

**INQUIRY IN TERMS OF SECTION 29**

**HELD AT**

**DURBAN**



**CHRISTIAAN PIETER MARX**

**[PAGES 1 - 110]**

ON 1997/06/04

INTERPRETER AND TRANSCRIBER SWORN IN

CHAIRMAN: Good morning and welcome. This is an inquiry - Brigadier Marx, can you hear me? Can you hear the Afrikaans translation? On Channel one the Afrikaans translation will be given. This is an inquiry in terms of section 29 of the Promotion of National Unity and Reconciliation Act of 1995. This is not a hearing, but an investigative inquiry, and as such it is held in camera. I want to stress that no findings will be made at this inquiry.

I will briefly outline the respective duties and obligations of the parties at this inquiry. The person subpoenaed, Brigadier Marx, has the right to legal representation, and he is represented here today. In terms of section 31 of the Act the person subpoenaed to give evidence shall be compelled to answer questions, answer any question put to him, notwithstanding the fact that the answer to that question may incriminate him.

There are conditions which are applicable to this section, and they are as follows. There must have been consultation with the Regional Attorney-General of the province, and we have consulted with the Attorney-General on this issue. The Chairperson of the inquiry must be satisfied that the request for information is reasonable, necessary and justifiable in an open and democratic society, and the witness must, of course, have refused to answer the question put to him.

The Act also provides that any incriminating evidence obtained at this inquiry is not admissible against the person who makes that information available in

/a court

a court of law, criminal court, or any other institution established by law. There is one proviso to that subsection, and that is that any evidence obtained at such an inquiry may be used against the person who gives that information in circumstances where the person is charged with perjury, or making conflicting or untrue statements to the Commission.

I also want to draw to your attention the penalty section of the Act, which is section 39 (d) (i) and (ii), which states that any person who hinders the Commission, or any member of the staff of the Commission, in the exercise of its powers and functions, duties under this Act, shall be guilty of an offence, and any person who wilfully furnishes the Commission, or a member of the Commission, with information which is false or misleading, shall be guilty of an offence.

Having made those brief opening remarks I'll just place on record that Advocate F van Zyl appears for Brigadier Marx today, instructed by de Klerk and van Gent, Mr Brandt. And is it correct that Brigadier Marx goes under the name of Brigadier Marx, or Mr Marx, or has he been - has he been promoted?

MR VAN ZYL: He is a general, a retired general.

CHAIRMAN: I apologise.

MR VAN ZYL: Who goes by the name of Mr Marx.

CHAIRMAN: Mr Marx. I will then - we will then proceed to swear in Mr Marx. Please remain seated Mr Marx.

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CHRISTIAAN PIETER MARX (Sworn, States) (Through  
Interpreter)

CHAIRMAN: The inquiry will be conducted in the following /manner.

manner. Questions will be put to Mr Marx by the head of the investigation unit, Advocate Govender, and where points of clarification are required members of this panel - that's myself, my name is Richard Lyster, Commissioner and Convenor for this region and the Free State, my colleague, Mr Mdu Dlamini, committee member and member of the Human Rights Violations Committee. And we can intervene and put questions to Mr Marx if necessary.

MR VAN ZYL: Chairperson - I am sorry to interrupt - may we remove our jackets? Thank you.

CHAIRMAN: Yes, you're in Durban now.

MR VAN ZYL: We find it extremely hot. Thank you.

CHAIRMAN: Mr Govender.

MR GOVENDER: (Inaudible) Dit is korrek.

Sorry, Interpreter, what channel is the English translation?

INTERPRETER: English is on channel two, Afrikaans is on channel one.

MR GOVENDER: General Marx, I refer to you - can I refer to you as Mr Marx? Is that the proper way to address you? --- Certainly.

Mr Marx, just to confirm some of the personal details, your personal details. Is it correct that you joined the South African Police Services on the 31st of January 1957? --- That is correct.

And that at your date of retirement you had 35 years of services with the SAP? --- That is correct.

That you are presently married, and that you were married on the 7th of May 1960, is that correct? ---

That is correct.

On the 1st of April 1970 you were promoted to  
/captain,  
captain, is that correct?

CHAIRMAN: Approximate dates are fine. We're not ...  
(incomplete)

MR GOVENDER: I see. --- That is correct. If you  
did research in that regard then I assume it's correct.

I don't expect you, Mr Marx, to remember the exact  
date, but I put it to you if you can't remember say you  
can't remember. That will be fine. The 1st of April  
1975 you were promoted to major, is that correct? ---

That is correct.

And then again on the 1st of September 1979 you  
were promoted to lieutenant-colonel. --- That is  
correct.

On the 1st of January 1987 you were again promoted  
to brigadier. --- That is correct.

And then finally on the 1st of May 1991 you were  
promoted to major-general.

INTERPRETER: Could you repeat the year again please?

MR GOVENDER: 1991.

INTERPRETER: And the rank please?

MR GOVENDER: Major-general. --- That is correct.

On the 29th of April 1982 you were awarded a medal  
for combatting terrorism, is that right, in 1974. ---  
That is correct.

On the 1st of April 1988 you were awarded - you  
were part of the 75th anniversary commemoration medal -  
you were awarded a medal in relation to the 75th  
anniversary, is that correct? ---- That is correct.

And on the 1st of May 1979 you were given the star for faithful service, that's 20 years' service with the SAP. --- That is correct.

On the 31st of January 1975 you were again given the

/medal for medal for faithful service for 10 years, is that right?

--- That is correct.

Mr Marx, presently you are retired from the South African Police Force, is that correct? --- That is correct.

Are you engaged in any business presently? Are you involved in any activity at all? --- No.

Now, Mr Marx, you were summoned here specifically to answer questions relating to certain incidents that took place, incidents that have been reported to the Commission as incidents of human rights violations, and one of the incidents is what has commonly come to be known as the Trust Feeds Massacre. --- I understand.

Are you familiar with this case, this incident?

--- That is correct, although it took place 10 years ago.

In fact it took place on the 3rd of December 1988.

--- That is correct.

What was your position within the SAP during the time of this incident? --- I was divisional - I was a detective officer in the Natal division.

And your rank? --- I was a brigadier.

Did you give evidence at the trial of Brian Mitchell and other special constables? --- Yes, I did.

What was your role in the investigation of the Trust Feeds matter? --- Could you be more specific please?

Well, did you play any role in the Trust Feed Massacre investigation? --- Yes, I visited the scene.

When did you visit the scene, Mr Marx? --- On the morning of the 3rd of December 1988.

And why did you visit the scene? --- I was /informed

informed telephonically about the event in question.

(Inaudible) --- Radio control, Hilton.

Were you responsible for crime incidents that took place in the Trust Feed area? Was that part of your responsibility as brigadier for the divisional - for the divisional command. Were you ... (incomplete) --- Yes.

And is it usual that you, as a senior police officer, would respond to such reports given over the radio control? --- Yes.

So, any incident that occurs within your jurisdiction, Mr Marx, that you are informed of over radio control, you personally respond to attending the scene of those incidents? --- That is correct, in cases of serious offences.

And did you get an indication over the radio that the Trust Feed incident was a serious incident? --- Yes, that is correct. And I'd like to mention not on radio, telephonically.

Can you remember the information you received that prompted you to attend the scene of the incident? ---

Several people were killed at Trust Feeds.

That's all you were told? --- That is correct.

You were not told anything else about who possibly would have perpetrated such a crime, and who in fact were the people that were killed? --- No.

You were stationed in Pietermaritzburg, is that right? --- That is correct.

And you immediately then drove up to Trust Feeds?

--- No.

Where did you go first, and what did you do first?

/--- I

--- I went to New Hanover Police Station.

And is New Hanover Police Station the police station that services the Trust Feeds? Is that right?

--- That is correct.

And the station commander there was? ---  
Captain Mitchell.

And what did you do there when you got to New Hanover Police Station? --- I requested a member of the force to accompany me to Trust Feeds since I did not know the area.

A member from New Hanover Police Station, is that right? --- That is correct.

When you got to New Hanover Police Station did you meet Brian Mitchell? --- No.

Was he not there, or you didn't meet him? ---  
I did not meet him.

Was he there at the police station when you got there? --- No.

Did you find out where he was? --- No.

Why not? --- It was not necessary for me to establish where the station commander was.



An incident had taken place at Trust Feeds which you considered very serious, and you considered serious enough for you yourself to make a journey to the scene.

You then stop at New Hanover Police Station, which is the station that services that area. The first thing you would do, I would think, was to find out - try to contact the station commander, if he's not present, to find out his whereabouts. Isn't that what you would normally do? --- The uniform branch is not tasked with serious offences, the investigative branch is, and Brian Mitchell was a

/member

member of the uniform branch.

Yes, but he was station commander, wasn't he? -

-- That is correct.

You then said you requested a member of the police force to accompany you to the scene, is that right? -

-- That is correct.

Did somebody accompany you? --- Yes.

And you attended the scene? --- That is correct.

Were you the first policeman on the scene, or were there other policemen when you arrived? --- There were other policemen on the scene.

(Inaudible) ... on the scene. --- It's a long time ago, but Captain Mitchell, the station commander of New Hanover Police Station, Major van Zyl, the district investigative officer of Greytown was on the scene, Captain Terblanche, a Captain van der Heever, and several other members of the force.

Was it Major Terblanche that was there? --- Correct.

Major Terblanche was your senior, wasn't he? ---

No, I was a brigadier, he was a major.

So you were his senior. --- That is correct.

And what did you ascertain when you got to the scene? --- According to inquiries which I made on arrival at the scene I established that persons had killed people in the house which I visited earlier that evening.

Sorry, who visited that house earlier that evening? --- I do not know.

You said that you had ascertained that people were killed in - people were killed in the house, and the translation was, that you had visited earlier that /evening.

evening. --- No, that was ... (intervention)

MR VAN ZYL: The witness said that - if I may translate - that he established that people were killed in the house that he visited, meaning the house that he visited that morning.

MR GOVENDER: And who was assigned to investigating this matter? --- Captain Wattress(?).

Yes, who assigned him? --- I did.

You did. Did you have an opportunity at that point while you were at the scene to speak to Brian Mitchell? --- Yes, that is correct.

And what did Brian Mitchell tell you? --- They were deployed in the area to prevent conflict between UDF and Inkatha supporters.

You said "they." Who was "they"? --- Yes, it was member of the South African Police.

When he said that did he include his division also, members from his station under his command? ---

Yes, that is correct.

That's all he told you? Did he tell you anything else about the incident, and any investigations that they had done, or anything that they had uncovered? -

-- I cannot remember verbatim what was said to me.

Well, I don't expect you, Mr Marx, to tell me verbatim, it's a long time, but what you can - you know, a summary. The gist of your discussion will be good enough. --- It was about the aspect that police were deployed in the area to deal with the conflict situation between supporters of the Inkatha party and supporters of the UDF.

Anything else he told you? --- No.

/Nothing

Nothing else? --- Not that I can recall.

Did you speak to Major Terblanche? --- I did.

And did he - what did he say to you? Again you don't have to give us verbatim. --- He confirmed that the police were deployed in the area to prevent conflict between Inkatha and UDF supporters.

Now, this is the same thing that Brian Mitchell had told you, that police, the SAP, had been deployed to prevent conflict between the ANC and the IFP. It's - the same information that Brian Mitchell gave you, Terblanche gave you the same information, is that right?

--- Yes, that is correct.

Did Terblanche tell you anything else besides this? --- No.

Now, how did the fact that they had to deploy SAP personnel to prevent a conflict in the area give rise to what had happened in Trust Feeds? --- I don't understand your question. Could you please rephrase it.

Well, Mr Marx, you were there attending a scene where people had been killed in a house. --- That is correct.

And you spoke to Brian Mitchell and you spoke to Terblanche. --- That is correct.

And the extent of the discussion you had with these two gentlemen was that they informed you that SAP personnel were deployed in the area to prevent conflict between IFP and ANC. --- UDF and Inkatha.

The question is, how did that information relate to what had happened at Trust Feeds? --- It did not relate.

It did not relate? --- No.

/So, if

So, if I understand you rightly - and, Mr Marx, I am just trying to get the sense of what happened. If I understand you rightly the discussion you had with Brian Mitchell and Terblanche at the scene of Trust Feeds was relating to a matter that had no relationship to what had happened at Trust Feeds, in the sense that you were told that the SAP had deployed personnel in that area to prevent conflict. Is that right? --- That is correct, to prevent conflict.

Did you discuss with either Brian Mitchell, or Terblanche, or anybody else at the scene, about what had happened at Trust Feeds, and the possibility of who could have been involved, who was killed, how it happened, that sort of thing? Did you discuss any of those matters with any of these gentlemen or anybody else? --- If I can recall I was informed that while the police in the area reported - while the police were in the area a report was made to them about an attack at

the house where these people were killed, the house in question, and they reacted to that and they went to visit the scene.

Who gave you this information, Mr Marx? --- I cannot recall.

Was there any discussion between you all at the scene as to who was possibly responsible for this incident, for these killings? --- At the scene at the house and the surrounding area I made inquiries as to whether any person or persons could possibly provide me with information in regards to the attack on this house. I could not obtain any information in this regard.

Now, Mr Marx, you personally made these inquiries?

You personally? --- That is correct, with other /members members of the force.

Which other members? --- There were many members of the police force there. Because I cannot speak Zulu, and I had to use one of the members who could speak Zulu as a result. I cannot remember who it was.

Do I understand you rightly, Mr Marx? When you got on the scene you had a discussion with these gentlemen, and then you yourself directed people to make inquiries about - amongst the neighbours and the surrounding area as to whether anybody had seen or heard what had happened that night. Is that right? --- That is correct. Not by myself, but also other members of the police force who were present inquired.

But in fact you initiated this initiative, is that right? --- I was - I am not sure whether they had

already started to inquire about this incident before I got to the scene, but while I was at the scene I did inquire.

So, while you were there you didn't see any inquiries, you received no information from anybody that inquiries have been made, and that information or no information had been received, is that right? ---  
No, no information was received.

So you then initiated this sort of gathering of information, sending people around to question the neighbours and so forth, and find out if they had seen anything. --- That is correct.

And the reason for that, Mr Marx, I put it to you, is that none of the other officers, senior officer that were there - that's Brian Mitchell, the station commander, or Terblanche, had initiated that sort of investigation

/prior  
prior to you arriving. --- I cannot comment on that.

But what you say, Mr Marx, is a comment in itself. You say that you were not aware of any such investigation when you got there, but then you yourself then directed such an investigation. --- At the scene of a serious offence the members of the investigative unit normally make the inquiries. I was not aware whether anyone else had started to make inquiries.

At that point in time there was no investigation unit. You then appointed an investigating officer, isn't that so, subsequently? --- That is correct, I did.

Because if such an initiative was taken, Mr Marx, you would have been informed by either Mr Terblanche or by Mr Brian Mitchell, because you were the senior officer who had come on the scene, and they would say to you, "General, this is what happened. We've made certain inquiries, we've sent people around to find out what had happened, and this is the information we have had - we have." But you didn't receive any such information from any of these people. --- No, I did not receive information from them in regards to the inquiry.

When you got to the crime scene who was in charge of the crime scene, who was directing the crime scene?

--- Major van Zyl, the district operator or the investigative officer.

But you had said earlier on that you had requested a police personnel to accompany you from New Hanover Police Station to the crime scene. Who was that person that accompanied you? Can you remember his identity?

--- No, not at all.

You don't know who it was? --- No, it was a  
/member.

member. I cannot remember who it was.

MR DLAMINI: Can I make just make a follow up on this same issue, because I wanted to - was he a member of the detective unit or SAP Force? --- It was a member of the uniform branch at Hanover. If I remember correctly it was a black member of the uniform branch at Hanover.

Earlier on you replied when asked that you did not speak to Brian Mitchell, who was the station commander, at that time. To me it sounds awkward that you couldn't speak to the station commander to get the help to assign

one of his guys. Who then gave the permission for that officer to accompany you? --- All I did was I walked into the charge office and asked that a member of the police force accompany me to the scene since I was not familiar with the area.

Thank you.

MR GOVENDER: When you got to the scene of crime, Mr Marx, would you say that the operation, or whatever was happening at the scene of crime, was under control? Was it being directed properly, in the sense that the gathering of evidence and the inspection of the crime scene was done in a proper manner by people whose responsibility it was to do certain tasks? --- I did not remain on the scene until the scene - until they had completed the investigation.

While you were there did you find that everybody had easy access to the crime scene, all people that were present had easy access to the crime scene and evidence on the crime scene? --- I cannot remember. Members of the detective branch entered the house. I cannot remember who they were, but usually a scene - or attempts are made

/not to  
not to disturb the scene in any way.

Well, was that rule observed on the crime scene while you were there? --- I do not know who all entered the house before I got there, but while I was at the scene people who were authorised to enter the house entered it.

The reason I ask you this question, Mr Marx, is that - I am not sure whether you're familiar with the court trial, Brian Mitchell and the special constables'



trial, but the Judge criticised the fact that evidence was led that the crime scene - anybody and everybody was allowed on the crime scene, so there was no discipline, and much of the evidence was removed from the crime scene. And the Court criticised that, because evidence was led to that fact. --- I do not know what happened before my arrival at the scene, and I also do not know what happened after I left the scene, or was on the scene.

Now, did you appoint the investigating officer before you left the scene, or at what stage did you appoint the investigating officer? It was Bruce Wattress. --- When Captain Wattress arrived at the scene. I appointed him as the investigating officer

While you were there on the scene? --- That is correct.

And he then took over the investigations from - van Zyl, was it, Major van Zyl? --- That is correct.

CHAIRMAN: Mr Marx, did anybody inform you that special constables had been deployed in that area the previous night? --- That is correct.

What did they tell you? --- I cannot remember who said that to me, but I established that there were

/special special constables, as I have already testified, who were deployed in the area.

What steps did you take immediately to ascertain which special constables were deployed the previous night? --- There was no need for that.

Why not? --- For which purpose would I want to establish that?

Well, if they were there on the previous night they might know something about how the people in the house were killed. That's the purpose. Did you find out which special constables were on duty the night of the killing? --- Only that special constables reacted to a report which they received and that they went and visited the scene.

And no attempts were made to find out who those special constables were? --- No, it was not necessary.

Do you know the procedure for - if you wanted to ascertain which special constables were on the scene that night do you know what procedure would have been used or put in place to find out? --- At the stage when I visited the scene the special constables weren't the issue. There were many members at the scene of the crime or at the house. I did not even know which special constables were at the house when I got there.

Are you aware that Captain Wattress picked up some shotgun shells, empty shotgun shells, on the scene?

-- No.

Are you aware that anybody picked up empty cartridges on the scene? --- No, not while I was there.

Did you examine the house in which the bodies were  
/found?

found? --- Yes, I did.

And you didn't feel it necessary to conduct a search for empty cartridges, or doppies, or spent shells? --- At that stage we waited for the photographers and the persons responsible for the video recording. That is why the scene was not to be

interfered with until their arrival.

And after they had arrived? --- I left the scene not long thereafter.

So you don't know anything about cartridge cases, shotgun shells, or anything of that sort? --- No.

And if Captain Wattress says that he picked up two black shotgun shells what would you say about that? -- If he says so then I assume that it is so.

But he didn't tell you about that. --- I do not know at which stage he picked up the shells, at least not whilst I was at the scene.

MR VAN ZYL: Chairperson, I don't want to interrupt unnecessarily, but it's not clear to me, and maybe the witness may have a misunderstanding here, he seems to be answering his questions as to whether he was aware that empty cartridge cases were picked up at the scene whilst he was still there, and not whether he might have become aware of it at a later stage. I don't know.

CHAIRMAN: No, I understand him to be saying that at the time he wasn't aware. He may have heard later, after the judgment or after the case, that things were picked up. I accept that fully.

MR GOVENDER: Mr Marx, you said earlier on that this was an important incident, and that you personally had to attend the scene ... (inaudible - end of Side A, Tape 1)

/... investigation  
... investigation was of such importance that you had to be kept informed on a continuous basis as to the progress of the investigation, is that right? ---  
Correct.

And that you expected Wattress to keep you informed of what was going on as the progress of the investigations took place. --- That is correct.

You were informed that there were special constables deployed in the area. --- That is correct.

On the night of the incident itself. --- Correct.

And the deployment of such constables would have had to be communicated to the branch commander of the station responsible for that area, is that right? ---

Yes, I suppose so. I am not aware of any instructions of deployment of members by the main branches.

Yes, but if anybody would have known whether special constables had been deployed, and who they were, and what they were deployed for, it would have been the station commander, Brian Mitchell? --- Yes, I suppose so.

(Inaudible) --- What? I have already said that special constables were deployed to prevent trouble between the factions.

But you didn't know the identity of those special constables, or any other information about them, is that right? --- No, I didn't.

(Inaudible) ... at a later stage to be acquainted with more information about those special constables it would be logical to speak to the station commander, Brian Mitchell. He would probably know, wouldn't he?

--- Yes, I would have spoken with Terblanche, the officer in command of the unit in whose service these special

/constables

constables were.

And by doing so you would have been able to ascertain the identity of those special constables, and if necessary the whereabouts of those special constables. --- That is correct.

Now, I take it that Patrick Wattress communicated to you on a regular basis the progress of the investigations, is that right, and that he would have informed you that 10 days after the incident took place two individuals, Burton and van Wyk, made statements to him regarding the incident? --- That is correct.

In which statements they indicated that they had been in the area that night together with Brian Mitchell. --- That is correct.

And, having received that information - you did receive that information, and when you received that information, Mr Marx, what did you do? --- After I received the report I went on leave, on holiday, but I gave an order that the incident must be investigated in full.

Did you have occasion to read those statements at that time? --- Yes, I did.

What did you gather from that statement, that you asked that the matter be investigated? --- Constable Burton and another constable, I can't remember his name, also made statements - that's van Wyk. They made statements that on that specific night they were deployed in Trust Feeds.

In Trust Feeds. Did it say anything else besides that? --- I cannot remember after all these years exactly what the statements said.

/(Inaudible)

(Inaudible) ... in Trust Feeds. You of course knew that. You knew that police personnel were deployed to prevent the conflict between the IFP and the ANC. So what - according to what you're saying now, that Burton and van Wyk's statements amounted to nothing, in the sense that you knew that information. All they were telling you is that they were also deployed in that area at that night. Now, what was it about the statement that prompted you that the matter should be investigated? --- If I remember correctly, and I speak under correction, in the statements they placed a question over the special constables and their deployment there.

What was that question? What was that question?

CHAIRMAN: I think he said they placed a question mark over the deployment. Do you mean that they suggested in their statements that the activities of the special constables on that night was in some way irregular or something? What did you mean by that they placed a question over the activities or the presence of the special constables? --- I once again speak under correction. If I remember correctly they vaguely insinuated, if that is the right word, in their statements that the special constables who were deployed in Trust Feeds - I stand to be corrected, it was 10 years back, it could be that it related to the incident in which these people died, but if it was so I can't remember any more.

MR GOVENDER: (Inaudible) ... suggesting that the special constables were implicated in some way in the incident that was known as Trust Feeds? --- No.

MR VAN ZYL: Chairperson, we are now testing the memory of this witness as to what was contained in a statement or

/statements

statements made by two persons. If, in an effort to curtail the proceedings, these statements could be made available to him, so that he can refresh his memory as to what was contained in those statements, then clearly he would be in a much better position to assist the Commission.

CHAIRMAN: Okay, we can - if we - we can put them to the witness shortly, but I want to just follow up - and this doesn't necessarily relate to what they said about the special constables. In the statements they said, and you will - I am sure you will recall this, that they said that they went to Trust Feeds that evening with Captain Mitchell. --- That is correct.

You spoke to Captain Mitchell on the day, on the morning of the 3rd of December, and he did not tell you that he had been there with two other police officers, white police officers, the very night of the incident. He didn't tell you that? --- I can't remember at all.

You said earlier on in your evidence that you had spoken to Captain Mitchell, you spoke to Major Terblanche, you tried to find out what was going on. Did Captain Mitchell say to you, "I was here. I was here when these people were shot. I and Mr Burton and Mr van Wyk were here"? Did he tell you that? --- Mitchell told me that while they were working in the area it was reported to them of an incident at that house, and thereafter they visited the scene.

You're quite sure about that? --- Yes. It is 10 years back, if I remember correctly, but if I recall my memories I think that was what was said.

Did he tell you on the morning of the - the morning

/that you that you went there, the 3rd of December, that he had been in Trust Feeds, right in the area with these two other policemen - I think they were reservists - and he had heard shooting, and had seen houses burning? Did he tell you that? --- No, I can't remember anything of that sort.

Captain Mitchell made a statement, didn't he? -

-- He did make a statement.

(Inaudible) ... the statement, but I can assure you now that it doesn't even mention anything remotely like that. And yet 10 days after the incident Burton and van Wyk made a statement to Wattress that they were there in the area, they saw houses burning, they saw - they heard shots, and they were taken out of the area by Captain Mitchell. Didn't you think that was - please let me continue. Didn't you think that was extremely strange, that Captain Mitchell, a high-ranking officer, should not have made that statement, or a statement which was similar to that of Burton and van Wyk, when he made his statement concerning his role or his knowledge about the Trust Feeds incident? --- Mitchell did make a statement. I cannot remember what it contained.

If statements were put before me, I studied them first.

I am testifying about an incident 10 years back. You must keep that in mind please.



(Inaudible) ... a look at the statements. (Pause)

Now, the statements which were made by Burton and van Wyk to Wattress, according to Captain Wattress he gave these statements to you at a later stage. Is that correct? --- Yes, he brought them to my home so that I could read them.

/What

What did you do with them? --- The statements were very incomplete. I gave Wattress - I ordered Wattress that he must take these statements again and complete them.

And did he do that? --- Yes, he did.

And are you aware what the gist of those statements was? --- No, not any more. I can't remember.

But if I tell you that the statements say that Burton and van Wyk had been with Mitchell earlier on on the evening of the 12th(sic), that they were drinking with him, and that late in the evening they went down to Trust Feeds, that they noticed that houses in the area were burning, that Captain Mitchell dropped them off at a particular point in the veld and drove off in the police vehicle. --- If that was the statement then I accept that that must be correct.

But, as you recall, Captain Mitchell didn't tell you anything like that on the morning of the 3rd of December, or can't you remember that? --- No, I can't remember exactly what he said, except for as far as I've already testified.

If he had told you that on the morning of the 3rd of December surely you would have taken statements immediately from Burton and van Wyk. I mean that would

seem to me the most obvious thing to do. Somebody - two police officers who were in the area at night, they heard shooting and they saw houses burning. If Captain Mitchell had told you that on the morning that you visited the scene, if he had told you, "Listen, I was here last night, myself and Burton and van Wyk were here last night, and we heard shooting and we saw houses burning" surely you, or

/Captain

Captain Wattress, would have taken statements from Burton and van Wyk that very day. --- That is correct.

So, when they only made statements - they came forward voluntarily 10 days later to make a statement to Wattress, did you call Captain Mitchell in and did you say to him, "Listen, what's going on here? These people tell me that they were with you on the night, in the area, and they heard shots and saw burning. Why didn't you tell me that on the day in question?" Did you do that to him? MR VAN ZYL: Mr Chairman, I am sorry, the witness can't speak ... (inaudible) ... he clearly doesn't follow the question properly. If you can perhaps break it up.

CHAIRMAN: When you read these statements of Burton and van Wyk you will have seen that they stated that they were in the area on the night of the incident with Captain Mitchell, in a police vehicle, and that they heard shots and that they saw houses burning. Okay? -- Yes, that's correct.

Now, was that new information to you? --- Yes. The first time that information came to my attention was when Burton and van Wyk made statements.

Right. Now, if you or Captain Wattress had heard that information on the 3rd of December when you were walking around looking at the dead bodies and that, if Captain Mitchell had said to you, "I was here last night. I heard shooting, I saw houses burning, and in fact I was with two other constables, two other policemen," surely a statement from Captain Mitchell and van Wyk and Burton would have been taken immediately from three policemen who were there in the area, saw houses burning and saw - and heard bullets being fired.

Surely a statement would have

/been

been taken from all three of those people at the time, on the 3rd of December. Is that not what a reasonable investigating officer would have done? --- That is correct. I say if Burton and van Wyk had made statements on that same morning, and not only a long time afterwards then the investigation might have taken a completely different turn. But what they had said in their affidavits, or in their statements, was not known to me on the day I investigated or the day I visited the scene.

But the point I am trying to make, Mr Marx, is that they said in their statements 10 days later that they were with Captain Mitchell, and you spoke to Captain Mitchell on the day of the incident, on the 3rd, and he didn't tell you that he was there. --- Yes, I have testified that Mitchell had said that he had been in Trust Feeds.

Did Mitchell tell you on the 3rd of December that he was in Trust Feeds with Burton and van Wyk, driving round in a police vehicle, and he saw houses burning and

he heard shooting? Did he tell you that on the morning of the 3rd? --- No. Mitchell did not say anything to me about Burton and van Wyk. He only said that him and members of the South African Police Force were in the area and they were deployed there.

Did he tell you that he was right in the village of Trust Feeds, and that he saw houses burning, and that he heard bullets being fired? Did he tell you that on the morning of the 3rd? --- I cannot remember exactly what the order was in which the events took place, but I can remember that Mitchell and members of the police had been deployed in the area, and also that a report was made to them of the incident at this house, and that they then

/visited

visited the scene. But the order of the events I can't remember any more.

Mr Marx, I'm afraid that I am going to record here that you are being evasive. I have asked you several times now, did he tell you on the morning of the 3rd that he was in the area that night, that he saw houses burning, that he saw bullets being fired, and that he was with two other police constables in a police vehicle? Did he tell you that or not? Yes, no, I can't remember. --- But I did testify that Mitchell and members of the South African Police were at the scene. If I say at the scene I mean in Trust Feeds. And that a report was made to them of an incident at this house. I have never denied it. That's what I've been saying all the time from the start of these proceedings that was what had happened.

So why then does Captain Mitchell's statement not indicate that he was in the area on that night - and please let me finish. In the area on that night with Burton and van Wyk, and that he heard shooting and that he saw houses burning? Why does his first statement that he made not contain any of that information which was contained in the statement of Burton and van Wyk? Do you know that? Do you know the answer to that? I don't want you to answer for Captain Mitchell, but do you - can you give any explanation as to why Mitchell's statement should not give that information, but 10 days later Burton's statement should give that information - and van Wyk's statement? --- I accept - or I think that Mitchell had made his own witness statement, his own statement. If I could see Mitchell's statement I will be able to see if he made it himself or whether else took it from him. If

/Mitchell

Mitchell had left out certain things that he should have mentioned in his statement then he is in the wrong.

Mitchell has explained all that in public. He said that he didn't put that in his statement. He's made that very, very clear. He said that he didn't put that in his statement because he didn't want to be connected with this incident, and he said in the statement that he - you will know this, this is why he was convicted of murder - that he was responsible for giving orders to the special constables to go and kill those people. And when he made his statement to Captain Wattress he didn't mention that he was in the area on the night in his car, and that he heard shooting and saw houses burning. He didn't make that statement. He has

told us that, and he's told the Amnesty Committee that.

That's part of the reason why he got amnesty. So, 10 days later, when that information is given to Captain Wattress, didn't you think it was very, very strange that a senior officer should not have given you the same information on the day in question? --- I did not see Mitchell's statement, I only saw the statement of Burton and van Wyk, and I absolutely agree with you that if Mitchell had made a statement, and if he hadn't put all the facts that should have been in the statement - if he didn't do that that would have been irregular.

Why didn't you regard Brian Mitchell as a suspect in this matter? --- At the first time - yes, the first time I formed a suspicion was after I had seen the statements of Burton and van Wyk. Before that I didn't have any suspicion.

Why didn't you regard him as a suspect after that, /after after you saw Burton and van Wyks' statements? --- Because Burton and van Wyk had put in their statements, if I remember correctly - I am just looking for the right word. They placed a question mark on the activities of the special constables in Trust Feeds on that night, that they could possibly know something more about the incident.

And so what did you think then? What did that lead you to do? Did that lead you to suspect the special constables? --- That is correct.

But at no stage did it lead you to suspect Brian Mitchell, is that right? --- Yes, there was a suspicion against Brian Mitchell as well.

And what did you think about that? --- We then started to investigate, and to take statements and to gain evidence with regard to this incident and the role of Mitchell, as well as the special constables.

So, in doing that you were relying to some extent, to a significant extent, on the information given to you by Burton and van Wyk? --- That is correct.

I've perused the statements that - the various statements that Captain Mitchell made, right up until after his trial. In none of them has anyone ever put the question to him, "Captain Mitchell, why didn't you tell us what Burton and van Wyk told us? Why didn't you tell us that on the 3rd of December?" No one ever put that question to him. Do you know why? --- Mitchell was at that stage a suspect. He was asked for an explanation, and he was warned according to the Judge's Rules, and he chose not to make a statement. You must realise that I could not put any questions as I liked to a suspect.

/At what

At what stage was Mitchell a suspect? After Burton and van Wyk had made their statements? --- That is correct.

(Inaudible) ... until three years later, when Colonel Dutton came into the picture. --- That is correct.

And there was an inquest, wasn't there? --- That is correct.

And isn't it also correct that at the inquest the Magistrate at New - I think it was New Hanover or Greytown - the Magistrate found - he made a finding, an unfavourable finding, against Captain Mitchell. ---

That is correct. I agree. I cannot remember the finding of the inquest, but I do know that Mitchell's name was mentioned.

And the Magistrate, because of the evidence of Burton and van Wyk the Magistrate - I can't quite recall his words, but he certainly made very negative remarks concerning Captain Mitchell's role in this whole incident, and suggested that there should be further investigations into Captain Mitchell's role. ---

That is correct. Exactly what was said about Mitchell I can't remember, but I do know that his name was mentioned, and that it was said that it must be investigated further.

And what steps were taken further to investigate his role? --- We did over a long period of time try to find the special constables and to trace them.

Why didn't you act on the finding of the Magistrate in New Hanover about Captain Mitchell? Why didn't you follow that up? --- But I did act the only way I could according to my opinion. The only way a case could be

/brought

brought to court against Mitchell was if we could find the special constables.

So you said you couldn't take a statement from a suspect. How long was he a suspect for? --- I could take a statement from a suspect, but not to cross-examine a suspect.

Did he remain a suspect for a long time? ---  
Yes, he was always a suspect.

And some time after the Trust Feeds incident I understand that he got promotion in the police force.



--- That is correct.

(Inaudible) ... in a murder case. --- That is correct.

Now, did you make any specific comments or remarks or observations relating to the finding of the Magistrate in the inquest? --- Under which circumstances? Could you please just make the question a bit clearer to me?

Well, put it this way. Superintendent Dutton has informed us that he had a discussion with you at some stage as to why Captain Mitchell was not charged following the finding of the Magistrate, and that you said that Burton and van Wyk were young and they had been drinking on the night in question - something like that. Do you recall that? --- No, I can't. The first discussion I had with Dutton - and once again I am speaking under correction, but I think I am right on this - was when he contacted - he consulted me and General van der Westhuizen in Pretoria. Before that, as far as I can remember, not.

So would it be incorrect then to say that you ever made any statement about the suitability or reliability of Burton and van Wyk as witnesses? --- No. If I

/remember

remember correctly Burton - I beg your pardon. Sorry, Major Dutton was stationed in Durban, and I am speaking under correction, but I can't remember that I had any discussions with him. He was stationed in Durban and I was in Pietermaritzburg, and there would not have been any reason for me to talk to him or to have discussions with him about the incident.

Okay, did you have discussions with anybody else about the incident and make observations or comments or remarks on the suitability of Burton and van Wyk as witnesses? Did you ever express a view as to why they shouldn't be used as witnesses? --- No. No.

Did you have a view as to whether they would or could be used as witnesses in any criminal proceedings after the Magistrate made a finding? --- Yes, they were very important witnesses.

And even though Captain Mitchell, in your own words, was a suspect, you didn't think it was possible in the circumstances to charge him? --- The function of deciding whether or not a person is charged is in the hands of the Attorney-General or his agent, and it does not lie with the South African Police Force.

Did you send - was the inquest docket and Captain Wattress' docket sent to the Attorney-General? --- Yes, I suppose so.

MR VAN ZYL: I don't think there would have been a docket and an inquest docket.

CHAIRMAN: The inquest docket only, sorry. Well, there would have been a docket ... (intervention) --- The procedure is that the dossier, the docket per se, is not handed in at court, only copies thereof. From the murder

/docket docket another docket is prepared. In other words all the other documents and statements which were in the case docket are made copies of and put into the inquest docket. In other words there are then two dockets.

Now, Mr Marx, do you know Captain Pada van Zyl? I don't know what his full names are, but he was known as

Pada van Zyl. Do you know him? --- Yes, Major van Zyl was the district investigative officer at Greytown.

Is he the van Zyl that we are talking about who attended the scene on the 3rd of December? Is that Pada van Zyl? --- That is correct.

Now, Captain Mitchell - Mr Mitchell, has informed this Commission that shortly after Burton and van Wyk made their statements, and after you became aware of the contents of Burton and van Wyk's statements, that - Mr Mitchell says that you visited him with Captain van Zyl, Pada van Zyl, at - he can't recall whether it was Greytown or New Hanover, and you spoke to him very robustly about what had happened at Trust Feeds on the night of the 2nd of December. --- Yes, I visited him at his office at New Hanover. I cannot remember exactly what the topic or the nature of our conversation was.

The allegation is that at that meeting with Mr Mitchell he told you in some detail exactly what had happened on the night of the 2nd of December, and he told you that he had given instructions to the special constables to shoot the occupants of the house - and he explained that it ended up being the wrong house, but in any event he gave instructions to the special constables that they should attack ... (inaudible) --- I will deny that he made such a statement to me. If he had done

/that I that I would have insisted on him making a confession before a Magistrate.

And Mr Mitchell says that you were angry with him and you told him that he could be locked up for

behaviour such as this, and then he says that you and Major - I don't know whether it was Captain or Major van Zyl - then left the room, and came back some short while later and said to him, that you said to Captain Mitchell that he should not be worried or concerned, and the matter would be dealt with. He was left with the understanding that the matter would be taken care of, that there would be no case brought against him. That is the allegation. --- I deny that in totality. There was a very strong suspicion that Mitchell was involved in the matter, a very strong suspicion.

Now, can you think of any reason why Captain Mitchell should say such a thing? --- No, it is beyond my thinking as well. I just don't know.

Were you on good terms with Captain Mitchell? -- I knew of his existence, but he was a member of the uniform branch, I was a member of the investigative branch.

Okay, so you were just acquaintances in the police force. --- No, not at all. The same as I knew any of the other uniform branch officers I knew him.

You just knew him. He wasn't a friend, he wasn't an enemy, he was merely a colleague in the same State service. --- That is correct.

And you cannot think of any reason why he should make a statement which is obviously highly incriminating of yourself? --- I agree with that 100%. I just fail

/to understand to understand how he could make such a statement, because if he had made any such statement to me I would have insisted immediately that he go to a Magistrate and

make a confession.

Mr van Zyl, would you think it appropriate to break now for a short adjournment for a cup of tea or something.

MR VAN ZYL: Well, the witness actually ... (inaudible) ... we break for tea.

CHAIRMAN: I am sorry.

MR VAN ZYL: He is, I am informed, a smoker, and it seems that for him to be without a smoke for an hour is a terrible thing ... (inaudible)

CHAIRMAN: Okay, we'll break for about 15 minutes or so. If you want longer we're happy to give you longer.

SHORT ADJOURNMENT

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ON RESUMPTION:

CHRISTIAAN PIETER MARX (Still under former oath)

MR VAN ZYL: Mr Chairperson, we have now had the opportunity to read the two statements by Burton and van Wyk, and Mr Marx will be, I think, better qualified now to speak with reference to these two statements.

CHAIRMAN: Thank you, Mr van Zyl. Mr Marx, I just want to refer to the statements that your counsel has referred to. Is this a statement which you saw before or after you instructed Captain Wattress to take the statements again? You did - in your earlier evidence you said that you saw a statement, or two statements from Burton and van Wyk, and because they were not full enough you asked Captain Wattress to take them again. Do you know - maybe you can't remember, but do you remember whether this was the

/first

first - these were the first set of statements or whether they're the second set of statements that were taken? --- I would just like to mention that it's Constable van Wyk not Lieutenant van Wyk, and, be that as it may, this is the statement which was re-taken.

Right. Now, just referring to the statement of Burton, Jason William Burton, having read the statement would you agree with me that this statement places a much bigger question mark over the behaviour of Captain Mitchell, or Lieutenant Mitchell as he then was, than over the activities of the special constables? And perhaps I should just elaborate there. You don't have to agree with me one way or the other. I refer to page 4, 5 and 6 of that statement. Halfway down page 4, where Burton says that they had heard shots, that they had seen the shop burning, and they asked Captain Mitchell - Lieutenant Mitchell, about this. And in the fourth paragraph from the bottom,

"His reply was that we were scared and we were seeing things. To me it appeared that Lieutenant Mitchell was trying to put us off."

And then if we turn over the page, the third paragraph down,

"Lieutenant Mitchell said nothing was going on. I again got the impression that he was avoiding the issue."

On the fourth paragraph from the bottom on page 5 Burton says that he and van Wyk noticed shotgun shells on the floor of the cab.

INTERPRETER: On the floor of the what, sorry?

/CHAIRMAN:

CHAIRMAN: On the floor of the cab of the vehicle. Two paragraphs from the bottom Burton noticed that those same shotgun shells were missing. The last paragraph on page 5,

"On the way I felt under the seat and found a shotgun shell. Lieutenant Mitchell demanded the shell from me, which he flung out of the open window.

Page 5, paragraph two,

"I saw some shotgun shells in his hand. which he again flung out of the window."

And so on. Now, you've read the statement. --- Yes.

You've heard what their version of the events is.

Do you agree that if Captain Mitchell had known all these things on the night - or on the morning of the 3rd of December, that he should have given you a statement which was - if he was telling the truth and being honest which should have been in accordance more or less with what Jason Burton and van Wyk tell us here? --- Yes.

Now, he didn't tell you anything like that. In fact he just said he was in the area at the time. ---

Yes.

What steps did you take, what investigations did you undertake, or did you instruct Wattress to undertake, to find out why Lieutenant Mitchell had omitted extremely important and vital evidence on the morning of the 3rd when you spoke to him? You will agree that what Mitchell told you and what he said in his statement doesn't bear any relation whatsoever to what's contained in these statements. Do you agree with

that, or do you think that Captain Mitchell told you more or less what's in the statements? --- No, Captain Mitchell when I visited

/the scene the scene did not tell anything that is contained in these statements.

Did you believe Captain Burton - I mean Constable Burton and van Wyk? Did you believe their statements or did you disbelieve them? --- Yes, I did.

What steps did you take to find out from Captain Mitchell why he had lied by omission to you, and to Captain Wattress, by not giving any information that's contained in this statement? --- Captain Mitchell was a strong suspect in this case, and in my opinion we could not have approached Mitchell about the content of these statements before the investigator could do his duty.

At what stage could you approach Mitchell concerning these details contained in this statement?

--- The moment we traced the special constables.

Were you satisfied that in Mitchell's statement he didn't say anything like this, or did you immediately think, "This man is a suspect"? What did you think about the fact that he had clearly not told you any of this information. He was asked about it. He was asked what he knew. On the 3rd of December you asked him those questions, "What happened here? Do you know what happened here?" You asked that to him and to Terblanche. That's what you told us. He told you virtually nothing except that, "I was in the area." 10 days later you read this. What were your feelings? -

-- As I already testified, if Mitchell on the morning



of the 3rd had made this information known to me which Burton and van Wyk mentioned in their statements the investigation would have taken a whole new turn, but he did convey this information to me.

And after this statement was made why didn't the /investigation investigation take a whole different turn? After Burton and van Wyk made their statements why didn't it then take a whole different turn? --- The crux of the whole matter in proving against a case against Mitchell was the tracing of the special constables. It is my meaning that on the basis - on the strength of the content of these statements we would not have been able to prosecute him.

So if he had told you this information on the morning of the 3rd why would the investigation have taken a whole different turn? That is what you've just said to us. Why would it have taken a whole different turn if he had told you all this on the morning of the 3rd? --- If the content of Burton and van Wyk's statements was known to me on the morning of the 3rd I would immediately have approached Mitchell.

And instead you approached him after these statements were made. --- That is correct.

You had more than one meeting with him, is that right? --- That is correct.

And in those meetings with him did you put to him very robustly why he hadn't told you this information on the 3rd, and are there any reports that you made which will reflect that you took him to task for not advising you or Captain Wattress, or anybody else for that matter? --- You must understand that Mitchell was a

strong suspect, and you cannot just approach a suspect and conduct an interview. The person has to be warned in terms of his rights according to law. His rights have to be explained to him before any questions are put to him. I did do that at some stage.

Did you question him about this specific thing, or /didn't didn't you question him at all? Did you question him as to why he didn't tell you what Burton and van Wyk told Captain Wattress? --- No. I warned him in terms - I explained his rights in terms of the law, and told him that he could - he had the right to legal representation before he made any statement.

And how long did he carry on being a suspect for?

--- Until his arrest.

Which had nothing whatsoever to do with you. ---

What do you mean?

It was taken away - it was no longer with Captain Wattress, the investigation was being conducted by Major Dutton, is that right? --- That is correct.

And in the interim almost three-year period, two years and eight months or something, Lieutenant Mitchell continued in his post, and was in fact promoted from lieutenant to captain, despite being a very strong suspect, as you put it, in a murder case. --- That is correct.

And was the fact that he was a strong suspect - was it ever made public, because there were lots of press reports at the time about this incident. I recall at the time there was a ... (incomplete) --- That is correct.

And you informed the press that he was a strong suspect, or a prime suspect in the matter? --- I cannot recall informing the press. I had nothing to do with his promotion.

No, I accept that. Because, you see, Captain Mitchell says that he wasn't a suspect. --- He was a suspect.

Well, he says he wasn't a suspect, and he says that,

/as I  
as I have said to you, that after the contents of this document were made available to him ... (incomplete) --  
-- The moment the information contained in these two statements became known to me, from that moment up until his arrest Mitchell was a suspect.

MR GOVENDER: Mr Marx, you said earlier on that at the point that you received the information from Wattress regarding the statements made to him by van Wyk and Burton Mitchell became a suspect, is that right? You then directed Wattress to take a further and fuller statement from van Wyk and Burton, is that right? ---

That is correct. The preliminary statements were not complete or comprehensive enough, that's why he had to go and take another statement from them.

(Inaudible) ... are dated the 20th of December.

--- That is correct.

You had before you allegations made in a statement on oath by two reservists, and you've said that you believed what these gentlemen had said, is that right?

MR VAN ZYL: Mr Chairperson, I do not think there's evidence before this committee that this witness had that information before him on the 20th of December.

Certainly the statements were taken, but I don't think it has been investigated at what stage he became aware of the existence of these fuller statements.

MR GOVENDER: Okay, I'll rephrase the question. At what point did you become aware of these statements?

When were these statements given to you by Wattress? -

-- I really cannot remember the date. It was while I was on vacation.

Was it some time in December that year? ---

Yes,

/if I

if I recall correctly it was in the month of December, but I cannot remember which date it was.

To all intents and purposes then, Mr Marx, you had this information before you. You had allegations on oath made by two reservist policemen, and you said that you believed what they said. Yes.

And you would agree with me that the allegations here are substantial, in the sense that they create a serious doubt as to Brian Mitchell's role in this entire incident? --- Whether there was doubt about Mitchell's role in this incident, yes, after reading these statements I realised that Mitchell could be a possible suspect.

Mitchell then was a suspect, is that right? ---

That is correct.

And Wattress was the investigating officer in this matter, is that right? --- That is correct.

Did you instruct Wattress to take a statement or interview Brian Mitchell in light of these statements that you received? --- No.

You chose rather to do it yourself, is that right?

--- No, that is not correct. I was on vacation.

And when did you return from vacation? --- I cannot remember. I think it was the end of December. I think I started work in January again.

When you came back from vacation what did you do?

--- I immediately started with taking statements.

From who? --- If I remember correctly I received a statement from Major Terblanche, Captain van der Heever, Sergeant Rose.

(Inaudible) ... people. --- The special constables served under the command of Major Terblanche at

/the Riot  
the Riot Unit in Pietermaritzburg.

You were investigating the angle of the special constables' involvement in this incident, is that right?

--- That is correct.

And you had strong reasons to believe that Brian Mitchell may have been involved in this also by virtue of these statements. --- Yes, I suspected so.

You said in your evidence earlier on that you didn't approach Brian Mitchell at that point in time because it was premature to do so. --- That is correct. I wanted more information first.

You wanted more information about the special constables, is that right? --- That is correct.

And you said the reason for that is because you would not be able to sustain a prosecution without getting information or statements from the special constables, is that right? --- That is correct.

And you didn't at that time consider the allegations made by van Wyk and by Burton sufficient to confront Brian Mitchell with. --- No. On the strength of the content of these statements my person opinion is that it would not have been wise to approach or confront Mitchell at that stage.

And the only reason you can advance for that is that you would not be able to sustain a prosecution on the evidence available to you at that moment in time.

--- Over and above the information or the statement which Burton made, and van Wyk, I wanted more information before I approached Mitchell.

Now, Mr Marx, you have an investigating officer, Wattress, who is investigating the case. He's made

/certain certain reports, he's made certain statements available to you. You don't ~~instruct that~~ instruct that investigating officer to continue the investigations, namely by speaking to Brian Mitchell. You considered that inappropriate at that time.

And the only reason you can advance for that is you didn't consider the evidence sufficient for a prosecution. Am I correct in summarising what your position is? --- I was not the investigating officer in this matter. Captain Wattress, and later Major van Zyl, were the investigating officers. I merely assisted here and there by taking some of the statements.

Carry on. --- And I am still of the opinion that on the basis of the content of these two statements, and with no other evidence, I did not have a strong enough case to confront Captain Mitchell.

You were a fairly - at that time you were a fairly senior officer in the ranks of the police, weren't you?

--- That is correct.

And generally in criminal investigations when an investigator is assigned he generally conducts that investigation, and it becomes necessary only when it is necessary to report to his senior officers, isn't that correct? --- Yes.

In this case you had given specific instructions to Wattress that he should inform you on a continuous basis as to the progress of this investigation. --- That is correct in this specific matter, and any other serious offence I was to be kept abreast of matter.

Are you saying, Mr Marx then, that in matters of a serious nature you are kept - you were kept continuously advised of the progress in these cases - in all serious /matters matters that you were ultimately responsible for? ---

That is correct.

And you had no other interest in this matter apart from that? --- It was a serious matter. I had an interest in the matter being finalised successfully. That is why I took statements in this matter and searched for suspects inter alia.

And this matter was of - generated sufficient public interest for this matter to be resolved as soon as possible, isn't that so?

INTERPRETER: Sorry, could you repeat the last part of your question.

MR GOVENDER: It is correct that this incident had generated enough - or a lot of publicity, and that it was important that the matter was resolved quite soon,

isn't that so? --- Yes.

On the 13th of December you were orally informed by Wattress about the information he had received from van Wyk and Burton, is that right? By the 13th of December you had received some information regarding Brian Mitchell's involvement. --- That is correct.

By some time before the end of December you had received written statements, signed statements, from these two gentlemen, is that correct? --- That is correct.

You were happy that there were sufficient allegations in these statements to make Brian Mitchell a suspect, isn't that so? --- Yes.

CHAIRMAN: (Inaudible) ... strong suspect, in your own words, Mr Marx. --- Yes.

MR GOVENDER: And did you - when did you first approach Brian Mitchell about his involvement in this incident?

/--- I

--- I cannot remember the date, but it was - it had to have been in the new year. I cannot remember the date.

I would really like to be of assistance, but I really cannot recall.

When you approached Mitchell did you approach him alone? --- I cannot remember if anyone was with me, but when I conducted the interview with him we were alone.

Nobody else was present in the interview? --- No, not when I took his statement.

You took his statement. --- Yes.

Was there any reason why Wattress was not asked to actually take his statement? He was in fact the



investigating officer. --- Wattress was not the investigating officer any more. Major van Zyl had taken over the investigation at that stage.

Well, at what point was that? In which part - do you remember the time, the period? --- It was in December when Wattress went on leave, and then van Zyl took over the investigation.

And why wasn't van Zyl tasked with the responsibility? --- I regarded the matter as being so serious that I decided to conduct the interview with Mitchell.

Mr Marx, if Mr van Zyl approached Mitchell rather than you what would be the difference? --- Absolutely no difference.

You were a fairly senior officer in the police force. You were tasked - you were tasked as an overseer in terms of the criminal investigation in the division that you belonged to. You were not one of the foot soldiers, in the sense that you had to personally take /statements statements and confront accused persons. Is that right?

--- No, that is incorrect. In several matters I would go and arrest people for serious offences, or be present when people were arrested for serious offences.

Mr Marx, name me some of the matters that you dealt with, that you personally as a brigadier had taken statements from the suspects. Name me some of the cases that you had. --- I cannot recall any, but there were incidents.

You cannot recall? --- No, I cannot recall.

So the reason for - there was no reason on earth for van Zyl not to have taken the statements. You took

it rather because you considered this of a serious nature. --- Van Zyl could have taken the statement.

I was on leave in December. I cannot speak on his behalf, but if he was to approach Mitchell to take a statement from him there was nothing wrong with that.

Mr Marx, Mr Mitchell was a suspect. The investigating officer was van Zyl, and if he continued with his investigations logically he would have eventually taken - or interviewed Brian Mitchell. There must have been some communication between yourself and Mr van Zyl as to who would approach Mitchell. --- I cannot testify as to why Major van Zyl did not approach Mitchell for an explanation. I cannot testify on his behalf.

Was there any discussion between yourself and Mr van Zyl as to who would approach Mitchell? --- No, I cannot call to mind right now.

Well, did you know whether Mr van Zyl had approached Mitchell and taken a statement from him before you approached Mitchell? Did you? --- No. Either Major

/van Zyl

van Zyl would have told me, or Mitchell himself would have told me that Major van Zyl had already taken a statement from him.

You had not communicated with van Zyl as to who would approach Mitchell, or whether a statement had been taken from Mitchell already, is that correct? ---

No.

You hadn't? --- When I approached Mitchell I cannot recall - I expect that van Zyl accompanied me, but I cannot remember.

(Inaudible) ... accompany you. --- I cannot remember.

Is that Pada van Zyl? --- Yes, that's correct.

Was there anyone else with you? --- No, not as far as I can recall.

Was there in fact a Dankie van Wyk with you? --- I really cannot recall that either.

Brigadier van der Westhuizen? I am asking you, Mr Marx. --- No, there was no Brigadier van der Westhuizen with me. I do not know anyone by that name.

(Inaudible) ... you know? --- Yes.

Was he there? --- When I took Mitchell's statement? No.

When you went to see Mitchell? --- Pardon me?

When you went to see Mitchell. --- When I went to see him when?

At the time when you approached him about his involvement in this incident, and you then subsequently took a statement, is that right? --- When I took the statement from Mitchell there was no one else with me. It was just Mitchell and I in the office, no one else.

So when was it possible that Pada van Zyl may have /accompanied accompanied you? When was that? --- It could possibly have been the day when I went to New Hanover to conduct an interview with Mitchell.

MR VAN ZYL: There may be a misunderstanding here. I think the witness tried to say that he saw Mitchell more than once, or he interviewed him more than once. At one stage he took a statement from him. At that stage, during the time that the statement was taken, they were alone. That's how I understand his evidence.

CHAIRMAN: Is that correct, Mr Marx, that when you took your statement from him you were alone? --- That is correct.

And did you have other meetings with Mr Mitchell at which other people were or may have been present, including Captain van Zyl and Dankie van Wyk? --- No, I approached Mitchell a second time and it was just the two of us.

MR GOVENDER: But did you approach Mitchell on occasions before that, before you took a statement? Did you interview him before that? --- To take a statement from him?

No, just ... (intervention) --- No. I cannot remember.

Well, you just agreed with your counsel and the Chairperson that in fact you met Mitchell on a number of occasions, interviewing him, and on the occasion that you took the statement you were alone. So, from that I gather, Mr Marx, that you met him in relation to this incident more than once. --- When I took a statement from Mitchell, the statement in terms of Judge's Rules, Mitchell and I were alone. I cannot remember - it's /possible possible that I could have spoken to him on other occasions, but I cannot remember. I will not deny it. I cannot remember it.

In relation to the Trust Feeds matter and his involvement in the Trust Feeds matter specifically. --- No, I cannot remember it.

Buy it's possible. --- Anything is possible. I really cannot remember it.

Do you categorically deny it, Mr Marx? Is that what I am trying to get from you? --- No.

And can I put it to you, is it possible that when you did meet with him on another occasion that you were in the company of other people, namely Pada van Zyl or Dankie van Wyk? --- That is possible.

And the subject of Mitchell's involvement in this whole affair was actually discussed. --- That is correct.

You see, is it - well, put it this way. Do you remember whether Mitchell made any confession to you and the other people regarding his involvement in the Trust Feed matter? --- At no stage whatsoever.

You see, Mr Marx, Mitchell makes - and he has made this publicly in his statement, that in fact he did meet with yourself at New Hanover Police Station, Pada van Zyl and Dankie van Wyk, on an occasion where he confessed to you his involvement in the Trust Feeds incident.

CHAIRMAN: That's already been put to the witness and he's denied it. --- I deny that categorically.

Can I just intervene here briefly. Mr Marx, the picture that you've painted for us is that this man, Mitchell, was a suspect, and you said - you went further /than that, than that, you said he was a strong suspect, and from the minute you got that statement you felt that Mitchell was a suspect. --- Yes, that is correct.

Did you ever make a statement to the effect that you thought he was a suspect? --- I cannot remember.

But nevertheless you still thought he was a suspect, is that right? --- Yes.

And why is it then - why is it that you made a sworn statement saying that the explanation about his role in the Trust Feeds Massacre, the explanation given to you by Captain Mitchell, was satisfactory? Why would you have said that? Because I can give you such a statement.

MR VAN ZYL: Mr Chairman, may we see that statement?

CHAIRMAN: Yes, of course. (Pause) This statement is dated 30th of March 1989, and it is New Hanover MR2/12/1988. The originals of the statement are available if you wish to check the copy with the original. It was taken more than one year after you found that Captain Mitchell was a strong suspect in this matter, and you nevertheless say - and I draw your attention to page 134, in the top right-hand corner of that statement, towards the end.

"As fellow ~~an~~ investigating officer in this matter I have found that we cannot depend on the allegations and the suspicions of Constable Burton and van Wyk that Lieutenant Mitchell was involved in any way, either directly or indirectly. It is clear that these two members on the night in question were shocked and very afraid, and this is

/corroborated

corroborated by the fact that they went to hide on a farm near Bongwe's shop, and their allegations are made on assumptions which they made in a state of anxiety. However, the

explanation issued by Lieutenant Mitchell is acceptable to me in the light of all these circumstances which took place on the night in question."

That paints a completely different picture to the one that you have painted for us over the last couple of hours. You have told us in the last couple of hours that you believed Burton and van Wyk, that you thought their evidence was very, very important, that from the moment you saw their statements that you believed that Captain Mitchell was a strong suspect, etcetera, etcetera, and one year later you say that no reliance can be had on these peoples' statements because they were "geskrik" and made their statements in a state of anxiety, and that the explanation given to you by Captain Mitchell is acceptable. Which version is the correct one? Can you just tell us that? --- The evidence I gave on Burton and van Wyk is correct. All that I insinuated in this statement was that Burton and van Wyk would not be good witnesses. I did not say in the statement that they were lying. I just voiced my opinion that they would not be good witnesses. Even though I didn't say it, they had drunk earlier that evening. I am not insinuating in this statement that their evidence could not be believed.

Where in that statement does it state, does it say that Lieutenant Mitchell was a suspect, or still is a /suspect, suspect, in fact a strong suspect, and that if only you could get hold of these special constables then he could be charged? Where does it say that?

MR VAN ZYL: Mr Chairperson, may the witness be afforded the opportunity of reading this statement, which we now only saw for the first time ... (intervention)

CHAIRMAN: Yes, of course.

MR VAN ZYL: And to at least consider it, and then I think the question could be answered more satisfactorily or more properly than at present.

CHAIRMAN: Yes. Take what time you need to read the statement.

MACHINE SWITCHED OFF

ON RESUMPTION:

CHRISTIAAN PIETER MARX (Still under former oath)  
(Through Interpreter)

CHAIRMAN: We now resume after that short break. Do you want to make any comment on the question which I put to you before the break?

MR GOVENDER: Before you - I think the absence of the other Commissioner should be ... (incomplete)

CHAIRMAN: Yes, just to record that Mr Dlamini will be back after - probably after we take the lunch break, which will not be too long from now. Do you want to make any comment on the question which I posed to you before the break, which was to the effect that the picture that you had painted to us during the course of this morning's evidence was that at all times after Burton and van Wyk made their statements you were of the view that Mr Mitchell was a strong suspect in this matter, that you believed Burton and van Wyk, that you regarded their

/evidence



evidence as very important, and compare that with the statement which you made in March 1989 to the effect that the statements made by Burton and van Wyk could not be relied on, and they made the statements in a state of anxiety and fear, and that the explanation given to you by Captain Mitchell was acceptable, and the fact that nowhere in that statement did you make any mention whatsoever of the fact that he is, or that he was at any stage, a suspect. Do you want to comment on that? ---

Yes, I would like to comment. The statement must be read as a whole, and within its own context. This statement was drawn up for the information of the Attorney-General, who had to ... (inaudible - end of Side A, Tape 2) ... indicate that Burton and van Wyk are

liars, or that one could not depend on the statements at all. What I meant there was that there are certain discrepancies in the statements of Burton and van Wyk, and that the Attorney-General had to take cognisance thereof. But I don't say that they are liars, as also is the case with other evidence in the docket.

(Inaudible) --- That is correct. Also to add, the explanation that was given by Mitchell in the context of the other circumstances and - circumstances of that specific night, is acceptable, must be seen within the context of the events of that night. There are also some evidentiary material that are problematical.

(Inaudible) ... as a correct reflection of your understanding and belief of the Trust Feeds incident?

--- That is correct.

And you make no mention whatsoever of the fact that Mitchell had failed to give you this information

when

/asked

asked to do so on the 3rd of December 1988. You make no reference to the fact that he threw shells, doppies, out the window of a moving motor vehicle in Trust Feeds that night. You make no mention of the fact that this man was, and still was, a suspect, a strong suspect. You make no mention of the fact that he was a strong suspect, because you told us that right up to the day of his arrest he was a strong suspect, but yet you make no mention of the fact in your report to the Attorney-General. Are you satisfied that that was the proper thing to do? --- All the evidence was included in the docket for the benefit of the Attorney-General.

---

Everything relating to the cartridges, everything that you've just mentioned, was in the docket.

And do you agree that it is common practice for an investigating officer - and in this case you say that you were a "mede ondersoekbeampte" - to express views to assist the Attorney-General as to ... (incomplete) ---

That is correct.

I've been involved in many such cases as an attorney, and I know that is the case, that the Attorney-General relies to a very large extent on the views expressed by investigating officers, and the only - the only mention that you have made here is in the second-last paragraph, where you say,

"Departmental steps must be considered to be taken against members for the way in which the evidentiary material was handled ..."

and so on. So that's your recommendation at the way that some of the evidence was handled on the scene, the fact that not all the doppies may have been picked up there.

/Is that

Is that the sort of thing you're referring to? Those are your only concluding recommendations, is that right?

--- No, it's not. This paragraph refers - does not refer to charge personnel at the police station, who know how to work with evidentiary material and so on. Those personnel did not work according to the rules, and that caused problems for us. That's what I am referring to. Because there are standing orders on how to work with evidentiary material.

Those issues, how evidentiary material was handled, those were the ones where you said thought should be given to possible departmental steps to be taken against those members who perhaps didn't follow standing orders. Is that right? --- It was an after-thought. It does not have anything to do with this specific case. In many criminal cases that we see members act negligently. When that happens we recommend that not only criminal procedures, but also departmental steps must be taken against them, and that was what I had in mind.

I just want to refer you to the judgment of WILSON J in this trial, and you can have a copy of the judgment if you wish after I've read the paragraph, but it is obviously a public document and you would have been fully aware of the contents of the judgment at the time that Captain Mitchell was sentenced. And on page 4460 WILSON J says the following:

"Marx had apparently gone to Bergville for the purpose of taking a statement from accused No 3."

That's Lieutenant Mitchell.

"He thereupon immediately made a

/statement

statement himself, apparently while still in Bergville, during the course of which he indicated that he accepted what was set out in accused No 3's statement, and gave reasons why the statements of Constable Burton and van Wyk should not be accepted, and indicated further problems that would face a prosecution. Marx made no mention whatsoever in his statement of the fact that accused No 3 ..."

that's Lieutenant Mitchell,

"... had been at the scene of the crime, and had not supplied any information to the officers who arrived there; that he had made two statements in connection with the burning of the store and the murders, and he had made no mention of the part played by himself or the special constables, and that he had refused to make a statement on the 3rd of January. It appears to us that the statement made by Marx ..."

and in this case WILSON J is referring to the statement that you have in front of you.

"It appears to us that the statement made by Marx was designed to bring the investigation to an end, and to supply reasons for an inquest to come to a finding that the murders had been committed by persons unknown."

/So that

So that is the opinion of the Judge at the end of the trial, where, after reviewing the evidence, he says that he is of the view that you deliberately made the statement in order to bring the investigation to an end.

Any comment on that? --- I cannot agree with this finding. It is general knowledge in the docket that Mitchell had been in Trust Feeds. It is also general

---

knowledge that somebody else except for the special constables had caused the deaths of the deceased and the other parties injured. At no stage did I create the impression, or try to create the impression, that any other person except for Mitchell and the special constables had been involved in the case. I have never tried to create the impression that other people had been responsible for the deaths and wounding of the people. The evidence in the docket would have been clear to anybody who read through the docket that that was the case.

(Inaudible) ... final explanation. --- Yes, that's correct.

(Inaudible) ... about that you were represented as a State witness, represented by senior counsel in that trial. How did that come about? Why was it necessary?

--- If I remember correctly it had been Mr Reid, who was a legal representative in the service of the South

African Police in Durban. I cannot remember if he acted himself or on whose instructions he acted. I had legal representation, but I can't remember the circumstances thereof. I cannot remember who ordered it.

You will be aware, from your experience as a policeman, that the interests of a State witness would normally be taken care of by the advocate or the counsel /appearing appearing on behalf of the State. Isn't that correct?

--- That is correct.

Why then do you think private senior counsel were appointed to represent you? --- I think Mr Reid, who is currently still in the South African Police, in the legal section of the South African Police, will be able to explain it much better than I would.

You yourself have ~~go~~ no idea. Is that your answer? --- I can't think of anything at this stage.

I can't remember the circumstances under which it took place.

Are you aware of any discussions or instructions which were given to you by any senior policemen, policemen more senior to you, relating to the Trust Feeds investigation? --- No.

Have you ever had a discussion with General Johan van der Merwe, General van der Westhuizen, Ronnie van der Westhuizen? You must think carefully now, because this is a long time ago. I want you to give us a straightforward answer. Did you have discussions with Johan van der Merwe and Ronnie van der Westhuizen about the Trust Feeds Massacre? --- What I remember now is -it's 10 years back - I know of a discussion with General van der Westhuizen where Dutton and van Zyl

visited main branch, the main office.

(Inaudible) --- I cannot remember. I cannot remember any personal discussion I had with General van der Merwe.

(Inaudible) ... aware that when arrests were made in this matter that senior policemen came down to Durban to assist Major Dutton with his investigation, including Colonel van der Westhuizen - I don't know if he was a /colonel colonel or general, it was Ronnie van der Westhuizen - and others. Are you aware of that at all? --- That General van der Westhuizen came to Natal to help Dutton with the investigation?

To oversee the investigations, in the same way that you oversaw Captain Wattress and van Zyl. Are you aware that that happened? --- I know that van der Westhuizen came to Natal, but however I do not know what he came to investigate here. I was in Pretoria at that stage.

So you have got no idea of what they were doing here and why they were here? --- No. I didn't get any feedback from them.

If I told you then that they - after they had been down here for a very short while that the Attorney-General of Natal, and the investigating officer, and the State prosecutor, requested the Commissioner of Police to withdraw them immediately from this case because he felt -or they felt that these senior policemen were attempting to prevent the investigation from continuing.

Do you have any knowledge about that at all? --- No, I have no knowledge.

MR VAN ZYL: I may just perhaps draw your attention to the fact that my client was transferred from Pietermaritzburg to Durban, in the division Port Natal, and from there to Pretoria, and maybe those dates may be of relevance as to his knowledge or possible knowledge as to what went on during those times.

CHAIRMAN: When were you transferred to Pretoria, Mr Marx? --- I think it was during January 1991 if I remember correctly. (Pause) Yes, it was January 1991.

Are you aware that Major Dutton made a request at /Greytown Greytown - made a request to van Zyl, that's Pada van Zyl, that he have access to the Trust Feeds docket? Do you have any knowledge of that? And that ...

(intervention) --- No.

... van Zyl said to Major Dutton that he could not have the docket, and if he wanted it he was to ask Brigadier Marx. Do you have any knowledge of that at all? --- No.

Major Dutton says that he was following routine investigations in that area with regard to certain crimes committed by special constables, and because he knew that special constables were involved in the Trust Feeds Massacre he decided to draw the docket to see whether any of the names matched up. And he went to van Zyl and he said could he have the docket, and van Zyl was adamant that he could not have the docket, and that if he wanted it he would have to get permission from Brigadier Marx. You know nothing about that whatsoever.

Is that correct? --- No, I can't remember anything.

He said that this had never ever happened to him in his career as a South African Policeman of some 12 or



15 years, that he been refused access to a docket by a fellow officer. I am not asking you to comment on that, I am just giving that to you for your information. Now, Major Dutton says that after he got certain information about the special constables in this matter he went to Pretoria, and there he met with you and General van der Westhuizen, and he spent a great deal of time explaining why it was necessary for him to have access to the docket. And he said he encountered resistance there from yourself and van der Westhuizen, and when eventually you and General

/van der

van der Westhuizen agreed to hand over the docket General van der Westhuizen informed Major Dutton that if anyone was going to be arrested in this matter steps should be taken to ensure that they should be granted bail immediately, and that a single defence counsel should be appointed to represent them all. Do you have any knowledge of that at all? --- You made a very long statement. I know of the fact that Dutton and van Zyl had come to Pretoria. I know that they had discussions with me and van der Westhuizen. I know that General van der Westhuizen had given the order that Dutton researches or investigates the matter further. But I do not know whether they had dockets with them at that stage. I think so, but I am not sure. And also I deny that myself, or van der Westhuizen in my presence, had told Dutton in any way what to do. In other words we didn't prescribe to him what he had to do in his investigation.

Did General van der Westhuizen instruct Dutton that anyone who was arrested in this matter should be

given bail immediately, and steps should be taken to ensure that they were represented by a single counsel?

--- Not in my presence, no.

Why was it necessary for van Zyl to get your permission to hand over the docket to Major Dutton? -

-- I don't know anything about the problem between Dutton and van Zyl. I cannot say if it was so or not.

I was not present there at the time.

Why was it necessary for Major Dutton to come to Pretoria to speak to you about this docket? ---

Dutton had certain information in regard to the docket, and he wanted authorisation to take over the investigation of the

/docket,

---

docket, and General van der Westhuizen gave him instructions to continue the investigation of the matter.

So, if Major Dutton says that the only way that he could get access to that docket, even to look at the docket, was with your and/or General van der Westhuizen's permission, what do you say to that? Is he telling the truth, or .... (incomplete) --- I cannot comment on allegations made by Dutton which were not made in my presence.

Mr Govender, I think I would like to start now with the issue of special constables. Do you have any feelings as to when you would prefer to adjourn for a short lunch break? Do you want to continue until two and then adjourn for half an hour, or adjourn now for half an hour and continue at two?

MR VAN ZYL: I am entirely in your hands, but may I speak to my client?

CHAIRMAN: Of course.

MR VAN ZYL: You say, Mr Chairperson, that you wish to proceed with the special constables.

CHAIRMAN: (Inaudible)

INTERPRETER: The speaker's microphone is not on.

CHAIRMAN: Sorry. Sorry, I was - sorry.

MR VAN ZYL: In the Trust Feeds matter?

CHAIRMAN: Oh yes. Yes. No, no, no.

MR VAN ZYL: Mr Chairperson, you can decide at any time.

CHAIRMAN: Okay. Mr Govender, I would like us to proceed then in that direction relating to General Marx' - Mr Marx' understanding of the role the special constables in this incident. And I will - when necessary I will intervene and ask questions.

/MR GOVENDER:

MR GOVENDER: Just before we go there there's just one preliminary question arising from a question you asked.

Mr Marx, do you know at what point - or firstly, was there an inquest held in this matter before the trial of Brian Mitchell? --- Yes.

Do you know when that was, around when? ----  
Unfortunately I cannot remember the date.

Was it the time - for that inquest did you make this statement that we've been discussing so far? ---

I cannot remember. I suspect that this statement was made in the murder case.

The statement was made in April 1990.

CHAIRMAN: Mr Govender, I think that in the judgment of WILSON J he says that it was his view that the statement made by Mr Marx was made with the specific intention to bring the investigation to a close, and to lead an

inquest to make a finding that the killing was done by persons unknown. That is the view of the Judge. An inquest was held after Mr Marx made this statement, which is dated March or April 1989, and, notwithstanding Mr Marx' view that the explanation given by Captain Mitchell was acceptable to him, the Magistrate made a negative finding against Lieutenant Mitchell. And of course that inquest report and finding is available. It's not here with us at the moment, but we can make that available to you.

MR GOVENDER: I am interested, Mr Chairman, on the timing of Mr Marx' statement, the one that's been the subject of discussion. Was it made prior to the inquest or was it made for the purposes of the trial?

CHAIRMAN: We don't have the inquest docket in front of us, but my understanding of this matter is that the /inquest inquest took place after March 1990 - March 1989.

MR VAN ZYL: Mr Chairperson, if I may interpose here. The statement clearly says at page 134,

"The inquiry in this matter has been finalised and the State has been submitted to the Attorney-General for his decision."

That took place before an inquest was held, because the Attorney-General has to decide whether to prosecute or to hold an inquest, or whatever he wants to do.

CHAIRMAN: That's correct.

MR GOVENDER: Thank you.

CHAIRMAN: So the inquest then must have taken place after that.

MR GOVENDER: Mr Marx, the evidence which you have given us in respect of why you hadn't proceeded at the outset to confront Mitchell about the allegations of his involvement was that you were tracing the special constables, and you had to trace the special constables first before you would confront Mitchell about these allegations, is that correct? --- That is correct.

Now, what efforts, if any, did you make to trace the special constables? --- I attempted several times to -I went and visited the homes of these suspects on several occasions, sometimes personally. I also had a name of - a list of names and addresses of the suspects, which I gave to Major Upton, who was in charge of the Riot Squad Investigative Unit in Pietermaritzburg.

This list - before you continue, where did you get this list from? --- From the Riot Unit.

This was the constables that were deployed in that /area on area on that night, is that correct? --- Yes, those were the special constables who were sought in connection with the Trust Feeds saga.

Ja, but the question, Mr Marx, is simply this. How did you know - or where did you get the information from that you would go out seeking these particular special constables? What information did you get? Put it that way rather. --- If I remember correctly Major Terblanche provided me with the names and addresses.

Of special constables that were deployed in that area in that period, or all special constables that were ... (incomplete) --- No, the special constables who

were deployed at Trust Feeds at the time, and in regard to who the suspects were in this matter.

Now, when did Major Terblanche give you this information? --- I cannot remember when he gave me the details, on which date it happened.

You will remember, Mr Marx, that at the very outset you said that when you arrived at the scene, the crime scene, you spoke to Mr Mitchell and you spoke to Terblanche, and they informed you that personnel had to be deployed in the area because of the conflict between the ANC and the IFP. Do you remember saying that to us?

--- That is correct.

Now, can you remember whether at that point in time did Terblanche, Major Terblanche, give you information about the people, that actual constables that were deployed, special constables? --- No, only that special constables had been deployed there.

So therefore you were then subsequently give that information by Terblanche, is that right? --- That is

/correct.

correct.

And that must have been after the time that you received information from Wattress and/or the statements of van Wyk and Burton. --- That is correct.

Because arising out of that information there were certain suspicions about the role of the special constables in Trust Feeds on that night, isn't that so?

--- That is correct.

And, equipped with this list of special constables, you then began the process of tracing these special constables. --- That is correct.

Okay, Mr Marx, I want you to just inform me - and if you don't know say so - when special constables are employed by the SAP what is the procedure in terms of the administrative work? --- I do not know.

Do you know if a record of information relating to special constables employed by the SAP - whether such records are kept, and where they are kept? --- No, I do not know.

Do you know if they are kept? --- I do not know anything about the administration and appointment of special constables.

If you, Mr Marx, had to seek information about any member of the SAP, personal details about an SAP member, what is your first recourse? Where would you go to

first to get that information? --- A member that's currently in the force?

Yes, currently in the force. --- I would go to his station commander if I wanted details about him, or to his unit commander.

And where do you think the station commander or unit

/commander

commander will get that information that you require from? --- He would have records of persons who served in his staff.

From records that are kept about these people, isn't that so? --- At the station they have personal files of members at each station.

Do you know if they have such personal files for special constables? --- I do not know.

Did you make inquiries? --- No. Major Terblanche gave me the names and addresses of the

special constables. That is why I came to the conclusion that he must have had them, but what I really want to say is that I do not know the circumstances under which a member is appointed, and I don't know the way in which the Riot Squad keeps their records. But he would have had to have had them because he gave them to me.

So you were equipped with the names and addresses of these special constables. --- That is correct.

And did you ever find these special constables?

--- No.

Why not? --- I could never find them at their houses. I tried several times.

How many of these constables were there on your list, Mr Marx? --- I cannot remember. Five, six, seven, I don't know, I am just guessing. But these were the special constables who were in employment at New Hanover.

And apart from visiting - seeking them at their houses did you make any other effort to find these special constables? --- Yes. As I said, Major Upton was in charge of the Riot Squad at Pietermaritzburg, and also had

/a satellite a satellite station at Hammarsdale. That is the area where the suspects stayed, and I also gave him a list of the names of the accused, or the suspects, and the addresses, and asked him to assist in trying to trace the suspects.

(Inaudible) ... the suspects were found. Did they never ever report for duty? --- Not as far as I know.



So all seven or eight of these people had absconded even from their employment, is that right? -

-- I don't know how many absconded. I do not know.

CHAIRMAN: Do you know what standard form is filled in if a police member has disappeared or absconded, or is resisting arrest or avoiding arrest? Do you know what form would be filled in which would be circulated to other stations and other units to trace that person? -

-- When a member of the force absconds I don't know, but - what steps would be taken to trace him, is that correct?

What steps would be taken to - there's a form apparently that the police use, that if a particular member disappears that form is filled in and it's circulated to other units and other stations, and it is indicated on that form that this person is a wanted person. Do you have any knowledge about that? ---

No, I do not know what happens when a member absconds, or the steps that are taken, or anything like that. I have never dealt with such situations yet.

(Inaudible) ... SAP55 form? --- Yes, I know about an SAP55 form. That is where suspects - information about suspects was circulated. I am now aware, now that we are talking about it. I was under the impression you wanted to know which steps were taken to trace special

/constables constables who had disappeared or absconded.

Well, would an SAP55 form be circulated in respect of special constables who were suspects? --- Yes, if there was a case against them an SAP55 would be circulated.

Well, in this case there was a case that was being investigated against a number of special constables, isn't that right? --- That is correct.

And were SAP55 forms issued? --- I do not know if Major van Zyl did that, or Captain Wattress.

Okay. Well, the evidence is from Captain Dutton at the time is that he examined the personal files of the accused, he examined the investigation diary, and he examined the docket, and there was no record anywhere that an SAP55 form had been filled in. In his judgment WILSON J says the following on page 4491 of his judgment.

"As I have already said there was no SAP55 form filled in, and it seems

highly improbable that General Marx was not aware of the procedure that should be followed in this regard, that is that a copy of the SAP55 form must be lodged with the records department in Pretoria."

--- I was not the investigating officer in this matter. I do not know what Major van Zyl did or did not do. I was only assisting in the investigation from time to time and at periodic intervals.

You describe yourself in your affidavit there as a "mede ondersoekbeampte." --- That is correct, but that is exactly what it says, that I was of assistance on a

/periodic periodic basis, and I was not assisting throughout.

But you were involved to such an extent that you, as a brigadier, took the highly unusual step of taking a

statement from Captain Mitchell, and, having been involved to that extent, where you travelled around to where Mitchell was stationed at Bergville and took his statement, but you were not even aware whether SAP55 forms had been filled in with regard to the special constables. --- Yes, but I did not keep the docket up to date. Major van Zyl did that. He entered - made entries into the docket. As I said several times previously, I was only assisting him from time to time, and I cannot comment on what he did or did not do.

Okay. But this was an important incident, you've said that already, and there was a lot of public interest generated around the incident. Do you believe, as a senior policemen, that if there were four policemen wanted in connection with a murder investigation, that one of the very, very basic steps that should have been taken by the investigating officer was that an SAP55 form should have been completed and sent to all the relevant departments - records in Pretoria and elsewhere? Do you agree? --- That is correct. The procedure is that they sent to Pretoria, not to other places.

Well, the evidence - the allegation is that there was no evidence whatsoever of any SAP55 forms being filled in. --- Unfortunately I cannot comment on that.

So, the steps that you took to look for these special constables were - was what? You visited their houses yourself. --- That is correct.

And what else did you do? --- As I said, I

/requested

requested Major Upton, who had an office at Hammarsdale, to assist me. And he also reported back to me at regular intervals or from time to time.

And did you have any discussions with the Attorney-General of Natal at the time as to the whereabouts of these policemen? --- Of their whereabouts? No, not as far as I can recall. I cannot recall having a discussion with the Attorney-General.

Because the Attorney-General at the time, Mr Imber, has indicated that you did discuss this with him, and he said he was extremely concerned that a large group of policemen simply disappeared off the face of the earth, and nobody in the police could find them. And he asked you what had happened to them, and he says

that your answer to him was, "Hulles moer toe." --- I doubt whether I would make use of such language before the Attorney-General, but I cannot remember at which stage, but I did focus the Attorney-General's attention on the fact that we could not trace the suspects.

Well, where else did you look for them? Where else did you - or do you know where else Upton and van Zyl looked for them? --- The only place which we could go and look at was at their homes, because there was no other place which we knew about.

Did you use informers to help you with your work?

--- That is correct.

Did you use your informer network ... (inaudible)

--- No. In my position I did not have an informant network. Members of the investigative unit who investigated matters from day to day had an informant network. And that is why I asked them to help me with

/tracing

tracing the suspects, because they had an informant network.

(Inaudible) ... when you were searching for these people? --- I went to Pretoria, and as far as I know there was a search for the suspects until Dutton arrested them.

Ja, but I am asking you how long was it before Captain Dutton came onto this case the file was - the docket was pending or closed? The Attorney-General says that he asked you - or the investigating officer to report to him on a monthly basis, and how long did that go on for? One year, two years? --- I do not know that this docket was ever closed. I can only comment up

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until the period which I left for Durban, and for my departure for Pretoria.

All right, well, I'll enlighten you there. This thing took place in December 1988, and from that time on, or shortly thereafter, after Burton and van Wyk had given their statements and the special constables became suspects - that would have been January 1989 they were suspects, all the way up to about July 1991, when Captain Dutton took over. So we have the whole of 1989, the whole of 1990 and half of 1991, where you - the investigating officer is searching for these suspects. Is that approximately correct? --- Yes, there was a continual search for the suspects.

And Captain Dutton takes over the case and within about two weeks he finds all of them. Doesn't that strike you as being a little remarkable? --- No, I do not find it remarkable. Dutton informed me that information was conveyed to him as to where the accused

- or one or

/more

more accused found themselves. I can't remember whether he was referring to one or more.

So you don't find it at all surprising that your investigating officers looked for them for two and a half years and Captain Dutton found them in a couple of weeks. It didn't strike you as being at all odd? You didn't think that perhaps your chaps were dragging their feet, or, even worse, making no attempt whatsoever to find them, or even covering it up? You didn't even think that at all? --- I do not know under which circumstances Dutton arrested the people. Dutton did inform me, however, that he received information. I do

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not know where he received the information as to where the accused found themselves, and if I or anyone else was investigating the matter - let me put it this way. The person who gave Dutton the information found themselves. If that person had come to me, or to us, and said to us, "The accused are at such and such a place," we would have gone there and arrested them.

Well, Captain Dutton says he got hold of - he arrested the first special constable by going to his house in Mpumalanga township. --- He was very lucky.

He went to his house, and he found the man in his bed with his girlfriend, and his name was David Khambule. --- I have no reason to dispute that, but I had gone there at all hours of the day and night and had never found them. Suspects flee when they know that the police are looking for them. They don't stay at home. They may visit their homes, but they don't stay home permanently.

And Captain Dutton says that this man, this special constable, David Khambule, confessed to his role in the

/Trust

Trust Feeds incident on the same day that he was arrested, and he told Captain Dutton that the other six special constables were being hidden at the house of Chief Khawula, who was a chief down the south coast, and who is presently a member of the National Assembly in Cape Town, representing the Inkatha Freedom Party. Do you know about that? --- No, I do not know anything about that.

Have you never heard that, even after it happened?

--- No, Dutton never told me where the persons were arrested.

And this man, Khambule, said that a few days before he was arrested by Major Dutton that some members of the KwaZulu Police had come to them in their various posts, in their various houses - had come to them and had, as a matter of great urgency, taken them to Chief Khawula's house down the south coast. And he said - this man Khambule said that he was told by the KwaZulu Policemen who took them down the coast that the Trust Feeds investigation had been opened up again. No, I am not suggesting that you - I am telling you what one of the special constables has made a sworn statement to the effect. And the special constable said that he was told, when he was taken by the KwaZulu Police and hidden down the south coast, that senior officers in the SAP had contacted a senior officer in the KwaZulu Police, a Colonel Mzimela, and had told them - or told him, Colonel Mzimela, that the Trust Feeds investigation was

being re-opened. --- I don't know anything about that.

Now, this was very shortly after your meeting with Captain Dutton in Pretoria. --- That may be possible. I do not know about the circumstances under which Dutton

/investigated

investigated the case.

So let me just paint the scenario for you, and for the record. We have a situation where the special constables disappear for two and a half years, no one knows where they are, no sign of them, and Captain Dutton goes to Pretoria to get permission, on his version, to re-open this case and to get access to the

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docket, and very shortly thereafter he arrests one of the special constables, and that special constable tells him that a few days before he and his six colleagues had received urgent instructions from a senior member of the KwaZulu Police to go into hiding. The reason why this man, according to his own evidence, David Khambule, was at his home, he said he left the place where he was meant to be in hiding down the south coast at Chief Khawula's house and he went home to see his girlfriend.

Nevertheless this is the sequence of events, that the KwaZulu Policeman who moves these six people down the south coast informs them that he has been told by a senior officer in the South African Police that the Trust Feeds investigation has been re-opened. So, does that come as a complete and total surprise to you? You know nothing about that? --- I have no knowledge thereof, and as far as I know the Trust Feeds case was never closed, so it couldn't have been re-opened. It



was never closed.

No, it wasn't closed. I used the word. It was pending until some further information came up. --- I don't have any knowledge of Dutton's investigation.

Captain Dutton then went with some other policemen to Chief Khawula's house, where he found all of them hiding at Chief Khawula's house. Are you aware of that?

/--- No,

--- No, I don't know anything thereof.

MR VAN ZYL: Mr Chairperson, I am sorry to interrupt. If my memory serves me some of these policemen, I think two of them, came from Ulundi. They were brought later to Pietermaritzburg. I don't think all of them were arrested at the chief's house.

CHAIRMAN: Sorry, you're quite correct. Four of them were arrested at the chief's house, two of them were handed over by Brigadier Buchner at a slightly later stage. I apologise. Also just for the record, and to provide some continuity for this record, Major Dutton's evidence is that when he arrested the special constables at Chief Khawula's house they advised him that shortly after the Trust Feeds incident they had been taken by one Major Langeni of the KwaZulu Police to something called Mkuze camp, which was a training camp used by the KwaZulu Police in a rural area of KwaZulu. --- I have no knowledge thereof.

And the purpose of taking them there was to hide them and to prevent any investigation into their role at Trust Feeds. --- I have no knowledge thereof.

They also stated that whilst they were at Mkuze camp they continued to receive their monthly wage, which was brought to them in the form of a cheque for which

they personally signed. It was brought to them by a policeman from Pietermaritzburg from the office of Major Terblanche. --- I have no knowledge thereof.

And they also gave evidence that they were thereafter integrated into the KwaZulu Police. Do you have any knowledge of that? --- No.

And this despite the fact that they were wanted as /suspects suspects in a murder case. Do you have any knowledge about that? --- No.

MR VAN ZYL: It may be of assistance to just point out that again, if my memory serves me, at the trial the special constables who testified there had a different version as to how they collected their money, that they actually went to the camp at - Oribi I think it's called, in Pietermaritzburg, and collected it personally, and that at one such incident they had an altercation with accused No 1 at the camp. I just want to put that on record.

CHAIRMAN: Accused No 1 being ... (incomplete)

MR VAN ZYL: Van den Heever.

CHAIRMAN: Van den Heever.

MR VAN ZYL: My client at the trial.

MR GOVENDER: Mr Chairperson, can I just put two - all right, just to go back a little bit. In an effort to find these special constables you said you personally visited their homes, is that right? --- That is correct.

And did you circulate or distribute the particulars of these constables, either with the KwaZulu Police or any other area that was likely to come across these people? --- Yes, with Major Upton, who was in

Hammarsdale. That's where the accused or the suspects stayed.

Why with Major Upton? Because he was head of the Riot Squad in that area? --- Yes, he was head of the Riot Squad in Pietermaritzburg, but as I have already said they had a branch which they were operating in Hammarsdale, and he knew the area very well.

MR VAN ZYL: Mr Chairperson, there may be a misunderstanding here again. Upton wasn't in control of the Riot Squad, he was in control of the Riot

/Investigation

Investigation Unit. They were detectives investigating riot - or politically related crimes.

MR GOVENDER: Did you submit this list to any of the investigating officers in this case? --- Which investigating officers are you talking about?

Van Zyl, who was investigating this, or Wattress?

--- Yes, he was also - van Zyl was also in charge of the list. He was also in possession of the list.

(Inaudible) ... the list, did you, you personally?

--- Yes. Yes.

You see, Mr Marx, it's quite strange that you say that, because in the judgment of the Brian Mitchell case at page 4491 the Judge makes this remark at marginal line 20 downwards,

"It would appear that he ..."  
and he's referring to yourself, Marx,

"... never passed on to the investigating officer or Captain van Zyl the information that he was aware of the fact that members of the Riot Unit had been stationed in Trust Feeds

at the time of the murders."

--- I did hand him the list. How could he have investigated the matter if he didn't have a list?

Well, this is the conclusion that the Judge comes to. --- I cannot comment on the conclusion of the Judge.

The other conclusion of the Judge that's very strange from what you've said, Mr Marx, is at page 4485 of the judgment at page - marginal line down - onwards, and I quote again,

/"He ..."

"He ..."

referring to Marx, that's yourself,

"... was asked by counsel for accused

No 6 about the alleged visit to the homes of the special constables. It became painfully obvious that he had no real knowledge as to whether this ever occurred. We are satisfied that he made no effort whatsoever to ascertain the whereabouts of the special constables."

This is the conclusion that the Judge makes in his judgment as a result of listening to your evidence and everybody else's evidence in the trial. Do you have any comment to make on that, Mr Marx? --- I do not agree with that conclusion. I personally went with other members - I never went alone because I did not know the area - to visit the homes of the suspects. If I can remember correctly I mentioned that one of the suspect's houses was broken down, and one of the other houses of the suspects was burnt down. If I did not visit the

scenes personally - if I did not go to their houses personally how would I have known that the houses were broken down or burnt down?

You see, also the Judge concludes at page 4495 of the judgment, at marginal line 11 onwards, referring to Captain Dutton's involvement in this as investigating officer, and he says, and I quote,

"On their return Captain van Zyl handed over the docket to him ..."

that's Captain Dutton,

"... and he then perused it and noticed

/that the

that the particulars of the six special constables had not been

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circulated as is required."

What's your comment on that, Mr Marx? --- I cannot comment because - as to why Major van Zyl did not circulate it.

Just a question arising out of earlier on evidence. Would I be correct in saying that you eventually took a statement from Mitchell three months after the incident? --- It is possible that I said that. I cannot remember. If I said that it is probably so. It's possible - I mean it's easy to mix up dates.

Mr Chairperson, if the Chairperson has no more questions we can consider taking the break now.

CHAIRMAN: I just want to just deal with a couple of things. How could it happen that for approximately five months after you embarked on a search for these special constables that their personal files in Pietermaritzburg contained copies of pay slips, indicating that their salaries had been handed to them on a monthly basis?

How could that happen? --- I cannot explain the circumstances under which these people received their salaries after an investigation was pending. I really cannot explain it.

It seems to me that if those same files had contained some sort of list or indication or SAP55 form to say that these people were wanted for murder, how would it be possible for these people to go on collecting their salary for month after month? It seems so completely bizarre. It's actually shocking to learn that this was happening. --- I have absolutely no knowledge about

/that an

that and I cannot comment on it.

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In circumstances where senior - very senior policemen like yourself are involved in the investigation it's difficult to even comment on it, because one simply doesn't know what to say. That people signed for their pay slips, and a senior policeman like yourself is a "mede ondersoekbeampte" in that very case, and he and his fellow investigating officers completely fail to find these people for a period of two and a half years, and that somebody who picks up the docket two and a half years later finds them after a couple of weeks, even less. It's astonishing. Have you got any comment on that? ---

I cannot comment at all on the fact that there is evidence to the effect that the special constables received their salaries after it was known that they were being sought. I cannot comment on that. And the manner in which Dutton received the information, it is possible that someone told him where the suspects were,

that is why he traced them that soon. I really don't know how he got his information or where the suspects were. He never discussed it with me.

(Inaudible) --- Not as far as I know.

MR GOVENDER: Mitchell's statement - and I'd like to quote from the statement and I want you to comment on that. He says in his statement,

"The people who knew to a varying degree about the facts behind the Trust Feeds incident, including the cover-up, were my wife, Marx ..."

referring to yourself,

"... Dankie van Wyk, Pada van Zyl,

/van der

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van der Heever, Terblanche, Rose,  
van der Huston, Colonel van Zyl,  
District Commander Davis, my brother-  
in-law, Andrew Brown, Upton, and a  
woman friend who worked with  
Neethlings where the ballistic tests  
were done."

What is your comment about that? --- I can't comment on that except for the fact that if Mitchell - or if it's insinuated - if Mitchell said that these people knew about Mitchell's involvement in Trust Feeds, I must just make it very clear I don't know anything. At no stage did he report to me that he was involved in Trust Feeds.

(Inaudible) ... between you and Brian Mitchell, were there, at any stage? Is there any reason ... (intervention) --- No.

Is there any reason why he would name you as one of the people who were involved in the cover-up? ---

I have no idea. I don't know what his motive and agenda would be. If he had said this to me he would have been arrested.

Just the last remark, Mr Marx. You said if he said this to you. What? What did you refer to, "this"?

--- That if Dutton had admitted to me that he had committed an offence I would immediately have arrested him and arranged for a confession to be made. If Mitchell had told me that he had been responsible for the murders at Trust Feeds he would have been arrested and taken to a Magistrate to make a confession before a Magistrate.

But, Chairperson, Mitchell in fact did say that he had confessed to you, but you denied that. --- Yes, I deny it.

/CHAIRMAN:

CHAIRMAN: We'll take a short break for half an hour.

MR GOVENDER: Unless my learned friends want to continue, because they need to get a flight, I think, at some stage. If they're willing we can continue. It's up to the Commissioner.

MR VAN ZYL: Mr Chairman, I'm in your hands, but we would appreciate a short break at this juncture. 10 minutes or so?

CHAIRMAN: If you want to just continue we can do so.

MR VAN ZYL: (Inaudible) ... thank you.

SHORT ADJOURNMENT

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/ON RESUMPTION:

ON RESUMPTION:

CHRISTIAAN PIETER MARX (Still under former oath)

(Through Interpreter)

CHAIRMAN: Are there any things that you want to continue with, Mr Govender?

INTERPRETER: The speaker's mike is not on.

MR GOVENDER: Sorry.

CHAIRMAN: You mean you want to leave the Trust Feeds incident?

MR GOVENDER: Yes.

CHAIRMAN: I just want to cover a couple of things here. Mr Marx, you said that Major Terblanche gave you copies or details of the special constables' names and addresses, and you distributed these to various people in the Riot Unit, or the Riot Investigation Unit. Is that right? --- That is correct.

Now, at the trial in this matter evidence was led from Captain Marion, who was second-in-command of that unit, and shared duties with Captain Upton, and he testified at the trial that he had absolutely no knowledge of any inquiries having been made to that unit as to the whereabouts of the special constables. What do you say about that? --- I can't comment on his statement, but Captain Marion was at the Riot Investigation Unit in Pietermaritzburg, and Major Upton moved between Pietermaritzburg and Hammarsdale, but he was usually at Hammarsdale.

So are you satisfied then that everything possible was done to trace these people? --- Absolutely.

To such an extent that whilst you were searching for them they were drawing their salaries at a police office

/in Pietermaritzburg

in Pietermaritzburg, and signing for their slips.

During that period you're satisfied that every single thing that was possible that could be done to trace these people had in fact been done? --- Nobody ever brought this aspect to my attention at all.

Now, evidence has been given by Captain Mitchell in his amnesty application that the decision to attack the house, or a house in Trust Feeds, was made long, long before the attack itself on the 3rd of December, and it had been planned by a number of people, including Captain Mitchell himself, Major Deon Terblanche and a certain Mr David Ntombela of the Inkatha Freedom Party, that because the Landowners Association in Trust Feeds

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was - had a UDF leaning to it, because - sorry, not the Landowners Association, the Trust Feeds Crisis Committee in that area had a UDF flavour or leaning to it, that a decision was taken by those people, Captain Mitchell, Major Terblanche and the IFP person I mentioned that steps should be taken to ensure that the IFP got the upper hand in that township, and that certain steps should be taken to ensure that those people who were believed to support the UDF were driven out of the township. He testified that this took place over a certain period of time, and that people who were involved in this process were members of the Inkatha Youth Brigade, special constables, and the SAP themselves, in the form of Captain Mitchell, Major Terblanche, and other people who were in control of the special constables. And he has testified that on the day before - or the morning before the attack members of the Riot Unit went into that area, detained in terms of

the state of emergency a number of - a large number of  
young

/people,

people, males, who were suspected of supporting the UDF.

They were detained at 'Maritzburg Police Station. And he also testified that thereafter during the course of the day certain elements were brought in my vehicle, bussed in, Inkatha Youth Brigade persons whose job it apparently was to attack people and to set houses alight. And then he also testified that later in the day, later in the evening, special constables were brought in, and it was part of the plan that they should attack people who were suspected of being members or supporters of the UDF. And Captain Mitchell testified

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that he went to Trust Feeds that night to ensure that that particular part of the plan was being carried out, ie, that the special constables had arrived, that they were doing their job, and that they had in fact attacked the target that they were meant to attack. And he says that when he discovered that they had not in fact attacked the target that he gave them instructions to do so, and that they then went ahead and fired on the people in this particular house, killed a large number of people, and were then removed from the area and taken back to Pietermaritzburg. And Captain Mitchell says that from very shortly thereafter there was a concerted effort by himself and other people to cover up this investigation by various means. He says that at the scene of the crime shells, cartridges, were picked up and thrown into a long-drop toilet belonging to Mr Jerome Gabela. He says that he deliberately did not inform the investigating officer of any of the incidents

of the night of the attack, or of the prior planning of the attack, and, as I have put to you, he said that he advised you personally of everything that had happened up to the date

/of the of the attack, and that you informed him that you would ensure that no steps would be taken to prosecute him ... (inaudible - end of Side A, Tape 3) ... he was confident that no steps would be taken to prosecute him. He states he was also aware that steps had been taken to hide those members of the special constables who had participated in the incident that evening, and he states that it came as a great shock to him some two years or so later to learn that the Trust Feeds

investigation had been re-opened. Now, we've heard evidence - or we've heard details concerning evidence that was given by the special constables themselves that they did take part in the attack, and that they were deliberately taken to various places and they were hidden. And this is the general picture which has been given to us by the person probably primarily responsible for the entire Trust Feeds incident, that is Captain Mitchell himself. Now, can you comment on that general scenario or picture that has been painted? Do you agree with any aspects of what Captain Mitchell has testified publicly about? Are there aspects concerning that which you disagree with, and if so which ones? --- I

unfortunately only at a late stage started making notes.

I will comment on the things I made notes on. If there's anything else would you please question me further. I have no knowledge on any actions that were taken by the Riot Investigating Unit, any plans that

were made by them about Trust Feeds. I also have no knowledge about any discussions that took place between members of the Riot Unit with any other people. I have no knowledge of - let me rephrase. I want to put it to you that no promises were made by me at any stage to Mitchell that no

/steps

steps would be taken against him. Could you please just help me a little here and refresh my memory?

What comment do you have to make on the fact that there was, on the version of those people who were found guilty in this matter, the special constables - that there was a deliberate effort to prevent them from being detected in this matter, and that they were hidden for

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lengthy periods until their arrest in 1991? --- I have no knowledge thereof.

Have you ever, ever heard that remark or observation or allegation before? Did you follow the trial in this matter? --- Dutton never discussed the case with me, and except for the fact that I testified in the High Court one or two days I cannot comment on what was testified there.

Have you never ever heard that these special constables were hidden for some time before they were integrated into the KwaZulu Police? Is this the first time you are hearing that? --- Yes, as far as I know. It was 10 years back. I cannot remember. What I do know is that Dutton didn't discuss the investigation of his case with me. Nobody else would have told me anything except for Dutton.

(Inaudible) ... then is that you know nothing whatsoever about a cover-up of any sort in the Trust

Feeds case. --- That is correct.

And if Captain Mitchell says that is so then do you have anything to say about that? Do you disbelieve him? --- That is correct.

Just one final observation I wish to make. Captain Dutton mentioned that on the day that he arrested Captain

/Mitchell,

Mitchell, Lieutenant Mitchell, he went to his house to arrest him and his wife informed him, informed Captain Dutton, that she had been expecting him to come and arrest her husband. Someone had informed her about this. --- I have no knowledge thereof. Dutton at no stage discussed his investigation with me.

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And she said to Captain Dutton that she had heard that the special constables had been killed. --- I have no knowledge thereof.

And she seemed surprised when Captain Dutton advised her that in fact he had arrested the special constables. And Captain Dutton expressed the view that it appeared that she was under the impression that some sort of arrangement or plan had been made to silence these special constables by killing them. Do you know anything about that? --- I have no knowledge thereof.

Is there anything - before we leave this Trust Feeds matter are there any further remarks or observations that you wish to make concerning it? ---

I don't think so. I can't think of anything.

MR VAN ZYL: The answer to that may not assist the Commission, I don't know, but - I am going to do this in Afrikaans, with your leave. Mr Marx, when you say, and

I understood you to say this, that you don't believe Mitchell that there had been a cover-up, do you mean to say that you personally had not been part of such a cover-up, or are you trying to say that there had been no cover-up at all. --- What I mean by that was to say that I did not take part in any such cover-up.

MR DLAMINI: Thank you, Mr Chairman, just a minor point for clarification. Mr Marx, I observed that at some stage

/Captain

Captain Wattress was removed from investigating the case, and I suspect it's part of the normal procedure to do that, but I am just concerned about the timing. He was removed after he had made a kind of a breakthrough where two police officers, Burton and his colleague, had given him information. Would you explain as to why he was removed from the case, and also why that kind of timing, which is a little bit of a concern for me? ---

Wattress was not removed from the matter as such, or the docket taken away from him. He went on holiday, and that is when the investigation was handed over to van Zyl, Major van Zyl.

MR GOVENDER: Mr Marx, we want to move on now to another incident, the killing of one Roy Ngcobo. Some time in 1990, on the 14th of March I think it was, Major Terblanche was killed. Do you remember that incident?

--- Yes.

And were you part of the investigating team investigating that killing? --- No.

What was your role in that? --- Over and above the fact that I visited the scene where Major Terblanche was killed I had no part in the investigation.



When did you visit the scene? Did you visit the scene before a suspect was identified or after? ---

No, I was at home on sick leave, and I was informed about his murder in the morning and I visited the scene.

(Inaudible) --- That is correct.

And besides yourself which other SAP personnel was present on the scene when you visited? --- There were so many people present, members of the South African Police, members of the Traffic Department. I cannot

/remember remember who were all there. I know there actually were members of Murder and Robbery present there as well. I just cannot remember who all any more.

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I don't expect you to remember everyone. --- I think Colonel Fourie was there, Captain Myburgh of Murder and Robbery was there, some of his staff were there. Lieutenant-Colonel Fourie, who was the assistant district investigating officer at Pietermaritzburg was there. I cannot remember if the district investigating officer was there, but there were so many people there.

(Inaudible) ... Chandler there? --- I cannot remember.

Was Sergeant Coetzee there? --- I cannot remember.

Again at that time, Mr Marx, you were still a brigadier I take it? --- That is correct.

And this murder had been committed in your district as such. --- That is correct.

And were you the highest-ranking officer present at the scene? --- That is correct.

Who was appointed investigating officer of this particular crime? --- The Murder and Robbery Unit in Pietermaritzburg took over the matter.

Ja, but do you know who specifically was the investigating officer? --- No, I cannot remember who the investigating officer was.

Were you present when a suspect, Roy Ngcobo, was interrogated? --- No.

Did you play any role in the investigation of this killing? --- No, I was not involved in the investigation of this murder at any stage.

So your role was confined to visiting the crime  
/scene  
scene on the morning of the killing itself? --- That  
is correct. That's all.

And were there any reports made to you subsequently in the progress of the investigation? ---

There were. As I already mentioned I was home on sick leave. A day thereafter I received a telephonic report that a Roy Ngcobo was arrested as a suspect.

This was the day after you'd visited the scene, or was it the same day? --- No, it was the day thereafter.

Now, Mr Marx, you visited the scene some time that morning. How long did you remain at the scene for? -- Not very long. As I say I was off sick and I was not feeling very well, and I visited the scene and thereafter I went home.

For how long were you at the scene? --- I would guess about 20 minutes, perhaps 25 minutes.

And when you left did you go back to your office or did you go back home? --- I went to my house.

You were sick. --- That is correct.

Were you booked off sick? --- Yes.

And did you consider this crime, as you mentioned earlier, as sufficiently serious to warrant your personal interest or your personal - being personally informed of the progress of this investigation? ---  
That is correct.

And I take it then the type of report that you would expect is like the one you demanded from the Trust Feeds investigation. --- As I said, I was home off sick, and if there were any developments in the matter I would have expected them to inform me about it.

/(Inaudible)

(Inaudible) --- That's correct.

---

And that's the reason why on the next day you were informed that a suspect had been arrested. --- That is correct.

Who informed you of this? --- I cannot remember, but it was somebody from Murder and Robbery. I cannot remember who the person was.

Was it the investigating officer? --- I cannot remember who informed me, but I was informed. I just cannot remember who.

(Inaudible) ... Officer Chandler? --- Yes.

Was he not the investigating officer in this matter? --- He could have been.

And it's possible he is the one who could have informed you of the arrest that had been made. ---  
It is possible. I cannot recall who told me.

And, having been informed that there was a suspect, did you then go to the place where the person was being detained? --- No.

What did you do? --- I was home. I was off sick.

(Inaudible) ... with one of your colleagues? ---

Yes.

(Inaudible) --- Yes, it was a serious matter.

And would you, being a senior officer within the crime investigation department, would have had - or wanted to play a personal role in the investigation of this matter? --- Normally that was possible, but as I said I was home on sick leave.

By the way, Mr Marx, what exactly was wrong with you? --- I cannot remember. I think I - I speak under

/correction

correction - I think I had pulled muscle or something, or a spasm in my back, which made it very difficult for me to walk, and if I remember correctly I was walking around with a walking stick at some stage at home.

(Inaudible) ... necessary to visit the scene of crime because the person who was killed was somebody you knew very well, isn't that so? --- No, I did not visit the scene because I knew the person. It was the first time that I came to hear that a commanding officer of a unit had been murdered.

(Inaudible) ... is that right? --- That is correct.

While you were at the scene of crime were the necessary procedures undertaken in terms of forensic people, fingerprints experts, and other experts that generally attend the scene of crime to gather evidence?

Were these people all present while you were there?

--- I know that the photographers were there, and the

fingerprint experts. I do not know if the other experts were there. The Forensic Unit is stationed in Pretoria, and locally we just had the local fingerprint office. And I think the video unit was there as well. I am not 100% certain.

(Inaudible) ... that could be done was done in terms of investigating the crime scene? --- Yes, that's correct.

You were informed the next day, Mr Marx, that a suspect had been arrested. Were you given the identity of the suspect? --- Yes.

What were you told? --- That a person by the name of Roy Ngcobo had been arrested, and that he was a  
/constable

---

constable affiliated to the Riot Unit.

And did you know this Roy Ngcobo? --- No, not at all.

Was it the first time you heard of this Roy Ngcobo? --- Yes.

But did you ever meet him after that? --- No, I did not meet him thereafter, but I saw him the following day, the day Major Terblanche was killed. I think it was a Wednesday. And the Friday I saw him again after he had been killed.

(Inaudible) --- Roy Ngcobo.

You say that you were informed that a suspect had been arrested. Was it the next day? --- The first time I saw Roy Ngcobo was the day - I did not see him at all on the day he was arrested. I only saw him the day on which he was killed.

MR VAN ZYL: (Inaudible) ... that he only saw this person after he had been killed.

CHAIRMAN: So you didn't see him after his arrest and before his death? --- No.

So the first time you saw him was when you saw his body in fact? --- That is correct.

MR GOVENDER: And you say you never met or knew this Roy Ngcobo at all before that? --- No, not at all.

Do you know what date he was - do you know how many days after the death of Terblanche Roy Ngcobo was killed? --- Terblanche was killed the Wednesday, and Ngcobo the Friday. So, let's say the day after his arrest.

And on the first day you were informed that in fact there was an arrest made, is that right? --- That is correct.

---

/And did

And did you give the investigating team any instructions in relation to the further investigation of this matter? --- No.

You say that you remained at home because you were not well. --- That is correct.

And on Friday you saw the body of Roy Ngcobo. --- That is correct.

Where did you see the body? --- In a police vehicle. I cannot remember the road or the street, but it was in the Hammarsdale police area.

The Hammarsdale police area. --- Yes.

Did you travel down there to see it? --- Yes, I did.

And how did it come about that you travelled down there to see it? --- I cannot remember.

You cannot remember. --- No, I cannot.

But it was obvious that you were informed. You were at home, weren't you, sick? --- That is correct.

(Inaudible) --- Once again I speak under correction, but I think radio control at Hilton.

Radio control at Hilton informed you. --- That is correct.

And you then went to Hammarsdale and you viewed the body of Roy Ngcobo. --- Yes, that is correct.

And did you get an explanation as to how Roy Ngcobo met his death? --- Yes.

What was that explanation? --- Investigating officer Chandler said to me that he had killed the deceased when the deceased took his firearm.

---

(Inaudible) ... investigating officer. --- No, I cannot remember who the investigating officer was. If /you do you do have the information that he was the investigating officer I will not dispute that.

But do you specifically remember that you were informed by Chandler about ... (incomplete) --- Yes, I remember Chandler informing me.

(Inaudible) --- That is correct.

And did he describe to you the circumstances under which he came to shoot him? --- Yes.

And what did he say? --- While he was travelling in the vehicle with Ngcobo Ngcobo took his firearm from him, but he killed him with it.

Mr Marx, you say - are you quite certain about this, that you had no role to play in the interrogation of Roy Ngcobo at the time of his arrest? --- That is correct.

Are you quite certain about that? --- Yes.

If information before the Commission states otherwise, Mr Marx, would you say that information is not true? --- Yes.

You see, Mr Marx, we have on reliable information that you in fact were part of the interrogating team that interrogated Roy Ngcobo. --- I deny that.

We have it on reliable information that you, together with Warrant-Officer Fitchett, Warrant-Officer Chandler, Captain Myburgh, amongst others, were responsible for the interrogation of Roy Ngcobo at the time of his arrest. --- I deny that.

And that during the interrogation Ngcobo had informed you that he had left his uniform with his sister up in Sweetwaters. --- No, I don't know anything about that.

And that Sergeant de Wet do you know Sergeant

/Willem

Willem de Wet, Mr Marx? --- There was a Sergeant de Wet at the Riot Unit, the Riot Squad. I don't know if we're talking about the same person.

Yes, from the Riot Squad. Do you know him? ---

Yes.

Was he involved in this investigation? --- I do not know. I was not involved in this investigation from day one until the last day.

But Sergeant de Wet, Warrant-Officer Chandler, a Reservist Constable Ntungwa, proceeded to Sweetwaters and saw Ngcobo's sister-in-law. --- I don't know anything about that.

And inquired about the kit bag and the uniform.

--- I don't know anything about that.



And that they managed to retrieve the uniform. -

-- I don't know anything about that.

And they found bloodstains on that uniform. ---

I don't know anything about that.

And that when Roy Ngcobo was confronted with that he then confessed to the killing of Major Terblanche.

--- I don't know anything about that.

And that on your instructions - well, in fact you instructed Roy Ngcobo to take off his uniform and to hand over his service pistol, and you placed him under arrest. --- No, I deny that.

Are you aware of the fact that Roy Ngcobo in fact made a confession to the murder of Terblanche? ---

No. As I already said I was not involved in this investigation at any stage.

But you just said to us, Mr Marx, that this investigation was so important that you had given

/instructions instructions that you be kept informed of the progress in this investigation. Now, an important thing like a confession is a major breakthrough in an investigation, and you say you were not informed of that? --- No, I do not know anything about a confession which was taken from him. No one informed me at that stage that he had allegedly signed a confession.

If they had not informed you, Mr Marx, is there any reason why not? --- All I was informed about was that Roy Ngcobo was arrested. I was not informed any further about the investigation which they planned to do or did do.

(Inaudible) ... important enough to inform you of Roy Ngcobo's arrest, but they didn't think it important

enough to inform you of his confession. --- I would have deemed it necessary for them to tell me about his arrest, but they did not discuss the investigation with me.

So you say you knew nothing about what was going on about the investigation and the interrogation that was taking place? --- No.

Do you know whether Roy Ngcobo made any statement to a Magistrate? --- No.

Do you know where he was kept, Roy Ngcobo was kept, on the Thursday night? --- No.

You're not aware of that. --- No.

Well, we have information that in fact a number of police stations in the area were approached to house him for the night and all of them refused, and finally members of the investigation team ... (intervention) -- I am sorry, could you just repeat that. Police stations

/were were approached to do what?

To house - keep Roy Ngcobo for the night in their gaol. --- I don't know anything about that.

Or the fact that the investigation team and members of the Riot Unit were tasked with the responsibility of guarding Roy Ngcobo at the Pietermaritzburg Murder and Robbery offices during that night. Do you know anything about that? --- No.

Now, the next morning, Mr Marx, there was - the docket having been completed there was a meeting at the Pietermaritzburg Murder and Robbery Unit. --- I don't know anything about that.

And the allegation is that apart from yourself there was members of the investigation unit, Murder and Robbery, Warrant-Officer Bosch, Sergeant Coetzee, Captain Myburgh, Chandler, Olivier, Mjilo - M-j-i-l-o - Warrant-Officer Shange, Sergeant Gaza, Sergeant Moloi, Constable Kholoko, Constable Ntalane, and so on. Do you ... (intervention) --- I was not there. I don't know about it.

And that during the meeting it was mentioned by Lieutenant Sergeant Julius ... (intervention)

CHAIRMAN: Lance-Sergeant Julius.

MR GOVENDER: Lance-Sergeant Julius, that the members of the Riot Squad had suggested that Roy Ngcobo be killed. --- I was not there. I don't know about that.

And that Julius promised that he will supply ammunition from the armoury for the killing of Roy Ngcobo. --- I don't know anything about that.

The allegation, Mr Marx, is that you were present at all these times. You deny that? --- I deny that.

The allegation goes further to say that you asked /which which member was going to drive the vehicle with Constable Roy Ngcobo in it. --- I deny it.

And that it was decided to take him back to the scene of the murder of Major Terblanche. --- Could you repeat the name please?

To take Roy Ngcobo back to the scene of the murder of Major Terblanche. --- I have no knowledge thereof.

On the pretence of a pointing-out. --- I have no knowledge thereof.

And Sergeant Coetzee had volunteered to drive the vehicle. --- I have no knowledge.

And Warrant-Officer Chandler was going to go along. --- I have no knowledge thereof.

And that you, Brigadier Marx, informed Chandler and Sergeant Coetzee to switch the radio into channel 50, which was a spare channel, and to contact you on that channel to attend the scene after they had killed Roy Ngcobo. --- I deny it. I have no knowledge thereof.

You say you have no knowledge of that, nothing at all. --- No, I was not involved in the investigation of the case at all.

(Inaudible) ... 15:00 that day there was over channel five a call to yourself to attend to the shooting incident. --- I deny that. Police radios are not telephones. It's communication between two vehicles. Nobody could call me from a police radio to my home.

Is there spare channels, such a thing as spare channels, on police radios? --- That is correct.

(Inaudible) ... sometimes used in secret operations and in times when police don't want their messages to be broadcast far and wide. --- No, the only reason why

/there there are different channels is that everybody cannot be on the air simultaneously, but there are no secret channels.

Who investigated the killing of Roy Ngcobo? ---

Lieutenant-Colonel Fourie.

Did you play any role in that investigation? ---

Absolutely nothing at all.

You played no role in, also you told us, the investigation of the killing of Terblanche, is that right? --- That is correct.

Do you remember the date, the exact date, on which Major Terblanche was killed? Can you remember that? -- It was on a Wednesday. I can't remember the exact date.

The 14th or 15th of March 1990? --- I think it was the 14th of March 1990. I think it was the 14th of March 1990.

You were informed on the 15th that Roy Ngcobo in fact was arrested. That's the next day, isn't it? ---

That is correct.

And you say that you didn't leave your premises and attend to any of your official duties until Friday, when you attended the scene where Roy Ngcobo was killed in Hammarsdale, is that right? --- That is correct.

Now, I have ... (inaudible - end of Side B, Tape 3) ... the date is Donderdag, 15.3.90. --- The 5th of the 3rd month of 1990.

At 08:30 there's an entry.

MR VAN ZYL: Mr Chairperson, I am sorry, can the questioner just repeat the date of that entry please.

MR GOVENDER: The date of the entry is 15.3.90. That's a Thursday. If the Chairperson would please oblige and

/read the

read the Afrikaans entry.

CHAIRMAN: I am not sure that I can follow it.

"Go to somewhere with Brigadier Marx to follow up further information."

MR GOVENDER: Is there perhaps another Brigadier Marx in the same district? --- It is definitely not correct.

This entry you say is incorrect, or you're saying this Brigadier Marx is not yourself that's entered - or what? --- No, it must be wrong, the ... (inaudible) ... of the investigation unit. There's nothing I would have done with them. I had nothing to do with them.

So while copies are being made of that we will just proceed, but we'll come back to that.

MR VAN ZYL: Mr Chairperson, I was just wondering whether the original document isn't perhaps available?

MR GOVENDER: It is perhaps available. I'll inquire about that.

---

MR VAN ZYL: Thank you.

MR GOVENDER: So, Mr Marx, what do you say about that entry? --- It is not correct. Constable or Sergeant de Wet is a member of the uniform branch and not a member of the investigation unit.

(Inaudible) ... in his pocket book indicates that you were involved in official duties on the 15.3.90, the time you allege that you were at home sick. --- That is correct, and I didn't leave my house.

Is there an error perhaps? Is there perhaps another Brigadier Marx?

MR VAN ZYL: Mr Chairperson, before we answer further questions on this entry we'd very much like to have a look at the entry, and if possible the original book.

/CHAIRMAN:

CHAIRMAN: Ja. You said you would move on to something else, Mr Govender.

MR GOVENDER: Okay. You said, Mr Marx, that you had not met Roy Ngcobo at all. You only had occasion to view his body after his killing. Are you quite sure about that? --- Yes.

Do you know which unit he belonged to? --- The Riot Unit of Pietermaritzburg.

That information you obviously would have got when you were briefed about him later on after his arrest and his killing and so forth, is that right? --- Yes, after his arrest.

And they type of activities that the Riot Unit were engaged in, some of it entailed, I believe, the guarding of premises that were under threat from riot situations and so forth, isn't that correct? ---

---

That is correct.

Now, I want you to cast your mind ... (intervention) --- It depended on the circumstances.

If there were riots they could search and protect premises. I am not really very much in the know about the Riot Unit's activities.

Did it entail guarding premises that were under threat? --- Yes, I have no knowledge of their activities. I don't know what their duties are and what their duties aren't.

Now, I want you to cast your mind back to an incident on the 12th of September 1985, if you can remember that far back, where a 14-year-old girl was killed, and I think you were responsible for the investigation of her murder. In - sorry, I'll give you the details. The child was killed in Mpophomeni, and the

/child's

child's name was Nonhlanhla Sikosiyana. Do you remember? --- When did it happen?

On the 12th of September '85 in Mpophomeni. ---

I have no knowledge thereof.

No, but it was an incident where a crowd of between 300-400 people approached to attack and burn down a house in Mpophomeni, and which house was being guarded by a constable from the Riot Unit, and that the constable, who felt threatened by the crowd, who were intent on killing him, fired warning shots into the crowd, who were about to attack him, and in the process the child was killed. --- I can't remember it at all.

But you would have investigated a matter like that. --- I don't want to make guesses about it. I can't remember at all. I can't recall this specific incident at all.

CHAIRMAN: Mr Govender, we did give Mr Marx and his attorneys and counsel an undertaking that we wouldn't deal with any matters other Ngcobo and Trust Feeds. If he's got no objection to answering these questions we can continue, but we did give an undertaking that we wouldn't move on to any other matters.

MR VAN ZYL: Mr Chairperson, I didn't want to object, but Brigadier Marx has no recollection as he's sitting here. May we have time to work through it, and maybe if he can see documentation he can refresh his memory, and we'll take it from there, and maybe some other time we can proceed to question him. But I think it is, with respect, manifestly unfair to expect him now to remember what happened or what didn't happen in '85 when he had no idea before now that he was going to be questioned on



that.

/CHAIRMAN:

CHAIRMAN: Ja, that's why I ... (incomplete)

MR GOVENDER: No, I do realise that, Mr Chairman. I wasn't going to question Mr Marx on that, but just to see if he can remember incident. If he can't, then fine. I don't intend to proceed with that.

CHAIRMAN: Shall we then return to the other incident, and if you look on page 14-15 of the copy of the diary you'll see - I think it's,

"Goes to unit with Marx to investigate."

MR VAN ZYL: Having been around for many years, Sir, I've discovered a thing called Tipp-Ex, and I don't like the wording of Brigadier Marx in this sentence. I would just like to have a look at the original if possible.

MR GOVENDER: Sorry, we're just going to check if we still have it, because a number of these things have been returned. We're just going to check if we still have it upstairs.

CHAIRMAN: Can I just ask, where did the book come from?

MR GOVENDER: From - it was during investigation of ...  
(inaudible) (Pause)

CHAIRMAN: We'll just wait until the pocket book comes down, then we can have a look at that. So, just in short, your evidence is that you saw the body for the first time on the same day or the day after this man died, Ngcobo. You took no part in the investigation at all into the death of Major Terblanche or Roy Ngcobo, and you know nothing whatsoever about an agreement or discussion that was held amongst members of Major

Terblanche's unit in which it was suggested by someone called Lance-Sergeant Julius - or in which Lance-Sergeant Julius advised the group that was there that it was the feeling of most

/members

members of the unit that Ngcobo should be killed, and that he was then taken out by Chandler and Coetzee in a motor vehicle and he was killed, and that you had instructed Chandler to contact you on a spare radio channel and advise you when Ngcobo had been shot so that you could attend the scene. That is the - sort of the gist of the allegation against you, and it's your response that you deny any knowledge of that at all. -

-- That is correct.

---

Can you think of any reason why a member of that unit should have made such a statement? --- No, I can't.

And your evidence is further that you were booked off sick on the day that Major Terblanche was - the day that he died, is that correct, or the day after? The day that he died. --- That is correct.

And that you did not leave your home until after the shooting of Mr Ngcobo. --- That is correct.

The shooting took place - the shooting of Major Terblanche took place on the 14th of March, and the pocket book indicates that - or a pocket book of one Willem de Wet indicates that you are alleged to have attended the "eenheid" - I think it's "Moord and Rowery" - on the 15th of March, which was the day after - the day after Major Terblanche died. --- No.

And you deny that. You say that you were at home during that period. --- Ja.

So you would have no way of explaining how then this entry came into this book. It's either incorrect, or it's a mistake, or a forgery, or something like that.

--- It is wrong or a mistake was made. I have no idea.

/(Pause)

(Pause)

MR VAN ZYL: Mr Chairperson, we've had sight of - it's clear that this is the original entry as reflected on the photostat, and there's no obvious signs that something is amiss with this entry.

CHAIRMAN: Mr Govender, are there any other matters which you want to put Mr Marx relating to this incident of Ngcobo?

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MR GOVENDER: (Inaudible)

INTERPRETER: The speaker's mike is not on.

MR GOVENDER: Mr Marx, ~~on Friday~~ March 16 1990 in The Natal Witness newspaper in Pietermaritzburg an article - I think it was the lead article under the heading, "Constable Held For Riot Chief's Death." An article besides that appeared, the heading of which said, "Major Said He Was On Hit List," and I'll read to you - quote to you the first paragraph of that article, which reads,

"Major Deon Terblanche warned members of his unit last week to be careful, and told them he knew his name was on the ANC hit list."

Do you know anything about that report? --- No.

(Inaudible) ... have information from anyone, Mr Terblanche or anybody else in fact, that they were on the hit list, and that - on the ANC list as such? ---

No, not that I can recall.

(Inaudible) ... hearing of that? --- Yes.

That is the - subject, of course, to the agreement that questions relating to the other incident would be canvassed at a later date when my learned friend has been given more details and information.

/CHAIRMAN:

CHAIRMAN: Anything that you'd like to raise, or any comments or observations or clarifying remarks which you would like to make, Mr Marx? --- No.

Mr van Zyl?

MR VAN ZYL: Thank you, Chairperson. I have no further comments or remarks, except to thank you for the manner in which the investigation or interrogation was conducted. Thank you.

CHAIRMAN: Thank you very much indeed.

MR GOVENDER: I just want to place on the record before we - that the subpoenas have been served and duly acknowledged as being received. Just for the record purposes.

CHAIRMAN: With regard to the other matter mentioned in the subpoena, which I think was referred to in a rather general way as politically related crimes, we will provide much fuller documentation so that Mr Marx has an opportunity to consider each one of those matters, and at a mutually convenient date, either here, or preferably in Cape Town - because I am down there very often - we could structure another meeting of this sort to complete this matter.

MR VAN ZYL: Chairperson, I want to make it very clear that although you referred in the letter to us that we are on a fishing expedition, that is not the idea at

all. It's merely a matter of being informed, as we are entitled to be, and to discuss it properly, that we don't sit here and can be of no assistance really one way or the other. It's a genuine attempt to try and work with the Commission to see what this is all about, and to assist my client of course.

/CHAIRMAN:

CHAIRMAN: Okay. Thank you very much indeed. We are then adjourned until the next time we meet to consider these matters. Is it possible to advise yourselves, or does Mr Marx require a subpoena to be served on Mr Brandt's office, or ... (incomplete)

MR VAN ZYL: It can be arranged informally. We don't require a subpoena to appear. We will come. It's just a matter of inform us and we can arrange a date. We will be there. My attorney I know is going on holiday during the July holidays, so if you can just arrange with us, or with my attorney, well ahead of time.

CHAIRMAN: Certainly. Thank you very much indeed. And we will - if you just submit the invoice for Mr Marx' travel and other expenses to - and give the full address and the name of the person to whom it should be directed.

PROCEEDINGS ADJOURNED SINE DIE

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/PROCEEDINGS

