
 3 hostel inmates again stormed at the members of the POP and
 4 fired at them with, inter alia, the stolen shotgun and
 5 another unknown calibre hand weapon, shot at the members.
 6 [15:52] The members again, acted again and a further five
 7 black people, among whom was a black woman, were shot dead.
 8 All the deceased persons are over 18 years. The stolen
 9 shotgun and a .357 Magnum revolver was found by the, in the
 10 vicinity of, I suppose, the deceased persons.
 11 MR SEMENYA SC: Thank you, Chair.
 12 Captain Vermaak in the transcript refers to you, Colonel,
 13 does it not?
 14 COLONEL VERMAAK: That's correct, Chair.
 15 MR SEMENYA SC: This was – Colonel, just
 16 remind me; this was a POP operation as well?
 17 COLONEL VERMAAK: Chair, no, initially
 18 the Dog Unit was attending to a complaint received of
 19 disturbance of peace. They wasn't aware at that stage that
 20 there was any problems, public order unrest. We also was
 21 at that stage not aware of any incidents up to that stage
 22 because why the previous day we had meetings with all the
 23 relevant people. So at that meeting the people agree that
 24 they will not go to work and the employer, without noticing
 25 us, sent a truck to go and fetch the people, take them to

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1 their offices and to retrench them. It's only then after
 2 we heard that the Dog Unit shoot at the people, experienced
 3 that there was a problem at the Springvale Farm where the
 4 Dog Unit attend to that complaint.
 5 CHAIRPERSON: What the report then goes
 6 on to say is that the help of the local POP was summoned, I
 7 think that's the correct translation, to support them –
 8 COLONEL VERMAAK: That's correct, Chair.
 9 CHAIRPERSON: - whereupon the members of
 10 the POP were charged at. That's probably a better
 11 translation –
 12 COLONEL VERMAAK: That's correct, Chair.
 13 CHAIRPERSON: - and various shots were
 14 fired at them.
 15 COLONEL VERMAAK: That's correct, Chair.
 16 Also I, on the question if it was a POP incident, that is
 17 correct, but at that stage the instructions was also that
 18 the Dog Units could operate with the POP and assist the POP
 19 where necessary to do some crowd management.
 20 MR SEMENYA SC: Again, Colonel, I didn't
 21 ask about the Dog Units. I'm asking whether you were
 22 attending to a public unrest, a POP operation or not?
 23 COLONEL VERMAAK: I attend to a complaint
 24 of disturbance of peace and the Dog Unit was shot at. At
 25 that stage we didn't know it was a public order incident.

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1 MR SEMENYA SC: I take it that you only
 2 deploy POP for POP events, no? You don't call them if it
 3 is not a POP environment. Am I right?
 4 COLONEL VERMAAK: Chair, it depends from
 5 when. At that stage we are allowed also to deploy the Dog
 6 Unit with the POP members.
 7 MR SEMENYA SC: I'm not asking about Dog
 8 Units. I want to understand whether as, when you brought
 9 there your own section, as the captain in command of that
 10 section you were going apply POP standards to that problem,
 11 were you not?
 12 COLONEL VERMAAK: That's correct.
 13 MR SEMENYA SC: You don't shoot teargas
 14 when this happens, right?
 15 COLONEL VERMAAK: At that time there
 16 wasn't time to shoot any teargas. If the video that I gave
 17 to you have been looked at, it was very clear on that –
 18 MR SEMENYA SC: You don't shoot any stun
 19 grenades.
 20 COLONEL VERMAAK: We haven't got stun
 21 grenades at that stage.
 22 MR SEMENYA SC: Rubber?
 23 COLONEL VERMAAK: No, only 37 millimetre
 24 rubbers.
 25 MR SEMENYA SC: Number 5?

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1 COLONEL VERMAAK: Yes.

2 MR SEMENYA SC: You don't shoot that, I

3 suppose?

4 COLONEL VERMAAK: I can't remember

5 exactly, but if we can go through the IRIS system, it is 19

6 years ago, it's really –

7 CHAIRPERSON: [Microphone off, inaudible]

8 21 years ago, but it was 20 and a half years ago. It was

9 19 years ago at the time of the Marikana incident.

10 COLONEL VERMAAK: That's correct, Chair.

11 I can't remember that detail.

12 MR SEMENYA SC: And you found it

13 appropriate as members of POP to discharge live ammunition

14 in those circumstances, right?

15 COLONEL VERMAAK: In that specific

16 circumstances, yes.

17 MR SEMENYA SC: And how many do you kill?

18 It's not clear from the report.

19 COLONEL VERMAAK: I think if you read the

20 IRIS –

21 CHAIRPERSON: No, just answer the

22 question. What was the question, Mr Semenya?

23 MR SEMENYA SC: How many does he kill in

24 that operation.

25 CHAIRPERSON: Well, it says in the IRIS

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1 report that two of the attackers were killed and it seems

2 that you were responsible. It says there was fired at you

3 by, with unknown firearms by the hostel inmates, whereupon

4 you returned the fire, you fired back and shot dead two of

5 the attackers, black men. That's what the report says.

6 COLONEL VERMAAK: That is correct.

7 There's, Chair, if that – not all the information reflected

8 on this IRIS entrance here, but actually there was three

9 being shot by myself.

10 MR SEMENYA SC: It says, "Die lede het

11 weer opgetree en nog vyf swart persone, waaronder 'n swart

12 vrou, doodgeskiet." That's why I'm asking how many did you

13 kill?

14 COLONEL VERMAAK: I shot three.

15 MR SEMENYA SC: No, I know you may have

16 shot three. How many did you kill?

17 COLONEL VERMAAK: All three of them.

18 MR SEMENYA SC: Okay. Would this be a

19 convenient stage, Chair? I'm about finished with my cross-

20 examination.

21 CHAIRPERSON: You're about to finish the

22 cross-examination? I know it's difficult to predict, but

23 how long are you likely to be? I'm not asking you for

24 reasons for continuing this afternoon, but so we can plan

25 tomorrow. How long – I know it's difficult to predict with

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1 any degree of accuracy, but how long do you anticipate

2 being?

3 MR SEMENYA SC: Before tea break I'll be

4 done.

5 CHAIRPERSON: I see. Thank you. Now Ms

6 Pillay, I take it you will re-examine the witness.

7 MS PILLAY: I will, Chair.

8 CHAIRPERSON: Yes. I don't know whether

9 I must ask Mr Ntsebeza, or Ms Barnes has gone, but Ms

10 Barnes for AMCU and Ms Lewis in Mr Ntsebeza's absence, for

11 the families, reserved the right to ask the witness further

12 questions based upon the extra statements that were

13 forthcoming, which were produced at a late stage by the

14 police in relation to the incident beyond the stream on the

15 13th. Mr Ntsebeza, are you going to cross-examine – or are

16 you going to exercise the right to further cross-

17 examination which Ms Lewis reserved on your behalf?

18 MR NTSEBEZA SC: Yes, Mr Chairman, I've

19 been readied to cross-examine.

20 CHAIRPERSON: How long do you think that

21 will be?

22 MR NTSEBEZA SC: About two hours.

23 CHAIRPERSON: The reason I'm asking you

24 the question, as you've gathered, is I'd like to try to

25 finish the evidence of this witness by 1 o'clock tomorrow.

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1 I think we must try to do that because I think he's been

2 here long enough and we – anyway, you've heard what I say.

3 I take it you will do what you can to assist in that

4 regard, and then Ms Pillay of course will re-examine. I

5 don't know how long she will be, but she can't tell us at

6 this stage –

7 MS PILLAY: Chair, just one or two Mpofu

8 questions.

9 CHAIRPERSON: One or two?

10 MS PILLAY: Mpofu questions.

11 CHAIRPERSON: One or two Mpofu questions.

12 That means 10 or 20. Alright, I'm sure Mr Mpofu would

13 allow me to make that comment. Alright, we'll adjourn at

14 this stage till 9 o'clock tomorrow morning.

15 [COMMISSION ADJOURNED]

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