

RealTime Transcriptions

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COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 230

15 MAY 2014

PAGES 28453 TO 28585



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<p style="text-align: right;">Page 28453</p> <p>1 [PROCEEDINGS ON 15 MAY 2014] 2 [10:37] CHAIRPERSON: The Commission resumes a 3 bit later than we thought it would but there were mattes 4 that had to be attended to. Mr Gotz, you're next, you have 5 half an hour and I think after that are the families who, 6 when they've finished, if it doesn't coincide with the 7 ordinary adjournments we're taking we'll have a special 8 adjournment and then speak to Mr Mpofu in chambers to see 9 whether the time he's been allotted, in the light of the 10 questions that will have been covered by then is adequate. 11 You're still under oath, Captain. Mr Gotz? 12 PAUL BISMARCK LOEST: (s.u.o.) 13 CROSS-EXAMINATION BY MS LE ROUX (CONTD.): 14 Good morning, Chair, and good morning Captain Loest. My 15 name is Anthony Gotz, I'm going to be asking you some 16 questions on behalf of AMCU. Captain, if we can begin by 17 going to exhibit RRR11 which is Lieutenant-Colonel 18 Claassen's witness, consolidated witness statement dated 28 19 January 2014 and if we can focus on paragraph 7 of that 20 statement where Lieutenant-Colonel Claassen says, "After 21 receiving my briefing I called my members who was then 22 accompanied by PH, TRT and Soweto TRT to be briefed. I 23 told them what the plan was and that if anything should go 24 wrong, the rules of engagement to be considered strictly." 25 I wanted to ask you what your understanding is of the rules</p>	<p style="text-align: right;">Page 28455</p> <p>1 CAPTAIN LOEST: That's correct, Mr Chair. 2 MR GOTZ: You thought and in fact knew 3 that that aspect of the plan was flawed, correct? 4 CAPTAIN LOEST: That's correct, Mr Chair. 5 MR GOTZ: But you said nothing to 6 Lieutenant-Colonel – well, is it Colonel Scott, at the 7 briefing, is that correct? 8 CAPTAIN LOEST: That's correct, Mr Chair. 9 MR GOTZ: We also understand that 10 Brigadier Calitz thought that that aspect of the plan was 11 flawed, do you know that? 12 CAPTAIN LOEST: Mr Chair, yes. I got to 13 know of that later on. 14 MR GOTZ: Did Brigadier Calitz raised the 15 issue with Lieutenant-Colonel Scott at the 14:30 briefing? 16 CAPTAIN LOEST: I can't remember that, 17 Chair. 18 MR GOTZ: Then we also understand from 19 your evidence that there was a later briefing by Brigadier 20 Calitz that you attended, was that at 15:30? 21 CAPTAIN LOEST: Chair, yes, I can't 22 exactly remember the time but it was after the 14:30 23 briefing and before we deployed. 24 MR GOTZ: Was Lieutenant-Colonel – 25 CHAIRPERSON: Mr Gotz, just as a matter</p>
<p style="text-align: right;">Page 28454</p> <p>1 of engagement to which Lieutenant-Colonel Claassen refers. 2 Do you know what those are? 3 CAPTAIN LOEST: Chair, yes. According to 4 my knowledge, that was what I explained yesterday, that we 5 would have a standoff and we would stay in our positions 6 unless we are being attacked and then each member would 7 then act in self-defence. 8 MR GOTZ: Are the rules of engagement 9 which he says need to be considered strictly, are those 10 written down for the members anywhere? 11 CAPTAIN LOEST: Mr Chair, according to my 12 knowledge, no, not that I know of. 13 MR GOTZ: So members are trained in these 14 so-called rules of engagement, is that correct? 15 CAPTAIN LOEST: That is correct, Mr 16 Chair. 17 MR GOTZ: I would have to move on, 18 unfortunately. I'd like to debate what those rules of 19 engagement were in greater detail but time doesn't permit. 20 Captain, the additional topic that I want to deal with is 21 to get a better understanding of what your knowledge of the 22 plan was. We understand that at 14:30 on the 16th there was 23 a briefing by Colonel Scott. Part of that briefing was 24 that Colonel Scott outlined that the barbed wire Nyalas 25 would deploy the barbed wire simultaneously, correct?</p>	<p style="text-align: right;">Page 28456</p> <p>1 of accuracy, my recollection is and I may be wrong but my 2 recollection is that Brigadier Calitz didn't realise that 3 that was what the plan involved, this is what he said as 4 far as I can recall, and he then in any event proceeded 5 with consecutive rolling out. So that part of the plan 6 wasn't adhered to but my recollection was, and if I'm wrong 7 I'll be corrected by somebody I'm sure, that Brigadier 8 Calitz said he didn't realise he was deviating from the 9 plan, he didn't realise that was in the plan. I think 10 that's correct but I'm not sure that it's relevant for the 11 purposes of the point you're making because in any event 12 what happened was – [Cell phone ringing] - oh dear, if I 13 wasn't the Chairman I'd order myself to leave the chamber. 14 Probably a lot of people would wish me to do that, I'm 15 sorry to disappoint you. The point is that the barbed wire 16 was rolled out consecutively? 17 MR GOTZ: Yes, indeed Chair, and of 18 course I am testing Brigadier Calitz's version so to the 19 extent that I asked this witness what his understanding of 20 Brigadier Calitz's knowledge was, I'm testing whether or 21 not Brigadier Calitz gave a correct version to this 22 Commission as well. Captain, let's call it the 15:30 23 briefing. I understand that you may not have got the time 24 entirely accurate but at the 15:30 briefing we understand 25 that Brigadier Calitz also discussed the roll-out of the</p>

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1 barbed wire, is that correct?
 2 CAPTAIN LOEST: Mr Chair, yes. That
 3 could have been correct but as the POP mandate was not part
 4 of my specific functions that day, I didn't pay particular
 5 attention to the briefing that he gave to the POP members,
 6 only towards the TRT members.
 7 MR GOTZ: Well, it's that part of the
 8 briefing that I want to interrogate. What precisely did
 9 Brigadier Calitz say was the role of the TRT at that 15:30
 10 briefing?
 11 CAPTAIN LOEST: Mr Chair, like I
 12 explained yesterday, if the POP line would not be able to
 13 contain the protesters the TRT would have to filter
 14 through, take over and then stand ground and like I said,
 15 with the way that we are equipped the protesters would
 16 realise that we are a different unit and that we would not
 17 use the same type of equipment and firearms and means to
 18 contain them.
 19 MR GOTZ: Did that not relate, that
 20 aspect of the briefing, did that not relate to the roll-out
 21 of the barbed wire because in a sense the consecutive roll-
 22 out of the barbed wire created a different kind of, let's
 23 call it risk and that risk was that the protesters would
 24 attempt to get in front of the Nyalas that were rolling out
 25 the barbed wire and enter into, come close to the police

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1 line let's say by circumnavigating the wire. Is that not
 2 an additional risk or a risk that is associated with the
 3 consecutive roll-out of the barbed wire?
 4 CAPTAIN LOEST: Mr Chair, yes, with the
 5 roll-out, as Mr Gotz explains it is a risk. That is why
 6 the staggered option was a better option for that specific
 7 operation.
 8 MR GOTZ: No, what I'm saying is with the
 9 consecutive roll-out of the barbed wire, in other words as
 10 the barbed wire is rolled out there is a different type of
 11 risk and that is that the protesters and strikers will see
 12 that the barbed wire is being rolled out and will attempt
 13 to defeat the purpose of the barbed wire by getting in
 14 front of it, correct?
 15 CAPTAIN LOEST: Mr Chair, yes, that is
 16 correct.
 17 MR GOTZ: And was that discussed at the
 18 briefing?
 19 CAPTAIN LOEST: Mr Chair, according to my
 20 understanding the POP commanders that were involved with
 21 this deployment was able to do this correctly and that is
 22 why I didn't concern myself very much with the deployment
 23 of the barbed wire and only with the TRT deployment at a
 24 later stage.
 25 MR GOTZ: But when you say that you were

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1 briefed as the TRT to, as it were, support the POP if there
 2 was a risk that the strikers were going to break through
 3 the POP line, is that not part and parcel of the roll-out
 4 of the barbed wire as well? In other words you would be
 5 deployed at a point in time that there might be a risk that
 6 the protesters got in front of the Nyalas that were rolling
 7 out the barbed wire?
 8 CAPTAIN LOEST: Mr Chair, yes, that could
 9 have been possible.
 10 MR GOTZ: And there's some support for
 11 that in paragraph 9 of Lieutenant-Colonel Claassen's
 12 statement which is on screen, to say that "In that area we
 13 waited for instructions via radio on what was going to
 14 take, was taking place. While waiting behind the Nyalas
 15 one Nyala started deploying 'bobbed' wire and we were told
 16 via radio to be on standby." Now I assume you would be
 17 told to be on standby because of the possible risk that
 18 we've just discussed, would that be correct?
 19 CAPTAIN LOEST: That is correct, Mr
 20 Chair.
 21 MR GOTZ: "While waiting, Brigadier
 22 Calitz said on the radio, TRT move in and we adhered,
 23 running towards the kraal where we formed a basic line to
 24 support POPS." Do you see that?
 25 CAPTAIN LOEST: Yes, I do, Mr Chair.

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1 MR GOTZ: That would support our
 2 understanding that the TRT was told, in effect, that they
 3 would need to be deployed if that risk that we've discussed
 4 became real, correct?
 5 CAPTAIN LOEST: That is correct, Mr
 6 Chair.
 7 MR GOTZ: To be absolutely clear on this,
 8 you don't dispute that the TRT was activated as it were
 9 when Brigadier Calitz gave an order to that effect, do you?
 10 CAPTAIN LOEST: No, I don't dispute that
 11 at all, Mr Chair.
 12 CHAIRPERSON: If I remember your evidence
 13 from yesterday correctly or I'll put it this way, I seem to
 14 remember that you said something like this, that there are
 15 gaps in your memory about what happened on the day and I
 16 seem to remember you said that you couldn't remember that
 17 Brigadier Calitz did this but you think he probably did, he
 18 must have done because you then gave an order which you
 19 wouldn't have given unless you'd been passing on an order
 20 from Brigadier Calitz. Is that, am I remembering
 21 correctly? So what this means is that Lieutenant-Colonel
 22 Claassen is in effect filling in the gap in your
 23 recollection which you said is probably what happened, is
 24 that a correct statement?
 25 CAPTAIN LOEST: That's correct, Mr Chair.

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1 MR GOTZ: Captain, I'd like to discuss
 2 then the aspects of the fact that the TRT lined up against,
 3 up along the road and perhaps for that purpose we can have
 4 a photo on screen which is one of Vermaak's photographs
 5 JJJ10 and the number is 4541. I think you might have been
 6 shown this picture yesterday by the Human Rights Commission
 7 but it was called UU2, it's effectively the same
 8 photograph. Now Captain, although this photograph was
 9 taken a couple of minutes after the shooting –
 10 CHAIRPERSON: We should have given a
 11 warning. We should have – those who looked at the screen
 12 would have seen that we saw dead bodies of people lying
 13 down near the small kraal and those who didn't see it may
 14 well experience emotional distress if they do see it. So
 15 it's been taken off the screen now and I ask that it not be
 16 put up again for a minute to give those who feel that they
 17 may be distressed and upset at seeing it an opportunity to
 18 leave the chamber. Half a minute has elapsed since I
 19 spoke, one member of the persons present, one of the people
 20 present in the chamber left. I take it no-one else wants
 21 to leave so we can proceed, Mr Gotz.
 22 MR GOTZ: Now Captain –
 23 CHAIRPERSON: In future please, if that's
 24 going to happen please warn me so that – I'm sure it was an
 25 oversight.

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1 MR GOTZ: I do apologise.
 2 CHAIRPERSON: I understand.
 3 MR BIZOS SC: Mr Chairman, may I draw
 4 attention to the absence of the interpreter?
 5 CHAIRPERSON: The interpreter is outside
 6 and the interpreter is in the room across the court -
 7 people have headphones and they can listen on headphones to
 8 the simultaneous translation. The reason we haven't got an
 9 interpreter sitting next to Captain Loest is because it's
 10 not necessary to interpret his evidence for our benefit.
 11 It's being interpreted from the room across the passage.
 12 MR GOTZ: Captain, just so that we get
 13 our bearings, although this photograph was taken a couple
 14 of minutes after the shooting, the line of people standing
 15 there which is the TRT line, was roughly in that position
 16 prior to the TRT opening fire on the strikers, correct?
 17 CAPTAIN LOEST: No, Mr Chair, that's not
 18 correct. We were at least about five or seven metres
 19 towards the north where we are standing at that specific
 20 time.
 21 MR GOTZ: Well, let me be clear. I
 22 didn't want to suggest that, in fact my follow-up question
 23 –
 24 CHAIRPERSON: Sorry, where north is,
 25 where is north? That's towards the road?

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1 CAPTAIN LOEST: Mr Chair, yes, according
 2 to the photograph there, towards the road.
 3 CHAIRPERSON: You were closer to the
 4 road.
 5 CAPTAIN LOEST: Closer to the road. We
 6 moved back about five to seven metres from the time that
 7 the shooting started until it stopped and that's basically
 8 where we formed up while we were standing there, right
 9 there.
 10 COMMISSIONER HEMRAJ: What is the
 11 distance between the road and where the current line-up,
 12 basic line is?
 13 CAPTAIN LOEST: Mr Chair, I'll have to
 14 speculate. I suggest most probably about 15-plus metres.
 15 MR GOTZ: Well, no, Captain. We
 16 understand that a Nyala is five metres in length so you'd
 17 be able to get a rough idea on the basis of measuring the
 18 length of, looking at the length of those Nyalas. We would
 19 estimate that it's approximately 10 metres to the road.
 20 CAPTAIN LOEST: Mr Chair, I would concur
 21 with that.
 22 CHAIRPERSON: Of course if necessary, I
 23 take it there'll most probably be another Vermaak
 24 photograph taken at the relevant time that you're talking
 25 about, in other words the time before they moved back, from

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1 which we'll be able to get accurate information if it's
 2 necessary.
 3 MR GOTZ: Chair and –
 4 CHAIRPERSON: But what he seems to be
 5 saying is they were about halfway between where we see them
 6 on the photograph and the road, if you are correct and he
 7 accepts that you are, that the distance is about 10 metres.
 8 MR GOTZ: And Captain, we also understand
 9 that the line stretched approximately the distance that it
 10 did as shown in this photograph. So from the one end of
 11 the line to the other, that was approximately the line of
 12 the TRT at the time, Correct
 13 CAPTAIN LOEST: That is correct, Mr
 14 Chair.
 15 MR GOTZ: And would you concur with me
 16 that that distance is approximately 40 metres?
 17 CAPTAIN LOEST: Mr Chair, yes, more or
 18 less roughly.
 19 MR GOTZ: So there was a basic line of
 20 TRT members stretching 40 metres long along that road,
 21 correct?
 22 CAPTAIN LOEST: That is correct, Mr
 23 Chair.
 24 MR GOTZ: Now it does seem to us also
 25 that that configuration departed from the plan that had

<p style="text-align: right;">Page 28465</p> <p>1 been presented by Scott in some respects because what we 2 found was that what transpired was that the POP Nyalas, the 3 dispersal line lined up as it were perpendicular to the 4 road, correct? 5 CAPTAIN LOEST: That's correct, Mr Chair. 6 MR GOTZ: Which meant that your line of 7 TRT members was perpendicular to the POP dispersal line, 8 correct? 9 CAPTAIN LOEST: That is correct, Mr 10 Chair. 11 MR GOTZ: According to the plan, you were 12 supposed to be parallel and behind the POP dispersal line, 13 correct? 14 CAPTAIN LOEST: That is correct, Mr 15 Chair. 16 MR GOTZ: Why did you depart from the 17 plan in that material respect? 18 CAPTAIN LOEST: Mr Chair, that is a 19 decision that we take on the ground due to operational 20 circumstances, that you have to make a decision because the 21 plan is flaw-able and in that instance we had to make a 22 decision as quickly as possible and that is why we ended up 23 the way that we did. 24 MR GOTZ: Was this eventuality 25 contemplated in the 15:30 briefing with Brigadier Calitz?</p>	<p style="text-align: right;">Page 28467</p> <p>1 CAPTAIN LOEST: That was never discussed 2 during the plan or during the planning phase, Mr Chair. 3 MR GOTZ: I'm asking for your state of 4 mind, Captain Loest. Did you contemplate as the TRT that 5 they might attempt to get onto that road? 6 CAPTAIN LOEST: Mr Chair, yes. It is 7 possible. Like I said yesterday as well, they used various 8 routes from Nkaneng towards the koppie to get to and fro 9 from the specific area. 10 MR GOTZ: And in fact isn't that why you 11 lined your members up along that road because you 12 contemplated that as they moved around the kraal they would 13 attempt to get onto that road, correct? 14 CAPTAIN LOEST: Mr Chair, the reason why 15 we lined up the members there is, towards the southern part 16 of the line, in other words our back was the safety zone 17 that we created for the police and that was the next point 18 where pressure would have been received because the barbed 19 wire already on the eastern side closed off the protesters 20 to get inside the safety zone. So the next point would 21 have been the northern side of that safety zone. 22 MR GOTZ: You line your members up on the 23 southern side of that road, you see the strikers moving 24 around the kraal. You, Captain Loest, contemplated that 25 they might attempt to get onto the road, correct?</p>
<p style="text-align: right;">Page 28466</p> <p>1 CAPTAIN LOEST: Mr Chair, no, that issue 2 was never raised but unfortunately with our people on the 3 ground you have to be able to make a plan B or sometimes 4 even a plan C. 5 MR GOTZ: There were in fact POPS members 6 who we see, we can look at the photographs and videos if 7 necessary, who, on your version at least, on the SAPS 8 version might have needed protection in that line of POPS 9 members. They were outside of their Nyalas and if your TRT 10 line had formed up as they were supposed to, parallel to 11 and behind the POPS dispersal line, they would have been 12 protecting the POPS members, correct? 13 CAPTAIN LOEST: Mr Chair, yes. I would 14 agree with that. 15 MR GOTZ: The road that you see there is 16 the road to Nkaneng, correct? 17 CAPTAIN LOEST: That's correct, Mr Chair. 18 MR GOTZ: That was the road along which 19 the strikers would move back and forth from the koppie to 20 their homes, correct? 21 [10:57] CAPTAIN LOEST: That's correct, Mr Chair. 22 MR GOTZ: And it seems to me that you 23 must have contemplated at some stage before the shooting 24 that the strikers might attempt to get onto that road, 25 correct?</p>	<p style="text-align: right;">Page 28468</p> <p>1 CAPTAIN LOEST: Mr Chair, according to my 2 recollection, as they came around the corner of the kraal 3 they did not attempt to get onto the road because then they 4 would have swerved towards the west but they kept on moving 5 right against the kraal fence and they came, that group 6 that you can see that's lying there next to or in the road, 7 they came directly towards my group of members standing 8 next to me in the line-up. 9 MR GOTZ: You see the difficulty that we 10 have with that - 11 COMMISSIONER HEMRAJ: I'm so sorry, I'm 12 so sorry. Do you mind repeating that, please? I missed 13 some of it. 14 CAPTAIN LOEST: Okay, Mr Chair, just for 15 clarification, as the miners moved around the kraal, you 16 can see on the northern side of the kraal there is a road 17 running diagonally towards the Nyala and the water cannon 18 standing on the left-hand side of the screen. They could 19 have easily used that road - 20 COMMISSIONER HEMRAJ: Sorry, the road on 21 the top of the kraal on the picture? 22 CAPTAIN LOEST: Chair, maybe I can just - 23 Mr Chair, they came from that direction and they moved 24 around there. Now according to my knowledge they could 25 have moved straight there but they did not. They came</p>

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1 around there and more or less in that area, that is where
 2 we encountered them. So I don't know, logically it tells
 3 me if you, as a person, would take the shortest and the
 4 easiest route to get onto that road, that would have been
 5 that area there.

6 CHAIRPERSON: You might want to put on
 7 record what you've been pointing out. What you've shown
 8 us, as one looks at the photograph there is a shack which
 9 one sees in the, I suppose one could call it the top right
 10 corner, the top right corner of the photograph below the
 11 rock formation and what you showed us was, one starts with
 12 the Nyala with the wire trailer behind it from which I
 13 think the wire has now been uncoiled, the bottom left-hand
 14 corner of the kraal as we see it in the photograph and you
 15 said, indicated how they went round the kraal along the
 16 left side of the kraal and then along what looks like the
 17 top of the kraal on the photograph and you said they then
 18 came down fairly close to the right side of the kraal as
 19 one sees it, ending up where we see the dead bodies. You
 20 said that you would have expected them if they, to have
 21 gone diagonally in a direction towards the corner near the
 22 bottom, bottom left corner of that shack there's actually a
 23 fence there which one can see if one looks carefully, you
 24 would have expected them to have gone there to the bottom
 25 left corner of that fenced area in which is the shack and

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1 then gone towards the two vehicles which one sees on the
 2 road on the right-hand side of the photograph. I think
 3 that's what you pointed out, did I describe it correctly?

4 CAPTAIN LOEST: Mr Chair, yes. Like I
 5 said, I think in that, more or less in that vicinity there,
 6 there is a fence but there was ample space for them to move
 7 towards that corner post and logically they would have,
 8 supposed to go in that direction but they opted to come
 9 down to this area here.

10 CHAIRPERSON: Well, in fact the area here
 11 is the spot at the, as one looks at the photograph, the
 12 bottom right-hand corner of the kraal where there are a
 13 number of bodies. In fact yesterday it was shown to us
 14 that there's, I think the number given was about 14, was it
 15 - is that correct - bodies. I think Ms Le Roux dealt with
 16 it, in the corner there of the kraal. And you say they
 17 came around near there and as we can see, a number of
 18 bodies are lying on the ground, slightly to the right of
 19 the bottom right-hand corner of the kraal as we see from
 20 the photograph. So you say that's where they came instead
 21 of going diagonally towards the corner fencepost near that
 22 shack. That's what you're saying, is that correct?

23 CAPTAIN LOEST: Mr Chair, yes. That is
 24 basically what I'm saying because according to me these
 25 people were coming straight towards our line. There's a

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1 lot of road in that area there that they could have
 2 deviated to move away, to get into the road towards Nkaneng
 3 but they opted to come straight - if you look at the video
 4 as well, they came straight towards us.

5 MR GOTZ: But Captain -

6 CHAIRPERSON: Mr Gotz, it's been
 7 indicated that you've got five minutes.

8 MR GOTZ: But Captain, of course what
 9 you're not taking into account is the fact that there were
 10 a row of Nyalas that was blocking that off and in fact
 11 channelling the strikers towards you. Can we, for that
 12 purpose, have a quick look at exhibit KKK52 which is the
 13 analysis that has been done in relation to the movement of
 14 the strikers relative to the - yes, well, that's one
 15 version of it. In fact KKK52 is the best version to look
 16 at. So if you look at slide 5 of that, you'll see that as
 17 the strikers move - in fact it's useful if you, if -

18 CHAIRPERSON: Maybe we should put on
 19 record that what you're showing us at the moment is a
 20 representation by, I think it was the Human Rights
 21 Commission -

22 MR GOTZ: This is our analysis.

23 CHAIRPERSON: I beg your pardon, by AMCU
 24 and SERI. It's a photograph taken at 15:53:35 -

25 MR GOTZ: Well, just -

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1 CHAIRPERSON: Is it a photograph taken at
 2 the time or is it a representation of the vehicles as they
 3 were at that time?

4 MR GOTZ: Chair, you'll see -

5 CHAIRPERSON: It's obviously not 15:53
 6 because the shooting has already taken place.

7 MR GOTZ: Yes, indeed.

8 CHAIRPERSON: But what is shown, what are
 9 shown are vehicles which it is said were at the relevant
 10 spot at that time, 15:53:35 and there's, it looks like two
 11 white clouds, one larger than the other. Those clouds
 12 represent, as far as I can remember what we were told last
 13 time, the advancing strikers. And it is said that at the
 14 time when the advancing strikers were in the position of
 15 the clouds there were a number of vehicles situated where
 16 we see them on the photograph. That's your point, Mr Gotz.

17 MR GOTZ: Yes, so therefore that diagonal
 18 position was, to some extent, blocked.

19 CHAIRPERSON: It is possible, I suppose,
 20 for them to have gone between P4 and P5 but that could be a
 21 matter for argument later but your point is they could have
 22 gone that way. The answer to that is it's not as simple as
 23 that because there were those vehicles in the way. Is
 24 that, am I summarising correctly, Mr Gotz?

25 MR GOTZ: That's exactly it. Just to

1 place on record also that Brigadier Calitz, subject to one
2 exception, agreed with the analysis that we'd done, the
3 exception being the position of Papa1. But if we can go to
4 the next slide which is the representation of what was, the
5 position of the Nyalas was at 15:53:40, you'll see that the
6 point at which they reached the edge of the kraal as
7 represented by the blue cloud, that channel –

8 CHAIRPERSON: It looks like a white cloud
9 actually but never mind. P5, Papa5 is right across.

10 MR GOTZ: Ja, Papa5 has moved up and in
11 fact, in fact what happens is that the Nyala which we've
12 marked as Papa19 which was in fact Papa10, moves five
13 seconds later, moves up right up behind Papa5 and so a
14 channel was created, Captain Loest, which prevented the
15 strikers from moving in the direction that you said they
16 could. Correct?

17 CAPTAIN LOEST: I agree on that.

18 CHAIRPERSON: The case being put is they
19 were, in effect, channelled along that corridor to the
20 right on the photograph of the kraal, by the position of
21 these vehicles.

22 CAPTAIN LOEST: No, I agree on that, Mr
23 Chair.

24 MR GOTZ: And so the reason that they're
25 moving towards your line and in fact heading directly

1 the members under me. If my life at any stage felt
2 directly threatened then I would have fired my firearm as
3 well but my concentration during this operation was to make
4 sure that my members stay in line and that they stay within
5 the commands that I give.

6 MR GOTZ: You personally did not feel
7 like your life was under threat?

8 CAPTAIN LOEST: Mr Chair, things happened
9 so quickly at that stage, all I can remember is the shots
10 being fired and the next thing I shouted "cease fire."
11 That is all I can really remember of that specific couple
12 of seconds.

13 MR GOTZ: You do say, though, that you
14 were focused on the threat as well as your members so –

15 CAPTAIN LOEST: Correct.

16 MR GOTZ: So you have your focus
17 partially on the threat, alleged threat we would say, but
18 you have your focus on the threat, yet you did not fire.
19 We must conclude from that that you personally did not feel
20 like your life was in danger, correct?

21 CAPTAIN LOEST: Mr Chair, because of the
22 fact that members around me started firing I anticipated
23 that the threat would stop because of them firing, so I
24 could not see any purpose of me now also drawing my firearm
25 and also adding to the chaos.

1 towards you is because of the fact that they're being
2 channelled in that direction, correct?

3 CAPTAIN LOEST: Yes, Mr Chair, I seem to
4 agree on that point.

5 MR GOTZ: I'd like to just interrogate
6 some of the reasons that you have given in relation to you
7 not having fired on the, at the time that the strikers
8 reached that position and for that purpose can we look at
9 paragraph 11 of SSS3 which is your consolidated statement.

10 Now, Captain, it was pointed out to you yesterday –

11 CHAIRPERSON: Mr Gotz, your time is up
12 but I took up some of your time so I'll give you an extra
13 five minutes.

14 MR GOTZ: Captain, you'll see in that
15 paragraph that you say, "I was armed with a pistol only."
16 We now know that that statement is untrue, correct?

17 CAPTAIN LOEST: Mr Chair, yes. Like I
18 said, memory impairment reminded me of a couple of things
19 as time went by.

20 MR GOTZ: Then you say, "I did not fire
21 my weapon because I was a commander." Now I understand you
22 to be saying, to be saying you did not fire your weapon
23 because you were a commander, is that correct?

24 CAPTAIN LOEST: Mr Chair, as a commander,
25 my sole purpose as a commander is to command and control

1 MR GOTZ: Captain, there's another aspect
2 of the evidence that's emerged that I just want to probe
3 with you for two minutes. You, and in fact Captain Thupe,
4 have given evidence that when a call for cease fire is made
5 in circumstances such as these, the call is, as it were,
6 repeated up and down the line. Would that be a fair – it
7 has to be repeated up and down the line, is that correct?

8 CAPTAIN LOEST: Mr Chair, yes, that is an
9 internationally accepted standard. That is how procedures
10 are carried out during tactical operations.

11 MR GOTZ: Yes, but we're talking
12 specifically about the TRT. What I want to know is, does
13 the TRT receive training in this exercise, that people are
14 called upon to call "cease fire" up and down the line in
15 these sorts of circumstances?

16 CAPTAIN LOEST: That is correct, Mr
17 Chair.

18 MR GOTZ: Now that seems to me, the
19 necessary corollary seems to me to be that the TRT receives
20 training to fire all at the same time in a basic line,
21 correct?

22 CAPTAIN LOEST: No, Mr Chair, that is not
23 correct.

24 CHAIRPERSON: What is the correct
25 position then?

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1 CAPTAIN LOEST: Mr Chair, when members
 2 are firing, for what reason and the amount of members, when
 3 a command is given to cease fire by a commander then all
 4 firing must stop, irrespective of how many members fired or
 5 for what reason they fired.
 6 MR GOTZ: No, but Captain let's think
 7 about this carefully. You've got a series of members in a
 8 line, in a basic line. You've told us that the training is
 9 that if a call for cease fire is given, that the members
 10 are required and trained to repeat that call up and down
 11 the line. That seems to me to necessarily imply that
 12 members are trained to fire while in that basic line, all
 13 of them at the same time, correct? They receive training
 14 to that effect.
 15 CAPTAIN LOEST: Mr Chair, yes, if a
 16 member is firing and he needs to fire he will carry on
 17 doing that until an exercise or for whatever reason is
 18 stopped by either a command to cease fire or for whatever
 19 reason.
 20 MR GOTZ: So practically, members receive
 21 training to fire while they are standing in a basic line
 22 all at the same time, at the target, correct?
 23 CAPTAIN LOEST: Mr Chair, I'm not 100%
 24 understanding what Mr Gotz is asking here.
 25 CHAIRPERSON: Mr Gotz's point –

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1 CAPTAIN LOEST: Because it doesn't make
 2 sense to me.
 3 CHAIRPERSON: Mr Gotz's point is this, if
 4 you give people instructions in relation to responding to a
 5 command to cease fire when they're in a basic line, it
 6 would seem to follow that the training is given on the
 7 assumption that there will be occasions when they're in a
 8 basic line and they're all firing because that's when the
 9 command is going to be given. Now the reason for the
 10 initial fire which is ordered to cease by the cease fire
 11 could either be that they're firing pursuant to a command
 12 or they are firing in circumstances of self- or private
 13 defence but the point Mr Gotz is making – I take it you
 14 agree with that?
 15 CAPTAIN LOEST: I do, Mr Chair.
 16 CHAIRPERSON: So the point Mr Gotz is
 17 making is the fact that you give training as to the
 18 circumstances in which a cease fire order will be given to
 19 a line of people firing, presupposes that one of the topics
 20 dealt with in training is situations where people in the
 21 line are firing. That must be right.
 22 CAPTAIN LOEST: That's correct, Mr Chair.
 23 CHAIRPERSON: That's his question as I
 24 understand it. Am I right, Mr Gotz?
 25 MR GOTZ: Yes, indeed. And the final

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1 question on this topic, Captain, is the Chairperson put to
 2 you that the circumstances might be either a command or
 3 possibly members firing in self-defence. Of course there's
 4 a third possibility and that is that members are trained to
 5 open fire in response to a particular event, a triggering
 6 event, correct?
 7 CAPTAIN LOEST: Mr Chair, I'd just like
 8 Mr Gotz just to explain that triggering event. What does
 9 he mean by the triggering event?
 10 CHAIRPERSON: No, he says I put two
 11 situations to you, one that people are firing because
 12 they've been ordered to fire, secondly, people are firing
 13 because they're firing in self- or private defence. He
 14 says to you is there not a third possibility that they've
 15 been trained that, without a command and without
 16 circumstances of self-defence being present or private
 17 defence being present, they also are trained to fire in
 18 response to what he calls a triggering event.
 19 CAPTAIN LOEST: No, Mr Chair, not at all
 20 and I don't, I can't understand why Mr Gotz is asking this
 21 question with a triggering event because our members are
 22 never trained with regard to that. They will fire on
 23 command, especially with live ammunition, fire on command
 24 or in self-defence or private defence, no other reason.
 25 COMMISSIONER HEMRAJ: The firing in self-

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1 or private defence does not necessarily mean that all of
 2 the persons in the line are going to be firing. It would
 3 depend on what threat was assessed by each of them.
 4 CAPTAIN LOEST: That's correct, Mr Chair.
 5 CHAIRPERSON: Well, the allotted time has
 6 come up, has ended. Unless there's some final point you
 7 want to put.
 8 MR GOTZ: Chair, I mean there's just, I
 9 should just note there are three topics that I would have
 10 liked to have covered that obviously I'm not allowed to do
 11 but –
 12 CHAIRPERSON: Alright, well, your time is
 13 up. We have rules that we've introduced and we've got to
 14 stick to them. So that's the end of your cross-
 15 examination. We will now take the tea adjournment.
 16 [COMMISSION ADJOURNS COMMISSION RESUMES]
 17 [11:53] CHAIRPERSON: The Commission resumes.
 18 You're still under oath, Captain.
 19 PAUL BISMARCK LOEST: (s.u.o.)
 20 CHAIRPERSON: Ms Lewis, are you going to
 21 cross-examine on behalf of the families?
 22 MS LEWIS: Yes, Mr Chair.
 23 CHAIRPERSON: You've got 45 minutes.
 24 CROSS-EXAMINATION BY MS LEWIS: Captain,
 25 in relation to the 13th you testified that Major-General

<p style="text-align: right;">Page 28481</p> <p>1 Mpembe's demeanour when he arrived on the scene, you 2 testified about General Mpembe's demeanour when he arrived 3 on the scene. You testified that he was running up and 4 down, correct? 5 CAPTAIN LOEST: That's correct, Mr Chair. 6 MS LEWIS: Captain, would you say that he 7 was upset about the death of his members? 8 CAPTAIN LOEST: Mr Chair, yes, I would 9 presume he was upset, but that is General Mpembe is; he's 10 always a busy person. 11 MS LEWIS: Would you say that he was 12 traumatised, Captain? 13 CAPTAIN LOEST: Mr Chair, I can't really 14 respond to what his state of mind was, but I presume that 15 he was to a certain extent traumatised, because a lot of us 16 were. 17 MS LEWIS: Now Lieutenant-Colonel Vermaak 18 testified that Mpembe was in a state of shock. Would you 19 agree with that? Did he appear shocked? 20 CAPTAIN LOEST: Mr Chair, I never really 21 had such in-depth conversations with him that I could 22 determine that and could make an objective position on 23 that. 24 MS LEWIS: But from his appearance? 25 CAPTAIN LOEST: Mr Chair, like I said, he</p>	<p style="text-align: right;">Page 28483</p> <p>1 people where control clearly is required, that does point 2 in a certain direction, doesn't it? 3 CAPTAIN LOEST: Yes, I agree, Mr Chair. 4 MS LEWIS: Now Captain, you testified 5 that Lieutenant-Colonel Vermaak asked you to gather 6 together a group of members, but he didn't tell you for 7 what purpose. But did you not ask him the purpose for 8 which he required the members? 9 CAPTAIN LOEST: Mr Chair, no, I can't 10 recall exactly what was the specifics of the conversation, 11 but at that stage I referred my attention to Warrant 12 Officer Monene. 13 COMMISSIONER HEMRAJ: Sorry, just before 14 that, what was the basis for forming the impression that 15 General Mpembe did not appear to be in control? What was 16 your observation? 17 CAPTAIN LOEST: Mr Chair, no, I can't 18 really say that I observed specific instances where the 19 General was not in control, but directly after the incident 20 took place and the two members deceased, I could see the 21 members in general were, they appeared to be, I can't 22 really explain, get the proper word, but there was 23 definitely, trauma was involved there. 24 COMMISSIONER HEMRAJ: But how does that 25 relate to the observation that General Mpembe did not</p>
<p style="text-align: right;">Page 28482</p> <p>1 is always, General Mpembe is a busy person, he's always 2 moving very fast. You have to almost run to stay with him. 3 That's how I've got to know him and that's how his, that is 4 how he appeared on that day as well. 5 CHAIRPERSON: Colonel Vermaak says he 6 went around saying, "My policemen have been killed. My 7 policemen have been killed," repeating that over and over 8 again. Did you hear that? 9 CAPTAIN LOEST: No, Mr Chair, I didn't 10 hear that. 11 MS LEWIS: And Lieutenant-Colonel Vermaak 12 also testified that the members on the scene were standing 13 around and that no-one appeared to have definitive command 14 and control over them. Do you agree with that? 15 CAPTAIN LOEST: I agree with that, Mr 16 Chair. 17 MS LEWIS: Now you testified – 18 CHAIRPERSON: To take the point further 19 than, you've described how General Mpembe normally is. Now 20 I take it he's busy, he's normally in control. Is that 21 right? 22 CAPTAIN LOEST: That is correct, Mr 23 Chair. 24 CHAIRPERSON: So if you find a situation 25 where he's moving around, not exercising control over</p>	<p style="text-align: right;">Page 28484</p> <p>1 appear to be in control of the members? 2 CAPTAIN LOEST: Mr Chair, General Mpembe 3 wasn't with, or in my immediate vicinity constantly, so I 4 can't really comment on when he was with other members, but 5 the times that I saw him he was a, he acted to a certain 6 extent quite normally and most of the time he was not 7 present with me and during the times he was not with me the 8 members just seemed to be just slouching around, nothing 9 really to be done. 10 COMMISSIONER HEMRAJ: I'm sorry to have 11 interrupted you, Ms Lewis. 12 MS LEWIS: So Captain, to return to my 13 previous question, it seems improbable, Captain, it seems 14 that if he asked you to gather together a group of members 15 he would tell you the purpose, or you would ask him for 16 what purpose. 17 CAPTAIN LOEST: Mr Chair, I did not ask 18 him. I just followed his instruction, I gathered a couple 19 of members. I sent them off to the Colonel and then I went 20 off to attend to Warrant Officer Monene. 21 MS LEWIS: So Captain, I take it then 22 that you didn't hear Lieutenant-Colonel Vermaak tell Mpembe 23 that he was going to pursue the group that had the 24 protester in the white overalls? 25 CAPTAIN LOEST: No, Mr Chair, I did not</p>

<p style="text-align: right;">Page 28485</p> <p>1 overhear that conversation.</p> <p>2 MS LEWIS: Now when you assembled the</p> <p>3 group of TRT members for Lieutenant-Colonel Vermaak, did</p> <p>4 you hear him issue any instructions to them as to what he</p> <p>5 required them to do?</p> <p>6 CAPTAIN LOEST: No, Mr Chair, I did not.</p> <p>7 I just by waving of my hands I indicated that they must</p> <p>8 come and that they must go with Colonel Vermaak, and</p> <p>9 nothing more after that.</p> <p>10 MS LEWIS: So does that mean that he</p> <p>11 didn't give any instructions, or he was simply out of</p> <p>12 earshot, out of your earshot when he perhaps did so?</p> <p>13 CAPTAIN LOEST: No, I would presume he</p> <p>14 was out of earshot because he would not call for members</p> <p>15 and not just utilise, or ask for them for no specific</p> <p>16 reason. He would have given them an instruction to do</p> <p>17 something.</p> <p>18 MS LEWIS: Now Captain, before you were</p> <p>19 boarded and at the relevant time in August 2012, you were a</p> <p>20 member of TRT Rustenburg, correct?</p> <p>21 CAPTAIN LOEST: No, that is incorrect, Mr</p> <p>22 Chair.</p> <p>23 MS LEWIS: Which unit were you a member</p> <p>24 of?</p> <p>25 CAPTAIN LOEST: I was stationed at the</p>	<p style="text-align: right;">Page 28487</p> <p>1 Vermaak included members of TRT Rustenburg? Did you know</p> <p>2 that at the time?</p> <p>3 CAPTAIN LOEST: Yes, Mr Chair, because I</p> <p>4 specifically called the members of TRT for Rustenburg to</p> <p>5 assist Colonel Vermaak.</p> <p>6 MS LEWIS: Was there a reason why you</p> <p>7 specifically called for those members?</p> <p>8 CAPTAIN LOEST: Mr Chair, yes, because</p> <p>9 they fell under my command and I felt it better for them to</p> <p>10 assist him. I was not exactly sure what he wanted to do,</p> <p>11 but I had control and command over these guys, so I would</p> <p>12 presume that I could send them off and that they would be</p> <p>13 able to assist the Colonel.</p> <p>14 MS LEWIS: Alright, so Captain, does that</p> <p>15 mean the members who are under your command and control,</p> <p>16 you didn't necessarily know who they were?</p> <p>17 CAPTAIN LOEST: That is correct. Like I</p> <p>18 said, I know some of the faces. I know the key personnel</p> <p>19 at the different units, but all the operational members,</p> <p>20 the operators themselves, some faces I do remember but the</p> <p>21 face connected with the surname is not always that clear.</p> <p>22 MS LEWIS: Would members under your</p> <p>23 command not be required to give you a debriefing? Sorry,</p> <p>24 after the 13th.</p> <p>25 CAPTAIN LOEST: Mr Chair, Captain Thupe</p>
<p style="text-align: right;">Page 28486</p> <p>1 Provincial Office in Potchefstroom. I was the Provincial</p> <p>2 OPS Commander of TRT in the North West province.</p> <p>3 MS LEWIS: Do you know members of TRT</p> <p>4 Rustenburg? Do you work with them?</p> <p>5 CAPTAIN LOEST: Mr Chair, to a certain</p> <p>6 extent I do work with them. I am, part of my job</p> <p>7 description was to evaluate their performance, assist with</p> <p>8 it, or assist with their training, and basically that was</p> <p>9 my biggest job description to work with these members, but</p> <p>10 on a very limited basis. From time to time I did work with</p> <p>11 them, but not regularly so. I remember faces, but surnames</p> <p>12 is not that familiar to me.</p> <p>13 MS LEWIS: Alright, Captain, I'm going to</p> <p>14 ask you anyway. Do you know the following members of TRT</p> <p>15 Rustenburg? Do you know a Constable Mgyue?</p> <p>16 CAPTAIN LOEST: No, Mr Chair, it doesn't</p> <p>17 ring a bell.</p> <p>18 MS LEWIS: Do you know a Constable</p> <p>19 Sekgweleya?</p> <p>20 CAPTAIN LOEST: No, Mr Chair, the surname</p> <p>21 sounds familiar but I can't put a face towards the surname.</p> <p>22 MS LEWIS: Do you know Rikhotso?</p> <p>23 CAPTAIN LOEST: No, Mr Chair.</p> <p>24 MS LEWIS: Did you know on the 13th of</p> <p>25 August that the group that you gathered together for</p>	<p style="text-align: right;">Page 28488</p> <p>1 was on the scene as well, so it is required for them to</p> <p>2 report directly to Captain Thupe, because I can remember</p> <p>3 that I informed him that I'd sent members off with Colonel</p> <p>4 Vermaak.</p> <p>5 MS LEWIS: Alright, Captain, the three</p> <p>6 members that I, whose names I read out to you, who you say</p> <p>7 you don't know, they have said in statements that they were</p> <p>8 members of the group who went with Colonel Vermaak. Now I</p> <p>9 take it that you would not be able to dispute that because</p> <p>10 you do not know who they are, correct?</p> <p>11 CAPTAIN LOEST: That is correct.</p> <p>12 MS LEWIS: Captain, did you at any stage</p> <p>13 hear Major-General Mpembe issue an instruction that the</p> <p>14 members should not follow the protesters because the attack</p> <p>15 was over?</p> <p>16 CAPTAIN LOEST: No, Mr Chair, I never</p> <p>17 heard that instruction.</p> <p>18 MS LEWIS: And for how much of the time</p> <p>19 after the killing of the police officers were you in Major-</p> <p>20 General Mpembe's direct presence, or presence?</p> <p>21 CAPTAIN LOEST: A couple of times for a</p> <p>22 few seconds, maybe a minute or two at most.</p> <p>23 COMMISSIONER HEMRAJ: Ms Lewis, two</p> <p>24 questions ago, did the witness hear General Mpembe not give</p> <p>25 an instruction? Could you just repeat that, please? Or</p>

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1 give an instruction that they were not to? Could you
2 please repeat that?
3 MS LEWIS: That they were not to follow
4 the protesters because the attack was over, and the Captain
5 said that he did not hear Major-General Mpembe give that
6 instruction, but that he was not in Major-General Mpembe's
7 presence for much of the time. Captain, is that correct?
8 CAPTAIN LOEST: That is correct, Mr
9 Chair.
10 COMMISSIONER HEMRAJ: Does that emanate
11 from the evidence of any witness? I seem to have missed
12 it. Could you perhaps indicate to us?
13 MS LEWIS: It does. The reference from
14 Lieutenant-Colonel Vermaak's testimony which refers to the
15 reference in Major-General Mpembe's testimony is at page
16 25245, day 205, at lines 18 to 23.
17 COMMISSIONER HEMRAJ: Thank you, Ms
18 Lewis.
19 MS LEWIS: Now Captain, Lieutenant-
20 Colonel Merafe has testified to a different set of facts
21 surrounding Lieutenant-Colonel Vermaak's departure from the
22 scene of the confrontation with the TRT members. He
23 testified as follows. He testified that whilst he, Merafe,
24 was attending to Warrant Officer Lepaaku he saw Lieutenant-
25 Colonel Vermaak grab an R5 rifle from one of the TRT

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1 members who was standing around. Captain, did you at any
2 stage see Lieutenant-Colonel Vermaak do that?
3 CAPTAIN LOEST: No, Mr Chair, I wasn't
4 close in that vicinity. I was busy with Warrant Officer
5 Monene, who was quite a distance from where Warrant Officer
6 Lepaaku was.
7 MS LEWIS: Did you at any stage on the
8 13th see Lieutenant-Colonel Vermaak with an R5 rifle in his
9 hands?
10 CAPTAIN LOEST: No, Mr Chair, never.
11 MS LEWIS: Did you see Lieutenant-Colonel
12 Vermaak go off with the TRT members whom you had gathered
13 together for him?
14 CAPTAIN LOEST: No, Mr Chair, I did. I
15 was busy with Warrant Officer Monene.
16 MS LEWIS: And then Lieutenant-Colonel
17 Merafe testified that Lieutenant-Colonel Vermaak, after
18 grabbing the rifle, asked the members why they were just
19 standing around and that they should go with him to chase
20 after the protesters in order to recover the R5 rifle. Now
21 Captain, I take it that you dispute that version because on
22 your version Lieutenant-Colonel Vermaak asked you to
23 assemble a group of protesters for him and then left the
24 scene with those members. Do you agree?
25 CAPTAIN LOEST: Yes, I agree with that,

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1 Mr Chair.
2 MS LEWIS: Alright, I'm now going to move
3 to the 16th. Captain, it took an hour for the paramedics to
4 arrive at scene 1. Do you know that? After the shooting.
5 CAPTAIN LOEST: Mr Chair, yes, I was
6 informed afterwards more or less of the timeframe.
7 CHAIRPERSON: Captain, have a glass. We
8 suggested, we provided a glass witnesses –
9 CAPTAIN LOEST: No, I'm fine, thank you,
10 Mr Chair.
11 CHAIRPERSON: - so you don't have to
12 drink from a bottle.
13 CAPTAIN LOEST: I'm fine, thank you, Sir.
14 MS LEWIS: Captain, until the paramedics
15 arrives no medical assistance was provided to the injured
16 at scene 1. Is that correct?
17 CAPTAIN LOEST: That is correct, Mr
18 Chair.
19 MS LEWIS: So Captain, if we refer to
20 paragraph 12 of your supplementary statement, the third-
21 last sentence, can we just have that up? The sentence that
22 says "Some of my members assisted the medical personnel by
23 holding up drips that were administered to the injured
24 protesters," that obviously refers to the paramedics and to
25 after the paramedics arrived. Do you agree?

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1 CAPTAIN LOEST: That is correct, Mr
2 Chair.
3 MS LEWIS: Captain, according to you the
4 TRT members under your command at scene 1 had no first aid
5 training. Is that correct?
6 CAPTAIN LOEST: That is correct, Mr
7 Chair.
8 MS LEWIS: But Captain, you do have first
9 aid training, correct?
10 CAPTAIN LOEST: That is correct, Mr
11 Chair.
12 MS LEWIS: So Captain, are you saying
13 that you were the only SAPS member at scene 1 with first
14 aid training?
15 CAPTAIN LOEST: That is correct, Mr
16 Chair.
17 MS LEWIS: Captain, I'm going to explore
18 the accuracy of that with you a bit later on in my cross-
19 examination, but for now I want to work on your version
20 that you were the only member with first aid training. Can
21 you tell us what first aid training you've received?
22 CAPTAIN LOEST: I'm a trained OPS medic,
23 trained by the National Defence Force.
24 MS LEWIS: Now I believe that there are
25 different levels of first aid training. Is that correct?

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1 CAPTAIN LOEST: That is correct, Mr
 2 Chair.
 3 MS LEWIS: Levels 1 to 3, if I'm not
 4 mistaken?
 5 CAPTAIN LOEST: Chair, according to my
 6 knowledge I think there's up to a level 6.
 7 MS LEWIS: What level training do you
 8 have, Captain?
 9 CAPTAIN LOEST: Mr Chair, up until today
 10 I'm still trying to find out where do I fit in because
 11 after we were trained the OPS medics is a specific
 12 curriculum and then they train people, civilian. So I'm
 13 not exactly sure where an OPS medic fits in because there's
 14 a lot of different versions from different people how they
 15 interpret these qualifications.
 16 MS LEWIS: Captain, where do you think
 17 you fit in?
 18 CAPTAIN LOEST: Mr Chair, according to
 19 what I could understand from speaking to civilian
 20 paramedics is that we fit in more or less at level 5.
 21 CHAIRPERSON: So it's quite an extensive
 22 curriculum.
 23 CAPTAIN LOEST: Mr Chair, yes.
 24 CHAIRPERSON: How long was the training?
 25 CAPTAIN LOEST: Mr Chair, in the vicinity

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1 of about seven months.
 2 MS LEWIS: Captain, I take it that level
 3 6 is the highest, correct?
 4 CAPTAIN LOEST: I speak, stand corrected,
 5 Mr Chair, but yes, that is what I have been informed.
 6 MS LEWIS: Captain, as someone with first
 7 aid training, and you've told us extensive first aid
 8 training, can you tell us what you understand by the
 9 emergency medical term "the golden hour"?
 10 CAPTAIN LOEST: Yes, Mr Chair, I do.
 11 MS LEWIS: Can you explain what you
 12 understand by that term, Captain?
 13 CAPTAIN LOEST: Directly after a person
 14 has been injured you work on an hour basis before you have
 15 to get a patient to a medical facility where all basic
 16 medical equipment is available, like in hospital or an ER
 17 where an injured person can be treated by a doctor.
 18 MS LEWIS: Captain, what it's essence is
 19 that if someone is treated within the first hour after a
 20 traumatic injury they have the highest likelihood of
 21 surviving, correct?
 22 CAPTAIN LOEST: That is my understanding,
 23 Mr Chair.
 24 MS LEWIS: And so a patient's chances of
 25 surviving are highest if they receive care within a short

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1 period of time after a severe injury, correct?
 2 CAPTAIN LOEST: That is correct, Mr
 3 Chair.
 4 MS LEWIS: And Captain, you don't need
 5 first aid training to know that if someone is seriously
 6 injured, for example if they've been shot with an assault
 7 rifle you need to get them treatment as quickly as possible
 8 for the greatest chance of survival. Would you agree?
 9 CAPTAIN LOEST: I would agree on that, Mr
 10 Chair.
 11 MS LEWIS: Now Captain, despite knowing
 12 that, despite the training that you have in first aid, you
 13 provided no assistance to the injured at scene 1, correct?
 14 CAPTAIN LOEST: That is correct, Mr
 15 Chair.
 16 MS LEWIS: Captain, I understood your
 17 testimony to give two reasons for this. The first was that
 18 you were still in command of the scene and the second was
 19 that you had to attend to, or see to your members who were
 20 traumatised. Did I understand your evidence correctly?
 21 CAPTAIN LOEST: That is correct, Mr
 22 Chair.
 23 MS LEWIS: Captain, I'm going to deal
 24 with each of those reasons. To deal with your first
 25 reason, Captain, we will argue, and so I want you to

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1 comment, but we will argue that as the commander who was
 2 still in charge of scene 1 your first priority should have
 3 been providing medical assistance to the injured at scene
 4 1. They were seriously injured, Captain. You agree with
 5 that?
 6 CAPTAIN LOEST: I agree with your
 7 statement that there were people seriously injured, but my
 8 first priority was not to deal with the injured, but to
 9 make sure that the scene is safe and that there are no more
 10 further injuries incurred by anyone.
 11 MS LEWIS: Alright, Captain, let's
 12 explore that. I'll accept the point that before you, that
 13 perhaps before you could attend to those who were injured
 14 you wanted to secure the scene. What you should have done
 15 then was – sorry, let me take a step back, as Mr Mpfu
 16 would say. By secure the scene, what do you mean?
 17 CAPTAIN LOEST: Mr Chair, basically to
 18 make sure that there are no weapons lying around and that
 19 no firearms are available to anyone that is not available
 20 for them for use. So all these things had to be removed.
 21 All the protesters had to be searched to make sure that
 22 there are no weapons amongst them that could launch a
 23 separate attack. So all these weapons were removed and
 24 placed on a heap at a safe distance.
 25 MS LEWIS: Yes, so when you say remove

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1 weapons and firearms, you mean you had to remove it from
 2 the people who were lying injured and dead at scene 1,
 3 correct?
 4 CAPTAIN LOEST: That is correct.
 5 [12:13] MS LEWIS: Well Captain, you should have
 6 done that quickly and then moved on to provide them with
 7 medical assistance, do you agree with that?
 8 CAPTAIN LOEST: Mr Chair, we have to make
 9 sure, we have to search people properly and make sure that
 10 these things are done properly. You can't do it quickly,
 11 you need to do it thoroughly.
 12 MS LEWIS: Yes but, Captain, from the
 13 video and we'll play it if necessary, that in any event
 14 took five minutes. Do you dispute that?
 15 CAPTAIN LOEST: No, I don't dispute that
 16 at all.
 17 MS LEWIS: Alright, so what happened to
 18 the remaining 55 minutes, Captain?
 19 CAPTAIN LOEST: Mr Chair, after the scene
 20 was secured I informed the JOC that everything or that the
 21 scene is secure and that the medics can come in. Why the
 22 medics took so long to arrive, I have got no idea.
 23 MS LEWIS: Yes, Captain, but we will
 24 argue that as a person who had first aid training at scene
 25 1, your priority after the five minute securing of that

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1 scene, should have been providing what assistance you
 2 could. You should have performed a triage, Captain. You
 3 should have prioritised treatment needs on the basis of the
 4 injuries sustained and then proceeded to provide whatever
 5 assistance you could until the paramedics arrived. Do you
 6 want to comment on that?
 7 CAPTAIN LOEST: Mr Chair, yes, I would
 8 like to comment on that. I did my initial training in 1989
 9 and after that I had to, out of my own pocket, keep myself
 10 current and in the middle '90s I stopped doing that because
 11 the police did not pay for it anymore. So I stopped doing
 12 it so at the moment I am not current, I cannot treat
 13 anybody because of the fact that I will open myself for
 14 legal disputes with regard to this.
 15 MS LEWIS: Captain, on the 13th you
 16 provided medical assistance to Warrant Officer Monene,
 17 didn't you?
 18 CAPTAIN LOEST: Mr Chair, yes. There was
 19 another paramedic available with me from the mine. If you
 20 check on the footage, there was another medic with me and I
 21 just assisted him.
 22 MS LEWIS: But Captain, we see you on the
 23 video performing CPR, isn't that correct?
 24 CAPTAIN LOEST: That's correct, Mr Chair.
 25 MS LEWIS: So were you not worried about

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1 a potential lawsuit from Warrant Officer Monene's family?
 2 CAPTAIN LOEST: Mr Chair, as I said, I
 3 was trained as an ops medic and an ops medic, we are, I
 4 would say only allowed to work or to perform evasive,
 5 invasive procedures on members of the armed forces and not
 6 civilians.
 7 MS LEWIS: Captain, I'm putting it to you
 8 that that's no justification. Do you want to comment? It
 9 doesn't excuse your lack of providing medical assistance
 10 and the consequences of that in any way. Do you want to
 11 comment?
 12 CAPTAIN LOEST: Mr Chair, as I said, my
 13 first role on the 16th was to attend to my members because
 14 my members were traumatised and I really could see that
 15 some of the members were in a very bad state of mind, me
 16 included, and I was at that stage fearing that - I have
 17 seen this in my career where directly after an incident
 18 like this takes place, the person that is involved is so
 19 traumatised that he could take his own firearm and take his
 20 own life right there and then and that was what I was
 21 trying to prevent.
 22 MS LEWIS: So Captain, what you're saying
 23 really is that it wasn't the fact that you didn't have the
 24 necessary skills or the necessary training, you prioritised
 25 the needs of your traumatised members, correct? That's

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1 what you've just said.
 2 CAPTAIN LOEST: That is correct.
 3 MS LEWIS: Captain, how do you justify
 4 prioritising traumatised members over people who are lying
 5 there, severely injured and dying? Captain, how do you
 6 justify that?
 7 CAPTAIN LOEST: Mr Chair, my first
 8 priority was my members and as I explained to you, I am not
 9 trained any - or I am trained but I'm not, as the medical
 10 profession would call it, current. So I would open myself
 11 for any legal actions that could have been taken against me
 12 as a person because I treated the person. I am not up to
 13 date with the new protocols with regard to a lot of these
 14 invasive procedures, so I just couldn't open myself up to
 15 taking that chance of being sued for something like that.
 16 MS LEWIS: Captain, we are also going to
 17 argue that your members used unnecessary violence when they
 18 were securing the scene at scene 1. What we see from the
 19 videos, we can see protesters being roughly - protesters
 20 who are seriously injured, who are already in pain, being
 21 dragged and in one clip - there are a few instances of
 22 that, Captain, and in one clip we see a TRT member with his
 23 boots on the face or neck of a protester. Do you want to
 24 comment?
 25 CAPTAIN LOEST: Mr Chair, I dispute that

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1 fact. I've never seen that footage or clip that legal
2 representation is referring to.

3 MS LEWIS: I can play it for you,
4 Captain, and perhaps we should do that –

5 CHAIRPERSON: Perhaps it can be played
6 and we won't take any time off Ms Lewis's time for showing
7 the clip but while you're doing that, while that's being
8 prepared can I ask you this, is it suggested that there was
9 any procedure which this witness, as a trained – could have
10 performed – sorry, I'm not sure whether that was recorded.
11 Is there any procedure where you say which the witness, as
12 a trained first aid person, could have performed which
13 would have saved the life of any of the persons who died?
14 I know we've got evidence that if they'd been taken in time
15 to the hospital, if General Naidoo had brought the
16 paramedics to the scene in time it's suggested that certain
17 things might have happened in respect of at least one,
18 possibly more, but is it suggested that there's anything
19 this – I'm talking now from a causal point of view. I
20 understand you may be arguing sort of moral justificatory
21 points as well but is there any evidence or any suggestion
22 that you make that there's something that he could have
23 done as a first aid trained person which would have saved
24 the life of one of these persons who had been shot by R5
25 bullets or in some cases, I think, shot with pellets? But

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1 anyway, you may not be able to answer that directly now but
2 perhaps at some stage it would be helpful and of course
3 there should then be evidence to that effect but it could,
4 if necessary, be produced by affidavit and not necessarily
5 orally. Is the clip that you want to show ready now? You
6 don't have to show me, I'm just asking is it ready? Can
7 you answer the question?

8 MS LE ROUX: Chair, it is a topic that we
9 would want to explore in full. Due to time constraints I'm
10 not sure I'm going to be able to but Dr Boffard's report in
11 relation to Mr Mdze is effectively that he lay there and
12 bled to death. All he needed was a bandage, a tourniquet
13 to stop the bleeding.

14 CHAIRPERSON: So effectively what's been
15 put to you is that one of the persons who died there, if
16 he'd, because he bled to death, if he'd received a
17 tourniquet he would not have bled to death. Was that a
18 procedure that you would have been capable of performing?

19 CAPTAIN LOEST: Mr Chair, if you look on
20 the video of the 13th, the paramedic that was with me at
21 Warrant Officer Monene's scene had a bag with him. I have
22 got no medical equipment of what nature soever.

23 MS LEWIS: Captain, sorry, just to follow
24 up, Captain, the only thing you needed was a piece of
25 cloth, a sock and you could have assisted Mr Mdze.

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1 CAPTAIN LOEST: Mr Chair, like I've
2 explained, I attended to my members. They were my first
3 priority. I did not have the equipment or the means at
4 that stage to go through all these people to establish
5 according to the triage policy who is going to go where. I
6 was in charge of the scene, I had to secure that scene,
7 that was my first priority. According to me, minutes after
8 the shooting took place I requested that ambulances be sent
9 in as soon as possible and I waited for them to arrive.

10 MS LEWIS: Captain, the other point is
11 that at that point almost immediately after the shootings
12 have occurred and whilst you're waiting for the paramedics,
13 you don't know who you would be able to save or not. Now
14 it turns out on the medical evidence available to us, we've
15 only been able to identify one person definitely as someone
16 who would have survived if you had assisted him but the
17 fact is, Captain, where your obligation comes in is that's
18 not necessarily the case for every shooting scene. There
19 could have been more people injured in a way similar to the
20 injuries sustained by Mr Mdze and so you were completely
21 remiss in your obligations not to perform that assessment
22 and not to provide whatever assistance you were capable of
23 providing. Do you want to comment?

24 CAPTAIN LOEST: Mr Chair, my
25 understanding was that the medical personnel was very close

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1 by, in the close proximity of the scene and at that stage,
2 like I said, I was busy attending to my members and
3 commanding the scene.

4 MS LEWIS: Alright, can I have –

5 CHAIRPERSON: Sorry, can I ask a
6 question? Did you think that the paramedics were going to
7 arrive very soon after you asked for them, after you spoke
8 to Brigadier Pretorius?

9 CAPTAIN LOEST: That is correct, Mr
10 Chair, because they were like a couple of hundred metres or
11 a kilometre away from us, so they would be very, very close
12 by. It is not like phoning an ambulance and waiting for
13 them to fly in or to drive in. They were already very
14 close to the scene where it actually happened.

15 CHAIRPERSON: But as time went by it
16 looked as if there was a problem because they didn't come
17 quickly. Did you do anything about that, did you enquire
18 what the cause of the delay was or that some people other
19 than those at forward holding area A should be sent in?

20 CAPTAIN LOEST: Mr Chair, if I can
21 remember correctly I did enquire at a later stage where the
22 ambulances and the medics were and I think my attention was
23 at that stage more drawn towards what was happening with
24 the members on the scene as well as securing the scene.

25 MS LEWIS: Can I ask for exhibit EEE16 at

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1 minutes 11:23 to 11:24 please? And Chair, I'm sorry, we
 2 need a warning, please.
 3 CHAIRPERSON: We're going to see a video
 4 clip in a moment which shows some of the people who were
 5 killed and some of the people who were injured and looking
 6 at this video clip may well cause a great deal of emotional
 7 distress to those who were the friends, loved ones and
 8 relatives of the persons shown on the video clip. So I ask
 9 that it not be shown until half a minute has expired from
 10 the time that I've stopped speaking, to enable those who
 11 wish to leave the chamber and not be exposed to the
 12 emotional distress that seeing this clip may well occasion
 13 them, to leave.
 14 MS LEWIS: I'm sorry, could we rather
 15 have – Captain, I'm only going to play you one example
 16 because of time constraints and I'm then going to give the
 17 references for another three but could we have at, I think
 18 it's 12:36 to 12:38? 12:36 to 38 please.
 19 [VIDEO IS SHOWN]
 20 MS LEWIS: You can stop. Captain, did
 21 you see that protester being dragged?
 22 CAPTAIN LOEST: Yes, I did.
 23 MS LEWIS: Alright, can I now have
 24 minutes 13:18 to 13:21, please?
 25 [VIDEO IS SHOWN]

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1 MS LEWIS: You can stop. Captain, did
 2 you see the TRT members boot on the face of that protester?
 3 CAPTAIN LOEST: Yes, Mr Chair, I did.
 4 MS LEWIS: Now before I ask you the
 5 question can I just give the other references for the
 6 dragging. There's a dragging incident at 11:23 to 11:24,
 7 at 12:10 and at 12:56 to 59. Captain, why was it necessary
 8 for your members to drag that protester?
 9 CAPTAIN LOEST: Mr Chair, I can't really
 10 comment on why the member dragged that person. I wasn't
 11 directly next to him also, I didn't actually see, besides
 12 on the video, exactly why this person was dragged.
 13 CHAIRPERSON: Sorry, if you'd seen – and
 14 there are other instances as well, as Adv Lewis has told
 15 you – did you see people being dragged?
 16 CAPTAIN LOEST: Mr Chair, unfortunately
 17 like I said some of these, there are blanks within my
 18 memory with regard to a lot of these things and as I've
 19 explained in the beginning, this incident is the incident
 20 that caused where I am today.
 21 COMMISSIONER HEMRAJ: Had you seen such
 22 an incident would you have stopped your members from
 23 continuing with such behaviour?
 24 CAPTAIN LOEST: Yes, Mr Chair, I would
 25 have.

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1 MS LEWIS: Captain, why was it necessary
 2 for that TRT member to put his boot on the face of that
 3 protester?
 4 CAPTAIN LOEST: Mr Chair, I can't comment
 5 on that. I wasn't there, I don't know why the member did
 6 that.
 7 CHAIRPERSON: Again if you'd seen it
 8 being done, would you have done something about it?
 9 CAPTAIN LOEST: Yes, Mr Chair, because
 10 it's inhumane.
 11 MS LEWIS: So Captain, we put it to you
 12 that that was not necessary, it was nothing more than
 13 gratuitous police brutality. Do you want to comment?
 14 CAPTAIN LOEST: No, Mr Chair.
 15 CHAIRPERSON: You don't want to comment.
 16 Do you agree with what's been put to you by counsel?
 17 CAPTAIN LOEST: Yes, I do agree with what
 18 counsel is saying, Mr Chair.
 19 MS LEWIS: Now Captain, I want to explore
 20 with you your allegation that you were the only person at
 21 scene 1 with first aid training. I understood you to say
 22 that none of the TRT members under your command had first
 23 aid training, correct?
 24 CAPTAIN LOEST: According to my
 25 knowledge, Mr Chair, yes, that is correct.

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1 MS LEWIS: Yes but, Captain, did you know
 2 that for a fact on the 16th of August 2012?
 3 CAPTAIN LOEST: Mr Chair, according to my
 4 knowledge, I didn't bear knowledge of any other member that
 5 was with me on that scene that had medical training,
 6 according to me.
 7 MS LEWIS: But Captain, did you ask? Did
 8 you send out some sort of call to say please, anyone with
 9 first aid training come and help me here? Did you do that?
 10 CAPTAIN LOEST: No, Mr Chair, I was busy
 11 attending to the scene and to my members.
 12 MS LEWIS: So Captain, you don't know
 13 whether some of those TRT members perhaps, as you do, had
 14 first aid training.
 15 CAPTAIN LOEST: Mr Chair, I would have
 16 picked that up with their paper work because I am at the
 17 provincial office. I would have personally sent somebody
 18 on training to attend a medical course so I would have
 19 known about that.
 20 MS LEWIS: But Captain, you didn't know
 21 the identities of all those members who were under your
 22 command, you've told us that.
 23 CAPTAIN LOEST: I agree on that, Mr
 24 Chair, but I would also know that at a specific unit there
 25 are certain members trained in certain skills, so I would

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1 have known if there were medics trained at that specific
2 scene.

3 CHAIRPERSON: From your, one of your, I
4 think your first statement, that you were at the provincial
5 office ORS in Potchefstroom.

6 CAPTAIN LOEST: That's correct, Mr Chair.

7 CHAIRPERSON: And you were the provincial
8 co-ordinator of the TRT.

9 CAPTAIN LOEST: That is correct, Mr
10 Chair.

11 CHAIRPERSON: Now if anyone in the TRT
12 under your command, therefore, had gone on a first aid
13 training course, would you have known about it?

14 CAPTAIN LOEST: Mr Chair, that's correct.
15 The call comes from head office. I inform the unit
16 commanders, they nominate members and then we send them off
17 on course.

18 CHAIRPERSON: Were there TRT people with
19 you on the scene who didn't come from Potchefstroom, didn't
20 come from North-West and weren't subject to your command?

21 CAPTAIN LOEST: Mr Chair, yes. I only
22 found out later on that there, Colonel Claassen and his
23 group from Gauteng joined us as well.

24 MS LEWIS: But Captain, if some of those
25 TRT members had received first aid training outside of the

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1 police force you wouldn't know about that.

2 CAPTAIN LOEST: Yes, Mr Chair, I would
3 have. I had a record of all members' training at my
4 office.

5 MS LEWIS: Even training that they
6 receive in their personal lives outside of the police
7 force?

8 CAPTAIN LOEST: That is correct, Mr
9 Chair. We have got a personal file on these members that
10 will indicate what experience they have picked up in and
11 outside the police.

12 MS LEWIS: But Captain, there were also
13 other TRT units under your command at that scene, correct?

14 CAPTAIN LOEST: Mr Chair, yes. They were
15 not under my command.

16 MS LEWIS: So you wouldn't know in
17 relation to those members unless you tried to ascertain at
18 the scene, correct?

19 CAPTAIN LOEST: That's correct, Mr Chair.

20 MS LEWIS: So Captain, you can't say as a
21 fact that none of those TRT members had first aid training,
22 correct?

23 CAPTAIN LOEST: Mr Chair, that is a
24 presumption.

25 [12:33] MS LEWIS: No, no, Captain, on the basis

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1 of what I've put to you, you can't say it as a fact,
2 correct?

3 CAPTAIN LOEST: That is a fact, Mr Chair.

4 MS LEWIS: Now can I – Captain, you have
5 this morning been given a collection of screen snapshots
6 from C22, from the Lonmin chopper video, correct?

7 CAPTAIN LOEST: Correct.

8 MS LEWIS: Alright, now before I get
9 there, can I ask for exhibit Q to be put on the screen?
10 And can I ask for slide 95? Now we can see from this
11 presentation that the STF received training, received first
12 aid training, correct? We see medical level 3. Do you see
13 that?

14 CAPTAIN LOEST: That's correct, Mr Chair.

15 MS LEWIS: Captain, there were STF
16 members at scene 1, correct?

17 CAPTAIN LOEST: Mr Chair, they were there
18 directly after the shooting and then they left.

19 MS LEWIS: Yes, but they could have of
20 their own volition – let's deal firstly with their
21 responsibility. They could have of their own volition,
22 instead of chasing after protesters to scene 2 they could
23 have come to assist with first aid at scene 1. That's
24 possible on the basis of the training that they have,
25 correct?

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1 CAPTAIN LOEST: Mr Chair, yes, I was not
2 in command of STF, so I can't comment on that.

3 MS LEWIS: Yes, but Captain, you also
4 didn't try to make any phone calls to the STF to ask them
5 to come and assist, correct?

6 CAPTAIN LOEST: That's correct, Mr Chair.

7 MS LEWIS: Thank you.

8 CHAIRPERSON: Ms Lewis, I'm instructed
9 you've got five minutes.

10 MS LEWIS: Thank you, Chair. Captain,
11 the NIU were also present at scene 1, correct?

12 CAPTAIN LOEST: That's correct, Mr Chair.

13 MS LEWIS: Can I ask for slide 79,
14 please? Captain, from this slide we see that the NIU also
15 have first aid training. It's the fifth point, and they
16 have that to level 3, correct?

17 CAPTAIN LOEST: That's correct, Mr Chair.

18 MS LEWIS: Now Captain, can I ask you to
19 look at the slide, the screenshot presentation that you
20 were given this morning? Can I ask you to look at the
21 first photo, or the first screenshot rather? Captain, the
22 timing on the Lonmin video is 003. Now that in what we
23 call eTV time is 15:57:33. That's 3 minutes and 43 seconds
24 after the shootings and you can see the NIU still lined up,
25 facing the koppie.

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1 CAPTAIN LOEST: I see that, Mr Chair.
 2 MS LEWIS: Thank you.
 3 MR CHASKALSON SC: Sorry, Chair, it's not
 4 on the screen, so nobody else can see it.
 5 MS LEWIS: Captain, the point, I'm just
 6 going to put the point to you. Up until 10 minutes after
 7 the shootings at scene 1 the NIU were within easy access of
 8 scene 1. Can you dispute that?
 9 CAPTAIN LOEST: No, I won't dispute that,
 10 Mr Chair.
 11 MS LEWIS: Captain, did you make any
 12 effort to send a TRT member to go and ask NIU members to
 13 come and assist you with first aid at scene 1?
 14 CAPTAIN LOEST: I was not aware of the
 15 vicinity – or I was not aware that the NIU members were so
 16 close to me. They were completely towards the back of our
 17 scene.
 18 MS LEWIS: Captain, I put it to you, and
 19 it will be a basis for argument, but I put it to you that
 20 they would still have been visible to you from scene 1. Do
 21 you want to comment?
 22 CAPTAIN LOEST: I concentrated on scene 1
 23 and what happened on scene 1. I didn't concentrate on what
 24 was happening around scene 1.
 25 MS LEWIS: Did you try and phone anyone

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1 from the NIU to say please come and help me, I've got 16
 2 injured protesters?
 3 CAPTAIN LOEST: I already informed the
 4 JOC and the medics was in close proximity, so I was waiting
 5 for them to come in.
 6 MS LEWIS: Captain, do you know whether
 7 the JOC made any effort to get the STF or the NIU to
 8 assist?
 9 CAPTAIN LOEST: I don't bear any
 10 knowledge of that.
 11 MS LEWIS: Captain, can I – can I have
 12 exhibit EEE16 at 14:02 to 14:13, but Chair, before we do
 13 that, could we have a warning, please?
 14 CHAIRPERSON: We'll have to give you an
 15 extra minute because of the warning. We're going to see a
 16 video clip with pictures which will cause emotional
 17 distress to those who were friends and loved ones and
 18 relations of some of the people who were killed and injured
 19 at scene 1. Seeing these pictures on the screen, as I have
 20 said will cause, or may well cause emotional distress and I
 21 ask that the clip not be shown until half a minute has
 22 expired after I've finished speaking, to enable anyone who
 23 feels that he or she would prefer not to see this clip, to
 24 give such persons an opportunity to leave the chamber. The
 25 half minute is up. I saw at least one person leaving. You

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1 may proceed, Ms Lewis. You've actually run out of time but
 2 I took some of your time and I also, time spent in
 3 warnings, for which you must be credited.
 4 MS LEWIS: I'm grateful, Chair. From
 5 14:02 to 14:13, Captain, can you please watch the man in
 6 the orange shirt? Captain, that was Mr Ntenetya. We see
 7 him sit up, shaking, he's obviously in pain, and then he
 8 collapses again and continues to move on the ground. Did
 9 you see that?
 10 CAPTAIN LOEST: Yes, I saw that, Mr
 11 Chair.
 12 CHAIRPERSON: What time did that happen?
 13 Do we know?
 14 MS LEWIS: eTV time?
 15 CHAIRPERSON: Yes.
 16 MS LEWIS: Chair, I'd have to get back to
 17 you on that. I don't know.
 18 CHAIRPERSON: Well, I think it's
 19 important for the witness to know because if it happened in
 20 the first couple of minutes after the shooting his answer
 21 might be different from if it was 20 minutes later.
 22 MS LEWIS: Chair, we estimate at around
 23 16:00.
 24 CHAIRPERSON: I see. So that was within
 25 how many minutes of the volley? Mr Chaskalson, can you

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1 tell us? You normally have these things at your
 2 fingertips.
 3 MR CHASKALSON SC: It will take me a
 4 minute, Chairperson. I'll find it.
 5 CHAIRPERSON: [Microphone off, inaudible]
 6 witness deal with the question that Adv Lewis is going to
 7 put to him.
 8 MS LEWIS: Captain, do you see your TRT
 9 members walking around, providing no assistance?
 10 CAPTAIN LOEST: Mr Chair, at that stage
 11 the scene was not safeguarded yet. We had got no idea what
 12 those people had under their blankets, what concealed
 13 weapons they had. We cannot allow our members to move in
 14 unless the scene has been secured.
 15 MR CHASKALSON SC: Chairperson, I think
 16 the source file is JJJ194.26, which is a source file of
 17 similar images, so if it isn't the same file it depicts the
 18 same image. That's 15:59:50.
 19 CHAIRPERSON: Remind me how many minutes
 20 is that after the volley?
 21 MR CHASKALSON SC: Six.
 22 CHAIRPERSON: Within six minutes after
 23 the volley was the scene not yet safe?
 24 CAPTAIN LOEST: No, Mr Chair, not at all.
 25 CHAIRPERSON: How long did it take for

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1 you to satisfy yourself that the scene was safe?

2 CAPTAIN LOEST: Mr Chair, I'm not hundred

3 percent sure how much, how, the time span, but it was

4 definitely not six minutes. It was much longer than that.

5 MS LEWIS: No, Captain, you conceded

6 previously that it took about five minutes to secure the

7 scene, and we will argue it on the basis of the objective

8 evidence. The objective evidence shows that as well. Do

9 you want to comment? Why are you changing your testimony

10 now?

11 CAPTAIN LOEST: Because according to that

12 video clip you just showed we have not started securing the

13 scene yet.

14 MS LEWIS: Alright, but Captain, you've

15 also conceded that no medical assistance was provided

16 within the hour before the paramedics arrived, correct?

17 CAPTAIN LOEST: That is correct.

18 CHAIRPERSON: We've got that point on

19 record already.

20 MS LEWIS: So within that hour no

21 assistance was provided to Mr Ntenetya, correct?

22 CAPTAIN LOEST: According to my

23 knowledge, that's correct.

24 MS LEWIS: And Captain, I'm not going to

25 play it but later in the video we can clearly see him lying

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1 there and your TRT members just standing and talking and

2 walking around. Do you want to comment on that?

3 CAPTAIN LOEST: I don't have any comment

4 regarding that, Mr Chair.

5 MS LEWIS: Captain, Mr Ntenetya died on

6 the scene. Did you know that?

7 CAPTAIN LOEST: No, I don't bear

8 knowledge of that, Mr Chair.

9 MS LEWIS: What we watched was the last

10 minute or at most the last hour of his life, Captain. You

11 weren't aware of that?

12 CAPTAIN LOEST: No, I wasn't aware of

13 that.

14 MS LEWIS: That's how he died, Captain.

15 Alone. He's in pain. No-one is doing anything to provide

16 him with any sort of care. That's no way for anyone to

17 die, Captain. Do you want to comment?

18 CAPTAIN LOEST: No comment, Mr Chair.

19 MS LEWIS: Chair, those are our

20 questions.

21 CHAIRPERSON: Thank you. Mr Mpofo, I

22 suggest you begin now. You'll be halfway through the

23 allotted time at lunchtime and then you can come and see me

24 in chambers and we could then take stock as to how much

25 longer you require reasonably for focussed prepared cross-

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1 examination.

2 CROSS-EXAMINATION BY MR MPOFU: Thank

3 you, Chairperson. Good afternoon, Captain.

4 CAPTAIN LOEST: Good afternoon, Mr Mpofo.

5 MR MPOFU: Thank you. I need to ask you

6 a few questions. I think up to now you are the most

7 important witness for the people that I represent, seeing

8 that you were at the scene right at the crucial time of the

9 most important question to be answered by this Commission,

10 namely whether or not the police acted in self-defence.

11 Would you agree with that?

12 CAPTAIN LOEST: I will agree on that, Mr

13 Chair.

14 MR MPOFU: Thank you. Now you, and I can

15 assure the Chairperson that I'm not going to go down a long

16 road, but you do appreciate the importance of telling the

17 truth, seeing that you are under oath?

18 CHAIRPERSON: I take it we can take that

19 as a given.

20 MR MPOFU: Agreed?

21 CHAIRPERSON: Sorry, before you carry on,

22 Captain, we discussed with you yesterday the fact that you,

23 I think you said are still suffering from post-traumatic

24 stress syndrome. You've been subjected to a rather

25 vigorous cross-examination by Adv Lewis. I'm not

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1 criticising her and I'm sure you don't either, but would

2 you like me to take the lunch adjournment now and let Mr

3 Mpofo continue after lunch, or do you feel able to deal

4 with a quarter of an hour's cross-examination?

5 CAPTAIN LOEST: Mr Chair, I would

6 appreciate a break, please.

7 CHAIRPERSON: You'd appreciate the

8 adjournment now. Alright –

9 MR CHASKALSON SC: Chairperson, just

10 before you take the adjournment, I must correct the

11 statement that I've previously made. It's in fact

12 JJJ194.29 which seems to have the same footage. Mr

13 Ntenetya is on both clips, but the footage of him sitting

14 up, or trying to sit up is on 194.29, which is at 16:01:52.

15 CHAIRPERSON: So that's actually seven

16 minutes –

17 MR CHASKALSON SC: Eight minutes,

18 Chairperson.

19 CHAIRPERSON: Eight minutes after the

20 volley. Alright, thank you. We will adjourn I think now,

21 seeing we're adjourning early we'll try to resume at

22 quarter to 2. I think we will resume at quarter to 2.

23 [COMMISSION ADJOURNS COMMISSION RESUMES]

24 [13:54] CHAIRPERSON: The Commission resumes.

25 You're still under oath, Captain. Mr Mpofo? Yes, Mr

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1 Budlender?

2 MR BUDLENDER SC: May I deal with –

3 CHAIRPERSON: I understand you wish to

4 make an announcement.

5 MR BUDLENDER SC: Two housekeeping

6 matters, Chair. Firstly, the next two witnesses, as

7 everyone knows, will be Lieutenant-Colonel McIntosh and

8 Captain Kidd. Parties which wish to cross-examine those

9 witnesses need to provide the documents on which they will

10 rely by tomorrow in order that he can, those witnesses can

11 read them and they'll be ready to give their evidence next

12 week, so that he'll have the weekend, they'll both have the

13 weekend.

14 The second announcement, the second matter,

15 Chair, relates to the provisional or proposed list of

16 witnesses which we distributed earlier this week. We ask

17 that the parties advise us by 8:30 on Monday of any

18 suggested additions or deletions so that we can try to put

19 together a programme without any further delays. So we ask

20 for, by 8:30 on Monday, any proposed additions to the list

21 which was distributed already and documents for cross-

22 examination of Kidd and McIntosh by tomorrow, sometime

23 tomorrow.

24 CHAIRPERSON: The applications, we need

25 the applications as to the topics. We've already had those

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1 for McIntosh but we need them in respect of Kidd, do we

2 not?

3 MR BUDLENDER SC: Yes, and what we will

4 also be doing, we will distribute to the parties a proposal

5 for how the cross-examination of Captain Kidd should be

6 dealt with, the time, and that will be done today. That

7 will be done today because there'll be a list, it will

8 include a list of the topics which we think he's going to

9 address and the topics which we propose to address in our

10 cross-examination.

11 CHAIRPERSON: Thank you. Anything else?

12 We had a meeting with Mr Mpofo at lunch time and discussed

13 with him the topics which he proposes to cover and the time

14 he will need and he persuaded us that the time we gave him,

15 in light of the topics that have been covered so far, was

16 not adequate and so we agreed to give him two hours.

17 MR MPOFU: Thank you, Chairperson.

18 CHAIRPERSON: That – sorry?

19 MR MPOFU: No, I was saying thank you,

20 Chairperson.

21 CHAIRPERSON: Ja.

22 MR MPOFU: 10 minutes has already

23 expired.

24 CHAIRPERSON: Well, I'll take that off.

25 That's not to be regarded necessarily as a precedent but in

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1 all the circumstances, regard being had to the evidence

2 this witness is giving and the position of Mr Mpofo's

3 clients, it was decided it would be the appropriate course.

4 You weren't well when we adjourned at quarter to one,

5 Captain. Are you, do you feel strong enough to continue?

6 CAPTAIN LOEST: Yes, Mr Chair, I can

7 continue.

8 CHAIRPERSON: Alright.

9 PAUL BISMARCK LOEST: (s.u.o.)

10 MR MPOFU: Thank you, Chairperson. Well,

11 before I continue, Chairperson, I just need to react to

12 some of the issues raised by Mr Budlender and just to say,

13 Chairperson, and I don't want to sound like a broken record

14 but since my clients were not here yesterday, as I

15 explained, they have again raised their concerns and I

16 assured them. I just wanted to place on record that I

17 assured them that the issue was discussed yesterday in

18 their absence, the issue of the timekeeping and so on and

19 that we effectively had made an application and we're

20 awaiting a ruling. So for the benefit of the record and

21 for their benefit, I explained to them that I would in any

22 event continue with this cross-examination, obviously under

23 protest or whatever other – I don't know what the right

24 term is but subject to – in other words they're not

25 abandoning their complaint but we, for the sake of progress

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1 we will continue with this cross-examination without being

2 seen to appear –

3 CHAIRPERSON: What you're looking for is,

4 without prejudice to your rights to contend that the time

5 limit principle should not be continued.

6 MR MPOFU: Thank you, Chairperson. Yes,

7 thank you very much.

8 CROSS-EXAMINATION BY MR MPOFU (CONTD.):

9 Now Captain, you – well, Ms Lewis had made reference to an

10 Mpofo-type of question and before we broke I had asked you

11 an Ntsebeza-type of question which is that you understand

12 the implications of telling the truth and the Chairperson

13 correctly pointed out that we can take that for granted, of

14 telling the truth under oath, correct?

15 CAPTAIN LOEST: That's correct, Mr Chair.

16 MR MPOFU: Yes. Now, I just then want to

17 start with an issue about the reasons why you removed the

18 weapons. You agree it's common cause that it took about an

19 hour for the medical staff to get there. You don't dispute

20 that, correct?

21 CAPTAIN LOEST: No, I don't, sir.

22 MR MPOFU: And therefore it could not, it

23 can't be correct that one of the reasons to – or rather,

24 I'm sorry – to remove the weapons would be a refusal by the

25 medical personnel to treat the injured people because they

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1 were not there, correct?
 2 CAPTAIN LOEST: That is correct, Mr
 3 Chair.
 4 MR MPOFU: And therefore the statement
 5 that you made under oath at SS2, 2.1 – or actually the best
 6 one is, go to HHH44 paragraph 8, sorry. That statement
 7 cannot be the truth, can it, that you say you “then
 8 instructed members present with me to remove and fetch all
 9 the weapons from the deceased and injured protesters and to
 10 put them in a heap. The reason for doing this was that
 11 they were not sure if the injured could still use the
 12 members to attack members” - you can ignore that part –
 13 “and for the safety of the members at the scene. The
 14 medical teams were also refusing to come in to assist if
 15 the area was not safe.” In respect of scene 1 that can't
 16 be the truth, correct?
 17 CAPTAIN LOEST: Mr Chair, a message was
 18 conveyed to me by somebody on the scene that the medical
 19 teams were afraid to come in unless the scene was secure
 20 and all firearms and weapons were removed from the injured
 21 people.
 22 MR MPOFU: Now, okay, so are you now
 23 saying this is something that someone else had told you?
 24 CAPTAIN LOEST: That is correct, Mr
 25 Chair.

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1 MR MPOFU: Who is that someone?
 2 CAPTAIN LOEST: Mr Chair, unfortunately I
 3 cannot recall who gave me that information.
 4 MR MPOFU: But as a general proposition
 5 you would agree that if the medical team was only to arrive
 6 an hour later, they couldn't very well have refused
 7 anything an hour before they arrived, correct?
 8 CAPTAIN LOEST: That is correct, Mr
 9 Chair.
 10 MR MPOFU: The second issue that I want
 11 to discuss with you relates to the fact that you have
 12 repeatedly said that, you've explained why you did not
 13 shoot and we'll get to that later but you've repeatedly
 14 said that you cannot account for why other people shot,
 15 correct?
 16 CAPTAIN LOEST: Mr Chair, yes. Like I
 17 said, some members did feel threatened and I believe that
 18 is why they did fire.
 19 MR MPOFU: No, did you or did you not
 20 repeatedly say to the Commission that you cannot account
 21 for why other people felt it necessary to shoot?
 22 CAPTAIN LOEST: That is correct, Mr
 23 Chair.
 24 MR MPOFU: And yet under oath at SSS1.1
 25 paragraph 12 you put this as a fact under oath, “During

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1 this process the group started storming the police, waving
 2 pangas and spears and individual members opened fire to
 3 protect their own and other members' lives.” Do you
 4 remember saying that under oath?
 5 CAPTAIN LOEST: That is correct, Mr
 6 Chair.
 7 MR MPOFU: Okay and just to round off
 8 some of your evidence before I ask you the next set of
 9 questions, you were told that, you were told that the
 10 police enclosure would be protected with barbed wire,
 11 correct?
 12 CAPTAIN LOEST: That is correct, Mr
 13 Chair.
 14 MR MPOFU: And you were told that your
 15 role as TRT was effectively that your mere presence as the
 16 TRT, I suppose, would act as a deterrent, correct?
 17 CAPTAIN LOEST: That is correct, Mr
 18 Chair.
 19 MR MPOFU: And you were also told that
 20 your line should, to use your words, stay put and not to
 21 retreat and stand their ground, correct?
 22 CAPTAIN LOEST: That's correct, Mr Chair.
 23 MR MPOFU: And you were also told that
 24 you should form a line and not allow protesters to proceed
 25 any further than they would have proceeded, correct?

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1 CAPTAIN LOEST: That is correct, Mr
 2 Chair.
 3 MR MPOFU: And you also have testified
 4 that you were not, you were not sure of the intention of
 5 the group as they were approaching, correct?
 6 CAPTAIN LOEST: That's correct, Chair.
 7 MR MPOFU: And you also said that you
 8 were told that you would have to use lethal force if need
 9 be, correct?
 10 CAPTAIN LOEST: That is correct,
 11 individual members.
 12 MR MPOFU: And you were also told that if
 13 non-lethal force did not achieve the desired result then
 14 you should use lethal force, correct?
 15 CAPTAIN LOEST: Mr Mpofo, can you just
 16 repeat the question?
 17 MR MPOFU: Well, I'm quoting you. You
 18 said, you've testified before – I can't remember who was
 19 cross-examining you – that if non-lethal force did not
 20 achieve the desired result then you would have to use
 21 lethal force.
 22 CAPTAIN LOEST: No, Mr Chair, that is not
 23 what I testified.
 24 MR MPOFU: Okay, well, the record will
 25 speak for itself on that.

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1 CHAIRPERSON: [Microphone off, inaudible]
 2 - something about what would happen if non-lethal force
 3 proved ineffective?
 4 CAPTAIN LOEST: Mr Chair, if I can
 5 remember correctly, I specifically stated that if non-
 6 lethal force did not work and the protesters could approach
 7 us it will end up in a stand-down. We would just stay in
 8 our position and not allow the protesters to move any
 9 further. If they didn't act towards us, there was no
 10 definite threat towards us, we would stay and stand our
 11 ground.
 12 MR MPOFU: Okay. As I say, I won't waste
 13 time on that. I think it was Mr Wesley to whom you made
 14 that statement but as I said, the record will speak for
 15 itself. I'd like us, you to help – your evidence
 16 effectively is that there was no specific instruction to
 17 shoot in relation to the TRT, correct?
 18 CAPTAIN LOEST: That is correct, Chair.
 19 MR MPOFU: Okay. Were you aware of the
 20 instruction that was given by Brigadier Calitz to engage,
 21 which was repeated by Colonel Vermaak?
 22 CAPTAIN LOEST: Yes, I was aware of that
 23 instruction for POP members, Mr Chair.
 24 MR MPOFU: Yes. I want your comment on
 25 this. Colonel Vermaak's evidence effectively, and I'm

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1 paraphrasing, was this, that when he repeated the
 2 instruction to engage he was directing it at the TRT
 3 members, your line, but because he was airborne and because
 4 you were not supposed to be where you were, he had assumed
 5 that those were POP people and when he realised that your
 6 group did not hear Calitz's instruction to engage, he
 7 repeated it to yourselves. And I therefore said to him, an
 8 instruction to engage to TRT would mean an instruction to
 9 use lethal force, to which he agreed. You understand where
 10 I'm saying – I'm not saying you agree or don't agree but do
 11 you agree –
 12 COMMISSIONER HEMRAJ: Mr Mpfu –
 13 CHAIRPERSON: Mr Mpfu, we think that
 14 that was said at scene 2.
 15 MR MPOFU: No, it was definitely – it's
 16 paragraph 7 of Vermaak, it's definitely scene 1. Paragraph
 17 7 of Vermaak's GGG17, I was cross-examining him on that
 18 where he says, "Om" –
 19 CHAIRPERSON: Mr Mpfu, Ms Baloyi, she
 20 wants to say something.
 21 MR MPOFU: Ja –
 22 CHAIRPERSON: Yes, Ms Baloyi?
 23 MR MPOFU: "n Aksie te loods," or
 24 whatever.
 25 MS BALOYI: Chairperson, I don't have the

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1 same recollection as Mr Mpfu and I think it will be
 2 helpful and fair to the witness that Mr Mpfu does point
 3 out exactly which part of the evidence of Colonel Vermaak.
 4 MR MPOFU: Ja, I've just done that –
 5 CHAIRPERSON: He says he's referring to
 6 paragraph 7 of Vermaak's statement. It's on the screen
 7 now.
 8 MR MPOFU: Ja, it is.
 9 CHAIRPERSON: It's in exhibit GGG17.
 10 MR MPOFU: That's correct, Chair.
 11 CHAIRPERSON: Paragraph 7.
 12 MR MPOFU: Ja. Yes, it's the second
 13 sentence where he says, "Dit was duidelik uit die lug
 14 waargeneem dat die groep nie gaan toegee nie. Brigadier
 15 Calitz het weer vir die lede opdrag gegee om 'n optrede te
 16 loods. Dit het amper voorgekom asof die lede nie gehoor
 17 het nie" –
 18 CHAIRPERSON: Okay, shall I translate it?
 19 MR MPOFU: Yes.
 20 CHAIRPERSON: The group moved backwards
 21 and then regrouped again on the other side of the kraal and
 22 the policemen, and again attacked the police at about
 23 15:55. It was clearly noticed from the air that the group
 24 weren't going to surrender. Brigadier Calitz again gave
 25 the members an instruction to engage, mount an operation –

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1 "optrede te loods" is the word he used. It almost appeared
 2 as if the members didn't hear. Because of the incident on
 3 Monday the 13th August where the two police members were
 4 hacked to death under the helicopter or had been hacked to
 5 death under the helicopter I realised that members would
 6 have to act to protect them. I think to protect
 7 themselves. I again repeated Brigadier Calitz's
 8 instruction from the helicopter, whereupon I saw that the
 9 members were acting.
 10 MR MPOFU: That's correct, Chairperson.
 11 To summarise this whole little dispute, the mere reference
 12 to the kraal would suggest that we are talking about scene
 13 1, correct, Captain?
 14 CAPTAIN LOEST: That's correct, Mr –
 15 MR MPOFU: Thank you.
 16 MS BALOYI: Chairperson, this part that
 17 Mr Mpfu seems to rely on in itself doesn't speak of him,
 18 Colonel Vermaak directing himself to TRT members, at least
 19 I don't understand it that way and if Mr Mpfu is relying
 20 on something else in addition to this, I think we should be
 21 shown in respect to that.
 22 MR MPOFU: Fair enough, Chairperson. I
 23 think what I'll do after the tea break, I'll find – the
 24 whole discussion about the TRT and Calitz and so on came
 25 when I was cross-examining Lieutenant-Colonel Vermaak on

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1 this paragraph, so I'll find that reference. Thank you,
2 Chairperson, but for the purposes of this cross-examination
3 you agree that that refers to scene 1, Captain?

4 CAPTAIN LOEST: Yes, I agree that that
5 refers to scene 1, Mr Chair.

6 MR MPOFU: Thank you, thank you and
7 therefore can you answer the question?

8 CAPTAIN LOEST: Mr Chair, according to my
9 knowledge the instruction that came from Brigadier Calitz
10 to engage was directed at POP members and definitely not
11 TRT members.

12 MR MPOFU: Right. Okay, the fact that
13 Colonel Vermaak says, assuming I'm correct in the reference
14 that I'm going to give to the Commission, that he, when he
15 repeated that, he was directing – albeit inadvertently – to
16 the TRT. Do you have any comment to that?

17 CAPTAIN LOEST: Mr Chair –

18 CHAIRPERSON: I don't remember that and I
19 don't understand how he could be repeating it to one group
20 or another if he's simply said engage, unless he said
21 members of the POP engage or members of the TRT engage –

22 MR MPOFU: No, no, Chair –

23 CHAIRPERSON: I don't remember that.
24 Perhaps you can remind me of what the precise words were
25 from which it appears that the remarks he made were

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1 up the difficulty.

2 MR MPOFU: Yes. No, that's not the
3 point. The point is that Vermaak – forget Calitz – Vermaak
4 was directing that the repetition of an instruction to the
5 TRT according to his evidence. That's the issue.

6 CHAIRPERSON: No, no, yes, I'm not
7 dealing with that. It's not so relevant to whom Vermaak
8 thought he was talking. The question is, in my opinion
9 that's important, is whether the TRT people if they heard
10 it realised that what he was saying was directed to them
11 and not the POP people. Anyway, you understand the
12 distinction?

13 MR MPOFU: Well, he was – whatever they
14 realised, it was directed to them. It was an instruction.
15 But fine, we'll leave that for argument, Chairperson, ja.

16 The next issue, Captain, that I want to deal with you, is
17 that according to you, or rather you are the person
18 effectively who was responsible for having the TRT line to
19 be formed where it was. We can put it squarely on your
20 shoulders, correct?

21 CAPTAIN LOEST: That is correct, Mr
22 Chair.

23 MR MPOFU: Ja, and if we can put that
24 squarely on your shoulders, do you concede that had the TRT
25 not been at that place at that time, that the massacre

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1 directed to the TRT and not just the POP?
2 [14:14] MR MPOFU: Ja, Chairperson, again without
3 wasting time, the evidence just went simply something like
4 this. "When you, Vermaak, repeated that instruction, was
5 it directed to the people on that line?" "Yes." "And at
6 that stage did you know that those people were TRT?" "No,
7 I thought they were POP," and so on, and so on. But I'll
8 find the reference. I don't want to waste much time on
9 that. And I even, I asked a further question. I actually
10 asked him a further question and I said an instruction to
11 engage as it would be directed to TRT could only mean one
12 thing, namely use your R5s, and he said yes. But I'll –

13 CHAIRPERSON: I understand that, but you
14 see the problem is Calitz is giving him instruction from
15 the air – sorry, Vermaak is giving instruction from the air
16 over the radio. Unless there's, it's clear from where he
17 says that he's talking to the TRT people rather than the
18 POP, there's no reason necessarily for the TRT people to
19 think he was talking to them.

20 MR MPOFU: No –

21 CHAIRPERSON: That's the problem, of
22 course.

23 MR MPOFU: No, Chairperson –

24 CHAIRPERSON: But it may be that the
25 passage that you're going to show me after tea will clear

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1 might not have happened? Or the tragedy, whatever it's
2 called.

3 CAPTAIN LOEST: No, Mr Chair, I don't
4 agree with that.

5 MR MPOFU: No, okay. Do you think that,
6 to put it differently, had you not instructed the TRT to go
7 and form up that basic line in front of the gap, and you
8 know by now what I mean by that, that the massacre would
9 still have happened as it happened?

10 CAPTAIN LOEST: Mr Chair, I can't
11 speculate on that. I'm not sure.

12 MR MPOFU: No, Captain, I'm sorry, it's
13 not a matter of speculation. We know now that 16 or 18
14 people died next to the road, next to the kraal. Agreed?

15 CAPTAIN LOEST: I agree on that.

16 MR MPOFU: We know that they were shot by
17 a TRT line which had formed on the other side of that same
18 road, correct?

19 CAPTAIN LOEST: That is correct, Mr
20 Chair.

21 MR MPOFU: We know that the people on the
22 police version at least were shot exactly at that point
23 because the people on the TRT line exactly at that point
24 allegedly felt threatened by them, correct?

25 CAPTAIN LOEST: I agree on that, Mr

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1 Chair.

2 MR MPOFU: Yes, now I'm asking you a

3 simple question. Had that TRT line been 50 metres, 100

4 metres away, you would agree that the massacre would not

5 have happened as we know it?

6 CAPTAIN LOEST: Mr Chair, that line-up

7 was put up on instruction and that is why we ended up where

8 we ended up.

9 MR MPOFU: Yes. No, okay, let's put

10 aside whether it was instruction, whatever –

11 CHAIRPERSON: No, no, Mr Mpofu, the point

12 he's making can't be brushed aside so easily. You put to

13 him that it is because of him, because of his instruction

14 that the line be formed up there that the tragedy took

15 place.

16 MR MPOFU: And he agreed.

17 CHAIRPERSON: And he agreed with that.

18 But he then said, you then also suggested if he hadn't

19 given the instruction it wouldn't have happened, and I

20 understand his evidence to be that the original instruction

21 came, there was an original instruction in terms of which

22 they acted. Now you remember he said he couldn't remember

23 having received the instruction from Calitz, but he said

24 there were gaps in his memory. Somebody else said,

25 Claassen I think said he did, that the original instruction

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1 was given by Calitz. So what he's saying is that even if

2 he hadn't given the instructions for them to go there they

3 would have still gone there because the original

4 instructions that they go there had come from Calitz, and I

5 think that's what he's saying.

6 MR MPOFU: Ja, that's what he's saying,

7 but –

8 CHAIRPERSON: So that's why I'm saying

9 you can't just say well, brush it aside the way you're

10 doing.

11 MR MPOFU: No, Chairperson, that's

12 mightily irrelevant to the question I'm asking now. I'm

13 simply asking him whoever gave the instruction, Mr John, Mr

14 Y, Mr Z, the point I'm asking is simple; had that line not

15 been formed where it was, on anybody under the sun's

16 instruction, does he agree that the massacre would not have

17 happened as it happened, as we know it, yes or no?

18 CAPTAIN LOEST: It's probable.

19 MR MPOFU: Thank you. And since earlier

20 on you have agreed that the fact that that line was formed

21 there where it was, should be put squarely on your

22 shoulders. I'm now asking you the question that you were

23 anticipating, which is can we then accept that but for your

24 instruction for that line to be formed the massacre might

25 not have happened probably?

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1 CHAIRPERSON: Mr Mpofu, I don't want to

2 be pedantic, but we had this debate once before. If they

3 were not acting in self-defence then it was a massacre. If

4 they were I personally don't think the word "massacre" on

5 the correct definition of the word in the Oxford Dictionary

6 is appropriate. I think keep the "massacre" word out –

7 MR MPOFU: Okay, fair enough,

8 Chairperson –

9 CHAIRPERSON: It just raises

10 unnecessary –

11 MR MPOFU: Yes, yes, yes.

12 CHAIRPERSON: It may be the end of the

13 day we will make the finding you ask for and we may find it

14 was a massacre –

15 MR MPOFU: Yes.

16 CHAIRPERSON: - either in whole or in

17 part, but let's not anticipate what will happen at the –

18 MR MPOFU: Yes, thank you, Chairperson.

19 Yes, no, we've had that debate before, but given these

20 exigencies, I'll agree. Yes, Captain, agreed? Substitute

21 the word "massacre" for the killings.

22 CHAIRPERSON: I think to be fair to the

23 witness repeat the question, substituting the word

24 "killings" for the other word you used and let's get his

25 answer.

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1 MR MPOFU: Yes, thank you. What I was

2 saying, given this debate that we had I'm saying seeing

3 that you've now accepted that the formation of the TRT line

4 exactly where it was eventually formed on whoever's

5 instruction, that you've agreed that that specific action

6 should be placed squarely on your shoulders, would you then

7 agree with the following proposition, that but for you

8 having given the instruction to move the TRT from wherever

9 they were to form the basic line where they eventually did,

10 the killings might not have happened?

11 CAPTAIN LOEST: Yes, Mr Chair, I accept

12 the fact that I was in command of that line-up and it is

13 probable that the killings would not have happened.

14 MR MPOFU: Thank you. And therefore we

15 have to explore then, if that instruction of yours played

16 such a crucial role we have to explore why it was made.

17 You've said that you did not yourself observe any attack by

18 the protesters against Nyala 4, correct?

19 CAPTAIN LOEST: Mr Chair, I just want to

20 clarify; that was the Nyala on the south-western –

21 MR MPOFU: Yes, I'm sorry, yes, you did

22 say you were not familiar with the numbers. Yes, Nyala 4

23 is the one that closed that gap, the first gap.

24 CHAIRPERSON: It's the one that had the

25 wire trailer and which completed the wire barrier from the

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1 power station to the little kraal.
 2 MR MPOFU: I think you've called it the
 3 south-eastern side of the kraal, Captain.
 4 CAPTAIN LOEST: That's correct, Mr Chair,
 5 yes. I didn't observe any attack in that area.
 6 MR MPOFU: Ja, right. Then why did you
 7 instruct the TRT to move from wherever they were to the
 8 place where eventually they formed the basic line which
 9 played such a crucial role in the killings?
 10 CAPTAIN LOEST: Mr Chair, like I've
 11 explained in the past already, this line was formed up
 12 because that was the next entry point into the safety zone
 13 that the police created.
 14 MR MPOFU: Ah-hah, thank you. So it was
 15 clearly anticipated and known to the police that if these
 16 people wanted to access the road which had been closed by
 17 Nyala 4, the road to Nkaneng, the only other way would have
 18 been through the gap, where they were eventually killed,
 19 correct?
 20 CAPTAIN LOEST: Mr Chair, yes –
 21 MR MPOFU: Thank you –
 22 CAPTAIN LOEST: - according to –
 23 MR MPOFU: Oh, sorry. I'm sorry to cut
 24 you. You wanted to add something? Are you happy?
 25 CAPTAIN LOEST: Yes, I'm fine, thank you,

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1 Sir.
 2 MR MPOFU: Thank you. And that would
 3 explain, wouldn't it, Captain, why your line, why people
 4 ran towards the gap as it were, as we know it, which is
 5 between the kraal and the corner of the yard with the
 6 shack, even before the strikers emerged from around the
 7 kraal, because it was foreseen and anticipated that that
 8 was the only way that they could go home, correct?
 9 CAPTAIN LOEST: No, Mr Chair, I could
 10 understand that they could have passed the kraal and used
 11 another route, but they opted to turn around and come back
 12 towards the northern side where we were blocking the line.
 13 MR MPOFU: Yes, that's very true. That's
 14 very true. But despite the fact that they could have used
 15 a million other routes, the only route where the gun-
 16 wielding TRT men stood firm was that gap, long before they
 17 even came around the kraal, because it was anticipated that
 18 they were going to use that route, correct?
 19 CAPTAIN LOEST: No, that is not correct.
 20 MR MPOFU: Well, if you thought they were
 21 going to use one of the other million option routes, then
 22 why did you stand firm, as you call it, manning the gap
 23 when nobody was approaching it?
 24 CAPTAIN LOEST: Mr Chair, like I've
 25 explained, on the eastern side of the koppie the wire was

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1 deployed. On the western side of – on the eastern side of
 2 the wire the members had their vehicles deployed. We had
 3 members on the southern side of this police corridor that
 4 we created the safety zone. The next option was to place
 5 members on the northern side where we deployed these, the
 6 people to keep the safety zone intact.
 7 MR MPOFU: Okay, again I'll just
 8 summarise this point as follows, as I've put it previously.
 9 The evidence of Mr Magidiwana, Mr Phatsha and, well, the
 10 people who were on the protesters' side is that indeed when
 11 Nyala 4 closed them off they were on the road which would
 12 run in front of the kraal towards Nkaneng, like all the
 13 other people who had gone before them. You accept that?
 14 CAPTAIN LOEST: Mr Chair, I wasn't there
 15 so I can't really respond to that question.
 16 MR MPOFU: Okay, let me put it this way
 17 to avoid showing you slide L191 and 193. Do you accept
 18 that before Nyala 4 closed that gap that we've spoken about
 19 before many other strikers had used that road as their
 20 escape route to Nkaneng?
 21 CAPTAIN LOEST: I would agree on that, Mr
 22 Chair. They also used different other routes as well.
 23 MR MPOFU: Yes, but you would also agree
 24 that throughout the day that was the main route for people
 25 going to and from the koppie, correct?

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1 CAPTAIN LOEST: Yes, I would agree on
 2 that.
 3 MR MPOFU: Yes. Now all I'm saying to
 4 you, having accepted those two propositions, that a few
 5 minutes before – well, not even minutes, a few seconds
 6 before Nyala 4 closed that route which all the strikers
 7 were using, other people had used it and managed to get to
 8 Nkaneng. You accept that?
 9 CAPTAIN LOEST: I accept that, Mr Chair.
 10 MR MPOFU: Yes, now what I'm saying is
 11 that now if you then look at the geography of that area the
 12 only other way by which people would re-access that route
 13 save for crossing through the kraal, which you can't
 14 because it's an opaque – well, not opaque, it's a solid
 15 barrier – would be to go around the kraal and re-access
 16 that road to Nkaneng, correct?
 17 CAPTAIN LOEST: That is correct, Mr
 18 Chair.
 19 MR MPOFU: Thank you, and for that reason
 20 that is why even a child would have known that having
 21 blocked them from the road to Nkaneng, the only other way,
 22 the quickest route would be to negotiate the kraal and go
 23 there, and that's why you went there before they even
 24 negotiated the kraal, correct?
 25 CAPTAIN LOEST: No, Mr Chair, I would not

<p style="text-align: right;">Page 28545</p> <p>1 agree on that.</p> <p>2 MR MPOFU: Alright. Anyway, you have</p> <p>3 testified that you yourself were not, or rather cannot say</p> <p>4 what their intention was in negotiating the kraal, but from</p> <p>5 this discussion we've had you cannot dispute that their</p> <p>6 intention, as they have testified, was to re-access that</p> <p>7 road, correct?</p> <p>8 CAPTAIN LOEST: Mr Chair, as they came</p> <p>9 around the corner of the kraal they started charging our</p> <p>10 members on the line and that was definitely not to access</p> <p>11 the road to go home. According to me there was a clear</p> <p>12 intention for that group of protesters to attack us.</p> <p>13 CHAIRPERSON: [Microphone off, inaudible]</p> <p>14 teargas being fired at that stage?</p> <p>15 CAPTAIN LOEST: That's correct, Mr Chair.</p> <p>16 CHAIRPERSON: Water cannon? Or was the</p> <p>17 water cannon only on the other side?</p> <p>18 CAPTAIN LOEST: I'm not sure, Mr Chair.</p> <p>19 I'm not sure.</p> <p>20 CHAIRPERSON: There was teargas?</p> <p>21 CAPTAIN LOEST: I think so, yes, Sir.</p> <p>22 CHAIRPERSON: And despite the teargas did</p> <p>23 they come on ahead, come towards you?</p> <p>24 CAPTAIN LOEST: That's correct, Sir.</p> <p>25 CHAIRPERSON: And rubber bullets being</p>	<p style="text-align: right;">Page 28547</p> <p>1 bear any knowledge of any people behind the kraal, or let's</p> <p>2 say members of POP on the other side of the kraal –</p> <p>3 MR MPOFU: No.</p> <p>4 CAPTAIN LOEST: - performing that –</p> <p>5 MR MPOFU: Yes. No, no, sorry, maybe I</p> <p>6 put the question clumsily. Do you accept that there were</p> <p>7 members who were shooting at them with shotguns in the gaps</p> <p>8 between the Nyalas and which had the effect of, I think you</p> <p>9 were shown by somebody that the effect of making them to</p> <p>10 accelerate forward?</p> <p>11 CAPTAIN LOEST: Yes, Mr Chair –</p> <p>12 MR MPOFU: Thank you.</p> <p>13 CAPTAIN LOEST: - that is clear on video</p> <p>14 footage.</p> <p>15 MR MPOFU: Sorry. Thank you very much.</p> <p>16 Now let's look at it differently. On your theory, and</p> <p>17 you've said you don't know what – okay, let me put it this</p> <p>18 way, because this is important. One of the key important</p> <p>19 issues that's going to have to be determined here is</p> <p>20 whether, as we put it, the people were intending to access</p> <p>21 the road, or as SAPS put it, they were intending to come</p> <p>22 and attack the TRT. You accept that?</p> <p>23 CAPTAIN LOEST: I accept that, Mr Chair.</p> <p>24 [14:34] MR MPOFU: Yes. And that is also, the</p> <p>25 relevance of that question also has something to do with</p>
<p style="text-align: right;">Page 28546</p> <p>1 fired?</p> <p>2 CAPTAIN LOEST: That's correct, Sir.</p> <p>3 CHAIRPERSON: I see. So there were other</p> <p>4 routes presumably where that wasn't happening.</p> <p>5 CAPTAIN LOEST: That is correct, Sir.</p> <p>6 They could have on the north-western side of the kraal</p> <p>7 decided to take a different route, but they opted to come</p> <p>8 around the kraal, though I understand, and I accept the</p> <p>9 fact that it was pointed out that Nyalas might have</p> <p>10 channelled them, but there were so many other routes they</p> <p>11 could have followed.</p> <p>12 MR MPOFU: No, let's put it like – let's</p> <p>13 for the sake of progress accept what you're saying, but do</p> <p>14 you accept the following proposition; if their intention</p> <p>15 was to access the road to Nkaneng which had been blocked by</p> <p>16 Nyala 4, the only and quickest way to do so would have been</p> <p>17 to negotiate the kraal and access the road the way they</p> <p>18 did, correct?</p> <p>19 CAPTAIN LOEST: I would accept that, yes.</p> <p>20 MR MPOFU: Thank you. Now do you also</p> <p>21 know, you've been asked about rubber bullets and all sorts</p> <p>22 of things. Do you also know that those, some of those</p> <p>23 rubber bullets were being fired from behind them, in other</p> <p>24 words driving them towards the road?</p> <p>25 CAPTAIN LOEST: No, Mr Chair, I don't</p>	<p style="text-align: right;">Page 28548</p> <p>1 the proximity of the TRT line to that road, and I'll</p> <p>2 explain what I mean by that. May I? May I do so, Captain?</p> <p>3 CAPTAIN LOEST: Yes, you can proceed,</p> <p>4 Sir.</p> <p>5 MR MPOFU: Yes. Listen to me carefully.</p> <p>6 If your line had been, let's say 50 – five-zero – metres</p> <p>7 behind where it was, or even a hundred metres, as it should</p> <p>8 have been, then that question which the Commission is going</p> <p>9 to be seized with would have been easily answered, because</p> <p>10 we would have known if they crossed the road, then they</p> <p>11 were coming to attack you, but if they turned left to</p> <p>12 Nkaneng then they were going home. You agree with that?</p> <p>13 CAPTAIN LOEST: That is probable, yes.</p> <p>14 MR MPOFU: Yes. But now we will never</p> <p>15 know until the Commission determines the issue, because you</p> <p>16 shot them before they reached that road, correct? Sorry,</p> <p>17 when I say "you" I mean the SAPS, not you personally.</p> <p>18 CAPTAIN LOEST: I agree.</p> <p>19 MR MPOFU: Thank you. Which brings us to</p> <p>20 the issue of statutorily – well, in terms of the plan at</p> <p>21 least your line, your TRT line was supposed to be about 100</p> <p>22 metres behind POP, correct?</p> <p>23 CAPTAIN LOEST: That is correct, Mr</p> <p>24 Chair.</p> <p>25 MR MPOFU: Thank you. Now this is the</p>

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1 third way of exploring this issue. On your version, let's
2 now take the SAPS version, you would agree that for it to
3 hold any water that the people were intending to attack the
4 TRT line, they would at the very least have to know that
5 the TRT line was there, correct?

6 CAPTAIN LOEST: Mr Chair, I don't think
7 it was just TRT, it was any member of SAPS.

8 MR MPOFU: No, no, no, let's not try and
9 go back. I thought you and I have agreed that one of the
10 nubs of this case, of this Commission, is to determine as
11 to whether when those people moved in that direction they
12 were intending to access the road to Nkaneng or to attack
13 the TRT line, and you agreed that that was the nub of the
14 issue.

15 CAPTAIN LOEST: I agree, Mr Mpofo, but
16 like I said it could have been any other unit of SAPS
17 placed in that line-up.

18 MR MPOFU: Yes, okay, fine. Let me
19 indulge you. Let's assume, ja, it was any old unit of
20 SAPS, TRT, STF, what have you, but for them to intend to
21 attack that line they would have to know that it was there,
22 correct?

23 CAPTAIN LOEST: Mr Chair, according to my
24 observations they tried to cut in from quite a distance
25 back to get in front of the Nyala and that indicated to me

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1 Chair.

2 MR MPOFU: So as they were negotiating
3 the kraal they did not even know that the TRT line was
4 there, correct?

5 CAPTAIN LOEST: Mr Chair, I'm sure they
6 paid attention to us running down and moving down towards
7 the northern side of the safety barrier, or the safety
8 corridor, and they must have known that that will be the
9 next area where the police would block off that area.

10 MR MPOFU: So you're saying as they were
11 negotiating the kraal, having looked at that same space
12 with no TRT line, they would have somehow worked out, while
13 they are obscured by the kraal, that the TRT line, that
14 Captain Loest has given an instruction for the TRT line to
15 go and form a basic line in front of the gap. Is that your
16 evidence?

17 CAPTAIN LOEST: Mr Chair, we moved all
18 the members of TRT and all the other units I think was
19 instructed way before Nyala 4 reached the corner of the
20 kraal, they started moving out of their vehicles. So I'm
21 sure the protesters must have seen that there are movement
22 within the safety zone and members of SAPS are being
23 redeployed to a different area.

24 MR MPOFU: No, okay, Captain. Once again
25 to save time, let me say to you, and you'll tell me if you

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1 that they didn't have pure intentions of entering that
2 safety zone.

3 MR MPOFU: No, Captain, please, just
4 answer my question with a yes or no or I don't know. Would
5 you –

6 CHAIRPERSON: No, no, no, I don't think
7 you can impose restrictions like that on the witness. The
8 witness is entitled to give the answer he wants to. I can
9 understand why he gave the answer he did, but you're
10 entitled perhaps when he's given his answer to frame a
11 question which calls for an answer either yes or no or I
12 don't know, but you can't merely because he's given an
13 answer dictate to him, or seek to dictate to him the form
14 in which the answer must be given.

15 MR MPOFU: Well, okay, answer the
16 question as long as you like, but answer it. I'm saying to
17 you would you agree with the following proposition, that
18 for them to intend to attack a particular target they would
19 have to know that that target was there? It's a simple
20 question.

21 CAPTAIN LOEST: Yes, I agree.

22 MR MPOFU: Thank you. And you will agree
23 with me that that TRT line was only formed after they were
24 closed off by Nyala 4, correct?

25 CAPTAIN LOEST: That is correct, Mr

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1 dispute this, it has been established with previous
2 witnesses that that episode where we see your members
3 running towards the basic line happened after the blockage
4 by Nyala 4 and when the strikers were obscured by the
5 kraal. Do you want to dispute that? We can play the
6 videos.

7 CAPTAIN LOEST: I will not dispute that
8 at all, but like I said, large members, large amount of
9 members had to move over a vast distance, so I'm sure the
10 people right at the top of the TRT line on the southern
11 side had to move earlier to make sure that they are in the
12 basic line in time.

13 MR MPOFU: Yes, but not earlier than
14 Nyala 4 closed the gap and the people were obscured by the
15 kraal?

16 CAPTAIN LOEST: No, Mr Chair, I cannot
17 dispute that. I'm not sure.

18 MR MPOFU: Thank you.

19 CAPTAIN LOEST: It is possible.

20 MR MPOFU: Yes. Ja, but if I'm right
21 that has been established before, then you would accept
22 that they did not know that there was a TRT line there?

23 CAPTAIN LOEST: Mr Chair, I'm not sure
24 what was the frame of mind and what information they had
25 and what they did not have.

<p style="text-align: right;">Page 28553</p> <p>1 MR MPOFU: No, Captain, please, I'm 2 asking you if I'm correct that the line was formed after 3 Nyala 4 had blocked them and after they had been obscured 4 by the kraal, then you would accept that they did not know 5 that the TRT line was formed there as it was, correct? 6 CAPTAIN LOEST: That's correct, Sir. 7 MR MPOFU: Yes, and therefore as they 8 were negotiating, at the very least as they were 9 negotiating the kraal they could not have been intending to 10 attack the TRT line because they did not know it was there, 11 correct? 12 CAPTAIN LOEST: Mr Chair, like I 13 explained before, as they came around the corner they 14 started revealing their weapons from underneath their 15 blankets and that gave a clear indication that these people 16 were not approaching us in a peaceful manner and that they 17 were launching, or in the process of launching an attack. 18 MR MPOFU: Ja. No, we'll come to that. 19 I'm asking you now a very simple question. At the very 20 least a they were negotiating the kraal and obscured by it, 21 their intention could not have been to attack the TRT line 22 because they did not know it was there, yes? 23 CAPTAIN LOEST: That is probable. 24 MR MPOFU: Thank you. So if they formed 25 an intention to attack the TRT line, it could only be after</p>	<p style="text-align: right;">Page 28555</p> <p>1 witnesses have testified that they revealed their weapons 2 on the other side of the kraal, contrary to what this 3 witness is saying, and if Mr Mpofu is going to be 4 presenting that evidence then he should say so to the 5 witness, otherwise he shouldn't be allowed to ask a 6 question like that, Chairperson, because what he does in 7 fact, he takes us through a path of discussion and cross- 8 examination that serves no purpose if it's not going to be 9 backed up by evidence. 10 CHAIRPERSON: What's your response to 11 that, Mr Mpofu? 12 MR MPOFU: Well, my response is that it's 13 wrong on two counts. (1), Mr Magidiwana testified in this 14 Commission that the weapons that they were carrying, 15 including his knobkierie, they had been carrying from the 16 time Mr Noki had told them that they must go to Nkaneng. 17 Secondly, I've played here – and I'm just about 18 to do it again – objective evidence which shows the 19 persons, and it was shown, I think Mr Wesley actually 20 showed this to the witness in respect to another point and 21 it's, I was trying to avoid that because it's been done so 22 repeatedly, but seeing that I'm forced to do it, can you 23 play JJJ194.16? I'm sorry, Chairperson, I'm not quite 24 sure, but it's a short one, it's something like 10 25 seconds –</p>
<p style="text-align: right;">Page 28554</p> <p>1 they emerged from the corner and saw that TRT line, 2 correct? 3 CAPTAIN LOEST: That is possible, yes. 4 MR MPOFU: Ja. So for the period that 5 they were moving from where Nyala 4 had blocked, around the 6 kraal, they had no intention to attack the TRT line, a TRT 7 line whose existence they did not know, correct? 8 CAPTAIN LOEST: Yes. 9 MR MPOFU: Thank you. Right, now you've 10 just spoken about how they revealed – I think is the word 11 that you've been using – revealed their weapons as one of 12 the signs of the so-called attack, correct? 13 CAPTAIN LOEST: That is correct, Mr 14 Chair. 15 MR MPOFU: Now if I can – well, what will 16 you say to this; if it can be shown that in actual fact 17 they had revealed their weapons, as you put it, before 18 Nyala 4 blocked them, what would be your comment? 19 MS BALOYI: Chairperson, Mr Mpofu has a 20 lot of "ifs" in his questions now and that is unfair to the 21 witness because when he asked the question he then proceeds 22 as if in fact it is a matter of fact, but coming to this 23 particular proposition that is being put to the witness Mr 24 Mpofu either has the evidence or he doesn't. To date we do 25 not have any witness that has testified, none of Mr Mpofu's</p>	<p style="text-align: right;">Page 28556</p> <p>1 CHAIRPERSON: Please indicate where on 2 the clip you want us to – 3 MR MPOFU: No, it's a very short clip, 4 it's about 15 seconds. 5 CHAIRPERSON: You want to look at the 6 whole clip then? 7 MR MPOFU: Yes. Okay, try at 1 minute – 8 maybe it's not the one I had in mind. Just one second. At 9 1:00. Thank you. Sorry, Chairperson, I must apologise, 10 it's not this one, it's before – 11 CHAIRPERSON: This is not – 12 MR MPOFU: Ja, it's before this, because 13 the whole point is that the line had not been formed. If 14 you go to 15, which is a very few seconds, ja, it's that 15 one. Ja, stop. Alright, Captain, you would agree that 16 this is when - I think Mr Wesley used the word 17 "perpendicular," or somebody said this is when they were 18 approaching that road while the other Nyalas were moving 19 towards the kraal. You remember that evidence? 20 CAPTAIN LOEST: Yes, I do, Sir. 21 MR MPOFU: Yes, okay, and this is the 22 stage I'm talking about. I'm saying at this stage the 23 evidence both from the previous witnesses and also from 24 this video and I think the related photographs, is that at 25 this stage they were brandishing their weapons. Would you</p>

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1 dispute that?

2 CAPTAIN LOEST: Mr Chair, yes, I don't

3 see any weapons of what nature whatsoever.

4 CHAIRPERSON: Perhaps we can zoom in on

5 the strikers.

6 MR MPOFU: Yes. Yes, let's try where it

7 is now, or just a minute – ja, just zoom please. Okay –

8 CHAIRPERSON: [Microphone off, inaudible]

9 picture you see, this is at 7 seconds into the video clip.

10 There's a man standing there –

11 MR MPOFU: Brandishing –

12 CHAIRPERSON: - on the right-hand side,

13 well to use Ms Le Roux's expression, perpendicular, he's

14 approaching the Nyala, is it? It's a Nyala, is it?

15 MR MPOFU: Yes, Chair.

16 CHAIRPERSON: Approaching it from the

17 left side, from in front on the left side and there are two

18 men we can see. The second one appears to have a weapon in

19 either hand.

20 MR MPOFU: Two, yes. Thank you,

21 Chairperson. Do you see that?

22 CAPTAIN LOEST: Yes, I do, Mr Chair.

23 MR MPOFU: And as I said, I didn't want

24 to waste time on this because really, it's just – in any

25 event, that is what is called "incident 2" by the police,

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1 which is supposedly an attack by armed protesters. So it

2 should be common cause. I don't understand why they now

3 say, they want to say they were coming with Bibles or

4 folded arms.

5 COMMISSIONER HEMRAJ: Mr Mpofo, whose

6 evidence characterised this as incident 2?

7 MR MPOFU: Everybody –

8 COMMISSIONER HEMRAJ: Could you perhaps

9 just point me to that –

10 MR MPOFU: Well, everybody's – the

11 approach to Nyala 4 is described by the police as incident

12 2. Remember –

13 COMMISSIONER HEMRAJ: But this particular

14 video, was my question.

15 MR MPOFU: No, no, not the video. I'm

16 saying –

17 COMMISSIONER HEMRAJ: That's my question.

18 This particular video –

19 MR MPOFU: Yes.

20 COMMISSIONER HEMRAJ: Has this been

21 characterised as incident 2 by any particular witness?

22 That was the question.

23 [14:54] MR MPOFU: No, all I'm saying,

24 Chairperson, with respect, is that the stage at which the

25 protesters were approaching, where they were closed off by

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1 Nyala 4 is described by SAPS as incident 2, and that stage,

2 if that so-called incident 2 was an attack by armed

3 protesters then clearly they had "revealed" their arms at

4 that stage. That's all I'm saying. But let's make it even

5 easier. Let's make it even easier. The version of SAPS,

6 if you go to L196, go to the last bullet there, this is now

7 even further back, it's incident 1, let's forget about

8 incident 2. The version of SAPS is that "At incident 1 the

9 protesters were aggressive, tapping their weapons against

10 each other and went into an attack formation. Nyala 4 cut

11 protesters off by driving towards the kraal quickly,

12 passing Nyala 5, while deploying its wire." You would

13 agree that they couldn't tap their weapons if they didn't

14 have them in their hands, correct?

15 CAPTAIN LOEST: I would agree on that.

16 MR MPOFU: Thank you. Alright, but to

17 you this so-called revelation of weapons was the first sign

18 of the attack, correct?

19 CAPTAIN LOEST: Yes, Mr Chair.

20 MR MPOFU: Yes. Okay, so if we put that

21 one aside, because it's clearly invalid, then your second

22 sign that there was an attack is the fact that they came in

23 tight formation, correct?

24 CAPTAIN LOEST: That's correct, Mr Chair.

25 MR MPOFU: And again you would agree that

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1 on the video that we've seen they were approaching in tight

2 formation still, correct?

3 CAPTAIN LOEST: That's correct, Mr Chair.

4 MR MPOFU: So that one is also invalid.

5 Then the second one, the third one, we've already dealt

6 with this, Ms Lewis, namely that they should have gone

7 diagonally, but you've considered that that part was

8 blocked by Nyalas, correct?

9 CAPTAIN LOEST: That is correct.

10 MR MPOFU: Ja, so all your three

11 indications of the so-called attack do not hold any water,

12 correct?

13 CAPTAIN LOEST: No, Mr Mpofo, I would not

14 agree with that.

15 MR MPOFU: Well, I will argue at the end

16 that you have just agreed with me, even if you do not want

17 to agree with the obvious conclusion. Okay, and just out

18 of interest, and again I'll avoid playing the video, there

19 is evidence which I think I played to Major-General Mpofo,

20 which shows that on the – on the 13th you were with Captain

21 Vermaak in the air, correct?

22 CAPTAIN LOEST: That's correct, Mr Chair.

23 MR MPOFU: Yes. There's evidence - and

24 if you dispute it I'll show you the video - that the

25 strikers on the 13th had approached members of the police in

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1 a tight formation, brandishing their weapons, clanking them
 2 together, and singing, and that was not an attack. They
 3 simply walked past those members on their intended path
 4 towards the koppie. Are you aware of that, or do you want
 5 me to – or do you not dispute that?

6 CAPTAIN LOEST: No, I don't dispute that,
 7 Mr Chair.

8 MR MPOFU: Ja, thank you. Right –

9 CHAIRPERSON: Mr Mpofo, we're going to
 10 take the tea adjournment shortly. If it's convenient at
 11 this stage we'll take it now.

12 MR MPOFU: Yes, it is.

13 CHAIRPERSON: If you want to ask a couple
 14 of questions, you've really got two minutes before the time
 15 I was going to take tea, but if you want it now we'll take
 16 it now.

17 MR MPOFU: No, thank you, Chairperson, I
 18 was moving to a new topic, so it's convenient now.

19 CHAIRPERSON: Alright, we'll take the tea
 20 adjournment. We'll resume again at quarter past 3, we'll
 21 run through to 4 o'clock.

22 MR MPOFU: Thanks, Chairperson.

23 [COMMISSION ADJOURNS COMMISSION RESUMES]

24 [15:20] CHAIRPERSON: Before we proceed I must
 25 say I've been told by Mrs Schubart that because of the

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1 election, the fact that these chambers were used during the
 2 election, the council couldn't have the normal meeting they
 3 would have had earlier and they require the chamber on
 4 Monday, which means that we will not be sitting on Monday
 5 because the chamber won't be available. We of course will
 6 not be sitting on Wednesday either because it's the third
 7 Wednesday, they have another meeting. We will, however, be
 8 sitting on Tuesday. It's regrettable that we lose the
 9 time, but in the circumstances there's nothing we can do
 10 about it. I thought I should announce it as soon as
 11 information was given to me so people who wish to make
 12 plans on the basis thereof can do so. But I hope that
 13 you'll be finished your evidence by then, Captain, so the
 14 fact that we can't sit on Monday won't affect you. You're
 15 still under oath.

16 PAUL BISMARCK LOEST: (s.u.o.)

17 CHAIRPERSON: Mr Mpofo.

18 MR MPOFU: Thank you, Chairperson. Well,
 19 there's a small matter of re-examination –

20 CHAIRPERSON: Sorry, Ms Baloyi wants to
 21 say something first, I think.

22 MS BALOYI: Yes, Chairperson, before Mr
 23 Mpofo continues, it has to do with the reference to the
 24 evidence of Colonel Vermaak that he referred to and I would
 25 like us to tidy that up, especially in the way that he

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1 concluded it, that he was going to argue something, and I
 2 would still like us to be referred to the part of the
 3 record. And Chairperson, I raise it now just so that when
 4 he does argue that eventually, if he does, he doesn't say
 5 the witness didn't answer whatever question was being put
 6 to him –

7 CHAIRPERSON: You don't have to motivate
 8 why you've raised it. You've raised it.

9 MR MPOFU: Yes. No, we've agreed –

10 CHAIRPERSON: Alright. Okay, Mr Mpofo.

11 MR MPOFU: Yes. No, we agreed that I'll
 12 find the reference. It's page 26342, Chairperson, day 213.

13 CHAIRPERSON: Thank you. How long is re-
 14 examination likely to take? Do you know? Is any re-
 15 examination envisaged at this stage?

16 MS BALOYI: Ja, Chairperson, Mr Semenya
 17 will do the re-examination. My understanding was that he
 18 does intend to do re-examination.

19 CHAIRPERSON: So he won't be doing it
 20 today.

21 MS BALOYI: No.

22 CHAIRPERSON: So the witness will have to
 23 – yes I think he did tell me something this morning about
 24 it, it slipped my mind.

25 MS BALOYI: Yes.

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1 CHAIRPERSON: So we'll have to have the
 2 re-examination on Tuesday morning.

3 MS BALOYI: Indeed so, Chair.

4 CHAIRPERSON: Yes, I see, and thereafter
 5 we will have Lieutenant-Colonel McIntosh.

6 MS BALOYI: Yes, we will.

7 CHAIRPERSON: Mr Mpofo.

8 MR MPOFU: Thank you, Chairperson.

9 MS BALOYI: Chair, I think just to
 10 complete the issue that I was raising about the reference,
 11 Chair, I would like for Mr Mpofo to put it up on the screen
 12 because I have looked at that reference and it doesn't say
 13 what he put to this witness.

14 CHAIRPERSON: But you can't eat into his
 15 cross-examination time like that.

16 MR MPOFU: Ja.

17 CHAIRPERSON: We can all look – oh, it's
 18 on the screen. What line, Mr Mpofo?

19 MR MPOFU: Chairperson, honestly, can I –
 20 look, can I just move on with my cross-examination?

21 CHAIRPERSON: Move on with your cross-
 22 examination.

23 CROSS-EXAMINATION BY MR MPOFU (CONTD.):

24 Yes, thank you, Chairperson. Captain - ja, then we'll deal
 25 with it in argument, ja. Thank you. Or re-examination,

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1 ja. Captain, your own view was that, as they say in the
2 business, at the end of it, it was mission accomplished,
3 everything went well, correct?
4 CHAIRPERSON: I don't see how a man who
5 has to be boarded from the police service with post-
6 traumatic stress syndrome –
7 MR MPOFU: That's exactly the point.
8 CHAIRPERSON: - as a result of an
9 incident that took place that he's been testifying about is
10 likely to regard it as mission accomplished. But perhaps
11 it's an improper comment of mine. How do you respond to
12 what Mr Mpofo put to you?
13 CAPTAIN LOEST: No, Mr Chair, definitely
14 not mission accomplished. That incident ended my career.
15 MR MPOFU: No, but the purpose of your
16 involvement was achieved because you succeeded in your
17 purposes, correct?
18 CAPTAIN LOEST: Mr Chair yes,
19 unfortunately with some sad incident and dire consequences
20 afterwards as well.
21 MR MPOFU: Yes, so subject to that
22 qualification it was mission accomplished?
23 CAPTAIN LOEST: Mr Mpofo, I would reserve
24 my comment on that.
25 MR MPOFU: Well, it's too late to reserve

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1 your comment. On paragraph 9 you did not reserve your
2 comment. Paragraph 9 of HHH44 you said, "The purpose of my
3 group's deployment was achieved because we succeeded in
4 protecting members of SAPS when they came under attack from
5 protesters." Correct? So you were happy –
6 CAPTAIN LOEST: With that you're quite
7 right, I concur, yes.
8 MR MPOFU: Thank you. Okay, so you
9 didn't reserve your comment at that stage, correct?
10 CAPTAIN LOEST: Mr Chair, yes, like I
11 said, we were under attack and the members was not injured
12 and that was my main purpose, to make sure that they are
13 safe.
14 MR MPOFU: So which part exactly – or
15 okay, let me put it this way, with the sensitivity that has
16 been indicated. Your condition as you understand it of
17 post-traumatic stress disorder was caused by the events
18 from the 13th to the 16th, including, or rather events
19 including those events, correct?
20 CAPTAIN LOEST: No, Mr Chair, from 1986
21 up until this specific day, the 16th of August 2012.
22 MR MPOFU: I'm sorry, I didn't catch
23 that.
24 CHAIRPERSON: He says since 1986, all the
25 way through until the 16th of August 2012.

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1 MR MPOFU: Yes, but what you described as
2 the proverbial last straw were the events in Marikana,
3 correct?
4 CAPTAIN LOEST: That's correct, Mr Chair.
5 MR MPOFU: Or let me put it this way;
6 were the successful events that you accomplished in
7 Marikana, correct?
8 CAPTAIN LOEST: That's correct, Mr Chair.
9 MR MPOFU: Thanks. Right, sorry, just
10 again just to round up a few of the issues that you've
11 already testified on so that I don't ask you; it's your
12 evidence, isn't it, that by the time the shooting had
13 occurred only a few of the strikers had come around the
14 kraal?
15 CAPTAIN LOEST: Mr Chair, that's correct.
16 MR MPOFU: Thanks. Okay, and it's also
17 your evidence that you yourself, at no stage did you feel
18 that your own life was under threat?
19 CAPTAIN LOEST: Mr Chair, yes.
20 MR MPOFU: Thank you, and that is the –
21 if you look at your position in the basic line, and you
22 take it from me as a layperson, you would accept that if
23 there was any threat to the TRT line it would be at its
24 greatest to the left of that line, in other words where it
25 started, where the three, you and two others were standing,

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1 correct?
2 CAPTAIN LOEST: That is correct, Mr
3 Chair.
4 MR MPOFU: Yes, okay. So as you go
5 further down the line the threat to life would diminish
6 proportionately, correct?
7 CAPTAIN LOEST: That's correct, Mr Chair.
8 MR MPOFU: Yes. And certainly, and
9 forgive me because you've already testified on this but I'm
10 just building to something else – and certainly as at the
11 point where you called for ceasefire you did not perceive
12 any threat to anybody's life, correct?
13 CAPTAIN LOEST: That is correct, Chair.
14 MR MPOFU: Yes, and anyway, you said the
15 – well, there was no attack. The attack was over, let
16 alone imminent, correct?
17 CAPTAIN LOEST: After I called ceasefire,
18 that's correct, Mr Chair.
19 MR MPOFU: Yes. And that is more
20 reinforced as well by the fact that after you called
21 ceasefire you moved to open the door of the vehicle. At
22 that stage there was no threat, correct?
23 CAPTAIN LOEST: That is correct, Mr
24 Chair.
25 MR MPOFU: Now you've also testified -

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1 and I want to deal with this very carefully so that we
 2 don't waste time on it – that in your view there was a
 3 period, I know this happened too fast and so on, so I will
 4 forgive you if it's confusing. I will try and break it
 5 down, but in your view there was a stage where the TRT
 6 members were shooting to the ground, correct?
 7 CAPTAIN LOEST: Yes, I –
 8 MR MPOFU: So sorry, that's a question.
 9 CAPTAIN LOEST: Yes, I can recall that,
 10 Mr Chair.
 11 MR MPOFU: Yes, yes. And I suppose after
 12 that stage then they were shooting to the head, or to the
 13 people, correct?
 14 CAPTAIN LOEST: Mr Chair, yes.
 15 MR MPOFU: Yes.
 16 CAPTAIN LOEST: Members fired at the
 17 ground. I'm not sure what happened after that, who
 18 specifically aimed at who, but the consequences are there.
 19 MR MPOFU: No, fair enough. What
 20 happened after that you can just deduce from the fact that
 21 there were people on the ground, but the first thing they
 22 did was to shoot onto the ground, correct?
 23 CAPTAIN LOEST: That is correct, Mr
 24 Chair.
 25 MR MPOFU: Yes, and Captain Thupe – and I

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1 want to check if you agree with that – in a loose fashion
 2 conceded that those shots to the ground can be considered
 3 as a warning of some sort. Normally warning shots are shot
 4 to the air, but you understand roughly speaking. Would you
 5 agree?
 6 CAPTAIN LOEST: Yes, I agree, Mr Chair.
 7 MR MPOFU: Yes, and therefore if there
 8 was sufficient time to do those warning shots to the
 9 ground, then something else would have had to happen before
 10 the second stage of shooting to the head comes.
 11 CAPTAIN LOEST: Yes, I agree on that,
 12 Chair.
 13 MR MPOFU: And you yourself, between the
 14 shooting to the ground and shooting to the head, you did
 15 not see anything else happening, or a further advance by
 16 the strikers, correct?
 17 CAPTAIN LOEST: Chair, according to my
 18 recalling of the scene is that they just kept on coming
 19 until such a stage when members starting firing at the
 20 protesters themselves.
 21 MR MPOFU: Yes, but I thought Mr Wesley,
 22 if I'm not incorrect, had established with you - that's why
 23 I don't want to go through that ground, if you'll excuse
 24 the pun – that after the shots to the ground and the dusty
 25 consequences of that, you could not observe what was

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1 happening, correct?
 2 CAPTAIN LOEST: Mr Chair, yes, to a
 3 certain extent I couldn't see –
 4 MR MPOFU: Thank you.
 5 CAPTAIN LOEST: But I could see people
 6 coming forward.
 7 MR MPOFU: No, which one is it? Is it
 8 that you could not see what was happening because of the
 9 dust, or that you could see?
 10 CAPTAIN LOEST: Mr Chair, after they
 11 fired into the ground, like I said they kept on coming
 12 until the members started firing at the protesters
 13 themselves and then they started falling and then it
 14 stopped.
 15 MR MPOFU: I see. So now we have a two-
 16 stage theory. They fire to the ground. There was dust.
 17 Your vision was impaired and kept on coming, and then stage
 18 2 where they were firing to the heads came. Is that your
 19 version?
 20 CAPTAIN LOEST: Mr Chair ja, this
 21 happened in a split second, so yes, that is more or less,
 22 if you break it down into stages.
 23 MR MPOFU: And just please listen to me
 24 very carefully. I want to explore your theory, or the
 25 SAPS' theory that no command was given to kill the people.

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1 CAPTAIN LOEST: That is correct, Mr
 2 Chair.
 3 MR MPOFU: Yes, so effectively what you
 4 are saying is that if you can postulate five stages, one of
 5 which being the command to kill, then only that command was
 6 missing, and I'll explain what I'm saying now. You gave
 7 the instruction for the people to go to the basic line,
 8 correct?
 9 CAPTAIN LOEST: That's correct, Mr Chair.
 10 MR MPOFU: So let's call that step 1.
 11 You gave the instruction for the basic line and the cocking
 12 of the guns, correct?
 13 CAPTAIN LOEST: Gave the command for the
 14 basic line, but not the cocking of the guns.
 15 MR MPOFU: Ja well, is the cocking of the
 16 guns an inherent part of the formation of the basic line?
 17 CAPTAIN LOEST: Mr Chair, sometimes it's
 18 done before, sometimes during. It's very difficult to
 19 establish that –
 20 CHAIRPERSON: When a basic line is
 21 formed, guns are cocked?
 22 CAPTAIN LOEST: Yes, Mr Chair.
 23 MR MPOFU: Thank you. So that's what I'm
 24 saying. You gave the command to form the basic line, which
 25 incorporates the cocking of the guns.

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1 CAPTAIN LOEST: That's correct, Mr Chair.
 2 MR MPOFU: Yes. Now then let's jump
 3 stage 3, which is the missing link. Then you gave the
 4 command for ceasefire, to stop the killing.
 5 CAPTAIN LOEST: Gave the command for
 6 ceasefire to stop firing, not stop killing.
 7 MR MPOFU: Well, by then –
 8 CHAIRPERSON: Essentially it amounts to
 9 the same thing because certainly some of the shots that
 10 were fired had fatal consequences. But you didn't only
 11 order the killings to stop, you ordered all the firing
 12 should stop.
 13 MR MPOFU: Yes.
 14 CAPTAIN LOEST: That's correct, Mr Chair.
 15 MR MPOFU: Yes, okay, so that's step 4,
 16 and then step 5 you gave the instruction to move in and
 17 remove the weapons.
 18 CAPTAIN LOEST: That's correct, Mr Chair.
 19 MR MPOFU: Right, now let's go back to
 20 step 2. You would agree that the police, and a self-
 21 respecting average policeman knows when their life is under
 22 threat, would know, correct?
 23 CAPTAIN LOEST: That's correct, Mr Chair.
 24 MR MPOFU: They would know generally, and
 25 we've gone through this with Constable Wesley and Constable

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1 Mpofo and so on, but they would know generally when the
 2 situation required self-defence.
 3 CAPTAIN LOEST: That's correct, Mr Chair.
 4 MR MPOFU: Ja, now given that, how do you
 5 explain the command given by Brigadier Calitz and repeated
 6 by you to the following effect, if I'm paraphrasing it
 7 correctly; please remember that you must shoot when your
 8 lives are under threat, but no command will be given by
 9 your seniors to that effect? How could it be necessary to
 10 tell people who know the rules of self-defence, who know
 11 what, that when they are under threat in any event they
 12 have to protect themselves, to just before people come have
 13 to "remind" them that they must shoot, and what is more,
 14 very significant, that no command will be given? Don't you
 15 think that was preparing for a defence after killing people
 16 before those people were killed?
 17 CAPTAIN LOEST: No, Mr Chair, that was
 18 augmenting the instruction that members must make sure that
 19 a command will not be given, so with the POPS members that
 20 fired with rubber, teargas and stun grenades, that will be
 21 done on command, but the TRT members will not receive a
 22 command to shoot at all.
 23 MR MPOFU: Yes, in other words ordinarily
 24 they would shoot only if they were given a command to
 25 shoot, but today they will not be given that command,

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1 correct?
 2 CAPTAIN LOEST: Mr Chair, yes, they
 3 wanted to establish the fact that there must be no
 4 misunderstanding that POPS will get a command, but TRT will
 5 not get a command.
 6 MR MPOFU: No, Captain, I think you
 7 understand exactly what I'm putting to you. I'm saying you
 8 would agree that this, let's call it veiled command, really
 9 was saying that this, as you have said we know that these
 10 people are going to go around the kraal, we know that the
 11 only road to Nkaneng is going to be near the gap. We are
 12 going to go and form there with –
 13 [15:39] CHAIRPERSON: No, wait, wait, wait, wait.
 14 I'm not sure the last proposition is correct –
 15 MR MPOFU: He has already conceded
 16 those –
 17 CHAIRPERSON: So it's not correct to say
 18 the only road to Nkaneng was by the gap.
 19 MR MPOFU: Well, we've gone through
 20 that –
 21 CHAIRPERSON: He never conceded that. He
 22 said there were lots of roads. Your point is that it was
 23 perhaps the nearest road or the most direct road, but
 24 that's a different proposition.
 25 MR MPOFU: Ja, okay, thank you,

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1 Chairperson –
 2 CHAIRPERSON: Just put the proposition
 3 correctly.
 4 MR MPOFU: Yes, thank you, Chairperson.
 5 We know that, as you and I have agreed, the quickest route
 6 if they want to still access that road that was blocked by
 7 Nyala 4 will be at the gap where they were killed, and at
 8 that point remember that you will not be given a command to
 9 kill them even though you know the rules of self-defence
 10 but you must, actually I think the wording used, to
 11 justify, I think that's your – I'm sorry, Chairperson, if I
 12 can look for it. Yes, it's SSS3, page 3, Chairperson,
 13 paragraph 7. These were your words, the last sentence,
 14 Chairperson, "After the briefing of Colonel Scott,
 15 Brigadier Calitz made it clear to the TRT commanders that
 16 no instruction for the use of live ammunition will be given
 17 by any commander and that each member will have his own
 18 decision in deciding if his life is in danger to justify
 19 acting in self-defence." Was that the position?
 20 CAPTAIN LOEST: That's correct, Mr Chair.
 21 Members could not fire at will whenever they deemed it
 22 necessary, but only in self-defence.
 23 MR MPOFU: Yes. No, but the message here
 24 is do not expect a command, just shoot and kill. Comment?
 25 CAPTAIN LOEST: No, Mr Chair.

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1 MR MPOFU: So in actual fact I will
 2 argue, and I need your comment, that missing stage 3 of
 3 supposedly firing without a command in a very subtle way
 4 was given by telling people who know the rules of self-
 5 defence very well, and "reminding" them that they must
 6 shoot but that no command will be given. That's the same
 7 thing as giving a command. Comment?
 8 CAPTAIN LOEST: Mr Chair, each member of
 9 SAP knows that you cannot execute an unlawful command, and
 10 that would have been an unlawful command.
 11 MR MPOFU: Yes, and when you gave the
 12 order for ceasefire you did not know what each individual
 13 member was perceiving. That's your evidence, correct?
 14 CAPTAIN LOEST: That is correct, Mr
 15 Chair.
 16 MR MPOFU: But nevertheless you were
 17 emboldened, irrespective of whatever threats they
 18 perceived, to ask them to stop shooting. Correct?
 19 CAPTAIN LOEST: That is correct, Mr
 20 Chair.
 21 MR MPOFU: And they didn't. They carried
 22 on shooting, correct?
 23 CAPTAIN LOEST: Mr Chair, like I
 24 testified yesterday, I wasn't able to see what other
 25 members saw, but where I was standing at that stage

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1 everything seemed to be safe, that is why I made the call
 2 to give the cease order fire.
 3 MR MPOFU: Yes, and I think, ja you
 4 testified at that stage it was either the people who were
 5 down or they were fleeing, correct?
 6 CAPTAIN LOEST: That is correct, Mr
 7 Chair.
 8 MR MPOFU: Yes, so there couldn't
 9 possibly be any threat to anybody if the people are down or
 10 fleeing, correct?
 11 CAPTAIN LOEST: Like I said, I couldn't
 12 the other people's perception. From my side everything was
 13 clear, that is why I gave the instruction to cease fire.
 14 MR MPOFU: Yes, but whatever it is that
 15 they were seeing, you ordered them to stop shooting.
 16 CAPTAIN LOEST: Mr Chair yes, it's clear
 17 that if somebody else's life was still in danger and he
 18 needed to fire, that an instruction from me to stop firing
 19 while somebody was still attacking him was clearly also not
 20 a very good idea.
 21 MR MPOFU: Yes. No, the point I'm going
 22 to argue at the end is that your very instruction for
 23 ceasefire was concomitant with the veiled instruction to
 24 shoot "without command" earlier, which you conveyed from
 25 Callitz admittedly. Comment?

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1 CAPTAIN LOEST: That's correct.
 2 MR MPOFU: Thank you. Now the issue of
 3 the – okay, I've given you the five orders. Then I'm just
 4 going to round off, there's a point which, Chairperson, it
 5 just ran off my head now. I'll come back to it, so I'll go
 6 to this penultimate point very quickly. You know about how
 7 crime scene management, that's your seniority, correct?
 8 CAPTAIN LOEST: To a certain extent I do,
 9 Mr Chair.
 10 MR MPOFU: Yes, and you know about some
 11 of the expectations of senior officers, in particular the
 12 person referred to as the first member, correct?
 13 CAPTAIN LOEST: Yes, I do, Mr Chair.
 14 MR MPOFU: And you were effectively the
 15 senior person who was calling the shots around the scene
 16 who said the people –
 17 CHAIRPERSON: I don't know if that's an
 18 unfortunate expression. I think you can put it
 19 differently.
 20 MR MPOFU: Oh yes, sorry, Chairperson.
 21 Sorry. Yes, you were the person who was, we've already
 22 established, who gave the order to move in and clear the
 23 arms and so on, correct?
 24 CAPTAIN LOEST: That is correct, Mr
 25 Chair.

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1 MR MPOFU: Yes, and one of the duties of
 2 a person in your position would be to prioritise the
 3 injured people and their wellbeing, correct?
 4 CAPTAIN LOEST: That's correct, Mr Chair.
 5 MR MPOFU: You failed to do that,
 6 correct?
 7 CAPTAIN LOEST: It seems like that, Mr
 8 Chair.
 9 MR MPOFU: Sorry? It seems like it? Oh,
 10 thank you, ja. Yes, well then that will – Chairperson, yes
 11 sorry, Chairperson, just for, since I've had that
 12 concession it will save us a whole lot of references, but
 13 for the record I was going to refer to MMM49.1 and MMM49.2.
 14 You remember it's that document that talks about the first
 15 member must prioritise injured people.
 16 CHAIRPERSON: We had the police Standing
 17 Orders in relation to preservation of crime scenes and the
 18 duties of the various people and so on. I think we –
 19 MR MPOFU: I won't go through –
 20 CHAIRPERSON: It was when General Naidoo
 21 was being cross-examined.
 22 MR MPOFU: Yes, yes, it's from General
 23 Naidoo.
 24 CHAIRPERSON: And there was a problem
 25 when someone who was potentially one of the accused becomes

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1 a –

2 MR MPOFU: Accused number 6 –

3 CHAIRPERSON: - manager of the scene.

4 You remember that?

5 MR MPOFU: Accused number 6, if I

6 remember well, Chairperson.

7 CHAIRPERSON: Well, let's not go there

8 now, Mr Mpofu.

9 MR MPOFU: Alright, thank you.

10 CHAIRPERSON: With limited time –

11 MR MPOFU: Thank you, Chairperson.

12 CHAIRPERSON: - to be frittered away on

13 nonsense like that –

14 MR MPOFU: Yes, thank you. Right, now we

15 then go to – okay, this is just, Captain, just to clean up

16 a point that Ms Lewis canvassed with you, and I'll sort of

17 take it halfway without taking you through the entire

18 sequence. From the discussions that you had with Ms Lewis

19 - it seems it was this afternoon or this morning, as I say

20 I won't go through it – you would agree that if one of your

21 members, or 18 of them, or 16 of them had been shot with R5

22 rifles at scene 1 you would have done whatever is in your

23 power to provide them with first aid treatment, correct?

24 CAPTAIN LOEST: Where possible, yes, Mr

25 Chair.

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1 MR MPOFU: And it would have been your

2 priority before anything else, as you did on the 13th,

3 correct?

4 CAPTAIN LOEST: Mr Chair, yes, once again

5 safety comes first.

6 MR MPOFU: Sure, well it should, except

7 when it's dead miners or injured miners. Now –

8 CAPTAIN LOEST: No, Mr Mpofu.

9 CHAIRPERSON: I don't think it

10 appropriate to make comments like that, Mr Mpofu. Please

11 confine yourself to asking questions.

12 MR MPOFU: Yes, okay. I'll move on to

13 something else. And alternatively, assuming you yourself

14 were not, did not have the sufficient skills, if it were

15 your colleagues you would have enlisted the assistance of

16 the relevant NIU or STF members who were on the scene,

17 correct?

18 CAPTAIN LOEST: Mr Chair, like I

19 testified this morning, the paramedics with all the

20 necessary equipment was very close to us. Why they took so

21 long to get to us I've got no idea.

22 MR MPOFU: Alright, well Captain, I'm

23 just going to put one or two propositions to you and one of

24 them is that we have now established that the, or rather

25 you have conceded that you yourself could not explain why

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1 any member shot and killed anybody there, or injured them,

2 correct?

3 CAPTAIN LOEST: Mr Chair, the members

4 acted in self-defence and I concede with why they did it,

5 because they'd felt threatened.

6 MR MPOFU: No, you – well, I'm giving you

7 the final chance to answer this honestly. You have

8 repeatedly told this Commission that you are in no position

9 to explain on behalf of any other person why they shot.

10 You can only explain why you did not shoot. Correct?

11 CAPTAIN LOEST: That's correct, Mr Chair.

12 MR MPOFU: Yes, and therefore on the

13 question of whether or not anyone was acting in self-

14 defence you can't assist this Commission.

15 CAPTAIN LOEST: No, I cannot, Mr Chair.

16 MR MPOFU: Thank you. One second,

17 Chairperson. Yes, just again just to make sure that I

18 understood you correctly, your evidence is that the TRT

19 members itself were not expected to take part in the

20 disarmament of the protesters, correct?

21 CAPTAIN LOEST: That's correct, Mr Chair.

22 MR MPOFU: And they would play the

23 protective role which you've explained extensively, but

24 also what we might summarise as the show of force with just

25 merely being there.

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1 CAPTAIN LOEST: That is correct, Mr

2 Chair.

3 MR MPOFU: And were you aware of the, I

4 think it's Captain Thupe – and I stand corrected – were you

5 aware of the plan to encircle the strikers?

6 CAPTAIN LOEST: Yes, I was, Mr Chair.

7 MR MPOFU: Until the time that the

8 operation started?

9 CAPTAIN LOEST: Mr Mpofu, just explain

10 your question a bit better. I'm not sure what you mean by

11 that.

12 MR MPOFU: Well, okay. I'm sorry, yes,

13 maybe it's not clear. I'm saying you were aware of the

14 plan to encircle and at no stage did you become aware of a

15 different plan apart from the encirclement plan, correct?

16 CAPTAIN LOEST: That is correct, Mr

17 Chair.

18 MR MPOFU: Thank you, Chairperson, I have

19 nothing further.

20 CHAIRPERSON: Thank you. Mr Semanya will

21 do the re-examination on Tuesday.

22 MS BALOYI: Yes, Chair.

23 CHAIRPERSON: And thereafter we will have

24 Lieutenant-Colonel McIntosh.

25 MS BALOYI: Indeed so, Chair.

1 CHAIRPERSON: And so at this stage we
2 adjourn until Tuesday morning at 9 o'clock. The witness
3 will still have to be back by then. The Commission will
4 adjourn.

5 [COMMISSION ADJOURNED]

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