RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 225

08 MAY 2014 PAGES 27723 TO 27858



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1	Page 27723 [PROCEEDINGS ON 8 MAY 2014]	1	Page 27725 that the document headed "Transcript, Adv Wesley, Colonel
2	[10:11] CHAIRPERSON: The Commission resumes. We	2	Vermaak and Mr Pretorius" is admissible into evidence only
3	had hoped to commence this extended period of operation of	3	we submit with the consent of both the evidence leaders and
4	the Commission promptly at 9 o'clock this morning, but we	4	Lieutenant-Colonel Vermaak, and finally that the
5	were not able to do so because the premises were still	5	admissibility of the evidence that has already been
6	being got ready for us because they were used yesterday and	6	obtained under the cross-examination of Lieutenant-Colonel
7	until a few minutes ago for the purposes of the election.	7	Vermaak by Adv Semenya SC can be determined by the
8	So I apologise to those who've been waiting since 9	8	Commission following closing argument.
9	o'clock, expecting us to begin.	9	May I say, Mr Chairman, that to the credit of my
10	Before I remind the witness that he's still bound	10	learned friend Mr Semenya, and even before he actually came
11	by the terms of the affirmation he made, I understand that	11	to the conclusion that it would be questionable at least as
12	we're going to have argument which was foreshadowed in our	12	to whether he should cross-examine Mr Vermaak, was a
13	proceedings last month, and that is an objection on behalf	13	correct one and a pity that it was not followed because of
14	of the Ledingoane family to firstly cross-examination by Mr	14	the circumstances set out in the heads of argument of the
15	Semenya of the witness on a transcript of his consultation	15	respondent, SAPS.
16	with Adv Wesley, and I understand from the heads which	16	Let me say at the outset, Mr Chairman, something
17	we've been given that the objection is now wider than that	17	about the SAPS saying that our client and we as the Legal
18	and the objection is to any cross-examination by counsel	18	Resources Centre, who you will recall said that it will
19	representing the SAPS of this witness.	19	consider as a party to these proceedings in terms of its
20	There's a third point as to the admissibility of	20	constitution and the right to defend people's rights, it is
21	the evidence given so far in cross-examination by the	21	absolutely incorrect, Mr Chairman, for them to say that we
22	witness. That matter stands over until the end, if I	22	have no locus standi to raise objections about the conduct
23	understand the heads correctly. I've received heads from	23	of any other party to these proceedings and how the justice
24	Mr Bizos and also from – for which I'm grateful – and also	24	can best be served by our making a submission such as this,
25	from the police, which I'm also grateful, and I've also	25	that the police have in the circumstances not the right to
	Page 27724		Page 27726
1	been given copies of two authorities relied on by Mr Bizos,	1	cross-examine Colonel Vermaak at all.
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1	Page 27727 will drop you and we will cross-examine you. It is only to	1	Page 27729
			judgement of the single judge court.
2	be stated, Mr Chairman, in order to be rejected as a	2	And finally, Mr Chairman, in the Bophuthatswana
3	possibility.	3	General Division, the case of Dintwe – if I pronounce it
4	So this objection of stopping Mr Semenya or any	4	correctly – the head note reads in English, "The duty of
5	other counsel cross-examining Colonel Vermaak on anything	5	the legal practitioner who represents two accused on a
6	else is well-founded. We may be partly to blame of not	6	criminal trial and finds halfway through the case that
7	having thought so earlier on, but that would be no reason	7	there is a conflict of interest between the two accused, is
8	to continue with the irregular cross-examination of Colonel	8	that he must withdraw altogether from the case. This is so
9	Vermaak.	9	because if he continues to represent one of the accused he
10	The head note of the first case to which we have	10	will be obliged to cross-examine the other, as well
11	referred you to and we have provided with copies of –	11	possibly other witnesses. He cannot do this properly
12	CHAIRPERSON: Yes, I have received it and	12	without making use of information gained from his former
13	I've already I think expressed my gratitude to you for	13	client, the other accused. To make use of such information
14	that.	14	would amount to a flagrant breach of the confidential
15	MR BIZOS SC: Yes. The Moseli case, Mr	15	attorney and client relationship, which the law jealously
16	Chairman, in the Orange Free State, the judgment of his	16	protects. On the other hand he may find that in attempting
17	lordship Mr Justice Erasmus, I will read the English	17	not to prejudice his former client he limits his cross-
18	translation of the head note, Mr Chairman, which I submit	18	examination to the prejudice of the accused he's continuing
19	is absolutely spot on. "A Court will not allow the same	19	to represent."
20	advocate to defend two accused with material conflicting	20	These are the authorities that we are relying on
21	interests on a capital charge, nor to continue to defend	21	and we tend to agree with the difficulty that the police
22	one irrespective of his or their attitude after such	22	counsel team will find themselves in. There are numerous
23	interests have come to light." Now it may well be, Mr	22	witnesses. Some of them, and particularly the senior
23	Chairman, that my learned friend may be constrained to say	23 24	
24 25		24 25	officers, are potential accused in a criminal trial in the
20	this is not a trial. The fairness in which all legal and	25	future. The Commission's function is to ascertain the
	Page 27728		Page 27730
1	quasi legal tribunals are to operate apply to all of them,	1	truth. It requires the truth from every witness,
1 2	quasi legal tribunals are to operate apply to all of them,	1 2	truth. It requires the truth from every witness,
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	5	1	
1	Page 27731		Page 27733
1	put out for us to consider, and I think that we of	1	is a more appropriate –
2	necessity have to agree that in the absence of any future	2	MR MATHIBEDI SC: Thanks, Mr Chairman.
3	extension that we should follow those rules strictly.	3	It is not correct for Mr Bizos to argue that Mr Pretorius
4	To allow my learned friend Mr Semenya to cross-	4	did not represent Lieutenant-Colonel Vermaak in the
5	examine the witness on a new document of – I have numbered	5	relevant proceedings as an attorney. Mr Pretorius was
6	the pages, Mr Chairman, as almost 50, and where in the	6	there to protect both the interests of Lieutenant-Colonel
7	heads of argument of the police say that Mr Pretorius was	7	Vermaak and the South African Police Services. Now, the
8	not really his attorney, I don't know what he was. I took the trouble of counting the number of interventions of Mr	8	other aspect is that there is no evidence that any of the
9	0	9	SAPS members have been told that if you don't toe the line
10	Pretorius during the recording of that examination. I	10	you are going to be ditched. And of importance, Mr
11	accept Mr Pretorius's statement that we did not know when I	11	Chairman, is the fact that even Lieutenant-Colonel Vermaak
12	made my original submissions about burying the document,	12	was advised that the South African Police Services is
13	apparently I was wrong and didn't know about what had	13	prepared to fund an attorney or an advocate of his choice.
14	happened. I accept what he says in the heads of argument	14	Now that was surely intended to make sure that he does not
15	for the State that he recorded it with the knowledge of	15	suffer any prejudice.
16	the, if I read it correctly.	16 17	And with the issue of the irregularities we
17	[10:31] The witness and the knowledge of Mr Wesley that	17	respectfully submit that Lieutenant-Colonel Vermaak was
18	was there, but there can be no doubt that although most of	18	duly advised of his rights by the Commission. He was told
19 20	his interruptions, contribution, questions are petty, there are nevertheless sufficient grounds to believe that he was	19	that he is entitled to consult with an attorney or advocate
20	-	20	of his choice to be advised as to whether or not the legal
21	there in his capacity as the witness's attorney and for	21	team of SAPS can cross-examine him and he said he doesn't
22	those reasons, with respect, I would submit that we are entitled to the order in terms, that we set out in our	22	want to consult any attorney or advocate of his choice.
		23 24	Actually, instead he was prepared to be led by an advocate,
24 25	heads of argument. Thank you for a patient hearing, Mr Chairman.	24 25	by an evidence leader. Now we respectfully submit that the consultation
25	Ghairman.	23	Now we respectfully submit that the consultation
	Page 27732		Page 27734
1	CHAIRPERSON: Thank you, Mr Bizos. Mr	1	which occurred between Lieutenant-Colonel Vermaak, the
2	Semenya, are you going to – I've been given heads of	2	advocate – sorry, evidence leaders – and Mr Pretorius,
3	argument on behalf of the SAPS. They weren't, there's no	3	occurred in terms of regulation 5 and 7 which entitles
4	name at the end of them. Are you going to argue or is one	4	evidence leaders or the investigators of the Commission to
5	of your colleagues going to do so?	5	conduct any interviews with any of the South African Police
6	MR SEMENYA SC: My learned colleague is	6	Services witnesses or member, which has happened, and
7	going to present argument.	7	arising therefrom, that consultation, the process has been
8	MR MATHIBEDI SC: Thanks, Mr Chairman.	8	that the relevant evidence leaders will prepare a
9	Mr Bizos has correctly pointed out that it is the function	9	statement, make it available to the South African Police
10	of this Commission to establish the truth as what would	10	Services legal team which, in turn, the statement is made
11	have occurred. Now we submit, Mr Chairman, that that can	11	available to the relevant member for signature if he is
12	only happen if all the evidence is placed before the	12	satisfied with the contents thereof.
13	Commission and by cross-examining Lieutenant-Colonel	13	We respectfully submit that it is in that context
14	Vermaak, that's what the police seek to do, Mr Chairman.	14	that the consultation was held. We respectfully submit
15	Vermaak, that's what the police seek to do, Mr Chairman. Now it is neither the police intention nor the	14 15	that it is misplaced for any argument to be presented that
15 16	Vermaak, that's what the police seek to do, Mr Chairman. Now it is neither the police intention nor the legal team, to selectively put any version before the	14 15 16	that it is misplaced for any argument to be presented that during that consultation Adv Wesley was either SAPS or
15 16 17	Vermaak, that's what the police seek to do, Mr Chairman. Now it is neither the police intention nor the legal team, to selectively put any version before the Commission. It is the SAPS responsibility, and the legal	14 15 16 17	that it is misplaced for any argument to be presented that during that consultation Adv Wesley was either SAPS or Lieutenant-Colonel Vermaak's legal representative. We know
15 16 17 18	Vermaak, that's what the police seek to do, Mr Chairman. Now it is neither the police intention nor the legal team, to selectively put any version before the Commission. It is the SAPS responsibility, and the legal team, to place all the information, all the versions before	14 15 16 17 18	that it is misplaced for any argument to be presented that during that consultation Adv Wesley was either SAPS or Lieutenant-Colonel Vermaak's legal representative. We know that they attended the consultation in their capacity as
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1	Page 27735 Colonel Vermaak.	1	Page 27737 Now the other aspect is to ensure that there is no
2	Now, reference has been made or reliance is made	2	prejudice to Mr Vermaak as he testified, I've already
3	to the matter of State verus Dintwe at page 6 of the heads	3	indicated what measures have been put in place and we
4	of argument. Now I'm going to read line 5 of the quotation	4	respectfully submit that this is not a situation wherein
5	which reads as follows, "He cannot do this properly without	5	the SAPS legal team is representing two accused persons.
6	making use of information gained from his former client,	6	We submit that the legal team in this matter represents the
7	the other accused." I have already indicated that any	7	interests of the South African Police Services. We
8	information that was obtained during the consultation with	8	respectfully submit that the argument advanced that the
9	Lieutenant-Colonel Vermaak will not be used. To make use	9	South African Police Service legal team is not entitled to
10	of such information will amount to a flagrant breach of the	10	cross-examine Lieutenant-Colonel Vermaak based on the fact
11	confidential attorney and client relationship which the law	11	that there is an attorney and client relationship, we
12	jealously protects.	12	respectfully submit that that argument does not hold water.
13	Now we submit that because that consultation did	13	That's my argument, Mr Chairperson.
14	not occur in the context of attorney and client	14	CHAIRPERSON: Yes, thank you very much.
15	relationship because of the presence of the evidence	15	Mr Bizos, do you –
16	leaders, that consultation occurred in terms of regulation	16	MS LE ROUX: Chair, before –
17	7. That being the case, we respectfully submit that SAPS	17	CHAIRPERSON: Yes?
18	legal team is entitled to cross-examine Lieutenant-Colonel	18	MS LE ROUX: Chair, before Mr Bizos
19	Vermaak using any information that was obtained during that	19	replies if I could just place two short submissions on the
20	consultation and this is what SAPS legal team seeks to do	20	record for the Human Rights –
21	and, Mr Chairman, for this contention to hold water we	21	CHAIRPERSON: You haven't given us any
22	respectfully submit that it should be establish that the	22	heads.
23	consultation was held with the view to - was held, one, in	23	MS LE ROUX: No, we don't have heads.
24	confidentiality, two, with a view to instituting legal	24	They're very short –
25	proceedings which we respectfully submit that that is not	25	CHAIRPERSON: Alright.
	Page 27736		Page 27738
1	Page 27736 applicable in this matter. And the other point is that we	1	Page 27738 MS LE ROUX: - submissions, Chair.
1 2	9	1 2	-
	applicable in this matter. And the other point is that we		MS LE ROUX: - submissions, Chair.
2	applicable in this matter. And the other point is that we submitted that there are no parties before this Commission.	2	MS LE ROUX: - submissions, Chair. Firstly it's to note that the Human Rights Commission,
2 3	applicable in this matter. And the other point is that we submitted that there are no parties before this Commission. Any person who testifies, testifies such as a witness.	2 3	MS LE ROUX: - submissions, Chair. Firstly it's to note that the Human Rights Commission, obviously I don't intend to take the legal arguments made
2 3 4	applicable in this matter. And the other point is that we submitted that there are no parties before this Commission. Any person who testifies, testifies such as a witness. CHAIRPERSON: Well, the argument that	2 3 4	MS LE ROUX: - submissions, Chair. Firstly it's to note that the Human Rights Commission, obviously I don't intend to take the legal arguments made by my learned friend Mr Bizos any further but I do wish to
2 3 4 5	applicable in this matter. And the other point is that we submitted that there are no parties before this Commission. Any person who testifies, testifies such as a witness. CHAIRPERSON: Well, the argument that there were no parties before this Commission was dealt with	2 3 4 5	MS LE ROUX: - submissions, Chair. Firstly it's to note that the Human Rights Commission, obviously I don't intend to take the legal arguments made by my learned friend Mr Bizos any further but I do wish to record that the Human Rights Commission shares the concerns
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1	Page 27739	1	Page 27741
1	application made by the Legal Resources Centre and we align	1	I've recorded this last submission correctly. You say when
2	ourselves with the submissions made by our learned friend	2	they, that's the police, offered to find another attorney
3	Mr Bizos. Thank you, Chair.	3	for the Colonel –
4	CHAIRPERSON: Thank you. Does anybody	4	MR BIZOS SC: That was an admission that
5	else wish to either align him or herself or not align him	5	they were the attorneys of record, that they were his
6	or herself with the arguments that have been advanced? Mr	6	attorneys.
7	Ntsebeza, you raised your hand but I see also Ms Lewis has	7	CHAIRPERSON: [Microphone off, inaudible]
8	got her light on, so are you waiving your seniority in her	8	- that was an admission that they were, up till then -
9	favour or what's going to happen?	9	MR BIZOS SC: His attorneys. Mr
10	MR NTSEBEZA SC: [Microphone off,	10	Chairman, I am even prepared, for the purposes of this
11	inaudible]	11	argument, that Colonel Vermaak said let's get on with it.
12	CHAIRPERSON: Ms Lewis?	12	I don't really blame him because he probably, he probably
13	MS LEWIS: Mr Chair, on behalf of the	13	having had an admonition from the Commissioner of Police
14	families we support the representations made by the LRC and	14	and called names and accused of doing skelm things, had had
15	we align ourselves with that for the reasons stated by Mr	15	enough of it and he wanted to get away with, from it all.
16	Bizos.	16	That does not mean that he has abandoned any of the
17	CHAIRPERSON: Thank you. Does anybody	17	privileges that he has or that he really did not want to be
18	else wish to align himself or herself or not align himself	18	advised by another legal representative. I think that the
19	or herself with what's been said? No. Mr Bizos, do you	19	Commission should protect him. He has the right to consult
20	wish to reply?	20	the person who led him, for advice, but that is not
21	MR BIZOS SC: Very briefly, Mr Chairman,	21	something that this Commission has to decide. It's the
22	I want to thank our colleagues for the support that they	22	right of the witness and the right of the evidence leaders
23	have expressed. In reply I want to pose the question, Mr	23	to jointly decide what his attitude is but I emphasise the
24	Chairman, are the police saying that they do not regard the	24	fact that the authority says that even if he consents, he
25	witnesses that they are calling to give a version, whether	25	can't consent to an unfair way of being treated. Yes, they
	B		
1	Page 27740	1	Page 27742
1	for or against the interests of the police officials,	1	were there, with respect, to protect – who is this, sorry –
2	for or against the interests of the police officials, and/or the victims, that the people that they are	2	were there, with respect, to protect – who is this, sorry – informed that it was said that the police at a stage said
2 3	for or against the interests of the police officials, and/or the victims, that the people that they are consulting are not their clients –	2 3	were there, with respect, to protect – who is this, sorry – informed that it was said that the police at a stage said that they were there to protect SAPS and Vermaak. There is
2 3 4	for or against the interests of the police officials, and/or the victims, that the people that they are consulting are not their clients – CHAIRPERSON: Sorry, you said they wanted	2 3 4	were there, with respect, to protect – who is this, sorry – informed that it was said that the police at a stage said that they were there to protect SAPS and Vermaak. There is no substance, in our submission, to the objections raised
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1	over but we will now take the tea adjournment.	1	- and this is reference to whether there should be a cordon
2	[COMMISSION ADJOURNS COMMISSION RESUMES]	2	and search – "all the others had a separate view. Now did
3	[11:26] CHAIRPERSON: The Commission resumes. I	3	they simply ignore what you said, or did they point out to
4	have considered the arguments that were advanced this	4	you that there might be certain difficulties with what you
5	morning in support of and against the application brought	5	were suggesting?" There your answer is, "Chair, there was
6	by the Legal Resources Centre on behalf of the Ledingoane	6	only once, I think it was on the 15th if I remember
7	family, and I've come to the conclusion that the ruling	7	correctly, where I was told that they haven't got
8	sought by the LRC in paragraph 21 of their heads of	8	information to go and cordon and search the hostel and then
9	argument cannot be granted. The application therefore is	9	I explained to them why did I still suggest that it must be
10	refused. My reasons will be given in the final report of	10	done." You see that?
11	this Commission, unless they are required earlier.	11	COLONEL VERMAAK: That's correct.
12	Colonel, you're still bound by the affirmation you made.	12	MR SEMENYA SC: So in one breath I ask
13	SALMON JOHANNES VERMAAK: That's correct,	13	you did you just give this information to the Commissioner
14	Chair.	14	Hemraj and you say no. Is there an explanation, Colonel?
15	CHAIRPERSON: Mr Semenya.	15	COLONEL VERMAAK: There was nobody who
16	CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):	16	was accepting my proposal and I –
17	Thank you, Chair. Can I ask that we go to the transcript,	17	MR SEMENYA SC: But you heard my
18	the last day of the hearing, on page 27719, the 30th of	18	question –
19	April 2014. Colonel, you will see against line 8 I ask	19	COLONEL VERMAAK: I also says on a, I did
20	you, and it reads there, "Thank you. Thank you, Chair.	20	see it on the transcript that I said Brigadier Engelbrecht
21	Colonel, did you in response to Commissioner Hemraj's	21	at one stage said that they don't have any information and
22	question to you say that you were told that there is	22	they have got a problem to obtain information.
23	inadequate information to implement your plan?" Do you see	23	MR SEMENYA SC: And then to that question
24	that?	24	I asked you the next.
25	COLONEL VERMAAK: That's correct.	25	"Did you just say no, no information was given to you, the
	Page 27744		Page 27746
1	MR SEMENYA SC: And to that you say,	1	reasons were not offered why your idea should not carry?"
1 2	MR SEMENYA SC: And to that you say, "No," and then I go, "Okay, we'll start with that on the	1 2	reasons were not offered why your idea should not carry?" and you say no. Now my question to you is, Colonel,
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2 3 4	MR SEMENYA SC: And to that you say, "No," and then I go, "Okay, we'll start with that on the record when we resume. I intend to be good to my word there." You see that?	2	reasons were not offered why your idea should not carry?" and you say no. Now my question to you is, Colonel, please, how do you explain just giving conflicting answers to the same question?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MR SEMENYA SC: And to that you say, "No," and then I go, "Okay, we'll start with that on the record when we resume. I intend to be good to my word there." You see that? COLONEL VERMAAK: That's correct. I can only mention the "No" was that there was no information. I didn't say no, there was not mentioned any information was given. MR SEMENYA SC: No, no, no, Colonel, please. I asked you directly, "Did you in response to Commissioner Hemraj's question say that you were not told that there is inadequate information to implement your plan?" You say, "No." That's not what you answered. Now can I take you to the relevant portion of the transcript? Can I invite you to look at page 27714 – CHAIRPERSON: I'm told someone's – sorry to interrupt you, Mr Semenya. I'm told someone has his or her phone on. I'd be grateful if it were put off, and if it's not put off and it rings I will ask the owner thereof to leave the chamber. I don't know what I'll do if it's Mr Semenya, but we'll cross that bridge if we get there. MR SEMENYA SC: Yes. Can we now go to	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	reasons were not offered why your idea should not carry?" and you say no. Now my question to you is, Colonel, please, how do you explain just giving conflicting answers to the same question? COLONEL VERMAAK: The answer was no, they didn't give any information and they said they haven't got any information. MR SEMENYA SC: No, but that's not an answer to my question now. I'm saying can you explain the conflicting versions you're giving? COLONEL VERMAAK: I think if you read it in the right context you will see that was the meaning at the end of the day. MR SEMENYA SC: Chair, I placed before you and circulated to colleagues what I propose to mark as exhibit OOO39, which is a AVL report of the motor vehicle belonging to, or under the control of Colonel Vermaak. CHAIRPERSON: Sorry, Mr Semenya, according to my notes OOO39 is the Helicopter Operations Manual, section 10 updated version. So the new document will therefore be OOO40. MR SEMENYA SC: I thank you, Chair.

	Page 27747		Page 27749
1	Manual is 00038.	1	"07:37:16 ignition off," and then just the second, just
2	CHAIRPERSON: Oh, well I – no, but there	2	under it, 07:53:57, start again. So there's definitely a
3	were two, you see. One was put in –	3	problem with this record. What –
4	MS PILLAY: That's correct, Chair,	4	CHAIRPERSON: There's a further point,
5	that's –	5	isn't there? The GPS is unlocked and the ignition is off
6	CHAIRPERSON: - which was the old one,	6	apparently at shortly after 5AM.
7	the original issue.	7	COLONEL VERMAAK: That's correct, Chair.
8	MS PILLAY: That's 37. That's OOO37.	8	CHAIRPERSON: And then the vehicle only
9	CHAIRPERSON: Well, my notes say that's	9	starts up two hours later.
		10	COLONEL VERMAAK: That's correct.
10	38. My notes say 37 is complaints of misconduct against	11	
11	Colonel Vermaak.		CHAIRPERSON: Now that's a bit unlikely
12	MS PILLAY: Oh, I see. That OOO37, I was	12	that you'd unlock the GPS at 5 o'clock and done nothing
13	under the impression that it wasn't properly marked as yet	13	again until 7.
14	because the document had to be amended still, Chair.	14	COLONEL VERMAAK: Precisely, Chair.
15	CHAIRPERSON: Oh well, I didn't mark it.	15	MR SEMENYA SC: So your evidence is that
16	MS PILLAY: Or you marked it as –	16	this record is incorrect?
17	CHAIRPERSON: So I'm right, okay. So it	17	COLONEL VERMAAK: That's correct.
18	is OOO40, AVL report. Is that what it's called, AVL	18	MR SEMENYA SC: And you can't point us to
19	report? Of, this is now 40, OOO40, AVL report, of whose	19	the technical error of the instrument?
20	vehicle? Is this the witness's vehicle?	20	COLONEL VERMAAK: I know that there are
21	MR SEMENYA SC: That's will be the	21	some vehicles that are experiencing problems. I also know
22	evidence. Colonel, can you confirm BSN395B is your	22	that Captain Visagie from Rustenburg, who is also AVL
23	vehicle?	23	manager, have mentioned to me that the AVL is not correct;
24	COLONEL VERMAAK: That's correct.	24	their times from time to time differ from what actually is
25	MR SEMENYA SC: You'll see in terms of	25	and according to the report that is being printed out.
	Page 27748		Page 27750
1	this document it records the movement of your vehicle on	1	MR SEMENYA SC: But if the transcript is
2	this document it records the movement of your vehicle on the 16th.	2	MR SEMENYA SC: But if the transcript is proved correct then your evidence before this Commission
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1	time can't be correct. Your argument – not your argument -	1	15th. The evidence is – perhaps I should clarify the
2	your evidence is that this is wrong –	2	question a bit for you slightly because it's a little bit
3	COLONEL VERMAAK: That's correct, Chair.	3	truncated. The evidence before us is that at a meeting of
4	CHAIRPERSON: - and you were in the JOC.	4	the National Management Forum of the police held on the
5	But if it's right then your evidence is contradicted, but	5	Wednesday evening, according to the minute – now there's a
6	your contention, as I understand it, is it isn't right. Am	6	dispute about it, but according to the minute she made a
7	I correct?	7	proposal which was endorsed by those present, which was all
8	COLONEL VERMAAK: That's correct, Chair.	8	the provincial commissioners and some others from head
9	CHAIRPERSON: Ja, am I right?	9	office, that a tactical option should be undertaken. She
10	COLONEL VERMAAK: That's correct, Chair.	10	gave her evidence that what was agreed, although the minute
11	If I can, I, if you only can have also a copy of the	11	doesn't actually say that, was that that would happen on
12	minutes of the JOC on that morning then we can see if I was	12	the Thursday.
13	in the JOC and if I was late in the JOC it should have been	13	The police version is it was her decision and
14	minuted because why the chairperson is not allowing people	14	they've got some explanations about the minute and so on,
15	to attend late to the JOC meetings.	15	but what is common cause, or rather what is clear on the
16	COMMISSIONER HEMRAJ: Do I understand	16	police version is that the decision to act, to implement
17	that this system has correctly recorded the locations, but	17	the tactical option on the Thursday was made at the
18	not the times? Is that what you're saying, or is all of it	18	Management Forum meeting on the Wednesday night in the
19	wrong?	19	absence of any information as to what the state of play
20	COLONEL VERMAAK: Chair, the, I believe	20	was, what was happening, who was where, who was doing what
21	the locations could be - no, it couldn't be correct because	21	on the Thursday. It was taken the night before, based
22	why if you go and compare it then with the GPS you will	22	obviously on what had happened before that, or it was
23	establish precisely where it was at that stage. So	23	understood possibly to be what was going on at that moment.
24	according to me it is possible that the GPS reading is also	24	That's the basis of the question.
25	not correct.	25	Now what you were asked by Mr Semenya was that
	Page 27752		Page 27754
1	Page 27752 MR SEMENYA SC: GPS is also not correct,	1	Page 27754 decision, which he describes as the Provincial
1 2	•	1 2	-
	MR SEMENYA SC: GPS is also not correct,		decision, which he describes as the Provincial
2	MR SEMENYA SC: GPS is also not correct, you say? Colonel?	2	decision, which he describes as the Provincial Commissioner's decision, the Commission may – it's not
2 3	MR SEMENYA SC: GPS is also not correct, you say? Colonel? COLONEL VERMAAK: Yes.	2 3	decision, which he describes as the Provincial Commissioner's decision, the Commission may – it's not clear at this stage – may find it was more than just the
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	Dogo 27755		Dego 27757
1	Page 27755 Then the Chairperson says, "Sorry to interrupt you. So you	1	Page 27757 9 and 10 on the page we're looking at was, he's saying it's
2	are saying it is irresponsible to say on Wednesday,	2	irresponsible to say on Wednesday, Thursday will be D-day.
3	Thursday will be D-day, even if that language wasn't used	3	That's what the witness said. He also said you can't say
4	on Wednesday, that was the idea conveyed and you say that's	4	that a general command or order to disarm is in itself
5	irresponsible. Do you see that?	5	irresponsible, it depends on the circumstances. So I think
6	COLONEL VERMAAK: That's correct.	6	you should reformulate your question to put it precisely to
7	MR SEMENYA SC: So you ascribe as	7	the witness.
, 8	irresponsible the decision of the PC, or it may later prove	8	MR SEMENYA SC: For the PC to say on a
9	to be more, the decision that they must be disarmed and you	9	Wednesday police must disarm armed people the following
10	say you can't take that type of decision particularly	10	day, you say that's irresponsible?
11	because you don't know what the following day may unfold.	11	COLONEL VERMAAK: That is correct.
12	COLONEL VERMAAK: That is correct.	12	MR SEMENYA SC: Okay. And you say you do
13	MR SEMENYA SC: It's a very serious	13	know, or don't you, that at that time the PC is not saying
14	criticism by somebody senior as you are, Colonel. Do you	14	how they should be disarmed, correct?
15	accept that at least?	15	COLONEL VERMAAK: Chair, are you
16	COLONEL VERMAAK: I do accept.	16	referring to the 15th or the 14th, the night –
17	MR SEMENYA SC: Now let us look at the	17	MR SEMENYA SC: No, to the 15th, Colonel.
18	context. You do know that the Provincial Commissioner when	18	COLONEL VERMAAK: The first –
19	she took the decision, she did not prescribe how the people	19	MR SEMENYA SC: Ja, what the PC doesn't
20	were to be disarmed, correct?	20	do is how those people, does not instruct how those people
21	COLONEL VERMAAK: Chair, I wasn't present	21	must be disarmed, correct?
22	when she made the instruction.	22	COLONEL VERMAAK: That is correct.
23	MR SEMENYA SC: No, but I –	23	MR SEMENYA SC: And you still maintain
24	COLONEL VERMAAK: And I can't say what	24	it's irresponsible still?
25	was her instruction on that stage precisely.	25	COLONEL VERMAAK: That's correct.
	Page 27756		Page 27758
1	MR SEMENYA SC: No, but at least even	1	MR SEMENYA SC: Okay. I thought I
1 2	MR SEMENYA SC: No, but at least even with the lack of information, you describe as irresponsible	1 2	MR SEMENYA SC: Okay. I thought I understood your evidence to be that you also were of the
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1 2 3 4 5 6	Page 27759 CHAIRPERSON: That's the distinction that - COLONEL VERMAAK: That is correct, Chair. MR SEMENYA SC: No – no, Colonel, that's not my question. COLONEL VERMAAK: Well, then me – the	1 2 3 4 5 6	Page 27761 decided the how the disarmament was to happen, am I correct? COLONEL VERMAAK: That is correct, but I must also state that according to information the PC was in the JOC when they started implementing the plan. MR SEMENYA SC: And you know the PC was
7	Chair and I don't understand the question.	7	not part of the plan on the how it should be done, correct?
8 9	MR SEMENYA SC: No, that's not my question. The PC did not say people must be disarmed at	8 9	COLONEL VERMAAK: I can't comment – MR SEMENYA SC: You were in the JOC, you
10	the koppie, she didn't do that. She didn't say that. She	10	
11	didn't even say how they should be disarmed but you	11	COLONEL VERMAAK: Chair, I cannot comment
12	maintain that that decision is irresponsible. Now I'm	12	on that because why, I wasn't in the JOC when they made
13	testing you. Weren't you of the mind as well that the	13	that decisions.
14	people must be disarmed?	14	MR SEMENYA SC: No, but you were there
15	COLONEL VERMAAK: The decision to unarm –	15	when the plan was discussed. Was the PC there?
16	well, can I answer the question, Chair? The decision to	16	COLONEL VERMAAK: Excuse me?
17	unarm the people at the koppie, the instruction to disarm	17	MR SEMENYA SC: You said you were there
18	them is when they were at the koppie all the time, so where	18	when the plan was discussed.
19	else would they go and unarm them?	19	COLONEL VERMAAK: The morning. The
20	MR SEMENYA SC: At least on your version	20	afternoon, the afternoon there was a different plan that
21	that there'd be a cordon and search of the hostel.	21	was conveyed to members on the ground by Colonel Scott. So
22	COLONEL VERMAAK: That's correct.	22	I wasn't there in the afternoon when that decisions were
23	MR SEMENYA SC: People did not even go	23	taken.
24	there.	24	MR SEMENYA SC: Were you ever, was the PC
25	COLONEL VERMAAK: That is correct is,	25	ever present when the plan on the "how" was discussed?
	Page 27760		Page 27762
1	Page 27760 that was -	1	Page 27762 COLONEL VERMAAK: Chair, I don't know if
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1	Page 27763	1	Page 27765
1	MR SEMENYA SC: No – no, I'm going	1	MR SEMENYA SC: Okay. Now if I also
2	further than that, Colonel. I'm saying all occasions when	2	understand your evidence, really the criticism is the, how
3	you were present and the plan was discussed, did you see	3	the disarmament is to happen, it's not the fact that the
4	the PC there at any stage?	4	people must be disarmed.
5	COLONEL VERMAAK: Now your question is	5	COLONEL VERMAAK: No, no. I don't say
6	clear. No.	6	how they must unarm them. I said the fact that they, under
7	MR SEMENYA SC: And yet you still say the	7	that circumstances, tried to unarm the people was
8	decision is irresponsible, when she did not participate in	8	irresponsible. I never said a way, how they must do or
9	how it should be implemented.	9	should have done it.
10	MS PILLAY: Chair, if I could just	10	MR SEMENYA SC: I'm a little confused
11	indicate and in fairness to the witness, any questioning	11	now. I thought the suggestion you made in the JOC was, we
12	around his testimony that the decision of the PC was	12	must go and disarm these people but we should do it rather
13	irresponsible must be done in the context of the evidence	13	with a cordon and search first.
14	at the time and the question asked by Mr Bizos at the time,	14	COLONEL VERMAAK: Chair, I think then Mr
15	because the question around the decision of the PC was a	15	Semenya must refer to the date which he is asking the
16	very specific question.	16	question of.
17	CHAIRPERSON: Let's have a look in the	17	MR SEMENYA SC: I'm not sure that it
18	transcript in the passage immediately preceding –	18	matters but is there an answer to my question, that the
19	MS PILLAY: Chair, it's page 25670.	19	thrust of your objection, the thrust of your objection was,
20	CHAIRPERSON: Sorry, 25?	20	to disarm the people it is preferable the cordon and search
21	MS PILLAY: 25670.	21	of hostels must happen first. Was that not the basis of
22	CHAIRPERSON: Let's have a look at that	22 23	your objection? COLONEL VERMAAK: Yes. I said they must
23	page and see whether your objection is correct. What line	23 24	COLONEL VERMAAK: Yes. I said they must first consider a hostel search and disarm the people if
24 25	 are you referring to line 14 and following? MS PILLAY: Picking up from line 14. 	24 25	they could get any arms during that process.
20	MS PILLAY: Picking up from line 14.	20	they could get any arms during that process.
	Page 27764		
			Page 27766
1	CHAIRPERSON: So Mr Bizos says, "Colonel,	1	Page 27766 MR SEMENYA SC: So that they must be
1 2	<u> </u>	1 2	-
	CHAIRPERSON: So Mr Bizos says, "Colonel,		MR SEMENYA SC: So that they must be
2	CHAIRPERSON: So Mr Bizos says, "Colonel, I'm going to suggest to you that common sense where you	2	MR SEMENYA SC: So that they must be disarmed, you were in agreement. You just did not approve
2 3	CHAIRPERSON: So Mr Bizos says, "Colonel, I'm going to suggest to you that common sense where you have a volatile situation and a decision taken beforehand	2 3	MR SEMENYA SC: So that they must be disarmed, you were in agreement. You just did not approve the how it was to happen that was suggested by JOCCOM, that
2 3 4	CHAIRPERSON: So Mr Bizos says, "Colonel, I'm going to suggest to you that common sense where you have a volatile situation and a decision taken beforehand that at a certain time on the afternoon of the 16th there	2 3 4	MR SEMENYA SC: So that they must be disarmed, you were in agreement. You just did not approve the how it was to happen that was suggested by JOCCOM, that was decided by JOCCOM.
2 3 4 5	CHAIRPERSON: So Mr Bizos says, "Colonel, I'm going to suggest to you that common sense where you have a volatile situation and a decision taken beforehand that at a certain time on the afternoon of the 16th there will be a force used which would inevitably result in the	2 3 4 5	MR SEMENYA SC: So that they must be disarmed, you were in agreement. You just did not approve the how it was to happen that was suggested by JOCCOM, that was decided by JOCCOM. COLONEL VERMAAK: Not the how, the date
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1	during consultations.	1	phrase the witness himself used. What the witness said in
2	MR SEMENYA SC: No, I'm repeating your	2	his statement and in his evidence was that when the people
3	evidence, Colonel. I don't know why you're going there.	3	have taken muti, they think they're invincible and they
4	CHAIRPERSON: - points in your statement,	4	become - I think that was more or less the word he used -
5	you see. The statement you made which was put in as an	5	they become an impi. It's a shorthand expression that he
6	exhibit is something different and obviously you can be	6	used to describe a militant group. In LLL8 which has been
7	asked questions about things that are in the statement,	7	handed in, in his evidence, earlier before he gave
8	there's nothing confidential about that, there's no	8	evidence, in paragraph 9 he quotes in full the text message
9	privilege attaching to that. It was a statement made for	9	which he sent to Brigadier Garnett on Tuesday the 14th,
10	submission to the Commission, so counsel is perfectly	10	where he says the following. I'll read it in Afrikaans,
11	entitled to ask you about that, I think. He can't ask you	11	then I'll translate it. "06:37 Môre brigadier," good
12	anything about things that he discussed with you in his	12	morning Brigadier, "jammer ek is so vroeg met 'n boodskap."
13	consultation with you because he undertook not to do that	13	Sorry I'm so early with a message. "Hierdie offisiere het
14	and I wouldn't allow that anyway, but he's not asking you	14	geen ondervinding van mynonluste nie." These officers have
15	about that. As I understand it, he's asking you – am I	15	got no experience of mine unrest. "Hierdie lot sal nou
16	correct, Mr Semenya – about material which is contained in	16	baklei tot die dood toe omdat hulle by die toordokter was
17	the various statements you made for submission to the	17	en glo hulle dat geen koeël hulle kan doodmaak nie." This
18	Commission. Perhaps it would help the witness if you drew	18	lot – the reference now is not to the officers but to the
19	his attention to a particular passage in one of those	19	strikers, hierdie lot, this lot will now fight until the
20	statements so that he could focus on the point that you're	20	death because they've been to the witchdoctor – the
21	dealing with.	21	sangoma, I take it – and they believe that no, "dat geen
22	MR SEMENYA SC: Colonel, I can do that	22	koeël hulle kan doodmaak nie," that no bullet can kill
23	but are you having difficulties in the question I put to	23	them. "Hulle is nou impi's." They are now impis. So
24	you?	24	that's the phrase the witness used and that's the basis of
25	COLONEL VERMAAK: Well, that point was	25	the question. I understand possibly why you raise some
	Page 27768	1	Page 27770
1	also been discussed during our interviews but yes, you can	1	kind of query in regard to it but I think it's clear in the
2	also been discussed during our interviews but yes, you can continue with the question.	2	kind of query in regard to it but I think it's clear in the context of what this witness has already said, to which Mr
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	Page 27771		Page 27773
1	police experience, experience when trainers test the	1	And the fact that you had been involved in the Stilfontein
2	effectiveness of bullets, rubber, when people is wearing	2	incident is reflected inter alia in the IRIS report. So
3	blankets, they knew that will not be effective to stop the	3	again it's a matter which you could be asked about, even if
4	crowd.	4	you'd never consulted with the police, isn't that correct?
5	MR SEMENYA SC: So –	5	COLONEL VERMAAK: That's correct.
6	CHAIRPERSON: Apart from that – sorry,	6	CHAIRPERSON: Alright. So what does the
7	apart from that, on the 13th were rubber balls fired?	7	video show? You say you gave a video, never mind the fact
8	COLONEL VERMAAK: That's correct, Chair.	, 8	that you gave them a video, you didn't give it to us so
9	CHAIRPERSON: Did they help?	9	tell me, what did his video of the Stilfontein incident
		-	
10	COLONEL VERMAAK: No, Chair.	10	show?
11	MR SEMENYA SC: So no official POP	11	COLONEL VERMAAK: Chair, just after the
12	equipment would be able to manage the impi-like people when	12	incident, as I already testified, that I always have my
13	they're in that formation, correct?	13	video operators with me, it was shown where the people were
14	COLONEL VERMAAK: That is correct.	14	shot dead. It was shown where we go through the hostel and
15	MR SEMENYA SC: In fact, you even put it	15	searched for people who have been wounded during that
16	higher and say even the STF would falter here.	16	incident. We did get some people in the hostel rooms who
17	COLONEL VERMAAK: That's correct because	17	was wounded. That specific video was never been published
18	why, they don't have any experience of crowd management.	18	or given to anybody else except for the investigating
19	They only have sharp ammunition and to use sharp	19	officers and now for the legal team of the police.
20	ammunition, according to me, that's a failure.	20	MS BARNES: Chair, I'm sorry to interrupt
21	MR SEMENYA SC: So the answer to my	21	but we're a little bit concerned. As we understand it, the
22	question is, no POP equipment would be adequate to deal	22	arrangement is that Adv Semenya cross-examines this witness
23	with the threat.	23	but on the basis that nothing that was discussed at
24	COLONEL VERMAAK: At the 16th.	24	consultations between the two is dealt with in cross-
25	MR SEMENYA SC: Yes.	25	examination. Now this is the second time –
	Page 27772		Page 27774
1	COLONEL VERMAAK: Yes.	1	Page 27774 CHAIRPERSON: Yes, yes, I hear you but of
1 2	-	1 2	<u> </u>
	COLONEL VERMAAK: Yes.		CHAIRPERSON: Yes, yes, I hear you but of
2	COLONEL VERMAAK: Yes. MR SEMENYA SC: Okay. Can I invite you	2	CHAIRPERSON: Yes, yes, I hear you but of course if it's common cause that there was a Stilfontein
2 3	COLONEL VERMAAK: Yes. MR SEMENYA SC: Okay. Can I invite you to look at one of the incidents which you commanded, the	2 3	CHAIRPERSON: Yes, yes, I hear you but of course if it's common cause that there was a Stilfontein incident and that appears from the IRIS report, he can
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1	Page 27775 MS PILLAY: Chair, just to demonstrate –	1	Page 27777
2	CHAIRPERSON: To whom was the video	1	evidence leaders can't see it. COLONEL VERMAAK: No, no.
2		2	
4	given? COLONEL VERMAAK: To Mr Pretorius.	3 4	CHAIRPERSON: Alright, so you can carry
4 5	CHAIRPERSON: And only to Mr Pretorius?	4 5	on – MS PILLAY: Chair, just to understand the
6	COLONEL VERMAAK: That's correct, Chair.	6	witness's concerns, I think it's important to ask him the
7	CHAIRPERSON: Where had it been before	7	basis on which the Stilfontein incident was discussed with
8	that?	8	his then legal representative.
9	COLONEL VERMAAK: In my possession.	9	CHAIRPERSON: Isn't it more relevant to
10	CHAIRPERSON: In your official capacity?	10	know on what basis the Stilfontein incident was discussed
11	COLONEL VERMAAK: That's correct, Chair.	10	with the evidence leaders? That wasn't a privileged
12	CHAIRPERSON: So in your official	12	consultation, that's why I refused the application that we
13	capacity as a member of the SAPS you had a video –	12	heard earlier.
14			
14	COLONEL VERMAAK: That's correct, Chair. CHAIRPERSON: - taken for the SAPS –	14	
	COLONEL VERMAAK: That's correct.	15	particular instance it was a privileged consultation and if
16		16	the witness could clarify the basis on which he discussed
17	CHAIRPERSON: - and if anyone in the SAPS	17	the Stilfontein incident with his then legal representative
18 19	had asked you long before Marikana, had asked you about the Stilfontein incident –	18	
20	COLONEL VERMAAK: No, Chair.	19	CHAIRPERSON: No, no – MS PILLAY: I think –
20	CHAIRPERSON: - they would have seen the	20 21	CHAIRPERSON: I'm not interested in the
21	video, would they?	21	basis upon which he discussed it with his then legal
22	COLONEL VERMAAK: Never.	22	representative, that would be privileged. I don't think we
23 24	CHAIRPERSON: On what basis could you –	23 24	can go there but if it was also discussed with the evidence
24	if they had, if someone had come to you in 2010 and said	24 25	leaders then there isn't a problem in relation to the
	Page 27776		Page 27778
1	look here, there was an incident at Stilfontein, we see it	1	discussion with the evidence leaders, and that's the only
2	in the IRIS report, have you got a video about it, you'd	2	part I'm concerned with. Any questions relating to
3	have said yes, right?	3	discussions between Mr Semenya and his team with the
4	COLONEL VERMAAK: I will consider to whom	4	witness relating to the Stilfontein incident I will not
5	I'm giving it, Chair.	5	allow to be asked. The witness has the surety of knowing,
6	CHAIRPERSON: Yes, well, but if a member	6	the certainty of knowing that that won't happen but
7	of the SAPS had come from, say, head office and asked you	7	inasmuch as he mentioned it to the evidence leaders and in
8	about it, you would have given it to him, wouldn't you?	8	fact they then asked for the video and he said, he either
9	COLONEL VERMAAK: Ja, for them I will	9	said or impliedly consented to Mr Pretorius handing over
10	give it.	10	the video to the evidence leaders, there's no privilege.
11	CHAIRPERSON: It wouldn't have been	11	MS PILLAY: With the exception, Chair,
12	confidential even in relation to another member of the	12	that the information comes to or it derived, it comes to
13	SAPS.	13	the knowledge of this present team as a result of a
14	COLONEL VERMAAK: No.	14	privileged consultation. That is the concern.
15	CHAIRPERSON: No.	15	CHAIRPERSON: But the evidence – did the
16	MS PILLAY: Chair –	16	evidence leaders, are you suggesting that the evidence
17	CHAIRPERSON: And did you give it to the	17	leaders would have been precluded from – assuming he'd been
18	evidence leaders as well?	18	called as a witness for the SAPS, they hadn't executed the
19	COLONEL VERMAAK: It was asked for Mr	19 20	volte face which subsequently took place, he'd given
20	Pretorius and he undertook that he will give it –	20	evidence as an SAPS member, are you saying that the
21	CHAIRPERSON: So the evidence leaders	21	evidence leaders couldn't have asked him about the
22	asked for it also?	22	Stilfontein incident?
23 24	COLONEL VERMAAK: I mentioned it to them. CHAIRPERSON: And the evidence leaders	23 24	MS PILLAY: Had we known about it we could have asked it. The issue is on what basis he brought
24 25	obviously, you didn't have any basis for saying the	24 25	the Stilfontein incident to the attention of his legal
	obviously, you didn't have any basis for saying the	20	are sanoneen modern to the attention of this legal
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1	Page 27779 representative, that's the issue, Chair.	1	Page 27781 an SAPS member, I don't see a problem. So the ruling I
2	MR SEMENYA SC: Chair, if I may?	2	give is that depending upon the circumstances in which the
3	CHAIRPERSON: Yes, Mr Semenya.	3	video was mentioned, if it was mentioned also in non-
4	MR SEMENYA SC: The witness has testified	4	privileged circumstances such as in a consultation with Mr
		4 5	
5	here that Marikana was not an exception. It happened in	-	Wesley, the questions may be asked.
6	Stilfontein and it is that Stilfontein we are getting into	6	COLONEL VERMAAK: Chair, if I may put
7	with my line of questions. I can't see why it would be	7	some light on the – when I was consulting with the police
8	objectionable.	8	legal team I was asked if there's any other serious
9	CHAIRPERSON: Mr Semenya, you'll forgive	9	incidents where I was involved in because why, I must
10	my saying what you can't see isn't relevant but you submit	10	remember during the Commission they will go into my history
11	that there's nothing unfair about it, yes. Anything	11	to make sure if there was other serious incidents where I
12	further you want to say, Ms Pillay?	12	was in charge or where I have taken some decisions. Now I
13	MS PILLAY: Chair, we've raised our	13	mentioned to them that I have got a video of it and I was
14	concerns.	14	asked if it is possible that I can give a copy to them. It
15	CHAIRPERSON: I've noted them. You may	15	was only mentioned, well, to Mr Wesley that there is a
16	proceed, Mr Semenya, but please make sure you keep away	16	video of my involvement in that and thereafter I gave it to
17	from anything that took place while you were consulting	17	Mr Pretorius and nobody else asked me any questions again
18	with the witness.	18	on it.
19	MR BUDLENDER SC: May I ask for a ruling,	19	CHAIRPERSON: Mr Wesley was told about
20	Chair? May I ask for a ruling whether counsel for the	20	it?
21	South African Police Services is entitled to cross-examine	21	COLONEL VERMAAK: It was, I think on the
22	the witness on the basis of information which was derived	22	day of meeting with me and Mr Pretorius, after everything
23	from a privileged conversation with the witness, that's the	23	was finished I just mentioned it that there was such a
24	question.	24	video and it could maybe assist them as well because why,
25	MR SEMENYA SC: I'm not –	25	there was a problem, well, some problems about the radios
	Page 27780		Page 27782
1	MR BUDLENDER SC: Is he entitled to	1	and how clear the radios in the Nyala is during an
2	cross-examine the witness on the basis of information which	2	operation and I said to them maybe that can assist them if
3	he derived from the witness during a privileged	3	they want to use –
4	conversation?	4	CHAIRPERSON: The information you gave
5	CHAIRPERSON: No, the ruling is he is not	5	about the video was not given in confidence to the police
6	allowed to but that doesn't - no, no, that doesn't preclude	6	on a confidential basis, it was given to them so that they
7	him asking questions about matters which the witness	7	could use it further to investigate certain matters, is
8	himself mentioned to the Commission. He talks about, the	8	that right?
9	mere fact that he had a consultation with him in which	9	COLONEL VERMAAK: That's correct. That
10	Stilfontein was discussed doesn't preclude him, in my	10	was, that was –
11	ruling, from asking questions about Stilfontein because the	11	MR SEMENYA SC: Colonel, I don't intend
12	Stilfontein incident was something he mentioned as part of	12	to ask you anything about the video and I'll not ask you
13	his ordinary evidence. Otherwise the whole question of	13	anything about what you would have said to me or to any
14	Stilfontein and its relevance, which he himself raised in	14	members of the legal team in consultation, trust me. Do
1 ⁻			you have the document, which is an IRIS report, before you,
15	his ordinary evidence, can't be investigated.	15	
15 16	his ordinary evidence, can't be investigated. MR BUDLENDER SC: Chair, may I ask for a	15 16	
16	MR BUDLENDER SC: Chair, may I ask for a	16	Colonel?
16 17	MR BUDLENDER SC: Chair, may I ask for a further ruling? If the South African Police Service are	16 17	Colonel? COLONEL VERMAAK: No, I haven't got it.
16 17 18	MR BUDLENDER SC: Chair, may I ask for a further ruling? If the South African Police Service are aware of the existence of a video because of a	16 17 18	Colonel? COLONEL VERMAAK: No, I haven't got it. MR SEMENYA SC: You don't?
16 17 18 19	MR BUDLENDER SC: Chair, may I ask for a further ruling? If the South African Police Service are aware of the existence of a video because of a communication which was made during a privileged	16 17 18 19	Colonel? COLONEL VERMAAK: No, I haven't got it. MR SEMENYA SC: You don't? COLONEL VERMAAK: No.
16 17 18 19 20	MR BUDLENDER SC: Chair, may I ask for a further ruling? If the South African Police Service are aware of the existence of a video because of a communication which was made during a privileged conversation with the witness, are they entitled to call	16 17 18 19 20	Colonel? COLONEL VERMAAK: No, I haven't got it. MR SEMENYA SC: You don't? COLONEL VERMAAK: No. CHAIRPERSON: You can put it on the
16 17 18 19 20 21	MR BUDLENDER SC: Chair, may I ask for a further ruling? If the South African Police Service are aware of the existence of a video because of a communication which was made during a privileged conversation with the witness, are they entitled to call for that video?	16 17 18 19 20 21	Colonel? COLONEL VERMAAK: No, I haven't got it. MR SEMENYA SC: You don't? COLONEL VERMAAK: No. CHAIRPERSON: You can put it on the screen, Mr Semenya. Adv Hemraj will give you her copy.
 16 17 18 19 20 21 22 	MR BUDLENDER SC: Chair, may I ask for a further ruling? If the South African Police Service are aware of the existence of a video because of a communication which was made during a privileged conversation with the witness, are they entitled to call for that video? CHAIRPERSON: Well, if the video was	16 17 18 19 20 21 22	Colonel? COLONEL VERMAAK: No, I haven't got it. MR SEMENYA SC: You don't? COLONEL VERMAAK: No. CHAIRPERSON: You can put it on the screen, Mr Semenya. Adv Hemraj will give you her copy. MR SEMENYA SC: Where does it start?
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 16 17 18 19 20 21 22 23 24 	MR BUDLENDER SC: Chair, may I ask for a further ruling? If the South African Police Service are aware of the existence of a video because of a communication which was made during a privileged conversation with the witness, are they entitled to call for that video? CHAIRPERSON: Well, if the video was mentioned to Mr Wesley in circumstances where Mr Wesley would have been entitled to have used it if he had cross-	 16 17 18 19 20 21 22 23 24 	Colonel? COLONEL VERMAAK: No, I haven't got it. MR SEMENYA SC: You don't? COLONEL VERMAAK: No. CHAIRPERSON: You can put it on the screen, Mr Semenya. Adv Hemraj will give you her copy. MR SEMENYA SC: Where does it start? Chair, do we have it as exhibit OOO41? CHAIRPERSON: It's written in my book,
 16 17 18 19 20 21 22 23 24 25 	MR BUDLENDER SC: Chair, may I ask for a further ruling? If the South African Police Service are aware of the existence of a video because of a communication which was made during a privileged conversation with the witness, are they entitled to call for that video? CHAIRPERSON: Well, if the video was mentioned to Mr Wesley in circumstances where Mr Wesley	 16 17 18 19 20 21 22 23 	Colonel? COLONEL VERMAAK: No, I haven't got it. MR SEMENYA SC: You don't? COLONEL VERMAAK: No. CHAIRPERSON: You can put it on the screen, Mr Semenya. Adv Hemraj will give you her copy. MR SEMENYA SC: Where does it start? Chair, do we have it as exhibit OOO41?

			1 3
	Page 27783		Page 27785
1	MR SEMENYA SC: OOO.	1	the police with the strikers?
2	CHAIRPERSON: OOO41 and I've described it	2	COLONEL VERMAAK: My criticism was on who
3	as "IRIS report re incident at Stilfontein in 1993."	3	was used, not how. If you can remember I said –
4	MR SEMENYA SC: Yes. Colonel, this	4	CHAIRPERSON: You also criticised the
5	report was entered into the IRIS system by yourself, am I	5	fact that it hadn't been tape recorded, so we didn't have a
6	right?	6	record of what was said. That's right also, isn't it?
7	COLONEL VERMAAK: No, negative. You can	7	COLONEL VERMAAK: That's correct, Chair.
8	see on the top –	8	CHAIRPERSON: Were those the two bases of
9	MR NTSEBEZA SC: Mr Chairman, I thought	9	your criticism?
10	that it was going to be put up on the screen.	10	COLONEL VERMAAK: Chair, no. The fact
11	CHAIRPERSON: I asked for it to be put up	11	that the person who did the negotiations was trained as a
12	on the screen because I haven't got a copy and Adv Hemraj	12	hostage negotiator and he didn't have experience or trained
13	has given her copy to the witness. Adv Tokota's copy is	13	in Public Order Police negotiations.
14	apparently going to find its way to the machine operator.	14	MR SEMENYA SC: Yes, Colonel, but we do
15	Sooner or later we'll get it.	15	know that you don't know what negotiations, how those
16	[12:25] I hope the time spent on it is going to be	16	negotiations were held?
17	profitable.	17	COLONEL VERMAAK: No, I haven't got the -
18	COLONEL VERMAAK: Chair, I can in the	18	I don't, as the Chair said, there's no minutes has been
19	meantime answer Mr Semenya. On the top –	19	taken or a full video was taken during this negotiations.
20	MR NTSEBEZA SC: We want to be part of	20	CHAIRPERSON: I must tell you that a
21	the whole testimony.	21	video has recently surfaced, very recently surfaced, which
22	CHAIRPERSON: Mr Semenya would prefer to	22	deals with some at least of the negotiations, which is
23	see with his own eyes rather than hearing it with his own	23	something that I didn't know about until last night and you
23	ears when you read it to him. I beg your pardon - Mr	23	don't know about at all, but something will come of that
24 25	Ntsebeza. Are we going to see the document now, Mr	24 25	later. But I think what Mr Semenya is putting to you, I
25	Nisebeza. Are we going to see the document now, wi	23	ater. But I think what will benefy a is putting to you, i
	Page 27784		Page 27786
1	Pretorius?	1	think - it probably sounds correct - your criticism about
2	MR PRETORIUS: It's not scanned,	2	Colonel McIntosh being used as a negotiator was more an
3	unfortunately.	3	objection in principle. You felt it's not appropriate for
4	CHAIRPERSON: How long is it going to	4	a hostage negotiator, a hostage trained negotiator, if I
5	take to scan? Mr Semenya, I don't know what other arrows	5	can call him that, to do these negotiations because they
6	you've got in your quiver. Are there other questions you	6	were negotiations of a different kind.
7	can ask the witness in the meanwhile then we can come back	7	COLONEL VERMAAK: That's correct, Chair.
8	to this after lunch?	8	CHAIRPERSON: But you would have to
9	MR SEMENYA SC: Indeed, Chair. We –	9	concede that not knowing what exactly Lieutenant Colonel
10	CHAIRPERSON: Now let's – I'm also asked	10	McIntosh says and how he went about the negotiations, in
11	whether we took a five-minute interval, a sort of belated	11	fact he may have overcome the disabilities that he suffered
12	comfort break, whether that wouldn't assist us to see the	12	from as a hostage trained negotiator and negotiated
13	document. How long will it take for this document to be –	13	properly. That's something you can't comment on. Is that
14	MR SEMENYA SC: Chair, I can address	14	right?
15	other matters.	15	COLONEL VERMAAK: No, that's true.
16	CHAIRPERSON: Alright, you'll take other	16	MR SEMENYA SC: In fact you are saying
17	arrows from your quiver.	17	you were available, you are the one who was supposed to be
18	MR SEMENYA SC: Thank you, Chair, yes. I	18	used to negotiate. Am I right?
19	take it you are also critical about the negotiations that	19	COLONEL VERMAAK: I never said that.
20	the police were doing with the strikers. Am I right,	20	MR SEMENYA SC: I'll find it in the
20	Oshurula Alexandre	20	record. Let's go forward.
21	() () () () () () () () () ()		-
	COLONEL VERMAAK: Can you just repeat	22	COMMISSIONER HEMRAJ: He said, Mr
23	your question, please?	23	Semenya, that he and certain other officers are used to do
24	MR SEMENYA SC: 1'm correct that you are	24 25	the negotiating on behalf of the POPS unit.
	very critical about how the negotiations were conducted by	25	CHAIRPERSON: The passage that's
	RCHIVE FOR JUSTICE	1	

	Page 27787		Page 27789
1	relevant, let's look at it. My recollection is not the	1	Mine's hostels.
2	same as your, but you may be right and I may be wrong.	2	MR SEMENYA SC: Colonel, we'll come to
3	Let's just check our recollections by looking at the	3	that perhaps after lunch. I was still exploring with you
4	transcript.	4	this negotiation criticism you have. Brigadier Calitz was
5	MR SEMENYA SC: Anyway, let's proceed.	5	part of the team that was doing the negotiation. Correct?
6	After lunch I'll get there and show you where you say, jy	6	COLONEL VERMAAK: I don't know if he took
7	was eintlik beskikbaar, but we'll get there. Colonel, can	7	part as a negotiator or as a operational commander, but
8	I take you forward –	8	according to me he was present there at the place where
9	CHAIRPERSON: We're now in business as	9	Colonel McIntosh did negotiate with the people.
10	far as exhibit 00041 is concerned. There's what looks	10	MR SEMENYA SC: Brigadier Calitz was part
11	suspiciously like an IRIS report on the screen and I think	11	of the negotiating team, was he not?
12	it's the one which relates to the incident at Stilfontein.	12	COLONEL VERMAAK: I don't know.
13	In fact it says so in terms, and it was something that	13	MR SEMENYA SC: Brigadier Calitz has the
14	happened on the 11th of August 1993, almost five years, just	14	experience on negotiations as you do?
15	over five years before the incident at Marikana that's	15	COLONEL VERMAAK: That's correct.
16	brought us here today.	16	MR SEMENYA SC: There was also a
17	COLONEL VERMAAK: No, it's longer.	17	psychologist that was present in the negotiating team
18	1993 –	18	there. You accept that?
19	CHAIRPERSON: No, not five years. Well,	19	COLONEL VERMAAK: If you say so, yes, I
20 21	my arithmetic is letting me down. Nine years. Nine years.	20 21	accept it then. MR SEMENYA SC: Now you say that you are
21	Yes, I take the correction and ask forgiveness. We've now got it in front of us. Is there anything you want to ask	21	MR SEMENYA SC: Now you say that you are critical of the involvement of Colonel McIntosh.
22	about it, Mr Semenya?	22	COLONEL VERMAAK: Especially due to the
23 24	COLONEL VERMAAK: Chair, I think it's 19	23 24	fact that he only finish his training in April and from
24	years. 1993.	24	April to August according to me he was never being exposed
25		20	April to August according to the ne was never being exposed
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1	Page 27788	1	Page 27790
1	CHAIRPERSON: Yes, did I say 1993? Yes,	1	to Public Order Police negotiations.
2	CHAIRPERSON: Yes, did I say 1993? Yes, I got it wrong. It's nine years – sorry, that's right –	2	to Public Order Police negotiations. MR SEMENYA SC: Now I have had a look at
2 3	CHAIRPERSON: Yes, did I say 1993? Yes, I got it wrong. It's nine years – sorry, that's right – COLONEL VERMAAK: 19, Chair.	2 3	to Public Order Police negotiations. MR SEMENYA SC: Now I have had a look at the material which is used for training. Are you able,
2 3 4	CHAIRPERSON: Yes, did I say 1993? Yes, I got it wrong. It's nine years – sorry, that's right – COLONEL VERMAAK: 19, Chair. CHAIRPERSON: Oh, 19 years?	2 3 4	to Public Order Police negotiations. MR SEMENYA SC: Now I have had a look at the material which is used for training. Are you able, when you find the time, to give us POP specific negotiation
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1	Page 27791 MR SEMENYA SC: And therefore you don't	1	Page 27793
2	know how it differs with that of POP.	1 2	training, Colonel? COLONEL VERMAAK: When you did your
2	COLONEL VERMAAK: That's correct.		5 5
4	MR SEMENYA SC: And whether or not it	3	police training as a student this radio procedures is also being part of your training as a student and there were
		4	
5	would be adequate to use those skills in a POP environment,	5	some circulars on, at a later stage regarding specific
6	you're not able to express a view?	6	issues that people ignore on this standing order.
7	COLONEL VERMAAK: One of my members also	7	MR SEMENYA SC: Sorry? What was your
8	attend the hostage negotiation course with Colonel	8	last statement?
9	McIntosh. We have decided several times since he came back	9	COLONEL VERMAAK: There was circulars,
10	from the hostage negotiations and according those	10	letters where National and Provincial Offices remind the
11	discussions that I had with her they never address any	11	people to stick to this standing order.
12	Public Order Police incidents.	12	MR SEMENYA SC: Thank you. So I think
13	MR SEMENYA SC: Colonel, you are familiar	13	your answer to my question is yes, you underwent this
14	with the provisions of Standing Order 259, are you?	14	training in relation to the use and transmission of
15	COLONEL VERMAAK: Yes.	15	messages by radio?
16	MR SEMENYA SC: Chair, can this be marked	16	COLONEL VERMAAK: That's correct.
17	exhibit 00042?	17	MR SEMENYA SC: Clause 1 of it, 11.1 says
18	CHAIRPERSON: 259?	18	to us that "All instructions, messages, reports and
19	MR SEMENYA SC: Standing Order 259.	19	conversations over the air must be short, distinct, and in
20	COLONEL VERMAAK: If I can maybe also	20	English."
21	have a copy. It was just emailed to me.	21	COLONEL VERMAAK: That's correct.
22	COMMISSIONER HEMRAJ: Before we get	22	MR SEMENYA SC: Your communication over
23	there, could I just ask you, Colonel, if you look at your	23	the radio on the 16th, did it comply in your view with this,
24	CV, under courses taken there are two courses on	24	Colonel?
25	negotiations, one in 1993 on advanced negotiations and one	25	COLONEL VERMAAK: Absolutely, yes.
1	Page 27792	1	Page 27794
1	in 1998 on intensive negotiations.	1	MR SEMENYA SC: So the evidence that the
2	COLONEL VERMAAK: That's correct, Chair.	2	radio was occupied for long duration of time by yourself
3	COMMISSIONER HEMRAJ: That would be the		and Brigadier Calitz is incorrect? COLONEL VERMAAK: That is not correct.
4	last course you would have attended on negotiations –	4	
5	COLONEL VERMAAK: 1998, yes, that's	5	If you might listen to the video of Lonmin Mine you would
6	correct, Chair.	6	hear many occasions that there was no conversations between
7	CHAIRPERSON: [Microphone off, inaudible]	7	me and anybody else.
8	have a look at my copy of – have you got one now?	8	MR SEMENYA SC: You say your
9	COLONEL VERMAAK: I've got one, thank	9	communication on the video we'll find it was short,
10	you, Chair.	10	distinct, and in English?
11	CHAIRPERSON: Is this the right one, Mr	11	COLONEL VERMAAK: That was requested from
12	Semenya? I see it's headed "Rapid response services and	12	my side. I was giving it back to the operational manager –
13	radio-equipped vehicles." Is this the standing order we're	13	ag, commander, and there was not any other discussions
14	supposed to see?	14	except for what you see on the ground, you give feedback to
15	MR SEMENYA SC: We'll focus at paragraph	15	him, and also if he give you an request you convey it to
16	11, Chair.	16	the members on the ground. So I will say yes, with
17	CHAIRPERSON: Paragraph 11. Paragraph 11	17	paragraph 1 I do, did it the way that it is expected.
18	is "Transmission of messages by radio." Is that the	18	MR SEMENYA SC: 11.2 then says, "The
19	passage? Yes, I've already written it in my book, SO	19	dispatcher or member in a radio-equipped vehicle must have
20	(General) 259. I'd better describe it, Rapid response	20	his or her message complete and ready before the start of
6.	/ 1 50 State / A	~ ~	
21	services and radio-equipped vehicles, OOO42, and our	21	the transmission." Did you comply with that?
22	services and radio-equipped vehicles, OOO42, and our attention is drawn to page 7 thereof, going on to page 8,	22	COLONEL VERMAAK: Chair, under the
22 23	services and radio-equipped vehicles, OOO42, and our attention is drawn to page 7 thereof, going on to page 8, which is a section headed "Transmission of messages by	22 23	COLONEL VERMAAK: Chair, under the circumstances of that operation you only give through what
22	services and radio-equipped vehicles, OOO42, and our attention is drawn to page 7 thereof, going on to page 8,	22	COLONEL VERMAAK: Chair, under the

	Page 27795		Page 27797
1	moment that I start talking on the radio I give the	1	You say you know, and this was your evidence, I looked at
2	information correctly through with no unnecessary	2	those people; they were lying in unnatural position.
3	conversations on the radio.	3	That's not how people lie when they are arrested. And you
4	MR SEMENYA SC: And an example is given	4	were also clear, distinct mind, that they may be injured or
5	under clause 11.5 there of the standing order. Am I	5	dead.
6	correct?	6	COLONEL VERMAAK: But I can't give for a
7	COLONEL VERMAAK: 5, which –	7	fact that they were injured or dead.
8	MR SEMENYA SC: Clause 11.5.	8	MR SEMENYA SC: No, I'm not -
9	COLONEL VERMAAK: The whole one?	9	COLONEL VERMAAK: That I cannot give as a
10	MR SEMENYA SC: Yes, they give examples	10	fact.
11	there about how this communication should happen. Am I	11	MR SEMENYA SC: No, I didn't say you must
12	right?	12	give anything as a fact, Colonel. I'm asking, you could
13	COLONEL VERMAAK: That's correct.	13	have conveyed, couldn't you, that people appear injured or
14	MR SEMENYA SC: You are aware that the	14	dead?
15	evidence of people like General Annandale is that bodies,	15	COLONEL VERMAAK: Chair, you just refer
16	the word "bodies" did not convey to them the seriousness of	16	me to 11.1, that conversations must be short. If I report
17	the observations you were making?	17	there bodies down, I accept that the people who is on the
18	COLONEL VERMAAK: Well, if he don't	18	scene, standing 10 metres away from the scene, would start
19	understand that, I cannot stand in for what the General	19	talking on the radio and give feedback to the JOC. So I
20	understand with it. To, for me when you say "bodies down"	20	comply with the transmission of messages on the radio.
21	you count them and go around and you count them again and	21	Although I said yes, the people were lying in unnatural
22	there is more than the first time, I think your common	22	ways, I believed that the people who was on the ground
23	sense will tell you there's something wrong.	23	should support me and say people are dead or people are
24	MR SEMENYA SC: No, I'm just saying you	24	serious injured. for that information I didn't have.
25	do accept that the evidence by General Annandale is the	25	MR SEMENYA SC: No, I'm not talking about
	Page 27796		Page 27798
1	word "bodies" conveyed something different. You accept	1	the people who were on the ground, Colonel. I'm just
2	word "bodies" conveyed something different. You accept that?	2	the people who were on the ground, Colonel. I'm just asking, saying that people appear dead or injured would
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	Page 27799		Page 27801
1	about, which I've now told you about. If of course you've	1	teruggaan na een, die foto's toe waar die oorledenes gelê
2	got another purpose in asking the question, I won't stop	2	het."
3	you.	3	CHAIRPERSON: I'll translate that as
4	MR SEMENYA SC: Chair, you remember the	4	follows, "Chairperson, or Chair, at that stage it was clear
5	other criticism about the operation related to	5	to me that the persons who were lying there were either,
6	communication? I'm just trying to see the quality of	6	must be either injured or dead, or killed, because they lay
7	communication, whether there is compliance.	7	in an unnatural, for them it was clear that they lay in an
8	CHAIRPERSON: If you've got another	8	unnatural position and also the fact, if we can go back to
9	purpose for asking the question other than imputing blandly	9	one, the photos where the deceased persons were lying."
10	him for the fact that there was a delay in the matter being	10	MR SEMENYA SC: So it is clear as I read
11	reported to IPID, you may proceed.	11	your evidence that you were satisfied that these people are
12	MR SEMENYA SC: What Standing Order 259	12	seriously injured or dead.
13	intends to do is to convey a method by which messages	13	COLONEL VERMAAK: Chair, that is why I
14	relayed over a radio are succinct, they are clear and they	14	used the word "bodies." That's a common word that is being
15	admit of no ambiguity. Am I right?	15	used when you see people down and it is clear to you that
16	COLONEL VERMAAK: That's correct.	16	they are not suspects who are arrested or people who is
17	MR SEMENYA SC: And then I come back to	17	trying to run away from the police, hiding somewhere.
18	you. When it was distinct in your mind that those people	18	CHAIRPERSON: [Microphone off, inaudible]
19	appear injured or dead, you could simply have said so.	19	incapacitated, either fatally or not.
20	COLONEL VERMAAK: Chair, I've already	20	COLONEL VERMAAK: That's correct.
21	answered that question.	21	MR SEMENYA SC: You say that's a word
22	MR SEMENYA SC: Well, let me refer you to	22	commonly used?
23	your answer, and we find that on the transcript day, 25	23	COLONEL VERMAAK: Under Air Wing, yes, to
24	March 2014, page 25368.	24	describe what we saw from the air.
25	MS PILLAY: Chair, it's day 206.	25	MR SEMENYA SC: It is a word commonly
	Page 27800		Page 27802
1	Page 27800 CHAIRPERSON: Which line must we look at?	1	Page 27802 used and understood in the Air Wing?
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			D 07005
1	Page 27803 MR SEMENYA SC: When on a different	1	Page 27805 that you have no ALEO training at all.
2	occasion did you use this word, Colonel?	2	COLONEL VERMAAK: Chair, before I can
3	COLONEL VERMAAK: Chair, I have just said	3	answer that question I just want maybe to go back to the
4	on the previous unrest that was on the mines there were	4	previous question about standing order 259. If you can
5	people were killing when they were on their way to work or	5	look on the bottom of that page, at the bottom of the page
6	coming back from work, where they were lying in a road or	6	you will see there division visible policing – no, no, you
7	in the veld. There were incidents. I don't have that	7	can stop there – amended by consolidation notice 16 of
8	particular dates now with me, but at the strikes at Impala	8	2012. There is no date that it is being a new consolidated
9	we have experienced that.	9	notice. You will also observe that this is visible
10	MR SEMENYA SC: And you would call from	10	policing and not operational response services under which
11	the chopper up there and say to OPS there's a body down?	11	we are falling and also, Chair, you will see rapid response
12	COLONEL VERMAAK: Ja, we saw a body lying	12	service and radio equipped vehicles.
13	in the veld.	13	CHAIRPERSON: The first paragraph which
14	MR SEMENYA SC: No, I'm talking about	14	is headed "Background" reads, "This order regulates the
15	radio communication now. I don't ask whether or not you	15	functioning of 10111 call centres and flying squad units in
16	come to JOCCOM and announce your observations. I'm talking	16	the South African Police Service." Then it's got
17	about radio transmission.	17	definitions and roles, responsibilities of relief
18	COLONEL VERMAAK: That is what I transmit	18	commanders 1011 call centre, a lot more about that and then
19	to the JOC.	19	they talk about the flying squad. In para 6, roles and
20	MR SEMENYA SC: So you say we can go back	20	responsibilities of members, flying squad and then 7, the
21	to the records of the SAPS and find where you used the word	21	duty record deals with the transmitter of the relevant
22	"bodies" that was understood to mean persons are dead?	22	10111 call centre transmitter and then para 8 deals with
23	COLONEL VERMAAK: Well, if you can get	23	the register to be kept by every 10111 call centre attached
24	records of all this, yes, you can try to see if you can get	24	to a flying squad. 9 deals with procedure to be followed
25	hold of them.	25	when registering complaints, that's complaints received at
	Page 27804		Page 27806
1	MR SEMENYA SC: You haven't received any	1	10111 call centres. And then we've got 10, despatch of
2	ALEO training, have you, Colonel?		. .
~		2	radio equipped vehicles and then presumably the reference
3	COLONEL VERMAAK: No.	2 3	radio equipped vehicles and then presumably the reference to transmission of messages by radio refers to messages
3	COLONEL VERMAAK: No.	3	to transmission of messages by radio refers to messages
3 4	COLONEL VERMAAK: No. MR SEMENYA SC: Would this be a	3 4	to transmission of messages by radio refers to messages sent from radio equipped vehicles, is that correct?
3 4 5	COLONEL VERMAAK: No. MR SEMENYA SC: Would this be a convenient stage, Chair?	3 4 5	to transmission of messages by radio refers to messages sent from radio equipped vehicles, is that correct? COLONEL VERMAAK: That's correct, Chair.
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	Page 27807		Page 27809
1	MR SEMENYA SC: Ja, that tells us about	1	document?
2	the document. Are you saying anything in that document	2	COLONEL VERMAAK: I've got it, Chair.
3	differs when it comes to transmission over the radio by air	3	MR SEMENYA SC: It says there in specific
4	wing?	4	terms –
5	COLONEL VERMAAK: There's no specific	5	CHAIRPERSON: I've marked this copy you
6	document like this for the air wing at this stage. I	6	gave me OOO43 and I've described it as "Airborne law
7	believe there will be after this Commission, considered to	7	enforcement officers SAPS air wing – circular."
8	write a specific document also for the air wing.	8	-
0 9			5
	5	9	says under background, "The crew of the airborne law
10	is the prescripts that are in that document, are they the	10	enforcement aircraft consists of a pilot and an ALEO" and
11	same as would happen in relation to how air wing should	11	in parenthesis it says something else, do you see that,
12	communicate over radio?	12	Colonel?
13	COLONEL VERMAAK: Not all of them is	13	COLONEL VERMAAK: I saw it.
14	applicable on the air wing.	14	MR SEMENYA SC: Right, and then says "The
15	MR SEMENYA SC: Those as –	15	inherently high risk nature and requirements of airborne
16	COLONEL VERMAAK: Some are in paragraph	16	law enforcement dictate that the aircraft is manned by the
17	5, if you can – no, 11, 11.5 an example of radio	17	full crew, i.e. pilot plus ALEO."
18	conversations. Yes, that is also an indication for us how	18	COLONEL VERMAAK: That is correct.
19	to talk onto the radio.	19	MR SEMENYA SC: "The one complements the
20	MR SEMENYA SC: And you told us you had	20	other and neither is able to complete a given task in a
21	that in basic training anyway.	21	safe and successful manner without the other."
22	COLONEL VERMAAK: That's correct.	22	COLONEL VERMAAK: That is correct.
23	MR SEMENYA SC: So can we go back to	23	MR SEMENYA SC: "The only exception to
24	where we were? You have told us you have no ALEO training	24	this may, under extreme circumstances, be that of VIP
25	at all.	25	transport from a prepared and secured landing zone to
1	Page 27808	1	Page 27810
1	COLONEL VERMAAK: That is correct.	1	another prepared and secured landing zone." That's the
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		I	
	Page 27811		Page 27813
1	person you have been flying, as you say, for eight years as	1	described on the screen as exhibit OOO37. According to my
2	an ALEO?	2	notes OOO37, as I mentioned earlier, is "Complaints of
3	COLONEL VERMAAK: That's correct, Chair,	3	misconduct against Lieutenant-Colonel Vermaak." We were
4	if I can just ask if the operator can put up the SOP about	4	given two sections of the Helicopter Operations Manual, the
5	air wing, paragraph 3.4.3? This is not - the standing	5	original one and the revised one, but only relating to
6	operations procedures as it is in the document itself, if	6	section 10, dangerous goods and weapons but it take it that
7	they can just go to that for me.	7	it's part of the same document.
8	CHAIRPERSON: What are you referring to,	8	COLONEL VERMAAK: That's correct.
9	this very document we've got?	9	MS PILLAY: Chair –
10	COLONEL VERMAAK: No, that is not the	10	CHAIRPERSON: Presumably the whole thing
11	document before you, Chair. There is a document, standing	11	was scanned.
12	order procedures. They just asked me questions in	12	MS PILLAY: OOO38.
13	paragraph 11 –	13	CHAIRPERSON: Yes, so it's OOO38. So
14	CHAIRPERSON: Is that an exhibit?	14	it's the original issue of the Helicopter Operations
15	COLONEL VERMAAK: Ja.	15	Manual. We only looked at section 10.
16	CHAIRPERSON: You see what we have as	16	COLONEL VERMAAK: That's correct.
17	exhibit OOO 38 is an extract from the Helicopter Operations	17	CHAIRPERSON: But you're now referring us
18	Manual of the South African Police Service Air Wing. The	18	to section 5.
19	second we've got is section 10 which deals with dangerous	19	COLONEL VERMAAK: That's correct, Chair.
20	goods and weapons. Are you referring to a section of that	20	CHAIRPERSON: It's the same document.
21	document?	21	COLONEL VERMAAK: The same document.
22	COLONEL VERMAAK: To that document, yes,	22	CHAIRPERSON: But we've only got copies
23	Chair.	23	of section 10 which I've marked OOO38 but presumably hard
24	CHAIRPERSON: I think all that we have as	24	copies can be provided in due course. Anyway, let's not
25	an exhibit, as far as I know, is – which is exhibit 00038,	25	waste time, let's look at the document on the screen and
	Page 27812		Page 27814
1	Page 27812 is section 10 of the document but if the –	1	Page 27814 then you can tell us what it is that you wanted us to see.
1 2		1 2	0
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	Page 27815		Page 27817
1	COLONEL VERMAAK: Chair, there's also a	1	whether the curtailment of times that are proposed to take
2	document, an approval document that I received from the	2	place applies now or, if not, why not -
3	section head, helicopters, in 2006 that gave me permission	3	CHAIRPERSON: No, no, I can answer your
4	that I can act as a crew in exception al circumstances and	4	question –
5	also that I must only inform him that I'm going to operate	5	MR BIZOS SC: I merely want to submit, Mr
6	as a crew on the helicopter. In my – you can go to my	6	Chairman, that the cross-examination that we have heard
7	telephone bills and you will see that I did phone Colonel	7	today may be described by some, kicking for touch –
8	Obie Oberholzer where I informed him about the situation at	8	[14:37] CHAIRPERSON: Yes, well, I don't know but
9	Marikana.	9	the answer to your question is this, I didn't consider it
10	MR SEMENYA SC: It escapes me, sorry. On	10	appropriate to impose time limits or anything of the kind
11	the 16th of August 2012 you say you got permission to fly as	11	in relation to this witness because he started giving
12	a crew?	12	evidence before the extension came into operation and those
13	COLONEL VERMAAK: I already obtained it	13	concerned with planning his cross-examination would not
14	on the 13th. Why? I also have to arrange it. We only have	14	have taken into account concerns of time and the amount of
15	three crews at North-West air wing, Warrant Officer Mentz,	15	time available. So I don't think it's fair, and anyway, I
16	Warrant Officer Kleynhans and Sergeant Venter. Warrant	16	allowed everybody else ample time, I didn't think it fair
17	Officer Mentz was family responsibility leave at that	17	to impose restrictions on the police who, as we can see,
18	stage, his mother-in-law died. Warrant Officer Kleynhans	18	consider it necessary to attack the witness to some extent
19	had a heart attack, he was off sick and that is why I get	19	in the hope, I take it, of persuading the Commission in the
20	the permission from Colonel Oberholzer to act as an ALEO on	20	end not to accept all of his evidence. So that's the
21	the R44 with only the exceptionals, we will not do confined	21	answer to your question, that's the reasoning for it, but
22	landings, we will not do slinging or hoisting but the R44	22	I'm sure that Mr Semenya is as anxious as we are that we
23	helicopter is not capable to do that sort of operations.	23	should finish our work in the allotted time and I'm sure he
24	MS PILLAY: Chair, may I just enquire,	24	will bear that in mind and confine his cross-examination
25	Chair, given – having regard to the fact that there's	25	only to matters that he regards as strictly necessary.
1	Page 27816	1	Page 27818
1	precious little time available for this Commission to	1	MR BIZOS SC: We will patiently listen to
2	precious little time available for this Commission to complete its task, what the relevance of this line of	2	MR BIZOS SC: We will patiently listen to him, but I do hope that the end of his cross-examination is
2 3	precious little time available for this Commission to complete its task, what the relevance of this line of questioning is to the terms of reference and to the	2 3	MR BIZOS SC: We will patiently listen to him, but I do hope that the end of his cross-examination is not too far away.
2 3 4	precious little time available for this Commission to complete its task, what the relevance of this line of questioning is to the terms of reference and to the questions which this Commission has to deal with?	2 3 4	MR BIZOS SC: We will patiently listen to him, but I do hope that the end of his cross-examination is not too far away. CHAIRPERSON: It depends upon what
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R C H I V E

1	Page 27819 COLONEL VERMAAK: Chair, yes.	1	Page 27821 COLONEL VERMAAK: Chair, go back to the
2	COLONEL VERMAAK: Chair, yes. MR SEMENYA SC: Okay. Let me test that.	1	
2	As I read it those exceptional circumstances are when an	2 3	reason why I act as a crew on the helicopter, is due to the
	experienced SAP member is available to carry out command	4	fact that there was only one crew available. I haven't got the power to cancel their leave and I couldn't tell to
4 5	and control for the operation. I thought you said you were		
		5	Warrant Officer Kleynhans you were not supposed to have a
6 7	not doing that. COLONEL VERMAAK: You must read the	6	heart attack, and that is why I phoned the chopper chief of
			the South African Police Service and I informed him about
8	whole, in the whole context. Command and control is where	8	the problems that we have in Marikana and I also ask his
9	the vehicles must be placed and they must go as requested.	9	permission to act as a crew. That is my answer.
10	MR SEMENYA SC: No, no, no, Colonel, we	10	MR SEMENYA SC: All of that you did not
11	spent a lot of time in your evidence saying 'All I was is	11	inform JOC about, did you? JOCCOM.
12	an eye in the sky. I was never in command and control."	12	COLONEL VERMAAK: Of course, yes. The
13	COLONEL VERMAAK: Not of the operation.	13	JOC know about it. They know. I give my strength, the
14	I was not in command of the operation.	14	choppers that I have, the vehicles that I have, and also
15	MR SEMENYA SC: Do you say what that	15	the manpower that I have available there at Marikana.
16	provides for, Colonel? It provides for an experienced SAP	16	MR SEMENYA SC: And therefore they make
17	member under exceptional circumstances where they must give	17	Colonel Fritz the air commander for the operation.
18	command and control.	18	Correct?
19	COLONEL VERMAAK: Chair, am I not –	19	COLONEL VERMAAK: I wasn't aware that he
20	MR SEMENYA SC: Is that not correct?	20	was appointed as the Air Wing, or the air, command in the
21	COLONEL VERMAAK: Am I not the	21	air because why they never informed me about it.
22	experienced policeman?	22	MR SEMENYA SC: Now if you are in JOCCOM,
23	MR SEMENYA SC: I have –	23	all JOCCOMS, are you are telling me, then you would have
24	COLONEL VERMAAK: I thought after 34	24	known. But anyway, let's move forward.
25	years in the police, 16 years in the POP and nine years in	25	COLONEL VERMAAK: No, I will answer,
	Page 27820		Page 27822
			1 dge 27022
1	the Air Wing, I should have been an experienced policeman.	1	Chair.
1 2	the Air Wing, I should have been an experienced policeman. CHAIRPERSON: The problem is the words	1 2	=
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2 3	CHAIRPERSON: The problem is the words "command and control" are ambiguous in this context. It	2 3	Chair. MR SEMENYA SC: Okay. COLONEL VERMAAK: Mr Semenya forget the
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		1	
1	Page 27823 haven't got at the Air Wing North West a unit operations	1	Page 27825 MR SEMENYA SC: You don't consider it
2	officer. I also did that as part of my duties. I was a	2	insubordination, do you?
2	commander. I drove the fuel for the choppers where they	3	COLONEL VERMAAK: Chair, if General
4	are needed. I act as a crew where there is not people	4	Mpembe or anybody should have been, have a problem with it,
	available, and in the same time I act as a unit operations	5	it is now almost 18 months plus after it, nobody come to me
5			and tell me I commit an offence in connection with
6	officer, and it is clear, it said, "When exercising a day-	6 7	
7	to-day operation control the unit operation officer shall		regulations or standing orders. So I don't know if that
8	anticipate flight requirements and provide essential	8	question is really applicable, but that is how I saw it. MR SEMENYA SC: You don't consider it
9	information timeously, convey the PIC any information	9	
10	necessary for the safe conduct of the flight, not allow a	10	insubordination? It's a simple question.
11	flight to commence if any requirements of operational	11	COLONEL VERMAAK: Yes.
12	control have not been met." That is my question, Chair.	12	MR SEMENYA SC: Okay.
13	MR SEMENYA SC: Why you were allocating	13	CHAIRPERSON: I think you meant no. You
14	aircraft at different feet levels, is that the answer to	14	don't consider it that you were guilty of insubordination?
15	that question?	15	COLONEL VERMAAK: Chair, no, I didn't –
16	COLONEL VERMAAK: That's correct.	16	CHAIRPERSON: Your case is –
17	MR SEMENYA SC: Okay. In fact, Colonel,	17	COLONEL VERMAAK: I didn't see me guilty
18	when General Mpembe tells you not to go to the river and	18	as –
19	follow the people, you told us you defied that, right?	19	CHAIRPERSON: Your case was you found a
20	COLONEL VERMAAK: Chair, I don't know if	20	major-general who was in a, according to your evidence in a
21	it is now fair to go back to that specific question,	21	very emotional state –
22	because –	22	COLONEL VERMAAK: That is correct, Chair.
23	MR SEMENYA SC: No, I'm leading up to	23	CHAIRPERSON: - who appeared on your
24	something.	24	evidence to be incapable of exercising any command.
25	CHAIRPERSON: I'm here to ensure that	25	COLONEL VERMAAK: That is correct.
	Page 27824		Page 27826
1	fairness prevails. Some people may think I don't always do	1	CHAIRPERSON: I think Merafe had already
2	it properly, but I do my best. If a question is unfair I	2	gone away, had he not? Or he'd taken one of the injured
3	will disallow it or counsel will object and I will consider	3	people to hospital. Is that right?
4	the objection, but -	4	COLONEL VERMAAK: That's correct, Chair.
5	COLONEL VERMAAK: Thank you, Chair.	5	CHAIRPERSON: Were you the senior officer
6	CHAIRPERSON: - that's my department.	6	on the scene there after –
7	You look after yours. Now he's entitled to go back to ask	7	COLONEL VERMAAK: At that stage, yes
8	you about going to the river and so on, as long as he	8	Chair.
9	doesn't repeat what he asked you before, in which case	9	
10	doesn't repeat what he asked you before, in which case	9	CHAIRPERSON: So normally if there's a
10	he'll get into trouble not for asking unfair questions, but	9 10	CHAIRPERSON: So normally if there's a crisis of some kind to be handled by the police, who must
10			5
	he'll get into trouble not for asking unfair questions, but	10	crisis of some kind to be handled by the police, who must
11	he'll get into trouble not for asking unfair questions, but for asking repetitious questions. But I think we must,	10 11	crisis of some kind to be handled by the police, who must take command?
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permission that real for deneral inperiod s own safety take in a numbers it difficult to follow. This asking you a direct
12 him away to the JOC. So that is also applicable. 12 question. Was it on the 14th when the encirclement of 3
121112
14 COMMISSIONER HEMRAJ: Colonel, when you 14 COLONEL VERMAAK: I said to you it was
15 went up towards the river you left Captain Loest in charge 15 discussed. The encirclement was discussed on the 14th.
16 MR SEMENYA SC: No, but that's not my
17 COLONEL VERMAAK: That's correct, Chair. 17 question. I'm asking of the 3 000 people. I'm using that
18 COMMISSIONER HEMRAJ: He's a TRT person? 18 word deliberately, that we are going to encircle 3 000
19 COLONEL VERMAAK: He's also POP. 19 strikers.
20 COMMISSIONER HEMRAL: Is the DOD? 20 COLONIEL VEDMAAK: Chair there were 20
20 COMMISSIONER HEMRAJ: Is he POP? 20 COLONEL VERMAAK: Chair, there were 3 0 21 COLONEL VERMAAK: That's correct Chair 21 people on the kopple Now are you asking me the quest
21 COLONEL VERMAAK: That's correct, Chair. 21 people on the koppie. Now are you asking me the quest
21COLONEL VERMAAK:That's correct, Chair.21people on the koppie.Now are you asking me the quest22MR SEMENYA SC:Could I tidy up some few22how will they then only encircle the group in front without
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21COLONEL VERMAAK:That's correct, Chair.21people on the koppie.Now are you asking me the quest22MR SEMENYA SC:Could I tidy up some few22how will they then only encircle the group in front without

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1	their own. It is only the belligerent group which would	1	CHAIRPERSON: No, no, I think, I must
2	have to be tackled. That was the decisions at the JOCCOM –	2	confess I thought you said "You agreed that you were." So
3	COLONEL VERMAAK: Well, that is very,	3	I thought he answered yes. No, you and I both missed the
4	very big risk that you take if you anticipate that all the	4	question. The question is you are aggrieved, in other
5	people will walk freely from the koppie.	5	words you are dissatisfied –
6	MR SEMENYA SC: And by the way, you were	6	COLONEL VERMAAK: That's correct.
7	moved from POP operations by General Mpembe, right? In	7	CHAIRPERSON: - about the transfer to the
8	2005.	8	Air Wing.
9	COLONEL VERMAAK: Just say again, please?	9	COLONEL VERMAAK: That's correct.
10	MR SEMENYA SC: You were transferred to	10	CHAIRPERSON: That's the question. Is
11	Air Wing by General Mpembe, were you not?	11	that correct?
12	COLONEL VERMAAK: No, he was – it wasn't	12	COLONEL VERMAAK: That's correct.
13	him who transferred me. He requested, due to the fact that	13	MR SEMENYA SC: To this day that position
14 15	there was big problems at the Air Wing in the North West. The commander at that stage was temporarily transferred to	14	that you are dissatisfied still obtains, Colonel. Am I
15 14		15 16	right? COLONEL VERMAAK: Can you please just put
16 17	Nelspruit due to the fact that there was an investigation against him.	17	your question again, please?
18	[14:57] And then it was discussed as a pilot project that	18	MR SEMENYA SC: Your disquiet about being
19	the police is going to move away from pilots as commanders	19	posted at the Air Wing still maintains to this day?
20	for the simple reason normally the senior pilot is also the	20	COLONEL VERMAAK: Chair, no. I don't
20	commander of the unit, and Brigadier Van der Colff decided	20	want to make it a long story –
22	to appoint me after a request from General Mpembe to be	22	CHAIRPERSON: The answer is, he put to
23	transferred as an operational experienced officer, and I	23	you you're still dissatisfied and you say no.
24	act for six months as acting and I was evaluated in that	24	COLONEL VERMAAK: I'm not –
25	six months and thereafter I was permanently appointed.	25	CHAIRPERSON: That's the answer –
	Page 27832		Page 27834
1	MR SEMENYA SC: Just see if you can keep	1	COLONEL VERMAAK: I'm not dissatisfied –
2	MR SEMENYA SC: Just see if you can keep your questions short. I haven't asked a whole host of	2	COLONEL VERMAAK: I'm not dissatisfied – CHAIRPERSON: That's an answer to the
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2 3 4 5 6	MR SEMENYA SC: Just see if you can keep your questions short. I haven't asked a whole host of things that you're talking about. I want to be able – COLONEL VERMAAK: You were – MR SEMENYA SC: I want to be able to use every drop in the bucket.	2 3 4 5 6	COLONEL VERMAAK: I'm not dissatisfied – CHAIRPERSON: That's an answer to the question. COLONEL VERMAAK: I was never being dissatisfied. CHAIRPERSON: That's an answer to the
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1	Page 27835 decision of General Mpembe and he put me back in my post as	1	Page 27837
	commander.		acceptability of the witness's evidence, he's entitled to
2		2	ask the question. Mr Semenya, please proceed.
3		3	MR SEMENYA SC: Thank you, Chair.
4	COLONEL VERMAAK: Of the Air Wing, yes.	4	MR BIZOS SC: Mr Chairman, if I heard the
5	MR SEMENYA SC: Not of the POP, right?	5	witness correctly, the most likely source of information
6	COLONEL VERMAAK: No, I was at the Air	6	was Mr Semenya's attorney.
7	Wing.	7	MR SEMENYA SC: No, no.
8	MR SEMENYA SC: Yes, and then you also	8	CHAIRPERSON: No, no, no. No, Mr Bizos,
9	applied for the position of Air Wing commander recently.	9	I don't think it appropriate for you to intervene like
10	Correct?	10	that. Mr Semenya is acting for the police. The police
11	COLONEL VERMAAK: Chair, I don't know	11	have decided they don't like some of the evidence he's
12	what is it relevant –	12	given and that his credibility must be attacked. There's
13	CHAIRPERSON: No, no, I must decide	13	no reason to believe that any information such as that he
14	relevance. He asked you whether it's correct that you	14	applied for a post recently and didn't get it, which might
15	recently applied for the position of Air Wing commander.	15	be a reason for suggesting certain things in argument, that
16	The answer is –	16	that was privileged information.
17	COLONEL VERMAAK: Chair, there was a lot	17	The most likely source for the information I
18	of discussions between me and the legal team about it. Mr	18	would imagine would be someone like the Provincial
19	Pretorius even –	19	Commissioner or one of the deputy commissioners, but I
20	CHAIRPERSON: No, no, no, but that's not	20	don't think we need go there now. That's pure speculation
21	a relevant answer. It's a simple question. Did you apply	21	which is unjustified, and I think we can accept the
22	for appointment as Air Wing commander recently?	22	integrity of Mr Semenya, who's undertaken not to use any
23	COLONEL VERMAAK: Chair, the post has	23	material that he got in consultation, and the questions he
24	been advertised in a senior post.	24	put are clearly capable of being derived from information
25	CHAIRPERSON: And did you apply for it?	25	he obtained independently. There's no reason to suspect
20		20	ne obtained independently. There's no reason to suspect
	Page 27836		Page 27838
1	Page 27836 COLONEL VERMAAK: I did apply for it.	1	Page 27838 him of behaving badly. So I think Mr Semenya can carry on.
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	Page 27839		Page 27841
1	CHAIRPERSON: I realise that, Mr Semenya.	1	CHAIRPERSON: So I take it one can
2	That's why I overruled the objection. Mr Bizos, what have	2	assume, subject to what may be said by others, that the
3	you got to do with this cross-examination?	3	views you expressed weren't occasioned by any
4	MR BIZOS SC: No, Mr Chairman, because	4	disappointment at not being appointed. They in fact were
5	the witness said Mr Pretorius, and he was stopped from	5	expressed prior to any disappointment you may have
6	saying –	6	suffered. Is that correct?
7	CHAIRPERSON: I'm aware of that –	7	COLONEL VERMAAK: That's correct, Chair.
8	MR BIZOS SC: - what he said on the basis	8	1 -
9	of your ruling. It doesn't take too much to persuade me	9	CHAIRPERSON: I think we can take the tea
10	that Mr Pretorius did not keep it a secret to himself, he	10	adjournment now?
11	transmitted it to counsel, Mr Semenya. So what is the –	11	[COMMISSION ADJOURNS COMMISSION RESUMES]
12	CHAIRPERSON: To use your expression, Mr	12	[15:32] CHAIRPERSON: The Commission resumes.
13	Semenya, it doesn't take too much for me to come to the	13	You're still bound by your affirmation, Colonel.
14	conclusion that Mr Semenya would have obtained this	14	COLONEL VERMAAK: Thank you, Chair.
15	information from an independent source. The fact that this	15	SALMON JOHANNES VERMAAK: (affirms
16	post was advertised, the fact that the witness applied for	16	further)
17	the job and didn't get it for reasons presumably that some	17	CHAIRPERSON: Mr Semenya?
18	other candidate is better than he, is a matter that's not a	18	CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):
19	secret in the police force. It's not something, the	19	Thank you, Chair. Colonel, on the 16th with your Blackberry
20	knowledge of which would be confined only to the witness	20	you took, I guess, 48, 38, three eight, photos.
21	and Mr Pretorius and Mr Semenya could only acquire it that	21	COLONEL VERMAAK: Chair yes, maybe if we
22	way. The more probable explanation is the one I put	22	can just finalise the previous question regarding the fact
23	forward. I think Mr Semenya can proceed.	23	that I was not promoted in the post, if you will allow me.
24	MR SEMENYA SC: Colonel –	24	CHAIRPERSON: You were asked the question
25	CHAIRPERSON: Well, let's take tea as	25	and you conceded it but it was obviously, the fact that the
1	Page 27840	1	Page 27842 post had been advertised was general knowledge in the
1	soon as you've dealt with this point. I take it you've	1	post had been advertised was general knowledge in the
2	soon as you've dealt with this point. I take it you've established what you wanted to establish.	1 2 3	post had been advertised was general knowledge in the police, the fact that you didn't get it was general
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Page 27843 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 – 9 be put before the Commission. The witness had himself prepar 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 11 topic itself wouldn't necessarily be entirely out of bour 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 18 was consulting and therefore that is privileged, then he	d in l ons it red to viously e nds n out,
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10MR NTSEBEZA SC:Mr Chair, can I just10have to be careful about the questions he asks but the11seek to get a sense of - I've been sitting here trying to11topic itself wouldn't necessarily be entirely out of bour12understand the basis on which this cross-examination by12- but anyway, that's a matter for you to consider. I'm13SAPS of Colonel Vermaak has been and I daresay I do13just expressing a prima facie view for you to think about14understand the agreed basis to have been that if it happens14it's a matter to be considered when you prepare your15that the witness either indicates or it is manifest that15matter to be cross-examined on is something that16MR NTSEBEZA SC:Thank you, Mr Chairm17was canvassed with the witness at a time when the witness17	e nds n put,
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17 was canvassed with the witness at a time when the witness 17 but on this recent point – and this is where I would also	
	nan,
18 was consulting and therefore that is privileged, then be 18 want to focus, where the Chair ostensibly was prevent	50
To was consulting and therefore that is privileged, then he want to rocas, where the orbit ostensibly was prevent	ing or
19 wouldn't be asked on that basis. I do understand now for 19 indicating probably in the witness's own interests that	if
20 the last two hours that I've been listening that there 20 the witness, if I can use the phrase mero motu wants	to
21 seems to be a basis which I would like, Mr Chairman with 21 raise issues that arose out of consultation, it would	
22 your permission, to place on record as being a basis which 22 appear to me, with respect, that this is again an instar	nce
23 we will argue on at the end of the day. It seems to me 23 where the witness, to the extent that what was canva	ssed
24 that the basis that has now been laid is that if it is 24 with him in consultation was privileged information, if	he
25 possible to obtain, on an independent basis, something 25 consciously takes the decision that he's waiving that	
Page 27844 Pag	e 27846
1 which had been canvassed during cross-examination, it can't 1 privilege, I cannot understand that there should be a	ny
2 be said that what was canvassed in cross-examination – 2 basis, there should be a basis on which he should be	
3 CHAIRPERSON: Sorry, do you mean 3 prevented from waiving that privilege, subject of cou	rse to
4 canvassed in consultation? You said cross-examination. 4 the Chair indicating to him that if he is insisting on	
5 MR NTSEBEZA SC: In consultation, I'm 5 disclosing in the course of his testimony something w	hich
6 sorry, Mr Chairman. It seems to me that the basis is that 6 took place during consultation, he must be aware that	t he is
7 if there is an independent third source for what is being 7 waiving whatever privilege there could have been .	
8 put in cross-examination to a witness, even if it is 8 CHAIRPERSON: No, I understand the po	oint
9 something that might have arisen during cross-examination, 9 you make, Mr Ntsebeza –	
9something that might have arisen during cross-examination,9you make, Mr Ntsebeza –10I mean during consultation, that it is a legitimate basis.10MR NTSEBEZA SC:The privilege is his a	nd
	nd
10I mean during consultation, that it is a legitimate basis.10MR NTSEBEZA SC:The privilege is his a	
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 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 	nts is, ay asn't I counsel who
 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 	nts is, ay asn't I counsel who
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10I mean during consultation, that it is a legitimate basis.10MR NTSEBEZA SC:The privilege is his a11We will want to argue at the end of the day that that is a11if he says yes -12CHAIRPERSON:- but there are two point13determine which is which and on behalf of the families and14AMCU we will seek to be permitted to argue at the end of15I would put to you again for consideration. The first14AMCU we will seek to be permitted to argue at the end of14I have a duty and a power to exclude evidence which15the day that, you know, when a witness then, where it is16relevant to assist us to write our report but I didn't sa16not clear whether it was from an independent source or it16relevant to assist us to write our report but I didn't sa18witness then says, raises it and says no, but this is19examination but I also indicated that if his counsel –20consultation, Mr Chairman, we will want to submit that that20beg your pardon, I must phrase it more delicately – of21should be respected and it should not be subjected to22who led his evidence, not his counsel but the counsed23source.24who led his evidence considers it necessary to deal with it	nts is, ay asn't I counsel who , or

		T	
1	Page 27847 write our report and I thought it would possibly open areas	1	Page 27849 exception, as the SAPS contends it was. The applicability
2	in regard to what happened in consultation and didn't	2	-
3	happen and so on, which would (a) take a lot of time and	3	CHAIRPERSON: Okay – okay. You don't
4	would produce no fruitful results. So that was the basis	4	have to spell it out. Ms Pillay, I think that answers your
5	for what I said but as I said, I didn't stop it completely,	5	question. Mr Semenya, continue?
6	I said it can be raised if necessary in re-examination, but	6	MR SEMENYA SC: Colonel, I just want us
7	nevertheless you will bear those points in mind also when	7	to go where the report $-$ I think it is the third folio
8	you prepare your argument on this point. Mr Semenya?	8	where it starts, "Staking deur werkers." "'n Staking deur
9	MR NTSEBEZA SC: Thank you, Mr Chairman.	9	werkers," if I read it out, "van die Springvallei Melkery
10	5		
	5	10	binne die Springvallei-nywerheidsgebied is alreeds vir die
11	number of BBM photos you took on the 16th, am I right that	11	afgelope paar weke aan die gang. Van die hostelle van die
12	there would be about 38?	12	melkery word deur privaat kontrakteurs gehuur en deur hulle
13	COLONEL VERMAAK: I haven't got it in	13	werkers asook mynwerkers bewoon. Een van die privaat
14	front of me but there was quite a number of photos, yes.	14	kontrakteurs, 'n blankeman van Vryburg, vermoedelik 'n
15	MR SEMENYA SC: Now I just want to	15	sekere mnr Van Vuuren, het gedurende die oggendure van
16	understand, you would have sent them to the JOC, got	16	bogenoemde datum by die hostelle opgedaag om van sy werkers
17	confirmation that they are there and went to the next one.	17	te gaan haal. 'n Groep van ongeveer 1 500 swart persone
18	COLONEL VERMAAK: That is correct, Chair.	18	het op daardie stadium voor die hostelle saamgedrom toe die
19	I informed the JOC that I'm sending a Blackberry photo	19	blankeman asook 'n tweede blankeman, vermoedelik 'n mnr
20	through and then they confirmed back to me they received	20	Smit, en nog 'n swartman by die hostelle opgedaag het. Een
21	it.	21	van die blankemans, vermoedelik mnr Van Vuuren, asook die
22	MR SEMENYA SC: With each and every one	22	swart vragmotorbestuurder, is deur 'n groep swart persone
23	of the 38?	23	uit die vragmotor waarin hulle gery het getrek en deur die
24	COLONEL VERMAAK: That is correct.	24	aanvallers doodgekap. Die ander blankeman, vermoedelik 'n
25	MR SEMENYA SC: Well, the evidence will	25	mnr Smit, het daarin geslaag om te ontvlug en ontvang tans
1	Page 27848	1	Page 27850
1	be that only 11 images were sent to Brigadier Pretorius and	1	mediese behandeling in die plaaslike hospitaal. Lede van
2	be that only 11 images were sent to Brigadier Pretorius and two of those were repetitions, so there were in total nine	2	mediese behandeling in die plaaslike hospitaal. Lede van die plaaslike honde-eenheid het op die toneel opgedaag,
2 3	be that only 11 images were sent to Brigadier Pretorius and two of those were repetitions, so there were in total nine of the images that you sent on the 16th.		mediese behandeling in die plaaslike hospitaal. Lede van die plaaslike honde-eenheid het op die toneel opgedaag, waarop die hostelbewoners op hulle afgestorm het. Die hulp
2 3 4	be that only 11 images were sent to Brigadier Pretorius and two of those were repetitions, so there were in total nine of the images that you sent on the 16th. COLONEL VERMAAK: No –	2 3 4	mediese behandeling in die plaaslike hospitaal. Lede van die plaaslike honde-eenheid het op die toneel opgedaag, waarop die hostelbewoners op hulle afgestorm het. Die hulp van die plaaslike ABS is ontbied, waarop die lede van ABS
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2 3 4 5 6	be that only 11 images were sent to Brigadier Pretorius and two of those were repetitions, so there were in total nine of the images that you sent on the 16th. COLONEL VERMAAK: No – MR SEMENYA SC: Through your Blackberry. COLONEL VERMAAK: If you could draw the	2 3 4 5 6	mediese behandeling in die plaaslike hospitaal. Lede van die plaaslike honde-eenheid het op die toneel opgedaag, waarop die hostelbewoners op hulle afgestorm het. Die hulp van die plaaslike ABS is ontbied, waarop die lede van ABS ook bestorm is en verskeie skote op hulle gevuur is. Van die swartes het sersant Van der Westhuizen se haelgeweer
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		1	
1	Page 27851 contractors, a white man of Vryburg, presumably a certain	1	Page 27853 their offices and to retrench them. It's only then after
2	Mr Van Vuuren, appeared or arrived at the hostels during	2	we heard that the Dog Unit shoot at the people, experienced
3	the morning hours of the said dates, abovementioned dates,	3	that there was a problem at the Springvale Farm where the
4	to fetch some of his workers. A group of approximately	4	Dog Unit attend to that complaint.
5	1 500 black persons had assembled together at that stage in	5	CHAIRPERSON: What the report then goes
6	front of the hostels when the white man, together with a	6	on to say is that the help of the local POP was summoned, I
7	second black man, presumably a Mr Smit and another black	7	think that's the correct translation, to support them –
8	man appeared or arrived at the hostels. One of the white	8	COLONEL VERMAAK: That's correct, Chair.
9	men, presumably Mr Van Vuuren, also as the black lorry	9	CHAIRPERSON: - whereupon the members of
10	driver were pulled out of the lorry by, in which they had	10	the POP were charged at. That's probably a better
11	travelled by a group of black people and they were chopped	11	translation –
12	to death by the attackers. The other white man, presumably	12	COLONEL VERMAAK: That's correct, Chair.
13	a Mr Smit, succeeded in escaping and he is presently	13	CHAIRPERSON: - and various shots were
14	receiving medical treatment in the local hospital. Members	14	fired at them.
15	of the local dog unit appeared on the scene, whereupon the	15	COLONEL VERMAAK: That's correct, Chair.
16	hostel inmates charged at them or stormed them. With the	16	Also I, on the question if it was a POP incident, that is
17	help of the – the ABS was the POP in those days, is that	17	correct, but at that stage the instructions was also that
18	correct, Colonel? The help of the local POP was called	18	the Dog Units could operate with the POP and assist the POP
19	for, whereupon the members of the POP were also attacked or	19	where necessary to do some crowd management.
20	rushed at and various shots were fired at them. Some of	20	MR SEMENYA SC: Again, Colonel, I didn't
20	the blacks took Sergeant Van der Westhuizen's shotgun from	20	ask about the Dog Units. I'm asking whether you were
22	him. Captain Vermaak of the POP unit 26 arrived with a	22	attending to a public unrest, a POP operation or not?
23	section on the scene. There was fired with unknown	22	COLONEL VERMAAK: I attend to a complaint
23	firearms by the hostel inmates at him, whereupon he	23	of disturbance of peace and the Dog Unit was shot at. At
25	returned the fire and two of the attackers, black men – and	25	that stage we didn't know it was a public order incident.
20			
	Page 27852		Page 27854
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	Page 27855		Page 27857
1	COLONEL VERMAAK: Yes.	1	any degree of accuracy, but how long do you anticipate
2	MR SEMENYA SC: You don't shoot that, I	2	being?
3	suppose?	3	MR SEMENYA SC: Before tea break I'll be
4	COLONEL VERMAAK: I can't remember	4	done.
5	exactly, but if we can go through the IRIS system, it is 19	5	CHAIRPERSON: I see. Thank you. Now Ms
6	years ago, it's really –	6	Pillay, I take it you will re-examine the witness.
7	CHAIRPERSON: [Microphone off, inaudible]	7	MS PILLAY: I will, Chair.
8	21 years ago, but it was 20 and a half years ago. It was	8	CHAIRPERSON: Yes. I don't know whether
9	19 years ago at the time of the Marikana incident.	9	I must ask Mr Ntsebeza, or Ms Barnes has gone, but Ms
10	COLONEL VERMAAK: That's correct, Chair.	10	Barnes for AMCU and Ms Lewis in Mr Ntsebeza's absence, for
11	I can't remember that detail.	11	the families, reserved the right to ask the witness further
12	MR SEMENYA SC: And you found it	12	questions based upon the extra statements that were
13	appropriate as members of POP to discharge live ammunition	13	forthcoming, which were produced at a late stage by the
14	in those circumstances, right?	14	police in relation to the incident beyond the stream on the
15	COLONEL VERMAAK: In that specific	15	13th. Mr Ntsebeza, are you going to cross-examine – or are
16	circumstances, yes.	16	you going to exercise the right to further cross-
17	MR SEMENYA SC: And how many do you kill?	17	examination which Ms Lewis reserved on your behalf?
18	It's not clear from the report.	18	MR NTSEBEZA SC: Yes, Mr Chairman, I've
19 20	COLONEL VERMAAK: I think if you read the	19	been readied to cross-examine.
20 21	IRIS – CHAIRPERSON: No, just answer the	20 21	CHAIRPERSON: How long do you think that will be?
21 22	. 5	21	MR NTSEBEZA SC: About two hours.
22	question. What was the question, Mr Semenya? MR SEMENYA SC: How many does he kill in	22	CHAIRPERSON: The reason I'm asking you
23 24	that operation.	23 24	the question, as you've gathered, is I'd like to try to
24 25	CHAIRPERSON: Well, it says in the IRIS	24 25	finish the evidence of this witness by 1 o'clock tomorrow.
20		23	initian the evidence of this withess by 10 clock tomorrow.
	Page 27856		Page 27858
1	report that two of the attackers were killed and it seems	1	I think we must try to do that because I think he's been
2	that you were responsible. It says there was fired at you	2	here long enough and we – anyway, you've heard what I say.
3	by, with unknown firearms by the hostel inmates, whereupon		
		3	I take it you will do what you can to assist in that
	you returned the fire, you fired back and shot dead two of	4	regard, and then Ms Pillay of course will re-examine. I
5	the attackers, black men. That's what the report says.	4 5	regard, and then Ms Pillay of course will re-examine. I don't know how long she will be, but she can't tell us at
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