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TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 227

12 MAY 2014

PAGES 27926 TO 28085



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1 [PROCEEDINGS ON 12 MAY 2014]
 2 [09:10] CHAIRPERSON: The Commission resumes.
 3 Who is the next witness to be called for the SAPS?
 4 MS BALOYI: Chairperson, the next witness
 5 is Captain Thupe. He is being led by Adv Mathibedi SC who
 6 stepped out at some point, if I could just go out and look
 7 for him, Chair, I do apologise.
 8 CHAIRPERSON: Not a very satisfactory
 9 beginning. I think we'd better adjourn, there's no point
 10 in sitting here waiting for Mr Mathibedi to come when he
 11 chooses to do so.
 12 MS BALOYI: Thank you, Chair.
 13 CHAIRPERSON: We'll adjourn.
 14 [COMMISSION ADJOURNS COMMISSION RESUMES]
 15 [09:14] CHAIRPERSON: The Commission resumes.
 16 Yes, Mr Mathibedi, where were you when we began?
 17 MR MATHIBEDI SC: Sorry, Mr Chairman, I
 18 would like to apologise for the holdup, I had gone to the
 19 gents.
 20 CHAIRPERSON: Sorry, I didn't –
 21 MR MATHIBEDI SC: I'd gone to the gents,
 22 to the bathroom. I'm sorry about that.
 23 CHAIRPERSON: I see, alright. In the
 24 circumstances I'll accept your apology.
 25 MR MATHIBEDI SC: Thanks, Mr Chair.

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1 CHAIRPERSON: The next witness I gather
 2 is Captain Samuel Kay Thupe.
 3 MR MATHIBEDI SC: That's correct, Mr
 4 Chairman.
 5 CHAIRPERSON: I understand he wishes to
 6 testify in the vernacular language, Setswana, is it?
 7 MR MATHIBEDI SC: That's correct, Mr
 8 Chair.
 9 CHAIRPERSON: I see he keeps his diary in
 10 English and statements are in English so I assume he
 11 understands English. I take it he has no objection to
 12 receiving questions in English on the understanding, of
 13 course, that if he doesn't understand the question it can
 14 be interpreted to him. Is that, am I correct in –
 15 MR MATHIBEDI SC: That's correct, Mr
 16 Chairperson.
 17 CHAIRPERSON: I see his statement under
 18 oath so I take it – would you rise, please Captain? I take
 19 you're prepared to take the oath, the ordinary oath will be
 20 binding on your conscience, is that right?
 21 CAPTAIN THUPE: It is binding.
 22 CHAIRPERSON: Do you swear that the
 23 evidence you will give before this Commission will be the
 24 truth, the whole truth and nothing but the truth. Please
 25 raise your right hand and say I swear, so help me God.

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1 CAPTAIN THUPE: I swear, so help me God.
 2 SAMUEL KAY THUPE: (d.s.s.)
 3 CHAIRPERSON: Thank you. You may be
 4 seated. Yes, Mr Mathibedi? We've been given a number of
 5 statements, many of which are described as new statements,
 6 so shall we mark them first?
 7 MR MATHIBEDI SC: I'll appreciate that,
 8 Mr Chairperson.
 9 CHAIRPERSON: Mark them all first for
 10 housekeeping purposes and then you can proceed without
 11 interruption.
 12 MR MATHIBEDI SC: I'll appreciate that,
 13 Mr Chairperson.
 14 CHAIRPERSON: Yes. So which statements
 15 do you want to have marked?
 16 MR MATHIBEDI SC: Item number 1, Mr
 17 Chairperson.
 18 CHAIRPERSON: Yes? That's the
 19 consolidated statement?
 20 MR MATHIBEDI SC: No, no, it's not. It's
 21 the statement of the 19/08/2012.
 22 CHAIRPERSON: Yes. Oh I see, that's not
 23 the consolidated one.
 24 MR MATHIBEDI SC: The consolidated
 25 statement is already an exhibit before the Commission.

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1 CHAIRPERSON: Yes. So the statement of
 2 the 19th of August 2012, that was an original statement,
 3 we'll start – I think we'll call that P1, shall we? The
 4 statement dated the 19th of August 2012 will be P1 and then
 5 any others that you want marked?
 6 MR MATHIBEDI SC: Item number 2 –
 7 CHAIRPERSON: Yes, can that be P2?
 8 MR MATHIBEDI SC: Then we go to item
 9 number 5.
 10 CHAIRPERSON: Yes, is that the statement
 11 of the 12th of February –
 12 MR MATHIBEDI SC: That's correct, Mr
 13 Chair –
 14 CHAIRPERSON: 12th of February 2012, is
 15 that right? That will be P3.
 16 MR MATHIBEDI SC: Thanks, Chairperson.
 17 CHAIRPERSON: No, sorry – yes, P3. And
 18 then there's a statement of the 5th of February 2013.
 19 MR MATHIBEDI SC: That is correct,
 20 Chairperson.
 21 CHAIRPERSON: Make that P4.
 22 MR WESLEY: Sorry, Chair, to throw a
 23 spanner in the works, I'm informed we have a PPP already.
 24 We should be actually, Chair, on RRR.
 25 CHAIRPERSON: Oh, thank you for drawing

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1 my attention to that fairly timeously. So we'll reverse
 2 our steps, we'll take a step back as it's customary to say
 3 in this Commission. The statement dated the 19th of August
 4 will be R1 –
 5 MR WESLEY: RRR1, Chair.
 6 CHAIRPERSON: Sorry, RRR1. The typed
 7 warning statement will be RRR2, the statement dated the 12th
 8 of February 2012 will be RRR3. The statement dated the 5th
 9 of February 2013 will be RRR4 and then the diary entries of
 10 the 13th and 16th of August 2012, that's your item 8, do you
 11 want to make it RRR5? And then we've got two shooting
 12 lists.
 13 MR MATHIBEDI SC: If item 9 could be
 14 RRR6.
 15 CHAIRPERSON: Yes and item 10 will be
 16 RRR7.
 17 MR MATHIBEDI SC: That's correct, Mr
 18 Chair.
 19 CHAIRPERSON: Then I see this morning we
 20 were given –
 21 MR GOTZ: Sorry, Chair, can I just
 22 interrupt? We don't know what these item numbers that are
 23 being referred to are. They haven't been distributed to
 24 the parties so it makes no sense to us to say item number
 25 10 or item number 9.

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1 CHAIRPERSON: Well, thank you for drawing
 2 my attention to that. I assumed that you had received
 3 them. There's a statement dated the 19th of August 2012,
 4 that's RRR1. There's a typed warning statement by the
 5 witness, RRR2. There is another statement of the witness
 6 dated 12 February 2012, that's item 5, that's RRR3.
 7 There's a statement of the witness dated 5 February 2013
 8 which is RRR4. There are entries from his diary dated the
 9 13th and the 16th of August 2012, those are RRR5 and then
 10 there's a document described as a shooting list, a shooting
 11 list containing details of the people under his command who
 12 fired shots on the 13th of August 2012, that's RRR6. And
 13 then there's a similar document, a shooting list for the
 14 16th of August and that's RRR7. I was given a copy of the
 15 documents on Friday, I assumed that the parties had also.
 16 Let's find out from Mr Mathibedi. What happened? Did the
 17 parties not get copies of these documents?
 18 MR MATHIBEDI SC: Mr Chairperson, we gave
 19 the parties an index but I'm told they were also, all the
 20 documents were also distributed yesterday, soft copy.
 21 CHAIRPERSON: A number of heads are being
 22 shaken but –
 23 MR GOTZ: Chair, we're now –
 24 CHAIRPERSON: - let's carry on with the
 25 evidence meanwhile. I imagine he will be giving evidence

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1 largely from his consolidated statement and then the copies
 2 can be found or not found or made available during the
 3 first tea adjournment, first comfort break. Mr Mathibedi,
 4 please proceed.
 5 MR MATHIBEDI SC: Thank you.
 6 EXAMINATION BY MR MATHIBEDI SC: Captain,
 7 I'm going to refer you to exhibit GGG9, that is your
 8 consolidated statement, item number 7. Sorry, it's QQQ9,
 9 sorry Mr Chairperson. Do you have the statement, Captain?
 10 CHAIRPERSON: I take it you've got that,
 11 Mr Gotz? Mr Gotz, I take it you've got that?
 12 MR GOTZ: Chair, we do. We're just
 13 trying to sort out what we have -
 14 CHAIRPERSON: That's all you'll need for
 15 the time being, I think.
 16 MR MATHIBEDI SC: Captain, according to
 17 page 2 of this statement at the bottom, during 2009 you
 18 attended a training for POP crowd management of section
 19 level institution, division training in-service, TRN
 20 operational response, do you confirm that?
 21 CAPTAIN THUPE: I confirm that, Chair.
 22 MR MATHIBEDI SC: Now what did the
 23 training entail?
 24 CAPTAIN THUPE: It entails theory and
 25 practical.

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1 MR MATHIBEDI SC: What was dealt with
 2 under theory?
 3 CAPTAIN THUPE: Standing order 262 as
 4 well as Public Gathering Act and tactical options.
 5 MR MATHIBEDI SC: And under training,
 6 practical training, what was dealt with?
 7 CAPTAIN THUPE: It entails tactical
 8 options to approach public gatherings.
 9 MR MATHIBEDI SC: Now, to your deployment
 10 at Marikana, were you involved in any crowd management
 11 incidents?
 12 CAPTAIN THUPE: Yes.
 13 MR MATHIBEDI SC: How many incidents were
 14 you involved in?
 15 CAPTAIN THUPE: Plus-minus 10 incidents.
 16 MR MATHIBEDI SC: Over what period was
 17 that?
 18 CAPTAIN THUPE: From 2009 until 2010.
 19 MR MATHIBEDI SC: Now in as far as
 20 practical experience of the trainers are concerned, are you
 21 in a position to give a view as to whether your view is
 22 that they have practical experience or not?
 23 CHAIRPERSON: Mr Interpreter, you're
 24 interpreting the questions. It's not necessary, the
 25 witness – it was indicated the witness can understand

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1 English, he keeps his diary in English. It's wasting time
 2 to interpret the questions into Tswana. If he doesn't
 3 understand the question then he can raise his hand and
 4 indicate but please, we –

5 MR MABUNDA: Ja, he confirms.
 6 CHAIRPERSON: There's only an hour been
 7 allocated for his evidence-in-chief. I regard it as having
 8 started, because of the holdups that we had and problems
 9 with the exhibits, at 20 past nine. So he has to finish at
 10 20 past ten.

11 MR MABUNDA: Chair, he confirms that he
 12 understand –

13 CHAIRPERSON: We lose time if you
 14 interpret the questions as well.

15 CAPTAIN THUPE: As far as I'm concerned,
 16 the way in which they taught me, I could see that they were
 17 experienced.

18 MR MATHIBEDI SC: Is it correct that
 19 during this year, 2014, you attended a course or training
 20 that dealt with crowd management?

21 CAPTAIN THUPE: That is so, Chair.
 22 MR MATHIBEDI SC: How long was the
 23 duration of the course?

24 CAPTAIN THUPE: A duration of three
 25 weeks.

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1 MR MATHIBEDI SC: What did the training
 2 entail?

3 CAPTAIN THUPE: Theory and practical.
 4 MR MATHIBEDI SC: What was dealt with
 5 under theory?

6 CAPTAIN THUPE: Theory, it was
 7 operational plans and commanding. What we have been taught
 8 theoretically, now it was then put in practice.

9 MR MATHIBEDI SC: Captain, going forward
 10 because of the training that you have just received, are
 11 you in a better position to can deal with crowd management
 12 related issues?

13 CAPTAIN THUPE: That is so, Chair.
 14 MR MATHIBEDI SC: Can you confirm that on
 15 the 13th of August 2012 you and some members of TRT were
 16 deployed at Marikana and you were the commander of that
 17 unit?

18 CAPTAIN THUPE: That is so, Chair.
 19 MR MATHIBEDI SC: On the 13th did you
 20 receive any briefing from any of the senior officers of the
 21 police?

22 CAPTAIN THUPE: I did, Chair.
 23 MR MATHIBEDI SC: Who was responsible for
 24 the briefing?

25 CAPTAIN THUPE: General Mpmembe.

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1 MR MATHIBEDI SC: What is it that was
 2 discussed during the briefing?

3 CAPTAIN THUPE: As far as the briefing is
 4 concerned, is that the TRT members they will back up the
 5 POP members, the day in question and there was, it was said
 6 that there were people who were marching from Karee Mine on
 7 their way to Wonderkop.

8 MR MATHIBEDI SC: Now according to
 9 paragraph 5.3 of your statement, there is an indication
 10 that the Provincial Commissioner instructed General Mpmembe
 11 to deploy members to the scene to monitor the situation and
 12 if necessary, disperse and disarm the strikers.

13 CAPTAIN THUPE: That is so, yes, Chair.
 14 CHAIRPERSON: Before you proceed, you're
 15 leading him from exhibit QQQ9. May I suggest you ask him
 16 to confirm that the statement is correct so it's all before
 17 us and you can then highlight the points that you consider
 18 important because you've only got until 20 past ten to lead
 19 his evidence-in-chief.

20 MR MATHIBEDI SC: Thanks, Mr Chairperson.
 21 Captain, you confirm that you are the source of the
 22 information set out in annexure QQQ9.

23 CHAIRPERSON: Exhibit QQQ9. You confirm
 24 the contents of that affidavit, is that correct?

25 CAPTAIN THUPE: I do, Chair.

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1 MR MATHIBEDI SC: Now you will note that
 2 at the last page of this exhibit there is a signature
 3 there?

4 CHAIRPERSON: - to do that, he's
 5 confirmed it. It's not –

6 MR MATHIBEDI SC: Thanks, Mr Chair. Now
 7 did the Provincial Commissioner dictate to General Mpmembe
 8 as to how he should go about in dealing with the situation?

9 CAPTAIN THUPE: No, Chair.
 10 MR MATHIBEDI SC: Now, were you briefed
 11 as to what the role of your unit would be?

12 CAPTAIN THUPE: I have been briefed,
 13 Chair.

14 MR MATHIBEDI SC: Now I am referring you
 15 to paragraph 6.1 of the exhibit where it says, "General
 16 Mpmembe instructed us to follow the group and monitor them,"
 17 you confirm that?

18 CAPTAIN THUPE: That's correct. I
 19 confirm, Chair.

20 MR MATHIBEDI SC: Now, did General Mpmembe
 21 give an instruction to members to leave behind their rifles
 22 and shotguns in the Nyalas?

23 CAPTAIN THUPE: That instruction I didn't
 24 hear it, your worship.

25 MR MATHIBEDI SC: Did General Mpmembe give

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1 instructions to members for the utilisation of stun
2 grenades on the ground?
3 CAPTAIN THUPE: That instruction I did
4 not hear it at all.
5 MR MATHIBEDI SC: Now you have observed
6 how the protesters were armed. Taking that into
7 consideration, also the number of the police officers that
8 were deployed and the number of the protesters, were there
9 enough members to effect an arrest and confiscate weapons
10 from the protesters?
11 CAPTAIN THUPE: There were no enough
12 members at all, Chair.
13 MR MATHIBEDI SC: And you further confirm
14 that General Mpembe gave Warrant Officer Kuhn instructions
15 to utilise a teargas?
16 CAPTAIN THUPE: That is so, yes, Chair.
17 MR MATHIBEDI SC: Now at paragraph 7.1 of
18 your statement, I'm going to read the two last lines which
19 read as follows, "I ran towards the police officer to
20 assist him but could not stop the strikers in their
21 actions." Do you confirm that?
22 CAPTAIN THUPE: That's correct. I
23 confirm, Chair.
24 MR MATHIBEDI SC: Now, did you observe or
25 witness any of the members who ran away whilst the police

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1 were under attack instead of assisting their colleagues?
2 CAPTAIN THUPE: No, Chair.
3 MR MATHIBEDI SC: Now you have indicated
4 that at one stage you followed the protesters.
5 CAPTAIN THUPE: That is so, Chair.
6 MR MATHIBEDI SC: That is set out at
7 paragraph 7.2. Do you confirm that?
8 CAPTAIN THUPE: I confirm that, Chair.
9 MR MATHIBEDI SC: Mr Chairman, I am just
10 for a moment –
11 COMMISSIONER HEMRAJ: - is that 7.2 or
12 6.2? I'm a bit confused with the paragraph you're
13 referring to.
14 MR MATHIBEDI SC: Sorry, sorry, that
15 would be paragraph 8. It starts from 7.2 where it's
16 indicated that "One of the strikers had grabbed an R5 rifle
17 from the police officer and ran away in the direction of
18 the informal settlement." You confirm that?
19 CAPTAIN THUPE: I confirm that, Chair.
20 MR MATHIBEDI SC: And you furthermore
21 confirm that you and Constable Sekgweleya followed the
22 member – sorry, the group of strikers.
23 CAPTAIN THUPE: I confirm also that, ja,
24 Chair.
25 [09:33] MR MATHIBEDI SC: And that there was a

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1 shooting incident that occurred between you and the
2 strikers.
3 CAPTAIN THUPE: That is so, Chair, yes.
4 MR MATHIBEDI SC: Now how many rounds did
5 you fire?
6 CAPTAIN THUPE: I fired eight rounds.
7 MR MATHIBEDI SC: Why was it necessary
8 for you to fire eight rounds?
9 CAPTAIN THUPE: The protesters they were
10 shooting at us and then I returned fire.
11 MR MATHIBEDI SC: I'm going to refer you
12 to item number 3, exhibit BSK1. Can you have a look at
13 that? It's item number 3.
14 CHAIRPERSON: I think that might –
15 MR MATHIBEDI SC: That's the one.
16 CHAIRPERSON: That's item 3, yes and it's
17 an exhibit already before us, is it, on which he's made
18 some marks?
19 MR MATHIBEDI SC: That's correct, it's
20 exhibit B.
21 CHAIRPERSON: But we didn't, in view of
22 the fact that this copy has got his marks on it which
23 aren't on the original, we'd better give it a separate
24 exhibit number. I suggest we make it RRR8.
25 MR MATHIBEDI SC: Thanks, Mr Chairperson.

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1 Now if you can look at the exhibit RRR8 you will note that
2 there is an indication of letter A and B and there is also
3 an arrow, can you see that?
4 CAPTAIN THUPE: I see that, Chair.
5 MR MATHIBEDI SC: Now at the time that
6 you fired eight rounds in relation to the blocks that form
7 part of the arrow, at which block were you?
8 CAPTAIN THUPE: The third block.
9 MR MATHIBEDI SC: Now the protester that
10 fired, where was he in relation to the blocks?
11 CAPTAIN THUPE: Between blocks 6 and 7.
12 MR MATHIBEDI SC: Now you state in your
13 statement that at the time that you fired there were some
14 members of the public in that vicinity.
15 CAPTAIN THUPE: That is so, yes.
16 MR MATHIBEDI SC: Now in relation to the
17 blocks, where were the members of the public?
18 CAPTAIN THUPE: The third block from
19 above.
20 MR MATHIBEDI SC: Now you furthermore set
21 out in your statement that one of the strikers was armed
22 with an R rifle and then what happened –
23 CAPTAIN THUPE: Ja, he was armed with an
24 R5 which it was for the police, from the police. He
25 attempted to cock it while pointing it at our direction.

<p style="text-align: right;">Page 27942</p> <p>1 MR MATHIBEDI SC: Now, thereafter what 2 happened, after the exchange of the fire with the 3 protesters? 4 CAPTAIN THUPE: Then the protesters they 5 entered the squatter camp. 6 MR MATHIBEDI SC: According to paragraph 7 8.5 of your statement you say that you will be in a 8 position to can identify the striker if you see him. 9 CAPTAIN THUPE: That's correct, Chair. 10 MR MATHIBEDI SC: Now at paragraph 9 of 11 your statement you give a description of the landing of the 12 chopper. Did the chopper land after or before you and 13 Constable Sekgweleya pursued the strikers? 14 CAPTAIN THUPE: The chopper landed after. 15 MR MATHIBEDI SC: Now you are aware now 16 that at one stage Lieutenant-Colonel Vermaak together with 17 some members of the TRT, including Constable Sekgweleya, 18 followed the protesters. 19 CAPTAIN THUPE: That's correct. Well, 20 that I heard it, that is after when they're returned back, 21 is that I heard about that, Chair. 22 MR MATHIBEDI SC: Now did that happen 23 before you pursued the strikers with Constable Sekgweleya 24 or after the pursuit? 25 CAPTAIN THUPE: It was after, after we</p>	<p style="text-align: right;">Page 27944</p> <p>1 with the situation on the day." 2 CAPTAIN THUPE: I confirm, yes. 3 MR MATHIBEDI SC: You've compiled a 4 shooting list of the members of TRT that would have 5 occurred on the 13th, is that correct? 6 CAPTAIN THUPE: I did, Chair. 7 CHAIRPERSON: Is that the document which 8 has been indicated as exhibit RRR6 which is item 9 of your 9 bundle? 10 MR MATHIBEDI SC: That's correct, Mr 11 Chairman. When did you compile the exhibit? 12 CAPTAIN THUPE: The following day on the 13 14th. 14 MR MATHIBEDI SC: And what happened to 15 the exhibit? 16 CAPTAIN THUPE: I kept it on myself 17 because there was nobody who came to, who wanted it or 18 asked for it or request for it. So I then at a later stage 19 while we were at Roots, I submitted it. 20 MR MATHIBEDI SC: You submitted it to 21 who? 22 CAPTAIN THUPE: Colonel Scott. 23 MR MABUNDA: Colonel Scholtz, Chair. 24 CAPTAIN THUPE: Scott. 25 MR MATHIBEDI SC: Am I correct that on</p>
<p style="text-align: right;">Page 27943</p> <p>1 proceeded, myself and Sekgweleya. 2 MR MATHIBEDI SC: Prior to Lieutenant- 3 Colonel Vermaak pursuing the strikers with the members of 4 TRT, did he discuss that with you? 5 CAPTAIN THUPE: No, he did not discuss it 6 with me. 7 MR MATHIBEDI SC: Who was the commander 8 of the TRT members on the ground that day? 9 CAPTAIN THUPE: I was the one who was – 10 MR MATHIBEDI SC: Was it expected of 11 Lieutenant-Colonel Vermaak to have discussed that with you 12 and obtained your consent before pursuing the strikers with 13 TRT members? 14 CAPTAIN THUPE: Yes, he was supposed to, 15 yes. 16 MR MATHIBEDI SC: Now you are aware at 17 this stage that there are allegations that some members of 18 the TRT would have told Lieutenant-Colonel Vermaak that 19 they were unhappy with the conduct of General Mpembe and 20 they even threatened to kill him. 21 CAPTAIN THUPE: That is not so, Chair. 22 MR MATHIBEDI SC: Do you confirm what is 23 set out in paragraph 12 of your statement, that "At no 24 stage until now has any of the unit members come to me to 25 express their dissatisfaction with how General Mpembe dealt</p>	<p style="text-align: right;">Page 27945</p> <p>1 the 14th and the 15th of August there were no incidents that 2 required the intervention of your unit? 3 CAPTAIN THUPE: That is so, Chair. 4 MR MATHIBEDI SC: Now – 5 CHAIRPERSON: Do I understand this 6 document correctly, it sets out the people who were, the 7 TRT members who were under your command and of course your 8 name is at the top of the list, is that correct? 9 CAPTAIN THUPE: That is so, Chair. 10 CHAIRPERSON: It appears the only, only 11 three of you fired on the 13th. You fired eight rounds with 12 your pistol, as you say. That's indicated in the right- 13 hand column of this document and then – 14 CAPTAIN THUPE: I confirm that, Chair, 15 that is so. 16 CHAIRPERSON: Sekgweleya fired, Constable 17 Sekgweleya fired 19, is that right, 19 rounds with an R5, 18 is that right? 19 CAPTAIN THUPE: That is so, Chair. 20 CHAIRPERSON: And Sergeant Mguye fired 21 ten rounds with an R5. 22 CAPTAIN THUPE: Yes. 23 CHAIRPERSON: Altogether 37 rounds were 24 fired, eight with a pistol by you and the other 29 by 25 Constable Sekgweleya and Sergeant Mguye, is that correct?</p>

<p style="text-align: right;">Page 27946</p> <p>1 CAPTAIN THUPE: That is so, correct, 2 Chair. 3 MR MATHIBEDI SC: Captain, on the 16th in 4 the morning is it correct that you attended a JOCCOM 5 meeting? 6 CAPTAIN THUPE: I did, Chair. 7 MR MATHIBEDI SC: Now a general question 8 about the JOCCOM meetings. The one that you attended, did 9 you give any input? 10 CAPTAIN THUPE: No. 11 MR MATHIBEDI SC: Was it not necessary 12 for you to give an input? 13 CAPTAIN THUPE: It wasn't necessary, 14 Chair. 15 MR MATHIBEDI SC: Other members who gave 16 input, were their inputs considered and deliberated upon? 17 CAPTAIN THUPE: It has been, yes, Chair. 18 MR MATHIBEDI SC: Do you know if 19 Lieutenant-Colonel Vermaak attended any of the JOCCOM 20 meetings that you attended? 21 CAPTAIN THUPE: Ja, there are some of the 22 meetings which he attended but I'm not sure as to whether 23 he attended all the meetings. 24 MR MATHIBEDI SC: Are you in a position 25 to state whether or not he gave some input during the</p>	<p style="text-align: right;">Page 27948</p> <p>1 While the Nyalas were busy deploying the barbed wire I saw 2 that a group of the strikers approached the police line." 3 Do you confirm that? 4 CAPTAIN THUPE: That's correct. I 5 confirm that, Chair. 6 MR MATHIBEDI SC: Now here you say "While 7 the Nyalas were busy deploying the barbed wire." Which 8 Nyalas are you referring to? If you can just have a look 9 at – paragraph 23 of your statement. 10 CAPTAIN THUPE: I don't understand your 11 question, would you kindly repeat it? 12 MR MATHIBEDI SC: Yes. Can you have a 13 look at paragraph, page 11 paragraph 23 of your statement 14 where you say, "While the Nyalas were busy deploying the 15 barbed wire I saw that a group of the strikers approached 16 the police line." Now which Nyalas are you referring to? 17 CAPTAIN THUPE: Nyala 3 and Nyala 4. 18 MR MABUNDA: Referring to Nyala, both 19 Nyala 3 and 4. 20 MR MATHIBEDI SC: Now in terms of metres, 21 distance, how far were you from the line where the 22 deployment of the barbed wire was happening? 23 CAPTAIN THUPE: The distance was 100 24 metres behind the lining up of the public policing. 25 MR MATHIBEDI SC: Now as a result of –</p>
<p style="text-align: right;">Page 27947</p> <p>1 meetings that you would have attended? 2 CAPTAIN THUPE: I don't remember, Chair. 3 MR MATHIBEDI SC: What was the task given 4 to your unit on the 16th? 5 CAPTAIN THUPE: It was just to back up 6 the public order policing, the distance was supposed to be 7 100 metres behind them. That's all. 8 MR MATHIBEDI SC: There is evidence 9 before this Commission that on the 13th there were, during 10 the course of the day two briefings were done. One was 11 done by Colonel Scott and the other one was done by 12 Brigadier Calitz. Did you attend those briefings? 13 CAPTAIN THUPE: That is so but the date 14 was the 16th, Chair. 15 MR MATHIBEDI SC: Thanks. Were you 16 satisfied that a proper briefing was made by both Colonel 17 Scott and Brigadier Calitz? 18 CAPTAIN THUPE: I was satisfied, yes. 19 MR MATHIBEDI SC: Did you also 20 accordingly brief the members under your command? 21 CAPTAIN THUPE: That is so, Chair, I 22 briefed them. 23 MR MATHIBEDI SC: Now I'm going to refer 24 you to paragraph 23 of your statement which reads as 25 follows, "I saw Nyala 1 start to deploy the barbed wire.</p>	<p style="text-align: right;">Page 27949</p> <p>1 COMMISSIONER HEMRAJ: Sorry, just a 2 second. 100 metres behind, at the time the Nyalas were 3 deploying you were 100 metres behind where? 4 CAPTAIN THUPE: The line of public order 5 policing. 6 MR MABUNDA: He is referring to the 7 lining of the public policing, 100 metres away from them, 8 behind them. 9 COMMISSIONER HEMRAJ: And which line-up 10 was that of the public order policing? 11 CAPTAIN THUPE: There were a line of 12 Nyalas in front of us. The ones that were used for 13 negotiations. 14 COMMISSIONER HEMRAJ: So you were 100 15 metres behind the POP Nyalas, the negotiations, five 16 Nyalas. 17 CAPTAIN THUPE: That's correct. 18 COMMISSIONER HEMRAJ: Thank you. 19 MR MATHIBEDI SC: Now as a result of an 20 instruction which was given by Captain Loest, members of 21 TRT moved forward, is that correct? 22 CAPTAIN THUPE: That is so, Chair. 23 MR MATHIBEDI SC: Then what happened 24 thereafter? 25 CAPTAIN THUPE: Then we formed a baseline</p>

<p style="text-align: right;">Page 27950</p> <p>1 just on the side of the kraal.</p> <p>2 MR MATHIBEDI SC: Why was it necessary</p> <p>3 for the line of TRT to move forward?</p> <p>4 CAPTAIN THUPE: There were some other</p> <p>5 members of the POP who were moving backward by then.</p> <p>6 MR MATHIBEDI SC: Why were –</p> <p>7 CAPTAIN THUPE: - retreating, your</p> <p>8 worship.</p> <p>9 MR MATHIBEDI SC: Why were the members of</p> <p>10 POP retreating?</p> <p>11 CAPTAIN THUPE: They had been attacked by</p> <p>12 the group of protesters by then.</p> <p>13 MR MATHIBEDI SC: They were attacked with</p> <p>14 what?</p> <p>15 CAPTAIN THUPE: They were armed with</p> <p>16 pangas, knobkerries, assegais.</p> <p>17 MR MATHIBEDI SC: According to paragraph</p> <p>18 26 of your statement, the fifth line, you said "I heard two</p> <p>19 gunshots fired by the strikers."</p> <p>20 CAPTAIN THUPE: That is so, yes, Chair.</p> <p>21 MR MATHIBEDI SC: Did you see the striker</p> <p>22 that fired?</p> <p>23 CAPTAIN THUPE: I did not see him at all,</p> <p>24 Chair.</p> <p>25 MR MATHIBEDI SC: In which direction was</p>	<p style="text-align: right;">Page 27952</p> <p>1 MR MATHIBEDI SC: On those two occasions</p> <p>2 when you tested the radio, hand radio, was it functional?</p> <p>3 CAPTAIN THUPE: In both occasions it was</p> <p>4 functional, Chair.</p> <p>5 MR MATHIBEDI SC: According to you,</p> <p>6 Lieutenant-Colonel Claassen is the first member who gave an</p> <p>7 instruction for cease fire.</p> <p>8 CAPTAIN THUPE: That is so, Chair.</p> <p>9 MR MATHIBEDI SC: Now did you compile a</p> <p>10 shooting list in relation to the incident of the 16th?</p> <p>11 CAPTAIN THUPE: I did so, Chairperson.</p> <p>12 MR MATHIBEDI SC: I'm going to refer you</p> <p>13 to annexure RRR7, is that the shooting list that you</p> <p>14 compiled?</p> <p>15 CHAIRPERSON: That's exhibit RRR7, that's</p> <p>16 item 10 in your bundle.</p> <p>17 CAPTAIN THUPE: Item number 10.</p> <p>18 [10:13] CHAIRPERSON: That presumably can be put</p> <p>19 up on the screen as the previous one was.</p> <p>20 MR MATHIBEDI SC: That is the list, yes.</p> <p>21 CHAIRPERSON: IPID opened a docket in</p> <p>22 respect of case 134 of August 2012 and a statement by you,</p> <p>23 unsigned statement by you was put in the IPID docket headed</p> <p>24 "Warning statement" but are you saying you hadn't seen that</p> <p>25 statement and you certainly didn't sign it, is that right?</p>
<p style="text-align: right;">Page 27951</p> <p>1 the firing made?</p> <p>2 CAPTAIN THUPE: They were approaching the</p> <p>3 line of the TRT, that is the protesters. As far as I'm</p> <p>4 concerned they were directing their shots towards the TRT</p> <p>5 line.</p> <p>6 MR MATHIBEDI SC: According to paragraph</p> <p>7 27 of your statement you saw some police members removing</p> <p>8 firearms from the protesters. Are you in a position to</p> <p>9 give names of the members referred to in the statement?</p> <p>10 CAPTAIN THUPE: One whom I've seen is</p> <p>11 Sergeant Browning. The second one I did not see him, who</p> <p>12 is that one, clearly.</p> <p>13 MR MATHIBEDI SC: According to paragraph</p> <p>14 28 of your statement you were in possession of a hand</p> <p>15 radio.</p> <p>16 CAPTAIN THUPE: That is so, Chair.</p> <p>17 MR MATHIBEDI SC: Now when on the 16th did</p> <p>18 you or did you at any stage on the 16th test the hand radio</p> <p>19 to check whether it was functional or not?</p> <p>20 CAPTAIN THUPE: I tested it, it was in a</p> <p>21 working condition, a good working condition.</p> <p>22 MR MATHIBEDI SC: When did you test the</p> <p>23 radio, hand radio.</p> <p>24 CAPTAIN THUPE: In the morning and also</p> <p>25 at the time when we were going to the kopple.</p>	<p style="text-align: right;">Page 27953</p> <p>1 CAPTAIN THUPE: So the docket was for the</p> <p>2 people who were arrested, so it's a witness statement.</p> <p>3 CHAIRPERSON: It's a witness – I see,</p> <p>4 it's an SAPS docket, in other words.</p> <p>5 CAPTAIN THUPE: That's correct.</p> <p>6 CHAIRPERSON: And your statement is a</p> <p>7 statement effectively as a potential state witness in that</p> <p>8 case, is that correct?</p> <p>9 CAPTAIN THUPE: That's correct.</p> <p>10 COMMISSIONER HEMRAJ: And it deals only</p> <p>11 with the incident on the 16th of August and not the 13th.</p> <p>12 CAPTAIN THUPE: That's correct.</p> <p>13 COMMISSIONER HEMRAJ: Yes.</p> <p>14 MR MOJAPELO: Okay, I'll move on this</p> <p>15 way. So Captain, you've never made any statement under</p> <p>16 oath to IPID disclosing that you have fired eight shots?</p> <p>17 CAPTAIN THUPE: No.</p> <p>18 MR MOJAPELO: Okay. I'll move on to the</p> <p>19 next topic which is the instructions to Kuhn to fire a</p> <p>20 teargas. You are by now aware of the evidence of General</p> <p>21 Mpmembe and you're aware that in his evidence he denies that</p> <p>22 he has issued instructions to Warrant Officer Kuhn to fire</p> <p>23 teargas, am I correct?</p> <p>24 CAPTAIN THUPE: You are correct.</p> <p>25 MR MOJAPELO: And in paragraph 6.3 of</p>

<p style="text-align: right;">Page 27954</p> <p>1 your statement that you've made now recently, you give a 2 full detail of what I term a conversation, an instruction 3 in the form of a conversation between General Mpembe and 4 Warrant Officer Kuhn. If you go to that paragraph 6.3 of 5 QQQ9, on the second sentence there you say, "General Mpembe 6 ran in the direction of some of the members and gave 7 instructions to Warrant Officer Kuhn to shoot a teargas." 8 That was the first part of the conversation. General 9 Mpembe issues an instruction to Warrant Officer Kuhn and 10 Warrant Officer Kuhn replies, according to you, you say "I 11 heard Warrant Officer Kuhn asking the General whether he 12 should shoot the teargas." That is the second part and the 13 third part of this conversation is the General responding 14 to the question. You say the General said, "Yes, shoot." 15 That's how it happened.</p> <p>16 CAPTAIN THUPE: That's correct. 17 MR MOJAPELO: Am I correct that you have 18 just recorded this in detail, this conversation in detail 19 for the first time under oath on the 14th of April 2012? 20 CHAIRPERSON: 2014. 21 MR MOJAPELO: 2014, I beg your pardon. 22 CAPTAIN THUPE: No. I am referring at 23 the time when we were at Roots. 24 MR MOJAPELO: Okay – 25 CHAIRPERSON: No, the question was this</p>	<p style="text-align: right;">Page 27956</p> <p>1 the third paragraph there, the second sentence of the third 2 paragraph. I can read that sentence to you. You say, 3 "While following and monitoring them, the protesters 4 changed direction and went straight towards the informal 5 settlement and then instruction was given for firing of a 6 teargas to redirect them not to pass through an informal 7 settlement and they went through a tear smoke." 8 CAPTAIN THUPE: You are correct. 9 MR MOJAPELO: We agree that you don't 10 mention that General Mpembe issued an instruction. 11 CAPTAIN THUPE: That's correct. 12 MR MOJAPELO: In fact, what is 13 significant is that in this statement when General Mpembe 14 has issued an instruction you've mentioned that 15 instruction. The first sentence of that paragraph you say, 16 "The participants refused to surrender their weapons and 17 while General Mpembe was still negotiating with them, they 18 stood up and started to move towards the koppie and General 19 Mpembe instructed us to follow and monitor them." You see 20 when you talk about an instruction and Mpembe, you 21 mentioned it here. 22 CAPTAIN THUPE: Yes, I can see. 23 MR MOJAPELO: Okay. Two months 24 thereafter you made another statement on the 5th of 25 February.</p>
<p style="text-align: right;">Page 27955</p> <p>1 is the first time you recorded in a statement under oath – 2 were you under oath at Roots? 3 CAPTAIN THUPE: No. 4 CHAIRPERSON: No, so the answer to the 5 question is correct, isn't it, counsel is correct, is it 6 not? Is this the first sworn statement, the first 7 affidavit you made in which you made these allegations? 8 CAPTAIN THUPE: That's correct. 9 CHAIRPERSON: Ja. 10 MR MOJAPELO: You know, what is more 11 significant about this is that it has been made after 12 General Mpembe has made, has already testified in this 13 Commission. You agree with me? 14 CAPTAIN THUPE: Yes. 15 MR MOJAPELO: Okay but you said you 16 mentioned again, you mentioned this again at Roots. I want 17 us to deal with Roots now. The first statement that you've 18 made after Roots is HHH15.1, the statement that you made on 19 the 12th of December 2012, am I correct? 20 CAPTAIN THUPE: Yes. 21 MR MOJAPELO: Am I correct again that in 22 this statement you don't mention this conversation that 23 I've just unpacked to you? In fact you don't mention that 24 General Mpembe issued an instruction to Warrant Officer 25 Kuhn. You can check the statement. What is significant is</p>	<p style="text-align: right;">Page 27957</p> <p>1 CHAIRPERSON: That's RRR4. 2 MR MOJAPELO: RRR4. This is that 3 statement that you deal with eight shots. 4 CAPTAIN THUPE: That is so, yes. 5 MR MOJAPELO: Also in this statement do 6 you agree with me that you – there is no mention again of 7 the alleged instruction by General Mpembe to fire teargas. 8 CAPTAIN THUPE: Yes, that is so, Chair. 9 MR MOJAPELO: Chair, and if we deal with 10 what happened at Roots, you know that General Mpembe has 11 already testified in this Commission and reference to what 12 happened at Roots will be at day 104, page 11168 from line 13 5 to line 17. Do you see that? General Mpembe answers, 14 "Chairperson, he, earlier on I said at Potchefstroom we 15 gathered all those members that took part on the 13th, and 16 during that discussion, that's when then Warrant-Officer 17 Kuhn was asked in the presence of all the members there, 18 and then he said he heard an order but he could not know 19 who gave the order or whose voice was that. It is in that 20 meeting where also Captain Thupe said, 'General, I heard 21 you giving the order.' I said to Captain Thupe, 'I did not 22 give the order. If I could have given the order I could 23 have given the order through the radio and that everybody 24 could have heard me.' That's when then Captain Thupe kept 25 quiet, and that was the end of the matter." This evidence</p>

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1 was given before you made this statement, you are aware of
2 that?

3 CHAIRPERSON: You don't have to interpret
4 the question, he understands – unless he asks you to do so.
5 It just wastes times.

6 MR MOJAPELO: The answer is yes?

7 CAPTAIN THUPE: I don't know.

8 MR MOJAPELO: This is what General Mpembe
9 has said in this Commission. It has been recorded, so we
10 can move on.

11 CAPTAIN THUPE: Let's move, I don't know.

12 MR MOJAPELO: Do you understand the
13 question?

14 CAPTAIN THUPE: May you repeat the
15 question, please?

16 MR MOJAPELO: I've read to you what
17 General Mpembe has said in this Commission. This is his
18 version and I've asked you that before you made your
19 statement, this was the evidence already in this Commission
20 by General Mpembe. Do you agree with me?

21 CAPTAIN THUPE: I don't know to which
22 statement are you referring.

23 COMMISSIONER HEMRAJ: Captain?

24 CAPTAIN THUPE: Which statement?

25 COMMISSIONER HEMRAJ: Captain, what has

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1 just been put to you as being the evidence of General
2 Mpembe at the Commission, were you aware of that, that that
3 evidence had been given?

4 CAPTAIN THUPE: No.

5 MR MOJAPELO: Okay, so my question
6 previously –

7 CHAIRPERSON: The witness's answer has
8 not been – I thought the witness said no anyway –

9 MR MABUNDA: He said no –

10 CHAIRPERSON: So the interpreter doesn't
11 have to interpret what the witness says in English.

12 MR MOJAPELO: Okay, you might not be
13 aware of this detailed or this part of the transcript but
14 five questions earlier you agreed with me when I said
15 Captain, I mean General Mpembe has already testified in
16 this Commission and denied that he has issued that
17 instruction. You are aware of that denial?

18 CAPTAIN THUPE: That's correct.

19 MR MOJAPELO: Okay, then we can move on.

20 CHAIRPERSON: If you're moving on, I see
21 it's nearly half past 10 so we'll take the first comfort
22 break now. Quarter of an hour, Mr –

23 MR MOJAPELO: Mr Timekeeper.

24 CHAIRPERSON: Mr Timekeeper, quarter of
25 an hour. So we'll be back at quarter to 11 and if

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1 everybody isn't here we'll still carry on unless Mr
2 Mathibedi is not here, in which case we'll have to send a
3 posse of policemen to fetch him.

4 [COMMISSION ADJOURNS COMMISSION RESUMES]
5 [10:46] CHAIRPERSON: The Commission resumes.
6 You're still under oath, Captain.

7 SAMUEL KAY THUPE: (s.u.o.)

8 CHAIRPERSON: Mr Mojapelo?

9 MR MATHIBEDI SC: Sorry, Mr Chairman, I
10 just would like to raise an issue which we think is
11 prejudicial to SAPS's case. At this stage we have, save
12 for the evidence leaders, the only documents that we
13 received this morning regarding the cross-examination of
14 this witness is from the Human Rights Commission. We have
15 not received other documents from other parties. My view
16 is that, you know, we should have had an opportunity to
17 consult with the witness on those documents. Now we are
18 being prejudiced, Mr Chairperson.

19 CHAIRPERSON: No, I don't know about, I
20 don't know whether you had time, whether you had an
21 opportunity to consult with the witness but certainly the
22 witness has had a chance to read them and we will take the
23 Human Rights Commission next after Mr Mojapelo, after the
24 evidence leaders, and I don't know whether the parties, the
25 other parties that are going to cross-examine are going to

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1 rely on documents. They may be precluded from doing so if
2 they haven't given notice of it in due time but that's
3 something we can perhaps address later on. There will be
4 substantially more time still spent by the evidence
5 leaders, being the time allocated to them and the Human
6 Rights Commission and presumably the other parties can
7 decide whether they're going to rely on documents and, if
8 so, which documents and something can be done by tea time
9 but we'll cross that bridge when we get there. Mr
10 Mojapelo, please proceed? No, sorry, the position is this.
11 If the other parties –

12 MR MATHIBEDI SC: No, but even –

13 CHAIRPERSON: Sorry, can –

14 MR MATHIBEDI SC: - even with the Human
15 Rights, we've just received those documents, they are just
16 being printed so the witness has, did not have an
17 opportunity of reading them.

18 CHAIRPERSON: Alright, when the cross-
19 examination by the evidence leaders is over, we will review
20 the position. Obviously we must give the witness an
21 opportunity to look at any documents that he's being
22 referred to. You haven't got the right to consult with him
23 on them but obviously we will be very careful to ensure
24 that there's no question of unfairness to the witness and
25 before he's confronted with any document, he will have had

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1 to have had ample opportunity to study the document.

2 MR MATHIBEDI SC: Sorry, Chairperson,

3 what I said, we would have consulted with him had those

4 documents been made available prior to the witness

5 testifying.

6 CHAIRPERSON: Ja, no, that's a good

7 point. Alright, okay, in the ordinary rule that you can't

8 cross-examine with a witness while he's under cross-

9 examination will not – sorry, I made the mistake before –

10 you can't consult with the witness while he's under cross-

11 examination, that rule will not apply insofar as the

12 consultation relating to documents which he hasn't been

13 shown before he started evidence-in-chief, which he should

14 have been shown before –

15 MR MATHIBEDI SC: Thanks, Chairperson.

16 CHAIRPERSON: I take it that

17 satisfactorily deals with the problem. Mr Mojapele?

18 CROSS-EXAMINATION BY MR MOJAPELO (CONTD.):

19 Thank you, Mr Chair. Captain –

20 CHAIRPERSON: I'm sorry. And if parties

21 are disgruntled because that's going to happen and

22 consultation will be allowed during cross-examination, it's

23 their own fault for not giving notice of the document

24 beforehand.

25 MR MOJAPELO: Thank you, Chair. Captain,

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1 we have just before break, we have just demonstrated to you

2 the evidence of General Mpembe in this Commission in as far

3 as it relates to the conversation that he had with you and

4 other members at Roots and I proceed, in your consolidated

5 statement paragraph 31.6 – your consolidated statement is

6 QQQ9, you say in relation to General Mpembe and Roots, you

7 say, "I recall that General Mpembe said that he could not

8 recall that he gave the instruction but admitted that it

9 was possible that the instruction was given by him." This

10 captures what you said.

11 CAPTAIN THUPE: That is so, yes, Chair.

12 MR MOJAPELO: You see, what we have now

13 is that General Mpembe said he told you, you Captain Thupe,

14 that he did not issue an instruction and you say that he

15 said to you that it was possible that he did.

16 CAPTAIN THUPE: That is so, Chair.

17 MR MOJAPELO: These are two conflicting

18 versions that have been made under oath by two commanders.

19 Are you aware of that?

20 CAPTAIN THUPE: I am aware but what I say

21 is true.

22 MR MOJAPELO: Obviously one of them can't

23 be true, one of them must be the truth and one of them not

24 the truth.

25 CAPTAIN THUPE: But what I said is true,

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1 that is what transpired.

2 MR MOJAPELO: So –

3 MR MABUNDA: I do not know why he has

4 changed but what I said to this Commission, that is the

5 truth.

6 MR MOJAPELO: So are you telling this

7 Commission that General Mpembe did not tell the truth under

8 oath about this event?

9 CAPTAIN THUPE: I don't know his reasons

10 but – (speaking Setswana) –

11 MR MABUNDA: I don't know why because

12 what I've said to this Commission is the truth. Even

13 before the presentation of Mr Visser it was said in that

14 way.

15 MR MOJAPELO: We will deal with the

16 presentation of Mr Visser now.

17 CHAIRPERSON: Mr Visser's, Colonel

18 Visser's presentation – General Mpembe also said in his

19 evidence that you had said that he gave the instruction and

20 when he challenged you on it, you said you hadn't heard him

21 yourself but someone else had told you that he had given

22 the instruction. That was his evidence also, you remember?

23 Now have you got any comment on that?

24 CAPTAIN THUPE: Well, when he made the

25 instruction I've seen him and heard him.

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1 CHAIRPERSON: So are you saying that

2 General Mpembe's evidence that you said at Roots that you

3 did not yourself hear him give the instruction but that

4 somebody had told you that he had given the instruction,

5 are you saying that evidence of General Mpembe is also

6 false, also incorrect?

7 CAPTAIN THUPE: It is, Chair, incorrect.

8 MR MOJAPELO: Thank you, Mr Chair. I

9 would like to deal with the documents that come from Roots

10 and I want your comment on that because those documents

11 that come from Roots, one of them, the first one will be

12 exhibit L and if we can light exhibit L47, if it can be

13 shown.

14 CHAIRPERSON: Exhibit L, slide 47, is

15 that what you're saying?

16 MR MOJAPELO: Slide 47, yes, L.

17 CHAIRPERSON: Do you see that, this is

18 the final version of exhibit L. Slide 47 describes what

19 allegedly happened on the 13th of August and in the second

20 paragraph it talks about the use of teargas and stun

21 grenades without mentioning any instruction at all. Do you

22 see that?

23 CAPTAIN THUPE: That's correct.

24 MR MOJAPELO: And the second document,

25 that is JJJ140, JJJ140 if we look at its narration in the

<p style="text-align: right;">Page 27966</p> <p>1 record, that is day 123. I will summarise it, it's the 2 notes that were compiled by the breakaway groups and in 3 this event they were dealing with the events of the 13th. 4 CHAIRPERSON: We'll have to scroll down 5 this one a bit because – the second page, yes. 6 MR MOJAPELO: Yes, the second paragraph 7 there. You see it reads, "General Mpembe gave instruction 8 to corner the strikers in order to disarm and arrest them. 9 After the instruction of cornering them was announced, the 10 police ran after the strikers and the strikers increased 11 their walking pace towards the nearby settlement. While 12 there, someone from the members who were run after the mob 13 gave an instruction, gas granite. Captain Thupe heard 14 Warrant Officer Kuhn confirming whether he clearly heard 15 the instruction. After confirming that then he used the 16 teargas CS with an attempt to disperse the mob." Do you 17 see that? 18 CAPTAIN THUPE: Yes, I see that. 19 MR MOJAPELO: You see it doesn't say 20 General Mpembe issued an instruction to Warrant Officer 21 Kuhn. 22 CAPTAIN THUPE: Yes, I can see that it's 23 not mentioned there. 24 MR MOJAPELO: Two documents I've shown 25 you from Roots do not mention that. Do you have any</p>	<p style="text-align: right;">Page 27968</p> <p>1 to General Mpembe when you heard that? 2 CAPTAIN THUPE: I can't remember but the 3 police were plus-minus ten. 4 COMMISSIONER HEMRAJ: Plus-minus ten? 5 CAPTAIN THUPE: That's right. 6 COMMISSIONER HEMRAJ: Was the order 7 addressed to Warrant Officer Kuhn? 8 CAPTAIN THUPE: That's correct, because 9 he was the one who was having the pump action, that's 10 launching that grenade, smoke grenade. 11 COMMISSIONER HEMRAJ: Was the order 12 addressed to Warrant Officer Kuhn? 13 CAPTAIN THUPE: Directed to Warrant 14 Officer Kuhn. 15 CHAIRPERSON: How far was Major-General 16 Mpembe from Warrant Officer Kuhn when he gave the order? 17 CAPTAIN THUPE: Less than three to four 18 metres. 19 CHAIRPERSON: Three to four metres? 20 CAPTAIN THUPE: That's correct. 21 CHAIRPERSON: And clearly from what you 22 tell us, Warrant Officer Kuhn realised that the person who 23 had spoken to him was Major-General Mpembe because you say 24 he asked him whether he should shoot teargas, so he 25 addressed a question to him, is that right?</p>
<p style="text-align: right;">Page 27967</p> <p>1 comment to that? 2 CHAIRPERSON: Before you do that, you'll 3 notice that where General Mpembe gives an instruction it 4 says so. That, the paragraph immediately preceding the one 5 which counsel has put to you begins, "The General warned 6 them" and then the next paragraph begins, "General Mpembe 7 gave an instruction" and then suddenly there's a reference 8 to "someone gave an instruction" and it's from the members 9 who ran after the mob. And then – so the one, when General 10 Mpembe gives an instruction, whoever drafted this document 11 says so but this particular alleged instruction is simply 12 described as having been given by "someone from the 13 members." Can you comment on that? 14 CAPTAIN THUPE: No, the instructions for 15 the CSS was given by General Mpembe. 16 CHAIRPERSON: Did he say gas granite? I 17 take it granite should really be grenade. Did he say gas 18 grenade or what did he say, or didn't you hear the exact 19 words that he used? 20 CAPTAIN THUPE: He said teargas. 21 CHAIRPERSON: He didn't say grenade? 22 CAPTAIN THUPE: No. 23 CHAIRPERSON: I see. 24 COMMISSIONER HEMRAJ: At the time he gave 25 the order how many of the policemen were in close proximity</p>	<p style="text-align: right;">Page 27969</p> <p>1 CAPTAIN THUPE: That's correct. 2 COMMISSIONER HEMRAJ: Does that normally 3 happen when you're given an order by a senior officer to 4 fire gas? Do you turn around and say, must I do this, or 5 do you just go ahead and carry out the order? 6 CAPTAIN THUPE: He asked that carry out 7 the orders. 8 CHAIRPERSON: No, I think what you tell 9 us is, he said should I shoot teargas – in other words, 10 from what you tell us he understood he had to shoot 11 something but he wasn't clear whether it was teargas, so to 12 make sure he asked him "Must I shoot teargas?" Is that 13 what you're telling us? 14 CAPTAIN THUPE: That's correct. 15 COMMISSIONER HEMRAJ: He also asked 16 whether he should shoot it? 17 CAPTAIN THUPE: That's correct. 18 CHAIRPERSON: Did you not contribute to 19 the discussion at all? Did you say anything? 20 CAPTAIN THUPE: I only heard the 21 instruction. 22 CHAIRPERSON: And you didn't repeat the 23 order – 24 CAPTAIN THUPE: I didn't – 25 CHAIRPERSON: - Warrant Officer Kuhn to</p>

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1 know who had issued the order and what the order was?
 2 CAPTAIN THUPE: No, I didn't repeat the
 3 order.
 4 CHAIRPERSON: You remained silent
 5 throughout.
 6 CAPTAIN THUPE: That's right.
 7 CHAIRPERSON: I see, thank you.
 8 MR MOJAPELO: You see, Captain, I've
 9 already demonstrated to you two documents from Roots that
 10 doesn't support your version. Now I want us to deal with
 11 the statement of Warrant Officer Kuhn and –
 12 CHAIRPERSON: Which exhibit number is
 13 that?
 14 MR MOJAPELO: The statement, as far as
 15 I'm concerned, doesn't have an exhibit number.
 16 CHAIRPERSON: No, it is before us as an
 17 exhibit, I'm sure. Let it be put up in the meanwhile and
 18 we'll find the exhibit number. The police have really
 19 kindly provided us with an index to the exhibits, so we
 20 should be able to find it there. We've seen it before,
 21 maybe it hasn't been given a number, maybe I'm being unduly
 22 optimistic in thinking it's been given a number but if it
 23 has been given one we'll find it on the index the police
 24 gave us to their bundle for cross-examination of Colonel
 25 Vermaak where they set out all the exhibits so far. We've

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1 got to move on a bit further, Mr Mojapelo, what paragraph
 2 number do you want us to look at?
 3 MR MOJAPELO: I want us to look at
 4 various paragraphs. Paragraph 2, paragraph 3 and paragraph
 5 4 but let me start it this way. There's a bundle of
 6 documents that I've prepared for the Commission, the
 7 statement must be there. Captain, do you have the
 8 statement of Kuhn in front of you?
 9 CAPTAIN THUPE: That's correct.
 10 MR MOJAPELO: Okay.
 11 COMMISSIONER HEMRAJ: Mr Mojapelo, if
 12 you've prepared a bundle of documents for us we certainly
 13 don't have it.
 14 MR MOJAPELO: I apologise for that. I
 15 was made to believe that they were given to you on Friday,
 16 but in the meantime the statement is on the board there.
 17 Yes, Mr Wesley confirms that it doesn't have an exhibit
 18 number so we can give it an exhibit number.
 19 CHAIRPERSON: Have you got copies of this
 20 document for us? It'll be RRR9. What paragraph do you
 21 want to refer to?
 22 MR MOJAPELO: Before I refer to the
 23 specific paragraph I just want to remind the Captain that
 24 according to his statement, Warrant Officer Kuhn and
 25 General Mpembe had the conversation that I broke down to

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1 you. Do you still remember that? General Mpembe issued an
 2 instruction, Warrant Officer asked whether he heard the
 3 instruction, General Mpembe responded again. Do you still
 4 remember that?
 5 CAPTAIN THUPE: That's correct.
 6 MR MOJAPELO: Okay, Warrant Officer Kuhn
 7 in paragraph 4, if I can just go to –
 8 CHAIRPERSON: Could we see paragraph 4
 9 please, on the screen? It's in Afrikaans. "Toe hulle 'n
 10 end van ons weg was, het General Mpembe die opdrag gegee
 11 dat ons hulle moet weghou van die plakkerskamp. Ons het
 12 begin hardloop om by hulle uit te kom. Dis toe dat hulle
 13 ook vinniger beweeg. Ek het 'n haelgeweer met een
 14 traanrook, ek was besig om agter hulle aan te hardloop toe
 15 iemand aan my regterkant opdrag gegee het dat daar
 16 traanrook en skokgranate gegooi moet word. Ek het gevra of
 17 ek die traanrook moet skiet. Die opdrag het weer gekom dat
 18 traanrook en skokgranate gegooi moet word."
 19 So I'll translate that into English. When they
 20 were a distance away from us, General Mpembe gave the order
 21 that we should hold, keep them away from the squatter camp.
 22 We began to run in order to catch up with them. That's
 23 when they also move – it's the present tense he uses now –
 24 they move more quickly. I had a shotgun with one teargas
 25 grenade, I think is the correct word, he just says with one

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1 teargas. I was busy to run behind them when someone on my
 2 right side gave an instruction that teargas and stun
 3 grenades must be thrown. I asked if I must fire the
 4 teargas. The instruction came again that teargas and stun
 5 grenades be thrown. I fired – then he goes on, "Ek het een
 6 traanrook afgevuur na die regterkant van die" group. I
 7 fired off one teargas to the right side of the group.
 8 That's the passage in the –
 9 [11:05] MR MOJAPELO: Yes, what I want to
 10 highlight there is the word "iemand." Do you see it
 11 doesn't say General Mpembe gave instruction. He says
 12 "iemand," he says "toe iemand aan my regterkant 'n opdrag
 13 gegee het." Do you see that?
 14 CAPTAIN THUPE: I see. Yes, I see that.
 15 MR MOJAPELO: Do you agree with me that
 16 he doesn't say the instruction came from General Mpembe?
 17 CAPTAIN THUPE: It's what he wrote on the
 18 statement, yes.
 19 MR MOJAPELO: Okay. On this statement
 20 again I can demonstrate to you that when Warrant Officer
 21 Kuhn talks about instruction and General Mpembe, he
 22 mentions those two –
 23 CHAIRPERSON: We saw that from the first
 24 sentence when he said, when they were a distance from us,
 25 as I translated previously, General Mpembe gave the

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1 instruction that we should keep them away from the squatter
2 camp.

3 MR MOJAPELO: Yes, that was in paragraph
4 4, you see that?

5 CAPTAIN THUPE: I see that, yes, Chair.

6 MR MOJAPELO: It happens again in the
7 previous Warrant Officer paragraphs. In paragraph 3 again
8 – I don't think it's necessary for the Chairperson to
9 interpret – on the second sentence he says, "Generaal
10 Mpembe met hulle gepraat en gevra dat hulle wapens moet
11 neersit voordat hulle koppie toe gaan. Hulle het hom nie
12 verstaan nie want hulle het ander taal gepraat. Die
13 Generaal het hulle weer ingelig dat hulle 10 sekondes gegee
14 om die wapens neer te lê. Hulle het geweier, vorentoe
15 geloop en hulle het laat deurgaan."

16 CHAIRPERSON: I think I'll have to translate that
17 for the benefit of those who are unable to understand
18 Afrikaans. With our arrival at the group of people, they
19 were kneeling with their traditional weapons with them,
20 spears, pangas and knobkerries. General Mpembe spoke with
21 them and asked that they should lay down their arms before
22 they go to the koppie. They didn't understand him because
23 they talked another language. The General then informed
24 them again that he was giving them 10 seconds to lay down
25 their weapons. They refused and walked on. We let them

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1 proceed.

2 MR MOJAPELO: So you see when he talks
3 about General Mpembe, he mentions General Mpembe by name.
4 He doesn't say "iemand."

5 CAPTAIN THUPE: Yes, I see that, Chair.

6 MR MOJAPELO: The same also applies in
7 the previous paragraph which is paragraph 2. I don't think
8 there's a need to go there.

9 CAPTAIN THUPE: Ja, it is so, Chair.

10 COMMISSIONER HEMRAJ: Can I just ask you,
11 Captain, the order you heard was for teargas to be fired.

12 CAPTAIN THUPE: That's correct.

13 COMMISSIONER HEMRAJ: Did you hear any
14 order from General Mpembe to use stun grenades as well?

15 CAPTAIN THUPE: No, I only heard the one
16 of teargas.

17 COMMISSIONER HEMRAJ: Only teargas?

18 CAPTAIN THUPE: That's correct.

19 MR MOJAPELO: Yes, taking leave from the
20 question of the Commissioner, that is the other significant
21 difference between your version and the version, and what
22 Warrant Officer Kuhn heard. Warrant Officer Kuhn heard an
23 instruction for both the grenade and teargas but you
24 specifically mention in your consolidated statement that
25 you heard only a teargas and you did not hear a stun

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1 grenade.

2 CAPTAIN THUPE: Ja, that is so. That's
3 what I heard –

4 MR MOJAPELO: The reference to that is on
5 paragraph 6.3 of QQQ9.

6 COMMISSIONER HEMRAJ: Did anyone give an
7 order to use stun grenades?

8 CAPTAIN THUPE: I didn't hear that order.

9 COMMISSIONER HEMRAJ: If it had been in
10 the immediate vicinity you would have heard it.

11 CAPTAIN THUPE: That's correct.

12 MR MOJAPELO: So do you have any comment
13 about that because your alleged conversation between
14 Warrant Officer Kuhn and General Mpembe is not supported by
15 the statement that has been filed by Warrant Officer Kuhn.
16 Do you have any comment on that?

17 MR MATHIBEDI SC: Sorry Mr Chairman, it
18 can't be expected of this witness to comment as to why
19 certain information was included or was excluded from –

20 CHAIRPERSON: No, I think that objection
21 is correct. I mean the most you can say is, have you any
22 explanation? You will later argue, if he can't explain it,
23 that he couldn't explain it but he was given an opportunity
24 to explain but I don't think you can put it any higher than
25 that. So are we correct in assuming that you can't explain

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1 the conflict between what you've told us and Warrant
2 Officer Kuhn?

3 CAPTAIN THUPE: No, I can't say what
4 Warrant Officer Kuhn has read but what I –

5 CHAIRPERSON: My understanding, you've
6 told us, you've given us your version.

7 CAPTAIN THUPE: That's correct.

8 CHAIRPERSON: He's reduced to writing his
9 version and there's a difference and you can't explain the
10 difference, is that correct? Alright.

11 MR MOJAPELO: Okay, we can move on.
12 Again as I've said and I think I must just repeat it, that
13 the dilemma is that two commanders have given two different
14 versions now about what led to Warrant Officer Kuhn's
15 shooting of the teargas and one of these versions cannot be
16 correct. Do you agree with me?

17 CAPTAIN THUPE: What I said to this court
18 is what I heard the day in question, that's all I gave to
19 the Commission, Chair.

20 MR MOJAPELO: Yes, I hear that but my
21 question is, your version is different from General
22 Mpembe's version and I'm saying these two commanders have
23 given two conflicting versions, one of those versions
24 cannot be correct, do you agree with me?

25 CAPTAIN THUPE: Well, what I wrote which

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1 is before this Commission, is what I have heard and that
 2 is the truth but I wouldn't explain how come the differ, of
 3 the statements.
 4 MR MOJAPPELO: Yes, I'm not yet at the
 5 period where you must explain how come or why did – you say
 6 your version is the correct one.
 7 CAPTAIN THUPE: That's correct.
 8 MR MOJAPPELO: So it goes without saying
 9 that General Mpmembe's version is not correct.
 10 CHAIRPERSON: [Microphone off, inaudible]
 11 – conflict and he says he's right, then it follows the
 12 other person is wrong. We don't have to waste time on
 13 that.
 14 MR MOJAPPELO: Okay. The other two things
 15 that I want to deal with briefly is the issue where,
 16 Captain, you've chased after the strikers who have robbed
 17 the police an R5.
 18 CAPTAIN THUPE: That's correct.
 19 MR MOJAPPELO: Yes, I've heard your
 20 explanation in evidence-in-chief, I'm not going to take it
 21 as far as I wanted to take it but before dealing with the
 22 chasing of the strikers I want you to explain, I want to
 23 understand what you saw in connection with the movement of
 24 the strikers as you explain it in paragraph 7.1 of your
 25 consolidated statement. The way I understand it and you

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1 must correct me if I'm wrong, is that the strikers were
 2 walking in front of the police, am I correct so far?
 3 CAPTAIN THUPE: I would like you to
 4 repeat your question.
 5 MR MOJAPPELO: Let me just clarify it
 6 before I put it. I'm talking about the incident just
 7 before the commotion, just before the firing of the teargas
 8 and the stun grenades. The strikers were walking in one
 9 direction and behind them it was the police.
 10 CAPTAIN THUPE: That's correct.
 11 MR MOJAPPELO: And the strikers at that
 12 time were near an informal settlement.
 13 CAPTAIN THUPE: No, that was not near the
 14 informal settlement.
 15 MR MOJAPPELO: They were not – okay, maybe
 16 let me put it this way. They were walking in the direction
 17 of the informal settlement.
 18 CAPTAIN THUPE: No. They were walking to
 19 pass on the left-hand side of the informal settlement.
 20 MR MOJAPPELO: They were walking to pass
 21 on the left-hand side of the informal settlement.
 22 CAPTAIN THUPE: Ja, before everything.
 23 MR MOJAPPELO: Okay. For my question that
 24 is enough. The police were behind them when the stun
 25 grenade and teargas were shot.

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1 CAPTAIN THUPE: They were on, behind as
 2 well on the right-hand side of the protesters.
 3 MR MOJAPPELO: Yes. Then when the stun
 4 grenade was shot the strikers changed direction, according
 5 to your statement, and ran back, not in the direction of
 6 where they were going but they went back and to the
 7 direction of the police. Is that how you saw it?
 8 CAPTAIN THUPE: What happened is that the
 9 strikers then turned to, on the right-hand side of the
 10 police, they turned in that side in the direction where the
 11 police were, with the stun grenade.
 12 MR MOJAPPELO: In other words when the
 13 stun grenade was shot, the strikers, instead of increasing
 14 the distance between themselves and the police by running
 15 away, you say they turned back and ran towards the police.
 16 CAPTAIN THUPE: That is so, Chair.
 17 MR MOJAPPELO: Okay. You spoke that there
 18 was a lot of teargas that clouded your vision. What
 19 exactly did you see when they ran back to the police?
 20 CAPTAIN THUPE: Those whom I have seen is
 21 those who were busy attacking Warrant Officer Lepaaku, that
 22 is the strikers.
 23 MR MOJAPPELO: Okay and then what happened
 24 thereafter?
 25 CAPTAIN THUPE: Thereafter I attempted to

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1 go and help Warrant Officer Lepaaku. The strikers, the
 2 protesters then they took his R5 and then they ran away
 3 with it. Then both myself and Constable Sekgweleya, we
 4 started to chase them, to follow the strikers.
 5 COMMISSIONER HEMRAJ: Captain, can you
 6 assist me with something please? When you say that they
 7 turned around and ran towards the police, was it the police
 8 on the right-hand side of the crowd of strikers or was it
 9 the police that were behind the crowd of strikers?
 10 CAPTAIN THUPE: Those on the right-hand
 11 side of the protesters.
 12 COMMISSIONER HEMRAJ: Those on the right-
 13 hand side?
 14 CAPTAIN THUPE: That's correct.
 15 COMMISSIONER HEMRAJ: And was it the
 16 persons that were at the front of the crowd or did they
 17 come from somewhere in the middle of the crowd? What did
 18 you observe?
 19 CAPTAIN THUPE: Can you please repeat
 20 your question?
 21 COMMISSIONER HEMRAJ: Yes. The persons
 22 that went towards the police line on the right-hand side,
 23 did they come from the persons that were at the very front
 24 of the crowd or did they come from some other part of the
 25 crowd of strikers?

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1 CAPTAIN THUPE: They were the people who
2 were in the middle of the crowd.
3 MR MOJAPELO: Okay. You say you and
4 Constable Sekgweleya followed the protester who had robbed
5 Warrant Officer Lepaaku of his rifle.
6 CAPTAIN THUPE: That is so, Chair.
7 MR MOJAPELO: That you have captured well
8 in paragraph 4 of HHH15.1 but in paragraph 8.2 of the new
9 statement, the consolidated statement, you don't put it
10 like that. You said "I followed the strikers," that is
11 you, Captain, you followed the strikers "and met Constable
12 Sekgweleya at point A at a certain point." So you didn't
13 leave -
14 CAPTAIN THUPE: That is so, Chair.
15 MR MOJAPELO: Sorry, Mr Interpreter. So
16 you didn't leave immediately with Captain Sekgweleya.
17 CAPTAIN THUPE: Constable Sekgweleya.
18 MR MOJAPELO: Constable Sekgweleya.
19 CAPTAIN THUPE: No.
20 MR MOJAPELO: You met him at a later
21 stage.
22 CAPTAIN THUPE: He was on my right-hand
23 side, just ahead, a few paces ahead of me. It's that as I
24 was following them he then joined me and then we started to
25 follow them together.

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1 MR MOJAPELO: Yes. You see, in your
2 first statement you were clear. You say "I and Constable
3 Sekgweleya followed them" but in your new statement, which
4 statement I put it to you was made when Colonel Vermaak was
5 giving evidence, you changed. This time you didn't follow
6 them with Constable Sekgweleya but you met Sekgweleya at a
7 certain point. Can you explain the difference?
8 CAPTAIN THUPE: Well, there's no
9 difference at all because he joined me as we were following
10 those people together, Chair. When saying that he has
11 joined me, it does not illustrate or show that he was far
12 away from me.
13 MR MOJAPELO: Because the thing is,
14 Colonel Vermaak has testified and I'm sure you are aware of
15 his testimony, that he took Sekgweleya – in fact in
16 paragraph 9 of Sekgweleya's statement – I will look for an
17 exhibit number now but he mentioned that "I" – he says
18 "Colonel Vermaak and myself, together with Sergeant Mguye
19 pursued a group of strikers on foot." He doesn't mention
20 you, Captain.
21 CAPTAIN THUPE: Only thereafter, after we
22 have followed those group of people, it's then that he
23 accompanied Vermaak.
24 MR MOJAPELO: So the reason, your reason,
25 the reason for changing this statement has nothing to do

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1 with the testimony of Colonel Vermaak?
2 CAPTAIN THUPE: No.
3 MR MOJAPELO: Okay. Yes, I'm about to
4 finish but I just want to go back to one point, the point
5 about the disclosure. Remember this morning we had a
6 debate about the late disclosure of the fact that you had
7 fired eight shots. The reason I want to take up this with
8 you is that, Captain, you are a very senior police officer
9 in the South African Police and you would have been aware
10 that after this incident where five lives have been lost,
11 there will be various investigations including the IPID, am
12 I correct so far?
13 CAPTAIN THUPE: You are correct.
14 MR MOJAPELO: There will be ballistics
15 investigations, am I correct so far?
16 CAPTAIN THUPE: Correct.
17 MR MOJAPELO: The LCRC part of the police
18 will be called to the scene to collect the evidence
19 immediately after the incident.
20 [11:25] CAPTAIN THUPE: Correct.
21 MR MOJAPELO: So don't you think it was
22 essential for you to disclose the number of shots that you
23 have shot immediately after the incident so that it can
24 help with this institution in the investigations?
25 CAPTAIN THUPE: I disclosed a shot that I

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1 fired.
2 MR MOJAPELO: Yes, in terms of the
3 statement that was made six months after the event you
4 finally put it under oath that you fired eight shots. I'm
5 asking about the investigations that were done immediately.
6 LCRC collect evidence immediately, don't they?
7 CAPTAIN THUPE: Well, as I've just
8 testified that I have compiled a list of the occurrence on
9 the 13th, so as far as myself is concerned, is to disclose
10 when compiling the list of the 13th.
11 COMMISSIONER HEMRAJ: Captain, when the
12 members of the LCRC attended the scene did you point out
13 any spots to them?
14 CAPTAIN THUPE: That's correct.
15 COMMISSIONER HEMRAJ: Did you indicate to
16 any of them whether you fired shots and how many?
17 CAPTAIN THUPE: That's correct.
18 COMMISSIONER HEMRAJ: And who was the
19 officer attending the scene?
20 CAPTAIN THUPE: It was Colonel Botha.
21 COMMISSIONER HEMRAJ: And would he have
22 completed the report about who shot, which policemen fired
23 shots and how many were fired?
24 CAPTAIN THUPE: I can't remember but I
25 completed the list of people who shot on the –

<p style="text-align: right;">Page 27986</p> <p>1 COMMISSIONER HEMRAJ: Apart from that 2 handwritten list, is there any other SAPS document which 3 contained the number of shots fired by the policemen on the 4 scene? 5 CAPTAIN THUPE: That's correct. 6 COMMISSIONER HEMRAJ: What is that 7 document? 8 CAPTAIN THUPE: The document was handed 9 over to Colonel Scott. 10 COMMISSIONER HEMRAJ: No, no, apart from 11 that handwritten document that you handed to Colonel Scott, 12 is there any other SAPS official form that was filled out 13 that would indicate which policemen fired shots and how 14 many were fired? 15 CAPTAIN THUPE: That's correct. 16 COMMISSIONER HEMRAJ: What would that 17 form be, Captain? 18 CAPTAIN THUPE: That form is supposed to 19 be handed to logistics for reissuing of ammunition. 20 COMMISSIONER HEMRAJ: And what is the 21 number of that SAPS form? 22 CAPTAIN THUPE: No, it's not, it doesn't 23 have a number, it's a pro forma. 24 CHAIRPERSON: Isn't there an SAP15 form? 25 CAPTAIN THUPE: No, SAP15 is the duty</p>	<p style="text-align: right;">Page 27988</p> <p>1 officer who attended this scene? 2 CAPTAIN THUPE: The person I saw, it was 3 Brigadier Calitz, he was on the scene. 4 CHAIRPERSON: So it was his job to fill 5 in the form, you say? Is that right? 6 COMMISSIONER HEMRAJ: The shooting 7 incident – 8 CHAIRPERSON: The shooting incident form. 9 CAPTAIN THUPE: That's correct. 10 CHAIRPERSON: And was it not your duty to 11 inform him of the shots that you'd fired so that he could 12 incorporate that information in the form that he had to 13 fill in? 14 CAPTAIN THUPE: That's correct. 15 CHAIRPERSON: Did you do that? 16 CAPTAIN THUPE: That's correct. 17 CHAIRPERSON: You haven't told us that 18 before. You told us you told Colonel Scott some days 19 later. This is the first we hear that you told Brigadier 20 Calitz on the scene, am I correct? 21 CAPTAIN THUPE: That's correct. 22 CHAIRPERSON: Why didn't you mention it 23 before? 24 CAPTAIN THUPE: No, the question was did 25 I submit the shooting list.</p>
<p style="text-align: right;">Page 27987</p> <p>1 list. 2 CHAIRPERSON: Duty list, I see. But 3 we've had evidence that there's a form, an official printed 4 SAP form that whenever you, a policeman or woman, a member 5 of the service fires his or her firearm, a form has got to 6 be filled in. Is that in order, so that that member of the 7 service can be issued with fresh ammunition to take the 8 place of the ammunition that's been discharged? 9 CAPTAIN THUPE: The form is the pro 10 forma, is called shooting incident. 11 CHAIRPERSON: Yes? 12 CAPTAIN THUPE: And after a shooting 13 incident, that form is completed. 14 CHAIRPERSON: Yes, now who completes it? 15 CAPTAIN THUPE: No, I didn't complete 16 that. 17 CHAIRPERSON: No, I say who normally 18 completes it? 19 CAPTAIN THUPE: The officer who attended 20 the scene. 21 CHAIRPERSON: What Adv Hemraj, the person 22 to whom Adv Hemraj refers as the attending officer. 23 CAPTAIN THUPE: It's the senior officer 24 who attended the scene is supposed – 25 CHAIRPERSON: Now who was the attending</p>	<p style="text-align: right;">Page 27989</p> <p>1 CHAIRPERSON: Alright. Well – 2 CAPTAIN THUPE: I submitted a shooting 3 list for Colonel Scott. 4 CHAIRPERSON: I understand that but that 5 was some days later. I'm interested in what happened on 6 the 13th of August. You say that Brigadier Calitz as the 7 attending officer was the person who was charged with the 8 duty to fill in the shooting incident form, is that 9 correct? 10 CAPTAIN THUPE: That's correct. I 11 reported the incident to Brigadier Calitz, he – 12 CHAIRPERSON: I see, you told him orally? 13 CAPTAIN THUPE: I told him orally, that's 14 correct. 15 CHAIRPERSON: You didn't make a note 16 about it in your diary? 17 CAPTAIN THUPE: No. 18 CHAIRPERSON: Why not? Aren't you 19 supposed to record important matters in your diary? 20 CAPTAIN THUPE: I only recorded – 21 CHAIRPERSON: No, answer my question. 22 Aren't you supposed to report, to record important 23 incidents in your diary? Isn't that – that's what the 24 diary is for, isn't it? 25 CAPTAIN THUPE: That's correct.</p>

<p style="text-align: right;">Page 27990</p> <p>1 CHAIRPERSON: Did you record it in your 2 diary that you fired these shots? 3 CAPTAIN THUPE: No, Chairperson. 4 CHAIRPERSON: Why not? 5 CAPTAIN THUPE: It is – I only mention it 6 in the shooting list. 7 CHAIRPERSON: Ja, I know but you haven't 8 answered my question. Why didn't you record it, an 9 important incident, in your diary? Is there a reason? 10 CAPTAIN THUPE: No, there's no reason. 11 CHAIRPERSON: No reason. Can we perhaps 12 take the tea adjournment at this stage? 13 [COMMISSION ADJOURNS COMMISSION RESUMES] 14 [12:03] CHAIRPERSON: The Commission resumes. 15 SAMUEL KAY THUPE: (s.u.o.) 16 CHAIRPERSON: Have you had an 17 opportunity, Captain, to study the documents which were 18 made available by the Human Rights Commission? 19 CAPTAIN THUPE: That's correct, 20 Chairperson. 21 CHAIRPERSON: You have. And then I 22 understand that Adv Gumbi also sent some documents through, 23 have you had an opportunity to see them? 24 CAPTAIN THUPE: There are lots of 25 documents, I don't know which one comes from who.</p>	<p style="text-align: right;">Page 27992</p> <p>1 Broadly speaking, phase 1 was to deal with the events of 9 2 to 16 August 2012 at Marikana and phase 2 was to deal with 3 underlying socio-economic causes. 4 The President has now removed paragraph 1.5 of 5 the Commission's terms of reference. That paragraph dealt 6 with certain phase 2 issues. Phase 1 of the Commission's 7 inquiry deals with the injuries and deaths during the 8 period 9 to 16 August 2012 and responsibility for those 9 injuries and deaths. It includes the investigation of the 10 role of the South African Police Service and why they acted 11 as they did. This issue is covered by paragraph 1.2 of the 12 terms of reference, which has not been amended or 13 withdrawn. The removal of paragraph 1.5 of the terms of 14 reference does not in any way affect phase 1 of the 15 Commission's inquiry. 16 The Commission has received statements from the 17 Minister of Police and Mr Cyril Ramaphosa with regard to 18 their role in relation to the conduct of the SAPS during 19 the week of 9 to 16 August 2012. As matters currently 20 stand, it is anticipated that they will be called to give 21 oral evidence. The removal of paragraph 1.5 of the terms 22 of reference will have no impact on that. 23 Copies of the statement, as I have said, are 24 available and will be given to the media representatives 25 who are in attendance at the Commission.</p>
<p style="text-align: right;">Page 27991</p> <p>1 CHAIRPERSON: The Human Rights Commission 2 sent you a statement of Lieutenant-Colonel Claassen, two 3 statements of Lieutenant-Colonel Claassen, one typed – both 4 typed and also a zoomed section of exhibit JJJ46. Those 5 are the documents you got from the Human Rights Commission. 6 Have you seen those? Yes, you've seen those? 7 CAPTAIN THUPE: Just received from Mr 8 Gumbi. 9 CHAIRPERSON: Well, never mind those. 10 Those are Mr Gumbi's, you haven't seen Mr Gumbi's but 11 you've see the Human Rights Commission documents, that's 12 the two statements by Lieutenant-Colonel Claassen and this 13 zoomed section of exhibit JJJ46. You've seen those? 14 CAPTAIN THUPE: Yes. 15 CHAIRPERSON: So the Human Rights 16 Commission can cross-examine you in a moment but before 17 they do that I want to make a statement and I understand 18 that Mr Bizos wishes to make a statement as well. Copies 19 of the statement that I'm now going to make will be made 20 available to the press. 21 There has been some speculation in the media 22 about the consequences of the President's amendment of the 23 Commission's terms of reference. I believe that it's 24 desirable that the correct position be stated publicly. 25 The Commission divided its investigation into phases.</p>	<p style="text-align: right;">Page 27993</p> <p>1 I understand, Mr Bizos, that you also have a 2 statement that you wish to make. 3 MR BIZOS SC: Yes, Mr Chairman. In view 4 of certain comments made by Right to Know, we, the LRC 5 legal team at this Commission, have consulted about the 6 statement released on behalf of the Marikana Support 7 Committee regarding the President's extension and amendment 8 of the Commission's powers and the LRC is listed as one of 9 the organisations in whose name the statement is released. 10 The LRC and its team at Marikana have consulted 11 in respect of the President's decision and our response has 12 been communicated to the Commission itself along with that 13 of the other legal teams in the normal course of Commission 14 proceedings. We believe that this is the appropriate way 15 for us to engage and do not wish to convey our views 16 through the statement which we do not consent to have been 17 issued in our name. We are awaiting the response of the 18 Commission and, if need be, the President on the 19 submissions of the legal teams and will continue to address 20 them at Commission hearings and not through the media. 21 CHAIRPERSON: Thank you, Mr Bizos. Mr 22 Mojapelo, I think you indicated to me during the tea 23 adjournment that you've finished your cross-examination, is 24 that correct? 25 MR MOJAPELO: Yes, we don't have any</p>

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1 further questions.

2 CHAIRPERSON: That is why I ascertained

3 whether the witness is ready to deal with the cross-

4 examination of the Human Rights Commission.

5 MR MOJAPELO: Thank you, Mr Chair.

6 CHAIRPERSON: Ms Le Roux, are you ready

7 to proceed with your cross-examination?

8 MS LE ROUX: Yes, thank you, Chair.

9 Before I do, if I could echo, on behalf of the Centre for

10 Applied Legal Studies, the statement made by the Legal

11 Resources Centre. Like the LRC, CALS was unaware that its

12 name would be attached to that statement and hadn't agreed

13 to its use. Chair, if I can then move on to the

14 housekeeping that we always need to do, there are three new

15 exhibits that need to be marked. The first of these is the

16 statement of the wonderfully named Little Joe Ronnie

17 Claassen on the 27th of January 2014. Chair, that is the

18 statement that doesn't have a heading above it in the two

19 documents you've been provided. So that should be RRR, I

20 think we're up to 8, is that correct?

21 CHAIRPERSON: No, we're up to 10 now.

22 MS LE ROUX: We're up to 10, RRR –

23 CHAIRPERSON: RRR9 was the statement of

24 Warrant Officer Kuhn.

25 MS LE ROUX: Yes.

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1 CHAIRPERSON: I must confess I still

2 think that the Warrant Officer Kuhn is an exhibit because

3 I've certainly read one and the police very kindly gave us

4 an updated index of the exhibits which I'm afraid I didn't

5 bring with me this morning but if we've erroneously marked

6 Warrant Officer Kuhn's document twice I'm sure we can sort

7 that out later but at the moment I think we must move on to

8 exhibit RRR10.

9 MS LE ROUX: RRR10 will be the statement

10 of Lieutenant-Colonel Claassen dated 27 January 2014.

11 CHAIRPERSON: Yes and then –

12 MS LE ROUX: Then RRR11 will be the

13 statement of Lieutenant-Colonel Claassen dated 28 January

14 2014.

15 CHAIRPERSON: Yes.

16 MS LE ROUX: And then RRR12 will be the

17 zoomed section of exhibit JJJ46.

18 CHAIRPERSON: JJJ – very well, I've

19 marked my copies then of the three documents. Exhibit

20 RRR10 is the statement of Lieutenant-Colonel Claassen dated

21 27th January 2014, exhibit RRR11 is the statement of

22 Lieutenant-Colonel Claassen dated 28 January 2014 and

23 exhibit RRR12 is the zoomed section of exhibit JJJ46.

24 MS LE ROUX: Thank you, Chair.

25 CROSS-EXAMINATION BY MS LE ROUX: Good

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1 morning, Captain Thupe. I'm the advocate representing the

2 South African Human Rights Commission in the Marikana

3 Commission of Inquiry and I have a few questions for you.

4 If I could start with a topic covered to a limited extent

5 by my learned friend for the evidence leaders, the two

6 shooting lists that are now marked RRR6 and 7 relating to

7 the 13th and the 16th respectively, I just want to confirm

8 and understand your evidence. You said you gave the one

9 relating to the 13th, RRR6, to Colonel Scott at Roots,

10 correct?

11 CAPTAIN THUPE: That's correct.

12 MS LE ROUX: And then you gave RRR7, the

13 shooting list for the 16th, to Colonel Scott on the 17th of

14 August at Marikana?

15 CAPTAIN THUPE: That's correct.

16 MS LE ROUX: Did you keep a copy of the

17 two lists?

18 CAPTAIN THUPE: That's correct.

19 MS LE ROUX: And were you ever asked by

20 the SAPS legal team whether you had any contemporaneous

21 notes, which would include the two shooting lists you'd

22 drawn up? Were you ever asked whether you had notes of

23 what happened at the incident?

24 CAPTAIN THUPE: Yes, it's only during the

25 consultation preparing for the consolidated statement.

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1 CHAIRPERSON: I don't want to go into

2 what happened in consultations –

3 MS LE ROUX: No.

4 CHAIRPERSON: - between the SAPS legal

5 team and the witness. I must confess I thought your

6 question related to the SAPS generally, in other words,

7 whether those notes that he compiled, whether he'd been

8 asked to hand that over at an earlier stage, not only by

9 the legal team because –

10 MS LE ROUX: Chair, that was my –

11 CHAIRPERSON: - the legal team –

12 MS LE ROUX: That was my next question.

13 CHAIRPERSON: Yes, alright.

14 MS LE ROUX: And Captain Thupe, other

15 than when the lawyers asked you if you had any notes, did

16 anyone else in the SAPS ask you if you had any notes, from

17 the 16th of August till today? Did any SAPS member ask you

18 if you had any notes?

19 CAPTAIN THUPE: No.

20 MS LE ROUX: Now, you've got JJJ178, the

21 statement of Mr Gary White, correct? You've got that

22 statement in front of you? JJJ178, it's the Gary White

23 statement.

24 MR MATHIBEDI SC: Sorry, Mr Chairman, the

25 witness never had an opportunity of reading the statement

<p style="text-align: right;">Page 27998</p> <p>1 because I mean we said for now we'll deal with the three 2 exhibits, you know, submitted. 3 CHAIRPERSON: Oh – 4 MS LE ROUX: Chair, I did – 5 CHAIRPERSON: You didn't give him notice 6 that you were going to ask him about Gary White's, Mr Gary 7 White's statement. 8 MS LE ROUX: Chair, I did and I gave the 9 specific page references and annexure details to the SAPS 10 legal team this morning and they assured that that's what 11 he would be looking at during the break, among other 12 documents. 13 CHAIRPERSON: Alright, it would appear 14 that there was a slip twixt the cup and the lip and what 15 you've told the legal team wasn't conveyed to him. Is it 16 necessary for you to deal with it now or is it something 17 you can deal with after lunch and he can get an opportunity 18 to look at it during the lunch adjournment? 19 MS LE ROUX: Chair, it's actually a very 20 simple point. I'm not even sure we need to – 21 CHAIRPERSON: Well, is it a short passage 22 that he can read now? 23 MS LE ROUX: Yes, two very short 24 passages. 25 CHAIRPERSON: Well, let's give him an</p>	<p style="text-align: right;">Page 28000</p> <p>1 PSNI used higher levels of force in any public order 2 operation" - that's the Northern Ireland police section 3 that he was involved with – "In my experience, where the 4 PSNI used higher levels of force in any public order 5 operation there was an obligation on each and every member 6 present to provide a full and detailed account of events as 7 possible." 4.2.15 – 8 MS LE ROUX: Chair, then – 9 CHAIRPERSON: Sorry? 10 MS LE ROUX: We can skip 4.2.16 – 11 CHAIRPERSON: Alright. 12 MS LE ROUX: And then just to note 13 4.2.16(a). 14 CHAIRPERSON: Alright, okay – 15 MS LE ROUX: Captain Thupe, you're one of 16 the statements that Mr White identifies as a unit commander 17 who provided inadequate detail of significant incidents 18 there witnessed. That's – 19 CHAIRPERSON: You see, I'll read that. 20 4.2.16 "At this point I highlight the following as examples 21 that illustrate the lack of detail in the statements 22 provided." Sub-para (a), "Unit commanders who provide 23 inadequate detail of significant incidents they witnessed, 24 for example" – and your name is the second and there's a 25 footnote which says this, refers to you as "Commander of</p>
<p style="text-align: right;">Page 27999</p> <p>1 opportunity to look at it here and then when he's looked at 2 it he can tell us if he feels he is able to answer 3 questions without considering it further, in which case 4 we'll have to deal with it appropriately. What is the 5 passage that you want to put to him? 6 MS LE ROUX: It's on page 32 of Mr 7 White's statement. 8 CHAIRPERSON: Paragraph? 9 MS LE ROUX: Paragraph 4.2.14 through to 10 4.2.16(a). 11 CHAIRPERSON: Alright, well maybe it 12 would help if we read it aloud – 13 MS LE ROUX: If we could just read it. 14 CHAIRPERSON: - and he can think about 15 it. 16 MS LE ROUX: Yes. 17 CHAIRPERSON: 4.2.14 to 16, is it? 18 4.2.14 says, "When considered as a whole, many of the 19 statements provided to the Commission by members who were 20 present at Marikana on 13 and 18" – sorry – "13 and 16 21 August, including from very senior officers, are so lacking 22 in detail that I question whether the SAPS leadership 23 and/or unit commanders made any serious attempts to 24 encourage their members to provide full details and frank 25 accounts of what happened. In my experience, where the</p>	<p style="text-align: right;">Page 28001</p> <p>1 TRT Brits and within the TRT line, scene 1, but no evidence 2 given of the shooting incident or orders he gave." So 3 that's the passage. 4 MS LE ROUX: Yes, thank you, Chair. 5 CHAIRPERSON: Now are you able, do you 6 feel able to deal with cross-examination on those limited 7 passages? Yes, I think in fairness to the witness he must 8 also be told what the statement is to which Mr White had 9 access. 10 MS LE ROUX: Yes, Chair. Captain Thupe, 11 that's your first statement, the initial statement RRR1, 12 the 19th of August statement, the two page handwritten 13 statement. So Captain Thupe, in light of – so Mr White, 14 who is the Human Rights Commission's policing expert, he 15 identifies this two page statement of yours as one that he 16 says is lacking in adequate detail of significant 17 incidents. So I'd like to ask you how this two page 18 statement came to be written. When did you write it, first 19 of all, on the 19th of August or did you only sign it on the 20 19th? 21 CAPTAIN THUPE: I wrote it on the 19th of 22 August. 23 MS LE ROUX: And why did you write it? 24 Were you asked to write it? 25 CAPTAIN THUPE: Well, I had to write it</p>

<p style="text-align: right;">Page 28002</p> <p>1 because it has something to do with the docket case number 2 134 of 8/2012. 3 MS LE ROUX: And did anyone ask you to 4 write it? 5 CAPTAIN THUPE: It's the investigating 6 officer. 7 MS LE ROUX: And do you remember who the 8 investigating officer was? 9 CAPTAIN THUPE: I remember him, Captain 10 Pule. 11 MS LE ROUX: Right. 12 COMMISSIONER HEMRAJ: This statement does 13 not deal with the events of the 13th at all? 14 CAPTAIN THUPE: That's correct. 15 COMMISSIONER HEMRAJ: Is there any reason 16 for that? 17 CAPTAIN THUPE: Yes, because the thing is 18 that they want specifically the incident, occurrence of the 19 16th, 8/2012. 20 CHAIRPERSON: The statement of the 16th, 21 that's exhibit RRR1, insofar as it deals with the actual 22 shooting incident on the 16th is rather sparse, isn't it? 23 Let's just go through the paragraphs just while they're 24 pertinent before us, beginning with paragraph 3. "The 25 POP unit members laid barbed wire to channel them," them</p>	<p style="text-align: right;">Page 28004</p> <p>1 COMMISSIONER HEMRAJ: Well, there's a lot 2 more detail that you could have put into the statement 3 about what happened, isn't there? 4 CAPTAIN THUPE: That is so, Chair, but I 5 wrote this statement for the court purposes. 6 CHAIRPERSON: No, I understand that but 7 we're dealing with the question whether Mr White is correct 8 in saying it wasn't a very full statement and if you 9 compare the paragraphs I read from the statement you made 10 more or less contemporaneously three days after the 11 incident with the statement that you made on the 14th of 12 April this year, I mean there's an enormous amount of 13 detail in the later statement which isn't in the first 14 statement. If one just looks at your statement, this is 15 exhibit QQQ9, one starts – I suppose one can start reading 16 round about paragraph 19 on page 10 and the narrative 17 continues until paragraph 26. The shooting ends in 18 paragraph 26, 27 deals with what happened afterwards. So 19 there's substantially more detail there than there was in 20 the initial statement you made, so Mr White when he says 21 that your original statement, which is the only one that 22 was available at the time he made his report, the only one 23 that was made available to him at the time he made his 24 report, there was a very sparse and inadequate account of 25 your version of the incident. That's correct, isn't it?</p>
<p style="text-align: right;">Page 28003</p> <p>1 being the protesters, what I prefer to call the strikers, 2 "to channel them towards the squatter camp. While the 3 police busy erecting the barbed wire the protesters started 4 to move towards the police and still carried traditional 5 weapons. The police used water cannon to try and disperse 6 the crowd but with no success. Teargas were used" – oh 7 sorry, yes, I missed it. "Teargas were also used after the 8 water and the protesters still come to the police and 9 rubber bullets were shot but," I think that must be "also 10 with no success. The protesters were aggressive and moved 11 closer and closer towards the police. I suddenly heard two 12 gunshots," is that "coming from the protesters and the 13 police returned fire to protestors" – 14 COMMISSIONER HEMRAJ: To protect 15 themselves. 16 CHAIRPERSON: - "to protect themselves." 17 And that's it. So that was the full statement that you 18 made in relation to this very important incident which had 19 taken place three days before. Now I think you will agree 20 that Mr White is correct in saying that it wasn't a full 21 statement, that must be right surely? Is he correct when 22 he says that? 23 [12:22] CAPTAIN THUPE: It only depends that he 24 could highlight in connection with my statement, maybe I'll 25 agree with him, to indicate where there's a fault.</p>	<p style="text-align: right;">Page 28005</p> <p>1 CAPTAIN THUPE: That's correct, 2 Chairperson. 3 MS LE ROUX: Captain Thupe, you've just 4 testified that you were asked to do your initial statement 5 RRR1, the two page handwritten statement, you were asked to 6 do that for court purposes. Were you – 7 CHAIRPERSON: No, I don't think he said, 8 I think he said it the other way round. I thought he was – 9 I understood him, I may have got it wrong but I thought he 10 said that QQQ9 was for court purposes. Did I understand, 11 did I misunderstand? 12 MS LE ROUX: Captain Thupe, am I correct 13 that you did your handwritten – 14 CHAIRPERSON: No, my two fellow 15 Commissioners agree with you that I'm in error, so I 16 retract what was said. 17 MS LE ROUX: Thank you, Chair. So 18 Captain Thupe when you said for court – you said for court 19 purposes, right? 20 CAPTAIN THUPE: The handwritten one. 21 MS LE ROUX: The handwritten one, yes. 22 CAPTAIN THUPE: Correct. 23 MS LE ROUX: And were you at a JOC, at a 24 JOCCOM meeting on the morning of the 19th? Were you there? 25 CAPTAIN THUPE: Which date?</p>

<p style="text-align: right;">Page 28006</p> <p>1 MS LE ROUX: The 19th. 2 CAPTAIN THUPE: No. 3 MS LE ROUX: The day you wrote your 4 statement were you at a JOC meeting? 5 CAPTAIN THUPE: No. 6 MS LE ROUX: Okay. 7 CAPTAIN THUPE: I think the 19th was 8 Sunday, was it Sunday? If it was Sunday, it's no. 9 MS LE ROUX: Not, okay. And you 10 testified earlier that you were asked to do this statement. 11 When you were asked to do the statement were you told that 12 it would be in order to prosecute and convict the strikers 13 that had been arrested? Were you told that that was why 14 you needed to do it? 15 CAPTAIN THUPE: That's correct. 16 MS LE ROUX: Chair, if we can just note 17 for the record, given that Captain Thupe wasn't there I 18 can't ask him further about it but if you look at exhibit 19 JJJ173 which are the handwritten notes of the JOC meeting 20 on the 19th of August and specifically at page 12 of that 21 document, what's recorded there – because the meeting 22 discusses a range of things, what's recorded on page 12 – 23 CHAIRPERSON: The 19th, it's the JOC 24 meeting on the 16th, isn't it? 25 MS LE ROUX: No, it's the 19th, Chair.</p>	<p style="text-align: right;">Page 28008</p> <p>1 what happened on the 16th. So these were, that is to say 2 relating to the so-called arrested persons and there the 3 purpose presumably was to include material which would 4 enable the prosecution to succeed in getting a conviction 5 against the accused persons. Is that – the number that's 6 given there is 259 – was that conveyed to you that that was 7 the purpose of the statement that you were expected to give 8 to the detectives for the docket against the strikers? 9 CAPTAIN THUPE: That is so, Chair. 10 MS LE ROUX: And then, Captain Thupe, 11 your counsel went through them this morning, you've done 12 five subsequent statements but only your consolidated 13 statement, the most recent one QQQ9, that's the one that 14 gives more details with respect to the events of the 16th. 15 Between the 19th of August when you wrote your two page 16 handwritten statement and then April this year when you did 17 that consolidated statement that deals with the detail of 18 the 16th, were you ever asked in that 20 month period to 19 provide a full and detailed account of the 16th by anyone, 20 whether IPID, detectives, lawyers, anyone? 21 CAPTAIN THUPE: Ja, there is another 22 statement which I wrote on the 16th except that one of the 23 docket, for the 16th. 24 MS LE ROUX: Captain Thupe, do you mean 25 your consolidated statement, the April one, the lengthy</p>
<p style="text-align: right;">Page 28007</p> <p>1 CHAIRPERSON: It is the 19th? 2 MS LE ROUX: This is the 19th. 3 CHAIRPERSON: I beg your pardon, okay. 4 MS LE ROUX: So there we see that the JOC 5 discussed having to, quote, "deal with IPID, IPID and 6 detectives start with investigation for statements. 7 Purpose of statements: convict accused persons," 259 8 appears in brackets, "only statements of commanders." So I 9 just draw that to the Commission's attention. 10 CHAIRPERSON: But was that conveyed to 11 you, Captain, that IPID were now busy, that IPID would be 12 interviewing the various people involved and that what is 13 written here, that statements must be, contain information 14 which would enable the accused persons to be convicted. 15 Yes, actually I'm reminded that I've actually abbreviated 16 my question excessively. It says, "Deal with IPID" and 17 then it says "IPID and detectives start with investigation, 18 statements." So I take it IPID, would I be right in saying 19 the IPID investigation was really directed against the 20 police? They were opening dockets against the police. The 21 detectives, on the other hand, that's the CID, they were 22 opening dockets against or had already opened dockets, I 23 take it, against certain of the strikers, those who were 24 accused of having been involved in killing the police, 25 members of the police on the 13th and also in respect of</p>	<p style="text-align: right;">Page 28009</p> <p>1 statement? Is that the one you're referring to? 2 CAPTAIN THUPE: No. No, I'm not 3 referring to the consolidated statement. 4 MS LE ROUX: Which statement are you 5 referring to? 6 CAPTAIN THUPE: I'm referring to the 7 statement dated 12 December 2012. 8 MS LE ROUX: Okay but that deals with the 9 13th. 10 CHAIRPERSON: No, no, there are two 11 statements, aren't there? HHH15.1 is a statement which 12 deals with the events of the 13th, that's 2012 and then 13 there's another one, same typewriter, same day – 14 CAPTAIN THUPE: RRR3. 15 CHAIRPERSON: That's RRR3 and that deals 16 with the 16th. So he made two statements on that day, one 17 dealing with the 13th, one dealing with the 16th and one was 18 handed in as an exhibit earlier and the other one we only 19 saw today. Is that right, Ms Le Roux? 20 MS LE ROUX: Yes, thank you, Chair. 21 Captain Thupe, let me then move on. If I could ask you to 22 look at your consolidated statement which is QQQ9 and if I 23 can ask you to turn to page 10 on that document and we're 24 going to concentrate on paragraphs 20 and 21, this relates 25 to briefing on the 16th. Now you state here in paragraph</p>

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1 20, "Between 2 and three o'clock commanders of various
2 units were called to meet at forward holding area 1 where
3 we were briefed about the execution of the tactical plan of
4 the operation which was to disperse, disarm and arrest the
5 strikers. Our task as TRT was to form a baseline 100
6 metres behind the POP members. We were also briefed to
7 sweep koppie 2 after the dispersal action and make arrests
8 if possible. I understood our task as the TRT very well
9 and according to me members were properly briefed. I was
10 under the impression that the commanders of the various
11 units properly understood their task and role properly."
12 In evidence-in-chief this morning you were asked how you
13 understood the role of the TRT and you testified that it
14 was to back up the POP to be 100 metres behind them and
15 then you also testified that you were satisfied about the
16 briefing that you got from Colonel Scott and Brigadier
17 Calitz, does that accurately capture what you testified
18 this morning?
19 CAPTAIN THUPE: That's correct.
20 MS LE ROUX: Okay. Now we'd like to
21 explore the briefing and, you know, your understanding of
22 the briefing and how it relates to what other people have
23 testified and said in their statements. Now at the 2:30
24 briefing, the later briefing before the operation, you
25 understood that the plan had changed from the briefing you

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1 got at six o'clock that morning, did you?
2 CAPTAIN THUPE: That's correct.
3 MS LE ROUX: Okay and how did you
4 understand that the plan had changed? What was the plan at
5 six o'clock and how was it different to the plan at 2:30?
6 So let's start with what was the plan for you at six
7 o'clock? And this is only about what TRT would be doing.
8 What were you doing to do at six o'clock?
9 CAPTAIN THUPE: six o'clock there was a
10 meeting. Well, at that meeting we were told that the TRT
11 should remain around there because there's a possibility
12 that the protesters are going to lay down their weapons.
13 MS LE ROUX: At the six o'clock JOC
14 meeting were you told what the TRT's role would be in any
15 tactical operation or were you just told to be available if
16 you were needed? Were you told what you would do or only
17 that you needed to be there?
18 CAPTAIN THUPE: In the case when they are
19 not, they will not surrender their weapons the TRT
20 functions will be to back up the POP.
21 MS LE ROUX: And then at 2:30 did you
22 understand that the plan had changed and did you understand
23 if the TRT role had changed?
24 CAPTAIN THUPE: That's correct.
25 MS LE ROUX: And what was the plan as at

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1 2:30 and what was the role of the TRT in that plan?
2 CAPTAIN THUPE: The role was to back up
3 the POP. After they have been dispersed by the POP, that
4 is the protesters, the function of the TRT will be to
5 disarm and arrest the protesters as well as to sweep koppie
6 2.
7 MS LE ROUX: And how was that different
8 to six o'clock that morning?
9 CAPTAIN THUPE: Well, in the morning
10 meeting they didn't speak anything concerning koppie 2.
11 MS LE ROUX: And in the six o'clock
12 meeting did they talk about disperse, disarm and arrest or
13 did they talk about something else like encircling the
14 koppie?
15 CAPTAIN THUPE: In the morning they
16 talked about encircle, encircle the koppie.
17 MS LE ROUX: And at 2:30 did they say no
18 more encircling, now it's disperse, disarm, arrest?
19 CAPTAIN THUPE: That's correct.
20 MS LE ROUX: Did you understand why there
21 had been a change from encircling the koppie at six o'clock
22 in the morning versus disperse, disarm, arrest at 2:30?
23 Did you know why there was a change?
24 CAPTAIN THUPE: No.
25 MS LE ROUX: Can I ask you to look at the

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1 new exhibit that we've marked RRR12? It's the photograph,
2 it's the zoomed section of JJJ46 and Chair, just to reflect
3 what's stated in the caption of that document, this is a
4 zoomed in portion of the Colonel Scott JJJ46 exhibit. What
5 we've done is we've taken out the two fire icons that were
6 inserted that represented scenes 1 and 2 because they were
7 put in after 4 o'clock, so as we understand the document
8 now, absent those two icons this is what Colonel Scott used
9 to brief at 2:30. Captain Thupe, Colonel Scott told the
10 Commission that this was the plan that he used when he
11 briefed you all at 2:30. Did you see this diagram at the
12 2:30 briefing by Colonel Scott?
13 CAPTAIN THUPE: No.
14 MS LE ROUX: When Colonel Scott briefed,
15 as we understand Colonel Scott's evidence he said that he
16 briefed using this diagram displayed on his laptop screen
17 and that he sat in the door of a van and the unit
18 commanders, about 20 of you were in front of him and he
19 pointed things out and used his computer screen. Do you
20 remember him briefing you using his computer screen?
21 CAPTAIN THUPE: That's correct.
22 MS LE ROUX: Okay and do you not remember
23 that this is the diagram that he showed you during that
24 briefing?
25 CAPTAIN THUPE: No.

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1 MS LE ROUX: What do you remember being
2 on the screen when Colonel Scott briefed you?
3 CAPTAIN THUPE: What was on the screen,
4 it was the line of POP Nyalas.
5 MR MABUNDA: That was the Nyalas and they
6 were moving –
7 MS LE ROUX: Sorry, can you put your
8 microphone on? No, the translator, thank you.
9 MR MABUNDA: The Nyalas, he indicated
10 about the Nyalas as well as their movements, mentioning
11 that Nyala 3 will move to a certain position, Nyala 1 will
12 move up to Nyala 2, Nyala 2 to Nyala 3 and then Nyala 3 to
13 Nyala 4. Those were the explanations he gave to us.
14 MS LE ROUX: And what was he showing you
15 on his computer when he was explaining that? What was on
16 his screen? Could you see his screen?
17 CAPTAIN THUPE: Ja, I could see the
18 screen.
19 MS LE ROUX: And what was on the screen
20 when he was explaining how the Nyalas would move with the
21 barbed wire?
22 CAPTAIN THUPE: It was a map but –
23 CHAIRPERSON: Are you –
24 MR MABUNDA: Well, he showed us a map –
25 CHAIRPERSON: Ms Le Roux, my recollection

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1 is that his evidence, Colonel Scott's evidence was that he
2 showed slide 181 of exhibit L without the writing, the
3 white writing in the white blocks. If I'm correct in so
4 thinking, then it might be appropriate to look at the – to
5 let the witness look at slide 181 and then tell him, well,
6 ask him whether that's what he saw and –
7 MS LE ROUX: Thank you, Chair.
8 CHAIRPERSON: It's just a suggestion, I
9 don't want to –
10 MS LE ROUX: No, no, Chair, that would be
11 helpful. If we could look at slide 181 of exhibit then.
12 CHAIRPERSON: The evidence that Colonel
13 Scott gave us was that that's what he showed you, the
14 people at the – in his vehicle, the people who had gathered
15 around the side of his vehicle and saw the screen on his
16 computer but those white blocks and the writing in them,
17 they weren't there. So it was just the, effectively those
18 three blue arrows plus the Nyalas and then there were the
19 other things we can see, I think the soft vehicles and the
20 people standing with, it looks like rifles.
21 [12:42] MS LE ROUX: Captain Thupe, is that the
22 picture that Colonel Scott used when he was briefing you?
23 CAPTAIN THUPE: That's correct.
24 MS LE ROUX: Okay, without any of the
25 white blocks or arrows?

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1 CAPTAIN THUPE: Not the first one.
2 MS LE ROUX: Okay. And on this diagram
3 then what did he point out to you? So you've explained the
4 Nyalas, could you identify those for us on this?
5 CAPTAIN THUPE: These are the Nyalas.
6 MS LE ROUX: Okay, so for the record
7 Captain Thupe is identifying the red vehicle icons
8 connected by the orange line. What else did Colonel Scott
9 point out to you on the diagram? Did he explain what any
10 of the other little men or vehicles represented?
11 CAPTAIN THUPE: Can you repeat your
12 question please, madam?
13 MS LE ROUX: When Colonel Scott was using
14 this diagram to brief you, you testified already that he
15 explained how the barbed wire Nyalas would move up and
16 you've shown us that those are the red vehicle icons along
17 the orange line. Did he explain what any of the other
18 icons meant, the little blue cars or the red men or the
19 green cars or the blue men? Did he explain what any of
20 that was?
21 CAPTAIN THUPE: Ja, he explained that
22 this will be – the red one – the TRT line –
23 MR MABUNDA: The red one is the TRT line.
24 MS LE ROUX: So for the record the red
25 men would be the TRT line.

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1 CAPTAIN THUPE: And this one in the
2 front, the blue one it will be a POP line.
3 MS LE ROUX: The blue vehicles were the
4 POP line. Did he tell you what the green vehicles were?
5 CAPTAIN THUPE: The green vehicles, it
6 was the task force and NIU.
7 MS LE ROUX: Strategic task force and
8 NIU?
9 CHAIRPERSON: Sorry, green is the STF?
10 CAPTAIN THUPE: STF and the NIUs.
11 CHAIRPERSON: And the NIU. Sorry, just
12 to get it again, you did say but I didn't focus on your
13 answer. The blue men there towards the right, who are
14 they?
15 CAPTAIN THUPE: The blue one, POP.
16 CHAIRPERSON: Blue one POP.
17 CAPTAIN THUPE: POP.
18 CHAIRPERSON: Yes and then the –
19 CAPTAIN THUPE: The red, the green is
20 TRT, NIU and special task force.
21 MR WESLEY: Sorry, Chair, might I just
22 interject? What the witness is indicating, he's showing
23 behind you with a pen. That won't be shown on your screen
24 and I think there might be a misunderstanding between the
25 blue men and the blue vehicles that he's pointing out.

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1 CHAIRPERSON: Oh, I see. Yes, you see if
2 one looks at slide 176 which of course isn't on the screen
3 at the moment, I think we get the colour scheme. According
4 to 176 it looks as if the – the TRT is orange and the red
5 are NIU and as he says, the green is supposed to be STF and
6 I take it the blue would be POP. That's correct, is it?
7 CAPTAIN THUPE: That's correct.
8 CHAIRPERSON: And they were in close
9 proximity to the vehicles, Papa1 and Papa2 and Papa3 and so
10 on, those vehicles were vehicles presumably in which the
11 POP were, from which they disembarked and to which they
12 returned if they had to. Is that correct?
13 CAPTAIN THUPE: I didn't hear you
14 clearly, can you repeat your question, please?
15 CHAIRPERSON: Am I correct in thinking
16 that the blue vehicles, the so-called Papa vehicles, they
17 were armoured vehicles, weren't they?
18 CAPTAIN THUPE: Yes.
19 CHAIRPERSON: The POP members were in
20 those vehicles, they got out of them but if they had to
21 they could get back into them and take refuge from an
22 attack of any kind. Is that correct?
23 CAPTAIN THUPE: That's correct.
24 CHAIRPERSON: The TRT people didn't have
25 vehicles but they had R5s.

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1 CAPTAIN THUPE: That's correct.
2 CHAIRPERSON: And the NIU were the same.
3 CAPTAIN THUPE: That's correct.
4 CHAIRPERSON: Ja.
5 MS LE ROUX: If we could then return to
6 slide 181 –
7 CHAIRPERSON: Now we know the colour
8 scheme, that helps us to understand 181.
9 MS LE ROUX: Yes. And Captain Thupe,
10 again to confirm, this is the only picture that Colonel
11 Scott shows you during the briefing, this minus the writing
12 and the blocks. You didn't see any other diagram that he
13 gave you, only this one.
14 CAPTAIN THUPE: That's correct.
15 MS LE ROUX: Right, and the blue men
16 behind the orange line with the red which signifies the
17 barbed wire Nyalas, who were the blue men going to be?
18 CAPTAIN THUPE: Are you referring to this
19 one?
20 MS LE ROUX: Yes.
21 CAPTAIN THUPE: This one is POP vehicles
22 that were standing there for negotiations.
23 MS LE ROUX: Okay, that's the negotiation
24 POP team.
25 CAPTAIN THUPE: That's correct.

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1 MS LE ROUX: Right. So could you just on
2 this show us, the POP dispersion line would be where? You
3 said that the plan at 2:30 was first of all to disperse and
4 that that would be the POP first and you were backup. So
5 where did you understand the POP dispersion line would be?
6 CAPTAIN THUPE: Before – are you
7 referring to briefing –
8 MS LE ROUX: In the briefing were you
9 told?
10 CAPTAIN THUPE: The morning one?
11 MS LE ROUX: No, the 2:30 briefing with
12 Colonel Scott where he showed you this diagram. Did he
13 tell you where the POP dispersion line would be formed up
14 and where they would move from?
15 CAPTAIN THUPE: The POP members would be
16 – then are moving from here to the koppie to disperse those
17 people.
18 MS LE ROUX: Okay, so for the record
19 you're indicating that the POP would move from the line of
20 blue –
21 CAPTAIN THUPE: Blue.
22 MS LE ROUX: - POP vehicles in the
23 direction of the top blue arrow, the short arrow towards
24 the koppie.
25 CAPTAIN THUPE: That's correct, yes.

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1 MS LE ROUX: Okay. And then the TRT,
2 STF, NIU line of members who are the little red men and the
3 green vehicles behind the POP blue vehicles on this
4 diagram, did you understand how they were going to be
5 deployed? Did you understand when they needed to get into
6 that position? What did Colonel Scott tell you?
7 CAPTAIN THUPE: - behind the POP, once
8 they moved and then we had to go to the koppie in order to
9 go and sweep or clean there, the koppie.
10 MS LE ROUX: Okay, so did Colonel Scott
11 tell you when –
12 CAPTAIN THUPE: And arrest.
13 MS LE ROUX: Did Colonel Scott brief you
14 on when the TRT line needed to be formed in relation to
15 when the POP dispersion would start? Did he tell you when
16 you needed to be where?
17 CAPTAIN THUPE: That's correct.
18 MS LE ROUX: And what did he tell you?
19 CAPTAIN THUPE: He said immediately POP –
20 well, the distance between us and the POP will be 100
21 metres behind them. Once they moved in order to cause the
22 disperse, then we followed in order to go to the koppie to
23 go and sweep and arrest.
24 MS LE ROUX: Okay. Do you remember what
25 Colonel Scott briefed you about when the TRT line needed to

<p style="text-align: right;">Page 28022</p> <p>1 be formed up in relation to when the barbed wire would 2 start getting rolled out? Did he tell you, you must do it 3 before the barbed wire, after the barbed wire, the same 4 time as the barbed wire? Do you remember him telling you 5 when to form your line in relation to when the barbed wire 6 gets rolled out? 7 CAPTAIN THUPE: After the barbed wire. 8 MS LE ROUX: He told you after the barbed 9 wire, and did he tell you how long after the barbed wire 10 was out? 11 CAPTAIN THUPE: Well, they did not 12 specify the time factor after the barbed wire. 13 MS LE ROUX: And what did you understand 14 by after, how long after did you think you needed to be in 15 position? 16 CAPTAIN THUPE: Immediately after the POP 17 have rolled out the barbed wire and then shortly thereafter 18 we had to follow them in order to go and clean the koppie 19 and arrest the people. 20 MS LE ROUX: Captain Thupe, when you say 21 immediately after the barbed wire was rolled out, did you 22 mean all of it, all the way through to Nyala 5 and 6 or did 23 you mean once number 1 started you needed to be in 24 position? 25 CAPTAIN THUPE: Well, beginning from</p>	<p style="text-align: right;">Page 28024</p> <p>1 CAPTAIN THUPE: We were somewhere here. 2 MS LE ROUX: So you're indicating the 3 area behind to the right on this photograph of the blue 4 men, the POP negotiating team? 5 CAPTAIN THUPE: That's correct, we were 6 here. 7 MS LE ROUX: Okay. Now did Colonel – 8 COMMISSIONER HEMRAJ: Sorry, is that the 9 position you earlier on identified as 100 metres behind the 10 negotiation Nyalas? 11 CAPTAIN THUPE: That's correct. 12 COMMISSIONER HEMRAJ: Is that what you're 13 indicating? 14 CAPTAIN THUPE: That's correct. 15 COMMISSIONER HEMRAJ: I see, thank you. 16 MS LE ROUX: Then Captain Thupe, did 17 Colonel Scott brief you on any warning that would be issued 18 before the barbed wire was to be deployed? Do you remember 19 Colonel Scott briefing you anything about that they would 20 warn the protesters that they were going to start rolling 21 out barbed wire? 22 CAPTAIN THUPE: No. 23 MS LE ROUX: Don't remember anything 24 about a warning? 25 CAPTAIN THUPE: That's correct.</p>
<p style="text-align: right;">Page 28023</p> <p>1 Nyala 1 up to the last Nyala. 2 MS LE ROUX: Okay, so you understood your 3 briefing to be that when Nyala 1 started, you needed to 4 start getting into position too? 5 CAPTAIN THUPE: The explanation is that 6 Nyala 1 will roll out the wire to Nyala 2, Nyala 2 will 7 continue to roll the barbed wire and then up to Nyala 5. 8 It is then that we will move. 9 MS LE ROUX: Okay, so you would only move 10 once the Nyala 5 was finished with its wire? 11 CAPTAIN THUPE: That's correct. 12 MS LE ROUX: Okay. And – 13 CHAIRPERSON: Where were you going to 14 move to? 15 CAPTAIN THUPE: I beg your pardon, Chair? 16 CHAIRPERSON: Where were you going to 17 move to, where were you going to move? 18 CAPTAIN THUPE: Behind POP. That is the 19 moment when the POP will move to the koppie, on that time 20 sector we will be behind the POP. Once they have finished 21 to disperse and then we move into the koppie and then we 22 start to effect the arrests. 23 MS LE ROUX: And Captain Thupe, where 24 were you when Nyala 1 started rolling its barbed wire? 25 Where were you standing?</p>	<p style="text-align: right;">Page 28025</p> <p>1 MS LE ROUX: Did Colonel Scott brief you 2 that there would be a period of time from when the barbed 3 wire was deployed that they would let the people disperse 4 before the POP or TRT would need to move in? Did Colonel 5 Scott tell you anything about waiting for a period of time 6 to let people leave? 7 CAPTAIN THUPE: No. 8 MS LE ROUX: Do you remember that? 9 CAPTAIN THUPE: No, I don't remember. 10 MS LE ROUX: Okay. If people dispersed 11 but they still had their weapons, do you remember Colonel 12 Scott briefing you anything about what to do if the people 13 left but they still carried their weapons, they didn't 14 leave their weapons on the koppie? Do you remember Colonel 15 Scott briefing anything about what to do if the people were 16 leaving, dispersing but they kept their weapons? 17 CAPTAIN THUPE: Once the POP disperse 18 those people in smaller groups, our duties, the TRT, was to 19 come in, in order to affect the arrest and disarm the 20 protesters. 21 COMMISSIONER HEMRAJ: The arrests that 22 were contemplated, they weren't confined to the second 23 koppie, were they? When you were briefed about arresting, 24 was it only arresting on the small koppie or arresting 25 anywhere else?</p>

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1 CAPTAIN THUPE: At the koppie 2.
 2 MS LE ROUX: Chair, I have a few short
 3 questions –
 4 CHAIRPERSON: I see it's –
 5 MS LE ROUX: Yes.
 6 CHAIRPERSON: You've still got quite a
 7 lot of time left but it's one o'clock so if you don't
 8 object, I propose taking the lunch adjournment.
 9 MS LE ROUX: No, that's fine, Chair.
 10 CHAIRPERSON: We'll take the lunch
 11 adjournment. We will reassemble at quarter to two.
 12 [COMMISSION ADJOURNS COMMISSION RESUMES]
 13 [13:52] CHAIRPERSON: The Commission resumes.
 14 There are two matters I want to deal with before we
 15 continue with the evidence of the Captain. The first is,
 16 we understand that the police would like to call Mr X on
 17 Monday. Now in terms of the order they can't do that
 18 because they can only call Mr X 14 days after they've given
 19 notice to the parties of various things. It was an order
 20 they themselves agreed to but clearly the parties would be
 21 able to waive their rights to have 14 days' notice, so I'd
 22 be grateful if the parties would think about the matter and
 23 inform the police and the evidence leaders by nine o'clock
 24 tomorrow morning whether they insist on the full 14 days
 25 and, if not, whether they're prepared to waive their rights

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1 so that Mr X can give evidence on Monday. That's the first
 2 announcement I want to make, I want to give.
 3 The second relates to Captain Loest. He is the
 4 next witness. I'd be grateful if those parties who wish to
 5 cross-examine him would apply in writing by tomorrow
 6 morning, again nine o'clock, indicating what topics they
 7 wish to cover and how long they would wish to be given for
 8 the purposes of the cross-examination. And presumably in
 9 order to do that they should consult with the evidence
 10 leaders beforehand so that they can avoid repetition and if
 11 there are documents they're going to rely on of course
 12 notice must be given of that fairly soon too so that
 13 Captain Loest can prepare for the cross-examination and if
 14 necessary consult with representatives of the SAPS before
 15 he gives evidence-in-chief in relation to the documents
 16 that he's going to be questioned on. Those are the two
 17 announcements I have to make.
 18 Captain, you're still under oath. Ms Le Roux?
 19 SAMUEL KAY THUPE: (s.u.o.)
 20 CROSS-EXAMINATION BY MS LE ROUX (CONTD.):
 21 Thank you, Chair. Captain Thupe, I'd like us now to turn
 22 to exhibit JJJ10.4540 if we can put that up on the screen
 23 please. JJJ10.4540, it's one of Lieutenant-Colonel
 24 Vermaak's photographs. Now Captain Thupe, this was taken
 25 at 15:43:56 and it shows the pre-deployment positions of

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1 the different units. Can you identify where the TRT is in
 2 this photograph? This is before – you can see the first
 3 Nyala has just started deploying its barbed wire. Can you
 4 identify where the TRT are in this photograph?
 5 CAPTAIN THUPE: That is the TRT line
 6 where I'm indicating.
 7 MS LE ROUX: Okay, so for the record it
 8 is the line of vehicles in close proximity to each other.
 9 There's the barbed wire Nyalas in the middle of the
 10 photograph and then there's the grouping of vehicles
 11 towards the bottom of the photograph and it's the line of
 12 vehicles in the first, the first row of that collection of
 13 vehicles.
 14 CHAIRPERSON: More or less in the middle
 15 of the page, it would seem, middle of the photograph. Now
 16 when that photograph was taken, were the TRT members in the
 17 vehicles or are any members visible on the photograph? The
 18 reason I ask that, there's a line, I'm not sure if it's a
 19 line of people immediately – more or less in the centre of
 20 the photograph immediately below that line to which Ms Le
 21 roux has referred there is what looks like a black line
 22 going across, parallel to the line of vehicles to which
 23 reference has been made. As far as you can see is that a
 24 line of people standing there or is that something else?
 25 MS LE ROUX: Chair, it may be useful if

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1 we could zoom in to that portion of the photograph where we
 2 see the line of people and the line of –
 3 CHAIRPERSON: It looks like a group of
 4 people. As a matter of fact there's another line of people
 5 that I can see now. One has this line of vehicles to which
 6 the witness referred and then on the left-hand side of that
 7 line, below it there is what amounts to a second line of
 8 vehicles. Below them appear to be a line of people
 9 standing, then below that line there are two vehicles with,
 10 looks like black roofs or certainly dark roofs. To the
 11 right of those two vehicles are two vehicles with white
 12 roofs and then to the right of those vehicles is what looks
 13 like a line of people. Now are those TRT people or POP
 14 people or what are they?
 15 CAPTAIN THUPE: Those are the TRT people.
 16 CHAIRPERSON: So is that both lines, both
 17 the smaller one which is closer to the line of, the first
 18 line of vehicles, below those – there are two vehicles
 19 which are in the second line and then the second, then the
 20 other line further down which stretches further across in
 21 line with one another, about six vehicles. Is that – are
 22 both lines, lines of TRT people?
 23 CAPTAIN THUPE: That is so, Chair.
 24 CHAIRPERSON: Thank you.
 25 MS LE ROUX: And Captain Thupe can you

<p style="text-align: right;">Page 28030</p> <p>1 point out for us where you were at this point in time? Do 2 you remember where you were? So it's approximately 3 15:43:56 where you've got the two small lines of TRT 4 members, do you recall if you were in either one of those 5 lines of people that we can see? 6 CAPTAIN THUPE: Yes – 7 MS LE ROUX: So you're indicating the 8 bottom longer row – 9 MR MABUNDA: He's indicating where he 10 was, your worship, yes. 11 MS LE ROUX: - of members, approximately 12 one-third in from the right-hand side of that line, that's 13 where you were? 14 CAPTAIN THUPE: That's correct. 15 MS LE ROUX: Okay. And if we could zoom 16 out again, now Captain Thupe, remembering what you 17 testified about before lunch where you were using slide 181 18 and where the people, where the TRT line needed to go to 19 back up the POP dispersion line, can you show us on this 20 photograph your understanding from where you are in the 21 second TRT line to the bottom of the photograph, where did 22 you understand you needed to get to, to be in position 23 behind the POP dispersion line? Where did you need to go? 24 CAPTAIN THUPE: This way. 25 MS LE ROUX: The witness is indicating a</p>	<p style="text-align: right;">Page 28032</p> <p>1 CHAIRPERSON: But I have difficulty 2 understanding, if that's your evidence that's your 3 evidence, I have difficulty understanding it because how 4 could they have got to the koppie if the plan was that the 5 wire barrier was to stretch from the power station on the 6 left all the way through to the kraal there on the right. 7 There was going to be no gap, as I understand it, in the 8 wire barrier. The coils of wire brought by Nyala 1 ended 9 where Nyala 2 was standing and Nyala 2 was going to proceed 10 from that point to where Nyala 3 was and so on. So there 11 was effectively a barrier between the position where the 12 POP people were at the time you're talking about and the 13 koppie. How could they have got through to go to the 14 koppie? I could understand the evidence that Brigadier 15 Calitz gave, that what was intended was that he was going 16 to give a warning to the people from a position somewhere 17 to the right of that kraal, he was going to move slightly 18 forward. He was then going to speak to them over a loud 19 hailer, give them a warning and if they didn't comply then 20 the POP people were going to go in and do what they could – 21 but anyway that's the problem I have. I wonder if you can 22 help me to understand the evidence. 23 CAPTAIN THUPE: Where it will be ended up 24 there will be a sort of a gate, the opening, that wire. 25 There will be a gap in between which will be similar to</p>
<p style="text-align: right;">Page 28031</p> <p>1 straight line from where the TRT is lined up towards the 2 koppie. 3 CHAIRPERSON: I've got a bit of 4 difficulty with that because as – you can see the first 5 Nyala which is busy uncoiling the wire. The wire 6 apparently started at the, the wire barrier started on the 7 left side of the picture at the power station and we saw 8 from the earlier diagram that you showed us, which you got 9 which has been shown by Captain Scott, where the barrier 10 was going to end. It was going to end, I think it's fair 11 to say, somewhere near that kraal we can see on the right- 12 hand side. Now if that was where it was going to be then 13 the POP people wouldn't have had access to the koppie 14 anywhere where the barrier was because they couldn't get 15 through it and in fact the picture which we saw - I think 16 it was 181, slide 181 of exhibit L - seemed to indicate 17 that the intention was to enter the area between the 18 barrier and the koppie at a point as we look at the 19 photograph to the right-hand side of the kraal and that in 20 fact was Brigadier Calitz's evidence. So I don't 21 understand your evidence on this point. Can you perhaps 22 help me? 23 CAPTAIN THUPE: Ja, initially during the 24 briefing TRT will leave that spot where I'm indicating to 25 go through to the koppie, straight to the koppie.</p>	<p style="text-align: right;">Page 28033</p> <p>1 that of a gate, that once they have moved there will be a 2 space where they could move through. 3 CHAIRPERSON: You see what you're telling 4 us is that between, I think it's the fourth Nyala and the 5 fifth Nyala that we can see, those positions as we can see 6 on the photograph, there was going to be an opening or a 7 gate in the wire barrier through which the POP people would 8 gain access to the area between the wire barrier and the 9 koppie. Is that a correct summary of what you've shown us? 10 CAPTAIN THUPE: That's correct. 11 CHAIRPERSON: Thank you. 12 MS LE ROUX: Could we – 13 COMMISSIONER HEMRAJ: Sorry, Captain, 14 proceeding to the koppie to effect the sweeping and the 15 arrest, was the TRT line going to move to that position 16 directly from where you are on the photograph? 17 CAPTAIN THUPE: That's correct. 18 COMMISSIONER HEMRAJ: So where was the 19 POPS dispersion line going to form up then? 20 CAPTAIN THUPE: It was supposed to form 21 from here. 22 COMMISSIONER HEMRAJ: From where? 23 CAPTAIN THUPE: Where, the barbed wire – 24 this Nyala for the barbed wire. 25 COMMISSIONER HEMRAJ: What you're</p>

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1 pointing out are the wire Nyalas, barbed wire Nyalas.
 2 CAPTAIN THUPE: That's correct and POP
 3 was supposed to form up somewhere here to go and disperse
 4 from here and there.
 5 COMMISSIONER HEMRAJ: So when the POP
 6 would form up in the direction that you've shown, where
 7 would the TRT line be at that stage when the POP dispersion
 8 line was formed?
 9 CAPTAIN THUPE: TRT was still here.
 10 COMMISSIONER HEMRAJ: The position you're
 11 pointing out is the position that the TRT line is on the
 12 photograph.
 13 CAPTAIN THUPE: That's correct.
 14 COMMISSIONER HEMRAJ: Right. Now where
 15 on the photograph would the POPS line be for dispersing?
 16 Where would that be on the photograph?
 17 CAPTAIN THUPE: The POP, the POP supposed
 18 –
 19 MR MABUNDA: Where he's indicating is
 20 where the –
 21 CHAIRPERSON: What he's shown to us is –
 22 sorry, can I try to explain what you've said? Between the
 23 fourth Nyala as we see it on the photograph and the light
 24 standard, there's a pole which one can see on the
 25 photograph where there was a light of some kind, and in

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1 fact there appears to be some kind of path very close to
 2 the position between the fourth Nyala and that pole – that
 3 I understood was where you would form, is that correct?
 4 CAPTAIN THUPE: That's correct.
 5 COMMISSIONER HEMRAJ: How were the POP
 6 going to get to that position from where they were behind
 7 the barbed wire? How were they going to get to the other
 8 side of the barbed wire?
 9 CAPTAIN THUPE: It was supposed to open
 10 the gate somewhere so that they could go through.
 11 COMMISSIONER HEMRAJ: For the Nyalas as
 12 well, for the POP Nyalas as well?
 13 CAPTAIN THUPE: That's correct.
 14 MS LE ROUX: Captain Thupe, the gate that
 15 you're referring to, the gap in the barbed wire, who
 16 briefed you about the gate, the gap? Was that Colonel
 17 Scott?
 18 CAPTAIN THUPE: No, it was Brigadier
 19 Calitz.
 20 MS LE ROUX: Brigadier Calitz. And when
 21 did he brief you? Was that the six o'clock or the 2:30
 22 briefing?
 23 CAPTAIN THUPE: After Colonel Scott –
 24 well, we have been first of all briefed by Scott then
 25 thereafter came Calitz, Brigadier Calitz to brief us too.

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1 MS LE ROUX: And that's at the 2:30
 2 briefing?
 3 CAPTAIN THUPE: It was the last briefing.
 4 MS LE ROUX: The last briefing, the one
 5 where Colonel Scott had –
 6 CAPTAIN THUPE: I don't remember the time
 7 but it was the last briefing which –
 8 MS LE ROUX: So the 2:30 afternoon
 9 briefing where Colonel Scott had his computer screen with
 10 the picture we looked at this morning?
 11 CAPTAIN THUPE: Mm-mm.
 12 MS LE ROUX: In that briefing after Scott
 13 finished, Brigadier Calitz told you about the gap, the gate
 14 in the barbed wire and you would go through there to form
 15 your line.
 16 CAPTAIN THUPE: After we have been
 17 briefed by Colonel Scott we left the forward holding area
 18 1, then we returned back to the scene. Then Brigadier
 19 Calitz he called all the commanders together, it's where he
 20 again briefed us and the drivers.
 21 MS LE ROUX: And can you show us on this
 22 photograph where that briefing with Brigadier Calitz took
 23 place? Is that location on this photograph? Where were
 24 you when Calitz briefed you?
 25 CAPTAIN THUPE: Where I'm indicating.

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1 MS LE ROUX: Where you were in your line.
 2 CHAIRPERSON: I see. So what happened
 3 was you left your position in that line to go to forward
 4 holding area 1 to get the briefing from Colonel Scott, is
 5 that right? And then you went back to the position where
 6 you'd been previously, the TRT line which we see on the
 7 photograph and then Calitz came and gave you further
 8 information. Is that the position?
 9 CAPTAIN THUPE: That's correct.
 10 MS LE ROUX: Now Captain Thupe, could I
 11 ask you to go back to your initial statement RRR1, the
 12 handwritten two page one that we started with and if we can
 13 look, RRR1, the 19th of August statement by Captain Thupe
 14 and if we go to paragraph 3 on the first page. Captain,
 15 I'm interested in the first sentence there, you say "The
 16 POP unit members laid barbed wire to channel them, the
 17 protesters, towards the squatter camp." So could I also
 18 ask that we then just look at RRR2 which is your typed
 19 warning statement from September 2012, paragraph 4 of that.
 20 You say there the same thing, "The public order police
 21 members laid barbed wire that channelled them towards the
 22 squatter camp" and then you carry on about how the
 23 protesters moved. So I'm correct that your understanding
 24 was that the barbed wire was laid the way it was laid so
 25 that it would channel protesters towards Nkaneng, right?

<p style="text-align: right;">Page 28038</p> <p>1 That's what you understood the barbed wire was doing?</p> <p>2 CAPTAIN THUPE: That's correct.</p> <p>3 MS LE ROUX: Okay. And who told you that</p> <p>4 the barbed wire was there to channel protesters towards</p> <p>5 Nkaneng? Who told you that that was why it was being laid</p> <p>6 the way it was?</p> <p>7 CAPTAIN THUPE: That is my own</p> <p>8 understanding. Nobody told me.</p> <p>9 MS LE ROUX: And what was your</p> <p>10 understanding based on? How did you decide that that was</p> <p>11 what the barbed wire was doing?</p> <p>12 CAPTAIN THUPE: The barbed wire was meant</p> <p>13 to be a barrier between the police and the protesters.</p> <p>14 [14:12] COMMISSIONER HEMRAJ: If you were going</p> <p>15 to channel, if the idea was to channel the strikers towards</p> <p>16 Nkaneng, then in what direction were they going to be</p> <p>17 dispersed?</p> <p>18 CAPTAIN THUPE: To any direction.</p> <p>19 MS LE ROUX: And Captain Thupe, was your</p> <p>20 understanding also that the strikers, if they went towards</p> <p>21 Nkaneng the way the barbed wire was channelling them, they</p> <p>22 would be allowed to go to Nkaneng. If they went in that</p> <p>23 direction, they would be allowed to go there.</p> <p>24 CAPTAIN THUPE: That's correct.</p> <p>25 MS LE ROUX: In any of the briefings, the</p>	<p style="text-align: right;">Page 28040</p> <p>1 his Blackberry, that's what is indicated at the top. It's</p> <p>2 number 1514 and it's taken at 15:42:35 eTV time and if we</p> <p>3 look at the photograph what we see on the left-hand side</p> <p>4 with the blue circle is the TRT in a line outside their</p> <p>5 vehicles, that's the TRT line you pointed out to us on the</p> <p>6 other photograph we just looked at and then on the right-</p> <p>7 hand side of the photograph we see a red circle showing us</p> <p>8 that Nyala 1 has started to deploy its barbed wire. It's</p> <p>9 started moving forward towards Nyala 2 and then on the</p> <p>10 bottom left we see two blue circles which indicate</p> <p>11 protesters dispersing from the koppie using the path</p> <p>12 towards Nkaneng and in the red circle is Nyala 6 and we see</p> <p>13 that the protesters that are dispersing are going on either</p> <p>14 side of Nyala 6 in order to get on that path that takes you</p> <p>15 to Nkaneng. So we've got Nyala 1 starting to lay its</p> <p>16 barbed wire, the strikers beginning to disperse and move</p> <p>17 away from the koppie towards Nkaneng and they walk both</p> <p>18 sides of Nyala 6 down the road to Nkaneng. Do you</p> <p>19 understand and accept all of what's shown in this</p> <p>20 photograph that I've pointed out?</p> <p>21 CAPTAIN THUPE: That's correct.</p> <p>22 MS LE ROUX: Okay, if we then look at the</p> <p>23 next photograph which is at page 24 of GW6A. This again is</p> <p>24 from Lieutenant-Colonel Vermaak, it's image 4540. It's</p> <p>25 taken one minute and 20 seconds later after the last, the</p>
<p style="text-align: right;">Page 28039</p> <p>1 Colonel Scott briefing at the forward holding area or</p> <p>2 Brigadier Calitz when you were back in the line, did any of</p> <p>3 them, either of them brief you about what to do if the</p> <p>4 people were moving towards Nkaneng?</p> <p>5 CAPTAIN THUPE: If they moved towards</p> <p>6 Nkaneng we'd let them go through but if they choose another</p> <p>7 direction, dispersing, we will leave them also the same.</p> <p>8 MS LE ROUX: Okay. Could we now go in</p> <p>9 Gary White's statement, if we go to annexure GW6A, that's</p> <p>10 JJJ178.1, annexure GW6A to the Gary White statement. If we</p> <p>11 could put GW6A up on screen, thanks. So GW6A – no, not the</p> <p>12 statement, that's Gary White – sorry, that's JJJ178. We</p> <p>13 need 178.1, the first annexure which is entitled "Route</p> <p>14 taken by protesters scene 1, CALS analysis." Could we go</p> <p>15 to page 21 of that document? Captain Thupe, I understand</p> <p>16 you haven't had a chance to read all of this document or</p> <p>17 have you been able to read all of 6A? I asked your legal</p> <p>18 team to give you time to do that. Have you looked at the</p> <p>19 whole of 6A, this document?</p> <p>20 CAPTAIN THUPE: Not all.</p> <p>21 MS LE ROUX: Okay, let me see, I think we</p> <p>22 can – because there are only two photographs that I want to</p> <p>23 deal with, with you, so let's see if we can do them</p> <p>24 together now. So if we start on page 21, Captain Thupe,</p> <p>25 this is a photograph taken by Lieutenant-Colonel Vermaak on</p>	<p style="text-align: right;">Page 28041</p> <p>1 photograph we've just looked at, this is one minute and 20</p> <p>2 seconds later or 15:43:56 eTV time. So what we see here if</p> <p>3 we look on the left, we see Nyala 1 deploying its barbed</p> <p>4 wire. It's now much closer to Nyala 2. Below that again</p> <p>5 in the blue circle we see your TRT line outside of the</p> <p>6 vehicles and then on the right-hand side of the photograph</p> <p>7 we see the two circles showing us protesters moving towards</p> <p>8 Nkaneng and we see Nyala 6 with the little red arrow</p> <p>9 indicating - the dot at the start of the red arrow is where</p> <p>10 it was in the photograph we looked at from a minute and 20</p> <p>11 seconds earlier and it's moved off the path, it's moved to</p> <p>12 the south of the path to Nkaneng, seemingly to allow the</p> <p>13 protesters to use the path. So Nyala 6 seems to have moved</p> <p>14 out of the way of the protesters.</p> <p>15 Now at this point in time, this second photograph</p> <p>16 that we've looked at, were you still in the second, longer</p> <p>17 TRT line towards the bottom of the photograph, still</p> <p>18 approximately one-third of the way in from the right-hand</p> <p>19 side of that line? Is that where you were still standing?</p> <p>20 CAPTAIN THUPE: We were still here.</p> <p>21 MS LE ROUX: Okay, so you were still</p> <p>22 standing in the same position you previously testified</p> <p>23 about.</p> <p>24 CAPTAIN THUPE: Yes.</p> <p>25 MS LE ROUX: In that line. And could</p>

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1 you, from where you were standing could you see the shape
2 that the barbed wire line was going to take? Could you see
3 the barbed wire Nyalas from where you were standing?
4 CAPTAIN THUPE: Ja, I could see.
5 MS LE ROUX: And is that, from what you
6 observed you could see the way that the barbed wire Nyalas
7 were lined up, that's why you came to your belief that it
8 was channelling the protesters towards Nkaneng, right?
9 CAPTAIN THUPE: That's correct.
10 MS LE ROUX: Okay. Now if I could ask
11 that we now go to the statement of Gary White, JJJ178 and
12 if we go to page 81 of that document, paragraph 6.5.19
13 because you see, Captain Thupe, Mr White, the expert for
14 the Human Rights Commission, he agrees with you and he sets
15 out here how he understood what the barbed wire would do
16 for the protesters. So if we turn over to page 82, this is
17 the original plan that Colonel Scott put together and what
18 Mr White says about this plan is that if the barbed wire
19 was put the way it's represented here in the orange, it
20 would block access to Nkaneng and it would make going home
21 to Nkaneng very difficult. And if we turn over to page 83
22 we then see the amended stage 3 plan. This was the plan at
23 two o'clock where you can see Nyala 6 has moved back and
24 now the orange line dog-legs towards Nkaneng. And Mr
25 White, as he sets out there on page 83, that this change in

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1 how the barbed wire would be redeployed would make the
2 strikers think that they could follow the shape of the
3 barbed wire and head home to Nkaneng and I should also let
4 you know that Lieutenant-Colonel Merafe testified, day 221
5 page 27292 to 93, that this change in how the barbed wire
6 would be used would mean that the protesters would think
7 that they could pass along the edge of the shape towards
8 Nkaneng, so –
9 CHAIRPERSON: Can we just see what
10 appears in the next line of the text below the section on
11 the screen? "Nonetheless, the presence of the POP, NIU,
12 TRT and STF members to the north of the koppie and adjacent
13 to the barbed wire do act" – it should be does act, I
14 suppose – "as a deterrent to movement towards Nkaneng."
15 MS LE ROUX: Yes, Chair. This was what
16 we should – this is the amended two o'clock plan which has
17 TRT, STF, NIU deployed at the same time as the barbed wire,
18 so they block the top half of the circle and then if we
19 turn over to page 84 we see the actual positioning of the
20 police resources where we have the Nyala line, the barbed
21 wire line with the Nyalas curving towards Nkaneng and the
22 POP, TRT, NIU and STF not yet deployed to the north of the
23 path to Nkaneng. So there's no-one where in the previous
24 diagram you had the human resources deployed to be the one
25 half of the semi-circle. This is what actually happened

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1 where we have all the human resources behind the barbed
2 wire line. So Captain Thupe, you would agree then with Mr
3 White where he says that this deployment of the barbed wire
4 where there's no-one to the north yet, that this would
5 channel protesters towards Nkaneng, you agree with that?
6 CAPTAIN THUPE: I don't understand your
7 question.
8 MS LE ROUX: Sure. If we go, let's go
9 back to page 82. So the picture on page 82 shows the
10 original plan that Colonel Scott developed. So here we see
11 the orange semi-circle is the barbed wire and then all the
12 other units of the SAPS who were there on the day would
13 have been deployed along that semi-circle and that would
14 block people wanting to go back to Nkaneng because there'd
15 be a barrier between them, between the koppie and Nkaneng.
16 You accept that, you understand that?
17 CAPTAIN THUPE: That's correct.
18 MS LE ROUX: Then if we turn over to page
19 83, this is the stage 3 plan as amended at two o'clock by
20 Colonel Scott and in this plan we see the dog-leg of the
21 barbed wire, so Nyala 6 has moved back out of the semi-
22 circle but STF, NIU and TRT are the resources that are
23 going to be deployed to the north and so between the people
24 being lined up and the barbed wire being deployed, there
25 would still be a semi-circle that stops everybody going to

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1 Nkaneng. Do you agree with and understand that? If
2 everyone is there at the same time, the barbed wire is
3 there and everyone is lined up at the same time, people
4 won't go to Nkaneng because there's either barbed wire or
5 TRT, NIU, STF in their way.
6 CAPTAIN THUPE: I disagree.
7 MS LE ROUX: Okay, why do you disagree
8 with that?
9 CAPTAIN THUPE: From here I'm indicating,
10 your lordship, Nkaneng, there's a lot of – you can go this
11 way, this way or this way. There's a lot of ways which
12 lead to Nkaneng, indicating the sides in which direction
13 one could take to Nkaneng. You can go this way or this
14 way.
15 MS LE ROUX: But Captain Thupe, the
16 koppie where the protesters were is the one that's got the
17 blue circle around it.
18 CAPTAIN THUPE: Yes.
19 CHAIRPERSON: You're talking over each
20 other but apart from that we haven't got a record of what
21 he showed. What you showed was that they could have got
22 into Nkaneng by moving towards what we described as koppie
23 3 and going the long way around but then you were saying
24 something else and Adv Le Roux said something over you or
25 vice versa, so perhaps she should repeat her question and

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1 you can repeat your answer.

2 CAPTAIN THUPE: I will, sir.

3 MS LE ROUX: I apologise, Chair. Captain

4 Thupe, the koppie with the blue circle around it is the

5 koppie where the protesters were gathered so no-one would

6 yet be – the koppie you indicated is the koppie to the left

7 of the photograph, of the diagram, but there aren't any

8 protesters gathered there. So the people are dispersing

9 from the koppie that's got the blue circle around it.

10 CHAIRPERSON: The blue circle is around

11 two koppies, it's around koppie 1 and 2 –

12 MS LE ROUX: Yes, Chair, so it's around

13 koppie 1 and 2 –

14 CHAIRPERSON: And the one to which you

15 are referring is what we call koppie 3.

16 MS LE ROUX: Yes. Thank you, Chair. So

17 Captain Thupe, given that the protesters are on koppies 1

18 and 2 which are in the blue circle, when those people

19 disperse, if the barbed wire is where the orange line is

20 and STF, NIU and TRT and POP are where the blue vehicles,

21 the red men and the green vehicles are, then the protesters

22 would have to go all the way north and around them in order

23 to get to Nkaneng, do you accept that?

24 CAPTAIN THUPE: That's correct.

25 MS LE ROUX: Okay. And then if we

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1 finally just deal with page 84, this shows us the same

2 picture but here we see what actually happened, which is

3 the barbed wire is being deployed along the orange line but

4 all the police resources, your line, everyone else, are

5 still behind the barbed wire Nyalas. They haven't moved up

6 yet north. So Mr White's point is that in this scenario

7 the people on koppies 1 and 2 have quite an easy route to

8 Nkaneng. They can get there quite directly. They can just

9 go around where the barbed wire is and they can get to

10 Nkaneng, do you accept that?

11 CAPTAIN THUPE: That's correct.

12 MS LE ROUX: Okay. There's one final

13 aspect of your briefing that I wanted to deal with and

14 perhaps the easiest way to do this is if we go back to

15 slide 181 of exhibit L and again this is with the white

16 blocks and writing and arrows removed, this was what

17 Colonel Scott used to brief you at 2:30, did you understand

18 from Colonel Scott's briefing that there would be a single

19 TRT line or would TRT members split into different groups

20 and do different things?

21 CAPTAIN THUPE: Single TRT line.

22 MS LE ROUX: So all the TRT members had

23 only one job, it was to be in a line 100 metres behind the

24 POP.

25 CAPTAIN THUPE: That's correct, except

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1 those who were the forward holding areas.

2 MS LE ROUX: Yes, of course. So with

3 respect the people, the TRT members that were with you, you

4 all had the same job.

5 CAPTAIN THUPE: That's correct.

6 MS LE ROUX: Okay. Now, Lieutenant-

7 Colonel Scott said that the TRT would actually split into

8 two groups and one group would go and form the line with

9 POP and one group would protect the gaps between the Nyalas

10 and the barbed wire trailers. Do you remember Colonel

11 Scott briefing you that some TRT would need to go and be

12 down the barbed wire line between the barbed wire trailers

13 and the Nyalas? Do you remember him saying anything about

14 that?

15 CAPTAIN THUPE: No.

16 MS LE ROUX: Okay. And Brigadier Calitz

17 didn't brief you anything about some of you must go and be

18 between the trailers and the Nyalas?

19 CAPTAIN THUPE: No.

20 MS LE ROUX: Okay. Now if I could turn

21 to the briefing that you gave your members when you went

22 back after you'd been briefed. Did you discuss the use of

23 force with your members? Did you talk to any of your

24 members about when they should shoot, whether they should

25 shoot, anything about the use of force when you briefed

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1 your members in the afternoon of the 16th after your

2 briefing by Colonel Scott and Brigadier Calitz?

3 CAPTAIN THUPE: No.

4 MS LE ROUX: Could I ask you to look at

5 RRR11 which is the supplementary statement by Lieutenant-

6 Colonel Claassen? This is the one dated the 28th of January

7 2014 and if we can go to page 3, paragraph 6 of that and

8 I'd just like to read from the second half of paragraph 6.

9 Here we see Lieutenant-Colonel Claassen saying,

10 "Furthermore, if not" – meaning if the strikers didn't lay

11 down their weapons and by three o'clock they had to move in

12 tactically – "Furthermore, if not, we have to respond as

13 per planning by encircling the koppies and disarming the

14 miners and arresting them. He" – that's Lieutenant-Colonel

15 Scott – "said TRT will be followed up by POPS by backing

16 them up. Task force to approach the big koppie, disarm the

17 miners, NIU to take a smaller koppie, TRT the smaller one."

18 And then in paragraph 7, "After receiving my briefing I

19 called my members who was then accompanied by PH TRT and

20 Soweto TRT to be briefed. I told them what the plan was

21 and that if anything should go wrong, the rules of

22 engagement to be considered strictly, also adding that in

23 our case we don't act, we react should anything go wrong,

24 which I doubt it." Now did you brief any of your members

25 anything about something like that, that if anything goes

<p style="text-align: right;">Page 28050</p> <p>1 wrong the rules of engagement must be considered strictly 2 and that you mustn't act, you would react if anything goes 3 wrong? Did you brief your members anything about that? 4 CAPTAIN THUPE: No. 5 MS LE ROUX: Could we then look at RRR10 6 which is the statement by Lieutenant-Colonel Claassen that 7 he signs the day before, the 27th of January 2014. Now the 8 two statements are pretty identical in terms of content 9 except for one material difference that we've identified, 10 which is at the end of paragraph 8 of this statement, if we 11 go to page 2 paragraph 8. Here we see the same thing where 12 Lieutenant-Colonel Claassen says, "After receiving my 13 briefing I called my members who was then accompanied by PH 14 TRT, Soweto TRT to be briefed. I told them what the plan 15 was and that if anything should go wrong the rules of 16 engagement to be considered strictly. I also added that in 17 our case we don't act, we react should anything go wrong, 18 which I doubted." And then there's an extra sentence there 19 which says, "I also added that should there be a situation 20 where shooting should occur, that we should go below the 21 knee." Did you brief any of your members that if shooting 22 needed to occur you would go below the knee, you would 23 shoot below the knee? 24 CAPTAIN THUPE: No. 25 [14:32] MS LE ROUX: Do you remember anyone</p>	<p style="text-align: right;">Page 28052</p> <p>1 CAPTAIN THUPE: That's correct. 2 MS LE ROUX: And you remember if he came 3 back and had the briefing with Brigadier Calitz? Was he 4 there for that? 5 CAPTAIN THUPE: That's correct. 6 MS LE ROUX: Okay, but in either of those 7 two briefings you don't remember anything about rules of 8 engagement, if you have to shoot you react and you shoot 9 below the knee? 10 CAPTAIN THUPE: No. 11 MS LE ROUX: Okay. Can I then ask you to 12 go into your, to your consolidated statement, which is 13 QQQ9, and if we could go to page 11 of that document, 14 paragraph 23 in particular? Because I'd now like to 15 understand, Captain Thupe, so you understand what I'm 16 focussing on? I'm now interested to try to work out from 17 where you were in the line that we've seen on the 18 photographs, how you move up behind the POP. That's what 19 we're going to focus on. 20 CHAIRPERSON: Have you moved away from 21 the briefing? 22 MS LE ROUX: Yes, Chair. 23 CHAIRPERSON: Alright, because could I 24 ask a question about that then before you move on? Would 25 you look at your statement, which is exhibit RRR3, that's</p>
<p style="text-align: right;">Page 28051</p> <p>1 briefing TRT members at any point about shooting below the 2 knee if you needed to shoot? 3 CAPTAIN THUPE: TRT North West, I don't 4 remember anything. 5 MS LE ROUX: And have you, you haven't 6 discussed his statement with him? You and Lieutenant- 7 Colonel Claassen haven't discussed his statement at all, 8 have you? 9 CAPTAIN THUPE: No. 10 MS LE ROUX: Okay. And with any TRT 11 member, did anybody tell you they were briefed to shoot 12 below the knee? 13 CAPTAIN THUPE: No. 14 MS LE ROUX: Okay. 15 CAPTAIN THUPE: He was referring to TRT 16 Katilehong because he was a commander of that TRT. 17 MS LE ROUX: Okay. 18 CAPTAIN THUPE: Was he referring to his 19 troop, or group. 20 MS LE ROUX: Okay. Do you know 21 Lieutenant-Colonel Claassen? Would you recognise him? 22 CAPTAIN THUPE: The 16th it was my first 23 time to see him on the scene. 24 MS LE ROUX: Okay, and was he at the 25 briefing with Lieutenant-Colonel Scott, if you remember?</p>	<p style="text-align: right;">Page 28053</p> <p>1 the statement which you made on the 12th of December 2012, 2 which was in fact the second statement you made that day. 3 The first one, which is exhibit HHH15.1 deals with what 4 happened on the 13th of August. This one deals with what 5 happened on the 16th. Now in the second paragraph of that 6 statement – do you have that in front of you? Ja. You say 7 this, "At about 15:00 Brigadier Calitz called all 8 commanders and we proceed to forward holding area 1 where 9 we were briefed about the execution of" – have you got it 10 there, Captain? You're fiddling with the paper. Are you 11 following what I'm reading to you? 12 CAPTAIN THUPE: Ja. 13 CHAIRPERSON: I want you to listen 14 carefully. "At about 15:00 Brigadier Calitz called all 15 commanders and we proceed to forward holding area 1 where 16 we were briefed about the execution of the phase 2 of the 17 operation, which is to disperse, disarm and arrest the 18 perpetrators. Our task was to form a baseline behind the 19 POP members," and then it goes on, "and when the retreat" - 20 that must clearly be "when they retreat," otherwise it 21 doesn't make sense - "when they retreat we move forward and 22 engage with the protesters." Now, so clearly the, that's 23 correct, isn't it? That's what you said? 24 CAPTAIN THUPE: That's correct. 25 CHAIRPERSON: And they, "the" should be</p>

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1 "they"? You nod your head.

2 CAPTAIN THUPE: That's correct.

3 CHAIRPERSON: Right, so what was

4 envisaged was the POP people were to advance on the

5 strikers and try to disperse and disarm them and they would

6 do that by what is called the force continuum, the less

7 than lethal force. They would use rubber bullets and

8 teargas and water cannon and that kind of thing. Is that

9 right?

10 CAPTAIN THUPE: That's correct.

11 CHAIRPERSON: But of course it was always

12 possible that that mightn't work, that in fact the POP

13 might have to retreat and take refuge in the armoured

14 vehicles because they were being attacked by the strikes.

15 That's correct too, isn't it?

16 CAPTAIN THUPE: That's correct.

17 CHAIRPERSON: Alright, and that's what

18 you deal with now. You say, "When they retreat," in other

19 words if they retreated, the POP people retreated to take

20 refuge in the armoured vehicles, your function then was to

21 move forward and engage with the protesters. That's

22 correct too, is it?

23 CAPTAIN THUPE: That's correct.

24 CHAIRPERSON: Right. Now this means that

25 you would have a group of protesters who aren't fazed at

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1 all. They aren't impressed at all by the less than lethal

2 force. They are advancing on the POP members, who are in

3 danger and that's why they have to retreat and take refuge

4 in their armoured vehicles. Is that right?

5 CAPTAIN THUPE: That's correct.

6 CHAIRPERSON: Right, and you then have to

7 engage them, correct? Armed with your R5 rifles.

8 CAPTAIN THUPE: That's correct.

9 CHAIRPERSON: How were you going to

10 engage them?

11 CAPTAIN THUPE: Ja.

12 CHAIRPERSON: What were you going to do?

13 How were you going to deal with the protesters, or strikers

14 advancing on you, on the POP people, putting them to flight

15 so they have to take refuge in their armoured vehicles?

16 What were the – how were the TRT going to deal with the

17 situation? Is that where the rules of engagement come into

18 operation?

19 CAPTAIN THUPE: That's correct. We –

20 CHAIRPERSON: And – sorry? You were

21 going to say something? The rules of engagement come into

22 operation, which would mean you would have a group of

23 people approaching you, who presumably would be aggressive,

24 would be seeking to attack you. Is that correct?

25 CAPTAIN THUPE: That's correct.

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1 CHAIRPERSON: Right. Now how would you

2 deal with the situation? Presumably you would use your

3 R5s. You would, I take it, not want to kill them if you

4 could avoid that, so you'd try to shoot them in their legs

5 below the knee? Is that right?

6 CAPTAIN THUPE: That's correct.

7 CHAIRPERSON: Ja, thank you. Of course

8 you couldn't always be sure that you would succeed in not

9 killing them because if you were discharging rifles like

10 R5s, which are very, very - they're high-velocity rifles,

11 aren't they?

12 CAPTAIN THUPE: That's correct.

13 CHAIRPERSON: Ja, so there's always the

14 risk that some at least of the people advancing would be

15 killed, or seriously injured. Is that right?

16 CAPTAIN THUPE: That's correct.

17 CHAIRPERSON: Thank you.

18 MS LE ROUX: Captain Thupe, if we go to

19 your consolidated statement, QOQ9, page 11 of that,

20 paragraph 23, you say there that you saw Nyala 1 starting

21 to deploy the barbed wire –

22 CHAIRPERSON: Sorry, my colleague Adv

23 Hemraj was putting a point to me she'd thought I'd

24 overlooked, but you can carry on.

25 MS LE ROUX: I'm just pausing. Captain

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1 Thupe, you say here at paragraph 23 you saw Nyala 1 start

2 to deploy the barbed wire. "While the Nyalas were busy

3 deploying the barbed wire I saw that a group of strikers

4 approached the police line. Captain Loest specifically

5 instructed us to run in the direction of the kraal and form

6 a line." Now I want to understand what it is that you

7 could see when you report this. So if we go back to

8 JJJ10.4540, Lieutenant-Colonel Vermaak's photograph, you're

9 in the bottom TRT line. You're a third of the way in from

10 the right, and from that position, is that where you saw

11 Nyala 1 start moving?

12 CAPTAIN THUPE: That's correct.

13 MS LE ROUX: Okay, and in your statement

14 you say, "While the Nyalas were busy deploying the barbed

15 wire I saw that a group of strikers approached the police

16 line." Which Nyala was busy deploying its barbed wire when

17 you saw strikers approach the police line? Which number

18 Nyala was moving?

19 CAPTAIN THUPE: Nyala 4.

20 MS LE ROUX: Nyala 4, okay. And just one

21 other question on this that I didn't ask you earlier. We

22 talked, we showed you in GW6A where we saw the groups of

23 protesters that were moving on the path to Nkaneng on

24 either side of Nyala 6, and then you remember Nyala 6 moved

25 off the path and the people used the path. You saw, did

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1 you see Nyala 6 move off the path? From where you were
 2 standing in this photograph did you see Nyala 6 move back?
 3 CAPTAIN THUPE: I've just noticed that
 4 Nyala 6 has stopped at the place where I'm indicating on
 5 the map. I don't remember that it has moved or not.
 6 MS LE ROUX: And did you see any strikers
 7 being challenged or stopped as they were using the path?
 8 CAPTAIN THUPE: No.
 9 MS LE ROUX: If we could then go to
 10 exhibit JJJ11, 15:15, this is one of Lieutenant-Colonel
 11 Vermaak's BlackBerry photographs. It's taken at eTV time
 12 15:51:47. So this is taken from a different angle, but at
 13 around the same time, and we see the core group of
 14 protesters heading to the north of the road to Nkaneng, and
 15 it's from that position that they move towards the gap
 16 between Nyala 4 and the kraal, correct? You saw that?
 17 CAPTAIN THUPE: Yes, I saw it.
 18 MS LE ROUX: Okay, and this is the same
 19 route that we saw the strikers taking on GW6A, the
 20 photographs we just looked at, getting to the path that
 21 takes you to Nkaneng, right? So this lead group of
 22 strikers were going in the same direction as the other
 23 strikers who had already got to the path, right?
 24 CAPTAIN THUPE: No, they were not moving
 25 to Nkaneng. They were just going towards the Nyala which

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1 was deploying the barbed wire. Those are the group on the
 2 right-hand side, that's the group which was moving towards
 3 Nkaneng, that I'm indicating. I'm indicating from below.
 4 MS LE ROUX: Now Captain Thupe, we've
 5 looked at the videos and the photographs and what I'd like
 6 to now try to see if you can help me with is we're trying
 7 to work out the time at which your TRT line starts moving,
 8 and we think we've been able to do that. So this
 9 photograph, which is again 15:51:47, you recall seeing the
 10 strikers in this position. You've testified about that.
 11 You remember seeing the strikers where they are in this
 12 photograph, correct?
 13 CAPTAIN THUPE: That's correct.
 14 MS LE ROUX: And at the time you saw them
 15 you were still in your TRT line where we've identified you
 16 in the previous photograph.
 17 CAPTAIN THUPE: Correct.
 18 MS LE ROUX: Okay, am I correct that this
 19 is the time that the TRT line starts moving up towards the
 20 road to Nkaneng?
 21 CAPTAIN THUPE: That is so.
 22 MS LE ROUX: Now we've measured the
 23 distance from where you were in your TRT starting position,
 24 the starting line, and to the road near the kraal and it's,
 25 on Google Earth it's about 110 metres. Does that sound

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1 approximately correct to you? From where you were in your
 2 line to where the road is at the kraal, it's about 110
 3 metres. Does that sound approximately right to you?
 4 CAPTAIN THUPE: Ja, I think you are
 5 right.
 6 MS LE ROUX: Okay, and we've calculated
 7 if we use sort of approximately six and a half kilometres
 8 an hour at sort of a light jog, a slow, you know, a pretty
 9 brisk walk, that it would take you about a minute to walk
 10 that distance. Is that what you recall, that it took you
 11 about a minute to get from where you were in your line up
 12 to where the road is?
 13 CAPTAIN THUPE: No, less than a minute.
 14 MS LE ROUX: Less than a minute, okay.
 15 If we can actually just play a short clip from JJJ194.16;
 16 this is at this same time period, so starting from 15:51.
 17 So in JJJ194.16 if we could just play the clip from 23
 18 seconds in and if we stop at 36 seconds in. Chair, and
 19 Captain Thupe, what you'll see is we'll see the TRT line
 20 moving up and you'll see members jogging and you'll see
 21 members walking fairly briskly. So from 23 seconds to 36
 22 seconds.
 23 [VIDEO IS SHOWN]
 24 If we can pause there; that's, they've obviously,
 25 the front of the TRT line has reached the road at the

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1 kraal. That is at 15:52:49 eTV time. So from your
 2 position in your starting line, which was 15:51:50, until
 3 15:52:49, it's taken you about a minute to get from your
 4 original line to the kraal. Does that agree with what you
 5 remember happening, that it's about a minute, just under a
 6 minute?
 7 CAPTAIN THUPE: I would ask you to repeat
 8 your time so that I could do my calculations.
 9 MS LE ROUX: Okay. So the photograph
 10 that we had you in your starting position in the line,
 11 that's at 15:51:50, and then this moment where the TRT line
 12 reaches the road is at 15:52:49. So it's 59 seconds later.
 13 So it's just under a minute from the line to the road.
 14 CAPTAIN THUPE: That's correct.
 15 MS LE ROUX: You'll agree with that,
 16 okay. If I could then ask us to put up JJJ11.1515. Again
 17 this photograph is at 15:51:47, so it's three seconds
 18 before you get to the road, okay. So this is the scene
 19 that would have prompted Captain Loest to tell you to form
 20 a line and get to the kraal. You'll accept that?
 21 CAPTAIN THUPE: Yes, I accept.
 22 MS LE ROUX: Okay. Now other parties are
 23 going to deal with the events from this point on, so I'll
 24 leave it for now and pick up my final topic with you, and
 25 that's regarding the use of radios on the day. Now at

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1 paragraph 28 of your consolidated statement you say that
 2 your radio wasn't functional. You remember that in your
 3 statement? Paragraph 28 you say that you had a radio but
 4 when the action started you realised it wasn't functional
 5 and you couldn't use it to make contact with the other
 6 commanders, and this morning you testified that you'd
 7 tested it in the morning and you tested it just before
 8 things started and it worked fine, but once the operation
 9 got going you didn't have a functional radio.
 10 CAPTAIN THUPE: That is so, Chair.
 11 MS LE ROUX: Okay. Now RRR5, which is
 12 your pocketbook for the 16th, doesn't say anything about
 13 your radio not working, or you having problems with your
 14 radio. Did you report to anybody that your radio didn't
 15 work? Because your diary entry doesn't say anything about
 16 radio difficulties, and then the first time we see it is in
 17 your statement. Did you report to anybody on the 16th, the
 18 17th, the 18th, there and thereabouts, or at Roots, did you
 19 tell anybody that your radio didn't work?
 20 CAPTAIN THUPE: Immediately after the
 21 operation I changed that radio and then got another radio
 22 because the other one was not functioning.
 23 MS LE ROUX: Captain Thupe, my question
 24 was did you tell anyone on the day that your radio didn't
 25 work?

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1 CAPTAIN THUPE: No.
 2 MS LE ROUX: Okay, did you tell anyone
 3 the next day or all the days that you were in Marikana, did
 4 you tell anyone that your radio didn't work?
 5 CAPTAIN THUPE: Well, the person who knew
 6 it was Captain Ntlati. I told him at Marikana, yes.
 7 MS LE ROUX: And who is Captain Ntlati?
 8 [14:51] CAPTAIN THUPE: The commander of TRT,
 9 Klerksdorp.
 10 MS LE ROUX: Did you tell anyone at Roots
 11 that your radio didn't work?
 12 CAPTAIN THUPE: That is so.
 13 MS LE ROUX: And who did you tell at
 14 Roots that your radio didn't work?
 15 CAPTAIN THUPE: Are you saying who?
 16 MS LE ROUX: Yes.
 17 CAPTAIN THUPE: As I just mentioned that
 18 I made a report to Captain Ntlati.
 19 MS LE ROUX: So you told Captain Ntlati
 20 on the day and also at Roots?
 21 CAPTAIN THUPE: Only at Roots.
 22 MS LE ROUX: Only at Roots, okay.
 23 CHAIRPERSON: When a radio doesn't
 24 function haven't you got to do something about it? I mean
 25 you can't just go around with a non-functioning radio.

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1 What happens, does a radio gets handed to you in the
 2 morning and you have to hand it back in the evening, or how
 3 do things work with radios?
 4 CAPTAIN THUPE: Well, if the radio is not
 5 functioning you hand it to the radio tech, to the people
 6 who work at radio tech.
 7 CHAIRPERSON: So who was the radio tech –
 8 there was a radio tech there that day, wasn't there? I
 9 remember he, Brigadier Calitz had a problem and he came and
 10 he did something to strengthen Brigadier Calitz's radio, so
 11 there was a radio technician in attendance. Is that right?
 12 CAPTAIN THUPE: That's correct.
 13 CHAIRPERSON: Can you remember who he
 14 was?
 15 CAPTAIN THUPE: I don't remember the
 16 person to whom I hand it over.
 17 CHAIRPERSON: But did you report to him
 18 that the radio was non-functional?
 19 CAPTAIN THUPE: That's correct, but –
 20 CHAIRPERSON: When did you do that?
 21 CAPTAIN THUPE: Immediately after the
 22 operation.
 23 CHAIRPERSON: I see.
 24 MS LE ROUX: Captain Thupe, I understand
 25 your radio wasn't working, but could you hear the radio

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1 communication that was going on at the time from other
 2 members' radio?
 3 CAPTAIN THUPE: I could hear that there
 4 was radio communication, but it wasn't so clear that I
 5 could follow what is being said.
 6 MS LE ROUX: Okay, and who was the member
 7 closest to you when you were in the line and immediately
 8 after the shooting? Who was the member closest to you that
 9 had a radio?
 10 CAPTAIN THUPE: It was Captain Ntlati.
 11 MS LE ROUX: Captain Thupe, immediately
 12 after the shooting, so there was the 8-second volley of TRT
 13 fire and then we know there's shooting for more than a
 14 minute after that. By the time all the shooting was
 15 finished you knew, because you could see that at least 25
 16 people had been shot, some of them probably fatally. You
 17 could see that, correct?
 18 CAPTAIN THUPE: That's correct.
 19 MS LE ROUX: Okay, now if your radio had
 20 been working, what would you have done with it at that
 21 point in time?
 22 CAPTAIN THUPE: If my radio was working?
 23 MS LE ROUX: Yes.
 24 CAPTAIN THUPE: No, I just wait for
 25 another instruction.

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1 MS LE ROUX: Okay, so you were only
2 waiting for another instruction over the radio. Did you
3 not think that you had a duty to inform the JOC that there
4 had been a shooting and that people were very seriously
5 injured, if not dead?
6 MR MATHIBEDI SC: Sorry, Mr Chairman,
7 sorry, the witness indicated that the radio, hand radio was
8 not functional, therefore he could not have, you know,
9 informed JOC.
10 MS LE ROUX: Chair, if my learned friend
11 would let the cross-examination develop, Captain Thupe
12 could have asked another member whether he could use his
13 radio.
14 CHAIRPERSON: Well, you can put the
15 question –
16 MS LE ROUX: He could have instructed a
17 member to communicate with the JOC –
18 CHAIRPERSON: You can put the question
19 like that. I must confess that I thought there was
20 substance in the objection which was raised, but your own
21 radio wasn't working. There were people near you who had
22 radios that were working. Is that right?
23 CAPTAIN THUPE: That's correct.
24 CHAIRPERSON: How far was Lieutenant-
25 Colonel Claassen from you?

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1 CAPTAIN THUPE: I was between Captain
2 Ntlati and Lieutenant-Colonel Claassen.
3 CHAIRPERSON: So was he right next to
4 you?
5 CAPTAIN THUPE: That's correct, but it
6 was –
7 CHAIRPERSON: Well, we see –
8 CAPTAIN THUPE: It was three members
9 between me and Lieutenant-Colonel Claassen –
10 CHAIRPERSON: Sorry, how many people
11 between you and Lieutenant-Colonel Claassen?
12 CAPTAIN THUPE: Three.
13 CHAIRPERSON: Three. But he was quite
14 close to you?
15 CAPTAIN THUPE: He was close.
16 CHAIRPERSON: Now according to his
17 statement he was listening on his radio quite a lot. He
18 says in exhibit RRR10 that he was waiting for instructions,
19 he talks about the barbed wire and so on and "We were told
20 by radio to be on standby," and then he goes on, referring
21 to his radio, after the cease fire had been shouted he
22 says, "I shouted basic line and someone else from the other
23 side also shouted basic line. I was listening to the
24 radio. I could not tell who was talking, but it was people
25 talking to one another." Now the question I think is your

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1 own radio wasn't working, but I take it, it must have been
2 obvious to you if you were only three people away from him
3 that Colonel Claassen was listening to his radio and his
4 radio was working.
5 CAPTAIN THUPE: That's correct.
6 CHAIRPERSON: Is that right? So the
7 question is well, why didn't you think of saying to Colonel
8 Claassen look here, don't you think we should tell the JOC
9 what's happened?
10 CAPTAIN THUPE: As I've already said that
11 I was between Lieutenant-Colonel Claassen and Captain
12 Ntlati. I would say that it was their duty that they
13 should report because if they could have seen that my radio
14 was not operating, thus it was their duty to report.
15 CHAIRPERSON: Now to put the proposition
16 slightly differently –
17 MR MABUNDA: Sorry, a point of
18 correction.
19 CHAIRPERSON: Sorry, I beg your pardon.
20 Carry on.
21 CAPTAIN THUPE: What I'm saying is that I
22 was between Lieutenant-Colonel Claassen and Captain Ntlati.
23 If I use my radio to report they could hear that I'm
24 reporting, then they couldn't report. So because I didn't
25 report I suppose that one of them is supposed to report to

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1 the JOC.
2 CHAIRPERSON: Yes, I was going to ask you
3 this question, but I may as well ask it to you. If your
4 radio had been working, would you have reported to the JOC
5 what had happened?
6 CAPTAIN THUPE: That's correct.
7 CHAIRPERSON: And therefore you would
8 have expected the colleagues near you whose radios were
9 working to do what you would have done if your radio had
10 been working. That's correct, isn't it?
11 CAPTAIN THUPE: That's correct.
12 MS LE ROUX: Captain Thupe, did you hear
13 on the radios that you could hear where you were standing,
14 did you hear anyone report to the JOC that there had been a
15 shooting?
16 CAPTAIN THUPE: Well, I heard that
17 Colonel Claassen was busy on his radio, but I could not
18 understand what he was saying, but he was busy talking in
19 his radio.
20 MS LE ROUX: So you could see Colonel
21 Claassen using his radio, you couldn't hear what he was
22 specifically saying?
23 CAPTAIN THUPE: That's correct.
24 MS LE ROUX: Okay, did you ask him
25 whether he had reported to the JOC that there had been a

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1 shooting?

2 CAPTAIN THUPE: No.

3 MS LE ROUX: Why not?

4 CAPTAIN THUPE: It's obvious where he

5 was, he was supposed to have reported to the JOC. If there

6 was not a report there was supposed to be a query and there

7 was never any query which came to us why it was not

8 reported to the JOC.

9 MS LE ROUX: Captain Thupe, this morning

10 and in the adjournment I've asked your legal team to show

11 you KKK43, which is the CALS analysis about the use of

12 radio and telephone by SAPS members at scene 1, because

13 we're hoping you can help us identify the four members that

14 we see there using the radios. Have you had a chance to

15 look at that document?

16 CHAIRPERSON: I wonder whether we

17 shouldn't – it's 3 o'clock now – whether we shouldn't take

18 tea now. I see Mr Ntsebeza is nodding his head vigorously,

19 so obviously thirsty. So let's take the tea adjournment

20 now. He can look at the exhibit that you've referred to

21 and give you a focussed condensed answer when we return.

22 Quarter of an hour? Take the tea adjournment.

23 [COMMISSION ADJOURNS COMMISSION RESUMES]

24 [15:32] CHAIRPERSON: The Commission resumes.

25 Captain, you're still under oath.

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1 SAMUEL KAY THUPE: (s.u.o.)

2 CHAIRPERSON: Ms Le Roux.

3 CROSS-EXAMINATION BY MS LE ROUX (CONTD.):

4 Thank you, Chair. Captain Thupe, just four short topics

5 relating to the use of radios. In the adjournment we went

6 through KKK43, the CALS analysis of the use of radios and

7 cell phones at scene 1, and could you just confirm that you

8 were able to identify member 1 in that presentation as

9 Lieutenant-Colonel Claassen, but you couldn't identify the

10 other three members? So member 1 is Lieutenant-Colonel

11 Claassen, but you didn't recognise the other three?

12 CAPTAIN THUPE: That's correct.

13 MS LE ROUX: Okay. Then secondly if we

14 can move on to – hopefully we don't need to go there, but

15 Lieutenant-Colonel Seloane, do you know Lieutenant-Colonel

16 Seloane?

17 CAPTAIN THUPE: I only know him after the

18 incident of the 16th, but it does appear that he was there

19 on the 13th. By then he was unknown to me.

20 MS LE ROUX: Right, in HHH45, which is

21 Lieutenant-Colonel Seloane's statement – for the record we

22 don't need to go there, but it's page 2, paragraph 8,

23 Lieutenant-Colonel Seloane says he counted the number of

24 dead and wounded people at scene 1 and he reported it on

25 the radio to chopper 2. Did you see Lieutenant-Colonel

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1 Seloane counting the number of dead and the number of

2 wounded and then using his radio to report it to chopper 2?

3 CAPTAIN THUPE: No, I didn't see him.

4 MS LE ROUX: Did you hear Lieutenant-

5 Colonel Seloane on the radio reporting numbers of dead or

6 wounded to chopper 2?

7 CAPTAIN THUPE: No.

8 MS LE ROUX: Did you hear anyone

9 reporting the number of dead or wounded people on a radio?

10 CAPTAIN THUPE: I say that I did not have

11 radio on me, so I didn't hear anybody, nor heard anybody

12 making a report.

13 MS LE ROUX: Okay. Captain Thupe, I'd

14 understood your testimony this afternoon differently. I'd

15 understood that although your radio didn't work, you could

16 hear the radio communication that was going on from the

17 people near you.

18 CAPTAIN THUPE: Well, I said that I could

19 hear, or heard it, but it wasn't clear to me what is has

20 been said there.

21 MS LE ROUX: Okay. Then thirdly,

22 immediately after the shooting at scene 1 did you see or

23 hear Captain Loest on the radio? Immediately after the

24 shooting did you hear Captain Loest on the radio at all?

25 CAPTAIN THUPE: Well, he was far left

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1 from where I was. That is very far away from me. Well, I

2 didn't see him using the radio and that's all yes, because

3 he was far away from me.

4 MS LE ROUX: So he was on the far left-

5 hand side of that TRT line?

6 CAPTAIN THUPE: That's correct.

7 MS LE ROUX: Okay, and then lastly if we

8 could just –

9 CHAIRPERSON: [Microphone off, inaudible]

10 was he on the far left, because I understood you or the

11 interpreter to stick out his right hand, so as you were

12 facing the oncoming strikers, perhaps we can get positions;

13 were you on the left or the right or in the middle? Where

14 were you?

15 CAPTAIN THUPE: I was on the right of

16 Captain Loest.

17 CHAIRPERSON: On the right, facing the

18 oncoming strikers? And where was –

19 CAPTAIN THUPE: That's correct.

20 CHAIRPERSON: Were you near the end or

21 were you in the middle or where were you?

22 CAPTAIN THUPE: I was in the middle.

23 CHAIRPERSON: In the middle, and Captain

24 Loest was to your left, was he?

25 CAPTAIN THUPE: Ja, he was on my left.

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1 CHAIRPERSON: And was he right near the
2 end or was he also more or less in the middle?
3 CAPTAIN THUPE: He was right to the end.
4 CHAIRPERSON: Right at the end, I see.
5 Thank you.
6 MS LE ROUX: Then Captain Thupe, lastly
7 I'm going to play you – if we could play exhibit EEE16,
8 EEE16, that's the eNews footage "Marikana exposed" and if
9 we could play from 9:30 into that – Chair, before we play
10 it, a warning might be appropriate. I think that
11 particular clip is alright, but it may be necessary.
12 CHAIRPERSON: I'm told that the clip that
13 we're now going to see may well contain pictures of people
14 who are relatives or loved ones of some of those present in
15 the chamber today and seeing these pictures may cause those
16 who are here and related to them, or among their loved
17 ones, may cause them acute emotional distress. So I ask
18 that that clip not be shown until a minute has elapsed
19 after what I am saying. Half a minute has expired and no-
20 one shows any signs of moving, so I think it's safe for us
21 to proceed.
22 MS LE ROUX: So Captain Thupe, we're
23 going to 9:30 into this clip and what I want you to listen
24 carefully for is we hear Brigadier Calitz on the radio
25 saying "TRT, can you hear me?" and then we hear a TRT

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1 member saying, "TRT, listen to the radio." So just listen
2 out for those bits of the clip.
3 [VIDEO IS SHOWN]
4 And we don't need it up on screen anymore.
5 Captain Thupe, did you hear that radio transmission? Did
6 you hear Brigadier Calitz saying, "TRT, can you hear me?"
7 Did you hear that?
8 CAPTAIN THUPE: Ja, I heard it from the
9 video.
10 MS LE ROUX: No, no, on the day did you
11 hear Brigadier Calitz say "TRT, can you hear me?"
12 CAPTAIN THUPE: No.
13 MS LE ROUX: Do you remember hearing any
14 TRT member saying "TRT, listen to the radio?"
15 CAPTAIN THUPE: No.
16 MS LE ROUX: Okay. Chair, I have no
17 further questions.
18 CHAIRPERSON: Thank you. Who is next to
19 cross-examine? Mr Gumbi.
20 MR GUMBI: Yes, Chairperson.
21 CHAIRPERSON: Let's find out if the
22 witness has had the opportunity to read the documents that
23 you provided. Have you had a chance to read the documents
24 which Mr Gumbi provided this morning? You remember there
25 was a little bundle of documents I showed you?

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1 CAPTAIN THUPE: No, I didn't get a chance
2 to read it, Chairperson, but I think it –
3 CHAIRPERSON: The bundle I'm showing you,
4 you've got it? Well, let's – the first statement that we
5 have is a – yes, it's quite a short point which Mr Gumbi is
6 going to put. I think I'll let him proceed and if you have
7 a problem at all – I don't want you to be ambushed or
8 caught by surprise by a document you haven't had a chance
9 to consider, but if there's any question then I'll have to
10 make a decision as to whether it is indeed a case of an
11 ambush. But let's let Mr Gumbi start and we'll see how far
12 we can get.
13 CROSS-EXAMINATION BY MR GUMBI: Thanks
14 very much, Chairperson. I think I can use the remaining
15 time effectively. Good afternoon, Captain Thupe.
16 CAPTAIN THUPE: Afternoon, Mr Gumbi.
17 MR GUMBI: Ja, let me introduce myself
18 briefly. I represent Lieutenant Baloyi who was injured on
19 the 13th of August 2012, and the family of the late Warrant
20 Officer Lepaaku. My cross-examination is divided into two
21 legs. The first leg I'll briefly deal with the version of
22 Lieutenant Baloyi about the incident of the 13th, and my
23 second leg of cross-examination I will briefly deal with
24 the series of report that was produced after Roots meeting
25 that took place from the 27th of August until the 6th of

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1 September 2012. Then I will test your knowledge on those
2 series of document that led to the production of exhibit L
3 that was presented before this Commission. You understand
4 me?
5 CAPTAIN THUPE: I do.
6 MR GUMBI: Let's deal with the version of
7 Lieutenant Baloyi, who was mobilised from Pretoria POP. On
8 the 13th of August 2012 the version of Lieutenant Baloyi was
9 to the effect that before they were deployed near the
10 railway line they were never briefed and he was not
11 equipped to confront those strikers they confronted near
12 the railway line. Do you have knowledge of those
13 allegation?
14 CAPTAIN THUPE: No, I don't have any
15 knowledge of the people of POP.
16 MR GUMBI: Near the railway line, the
17 version of Lieutenant Baloyi is that when General Mzembe
18 took a decision to escort those strikers on their way to
19 the koppie General Mzembe did not inform different units
20 that they were there that now he has taken a decision to
21 escort the strikers on their way to the koppie. Do you
22 have knowledge of that?
23 CAPTAIN THUPE: I would have you to
24 repeat your question so that I can understand.
25 MR GUMBI: I'm saying Lieutenant Baloyi,

<p style="text-align: right;">Page 28078</p> <p>1 his version is that when General Mpembe took a decision to 2 escort strikers from the railway line to the koppie, 3 General Mpembe did not instruct different units that they 4 were involved there that now he has taken a decision to 5 escort strikers on their way to the koppie. That 6 instruction was not announced loudly to all the units who 7 were there. Do you agree with him on that one? 8 CAPTAIN THUPE: That's correct. 9 MR GUMBI: Okay, furthermore according to 10 the version of Lieutenant Baloyi he drove and blocked the 11 strikers who were marching towards koppie, then he alighted 12 from the Nyala. He was attacked, then he fired a stun 13 grenade. So did you see one of the Nyalas moving in front 14 of the strikers, blocking them, and did you see Lieutenant 15 Baloyi alighting from the Nyala? 16 CAPTAIN THUPE: I only looked at the 17 Nyalas just travelling on the gravel road, but I didn't 18 know the inhabitants of those Nyalas, who were in the 19 Nyalas. 20 MR GUMBI: Will I be correct again, 21 Captain, that there were other members, after the stun 22 grenade, after the teargas was fired there were other 23 members who fired stun grenade after that? 24 CAPTAIN THUPE: Well, there was some 25 smoke of the teargas after it had been fired, but I heard</p>	<p style="text-align: right;">Page 28080</p> <p>1 2 again, you see again your name there, "Captain Thupe, TRT 2 commander, heard Major-General Mpembe issue a command for 3 stun grenade and teargas, after which Warrant Officer Kuhn 4 fired a shotgun CS rifle grenade." You see that? 5 CAPTAIN THUPE: Yes, I see that. 6 MR GUMBI: That was the 5th of September 7 2012. The first, it's a draft report produced by SAPS on 8 the 5th of September 2012. You see that? 9 CAPTAIN THUPE: I see that. 10 MR GUMBI: Then again when you move on 11 again on the same document again, page 20, paragraph 6, on 12 the 11th of September 2012 your name also again is there, 13 Captain Thupe as a person who heard Major-General Mpembe 14 issue a command. You see that? 15 CAPTAIN THUPE: I see that, Chair. 16 MR GUMBI: Same applies again when you go 17 to the next page again, page 29 of the same document is 18 dated 12 September 2012. When you go to paragraph 3, again 19 your name, Captain Thupe, is included there as a person who 20 heard Major-General Mpembe issue a command. You see that? 21 CAPTAIN THUPE: Yes, I see that, Chair. 22 MR GUMBI: When you go on the 18th of 23 September, same document, page 29, same exhibit I mean, 24 page 29, 18 September 2012, when you go to paragraph 2 your 25 name there is not included. Do you see that? The name of</p>
<p style="text-align: right;">Page 28079</p> <p>1 the sound of the stun grenade, but I could not see who were 2 firing them. 3 MR GUMBI: Thanks very much. Let's move 4 again to another, my second leg of cross-examination. Can 5 I refer you to exhibit JJJ156? Ja, before you could even 6 deal with exhibit JJJ156 can I refer you – you can put that 7 exhibit aside, Captain. Can I refer you to OOO19.2 – I 8 mean OOO19.1, I mean. I'm sorry. OOO19.1, then you go to 9 page 17. That's a document that was produced by the SAPS 10 from the hard drive of Lieutenant-Colonel Scott. When you 11 go to paragraph 3 of that page, page 17, do you see that? 12 If I can read it for you quickly. It reads as follows, "On 13 their way to the koppie they changed direction towards the 14 village. To prevent them from entering the village a 15 command was given of gas grenade. Warrant Officer Kuhn 16 confirm the command to Captain Thupe and teargas was used 17 to disperse the group and prevent them from entering the 18 village." Do you see that? 19 CAPTAIN THUPE: I can see that. 20 MR GUMBI: Your name is included there. 21 You see? 22 CAPTAIN THUPE: That's correct. 23 MR GUMBI: Can we move again, the same 24 document, when you go to page 16 – to page 18, I mean, page 25 18 of the same exhibit OOO19.1, and when you read paragraph</p>	<p style="text-align: right;">Page 28081</p> <p>1 Captain Thupe, paragraph 2, is not there, as the person who 2 heard Major-General Mpembe issue an instruction. Do you 3 see that? 4 CAPTAIN THUPE: I see that, Chair. 5 MR GUMBI: When you move again, the same 6 document, when you go to page 36 of the same document, 7 exhibit OOO19.1, paragraph 3 is 30 October 2012, your name, 8 Captain Thupe, as the person who heard Major-General Mpembe 9 issue an instruction on that day, it's also not there. You 10 see that? 11 CAPTAIN THUPE: I see that, Chair. 12 MR GUMBI: That was the hard drive for 13 Lieutenant-Colonel Scott. When we go to another hard drive 14 again of Lieutenant-Colonel Visser, that is OOO19.2, you 15 can put it up, OOO19.2, page 32, this document is dated 8th 16 of October 2012. When you go to paragraph 2 of that 17 document, that's the hard drive received from Lieutenant- 18 Colonel Visser, your name, Captain Thupe, is not included 19 there. You see that? 20 [15:52] CAPTAIN THUPE: I see that, Chair. 21 MR GUMBI: Furthermore when you go to the 22 next page again of the same exhibit, page 31, paragraph 3, 23 paragraph 3 again your name, Captain Thupe, is not included 24 there. You see that? 25 CAPTAIN THUPE: I see that, Chair.</p>

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1 MR GUMBI: When you go to the next page,
 2 page 36 of the same exhibit, that page is dated 15th of
 3 October 2012 and your name again, Captain Thupe, as the
 4 person who heard instructions, is not included there. You
 5 see that?
 6 CAPTAIN THUPE: I see that, Chair.
 7 MR GUMBI: The last page again on that
 8 exhibit, that is page 36, paragraph 3, and it's on record
 9 this document is dated the 17th October 2012, you see that?
 10 CAPTAIN THUPE: I see that, Chair.
 11 MR GUMBI: And your name is not included
 12 there. You confirm that?
 13 CAPTAIN THUPE: That is so, Chair.
 14 MR GUMBI: Will I be correct, Captain,
 15 that you didn't instruct Lieutenant-Colonel Scott or
 16 Lieutenant-Colonel Visser to delete this document building
 17 towards the production of exhibit L?
 18 CAPTAIN THUPE: No.
 19 MR GUMBI: So did you see this document,
 20 or were you given an opportunity to make your own
 21 contribution leading towards the production of exhibit L
 22 around the incident of the 13th near the railway line?
 23 CAPTAIN THUPE: I see these documents
 24 before me today in this Commission for the first time.
 25 COMMISSIONER HEMRAJ: Captain –

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1 MR GUMBI: Is it including exhibit L?
 2 COMMISSIONER HEMRAJ: Captain, the only
 3 stage that your name disappears from this narrative is the
 4 8th of September 2012.
 5 CAPTAIN THUPE: Okay.
 6 COMMISSIONER HEMRAJ: Prior to that at
 7 any one of the Roots meetings had you seen this narrative
 8 put up where your name was mentioned?
 9 CAPTAIN THUPE: No.
 10 COMMISSIONER HEMRAJ: Thank you.
 11 MR GUMBI: Thank you very much,
 12 Commissioner. Exhibit L, did you see exhibit L before it
 13 was presented before this Commission, around the incident
 14 of the 13th, if I can refer you to slide number 47?
 15 CAPTAIN THUPE: Page?
 16 MR GUMBI: Page 48, slide number 47 of
 17 exhibit L. This narrative was ever, ever presented to you
 18 before this document, exhibit L, was presented before this
 19 Commission? Page 48, slide number 47 of exhibit L.
 20 CAPTAIN THUPE: No, it was not presented
 21 to me.
 22 MR GUMBI: Thanks very much, Chairperson,
 23 I don't have further questions.
 24 CHAIRPERSON: Thank you. Well, it's
 25 worked out rather nicely. It's now 2 minutes to 4. Who is

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1 going to cross-examine next? Not now, but tomorrow
 2 morning. Who wishes to? Mr Ntsebeza is nodding his head
 3 and smiling. Does that mean we're going to have the
 4 privilege of hearing you opening the bowling tomorrow
 5 morning?
 6 MR NTSEBEZA SC: Yes, Mr Chairman,
 7 tomorrow morning.
 8 CHAIRPERSON: Have we got documents from
 9 you?
 10 MR NTSEBEZA SC: Yes, there are.
 11 CHAIRPERSON: Alright, and then AMCU.
 12 Well, of course being a gentleman you may want to stand
 13 back for Ms Barnes. Do you want to cross-examine next, Ms
 14 Barnes, or do you leave it to Mr Ntsebeza? Have you come
 15 to an agreement with him?
 16 MS BARNES: Yes, Chair, it will be Adv
 17 Gotz on behalf of AMCU, but Mr Ntsebeza will go first
 18 tomorrow. Our documents have also been distributed, Chair.
 19 CHAIRPERSON: We've got some documents
 20 here that we found on our table, "One second before the TRT
 21 volley" is one of the documents. Who's responsible for
 22 that?
 23 MS BARNES: Yes, those are part of the
 24 AMCU bundle of documents that will be used tomorrow. They
 25 have been distributed, Chair.

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1 CHAIRPERSON: Mr Ntsebeza, what are your
 2 documents? Perhaps you could – we won't debate it here in
 3 the chambers. Perhaps you and Ms Lewis can come and see us
 4 afterwards and you can tell us what your documents are, so
 5 we'll be prepared – because I don't think we've got them.
 6 But anyway, we can be prepared to deal with your cross-
 7 examination in the sense of listening with comprehension
 8 and understanding to it tomorrow. We'll adjourn now until
 9 tomorrow morning 9 o'clock. I think we must try from now
 10 on – it's not always easy because planes are late and other
 11 things happen, but if we could start at 9 tomorrow if
 12 possible, I personally would appreciate it. We'll adjourn.
 13 [COMMISSION ADJOURNED]
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