

# RealTime Transcriptions

TRANSCRIPTION OF THE

## COMMISSION OF INQUIRY

### MARIKANA

#### BEFORE TRIBUNAL

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

#### HELD ON

DAY 235

27 MAY 2014

PAGES 29346 TO 29431



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1 [PROCEEDINGS ON 27 MAY 2014]  
 2 [09:09] CHAIRPERSON: The Commission resumes.  
 3 Captain Kidd, you're still under oath.  
 4 WAYNE PETER KIDD: (s.u.o.)  
 5 CHAIRPERSON: Mr Mpofo.  
 6 MR MPOFU: Sorry, Chairperson –  
 7 MR WESLEY: Sorry, Chair –  
 8 CHAIRPERSON: Mr Wesley, you turned your  
 9 light on.  
 10 MR WESLEY: Yes, Chair, if we can just do  
 11 a little bit of homework, Chair.  
 12 CHAIRPERSON: Yes.  
 13 MR WESLEY: Or housework rather. Chair,  
 14 on your desks there's a file which I've put on this  
 15 morning, an A4 file. If we could just get that in as an  
 16 exhibit, and I'll explain what it is. It's divided into  
 17 two parts. The first part is a set of LRC post mortem  
 18 reports and related documents, and if I can be so bold,  
 19 Chair, as to suggest maybe we call it A bis, because it  
 20 follows on exhibit A, which is the State's pathology  
 21 reports.  
 22 CHAIRPERSON: A little bit of Latin never  
 23 causes much difficulty.  
 24 MR WESLEY: Then the second part, Chair,  
 25 you'll see it's divided just by a flag. The second part is

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1 State pathologist follow-up reports, A ter, if it would  
 2 suit you.  
 3 CHAIRPERSON: Latin scholar among the  
 4 advocates, so it's an impressive development. A ter. A,  
 5 t-e-r, for the typist –  
 6 CHAIRPERSON: I know how to spell it.  
 7 MR WESLEY: No, Chair, that was for the  
 8 typist who's going to be typing this. Chair, then if I can  
 9 just make one note, there was one outstanding follow-up  
 10 report from a Dr Ngooday which we've been waiting to  
 11 receive. I decided to hand them in now in any event, but I  
 12 have just received it. We're going to circulate that  
 13 amongst the parties, and if I can please ask the parties,  
 14 those documents are too big to send by way of email, if  
 15 they can attend on the evidence leaders and collect them  
 16 with a stick we'll copy those documents onto a stick for  
 17 them and then they can print it themselves. Thank you,  
 18 Chair.  
 19 CHAIRPERSON: Adv Hemraj wants to place  
 20 something on record.  
 21 COMMISSIONER HEMRAJ: Mr Wesley, I did  
 22 raise with you the question at some time as to whether any  
 23 of the pathologists can tell us whether any of these  
 24 injuries, entrance wounds described are as a result of  
 25 direct shots.

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1 MR WESLEY: Yes, I'm going to follow that  
 2 up and send an enquiry to not only – I'll send it to, with  
 3 the Legal Resources Centre's leave I'm going to send a  
 4 direct enquiry to Drs Perumal and Naidoo and ask them if  
 5 they are able to express an opinion, and if they are, what  
 6 the opinion would be in that regard. I'll send the email  
 7 this morning still.  
 8 COMMISSIONER HEMRAJ: And perhaps they  
 9 can explain to us the import of the irregular entrance  
 10 wounds that they described.  
 11 MR WESLEY: I will do so. Thank you,  
 12 Commissioner.  
 13 COMMISSIONER HEMRAJ: Many thanks, Mr  
 14 Wesley.  
 15 MR WESLEY: Thank you, Chair.  
 16 CHAIRPERSON: Right, Mr Mpofo.  
 17 CROSS-EXAMINATION BY MR MPOFU (CONTD.):  
 18 Thank you. Thank you, Chairperson. Good morning, Captain.  
 19 CAPTAIN KIDD: Morning, Mr Mpofo.  
 20 MR MPOFU: Captain, I want to just appeal  
 21 to you to assist me because this issue that you and I were  
 22 dealing with yesterday might well turn out to be of crucial  
 23 importance to some of the questions that need to be  
 24 answered in this Commission. Do you understand?  
 25 CAPTAIN KIDD: I understand.

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1 MR MPOFU: Thank you. I don't want again  
 2 to do the merry-go-round that we did yesterday. I just  
 3 need you to understand where I'm going with this is that –  
 4 and I'm not blaming you, whether it occurred to your mind,  
 5 you thought about it or not, that's not where I am, but  
 6 what I was trying to say to you yesterday is that logically  
 7 if we discount the two possibilities that the Chairperson  
 8 put to you, the first one – the two obvious possibilities –  
 9 the first one is that they would lay their arms down, as  
 10 you anticipated, and then you let them go. So let's put  
 11 that aside. You understand that?  
 12 CAPTAIN KIDD: I understand.  
 13 MR MPOFU: The third one, if you like, is  
 14 they were to attack you and then of course you'd be  
 15 entitled to defend yourself. So let's put that aside as  
 16 well.  
 17 CAPTAIN KIDD: Okay.  
 18 MR MPOFU: Okay? What I'm busy exploring  
 19 with you is the second possibility in that spectrum, which  
 20 as I say came out of an exchange that you had with the  
 21 Chairperson on an unrelated point, namely that they would  
 22 be approaching you with their arms but only with the sole  
 23 intention of accessing the settlement, or going home or  
 24 whatever they were going to do in the settlement. Whether  
 25 they were going to attack people or just go home again is

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1 not important, but that they would approach you, refuse to  
 2 disarm, disobey whatever instructions you give them to  
 3 disarm, but not with the intention of harming or killing  
 4 anybody, any policemen, but of going home. You understand  
 5 that?  
 6 CAPTAIN KIDD: Going home, yes, I  
 7 understand.  
 8 MR MPOFU: Yes. Now I'm saying, the  
 9 point I was putting to you is that given the instructions  
 10 that you had to stand firm, to ensure that they don't  
 11 proceed further, and given the fact that you were armed,  
 12 the only logical way in which you could have stopped them  
 13 would have been to use the instruments in your hands, which  
 14 were your firearms. Do you accept that that would be a  
 15 logical way to prevent them from accessing the squatter  
 16 camp?  
 17 CAPTAIN KIDD: No, each of the different  
 18 individuals from the members that were with me, each one of  
 19 them have got their own different techniques how they can  
 20 maybe disarm someone or take away whatever they got with  
 21 them and then to effect the arrest. It doesn't necessarily  
 22 have to mean that shots have to be fired.  
 23 MR MPOFU: Yes. No, fair enough. It  
 24 might not necessarily mean that, but it's the most logical  
 25 – let me give you can example. If you are guarding

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1 prisoners, you have a row of policemen who are guarding  
 2 prisoners and one or more of the prisoners come towards  
 3 your guard, not with the intention of attacking you as the  
 4 guard but with the intention to escape, you understand what  
 5 I mean?  
 6 CAPTAIN KIDD: I understand.  
 7 MR MPOFU: Yes, then surely the reason  
 8 why you as the guards are issued with firearms is so that  
 9 if that eventuality comes and you tell them don't go, don't  
 10 run, you try all the peaceful means, eventually if they  
 11 still continue you have to shoot them. That's why you are  
 12 issued with firearms to guard those prisoners. Do you  
 13 understand where I'm going?  
 14 CAPTAIN KIDD: I understand where you're  
 15 going.  
 16 MR MPOFU: Yes, and do you accept that  
 17 analogy?  
 18 CAPTAIN KIDD: No, I still don't accept  
 19 where you're going, is that the people that were there, if  
 20 the people came and wanted to pass they would use their  
 21 firearms. I still say that, you know that was the last  
 22 resort.  
 23 MR MPOFU: Yes.  
 24 CAPTAIN KIDD: There's other things that  
 25 the people could have used.

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1 MR MPOFU: Fair enough.  
 2 CAPTAIN KIDD: They wouldn't have just  
 3 used their firearms.  
 4 MR MPOFU: No, okay, I accept that.  
 5 Fine, so let's assume they would appeal to them, they would  
 6 try to block them, they would offer them money, whatever it  
 7 is, but as a last resort they would have to shoot them.  
 8 CAPTAIN KIDD: The last resort would be  
 9 to try and disarm and arrest. If they attack the police  
 10 then and the police could see that their lives were in  
 11 danger, then they would regard it's a danger and then they  
 12 would fire.  
 13 MR MPOFU: So even as a last resort they  
 14 wouldn't fire then if they simply disobeyed them and did  
 15 not do what the police were asking to do?  
 16 CAPTAIN KIDD: Ja, if they did not – if  
 17 they attacked the police, but like you were saying, they  
 18 were just wanting to go, then the police would instruct  
 19 them to put down their weapons. If they didn't do that and  
 20 they carried on like you said and they wanted to go  
 21 wherever, if it was in that informal settlement, I mean the  
 22 instruction was they had to leave their weapons behind,  
 23 then they could leave.  
 24 MR MPOFU: Alright. Okay, fine, we'll  
 25 leave it to argument. The reason I'm asking you this is

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1 because the words that you used are almost identical to the  
 2 words which were used by Captain Loest – is he a captain as  
 3 well?  
 4 CAPTAIN KIDD: Captain Loest, yes.  
 5 MR MPOFU: Yes, by Captain Loest, which  
 6 was that they were instructed – almost identically to  
 7 yourself – to ensure that the strikers at scene 1 do not  
 8 pass through their basic line, just as your basic line up  
 9 there was given a similar instruction. I do understand  
 10 that there are differences, but do you see where I'm  
 11 getting to?  
 12 CAPTAIN KIDD: I see where you're  
 13 getting, but I can't say that myself and Captain Loest had  
 14 the same instructions. He was by scene 1, I was by forward  
 15 holding area 2.  
 16 MR MPOFU: Yes, of course. But at the  
 17 time when you were being briefed by Colonel Scott your  
 18 group and Captain Loest's group were briefed at the same  
 19 time, correct?  
 20 CAPTAIN KIDD: No, that's not correct.  
 21 Captain Loest was not there.  
 22 MR MPOFU: Okay, but the TRT – alright,  
 23 it might not have been at the same identical time, but you  
 24 were given the same briefing by Colonel Scott.  
 25 CAPTAIN KIDD: Colonel Scott briefed us

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1 to make a basic line, filtrate the people. Whoever wanted  
 2 to come past, came past, but they didn't come through with  
 3 weapons.  
 4 MR MPOFU: Yes, and that briefing, or  
 5 rather some of the practical ramifications of that briefing  
 6 were reinforced by Brigadier Calitz, correct?  
 7 CAPTAIN KIDD: Brigadier Calitz was given  
 8 a certain instruction.  
 9 MR MPOFU: Yes.  
 10 CAPTAIN KIDD: He passed it on to whoever  
 11 was by him.  
 12 MR MPOFU: Yes. Yes, and therefore one  
 13 would expect that insofar as the blocking of ways and  
 14 protecting the settlements, that the instructions would be  
 15 similar. In other words there was nothing particularly  
 16 special about the people on the western settlement that  
 17 they needed special protection, different to those of  
 18 Nkaneng.  
 19 CAPTAIN KIDD: No, I don't agree because  
 20 at scene 1 they were given other instructions. The TRT  
 21 members were apart from the POP. They were given totally  
 22 different instructions to what mine were.  
 23 MR MPOFU: Ja.  
 24 CAPTAIN KIDD: So I don't think it was  
 25 the same.

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1 MR MPOFU: No, no, maybe I'm asking a  
 2 convoluted question. I'm saying to you when it came to the  
 3 need to block the way of the strikers in order to protect  
 4 residents, the same considerations would apply to the  
 5 residents of the western settlement than any other  
 6 settlement, including Nkaneng, obviously. Correct?  
 7 CAPTAIN KIDD: When the briefing was  
 8 given by Colonel Scott, the only thing I heard about one  
 9 informal settlement was my informal settlement.  
 10 MR MPOFU: Yes.  
 11 CAPTAIN KIDD: I don't recall any other  
 12 thing about saying that the people weren't allowed to go to  
 13 other informal settlements.  
 14 MR MPOFU: Yes. No, I'm not even saying  
 15 that you heard it. I'm telling you that Captain Loest said  
 16 that they too were asked to prevent the people from going  
 17 through. All I'm saying to you is that if there was a  
 18 requirement to protect another settlement it would be  
 19 similar to those of the western settlement. I mean you  
 20 didn't know the people who were there. The same  
 21 considerations would apply, correct?  
 22 CAPTAIN KIDD: I don't agree.  
 23 MR MPOFU: You think there would be  
 24 special measures for the people in one settlement as  
 25 opposed to another settlement in terms of protection?

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1 CAPTAIN KIDD: That's how I saw it, yes.  
 2 MR MPOFU: Okay. Were you told what were  
 3 the special circumstances that pertained to the residents  
 4 of the western settlement that they required a special kind  
 5 of protection?  
 6 CAPTAIN KIDD: If I can remember  
 7 correctly it was said that there was members that worked at  
 8 Lonmin that belonged to the NUM union that were staying in  
 9 that settlement and that information from Crime  
 10 Intelligence that these people had gone to work or wanted  
 11 to go to work and that the other people didn't want them to  
 12 go work. That's it.  
 13 MR MPOFU: And that didn't apply to other  
 14 settlements?  
 15 CAPTAIN KIDD: I didn't hear it being  
 16 said to anyone else.  
 17 MR MPOFU: You don't know?  
 18 CAPTAIN KIDD: I don't know.  
 19 MR MPOFU: Okay. Alright. Now there's  
 20 also a suggestion which I want to put to you, that in  
 21 actual fact this idea of the protection of the settlement  
 22 was not your primary task. What would you say to that?  
 23 CAPTAIN KIDD: I would say that's not  
 24 true.  
 25 MR MPOFU: If someone were to say to you

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1 according to your, or rather – okay, let me take one step  
 2 back. You were aware of the plan to encircle the koppie?  
 3 CAPTAIN KIDD: To encircle the koppie?  
 4 MR MPOFU: Ja.  
 5 CAPTAIN KIDD: No.  
 6 MR MPOFU: You never heard of this? This  
 7 is the first time you're hearing about it?  
 8 CAPTAIN KIDD: That's correct.  
 9 MR MPOFU: Were you aware of the plan,  
 10 that there was a plan?  
 11 CAPTAIN KIDD: Yes.  
 12 MR MPOFU: Ja, and you were not aware  
 13 that a version of that plan was surrounding the people  
 14 somehow?  
 15 CAPTAIN KIDD: No, there was no thing to  
 16 say to surround the whole koppie.  
 17 MR MPOFU: Well, I'm telling you there  
 18 was. You can just say you were not aware of it if you're  
 19 not aware.  
 20 CAPTAIN KIDD: I was not aware of it.  
 21 MR MPOFU: Yes. Alright, and I'm going  
 22 to argue at the end of the case that people like yourself,  
 23 or like your unit, and the Nyalas and the barbed wire and  
 24 all those things were part of a broader plan to surround  
 25 the area where the strikers were. What would you say to

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1 that?

2 CAPTAIN KIDD: That's not correct.

3 MR MPOFU: And one of the reasons I'm

4 going to say that now pertaining to your unit is the fact

5 that actually your unit had the intention of advancing

6 towards the koppie as opposed to standing still and

7 protecting the settlement. What would you say to that?

8 CAPTAIN KIDD: That's not correct.

9 MR MPOFU: Okay, good. And the reason

10 why you're saying that's not correct is because you can see

11 the –

12 CHAIRPERSON: Sorry, I think you should

13 make it clear to the witness, Mr Mpofo, which koppie you're

14 talking about.

15 MR MPOFU: Yes.

16 CHAIRPERSON: Because koppie 3 only came

17 into the picture at a fairly late stage.

18 MR MPOFU: Yes. No, fair enough. Fair

19 enough. Yes, I think that's a fair comment. At this stage

20 you would accept that koppie 3 was not part of the picture

21 until the people took refuge there. The concentration was

22 on koppie 1 and 2, the big one and the little smaller one

23 next to it, correct?

24 CAPTAIN KIDD: That's correct.

25 MR MPOFU: Yes, so when I'm saying your

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1 intention or your plan was to approach the koppie, I'm

2 talking really about the big koppie, or you can include

3 koppie 2 as well, the small - the big crowd. That was your

4 actual intention.

5 CAPTAIN KIDD: No, it wasn't.

6 MR MPOFU: That's not correct? And the

7 reason why you're saying it's not correct is because you

8 accept that that would be incompatible with an intention to

9 stand still and protect the informal settlement, correct?

10 CAPTAIN KIDD: No –

11 MR MPOFU: Because if you are approaching

12 the koppie you'd be leaving that informal settlement

13 vulnerable, correct?

14 CAPTAIN KIDD: That's correct.

15 MR MPOFU: Yes.

16 CHAIRPERSON: Can I interpose and ask a

17 question –

18 MR MPOFU: Yes, thank you, Chairperson.

19 CHAIRPERSON: - which relates to what

20 you're asking about but is actually something that arises

21 before that. When did you actually get to Marikana? You

22 were deployed there from –

23 CAPTAIN KIDD: The 15th –

24 CHAIRPERSON: - whatever the appropriate

25 word is, there from your normal position. Remind me where

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1 were you at –

2 CAPTAIN KIDD: 15th, Mr Chairman.

3 CHAIRPERSON: Sorry? On the 15th?

4 CAPTAIN KIDD: 15th. The morning of the

5 15th.

6 CHAIRPERSON: You got there on the

7 morning of the 15th.

8 CAPTAIN KIDD: That's correct.

9 CHAIRPERSON: And when did you attend a

10 JOCCOM meeting? Do you ever attend a JOCCOM meeting?

11 CAPTAIN KIDD: 16th.

12 CHAIRPERSON: On the 16th.

13 CAPTAIN KIDD: 6 o'clock the morning.

14 CHAIRPERSON: So you weren't aware of –

15 or were you? I shouldn't ask you leading questions. Were

16 you aware before the morning of the 16th what plans were on

17 the table, what was –

18 CAPTAIN KIDD: Before the 16th?

19 CHAIRPERSON: Ja, before you got there.

20 CAPTAIN KIDD: No.

21 CHAIRPERSON: So all you know about is

22 what you – would it be correct to say that all you know is

23 what was discussed at the first JOCCOM meeting you attended

24 at 6 o'clock on the Thursday morning –

25 CAPTAIN KIDD: That's correct –

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1 CHAIRPERSON: - and what happened

2 subsequently, of course you weren't at the second JOCCOM

3 meeting at 1:30 because you were out in the field.

4 CAPTAIN KIDD: That's correct, Mr

5 Chairman.

6 CHAIRPERSON: And you then received the

7 briefing that you told us about.

8 CAPTAIN KIDD: That's correct.

9 CHAIRPERSON: So your knowledge of what

10 the plans were before that is virtually non-existent?

11 CAPTAIN KIDD: That's correct, Mr

12 Chairman.

13 CHAIRPERSON: Thank you. Where were you

14 stationed on the 15th actually?

15 CAPTAIN KIDD: On the 15th, forward

16 holding area 2, but it was under the command of another

17 brigadier.

18 CHAIRPERSON: Yes, who then, who wasn't

19 there on the Thursday as far as I can recall.

20 CAPTAIN KIDD: No.

21 MR MPOFU: Thank you, Chairperson. Would

22 it surprise you if I told you that in your September

23 statement you didn't say anything about protecting any

24 settlement?

25 CAPTAIN KIDD: In my September statement?

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1 MR MPOFU: Yes.

2 CAPTAIN KIDD: That's the same statement

3 that was made in August.

4 MR MPOFU: Yes. I think yes, it's a

5 transcript of – it's TTT8. I'm assuming, Chairperson, I'm

6 sorry, I'm not familiar with some of these. I think it's a

7 transcript –

8 CHAIRPERSON: [Microphone off, inaudible]

9 MR MPOFU: 8.2, thank you, which is the –

10 [09:28] CHAIRPERSON: Sorry, I marked mine

11 TTT8.2, which is the typed version –

12 MR MPOFU: Yes, that's correct.

13 CHAIRPERSON: And the hand-written

14 version is TT8.1.

15 MR MPOFU: Yes, and point 2 is the

16 transcript of the hand-written version. That's correct,

17 yes it is. Captain, you are quite correct, yes. It's a

18 version of your - so you can use either one, we can use

19 let's say your August statement, the hand-written

20 statement. I'm saying would it surprise you if I say in

21 that statement there's nothing about the protection of a

22 settlement?

23 CAPTAIN KIDD: No.

24 MR MPOFU: It wouldn't surprise you.

25 CAPTAIN KIDD: No, because I know I

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1 didn't mention it.

2 MR MPOFU: Yes, but if that was actually

3 your reason of existence, of that line of yours, then

4 surely –

5 CHAIRPERSON: Yes, I'm sorry to interrupt

6 you. In fact you said something different. Look at

7 paragraph 4 of TTT8.1, and I think it's the same, exactly

8 the same wording in TTT8.2.

9 MR MPOFU: Yes. Paragraph 4, you say

10 there "We were instructed to cover the western side of the

11 hill to find a place to stand where we could gain quick

12 access to the hill if required." So in other words your

13 intention was exactly - what you've said is incorrect,

14 which I've put; your intention was to advance towards the

15 hill, which is a far cry from staying put and protecting

16 the settlement.

17 CAPTAIN KIDD: That's not correct. That

18 was what was said to us in the morning. We were just to go

19 to forward holding area 2 as a reserve reaction group, to

20 find a nice dirt road where we can get quick access to the

21 koppie if needed.

22 MR MPOFU: Yes, but you understand the

23 thrust of my question to you is that what you want us now

24 to believe was the most prominent part of your, of the

25 formation of that line is not even mentioned in the

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1 statement. What is mentioned is a potential advance

2 towards the hill.

3 CAPTAIN KIDD: As I mentioned earlier,

4 this statement was made in connection to a police docket,

5 it wasn't made to explain everything that was to be said in

6 a commission like this.

7 MR MPOFU: Yes. No, it's fine, so you

8 could leave out a few unimportant things, but you couldn't

9 leave out the most important thing, which is why you were

10 there, why that basic line was formed in the first place.

11 That's the most important, if you had to write one sentence

12 that's what you would write because that's what you were

13 there for.

14 CAPTAIN KIDD: No, if I had to write

15 every single thing in a statement for the docket the

16 statement will be quite long, so I thought what things that

17 I thought was important for the police docket, I put in the

18 statement.

19 MR MPOFU: So you left out the most

20 important fact, the most important reason why you were

21 there, in the interest of saving paper.

22 CAPTAIN KIDD: No, you think it was an

23 important thing, I don't think it was.

24 MR MPOFU: You don't think that was the

25 very essence of the reason why your basic line was formed

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1 was to allegedly protect the informal settlement?

2 CAPTAIN KIDD: Because nothing happened

3 there, that's why I didn't mention it.

4 MR MPOFU: Let's then jump to paragraph 9

5 of the same statement. Here now you actually – it's no

6 longer just an intention, you say what happened. "We

7 proceeded to walk towards the hill in the line facing the

8 hill." Is that correct?

9 CAPTAIN KIDD: That's what written there,

10 yes.

11 MR MPOFU: Ja. but is that what

12 happened?

13 CAPTAIN KIDD: We proceeded to walk,

14 that's how I gave instructions to members, form the basic

15 line, to walk towards the hill area.

16 MR MPOFU: No, Captain, please. "We

17 proceeded to walk towards the hill in the line facing the

18 hill." In real life is that what actually happened?

19 CAPTAIN KIDD: No.

20 MR MPOFU: So why did you say you

21 proceeded to walk towards the hill if you did not proceed

22 to walk towards the hill?

23 CAPTAIN KIDD: Like I said earlier, when

24 we formed the line we walked forward. Before we got to our

25 intended position I heard over the radio, that's when we

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1 carried on walking forward.

2 MR MPOFU: Captain Kidd, please. That

3 sentence which you wrote and put under oath, would you like

4 to amend it or is it a correct statement of fact?

5 CAPTAIN KIDD: It's a correct statement.

6 MR MPOFU: Okay fine. So as I was saying

7 earlier, not only was your instruction and your intention

8 to proceed towards the hill as opposed to standing still

9 and protecting the settlement, actually that's what you

10 did. You proceeded towards the hill. Am I right?

11 CAPTAIN KIDD: As you can see there was

12 another statement made, a consolidated statement where it

13 was said earlier by Mr Chairman that if things were left

14 out you added it in the statement. That's why you can see

15 by that statement that things that I did not add in this

16 statement were added in that statement.

17 MR MPOFU: No, that's not good enough.

18 This is not something that was left out, this is something

19 that is here.

20 CAPTAIN KIDD: We did, we made a basic

21 line and we walked towards the hill. That is what's

22 written there. That's what we did do.

23 MR MPOFU: As written in the statement.

24 CAPTAIN KIDD: As written in the

25 statement.

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1 MR MPOFU: Yes, so then you'd agree with

2 me that not only did you, as I earlier said, poise yourself

3 for a movement forward towards the hill, that actually is

4 what you did, and you've already agreed that that is

5 incompatible - you've agreed that that forward movement is

6 incompatible with standing still and protecting the

7 squatter camp. Do you still agree with that?

8 CAPTAIN KIDD: No, I didn't say, I didn't

9 agree by saying that we walked forward towards the hill.

10 MR MPOFU: No.

11 CAPTAIN KIDD: Here it's the - you are

12 asking me something that was written in the statement, did

13 I proceed to the hill, and I said we did proceed to the

14 hill.

15 MR MPOFU: No, Captain -

16 CAPTAIN KIDD: As it was indicated before

17 is that when we made the basic line it was at the beginning

18 of that informal settlement, as I showed last week

19 Thursday. Then there was quite a distance that the people

20 had to walk before I was to instruct them to stand still.

21 I intended the position, as it was put by Mr Chairman, so

22 when we were proceeding there we were, we were proceeding

23 towards the hill as it was stated in the statement.

24 MR MPOFU: Yes but, Captain, please, I'm

25 sure you understand what I'm saying. I'm saying, it's a

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1 simple statement; if somebody is not only poised but

2 actually approaches the hill, the koppies, the relevant

3 koppies that we spoke about, you approached those koppies,

4 that means you are leaving out the squatter camp. You and

5 I have agreed about this earlier.

6 CAPTAIN KIDD: No, Mr Mpofo, if you saw,

7 if you were here on last week Thursday and I described how

8 I walked forward, then you would have seen how the movement

9 went from when we disembarked from the vehicles, made the

10 line and walked towards the hills. I don't know if you

11 were here Thursday that you saw on the presentation how it

12 was shown.

13 MR MPOFU: No, it doesn't matter where I

14 was Thursday. I've been to that hill. All I'm saying to

15 you is that - and you agreed with me earlier - is that an

16 approach that goes towards the hill is incompatible with a

17 statement that you want us to believe that your job was to

18 guard the informal settlement. And you agreed with me

19 earlier, a few questions ago about that and that's why you

20 said when I said to you, you were not going to stand there,

21 you were going towards the hill, you said no, that I was

22 wrong, and I said to you the reason why you're saying I'm

23 wrong is because those two are incompatible, and you said

24 yes.

25 CAPTAIN KIDD: No, maybe I misunderstood

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1 your, the question that you put, but I said when we

2 disembarked the vehicle we made the line, we walked towards

3 the hill, and as I mentioned earlier, if you saw on

4 Thursday from one of the slides, while walking towards the

5 hill to our intended position, that's when the things

6 happened over the radio and I made the decision to walk

7 further. There was nowhere where it was said to me to walk

8 towards the hill.

9 MR MPOFU: Anyway okay, I'll leave that

10 for argument as well. And at some stage you instructed

11 your members to keep the line, in other words to remain, to

12 keep the line intact, let me put it that way, correct?

13 CAPTAIN KIDD: That's correct.

14 MR MPOFU: Ja, and according to you -

15 let's now forget that I'm disputing your version about,

16 let's assume that you were there to protect the informal

17 settlement for the purposes of the next question. Your

18 intention and your instructions from above and which you

19 also relayed to the people below you, was that the people

20 must be asked to disarm and then be allowed to proceed.

21 Correct?

22 CAPTAIN KIDD: That's correct.

23 MR MPOFU: And the majority of them did

24 that.

25 CAPTAIN KIDD: That's correct.

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1 MR MPOFU: In fact all of them did that –  
 2 CAPTAIN KIDD: All of them that – anyone  
 3 that came past us wasn't allowed to go with any weapons.  
 4 MR MPOFU: Yes, and how many hundreds of  
 5 people passed you, approximately?  
 6 CAPTAIN KIDD: I didn't count them.  
 7 MR MPOFU: But ja, roughly.  
 8 CAPTAIN KIDD: Over 100.  
 9 MR MPOFU: Over 100.  
 10 CAPTAIN KIDD: That's correct.  
 11 MR MPOFU: Okay, so where were those 100  
 12 or 200 arms? Let's assume each one had only one, what  
 13 happened to them?  
 14 CAPTAIN KIDD: I don't know what happened  
 15 to them.  
 16 MR MPOFU: Well, when was the last time  
 17 that you saw these arms?  
 18 CAPTAIN KIDD: I saw some of the members  
 19 were placing arms in a certain place but I don't know what  
 20 happened to them after that.  
 21 MR MPOFU: In a kind of pile?  
 22 CAPTAIN KIDD: Sorry?  
 23 MR MPOFU: A pile of arms.  
 24 CAPTAIN KIDD: I wouldn't say a pile,  
 25 there was a couple put in that area.

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1 MR MPOFU: Ja, but it must be some kind  
 2 of pile, or were they in a row of 100?  
 3 CAPTAIN KIDD: No, what I said was not  
 4 everyone that passed had weapons. Those that had weapons  
 5 were told to lay them down. Some of the people just lay  
 6 their weapons where they were and they were shouted by the  
 7 police to lay the weapons, they just lay them down there  
 8 and then they proceeded through.  
 9 MR MPOFU: What proportion were unarmed?  
 10 CAPTAIN KIDD: I didn't count how many.  
 11 MR MPOFU: Ja, I know.  
 12 CAPTAIN KIDD: A small proportion.  
 13 MR MPOFU: Maybe 30%?  
 14 CAPTAIN KIDD: Did you say 30%? It could  
 15 have been that.  
 16 MR MPOFU: Ja, okay. So you know that I  
 17 act for the people who were arrested eventually?  
 18 CAPTAIN KIDD: That's correct.  
 19 MR MPOFU: Ja. Now from what you are  
 20 telling me then nobody said to you these people who are  
 21 either unarmed or who have surrendered their arms would be  
 22 targets for arrest? Nobody said that to you?  
 23 CAPTAIN KIDD: I don't understand. When  
 24 you say nobody –  
 25 MR MPOFU: Nobody said look some of these

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1 people will be unarmed, others might voluntarily surrender  
 2 their arms, but you must arrest them nevertheless?  
 3 CAPTAIN KIDD: I think at different times  
 4 there were different things said but at the briefing at  
 5 half past 2 it was said that if they were unarmed and they  
 6 lay down their weapons they were allowed to proceed.  
 7 MR MPOFU: Let them go.  
 8 CAPTAIN KIDD: That's correct.  
 9 MR MPOFU: Ja, that's the point I'm  
 10 making, ja. So we can accept that SAPS' goal was for those  
 11 people who are either unarmed or have surrendered their  
 12 arms they must be let go.  
 13 CAPTAIN KIDD: No, that's not say SAPS'  
 14 goal, that was my briefing.  
 15 MR MPOFU: Well, are you a member of  
 16 SAPS?  
 17 CAPTAIN KIDD: No, but if you say SAPS  
 18 then it can include everybody.  
 19 MR MPOFU: Ja, but how do you know what  
 20 includes or doesn't include? As far as you know that was  
 21 what was said to you.  
 22 CAPTAIN KIDD: I can only answer what was  
 23 said to me at the briefing.  
 24 MR MPOFU: Ja.  
 25 CAPTAIN KIDD: So if you can say what was

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1 said to me to inform my members, that's correct.  
 2 MR MPOFU: Yes, that's what I'm saying.  
 3 Do you agree now?  
 4 CAPTAIN KIDD: That was said to me, yes.  
 5 MR MPOFU: Ja, ja. Now as far as you saw  
 6 when it came to the - or let me put it like this; nobody  
 7 said to you look even if these people surrender and even if  
 8 they are unarmed, you must arrest them for illegal  
 9 gathering?  
 10 CAPTAIN KIDD: Like I said earlier, it  
 11 could have been said earlier in one of the other briefings.  
 12 I don't remember who but at the half past 2 meeting all the  
 13 other instructions were null and void. They were changed.  
 14 MR MPOFU: No, okay at the half past 2  
 15 meeting or any other meeting under the sun nobody said to  
 16 you that irrespective of whether these people are armed or  
 17 are unarmed or whether they've surrendered their weapons,  
 18 you must still arrest them for illegal gathering?  
 19 CAPTAIN KIDD: In the morning of the 16th  
 20 in that JOCCOM meeting it was said, I remember one of the  
 21 things that was said was the plan, if it was not that the  
 22 people lay down their weapons, it was disputed and  
 23 discussed already in this Commission, at 9 o'clock, then  
 24 there would be a plan to disperse, encircle, disarm and  
 25 arrest. So it was mentioned then.



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1 MR MPOFU: Captain Kidd, can you please  
 2 answer the question?  
 3 CAPTAIN KIDD: I'm answering the  
 4 question.  
 5 MR MPOFU: I'm not talking about  
 6 whether –  
 7 CAPTAIN KIDD: You asked me when, did I  
 8 hear if it was said.  
 9 MR MPOFU: Yes.  
 10 CAPTAIN KIDD: And I'm telling you now it  
 11 was said in the 6 o'clock meeting.  
 12 MR MPOFU: No, no, you're not answering  
 13 my question and it's either because you don't want to  
 14 answer it or I have not asked it properly. So can I just  
 15 put it again?  
 16 CAPTAIN KIDD: Okay.  
 17 MR MPOFU: We all know that there was, I  
 18 think it was called disperse, disarm, arrest, we know that  
 19 arrest was part of the broader plan. That's not what I'm  
 20 asking you about, okay. I'm saying to you - please listen  
 21 carefully - at no stage did someone say to you that  
 22 irrespective of whether the strikers that you come across  
 23 are unarmed or have laid down their arms, you must  
 24 nevertheless arrest them for illegal gathering. Nobody  
 25 said that to you?

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1 CAPTAIN KIDD: Mr Mpofo, you know, if you  
 2 say anyone, I don't know what you're meaning by anyone.  
 3 Like I said, it was said in the meeting which I referred  
 4 to, as you said the SAPS –  
 5 MR MPOFU: To you.  
 6 CAPTAIN KIDD: - to everyone, to everyone  
 7 that was there and I was part of that meeting. So if you  
 8 can look at that, if it was said to me, yes it was said  
 9 there.  
 10 MR MPOFU: And it was said you must  
 11 arrest unarmed strikers?  
 12 CAPTAIN KIDD: It was said once the plan  
 13 was to disperse, encircle, disarm and arrest, that's what  
 14 they said.  
 15 MR MPOFU: Everybody?  
 16 CAPTAIN KIDD: That is what was said in  
 17 the morning.  
 18 MR MPOFU: Yes.  
 19 CAPTAIN KIDD: Part of the plan.  
 20 MR MPOFU: I know it was said in the  
 21 morning. Was it said you must arrest all 4 000 people?  
 22 CAPTAIN KIDD: No.  
 23 MR MPOFU: So can you please answer the  
 24 question? Did anyone at any stage say to you, you must  
 25 arrest unarmed strikers or those that have surrendered

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1 their arms?  
 2 CAPTAIN KIDD: No-one said it to me  
 3 directly.  
 4 MR MPOFU: Thank you. Did anyone say to  
 5 you that irrespective of whether the people disarm or are  
 6 unarmed, you must still arrest them for public violence or  
 7 murder or whatever?  
 8 CAPTAIN KIDD: No, I don't recall anyone  
 9 saying that to me.  
 10 MR MPOFU: And you are aware that some of  
 11 the people who were surrounded - now moving to koppie 3, or  
 12 scene 2 –  
 13 CHAIRPERSON: Are you moving away from  
 14 this point?  
 15 MR MPOFU: No, it's the same point,  
 16 Chair, but I'm –  
 17 CHAIRPERSON: Are you moving away from  
 18 the point about arresting people who are disarmed or not  
 19 disarmed?  
 20 MR MPOFU: No, I'm not, but -  
 21 CHAIRPERSON: Are you still busy with  
 22 that point?  
 23 MR MPOFU: Yes, Chairperson.  
 24 CHAIRPERSON: I see, alright, because  
 25 I've got a question I want to ask but –

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1 MR MPOFU: Yes, Chair, I'll indicate -  
 2 CHAIRPERSON: Maybe you'll ask it before  
 3 I get a chance.  
 4 MR MPOFU: Yes, I'll indicate,  
 5 Chairperson. You are aware as yourself now from what you  
 6 witnessed that the people who were surrounded in koppie 3,  
 7 that at least some of them surrendered their arms, correct?  
 8 CAPTAIN KIDD: That's correct.  
 9 MR MPOFU: And some of them were unarmed,  
 10 correct? Just like the 30% that you observed the other  
 11 side.  
 12 CAPTAIN KIDD: No, I don't know who was  
 13 unarmed, I can't give an answer on that.  
 14 MR MPOFU: But you can't that they were  
 15 all armed?  
 16 CAPTAIN KIDD: No, I can't.  
 17 MR MPOFU: Yes. Okay, so let's then  
 18 confine it to the ones who had surrendered their arms. In  
 19 fact you even helped to load them into the Canters,  
 20 correct?  
 21 CAPTAIN KIDD: No, I didn't.  
 22 MR MPOFU: Or you observed them being  
 23 loaded.  
 24 CAPTAIN KIDD: No, I didn't.  
 25 MR MPOFU: You didn't see anyone being

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1 loaded into vans.

2 CAPTAIN KIDD: I wasn't there at that

3 time.

4 MR MPOFU: Okay, but do you know that the

5 rule that you were given, namely that those who surrender

6 or are unarmed should be allowed to go home. Do you know

7 any reason why it was altered in relation to the people

8 that I represent?

9 [09:48] CAPTAIN KIDD: No, I don't.

10 MR MPOFU: Thank you, Chair. Yes, I'm

11 going to -

12 CHAIRPERSON: There seems to be a

13 conflict between two statements that you made on this

14 point. I would like to put them to you. The first is

15 exhibit HHH12. That's in the little binder we were given.

16 It's 2.3. I don't know whether you've got the binder. I

17 take it you've got HHH12. That's the statement that you

18 made on the 14th of November 2012. Remember you made a

19 handwritten statement in August, it was typed in September

20 and then two months later in November, you made a further

21 typed statement, which -

22 CAPTAIN KIDD: That's correct, Mr

23 Chairman.

24 CHAIRPERSON: - begins with the words,

25 "This is a further statement to that which I made on 17

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1 August 2012." That's obviously the handwritten statement.

2 "The purpose of this further statement is to address

3 specific questions now put to me that had not been put to

4 me before."

5 CAPTAIN KIDD: That's correct.

6 CHAIRPERSON: You've got the statement in

7 front of you.

8 CAPTAIN KIDD: I've got it.

9 CHAIRPERSON: Right. Now if you then

10 turn to paragraph 8, which is on the third page of that

11 statement, you will see the following, "I attended the

12 briefing called by Colonel Scott at 14:30." Now this is

13 November 2012, two months after the event - three months

14 really - things I take it are reasonably fresh in your

15 memory. Is that correct?

16 CAPTAIN KIDD: That's correct.

17 CHAIRPERSON: Right. "I attended a

18 briefing called by Colonel Scott at 14:30 at forward

19 holding area 1. Colonel Scott briefed us that at 15:30

20 phase 3 would be implemented where the barbed wire would be

21 deployed and the protestors disarmed and arrested. The

22 specific brief to my team was to look after the informal

23 settlement situated at the western side by making a basic

24 line in front of it facing the koppies. The basic line was

25 to be formed when the barbed wire was being deployed. It

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1 was our responsibility to protect the settlement from

2 attack by anyone" - so that indicates that as early as

3 November 2012 you were already saying that part of your

4 brief was to protect the informal settlement.

5 CAPTAIN KIDD: That's correct.

6 CHAIRPERSON: Alright. Then it goes on -

7 "and to disarm any armed protestors going past the line and

8 arrest them."

9 CAPTAIN KIDD: That's correct.

10 CHAIRPERSON: In other words if they were

11 disarmed you had to arrest them.

12 CAPTAIN KIDD: That's correct.

13 CHAIRPERSON: Then we look at the

14 statement that you made in this month, May 2012, that's

15 UUU2, paragraph 6. There again you talk about the briefing

16 you got from Colonel Scott and towards the end you say,

17 five lines from the foot of that paragraph, "The members

18 were to protect the informal settlement from attack."

19 That's what you said in your November statement 2012 as

20 well. "The members would also disarm and confiscate any

21 dangerous weapons in their possession of the strikers that

22 would be approaching the line and allow them to proceed."

23 So the apparent difference between the November 2012

24 statement and the May 2014 statement is your instructions

25 according to the November statement were to disarm the

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1 people and thereafter allow them to proceed, and the May

2 2014 statement says you were to - sorry, May 2014 says you

3 had to disarm them, confiscate the weapons and allow them

4 to proceed. November 2012 says disarm them and arrest

5 them. Now those - can you explain the apparent

6 discrepancy?

7 CAPTAIN KIDD: Okay, let me explain, Mr

8 Chairman. The November statement, there's two specific

9 words that I can see in the both. The November one, the

10 one that the Chairman mentioned first says "settlement from

11 attack," okay that's in both, "by anyone and to disarm any

12 armed protestor going past the line" - going past the line

13 - whereas the third statement says "approaching the line".

14 So in other words those that approached the line, put down

15 their weapons, were allowed to pass, but in that statement

16 it's written those that obviously didn't want to put down

17 the weapons and passed our line were to be disarmed using

18 any means, and arrested.

19 CHAIRPERSON: That's not mentioned -

20 CAPTAIN KIDD: That's not mentioned both

21 together -

22 CHAIRPERSON: That's not mentioned in

23 your 2014 statement.

24 CAPTAIN KIDD: Yes, it's not -

25 CHAIRPERSON: All your 2014 statement

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1 talks about disarming and confiscating people admittedly as  
 2 you said approaching the line, but it doesn't say and also  
 3 to arrest people who –  
 4 CAPTAIN KIDD: Would pass the line with  
 5 the weapons -  
 6 CHAIRPERSON: Pass the line and then  
 7 would have to be disarmed.  
 8 CAPTAIN KIDD: Yes, it doesn't.  
 9 CHAIRPERSON: That point is not made  
 10 there.  
 11 CAPTAIN KIDD: Yes, but like I said the  
 12 explanation I can give is those were the two words. The  
 13 one was where they pass and the other one was approaching.  
 14 CHAIRPERSON: So in other words your  
 15 instruction was twofold as far as armed strikers were  
 16 concerned. Those who don't pass the line, you just disarm  
 17 them and let them go.  
 18 CAPTAIN KIDD: Which everyone did.  
 19 CHAIRPERSON: Ja, those who do pass the  
 20 line, you disarm and arrest them.  
 21 CAPTAIN KIDD: That's correct, Mr  
 22 Chairman.  
 23 CHAIRPERSON: I see. Alright.  
 24 MR MPOFU: Ja, but alright, look, putting  
 25 aside that discrepancy, you do accept that - well, firstly,

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1 even at best for you, did you go to Roots?  
 2 CAPTAIN KIDD: Yes, I did go to Roots.  
 3 MR MPOFU: Yes, so even at best for you  
 4 this version about protecting the informal settlement came  
 5 after Roots, correct? Or as far as the statements are  
 6 concerned.  
 7 CAPTAIN KIDD: As far as the statements  
 8 are concerned, that's correct.  
 9 MR MPOFU: Ja. Right. So if the  
 10 instruction, or the attitude - I think let's call it that -  
 11 if the attitude that people who were not in possession of  
 12 arms or had surrendered their arms should be allowed to go  
 13 home, if that changed somewhere along the line, you don't  
 14 know why. You can't give us a logical reason why it might  
 15 have changed.  
 16 CAPTAIN KIDD: No.  
 17 MR MPOFU: It might have applied to  
 18 certain strikers and not any other strikers.  
 19 CAPTAIN KIDD: I can't give an  
 20 explanation.  
 21 MR MPOFU: And you accept that some of  
 22 the people that came past you, your group, were the people  
 23 who had - and this you might know with the benefit of  
 24 hindsight or you might not know - that the latter group had  
 25 gone down towards Nkaneng and after the events there, which

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1 I know you were not part of, they sort of turned back. You  
 2 know that.  
 3 CAPTAIN KIDD: I know there was a large  
 4 group of people that had gathered behind me.  
 5 MR MPOFU: Yes.  
 6 CAPTAIN KIDD: Yes.  
 7 MR MPOFU: And that some of them might  
 8 have come to your direction, others might have gone to  
 9 koppie 3, of that group. You saw that. That would have  
 10 happened in front of you.  
 11 CAPTAIN KIDD: No -  
 12 MR MPOFU: That some would come towards  
 13 the informal settlement, others would proceed towards -  
 14 CAPTAIN KIDD: No I can't say that. I  
 15 can't, I didn't see that. I saw people running in the far  
 16 distance. That was very far -  
 17 MR MPOFU: Yes.  
 18 CAPTAIN KIDD: - but to say that they  
 19 came around, or they came there, I can't say that.  
 20 MR MPOFU: Okay, no, what I'm getting at,  
 21 Captain, is simply that between the group of people who  
 22 took refuge at koppie 3 and those who might have chosen to  
 23 walk around towards the informal settlement, there was no  
 24 difference, it was just a matter of coincidence.  
 25 CAPTAIN KIDD: Oh yes, yes I agree.

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1 MR MPOFU: Ja, and therefore to treat  
 2 them differently would be just arbitrary, just out of pure  
 3 luck. If I happen to have gone straight towards the koppie  
 4 then I might get arrested. If I've taken a slightly  
 5 leftwards turn towards the settlement then I'll go home.  
 6 That's really the reality.  
 7 CAPTAIN KIDD: No, I don't agree.  
 8 MR MPOFU: No. You and I -  
 9 CAPTAIN KIDD: Can I explain why I don't  
 10 agree?  
 11 MR MPOFU: No, first let me - yes, I'll  
 12 give you a chance to explain, but I just want to recap.  
 13 You have agreed with me -  
 14 MS BALOYI: Chairperson, the witness  
 15 should be afforded the opportunity to explain when he asks  
 16 to.  
 17 MR MPOFU: I've just said I'm going to  
 18 afford him an opportunity.  
 19 MS BALOYI: No, he should be allowed  
 20 first to -  
 21 CHAIRPERSON: Give him a chance to give  
 22 his explanation and then we can - you could put your next  
 23 question if you still want to put it.  
 24 MR MPOFU: [Microphone off, inaudible]  
 25 CHAIRPERSON: No, no, no, Mr Mpofo, it's

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1 not a waste of time. We don't know it's a waste of time.  
 2 Let's hear what the explanation is first. It may be a very  
 3 valuable explanation he can give us.  
 4 CAPTAIN KIDD: Okay, you asked if it  
 5 could be the same people that should be treated the same.  
 6 The things that happened at koppie 3 were, first of all  
 7 what I witnessed is that the shots that were fired in our  
 8 direction that we thought came from the strikers, the  
 9 aggressive manner in which they approached certain members,  
 10 so those - that's my explanation to saying that I don't  
 11 think that the two groups were the same or that they should  
 12 be treated the same.  
 13 MR MPOFU: Ja, as I suspected you didn't  
 14 understand my question, that's why I was trying to explain  
 15 it to you. I'm saying to you that you and I have agreed  
 16 that - we've agreed that if someone was coming from the  
 17 direction of the big koppie, as to whether they would  
 18 proceed straight westwards towards koppie 3, or they would  
 19 veer slightly more leftwards towards where you were, was  
 20 just a matter of coincidence.  
 21 CAPTAIN KIDD: That's correct.  
 22 MR MPOFU: Yes. Now I'm saying that  
 23 coincidence, if I'm the same striker - Striker Mpofu - as  
 24 to whether I went straight, I went to koppie 3 or I went  
 25 towards where you are was just a matter of pure chance.

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1 CAPTAIN KIDD: That's correct.  
 2 MR MPOFU: Yes, but the point I'm making  
 3 is that if in that matter of pure chance, if I had come  
 4 towards you unarmed, or I'd put my arms down, I would have  
 5 been home and dry, correct?  
 6 CAPTAIN KIDD: That's correct.  
 7 MR MPOFU: But if by pure coincidence, as  
 8 you and I have agreed, I had chosen to go straight and get  
 9 trapped in koppie 3, I would be arrested. Same guy, same  
 10 conditions, same no arms or have surrender the arms, but  
 11 those would be my two different fates.  
 12 CAPTAIN KIDD: That's correct.  
 13 MR MPOFU: And you - what I'm saying to  
 14 you is that you are not aware of any reason why I, Striker  
 15 Mpofu, whether I am today a person facing murder charges  
 16 and all sorts of things, or whether I just went home  
 17 because I went past Captain Kidd, there is no logical  
 18 reason why the same me would have those different fates,  
 19 correct?  
 20 CAPTAIN KIDD: No, not correct. As I  
 21 said at the question, as I explained myself, those people  
 22 that remained on the koppie, according to myself didn't  
 23 want to leave. They stayed there and then there were  
 24 certain incidents where they charged at the police. They  
 25 didn't disarm the weapons - they didn't put down the

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1 weapons and then there were certain shots fired. So that  
 2 still is in dispute, but that would be my reason. So out  
 3 of all the things I would agree, but that one I won't.  
 4 MR MPOFU: Yes.  
 5 CAPTAIN KIDD: That's why Striker Mpofu  
 6 would have been arrested.  
 7 MR MPOFU: Yes, because you are saying  
 8 Striker Mpofu - so are you saying all the people who  
 9 coincidentally ended up at koppie 3 attacked the police?  
 10 CAPTAIN KIDD: No, I'm not saying that.  
 11 MR MPOFU: Okay. You are also not saying  
 12 that all the people who went to koppie 3 did not respond  
 13 when they were asked to surrender their arms, they did not  
 14 do so?  
 15 CAPTAIN KIDD: No, I'm not saying that, I  
 16 didn't see -  
 17 MR MPOFU: You're not saying that?  
 18 CAPTAIN KIDD: I didn't see everyone.  
 19 MR MPOFU: Yes. So the probability is  
 20 that among those people were people who behaved exactly in  
 21 the same way as the people you were faced with where you  
 22 said place down your arms, they placed down their arms and  
 23 they went home. That's the probability.  
 24 CAPTAIN KIDD: According to what the  
 25 people said - it could be the possibility, yes.

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1 MR MPOFU: Yes, and on top of that, you  
 2 are aware now - or you should be - that the police insofar  
 3 as there were shots fired, the police have conceded that  
 4 that may have been shots that came from the police  
 5 themselves, so-called friendly fire. I accept that at that  
 6 stage you didn't know.  
 7 CAPTAIN KIDD: I didn't know, but I also  
 8 know that there was firearms found on the koppie as well.  
 9 MR MPOFU: Yes, but do you accept that  
 10 the police have conceded that the fire that was experienced  
 11 there may have been friendly fire, in other words fire  
 12 coming from other police?  
 13 CAPTAIN KIDD: I accept that, yes.  
 14 MR MPOFU: Yes. So even that  
 15 distinguishing factor between Striker Mpofu 1 and Striker  
 16 Mpofu 2 might be a neutral fact, correct?  
 17 CAPTAIN KIDD: No, it's not correct  
 18 because there was firearms found, so to say who the  
 19 firearms belonged to must have been the people on the  
 20 koppie, the strikers.  
 21 MR MPOFU: Yes.  
 22 CAPTAIN KIDD: The Mpofu 2.  
 23 MR MPOFU: Sure, but there were two  
 24 other -  
 25 CHAIRPERSON: I'm sorry to interrupt

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1 you -

2 MR MPOFU: Sorry.

3 CHAIRPERSON: There were a number of

4 people on koppie 3, quite a - I think well over a hundred

5 strikers according to the evidence.

6 CAPTAIN KIDD: 200.

7 CHAIRPERSON: I say well over a hundred

8 on koppie 3, and according to exhibit L three pistols were

9 found. There may have been other firearms of course as

10 well, but all the casings that were found, all the

11 "doppies" that were found on the koppie were fired from

12 police firearms according to the ballistics. So certainly

13 of the pistols that were fired, one appears to have fired I

14 think about seven shots, the second one appears to have

15 fired one and the third one the magazine was full. So if

16 those pistols were the only firearms in possession of the

17 strikers, a maximum of eight shots were fired. There is a

18 possibility that there were other striker firearms as well,

19 but if so, they must have somehow got them past the people

20 who searched them, or who was supposed to have searched

21 them when they exited, and in any event, I take it not many

22 shots - extra shots could have been fired because you would

23 have expected some "doppies" from firearms that weren't

24 police firearms. So the indications are that there were

25 shots fired from the koppie, certainly from pistols, or two

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1 pistols -

2 CAPTAIN KIDD: Okay.

3 CHAIRPERSON: - and, but not very many.

4 So on the probabilities therefore, as far as I see it prima

5 facie at the moment, the vast majority of the shots were

6 fired by the police and, of course, the police at one side

7 of the koppie did not know the police on the other side of

8 the koppie were there and vice versa which, of course, was

9 a further factor we have to bear in mind, but - so you're

10 right in saying there were firearms on the koppie, but one

11 mustn't overeat that particular pudding because they don't

12 appear to have fired very many shots, right?

13 CAPTAIN KIDD: That's correct, Mr

14 Chairman.

15 MR MPOFU: And in any event, the two or

16 three firearms - I'll stick with what the Chair says, I

17 thought it was two but let's say three -

18 CHAIRPERSON: If you look at exhibit L

19 there were -

20 MR MPOFU: At koppie -

21 CHAIRPERSON: We're talking about koppie

22 3.

23 MR MPOFU: Koppie 3.

24 CHAIRPERSON: Three were found.

25 MR MPOFU: Ja.

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1 CHAIRPERSON: One appears to have had a

2 full magazine. I take it one assumes nothing was fired

3 from it.

4 MR MPOFU: Yes.

5 CHAIRPERSON: The other one, as far as I

6 remember -

7 MR MPOFU: Eight.

8 CHAIRPERSON: - held eight and there was

9 one -

10 MR MPOFU: Missing.

11 CHAIRPERSON: - one left. So indications

12 were that it probably fired seven.

13 MR MPOFU: Ja.

14 CHAIRPERSON: And the other one appears

15 to have fired one.

16 MR MPOFU: Ja.

17 CHAIRPERSON: Because there were seven

18 left I think. So, anyway, it doesn't matter whether eight

19 were fired or nine were fired or -

20 MR MPOFU: Ja.

21 CHAIRPERSON: - it's that order of -

22 MR MPOFU: Yes, correct.

23 CHAIRPERSON: Everyone else left - who

24 left was either arrested, or allowed to go, and I suppose

25 it's theoretically possible for someone who's allowed to go

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1 succeeded in smuggling some firearm past the people who

2 were searching him, but again, looking at the probabilities

3 there may be difficulties with that.

4 MR MPOFU: Ja, right.

5 CHAIRPERSON: Anyway, but it's important

6 to get the number of possible, or probable firearms in the

7 hands of the strikers and the number of shots fired

8 possibly or probably or actually by the strikers also in

9 perspective.

10 MR MPOFU: Thanks, Chairperson.

11 CHAIRPERSON: That's why I said what I

12 said.

13 MR MPOFU: Thank you. Thank you,

14 Chairperson. Anyway, I think the point is made. And

15 you're aware that a total of 270 - well it was 270 because

16 there were people in hospital - at least a total of 259

17 people were arrested, those who had been surrounded at

18 koppie 3?

19 CAPTAIN KIDD: I heard that, yes.

20 MR MPOFU: And that included people who

21 had surrendered in front of the police, correct?

22 CAPTAIN KIDD: That's correct.

23 MR MPOFU: And it also included people

24 who surrendered arms other than firearms, kieres and

25 spears and things like that, correct?

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1 CAPTAIN KIDD: That's correct.  
 2 MR MPOFU: Ja, and as far as you know  
 3 once after the fact admittedly the police realised that  
 4 there was this so-called friendly fire they didn't say ah  
 5 well, then these people were wrongly arrested?  
 6 CAPTAIN KIDD: I don't understand the  
 7 question.  
 8 [10:08] MR MPOFU: No I'm saying, I'm accepting  
 9 that at the time there was this confusion about the firing  
 10 and so on. As far as you know, once it was discovered  
 11 later, at least by the time we heard the opening statement  
 12 here, that there might have been so-called friendly fire,  
 13 you're not aware of anyone saying well, that means those  
 14 people were wrongly, were arrested under the wrong  
 15 impression?  
 16 CAPTAIN KIDD: No, I'm not aware of  
 17 anything.  
 18 MR MPOFU: Okay. Alright, now you  
 19 remember there's evidence that you gave about muti. You  
 20 said one of your black members – whatever that means – one  
 21 of your black members told you that there was muti,  
 22 correct?  
 23 CAPTAIN KIDD: That's correct.  
 24 MR MPOFU: That happened once, that  
 25 explanation about the muti under the armpit or whatever?

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1 That incident happened once?  
 2 CAPTAIN KIDD: I don't understand. What  
 3 incident? That I saw it?  
 4 MR MPOFU: No, that you were told by one  
 5 of your black members that this is muti.  
 6 CAPTAIN KIDD: That happened, yes, once  
 7 to me; when I enquired it was told, yes.  
 8 MR MPOFU: Okay, it did not happen again  
 9 in your presence that someone was explaining the muti?  
 10 CAPTAIN KIDD: No, I don't recall if it  
 11 was said anywhere else.  
 12 MR MPOFU: Any other time.  
 13 CAPTAIN KIDD: I don't recall it. It  
 14 could have been mentioned in someone else asking, but when  
 15 I asked this is what was said to me.  
 16 MR MPOFU: Well, unfortunately I don't  
 17 have the clip, but maybe that will help us and save time.  
 18 When you were shown the clip, I think by Ms Le Roux, where  
 19 you appeared – you remember?  
 20 CAPTAIN KIDD: That's correct.  
 21 MR MPOFU: And in that clip, that clip  
 22 corresponded with the transcript where somebody says "This  
 23 is that muti shit." You remember that?  
 24 CAPTAIN KIDD: I remember that.  
 25 MR MPOFU: And "It won't work here,

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1 Baba," something like that.  
 2 CAPTAIN KIDD: I remember something like  
 3 that, yes.  
 4 MR MPOFU: Yes, that's the same episode?  
 5 CAPTAIN KIDD: That's the same episode  
 6 as?  
 7 MR MPOFU: As when you were told that  
 8 this is the muti.  
 9 CAPTAIN KIDD: No.  
 10 MR MPOFU: Well, I thought it happened  
 11 once that you heard the description of the –  
 12 CAPTAIN KIDD: No, you asked me when did  
 13 I find out. This is when I found out, it was told to me.  
 14 If it was said to someone else or someone else asked,  
 15 that's not – if I heard it or I didn't hear it, I didn't  
 16 take notice of it.  
 17 MR MPOFU: But it was about the same  
 18 person?  
 19 CAPTAIN KIDD: Yes, that's correct.  
 20 MR MPOFU: Ja, right. And do you think  
 21 that's the kind of language that should be used by the  
 22 police?  
 23 CAPTAIN KIDD: I cannot say how the  
 24 people who spoke, whoever said it maybe was explaining  
 25 something, but no, it's not a nice language to use

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1 anywhere.  
 2 MR MPOFU: Now you remember there was  
 3 also the evidence that you gave regarding the killing of Mr  
 4 Mkhonjwa and the shooting of the man in the red T-shirt.  
 5 CAPTAIN KIDD: That's correct.  
 6 MR MPOFU: Mr Mathangeni –  
 7 CHAIRPERSON: Sorry to interrupt you, Mr  
 8 Mpofo, just while we're busy with that. Your attorney  
 9 promised us yesterday that she would endeavour to ascertain  
 10 the surname of the gentleman in the red Arsenal T-shirt and  
 11 it's just, you know, it's undesirable to refer to people  
 12 just in that way if we can find out their names. So do you  
 13 know whether that information is available yet?  
 14 MR MPOFU: Yes, Chair, I've just said the  
 15 name. It's Mr Mathangeni.  
 16 CHAIRPERSON: How does one spell it?  
 17 MR MPOFU: M-A-T-H-A-N-G-E-N-I.  
 18 CHAIRPERSON: Mr Mathangeni. Has he made  
 19 a statement at all? Do we know?  
 20 MR MPOFU: No. No, Chairperson, we had  
 21 to do a whole tracing –  
 22 CHAIRPERSON: Yes, I understand.  
 23 MR MPOFU: Yes, thank you.  
 24 CHAIRPERSON: We now know who he is, so  
 25 we don't have to refer to him as the Arsenal supporter –

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1 MR MPOFU: Yes.

2 CHAIRPERSON: - or anything of that kind.

3 MR MPOFU: Yes. You remember that, ja?

4 CAPTAIN KIDD: I do remember that.

5 MR MPOFU: So it involved Mr Mkhonjwa and

6 Mr Mathangeni.

7 CAPTAIN KIDD: Mathangeni, yes.

8 MR MPOFU: Yes, and Mr Ntsebeza and you

9 had a long debate as to whether that incident happened when

10 the two people on their own as it were, were allegedly

11 attacking the police, or whether they were part of a group.

12 You remember that?

13 CAPTAIN KIDD: I remember that.

14 MR MPOFU: And you were adamant that they

15 did it on their own, irrespective of whatever Greyling and

16 other people might have said, correct?

17 CAPTAIN KIDD: That's correct. Greyling

18 didn't mention about that incident, the other incident –

19 MR MPOFU: Ja, okay, whoever, but he

20 quoted other statements where it was suggested that it was

21 part of a group, but you said, you were adamant that they

22 did it on their own.

23 CAPTAIN KIDD: That's correct.

24 MR MPOFU: And you stand by that?

25 CAPTAIN KIDD: That's correct.

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1 MR MPOFU: Okay, if you go to TTT8.1 or

2 point 2 – I think point 2 because it's the printed one –

3 CAPTAIN KIDD: Can you tell me from which

4 evidence that was?

5 MR MPOFU: No, it's your statement.

6 CAPTAIN KIDD: My statement?

7 MR MPOFU: Ja, it's your – the transcript

8 of your written statement, TTT8.2. Let's go to paragraph

9 13.

10 CAPTAIN KIDD: I'm there.

11 MR MPOFU: Start with the – yes, "The

12 group was making a hissing sound," and so on and so on.

13 "They approached members on the western side and stopped

14 nearby some bushes." You see that?

15 CAPTAIN KIDD: I do see that.

16 MR MPOFU: "The males in front were

17 crouching and pointing weapons in an aggressive manner."

18 You see that?

19 CAPTAIN KIDD: I see that.

20 MR MPOFU: Ja, that's the end of 13.

21 Paragraph 14 says, "At the time two persons of the group

22 near the bushes on the western side charged at the police."

23 Do you see that?

24 CAPTAIN KIDD: I see that.

25 MR MPOFU: So your own version is that at

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1 the time two persons who were part of a group charged at

2 the police.

3 CAPTAIN KIDD: That's correct.

4 MR MPOFU: And that's what you've been

5 denying until about two questions ago.

6 CAPTAIN KIDD: I denied what?

7 MR MPOFU: No, Captain, I said to you –

8 you remember you had a debate with Mr Ntsebeza, which I've

9 just confirmed now, as to whether or not the two persons

10 who charged were charging on their own or were part of a

11 group.

12 CAPTAIN KIDD: That's correct.

13 MR MPOFU: You remember that?

14 CAPTAIN KIDD: I remember.

15 MR MPOFU: And I've just asked you now

16 that you were adamant and you stand by the fact that they

17 were not part of a group but they were on their own.

18 CAPTAIN KIDD: No, you asked me if they

19 charged as a group. You didn't ask me if they were on

20 their own.

21 MR MPOFU: No. No, no, no, I –

22 CHAIRPERSON: Sorry, Mr Mpofo, I think

23 the transcript will tell us which of you is right. I don't

24 know –

25 MR MPOFU: Yes, well whatever the

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1 transcript says, or whatever you're saying, are you

2 satisfied now that the people, the two gentlemen concerned

3 were part of a group?

4 CAPTAIN KIDD: They were part of the

5 group, yes.

6 MR MPOFU: Okay. Alright, and that's the

7 group that was approaching on the western side either to

8 attack or to escape, we don't know, correct?

9 CAPTAIN KIDD: Correct.

10 MR MPOFU: Okay. Then Chairperson, could

11 we take the comfort break?

12 CHAIRPERSON: Alright, I can understand

13 sometimes the need for these comfort breaks arises earlier

14 than expected. We'll take the comfort break now for

15 quarter of an hour.

16 MR MPOFU: Thank you, Chairperson.

17 [COMMISSION ADJOURNS COMMISSION RESUMES]

18 [10:49] CHAIRPERSON: The Commission resumes.

19 Sorry, it's not always possible to adhere to the times we

20 announce for comfort breaks because housekeeping problems

21 intervene, so I apologise to those who were kept waiting

22 because of that. Captain Kidd, you're still under oath.

23 WAYNE PETER KIDD: (s.u.o.)

24 CHAIRPERSON: Mr Mpofo.

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

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1 Thank you, Chairperson. Captain, you are not able to say  
 2 whether Mr Mathangeni was carrying any weapons, correct?  
 3 CAPTAIN KIDD: No, as I've said I'm sure  
 4 I testified that he had two weapons, one in each hand.  
 5 MR MPOFU: Oh, I thought that was Mr  
 6 Mkhonjwa.  
 7 CHAIRPERSON: Mr Mathangeni you remember  
 8 is the gentleman in the –  
 9 CAPTAIN KIDD: With the red –  
 10 CHAIRPERSON: - in the Arsenal T-shirt.  
 11 CAPTAIN KIDD: That's correct. The other  
 12 guy, the, body N had one weapon in his hand.  
 13 MR MPOFU: Oh, I thought the person who  
 14 there was a dispute as to you said they had two and I think  
 15 other people said he had one, Greyling or so, that was Mr  
 16 Mpumza.  
 17 CAPTAIN KIDD: No.  
 18 MR MPOFU: Alright, and when did he have  
 19 those two weapons? The first time or the second time?  
 20 CAPTAIN KIDD: Both times.  
 21 MR MPOFU: Both times?  
 22 CAPTAIN KIDD: That's correct.  
 23 MR MPOFU: And so why did you not mention  
 24 that in your statement before Roots? Or well, at any time.  
 25 CAPTAIN KIDD: This statement was made

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1 before Roots.  
 2 MR MPOFU: Yes, it was, and all you said  
 3 was that he ran straight towards the police. That's all,  
 4 after a 20-minute break.  
 5 CAPTAIN KIDD: After 20 seconds.  
 6 MR MPOFU: You said 20 minutes.  
 7 CAPTAIN KIDD: When he came out the first  
 8 time, then he came out the second time?  
 9 MR MPOFU: Yes.  
 10 CAPTAIN KIDD: 20 seconds.  
 11 MR MPOFU: It says 20 minutes. Paragraph  
 12 15 of TTT8, "This same male dressed with a red jacket  
 13 returned about 20 minutes later."  
 14 CAPTAIN KIDD: No, I'm sorry, if you look  
 15 at my written statement it says 20 seconds.  
 16 MR MPOFU: Okay, in any event you say  
 17 when he –  
 18 CHAIRPERSON: Sorry, which paragraph is  
 19 that?  
 20 MR MPOFU: 20 – I'm reading from TTT8.2,  
 21 Chairperson –  
 22 CHAIRPERSON: Yes, I –  
 23 MR MPOFU: Paragraph 15, one-five.  
 24 CAPTAIN KIDD: Mr Chairman, if you could  
 25 look at the typed version it says 20 minutes, but if you

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1 look at my written statement it says 20 seconds.  
 2 CHAIRPERSON: Oh, yes. Ja, the witness  
 3 is correct on that, isn't he? So the handwritten statement  
 4 does say 20 seconds and there's the typing error in the  
 5 typed statement, which he didn't sign. So he's correct.  
 6 MR MPOFU: Oh well, okay.  
 7 CHAIRPERSON: The time in question isn't  
 8 repeated in UUU2.  
 9 MR MPOFU: Yes.  
 10 CHAIRPERSON: But the more or less  
 11 contemporaneous statement in August 2012 does say seconds.  
 12 MR MPOFU: Ja well, Chairperson, that's  
 13 fine. I'll accept that. It's not clear, but I think it's  
 14 not a material point.  
 15 CHAIRPERSON: Well, it certainly looks  
 16 like, you know it's an abbreviation, it's sec, S-E-C, but  
 17 it's certainly not M-I-N, so we can accept it when he says  
 18 it's 20 seconds. He says he wrote 20 – is it your  
 19 handwriting or someone else's handwriting?  
 20 CAPTAIN KIDD: That's correct, Mr  
 21 Chairman, this is my handwriting.  
 22 CHAIRPERSON: Your handwriting, so you  
 23 wrote SEC, meant seconds?  
 24 CAPTAIN KIDD: I wrote SEC, which I  
 25 meant –

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1 CHAIRPERSON: Okay.  
 2 CAPTAIN KIDD: - which is abbreviation  
 3 for seconds.  
 4 MR MPOFU: Okay.  
 5 CHAIRPERSON: Yes, I picked that up and  
 6 Mr Mpofu accepts what you say.  
 7 MR MPOFU: Ja, I do, Chairperson. And in  
 8 any event when it comes to, you had a discussion - I'm not  
 9 going to belabour the point - about the alleged tampering  
 10 with the crime scene. As far as you were concerned there  
 11 should not have been tampering with the crime scene,  
 12 correct?  
 13 CAPTAIN KIDD: Correct.  
 14 MR MPOFU: And one of the outcomes, and  
 15 I'm saving us from the long story of what happened during  
 16 the day and what have you, but the bottom line is that one  
 17 of the outcomes of the tampering was the fact that  
 18 according to you Mr Mpumza had one weapon, but he ended up  
 19 with four weapons on the photo, correct?  
 20 CAPTAIN KIDD: Mr Mpumza is body C?  
 21 MR MPOFU: Ja, Mr – I think it's Mr –  
 22 who's the one who was treated by McIntosh? It was –  
 23 CAPTAIN KIDD: Mr Mpumza.  
 24 MR MPOFU: Yes. No, you said Mr Mpumza  
 25 had two weapons.



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1 CAPTAIN KIDD: That's correct.  
 2 MR MPOFU: Ja. Now the other, the one  
 3 who had one weapon was Mr Mkhonjwa according to you.  
 4 CAPTAIN KIDD: Body N, yes.  
 5 MR MPOFU: Yes.  
 6 CAPTAIN KIDD: That's correct.  
 7 MR MPOFU: And what I'm saying is that,  
 8 to cut a long story short, the outcome of the tampering was  
 9 the fact that according to you he had one weapon, but on  
 10 the photo he ended up with four weapons?  
 11 CAPTAIN KIDD: According to that photo  
 12 that I saw wasn't correct, yes.  
 13 MR MPOFU: Yes, he had four weapons.  
 14 CAPTAIN KIDD: That's correct.  
 15 MR MPOFU: But you remember him having  
 16 had one?  
 17 CAPTAIN KIDD: Yes.  
 18 MR MPOFU: Okay. So from that it will be  
 19 clear that the ridiculous notion of replacing the weapons  
 20 was not without fault, correct?  
 21 CAPTAIN KIDD: Correct.  
 22 MR MPOFU: Thanks. Right, now we go to –  
 23 just a remark which I'd like to check if you agree with me,  
 24 you would agree that it was remarkable that according to  
 25 you, you had a hundred percent success rate when it came to

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1 asking people to put down their arms and then proceeding?  
 2 CAPTAIN KIDD: I don't understand,  
 3 hundred percent success rate?  
 4 MR MPOFU: Ja, I mean nobody –  
 5 CHAIRPERSON: No, no, no, what he means  
 6 is, you remember there was a debate, I started it yesterday  
 7 and Mr Mpofu carried on this morning, about what would you  
 8 have done if some of the people didn't want to give up  
 9 their weapons, just wanted to walk past, how would you have  
 10 handled it. You remember?  
 11 CAPTAIN KIDD: Yes, I remember.  
 12 CHAIRPERSON: But in the end that didn't  
 13 arise.  
 14 CAPTAIN KIDD: Yes.  
 15 CHAIRPERSON: Because everyone you asked  
 16 to lay down his arms, laid them down.  
 17 CAPTAIN KIDD: That's correct.  
 18 CHAIRPERSON: Right, so that's what Mr  
 19 Mpofu means when he says you had a hundred percent success  
 20 rate.  
 21 CAPTAIN KIDD: Okay, I understand, yes.  
 22 CHAIRPERSON: And you agree with that  
 23 proposition?  
 24 CAPTAIN KIDD: Yes.  
 25 CHAIRPERSON: Yes.

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1 MR MPOFU: Yes, so one can then say that  
 2 the disposition, or the attitude of the strikers was that  
 3 if they were asked to lay down their arms they did so.  
 4 Your experience is that all of them complied.  
 5 CAPTAIN KIDD: The ones that came past  
 6 us?  
 7 MR MPOFU: Yes.  
 8 CAPTAIN KIDD: That's correct.  
 9 CHAIRPERSON: No, no, it's actually not  
 10 when they came past you, it's when they came up to you –  
 11 CAPTAIN KIDD: Or when they came up to  
 12 us –  
 13 CHAIRPERSON: Isn't that the distinction,  
 14 if they came past they would have to be –  
 15 CAPTAIN KIDD: They would have been  
 16 arrested.  
 17 CHAIRPERSON: - be arrested.  
 18 CAPTAIN KIDD: That's correct, yes.  
 19 CHAIRPERSON: But no-one came past you –  
 20 CAPTAIN KIDD: With –  
 21 CHAIRPERSON: - until he'd handed down  
 22 his weapon.  
 23 CAPTAIN KIDD: That's correct.  
 24 CHAIRPERSON: If he had a weapon.  
 25 CAPTAIN KIDD: That's correct, Mr

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1 Chairman.  
 2 CHAIRPERSON: Right, so that's why you  
 3 had this hundred percent success rate.  
 4 CAPTAIN KIDD: That's correct.  
 5 CHAIRPERSON: And you didn't arrest them.  
 6 CAPTAIN KIDD: That's correct, Mr  
 7 Chairman.  
 8 MR MPOFU: Yes, and from that also we can  
 9 then say that it's clear that they were more interested in  
 10 reaching the settlement, or going home, than retaining  
 11 their arms, correct?  
 12 CAPTAIN KIDD: That's correct.  
 13 MR MPOFU: And so that would go along  
 14 with their own testimony of people like Mr Magidiwana who  
 15 say that they were more worried about being trapped within  
 16 the circle, or whatever you call it, the enclosure that the  
 17 police were clearly creating, and to rather be on the home  
 18 side of that enclosure. That was your experience at least?  
 19 CAPTAIN KIDD: I don't understand, what's  
 20 the question?  
 21 MR MPOFU: No, I'm saying that more than  
 22 whether or not they were going to retain their arms and so  
 23 on, their most important objective was to be safe, to be at  
 24 home, to be –  
 25 CAPTAIN KIDD: Yes, that's correct.

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1 MR MPOFU: - beyond the police trap.  
 2 CAPTAIN KIDD: Yes.  
 3 MR MPOFU: Correct, ja.  
 4 CAPTAIN KIDD: That's correct.  
 5 MR MPOFU: Right, and also the statements  
 6 – and I'm not intending to take you through it, but it's  
 7 either something you witnessed or you heard other people  
 8 talking about and so on – the statements also indicate that  
 9 another group of people who had a hundred percent success  
 10 are those who fired warning shots in the air or on the  
 11 ground, because the response was always that the strikers  
 12 would put their arms down or kneel down, or something like  
 13 that.  
 14 CAPTAIN KIDD: No, I didn't hear – I  
 15 don't know what, which – I can't give comment on that one.  
 16 MR MPOFU: Okay, you're not aware of any  
 17 of the people who say that they shot in the air, or using  
 18 their R5s, they shot on the ground?  
 19 CAPTAIN KIDD: I don't recall that, no.  
 20 MR MPOFU: Okay. But if that was indeed  
 21 so, again it would indicate similarly that when the  
 22 strikers were warned either by firing in the air, they  
 23 complied completely, correct?  
 24 CAPTAIN KIDD: No, I can't, I can't say  
 25 yes –

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1 MR MPOFU: No, I'm saying if –  
 2 CAPTAIN KIDD: - because I don't know  
 3 where, on which side that was –  
 4 MR MPOFU: No, on any side. I'm saying  
 5 if the statements show that all the policemen who say they  
 6 fired in the air or on the ground received compliance from  
 7 the strikers, that would also indicate another willingness  
 8 for them to comply with orders?  
 9 CAPTAIN KIDD: No, I wouldn't know that  
 10 because I don't know about those members.  
 11 MR MPOFU: Okay –  
 12 CHAIRPERSON: It's not something you can  
 13 express an opinion on?  
 14 CAPTAIN KIDD: No – yes, Mr Chairman, I  
 15 can't express opinion on that. Thank you.  
 16 MR MPOFU: Alright, now you said  
 17 yesterday that the question whether TRT people would be  
 18 carrying their R5s, was related to how dangerous the  
 19 situation was, correct?  
 20 CAPTAIN KIDD: That's correct.  
 21 MR MPOFU: And you told many people that  
 22 these strikers were dangerous.  
 23 CAPTAIN KIDD: No, I didn't use the words  
 24 that they're dangerous.  
 25 MR MPOFU: You didn't?

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1 CAPTAIN KIDD: No.  
 2 MR MPOFU: So all the policemen, and  
 3 again to save time I don't intend to put all the statements  
 4 to you, but I can assure you that more than – okay, I don't  
 5 want to commit – about 10 or more people say that you  
 6 warned them that the strikers were dangerous. Are they all  
 7 making it up?  
 8 CAPTAIN KIDD: No, what I said to them  
 9 was they had dangerous weapons, not that they were  
 10 dangerous. I also read some of those statements and a lot  
 11 of them say they said that they had dangerous weapons.  
 12 MR MPOFU: Yes, but others said you said  
 13 they were dangerous.  
 14 CAPTAIN KIDD: No, I don't recall –  
 15 MR MPOFU: You don't recall anyone –  
 16 CAPTAIN KIDD: No.  
 17 MR MPOFU: - saying that?  
 18 CAPTAIN KIDD: I did not say that.  
 19 MR MPOFU: No, no, I know you say you  
 20 didn't say that. When you were going through the  
 21 statements you don't recall anyone saying that you said  
 22 that the strikers were dangerous?  
 23 CAPTAIN KIDD: No, I don't recall it.  
 24 CHAIRPERSON: The truth is of course that  
 25 if you said they had dangerous weapons they might have

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1 understood you to mean that –  
 2 CAPTAIN KIDD: That the people are  
 3 dangerous.  
 4 CHAIRPERSON: - they were dangerous  
 5 because they had dangerous weapons, and so it's something  
 6 that they might have understood. It's something you can't  
 7 debate further, I would have thought.  
 8 CAPTAIN KIDD: That's correct, Mr  
 9 Chairman.  
 10 MR MPOFU: Okay, ja, fair enough. I  
 11 think - yes. And you also said that these strikers had  
 12 killed two policemen and eight other innocent people.  
 13 CAPTAIN KIDD: I did not say that. A  
 14 question was asked after my briefing as to what firearms  
 15 they could experience and then I told them about the  
 16 incidents where the policemen were killed and their  
 17 firearms were taken, and where the security guards were  
 18 killed and firearms were taken. So I said there was a  
 19 possibility that firearms were present by the strikers.  
 20 CHAIRPERSON: And by implication – or  
 21 well, not by implication, actually expressly mentioned that  
 22 four people had been killed, the two security guards and  
 23 the two policemen. You said when policemen were killed and  
 24 security guards were killed, firearms were taken.  
 25 CAPTAIN KIDD: Yes, Mr Chairman, I didn't

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1 specify and say those two, those two. I just said there's  
 2 an incident where policemen were killed and firearms were  
 3 taken, and security guards were killed and firearms were  
 4 taken, but if you have to look at it more it was four yes,  
 5 but that was not said. The amount was not said.  
 6 CHAIRPERSON: You didn't give the number.  
 7 They may –  
 8 CAPTAIN KIDD: No, that –  
 9 CHAIRPERSON: Your people to whom you  
 10 spoke might have though the number was bigger?  
 11 CAPTAIN KIDD: That's correct, Mr  
 12 Chairman.  
 13 MR MPOFU: Alright, well I'll put it to  
 14 you that the following policemen, one, two, three, four,  
 15 four people, there's a member of the TRT, Mosethla,  
 16 Thobela, Matlala and Mlombo, and another one is Mabasa,  
 17 they say that you said these people had killed two police  
 18 officers and eight innocent people.  
 19 CAPTAIN KIDD: That's not correct. I  
 20 didn't know myself how many innocent, or striking people  
 21 had been killed the previous dates.  
 22 MR MPOFU: Okay, you were given – just to  
 23 short circuit this I'll use a statement that we already  
 24 have, UUU9 –  
 25 CAPTAIN KIDD: UUU9, who's that?

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1 MR MPOFU: Mabasa.  
 2 CAPTAIN KIDD: Mabasa.  
 3 MR MPOFU: Paragraph 2.  
 4 COMMISSIONER HEMRAJ: What paragraph, Mr  
 5 Mpofo, again?  
 6 MR MPOFU: Well, 2 – I have a printed  
 7 transcript. I hope it corresponds with the – it's  
 8 paragraph 2, Chairperson, Commissioner. It starts with "On  
 9 the very same date."  
 10 CAPTAIN KIDD: Is that Constable Mabasa?  
 11 CHAIRPERSON: [Microphone off, inaudible]  
 12 Mabasa. Sorry, I've got a statement by Mabasa –  
 13 MR MPOFU: On the very same date  
 14 between –  
 15 CHAIRPERSON: On the very same day  
 16 between 15:00 and –  
 17 MR MPOFU: Yes, so okay, then my  
 18 transcript is wrong. Paragraph 4, thank you, Chairperson.  
 19 Yes, you –  
 20 CHAIRPERSON: What the passage reads, the  
 21 passage reads as follows, "Captain Kidd during the briefing  
 22 informed us that we are about to approach the mountain, or  
 23 hill where the strikers were gathered at. We were told  
 24 that those strikers were heavily armed with dangerous  
 25 weapons, namely pangas, spears, and possibly firearms since

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1 there were two police officers who were killed by the  
 2 striking miners and their firearms were also taken by the  
 3 same people, who are the strikers, and other eight innocent  
 4 people were also killed by the strikers. We were told to  
 5 be very careful because these people were very dangerous  
 6 and we should defend our lives when faced with life-  
 7 threatening situation, and again we were instructed to give  
 8 them a room or space for them to disperse peacefully if  
 9 they volunteered to do so." That's what Mabasa has said.  
 10 I don't know what his rank is.  
 11 CAPTAIN KIDD: Constable.  
 12 CHAIRPERSON: Sorry, he is?  
 13 CAPTAIN KIDD: Constable.  
 14 CHAIRPERSON: He's a constable. That's  
 15 what his statement says.  
 16 MR MPOFU: Yes, so you're saying Mabasa  
 17 is making all this up? You yourself didn't say that these  
 18 people were very dangerous, as he says?  
 19 CAPTAIN KIDD: I'm not saying he's making  
 20 it up. I'm just saying I didn't say it.  
 21 MR MPOFU: No well, it can't – if he says  
 22 you said the people were very dangerous and you never said  
 23 anything of the sort, then he must be making it up.  
 24 CAPTAIN KIDD: No, I can't say – you say,  
 25 you're asking two questions, if he made that up or if I

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1 said it. I said I didn't say it and I can't say if he's  
 2 making it up. You're going to have to ask him what he  
 3 wrote in his statement.  
 4 [11:09] CHAIRPERSON: I take it there was scope  
 5 for misunderstanding. I mean on the basis of what you did  
 6 tell him and what presumably the police already knew from  
 7 television reports and other information they got, I mean  
 8 these eight other people who were talked about included  
 9 three strikers. There were five people killed on the  
 10 Monday, which included, were two policemen and three  
 11 strikers. On the Sunday four people were killed and that's  
 12 already nine, two security officers and two people who went  
 13 to work on the Sunday night, and the 10th person was Mr  
 14 Twala who was one of the people on the koppie whose body  
 15 was found on the Tuesday afternoon. But you say you didn't  
 16 even know the numbers.  
 17 CAPTAIN KIDD: Mr Chairman, I didn't even  
 18 know how many members and who else was killed at that  
 19 stage. We had just – we had come there and we were just  
 20 told to go and work.  
 21 CHAIRPERSON: He's made the point as far  
 22 as can be made. The material on which you would wish to  
 23 argue at the end is on record. I don't know whether you  
 24 need to spend more time on this at this point. Perhaps you  
 25 would like to move onto the next.

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1 MR MPOFU: No, Chairperson, I wouldn't  
 2 like to move on as yet because this is an important thing  
 3 as to the attitude that was inculcated on these people.  
 4 CHAIRPERSON: I understand, that's why I  
 5 said the material on which you wish to cross-examine on, I  
 6 mean on which you wish to argue is already on record. This  
 7 is what Constable Mabasa says, you have the answer of the  
 8 witness and there it is.  
 9 MR MPOFU: Yes, well I can just point out  
 10 to you that – as I said, I'm using this as an example;  
 11 there are many other people who said that you told them  
 12 about these eight innocent people.  
 13 CAPTAIN KIDD: Okay, if I can say – if  
 14 you say many people, you'll mention all those names,  
 15 they're all from Pretoria TRT. They travelled in the same  
 16 vehicle from Pretoria to Rustenburg, so I'm sure they were  
 17 all discussing whatever they'd heard on the radio or the  
 18 news. But I say I never told them about any amount of  
 19 people that had been killed.  
 20 MR MPOFU: Well okay, insofar as you knew  
 21 that some people had been killed, you did not know about  
 22 their innocence or guilt, correct?  
 23 CAPTAIN KIDD: No, like I said, I didn't  
 24 know – I knew of incidents that I heard on the radio and  
 25 the TV, but I didn't know how and under what circumstances

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1 they were killed.  
 2 MR MPOFU: Just like the killing of Mr  
 3 Twala, you said you don't know the circumstances of how  
 4 that happened. You just know that it happened on the 14th,  
 5 correct?  
 6 CAPTAIN KIDD: That's correct.  
 7 MR MPOFU: Now can you just assist me  
 8 with something; just I want to verify, is it correct that  
 9 when you form a basic line do you have to cock your R5?  
 10 CAPTAIN KIDD: If it's a rule, there's no  
 11 rule on that, no.  
 12 MR MPOFU: So in your TRT training  
 13 there's nothing that says once a basic line is formed you  
 14 must also cock your firearm?  
 15 CAPTAIN KIDD: No, not as far as what I  
 16 know, no.  
 17 MR MPOFU: And under what circumstances  
 18 do you cock your firearm, your R5?  
 19 CAPTAIN KIDD: It depends on the danger.  
 20 MR MPOFU: When you say it depends on the  
 21 danger, it depends on the danger that they anticipate or it  
 22 depends on danger that you may be facing?  
 23 CAPTAIN KIDD: It could be both.  
 24 MR MPOFU: So you could cock in  
 25 anticipation, when there's no actual danger?

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1 CAPTAIN KIDD: That's correct.  
 2 MR MPOFU: Alright, and were you present  
 3 when Brigadier Calitz addressed members the following day,  
 4 praising them about how they've done a good job, or  
 5 something like that?  
 6 CAPTAIN KIDD: No.  
 7 MR MPOFU: Okay, then I wanted to ask you  
 8 very briefly about the briefing that Colonel Scott gave  
 9 you. It's been described by many people. I just want to  
 10 ask you whether do you agree with some of the witnesses  
 11 that said that it was done with some kind of urgency and  
 12 that the time was not adequate?  
 13 CAPTAIN KIDD: No, I don't think there  
 14 was – there was no rush. I didn't see no rush.  
 15 MR MPOFU: No rush?  
 16 CAPTAIN KIDD: No.  
 17 MR MPOFU: You felt that for such an  
 18 important mission or operation that to be briefed for  
 19 something that's going to happen within the hour, that was  
 20 adequate?  
 21 CAPTAIN KIDD: As long as the person  
 22 knew, each person knew what they were to do, I feel then it  
 23 was enough time.  
 24 MR MPOFU: And you still had to go and  
 25 brief - each person who was briefed they still had to go

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1 and brief their own people as well?  
 2 CAPTAIN KIDD: That's correct.  
 3 MR MPOFU: Okay. Why did you think it  
 4 was necessary to say to the members that they must shoot  
 5 people if their lives are threatened?  
 6 CAPTAIN KIDD: I did not say that.  
 7 MR MPOFU: You didn't say that?  
 8 CAPTAIN KIDD: No.  
 9 MR MPOFU: So again Mabasa is making that  
 10 up?  
 11 CAPTAIN KIDD: As I said earlier –  
 12 MR MPOFU: In paragraph 4 he says after  
 13 you said the thing about innocent people, "We were told to  
 14 be very careful because these people are very dangerous and  
 15 we should defend our lives when faced with life-threatening  
 16 situations."  
 17 CAPTAIN KIDD: As I said, I didn't say  
 18 the thing about innocent people and I didn't say to them  
 19 they must defend themselves by shooting.  
 20 MR MPOFU: So again all the people who  
 21 report to you who say that you mentioned that they must  
 22 shoot, well not shoot, they must defend themselves,  
 23 obviously by shooting, when their lives were in danger are  
 24 wrong?  
 25 CAPTAIN KIDD: No, but I don't know who

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1 all the people are.  
 2 MR MPOFU: Okay, I'll just give you a  
 3 few.  
 4 CHAIRPERSON: This evidence about the –  
 5 you know you won't get an order to fire but if your life's  
 6 in danger or those of your colleagues are in danger you can  
 7 fire in self-defence or private defence. That's been  
 8 referred as the rules of engagement in some of the  
 9 evidence, and do you consider it necessary to brief your  
 10 people, the people who are under your command about the  
 11 rules of engagement?  
 12 CAPTAIN KIDD: Mr Chairman, I told them  
 13 about the firearms. I never mentioned anything else  
 14 further about what they could do –  
 15 CHAIRPERSON: Okay, so your answer is you  
 16 didn't –  
 17 CAPTAIN KIDD: - about the rules of  
 18 engagement.  
 19 CHAIRPERSON: So you didn't do that?  
 20 CAPTAIN KIDD: No.  
 21 CHAIRPERSON: You didn't think it was  
 22 necessary, alright. So the next question is when Captain  
 23 Scott – sorry, Colonel Scott gave the briefing he did, did  
 24 he talk about the rules of engagement as far as you can  
 25 remember?

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1 CAPTAIN KIDD: Not that I can remember.  
 2 CHAIRPERSON: And Brigadier Calitz when  
 3 he spoke?  
 4 CAPTAIN KIDD: No, Brigadier Calitz  
 5 didn't speak. Only when a question was asked, I asked a  
 6 question when to deploy, he said over the barbed wire.  
 7 Nothing else was said.  
 8 CHAIRPERSON: So as far as you can  
 9 remember at the briefing that you attended on the Thursday  
 10 afternoon the rules of engagement weren't mentioned.  
 11 CAPTAIN KIDD: I didn't hear it, no.  
 12 CHAIRPERSON: As far as you can remember,  
 13 and you certainly didn't mention them on your briefing.  
 14 CAPTAIN KIDD: No, Mr Chairman.  
 15 MR MPOFU: Okay, ja you were saying who  
 16 are all the people. I'll just give you their surnames.  
 17 It's Mashodi from TRT, Moksohelo from TRT, Thoka, Tsomo,  
 18 Matlala, Mlombo, Mosethla, Thobela, Mashishi. Ja, those  
 19 are the people that say that you said that. Are they all  
 20 making it up or mistaken?  
 21 CAPTAIN KIDD: As I said earlier, Mr  
 22 Chairman, they're all from Pretoria TRT. They travelled  
 23 together, they were speaking, so I don't know. If it's all  
 24 mentioned in their statements I don't know where they heard  
 25 it.

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1 MR MPOFU: No, but whether they come from  
 2 Pretoria or wherever, you think they would just get into a  
 3 van and hatch a plot that says Captain Kidd told us to  
 4 defend ourselves? I mean why would they do such a  
 5 ridiculous thing?  
 6 CAPTAIN KIDD: I don't know, I cannot  
 7 answer that.  
 8 MR MPOFU: Well, then I put it to you  
 9 that you told them as was mentioned in the briefing.  
 10 CAPTAIN KIDD: No, I did not tell them  
 11 that.  
 12 MR MPOFU: Are you also denying that that  
 13 was said in the briefing as well?  
 14 CAPTAIN KIDD: That's correct.  
 15 MR MPOFU: But the people who did the  
 16 briefing are not denying it, or at least some of those who  
 17 attended it, like Captain Loest.  
 18 CAPTAIN KIDD: I said I did not hear it.  
 19 And as I mentioned earlier, Captain Loest wasn't with us.  
 20 We didn't attend the same briefing.  
 21 MR MPOFU: That's fine, so if it's found  
 22 that you did say that people must defend themselves, you'd  
 23 accept that that would be a strange thing because people  
 24 should know when their lives are in danger, they don't need  
 25 to be reminded by you, correct?

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1 CAPTAIN KIDD: No, it won't be found  
 2 because I didn't say it.  
 3 MR MPOFU: You don't know –  
 4 CHAIRPERSON: It's a hypothetical  
 5 question.  
 6 MR MPOFU: Ja.  
 7 CAPTAIN KIDD: If it was found –  
 8 CHAIRPERSON: It's a hypothetical  
 9 question. But I don't think we need worry about what  
 10 answer he gives to the hypothetical question, it's really a  
 11 matter for argument.  
 12 MR MPOFU: Well, Chairperson, we do, we  
 13 need to worry because if – look, if eight or 10 people say  
 14 that he said something to them we either have to call them  
 15 or we just believe that they're all talking nonsense and  
 16 you are the only one who is telling the truth.  
 17 CHAIRPERSON: Well, if it's a –  
 18 MR MPOFU: I'm saying given all those, if  
 19 at the end, I'm not saying I'm going to call them, if it's  
 20 found that they are right and you are the one who's making  
 21 a mistake, would you agree that giving such an order would  
 22 be strange, given the fact that every policeman should know  
 23 when their life is in danger?  
 24 CAPTAIN KIDD: Okay, if that can be  
 25 proven then yes.

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1 MR MPOFU: It would be strange?  
 2 CAPTAIN KIDD: It will be strange, yes.  
 3 MR MPOFU: Yes, and if it's coupled with  
 4 all these other things about how dangerous they are and so  
 5 on and so on, it would even amount to an exultation for  
 6 them to shoot people.  
 7 CAPTAIN KIDD: No, I don't agree with  
 8 that.  
 9 MR MPOFU: Okay, the last thing I wanted  
 10 to discuss with you is an issue, we'll either play the  
 11 video, or not play the video. I asked you to look at the  
 12 video overnight of I think Z1. You remember that?  
 13 CAPTAIN KIDD: Yes, I do.  
 14 MR MPOFU: Okay, now the only reason I  
 15 asked you to do that was again it came from the discussion  
 16 that you and the Chair had about - you've accepted now that  
 17 you can't foretell what, if people who are approaching you,  
 18 if strikers were approaching you, you couldn't tell whether  
 19 they were coming to attack or to escape. That you accept.  
 20 CAPTAIN KIDD: Except the two that ran  
 21 out.  
 22 MR MPOFU: Ja, but in general.  
 23 CAPTAIN KIDD: Yes, I accept.  
 24 MR MPOFU: Just the group, yes. Now one  
 25 of reasons you said that the group - I'm talking about the

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1 group now - one of the reasons why you said they had an  
 2 intention to attack the police was because they were  
 3 clapping their arms together, correct?  
 4 CHAIRPERSON: I think their weapons  
 5 rather.  
 6 MR MPOFU: Rather, yes their weapons, ja.  
 7 CAPTAIN KIDD: When they were clapping  
 8 their weapons and also the two that ran out raised their  
 9 weapons above their heads.  
 10 MR MPOFU: No, I'm not talking about the  
 11 two. Remember according to you, you said all these people  
 12 were determined and -  
 13 CAPTAIN KIDD: They acted in an  
 14 aggressive manner.  
 15 MR MPOFU: Yes, now I'm talking about  
 16 that now, okay.  
 17 CAPTAIN KIDD: Okay.  
 18 MR MPOFU: Ja, I'm saying and one of the  
 19 reasons was because of the clapping of the weapons.  
 20 CAPTAIN KIDD: That's correct.  
 21 MR MPOFU: Ja, now the reason I asked you  
 22 to look at that video, the reason I asked you to look at  
 23 that video - and if you remember it then we don't have to  
 24 play it - do you remember on that video, or firstly let me  
 25 tell you that the strikers on the 13th were also described

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1 in the same way. They were clapping their weapons and they  
 2 looked aggressive, all the descriptions that you've given.  
 3 So you can accept that.  
 4 CAPTAIN KIDD: Okay.  
 5 MR MPOFU: Ja, I'm saying nevertheless  
 6 when they approached, if you remember there was a policeman  
 7 who had a -  
 8 CAPTAIN KIDD: Helmet.  
 9 MR MPOFU: - blue helmet.  
 10 CAPTAIN KIDD: Yes.  
 11 MR MPOFU: Remember ja, and in exactly  
 12 that same manner when they approached they did not attack  
 13 that policeman. That policeman made way and they passed  
 14 through. Do you remember that?  
 15 CAPTAIN KIDD: I saw that, yes.  
 16 MR MPOFU: So from what you witnessed in  
 17 that video it would seem at least probable that although  
 18 the strikers were looking aggressive and they were clapping  
 19 their arms and they were walking towards an armed  
 20 policeman, in actual fact their intention was simply to  
 21 pass through and go to wherever they were going. I know  
 22 that later there was another problem, but for now ignore  
 23 that.  
 24 CAPTAIN KIDD: For now -  
 25 MR MPOFU: Do you agree with that?

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1 CAPTAIN KIDD: For now, yes.  
 2 MR MPOFU: Yes, thank you. Thank you,  
 3 Chairperson.  
 4 CHAIRPERSON: Those are your questions?  
 5 MR MPOFU: Those are my questions. Thank  
 6 you very much, Chairperson.  
 7 CHAIRPERSON: Thank you. Now is there  
 8 anyone else? I don't think there's anyone else who's  
 9 indicated an intention to cross-examine. Mr Chaskalson is  
 10 not available at the moment. He's going to cross-examine  
 11 and re-examination of course can't take place until after  
 12 that. So, Captain Kidd, you're excused for the moment, but  
 13 obviously you've got to come back when Mr Chaskalson has  
 14 recovered. We understand that it's going to be some time  
 15 next week, so I don't know whether that means you can go to  
 16 Knysna in the meanwhile and come back but that's a matter  
 17 for you to decide. But we will let you know as soon as we  
 18 know when Mr Chaskalson will be back to cross-examine you.  
 19 CAPTAIN KIDD: Thank you, Mr Chairman.  
 20 CHAIRPERSON: In the meanwhile you're  
 21 excused on the basis that you'll come back when we tell you  
 22 that Mr Chaskalson is here.  
 23 CAPTAIN KIDD: Thank you, Mr Chairman.  
 24 [NO FURTHER QUESTIONS - WITNESS EXCUSED]  
 25 CHAIRPERSON: We'll now adjourn and take

1 the tea adjournment. We must all try and be back at 20 to  
 2 12. I'm not sure, or perhaps maybe I should change that.  
 3 Yes, alright, let the representatives now come and see us  
 4 at tea. It's in relation to the next witness, Constable  
 5 Sebatjane, there's a question whether he can be led now or  
 6 this afternoon or subsequently, but so for the moment we're  
 7 adjourned until 20 to 12. There may be some other  
 8 developments by that time.

9 [COMMISSION ADJOURNS COMMISSION RESUMES]

10 [11:54] CHAIRPERSON: The Commission is not  
 11 resuming, that's why I'm here by myself, to announce that  
 12 owing to circumstances over which we have no real control  
 13 at this stage the position is as follows.

14 Claassen - I think he's a captain, is he? I hope  
 15 I haven't demoted him. Anyway, he's coming to give  
 16 evidence on Thursday. People have ample time now to  
 17 prepare cross-examination of him. He will be followed by  
 18 Constable Sebatjane and that effectively will dispose of  
 19 the sittings for the rest of the week, that is for Thursday  
 20 and Friday, and the following week the two Lonmin witnesses  
 21 will give evidence, Mr De Costa and Mr Seedat. We're also  
 22 hoping -

23 MR MPOFU: Sorry, Chair, what is the  
 24 second name?

25 CHAIRPERSON: Seedat.

1 MR MPOFU: Seedat.

2 CHAIRPERSON: And we are hoping that Adv  
 3 Chaskalson would have recovered sufficiently to come back  
 4 to cross-examine Captain Kidd, so Captain Kidd can then be  
 5 re-examined and conclude his evidence.

6 So that's the programme forward. It's caused by  
 7 various problems which I don't have to elaborate on.

8 That's the best we can do in the circumstances. I'm  
 9 painfully conscious of the fact we are falling behind the  
 10 programme that's been drawn up, but there are certain  
 11 things one can control and certain things one can't.

12 [COMMISSION ADJOURNED]

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|---|---|---|--|---|
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