

# RealTime Transcriptions

TRANSCRIPTION OF THE

## COMMISSION OF INQUIRY

### MARIKANA

#### BEFORE TRIBUNAL

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

#### HELD ON

DAY 6      30 OCTOBER 2012      PAGES 490 TO 677

#### HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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64 10<sup>th</sup> Avenue, Highlands North, Johannesburg  
P O Box 721, Highlands North, 2037  
Tel: 011-440-3647 Fax: 011-440-9119 Cell: 083 273-5335  
E-mail: [realtime@pixie.co.za](mailto:realtime@pixie.co.za)  
Web Address: <http://mysite.mweb.co.za/residents/pak06278>



<p style="text-align: right;">Page 490</p> <p>1 [PROCEEDINGS ON 30 OCTOBER 2012]  2 [09:05] CHAIRPERSON: Good morning, the  3 Commission resumes. I understand from Mr Madlanga that he  4 has received information from the Legal Aid Board regarding  5 the decision which they were to make yesterday afternoon.  6 Mr Madlanga, can you tell us about it please?  7 MR MADLANGA SC: Thank you, Chairman,  8 commissioners. It's an e-mail sent at 5:26 pm by the chief  9 executive officer of Legal Aid South Africa and it reads as  10 follows, "Further to your telephone discussion with the  11 Chairperson of our board, Judge President Mlambo, and the  12 e-mail addressed to him dated 28 October 2012 on the matter  13 of Legal Aid South Africa providing funding for legal  14 representation for the arrested and injured miners  15 represented by the legal team Maluleke Msimang Attorneys, I  16 wish to advise that the matter was once again discussed by  17 the board executive committee and management this morning.  18 Having considered the arguments advanced by the  19 Commission's evidence leading team, the board executive  20 committee agrees that the arguments advanced did not  21 persuade it to change its decision in this matter. We  22 therefore confirm our earlier decision that, for the  23 reasons presented in our e-mail to Adv Budlender, we have  24 decided that we will not fund the arrested and injured  25 miners, represented by Messrs Maluleke Msimang Attorneys."</p>	<p style="text-align: right;">Page 492</p> <p>1 MR CHASKALSON SC: They're matters  2 flowing from the pre-hearing conference of the 24th of  3 October. The first relates to the status of documents  4 exchanged in the discovery processes of the Commission and  5 the second relates to the definition of issues for the  6 first phase of the hearings.  7 CHAIRPERSON: They both sound very  8 important matters, please tell us about them.  9 MR CHASKALSON SC: In relation to the  10 first matter it was placed on record at the pre-hearing of  11 the 24th that a document that had been discovered by Lonmin  12 in the processes of the Commission had been leaked to the  13 press before it had been tabled in the Commission hearing.  14 Now, Mr Chairperson, I would like to read the provisions of  15 regulation 4 of the regulations published on 28 September  16 2012. It states that, "No person shall, without the  17 written permission of the Chairperson, (a) disseminate any  18 document submitted to the Commission by any person in  19 connection with the inquiry or publish the contents or any  20 portion of the contents of such document." And regulation  21 17(1)(b) makes a contravention of regulation 14 a criminal  22 offence.  23 At the pre-hearing of 24 October we confirmed  24 that until a discovered document has been tabled in open  25 hearings of the Commission, there is no permission for it</p>
<p style="text-align: right;">Page 491</p> <p>1 Thank you, Chairperson.  2 CHAIRPERSON: Do any of the  3 representatives of any of the parties wish to say anything  4 at this stage?  5 MR MPOFU: No, no, Mr Chair.  6 CHAIRPERSON: Thank you. I understand we  7 also have a new party here this morning who wishes to put  8 themselves on record, is that correct?  9 ADV MASEBE: Yes, it's Adv Takarane  10 Maseba from the Pretoria Bar. I represent the families of  11 Warrant Officer Lepaaku and Warrant Officer Monene.  12 CHAIRPERSON: And you're applying to be  13 allowed to participate in the proceedings, I take it?  14 ADV MASEBE: That is correct.  15 CHAIRPERSON: The request is granted.  16 The proceedings up to now have been transcribed and I take  17 it that if you request copies of the transcripts, they will  18 be made available to you. Colonel Botha, u is nog onder u  19 eed wat u afgelê het om die waarheid te vertel.  20 MR CHASKALSON SC: Mr Chairperson, I'm  21 sorry to interject but might I put two further matters on  22 record before we get into the evidence of Colonel Botha?  23 CHAIRPERSON: I don't know what the  24 matters are. If you tell me that they are, I can consider  25 your request.</p>	<p style="text-align: right;">Page 493</p> <p>1 to be disclosed to any third parties or for it to be  2 published further. No opposition was expressed to this  3 principle at the pre-hearing meeting and we trust that this  4 problem will not arise again.  5 CHAIRPERSON: Thank you, Mr Chaskalson,  6 and what is the second matter that you wish to raise?  7 MR CHASKALSON SC: The second matter  8 concerns the definition of issues in relation to phase 1 of  9 these hearings. A concern was expressed or two concerns  10 were expressed at the pre-hearing meeting. The first was  11 that there had been insufficient precision in the  12 definition of issues for the first phase of the hearing,  13 theme 1 that we've come to know, to be described as. The  14 second was, some parties expressed opposition to the  15 principle that the Commission might make findings at the  16 end of theme 1 in advance of further hearings of the  17 Commission.  18 The evidence leaders have in the meantime  19 circulated a document which defines with more precision the  20 issues which they see as being the issues to be the subject  21 matter of theme 1 and the first phase of the hearings. The  22 parties only received that document yesterday. Our  23 submission is that the parties should be given time to  24 consider that document and that it may be convenient, as  25 the first item of business on, when we reconvene on Monday,</p>

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1 to finalise this issue.

2 CHAIRPERSON: Thank you, Mr Chaskalson,

3 that seems to be a satisfactory suggestion, a satisfactory

4 way of approaching the matter which you have suggested. So

5 we'll do that, the first item of business on Monday, the

6 Commission has been made – as we indicated previously,

7 we're sitting today and tomorrow, we can't sit on Thursday

8 and Friday so we're resuming again on Monday and then as

9 you've said, the first item of business on Monday will be

10 the topic that you've just raised.

11 Is there any other preliminary matter which

12 anyone wishes to raise before we continue with the evidence

13 of Lieutenant-Colonel Botha? No. I've already reminded

14 him that he's under oath. You were cross-examining him, Mr

15 Ntsebeza. Would you – I take it you wish to proceed?

16 MR NTSEBEZA SC: Yes, Mr Chairman, I wish

17 to proceed. I won't be long and against the backdrop of

18 all the sad news that we heard in the preliminary stages,

19 if you will allow me just to lighten the atmosphere by

20 saying something which I've been told is a true story

21 relevant to Colonel Botha and that is that, spotting some

22 anxiety on the face of one of her many husbands, I'm told

23 Elizabeth Taylor told him that please don't worry, I don't

24 intend to keep you for long. So let's carry on, I don't

25 intend to keep you for long.

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1 CORNELIUS JACOBUS BOTHA: s.u.o.

2 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTINUED):

3 Last – when we left off yesterday it appeared to me you

4 were explaining something about the footage in the video

5 that you took when I pointed out to you that in one of your

6 statements you had recorded that you made a recording of

7 the scene at 15:49. If you could repeat what you said

8 again because I just want to take off from there?

9 LT-COL BOTHA: Mr Chair, I said that I

10 realised when I looked at my digital camera, that the video

11 camera is about eight minutes behind and there was a

12 specific reason why I did that. I asked myself, but why

13 was I late? If my video camera says 15:49, I mean I don't

14 know when the shooting happened but I should've been, on my

15 video, more correct than on my camera and then I realised

16 but the video camera is eight minutes behind, the time on

17 the video camera.

18 MR NTSEBEZA SC: I see. So the – what

19 did you say about the digital camera? Just –

20 LT-COL BOTHA: The video camera time is

21 eight minutes behind my digital camera and my digital

22 camera's time was the same as on my arm, so I took that as

23 correct and – because I can see what time I took, the first

24 digital photo was taken.

25 MR NTSEBEZA SC: I see. Okay, now I'll

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1 come to this at a later stage but let me just recap on the

2 events of that day on the 16th of August 2012 when you came

3 to do this operation. You told the Commission that you

4 arrived at 15:00 at the joint operations centre, is that

5 right?

6 LT-COL BOTHA: I said I can confirm it, I

7 wasn't sure, more or less 15:00. I did say that I can

8 confirm it.

9 CHAIRPERSON: Mr Ntsebeza, can I ask a

10 question just to -

11 MR NTSEBEZA SC: Yes.

12 CHAIRPERSON: - lay the foundation for

13 something possibly. There was reference made to your

14 diary, I think, and there's also some other document that

15 you said you could bring, if my memory is correct, that you

16 could bring if you were asked to bring it and I said if you

17 – you'd better bring it. Have you brought the documents,

18 the document and the diary with you today?

19 LT-COL BOTHA: Sir, I did make copies of

20 the page of the 16th of my diary which has got the times. I

21 do have it with me.

22 MR NTSEBEZA SC: Well, I'll come to that

23 also, Mr Chairman, with your permission.

24 CHAIRPERSON: Permission granted.

25 MR NTSEBEZA SC: Thank you, Chairman.

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1 Just to say, relevant thereto Lieutenant, it would assist

2 if you also brought the original, the diary and then the

3 copies.

4 LT-COL BOTHA: I do have it with me.

5 MR NTSEBEZA SC: Yes. Now is it correct

6 – or let me just ask you, are your SAPS helicopters fitted

7 with cameras?

8 LT-COL BOTHA: I know there are police

9 helicopters fitted with cameras, I do not know if that

10 specific ones on that day were fitted with cameras.

11 MR NTSEBEZA SC: I see. So you were not

12 using a camera affixed to the helicopter in your video

13 covering of the events on the day?

14 LT-COL BOTHA: I used the hand held

15 camera.

16 CHAIRPERSON: That's not a precise answer

17 to the question. We know you used your hand held camera.

18 Counsel established that certainly some, if not all, police

19 helicopters have cameras which are fitted to the helicopter

20 and so the thrust of the question is, was there a fitted

21 camera in that helicopter?

22 LT-COL BOTHA: I don't know, Mr Chair.

23 CHAIRPERSON: Thank you.

24 MR NTSEBEZA SC: Can I just ask a further

25 question? As an expert, would you not have or was it not

<p style="text-align: right;">Page 498</p> <p>1 expected of you to check whether the chopper you were going 2 to go up into the sky and do the video covering, had or did 3 not have an affixed camera? 4 LT-COL BOTHA: No, sir. 5 MR NTSEBEZA SC: Let me ask another 6 question. In your experience have you ever had to go on a 7 crime scene in a chopper in which you also had to use the 8 camera affixed to the chopper? 9 LT-COL BOTHA: No, sir, not in my 10 experience. 11 MR NTSEBEZA SC: Would that be because 12 there is a specific skill that is required for one to be 13 able to do so? 14 LT-COL BOTHA: I'm not sure. I presume 15 someone must be trained to use it. 16 MR NTSEBEZA SC: So are you then saying 17 your own training has not extended that far? 18 LT-COL BOTHA: No, sir. That's what I'm 19 saying, sorry, yes. 20 MR NTSEBEZA SC: Okay. Now when you say 21 you arrived at more or less 3 o'clock, would it be safe to 22 say you arrived from Phokeng where you are based? 23 LT-COL BOTHA: No, sir, I did not arrive 24 from Phokeng. I arrived from the scene of the 13th. 25 MR NTSEBEZA SC: Are you saying that on</p>	<p style="text-align: right;">Page 500</p> <p>1 LT-COL BOTHA: She. 2 MR NTSEBEZA SC: She -she is, she is, I'm 3 sorry, I'm sorry. She is the provincial commissioner. 4 LT-COL BOTHA: That's correct, sir. 5 MR NTSEBEZA SC: Do you know Major- 6 General Annandale? 7 LT-COL BOTHA: I do know him, sir. 8 MR NTSEBEZA SC: What is he? 9 LT-COL BOTHA: I know he is a general in 10 the police. 11 MR NTSEBEZA SC: He is from head office, 12 is he not? 13 LT-COL BOTHA: I'm not sure. I know he's 14 from Pretoria. 15 MR NTSEBEZA SC: Yes. Were you aware 16 that he was around on that day? 17 LT-COL BOTHA: Yes, sir. 18 MR NTSEBEZA SC: In document A197/3 he's 19 given as a Major-General Annandale, specialised high risk 20 force commander. Do you know him as that? 21 LT-COL BOTHA: No sir, I just get to know 22 him as General Annandale. 23 MR NTSEBEZA SC: I see. Now, there is a 24 record of a special JOC COM meeting on that day at 13:30. 25 Now I know that you are not listed as one of the attendees,</p>
<p style="text-align: right;">Page 499</p> <p>1 the 16th you went to the scene of the 13th? 2 LT-COL BOTHA: Yes, sir. 3 MR NTSEBEZA SC: So you – was it the 4 second time that you were visiting that scene? 5 LT-COL BOTHA: That's correct, sir. 6 MR NTSEBEZA SC: So would it be fair then 7 to say you were in the vicinity of the scene, Marikana, 8 that area, the joint operations and all of those areas or 9 the scene in the area, the Lonmin mines, the joint 10 operations centre, they are more or less in the same area? 11 LT-COL BOTHA: That's correct, sir. 12 MR NTSEBEZA SC: And can I assume that 13 because you were in the area on that day you would've been 14 aware that there were meetings of the top brass of the SAPS 15 that were going on, planning sessions, or am I assuming too 16 much? 17 LT-COL BOTHA: No sir, I wasn't – ja, 18 you're assuming too much, sir. 19 [09:25] MR NTSEBEZA SC: I think I'm making too 20 much of your expertise, Mr – Colonel Botha, but on that day 21 you were – let me ask the question, do you know Lieutenant- 22 General Mbombo? 23 LT-COL BOTHA: Yes, sir. 24 MR NTSEBEZA SC: He is the provincial 25 commissioner in this area, isn't it?</p>	<p style="text-align: right;">Page 501</p> <p>1 which is why I asked the question whether you were aware 2 that there were goings on, on that day, but one of the 3 things that was decided there, according to this minute 4 A197/2, was that there should be enough video operators to 5 capture sequence of events as unfolds. Are you aware of 6 that? 7 LT-COL BOTHA: No, sir. 8 MR NTSEBEZA SC: The question was enough 9 video operators, not helicopters. 10 MR MUSHWANA: Oh, I'm sorry. 11 MR NTSEBEZA SC: And talking about your 12 mistake about your camera, Major-General Annandale also 13 went through, according to the minute, a check list to 14 ensure that everything was in place and the first thing 15 was, you must ensure adequate batteries for radios and 16 video cameras. Did you set your own radio and video 17 cameras for – 18 LT-COL BOTHA: My own video camera 19 battery was charged, so I did check it. 20 MR NTSEBEZA SC: Okay – digital camera? 21 LT-COL BOTHA: Both cameras had charged 22 batteries. 23 MR NTSEBEZA SC: Okay. Now on the day 24 when you were asked by Brigadier Van Zyl, had there been 25 any formal gathering of video operators who were addressed</p>

<p style="text-align: right;">Page 502</p> <p>1 by Brigadier Van Zyl or did he just call you aside?</p> <p>2 LT-COL BOTHA: When I arrived I had a</p> <p>3 conversation with him alone.</p> <p>4 MR NTSEBEZA SC: I see. Now from your</p> <p>5 evidence so far it doesn't appear as though there was much</p> <p>6 conversation between the two of you, but let me explore</p> <p>7 that. Did he tell you about this meeting that had been</p> <p>8 held at 13:30 at which, amongst other things, the purpose</p> <p>9 of the meeting was described as dealing with the protestors</p> <p>10 on the koppie, what you referred to in your evidence as the</p> <p>11 disarming and the dispersal thereof.</p> <p>12 LT-COL BOTHA: Sir, he did not discuss</p> <p>13 the meeting with me. He gave me my tasking, that I must</p> <p>14 the video and the disarming of the people.</p> <p>15 MR NTSEBEZA SC: Did you ask which</p> <p>16 people?</p> <p>17 LT-COL BOTHA: He did explain to me that,</p> <p>18 the people that's at the koppie.</p> <p>19 MR NTSEBEZA SC: So in the short</p> <p>20 conversation you had, he contextualised what you were going</p> <p>21 to do. It is people in the koppie, they're going to have</p> <p>22 to be disarmed, they're going to have to be dispersed and</p> <p>23 your task was to video that operation as it unfolded.</p> <p>24 LT-COL BOTHA: That is correct, sir.</p> <p>25 MR NTSEBEZA SC: Yes. I'm asking you</p>	<p style="text-align: right;">Page 504</p> <p>1 LT-COL BOTHA: Sir, it's the pilot and</p> <p>2 then I don't think it's a co-pilot but a crew to the pilot</p> <p>3 –</p> <p>4 MR NTSEBEZA SC: No, no, let's take it</p> <p>5 step by step. It's a pilot, does he have a name, if you</p> <p>6 remember?</p> <p>7 LT-COL BOTHA: I know his rank is captain</p> <p>8 and I know him, his name is André. I think it's – no, I'm</p> <p>9 not going to take a guess on his surname, André.</p> <p>10 MR NTSEBEZA SC: Okay, fair enough.</p> <p>11 Captain André. You don't know if there was a co-pilot?</p> <p>12 LT-COL BOTHA: No, I don't think it's a</p> <p>13 co-pilot. I think the person that sits next to him is the</p> <p>14 crew to the pilot.</p> <p>15 MR NTSEBEZA SC: The crew to the pilot.</p> <p>16 Do you know his name?</p> <p>17 LT-COL BOTHA: Warrant Officer, I think</p> <p>18 it's Venter.</p> <p>19 MR NTSEBEZA SC: Venter.</p> <p>20 CHAIRPERSON: That was the person to whom</p> <p>21 you handed your digital camera, as far as I can recall?</p> <p>22 LT-COL BOTHA: That is correct, sir. I</p> <p>23 think she's a sergeant, I've just promoted her. I think</p> <p>24 she's a sergeant.</p> <p>25 MR NTSEBEZA SC: Yes, I'll come to what</p>
<p style="text-align: right;">Page 503</p> <p>1 because according to this minute of the 16th of August of</p> <p>2 the meeting that I said took place at 13:30, Brigadier Van</p> <p>3 Zyl was there and one of the closing remarks, as they are</p> <p>4 labelled in this minute, is that Major-General Annandale</p> <p>5 wanted the operation to commence at 15:30. The minute</p> <p>6 reads, "Major-General Annandale instructed Brigadier</p> <p>7 Pretorius and Lieutenant-Colonel Scott to report back at</p> <p>8 the JOC at 15:15 as he wants the operation to commence at</p> <p>9 15:30." Now, I'm again trying to see in what way you would</p> <p>10 have left closer to four when Brigadier Van Zyl knew that</p> <p>11 the Major-General, specialised high risk force commander,</p> <p>12 had indicated that the operation should commence at 15:30.</p> <p>13 Do you probably have an explanation?</p> <p>14 LT-COL BOTHA: No, sir.</p> <p>15 MR NTSEBEZA SC: Now let's just get a</p> <p>16 picture of moments just before you took off. These</p> <p>17 choppers that you say in total were about four, were they</p> <p>18 all on the ground when you took off or some of them or all</p> <p>19 of them were already in the air, other than the one you</p> <p>20 were going to take off in?</p> <p>21 LT-COL BOTHA: All of them were already</p> <p>22 in the air except the one that we were taking off in.</p> <p>23 MR NTSEBEZA SC: And in your chopper, who</p> <p>24 were the crew? In other words, other than yourself, who</p> <p>25 else was in the chopper?</p>	<p style="text-align: right;">Page 505</p> <p>1 the Chairman has said but maybe let me get there. You do</p> <p>2 say in your statement, the one statement that you gave,</p> <p>3 that – I'll come to that at an appropriate time. So it's</p> <p>4 Captain André, if that is who he is, and then there is</p> <p>5 Sergeant Venter or Warrant Officer Venter, then there is</p> <p>6 General, Brigadier Fritz and who else?</p> <p>7 LT-COL BOTHA: Sir, next to Brigadier</p> <p>8 Fritz there was a gentleman in private clothing, which also</p> <p>9 had a camera and – which I saw had a camera with him.</p> <p>10 MR NTSEBEZA SC: You wouldn't know his</p> <p>11 name?</p> <p>12 LT-COL BOTHA: I do not know his name,</p> <p>13 sir.</p> <p>14 MR NTSEBEZA SC: Do you know why he was</p> <p>15 in that chopper and having a camera?</p> <p>16 LT-COL BOTHA: Sir, I did not. I didn't</p> <p>17 ask. I presume if he's got a camera with him, he must take</p> <p>18 photos.</p> <p>19 MR NTSEBEZA SC: I see. I suppose</p> <p>20 because the Brigadier, being of a higher rank and allowing</p> <p>21 him to be on the aircraft, you didn't want to ask where is</p> <p>22 this guy going to.</p> <p>23 LT-COL BOTHA: I did not ask, sir.</p> <p>24 CHAIRPERSON: Do you know if this person</p> <p>25 was a member of the SAPS or was he a civilian?</p>

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1 LT-COL BOTHA: Sir, I – no, I don't know.  
 2 I presumed he was a policeman because he was with us in a  
 3 police chopper but I cannot confirm that.  
 4 MR NTSEBEZA SC: Could he have been a  
 5 civilian?  
 6 LT-COL BOTHA: I cannot confirm that,  
 7 sir.  
 8 CHAIRPERSON: I take it if you can't  
 9 confirm it, the answer is he could've been a civilian?  
 10 LT-COL BOTHA: He was in private  
 11 clothing, it's possible.  
 12 MR NTSEBEZA SC: You see, Colonel Botha,  
 13 I ask these questions because you will recall that at the  
 14 beginning of my enquiry I asked if you had made a report,  
 15 other than just downloading what you had recorded - in  
 16 other words, a detailed report that tells us or tells  
 17 anyone what exactly you did on that day. Don't you think  
 18 we would have benefited if you'd done so?  
 19 LT-COL BOTHA: Sir, it's not part of my  
 20 duties. I've never done it before, so I haven't done it.  
 21 MR NTSEBEZA SC: Now I find that  
 22 difficult to accept –  
 23 CHAIRPERSON: Mr Ntsebeza, you know it's  
 24 not proper for a cross-examiner to make comments like that.  
 25 If we find it difficult to accept it at the end of the day,

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1 well and good, but it's not for you to say what you find  
 2 difficult or easy to accept. I think you must confine  
 3 yourself to asking questions.  
 4 MR NTSEBEZA SC: Thank you, Mr Chairman.  
 5 Mr – Colonel Botha, forgive me for that comment. We have a  
 6 document bundle from the SAPS, it's document bundle 1 and  
 7 it purports to be addressing itself to Public Order Police.  
 8 It seems to me to be a standing order and I'd like to draw  
 9 your attention to pages 687 and 688 thereof and I will  
 10 invite your commentary relevant thereto. There is there,  
 11 in paragraph 16, record-keeping, under the title "Record-  
 12 keeping and reporting," this order says, "For the purposes  
 13 of the proper keeping of records and accurate reporting, a  
 14 video register must be drawn up. The following heads must  
 15 be set out in columns." And then it says, "Column A1  
 16 serial number beginning with 1 every year. Column B, date  
 17 of recording, time of recording, duration of recording.  
 18 Column C, title of and place at which recording was made.  
 19 Column D, video camera operator. Comments. Column E,  
 20 annual serial number of tape, format of tape. Column F,  
 21 CAS number if applicable." Are you aware of this order?  
 22 LT-COL BOTHA: Yes, Mr Chair.  
 23 [09:45] MR NTSEBEZA SC: Now 16.3 goes on to say,  
 24 "and the recordings of actions and incidents which are  
 25 related through POP actions may be used as evidence at a

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1 later stage. The following information must be recorded on  
 2 the soundtrack before the actual recording begins. Bullet  
 3 1, day, date, time and place of the recording. Bullet 2,  
 4 the number, rank and name in full of the camera's operator  
 5 and of the commentator. Bullet 3, the name of the POP unit  
 6 to which the camera operator is attached. Bullet 4, what  
 7 the recording is about, for example, a meeting, gathering  
 8 or funeral. Bullet 5, how the recording is to be made, for  
 9 example, from a selected vantage point, from a moving Nyala  
 10 vehicle, or while moving on feet. Bullet 6, the length of  
 11 the tape being used. Bullet 7, if there is a break in the  
 12 recording, the reason for the break must be stated clearly,  
 13 for example, shielding from those throwing stones or a  
 14 fault in the camera, or tapes are being changed, or it is  
 15 the end of the first recording, or it is the beginning of  
 16 the second recording, etcetera. Next bullet, comments can  
 17 also be made regarding the weather conditions, for example,  
 18 that it is raining, overcast. The last bullet, remember  
 19 that the prime test for the evidence from the digital  
 20 recording on the memory card to be admissible is that of  
 21 relevance, that is the digital recording must be relevant  
 22 to the case brought before the court." Are you aware of  
 23 it?  
 24 LT-COL BOTHA: Yes, Mr Chair.  
 25 MR NTSEBEZA SC: There doesn't seem to

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1 be, unless I've missed something in the evidence that you  
 2 have given so far, you don't seem to have complied with,  
 3 for instance, recording on the soundtrack before the actual  
 4 recording begins, the day, the date, the time and the place  
 5 of the recording.  
 6 LT-COL BOTHA: Mr Chair, I normally would  
 7 do it, a normal still crime scene, I do it. What happened  
 8 is, when I switched on – when we came over and I could see  
 9 that there is – and I could see the policemen, I switched  
 10 on the camera, and I immediately started taping. So yes, I  
 11 omitted that, but that was in the spur of the moment that I  
 12 switched the – you'll see that I switched the camera on,  
 13 it's white, then I realised that the lens cap is not open,  
 14 and I opened the lens cap.  
 15 MR NTSEBEZA SC: Are you saying there was  
 16 something happening on the ground, the urgency of which  
 17 necessitated you to just switch on your camera and start to  
 18 shoot?  
 19 LT-COL BOTHA: Sir, when I said, when I  
 20 saw the people – what I said is, when I saw the people on  
 21 the ground, I switched on my camera, and I started taping.  
 22 I could – I mean, you can see on the tape that police  
 23 vehicles are moving around, and I switched on the camera,  
 24 and I immediately started taping.  
 25 MR NTSEBEZA SC: Forgive me, Colonel, I

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1 do admit that there were people. There doesn't seem to  
 2 have been much or many people, for most of the time that  
 3 you had the camera on. One would have been forgiven to  
 4 think that it's a National Geographic video of the  
 5 landscape. Which people are these that – and what were  
 6 they doing, the nature of which caused you to want to  
 7 photograph them with such urgency that you didn't comply  
 8 with a standing order of the nature that I've read to you?  
 9 LT-COL BOTHA: I saw police vehicles  
 10 moving, and for that reason, I started videoing  
 11 immediately. I did not see what was happening  
 12 specifically.  
 13 MR NTSEBEZA SC: I see. I thought I  
 14 heard you say you saw the people, but you seem to clarify  
 15 that now by saying that you saw police vehicles, are those  
 16 the people that you saw and you realised that you need to  
 17 act with urgency?  
 18 LT-COL BOTHA: Sir, when I saw the police  
 19 vehicles moving, I switched my camera on, and starting  
 20 recording.  
 21 MR NTSEBEZA SC: I don't want to be  
 22 appearing to badger you, is that who you meant when you  
 23 said you saw the people, and then you determined that it  
 24 was urgent for you to switch on your camera? Were you  
 25 referring to the police vehicles?

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1 LT-COL BOTHA: I was referring to police  
 2 vehicles, I wasn't necessarily so urgent. I saw police  
 3 vehicles moving, and I immediately switched my camera on  
 4 and I started recording.  
 5 CHAIRPERSON: Counsel is interested in a  
 6 slightly different point. Previously you said that you saw  
 7 the people on the ground, as I understand it. When you saw  
 8 the people on the ground, you started taping. You then  
 9 later said you saw police vehicles moving. What counsel  
 10 wants to know is, when you – the earlier reference to  
 11 people, was that really a reference to the police vehicles?  
 12 I think that's the question, Mr Ntsebeza, is that correct?  
 13 LT-COL BOTHA: That is correct, Mr Chair.  
 14 MR NTSEBEZA SC: Yes.  
 15 CHAIRPERSON: If that's the question,  
 16 what's the answer.  
 17 LT-COL BOTHA: I said, that is correct,  
 18 Mr Chair.  
 19 MR NTSEBEZA SC: Thank you, Mr Chairman.  
 20 You see, my impression of the video shown yesterday, was  
 21 that – maybe let me precede that by another question. You  
 22 do confirm that your camera had a zooming facility by which  
 23 I understand that it -  
 24 LT-COL BOTHA: That is correct, Mr Chair.  
 25 MR NTSEBEZA SC: Now, you'll correct me

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1 if I am wrong, my impression of the taking of the video,  
 2 which is ascribed to you, was that there were fleeting  
 3 moments of capturing what one would have thought are the  
 4 subject matter of your operation, the Nyalas, the police  
 5 vehicles, the people. At one stage, I was struggling to  
 6 know whether those were police people or were police  
 7 running. There didn't seem to be an attempt by you to zoom  
 8 and focus on them for a clearer view. Did I get the wrong  
 9 impression of the video?  
 10 LT-COL BOTHA: Sir, I did zoom it at some  
 11 stages, but I mean, because I did not know what was  
 12 happening on the ground, I videographed what I saw from the  
 13 side which I was on the chopper with.  
 14 MR NTSEBEZA SC: Were you at liberty to  
 15 ask the pilot or even Brigadier Fritz to say, please,  
 16 please, I would like to zoom with my camera on that  
 17 occurrence down there?  
 18 LT-COL BOTHA: Sir, I did not know what  
 19 was happening on the ground, so I videoed, you will see in  
 20 the video there was a lot of people that's in the veld that  
 21 I also videoed. According to me, that was part of the  
 22 dispersal, that's why I videoed it.  
 23 MR NTSEBEZA SC: I do not think that you  
 24 are answering my question.  
 25 LT-COL BOTHA: I am not finished answer.

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1 I am sure that I was at liberty to ask him, yes.  
 2 MR NTSEBEZA SC: Yes. And Brigadier Van  
 3 Zyl had given you a specific task to go and video record  
 4 the operation.  
 5 LT-COL BOTHA: That is correct, Mr Chair.  
 6 MR NTSEBEZA SC: And you obviously had an  
 7 obligation to capture as much of the operation as  
 8 opportunity presented itself for you to do so. Is that  
 9 correct?  
 10 LT-COL BOTHA: That is correct.  
 11 MR NTSEBEZA SC: You would have been at  
 12 liberty to direct the pilot to go to those areas which you  
 13 saw people running, police vehicles, so that you can at  
 14 least have content to a subject matter, or your instruction  
 15 from Brig Van Zyl.  
 16 LT-COL BOTHA: That is correct.  
 17 MR NTSEBEZA SC: You did not consider  
 18 that Brig Fritz would not respond favourable to your  
 19 request that the particular area must receive your focal  
 20 point of attention.  
 21 LT-COL BOTHA: Sir, according to me, I  
 22 was recording what I was supposed to do, and I presume  
 23 according to Brigadier Fritz also. I can't answer for him.  
 24 MR NTSEBEZA SC: Well, I would like you  
 25 to answer for yourself, and why then didn't you ask the

1 pilot to go to those areas where you would have zoomed in  
2 and given a better content of the goings on, on the ground,  
3 than we have been able to gather from –

4 LT-COL BOTHA: Because I was under the  
5 impression that the people in the veld and the people that  
6 dispersed, the living area also is part of the dispersal,  
7 and that's what I also videoed that.

8 MR NTSEBEZA SC: I thought when the  
9 Chairman put a question to you last week, you estimated  
10 that there were about 3 000 people on that koppie. You  
11 were aware of that?

12 LT-COL BOTHA: I cannot remember  
13 confirming that, but the overall talk was that there were  
14 3 000 people on the koppie.

15 MR NTSEBEZA SC: And I battle to recall  
16 from the video footage that was flighted after 41 minutes  
17 of recording, anything near the kind of numbers that  
18 reflect the number or the crowd that was there. I didn't  
19 anything approaching more than a hundred people in that  
20 video of yours.

21 LT-COL BOTHA: Mr Chair, there, if I  
22 remember correctly, you can see people moving. I was asked  
23 yesterday, by the Nyalas, when you look at the video, at  
24 some stage there were groups of people in the veld, there  
25 were people dispersing, I did not count them, I think there

1 were many more than a hundred.

2 MR NTSEBEZA SC: It was put to you in  
3 cross-examination, I think by Mr Mpofu, that it seemed that  
4 more of the footage was of the surrounding areas. I am  
5 just battling to, if you will enlighten me, I am just  
6 battling to find where the 3 000 people went to that a 41  
7 minutes video could only capture at its most liberal, the  
8 hundred people or more that you are talking about.

9 LT-COL BOTHA: Sir, when I started  
10 videographing, there weren't anyone on the koppie anymore.  
11 I videographed the people on the ground that I saw.

12 MR NTSEBEZA SC: Would that include the –  
13 did you say 300 people that were being arrested?

14 LT-COL BOTHA: I am not sure if they  
15 appear on the video, we will have to look at the video  
16 again.

17 MR NTSEBEZA SC: They were not – I  
18 suppose I was trying to say to you, it doesn't seem that  
19 your video does capture most, or most of the events that  
20 seem to matter that would be the content of your operation.

21 LT-COL BOTHA: Sir, I've included police  
22 vehicles in my video. I have included people running, you  
23 can clearly see them, we can't dispute that on my video. I  
24 included people standing around on my video, and I've  
25 included people walking around in the video. That is all

1 people in the veld, which I presume came from the koppie.

2 [10:05] MR NTSEBEZA SC: Now, when did you  
3 realise that there was a fault in the camera? I'm just  
4 moving on to something else now.

5 LT-COL BOTHA: Did you talk about the  
6 fault in the camera?

7 MR NTSEBEZA SC: Yes.

8 LT-COL BOTHA: What camera?

9 MR NTSEBEZA SC: The digital camera. You  
10 remember you were explaining that there had been –

11 LT-COL BOTHA: The timing fault?

12 MR NTSEBEZA SC: Yes.

13 LT-COL BOTHA: Okay, so after I gave – I

14 think my statement is given out on the 1st September, and  
15 because we – I obviously were late, I mean there's no two  
16 things about it, for – I think we've concluded last

17 Tuesday, the chairperson asked me, "What happened is you  
18 were either late, or it happened to early." I think that

19 was the last statement that before left. And I asked

20 myself the question but why? I mean if I was in the air,  
21 according to the video camera, at 15:49, I don't whenever

22 what happened, but then something doesn't make sense, and I  
23 had a look at my digital camera and it was the same as my

24 watch time, and I take that as the correct time, so it

25 looked like my video camera was 8 minutes out.

1 MR NTSEBEZA SC: I'm concerned about you  
2 having an impression that you and the chairman concluded  
3 that there could have been – you could have been late, or I  
4 think the chairman was debating with you in much the same  
5 way as I'm debating just to –

6 LT-COL BOTHA: Then the word concluded is  
7 not the right choice.

8 MR NTSEBEZA SC: Yes. Now, I'm asking  
9 because there is this – would have regarded that as a break  
10 in the recording, what happened there, that now accounts  
11 for the minutes that you cannot explain?

12 LT-COL BOTHA: No, that's not the break  
13 in the recording.

14 MR NTSEBEZA SC: I see, okay. Now, if we  
15 look at your statement which you just referred to, the one  
16 you made on the 12th of September 2012, 001075, you say this  
17 in paragraph 6, "On 2012, 08 16, I was in an SAPS chopper  
18 at Wonderkop, Marikana during an SAPS operation." That  
19 would be relevant to what we are debating about.

20 LT-COL BOTHA: That's correct, Sir. Is

21 that the statement that was given in here at the –

22 MR NTSEBEZA SC: The one that you was –

23 no, no, not the one that was handed in on Tuesday, it's the  
24 one that you commissioned, or you were commissioned, as a  
25 Commissioner of Oaths by Mosweu Bolmulwa.



<p style="text-align: right;">Page 518</p> <p>1 CHAIRPERSON: I think this is the 2 statement that was part of IPED file. 3 MR NTSEBEZA SC: Yes. 4 CHAIRPERSON: What was made available to 5 the evidence leaders and the parties, and also the 6 Commission, was the files of IPED, which contain all sorts 7 of statements and so forth, included a statement which you 8 had made – at least one statement, there may be another but 9 I only saw one, and the one that I saw, I think is the one 10 that counsel is referring to. So it's not the statement 11 that was handed in when you gave evidence, which was 12 confirmed as being correct, it's an earlier statement which 13 you made, I think, as part of the IPED Inquiry. So is that 14 correct, Mr Ntsebeza? 15 MR NTSEBEZA SC: Yes, it is. 16 LT-COL BOTHA: Is that the same one that 17 you referred to yesterday? 18 MR NTSEBEZA SC: Yes. 19 LT-COL BOTHA: Okay. 20 MR NTSEBEZA SC: Can I correct that? 21 There seems to have been, including the statement 22 yesterday, there seems to be three statements that you 23 made. I mean, including the statement that you made on the 24 basis of which you testified on the Tuesday last week. 25 There's that statement, which you swore should be accepted</p>	<p style="text-align: right;">Page 520</p> <p>1 CHAIRPERSON: The passage in it that you 2 want to put to him, I suppose you want to give him 3 opportunity to read it first, before you put – 4 MR NTSEBEZA SC: Ja, it's a very short 5 statement, Mr Chairman. 6 LT-COL BOTHA: Sir, I've read it. Sorry, 7 is there a question? I have read it. 8 MR NTSEBEZA SC: No, no, we were talking 9 – 10 CHAIRPERSON: He's now read it, so you 11 can proceed with the question. 12 MR NTSEBEZA SC: Alright, okay. I take 13 it we are okay, it's your statement? 14 LT-COL BOTHA: Sorry, let me just ask Ms 15 Pillay, how do I scroll down, I can't see the bottom of the 16 statement? 17 MR NTSEBEZA SC: You can't be as bad as I 18 am in electronics, Colonel. I just wanted you to just 19 elucidate. You will see in paragraph 6 you say, "As I was 20 busy making a video recording, I handed my digital camera 21 to Warrant Officer A Venter, the co – I suppose that was 22 suppose that was supposed to be co-pilot of the chopper. 23 Warrant Officer Venter photographed the SAPS operation on 24 the ground. When we landed, she handed my camera back to 25 me. I had the emails she downloaded, and I compiled the</p>
<p style="text-align: right;">Page 519</p> <p>1 as the truth. Then there the statement, 001120 A213, where 2 you record - and that was on the 1st of September 2012. 3 That's where you record the time that you made a recording 4 at Marikana, the duration of the recording, being 41 5 minutes and 8 seconds. Now, there is another statement, 6 001075, where you say – and that also is made before 7 Commissioner of Oaths, Mosweu Bolmulwa, and that statement 8 is dated the 12th of September 2012. In that statement you 9 say what I have just read in paragraph 6, first sentence, 10 that you were in that SAPS chopper at Marikana. Now, I 11 just want you to assist us in understanding what you meant 12 by the following. 13 MR MADLANGA SC: Chairman, Commissioners, 14 may we ask to avail the witness a copy of the statement 15 that my learned friend is referring to. 16 CHAIRPERSON: Yes, that seems a very 17 reasonable request. 18 MR MADLANGA SC: Thank you, Chairperson. 19 CHAIRPERSON: I think it's fair to the 20 witness that he should see the statements that you're 21 questioning him on. Is there a copy? Oh, I see Ms Pillay 22 is taking an electronic to him. 23 MR NTSEBEZA SC: Thank you Mr Chairman, I 24 concur it is fair that the statement should be given to the 25 witness.</p>	<p style="text-align: right;">Page 521</p> <p>1 attached photo album," and I don't have an attached photo 2 album. Now, firstly, so it's part of what took place there 3 on that day that, whilst you were doing the video 4 recording, the digital camera photographing was being done 5 by Warrant Officer Venter. 6 LT-COL BOTHA: Yes, Sir. 7 MR NTSEBEZA SC: And I'm not making an 8 issue about it, but you didn't think that she was a co- 9 pilot, but here, under oath, you say she is a co-pilot? 10 LT-COL BOTHA: I thought was she was a 11 co-pilot, but apparently I promoted her into a co-pilot, 12 she isn't a co-pilot. 13 MR NTSEBEZA SC: Well you – 14 LT-COL BOTHA: She's a crew. 15 MR NTSEBEZA SC: Oh. 16 LT-COL BOTHA: I said previously she's a 17 crew, I don't think she's a co-pilot. 18 MR NTSEBEZA SC: Oh, I see. Chairman, I 19 won't take it further, but it now raises a question. 20 CHAIRPERSON: Look, obviously he made a 21 mistake about her rank and whether she's a co-pilot, I'm 22 not sure that it's necessary for us to decide either of 23 those issues for the purposes of the work that this 24 Commission has got. The real question is what sort of 25 photographer was she? Did she take good photographs? What</p>

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1 did she photograph? My copy of the photo album is in black  
 2 and white, which means you can see nothing on it, but  
 3 presumably, at some stage we may see the colour  
 4 photographs.  
 5 MR NTSEBEZA SC: Yes, Mr Chairman. I  
 6 see. You don't know if she was trained in photography or  
 7 whether she was just an amateur?  
 8 LT-COL BOTHA: I do not know if she was  
 9 trained in photography, but I do know that she can handle a  
 10 camera. She did confirm with me that she can handle the  
 11 camera.  
 12 MR NTSEBEZA SC: Right. Now, as I  
 13 conclude, I gather that you, in your evidence – Mr  
 14 Chairman, please correct me if I make a mistake here, but  
 15 in your evidence you seem to suggest that SAPS had a  
 16 weeklong meeting, was it in Potchefstroom?  
 17 LT-COL BOTHA: Yes, Sir.  
 18 MR NTSEBEZA SC: And was your, or do we  
 19 have minutes, I'm not so sure, do we have minutes of that  
 20 Potchefstroom meeting or wouldn't you know?  
 21 LT-COL BOTHA: No, Sir, I don't know.  
 22 MR NTSEBEZA SC: Did you consider at that  
 23 meeting the events of the 16th of August and available  
 24 evidence relevant thereto? Like, for instance, materials  
 25 from you chopper, material from the other choppers that you

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1 say have been encircling the area?  
 2 LT-COL BOTHA: Are you asking if I  
 3 considered it?  
 4 MR NTSEBEZA SC: At that gathering, was  
 5 there a discussion of all the available evidence relevant  
 6 to the 16th, in particular?  
 7 LT-COL BOTHA: Sir, that was in  
 8 preparation of the presentation for the SA Police Service,  
 9 so we -  
 10 CHAIRPERSON: But – sorry, yes carry on.  
 11 LT-COL BOTHA: So we did consider it.  
 12 MR NTSEBEZA SC: I would consider that  
 13 there were other video material that was conceded having  
 14 come from the other choppers in which you were not?  
 15 LT-COL BOTHA: I cannot recall any other  
 16 video material from any other choppers.  
 17 MR NTSEBEZA SC: You know sometimes when  
 18 a witness says "I don't remember," it can be either of two  
 19 things, it could have happened, except that the witness  
 20 doesn't remember, or I do not remember, because it never  
 21 happened. Which of the two would you –  
 22 LT-COL BOTHA: Sir, I can't remember if  
 23 we looked at any other video material than my video  
 24 material.  
 25 MR NTSEBEZA SC: Okay. Was your video

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1 shown?  
 2 LT-COL BOTHA: I've handed my video I  
 3 think to Colonel Scott. And, again, I can remember if it  
 4 was shown. I don't know. I really can't make a call on  
 5 that.  
 6 CHAIRPERSON: Sorry, you talked about  
 7 video – helicopter video material?  
 8 LT-COL BOTHA: I'm talking about  
 9 helicopter video material.  
 10 CHAIRPERSON: Was there any other video  
 11 material? From the standing order that was read, there's  
 12 reference to video material possibly being obtained from  
 13 Nyalas, maybe, I don't know whether the water canon, you  
 14 can get video material from the water canon, so there would  
 15 have been – presumably, if everything had been done  
 16 according to the standing order, there would have been  
 17 video material, not only from the helicopters, but also  
 18 from other sources. I can take that's a fair assumption  
 19 one can make?  
 20 LT-COL BOTHA: Yes, Sir.  
 21 CHAIRPERSON: Now, what I think counsel  
 22 is after and he will forgive me if I interrupt him, was any  
 23 other video material, apart from helicopter video material,  
 24 shown or seen by you during that week long meeting?  
 25 LT-COL BOTHA: Yes, Sir.

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1 MR NTSEBEZA SC: Yes, now I think you got  
 2 interrupted when I was seeking to find out whether your  
 3 video, the one that was shown here, whether it was shown  
 4 there and was it discussed?  
 5 CHAIRPERSON: He answered the question.  
 6 He said he couldn't remember whether his video was shown,  
 7 that's as I understood his evidence.  
 8 LT-COL BOTHA: That's correct, Sir.  
 9 CHAIRPERSON: So it was at that point,  
 10 because the concentration was on helicopter video material,  
 11 I endeavoured to ascertain whether there was any other  
 12 material – video material, other than helicopter video  
 13 material, and he gave the answer that you heard and if you  
 14 want to take it further, you may, or you may not.  
 15 MR NTSEBEZA SC: Now, can I just ask the  
 16 question, you may or may not know? Are you aware of any  
 17 other video recording material by SAPS, whether it was from  
 18 Nyalas or from helicopters or from photographs, that is in  
 19 the possession of the SAPS?  
 20 LT-COL BOTHA: Of the day of the 16th, of  
 21 when?  
 22 MR NTSEBEZA SC: Particularly the 16th.  
 23 LT-COL BOTHA: I'm not aware of anything  
 24 like that, Sir. Sorry, you specifically asked videos?  
 25 MR NTSEBEZA SC: Yes.

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1 LT-COL BOTHA: Okay.

2 [10:25] MR NTSEBEZA SC: Is there any other

3 material, photographic material, digital camera material?

4 LT-COL BOTHA: I am aware that there were

5 photos taken, yes.

6 MR NTSEBEZA SC: Colonel, it's not your

7 fault that there doesn't seem – you've said what you can,

8 but maybe there's other evidence, there will be other

9 people who will come to tell the Commission about what they

10 have by way of video material but given what I told you

11 about the planning meeting at 13:30 on that day, everything

12 else, wouldn't it be remarkable that the only material that

13 would be available is the one that was shown here?

14 LT-COL BOTHA: Mr Chair, the only video

15 material, SA Police video material that I know of is my

16 video material.

17 CHAIRPERSON: That's not an answer to the

18 question. What counsel asked you, speaking I imagine as an

19 expert, knowing what the standing instructions say or

20 standing order says, knowing how important it is for

21 police, public order policing operations to be covered by

22 video material, so if there are arguments later that the

23 police misbehaved it can be refuted by reference to the

24 video material – it's against that background that counsel

25 asks you, is it not remarkable that – whether it's true or

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1 not, I don't know, I'm just repeating his question – is it

2 not remarkable that the only material that appears to be

3 available is your material which, frankly, doesn't help us

4 very much, as we've all seen. Is that a fair summary of

5 your question, Mr Ntsebeza?

6 MR NTSEBEZA SC: Indeed, indeed.

7 CHAIRPERSON: What's your answer?

8 LT-COL BOTHA: Well, I can only say yes.

9 MR NTSEBEZA SC: It's remarkable –

10 CHAIRPERSON: Mr Ntsebeza, it's nearly

11 half past 10. I'll do again what I did last night. When a

12 suitable stage arises for the adjournment, please indicate

13 and we can take the adjournment. I don't want to stop you

14 at this stage if you want to ask further questions before

15 the adjournment, but when it's appropriate please tell me.

16 MR NTSEBEZA SC: Mr Chairman, I should

17 keep to my word of not keeping the Colonel for long. Can I

18 just take instructions from – Mr Chairman, can we take the

19 adjournment now?

20 CHAIRPERSON: The Commission will adjourn

21 for 15 minutes.

22 [INQUIRY ADJOURNS INQUIRY RESUMES]

23 [10:51] CHAIRPERSON: The Commission resumes. Mr

24 Ntsebeza, you were cross-examining the witness. I assume

25 you wish to ask further questions.

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1 MR NTSEBEZA SC: Yes, Mr Chairman, thank

2 you very much.

3 CHAIRPERSON: Warrant Officer –

4 MR NTSEBEZA SC: Lieutenant-Colonel.

5 CHAIRPERSON: Lieutenant-Colonel, you are

6 still under oath.

7 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD):

8 Thank you, Mr Chairman. The witness jocularly told me that

9 I had not kept my promise and I told him that Elizabeth

10 Taylor did keep Richard Burton more, longer than any other,

11 Chair.

12 CHAIRPERSON: She married him twice.

13 MR NTSEBEZA SC: Now, just a couple of –

14 the pilots and their logs, do they keep any logs that you,

15 are you aware whether the pilots, whenever you go on that

16 kind of mission, whether they keep any logs or logbooks?

17 LT-COL BOTHA: No sir, I don't know.

18 MR NTSEBEZA SC: Now, yesterday I think

19 there was an uncompleted question I wanted to pursue. The

20 post-mortems of what you did on the 13th and the 14th, which

21 did you do and which do you have records of?

22 LT-COL BOTHA: Sorry, sir I did the post-

23 mortems – can I quote the CAS numbers?

24 MR NTSEBEZA SC: Yes and the dates.

25 LT-COL BOTHA: All the post-mortems were

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1 done on the 16th, okay.

2 MR NTSEBEZA SC: Yes.

3 LT-COL BOTHA: It's the five post-mortems

4 of the people that died in Marikana CAS115-119/8/2012.

5 MR NTSEBEZA SC: Yes, did you –

6 CHAIRPERSON: Those five are the five

7 bodies – no, it's the four bodies that were found by you at

8 the scene on the 13th, is that correct? Plus the person

9 who, the policeman who died in hospital thereafter, do I

10 understand it correctly?

11 LT-COL BOTHA: It is the two bodies that

12 I found on my scene CAS117 and 118, Marikana CAS117 and

13 118. The two bodies of Captain Moshwana, 115 and 116 and

14 then the body of the policeman that died in hospital,

15 CAS119.

16 CHAIRPERSON: Those all relate to the

17 incident of the 13th, is that correct?

18 LT-COL BOTHA: That's correct, Mr Chair.

19 MR NTSEBEZA SC: Now did those post-

20 mortems include the person who was found just across the

21 river? You remember we had a debate yesterday about the

22 person who was, whose body was found across the river?

23 LT-COL BOTHA: Sorry, I didn't complete

24 the answer. There's one outstanding because I've only

25 mentioned five now.

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1 MR NTSEBEZA SC: Oh, okay.  
 2 LT-COL BOTHA: Then CAS121, that's the  
 3 person that was found behind the koppie on the 14th.  
 4 MR NTSEBEZA SC: Yes.  
 5 LT-COL BOTHA: To answer the second  
 6 question, that included the person that died in CAS115 on  
 7 the other side of the river.  
 8 MR NTSEBEZA SC: And in each of those  
 9 cases would you know why physically performed the post-  
 10 mortems?  
 11 LT-COL BOTHA: Yes, Mr Chair.  
 12 MR NTSEBEZA SC: Tell us?  
 13 LT-COL BOTHA: A gentleman by the name of  
 14 Dr Nkosi.  
 15 MR NTSEBEZA SC: Dr Nkosi, all of them?  
 16 LT-COL BOTHA: All six of them.  
 17 MR NTSEBEZA SC: All six of them. Thank  
 18 you, Colonel. Now, I think indeed to – I think the  
 19 Commission would like to know a little bit more about the  
 20 week long meeting that you said was held at Potchefstroom.  
 21 I understood that the purpose of the meeting – and you'll  
 22 correct me if I'm wrong – was to make a presentation, to  
 23 prepare a presentation for this Commission, or am I wrong?  
 24 LT-COL BOTHA: It was to prepare a  
 25 presentation for the National Commissioner and then

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1 eventually for this Commission.  
 2 MR NTSEBEZA SC: I see. Yes, you will  
 3 forgive me if I then take you back again just to get a  
 4 little bit more detail about the meeting because I only got  
 5 aware of it from your evidence last week. Now, which of –  
 6 on how many days were there meetings? I just get the sense  
 7 that it was a week long meeting. Did you meet every day,  
 8 Monday to Friday –  
 9 LT-COL BOTHA: If I did say a week long,  
 10 I must correct myself. It was five days the one week and I  
 11 think four days the other week.  
 12 MR NTSEBEZA SC: So for nine days  
 13 actually.  
 14 LT-COL BOTHA: Yes.  
 15 MR NTSEBEZA SC: You attended on all five  
 16 days, I mean on all five days, four days.  
 17 LT-COL BOTHA: No, I did not attend to  
 18 all of them. Half a day I wasn't there but let's say then  
 19 I attended all of them, because half a day I wasn't there.  
 20 One day, for part of the day I wasn't there.  
 21 CHAIRPERSON: You attended for eight and  
 22 a half days.  
 23 LT-COL BOTHA: More or less, sir.  
 24 MR NTSEBEZA SC: Now who, who was  
 25 convening the meetings, do you know?

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1 LT-COL BOTHA: Sir, there were a lot of  
 2 officers. I can't really say who convened the meeting.  
 3 MR NTSEBEZA SC: Yes, or who then  
 4 attended the meetings at which you were present? We'll  
 5 come to the meetings in a moment. For instance, let me  
 6 just give you a sense of probably who would have attended  
 7 the meeting. You remember that I told you there was a  
 8 meeting on the 16th of August at the special, a special JOC  
 9 COM meeting at the centre where I said the operation, stage  
 10 1, stage 2, stage 3 of the operation was going to be  
 11 embarked upon was discussed and I indicated to you, you  
 12 were not there. Now these are the people who were in  
 13 attendance, according to this minute A197/1. Lieutenant-  
 14 General Mbombo, Major-General Annandale, Major-General  
 15 Mpembe, M-P-E-M-B-E, Brigadiers Van Zyl, Fritz, Silwane,  
 16 Pretorius and then Colonel Isaacs from crime intelligence  
 17 and Adv Moolman from legal services. Were any of these  
 18 people in attendance at the nine day meeting that you  
 19 attended?  
 20 LT-COL BOTHA: Yes, Mr Chair.  
 21 MR NTSEBEZA SC: Now I would assume that  
 22 there was an agenda –  
 23 CHAIRPERSON: We haven't got clarity yet  
 24 on the last point that you covered. A list of names was  
 25 read to you of people who were at the JOC meeting on the

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1 16th and you were asked whether any of them were there at  
 2 the nine day meeting and you said yes, but you didn't tell  
 3 us whether they were all there or, if all of them weren't  
 4 there, which of them were there at the nine day meeting.  
 5 So that point is left in the air, so can you perhaps help  
 6 us on that before counsel proceeds to his next point?  
 7 LT-COL BOTHA: Sorry, sorry – no, I'm  
 8 fine sir, thank you. I can recall General Annandale. I  
 9 cannot say that General Mpembe was there the whole time, I  
 10 know he was there. Brigadier Pretorius was there, Adv  
 11 Moolman was there, Brigadier Fritz wasn't there. What's  
 12 the other – I maybe missed some names now.  
 13 MR NTSEBEZA SC: Mbombo?  
 14 LT-COL BOTHA: I've commented on that.  
 15 MR NTSEBEZA SC: Annandale you have said.  
 16 Mpembe, Van Zyl, Fritz, Silwane, Brigadier Silwane,  
 17 national –  
 18 LT-COL BOTHA: Brigadier – I cannot  
 19 recall that Brigadier Van Zyl was there all the time but I  
 20 can recall seeing him there. I do not, I don't know all  
 21 the people that were there by their names, so I cannot say  
 22 if Brigadier Silwane was there or wasn't there.  
 23 MR NTSEBEZA SC: Okay, perhaps so that we  
 24 don't get lost, let's start – you do have your diary with  
 25 you, don't you? You said you do.

<p style="text-align: right;">Page 534</p> <p>1 LT-COL BOTHA: Yes, I do have it with me.</p> <p>2 MR NTSEBEZA SC: Would you tell us who,</p> <p>3 on the first day, chaired the meeting and who, in your</p> <p>4 knowledge other than you, attended the meeting?</p> <p>5 LT-COL BOTHA: Sir, there were a lot of</p> <p>6 people. I – it's going to be difficult now to say who</p> <p>7 attended the meeting. There were a lot of people. I know</p> <p>8 that General Annandale was there, Brigadier – the names</p> <p>9 that I've now known. I cannot recall – on the first day</p> <p>10 Brigadier Van Zyl for instance, he might've, he might not</p> <p>11 have been there. I cannot recall Brigadier – General</p> <p>12 Mbombo, I do not think she was there the first day. So</p> <p>13 it's going to be very difficult for me to say out of my</p> <p>14 head and I did not note that.</p> <p>15 CHAIRPERSON: Mr Ntsebeza, I don't want</p> <p>16 to interrupt you. I'm not sure if this is the best witness</p> <p>17 to obtain this information from. I would imagine that in</p> <p>18 the course of the inquiry it'll be fairly easy for you to</p> <p>19 obtain the information you now seek. I wonder, unless</p> <p>20 you've got a particular reason for asking the question, in</p> <p>21 which case I won't stop you, but if you are in effect</p> <p>22 endeavouring to lay a foundation for things that will</p> <p>23 follow, it may be that - if you're wasting your time with</p> <p>24 this witness on this issue, but you will be able to get the</p> <p>25 information later. But if you have a reason for asking the</p>	<p style="text-align: right;">Page 536</p> <p>1 LT-COL BOTHA: That's correct, Mr Chair.</p> <p>2 MR NTSEBEZA SC: Right. Were there any</p> <p>3 agendas, written agendas that were circulated to those who</p> <p>4 attended?</p> <p>5 LT-COL BOTHA: No, Mr Chair.</p> <p>6 MR NTSEBEZA SC: Let's take the first</p> <p>7 day. Who chaired the meeting of the first day?</p> <p>8 LT-COL BOTHA: Sir, I'm not sure who</p> <p>9 chaired the first day. I cannot remember who chaired the</p> <p>10 days. It was – I know that General Annandale and General</p> <p>11 Naidoo was there, I cannot even say that General Naidoo was</p> <p>12 there the whole time and so I presume they were the senior</p> <p>13 people, they chaired the meeting.</p> <p>14 MR NTSEBEZA SC: Now were there any oral</p> <p>15 reports given, seeing that the whole purpose of the</p> <p>16 meeting, according to you, was to prepare a comprehensive</p> <p>17 report for the National Commissioner of police and, as I</p> <p>18 understood you, also for this Commission.</p> <p>19 LT-COL BOTHA: That is correct, sir.</p> <p>20 MR NTSEBEZA SC: Would you recall who</p> <p>21 made oral representations – who made oral reports at the</p> <p>22 meeting?</p> <p>23 LT-COL BOTHA: No sir, there were a lot</p> <p>24 of people.</p> <p>25 MR NTSEBEZA SC: One or two? You must</p>
<p style="text-align: right;">Page 535</p> <p>1 question now, then you must carry on.</p> <p>2 MR NTSEBEZA SC: Two reasons –</p> <p>3 CHAIRPERSON: You don't have to tell me</p> <p>4 what – if there are reasons, you can carry on.</p> <p>5 MR NTSEBEZA SC: Thank you. Colonel,</p> <p>6 your diary, does it show on each day who at least chaired</p> <p>7 the meeting and who attended the meeting?</p> <p>8 LT-COL BOTHA: No, it does not.</p> <p>9 MR NTSEBEZA SC: Of the nine days - can</p> <p>10 you just tell us which witness statement the first day of</p> <p>11 the meeting?</p> <p>12 LT-COL BOTHA: Sir, I'll have to go and</p> <p>13 confirm that. I do not know what the first day – I know it</p> <p>14 was a Monday, I cannot remember the date now.</p> <p>15 MR NTSEBEZA SC: And that would be so in</p> <p>16 respect of the remainder of the days, you wouldn't remember</p> <p>17 what days the meetings were held, or in respect of the</p> <p>18 remaining eight days or seven and a half days?</p> <p>19 LT-COL BOTHA: It was held from the</p> <p>20 Monday till the Friday –</p> <p>21 MR NTSEBEZA SC: Yes.</p> <p>22 LT-COL BOTHA: And then from the Monday</p> <p>23 till the Thursday, if I'm not mistaken.</p> <p>24 MR NTSEBEZA SC: Okay. You are not sure</p> <p>25 who attended, there were many people.</p>	<p style="text-align: right;">Page 537</p> <p>1 remember that there was a particular report that caught</p> <p>2 your attention, I would assume.</p> <p>3 LT-COL BOTHA: Sir, there was a lot of</p> <p>4 people talking and there was a lot of people present and I</p> <p>5 mean we all know that we were there to make a</p> <p>6 representation for the National Commissioner, so the</p> <p>7 discussion was obviously what happened.</p> <p>8 MR NTSEBEZA SC: Surely, Colonel, the</p> <p>9 meetings were structured. I don't gainsay what you're</p> <p>10 saying but you must remember something of the nine days</p> <p>11 that caught your attention.</p> <p>12 LT-COL BOTHA: We discussed the</p> <p>13 happenings of the 16th, so I – it's general discussions. I</p> <p>14 can't remember specific things that were said.</p> <p>15 MR NTSEBEZA SC: Were there any written</p> <p>16 reports that were handed in that you are aware of?</p> <p>17 LT-COL BOTHA: Not that I am aware of,</p> <p>18 sir.</p> <p>19 MR NTSEBEZA SC: Were there times when</p> <p>20 there were footages of what happened on the 16th flighted?</p> <p>21 LT-COL BOTHA: Yes, Sir.</p> <p>22 [11:11] MR NTSEBEZA SC: And were those only SAPS</p> <p>23 footages that were flighted or all footages that have been</p> <p>24 recorded of what took place on the 16th?</p> <p>25 LT-COL BOTHA: I can recall SAPS footage,</p>

<p style="text-align: right;">Page 538</p> <p>1 like my photos for instance or the photos taken by Warrant 2 Officer Venter. I can't recall that we looked at any other 3 footage. 4 MR NTSEBEZA SC: And would your answer be 5 that, except only for the half a day that you were not 6 there, in the nine days that you gathered in Potchefstroom, 7 all footage that would have been shown is the one that was 8 shown to this Commission from the SAPS? 9 LT-COL BOTHA: Just repeat the question? 10 MR NTSEBEZA SC: The question is, unless 11 something else was shown in the half a day that you were 12 not there, in the eight and a half days that you were in 13 attendance, on one or more days of which footage was shown, 14 all footage that was shown is the one that you presented to 15 us here at this Commission. Am I correct in saying so? 16 LT-COL BOTHA: Maybe you must rephrase 17 the question. Sorry, I'm not trying to be difficult – 18 MR NTSEBEZA SC: Okay. 19 CHAIRPERSON: As I understand the 20 question, what counsel is asking you is, this video that 21 you showed us yesterday or was shown yesterday that you 22 took, was that the only video which was seen while you were 23 there during the eight and a half days at the meeting? 24 That's counsel's question, as I understand it. I think you 25 can – I hope you can understand it now.</p>	<p style="text-align: right;">Page 540</p> <p>1 MR NTSEBEZA SC: Thank you, Mr Chairman. 2 Thank you, Colonel. Just now to be, to put this point 3 beyond doubt – as far as you are aware, or your evidence is 4 that you do not recall that even your footage was flighted 5 in the eight and a half days that you were present at this 6 meeting. 7 LT-COL BOTHA: Not the video, but I do 8 recall that the aerial photos were flighted. 9 MR NTSEBEZA SC: No, no, that's clear. 10 Can we take that a little bit further and say, is it 11 because you do not remember now because there are a number 12 of things that's happened along the route, you do not 13 remember now whether or not that video footage was flighted 14 during the meetings, or it was never done at all because if 15 it was, you would remember. 16 LT-COL BOTHA: Sir, no, I cannot remember 17 now. As you've said, a lot of things happened in between. 18 I cannot remember now if it was flighted. 19 MR NTSEBEZA SC: And your evidence will 20 be if it was flighted at all, in your recollection it 21 would've been the only video material of the events of the 22 16th that would have been flighted. 23 LT-COL BOTHA: That is correct, Mr Chair. 24 MR NTSEBEZA SC: Mr Chairman, as you 25 remarked earlier on, it is remarkable that it is the only</p>
<p style="text-align: right;">Page 539</p> <p>1 LT-COL BOTHA: But you asked of the 16th, 2 the happenings on the 16th of – 3 CHAIRPERSON: Yes, I take it he's talking 4 – yes, I think that was in, that was part of the question, 5 but there may have been earlier footage about the 13th which 6 would possibly form the subject matter of another question 7 but as far as the events of the 16th are concerned, what 8 counsel wants to know from you is, the footage that we saw 9 yesterday which you took from the helicopter, was that the 10 only video footage which was shown in your presence at the 11 meeting over the eight and a half days. 12 LT-COL BOTHA: Of the 16th. Sir, I did 13 say previously that I cannot recall that this, my video was 14 shown there, but there were aerial photos of the 16th that 15 were shown or that we looked at. 16 CHAIRPERSON: Yes, that's what I 17 understood you to say earlier, that you couldn't recall 18 your footage, your video footage being shown. What you do 19 recall is that the pictures taken on your camera by 20 Sergeant or Warrant Officer Venter were shown and I 21 understood you to say that they were the only visual 22 material which you saw at these meetings. Did I understand 23 correctly? 24 LT-COL BOTHA: No sir, that's not – there 25 were other, I did say there were other aerial photos also.</p>	<p style="text-align: right;">Page 541</p> <p>1 video material – 2 CHAIRPERSON: I just asked, rephrased 3 your question. The witness said yes, so it's the witness's 4 remark 5 MR NTSEBEZA SC: Yes indeed, Mr Chairman. 6 I think that's where we should leave it. Oh ja, my junior 7 always wants to make sure I do the right thing. My learned 8 friend is not going to like this. Was there anyone from 9 Lonmin at that meeting, at the end of those meetings? 10 LT-COL BOTHA: Sir, as far as I can 11 recall there were only policemen at that meeting. 12 MR NTSEBEZA SC: Okay. May I just place 13 on the record also, Mr Chairman, that Adv Budlender 14 educated me a little bit yesterday. He told me that papa 15 refers to Nyalas, it has nothing to do – remember I asked 16 the question, is papa the same thing as the – he said no, 17 no, papa, Dumisa – except that he calls me "Mr Ntsebenza". 18 So papa, I now accept to be a reference to Nyalas. Thank 19 you, Mr Chairman, no more questions. 20 CHAIRPERSON: Before I give the counsel 21 for some of the parties the opportunity to ask further 22 questions arising from the extra material, particularly the 23 video, is there anyone representing any of the parties who 24 hasn't yet had the opportunity to cross-examine and wishes 25 to do so? A hand is being raised at the back, yes? Please</p>

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1 put yourself on record and then ask the questions you want  
2 to ask.

3 MR RAMPHELE: That is correct, Chair. My  
4 name is Tshepiso Ramphele, I'm representing the families of  
5 the two security officers that perished on the 12th. Just  
6 to make clear, I'm an attorney, not an advocate.

7 CHAIRPERSON: I take it you have what is  
8 known as "verskyningsbevoegdheid", but there's no reason  
9 why you shouldn't participate in these proceedings. Please  
10 carry on without any sense of inadequacy.

11 MR RAMPHELE: Colonel, just because  
12 you're not involved in the issues around the 12th, my  
13 questions will just basically relate to clarity so I should  
14 understand the workings in your area of expertise. Tell  
15 me, under what circumstances would you normally have video  
16 recordings of incidents?

17 LT-COL BOTHA: Sir, that's a call made  
18 entirely by the expert when he gets to a crime scene, he  
19 will decide if he's going to make a video or not. Me  
20 personally, in serious cases I will make videos.

21 MR RAMPHELE: And in your 26 years or so  
22 of experience, ordinarily if you have continuous marches in  
23 an area and the area is volatile there would be a need for  
24 some sort of recording.

25 LT-COL BOTHA: Sir, LCRCs only record

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1 passive crime scenes, not active crime scenes, so I don't  
2 know.

3 MR RAMPHELE: If you could explain that?  
4 If you say – because we learn from the dockets that have  
5 been opened on the 10th and the 11th that there were marches  
6 in Lonmin. So the question is, would these kinds of  
7 incidents require some sort of observation by the police?

8 LT-COL BOTHA: That's not my field of  
9 expertise, I don't know.

10 MR RAMPHELE: Now Colonel, even if it's  
11 not your field of expertise, on the 10th of August there  
12 were two cases that were reported at Marikana police  
13 station of shooting and there were marches. Would you –  
14 I'm just giving you this information – and on the 11th of  
15 August there were a further two cases of shootings reported  
16 at Marikana police station and there were marches. So just  
17 in terms of your experience, would this kind of incident  
18 not require some sort of police attention?

19 LT-COL BOTHA: If there are shootings and  
20 marches, it does require police attention.

21 MR RAMPHELE: And in this particular case  
22 the reports were that it was the security of Lonmin that  
23 were involved in the shooting at first and, secondly, it  
24 was the warring unions that were involved. So that, you  
25 would agree with me, required some sort of police

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1 attention.

2 LT-COL BOTHA: Sir, if the case was  
3 reported at the police they must give attention to it.

4 MR RAMPHELE: And ordinarily in these  
5 kinds of instances you would agree with me that the police  
6 would have to do some sort of probing, that the police  
7 would find out what the situation is in Lonmin, would you  
8 agree with me?

9 LT-COL BOTHA: If you say probing into  
10 the case, they investigate the case. The rest I can't  
11 comment on.

12 MR RAMPHELE: I see. Colonel, I am  
13 referring to a situation where you have shootings in a  
14 march and that is reported to the police. Would the  
15 police, say public order policing, not have an interest in  
16 this kind of matter?

17 LT-COL BOTHA: Sir, again, it's not my  
18 field of expertise. I'm not a POP, public order policeman.  
19 I've been a fingerprint expert or criminalistic expert for  
20 26 years.

21 CHAIRPERSON: Mr Ramphele, I don't want  
22 to unduly interfere with your cross-examination but it  
23 occurs to me that – I take it there will be public order  
24 policemen, policing people here and if these questions are  
25 relevant to the issues before us at this stage, not merely

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1 to a possible claim that your clients may have against  
2 somebody else, then I'll the questions then but I think – I  
3 hope you'll forgive me if I say that I don't know if the  
4 inquiry is being advanced very much at the moment by asking  
5 questions of this kind to this witness. As I say, there  
6 may be other witnesses to whom you can fruitfully ask the  
7 questions but I wonder whether you shouldn't be -

8 MR RAMPHELE: I appreciate, I accept,  
9 Judge. Let me just then move on to the other areas.  
10 Colonel, in a situation of a big organisation like Lonmin,  
11 would you be aware that they would have some sort of  
12 surveillance that could assist in your investigation?

13 CHAIRPERSON: Sorry Mr Ramphele, again is  
14 this the kind of question we can expect a meaningful answer  
15 from the Colonel? I don't mean any disrespect to the  
16 Colonel but it's not his field of expertise either. I can  
17 understand why you're asking the questions, where you're  
18 coming from. I'm not sure that they'll necessarily help us  
19 at this stage of the inquiry but in any event I don't think  
20 this is the right witness to ask the questions of but –  
21 unless you wish to address me on that, I'm proposing to  
22 disallow the question.

23 MR RAMPHELE: Yes, let me address you –  
24 thank you, Chair, let me address you on that. My  
25 understanding is that the Colonel is the most senior in his

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1 experience – I mean he's got 26 years' experience, he's  
 2 indicated that in the unit where he was operating he is the  
 3 most senior, so in terms of the protocols I think he would  
 4 be the most appropriate official to give an indication of  
 5 what would be practice in the operation.  
 6 CHAIRPERSON: You should first ask him  
 7 what his field of – to define more precisely what his field  
 8 of expertise is, to see whether he's able to give  
 9 meaningful answers on the points that you want to cover.  
 10 Colonel, can you deal with that point?  
 11 LT-COL BOTHA: Sir, my field of  
 12 expertise, I'm a criminalistic expert in the South African  
 13 Police Service. I videograph, photograph crime scenes and  
 14 I also lift fingerprints and do comparisons, filing and  
 15 identifications of fingerprints. I'm a bloodstain pattern  
 16 analysis, trained bloodstain pattern analysis and also  
 17 footprints. That's my – in short, I might miss one or two  
 18 but that's my field of expertise.  
 19 CHAIRPERSON: Now how can any –  
 20 MR RAMPHELE: Thank you, Chair. Now the  
 21 reason why I'm asking is because the surveillance is part  
 22 of video material that may actually be relevant to the  
 23 investigation by the police and I'm trying to establish,  
 24 with respect Chair, the interaction between the police and  
 25 probable available material in areas where they operate.

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1 CHAIRPERSON: Can you assist us on that  
 2 line of enquiry, Colonel?  
 3 LT-COL BOTHA: I cannot, sir.  
 4 MR RAMPHELE: So what you are telling  
 5 this Commission is that even if there could be video  
 6 material at Lonmin that could have assisted you, you would  
 7 not know how to interface with that?  
 8 LT-COL BOTHA: Sir, what I'm saying is  
 9 I'm not investigating the case, I'm not an investigating  
 10 officer. I made the video.  
 11 [11:31] MR RAMPHELE: Thank you, Colonel. Let's  
 12 go to – because you see, like I say, I just want to  
 13 understand the processes. The –  
 14 CHAIRPERSON: I'm sorry, Mr Ramphele. I  
 15 don't know that obtaining an understanding of the processes  
 16 is a necessary exercise to perform before the Commission in  
 17 open session. I'm sure one of the police people will give  
 18 you the information you require but I don't think this is  
 19 the right witness, in any event, to give you the  
 20 understanding of the processes. So I propose disallowing  
 21 this line of cross-examination. If you want to deal with  
 22 something that's directly relevant to what we're busy with,  
 23 you can proceed.  
 24 MR RAMPHELE: Chair, I – let me just  
 25 explain. When I say processes I'm referring to protocols

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1 as – because I went through the directive in relation to  
 2 how they would operate and I think, Chair, questions have  
 3 been extensively asked on that directive and the Colonel  
 4 has duly obliged and responded and I just wanted to make  
 5 enquiries about certain of the issues that are in the  
 6 directive, Chairperson.  
 7 CHAIRPERSON: Ask the question, let's see  
 8 if the witness can help you.  
 9 MR RAMPHELE: Thank you. Colonel, in  
 10 your evidence you gave an indication that in your work on  
 11 the day of the 16th you were having both a video camera and  
 12 a digital camera.  
 13 LT-COL BOTHA: That is correct, Mr Chair.  
 14 MR RAMPHELE: And you indicated that the  
 15 digital camera time was actually the correct time, in your  
 16 understanding.  
 17 LT-COL BOTHA: As far as I could  
 18 determine it.  
 19 MR RAMPHELE: And if I understand it  
 20 correctly, the properties on the video recording will give  
 21 the exact time at which the picture was taken.  
 22 LT-COL BOTHA: No, if you have a look at  
 23 my video, for some reason there's something wrong with the  
 24 programme. The properties do not show correctly. We've  
 25 experienced it in Brits and we've experienced it here.

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1 What I do when I type my statement, I open the video  
 2 camera, then at the bottom it shows the time when I started  
 3 - it doesn't show when you film – and I take that time and  
 4 then afterwards I realised but this time is wrong, but if  
 5 you even look at my video the properties will not be  
 6 correct. There's some glitch in the programme and I'm not  
 7 a computer expert.  
 8 MR RAMPHELE: But would I be correct if I  
 9 say that the slides as they appear in your, the photos that  
 10 you've provided follow one another?  
 11 LT-COL BOTHA: Sorry, if you spoke about  
 12 the properties of the photos, that is correct. I thought  
 13 you talked about the properties of the video, there's a  
 14 glitch in the programme but the properties of the photos  
 15 will be correct, that will give you the actual time.  
 16 MR RAMPHELE: Now I would like to, and  
 17 Chairperson with your guidance because there are some – we  
 18 received some photos that I wanted to just establish from  
 19 the Colonel in terms of times they were taken and the order  
 20 in which they actually are placed, that maybe this could be  
 21 shown so that the Colonel could respond to some of the  
 22 questions.  
 23 CHAIRPERSON: Are these photographs of  
 24 something that happened on the 13th or the 12th or on the  
 25 16th?



<p style="text-align: right;">Page 550</p> <p>1 MR RAMPHELE: The 16th, Chair.  2 CHAIRPERSON: Are these –  3 MR RAMPHELE: And this is on the –  4 CHAIRPERSON: Are these supposed to be  5 Sergeant or Warrant Officer Venter's photographs?  6 MR RAMPHELE: These are from the folio  7 that is Colonel Botha's folio.  8 CHAIRPERSON: Colonel Botha provided a  9 photo album which is in the bundle of documents.  10 MR RAMPHELE: Yes.  11 CHAIRPERSON: It's not been handed in  12 yet, I don't think, but it's the photographs taken, as I  13 understand it, by Warrant Officer Venter using the  14 Colonel's digital camera. Is that what you're asking  15 about?  16 MR RAMPHELE: Yes.  17 CHAIRPERSON: Mr Madlanga, you look  18 puzzled. Do you want to say something at this stage?  19 MR MADLANGA SC: Well Chair, no  20 arrangement, as far as I'm aware, was made for the  21 photographs to be shown but I believe those photographs are  22 on the SAPS hard drive. So if an arrangement could have  23 been made, could have taken them up there to Mr Rice for  24 them to be shown or to be viewed.  25 CHAIRPERSON: Yes, well obviously you're</p>	<p style="text-align: right;">Page 552</p> <p>1 Chairperson to ask the gentleman upstairs whether he's got  2 those ready and whether everything is set up for that  3 viewing, Chair.  4 CHAIRPERSON: He is standing up and  5 raising his thumb, which I take it is an indication of yes.  6 So would you please proceed to show us the first three  7 photographs? Just to put on record, what we're now going  8 to see is presumably the first three photographs in the  9 photo album which the Colonel prepared of the photographs  10 taken on his digital camera by Sergeant or Warrant Officer  11 Venter.  12 MR RAMPHELE: Chair, let me just  13 indicate, the photographs that I would like the Colonel to  14 just respond on are photographs 5131, 5132 and 5134.  15 CHAIRPERSON: And have you arranged that  16 those are the photographs that we will now see?  17 MR RAMPHELE: Yes.  18 CHAIRPERSON: Alright, let's see those  19 three photographs. They may not be the first three but we  20 know, we can – they have been identified, but please show  21 them to us, please?  22 [PHOTOGRAPHS ARE SHOWN]  23 MR RAMPHELE: These photographs, Colonel,  24 the time that will appear in the properties you said will  25 be the correct time at which the photograph was taken.</p>
<p style="text-align: right;">Page 551</p> <p>1 not able to do it now –  2 MR MADLANGA SC: We can't do it now.  3 CHAIRPERSON: So it's possibly  4 appropriate then, I'm not quite sure what point Mr Ramphele  5 is making but perhaps the sensible way to do it is to stand  6 this, down this part of his cross-examination and when  7 you're ready to show the photographs then we can get the  8 Colonel back perhaps and Mr Ramphele can ask his questions.  9 Would that be acceptable, Mr Ramphele?  10 MR RAMPHELE: The arrangement has been  11 made, Chairperson, with I think - we spoke to Adv  12 Chaskalson and then we were referred to someone who's  13 operating –  14 CHAIRPERSON: Are you telling me – well,  15 let's find out from Mr Madlanga. If the photographs are  16 available and they can be shown now – I don't know about  17 all of them but – do you want all of them shown or just one  18 or two?  19 MR RAMPHELE: No, just about three, four,  20 just to understand how –  21 CHAIRPERSON: Okay. If the photographs  22 are available it will probably save time, we'll just see  23 the three, the first three now and then Mr Ramphele can  24 carry on.  25 MR MADLANGA SC: May I ask the</p>	<p style="text-align: right;">Page 553</p> <p>1 LT-COL BOTHA: Where's the properties?  2 Sir, according to me that must be the correct time. It  3 says 16:04.  4 CHAIRPERSON: I can't see but if -  5 MR RAMPHELE: It seems to be 16:04,  6 201208 at 16 – at 16:04.1736.  7 CHAIRPERSON: May I suggest that the  8 Colonel may wish to stand up and go closer to the screen to  9 see if he can see it more clearly.  10 MR MAHLANGU: The time is 4:17 as  11 indicated.  12 CHAIRPERSON: That's evidence given by  13 the interpreter who hasn't been sworn in but Colonel, can  14 you tell us, is that time that we were given the correct  15 time that we can see?  16 LT-COL BOTHA: Sir, according to me that  17 must be the correct time, and to my watch.  18 MR RAMPHELE: And the line of people that  19 we see there, are these police officers on that day?  20 LT-COL BOTHA: I can't really –  21 MR MAHLANGU: The date seems to be the  22 20th, 20 – yes, 201208, the date the 16th and the time 4.17  23 –  24 LT-COL BOTHA: Correct.  25 MR MAHLANGU: .36.</p>

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1 CHAIRPERSON: For the sake of good order,  
 2 you confirm that, Colonel?  
 3 LT-COL BOTHA: I can confirm that, sir.  
 4 CHAIRPERSON: Now the next question is  
 5 the line of people, you were asked about that and you were  
 6 going to answer when we got that extra information about  
 7 the time.  
 8 LT-COL BOTHA: Sir, I can see a line of  
 9 people there. I cannot comment on who it is. I mean maybe  
 10 –  
 11 CHAIRPERSON: Is there a facility for  
 12 zooming in on the picture which we have on the screen and  
 13 enlarging that particular part of the picture, which will  
 14 give us perhaps more definition as to the people from which  
 15 we can identify whether they are policemen or protestors?  
 16 It's being done, I see.  
 17 LT-COL BOTHA: Sir, I can most probably  
 18 say it's policemen. I wasn't on the ground so I can't  
 19 swear to that, that it's policemen.  
 20 MR RAMPHELE: Would you say that this was  
 21 before the incident or after?  
 22 LT-COL BOTHA: Sorry, just repeat the  
 23 question?  
 24 MR RAMPHELE: Would you say that this  
 25 line of police officers happened before the incident or

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1 after?  
 2 LT-COL BOTHA: Well, now I can say it  
 3 happened after the incident if I look at the time.  
 4 MR RAMPHELE: Can we then go to 5134?  
 5 CHAIRPERSON: What do you want to know  
 6 about that picture, Mr Ramphele? Do you want to know the  
 7 time or what we can see on it –  
 8 MR RAMPHELE: Yes.  
 9 CHAIRPERSON: Or do you want to –  
 10 enlarged, so that we can see it more clearly?  
 11 MR RAMPHELE: Yes. This also was taken  
 12 at 14, at 15:18:10 would you agree with that?  
 13 LT-COL BOTHA: That is correct.  
 14 MR RAMPHELE: And if you were to sort of  
 15 give some light, would you say this was before or after the  
 16 incident of the 16th?  
 17 LT-COL BOTHA: Sir, I will have to  
 18 qualify the incident of the 16th because by now I know  
 19 that's the small koppie, I know there was an incident. I  
 20 don't know if it was before or after the incident on the  
 21 small koppie happened, so we must – we must – what incident  
 22 are we talking about now?  
 23 MR RAMPHELE: The killing that happened  
 24 on the koppie.  
 25 CHAIRPERSON: No, Mr Ramphele, I think

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1 that question is a bit imprecise and I also think that  
 2 you're actually asking the witness to speculate. You ask  
 3 him to look at the picture and then tell us what he thinks  
 4 was the situation. The difficulty is, as I understand the  
 5 allegations on the table, there was – the first incident is  
 6 at scene 1 where, in the space of a very short period of  
 7 time, a substantial number of rounds of ammunition were  
 8 fired and a number of people were killed and their bodies  
 9 were found on what we can describe as the field between the  
 10 koppie and the informal settlement. Thereafter, it is  
 11 alleged that the action moved to the small koppie and  
 12 various things happened there. It's not quite clear, as I  
 13 understand at this stage, at what time those incidents took  
 14 place and/or over what period they extended. The  
 15 suggestion is, for example by some people, that a number of  
 16 miners were lying on the ground and police came up and  
 17 cold-bloodedly shot them. How long that – if that's true,  
 18 we'll ascertain perhaps in the course of the evidence.  
 19 It's also not clear over what period of time those  
 20 individual shootings took place. So in the absence of  
 21 precise timing of this incident of the second scene, all  
 22 this witness can tell us is what time that picture was  
 23 taken, that it depicts the second scene. I'm not sure one  
 24 can take it any further, but –  
 25 MR RAMPHELE: Yes.

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1 CHAIRPERSON: I don't want to stop you  
 2 unduly because if you have an important point to make I  
 3 must give you an opportunity, but I'm also concerned about  
 4 the fact that we haven't got unlimited time to go down all  
 5 these ways and byways.  
 6 MR RAMPHELE: As it pleases. So Colonel,  
 7 because you – clearly this is one area where you could zoom  
 8 – you will not be able to, you are not able to zoom at the  
 9 koppie and make some sort of picture on exactly what was  
 10 happening on the koppie.  
 11 LT-COL BOTHA: Mr Chair, I did not take  
 12 the photo.  
 13 CHAIRPERSON: Is it possible to enlarge  
 14 this photograph or a particular part of it, so we can see  
 15 more clearly what's happening at the little koppie? It's  
 16 now being enlarged for us but – perhaps we can have expert  
 17 evidence later, if such evidence is available, as to what  
 18 can be seen by a magnification, as it were, of some of  
 19 these photographs. But I'm not sure that you can help us  
 20 on this, Colonel, can you?  
 21 LT-COL BOTHA: Sorry, on the enlargement  
 22 or on what happened?  
 23 CHAIRPERSON: Both.  
 24 LT-COL BOTHA: Sorry. On the  
 25 enlargement, I can enlarge it the same way and on what

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1 happened, I can't really comment on that.  
 2 MR RAMPHELE: So Colonel, if by any  
 3 chance the shooting happened between these two periods then  
 4 it means that at that time you were actually in the  
 5 helicopter.  
 6 LT-COL BOTHA: Sir, I think we have to –  
 7 yes, I was in the chopper, sorry.  
 8 MR RAMPHELE: Yes. So you can safely say  
 9 that of the evidence that you will provide, there will  
 10 always be unclarity on some aspects.  
 11 LT-COL BOTHA: I don't know how to answer  
 12 the question, Mr Chair.  
 13 MR RAMPHELE: Because you've just said  
 14 you could've been in the helicopter when the shooting  
 15 happened but you say that you did not capture it.  
 16 LT-COL BOTHA: I didn't say that. I  
 17 think we established here at some stage that I did not know  
 18 even that there was a shooting at the koppie until I got  
 19 back onto the ground.  
 20 MR RAMPHELE: Now part of the reason why  
 21 you have video recording, Colonel, is to prevent  
 22 emergencies or tragedies from happening. Would you agree  
 23 with me?  
 24 LT-COL BOTHA: Sir, video will not  
 25 prevent a tragedy from happening.

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1 CHAIRPERSON: Colonel, it depends on how  
 2 the tragedy is defined. If the tragedy is a cold-blooded  
 3 murder by a policeman of miners, then the fact that there's  
 4 video footage being taken would discourage, one assumes,  
 5 the policemen from doing what they're otherwise alleged to  
 6 have done. So to that extent the fact that the video  
 7 recording is being taken is a useful way of ensuring that  
 8 atrocities don't occur because there is a strong likelihood  
 9 that people aren't going to perform atrocities if it's all  
 10 being recorded on video. So that extent the question put  
 11 is, elicits a positive answer.  
 12 [11:51] LT-COL BOTHA: Yes, Sir.  
 13 MR RAMPHELE: Actually you're directive  
 14 is very clear that the video operator must communicate with  
 15 the POP officials. That is what one clause of the  
 16 directive tells us.  
 17 CHAIRPERSON: But what is the question?  
 18 You're not going to just argue with the witness or debate  
 19 with him. You've got to ask him questions to get  
 20 information that helps us. What is the question?  
 21 MR RAMPHELE: Okay, do you agree with me  
 22 that your own directive as a video operator that you have  
 23 provided us, say that you interact with a member of the POP  
 24 and receive instructions from the operations commander?  
 25 LT-COL BOTHA: Sir, that is not correct.

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1 That Standing Order that was read is a POP Standing Order,  
 2 which will be for POP members, which means POP video person  
 3 will speak to the POP commander.  
 4 MR RAMPHELE: With your permission,  
 5 Chair, let me just read the colonel the relevant –  
 6 CHAIRPERSON: It's been read already, Mr  
 7 Ramphele. It's on record. Again, the purpose of this  
 8 questioning isn't to have a debate with him to persuade him  
 9 he's wrong; it's to put information before us which helps  
 10 us to find the answer to the difficult questions submitted  
 11 for us to answer. May I suggest that you move on to the  
 12 third photograph you wanted to take, and then let's see  
 13 what comes from that?  
 14 MR RAMPHELE: Chairperson, I believe that  
 15 this interaction is very important to make because it is  
 16 our case that if – and the Terms of Reference of the  
 17 Commission are clear, whether there's any commission or  
 18 omission on the part of persons that will appear, amongst  
 19 others the Police, before the Commission, that led to, in  
 20 my case, the death of a security officer on the 12th, and  
 21 I'm, it is important, Chair, that I make it clear these are  
 22 the Standing Order, that this Standing Order is not being  
 23 regularly complied with –  
 24 CHAIRPERSON: The Standing Order is  
 25 already before us and can be put before us more fully

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1 later. The photographs that you're asking him about relate  
 2 to what happened not on the 12th, but on the 16th. It  
 3 already appears from answers that were given in response to  
 4 earlier cross-examination that the Standing Order doesn't  
 5 appear to have been complied with. So I don't know  
 6 whether, you know you can go on asking questions as long as  
 7 you like, but I have the power and in fact the duty under  
 8 the regulations to regulate the proceedings to make sure  
 9 that time isn't unduly waste. I rule this line of  
 10 questioning, I disallow this line of questioning. Would  
 11 you like to move on to the next photograph? You made the  
 12 point that they don't always comply with the Standing  
 13 Regulations. That's what you want. That fact is a fact  
 14 you want to use for the purposes of your submissions in  
 15 relation to what happened on the 12th, but if you made the  
 16 point once, you don't have to make it again and again. So  
 17 move on now please to the next photograph.  
 18 MR RAMPHELE: Chairperson, I think that  
 19 in view of your acceptance that the Standing Orders are not  
 20 usually complied with and it seems to be the finding, I  
 21 will not take this matter any further.  
 22 CHAIRPERSON: I don't accept anything,  
 23 and I make no findings. I'm merely indicating what  
 24 evidence is already before the Commission. It may be that  
 25 we'll have other evidence to the effect that the Standing

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1 Order is complied with. It may be difficult for that case  
 2 to be presented in the light of what we've already been  
 3 told, but I certainly am not going to make any findings  
 4 until the appropriate time to do so comes, and I don't  
 5 accept anything either again until the appropriate time for  
 6 that is there. So, but anyway, so now that I have  
 7 disabused your mind of that misapprehension, would you like  
 8 to carry on with further questioning?  
 9 MR RAMPHELE: Okay, Chairperson, I rest  
 10 my case because I am satisfied that even though you've not  
 11 made a finding, you have a provisional inclination and I  
 12 don't have to take this matter any further.  
 13 CHAIRPERSON: I am not even prepared to  
 14 concede I have a provisional inclination, but I have  
 15 summarised to you the evidence that's been given and I  
 16 think we can leave it there. Anyway, I think it's clear  
 17 that you don't propose asking anymore questions of this  
 18 witness. So thank you very much. Let me now go to the  
 19 other counsel. Mr Semenya, are there any further questions  
 20 you'd like to ask in the light of the extra points that  
 21 arose particularly in relation to the video that was shown?  
 22 MR SEMENYA SC: Chairperson, not.  
 23 MR GUMBI: Yes Chairperson, before you  
 24 could even allow Mr Semenya to ask any question, I wanted  
 25 to ask few seeking clarity question from colonel.

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1 CHAIRPERSON: I did indicate at one  
 2 point, I asked whether did anyone else want to ask  
 3 questions and I didn't see you, but I see you in the  
 4 background. That's probably the reason. Yes, I didn't  
 5 deliberately intend to deprive you of your opportunity –  
 6 MR GUMBI: I understand, Chairperson.  
 7 CHAIRPERSON: So please ask the questions  
 8 you want to ask and then we'll give Mr Semenya and his  
 9 other colleagues in what I can call the front row an  
 10 opportunity to ask further questions, if they wish to do so  
 11 in the light of the video that we saw, but please carry on  
 12 with your questions.  
 13 MR GUMBI: Thank you very much, Chairman.  
 14 To place myself on record again, my name is Louis Gumbi.  
 15 I'm from the Johannesburg Bar. I'm representing the  
 16 interest of POPCRU in this proceeding, specifically the  
 17 interest of Lieutenant Baloyi and Warrant Officer Lepaaku  
 18 and his family. Colonel, before you boarded in that  
 19 chopper you used to captured those video images you  
 20 displayed before this Commission, I wanted to deal with  
 21 your observation of the police officers that were there.  
 22 Is it correct that the police officers who were there, some  
 23 of them they were in uniform and some of them they were not  
 24 in uniform?  
 25 LT-COL BOTHA: Mr Chair, there were

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1 policemen in and, with and without uniform.  
 2 MR GUMBI: But the majority of the police  
 3 officers, were they in uniform?  
 4 LT-COL BOTHA: Yes.  
 5 MR GUMBI: You testified before this  
 6 Commission that there were different units of the police  
 7 officers who were there on that day before you captured  
 8 those video images.  
 9 LT-COL BOTHA: I think I said that I  
 10 cannot dispute the list that was read to me.  
 11 MR GUMBI: As an experienced police  
 12 officer, Colonel, would I be correct that each and every  
 13 unit has his, its own commander?  
 14 LT-COL BOTHA: It's supposed to be like  
 15 that.  
 16 MR GUMBI: When one looks at the video  
 17 footage you captured on that day in question, would I be  
 18 correct, Colonel, that those video images captured the  
 19 uniformed police officers, it also captured the marked  
 20 police vehicles?  
 21 LT-COL BOTHA: Chair, if I look in  
 22 hindsight now, there are policemen on the, uniformed  
 23 policemen on the scene and there are marked police vehicles  
 24 on the scene.  
 25 MR GUMBI: The police officers you

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1 observed on that day in question, would I be correct,  
 2 Colonel, that they were armed with ammunition that are used  
 3 to disperse crowds? That's correct?  
 4 LT-COL BOTHA: Sir, I did not inspect any  
 5 policeman. I cannot give any comment on what they were  
 6 armed with.  
 7 MR GUMBI: While you were inside the  
 8 chopper taking those video footages you displayed before  
 9 this honourable Commission, would I be correct that you  
 10 observed police officers dispersing crowds there?  
 11 LT-COL BOTHA: Sir, I saw police vehicles  
 12 move and I, and as on the video, you can see people  
 13 walking, running in a bundle, standing around, and  
 14 according to me that is dispersement.  
 15 MR GUMBI: But you testified that at  
 16 certain occasions you observed one of the police officers  
 17 while you were there releasing a stun grenade. You  
 18 remember that?  
 19 LT-COL BOTHA: No Sir, I did say the stun  
 20 grenade was released from my chopper – from the chopper,  
 21 not my chopper – from the chopper that I was in.  
 22 MR GUMBI: And that stun grenade is used  
 23 to disperse crowds. Is that correct?  
 24 LT-COL BOTHA: Sir, I'm not a OPS member,  
 25 I'm not operational member. It was used.

<p style="text-align: right;">Page 566</p> <p>1 MR GUMBI: Thank you, Chairman, I don't 2 have any further questions. 3 CHAIRPERSON: Thank you very much. Mr 4 Semenya? Oh sorry, Mr Mogagabe, do you wish to ask 5 questions? 6 MR MOGAGABE SC: Tell us, you said that 7 the object of you, I mean getting airborne in the chopper 8 was to video record the disarming and dispersal of the 9 people on the ground. Is that correct? 10 LT-COL BOTHA: That is the information 11 that was given, yes. 12 MR MOGAGABE SC: What did you understand 13 by dispersal of the people on the ground to mean? 14 LT-COL BOTHA: That people will be 15 dispersed. I, that's my understanding. 16 MR MOGAGABE SC: What does it entail? 17 What does it mean? 18 LT-COL BOTHA: So what is that, what is 19 entailed, what it does entail I don't know. I wasn't with 20 any planning or anything like that. I was informed that 21 the people will be dispersed and disarmed and I need to get 22 into the air to make an aerial video. 23 MR MOGAGABE SC: The next question is, 24 what did you understand by the disarming of people? 25 LT-COL BOTHA: I understand that arms</p>	<p style="text-align: right;">Page 568</p> <p>1 CHAIRPERSON: Don't cover matters that 2 we've had already because that's not helping us. I mean 3 you got him to repeat what he told us previously. 4 Fortunately for you he stuck to his story, but I mean it 5 might not always have that result, so I suggest you deal 6 with new matter rather than just re-traversing old matter. 7 MR MOGAGABE SC: Yes. Thank you. 8 Colonel, my next question is, you said in this Commission 9 that you only have expertise or experience in recording 10 passive crime scenes and not active ones. Is that correct? 11 LT-COL BOTHA: That's not what I said. I 12 said in video recording, and then I said that normally LCRC 13 guys will record passive crime scenes and POPS members will 14 record active crime scenes. 15 MR MOGAGABE SC: Was it the first time 16 that you're recording from airborne, from a helicopter? 17 LT-COL BOTHA: It might sound strange, in 18 26 years, yes. 19 MR MOGAGABE SC: Did you tell Brigadier 20 Van Zyl about this? 21 LT-COL BOTHA: No, I didn't tell him 22 about it. Let me just rectify the previous answer, Sir. I 23 was also airborne on the 14th, which I did say during my 24 evidence, that I switched off the video camera and I went 25 over to aerial photos. No, I did not tell the brigadier</p>
<p style="text-align: right;">Page 567</p> <p>1 will be taken away from people. 2 MR MOGAGABE SC: Colonel, who gave you 3 these orders on the day in question? 4 LT-COL BOTHA: Brigadier Van Zyl. 5 MR MOGAGABE SC: I beg your pardon? 6 LT-COL BOTHA: Brigadier Van Zyl gave me 7 the instruction. 8 MR MOGAGABE SC: Was this during a 9 briefing session before you get into the chopper? 10 LT-COL BOTHA: I met him at the outside 11 of the JOC. He told me that they're going to need a video 12 person because people are going to be dispersed and 13 disarmed and I must, when the chopper goes into the air I 14 must go into the air with it. 15 CHAIRPERSON: Mr Mogagabe, I don't want 16 to interrupt you unfairly. These questions have all been 17 covered already. We've heard nothing new. This cross- 18 examination you're now busy with doesn't in any way relate 19 to the extra material that we were shown. So unless you're 20 going to bring your cross-examination closer to that aspect 21 of the matter I don't think you should proceed. But 22 anyway, carry on for the moment. Endeavour to bear in mind 23 what I said. 24 MR MOGAGABE SC: Thank you, Mr Chairman. 25 I'll try to keep my question as brief as possible.</p>	<p style="text-align: right;">Page 569</p> <p>1 that. 2 MR MOGAGABE SC: Colonel, I think I have 3 only two or three questions left. Was there a flight plan 4 on the 16th of August? 5 LT-COL BOTHA: I'm not sure. I don't 6 know. I can't answer on that. 7 MR MOGAGABE SC: You also testified that, 8 I mean when the other two shooting incidents occurred, you 9 were airborne but didn't capture the incidents. May I ask 10 you then, who was in control of the pilot as to which 11 direction the chopper should fly, to which spot and 12 location? 13 LT-COL BOTHA: Can I just ask you to 14 repeat the statement and then the question? 15 MR MOGAGABE SC: I said, you testified 16 that in fact at the time that the two incidents which 17 happened which resulted in the killing of the protesters or 18 strikers had occurred, you were airborne at the time in the 19 chopper. 20 LT-COL BOTHA: Yes, I was. Let me just 21 say that in hindsight I know now that the first incident 22 obviously took place because I can see it on the video. 23 When the shooting in the koppie took place, I don't know, 24 so I can't say that I did or did not videograph it. 25 MR MOGAGABE SC: Colonel, my next</p>

<p style="text-align: right;">Page 570</p> <p>1 question is, I mean at the time who was giving the pilot 2 orders as to in which direction to fly the chopper? Was it 3 you or was it brigadier Van Zyl. 4 [12:11] LT-COL BOTHA: Sir, it wasn't me. As far 5 as I know, the chopper pilot flew where he see, where he 6 saw things happen, where people walked, where police 7 vehicles were driving, where people ran, where people were 8 standing, and that's how we videographed it. 9 CHAIRPERSON: It follows then from your 10 answer that nobody, while you were there in the helicopter, 11 actually gave an oral instruction to the pilot as to where 12 to go? 13 LT-COL BOTHA: No, Sir. 14 CHAIRPERSON: I think the answer that I 15 put to you [inaudible] no-one gave him instructions to 16 where to fly. Is that right? 17 LT-COL BOTHA: No Sir, at some stage, you 18 will see at the last part of my video, it does not really 19 concentrate on any area, to the koppie or that area. Then 20 Brigadier Fritz made a call and said we are going to die 21 here, there, because you'll hear if you listen closely on 22 the video I at some stage said to the pilot, "Check the 23 white chopper," and he said we must move away and then 24 that's where I photographed the people regrouping at the 25 side of the road and stuff like that. According to me that</p>	<p style="text-align: right;">Page 572</p> <p>1 MR MOGAGABE SC: Who gave the order that 2 the chopper should return to the ground? 3 LT-COL BOTHA: Brigadier Van Zyl 4 contacted the chopper and said that I must come back to the 5 ground. 6 MR MOGAGABE SC: Can you recall what time 7 was that? 8 LT-COL BOTHA: Sir, I think I said under 9 my evidence, if you take when I started making the video 10 and I, and when I switched the camera off, it should have 11 been in the area of 17:40. 12 MR MOGAGABE SC: My last question is, who 13 gave the order to release the two stun grenades from your 14 chopper? 15 LT-COL BOTHA: Brigadier Fritz. 16 MR MOGAGABE SC: Do you know for what 17 purpose was that order given? 18 LT-COL BOTHA: No Sir, he's the 19 operations person, he made the call and he instructed the – 20 I'm not sure is it Warrant Officer or Sergeant Venter, to 21 release the stun grenade. 22 MR MOGAGABE SC: Thank you, Mr Chair, no 23 more questions. 24 CHAIRPERSON: Thank you. Mr – 25 MR SEMENYA SC: Sorry Chair, can I just</p>
<p style="text-align: right;">Page 571</p> <p>1 was part of the dispersed people and I videographed it. 2 CHAIRPERSON: The answer is that 3 generally speaking the pilot wasn't given instructions as 4 to where to fly, but at one point he was by Brigadier 5 Fritz. Is that correct? 6 LT-COL BOTHA: That's correct, Sir. 7 CHAIRPERSON: Thank you. 8 MR MOGAGABE SC: Colonel, the next 9 question is, I will assume that during the whole period 10 that you were encircling the area, that you were in 11 constant contact with JOC? 12 CHAIRPERSON: I'm not sure how an 13 assumption can be a question. If you want to ask whether 14 he was in contact, you can ask him, but you can't just 15 preface your remarks by making an assumption. 16 MR MOGAGABE SC: Let me rephrase the 17 question, Mr Chairperson. During the whole period that you 18 were airborne and circling the area, were you in constant 19 contact with JOC, either you, Brigadier Van Zyl or the 20 pilot? 21 LT-COL BOTHA: Sir, I cannot remember if 22 we were in contact with the JOC. I can remember speaking, 23 people speaking on the radio. If it was, and it was the 24 JOC, I can't remember if we were in constant contact with 25 the JOC.</p>	<p style="text-align: right;">Page 573</p> <p>1 tidy one aspect? 2 CHAIRPERSON: I thought you were, Mr 3 Mogagabe was dealing with the matter on your behalf, but 4 obviously if there's a further point you want to deal with 5 you may. 6 MR SEMENYA SC: He represents a different 7 team. 8 CHAIRPERSON: Oh, I see. I'm sorry. 9 MR SEMENYA SC: Alright. Colonel, can we 10 tidy up one aspect? The document called Standing Order, 11 firstly it is a POP document. Am I correct? 12 LT-COL BOTHA: The one that was read to 13 me was a POP document, yes. 14 MR SEMENYA SC: Secondly, the document is 15 a draft document, is it not? 16 LT-COL BOTHA: Sir, no I don't know if 17 it's a draft. If you told me it is, it might be. 18 MR SEMENYA SC: Well I can show you that. 19 That's how it is indicated at the top. At page 649 you 20 will see it's a draft, but I'm merely putting it to you. 21 Can you accept that? 22 LT-COL BOTHA: I can accept it. 23 MR SEMENYA SC: Thirdly, it is not a 24 standing order. Would you dispute that, Colonel? 25 LT-COL BOTHA: No, Sir, I cannot really</p>

<p style="text-align: right;">Page 574</p> <p>1 say if it's not – well, if it says Standing Order whatever 2 the number is, then it must be a Standing Order. If it's a 3 draft, then it's a draft. I'm not sure, Sir. 4 MR SEMENYA SC: It is merely being used 5 by POP as a guide, correct? Would you know? 6 LT-COL BOTHA: I won't know, Sir. 7 MR SEMENYA SC: Can I just read what the 8 heading of the document is? It reads, "A divisional 9 directive 20," in Roman figures - I'm told it's XX, not 20 10 in Roman figures, "-2012 POP Operational Standards." You 11 can accept that reading to be correct at least? 12 LT-COL BOTHA: If that's the official 13 document of the SA Police Service, I can presume that it's 14 correct. 15 MR SEMENYA SC: Thank you, Chair. 16 CHAIRPERSON: No further questions? 17 MR SEMENYA SC: No. 18 CHAIRPERSON: Mr Burger, have you got any 19 questions? 20 MR BURGER SC: Yes, thank you, Chair. 21 Colonel, my colleagues and I represent Lonmin in this 22 inquiry and with the permission of the Chair I want to 23 probe two issues with you in some more detail. One is the 24 chopper flight on the 16th and the second is the 25 Potchefstroom nine-day conference. Can I start with the</p>	<p style="text-align: right;">Page 576</p> <p>1 radio. 2 MR BURGER SC: Would it be correct that 3 the two people inside the chopper who spoke on the radio 4 would be firstly Brigadier Fritz, correct? 5 LT-COL BOTHA: So I did say that 6 Brigadier Fritz, I can remember that he did speak on the 7 radio at some stage. You can even hear it on the – but I 8 cannot remember what he said. 9 MR BURGER SC: And the second person 10 would be the pilot. He would know where to fly. 11 LT-COL BOTHA: That is correct, Sir. 12 MR BURGER SC: Did Brigadier Fritz have 13 earphones or did he simply speak in a microphone and heard 14 the response on an open microphone? 15 LT-COL BOTHA: No Sir, he had earphones. 16 MR BURGER SC: Does that mean when he 17 spoke into the microphone, you could hear it sitting next 18 to him, but you couldn't hear what came back to him through 19 the earphones? 20 LT-COL BOTHA: Sir, there was a lot of 21 talking. I heard some, I heard people talking in my 22 earphones. 23 MR BURGER SC: Colonel, let me put the 24 question again. I don't think you followed it. Brigadier 25 Fritz is sitting next to you. He's talking into a</p>
<p style="text-align: right;">Page 575</p> <p>1 first subject? Would it be correct for the Commission to 2 accept that on the 16th of August there was constant radio 3 communication between the JOC, the units in the area of the 4 koppie, and the SAPS helicopters? 5 LT-COL BOTHA: Just ask the question 6 again, sorry. 7 MR BURGER SC: Let me put it again. May 8 we assume that on the day of the 16th during the operation, 9 take it from 3 o'clock in the afternoon, there was constant 10 radio communication between the JOC on the one hand, the 11 operational units in the area of the koppie on the other 12 hand, and the helicopters in the air, operated by SAPS? 13 LT-COL BOTHA: Sir, if you say we must 14 assume it, then I cannot think that we can dispute it 15 because I don't think we can have such a big operation 16 without radio communication. I did say that I cannot 17 remember that we had constant comms, or my chopper had 18 constant comms with the JOC. I can't remember that. 19 MR BURGER SC: Colonel, I'll probe your 20 memory presently. I'm just trying to get the facts before 21 the Commission. We know for example that there was direct 22 contact between the JOC and your chopper because there was 23 an instruction given by Brigadier Van Zyl that you should 24 return. That was given by radio, I accept. 25 LT-COL BOTHA: Yes, that was given by</p>	<p style="text-align: right;">Page 577</p> <p>1 microphone. You can clearly hear what he says, but the 2 Commissioner must accept that you can't hear what comes 3 back to him because he's got earphones on. Is that 4 correct? 5 LT-COL BOTHA: No, I did not say that I 6 cannot hear what is coming back to him. 7 MR BURGER SC: So you could also hear 8 what was said to him, what instructions he got or 9 information he got from the other side? 10 LT-COL BOTHA: I could hear everything 11 that was said on the radio. We had, I did say also we had 12 difficulty with radio communication but I could hear what 13 was said. 14 MR BURGER SC: I see. So you could hear 15 what the brigadier was saying and the response he got, I 16 take it both from the units around the koppie and from the 17 JOC. 18 LT-COL BOTHA: Sir, I cannot recall that 19 Brigadier Fritz spoke specifically to the JOC or 20 specifically to people on, to specific people on the 21 ground. I know that he spoke on the radio. I cannot 22 remember whether it was, what was said. 23 MR BURGER SC: The function of Brigadier 24 Fritz is to direct the operation from the helicopter? 25 LT-COL BOTHA: I did say I don't know</p>

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1 what the function of Brigadier Fritz was.  
 2 MR BURGER SC: Colonel, you're a  
 3 lieutenant-colonel in the South African Police Service.  
 4 You've got 26 years service. What do you think was the  
 5 function performed by Brigadier Fritz on that day in the  
 6 helicopter?  
 7 LT-COL BOTHA: Mr Chair, I already said I  
 8 do not know what the function of Brigadier Fritz was in the  
 9 chopper.  
 10 MR BURGER SC: I will make two  
 11 submissions on that answer to the Commissioner and if you  
 12 think it's unfair or incorrect, this will be the  
 13 opportunity to say so. My first submission will be that  
 14 Brigadier Fritz was clearly in charge of the chopper and  
 15 had to direct the business of the chopper on that day. Do  
 16 you want to comment on that?  
 17 LT-COL BOTHA: I cannot comment on that.  
 18 I have said I don't know what the role of Brigadier Fritz  
 19 was.  
 20 CHAIRPERSON: You did also say that on  
 21 one occasion at least he did give instructions to the – is  
 22 that correct? Did he give instructions to the pilot or was  
 23 it Brigadier Van Zyl? You said generally the pilot flew  
 24 where he wanted to fly. You said at one point he received  
 25 an instruction. Was that from Brigadier Van Zyl or

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1 Brigadier Fritz?  
 2 LT-COL BOTHA: Because we moved away from  
 3 the koppie I can remember that he said that we, there's a  
 4 lot of air traffic, we must move away otherwise we might  
 5 die.  
 6 CHAIRPERSON: Was that Brigadier Fritz  
 7 who said that?  
 8 LT-COL BOTHA: That was Brigadier Fritz.  
 9 CHAIRPERSON: Thank you. Sorry, Mr  
 10 Burger.  
 11 MR BURGER SC: And the second submission  
 12 I will make is that your answer that you did not know what  
 13 Brigadier Fritz was doing in the helicopter, is not a  
 14 reliable answer.  
 15 LT-COL BOTHA: Just say again? Sorry.  
 16 MR BURGER SC: I will submit at the end  
 17 of this proceeding that your answer to the Commission that  
 18 you did not know what Brigadier Fritz's role in the  
 19 helicopter was on the 16th of August 2012, is an unreliable  
 20 answer.  
 21 LT-COL BOTHA: Sir, I can just stick to  
 22 my point. I do not know what the role of Brigadier Fritz  
 23 was next to me in the chopper.  
 24 MR BURGER SC: Who gave the order for the  
 25 stun grenades to be fired?

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1 LT-COL BOTHA: Brigadier Fritz.  
 2 MR BURGER SC: In what capacity did he  
 3 give that order?  
 4 LT-COL BOTHA: As a capacity of the  
 5 brigadier in the chopper.  
 6 MR BURGER SC: Colonel, I was thinking  
 7 about the role of a chopper in this situation and I could  
 8 think of three roles to be played. Let me put them to you  
 9 and if there are more, will you assist the Commission and  
 10 identify the additional ones. The first role of a chopper  
 11 will be to record events by video camera, by camera, very  
 12 much in the fashion that you have done, and that would be a  
 13 role of a chopper in the situation on the 16th of August.  
 14 Can we accept that?  
 15 LT-COL BOTHA: Yes Sir, because that was  
 16 why I was in the air.  
 17 MR BURGER SC: May we also accept that in  
 18 performing that role, radio communication is pivotal  
 19 because if you don't have radio communication, the chopper  
 20 wouldn't know what to look for?  
 21 LT-COL BOTHA: That is correct, Sir.  
 22 MR BURGER SC: The second role of a  
 23 helicopter in this situation is to act as an aerial command  
 24 post.  
 25 LT-COL BOTHA: Sir, I'm not an

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1 operational person. I cannot say that the chopper will be  
 2 an aerial command post.  
 3 MR BURGER SC: Do you accept, Colonel,  
 4 that it could have been a role performed by the chopper in  
 5 which you were on the 16th of August to act as an aerial  
 6 command post to give directions and strategic input to the  
 7 ground forces? Do you accept that?  
 8 LT-COL BOTHA: I cannot accept it because  
 9 I don't know what the role of Brigadier Fritz was and I  
 10 don't, I went into the air to go and make a video.  
 11 MR BURGER SC: Colonel, do you tell the  
 12 Commission that you're in the helicopter; the first thing  
 13 you see is a number of dead bodies on the ground. You're  
 14 in a helicopter for 40 minutes and the trip ends when  
 15 there's a command to say we must get out of here, we're  
 16 going to get killed, and you don't have any idea of what  
 17 the brigadier next to you is saying in taking part in the  
 18 process?  
 19 LT-COL BOTHA: Sir, I said when I started  
 20 the video I did not see any dead people on the ground. I  
 21 saw police vehicles moving. What I also said is I cannot,  
 22 there was a lot of talking, I cannot remember what  
 23 Brigadier Fritz or anyone else said. I just can't  
 24 remember.  
 25 MR BURGER SC: I want to put the third



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1 function of a helicopter, because I want to, trying to  
2 explore to what extent these functions were performed on  
3 the day. The third function is that of crowd control  
4 performed by a helicopter, and I put it in the context that  
5 if you put a helicopter above a crowd of people, that might  
6 well be inhibiting them to do what they're busy with and it  
7 might also serve as a place to launch a stun grenade from  
8 and to do crowd control from the helicopter, would you  
9 accept that?

10 [12:31] LT-COL BOTHA: I can accept it but I'm  
11 not an operational person to say that yes, I can use a  
12 chopper for crowd control.

13 MR BURGER SC: Can you think of any other  
14 function to be performed by a helicopter on that day or can  
15 we stay with these three functions?

16 LT-COL BOTHA: I cannot think of any  
17 other function.

18 MR BURGER SC: Now let us just decide how  
19 this helicopter performed its functions on the day in  
20 question. The first function, that of recording events, we  
21 know in your evidence that the first incident at scene 1  
22 was not recorded.

23 LT-COL BOTHA: In hindsight we can say  
24 that it was not recorded, yes.

25 MR BURGER SC: We know that the second

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1 scene was not recorded because you didn't know about it.

2 LT-COL BOTHA: As I have said, that I've  
3 recorded the koppie at some stage. I do not know at what  
4 stage the scene happened, so it could've been recorded, it  
5 could not have been recorded. We look at the video, I  
6 can't say.

7 MR BURGER SC: Colonel, does the  
8 Commission have to understand, in view of your evidence,  
9 that you did not know what was happening on the ground,  
10 that the Brigadier did not tell you that people were being  
11 killed at scene 2 while you were in the chopper?

12 LT-COL BOTHA: Sir, as far as I can  
13 remember there was no conversation on the radio that  
14 anyone, that there's a shooting or a second scene or  
15 killings at the koppie.

16 MR BURGER SC: Were you made aware while  
17 you were in the helicopter that some 16 people had been  
18 killed at scene 1?

19 LT-COL BOTHA: I became aware of dead  
20 people on the ground when Colonel Vermaak said he can see  
21 two people, two dead – two bodies on the ground at the  
22 kraal. Then I realised there was a shooting on the ground.  
23 I did not, there was – according to me, I can't remember  
24 any conversation that said that people were killed.

25 MR BURGER SC: Colonel, does that mean

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1 that you're in a police helicopter on the 16th of August  
2 during a period when some 31 people lose their lives on the  
3 ground and the people in the helicopter are blissfully  
4 unaware of what's happening on the ground?

5 LT-COL BOTHA: That is what I'm saying, I  
6 did not now.

7 MR BURGER SC: And may we assume that it  
8 is inconceivable that Brigadier Fritz and/or the pilot  
9 would know about these tragedies and not telling you about  
10 it?

11 LT-COL BOTHA: They definitely would've  
12 told me about it.

13 MR BURGER SC: Just before I want to put  
14 to you what we will argue on behalf of the performance of  
15 the first function, that is the observation function on the  
16 day in question, can I just get clarity? You arrive at the  
17 JOC at three o'clock that afternoon.

18 LT-COL BOTHA: Sir, I said I can't  
19 confirm it. It can be a bit before, a bit after three, but  
20 it must be more or less at three o'clock.

21 MR BURGER SC: I accept that. We know  
22 from documents produced or read to you by my learned  
23 friends on my left that the plan was to commence the  
24 operation at 3:30 that afternoon, you heard that?

25 LT-COL BOTHA: I've heard that.

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1 MR BURGER SC: What did you do between  
2 three o'clock and 3:30 that afternoon at the JOC?

3 LT-COL BOTHA: Sir, I wasn't at the JOC.  
4 I met Brigadier Van Zyl outside, then I went – I stood  
5 outside. I could have had a cool drink, then I went to the  
6 chopper and I waited because the instruction was, when the  
7 chopper goes into the air you must go with it.

8 MR BURGER SC: And was the chopper ready  
9 to fly when you came to it shortly after three o'clock?

10 LT-COL BOTHA: No sir, the chopper was  
11 standing on the parking, I think if we can call it a  
12 parking ground, landing strip, whatever. The pilot and the  
13 co-pilot were there.

14 MR BURGER SC: Let me ask you the obvious  
15 question. There's a major operation starting at 3:30,  
16 there's a chopper, there's a pilot, there's a substitute  
17 for the pilot, you're ready, why doesn't the chopper fly?

18 LT-COL BOTHA: I cannot answer that, sir.

19 MR BURGER SC: We will submit at the end  
20 that the police chopper on that day failed to perform its  
21 function in recording the events on the ground as it was  
22 supposed to do. If you want to comment, you may. If you  
23 do not have a comment it's your free will not to respond.

24 LT-COL BOTHA: Sir, according to my duty  
25 I feel that I did what I had to. I videographed what I

<p style="text-align: right;">Page 586</p> <p>1 could see on the ground. I videographed the people being 2 dispersed, people in informal settlements regrouping, 3 people running, people walking. According to me, that was 4 what I was supposed to do. People were dispersed. 5 MR BURGER SC: Now the facts I will rely 6 upon for that submission are briefly the following. There 7 are two tragedies happening, you don't record either of 8 them and you take about 80% of your time to film what is, 9 with great respect, irrelevant. 10 LT-COL BOTHA: I cannot comment on that. 11 MR BURGER SC: We will also submit that, 12 to the extent that there was an aerial command post 13 function, that was not performed because on the facts 14 before the Commission, Brigadier Fritz did not know about 15 the killings on the ground. 16 LT-COL BOTHA: If that's your – sorry, if 17 that is your submission, I'm not going to comment on that. 18 MR BURGER SC: And on the third possible 19 function, namely that of crowd control, we do not have 20 enough facts yet to make a submission so may I ask you, why 21 was it necessary to fire stun grenades at the crowd when it 22 was done? 23 LT-COL BOTHA: Sir, that's an operational 24 call that was made by Brigadier Fritz. I don't know, 25 you'll have to ask him.</p>	<p style="text-align: right;">Page 588</p> <p>1 now but it is at some stage in the early stages in the 2 video. 3 CHAIRPERSON: And the second? 4 LT-COL BOTHA: Phew, I can't remember 5 now, it's either seven or 13 or 13 or 25, I can't remember 6 sir. 7 CHAIRPERSON: And how big were the crowds 8 that were to be dispersed on those two occasions? 9 LT-COL BOTHA: Sir, the first – the first 10 stun grenade was a very small group of people. The second 11 stun grenade, I did not see a crowd. 12 MR BURGER SC: Colonel, we know there 13 were three other helicopters in the air on that day, 14 correct? 15 LT-COL BOTHA: That's correct. 16 MR BURGER SC: May the Commission assume 17 that, on probability, they would all have carried camera or 18 video equipment? 19 LT-COL BOTHA: I don't know, sir. 20 MR BURGER SC: No, but you were at 21 Potchefstroom for nine days and I'm sure that because you 22 go there as the video person in the helicopter, the first 23 thing you ask around is, do I have comrades, video people 24 in helicopters, can we compare notes? Now what's the 25 answer you get to that at Potchefstroom?</p>
<p style="text-align: right;">Page 587</p> <p>1 MR BURGER SC: Colonel, just help us. 2 You're in the helicopter. Where in the process does that 3 take place in your 42 minutes of recording? Where is that 4 demand given? How high above the ground is the helicopter 5 and how big is the crowd to be scared off? Help us on 6 that, please. 7 LT-COL BOTHA: Sir, I think the first is 8 – and now I'm under correction – on the video more or less 9 seven minutes, I'm not sure, in the video. It can be 13 or 10 seven, I cannot – I can't remember now. I do not know how 11 high the chopper was. I mean we're above the ground, I 12 don't know how high we are. And according to me, the crowd 13 wasn't big that had to be dispersed. 14 CHAIRPERSON: Did I understand you to say 15 it was the first stun grenade? Were the two stun grenades 16 fired off – 17 LT-COL BOTHA: Yes. 18 CHAIRPERSON: - at the same time, or was 19 one fired off at one stage and the second at another stage? 20 LT-COL BOTHA: One at one stage and one 21 at another stage. 22 CHAIRPERSON: I understood you to say the 23 first one was either seven or 13 minutes into the video, is 24 that right? 25 LT-COL BOTHA: Yes. I cannot remember</p>	<p style="text-align: right;">Page 589</p> <p>1 LT-COL BOTHA: I did not ask any such 2 question at Potchefstroom. 3 MR BURGER SC: I want to deal with 4 Potchefstroom separately but let me just ask you this. The 5 format during the nine days, would that be a meeting of all 6 the policemen together in a room? 7 LT-COL BOTHA: There were a lot of 8 policemen together, yes. Some sub-meetings, some big 9 meetings, there were a lot of policemen. 10 MR BURGER SC: Did you attend all the big 11 meetings? 12 LT-COL BOTHA: Sir, most – yes, let's say 13 yes. 14 MR BURGER SC: Now I'm paraphrasing but 15 you'll forgive me. You're for nine days in big meetings, 16 do you ever hear anybody asking whether there was a chopper 17 with a camera or a video apart from your one? 18 LT-COL BOTHA: Sir, I did not hear that 19 anyone asked if anyone else than me made a video. 20 MR BURGER SC: Colonel, as there was no 21 Lonmin representative at Potchefstroom, I must put to you 22 there was no Lonmin helicopter in the air on the 16th of 23 August in the area of the koppie, so you accept that? 24 MR BURGER SC: Sir, I do know there was 25 an extra helicopter in the air. I cannot say if it was a</p>

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1 Lonmin or not a Lonmin. If you tell me it wasn't a Lonmin  
2 one then I will accept it.

3 MR BURGER SC: And I also put to you  
4 there was no civil helicopter in the air instructed by  
5 Lonmin.

6 LT-COL BOTHA: I cannot comment on that,  
7 I don't know.

8 MR BURGER SC: I just want to briefly  
9 understand the instruction you get from Brigadier Van Zyl  
10 at the beginning of the flight and when you arrived back.  
11 At the beginning of the flight was Brigadier Van Zyl in a  
12 hurry, was he flustered, was he anxious that you should get  
13 into the air or did he give you an instruction as you would  
14 expect from a Brigadier in the normal course of events?

15 LT-COL BOTHA: He gave me an instruction  
16 as in the normal course of events.

17 MR BURGER SC: And on your return, can  
18 you just picture for the Commission what was said on the  
19 ground when you meet Brigadier Van Zyl? What did he tell  
20 you?

21 LT-COL BOTHA: Sir, Brigadier Van Zyl  
22 told me that there's a lot of people being killed and we  
23 need to get people in that can process the scenes.

24 MR BURGER SC: No, but clearly the next  
25 thing he asks you is, did you record it, do you have film

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1 of that for us?

2 LT-COL BOTHA: I did tell him that I made  
3 a video recording but I didn't know when the shooting  
4 happened so I didn't know if I recorded it.

5 MR BURGER SC: Try to help us and  
6 remember what you told him of the filming?

7 LT-COL BOTHA: I told him I made a video  
8 recording but – that is what I told him, I made a video  
9 recording, because I saw – remember I sat in the chopper, I  
10 saw people running, I saw police vehicles moving, that is  
11 what I recorded and that is, I told him that I made a video  
12 recording. I did not tell him that I made a video  
13 recording of shootings or killings or anything like that  
14 because I mean I didn't know if I recorded it or not. The  
15 first one I know now and then something must've happened, I  
16 did not record it. The second one I did not know about.

17 MR BURGER SC: I have difficulty  
18 understanding the evidence, bear with me. You get off a  
19 helicopter and you're told by a senior police officer that  
20 there has been killing of many people. You find that a  
21 most disturbing piece of news to receive, I take it,  
22 correct?

23 LT-COL BOTHA: It was quite disturbing.

24 MR BURGER SC: Absolutely. You then tell  
25 the Brigadier that you have some film footage in your

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1 camera.

2 LT-COL BOTHA: That is correct, because  
3 he sent me there to go and make a video.

4 MR BURGER SC: And you say to me that the  
5 next question doesn't follow, did you video the killings,  
6 did you see the killings?

7 [12:51] LT-COL BOTHA: The Brigadier did not ask  
8 me if I did see or videograph killings.

9 MR BURGER SC: Colonel, as I understand  
10 the sources of your information in this case, information  
11 which you use to tell the Commission what you know, the  
12 first would be Warrant Officer Opperman and that's about  
13 the killing of the two security officers on the 12th of  
14 August, is that correct?

15 LT-COL BOTHA: What do you mean by  
16 sources, sorry?

17 MR BURGER SC: People would tell you what  
18 had happened on the scene.

19 LT-COL BOTHA: No, why I know there were  
20 people killed on the 12th is because I had to make an aerial  
21 or a Google map for the evidence leaders and Inspector –  
22 Warrant Officer Opperman took me to the scene so that I can  
23 get a GPS reading.

24 MR BURGER SC: And then we know you were  
25 invited to the Potch nine day seminar.

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1 LT-COL BOTHA: Yes, I was there, sir.

2 MR BURGER SC: What was the format of the  
3 presentations during the day – and let us first understand  
4 the big meeting, the plenary session. What would typically  
5 happen in a day's plenary session at Potchefstroom?

6 LT-COL BOTHA: Sorry, you'll have to  
7 explain plenary to me.

8 MR BURGER SC: A big meeting, the big  
9 meeting where everybody is present, die algemene  
10 vergadering.

11 LT-COL BOTHA: Sir, as I've said, there  
12 was a lot of discussions around what happened, to see what  
13 footage is available, all that stuff. So that was  
14 literally the – I want to say what happened in all the  
15 meetings.

16 MR BURGER SC: Yes. Colonel, and just  
17 before the luncheon adjournment can I just ascertain this  
18 from you, am I correct to think that the two main events  
19 being discussed during that nine day period would be the  
20 killing of 16 people at scene 1 and the killing of 13  
21 people at scene 2?

22 LT-COL BOTHA: That made out part of the  
23 discussions, yes. Can I just say it's 14 people at scene  
24 2.

25 MR BURGER SC: Yes, I think in the end it

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1 was 16 and 18 but certain people died afterwards, so don't  
 2 hold me to the number. Chair, is it convenient now -  
 3 CHAIRPERSON: Is it a convenient stage to  
 4 take the adjournment? The Commission will adjourn for  
 5 lunch. In view of the fact that it's five to one by my  
 6 watch, we'll start at five to two.  
 7 [INQUIRY ADJOURNS INQUIRY RESUMES]  
 8 [14:02] CHAIRPERSON: The Commission resumes. Mr  
 9 Burger, you were still cross-examining. Kolonel, u is nog  
 10 steeds onder eed. Yes, Mr Burger.  
 11 MR BURGER SC: Thank you, Chairman.  
 12 Colonel, before the luncheon adjournment we were discussing  
 13 the events at Potchefstroom and that nine-day event, and  
 14 you and I agreed that two of the matters pivotal to the  
 15 debate were the two incidents on the 16th of October, to  
 16 which we've referred to as scene 1 and scene 2 - 16 August  
 17 2012 - and I think we ended off by your answer to say that  
 18 was part of the discussion. Can I pick it up from there  
 19 and ask you what else in general terms were discussed  
 20 during that period?  
 21 LT-COL BOTHA: Sir, in general terms the  
 22 whole situation that became, that led to the incident, let  
 23 me call it the incidents that took place, what happened,  
 24 what the police did, stuff like that. That was what was  
 25 discussed.

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1 MR BURGER SC: Yes. But do I understand  
 2 it correct that to the extent that we look at the events of  
 3 the 9th to the 16th of August, pivotal in that discussion  
 4 would have been what happened at scene 1 and what happened  
 5 at scene 2?  
 6 LT-COL BOTHA: I cannot say what happened  
 7 at scene 1 or what happened at scene 2. What was looked at  
 8 is what footage is available, what is available, what  
 9 happened, things like that, ja. But I mean it was  
 10 discussed.  
 11 MR BURGER SC: And may we accept that you  
 12 were invited because of your role behind the video camera  
 13 in the chopper on the 16th in particular?  
 14 LT-COL BOTHA: I think we can accept it.  
 15 MR BURGER SC: Yes. Now what was your  
 16 contribution to the seminar? You're in front of the top  
 17 brass of the South African Police, quite an important  
 18 occasion, a very tragic event being inquired into, and your  
 19 role is a video camera in the chopper. How did you present  
 20 it during that nine-day period?  
 21 LT-COL BOTHA: Sir, I said I cannot  
 22 remember that we looked at the video. I cannot recall that  
 23 we looked at the video. I must also say that I represented  
 24 the LCRCs of the province there. Obviously the crime  
 25 scenes were processed by members of the LCRC and there were

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1 certain questions and feedback had to be given.  
 2 MR BURGER SC: Colonel, what was your  
 3 contribution during that period of nine days? You  
 4 personally, Colonel Botha's contribution, what did you say  
 5 to the people there?  
 6 LT-COL BOTHA: The role that the LCRCs  
 7 played in the processing of all these crimes.  
 8 MR BURGER SC: No, but you speak to  
 9 police generals. You don't have to teach them Criminology  
 10 101. They're clearly interested in what happened from your  
 11 vantage point in the helicopter on the 16th. Let's get  
 12 serious on this now.  
 13 LT-COL BOTHA: Sir, no-one asked me to  
 14 explain what happened from the chopper on the 16th.  
 15 MR BURGER SC: As I understand your  
 16 evidence, you know of only one video recording of that  
 17 scene and that's the one you took.  
 18 LT-COL BOTHA: Of one police video that  
 19 was taken, that was the one that I took, yes.  
 20 MR BURGER SC: Correct. Do we have to  
 21 accept then that you being the only person who took a  
 22 video, you were not asked during a nine-day period about  
 23 the video, in Potchefstroom?  
 24 LT-COL BOTHA: Sir, as I said, I cannot  
 25 recall if we watched the video or not. I can, no-one

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1 specifically interrogated or asked me about the video. My,  
 2 the aerial photos that was taken by Warrant-Officer Venter  
 3 was actually a discussion point, but not the video.  
 4 MR BURGER SC: Did you go forward and  
 5 give a lecture, or were you asked by people in a hall  
 6 questions, or how did your debriefing take place?  
 7 LT-COL BOTHA: I did not go forward to  
 8 give a lecture. If I was asked about crime scenes and the  
 9 processing of crime scenes, then I gave feedback.  
 10 MR BURGER SC: Were you asked, Colonel?  
 11 LT-COL BOTHA: About what members of the  
 12 LCRC did at the crime scenes?  
 13 MR BURGER SC: No, about you in the  
 14 helicopter taking a video. Were you asked anything on  
 15 that?  
 16 LT-COL BOTHA: As far as I recall, no  
 17 Sir.  
 18 MR BURGER SC: In that nine-day period  
 19 were questions asked about the first shooting at scene 1?  
 20 LT-COL BOTHA: It was a discussion point,  
 21 yes.  
 22 MR BURGER SC: And what was discussed?  
 23 Who spoke and what was the outcome of the discussion?  
 24 LT-COL BOTHA: Mr Chair, I've already  
 25 said that a lot of things were said, a lot of things

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1 happened afterwards, and there was a lot of people talking,  
 2 there was a lot of commanders with. I cannot remember  
 3 specifics and what was said and who made specific points  
 4 and statements and stuff like that.

5 MR BURGER SC: Colonel, just give us the  
 6 gist of what was said by the top brass of the Police about  
 7 scene 1 when 16 people were killed, at Potchefstroom. What  
 8 was said?

9 LT-COL BOTHA: Just give me the, the gist  
 10 of what?

11 MR BURGER SC: What was said, just in  
 12 general terms, about scene 1?

13 LT-COL BOTHA: Sir, I can't remember what  
 14 was said about specific scenes, who said what. There was a  
 15 lot of people talking, members make, made statements.  
 16 There were legal representatives, and there was a lot of  
 17 things that happened in between. I can't remember.

18 MR BURGER SC: Now scene 2 would really  
 19 have made you very inquisitive because you were not aware  
 20 that scene 2 was playing out while you were in the  
 21 helicopter. Is that correct?

22 LT-COL BOTHA: No, I was not, Sir.

23 MR BURGER SC: By the time you get to  
 24 Potchefstroom you know that 13 people lost their lives at  
 25 the Klein Koppie.

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1 LT-COL BOTHA: That's correct, Sir.

2 MR BURGER SC: May the Commission assume  
 3 that you as a citizen of the land would now like to  
 4 understand what happened there? Not as a policeman, but as  
 5 a concern citizen.

6 LT-COL BOTHA: Sir, that was obviously  
 7 part of the discussions, and again, I'm not trying to be  
 8 difficult, I cannot remember everything that was said. I  
 9 cannot remember all the things that was done. I was there  
 10 to brief the, or not to brief, to give feedback on what  
 11 processes was followed by the members of the LCRCs, if they  
 12 have to I'll phone them and ask them and the processing of  
 13 the scenes. I, it's not that I wasn't interested. It was  
 14 obviously discussed.

15 MR BURGER SC: Colonel, take us into your  
 16 confidence. I don't want detail. Tell us anything that  
 17 was discussed about scene 2 during that nine-day period,  
 18 anything you remember.

19 LT-COL BOTHA: Sir, I can remember that  
 20 people had to determine who was at scene 2, what happened  
 21 at scene 2, stuff like that. I mean I cannot remember that  
 22 the guys said well I was here and I was here, because I  
 23 don't even know the members that were there.

24 MR BURGER SC: Can I jog your memory and  
 25 see whether you – you have a memory which becomes clearer

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1 if it is led into a version. I'm asking you to have a look  
 2 at page 19 of 30 of the opening statement by SAPS in this  
 3 matter. Have you got that in front of you? Now Colonel,  
 4 to orientate you, you'll see on page 1 this is part of the  
 5 opening statement on behalf of the South African Police  
 6 Service. It was addressed to the Commission at the  
 7 beginning of these proceedings, and on page 19 in paragraph  
 8 45 we are told what we are likely to hear about the events  
 9 at scene 2. I want to read it to you and ask you whether  
 10 you remember that this was discussed at Potchefstroom.  
 11 45.4, in fact to lead in I start three lines earlier,  
 12 "Water canons were used to disperse the protesters. Some  
 13 dispersed westwards and through the TRT line led by Captain  
 14 Kidd, without incident." Does that jog your memory?

15 LT-COL BOTHA: I know that Captain Kidd  
 16 was there. I can't remember that someone had said that  
 17 water canons were - we, I saw the water canons on the  
 18 ground when I was in the chopper. I can't remember that  
 19 someone said well water canons were brought in and they  
 20 were dispersed, but I mean I saw them on the video.

21 MR BURGER SC: "Others remained obdurate  
 22 and police officers heard shots being fired from inside the  
 23 koppie crevices and bushes. Believing this to be fire from  
 24 the protesters, some of the police officers returned fire  
 25 with sharp ammunition. Other police officers returned fire

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1 against specific protesters they had seen firing at them."  
 2 Do you remember that discussion at Potchefstroom?

3 LT-COL BOTHA: Sir, can I just say that  
 4 the meeting a lot of times broke up in smaller groups which  
 5 I had, which I did not attend to. I sat with my computer  
 6 and then I did some of my work. I can't recall that this  
 7 was discussed in the big meeting. It could have been  
 8 discussed in a smaller meeting. I can't recall this.

9 MR BURGER SC: Colonel, the last portion  
 10 I want to read with you, let's read it together again,  
 11 45.5, "The evidence will be that some of the 13 protesters  
 12 who were shot and killed at koppie 3 had charged at the  
 13 police officers with dangerous sharp weapons and had been  
 14 shot in self-defence. These are accounted for below.  
 15 Others could have been killed when police officers returned  
 16 sharp fire, believing shots to have been fired from the  
 17 bushes and crevices in the koppies by protesters. The  
 18 police officers are prepared to accept that they may have  
 19 been responding to friendly fire, believing it to be fire  
 20 from protesters." Does that ring a bell with you?

21 LT-COL BOTHA: The first part does, yes.

22 MR BURGER SC: Tell us, please.

23 LT-COL BOTHA: Okay, I don't there was  
 24 any discussion in the meeting, but I do know that Captain  
 25 Kidd or some of his members were involved and because I

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1 heard it, I must have heard it at the meeting from him,  
 2 that a person stormed at them with sharp weapons and that  
 3 he was then shot. I can recall that.  
 4 MR BURGER SC: The purpose of  
 5 Potchefstroom was to prepare two reports, one a report to  
 6 the National Commissioner of Police, and the second a  
 7 presentation to the Commission. Is that correct?  
 8 LT-COL BOTHA: Sir no, the purpose was,  
 9 as far as I can – well no, it was a presentation for the  
 10 National Commissioner and then a presentation for the  
 11 Commission. That is why the legal representatives of the  
 12 South African Police Service were also present.  
 13 MR BURGER SC: And what was the  
 14 conclusion reached in these two presentations by the  
 15 Police? They now report the first one to their  
 16 Commissioner. What did they say, that everything went  
 17 perfect and they're very proud of their performance, or  
 18 what was the conclusion?  
 19 LT-COL BOTHA: Sir, I can just say that  
 20 the presentation wasn't finalised after that nine days, so  
 21 I do not know what the conclusion was.  
 22 MR BURGER SC: Colonel, eight and a half  
 23 out of the nine days you're there. You drive back after  
 24 that period home now. Is the belief of the Police there  
 25 that everything went fine, or that things went wrong?

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1 What's your – what do you take away from that nine-day  
 2 course?  
 3 LT-COL BOTHA: Sir, what I take away from  
 4 the nine-day thing is, that course, is that it was an  
 5 unfortunate incident that happened, 34 people were killed.  
 6 The Police were involved in it. I cannot say that we felt  
 7 we did right or we did wrong. I, it's just not my  
 8 decision.  
 9 MR BURGER SC: You seem to be unable to  
 10 tell us whether your video was shown, but you told the  
 11 Commission that other video material was shown. Can you  
 12 particularise that, what other video material was shown  
 13 during that period?  
 14 MR SEMENYA SC: Chairperson, that's the  
 15 photos the witness spoke about, not another video.  
 16 CHAIRPERSON: Yes, the evidence is that –  
 17 Mr Semenya is right. What he said was what was seen were,  
 18 was other visual material, namely the photographs which  
 19 Sergeant, or Warrant-Officer Venter took with his digital  
 20 camera. He did not say, as far as I can recall, according  
 21 to my notes, that any other videos were shown. So perhaps  
 22 you could reformulate the question.  
 23 MR BURGER SC: My notes stand to be  
 24 corrected then. I recorded it differently, but then we  
 25 immediately accept that's the position. Can I ask you was

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1 any other video material shown during that nine-day period?  
 2 [14:22] LT-COL BOTHA: Yes, I can at least recall  
 3 one. There might be more, but I can recall one.  
 4 MR BURGER SC: I thought so. Tell us  
 5 what it was.  
 6 LT-COL BOTHA: It was the video footage  
 7 of the – I don't want to call it strikers, but of the  
 8 miners that, on the Monday the 13th, that were next to the  
 9 railway line where General Mpembe - I cannot say negotiated  
 10 with them because I don't understand the language - had a  
 11 conversation with them and that was it. I can recall that  
 12 video being shown.  
 13 CHAIRPERSON: Are we to understand that  
 14 video material was shown, at least two items of video  
 15 material were shown, one being your video of the events of  
 16 the 16th, as far as one can see them on your video, the  
 17 other being the video of the events or incident on the 13th  
 18 by the railway line in that field were you found certain –  
 19 LT-COL BOTHA: Mr Chair, I cannot recall  
 20 that we looked at my video. I do recall clearly –  
 21 CHAIRPERSON: Sorry, you didn't look at  
 22 your video.  
 23 LT-COL BOTHA: No, I can't recall that.  
 24 CHAIRPERSON: Yes, I'm sorry, I'm wrong.  
 25 LT-COL BOTHA: We, I can –

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1 CHAIRPERSON: I'm sorry, I'm incorrect.  
 2 You did say you couldn't remember if your video was shown.  
 3 What you can remember is that the video of the 13th was  
 4 shown.  
 5 LT-COL BOTHA: Yes, I can remember that,  
 6 Sir.  
 7 CHAIRPERSON: Thank you.  
 8 MR BURGER SC: Your video camera's time  
 9 mechanism is wrong, is defective, correct?  
 10 LT-COL BOTHA: No Sir, it's not  
 11 defective; it was just eight minutes out.  
 12 MR BURGER SC: Do you then go to  
 13 Potchefstroom, make your contribution, come back and you  
 14 don't realise that your video camera's time is eight  
 15 minutes out?  
 16 LT-COL BOTHA: When I came back I asked  
 17 myself, it was in that period that we were in  
 18 Potchefstroom, I asked myself but how is it possible that  
 19 it looks like I'm late, but, according to the video time,  
 20 but the video shows the, what I videographed, and then I  
 21 realised, because the 1st of September I was still in  
 22 Potchefstroom, then I realised but the video time is out.  
 23 MR BURGER SC: Colonel, you make me doubt  
 24 my own notes now because I seem to remember your evidence  
 25 of this morning was to the effect that it was after the

<p style="text-align: right;">Page 606</p> <p>1 Chairman asked you questions last Tuesday that you were 2 puzzled, you drove back and the penny dropped and you 3 discovered that your video camera's timing mechanism was 4 eight minutes out.</p> <p>5 LT-COL BOTHA: No Sir, that wasn't my 6 evidence.</p> <p>7 MR BURGER SC: Do we have to deduce from 8 that evidence that you had your video camera in Potch? 9 LT-COL BOTHA: Yes, I had my video camera 10 in Potch.</p> <p>11 MR BURGER SC: And the film? 12 LT-COL BOTHA: It's not a film, it's a 13 CD, yes.</p> <p>14 MR BURGER SC: And the CD. Can I ask you 15 this, at Potchefstroom do you remember any debate about the 16 role of the Department of Mining &amp; Energy Affairs in the 17 events between the 6th and the, the 9th and the 16th of 18 August? 19 LT-COL BOTHA: No Sir, I cannot remember 20 such a debate.</p> <p>21 MR BURGER SC: Do you remember any debate 22 about the role of Lonmin in the events of the 9th to the 23 16th of August? 24 LT-COL BOTHA: No Sir, I cannot recall 25 something like that.</p>	<p style="text-align: right;">Page 608</p> <p>1 they can discuss it.</p> <p>2 MR BURGER SC: Thank you, Chair. 3 CHAIRPERSON: Mr Tip, would you like to – 4 MR TIP SC: Yes, thank you, Chair. 5 CHAIRPERSON: - do you have further 6 cross-examination, essentially arising from the video? 7 MR TIP SC: Arising from the video, 8 purely that, and one aspect only. Colonel, I want to 9 pursue with you your evidence that you can't recall whether 10 or not this video that we've seen here was shown during the 11 session at Potchefstroom. 12 LT-COL BOTHA: Sir, I cannot recall that 13 we looked at it. It's, I just cannot remember it. 14 MR TIP SC: Now let us just establish 15 when that session took place, from when to when? 16 LT-COL BOTHA: I think it is from the 17 last Monday in August till the, I'm not sure if it is then 18 the first Friday or the second Friday in September. I'm 19 not sure. 20 MR TIP SC: Yes, very well. But that is 21 in recent time, isn't it? Not a long time ago. 22 LT-COL BOTHA: Yes, Sir. 23 MR TIP SC: You told us earlier that this 24 video that you had produced from the helicopter was the 25 very first time in your 26-year career of taking a video of</p>
<p style="text-align: right;">Page 607</p> <p>1 MR BURGER SC: Just in conclusion, we are 2 puzzled by the fact that in Potchefstroom your recollection 3 is that the photographs taken by Sergeant Venter are used, 4 but not the main piece of evidence, the video recording 5 made by Lieutenant-Colonel. Can you give an explanation 6 for that? 7 LT-COL BOTHA: Yes, Sir. If you have a 8 look – and I think you've all got my photos – if you have a 9 look at the photos, the photos clearly show where the 10 police vehicles are situated on the scene and where the, or 11 you can even see policemen behind vehicles on those photos 12 and why I remember that is I was requested to go and 13 enlarge them for members, A1-size, so that they can have a 14 look at it and discuss it in smaller meetings. I know that 15 they broke up and in smaller meetings they had a look at 16 it. 17 MR BURGER SC: And that despite the fact 18 that the main area of interest was and should have been 19 scene 1 and scene 2, not the parking of police vans. 20 LT-COL BOTHA: No, you misunderstood me. 21 The vehicles that you can see in the photos are around 22 koppie number 2. There are aerial photos of that. You can 23 see that, I think it's available to all the parties, and I 24 was requested by General Naidoo to enlarge it A1-size so 25 that the people can have a look at it and that they, then</p>	<p style="text-align: right;">Page 609</p> <p>1 a live operation. Is that correct? 2 LT-COL BOTHA: That is correct, Sir. 3 MR TIP SC: It wasn't a minor piece, it 4 was 41 minutes long. 5 LT-COL BOTHA: That is correct, Sir. 6 MR TIP SC: A few weeks later you are at 7 a session in Potchefstroom with, as my learned colleague Mr 8 Burger put it, with the top brass of the South African 9 Police Services in attendance. 10 LT-COL BOTHA: That is correct, Sir. 11 MR TIP SC: Now I should have thought, 12 Colonel, that if you displayed your 41-minute video to the 13 top officers of the South African Police Service, that that 14 would have been something that you would most certainly 15 have recalled in detail. 16 LT-COL BOTHA: Sir, I do recall that I 17 gave the video to Lieutenant-Colonel Scott. If it was 18 showed in the, in my absence or not, I'm not sure. I 19 cannot recall that we looked at the video. That means we 20 looked it or we didn't look at it. I cannot recall that we 21 looked at the video. 22 MR TIP SC: Yes, I am challenging the 23 credibility of what you say about that, and I'll repeat 24 that it is to me inconceivable that a person in your 25 position who is in the company of the most senior officers</p>

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1 of the country and who shows a video, would not remember  
 2 it, and that when you say you can't recall whether or not  
 3 it was shown, you are not being frank with this Commission.  
 4 LT-COL BOTHA: Sir, I cannot say  
 5 something that I cannot remember. If I can't, if I don't  
 6 remember, I don't remember.  
 7 MR TIP SC: The evidence was given  
 8 yesterday, and a number of questions were put around it and  
 9 you fully agreed that the very purpose of making a video of  
 10 this nature of an operation scene was so that there would  
 11 be a reliable audiovisual source of information for a  
 12 review that would be subsequently taken. Do you remember  
 13 that?  
 14 LT-COL BOTHA: I can remember that I said  
 15 I had to make the video. I cannot remember that we said it  
 16 must be for a review.  
 17 MR TIP SC: Colonel, I'm not going to  
 18 spend time debating my recollection of your evidence with  
 19 you on that point. I'm just going to put it to you that it  
 20 is very clear from the evidence as a whole that the purpose  
 21 of making such a video is to have it available for scrutiny  
 22 when an evaluation is undertaken of the event subsequently.  
 23 Do you disagree with that?  
 24 LT-COL BOTHA: No, I don't disagree with  
 25 it.

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1 MR TIP SC: And let me remind you that  
 2 Brigadier Van Zyl specifically requested you to go and make  
 3 that video, presumably for that very purpose. Is that not  
 4 correct?  
 5 LT-COL BOTHA: He asked me to make a  
 6 video and if we then have to presume it's for that purpose,  
 7 then it might be correct.  
 8 MR TIP SC: Brigadier Van Zyl was at  
 9 Potchefstroom?  
 10 LT-COL BOTHA: Yes, Sir.  
 11 MR TIP SC: He knew very well that you  
 12 had made this video.  
 13 LT-COL BOTHA: Yes, Sir.  
 14 MR TIP SC: Did he offer it for the  
 15 attention of the senior officers of the Police?  
 16 LT-COL BOTHA: Not as far as I can  
 17 recollect. I gave the video to Colonel Scott.  
 18 MR TIP SC: And I want to suggest to you  
 19 that the senior officers of the South African Police  
 20 Service are also well aware of the need for video material  
 21 to be made of operation scenes, and for that material to be  
 22 scrutinised in a subsequent review of what took place. Do  
 23 you agree?  
 24 LT-COL BOTHA: Sorry, just repeat the  
 25 question?

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1 MR TIP SC: Yes, with pleasure. I'm  
 2 suggesting to you that the senior officers of the South  
 3 African Police who were in attendance at Potchefstroom were  
 4 all as aware of you of the importance of looking at  
 5 audiovisual material for the purpose of examining what took  
 6 place at a scene of controversy. Is that clear?  
 7 LT-COL BOTHA: That is clear, that it is  
 8 a suggestion. I cannot really confirm or not confirm.  
 9 What I can say is that's why I gave the video to Colonel  
 10 Scott. He collected all the footage, all the videos,  
 11 everything from us.  
 12 MR TIP SC: Are we to understand your  
 13 evidence as implying that none, not one of the senior  
 14 officers made a specific request for all audiovisual  
 15 material to be produced?  
 16 LT-COL BOTHA: Sir no, we were requested  
 17 at the meeting to give all our footage and all our photos  
 18 that was taken that's available to Colonel Scott and,  
 19 because he collected all the evidence.  
 20 MR TIP SC: Was Colonel Scott present  
 21 when that request came from the senior officers?  
 22 LT-COL BOTHA: Yes Sir, he was present.  
 23 MR TIP SC: So we are to understand that  
 24 Colonel Scott had your audiovisual material that senior  
 25 officers asked for anything of the sort, and he failed to

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1 produce it for their scrutiny and attention?  
 2 LT-COL BOTHA: Sir, I don't know if he  
 3 showed it to them at another stage or in my absence or  
 4 whenever. I don't know what, I mean I gave it to him.  
 5 MR TIP SC: You know, Colonel Botha, from  
 6 time to time you appear to seek an escape by saying well  
 7 perhaps it wasn't in my presence that something happened,  
 8 but I'm going to suggest to you that that can't possibly be  
 9 the case here. You were the person who made the film,  
 10 correct?  
 11 LT-COL BOTHA: That's correct, Sir.  
 12 MR TIP SC: And you are suggesting that  
 13 perhaps it was played in a sub-room to a sub-group without  
 14 anybody telling you or inviting you to come along and to  
 15 give whatever commentary you could to elucidate it?  
 16 LT-COL BOTHA: Sir, that is not what I'm  
 17 suggesting. What I'm saying is I cannot recall that the  
 18 video was played. If it was played in my absence, that is  
 19 a possibility, but I don't think that's an escape route.  
 20 MR TIP SC: You can give us an insight  
 21 into the thinking of senior police officers, I'm sure. If  
 22 they had a 41-minute video of a highly controversial event,  
 23 are you suggesting that they'd be content to look at it in  
 24 a viewing without the person present who had filmed it and  
 25 who could give them commentary and explain what was being



<p style="text-align: right;">Page 614</p> <p>1 shot?</p> <p>2 CHAIRPERSON: Mr Tip, I'm not sure that</p> <p>3 he's saying that. He's saying it's a possibility, but</p> <p>4 there's another possibility and that's that Lieutenant</p> <p>5 Scott had already, Colonel Scott had already told them, or</p> <p>6 told them after they called for material that he'd seen it</p> <p>7 and took the case no further, and other questions would</p> <p>8 flow from that, that is another possibility, to be fair.</p> <p>9 But I'm not sure that pressing him on this restricted line</p> <p>10 is necessarily fair or helpful in getting to the truth in</p> <p>11 the matter.</p> <p>12 [14:42] MR TIP SC: Well, Mr Chair, that really</p> <p>13 concludes the points that I wanted to raise in any event,</p> <p>14 the central propositions have been put. Colonel Botha, I</p> <p>15 just want to take a sideways step and to go back to the 16th</p> <p>16 of August. We know that you were in the last chopper to go</p> <p>17 into the air.</p> <p>18 LT-COL BOTHA: That's correct, sir.</p> <p>19 MR TIP SC: And that you were in the</p> <p>20 vicinity of that helicopter for a good length of time</p> <p>21 before you took off at about 15:53.</p> <p>22 LT-COL BOTHA: That's correct, sir.</p> <p>23 MR TIP SC: Can you give us an indication</p> <p>24 of when the other three helicopters took off?</p> <p>25 LT-COL BOTHA: Sir, no, I can't remember.</p>	<p style="text-align: right;">Page 616</p> <p>1 Potchefstroom?</p> <p>2 LT-COL BOTHA: The first time I've seen</p> <p>3 the video was here, sir.</p> <p>4 MR TIP SC: And finally, as far as you</p> <p>5 know, news coverage, news video footage, that also was not</p> <p>6 called for or produced at the deliberations in</p> <p>7 Potchefstroom?</p> <p>8 LT-COL BOTHA: I do think that we did</p> <p>9 look at the news footage and now again – I'm not sure. We</p> <p>10 could've or we couldn't have. I really am not sure.</p> <p>11 MR TIP SC: We will leave it at that</p> <p>12 rather uncertain note, Colonel. Thank you, Mr Chair.</p> <p>13 CHAIRPERSON: Thank you, Mr Tip. Mr</p> <p>14 Bruinders, have you got any further cross-examination</p> <p>15 arising from this new video material that came out during</p> <p>16 the cross-examination?</p> <p>17 FURTHER CROSS-EXAMINATION BY MR BRUINDERS SC:</p> <p>18 Colonel, the video that you say you saw of the 13th, was</p> <p>19 that a video that showed an encounter between the SAPS and</p> <p>20 strikers?</p> <p>21 LT-COL BOTHA: Sir, if you say encounter</p> <p>22 do you mean we – okay, let me explain what I saw. I saw a</p> <p>23 video where General Mpembe is with a group of miners on a</p> <p>24 side road next to the railway line and having a discussion</p> <p>25 with them. That is the video that I saw.</p>
<p style="text-align: right;">Page 615</p> <p>1 I cannot remember if they were on the ground when I got</p> <p>2 there, if some of them were still – or already in the air.</p> <p>3 I think when I stood at my – when I came to our chopper,</p> <p>4 that was the only chopper that was there.</p> <p>5 MR TIP SC: So we can conclude from that,</p> <p>6 that they had gone into the air quite some time before you</p> <p>7 did with the chopper that you embarked on?</p> <p>8 LT-COL BOTHA: I was at the chopper for a</p> <p>9 good 10 minutes or so and if I recall correctly, we were</p> <p>10 the only chopper that was still there, sir.</p> <p>11 MR TIP SC: Lastly, you saw yesterday</p> <p>12 when we viewed your 41 minute video that there was an</p> <p>13 excerpt from a second video that was shown as well.</p> <p>14 LT-COL BOTHA: Yes, sir.</p> <p>15 MR TIP SC: We observed it for five or</p> <p>16 six minutes, you will recall that.</p> <p>17 LT-COL BOTHA: That's correct, sir.</p> <p>18 MR TIP SC: It was clearly taken from</p> <p>19 another helicopter other than yours.</p> <p>20 LT-COL BOTHA: Yes, that wasn't the</p> <p>21 chopper that I was in.</p> <p>22 MR TIP SC: And it appeared to focus on</p> <p>23 the koppie during the events of 16 August, is that correct?</p> <p>24 LT-COL BOTHA: That's correct, sir.</p> <p>25 MR TIP SC: Was that video produced at</p>	<p style="text-align: right;">Page 617</p> <p>1 MR BRUINDERS SC: In that video did you</p> <p>2 see any footage of Lonmin security personnel?</p> <p>3 LT-COL BOTHA: No sir, I can remember</p> <p>4 policemen on the video, I cannot remember Lonmin security</p> <p>5 personnel. I don't think they were there on the video.</p> <p>6 MR BRUINDERS SC: There appears then to</p> <p>7 be a video or video footage of General Mpembe talking to</p> <p>8 miners, as you call it or call them, and are you aware of</p> <p>9 another video which shows footage of Lonmin security</p> <p>10 talking to strikers or miners?</p> <p>11 LT-COL BOTHA: No sir, I have not seen</p> <p>12 such a video.</p> <p>13 MR BRUINDERS SC: Who took the video</p> <p>14 footage that you saw at the Potch meeting?</p> <p>15 LT-COL BOTHA: Sir, I don't know who took</p> <p>16 the video footage. I just know there are video footage of</p> <p>17 that.</p> <p>18 MR BRUINDERS SC: Can I take you very</p> <p>19 briefly back to the Potch meeting by the SAPS? As I</p> <p>20 understand it, what you – well, firstly can we start off</p> <p>21 with this. Were you the only person from the LCRC there?</p> <p>22 LT-COL BOTHA: Yes, yes sir.</p> <p>23 MR BRUINDERS SC: So you were not</p> <p>24 accompanied by an LCRC team of people to support you there?</p> <p>25 LT-COL BOTHA: No, I was alone, sir.</p>

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1 MR BRUINDERS SC: During the eight and a  
2 half days that you were there you made a presentation, as I  
3 understand it, on behalf of the LCRC.  
4 LT-COL BOTHA: No sir, I didn't make a  
5 presentation on behalf of the LCRC. If there were any  
6 questions about the processing of the crime scenes then I  
7 was there to answer.  
8 MR BRUINDERS SC: And were there any  
9 questions to you about the crime scenes?  
10 LT-COL BOTHA: Yes sir, there was.  
11 MR BRUINDERS SC: How many?  
12 LT-COL BOTHA: There were questions. I  
13 can't say 10, 20, 30 or 40. There were questions that were  
14 asked which I had to get clarity on and then give answers.  
15 MR BRUINDERS SC: Did this all happen in  
16 one – in one session?  
17 LT-COL BOTHA: No sir, it did not only  
18 happen in one session.  
19 MR BRUINDERS SC: Did it happen on more  
20 than one day during the eight and a half days that you were  
21 there?  
22 LT-COL BOTHA: Yes, sir.  
23 MR BRUINDERS SC: On how many of those  
24 eight and a half days did you have to answer questions  
25 about crime scenes?

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1 LT-COL BOTHA: I can't remember if it was  
2 six or seven or four or five days. There were questions  
3 which I had to answer, sometimes it could be someone that  
4 would come to me and ask me a question, then not from the  
5 meeting, stuff like that. So there was information sought  
6 that was done, of things that were done on the crime scenes  
7 that I had to clarify for specific reasons.  
8 MR BRUINDERS SC: Who asked these  
9 questions or questioned the information?  
10 LT-COL BOTHA: Various people. There  
11 were a lot of people, so there were various people that  
12 asked questions about what we found and how we processed  
13 and things like that.  
14 MR BRUINDERS SC: So you answered  
15 questions when these were asked of you?  
16 LT-COL BOTHA: Yes, sir.  
17 MR BRUINDERS SC: Did you present the  
18 photographs by Warrant Officer Venter?  
19 LT-COL BOTHA: Yes, I did, sir.  
20 MR BRUINDERS SC: And then you watched  
21 another video taken on the 13th?  
22 LT-COL BOTHA: One of the things, yes.  
23 MR BRUINDERS SC: When you say one of the  
24 things, what else did you do during those eight and a half  
25 days?

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1 LT-COL BOTHA: That's why I say one of  
2 the things. I also answered a lot of other questions and  
3 in spare time I was doing my own work on my laptop.  
4 MR BRUINDERS SC: So besides answering  
5 questions, watching somebody else's video, presenting  
6 photographs and working on your laptop, what else did you  
7 do in those eight and a half days?  
8 LT-COL BOTHA: That is what I did in the  
9 eight and a half days, sir.  
10 MR BRUINDERS SC: No further questions.  
11 CHAIRPERSON: Thank you, Mr Bruinders.  
12 Mr Bizos, are you going to ask any more questions relating  
13 to these matters or are you going to get someone –  
14 MR BIZOS SC: My learned friend Mr  
15 Ngcukait –  
16 MR NGCUKAITOBI: I'll announce myself.  
17 MR BIZOS SC: I wanted to spell it for  
18 the record, but he will do the –  
19 CHAIRPERSON: He will put himself on  
20 record, spell his name and then cross-examine.  
21 MR BIZOS SC: Yes.  
22 MR NGCUKAITOBI: In that order, Mr  
23 Chairperson. The surname is Ngcukaitobi, N-G-C-U-K-A-I-T-  
24 O-B-I. I'm told by my learned friend on the right that  
25 it's too fast.

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1 CROSS-EXAMINATION BY MR NGCUKAITOBI:  
2 Right Mr – Colonel Botha, can I start off with the  
3 transcript of the bail hearing? It appears at – I can't  
4 remember the bundle. It's a marked bundle, it's with the  
5 bundle C at page 195 to 196. I wonder if someone can help  
6 you. Alright, I'll read out to you – this is the evidence  
7 that was given by Brigadier Van Zyl as to how the people  
8 who were arrested on the 16th were identified. Now, he had  
9 spoken about a monitor belonging to the SAPS and a CCTV  
10 camera in the mine premises. He didn't say who it belonged  
11 to. He said there was a CCTV camera in the mine premises.  
12 The question that was asked to him, of him, was "Now, if  
13 you can just explain for the purposes of everybody's  
14 understanding, where was this monitor?" His answer was,  
15 "They have got CCTV cameras in the mine premises and we also  
16 had access to aerial communication as to what happened on  
17 the ground." So then there's a further question asked, "So  
18 the observation you made is after the incident?" And then  
19 he says "That is correct." Then he talks about the opening  
20 of the docket, have you got that? It's at page 195.  
21 LT-COL BOTHA: Got it, yes.  
22 MR NGCUKAITOBI: You've got it. And  
23 you've seen the words I've just read out to you. Okay, if  
24 you go then to the following page at 196 you're then asked  
25 at line 5, "Now it is common knowledge also that here was a

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1 shooting that took place on the 16th. Did you observe this  
 2 on the monitor?" What is his answer? What did Brigadier  
 3 Van Zyl say? Is the answer yes? Look on your transcript.  
 4 LT-COL BOTHA: Yes.  
 5 MR NGCUKAITOBI: Now, then he's asked a  
 6 further question. "Tell us what you observed with regard  
 7 to the shooting and then he says, "There was a group of  
 8 people who broke through and the police fired shots at  
 9 them." Can you see that? So according to Brigadier Van  
 10 Zyl, there were at least two video footage sources that  
 11 were presented to him by the 27th August showing a group of  
 12 people breaking through and the police firing shots at  
 13 them. Now in these nine days that you spent with him at  
 14 Potchefstroom, did he mention this in your presence?  
 15 LT-COL BOTHA: No, sir.  
 16 MR NGCUKAITOBI: Did he make any  
 17 presentation at all in your presence?  
 18 LT-COL BOTHA: No, sir.  
 19 MR NGCUKAITOBI: So could he have made it  
 20 in your absence, maybe when you were looking at your  
 21 laptop?  
 22 LT-COL BOTHA: If I was looking at my  
 23 laptop I definitely would have known about it. In my  
 24 absence, that's always a possibility.  
 25 MR NGCUKAITOBI: Yes. Now if what

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1 Brigadier Van Zyl said at the bail hearing is true, there  
 2 would be CCTV footage and monitors belonging to the SAPS  
 3 that captured the incident live. Where is that material?  
 4 LT-COL BOTHA: I do not know about any  
 5 CCTV footage or CCTV cameras of the SA Police Service and I  
 6 do not know of such footage.  
 7 MR NGCUKAITOBI: Do you think Brigadier  
 8 Van Zyl was telling the truth when he spoke about the CCTV  
 9 footage and the monitors belonging to the SAPS?  
 10 CHAIRPERSON: Is it a permissible  
 11 question to ask a witness –  
 12 MR NGCUKAITOBI: No – I'll proceed. I'll  
 13 leave the question.  
 14 CHAIRPERSON: It would be better  
 15 withdrawn.  
 16 MR NGCUKAITOBI: Yes, I'll leave, I  
 17 withdraw the question. Now, if Brigadier Van Zyl was  
 18 telling the truth about this, this surely exists somewhere  
 19 within the SAPS. Would you at least confirm that?  
 20 LT-COL BOTHA: I cannot confirm that it  
 21 is in SAPS. I just said I don't know about any CCTV  
 22 footage and I do not know that the SAPS own CCTV cameras.  
 23 MR NGCUKAITOBI: Yes, alright. And the  
 24 aerial communication that belonged to the SAPS, that's  
 25 apart from the CCTV footage – he said you relied on two

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1 sources, the CCTV footage and the aerial communication –  
 2 did he mention that at the Potchefstroom meeting, the nine  
 3 day meeting?  
 4 LT-COL BOTHA: No sir, not as far as I  
 5 can recall.  
 6 MR NGCUKAITOBI: But you would agree with  
 7 me, surely Colonel Botha, that if that's what he said  
 8 existed, it should still be somewhere within the SAPS today  
 9 and can be made available to the Commission.  
 10 LT-COL BOTHA: Sir, if it exists, I don't  
 11 see any reason why it doesn't, cannot be made available. I  
 12 do not know of such existence.  
 13 MR NGCUKAITOBI: Yes. Now you were asked  
 14 earlier about cameras that are installed in the helicopters  
 15 of the SAPS. Was your answer that you know about these  
 16 cameras that are installed or you don't know about these  
 17 cameras?  
 18 LT-COL BOTHA: I said I do know that  
 19 there are police choppers with cameras. I do not know if  
 20 the ones that we had were equipped –  
 21 MR NGCUKAITOBI: Did you check whether  
 22 the one that you flew in had a camera installed in it?  
 23 [15:02] LT-COL BOTHA: No Sir, I did not.  
 24 MR NGCUKAITOBI: Don't you believe that  
 25 it as of material significance that you check whether that

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1 camera was working and you check whether the helicopter in  
 2 fact had a camera prior to you taking off, as a seasoned  
 3 cameraman of 26 years' standing?  
 4 LT-COL BOTHA: I was requested to make an  
 5 aerial view. I did not even think that the chopper can or  
 6 cannot have a camera. I presume at that stage that I  
 7 thought, well, it doesn't have a camera because otherwise  
 8 why will I be on the chopper?  
 9 MR NGCUKAITOBI: Colonel Botha, what do  
 10 you think is the purpose of video recording a crime scene,  
 11 particularly a live crime scene? Isn't it to eliminate  
 12 disputes of fact?  
 13 LT-COL BOTHA: That can be one of the  
 14 reasons.  
 15 MR NGCUKAITOBI: The primary reason.  
 16 LT-COL BOTHA: It can be.  
 17 MR NGCUKAITOBI: Now, why don't you check  
 18 whether the helicopter that you are flying in has a camera  
 19 or not, because I'm told by an expert that the LRC will  
 20 bring that those cameras are very powerful and capture the  
 21 incidents clearly.  
 22 LT-COL BOTHA: Sir, I did not check if  
 23 the chopper had a camera. I'm not a camera expert, I don't  
 24 know how powerful they are. I was placed on the chopper to  
 25 go and make an aerial view and for that reason I assumed,

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1 well, there is no camera. I didn't even ask if there's a  
 2 camera on the chopper. I mean they – if it was there, I'm  
 3 not – no, I don't know if the chopper had a camera.  
 4 MR NGCUKAITOBI: Will you give us the  
 5 details of this chopper that you were in, so that we can  
 6 inspect whether it had a camera or not?  
 7 LT-COL BOTHA: Details as in?  
 8 MR NGCUKAITOBI: Well, the only way to  
 9 identify it – how do you identify that chopper that you  
 10 were in?  
 11 LT-COL BOTHA: It was an SAPS chopper.  
 12 MR NGCUKAITOBI: And it's got no  
 13 registration number?  
 14 LT-COL BOTHA: I did not take note of the  
 15 registration number. I do know the type of chopper, it was  
 16 a Squirrel.  
 17 MR NGCUKAITOBI: So you would not be able  
 18 today to identify the specific chopper that you were in?  
 19 LT-COL BOTHA: No, sir.  
 20 CHAIRPERSON: I don't want to interrupt  
 21 you but I assume that this is the kind of information which  
 22 the SAPS should be able to provide you. I imagine there  
 23 must be logs -  
 24 MR NGCUKAITOBI: Yes.  
 25 CHAIRPERSON: - and other records

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1 relating to the helicopters they had and who were in them  
 2 at the relevant time. I'm not sure if it's a productive  
 3 exercise to ask this witness about it. I'm sure possibly  
 4 even outside the actual formal sittings of the Commission  
 5 you can get this information from the SAPS representatives.  
 6 MR NGCUKAITOBI: Yes.  
 7 CHAIRPERSON: I don't want to stop you  
 8 but I just want to suggest to you that, you know, the time  
 9 we have could be possibly more fruitfully spent than by  
 10 asking these questions of this witness.  
 11 MR NGCUKAITOBI: Yes, Mr Chairperson, I  
 12 have made the request to my learned friends prior to  
 13 commencing this cross-examination. They undertaken to do  
 14 what they can to make the information available. Now if  
 15 you look at the IPID documents and I don't want to go  
 16 through those documents because I'm sure this is something  
 17 you would accept, each water cannon is installed with two  
 18 cameras. There's a front camera which takes CCTV footage  
 19 and there's a rear camera. Do you accept that?  
 20 LT-COL BOTHA: Sir, I can't – I don't  
 21 even know how to open a water cannon's door so - I've never  
 22 been in a water cannon.  
 23 MR NGCUKAITOBI: Well, I don't want to  
 24 take you through the IPID documents but I've inspected them  
 25 and I've seen that they – each water cannon has a camera

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1 installed in front and at the back. Now at the subsequent  
 2 debriefing session in Potchefstroom did no-one who operated  
 3 these water cannons produce any video footage taken from  
 4 the water cannon?  
 5 LT-COL BOTHA: Sir, I have not seen any  
 6 such video footage.  
 7 MR NGCUKAITOBI: Were there no enquiries  
 8 made by any official in the eight and a half days in  
 9 Potchefstroom about what happened to the footage that  
 10 should have been contained by the water cannons?  
 11 LT-COL BOTHA: I'm not sure if it was  
 12 made. If it was made it was not – I didn't hear it, I  
 13 can't recall something like that.  
 14 MR NGCUKAITOBI: Because at the meeting  
 15 held, at the JOC meeting at half past one on the 16th of  
 16 August 2012 there was an explicit reference to checking  
 17 that the water cannons work and are capable of being - of  
 18 deployment during the incident.  
 19 LT-COL BOTHA: I was not at the meeting,  
 20 I don't know.  
 21 MR NGCUKAITOBI: Yes. Now finally, we  
 22 know that Brigadier Van Zyl has spoken about a CCTV, about  
 23 aerial communication, we know that possibly the water  
 24 cannons that you confirm having seen on the ground  
 25 potentially had cameras and out of all of this, all we have

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1 is the 41 minutes that does not record any of the  
 2 shootings. What is your comment to that?  
 3 CHAIRPERSON: That's not quite correct.  
 4 There is other footage which we saw after we saw the  
 5 Colonel's footage yesterday, remember.  
 6 MR NGCUKAITOBI: Yes.  
 7 CHAIRPERSON: So, well, he said he saw it  
 8 for the first time yesterday but the fact is it's not  
 9 correct to put to the witness that the only footage we have  
 10 is his footage because we know there's the other footage as  
 11 well. So perhaps you should reformulate the question.  
 12 MR NGCUKAITOBI: Yes. Was the only  
 13 footage of the 16th that was shown at the Potchefstroom  
 14 meeting for nine days, was the footage that you took?  
 15 CHAIRPERSON: No, no, he didn't say that.  
 16 On the contrary, he said the opposite. He said he can't  
 17 recall his footage being shown at all. In fact all he can  
 18 remember of footage being shown relates to the 13th –  
 19 MR NGCUKAITOBI: Yes.  
 20 CHAIRPERSON: And the visual material he  
 21 recalls being shown were, consisted of the photographs  
 22 taken on his camera by Sergeant or Warrant Officer Venter.  
 23 I don't think that question is correct either -  
 24 MR NGCUKAITOBI: Yes.  
 25 CHAIRPERSON: - reformulate that one

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1 also.

2 MR NGCUKAITOBI: Let me put it another

3 way then, Mr Chairperson. The only footage that you are

4 aware of is the footage that you personally took.

5 LT-COL BOTHA: Video footage, yes.

6 MR NGCUKAITOBI: And can you eliminate

7 the possibility that other video footage actually recording

8 the shooting does exist in the light of what I've put to

9 you?

10 LT-COL BOTHA: I cannot dispute that but

11 I also can't say it does exist.

12 MR NGCUKAITOBI: Those are the questions,

13 Mr Chair.

14 CHAIRPERSON: Thank you very much. Mr

15 Madlanga, do you have any re-examination of the witness?

16 RE-EXAMINATION BY MR MADLANGA SC: Yes

17 Chair, thank you. Colonel, you referred under cross-

18 examination to a correcting statement, a statement that was

19 correcting what you had recorded or observed as the time at

20 which you commenced videoing on the 16th. Where is that

21 correcting statement? You mentioned in your evidence that

22 it's in a docket. Which docket is that?

23 LT-COL BOTHA: Sir, it is in the video

24 docket.

25 MR MADLANGA SC: And that video docket,

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1 where is it? Is it part of the IPID documents?

2 LT-COL BOTHA: It's part of the IPID

3 documents.

4 MR MADLANGA SC: That's maybe unfair to

5 you because the statement is not in front of you but I'll

6 ask the question nonetheless, do you perhaps know what the

7 date of that statement is?

8 LT-COL BOTHA: I think it was said

9 yesterday the date of the statement is the 1st of the 9th

10 month.

11 MR MADLANGA SC: Thank you for that,

12 Colonel. Colonel, you referred to somebody who was in

13 civilian clothing in the helicopter in which you were on

14 the 16th and you said that this person had a camera. What

15 type – not brand, what type of camera was this? Was it a

16 still camera or was it a video camera?

17 LT-COL BOTHA: Sir, if I recall correctly

18 it was a video camera.

19 MR MADLANGA SC: It's almost certain from

20 the evidence that you've given that you've never had sight

21 of any footage from this person's video camera.

22 LT-COL BOTHA: No sir, I did not.

23 MR MADLANGA SC: Responding to a question

24 by my learned friend Mr Burger, you said that you heard of

25 two dead people from Colonel Vermaak. Do you recall saying

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1 that?

2 LT-COL BOTHA: I recall saying that.

3 MR MADLANGA SC: At what stage did

4 Colonel Vermaak tell you this? What was the occasion, what

5 was happening, where were you?

6 LT-COL BOTHA: Sir, I said that when we

7 were in the air, when I realised, the first time I realised

8 that the shooting happened or someone has been shot, was

9 when Colonel Vermaak mentioned on the air that he can see

10 two bodies.

11 MR MADLANGA SC: Over the radio?

12 LT-COL BOTHA: Over the radio, yes.

13 MR MADLANGA SC: I will paraphrase

14 another question that was put to you by Mr Burger. He said

15 that because scene 2 played itself out – I hope I'm

16 paraphrasing it correctly – because scene 2 played itself

17 out without you being aware, you would have been

18 inquisitive as to what had happened there. Do you recall

19 that question?

20 LT-COL BOTHA: I recall the question,

21 sir.

22 MR MADLANGA SC: I might have captured

23 your response incorrectly but I captured something like "I

24 wasn't" and I wasn't quite sure what the substance of your

25 response was. If I'm incorrect, please correct me and just

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1 state again what your response to that question was.

2 LT-COL BOTHA: Sir, if I can remember

3 correctly I said that we did, it was discussed – sorry – it

4 was discussed and obviously I wanted to know what happened

5 there but I didn't specifically ask and then were

6 inquisitive because of that.

7 MR MADLANGA SC: In quite a number of

8 your –

9 CHAIRPERSON: Sorry, are you moving on to

10 another point now, Mr Madlanga? I'm not sure that you

11 quite understood the question perhaps. Inquisitive doesn't

12 necessarily mean you ask questions. You know, in your mind

13 you wanted to know the answer to certain questions but you

14 don't have to actually ask them to be inquisitive. I think

15 nuuskierig is probably the correct – the interpreter nods

16 his head – is probably the correct Afrikaans translation.

17 MR MAHLANGU: That's the correct

18 Afrikaans, Chair.

19 CHAIRPERSON: Right. Now – so we'll ask

20 you the question again. When you were told that there were

21 bodies at the kraal and when you were told other things

22 that you heard, were you not nuuskierig, even though you

23 might not have actually asked questions?

24 LT-COL BOTHA: I think I was but because

25 I – I saw the crime scene photos, I mean I – a lot of the

<p style="text-align: right;">Page 634</p> <p>1 things I could, not answer for myself but I saw it.  2 CHAIRPERSON: But you also saw the crime  3 scene photos later, didn't you? So why - if you were  4 inquisitive, in the sense I've explained, at the time why  5 didn't you ask questions?  6 LT-COL BOTHA: I did not ask questions  7 about scene 2 when I learnt about it, sir.  8 CHAIRPERSON: I know that, but I've asked  9 you why? If you were curious, nuuskierig, inquisitive,  10 wouldn't the natural response have been to have asked, to  11 say but what's this, how can this be, what exactly happened  12 – other questions along those lines.  13 LT-COL BOTHA: No sir, I did not ask  14 questions along those lines.  15 CHAIRPERSON: No, but Colonel, I'm not  16 asking you whether you asked questions. We know you didn't  17 ask questions. The question is a different question and  18 it's why didn't you?  19 LT-COL BOTHA: Mr Chair, I was – I sent  20 out people to the crime scenes and then at some stage I  21 also went to the crime scenes so I was, I did see scene 2.  22 I did not ask questions before that, so then I wasn't  23 inquisitive before that. I hope that answers the question.  24 MR MADLANGA SC: Colonel, you were asked  25 a number of questions around discussions that would have</p>	<p style="text-align: right;">Page 636</p> <p>1 then the one of Colonel Vermaak.  2 MR MADLANGA SC: Yes, yes, so the four.  3 Four, you do recall four. But the distinct impression I  4 get is that that would be a tiny percentage of what you  5 recall.  6 LT-COL BOTHA: Yes, sir.  7 MR MADLANGA SC: You don't recall most of  8 the communications.  9 LT-COL BOTHA: I said there was a lot of  10 communications so I don't recall – these are things that  11 directly either influenced me or I mean the moment you hear  12 bodies, you think dead people and that is why maybe it  13 stuck in my mind but that is what I recall.  14 [15:22] MR MADLANGA SC: Can you, just for  15 clarity – because if you were able to hear these four  16 communications, I want to get an idea of why it is that you  17 did not hear the rest of the communications – is it that  18 you might've heard but now as you're sitting there you no  19 longer remember, or is it that you did not hear at all or  20 you did not listen or pay attention at all?  21 LT-COL BOTHA: Sir, I do think it's two  22 of those. I do think I might've heard but I can't recall  23 at the moment. I don't want to say I'm sitting in the  24 spotlight but I can't recall at the moment, and I was  25 really trying to concentrate on the video camera because</p>
<p style="text-align: right;">Page 635</p> <p>1 taken place inside the helicopter in which you were –  2 whether over the radio or amongst the people that were  3 inside the helicopter. You remember that?  4 LT-COL BOTHA: I remember that.  5 MR MADLANGA SC: Am I correct that, for  6 the most part, your response was that you do not recall  7 what the content of those communications was?  8 LT-COL BOTHA: That is correct, sir.  9 MR MADLANGA SC: I do recall from your  10 evidence that at least you do recall three communications –  11 the instructions by Brigadier Fritz that stun grenades be  12 shot or thrown, I don't know what the correct verb is –  13 LT-COL BOTHA: It is thrown – I actually  14 recall it because it was an action that took place in my  15 presence.  16 MR MADLANGA SC: Yes. The second one,  17 you also recall him when he warned the pilot of a likely or  18 possible collision between the helicopters.  19 LT-COL BOTHA: Yes sir, because that  20 influenced my video. We moved away from what I know now is  21 the koppie.  22 MR MADLANGA SC: And the third one  23 obviously was directed at you and that was that you should  24 go back.  25 LT-COL BOTHA: That is correct, sir, and</p>	<p style="text-align: right;">Page 637</p> <p>1 with a hand held video camera in a chopper, it's not easy.  2 You can see, when the chopper turns you go down, if the  3 chopper goes up you go up and – because at some stages  4 there are only blue light and I think due to those too, I  5 cannot recall a lot of these things.  6 MR MADLANGA SC: Lastly – and Chair,  7 commissioners, it doesn't arise from the cross-examination  8 but with your leave may I just ask the Colonel to confirm  9 under oath now the correctness of what he pointed out at  10 the inspection in loco, was it on the 2nd of October?  11 CHAIRPERSON: Yes.  12 LT-COL BOTHA: Sir, that was on the 2nd of  13 October and I confirm that under oath as correct.  14 MR MADLANGA SC: There are no further  15 questions, Chair, thank you.  16 CHAIRPERSON: We will take the tea  17 adjournment at this stage and it is now 25 past by my watch  18 – I don't know what it is by the Colonel's watch and we  19 will resume at 20 to four.  20 [INQUIRY ADJOURNS INQUIRY RESUMES]  21 [15:45] CHAIRPERSON: The Commission resumes.  22 Thank you, Colonel, for your evidence. You're excused.  23 LT-COL BOTHA: Thank you, Mr Chairman.  24 [NO FURTHER QUESTIONS – WITNESS EXCUSED]  25 MR SEMENYA SC: Chairperson might –</p>

<p style="text-align: right;">Page 638</p> <p>1 CHAIRPERSON: Mr Semenya?</p> <p>2 MR SEMENYA SC: Chairperson, to the</p> <p>3 extent that there might be a lingering misunderstanding, I</p> <p>4 think the Colonel referred to the legal team being in</p> <p>5 Potchefstroom –</p> <p>6 CHAIRPERSON: I understood the earlier</p> <p>7 reference to be a reference to an Adv Moolman who is, I</p> <p>8 think he was described as a legal officer in the SAPS. I</p> <p>9 didn't understand him to refer to you or your colleagues</p> <p>10 who are appearing, but let's just get clarity from him on</p> <p>11 that, just for the record's sake.</p> <p>12 MR SEMENYA SC: On the light side –</p> <p>13 CHAIRPERSON: Colonel, you heard Mr</p> <p>14 Semenya's point. These lawyers who were present, were they</p> <p>15 practising lawyers or were they lawyers who were permanent</p> <p>16 members of the South African Police Force, Police Service?</p> <p>17 LT-COL BOTHA: I'm talking about members</p> <p>18 of the South African Police Force, sir.</p> <p>19 CHAIRPERSON: Service.</p> <p>20 LT-COL BOTHA: Police Service, sorry.</p> <p>21 MR SEMENYA SC: I'm saying thankfully</p> <p>22 you're not at risk of being disbarred.</p> <p>23 CHAIRPERSON: Yes, no, I'm – you know, I</p> <p>24 would've been astonished if there was any problem in that</p> <p>25 regard. No, it's still the SAPS as far as the name is</p>	<p style="text-align: right;">Page 640</p> <p>1 MR MADLANGA SC: Thank you.</p> <p>2 CHAIRPERSON: I take it you intend it</p> <p>3 being handed in as an exhibit.</p> <p>4 MR MADLANGA SC: Yes, Chair.</p> <p>5 CHAIRPERSON: Perhaps we can give it its</p> <p>6 exhibit letter now. I take it Ms Pillay's been keeping</p> <p>7 note of these things, if she can tell us what it will be.</p> <p>8 MR MADLANGA SC: Is it not D? It should</p> <p>9 be D, Chair.</p> <p>10 CHAIRPERSON: So it'll be, we'll mark it</p> <p>11 Exhibit D.</p> <p>12 MR MADLANGA SC: Thank you, Chair.</p> <p>13 CHAIRPERSON: Please proceed.</p> <p>14 MR MADLANGA SC: Thank you. Do you</p> <p>15 confirm the truthfulness of the contents of this statement,</p> <p>16 Captain?</p> <p>17 CAPTAIN MOSHWANA: Yes, I confirm.</p> <p>18 MR MADLANGA SC: Your experience,</p> <p>19 training, et cetera are reflected in the statement, I will</p> <p>20 not make you read that. What I'll ask you to please read</p> <p>21 into the record are paragraphs 4 and 5 of the statement.</p> <p>22 CAPTAIN MOSHWANA: Thank you,</p> <p>23 Chairperson. "On the 13th of August 2012 I attended and</p> <p>24 processed a crime scene involving Marikana CAS115/8/2012</p> <p>25 and 116/8/2012 at Donkerhoek, Marikana, wherein two</p>
<p style="text-align: right;">Page 639</p> <p>1 concerned, it hasn't been re-militarised.</p> <p>2 LT-COL BOTHA: Sorry for that Mr Chair.</p> <p>3 CHAIRPERSON: Mr Madlanga, have you got</p> <p>4 another witness to lead?</p> <p>5 MR MADLANGA SC: Yes Chairman,</p> <p>6 commissioners, the next witness is Captain Moses Moshwana.</p> <p>7 Can he please come forward and may I ask to hand up – or</p> <p>8 no, not at this stage, not at this stage.</p> <p>9 CHAIRPERSON: Captain, do you wish to</p> <p>10 swear or do you wish to affirm?</p> <p>11 CAPTAIN MOSHWANA: Swear.</p> <p>12 CHAIRPERSON: Do you swear that the</p> <p>13 evidence that you will give before this Commission will be</p> <p>14 the whole truth and nothing but the truth. Please raise</p> <p>15 your right hand and say so help me God.</p> <p>16 MOSES MOSHWANA: So help me God.</p> <p>17 CHAIRPERSON: Thank you, you may be</p> <p>18 seated. Yes, Mr Madlanga?</p> <p>19 EXAMINATION BY MR MADLANGA SC: Thank</p> <p>20 you, Chair. There is an unsigned statement bearing your</p> <p>21 name. Have you had sight of it, have you read it? This,</p> <p>22 Chair and commissioners, was handed up on the first day of</p> <p>23 Colonel Botha's testimony so the commissioners, I believe,</p> <p>24 already have a copy of it.</p> <p>25 CHAIRPERSON: Yes, we do.</p>	<p style="text-align: right;">Page 641</p> <p>1 civilians were found dead."</p> <p>2 MR MADLANGA SC: Now on the screen</p> <p>3 slightly to your left, roughly behind you there is a slide.</p> <p>4 I assume Colonel Botha left a hard copy there in front of</p> <p>5 you or are you looking at the screen?</p> <p>6 CAPTAIN MOSHWANA: I'm looking at the</p> <p>7 screen.</p> <p>8 MR MADLANGA SC: The laptop screen, yes.</p> <p>9 Chair, I'm referring the witness to B9 on the hard copies.</p> <p>10 Do you want to take us through that slide and indicate what</p> <p>11 observations you made?</p> <p>12 CAPTAIN MOSHWANA: Chairperson, the</p> <p>13 aerial photograph is to indicate the relationship between</p> <p>14 my crime scenes and also Lieutenant-Colonel Botha's crime</p> <p>15 scenes.</p> <p>16 MR MADLANGA SC: My understanding is that</p> <p>17 there was a dirt road that separated the part of the scene</p> <p>18 that was processed by Colonel Botha and that part that was</p> <p>19 processed by you. Is that part which is linear and lighter</p> <p>20 in colour, that's dirt road, there's a motor vehicle</p> <p>21 further up close to where N for north is – is that the dirt</p> <p>22 road?</p> <p>23 CAPTAIN MOSHWANA: That's correct,</p> <p>24 Chairperson.</p> <p>25 MR MADLANGA SC: Now the CAS116/08/2012</p>

<p style="text-align: right;">Page 642</p> <p>1 does show on the slide, you agree?</p> <p>2 CAPTAIN MOSHWANA: That's correct.</p> <p>3 MR MADLANGA SC: What did you find there,</p> <p>4 if anything?</p> <p>5 CAPTAIN MOSHWANA: Chairperson, there is</p> <p>6 an informal house number C05 and in front of this informal</p> <p>7 house I found a civilian body.</p> <p>8 MR MADLANGA SC: Now before I forget, you</p> <p>9 were also at the in loco inspection on the 2nd of October</p> <p>10 2012, were you not?</p> <p>11 CAPTAIN MOSHWANA: That's correct.</p> <p>12 MR MADLANGA SC: And you also</p> <p>13 participated in the sense that you pointed out certain</p> <p>14 spots.</p> <p>15 CAPTAIN MOSHWANA: Yes, I pointed certain</p> <p>16 spots.</p> <p>17 MR MADLANGA SC: Do you confirm the</p> <p>18 correctness of what you pointed out during your</p> <p>19 participation at that inspection?</p> <p>20 CAPTAIN MOSHWANA: Yes, that's correct.</p> <p>21 MR MADLANGA SC: Now, continue and tell</p> <p>22 us what else you observed and if you prefer showing us on a</p> <p>23 different slide, you may do so.</p> <p>24 CAPTAIN MOSHWANA: Okay, on a spot on</p> <p>25 CAS115/8/2012 there was also a body of a civilian across</p>	<p style="text-align: right;">Page 644</p> <p>1 MR MADLANGA SC: Now on B10 I see what</p> <p>2 looks like a motor vehicle close to a circle. Is that the</p> <p>3 spot that you are referring to?</p> <p>4 CAPTAIN MOSHWANA: Correct, Chairperson.</p> <p>5 MR MADLANGA SC: And now when you go</p> <p>6 across where you found the body, is it where "body" is</p> <p>7 written?</p> <p>8 CAPTAIN MOSHWANA: Chairperson, correct.</p> <p>9 MR MADLANGA SC: And obviously that is on</p> <p>10 the western – or rather eastern side of the stream.</p> <p>11 CAPTAIN MOSHWANA: Correct, Chairperson.</p> <p>12 MR MADLANGA SC: At B11 you give a number</p> <p>13 of measurements, do you see that?</p> <p>14 CAPTAIN MOSHWANA: Yes, I can see.</p> <p>15 MR MADLANGA SC: Do you want to just</p> <p>16 quickly read those into the record?</p> <p>17 CAPTAIN MOSHWANA: Chairperson, to</p> <p>18 explain my measurements from the main road until the body</p> <p>19 in front of the informal house number C05, it's 93.5 metres</p> <p>20 which is CAS116/8/2012 –</p> <p>21 MR MADLANGA SC: And by main road would</p> <p>22 you be referring to the dirt road I earlier referred you</p> <p>23 to?</p> <p>24 CAPTAIN MOSHWANA: That's correct,</p> <p>25 Chairperson.</p>
<p style="text-align: right;">Page 643</p> <p>1 the street.</p> <p>2 MR MADLANGA SC: It does show also on the</p> <p>3 same slide, that is B9 but –</p> <p>4 CAPTAIN MOSHWANA: That's correct.</p> <p>5 MR MADLANGA SC: Is that spot not visible</p> <p>6 in B10 as well, even though perhaps it's not marked that</p> <p>7 case number or is it? Oh ja, it is, it's marked at the top</p> <p>8 to the left of the letter W for "work", it is marked</p> <p>9 CAS115. This is at B10, the next slide. Do you see that,</p> <p>10 the following slide?</p> <p>11 CAPTAIN MOSHWANA: That's correct.</p> <p>12 MR MADLANGA SC: My understanding is - or</p> <p>13 perhaps before you crossed that stream, after you had found</p> <p>14 the body next to what you referred to as an informal house,</p> <p>15 before one crosses the stream is there anything else you</p> <p>16 observed?</p> <p>17 CAPTAIN MOSHWANA: Yes, Chairperson.</p> <p>18 There were cartridge cases before you cross the stream.</p> <p>19 MR MADLANGA SC: How far from the stream</p> <p>20 was this, if you can tell?</p> <p>21 CAPTAIN MOSHWANA: Chairperson, from the</p> <p>22 stream it can be plus-minus 50 metres.</p> <p>23 MR MADLANGA SC: And would I be correct</p> <p>24 to say that this was on the western side of the stream?</p> <p>25 CAPTAIN MOSHWANA: That's correct.</p>	<p style="text-align: right;">Page 645</p> <p>1 MR MADLANGA SC: Please continue.</p> <p>2 CAPTAIN MOSHWANA: And Chairperson, from</p> <p>3 the body in front of the informal house to the body across</p> <p>4 the stream is 500 metres.</p> <p>5 MR MADLANGA SC: Yes?</p> <p>6 CAPTAIN MOSHWANA: I just want to correct</p> <p>7 something, not 550, 500.</p> <p>8 MR MADLANGA SC: Yes, continue.</p> <p>9 CAPTAIN MOSHWANA: Chairperson, from the</p> <p>10 position of cartridge cases to a body across the stream,</p> <p>11 74.4 metres which is – the body across the stream</p> <p>12 CAS115/8/2012.</p> <p>13 MR MADLANGA SC: And the last</p> <p>14 measurement?</p> <p>15 CAPTAIN MOSHWANA: Chairperson, the last</p> <p>16 measurement from the body in front of the informal house</p> <p>17 until to Lieutenant-Colonel Botha's scene, which is</p> <p>18 CAS117/8/2012, is 120 metres.</p> <p>19 MR MADLANGA SC: Chair, commissioners,</p> <p>20 that is the evidence of the witness, thank you.</p> <p>21 CHAIRPERSON: Do you have any questions</p> <p>22 for the witness?</p> <p>23 MR SEMENYA SC: Chairperson, thank you,</p> <p>24 no.</p> <p>25 CHAIRPERSON: Mr Burger, do you have any</p>



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1 questions?

2 MR BURGER SC: No thank you, Mr Chairman.

3 CHAIRPERSON: To shorten things, has

4 anyone got any questions? Do you have questions?

5 MR BRUINDERS SC: I do, yes.

6 CHAIRPERSON: Please begin your cross-

7 examination.

8 CROSS-EXAMINATION BY MR BRUINDERS SC:

9 Thank you. Captain, there's one measurement I'd like you

10 to confirm for us, is – have you any idea what the distance

11 is between B and G?

12 CAPTAIN MOSHWANA: I did not attend to

13 that. Just repeat the question?

14 MR BRUINDERS SC: The distance between B

15 and G?

16 MR MADLANGA SC: Chair, may I just try to

17 establish if my learned friend is referring to B1, the

18 page?

19 CHAIRPERSON: That's Colonel Botha scene

20 that he did. I'm not sure whether this witness can deal

21 with it but if he can then obviously he will do so.

22 MR BRUINDERS SC: I beg your pardon,

23 Captain.

24 CHAIRPERSON: Captain, do you see the

25 Google photograph which is, I think, B1? I think that's

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1 what counsel is referring to.

2 CAPTAIN MOSHWANA: Yes, Chairperson –

3 CHAIRPERSON: Can you give him the

4 information that he seeks?

5 CAPTAIN MOSHWANA: Yes, I don't have the

6 measurement from B to G because letter B is Colonel Botha's

7 crime scene.

8 MR BRUINDERS SC: When you say – so you

9 did not go to the point at B?

10 CAPTAIN MOSHWANA: No, I didn't go to

11 point B.

12 CHAIRPERSON: I take it what you're

13 asking for is the distance between the railway line which

14 is B –

15 MR BRUINDERS SC: Yes.

16 CHAIRPERSON: - and the place where the

17 body on the other side of the stream was found?

18 MR BRUINDERS SC: Yes.

19 CHAIRPERSON: Can you perhaps give us an

20 estimation, even if you didn't measure it?

21 CAPTAIN MOSHWANA: Chairperson, if I can

22 give an estimation, it can be plus-minus 8 to 900 metres.

23 MR BRUINDERS SC: Is it possibly more

24 than one kilometre?

25 CAPTAIN MOSHWANA: Yes Chairperson, it

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1 can be possible because I didn't measure.

2 MR BRUINDERS SC: On the 13th, what time

3 did you arrive at the crime scene that you say you

4 investigated?

5 [16:05] CAPTAIN MOSHWANA: Chairperson, I arrived

6 at 16:31.

7 MR BRUINDERS SC: How long did you spend

8 there?

9 CAPTAIN MOSHWANA: Are you referring, at

10 the crime scene?

11 MR BRUINDERS SC: Yes.

12 CAPTAIN MOSHWANA: It can be plus-minus

13 four hours.

14 MR BRUINDERS SC: So you were there

15 between half past four and half past eight that evening?

16 CAPTAIN MOSHWANA: Chairperson, I

17 departed from the crime scene at 20:15.

18 MR BRUINDERS SC: Now you do say G is

19 what you call your crime scene.

20 CAPTAIN MOSHWANA: That's correct.

21 MR BRUINDERS SC: What did you find

22 there?

23 CAPTAIN MOSHWANA: It was a body of a

24 civilian across the street.

25 MR BRUINDERS SC: And did you look at the

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1 body?

2 CAPTAIN MOSHWANA: Yes.

3 MR BRUINDERS SC: What did you see?

4 CAPTAIN MOSHWANA: The deceased was lying

5 on his stomach.

6 MR BRUINDERS SC: Was the deceased a man?

7 CAPTAIN MOSHWANA: Yes, it was a man.

8 MR BRUINDERS SC: Did he have any wounds?

9 CAPTAIN MOSHWANA: Yes, he was having

10 some wounds.

11 MR BRUINDERS SC: What wounds?

12 CAPTAIN MOSHWANA: I cannot say whether

13 it was a stab or a gunshot.

14 MR BRUINDERS SC: And where was this

15 wound?

16 CAPTAIN MOSHWANA: I observed one wound

17 at the back of his neck.

18 MR BRUINDERS SC: And any other wounds?

19 CAPTAIN MOSHWANA: Chairperson, he was

20 also having a scratch on his left cheek.

21 MR BRUINDERS SC: Any other wounds?

22 CAPTAIN MOSHWANA: No, they were the only

23 wounds, Chairperson.

24 MR BRUINDERS SC: The wound at the back

25 of his neck, what did it look like to you?

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1 CHAIRPERSON: Mr Bruinders, I don't want  
 2 to unnecessarily interrupt you but I take it that the post-  
 3 mortem report is before us. So is there any point in  
 4 checking the accuracy of the memory of this witness on  
 5 something which is objectively ascertainable?  
 6 MR BRUINDERS SC: Chair –  
 7 CHAIRPERSON: I've made my point, you can  
 8 proceed.  
 9 MR BRUINDERS SC: No Chair, with respect,  
 10 it's a point well taken. I want to, though, ask whether –  
 11 we haven't seen the post-mortem report and so I want to ask  
 12 this witness whether he knows, but let me ask him. Do you  
 13 know whether there is a post-mortem report for this, the  
 14 person you saw at G?  
 15 CAPTAIN MOSHWANA: Yes, I know.  
 16 MR BRUINDERS SC: Where is that post-  
 17 mortem report, do you know?  
 18 CAPTAIN MOSHWANA: No, I don't have any  
 19 idea.  
 20 CHAIRPERSON: Mr Chaskalson, as I  
 21 understand it, is in charge of post-mortem reports. So –  
 22 he's not here at the moment, he's obviously working on  
 23 another aspect of the case but I imagine tomorrow morning  
 24 you can ask him and obtain the post-mortem report.  
 25 MR BRUINDERS SC: We will follow that.

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1 Just for purposes of the record, the witness has said there  
 2 is one. We haven't seen one and we'll follow this up with  
 3 Mr Chaskalson. Captain, on the second day of the  
 4 inspection in loco you pointed out the crime scene of the  
 5 13th.  
 6 CAPTAIN MOSHWANA: Yes, correct.  
 7 MR BRUINDERS SC: The note that my  
 8 attorney has of your pointing out is that you, in answer to  
 9 a question, confirmed that this witness had a gunshot wound  
 10 to the back of the neck or head. Would that be right?  
 11 CAPTAIN MOSHWANA: No, I never said that.  
 12 CHAIRPERSON: Mr Bruinders, again if -  
 13 the proceedings at the inspection were recorded, I don't  
 14 know if they've been transcribed but they were recorded, so  
 15 again if anything turns on this point you can check it from  
 16 the transcript when it's available but again, even if the  
 17 witness was wrong on that point, once we get the post-  
 18 mortem reports we'll see whether there was a gunshot wound  
 19 and unless something turns on his perception then I don't  
 20 know if we need spend any more time on it, but I've made  
 21 the point to you.  
 22 MR BRUINDERS SC: We'll move on.  
 23 CHAIRPERSON: Yes, good idea.  
 24 MR BRUINDERS SC: Were you at all  
 25 involved in the crime scene at what I think is called scene

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1 1 and 2 of the 16th?  
 2 CAPTAIN MOSHWANA: I was only at scene 1.  
 3 MR BRUINDERS SC: When was that?  
 4 CAPTAIN MOSHWANA: The 16th.  
 5 MR BRUINDERS SC: What time?  
 6 CAPTAIN MOSHWANA: 21:47.  
 7 MR BRUINDERS SC: Why were you there?  
 8 CAPTAIN MOSHWANA: I was called to come  
 9 and assist because it was a big scene.  
 10 MR BRUINDERS SC: What did you assist  
 11 with?  
 12 CAPTAIN MOSHWANA: I was assisting with  
 13 collecting of exhibits and doing measurements.  
 14 MR BRUINDERS SC: Whom did you assist?  
 15 CAPTAIN MOSHWANA: Warrant Officer  
 16 Thamae.  
 17 MR BRUINDERS SC: So the crime scene  
 18 investigator in charge of scene 1 was Warrant Officer  
 19 Thamae?  
 20 CAPTAIN MOSHWANA: Yes, it was Warrant  
 21 Officer Thamae.  
 22 MR BRUINDERS SC: And I take it that he  
 23 will come and give evidence about what he found at that  
 24 crime scene.  
 25 CAPTAIN MOSHWANA: Yes, Chairperson,

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1 that's correct.  
 2 MR BRUINDERS SC: Before you arrived at  
 3 the crime scene on the 16th, where were you?  
 4 CAPTAIN MOSHWANA: I was at – in  
 5 Rustenburg.  
 6 MR BRUINDERS SC: And where in Rustenburg  
 7 were you?  
 8 CAPTAIN MOSHWANA: I was at my  
 9 residential place.  
 10 MR BRUINDERS SC: So you were off duty on  
 11 that day?  
 12 CAPTAIN MOSHWANA: I was off duty after  
 13 four but during the day I was on duty.  
 14 MR BRUINDERS SC: And where were you on  
 15 duty?  
 16 CAPTAIN MOSHWANA: Rustenburg LCRC.  
 17 MR BRUINDERS SC: So the first time you  
 18 were called out to scene 1 and the Wonderkop area was after  
 19 nine on the 16th.  
 20 CAPTAIN MOSHWANA: Chairperson, it was  
 21 before eight because I arrived at the crime scene 21:47.  
 22 MR BRUINDERS SC: And the first time you  
 23 got there on that day was at 21:47.  
 24 CAPTAIN MOSHWANA: Are you referring at  
 25 scene 1?

<p style="text-align: right;">Page 654</p> <p>1 MR BRUINDERS SC: Yes.</p> <p>2 CAPTAIN MOSHWANA: Correct, Chairperson.</p> <p>3 MR BRUINDERS SC: Can I take an</p> <p>4 instruction? No further questions.</p> <p>5 CHAIRPERSON: Thank you, Mr Bruinders.</p> <p>6 Are you next, Mr Mpofo?</p> <p>7 MR MPOFU: Yes, Chair.</p> <p>8 CHAIRPERSON: I think actually Mr Bizos</p> <p>9 and the way we were doing it, in order of seniority – Mr</p> <p>10 Bizos, do you want to ask any questions?</p> <p>11 MR BIZOS SC: No, thank you.</p> <p>12 CHAIRPERSON: Mr Ntsebeza isn't here, so</p> <p>13 you'd better take over.</p> <p>14 MR MPOFU: Yes, thank you Chair.</p> <p>15 CHAIRPERSON: Have you got questions to</p> <p>16 ask?</p> <p>17 MR MPOFU: Chair, I'm not really going to</p> <p>18 ask questions, I just want to place something on record,</p> <p>19 more for the Commission than the witness. Just to say that</p> <p>20 as in the case of –</p> <p>21 CHAIRPERSON: Do you want to do it while</p> <p>22 the witness is here?</p> <p>23 MR MPOFU: Yes, yes.</p> <p>24 CHAIRPERSON: Alright.</p> <p>25 MR MPOFU: Because you might want to</p>	<p style="text-align: right;">Page 656</p> <p>1 found were.</p> <p>2 CHAIRPERSON: I don't think anyone will</p> <p>3 object to your asking that question.</p> <p>4 MR MADLANGA SC: Thank you, thank you,</p> <p>5 Chair.</p> <p>6 CHAIRPERSON: And if they do object I'll</p> <p>7 overrule the objection. Carry on.</p> <p>8 RE-EXAMINATION BY MR MADLANGA SC: Thank</p> <p>9 you, thank you. Captain, at B10 where, what looks like a</p> <p>10 motor vehicle, where you indicated that there were</p> <p>11 cartridge cases, what cartridge cases were these and how</p> <p>12 many were there?</p> <p>13 CAPTAIN MOSHWANA: Chairperson, I've</p> <p>14 collected one R5 cartridge case and 16 x 9 millimetre</p> <p>15 cartridge cases, one-six.</p> <p>16 MR MADLANGA SC: Thank you, Chair, no</p> <p>17 further questions.</p> <p>18 CHAIRPERSON: Any questions arising from</p> <p>19 the new matter covered in re-examination? Thank you,</p> <p>20 Captain, you are excused.</p> <p>21 [NO FURTHER QUESTIONS – WITNESS EXCUSED]</p> <p>22 CHAIRPERSON: Mr Madlanga?</p> <p>23 MR MADLANGA SC: Commissioners, the next</p> <p>24 witness is – I'm just looking for the rank – it's Warrant</p> <p>25 Officer Opperman.</p>
<p style="text-align: right;">Page 655</p> <p>1 convey the message to him, Mr Chairperson. I just want to</p> <p>2 say that as in the case of the previous witness, we would</p> <p>3 like to reserve the right – it's less likely in the case of</p> <p>4 this witness than the previous one but since the people who</p> <p>5 were in custody are only now being in the process of being</p> <p>6 released, if anything comes out of those consultations</p> <p>7 which might necessitate recalling the witness, obviously</p> <p>8 they're not going to dispute the measurements but for what</p> <p>9 it's worth, if the witness can just be –</p> <p>10 CHAIRPERSON: I indicated to you that if</p> <p>11 you wished to have, if you apply for the recall of the</p> <p>12 witnesses who've testified because you've obtained</p> <p>13 meaningful instructions from the people who were not</p> <p>14 available previously, then any application of that kind</p> <p>15 would be entertained.</p> <p>16 MR MPOFU: Yes.</p> <p>17 CHAIRPERSON: And if successful, would be</p> <p>18 granted.</p> <p>19 MR MPOFU: Thank you.</p> <p>20 CHAIRPERSON: Anybody else want to ask</p> <p>21 questions? No. Any re-examination, Mr Madlanga?</p> <p>22 MR MADLANGA SC: Chairman, commissioners,</p> <p>23 to say that I forgot – it makes me feel terrible. Chair, I</p> <p>24 did not ask the witness how many cartridges and cartridge</p> <p>25 cases and what type the cartridges or cartridge cases they</p>	<p style="text-align: right;">Page 657</p> <p>1 CHAIRPERSON: Warrant Officer, do you</p> <p>2 wish to swear or to affirm?</p> <p>3 WARRANT OFFICER OPPERMAN: To swear.</p> <p>4 CHAIRPERSON: Would you raise your right</p> <p>5 and do you swear that the evidence you will give before</p> <p>6 this Commission will be the truth, the whole truth and</p> <p>7 nothing but the truth, say so help me God.</p> <p>8 WARRANT OFFICER OPPERMAN: So help me</p> <p>9 God.</p> <p>10 CHAIRPERSON: Thank you, you may be</p> <p>11 seated.</p> <p>12 EXAMINATION BY MR MADLANGA SC: Thank you</p> <p>13 –</p> <p>14 CHAIRPERSON: The statement is before us,</p> <p>15 I take it, it will be E?</p> <p>16 MR MADLANGA SC: Yes, yes, Chair, thank</p> <p>17 you very much. Warrant Officer, details relating to your</p> <p>18 experience, training, et cetera are reflected in the</p> <p>19 statement, unsigned statement. I want you to read into the</p> <p>20 record paragraphs 4 and 5 of the statement.</p> <p>21 WARRANT OFFICER OPPERMAN: "On the 12th of</p> <p>22 August 2012 I attended and processed a crime scene</p> <p>23 involving Marikana CAS107/89/2012 which is in respect of</p> <p>24 the two Lonmin security officials. Captain Phule pointed</p> <p>25 out to me two burnt motor vehicles, cartridges and two</p>

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1 bodies. Using these points and my own observation I took  
 2 photos and measurements of the scene and I compiled a photo  
 3 plan." I also collected exhibits from the scene, Mr Chair.  
 4 MR MADLANGA SC: What exhibits did you  
 5 collect?  
 6 WARRANT OFFICER OPPERMAN: It was  
 7 cartridge cases that were found on the scene, Mr  
 8 Chairperson.  
 9 MR MADLANGA SC: And can you describe the  
 10 cartridge cases that you found?  
 11 WARRANT OFFICER OPPERMAN: It was shotgun  
 12 cartridge cases and two rubber or teargas cartridge cases.  
 13 MR MADLANGA SC: Before we go further, do  
 14 you confirm the correctness of your statement?  
 15 WARRANT OFFICER OPPERMAN: That is  
 16 correct, Mr Chairperson.  
 17 MR MADLANGA SC: May I refer you to the  
 18 Google map in the slides? I'm referring the witness to  
 19 B12, commissioners. There you have points, a point marked  
 20 A and another point marked NUM offices. Where is it that  
 21 you found the bodies, the burnt motor vehicles and the  
 22 cartridges? Is it where it's written NUM offices or is it  
 23 where it's marked A or is it elsewhere?  
 24 WARRANT OFFICER OPPERMAN: It is where  
 25 it's marked A, Mr Chairperson.

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1 [16:25] MR MADLANGA SC: I see in B13, the next  
 2 page, you give measurements. Do you want to read those  
 3 into the record?  
 4 CHAIRPERSON: It's one measurement.  
 5 MR MADLANGA SC: Thank you, Chair. Let  
 6 me just read it and confirm if that is correct. It says  
 7 here – or perhaps let me just read what is above. It says,  
 8 "A the position of Marikana CAS107/08/2012 and Wonderkop  
 9 Hostel. Red marker position of NUM offices" and then the  
 10 measurement, "A to NUM offices 250 metres." Do you confirm  
 11 that?  
 12 WARRANT OFFICER OPPERMAN: That is the  
 13 measurements taken by Colonel Botha, Mr Chairperson.  
 14 MR MADLANGA SC: Is there anything else  
 15 that you would like to tell the Commission about your  
 16 processing of this particular scene?  
 17 WARRANT OFFICER OPPERMAN: No, Mr  
 18 Chairperson.  
 19 CHAIRPERSON: Thank you, Mr Madlanga. Mr  
 20 Semenya, do you have any cross-examination?  
 21 MR SEMENYA SC: No, we do not, Chair.  
 22 CHAIRPERSON: Mr Tip?  
 23 CROSS-EXAMINATION BY MR TIP SC: Thank  
 24 you, Mr Chair. Warrant Officer Opperman, it's clear from  
 25 your statement that you attended a scene with two bodies.

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1 WARRANT OFFICER OPPERMAN: That is  
 2 correct, Mr Chairperson.  
 3 MR TIP SC: Whom you have identified as  
 4 Lonmin security officials.  
 5 WARRANT OFFICER OPPERMAN: That is  
 6 correct, Mr Chair.  
 7 MR TIP SC: There has been the suggestion  
 8 in these proceedings that there were also two people who  
 9 were participating in the strike who were killed on the  
 10 scene. Do you have any knowledge of that?  
 11 WARRANT OFFICER OPPERMAN: I don't know  
 12 of any other persons that were killed, Mr Chair.  
 13 MR TIP SC: You found no other bodies on  
 14 the scene?  
 15 WARRANT OFFICER OPPERMAN: No other  
 16 bodies were found on the scene.  
 17 MR TIP SC: Thank you, Mr Chairperson.  
 18 CHAIRPERSON: Thank you. Mr Bruinders?  
 19 CROSS-EXAMINATION BY MR BRUINDERS SC:  
 20 Thank you, Commission, Chair. Who is Captain Phule?  
 21 WARRANT OFFICER OPPERMAN: He's a Captain  
 22 stationed at Marikana police station, Mr Chairperson.  
 23 MR BRUINDERS SC: Why did he point the  
 24 bodies out to you?  
 25 WARRANT OFFICER OPPERMAN: When I arrived

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1 at the scene he met me and he told me that he's going to  
 2 investigate the case and he was on the scene and he showed  
 3 some points to me, Mr Chairperson.  
 4 MR BRUINDERS SC: So is he a detective  
 5 who was investigating what had happened on the 12th?  
 6 WARRANT OFFICER OPPERMAN: That is  
 7 correct, Mr Chairperson.  
 8 MR BRUINDERS SC: And he's a detective  
 9 stationed at Marikana?  
 10 WARRANT OFFICER OPPERMAN: That is  
 11 correct.  
 12 MR BRUINDERS SC: Nothing else.  
 13 CHAIRPERSON: Mr Bizos?  
 14 MR BIZOS SC: No questions.  
 15 CHAIRPERSON: Absent Mr Ntsebeza, is Mr  
 16 Mpofo – do you wish to ask any questions?  
 17 MR MPOFU SC: No thank you, Chairperson.  
 18 CHAIRPERSON: Sorry Mr Burger, I didn't  
 19 give you a chance. Do you want to ask any questions?  
 20 MR BURGER SC: No thank you, Chair.  
 21 CHAIRPERSON: Anyone want to ask  
 22 questions? I know the family of the deceased is  
 23 represented, does their representative want to ask any  
 24 questions?  
 25 CROSS-EXAMINATION BY MR RAMPHELE: Thank

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1 you, Chair. Warrant Officer Opperman, what time did you  
 2 attend to the scene that you referred to?  
 3 WARRANT OFFICER OPPERMAN: I arrived at  
 4 the scene at 25 minutes past 12, Mr Chairperson.  
 5 MR RAMPHELE: And what was the date?  
 6 WARRANT OFFICER OPPERMAN: It was on the  
 7 12th of August.  
 8 MR RAMPHELE: So this is just about two  
 9 hours after the incident had happened?  
 10 WARRANT OFFICER OPPERMAN: That is  
 11 correct, Mr Chairperson.  
 12 MR RAMPHELE: Do you remember who all was  
 13 there?  
 14 WARRANT OFFICER OPPERMAN: I can remember  
 15 Captain Phule and Colonel Madoda, also of the detectives.  
 16 MR RAMPHELE: Were the bodies of the  
 17 deceased still at the scene?  
 18 WARRANT OFFICER OPPERMAN: That is  
 19 correct, Mr Chairperson.  
 20 MR RAMPHELE: And you say how far from  
 21 where the bodies were lying were the NUM offices, what is  
 22 the distance?  
 23 CHAIRPERSON: He did - say that  
 24 Lieutenant-Colonel Botha measured it because it was 250  
 25 metres.

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1 MR RAMPHELE: Thank you, Chair. And can  
 2 you describe just in brief how these bodies were that you  
 3 found there?  
 4 WARRANT OFFICER OPPERMAN: I found two  
 5 bodies on the scene. One of them was, the legs you could  
 6 see were still half in the vehicle. That body was badly  
 7 burned and I could also see a hack mark or a mark on the  
 8 head of that body. The second body was a few metres from  
 9 the vehicle. There were burn marks on the chest and his  
 10 trousers were also burned and he had wounds in his face.  
 11 MR RAMPHELE: Now the car they were  
 12 travelling in, what type of car was this? Or the car that  
 13 you found a body sort of like protruding from, what type of  
 14 car was that?  
 15 WARRANT OFFICER OPPERMAN: At that stage  
 16 you couldn't determine what type of car it was because both  
 17 vehicles were totally burnt.  
 18 MR RAMPHELE: But do you remember whether  
 19 these were like sedans or like trucks or what type?  
 20 WARRANT OFFICER OPPERMAN: Both vehicles  
 21 were sedan vehicles.  
 22 MR RAMPHELE: Now this was two hours  
 23 after the incident, were the only police officers that were  
 24 there, Phule and Madoda? Were they the only - except for  
 25 you, of course?

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1 WARRANT OFFICER OPPERMAN: There were  
 2 also police officers of Marikana police station and some of  
 3 the security of Lonmin.  
 4 MR RAMPHELE: And you yourself did not,  
 5 you only arrived at the scene two hours - you were not  
 6 there before? You yourself don't - you don't have any  
 7 information about what happened there.  
 8 WARRANT OFFICER OPPERMAN: That's  
 9 correct, Mr Chairperson.  
 10 MR RAMPHELE: Thank you, there's no  
 11 further questions.  
 12 CHAIRPERSON: Anyone else want to ask  
 13 questions?  
 14 MR MADLANGA SC: None, thank you Chair.  
 15 CHAIRPERSON: Thank you, Warrant Officer,  
 16 you are excused.  
 17 [NO FURTHER QUESTIONS - WITNESS EXCUSED]  
 18 MR MADLANGA SC: The next witness,  
 19 Chair and commissioners, is going to be quite long - or  
 20 perhaps because we still have a bit of time I should start  
 21 but he will not complete his evidence-in-chief, but I have  
 22 no problem starting.  
 23 CHAIRPERSON: Let's start because the  
 24 half an hour used today won't be required tomorrow. Carry  
 25 on.

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1 MR MADLANGA SC: Thank you, Chair. May I  
 2 call Captain Mohlaki, please?  
 3 CHAIRPERSON: Captain, do you wish to  
 4 swear or to affirm?  
 5 CAPTAIN MOHLAKI: To swear.  
 6 CHAIRPERSON: Do you swear that the  
 7 evidence you'll give before this Commission will be the  
 8 truth, the whole truth and nothing but the truth. Please  
 9 raise your right hand and say so help me God.  
 10 CAPTAIN APOLLO JEREMIAH MOHLAKI: So help  
 11 me God.  
 12 CHAIRPERSON: Thank you, you may be  
 13 seated. They tell me that - have you turned your  
 14 microphone on? You're no longer a source of interference.  
 15 EXAMINATION BY MR MADLANGA SC: Captain,  
 16 just for - it should be FJ.  
 17 Thank you, thank you Chair. And Captain, your  
 18 experience, training, et cetera are reflected in the  
 19 statement. Do you confirm the correctness of the entire  
 20 contents of the statement?  
 21 CAPTAIN MOHLAKI: That's correct, Chair  
 22 and the commissioners.  
 23 MR MADLANGA SC: Commissioners, I've been  
 24 advised by Ms or Adv Malunga that the media are interested  
 25 in the full names of the people. Captain, is it so that

<p style="text-align: right;">Page 666</p> <p>1 your full names are Apollo Jeremiah Mohlaki, Mohlaki being 2 M-O-H-L-A-K-I. 3 CAPTAIN MOHLAKI: That's correct, Chair 4 and commissioners, Apollo Jeremiah Mohlaki. 5 MR MADLANGA SC: Thank you. Captain, can 6 you read paragraphs 4 and 5 of your statement into the 7 record? 8 CAPTAIN MOHLAKI: Thank you, Chair and 9 commissioners. "I am instructed in photography" – 10 MR MADLANGA SC: No, no, sorry – sorry. 11 CHAIRPERSON: There are two paragraph 12 4's, I think he means paragraph 4 bis or you mean paragraph 13 4 bis which is the top of the second page. 14 MR MADLANGA SC: Yes Chair, thank you 15 very much. Paragraph 4 on the next page, yes. 16 CAPTAIN MOHLAKI: Thank you, Chair and 17 commissioners. "On the 16 August 2012 I attended and 18 processed a crime scene involving Marikana CAS138/8/2012 19 and at what has come to be known as scene 2 at Wonderkop 20 Marikana. Warrant Officer Monama indicated some points to 21 me. Using these points and my own observation I took 22 photos and measurements of the scene. Constable Molefe 23 made a video recording of the scene. I compiled a photo 24 plan using an aerial photo of the scene. I also collected 25 exhibits from the scene."</p>	<p style="text-align: right;">Page 668</p> <p>1 departed. 2 CHAIRPERSON: No, you made the entries in 3 your diary more or less contemporaneously – 4 CAPTAIN MOHLAKI: That's correct, Chair. 5 CHAIRPERSON: You refresh your memory 6 from the entries therein? 7 CAPTAIN MOHLAKI: That's correct, Chair. 8 CHAIRPERSON: Okay, you may look at your 9 diary. 10 CAPTAIN MOHLAKI: Thank you, Chair and 11 commissioners. I started at 16:00 on the 16th of August 12 2012. Then I departed the scene at 15:10 the following 13 day, the 17th August 2012. 14 MR MADLANGA SC: Does that mean 15 throughout that period from 16:00 to 15:10, you say, you 16 did not knock off at all, you just worked flat out 17 continuously? 18 CAPTAIN MOHLAKI: That's correct, M'Lord 19 and commissioners. 20 MR MADLANGA SC: Let me take you to a 21 Google map that is on the slide in front of you – 22 CHAIRPERSON: Before we have the Google 23 map, can I just ask him a question? Did I understand you 24 to say that at 16:00 on the 16th August you were at the 25 scene?</p>
<p style="text-align: right;">Page 667</p> <p>1 MR MADLANGA SC: On the 1st of October 2 2012 you took part in an inspection in loco that was held 3 at what you referred to as scene 2, not so? 4 CAPTAIN MOHLAKI: That's correct, Chair 5 and commissioners. 6 MR MADLANGA SC: And there you pointed 7 out various spots to the Commission. 8 CAPTAIN MOHLAKI: That's correct, Chair 9 and commissioners. 10 MR MADLANGA SC: Do you confirm the 11 truthfulness of what you pointed out to the Commission at 12 the inspection? 13 CAPTAIN MOHLAKI: That's correct, Chair 14 and commissioners. 15 MR MADLANGA SC: Now can you tell the 16 Commission from what time to what time you processed scene 17 2? 18 CAPTAIN MOHLAKI: Thank you, Chair and 19 commissioners. I don't know, can I refer to my diary? 20 MR MADLANGA SC: Yes, you may. Chair? 21 CHAIRPERSON: I take it your diary, the 22 entries in your diary were made more or less 23 contemporaneously, were they? 24 CAPTAIN MOHLAKI: Chair, I did record the 25 time that I started but I'm not sure about the time I</p>	<p style="text-align: right;">Page 669</p> <p>1 CAPTAIN MOHLAKI: That's correct, Chair 2 and commissioners. 3 CHAIRPERSON: Had the incident happened 4 yet? 5 CAPTAIN MOHLAKI: Come again, sir? 6 CHAIRPERSON: Had the shooting happened 7 yet, shootings happened yet? 8 CAPTAIN MOHLAKI: Ja, when we arrived 9 there I think the scene was still active because the 10 police, with the movement of the police officials and the 11 paramedics at the scene. 12 [16:45] MR MADLANGA SC: Was there any shooting 13 taking place when you arrived there? 14 CAPTAIN MOHLAKI: Not at all, Chair and 15 commissioners. 16 MR MADLANGA SC: When you, or just before 17 you went to process that scene at 16:00, where had you 18 been? 19 CAPTAIN MOHLAKI: We were posted at, they 20 call it holding area 1, somewhere around Lonmin. It was an 21 open veld where we were requested to stay as to be on 22 standby. 23 MR MADLANGA SC: And who is it that had 24 asked you to be on standby there? 25 CAPTAIN MOHLAKI: Chair, I think if you</p>

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<p>1 allow me to explain what happened according to the briefing 2 that I got on the 16th. In the morning of the 16th 2012 3 August, I attended a morning briefing. 4 MR MADLANGA SC: Where was this briefing? 5 CAPTAIN MOHLAKI: The briefing was held 6 at Lonmin JOC. 7 MR MADLANGA SC: And who conducted the 8 briefing? 9 CAPTAIN MOHLAKI: There were a couple of 10 senior officers from SAPS. I still remember General 11 Adeline, Brigadier Calitz, Brigadier – 12 MR MADLANGA SC: Captain, please be 13 careful. Do not speak at the same time as the interpreter. 14 There will be problems with the transcription. You should 15 wait until he is done. 16 INTERPRETER: Thank you. 17 CAPTAIN MOHLAKI: Thanks, Chair and 18 commissioners. 19 MR MADLANGA SC: Now, would the name 20 perhaps not be General Annandale? 21 CAPTAIN MOHLAKI: I get difficulty 22 pronouncing that surname but just like on that version, 23 yes, Annandale. 24 MR MADLANGA SC: And I thought you 25 mentioned the second, or rather another name as well. Who</p>	<p>1 CAPTAIN MOHLAKI: Thank you, Chair and 2 commissioners. When I got there they were already started 3 with the briefing. 4 MR MADLANGA SC: After the briefing did 5 you immediately proceed to the forward holding, or rather 6 to forward holding area number 1 or did you remain at 7 Lonmin for some time? 8 CAPTAIN MOHLAKI: After the briefing I 9 went outside to brief the three members that I was posted 10 with at Lonmin. I never recorded the time when we departed 11 there but I will estimate past nine to 10 we went to that 12 holding area. 13 MR MADLANGA SC: Did you ever leave that 14 holding area or were you there until the time you attended 15 at scene 2 at the time that you earlier indicated? 16 CAPTAIN MOHLAKI: That's correct, sir, I 17 stayed there until we were called to come and process the 18 crime scene. 19 MR MADLANGA SC: Can I now take you to 20 the Google map? B46, Chair and commissioners, B46. I do 21 not know if you were here when the South African Police 22 Service made its opening statement but if you were not, 23 part of what that statement said was that the South African 24 Police Service takes issue with your positioning of the 25 cartridges on B46, which is the Google map. Do you wish to</p>
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<p>1 did you say or rather what's that name? 2 CAPTAIN MOHLAKI: It was Brigadier 3 Calitz. 4 MR MADLANGA SC: And what exactly was the 5 briefing? 6 CAPTAIN MOHLAKI: We were – we have to 7 submit our strand. Our strand, I'm referring that when 8 they ask the representative from LCRC how many members are 9 there, then I have to account, then we were four. Then the 10 briefing was, we must be on standby. There is an 11 information or agreement that there will be a possibility 12 of the people who are gathering at the mine, at the koppie, 13 they will be surrendering some dangerous traditional 14 weapons, possibly with some unlawful ammunition that will 15 be in their possession and they will withdraw. Then we 16 will be called to come and record, take photos with the 17 detectives of those dangerous traditional weapons. 18 MR MADLANGA SC: What time or round about 19 what time was this briefing? 20 CAPTAIN MOHLAKI: Thanks, Chair and 21 commissioners, I'll have to refer to my diary. I arrived 22 there at 16:05 – sorry, 06:05 in the morning. 23 CHAIRPERSON: You were asked what time 24 was the briefing. You got there at five past six in the 25 morning, what time was the briefing actually?</p>	<p>1 comment on that? Do you accept that there are inaccuracies 2 in – or ja, with regard to where the cartridge cases or 3 cartridges have been placed on the Google map? 4 MR SEMENYA SC: Chairperson, perhaps we 5 were misunderstood. The issue with the Google map was 6 simply that there certainly were more cartridges than were 7 captured by the LCRC, not that those captured are in 8 incorrect places. 9 CHAIRPERSON: Thank you, I take it that 10 shortens this part of the evidence. 11 MR MADLANGA SC: Thank you, I'm indebted 12 to my learned colleague but I will still ask the question 13 in a different way. Now forgetting about what the SAPS 14 presentation says, are there inaccuracies in the reflection 15 of where the cartridge cases were on the Google map? 16 CAPTAIN MOHLAKI: Correct, Chair and 17 commissioners. 18 MR MADLANGA SC: I think the correct verb 19 that you use in your technical language is to plot, who 20 plotted the cartridges on this Google map? 21 CAPTAIN MOHLAKI: It was Lieutenant- 22 Colonel Scott. 23 MR MADLANGA SC: Can you explain how that 24 came about and how exactly that unfolded? 25 CAPTAIN MOHLAKI: Thanks, Chair and</p>

<p style="text-align: right;">Page 674</p> <p>1 commissioners. We visited Potchefstroom for consultation  2 with the SAPS advocates. I just want to check and confirm  3 the date. That's correct, 2012/09/11. After consultation  4 with – it was three advocates representing SAPS – because  5 we were not briefed when I left Rustenburg to Potch, that  6 they will need a model of a crime scene so that they can  7 understand what happened on that day of the 16th of August  8 2012, so I did some rough sketches to indicate to them. So  9 fortunately Lieutenant-Colonel Scott was there in the  10 conference room, but not the room where we were with the  11 advocate. So he asked me that he can help us with the  12 model of the crime scene if I'm having the co-ordinates of  13 the crime scene. Then I explained to Colonel Scott that I  14 do have co-ordinates but I don't have any documents with me  15 so that I can present to him to plot those points, then I  16 will e-mail the GPS readings.  17 MR MADLANGA SC: And the GPS readings are  18 what you have been referring to as co-ordinates?  19 CAPTAIN MOHLAKI: Yes, Chair and  20 commissioners. Then I'm not sure about the date but I did  21 e-mail Colonel Scott the co-ordinates to plot for me and he  22 e-mailed back the Google Earth with plots of these points.  23 MR MADLANGA SC: And are you satisfied  24 with how he plotted the cartridge cases, et cetera on the  25 Google map?</p>	<p style="text-align: right;">Page 676</p> <p>1 MR MADLANGA SC: Chair, may I just ask  2 quickly-quickly to hand up a page, it should be part of –  3 it should be part of B, Chair, perhaps let's mark it B88,  4 the very last page of Exhibit B and –  5 CHAIRPERSON: Yes, thank you Mr Madlanga.  6 MR MADLANGA SC: Thank you, Chair.  7 CHAIRPERSON: Thank you. Have your  8 learned friends got copies of this?  9 MR MADLANGA SC: I asked that they be  10 given copies - was it this morning – this morning, Chair.  11 Colleagues, it's a document marked "Scene 2 legend."  12 Please don't ask me about the word "legend" there. I  13 myself do not know what the import is.  14 CHAIRPERSON: It's a kind of a key to the  15 map. Mr Mpofo, did you want to tell us what legend was or  16 have you got some other statement to make?  17 MR MPOFU SC: No, Chair, I'm assuring  18 that Mr Madlanga is done. It's a completely unrelated  19 matter. Chair, I simply wanted to indicate something and  20 also the fact that tomorrow morning I might want to address  21 one or two preliminary issues when you give the slot for  22 preliminary issues in the morning, but one of them will  23 relate – I've seen that at least five of the arrested  24 people have just walked in and I just wanted to express my  25 gratitude to you, Chair, and to Mr Semenya for the</p>
<p style="text-align: right;">Page 675</p> <p>1 CAPTAIN MOHLAKI: Not at all because when  2 I compared the Google map, some of the points, with my  3 rough sketch, some points were not matching.  4 MR MADLANGA SC: Can you address those?  5 Can you explain to the Chairperson and commissioners what  6 the inaccuracies are?  7 CHAIRPERSON: May I ask, have you re-  8 plotted them on another Google map? It would be easier if  9 you re-plotted them rather than just told us by referring  10 to Lieutenant-Colonel Scott's map, which ones are wrong.  11 Have you done that, re-plotted them?  12 CAPTAIN MOHLAKI: No Chair, I've just  13 drawn a sketch plan that is on the following slide.  14 MR MADLANGA SC: May I refer the  15 commissioners to B47? But I wanted us to deal with this  16 more fully because when one then looks at the sketch, the  17 sketch and the Google map, there will be a mismatch at  18 certain places.  19 CHAIRPERSON: Alright.  20 MR MADLANGA SC: Thank you.  21 CHAIRPERSON: Is this a suitable stage  22 for us to adjourn or do you want to perform that exercise  23 before we adjourn?  24 MR MADLANGA SC: A suitable stage, Chair.  25 CHAIRPERSON: Very well.</p>	<p style="text-align: right;">Page 677</p> <p>1 assistance and – but I'll give, once I've spoken to them  2 I'll give a fuller report as to who is not here and so on,  3 as part of what I will say tomorrow morning.  4 CHAIRPERSON: I don't know that I deserve  5 any gratitude but I understand that Mr Semenya does. I'm  6 glad you put it on record.  7 MR MPOFU SC: I insist, Chair, that you  8 do – and the commissioners – for any assistance that you  9 gave us and the space for the discussions that were  10 obviously fruitful. Thank you.  11 CHAIRPERSON: I'm glad that the  12 discussions that were held yesterday, which were to find  13 out a way of solving that particular problem, have  14 ultimately come to a successful conclusion and I want to  15 congratulate, on behalf of my colleagues and myself, all  16 those who took part in those discussions which were not  17 only successful but I understand conducted in a very  18 harmonious and appropriate manner and it reflects credit on  19 everyone concerned.  20 MR SEMENYA SC: Thanks Chair.  21 CHAIRPERSON: We will adjourn until 9AM  22 tomorrow morning.  23 [INQUIRY ADJOURNED]  24 .  25 .</p>



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