

# 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 218

15 APRIL 2014

PAGES 26819 TO 26900



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<p style="text-align: right;">Page 26819</p> <p>1 [PROCEEDINGS ON 15 APRIL 2014]  2 [09:17] CHAIRPERSON: The Commission resumes. I  3 want to correct something I said yesterday. Yesterday I  4 said that we were going to sit till half past one and just  5 before half past one I would give my reasons for the  6 rulings that I'm going to make in relation to the  7 application being sought by the police. There's been a  8 change of plan since then. The Commission will be sitting  9 till 1 o'clock today, so I will be giving the reasons just  10 before 1 o'clock. What's going to happen is I'm going to  11 read the actual rulings and then I will say that copies  12 will be available with the secretariat, I've given a copy  13 to the secretariat. Those who wish copies, to receive  14 copies of their own, ask the secretariat to send copies  15 electronically. So if there's anyone here at the moment  16 who wishes to speak to Ms Schubart now and give e-mail  17 addresses and so on, so that their rulings can be sent  18 after – there are reasons why they're being sent after the  19 rulings have been read out – they may do that. And of  20 course the reasons themselves will also be put on the  21 Commission's website for those – that will happen just  22 before 1 o'clock today.  23 Thank you. Lieutenant-Colonel, you're still  24 under oath. Mr Wesley?  25 OMPHILE JOSEPH MERAFAE: (s.u.o.)</p>	<p style="text-align: right;">Page 26821</p> <p>1 MR WESLEY: Correct, Chair.  2 CHAIRPERSON: There are some statements  3 that you want me to give exhibit numbers to.  4 MR WESLEY: That's correct, Chair.  5 CHAIRPERSON: So that your cross-  6 examination can proceed smoothly.  7 MR WESLEY: Chair, there are four  8 statements. I have – these weren't previously given to the  9 Colonel. I have given them to him this morning, he has  10 read them. I've also provided them to the police  11 representatives. I think, Chair, you would have been given  12 copies on your desk.  13 CHAIRPERSON: Well, what I got is two  14 statements by – I've got two statements from Constable  15 Sekgweleya, one an original handwritten one and then one a  16 supplementary statement.  17 MR WESLEY: That's correct, Chair.  18 CHAIRPERSON: And another statement from  19 –  20 MR WESLEY: Sergeant Mguye.  21 CHAIRPERSON: From Sergeant Mguye. The  22 same thing again, there's a handwritten statement and  23 there's a typed supplementary statement. Which one – the  24 first one will be QQQ7, I think we make them QQQ7.1 and  25 QQQ7.2. So which one comes first?</p>
<p style="text-align: right;">Page 26820</p> <p>1 CROSS-EXAMINATION BY MR WESLEY (CONTD.):  2 Thank you, Chair. Chair, if I can just begin with a matter  3 that arose yesterday. It was the date modified – Chair,  4 you'll remember the Colonel addressed the statement which  5 is now QQQ2 and I took him through when it was found, where  6 it was found on the SAPS hard drives that we obtained in  7 September last year and I said that the date modified was  8 the 3rd of December 2012 and I said I would check that  9 because I know, Chair, you queried that and also Mr  10 Chaskalson queried it.  11 CHAIRPERSON: You said January.  12 MR WESLEY: Yes.  13 CHAIRPERSON: And I said the witness  14 would have had remarkable foresight if he'd made the  15 statement in January 2012 dealing with things that happened  16 in August 2012.  17 MR WESLEY: I've made quite the opposite  18 mistake today then because in fact the date is the 3rd of  19 December 2012.  20 CHAIRPERSON: Well, I suspected that was  21 the case, I'm glad that you've clarified it.  22 MR WESLEY: Thank you, Chair.  23 CHAIRPERSON: There's also some  24 housekeeping you want to do, I understand. You came to see  25 me in chambers.</p>	<p style="text-align: right;">Page 26822</p> <p>1 MR WESLEY: Sekgweleya.  2 CHAIRPERSON: Sekgweleya, so his  3 handwritten statement will be QQQ7.1 and his supplementary  4 typed statement will be QQQ7.2 and then Constable –  5 MR WESLEY: Sergeant Mguye.  6 CHAIRPERSON: I beg your pardon.  7 Sergeant Mguye, he is, his statement is QQQ8.1 and 8.2, the  8 handwritten one being 8.1.  9 MR WESLEY: Sorry, Chair, I'm just  10 handing out copies for all the parties.  11 CHAIRPERSON: Have copies been given to  12 the parties? Oh, they're being handed out now.  13 MR WESLEY: They've been given to the  14 parties. Colonel, we were dealing yesterday with the  15 statement QQQ2 and also GGG15. Now QQQ2, I'm going to put  16 some things to you which hopefully you will agree with me  17 and it's perceptions that I obtained when I read QQQ2. The  18 first one is that when you drafted it, especially having  19 regard to the first sentence – I'll remind you what you  20 said there in the second paragraph, "I hereby make the  21 following statement to give my version in respect of  22 Marikana Commission of Inquiry held at Rustenburg Civic  23 Centre." We know you wanted to tell this Commission your  24 version.  25 COLONEL MERAFAE: That is so, Chair.</p>

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1 MR WESLEY: The first observation that I  
 2 want to make is that you wanted to tell the Commission  
 3 about things that were on your mind that you thought this  
 4 Commission should know.  
 5 COLONEL MERAFAE: Things that took place,  
 6 Mr Chairperson, which I thought this Commission needs to  
 7 know.  
 8 MR WESLEY: Well, you've answered the  
 9 second question because the second impression I got was  
 10 that you put things in there that you wanted, that you  
 11 thought the Commission ought to know and you said stuff  
 12 that the Commission needs to know, so that answers that  
 13 question but the third one I want to tell you is, you  
 14 wanted to tell the Commission more than you eventually did  
 15 in exhibit GGG15.  
 16 COLONEL MERAFAE: Chairperson, as I have  
 17 already explained, that I made the unsigned statement  
 18 before GGG15. I explained fully in the statement QQQ2,  
 19 than I did in GGG15.  
 20 MR WESLEY: What you wanted to tell the  
 21 Commission was in QQQ2 though, everything that was in  
 22 there.  
 23 COLONEL MERAFAE: Yes, I admit that in all  
 24 the statements that I made, Chairperson, is what I wanted  
 25 the Commission to know. Chairperson, I explained

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1 everything that I knew to my mind the Commission needed to  
 2 know. What I did not explain in the one statement appears  
 3 in another.  
 4 MR WESLEY: We'll get to that but I want  
 5 to put one final thing to you and it's quite personal.  
 6 You're a modest man. When I asked you about whether you  
 7 can be considered an expert, the furthest that you would  
 8 go, an expert on public order policing, was that you know  
 9 your job well. Well, I want to put to you that to draft  
 10 QQQ2 and to say what you did there took a lot of courage  
 11 and you are a courageous man for having said that, what you  
 12 did in that.  
 13 COLONEL MERAFAE: I am a person who does  
 14 not change, Mr Chairperson. If I remain courageous today,  
 15 the same applies tomorrow, I do not change.  
 16 MR WESLEY: Now if you – I explained to  
 17 you yesterday one of the jobs I did, things I did was to  
 18 take QQQ2 and put it next to GGG15 and we went through some  
 19 of the changes and some of the differences yesterday. Now  
 20 would you agree with me that GGG15 is an edited version of  
 21 QQQ2?  
 22 CHAIRPERSON: We covered that ground  
 23 already yesterday. Effectively the answer is yes, it's  
 24 edited in the sense that he thinks some things were left  
 25 out, some things were softened but I think he also said

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1 that there's extra material that wasn't in QQQ2. That's  
 2 right, isn't it, Colonel?  
 3 COLONEL MERAFAE: It's correct,  
 4 Chairperson.  
 5 CHAIRPERSON: He said he did, he made  
 6 those changes on the advice, essentially, of his lawyer but  
 7 clearly they were working from the original statement QQQ2  
 8 because the lawyer had a copy, he had a copy and a lot of  
 9 phraseology and content has been taken over but as I've  
 10 said, and he agreed, a lot of it has been softened and  
 11 diluted and so on. I think he's answered that question  
 12 already.  
 13 MR WESLEY: I'll move on from that point,  
 14 Chair. Can we then look at QQQ1, do you have that? Do you  
 15 have that, Colonel?  
 16 COLONEL MERAFAE: I have it, Chair.  
 17 MR WESLEY: Now this statement, if you  
 18 have a look at the last page it was deposed to on the 10th  
 19 of April this year, 2014.  
 20 COLONEL MERAFAE: That's correct,  
 21 Chairperson.  
 22 MR WESLEY: And when you began your  
 23 testimony you made two corrections to this statement, as  
 24 they were called, the first is to fix a date in paragraph  
 25 4.7.11.

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1 CHAIRPERSON: Yes, in the fourth line 22  
 2 April becomes 28 – sorry, 22 May to 28 May. That corrects  
 3 the date of Colonel Vermaak's –  
 4 MR WESLEY: And the word "pangas."  
 5 CHAIRPERSON: Yes.  
 6 MR WESLEY: Yes, Chair, and the word  
 7 "pangas" was then included in paragraph 4.7.12.  
 8 CHAIRPERSON: Ja, the fourth line of  
 9 paragraph 4.7.12, "In addition to the weapons that were  
 10 used in some of the marches" – that were used in the march,  
 11 sorry – "referred to by Colonel Vermaak, which were carried  
 12 by some of the marchers," "in addition to knobkerries and  
 13 sticks, pangas were used" –  
 14 MR WESLEY: Now, while you were being led  
 15 in your evidence and when dealing with an allegation by you  
 16 of Lieutenant-Colonel Vermaak having taken an R5 rifle from  
 17 a TRT member on the 13th August you were asked why you  
 18 hadn't put this in GGG15 or any of the QQQ statements,  
 19 which is the other statements I've taken you through, and  
 20 your answer was that "The content of my consolidated  
 21 statement caters for each and every thing that I forgot to  
 22 say in my other statements."  
 23 COLONEL MERAFAE: I remember saying so,  
 24 Chairperson.  
 25 MR WESLEY: Now if we take then all your

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1 statements together and we accept then for the sake of  
 2 argument that the last statement was there to put in stuff  
 3 that you forgot, in order to arrive at QQQ1, your last  
 4 statement, you would have had to go through your other  
 5 statements – sorry, Colonel, if you listen I'll explain it  
 6 to you – you'll have to go through your other statements,  
 7 which is QQQ6, that's the manuscript statement which you  
 8 deposited to on the 13th of August which you handed in, then  
 9 you'd also have to look at QQQ2 which is your unsigned  
 10 statement, as I call it, also then GGG15 and then QQQ3  
 11 which is the supplementary statement of the 29th November  
 12 2013. Do you understand the question? In order to go  
 13 through, in order to arrive at QQQ1 and to include in that  
 14 matter that you'd forgotten to put in your previous  
 15 statements, you would have had to have a look at your  
 16 previous statements?  
 17 CHAIRPERSON: That must be right, surely?  
 18 That must be right. Did you do that?  
 19 COLONEL MERAPE: No, I did not do so,  
 20 Chair. What I'm trying to explain is – QQQ2 and GGG15,  
 21 there are things that corroborate. When I made statements,  
 22 Chairperson, like for instance in QQQ2 and GGG15, there are  
 23 things that corroborate each other, something that appears  
 24 in the one statement would also be in the other. I am also  
 25 explaining that in my final statement I then included all

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1 the other things that appear in my other statements which I  
 2 thought would be important for the Commission, I included  
 3 those.  
 4 MR WESLEY: Colonel, I'm going to take  
 5 you through some of the content of QQQ1 but I'm just trying  
 6 to understand how it came about. Let's look at QQQ1. It's  
 7 called the consolidated statement. From what I understand,  
 8 the word "consolidated," it means to combine something or  
 9 amalgamate something, put something altogether. Is that  
 10 the way you understood this, the purpose of this statement  
 11 or what it was meant to achieve?  
 12 COLONEL MERAPE: Chairperson, that's not  
 13 how I understood it. I understand that explanation now  
 14 that you are giving me, that is not how I understood it.  
 15 MR WESLEY: What did you understand you  
 16 were doing then if you're giving a consolidated statement?  
 17 COLONEL MERAPE: I was writing my final  
 18 statement.  
 19 MR WESLEY: Your final statement?  
 20 COLONEL MERAPE: Correct, Chairperson.  
 21 MR WESLEY: How did you decide what to  
 22 address in your final statement? Let me ask you this  
 23 question, did you decide what has to be addressed in this  
 24 final statement of yours, QQQ1?  
 25 COLONEL MERAPE: Chairperson, questions

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1 had been asked which I had to answer. Some of the  
 2 questions came from you that I have to answer as it is  
 3 being put to me now.  
 4 MR WESLEY: In QQQ1?  
 5 COLONEL MERAPE: When you speak about the  
 6 statement referred to as the consolidated statement, which  
 7 I have referred to, Mr Chairperson, as my final statement  
 8 before coming to testify here. There are 27 questions  
 9 which I had to read and answer in completing my final  
 10 statement. They were leading me to, where I see here I  
 11 missed the ball they would direct me to where the ball is.  
 12 MR WESLEY: I understand now.  
 13 CHAIRPERSON: Mr Mahlangu, I heard him  
 14 say that in English but I haven't heard you say it in  
 15 Tswana.  
 16 MR MABUNDA: Oh yes, sorry Chair.  
 17 MR WESLEY: Colonel, I understand now.  
 18 So when you prepared QQQ1, what happened was you were given  
 19 a list of 27 questions and you were told, answer those  
 20 questions.  
 21 COLONEL MERAPE: Yes, Chairperson. They  
 22 were assisting me or preparing me to bring about everything  
 23 that is important in my statement.  
 24 MR WESLEY: Now, we've heard how it came  
 25 about now, now we understand that but if there is a

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1 difference between something you say in QQQ1 and something  
 2 you say in your other statements, and I'm going to give you  
 3 an example, a simple example. I would like you to explain  
 4 to the Commission how must we deal with this because we've  
 5 got several statements of yours now. I think Colonel  
 6 Vermaak claimed the record for the most number of  
 7 statements but you might be close to him. How are we  
 8 supposed to deal with differences and discrepancies where  
 9 they clash. I want to give you an example -  
 10 [09:37] CHAIRPERSON: Mr Wesley, to be fair to  
 11 the witness, shouldn't you put the differences? Some of  
 12 the differences he may say, well, now that you put it to  
 13 me, my earlier statement is probably right. Others he may  
 14 say, I looked at it and I realised what I said in my  
 15 earlier statement was wrong and that's why I've corrected  
 16 it. So you can't, there's no holdall answer to that  
 17 question put as a general proposition. Surely he must be  
 18 asked to deal with differences which you will contend in  
 19 due course are significant, and asked to explain how we  
 20 must handle it. Either the earlier one is right because  
 21 his memory was fresher or the later one is right because  
 22 he's realised he has made a mistake, then you can explore  
 23 those answers after that, surely.  
 24 MR WESLEY: Yes, Chair. I'm going to put  
 25 two now and then as we go through your evidence we will

<p style="text-align: right;">Page 26831</p> <p>1 address them as they arise but because I wanted to use an 2 example it's convenient to do so right now. Let's have a 3 look at paragraph 5.28, 5.28 of QQQ1. Now what you've done 4 in this statement is, in paragraph 5.25 through to 5.27 you 5 deal with what you refer to later on as the planning 6 exercise that you went through with Lieutenant-Colonel 7 Scott and then you state in 5.28, "After the presentation 8 of the plan" – no, sorry, that's the wrong part. The first 9 sentence, "After the plan exercise with Colonel Scott we 10 did the slide presentation and briefed members on the same 11 day about what the plan would be." You see that? 12 COLONEL MERAFA: I see, Chairperson. 13 MR WESLEY: If one then has a look at 14 paragraph 16 of QQQ2 – 15 CHAIRPERSON: QQQ2 of course hasn't got 16 numbered paragraphs. 17 MR WESLEY: No. 18 CHAIRPERSON: So what page are you on? 19 MR WESLEY: Chair, it's the very last 20 page, the first paragraph on the top of the very last page. 21 It begins, "On Tuesday the 14th August 2012." 22 CHAIRPERSON: No, it's not on the screen 23 yet. It goes a bit further. It is, yes, sorry, I beg your 24 pardon. Yes, it's the top of the page on the screen. 25 MR WESLEY: The very first sentence, what</p>	<p style="text-align: right;">Page 26833</p> <p>1 I have explained that – Chairperson, the position is that 2 we did the plan together with Colonel Scott, me and him, so 3 I could not have been one of the people that he was 4 briefing about the plan that I did together with him, which 5 I knew. 6 MR WESLEY: I agree with you there, 7 that's why I have difficulty where you're saying in 8 paragraph 16 of QQQ2 that "Lieutenant-Colonel Scott briefed 9 us." 10 COLONEL MERAFA: Chairperson, there is 11 always what is called the slip of a tongue. 12 MR WESLEY: Okay. Okay, I accept that. 13 That's – 14 CHAIRPERSON: This looks like a slip of 15 the type, though, doesn't it, but anyway I think you've 16 made the point so far as it can be made, Mr Wesley. 17 Perhaps we should move on to the next one. 18 MR WESLEY: Yes. Let's just deal with 19 one other one which we're going to, what happened on the 20 13th and what you intended to do and what you wanted to do 21 but while we're on this point have a look at QQQ2, 22 paragraph 13. 23 CHAIRPERSON: Paragraph 13 will be on the 24 penultimate page. 25 MR WESLEY: That's on the second page, it</p>
<p style="text-align: right;">Page 26832</p> <p>1 it reads is the following, "On Tuesday the 14th August 2012 2 at 07H00 a JOC meeting was held attended by Major-General 3 Mpmembe, Major-General Annandale, Brigadier Seboloke, 4 Brigadier Calitz, Brigadier Seloane, whereafter Lieutenant- 5 Colonel Duncan Scott from head office briefed us about the 6 detailed plan." Do you see that? 7 COLONEL MERAFA: I see, Chairperson. 8 MR WESLEY: Now the difference here is, 9 in QQQ1 you say that "we did the presentation," you and 10 Colonel Scott "and briefed the members," but here you're 11 saying that "Colonel Scott from head office briefed us." 12 Which one was it? 13 COLONEL MERAFA: Chairperson, we can plan 14 a thing together as being two but there's one speaker. The 15 speaker in this case then Colonel Scott, Mr Chairperson, 16 about things that we planned together with him. What I say 17 in the one statement is exactly what I mean in the other 18 statement, it's the same thing. 19 MR WESLEY: Colonel, I differ with you 20 there. In the one you say that you were briefed, in the 21 other one you say you were the person doing the briefing. 22 Those are not the same. 23 COLONEL MERAFA: Yes, Chairperson, I have 24 explained that in a choir where we sing together as a 25 group, but here one person speaks on behalf of the group.</p>	<p style="text-align: right;">Page 26834</p> <p>1 is the second paragraph from the top. It begins, "The 2 group was stopped." 3 CHAIRPERSON: Well, that's the third page 4 actually. It's the second paragraph beginning on the third 5 page. 6 MR WESLEY: Third page, I beg your 7 pardon, Chair. 8 CHAIRPERSON: Well, actually it's the 9 second paragraph on the third page. 10 MR WESLEY: Now in the middle, here we're 11 dealing with events on the 13th and Major-General Mpmembe has 12 spoken and he's been told that, by the crowd, that Lonmin 13 management must come and address the people about 14 grievances regarding salary agreements and then you say the 15 following, it's in the middle, "Myself and other officers 16 suggested that we disarm the people there and then because 17 we have cornered them." Do you see that? 18 COLONEL MERAFA: I see, Chairperson. 19 MR WESLEY: And then you carry on to say 20 the General refused, is that correct? 21 COLONEL MERAFA: I don't think we should 22 just read up to there, we should continue with the sentence 23 where it says the General refused and then what happened 24 and why. 25 MR WESLEY: You're welcome to read the</p>

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1 rest. It's really not important for the question but if  
 2 you'd like I can place it on the record. It reads, "The  
 3 General refused and said he didn't want a Tatane incident  
 4 (Ficksburg incident) where a person was shot and killed by  
 5 the police with rubber bullets." Do you want that on the  
 6 record?  
 7 COLONEL MERAPE: I thank you, sir.  
 8 MR WESLEY: Okay, but what I want to know  
 9 here, your thinking at that point in time, your thinking  
 10 was that – am I correct in saying your idea, what you  
 11 thought should happen was that you should disarm the people  
 12 there because you had them cornered?  
 13 COLONEL MERAPE: Chairperson, I think at  
 14 the time where we had stopped these gentlemen, the  
 15 strikers, there, certain things happened. General Mzembe  
 16 spoke to the people and me, as crowd manager, thought it  
 17 was time that I took over to take control of the situation.  
 18 That is when I explained that they should stand back, we  
 19 will deal with the situation.  
 20 MR WESLEY: In short, your idea at that  
 21 stage, what you've written, though, is you wanted them  
 22 disarmed because you had them cornered.  
 23 COLONEL MERAPE: Chairperson – in terms  
 24 of public order intervention they should be followed –  
 25 Chairperson, yes, there were certain processes that were

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1 going to be followed though that, the aim at the end was to  
 2 – but in terms of public order interventions we would have  
 3 applied the necessary processes.  
 4 MR WESLEY: Okay, I hear that but what  
 5 you wrote then, let me make it very simple, what you wrote  
 6 here in QQQ2 is that you wanted them disarmed there because  
 7 you had them cornered.  
 8 COLONEL MERAPE: Chairperson, it was in  
 9 the interests of the nation that the people who were  
 10 cornered there put their arms down. The reason for the  
 11 police going over there was to disarm these people, I had  
 12 gone for that purpose as well.  
 13 MR WESLEY: Colonel, my question was –  
 14 you haven't answered the question. My question is, what  
 15 you wrote there in QQQ2, what you wrote was that you wanted  
 16 the people, you wanted to disarm the people there and there  
 17 "because we had them cornered." That's what you wrote.  
 18 COLONEL MERAPE: My response is the same,  
 19 yes. That was the purpose of – Chairperson, that was the  
 20 purpose of going there, yes, but as I explained there were  
 21 certain processes to be followed which will eventually end  
 22 up with them putting their arms down.  
 23 MR WESLEY: If you can then have a look  
 24 at QQQ1 paragraph 5.13, numbered paragraph 5.13 and let's  
 25 have a look at what you wrote here. In the middle of the

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1 paragraph the sentence reads, "I then said to Major-General  
 2 Mzembe that as the senior POP commander I'm taking control  
 3 and that we should" – and here's the important part –  
 4 "disperse and disarm the people." So what you wrote here  
 5 was that you wanted to, you thought they should be  
 6 dispersed and disarmed.  
 7 COLONEL MERAPE: Yes, Chairperson.  
 8 MR WESLEY: In the first part that I put  
 9 to you, you want to disarm them because you have them  
 10 cornered and in the second one you see, now you're saying  
 11 you must disperse them and disarm them.  
 12 COLONEL MERAPE: Chairperson, I take it  
 13 as I've already explained, I mentioned this when I was  
 14 being led by my counsel in evidence-in-chief, that at the  
 15 end of the day when you go and disarm people, you have to  
 16 disperse them into smaller groups to make it easier. The  
 17 final product will be to disarm. There are processes to be  
 18 followed.  
 19 MR WESLEY: I hear you and we're going to  
 20 get to that in more detail, I understand but do you see the  
 21 difficulty? There are certain places where what you say in  
 22 one statement isn't quite the same as what you say in  
 23 another statement and that's what I was trying to show you.  
 24 COLONEL MERAPE: I have explained,  
 25 Chairperson, that in my statement, that there would be

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1 certain things appearing in the one statement which you  
 2 would not find in the other one but they were not left  
 3 deliberately.  
 4 MR WESLEY: Okay. Now, in other parts of  
 5 QQQ1 – and remember the context where I'm asking these  
 6 questions is, you said in your testimony that what you did  
 7 with this statement QQQ1 was to put in stuff that you'd  
 8 forgotten to say in your previous statements, okay?  
 9 Remember that? That was your testimony.  
 10 COLONEL MERAPE: I agree, Chairperson,  
 11 the 27 questions to 28 questions -  
 12 MR MAHLANGU: - but I must say –  
 13 COLONEL MERAPE: - should not be put  
 14 aside out of context. They should be part and parcel of my  
 15 statement.  
 16 MR MAHLANGU: - that the 27 or 28  
 17 questions should not be put out of context, they should be  
 18 part and part of my statement.  
 19 CHAIRPERSON: Mr Mahlangu, we're having a  
 20 problem again with you and the witness talking over each  
 21 other. I know it's difficult but please try to avoid that  
 22 because it's very difficult for the transcribers otherwise.  
 23 I know it's difficult, I'm not criticising you, I'm just  
 24 asking you to bear it in mind.  
 25 MR MABUNDA: Thank you, Chair.

<p style="text-align: right;">Page 26839</p> <p>1 MR WESLEY: Now you've made reference 2 again to the 27 questions. The point I want to make is, 3 those 27 questions didn't just deal with material that you 4 may have left out. It also dealt with other material and 5 more specifically – we know this now because you say in 6 this statement you answered 27 questions – more 7 specifically you were also asked to deal with evidence, 8 testimony that had been led in this Commission. Is that 9 not correct? Was that not part of what you were, part of 10 the 27 questions that you were given, stuff that was said 11 here?</p> <p>12 COLONEL MERAFAE: I agree to what, about 13 what I'm being asked, Chairperson, that it is true. I just 14 want to say that some of the things that I left out were 15 left so deliberately, it's something that I wrote.</p> <p>16 MR WESLEY: No, I'm not – leave it there 17 but let's take an example. Paragraph 8.1 and it's 18 something we dealt with yesterday. Here you say, "I'm 19 aware that there is evidence that some strikers on 16 20 August 2012 were shot with pellets. None of the members 21 under my command are issued with pellets." You say that in 22 paragraph 8.1 of QQQ1, is that correct?</p> <p>23 COLONEL MERAFAE: True, sir.</p> <p>24 MR WESLEY: Now the evidence that you're 25 referring here to, you say I'm aware that there's evidence,</p>	<p style="text-align: right;">Page 26841</p> <p>1 dealing with something that was said in this Commission, 2 testimony led here by Lieutenant-Colonel Vermaak.</p> <p>3 COLONEL MERAFAE: Chairperson, you will 4 understand that when I made the statement the Commission 5 had already commenced. As a person who listens to the news 6 you hear these things, you hear what this person is saying.</p> <p>7 [09:57] MR WESLEY: Would I then be correct in 8 saying if one looks at QQQ1 that there were actually two 9 reasons why it was drafted and presented to this 10 Commission. The first one was to put stuff in there, 11 matters that you had forgotten and there was a second 12 reason and the second reason was to deal specifically with 13 specific evidence that had been led in this Commission.</p> <p>14 MS BALOYI: Chairperson, I object to that 15 question. The ruling that was previously made by the 16 Commission was that when witnesses come to testify we have 17 to provide statements, full statements of what the evidence 18 of that witness was going to be so that witnesses do not 19 end up testifying or saying things for the first time in 20 the witness stand and denying the other parties the 21 opportunity to prepare for the cross-examination of that 22 witness. Chairperson, that is the basis on which QQQ1 was 23 prepared.</p> <p>24 CHAIRPERSON: Yes, well, I don't think 25 it's the basis for an objection but I mean the point made</p>
<p style="text-align: right;">Page 26840</p> <p>1 is that evidence that has been led in this Commission? Is 2 that the evidence you are talking about?</p> <p>3 COLONEL MERAFAE: These are some of the 4 things that I overheard. What I was explaining here is 5 that I have heard that some of my members had used pellets. 6 I was also explaining that where I am working, I have not 7 seen any member being issued with those, with that 8 ammunition, the pellets.</p> <p>9 MR WESLEY: So did you put this sentence 10 in paragraph 8.1 because it was something that you heard or 11 because it was part of the 27 questions that you were given 12 to answer?</p> <p>13 COLONEL MERAFAE: Chairperson, I do not 14 remember there whether I was responding to part of the 27 15 questions or something that I'd heard but what I am 16 explaining here is that I had heard that some of the 17 members had used pellets.</p> <p>18 MR WESLEY: Let's take another example, 19 paragraph 6.3, the last part of paragraph 6.3. Here it is 20 more specific. You say there, "I am aware that Lieutenant- 21 Colonel Vermaak testified before the Commission that I told 22 him at Roots that General Mpembe gave the order to fire 23 teargas." Do you see that?</p> <p>24 COLONEL MERAFAE: I see so.</p> <p>25 MR WESLEY: So there you are specifically</p>	<p style="text-align: right;">Page 26842</p> <p>1 is a valid one, that the purpose obviously of the statement 2 was to provide a written version of all the evidence-in- 3 chief that the witness was going to give. That would have 4 included what was in the original statement, answers to the 5 27 questions, things that he noticed on reading his 6 statement that he'd forgotten about and was going to 7 mention in chief and your point is that over and above 8 those reasons, he also was going to answer specifically to 9 things Colonel Vermaak had said. Well, of course what Ms 10 Baloyi says, applies. If she was proposing to lead him in 11 chief to answer things that Colonel Vermaak had said, it 12 was appropriate for her to ensure that that material was 13 included in the statement, isn't that so?</p> <p>14 MR WESLEY: Quite so, Chair.</p> <p>15 CHAIRPERSON: I mean I think I understand 16 the point you're trying to make but I think, if I may say 17 so, you should put it differently.</p> <p>18 MR WESLEY: Over-egged the pudding. 19 Colonel, let's – we'll leave that point there.</p> <p>20 CHAIRPERSON: It is correct, is it not, 21 that part of the – some of the new material in your 22 statement that's not in the others, is inserted 23 specifically to give your answer to some of the things that 24 Colonel Vermaak had said because you didn't agree with some 25 of the things he said and you wanted to make it clear to</p>

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1 the Commission that that was so. That's fair, isn't it?

2 COLONEL MERAPE: That's correct,

3 Chairperson.

4 MR WESLEY: Let's have a look at

5 something and here we've heard Colonel Vermaak testify and

6 you have certain things to say. Now I want you to

7 understand that what we're doing here, the process which

8 I'm going to go through now with you is just to test what

9 you have to say. It must be tested, one cannot just leave

10 it hanging in the air. So you accept that, it must be

11 tested, what you have to say.

12 COLONEL MERAPE: It is so, Chairperson.

13 MR WESLEY: Okay. Now regarding the

14 order for teargas, what you're saying in paragraph 6.3 of

15 QQQ1 and I will read it again to you, so you can listen

16 carefully. You say, "I am aware that Lieutenant-Colonel

17 Vermaak testified before the Commission that I told him at

18 Roots that General Mpembe gave the order to fire teargas."

19 And you say, "I did not tell Lieutenant-Colonel Vermaak

20 this. I was not anywhere near Major-General Mpembe when

21 the first teargas was thrown and I could not have made such

22 an allegation."

23 COLONEL MERAPE: Chair, it is true, I was

24 not near General Mpembe when the teargas was thrown.

25 MR WESLEY: Were you in this chamber when

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1 Lieutenant-Colonel Vermaak gave this evidence?

2 COLONEL MERAPE: No.

3 MR WESLEY: Did you see this evidence

4 being led on television maybe?

5 COLONEL MERAPE: Chair, I read the

6 papers, I also listen to the broadcasts. That's what I

7 read in the news and I knew that I was at Roots, it's not

8 just stories that I'm giving here.

9 MR WESLEY: But you can't remember

10 specifically how you became aware of this?

11 COLONEL MERAPE: You're confusing me,

12 sir. The questions that you were asking are not questions

13 that I can answer directly, I am a bit confused.

14 MR WESLEY: No, okay, I'll make it

15 simple. Here you say, the very first sentence, "I am aware

16 that Lieutenant-Colonel Vermaak testified." You're aware

17 that he testified, you know that Lieutenant-Colonel Vermaak

18 testified this, do you see that?

19 COLONEL MERAPE: As I have explained,

20 that as a person who listens to the news, when General –

21 when Vermaak was here, when Vermaak was here, from the news

22 and so on I knew that he had said this. That is why I'm

23 saying I knew that he was giving evidence here. I had also

24 seen this in the news.

25 MR WESLEY: You saw this in the news, is

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1 that how you became aware of this testimony?

2 COLONEL MERAPE: Chair, at Roots this

3 matter came up. In the Commission here it also came up. I

4 made my statement whilst the Commission was continuing.

5 The matter that is being raised here is something that I

6 know, it has been said.

7 MR WESLEY: Colonel, you're not answering

8 the question but I'm going to move on, I'll leave it there.

9 You must have been very upset with Lieutenant-Colonel

10 Vermaak that he would say something like this about you

11 under oath.

12 COLONEL MERAPE: Chairperson, anybody has

13 that right to say things about me, I don't get angry, it's

14 fine.

15 MR WESLEY: You weren't upset?

16 COLONEL MERAPE: Never. I don't get

17 angry about things that happen – particularly where there

18 is no truth, that does not worry me.

19 MR WESLEY: Okay. Would you be surprised

20 if I told you that Lieutenant-Colonel Vermaak did not

21 testify like that?

22 COLONEL MERAPE: No, Chairperson, as I

23 explained I am not going to argue with you if you say that.

24 MR WESLEY: In the documents that you

25 were given is exhibit LLL8, that's Lieutenant-Colonel

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1 Vermaak's statement of 21 January 2014. Could you go to

2 paragraph 12 of it? It's in Afrikaans. I'll read the

3 Afrikaans and if the Chair would be kind enough to

4 translate –

5 CHAIRPERSON: Why don't, why shouldn't I

6 read the Afrikaans, you translate –

7 MR WESLEY: I'm quite happy to do it

8 myself, Chair.

9 CHAIRPERSON: What's the paragraph?

10 MR WESLEY: I can do it, Chair.

11 CHAIRPERSON: Where is it, where –

12 MR WESLEY: Paragraph 12.

13 CHAIRPERSON: Okay, I think I can find

14 it.

15 MR WESLEY: There's words the word –

16 there's one sentence and it is this, the Colonel is dealing

17 with events on the 6th of September, if I'm not mistaken or

18 maybe it was the 5th, the 5th of September at Roots. Now he

19 gets to a part at the bottom, it reads as follows in

20 Afrikaans, "Die kwessie het ter sprake gekom van wie die

21 traanrook en skokgranate gegooi het en wie die opdrag gegee

22 het. Kaptein Thupe het toe opgestaan en vir die generaal

23 gesê dat hy, wat die generaal is, is die een wat die opdrag

24 gegee het. Die generaal het dit aanvanklik ontken." And

25 then it carries on.



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1 CHAIRPERSON: I'll translate it. The  
 2 question then arose as to who threw the teargas and the  
 3 stun grenades and who gave the instruction. Captain Thupe  
 4 then stood up and told the General that he, that's to say  
 5 the General, is the one who gave the instruction. That's  
 6 the passage that you read in Afrikaans.  
 7 MR WESLEY: Thank you, Chair.  
 8 CHAIRPERSON: The point made is that he,  
 9 and he said the same in his evidence, the point made is  
 10 that Lieutenant-Colonel Vermaak didn't accuse you of having  
 11 made that allegation. He said, in fact, that it was  
 12 Captain Thupe who said it. So if you heard it on the radio  
 13 or read it in the newspaper – well, I don't think you could  
 14 have heard it on the radio because they wouldn't have got  
 15 it wrong and I don't think, it's unlikely there was a wrong  
 16 report in the newspaper, so either somebody told you that  
 17 or somehow you misunderstood what you'd heard. I'm not  
 18 sure how significant it is but what is important is that  
 19 the Colonel didn't say that.  
 20 COLONEL MERAFAE: Chairperson, as I  
 21 explained, counsel is going this way and this way and  
 22 doesn't ask direct questions to which I should reply. That  
 23 is why I mention that even if I try my best to respond to  
 24 him, he confuses me.  
 25 CHAIRPERSON: You're now going on a

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1 dwaalspoor. Let's stick to the main track. The point I'm  
 2 putting to you has nothing to do with the way counsel is  
 3 asking his questions. What I said to you is this, you said  
 4 in your statement that you're aware that Lieutenant-Colonel  
 5 Vermaak accused you of having said that he gave the order.  
 6 What counsel says to you is, that's not correct,  
 7 Lieutenant-Colonel Vermaak didn't say that, he said  
 8 something else and he then shows you from the original  
 9 statement that Colonel Vermaak made – not the original  
 10 statement, the statement he put before the Commission which  
 11 is in accordance with the evidence he gave and which I,  
 12 which he read to you in Afrikaans and I have translated –  
 13 it appears from that that Lieutenant-Colonel Vermaak did  
 14 not say that you had accused him of having given the  
 15 instruction. What he said was that Captain Thupe stood up  
 16 at Roots and said that he accused him, that is to say the  
 17 General, of having given the instruction. That's the  
 18 point. So what you said in your statement, I'm aware that  
 19 Colonel Vermaak said that, that wasn't correct. You either  
 20 misunderstood what Lieutenant-Colonel Vermaak had said or  
 21 you were misinformed but anyway, the point is the  
 22 allegation you were dealing with wasn't correct. Of course  
 23 it's not serious because you say you didn't make the  
 24 allegation, you said you couldn't have made it because you  
 25 weren't next to him at the time the stun grenade was

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1 thrown, the teargas canister was thrown. Now that fits in  
 2 with what Colonel Vermaak says because he says you didn't  
 3 make the allegation, it was Thupe.  
 4 COLONEL MERAFAE: It is so, Chairperson.  
 5 Yesterday I also explained the Thupe question, I said Thupe  
 6 was the person next to him and Thupe is the person who  
 7 said.  
 8 CHAIRPERSON: You see, so you and the  
 9 Colonel were choirboys singing from the same hymn sheet on  
 10 that point, to use the metaphor you used.  
 11 MR WESLEY: Do you accept that you were  
 12 misinformed by wherever it was or whomever it was that told  
 13 you that Lieutenant-Colonel Vermaak had made that  
 14 statement? He didn't say that about you.  
 15 COLONEL MERAFAE: Chairperson, what I  
 16 know, what I know about General Vermaak – I mean General,  
 17 what I know about General – what I know about the  
 18 allegations which were made by Colonel Vermaak was that  
 19 there was a plan to murder the General. That is all I  
 20 know.  
 21 MR WESLEY: Okay.  
 22 COLONEL MERAFAE: Which was mentioned at  
 23 Roots.  
 24 MR WESLEY: Let's move on to a second  
 25 part then. In that same paragraph 6.3 there's something

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1 else that you state. At the very start of the sentence,  
 2 let's look at this part, you say here – 6.3, there we go,  
 3 I'll read it for you. You say that "Before we started a  
 4 discussion in my breakaway group, Major-General Mpembe  
 5 asked Lieutenant-Colonel Vermaak to tell him who threatened  
 6 to kill him on 13 August 2012. Major-General Mpembe said  
 7 to Colonel Vermaak that if he did not disclose the person  
 8 that made the threat he would lay a charge of intimidation  
 9 against Colonel Vermaak. Colonel Vermaak then said 'die  
 10 man langs jou,'" which means the man next to you. "I was  
 11 sitting next to Major-General Mpembe and Major-General  
 12 Mpembe turned and looked at me. I said to the Major-  
 13 General that I did not know anything of what Colonel  
 14 Vermaak was talking" and it carries on. You see that?  
 15 COLONEL MERAFAE: I see, Chairperson.  
 16 MR WESLEY: Now if you have a look –  
 17 that's what you, you're addressing that allegation but that  
 18 doesn't quite accord with what Lieutenant-Colonel Vermaak,  
 19 what his evidence was. If you can have a look at LLL8,  
 20 I'll use the statement again to show you, paragraph 12. I  
 21 just want to find the place, Chair. It begins – well, it  
 22 begins at, actually that's the start, there we go. It  
 23 says, "In opdrag van die Provinsiale Kommissaris moes die  
 24 betrokke bevelvoerders van 27 Augustus 2012 tot 6 September  
 25 2012 'n nabetragtingsessie bywoon te Potchefstroom, Roots,

<p style="text-align: right;">Page 26851</p> <p>1 om 'n voorlegging voor te berei vir die Provinsiale en 2 Nasionale Kommissarisse. In die tydperk was daar noukeurig 3 deur die gebeure gewerk. Op 5 September 2012 het ons 4 opdrag ontvang om in groepe op te deel soos die gebeure 5 plaasgevind het. Luitenant-kolonel Merafe het by my kom 6 staan tydens tee breek en het hy aan my genoem dat hy 7 ongelukkig is oor – ongelukkig is dat generaal Mpembe die 8 toneel by die spoor oorgeneem het en hom as POP 9 bevelvoerder uitgeskuif het en nie geluister het na die 10 raad wat vir hom gegee was nie. Ek het besef dat dit net 11 bevestig wat die lede die dag by die spruit vir my gesê 12 het, dat hulle nie tevrede was met die generaal se besluite 13 nie.” Now I can do a rough translation. The only part 14 which is –</p> <p>15 CHAIRPERSON: Before you translate it for 16 him, what paragraph?</p> <p>17 MR WESLEY: From 5 September, “Op 5 18 September-“</p> <p>19 CHAIRPERSON: Op 5 September?</p> <p>20 MR WESLEY: The sentence that begins, on 21 5 September, “Op 5 September” – Chair, can I do a 22 translation?</p> <p>23 CHAIRPERSON: Yes, do so.</p> <p>24 MR WESLEY: What he said is, on 5 25 September 2012 we received an order to divide ourselves</p>	<p style="text-align: right;">Page 26853</p> <p>1 MR WESLEY: Thank you, Chair. Do you see 2 that there's a difference here? We of course yet don't 3 know which is correct but what you're addressing in 4 paragraph 6.3 of QQQ1 where Colonel Vermaak would have said 5 “die man langs jou,” you're saying that it regarded a 6 threat against the life of General Mpembe but what 7 Lieutenant-Colonel Vermaak was actually addressing was 8 unhappiness about the General having taken over and having 9 moved you aside as POP commander at the scene on the 13th, 10 do you see that?</p> <p>11 [10:16] COLONEL MERAFA: I see, Chairperson, but 12 I want to explain that. In this statement, the statement 13 now on the screen, here there's not – it is not talking 14 about things that were happening at Roots. It is a cover- 15 up as it is that the statements went about being changed 16 from time to time. The first thing is, there was no 15 17 minutes tea breaks there. General Mpembe started, before 18 we can even start talking about anything, asked Colonel 19 Vermaak – right away.</p> <p>20 MR MAHLANGU: General Mpembe asked right 21 away, the other part he said in English, he said it's right 22 away from the start about the allegations, the threats on 23 his life.</p> <p>24 COLONEL MERAFA: I don't know what the 25 General was trying to, the Colonel here was trying to</p>
<p style="text-align: right;">Page 26852</p> <p>1 into groups according to the events as they happened. 2 Lieutenant-Colonel Merafe came and stood by me during a tea 3 break and he mentioned to me that he was upset that General 4 Mpembe took over at the scene –</p> <p>5 CHAIRPERSON: Had taken over the scene.</p> <p>6 MR WESLEY: Ja.</p> <p>7 CHAIRPERSON: Had taken over the scene by 8 the railway line.</p> <p>9 MR WESLEY: Yes.</p> <p>10 CHAIRPERSON: And had pushed him aside as 11 POP commander and did not listen to the advice that was 12 given to him. I realised that that just confirmed what the 13 members had said to me that day at the stream, that they 14 were not satisfied with the General's decisions. We then 15 went into the discussion group and the group could not get 16 started, whereupon I suggested that we should begin at the 17 beginning where the strikers were next to the railway line 18 and what went wrong there. I made the comment, I then made 19 the comment that some of the members were not happy with 20 the General's decision. General Mpembe was immediately 21 angry about the comment and insisted that I should say who 22 had said it, whereupon I mentioned to him that Lieutenant- 23 Colonel Merafe about 15 minutes earlier had made the 24 comment. Lieutenant-Colonel Merafe originally denied it. 25 That's the passage.</p>	<p style="text-align: right;">Page 26854</p> <p>1 polish when he mentioned these things.</p> <p>2 MR WESLEY: But you see, Colonel Vermaak 3 didn't testify that you were the one who made the death 4 threat against General Mpembe.</p> <p>5 COLONEL MERAFA: Die man langs jou – 6 General Mpembe - I'm going to lay a charge of intimidation 7 against you if you don't tell me the man who threatened to 8 kill me. That is that.</p> <p>9 MR MAHLANGU: The use of the words “die 10 man langs jou,” as he says, came out as a result of that.</p> <p>11 CHAIRPERSON: [Microphone off, inaudible] 12 – this point does seem to differ from the previous point. 13 The previous point you were dealing with an allegation this 14 witness made about what he understood Colonel Vermaak to 15 have said in evidence here and you showed that in Colonel 16 Vermaak hadn't said that. He's now dealing with something 17 else, he's not dealing with what he understood Colonel 18 Vermaak to have said here. What he's dealing with is what 19 he says Colonel Vermaak said at Roots. He says Colonel 20 Vermaak at Roots accused him of having said that he was the 21 one who had threatened the General. And he says, and it's 22 correct that Colonel Vermaak didn't say that in his 23 evidence here but that's not the point. He says that what 24 Colonel Vermaak did say is incorrect and he says what 25 Colonel Vermaak did say at Roots but it doesn't turn on his</p>

<p style="text-align: right;">Page 26855</p> <p>1 evidence, it turns upon what actually happened at Roots. 2 So there is a difference, I think. 3 MR WESLEY: Yes, Chair. No, what I was 4 going to say is we must then accept that as far as this 5 incident is concerned there's definitely a difference 6 between you have to say and what Colonel Vermaak has to say 7 about what happened. We know that, you've got a version, 8 he has a version. 9 MS BALOYI: Chairperson, Mr Wesley is 10 putting to the witness the difference in the account of 11 what happened at Roots. I'm not sure that that is 12 factually correct, Chairperson. Colonel Vermaak speaks to 13 something and then the Colonel speaks to something 14 completely different. It may well be that all of that 15 happened or one or the other happened and I'm not sure that 16 what Mr Wesley is putting is correct. 17 CHAIRPERSON: Well, I'm not sure that 18 anything turns on this from a material point of view and I 19 don't propose devoting a chapter in the report to solving 20 this particular problem, this conflict of fact. The fact 21 is, as you correctly say, Colonel Vermaak gives one version 22 of what was said, the witness gives another. It's 23 possible, as suggested, that both may even be true because 24 both may be correct but speaking for myself, I hope I'll be 25 forgiven for saying I'm not terribly interested in which of</p>	<p style="text-align: right;">Page 26857</p> <p>1 COLONEL MERAFAE: You are given a sidearm 2 if you have undergone training in the use. 3 MR WESLEY: Now when you are given a 4 sidearm as a SAPS member, what are your duties with regard 5 to the keeping of that sidearm? 6 COLONEL MERAFAE: One has got to see to it 7 that it is kept safe in his possession – a safe that is 8 moulded on the wall for safekeeping of that firearm. 9 MR MAHLANGU: That in one's house, if 10 it's got to be kept there, there has got to be a safe that 11 is moulded into the wall for the safety of that firearm. 12 MR WESLEY: Okay, so when it's not in 13 your possession you must keep it in a safe. 14 COLONEL MERAFAE: Lock it and have the key 15 with you. 16 MR WESLEY: Have the key with you and 17 otherwise you must keep it safe in your possession when you 18 have it. 19 COLONEL MERAFAE: Correct, Chairperson. 20 MR WESLEY: Is a SAPS member allowed to 21 take his firearm, his sidearm, and just give it to another 22 SAPS member, his friend who is on duty with him, or never? 23 COLONEL MERAFAE: It depends on 24 circumstances, Chairperson. 25 MR WESLEY: Okay. What circumstances may</p>
<p style="text-align: right;">Page 26856</p> <p>1 the two is correct on this point because I don't think it's 2 going to affect any recommendations or findings the 3 Commission makes. 4 MR WESLEY: No, Chair. The point is the 5 witness's answers have explained the difference and we 6 can't take it further and I have no intention of taking it 7 any further than that. 8 CHAIRPERSON: May we move on, Mr Wesley? 9 MR WESLEY: Next point. Now, Colonel, 10 you hold the rank of Lieutenant-Colonel, it's a senior 11 officer, regarded as a senior officer in the South African 12 Police Service. Are you a senior officer? 13 COLONEL MERAFAE: It is so, yes. 14 MR WESLEY: Yes, and as a senior officer 15 is it not your duty to report incidents of misconduct on 16 the part of fellow officers to your superiors? In other 17 words, if you see a fellow officer misconduct themselves, 18 himself or herself, you report to whomever it is that you 19 have to report. 20 COLONEL MERAFAE: It's my job, yes. 21 MR WESLEY: And here, please, I'm relying 22 on your experience as a police officer to explain this to 23 us. We know that – well, let me ask you, are all SAPS 24 members issued with a sidearm? Does everyone get one or 25 only selected members?</p>	<p style="text-align: right;">Page 26858</p> <p>1 he do it and what circumstances may he not do it? 2 COLONEL MERAFAE: Circumstances such as I 3 have been injured there and I know that you have undergone 4 training in the use of this firearm, I could give it to 5 you. 6 MR WESLEY: Okay, any other 7 circumstances? 8 COLONEL MERAFAE: The other circumstances 9 would be if I'm unable to use it – I have run out of 10 ammunition for that firearm, the rounds. It actually 11 depends on circumstances existing at the time, Mr 12 Chairperson. 13 MR WESLEY: Okay, so there are 14 circumstances when you can. Now, if one SAPS member does 15 hand over a weapon to his friend, would you agree with me 16 that it must be recorded in – that SAPS person, member, 17 must record that in their pocketbook or diary? 18 COLONEL MERAFAE: Chairperson, when you 19 speak of handing over, yes, that would be the position. 20 MR WESLEY: Yes. Now, not all SAPS 21 members are issued with R5 rifles. 22 COLONEL MERAFAE: Any member of the police 23 who has undergone training in the use of R5 is issued with 24 an R5. 25 MR WESLEY: So it's the same thing, if</p>

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1 you've undergone the training you can be issued with an R5,  
 2 I understand that. Now, the duties with regards, if you've  
 3 got an R5 in your possession, you're issued one, are they  
 4 any different to your handgun as regards keeping it in your  
 5 possession and handing it over to another member if you  
 6 want to? Is it the same? In other words, you've got to –  
 7 if you have it in your possession you have to keep it safe  
 8 in your possession. If you don't have it, you must have it  
 9 locked up or is there a difference?

10 COLONEL MERAPE: Safekeeping of firearms  
 11 is the same, Chairperson. One has got to have it in his  
 12 possession all the time. If you're not using it, it must  
 13 be locked away where another person could not have access  
 14 to it.

15 MR WESLEY: Now with regard to handing it  
 16 over to another member, is there a difference between an R5  
 17 and a 9 millimetre, for instance, are you permitted to hand  
 18 it over in circumstances?

19 COLONEL MERAPE: Chair, if a person  
 20 voluntarily hands this over to another person, an entry  
 21 would be made, it would be written down.

22 MR WESLEY: And entry would be made in?

23 COLONEL MERAPE: It depends where you  
 24 are. It depends on where people are. If you are in the  
 25 veld, this would be in the pocketbook. An OB entry would,

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1 through proper communications, also be made.

2 MR WESLEY: Okay, so there would be some  
 3 – there would be, I mean this is a powerful weapon, there  
 4 would be a record somewhere, a written record that R5  
 5 number XYZ was handed over to so-and-so by so-and-so on  
 6 this day?

7 COLONEL MERAPE: If you have noted, sir,  
 8 that I said if a person hands it over as to another person  
 9 voluntarily.

10 MR WESLEY: Yes. No, I understand that.  
 11 Now let's deal specifically with R5 rifles. Is one SAPS  
 12 member allowed to go and take an R5 rifle from another  
 13 member?

14 COLONEL MERAPE: As I explained, Chair,  
 15 if circumstances force one to do that and one has the  
 16 necessary training, you can.

17 MR WESLEY: You can go to a member and  
 18 grab their R5 for yourself?

19 COLONEL MERAPE: Chairperson, I said  
 20 depending on different circumstances.

21 MR WESLEY: Well, let's go specifically  
 22 to the point, Lieutenant-Colonel Vermaak on the 13th of  
 23 August grabbing an R5 rifle from a TRT member. You make  
 24 that allegation, you say he did. It's in paragraph 5.2.1  
 25 of QQQ1, shall we go there? Let's look at those

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1 circumstances, let's not talk in theory. Let's look at  
 2 these circumstances so we can understand this. Let me read  
 3 the paragraph to you. You say, "Whilst attending to  
 4 Warrant Officer Lepaaku I saw Lieutenant-Colonel Vermaak on  
 5 the scene. I did not see him land his chopper on the  
 6 scene. I saw Lieutenant-Colonel Vermaak grab an R5 rifle  
 7 from one of the TRT members who were standing around where  
 8 we were attending to Warrant Officer Lepaaku and I heard  
 9 him say in Afrikaans to the TRT members, why were they just  
 10 standing and that they should go with him to chase after  
 11 the marchers to go recover the police R5. I did not know  
 12 the name of the member from whom Lieutenant-Colonel Vermaak  
 13 took the R5 but remember that he is short. Lieutenant-  
 14 Colonel Vermaak ran with the TRT members that he ordered to  
 15 go with him in the direction of the informal settlement."  
 16 Okay, those are the circumstances.

17 COLONEL MERAPE: That's correct, Chair.

18 MR WESLEY: Was he entitled to do that?

19 COLONEL MERAPE: Chair, I said it will  
 20 depend on the circumstances and I said he took this  
 21 firearm, I saw him do that. I saw him do that and I saw  
 22 him going along with them. One other thing, Chairperson,  
 23 you cannot just follow people and follow them when they  
 24 have arms and you don't have anything, just with your empty  
 25 hands.

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1 MR WESLEY: Yes? And so a firearm  
 2 belonging to the SAPS was taken by one of the strikers and  
 3 he was going away with it. Vermaak then grabbed one arm  
 4 from members of the TRT and went along with them. This is  
 5 not something that I overheard, not hearsay, it's something  
 6 that I saw with my own eyes.

7 MR WESLEY: Now I've heard what you said  
 8 but my question was, in these circumstances was he entitled  
 9 to do that?

10 COLONEL MERAPE: Chair, I have mentioned,  
 11 circumstances would differ. Possibly he made that decision  
 12 because he saw the others standing and doing and he took a  
 13 firearm which he's trained to use and then proceeded with  
 14 the job.

15 CHAIRPERSON: You haven't answered the  
 16 question. The question was, in the circumstances which  
 17 you've described, was Lieutenant-Colonel Vermaak entitled  
 18 to take the firearm from the TRT member?

19 COLONEL MERAPE: In terms of law, sir,  
 20 no, he was not supposed to.

21 CHAIRPERSON: So it was an irregular act  
 22 on his part?

23 COLONEL MERAPE: It also surprised me,  
 24 Chair.

25 MR WESLEY: Now just to round off the

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1 picture, did he then – you've spoken about he ran off with  
 2 members, did he run off with the R5 rifle with him?  
 3 COLONEL MERAFAE: Yes, sir. He had the  
 4 firearm, he had it when he left then. I then did not  
 5 further pay attention to that.  
 6 MR WESLEY: Okay, so he ran off with the  
 7 R5 with the TRT members.  
 8 COLONEL MERAFAE: Correct, they were two  
 9 and one from the POP.  
 10 MR WESLEY: Two TRT, one POP.  
 11 COLONEL MERAFAE: Who were standing around  
 12 there, I saw two of the TRT and one – but there were many  
 13 others standing there.  
 14 CHAIRPERSON: I understand you to say  
 15 that you and Colonel Dirole then left and took Warrant  
 16 Officer Lepaaku to the clinic at Marikana.  
 17 COLONEL MERAFAE: That is so, Chair.  
 18 CHAIRPERSON: So you don't know what  
 19 happened to the R5 that Colonel Vermaak took over from the  
 20 TRT member after that, is that right?  
 21 COLONEL MERAFAE: I do not know what was  
 22 the end of this, what he did with it.  
 23 CHAIRPERSON: But it was an irregular  
 24 action on his part to take the weapon, is that right?  
 25 That's what you said.

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1 COLONEL MERAFAE: Chairperson, yes. As I  
 2 say, it also surprised me to a great extent.  
 3 CHAIRPERSON: Well, wasn't it something  
 4 that should have been followed up? Shouldn't some entry  
 5 have been made, shouldn't some charge have been laid or  
 6 something of that kind if it's an irregular thing that took  
 7 place in front of you, observed clearly?  
 8 COLONEL MERAFAE: Chairperson, on that day  
 9 certain things happened that, of the police, the death of  
 10 the protesters, the strikers, after this I attended to  
 11 quite a number of things, Chairperson, and did not really  
 12 take this thing further.  
 13 CHAIRPERSON: Mr Wesley, perhaps you can  
 14 take this point further after we've taken the tea  
 15 adjournment.  
 16 MR WESLEY: I was about to ask, Chair.  
 17 CHAIRPERSON: We will take the tea  
 18 adjournment at this stage.  
 19 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 20 [11:13] CHAIRPERSON: The Commission resumes.  
 21 Before we carry on with the evidence, I understand that the  
 22 families are due to return home today. I don't know  
 23 whether they will leave before we adjourn just before 1  
 24 o'clock but if they do I think it's appropriate – just in  
 25 case they do, it's appropriate for me to say to them now

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1 that we wish them a safe journey home and we look forward  
 2 to seeing them again when we resume in May. No, let me  
 3 repeat that. We wish them a safe journey home and we hope  
 4 that they will also have a safe journey back when we  
 5 resume. I'm not sure when we'll resume but that's a matter  
 6 which we'll deal with in due course but I know it's a long,  
 7 difficult journey for them to come here, to leave their  
 8 homes behind but it's important for them to be here, it's  
 9 important for us that they are here and I want them to  
 10 appreciate that and that's why we wish them a safe journey  
 11 home and a safe return. And we wish them also a happy  
 12 Easter. Colonel, you're still under oath.  
 13 OMPHILE JOSEPH MERAFAE: (s.u.o.)  
 14 CHAIRPERSON: Mr Wesley?  
 15 CROSS-EXAMINATION BY MR WESLEY (CONTD.):  
 16 Thank you, Chair. Colonel, to carry on with this point, we  
 17 don't need to go there but I can tell you in paragraph 12  
 18 of QQQ2 you list the participants or the people, the SAPS –  
 19 CHAIRPERSON: Before we get there,  
 20 housekeeping. We found on our table a document headed  
 21 "Consolidated statement of Captain Samuel K Thupe." I take  
 22 it this has got to be marked as an exhibit?  
 23 MR WESLEY: Yes, Chair. I beg your  
 24 pardon, I forgot to mention that to you.  
 25 CHAIRPERSON: QQQ9.

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1 MR WESLEY: Chair, yes, and while we're  
 2 on housekeeping let me just mention, this statement arrived  
 3 by e-mail this morning at approximately 25 to 10 while I  
 4 was busy cross-examining the witness. Chair, during the –  
 5 CHAIRPERSON: So it's hot off the press.  
 6 MR WESLEY: Very hot off the press,  
 7 Chair.  
 8 CHAIRPERSON: You'll get to it in due  
 9 course but anyway, now I've marked it, the consolidated  
 10 statement of Captain SKK Thupe is now QQQ9 and when, if you  
 11 get an opportunity to deal with it before we adjourn, you  
 12 will, otherwise you'll look at it, you'll deal with it  
 13 again on Monday.  
 14 MR WESLEY: Chair, I'm going to return to  
 15 it –  
 16 CHAIRPERSON: Monday?  
 17 MR WESLEY: Tuesday, Chair.  
 18 CHAIRPERSON: Tuesday, sorry. I beg your  
 19 pardon, Tuesday. Look at it on Monday and prepare what  
 20 you're going to do with it on Tuesday.  
 21 MR WESLEY: Chair, there's some further  
 22 housekeeping and here I must admit I think I've got myself  
 23 into trouble with you but more especially with Ms Pillay.  
 24 Mr Gumbi was kind enough to point out to me that what we  
 25 have marked as exhibit QQQ7.1 and QQQ8.1, the two

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1 manuscript statements by Constable Sekgweleya and Sergeant  
2 Mgyue respectively were already made exhibits by him.  
3 CHAIRPERSON: I see, alright.  
4 MR WESLEY: They are –  
5 CHAIRPERSON: Well, I'm sorry for that  
6 little mistake but we'll have to fix it up.  
7 MR WESLEY: Yes.  
8 CHAIRPERSON: So wht we will do is we'll  
9 simply make the supplementary statement of Constable  
10 Sekgweleya QQQ7 and the supplementary statement of Sergeant  
11 Mgyue QQQ8.  
12 MR WESLEY: Thank you, Chair, and may I –  
13 CHAIRPERSON: And the other two you say  
14 are already exhibits?  
15 MR WESLEY: Yes, Chair –  
16 CHAIRPERSON: Just for the sake of good  
17 order would you like to tell us what the exhibit numbers  
18 are?  
19 MR WESLEY: Yes. The manuscript  
20 statement of Sergeant, of Constable Sekgweleya is HHH29 and  
21 the manuscript statement of Sergeant Mgyue is HHH30.  
22 CHAIRPERSON: Thank you very much.  
23 MR WESLEY: And may I just say thank you  
24 to Mr Gumbi for pointing that out to me.  
25 CHAIRPERSON: Mr Gumbi, you've made

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1 another valuable contribution to the work of the  
2 Commission.  
3 MR WESLEY: Sorry, Colonel, to get back,  
4 in QQQ2 you list the SAPS units and members who went to the  
5 scene on the 13th by the railway line and you there  
6 specifically state that the TRT was the TRT from North-  
7 West. Is that the TRT members that attended the scene on  
8 the 13th? North-West TRT.  
9 COLONEL MERAFAE: Chairperson, yes, under  
10 Captain Thupe. When I speak of North-West I mean  
11 Klerksdorp and Rustenburg, Chair.  
12 MR WESLEY: Thank you. Now we know that  
13 approximately 70 SAPS members in total went to that scene.  
14 How many of them were TRT, approximately? You don't have  
15 to give me an exact figure, an approximation?  
16 COLONEL MERAFAE: I did not count them,  
17 Chair.  
18 MR WESLEY: Could you say approximately  
19 10, 20?  
20 COLONEL MERAFAE: Chairperson, I did not  
21 count them nor did I cause them to parade because they came  
22 with their own commanders.  
23 MR WESLEY: Okay. If you don't know then  
24 obviously you don't know. You'll agree with me though,  
25 SAPS, the police should be able to – it's not such a large

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1 number that SAPS won't be able to identify who they were.  
2 SAPS can say who they were or investigate and establish  
3 that fact, who they were. The TRT members that were there,  
4 SAPS can get a list of their names.  
5 COLONEL MERAFAE: Chairperson, SAPS  
6 receives an SAP15, they would be able to determine from  
7 there who those members were.  
8 MR WESLEY: And once they've done that  
9 exercise they'll be able to call those members in and say  
10 please give us your pocketbooks and if they're an officer,  
11 give us your diary.  
12 COLONEL MERAFAE: Correct, Chairperson.  
13 MR WESLEY: I just want to put this to  
14 you. We've seen pocketbooks and diaries and I don't recall  
15 my attention being directed to one specifically where any  
16 mention is made of the incident that you've referred to,  
17 the taking of the R5 rifle by Lieutenant-Colonel Vermaak,  
18 by any member. Do you know of a pocketbook or a diary  
19 entry that records this?  
20 COLONEL MERAFAE: Chair, I did not check  
21 exhibits or statements or whatsoever of members of  
22 different units. Even statements of my own members I  
23 haven't checked. If you say so, I think I would agree with  
24 you.  
25 MR WESLEY: But if SAPS are inclined to

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1 do the exercise they can do that, though.  
2 COLONEL MERAFAE: SAPS can do so,  
3 Chairperson, as the employer. Yes, they can do so as the  
4 employer.  
5 MR WESLEY: Now you also mentioned that  
6 another place where one might find mention of this in  
7 writing is an entry in the occurrence book, if I'm not  
8 mistaken, where a sitrep is given or –  
9 COLONEL MERAFAE: I've said if it is done  
10 correctly, Chairperson, yes, entries are being made.  
11 MR WESLEY: No, if it is done correctly,  
12 I accept that but we need just to round off the point. The  
13 occurrence book pertaining to Marikana is exhibit FFF25 and  
14 I apologise for not previously referring you to this but  
15 this only came up as a result of your evidence now. FFF25,  
16 during teatime I have gone through the occurrence book, I  
17 think it'll be brought up now, Craig should be – page 4,  
18 Craig. If you go up, up. No, that's down. Up, up a bit  
19 more, a bit more. I just want to show you – Craig go to  
20 the previous page, entry number 1. If you start, there we  
21 go. Go down, down. Now that's the occurrence book that  
22 you see there from, that records the events on Monday. Now  
23 during the tea break I've gone through this occurrence  
24 book. There isn't an entry recording that Lieutenant-  
25 Colonel Vermaak might have taken or took an R5 from a

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1 member. Would you accept that I say that to you, it's not  
2 there?

3 COLONEL MERAFAE: I said, Chairperson, if  
4 things are being done in accordance with law, correctly,  
5 the procedure that is being followed is the one that I have  
6 explained. Extraordinary things will not appear on our  
7 occurrence book.

8 MR WESLEY: So this is an extra – sorry,  
9 I'm trying to understand now. Well, let me go to entry  
10 number 47 because you made a sitrep that day. Now please  
11 understand - 47, there we go – now understand, I don't want  
12 to minimise what happened and what occurred that day was  
13 traumatic. I accept that fully but you testified about  
14 making reports and this is a serious incident and if things  
15 are done properly then that would be recorded. You did  
16 make a sitrep report there at approximately 25 to four.  
17 Now you don't record in that sitrep this incident of  
18 Lieutenant-Colonel Vermaak taking an R5 rifle from a  
19 member.

20 COLONEL MERAFAE: Chairperson, I don't see  
21 on the sitrep where I make mention of the TRT following up  
22 the people and the shooting that took place. Also on the  
23 sitrep made by me I don't see where I mentioned the use of  
24 teargas and other – there I was, the entry specifically  
25 refers to the injured and the dead police officers.

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1 the statements of other different people.

2 MR WESLEY: I accept that, I accept that  
3 but I've done a job to go and look for other places where  
4 this might have been mentioned and I came across two  
5 statements which might assist us. Now, during the course  
6 of this morning you saw them, they are now two statements  
7 that are QQQ7 and QQQ8. You remember seeing those two  
8 statements? I think you have copies with you. It's a  
9 statement by Constable Sekgweleya and Sergeant Mguye. Do  
10 you remember reading those?

11 COLONEL MERAFAE: I read them thoroughly,  
12 Chair.

13 MR WESLEY: Okay, right. Now Chair,  
14 before I proceed I must place something on record, Chair.  
15 Yes Chair, before I proceed with these I must place  
16 something on record. When these were handed in the  
17 evidence leaders - there was an attempt last week to hand  
18 them in, if I'm not mistaken – the evidence leaders  
19 objected to them being handed in. I'm also asked to record  
20 the South African Human Rights, just to record, they also  
21 objected to the handing in of these two statements. I  
22 intend to use them in fact to show a negative. My  
23 submission is that producing them here doesn't detract from  
24 the objections that stand. I just wish to place that on  
25 record.

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1 MR WESLEY: No, I accept that and I said  
2 to you, and I can even understand why you only made that  
3 report. I understand that. It was traumatic and I know  
4 why you made this sitrep but the point I'm making is, in  
5 this one you don't mention Lieutenant-Colonel Vermaak  
6 having taken an R5.

7 COLONEL MERAFAE: Chair, I say just as I  
8 did not say that the TRT members who were following the  
9 strikers, the same question should be asked and not that  
10 where I speak about him alone.

11 MR WESLEY: I'll carry on. There isn't  
12 another entry on that day about Lieutenant-Colonel – by  
13 anybody in fact – about Lieutenant-Colonel Vermaak, about  
14 him having taken an R5 rifle from a TRT member and having  
15 run off with it. Do you accept that?

16 COLONEL MERAFAE: I agree if you say so,  
17 sir.

18 MR WESLEY: Now the reference to this  
19 event of Lieutenant-Colonel Vermaak having taken an R5  
20 rifle from a member on the 13th and then having run off with  
21 it, Colonel, the only place that it is mentioned in an  
22 affidavit is your affidavit. Did you know that?

23 COLONEL MERAFAE: I did not know that. I  
24 only know it now that you're saying it to me, sir. As I  
25 have already said, I did not have a chance to go through

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1 CHAIRPERSON: But the objections really  
2 related, as I understood it – if I misunderstood it I hope  
3 you'll correct me – the main thrust of the objection was,  
4 this was in the course of the examination or cross-  
5 examination actually of Colonel Vermaak. The main point,  
6 as I understood it, was that it's very unfair on him. It  
7 also was a departure from what is understood to be the  
8 practice in this Commission, but Colonel Vermaak is now  
9 away, he's going to be cross-examined I'm not quite sure  
10 when but he's not going to be cross-examined immediately  
11 and he will have an opportunity to look at these statements  
12 in the meanwhile. The police know what our attitude is in  
13 regard to statements and when they should be filed, so  
14 that's something that already belongs to history.

15 MR WESLEY: Thank you –

16 CHAIRPERSON: I understand the concern  
17 but they're here. Anyway, you are now seeking to extract  
18 something positive from your side and negative for the  
19 other side from – so you're certainly not objecting to the  
20 statements being put in at this stage and if you were to  
21 try to object I'd overrule you, so shall we carry on?

22 MR WESLEY: Thank you, Chair. Colonel,  
23 if you can maybe just for the sake of good order, the first  
24 one is QQQ7, if you can take Sergeant Sekgweleya's  
25 statement, put that by your left hand and then the

<p style="text-align: right;">Page 26875</p> <p>1 supplementary statement of Sergeant Mguye on the right.  2 You've got them in front of you, have you got both of them?  3 COLONEL MERAFAE: I have both,  4 Chairperson.  5 MR WESLEY: Right. Now you're going to  6 see that they begin by saying "Supplementary statement" and  7 in the statement of Constable Sekgweleya in paragraph 3 he  8 says, "I initially" – we don't have to show this but just  9 listen to me, he says "I initially made a statement  10 covering the incidents of 13 August at Marikana." And then  11 in the supplementary statement of Sergeant Mguye he says,  12 "I have already made a statement regarding my deployment at  13 Marikana on 13 August." Do you see that? They both say  14 we've already made a statement about the 13th of August, do  15 you see that?  16 COLONEL MERAFAE: I see that, Chair.  17 MR WESLEY: Now, I did a bit of digging  18 and there are two other manuscript statements which I also  19 showed you this morning and you also read, one by Constable  20 Sekgweleya and the other by Sergeant Mguye. You agree, you  21 read them as well?  22 COLONEL MERAFAE: I read them as well,  23 Chair –  24 MR WESLEY: They are HHH29 and HHH30.  25 Sorry, there was a translation. Those are HHH29 and HHH30,</p>	<p style="text-align: right;">Page 26877</p> <p>1 the taking of the R5 rifle from a TRT member specifically,  2 they don't mention that happening.  3 COLONEL MERAFAE: Chairperson, I am saying  4 if they had at least explained what he had, if they didn't  5 explain that. I agree with you that they don't make any  6 such explanation.  7 MR WESLEY: Okay. And that's in the  8 handwritten statements. You also then read this morning  9 the supplementary statements which I gave you which are now  10 QQQ7 and QQQ8, you read those as well. Neither of them  11 mention in those statements either this, the incident where  12 Lieutenant-Colonel Vermaak took an R5 rifle from a TRT  13 member.  14 COLONEL MERAFAE: That's correct, Chair.  15 COMMISSIONER HEMRAJ: Mr Wesley, these  16 two statements 29 and 30, HHH29 and 30, they are the two  17 persons who were involved in trying to repel the attack on  18 the policemen. They were involved in the incident.  19 MR WESLEY: Yes.  20 COMMISSIONER HEMRAJ: I don't know if it  21 makes a difference that in his statement Colonel Merafe  22 says it was those TRT members who were standing around. I  23 don't know if it's a different time.  24 MR WESLEY: Commissioner, what these two  25 – as I read their statements, I've been trying to place</p>
<p style="text-align: right;">Page 26876</p> <p>1 for the record. Now in those two statements, HHH29 and  2 HHH30, neither – well, let me put it this way. In the  3 supplementary statements QQQ7 and QQQ8 these two members,  4 they say they're from the TRT in Rustenburg and they  5 identify themselves as having been with Colonel Vermaak at  6 the scene on the 13th and having been with him as TRT  7 members who then pursued the crowd, as you've described.  8 Would you like me to read you the seconds or will you  9 accept what I say to you?  10 COLONEL MERAFAE: I accept what you say, I  11 read it.  12 [11:33] MR WESLEY: Okay, so these two TRT  13 members went with Lieutenant-Colonel Vermaak in pursuit of  14 the crowd. So we know that they were there and they were  15 at the scene. Now if I can go back then to HHH29 and  16 HHH30, you've read those statements, in neither of these  17 two statements do these two members say that Lieutenant-  18 Colonel Vermaak took an R5 rifle from them or from any  19 other TRT member.  20 COLONEL MERAFAE: Yes, Chairperson. When  21 I read the statements I don't see anywhere where both these  22 policemen, they don't mention anything about Mr Vermaak  23 carrying any kind of a firearm. They don't say anything  24 about him and a firearm.  25 MR WESLEY: Carrying a firearm, but it's</p>	<p style="text-align: right;">Page 26878</p> <p>1 them at the scene, it's after the attack has occurred these  2 two TRT members place themselves by Lieutenant-Colonel  3 Vermaak and then they say, both of them, that they then  4 were part of the group that pursued the strikers. If one  5 has a look at QQQ7, this is Constable Sekgweleya. In  6 paragraph 8 he says, "Colonel Vermaak appeared at the  7 scene. I saw him coming out of a chopper and approached  8 us. Colonel Vermaak instructed the members to pursue the  9 strikers with the aim of retrieving the pistols and the R5  10 rifle. I, together with some members, went inside a Nyala  11 but the driver was not there. The members alighted.  12 Colonel Vermaak, myself, together with Sergeant Mguye  13 pursued the group of strikers on foot."  14 COMMISSIONER HEMRAJ: Yes, I beg your  15 pardon, you're quite right.  16 MR WESLEY: Ja, so he was part of the  17 group that pursued and the same is the case with – I'll  18 place it on the record – Sergeant Mguye. It's paragraph 8  19 of his statement QQQ8. He says the following in paragraph  20 7, "The members went inside the Nyala but because the Nyala  21 driver was not present at that stage, the members got out  22 of the Nyala. Colonel Vermaak, myself armed with both an  23 R5 and a 9 millimetre pistol, together with Constable  24 Sekgweleya also armed with an R5 and 9 millimetre pistol,  25 pursued the strikers on foot." And you will recall that</p>



<p style="text-align: right;">Page 26879</p> <p>1 what the Colonel explained was, Colonel Vermaak having TRT  2 members with him and then taking an R5 rifle and pursuing  3 them. So it appears from this that these two TRT members  4 were certainly with that group who were with him at that  5 time and then pursued the strikers in order to retrieve, as  6 he says, an R5 rifle. Colonel, now you've heard me read a  7 passage from QQQ8 which is the statement of Sergeant Mguye.  8 He, not only in that statement does he not say that he saw  9 Colonel Vermaak take an R5 rifle from a TRT member, he  10 gives it a little bit more detail. He in fact describes at  11 least how he was armed and Constable Sekgweleya were armed.  12 You read the passage, it's paragraph 7. He says, "The  13 members went inside the Nyala but because the Nyala driver  14 was not present at that stage, the members got out of the  15 Nyala." Now please listen carefully here. He says,  16 "Colonel Vermaak, myself armed with both an R5 and a 9  17 millimetre pistol, together with Constable Sekgweleya also  18 armed with an R5 and 9 millimetre pistol, pursued the  19 strikers on foot." Now the point is, in his description of  20 what happened there he describes the armaments that the  21 three of them had. He mentions that Constable Sekgweleya  22 had an R5 and a 9 millimetre pistol but when he talks about  23 Colonel Vermaak he makes no mention of any arm, any weapon  24 at all, not a 9 millimetre pistol or an R5. Do you see  25 that?</p>	<p style="text-align: right;">Page 26881</p> <p>1 Constable Sekgweleya was armed with but he doesn't take the  2 effort to describe what Colonel Vermaak had.  3 COLONEL MERAFAE: I am surprised, yes.  4 MR WESLEY: Now, before I ask if you can  5 give an explanation or tell us why this would be the case,  6 I want to refer you to another statement. It's one that  7 arrived this morning. Where's the copies? Thupe. I  8 understand it's a statement by Captain Thupe, have you got  9 a copy of Captain Thupe's statement with you?  10 CHAIRPERSON: It's QQQ9. Have you got a  11 copy?  12 COLONEL MERAFAE: If I could please see  13 it, I haven't seen that one, Chairperson.  14 MR WESLEY: No, Colonel, please sit.  15 Colonel, I've managed to go through this very briefly,  16 we've just received it. I've read it –  17 CHAIRPERSON: Mr Wesley, if the witness  18 hasn't read the statement yet then it's not fair to ask him  19 questions about it. I was proposing to take an adjournment  20 at about 12 o'clock. I normally like to take adjournments  21 every hour and a quarter because my experience is and it's  22 reported to me that this is so, that people find it  23 difficult to concentrate properly after that but if it's  24 necessary we'll take the adjournment now and give the  25 witness an opportunity to read the statement and then we'll</p>
<p style="text-align: right;">Page 26880</p> <p>1 COLONEL MERAFAE: I see it clearly, Mr  2 Chairperson. The member I believe was talking about  3 themselves and not Colonel Vermaak as to what Colonel  4 Vermaak had. According to me, if this is what he wanted to  5 explain he would have said Colonel Vermaak did not have  6 anything or – Colonel Vermaak unarmed, myself and this man  7 armed with so-and-so. So here it is unclear whether indeed  8 Colonel Vermaak was unarmed by then.  9 MR WESLEY: Colonel, I must take issue  10 with you on that. You've just said that in this statement  11 the members described how they were armed. It's not that.  12 Look at it carefully. It's only one member describing what  13 happens here. It's Sergeant Mguye, okay, it's not both of  14 them. What Sergeant Mguye does is he says what he had, he  15 mentions specifically he had an R5 and a 9 millimetre  16 pistol. He then mentions specifically that Constable  17 Sekgweleya had an R5 and a 9 millimetre pistol, do you see  18 that?  19 COLONEL MERAFAE: I see that, Chairperson,  20 but there I don't see any part where he explains whether  21 Captain, I mean Colonel Vermaak had anything or did not  22 have anything. He is dead quiet about that.  23 MR WESLEY: Yes, he is and that's the  24 point. He is dead quiet about it. He takes the effort to  25 describe what he had, he takes the effort to describe what</p>	<p style="text-align: right;">Page 26882</p> <p>1 run on, when we resume we'll run till we adjourn.  2 MR WESLEY: Chair, that would be –  3 CHAIRPERSON: We'll take the tea  4 adjournment now. We'll try to come back by noon and then  5 we'll run through till just before one when I give the  6 ruling. I've explained about where the reasons can be  7 obtained.  8 [COMMISSION ADJOURNS COMMISSION RESUMES]  9 [12:07] CHAIRPERSON: The Commission resumes.  10 Colonel, you're still under oath. Mr Wesley?  11 OMPHILE JOSEPH MERAFAE: (s.u.o.)  12 CROSS-EXAMINATION BY MR WESLEY (CONTD.):  13 Thank you, Chair. Colonel, before we took the adjournment  14 I was referring to a statement by Captain Thupe. Have you  15 had a chance now to go through the statement?  16 COLONEL MERAFAE: I did read it,  17 Chairperson.  18 MR WESLEY: That's exhibit QQQ9, for the  19 record. Captain Thupe – he's still captain, he was captain  20 then – he was in command of the TRT at the scene of the  21 13th.  22 COLONEL MERAFAE: I agree with you, sir.  23 MR WESLEY: Now, having read the  24 statement you'll agree with me he makes no mention of  25 having seen Colonel Vermaak take an R5 rifle from one of</p>

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1 his TRT members or of receiving a report from any of his  
 2 members that Colonel Vermaak would have taken an R5 rifle  
 3 from a TRT member. It's not there.  
 4 COLONEL MERAFAE: I read Captain Thupe's  
 5 statement, Chairperson. I would like the Commission to  
 6 permit me also to mention certain things that I see from  
 7 his statement.  
 8 CHAIRPERSON: [Microphone off, inaudible]  
 9 – mentioning things from his statement for. We have his  
 10 statement, he'll give evidence in due course. If you  
 11 yourself can give evidence about some of the matters, you  
 12 can give evidence about it but you don't have to mention  
 13 things in his statement. We'll read them in due course.  
 14 MR WESLEY: Colonel, when we get to the –  
 15 CHAIRPERSON: If you wish to comment on  
 16 things –  
 17 COLONEL MERAFAE: Yes.  
 18 CHAIRPERSON: - I suppose that you can  
 19 do.  
 20 COLONEL MERAFAE: Yes, to comment, Chair.  
 21 CHAIRPERSON: But I don't want you just  
 22 to mention things. We've got –  
 23 MR WESLEY: Colonel, when we get to – I'm  
 24 going to take you through exactly what happened on the 13th.  
 25 I'm still going to get there. Can I give you an

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1 undertaking that when we do that, we will go through  
 2 Captain Thupe's statement and you can mention it then.  
 3 Would that be in order with you?  
 4 COLONEL MERAFAE: It's fine, sir.  
 5 MR WESLEY: Okay. I will take you  
 6 through Captain Thupe's statement then when we get to what  
 7 happened on the 13th. Now returning to the present matter  
 8 that we're dealing with, I've seen no report that you made  
 9 of this incident concerning Lieutenant-Colonel Vermaak and  
 10 the R5 rifle on 13 August. Did you make a report to  
 11 anybody on that day about this event, the R5 rifle event?  
 12 COLONEL MERAFAE: I have already explained  
 13 here, sir, that there was no written report. I left  
 14 Colonel Vermaak together with the TRT police there.  
 15 MR WESLEY: Did you make an oral report  
 16 to anybody?  
 17 COLONEL MERAFAE: I did not. I did not  
 18 see the need to make any oral report, to make an oral  
 19 report to anybody.  
 20 MR WESLEY: Well, let's look at that  
 21 then. We know then you didn't see the need but this was a  
 22 serious incident, why didn't you see the need to report  
 23 this to anybody?  
 24 COLONEL MERAFAE: Chairperson, I saw  
 25 Colonel Vermaak grab the gun, the firearm from a TRT

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1 policeman. Except that, I did not see Colonel Vermaak do  
 2 anything with that firearm because I later left the scene.  
 3 MR WESLEY: I accept that but I asked you  
 4 why didn't you feel the need to report the fact, the  
 5 serious incident that he took it from a TRT member? Why  
 6 didn't you see the need to report that?  
 7 COLONEL MERAFAE: I have explained, sir,  
 8 that the last thing I saw was the firearm being taken. I  
 9 then attended to Lepaaku who was bleeding there.  
 10 MR WESLEY: I'll carry on. Might I just  
 11 mention, Mr Mahlangu, I'm getting a wave again from the  
 12 people recording the transcript, if we can – if you can  
 13 just wait before you translate, till the Colonel finishes.  
 14 I see that they are waving at me.  
 15 MR MAHLANGU: I will do so.  
 16 MR WESLEY: We do know, Colonel, that you  
 17 waited until the 10th of April 2014 before you made mention  
 18 of this incident in writing to anybody. That's when you  
 19 made the statement QQQ1.  
 20 COLONEL MERAFAE: I have responded to that  
 21 question, sir, when I said when I made that statement I  
 22 endeavoured to make mention of each and every aspect.  
 23 MR WESLEY: Yes, you did and that was the  
 24 first time that you mentioned this serious incident. We'll  
 25 leave it at that. Right, could you grab QQQ2, have you got

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1 that in front of you? QQQ2, that's your unsigned  
 2 statement.  
 3 COLONEL MERAFAE: I've got it, sir.  
 4 MR WESLEY: Okay, you have it with you.  
 5 Now you'll remember I said to you that I've numbered the  
 6 paragraphs, the first paragraph beginning "I am a  
 7 Lieutenant-Colonel" is paragraph number 1 and how I ran  
 8 through them, the numbering. We're going to use the same  
 9 numbering now. In paragraph 3 which begins, "There have  
 10 been challenges in how POP units operate," from that  
 11 paragraph all the way through to paragraph 8 of this  
 12 statement, in those paragraphs you don't actually deal with  
 13 the events specifically at Marikana between 10 and 16  
 14 August 2012. Do you agree with me on that?  
 15 COLONEL MERAFAE: I agree with you, Chair.  
 16 MR WESLEY: Yes. Now what you deal with  
 17 in those paragraphs, I've made a list of – I've extracted  
 18 nine matters that you deal with and I'll mention them to  
 19 you and after each one tell me if you agree. I would like  
 20 you to agree because it is correct, though. What you deal  
 21 with is the challenges facing public order policing in the  
 22 Republic and in the North-West before Marikana.  
 23 COLONEL MERAFAE: It was important that  
 24 these facts be mentioned, Chairperson.  
 25 MR WESLEY: I agree with you, it was

<p style="text-align: right;">Page 26887</p> <p>1 important. I agree with you. The second you say is the 2 effect, the second thing you address is the effect of these 3 challenges on the efficiency of public order policing in 4 the Republic and in the North-West.</p> <p>5 COLONEL MERAPE: I agree with you there.</p> <p>6 MR WESLEY: The third thing you tell the 7 Commissioners about, these Commissioners here, is the 8 conditions, if I can use the term on the ground in the area 9 that comprises your cluster, the Rustenburg cluster, you 10 describe what it was like on the ground for public order 11 policemen.</p> <p>12 COLONEL MERAPE: It is so.</p> <p>13 MR WESLEY: And you deal specifically in 14 certain places with the problems or difficulties or 15 challenges, I use those words interchangeably, that were 16 experienced in your cluster in 2012 before Marikana.</p> <p>17 COLONEL MERAPE: Correct, Chairperson.</p> <p>18 MR WESLEY: You also deal with some of 19 the interventions that were made by police management with 20 regard to public order policing in the North-West.</p> <p>21 COLONEL MERAPE: Correct, Chair.</p> <p>22 MR WESLEY: And you deal with the 23 provincial operational response meeting of 16 May 2012 and 24 the attendance of Brigadier Calitz thereat.</p> <p>25 COLONEL MERAPE: That is so.</p>	<p style="text-align: right;">Page 26889</p> <p>1 MR WESLEY: Yes, if I can just summarise 2 there, you say Marikana didn't happen out of the blue and 3 that some of these challenges I think you said had an 4 influence or had an effect at Marikana.</p> <p>5 COLONEL MERAPE: It is so, if you look at 6 things correctly.</p> <p>7 MR WESLEY: Yes. No, I agree with you. 8 I agree with you fully. If one does have regard to what 9 you say here, I agree with you fully and you've confirmed, 10 I mean the reason why you addressed it is because you want 11 these Commissioners to take note of that.</p> <p>12 COLONEL MERAPE: Correct, Chairperson.</p> <p>13 MR WESLEY: It helps them understand what 14 happened at Marikana better. You get a better 15 understanding of what happened at Marikana if you know what 16 happened before that.</p> <p>17 COLONEL MERAPE: I take it, it is so, 18 yes.</p> <p>19 MR WESLEY: Okay. Now let's turn to you 20 in particular. I'm going to try and do this as quickly as 21 possible, if you'll just – I can't ask you to agree with me 22 but if I'm wrong you'll point out where I'm wrong. You've 23 got 26 or 28 experience, years' experience in public order 24 policing.</p> <p>25 COLONEL MERAPE: It is so, Chair.</p>
<p style="text-align: right;">Page 26888</p> <p>1 MR WESLEY: You deal with the incident 2 that occurred at Tlabane on the 22nd of May 2012.</p> <p>3 COLONEL MERAPE: Correct, Chair.</p> <p>4 MR WESLEY: You deal with the POP 5 national conference of 28 and 29 May 2012 and the 6 attendance of Major-General Mpembe thereat.</p> <p>7 COLONEL MERAPE: That is correct, Chair.</p> <p>8 MR WESLEY: And you deal with a meeting 9 that occurred at Phokeng regarding the implementation of 10 provincial integrated crime combating strategy, that would 11 have occurred on the 30th of May 2012 and the attendance of 12 Lieutenant-General Mbombo and Major-Generals Mpembe and 13 Naidoo at that meeting.</p> <p>14 COLONEL MERAPE: Correct, Chairperson.</p> <p>15 MR WESLEY: Now shortly and briefly, can 16 you tell the Commissioners why was it important for you, 17 when describing Marikana, to tell them about this stuff?</p> <p>18 COLONEL MERAPE: According to me, Chair, 19 Marikana did not just spring up from the blue. Some of the 20 things that I mentioned there had an effect or a 21 contribution towards what eventually became Marikana and 22 that is why we asked the assistance of the other units. So 23 it was important for me to mention the challenges, the 24 problems that we had in Marikana and what endeavours were 25 made to address them.</p>	<p style="text-align: right;">Page 26890</p> <p>1 MR WESLEY: Many, many years. Now you've 2 also, according to paragraph 1 and paragraph 2 of QQQ2 3 you're a Lieutenant-Colonel, you're stationed at the 4 Rustenburg public order police unit, you are posted as the 5 unit commander, you have 148 members under your command. 6 They serve in three clusters, namely Rustenburg, Brits and 7 Mmakau and your primary function is – yours, when I say 8 yours I mean public order policing – the primary function 9 is crowd management and a secondary function is crime 10 prevention.</p> <p>11 COLONEL MERAPE: That is so, sir.</p> <p>12 MR WESLEY: Now you also in paragraph 3, 13 the third paragraph of QQQ2 you explain that it is known 14 that the Rustenburg cluster on its own has more mining 15 companies, resorts, factories, venues to host major events 16 and more influx of people from other areas in the country 17 seeking employment, thus creating more informal settlements 18 – but you don't say where. Is that than anywhere else in 19 the country, is that what you're saying? More than what, 20 yes?</p> <p>21 COLONEL MERAPE: Chairperson, if the 22 question could be repeated, sir, so that I can understand 23 exactly what it is that I'm to respond to.</p> <p>24 MR WESLEY: What you're saying is that in 25 Rustenburg there's more of these things – mining companies,</p>

<p style="text-align: right;">Page 26891</p> <p>1 resorts factories, venues for major events and people  2 seeking jobs but you don't say more than what? More than  3 any other place in the country, is that the answer?  4 COLONEL MERAFAE: I was talking about what  5 is exactly happening in Rustenburg. The difficulties that  6 I mentioned there, these are things that are happening in  7 Rustenburg.  8 MR WESLEY: Yes, but the specific  9 question is, you say that Rustenburg has more of these  10 things but more than anywhere else in the country or more  11 than another town in the North-West or more than where? I  12 think what you're trying to say, let me help you here, I  13 think what you're trying to say is that Rustenburg has got  14 more of these things than anywhere else in the country,  15 your cluster. Is that correct?  16 COLONEL MERAFAE: If you assist me with  17 that answer, I accept it.  18 MR WESLEY: Okay, alright, we've got that  19 one. Now you also mention statistics and you say that  20 "Rustenburg was the highest in police gatherings for the  21 last two years."  22 COLONEL MERAFAE: Yes, Chairperson, it is  23 so. I have realised it is so in my province.  24 MR WESLEY: Now is that countrywide, in  25 the whole country or is this just in the North-West</p>	<p style="text-align: right;">Page 26893</p> <p>1 of QQQ2, I've already mentioned it, you talk about the  2 primary function of public order policing being crowd  3 management and the secondary function is crime prevention.  4 Let's start with the second part, what does crime  5 prevention entail? I need to know what is public order  6 policing and where does it stop and where does crime  7 prevention begin and what is crime prevention?  8 COLONEL MERAFAE: Chair, the duty of each  9 and every policeman is crime prevention. Chairperson, a  10 police person is, as you said, first crime prevention but  11 after the training that I received and all such things,  12 specifically I looked at and that as my priority was  13 management of crowds rioting.  14 MR WESLEY: I accept that but I'm just  15 trying to establish what would constitute crime prevention  16 and what would constitute public order policing? Can you  17 explain that difference to me? Remember I am a layman, I  18 don't understand this.  19 COLONEL MERAFAE: As I explained,  20 Chairperson, each and every policeman comes into the police  21 service with a view of stopping crime. That is crime  22 prevention.  23 MR WESLEY: Yes?  24 COLONEL MERAFAE: Crowd management has to  25 do with the Gatherings Act. It is also mentioned in the</p>
<p style="text-align: right;">Page 26892</p> <p>1 Province, do you know?  2 COLONEL MERAFAE: I think in South Africa.  3 MR WESLEY: Okay, that's what I'm trying  4 to establish. So in a nutshell then it's fair to say that  5 your cluster that you deal with would maybe have been the  6 busiest cluster as far as public order policing is  7 concerned, in South Africa in 2012, you were the busiest?  8 COLONEL MERAFAE: It is correct,  9 Chairperson, but I was able to ask assistance of members  10 from other provinces to come and assist us.  11 MR WESLEY: No, I accept that, I accept  12 that. We're going to get to that as well. And it follows,  13 you were then the busiest public order police commander  14 during 2012 in the country.  15 COLONEL MERAFAE: It is so, Chair.  16 MR WESLEY: Now we've already covered  17 this and you are a modest man but police management must  18 have had a great deal of faith in you to put you in charge  19 of the busiest cluster, public order policing cluster in  20 the country. They must have thought, you've agreed with me  21 already, this man knows his job.  22 COLONEL MERAFAE: This was management's  23 decision, Chairperson. Whether they were wrong or right, I  24 am unable to say.  25 MR WESLEY: Fair enough. In paragraph 2</p>	<p style="text-align: right;">Page 26894</p> <p>1 Constitution of the country that the National Commissioner  2 of Police shall bring to life a wing of the police that  3 would be specifically charged with managing and controlling  4 crowds. Standing order 262 specifies, specifically refers  5 to public gatherings but it also has to do with crime  6 prevention.  7 [12:26] MR WESLEY: Yes, it does. The order –  8 I'll give you a wording, what it refers to is crowd  9 management during gatherings and demonstrations. That's  10 the official wording, it's the heading of the standing  11 order.  12 CHAIRPERSON: Yes, but it also contains  13 provisions which are designed to ensure that when there is  14 a crowd, when there is a gathering, there won't be trouble  15 and these things precede the actual gathering and the  16 management thereof, isn't that so?  17 MR WESLEY: The Chair is correct,  18 Colonel. Colonel, do you agree with what the Chair just  19 said?  20 COLONEL MERAFAE: I agree, Chairperson.  21 MR WESLEY: So when one has a crowd  22 management situation, including and you also now have  23 aspects of policing, what you have to keep in mind as a  24 public order police, or a policeman maybe, just a normal  25 policeman at a crowd management situation and your members</p>

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1 as well, they must keep in mind a couple of things. One  
 2 is, they're there to promote public safety.  
 3 COLONEL MERAPE: That's so.  
 4 MR WESLEY: They're there to protect  
 5 communities.  
 6 COLONEL MERAPE: Correct, Chair.  
 7 MR WESLEY: They're there to identify  
 8 conflict.  
 9 COLONEL MERAPE: If you could repeat  
 10 that, sir?  
 11 MR WESLEY: Identify conflict. You'll  
 12 recall that in the introduction there's mention made of  
 13 proactive –  
 14 COLONEL MERAPE: Okay yes, I understand.  
 15 It is so.  
 16 MR WESLEY: They must spot trouble when  
 17 it happens.  
 18 COLONEL MERAPE: That is correct, Chair.  
 19 MR WESLEY: Be on the lookout for that,  
 20 that's what I mean, identify conflict. And they must then  
 21 also keep in mind they're there to diffuse the conflict  
 22 before it becomes violent.  
 23 COLONEL MERAPE: That is so, Chairperson.  
 24 MR WESLEY: And also they're there for  
 25 proactive communication with the public.

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1 COLONEL MERAPE: That is so.  
 2 MR WESLEY: Yes, they can't just sit back  
 3 and wait for people to come to them to talk and then just  
 4 sit back and listen. You go and look for a man to talk to.  
 5 You go find the man and you talk to him. Now, with regard  
 6 to a crowd management or rather a gathering or a  
 7 demonstration or a crowd management incident, when I've  
 8 spoken here of the public and he communities, you know, the  
 9 promotion of public safety, protection of communities, that  
 10 public and that communities, that includes people who are  
 11 protesting and gathering or gathering for that matter.  
 12 COLONEL MERAPE: That is so, Chairperson.  
 13 MR WESLEY: In other words, yes, if you  
 14 see a large community in front of you and let's say there's  
 15 10 people on the one side who are protesting, they still  
 16 form part of this whole community.  
 17 COLONEL MERAPE: That is so, yes.  
 18 MR WESLEY: And they get, with regard to  
 19 the items that I mentioned, they get as much respect as  
 20 those people that aren't gathering or demonstrating.  
 21 COLONEL MERAPE: As I say, they have the  
 22 same rights, Chairperson.  
 23 MR WESLEY: Now these thoughts or ideas  
 24 or notions that I've mentioned to you, the five of them  
 25 that police members must keep in mind, they must – they

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1 play a part at the planning stage of an operation, you keep  
 2 them in mind when you plan.  
 3 COLONEL MERAPE: Yes, it is so,  
 4 Chairperson.  
 5 MR WESLEY: But you don't stop  
 6 considering them when the planning is done. When you  
 7 implement an operation you still keep them in mind, they're  
 8 important.  
 9 COLONEL MERAPE: That is so, Chair.  
 10 MR WESLEY: Chair, I see it's quarter to.  
 11 I'm going to move on to a document now –  
 12 CHAIRPERSON: I was proposing to suggest  
 13 at this stage that you resume your cross-examination on  
 14 Tuesday morning. In a moment we're going to adjourn, in 20  
 15 seconds. I now wish to deal with the – thank you, Mr  
 16 Wesley. You'll be excused at this stage, Colonel, and come  
 17 back on Tuesday morning.  
 18 RULING  
 19 I now wish to deal with the application brought  
 20 by the South African Police Service to lead evidence in  
 21 camera and by visual link. I've made my decision on the  
 22 application and I've prepared a document setting out the  
 23 reasons for the decision, which is in the hands of the  
 24 secretariat. I shall now read the last paragraph of that  
 25 document. I make the following rulings:

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1 1. That the evidence of Mr X be presented in  
 2 camera and by video link.  
 3 2. That at all times during the testimony of Mr  
 4 X one of the evidence leaders shall be present in the room  
 5 from which he testifies.  
 6 [12:46] 3. That only the Commissioners, the legal  
 7 representatives, the evidence leaders, accredited media  
 8 representatives and the parties shall be present in the  
 9 auditorium during the testimony of Mr X. That at least two  
 10 weeks prior to the commencement of the testimony of Mr X,  
 11 the SAPS legal representatives shall –  
 12 (a) disclose the name of Mr X to the evidence  
 13 leaders and the legal representatives of all the parties;  
 14 (b) provide the evidence leaders and the legal  
 15 representatives of the parties with a photograph of Mr X;  
 16 and  
 17 (c) indicate to the evidence leaders and the  
 18 legal representatives of the parties all points at which  
 19 they have been able to identify Mr X on video footage of  
 20 the events during the period 13 to 16 August 2012.  
 21 That the details in sub-paragraphs (a) to (c) of  
 22 the paragraph I have just read shall be disclosed only to  
 23 the Commissioners, the evidence leaders and to the legal  
 24 representatives who require the information in order to  
 25 obtain instructions from their clients.

1 That neither the name nor any information that  
2 may reveal the identity of Mr X shall be disclosed further  
3 by any party other than the SAPS, save for the purpose of  
4 obtaining instructions.

5 That, subject to the rulings made in the last  
6 three paragraphs, in terms of section 18 and 19 of the  
7 Witness Protection Act 112 of 1998, the following shall be  
8 prohibited:

9 (a) The publication of any information, including  
10 any drawing, picture, illustration, painting, photograph,  
11 pamphlet, poster or other printed matter, in whatever form,  
12 which may disclose the place of safety or location where Mr  
13 X is or has been under protection or where he has been  
14 relocated in terms of this Act;

15 (b) the circumstances relating to his protection;

16 (c) the identity of any other protected person  
17 and the place of safety or location where such person is  
18 being protected or the relocation or change of identity of  
19 a protected person; or

20 (d) any questioning of Mr X which can lead to a  
21 disclosure of any of the matters referred to in the three  
22 paragraphs I have read, that's (a), (b) and (c);

23 That members of the public may listen to the  
24 audio transmission of the testimony of Mr X in the overflow  
25 room; that members of the media may not publish the name of

1 Mr X any other information which may reveal his identity;  
2 that all video recordings of the evidence of Mr X must be  
3 blurred out so as not to disclose his identity.

4 And the last paragraph of the order is that leave  
5 be granted to any interested person to seek an amendment of  
6 these rulings should circumstances show that any such  
7 ruling may be impracticable or incapable of proper  
8 implementation or circumstances may emerge which call for a  
9 reconsideration of these rulings.

10 Those are the rulings that I have made. The  
11 Commission will now adjourn until Tuesday morning, the 22nd  
12 of April at 9AM.

13 [COMMISSION ADJOURNED]

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