

# 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 223

29 APRIL 2014

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<p style="text-align: right;">Page 27458</p> <p>1 [PROCEEDINGS ON 29 APRIL 2014]  2 [09:32] CHAIRPERSON: The Commission resumes. We  3 had some housekeeping to attend to in chambers before we  4 came, so I apologise to those who've been kept waiting.  5 Luitenant-kolonel Vermaak, u is nou terug by ons.  6 KOLONEL VERMAAK: Dis reg.  7 VOORSITTER: Ek moet u daaraan herinner  8 dat u nog steeds gebonde is daaraan, aan die plegtige  9 onderneming wat u gegee het.  10 SALMON JOHANNES VERMAAK: Dis korrek.  11 VOORSITTER: Mnr Semenya, ek neem aan u  12 gaan in Engels u vrae stel aan die getuie.  13 MR SEMENYA SC: Thank you, Chair.  14 CHAIRPERSON: No, I'm sure you're capable  15 of doing it in Afrikaans, but it saves time on translation  16 if you cross-examine the witness in English. Are you  17 prepared to do that as a special favour to me?  18 MNR SEMENYA SC: Ek is nie heeltemal vlot  19 in my Afrikaans, Voorsitter. Ek sal probeer dit in Engels  20 stel.  21 CHAIRPERSON: Okay. U sal in Engels  22 voortgaan.  23 MR SEMENYA SC: Yes.  24 CHAIRPERSON: Alright, okay. We've  25 wasted enough time on that. We have a bundle, 'n lywige</p>	<p style="text-align: right;">Page 27460</p> <p>1 CHAIRPERSON: Now have you had a chance  2 to go through the document? Are the entries therein  3 correct?  4 KOLONEL VERMAAK: Yes, Chair, I'm ready  5 to –  6 CHAIRPERSON: I see.  7 KOLONEL VERMAAK: - answer on that.  8 CHAIRPERSON: So it's not necessary for  9 us to check in advance –  10 KOLONEL VERMAAK: No, no, no.  11 CHAIRPERSON: - or anybody to check in  12 advance if these entries are correct?  13 KOLONEL VERMAAK: No, that's fine.  14 CHAIRPERSON: I see that in all of them  15 except one no action was taken against you, or no finding  16 was made against you. Is that right?  17 KOLONEL VERMAAK: That's correct, Chair.  18 CHAIRPERSON: There was one which I take  19 it you'll be asked about by Mr Semenya, so I won't steal  20 his –  21 KOLONEL VERMAAK: I will –  22 CHAIRPERSON: - his thunder or whatever  23 it's going to be that –  24 KOLONEL VERMAAK: I'll answer on that  25 one.</p>
<p style="text-align: right;">Page 27459</p> <p>1 dokument, a bundle of documents. I understand that they  2 were emailed to you on Sunday. Is that correct?  3 KOLONEL VERMAAK: That's correct, Chair.  4 CHAIRPERSON: Yes, and some of them are  5 exhibits already, some of them new documents. Do you want  6 to mark them as you go along, Mr Semenya? The new  7 documents – that's not been recorded. We've been given a  8 hefty bundle of new documents which the witness says he got  9 on Sunday. Do you want to mark them now or do you want to  10 mark them as you go along?  11 MR SEMENYA SC: If I can do that later,  12 Chair.  13 CHAIRPERSON: Alright, that's the best  14 way. But there's one I'd like to ask you about quickly,  15 very shortly. There's one which is misleadingly described  16 as "Misconduct." It's number 60, six-oh, in the bundle.  17 Now this is, it's misleadingly headed, it's headed  18 "Misconduct" with your name, but it's in fact not a list of  19 misconduct, it's a list of allegations –  20 KOLONEL VERMAAK: That's correct, Chair.  21 CHAIRPERSON: - against you. Both  22 allegations, some of them were criminal cases, criminal  23 dockets were opened, other cases there were departmental  24 matters.  25 KOLONEL VERMAAK: That's correct, Chair.</p>	<p style="text-align: right;">Page 27461</p> <p>1 CHAIRPERSON: But that document you say  2 is accurate as far as the content is concerned, but the  3 problem is the heading.  4 KOLONEL VERMAAK: It's only the heading,  5 that's correct, Chair.  6 CHAIRPERSON: So how should we head it,  7 Mr Semenya? Allegations of?  8 MR SEMENYA SC: Complaints of misconduct.  9 CHAIRPERSON: Oh, alright. So we'll call  10 this document "Complaints," or possibly give it an exhibit  11 number now seeing I've referred to it. "Complaints of  12 misconduct." That will be the heading, and we were using  13 the triple O-series with the witness and the next triple O  14 one is –  15 MR SEMENYA SC: This witness would have  16 been triple L, Chair.  17 CHAIRPERSON: Triple L? Triple O. Yes,  18 that's right. So the last triple O according to my notes  19 is OOO36, but Ms Pillay who's doubling up as leader of the  20 evidence leaders today and also doing her usual task will  21 tell us whether I'm right. Is it OOO37?  22 MS PILLAY: That's correct, Chair. This  23 would be OOO37.  24 CHAIRPERSON: OOO37, Complaints of  25 misconduct against Lieutenant-Colonel Vermaak, and that is</p>

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1 OOO37. Alright, so now I think we've reached the stage  
 2 where you can commence your cross-examination.  
 3 CROSS-EXAMINATION BY MR SEMENYA SC: I  
 4 thank you, Chair. Lieutenant-Colonel, good morning. Good  
 5 morning to you.  
 6 COLONEL VERMAAK: Good morning.  
 7 MR SEMENYA SC: Colonel, can we have the  
 8 benefit of your experience in Public Order Policing?  
 9 Firstly can we look at the legal framework that informs  
 10 Public Order Policing. I'm correct that under the law of  
 11 the land people have a right to assemble?  
 12 COLONEL VERMAAK: That's correct.  
 13 MR SEMENYA SC: It's a constitutionally  
 14 protected right, correct?  
 15 COLONEL VERMAAK: That's correct.  
 16 MR SEMENYA SC: The exercise of which  
 17 means that people are acting with authority of the law.  
 18 COLONEL VERMAAK: That's correct.  
 19 MR SEMENYA SC: They are also under the  
 20 Constitution having the right to demonstrate. Is that  
 21 correct?  
 22 COLONEL VERMAAK: That's correct.  
 23 MR SEMENYA SC: Also a constitutionally  
 24 protected right.  
 25 COLONEL VERMAAK: That's correct.

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1 MR SEMENYA SC: To picket as well?  
 2 COLONEL VERMAAK: If they comply with the  
 3 law, yes.  
 4 MR SEMENYA SC: Under the Constitution  
 5 they have a right to picket. You accept that to be  
 6 correct? That's the framework.  
 7 COLONEL VERMAAK: That's correct.  
 8 MR SEMENYA SC: And they also have a  
 9 right to present petitions, etcetera.  
 10 COLONEL VERMAAK: Yes.  
 11 MR SEMENYA SC: It's a legally  
 12 enforceable right of individuals under our law.  
 13 COLONEL VERMAAK: That's correct, as long  
 14 as it is in framework of the law.  
 15 MR SEMENYA SC: But there is a very  
 16 strong qualification to that right, is there not, Colonel,  
 17 where the Constitution tells us they can only exercise  
 18 these things unarmed? Am I correct?  
 19 COLONEL VERMAAK: That is correct.  
 20 MR SEMENYA SC: When they are armed they  
 21 are not doing it within the protection of the law, do they?  
 22 COLONEL VERMAAK: That's correct.  
 23 MR SEMENYA SC: There is another caveat,  
 24 or a qualification to the exercise of that right, is that  
 25 it must be peacefully done.

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1 COLONEL VERMAAK: That's correct.  
 2 MR SEMENYA SC: So we can learn from the  
 3 Constitution that if a bunch of 300, 400 spear-wielding  
 4 individuals want to go and rob a bank, they are not  
 5 exercising a constitutionally protected right under section  
 6 17. Am I right?  
 7 COLONEL VERMAAK: That's right.  
 8 CHAIRPERSON: [Microphone off, inaudible]  
 9 robbing banks. If they want to go and present a petition  
 10 to somebody –  
 11 COLONEL VERMAAK: That's correct.  
 12 CHAIRPERSON: - but they do so in a  
 13 violent, unpeaceful fashion –  
 14 COLONEL VERMAAK: That's correct, Chair.  
 15 CHAIRPERSON: - and they do so while  
 16 armed, then they're not covered by the terms of the  
 17 Constitution.  
 18 COLONEL VERMAAK: Of the Constitution,  
 19 that's correct.  
 20 CHAIRPERSON: They are not exercising a  
 21 right –  
 22 COLONEL VERMAAK: No.  
 23 CHAIRPERSON: - entrenched in the Bill of  
 24 Rights.  
 25 COLONEL VERMAAK: That's correct, Chair.

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1 MR SEMENYA SC: Or if their purpose is to  
 2 attack the police.  
 3 COLONEL VERMAAK: That's correct –  
 4 MR SEMENYA SC: They are not exercising a  
 5 constitutionally protected right. Am I right?  
 6 COLONEL VERMAAK: That is correct.  
 7 MR SEMENYA SC: So my understanding is,  
 8 and you must correct me if I'm wrong, then the legislature  
 9 then seeks to give content to this right and passed the  
 10 Regulation of Gatherings Act.  
 11 CHAIRPERSON: That's not correct, it's  
 12 the other way around. The Regulation of Gatherings Act was  
 13 passed in 1993.  
 14 COLONEL VERMAAK: That's correct.  
 15 CHAIRPERSON: Before the constitutional  
 16 era began.  
 17 COLONEL VERMAAK: That's correct, Chair.  
 18 CHAIRPERSON: It was drafted by a special  
 19 committee of the Goldstone Commission –  
 20 COLONEL VERMAAK: That's correct.  
 21 CHAIRPERSON: - presided over by a  
 22 Professor Heymann from Harvard University and the draft  
 23 which was prepared by the Goldstone Commission's committee  
 24 was adopted by parliament as the act before the  
 25 constitutional era began.

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1 COLONEL VERMAAK: That's correct.  
 2 MR SEMENYA SC: Colonel, if I step back;  
 3 the Regulation of Gatherings Act is intended to guide the  
 4 exercise of the section 17 rights. Am I correct? As the  
 5 law stands.  
 6 COLONEL VERMAAK: Just repeat your  
 7 question, Sir.  
 8 MR SEMENYA SC: This is the legislative  
 9 instrument defining how that exercise of section 17 of the  
 10 Constitution is exercised, correct?  
 11 COLONEL VERMAAK: That's correct.  
 12 MR SEMENYA SC: It actually says –  
 13 CHAIRPERSON: If parliament had wanted to  
 14 change it, if parliament had been dissatisfied with  
 15 anything in that act and felt it required amendment to  
 16 bring it in line with section 17 of the Constitution it  
 17 would have done so.  
 18 COLONEL VERMAAK: That's correct.  
 19 CHAIRPERSON: But it was content to leave  
 20 it on the statute book because it was already –  
 21 COLONEL VERMAAK: Implemented.  
 22 CHAIRPERSON: - a precursor as it were of  
 23 the new constitutional dispensation –  
 24 COLONEL VERMAAK: That's correct.  
 25 CHAIRPERSON: - as far as gatherings were

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1 concerned.  
 2 COLONEL VERMAAK: That's correct, Chair.  
 3 MR SEMENYA SC: And in its own language  
 4 it says it is to regulate the holding of public gatherings  
 5 and demonstration at certain places. That's what the act  
 6 is intended to address. Am I right?  
 7 COLONEL VERMAAK: Yes.  
 8 MR SEMENYA SC: And then tells us that it  
 9 is in recognition, so the preamble says, that every person  
 10 has the right to assemble with other persons and to express  
 11 his views on any matter freely in public and to enjoy the  
 12 protection of the State while doing so, correct? And that  
 13 protection of the State is really even the manner in which  
 14 Public Order Policing would help those citizens who want to  
 15 express that right to express it so unhindered. Am I  
 16 correct?  
 17 COLONEL VERMAAK: That is correct.  
 18 MR SEMENYA SC: But in its preamble, says  
 19 the Regulation of Gatherings Act, that such right shall  
 20 take place peacefully and with due regard to the rights of  
 21 others. You accept that?  
 22 COLONEL VERMAAK: That is correct.  
 23 MR SEMENYA SC: It's important a  
 24 qualification that it is with regard to the rights of  
 25 others because in these public demonstrations and

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1 gatherings you normally have to make sure there is minimal  
 2 interference in the rights of the others.  
 3 COLONEL VERMAAK: That's correct, from  
 4 both sides.  
 5 MR SEMENYA SC: From both sides. Make  
 6 sure that whilst they can express this constitutionally  
 7 protected right, there is no undue hindrance to the rights  
 8 of others, correct?  
 9 COLONEL VERMAAK: That's correct.  
 10 MR SEMENYA SC: And then the statute  
 11 creates a structure in terms of which that happens. Am I  
 12 right?  
 13 COLONEL VERMAAK: That's correct.  
 14 MR SEMENYA SC: There would be meetings,  
 15 section 4 meetings, etcetera, etcetera.  
 16 COLONEL VERMAAK: That's correct.  
 17 MR SEMENYA SC: Am I right?  
 18 COLONEL VERMAAK: Yes.  
 19 MR SEMENYA SC: Now when – shall I call  
 20 it the RGA for short – when the Regulation of Gatherings  
 21 Act makes various provisions, it also says, does it not,  
 22 how the police are to act in a particular circumstances,  
 23 even where there was non-compliance with the provisions of  
 24 the regulation. Am I right?  
 25 COLONEL VERMAAK: That's correct, Chair.

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1 MR SEMENYA SC: And that is captured in  
 2 the powers of the police under section 9 of that statute,  
 3 right?  
 4 COLONEL VERMAAK: I accept it.  
 5 MR SEMENYA SC: But principally it then  
 6 tells us that if for some other reason the gathering does  
 7 not comply with one of either of, any of the provisions of  
 8 the act, one of the things a police member is entitled to  
 9 do is to say disperse, correct?  
 10 COLONEL VERMAAK: It depends what the  
 11 circumstances is, Chair.  
 12 MR SEMENYA SC: Ja, if for instance they  
 13 are armed and the gathering is not in terms of the act and  
 14 it is competent where a police officer has reason to  
 15 believe that it might go out of hand to call on them to  
 16 disperse?  
 17 COLONEL VERMAAK: That's correct.  
 18 MR SEMENYA SC: Yes. Significant though,  
 19 section 9(3) of the RGA then says, "No common law  
 20 principles regarding self-defence, necessity, and  
 21 protection of property shall be affected by the provisions  
 22 of this act."  
 23 COLONEL VERMAAK: I accept.  
 24 MR SEMENYA SC: Am I right? So to the  
 25 extent that the police intend to explain their conduct to

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1 have been acting under common law principles regarding  
 2 self-defence, the act doesn't apply. Is that your  
 3 understanding?  
 4 COLONEL VERMAAK: Yes.  
 5 MR SEMENYA SC: And then there is the  
 6 Standing Order 262 which is an administrative instrument.  
 7 Am I correct?  
 8 COLONEL VERMAAK: That is correct.  
 9 MR SEMENYA SC: It is not law as we  
 10 understand that concept to be. Am I right?  
 11 COLONEL VERMAAK: No, it is instruction  
 12 from the police side.  
 13 MR SEMENYA SC: Correct. And that  
 14 instruction also is intended to –  
 15 MR BIZOS SC: Mr Chairman, I don't know  
 16 that my learned friend is correct in submitting that the  
 17 standing orders are not a law.  
 18 MR SEMENYA SC: It's an administrative  
 19 instrument.  
 20 CHAIRPERSON: I'm inclined to think that  
 21 he's right, but I don't propose deciding the issue at the  
 22 moment because I don't think it arises directly, but you've  
 23 put on record your contention that you think it has the  
 24 force of law. It certainly would be binding on the police  
 25 as being instructions they have received of a permanent

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1 nature from the National Commissioner.  
 2 MR BIZOS SC: My learned friend isn't  
 3 putting that proviso. He says it's not law; it can be  
 4 ignored at the instance of the police, if I understand the  
 5 question correctly.  
 6 MR SEMENYA SC: Happily I didn't say –  
 7 CHAIRPERSON: Mr Semenya, make it clear  
 8 what you do intend to submit and then perhaps Mr Bizos will  
 9 be satisfied.  
 10 MR SEMENYA SC: A standing order is an  
 11 administrative instrument, the breach of which would submit  
 12 a member to misconduct, nothing else. Am I right?  
 13 COLONEL VERMAAK: That's correct, the  
 14 police, the Police Act gives the power to the National  
 15 Commissioner to issue certain standing orders.  
 16 MR SEMENYA SC: Now even that –  
 17 CHAIRPERSON: I'm sorry to interrupt.  
 18 The point made is that they are binding on members of the  
 19 police, with –  
 20 COLONEL VERMAAK: That's correct.  
 21 CHAIRPERSON: - consequences if they  
 22 don't comply.  
 23 COLONEL VERMAAK: That's correct, Chair.  
 24 CHAIRPERSON: A policeman hasn't the  
 25 power or the right or the discretion to deviate as he or

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1 she considers appropriate from the provisions of the  
 2 standing orders.  
 3 COLONEL VERMAAK: Chair, there is  
 4 standing orders that stipulate that when a member is not  
 5 satisfied with specific instructions he can on a later  
 6 stage make a representing to the senior people that he was  
 7 not satisfied with the instruction or the standing order  
 8 that he expect to execute at that stage.  
 9 MR SEMENYA SC: Okay. I want us just to  
 10 tidy up what the standing order then says in relation to  
 11 various matters. It also is founded on the RGA. It seeks  
 12 to give expression to the RGA. Am I right?  
 13 COLONEL VERMAAK: That's correct.  
 14 MR SEMENYA SC: And for that it has under  
 15 article 2 various definitions, but 2 deal with, define what  
 16 is called crowd management. Can I share it with you and  
 17 tell me whether this is consistent with your understanding?  
 18 It says, "Crowd management means the policing of  
 19 assemblies, demonstrations, and all gatherings as defined  
 20 in the act, whether recreational or peaceful, or of an" –  
 21 CHAIRPERSON: Mr Semenya, Ms Lewis has  
 22 put on her light; she wishes to make an objection of some  
 23 kind. What is your objection, Ms Lewis?  
 24 MS LEWIS: Chair, I would simply like to  
 25 add to Mr Bizos' reservation. To the extent that Mr

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1 Semenya is simply putting issues of law to this witness,  
 2 our understanding is that those are issues to be argued at  
 3 the end –  
 4 CHAIRPERSON: We can certainly hear –  
 5 MS LEWIS: - and for the Commission to  
 6 decide.  
 7 CHAIRPERSON: No, no, I've ruled that  
 8 often, but he's prefaced his remarks by something that I  
 9 don't think you heard. He said "I want to test your  
 10 knowledge of the law in relation to crowd management and  
 11 public gatherings," and so on. So it's preliminary to  
 12 questions he's going to ask about the way the Colonel  
 13 acted. So I don't think I can stop that question because  
 14 it's not designed to persuade, to tell us what the law is,  
 15 but to test what the witness knows about it. Is that  
 16 right, Mr Semenya? But you won't go, you won't trespass  
 17 across the line that has been firmly drawn in the past in  
 18 this Commission, to which Ms Lewis has referred, will you?  
 19 You won't trespass against that line?  
 20 MR SEMENYA SC: No, I'm not asking for  
 21 his legal opinion.  
 22 MR BIZOS SC: Mr Chairman, may I also add  
 23 with respect to our learned friend that our courts have  
 24 pronounced, and particularly the Constitutional Court,  
 25 about the right to life and serious injury which are to be

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1 taken into consideration in interpreting the legislation  
 2 that our learned friend is referring to.  
 3 [09:51] And may I remind him, Mr Chairman, that the  
 4 unequivocal rejection that a wrong of stealing an apple  
 5 over the fence doesn't give you an opportunity literally to  
 6 shoot the child that stole the apple. So please let us  
 7 not –  
 8 CHAIRPERSON: Yes, Mr Bizos, I'm sure Mr  
 9 Semenya –  
 10 MR BIZOS SC: - forget the interpretation  
 11 of those laws and the moral responsibility that our courts  
 12 expect the police to observe.  
 13 CHAIRPERSON: I'm sure Mr Semenya is  
 14 aware of that but I'm sure he's all the better for being  
 15 reminded. Would you like to continue with your cross-  
 16 examination, Mr Semenya?  
 17 MR SEMENYA SC: Thank you, Chair.  
 18 Colonel, then under the definitions, section K, there is a  
 19 definition of JOCCOM and it reads, "means the Joint  
 20 Operational Coordinating Committee that is an integrated  
 21 operational body involving service as well as external  
 22 role-players such as SANDF, the Metro Police," etcetera.  
 23 COLONEL VERMAAK: That's correct.  
 24 MR SEMENYA SC: Now what follows is more  
 25 important because I want us later to deal with it. Then it

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1 says under JOCCOM "The consultation process regarding the  
 2 threat assessment is carried out by the JOCCOM and involves  
 3 all information role-players, the threat determination,  
 4 mandate and tasking for the event will come from this  
 5 meeting." So it is the JOCCOM which addresses all of these  
 6 issues. You agree with that?  
 7 COLONEL VERMAAK: I agree.  
 8 MR SEMENYA SC: "The JOCCOM meets weekly  
 9 and only deals with planned activities such as the coming  
 10 COSATU march. Furthermore the JOCCOM will activate a JOC,  
 11 appoint an operational commander and identify all the  
 12 required role-players involved." That is in line with your  
 13 understanding of how the JOCCOM works.  
 14 COLONEL VERMAAK: That's correct.  
 15 CHAIRPERSON: I'm sorry, the problem that  
 16 we had last week has recurred that someone, or some people  
 17 perhaps, have either got their earphones on too loudly or  
 18 they haven't got the earphones on their ears so that the  
 19 noise we can hear. It's very disturbing and I think  
 20 something should be done about it. Mr Semenya, would you  
 21 like to carry on?  
 22 MR SEMENYA SC: Thank you, Chair. I  
 23 would like to read to you what then clause 11 says of the  
 24 Standing Order so that you can confirm whether it is in  
 25 line with your understanding of how matters work. It says,

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1 and it is headed "Execution. The use of force must be  
 2 avoided at all cost and members deployed for the operations  
 3 must display the highest degree of tolerance." That's in  
 4 line with your understanding, Colonel?  
 5 COLONEL VERMAAK: That's correct.  
 6 MR SEMENYA SC: "The use of force and  
 7 dispersal of crowds must comply with the requirements of  
 8 section 9(1) and (2) of the act. During any operation  
 9 ongoing negotiations must take place between officers and  
 10 conveners or other leadership elements." Are you familiar  
 11 with that?  
 12 COLONEL VERMAAK: Yes, Chair.  
 13 MR SEMENYA SC: And then says under sub  
 14 2, "If negotiations fail and life or property is in danger  
 15 the following procedure must be followed." Can I highlight  
 16 the first one? It says "Put defensive measures in place as  
 17 a priority."  
 18 COLONEL VERMAAK: Yes, Chair.  
 19 MR SEMENYA SC: So when you talk  
 20 Marikana, putting something like a barbed wire would be  
 21 such typical defensive measure as is contemplated by the  
 22 Standing Order. Am I right?  
 23 COLONEL VERMAAK: That's correct.  
 24 MR SEMENYA SC: And then under 5, which  
 25 is another thing, it says "Force may only be used on

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1 command or instruction of the CJOC or operational  
 2 commander, if appointed. Members may never act  
 3 individually without receiving a command from their  
 4 commander." You're familiar with that too?  
 5 COLONEL VERMAAK: I'm familiar with it.  
 6 MR SEMENYA SC: And under 7, sub 7 it  
 7 says, "Common law principle of self-defence or private  
 8 defence are not affected by this order." Are you familiar  
 9 with that?  
 10 COLONEL VERMAAK: I'm familiar.  
 11 MR SEMENYA SC: Okay. You would, given  
 12 your experience, Colonel, then also be familiar with the  
 13 provisions of the Dangerous Weapons Act which defines what  
 14 type of weapons are dangerous weapons in terms of the act.  
 15 COLONEL VERMAAK: That's correct.  
 16 MR SEMENYA SC: And you have no  
 17 difficulty that the weapons that were displayed in  
 18 Marikana, the 13th for instance, the 16th for instance, of  
 19 August 2012 were such weapons as are defined in terms of  
 20 this act?  
 21 COLONEL VERMAAK: That's correct. 13  
 22 and, from the 13th to the 16th where I was involved, prior  
 23 to that I was not.  
 24 MR SEMENYA SC: Right, and I also want to  
 25 deal with the helicopter operation manual. Do you have

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1 that document with you?  
 2 COLONEL VERMAAK: I haven't got it here  
 3 now.  
 4 MR SEMENYA SC: Could we then have that,  
 5 Chair, as exhibit 000 –  
 6 CHAIRPERSON: What number is it in your  
 7 bundle? The bundle you've given us there are numbered tabs  
 8 that tell us what the particular – which indicate various  
 9 documents, which one is this? I saw it somewhere.  
 10 MR SEMENYA SC: Colonel, I don't have the  
 11 bundle with me. Are you able to identify it in your  
 12 bundle?  
 13 COLONEL VERMAAK: It wasn't on the list  
 14 that you sent to me.  
 15 COMMISSIONER HEMRAJ: Is it the emails  
 16 that you're referring to, Mr Semenya?  
 17 CHAIRPERSON: No it's –  
 18 COMMISSIONER HEMRAJ: Not?  
 19 COLONEL VERMAAK: No, Chair, it's not  
 20 part of the topics that was sent to me that –  
 21 MR SEMENYA SC: Okay, I'll tidy this up  
 22 during break.  
 23 CHAIRPERSON: I thought I saw it here but  
 24 I must be wrong.  
 25 MR SEMENYA SC: Alright. Shall we deal

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1 with something in the meantime? Is it fair, Colonel, to  
 2 say in broad terms that the South African Police Service  
 3 deals with almost something like 150 000 events of public  
 4 order management challenges –  
 5 COLONEL VERMAAK: I haven't got the  
 6 statistics but there's quite a lot, yes.  
 7 MR SEMENYA SC: Particularly in the North  
 8 West province, it has in recent times seen a fair amount of  
 9 these events happening and being managed.  
 10 COLONEL VERMAAK: That is correct.  
 11 MR SEMENYA SC: And even with the  
 12 resources limitations you have there have been a fair  
 13 amount of good outcomes from those events.  
 14 COLONEL VERMAAK: Definitely, yes.  
 15 MR SEMENYA SC: With less, or no loss of  
 16 life in many of these instances.  
 17 COLONEL VERMAAK: That is correct, Chair.  
 18 MR SEMENYA SC: And we may even say that  
 19 by far the majority of them come and go without event,  
 20 correct?  
 21 COLONEL VERMAAK: That's correct.  
 22 MR SEMENYA SC: So that a conclusion can  
 23 fairly be drawn that there is a fair on-the-field  
 24 experience that has been accumulating in the North West  
 25 within the public order policing. Is that a fair statement

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1 to say?  
 2 COLONEL VERMAAK: Yes.  
 3 MR SEMENYA SC: And that those incidents  
 4 have been managed with some fair amount of consistency and  
 5 learning has come out of it.  
 6 COLONEL VERMAAK: Yes, I agree with that.  
 7 MR SEMENYA SC: And a resultant outcome  
 8 such as has happened in Marikana in particular is  
 9 exceptional, highly exceptional.  
 10 COLONEL VERMAAK: There was previous  
 11 incidents at mines where more or less the same incidents  
 12 happened and it was handled without loss of life.  
 13 MR SEMENYA SC: But that's my point. It  
 14 makes Marikana therefore quite exceptional that it produced  
 15 the outcomes it did.  
 16 COLONEL VERMAAK: I don't think I can  
 17 really comment on that.  
 18 MR SEMENYA SC: Your difficulty being?  
 19 COLONEL VERMAAK: I testified that if the  
 20 management did take notice of information that was conveyed  
 21 to them from the 13th up to the morning of the 16th the  
 22 outcome could have been something else as it was on that  
 23 day.  
 24 MR SEMENYA SC: I'm familiar with your  
 25 evidence, Colonel. All I'm saying is - and we'll deal with

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1 that later. All I'm saying is the results of Marikana are  
 2 not consistent with the history of public order policing  
 3 that has happened in the province in the past.  
 4 COLONEL VERMAAK: I will not fully agree  
 5 with you on that point –  
 6 MR SEMENYA SC: Were there any other  
 7 incidents where 34 people were killed in one incident?  
 8 COLONEL VERMAAK: No, there was no  
 9 incidents where police have to shoot people, where 34  
 10 people were killed.  
 11 MR SEMENYA SC: So that's the question  
 12 I –  
 13 COLONEL VERMAAK: My argument was that if  
 14 another plan was followed the outcome could be otherwise.  
 15 MR SEMENYA SC: No, I will test that, I  
 16 accept that. All I'm asking is you can agree with me,  
 17 can't you, Colonel, that no other incident has produced as  
 18 many fatalities post democracy as this was the case?  
 19 COLONEL VERMAAK: Yes, if you put it like  
 20 that.  
 21 MR SEMENYA SC: Okay. Now can I have the  
 22 benefit again of your experience in this regard? Brigadier  
 23 Calitz, you know him very well.  
 24 COLONEL VERMAAK: Brigadier Calitz, just  
 25 repeat.

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1 MR SEMENYA SC: Brigadier Calitz –  
 2 COLONEL VERMAAK: Yes.  
 3 CHAIRPERSON: Yes, he knows Brigadier  
 4 Calitz very well, I take it the answer is yes.  
 5 COLONEL VERMAAK: Very well, for many  
 6 years, yes.  
 7 MR SEMENYA SC: I think since 2002 or  
 8 something?  
 9 COLONEL VERMAAK: Ja, more or less,  
 10 that's correct.  
 11 MR SEMENYA SC: In Public Order Policing?  
 12 COLONEL VERMAAK: That's correct, Chair.  
 13 MR SEMENYA SC: You have come to know his  
 14 expertise in Public Order Policing?  
 15 COLONEL VERMAAK: That's correct.  
 16 MR SEMENYA SC: Never have had any reason  
 17 in the past to question his judgment?  
 18 COLONEL VERMAAK: No.  
 19 MR SEMENYA SC: And you can consider him  
 20 competent to manage a Public Order Policing event?  
 21 COLONEL VERMAAK: Yes.  
 22 MR SEMENYA SC: And you have no issues  
 23 that he was appointed the operational commander for the  
 24 Marikana events?  
 25 COLONEL VERMAAK: No, not at all.

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1 MR SEMENYA SC: You would consider that  
 2 operation to have been under the control of an operational  
 3 commander of outstanding experience in Public Order  
 4 Policing?  
 5 COLONEL VERMAAK: Yes, for that what he  
 6 was appointed for.  
 7 MR SEMENYA SC: Colonel Merafe, you know  
 8 him well?  
 9 COLONEL VERMAAK: Yes, I know him very  
 10 well.  
 11 MR SEMENYA SC: He is in the Public Order  
 12 Policing as well?  
 13 COLONEL VERMAAK: Yes.  
 14 MR SEMENYA SC: You don't doubt his  
 15 competence in relation to Public Order Policing matters?  
 16 COLONEL VERMAAK: No.  
 17 MR SEMENYA SC: Come to respect his  
 18 experience in that regard?  
 19 COLONEL VERMAAK: Yes.  
 20 MR SEMENYA SC: And there is nothing  
 21 untoward about him being present at one element of the  
 22 Public Order Police management in Marikana during that  
 23 period?  
 24 COLONEL VERMAAK: No.  
 25 MR SEMENYA SC: Colonel Pitsi you know?

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1 COLONEL VERMAAK: Yes.  
 2 MR SEMENYA SC: Public Order Police  
 3 management, I mean Public Order Police – am I correct?  
 4 COLONEL VERMAAK: Yes.  
 5 MR SEMENYA SC: You know him very well  
 6 too?  
 7 COLONEL VERMAAK: That's correct.  
 8 MR SEMENYA SC: Come to respect his  
 9 experience in Public Order Policing?  
 10 COLONEL VERMAAK: Yes.  
 11 MR SEMENYA SC: Would not question his  
 12 expertise in relation to matters of Public Order Policing?  
 13 COLONEL VERMAAK: No.  
 14 MR SEMENYA SC: And these are people,  
 15 broadly, who were there during the Marikana period as well?  
 16 COLONEL VERMAAK: That's correct.  
 17 MR SEMENYA SC: Okay. Colonel, I just  
 18 want us to start –  
 19 CHAIRPERSON: Are you moving to another  
 20 topic?  
 21 MR SEMENYA SC: Yes.  
 22 CHAIRPERSON: Well, I'd like to ask a  
 23 question before you do that. But before I do that, I see  
 24 there's a document against tab 57 in your bundle which is  
 25 the job description of a unit commander of Air Wing at

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1 Nelspruit. I don't whether that's the – that sets out all  
 2 the duties and so forth of a person in that position. I  
 3 don't know if that's the document you were looking for.  
 4 MR SEMENYA SC: No, that's not the  
 5 document. I propose to deal with that at a different  
 6 stage.  
 7 CHAIRPERSON: Alright, okay. Well, then  
 8 let me ask a question about the topic you were dealing  
 9 with. I understood you to say that your main criticism of  
 10 what happened on the 16th related to the plan. You said if  
 11 there had been another plan in place then the outcome might  
 12 have been different.  
 13 COLONEL VERMAAK: That's correct, Chair.  
 14 CHAIRPERSON: You said a few minutes.  
 15 COLONEL VERMAAK: That's correct.  
 16 CHAIRPERSON: Now you were referred to  
 17 three POP people with vast experience in whom you have  
 18 great confidence. That's Brigadier Calitz, Lieutenant-  
 19 Colonel Merafe and Colonel Pitsi.  
 20 COLONEL VERMAAK: That's correct.  
 21 CHAIRPERSON: Not one of them was  
 22 responsible for the plan that was put into operation on the  
 23 16th, is that correct?  
 24 COLONEL VERMAAK: That is correct, Chair.  
 25 MR SEMENYA SC: Well, check your answer,



<p style="text-align: right;">Page 27486</p> <p>1 Colonel, maybe you want to reflect on it. Was Merafe not 2 part of the plan? 3 COLONEL VERMAAK: Chair – 4 MR SEMENYA SC: But I know you're not 5 there, that's why I'm saying be careful with answers that 6 you give. 7 COLONEL VERMAAK: No, I will give the 8 answer. 9 CHAIRPERSON: Let me put it this way, 10 were any of those gentlemen at the 1:30 JOCCOM meeting on 11 the 16th, as far as you know, where the plan was for the 12 first time put on the table by Colonel Scott? 13 COLONEL VERMAAK: No, Chair, as far as I 14 know Merafe was not there on the 16th at all. 15 CHAIRPERSON: Merafe was at a funeral on 16 the 16th. 17 COLONEL VERMAAK: That's correct. 18 CHAIRPERSON: Pitsi and Calitz were out 19 in the field. 20 COLONEL VERMAAK: That's correct, Chair. 21 CHAIRPERSON: For some reason or other 22 they weren't summoned back to the JOCCOM meeting – 23 COLONEL VERMAAK: That's correct. 24 CHAIRPERSON: - at 1:30 where the plan 25 was for the first time tabled –</p>	<p style="text-align: right;">Page 27488</p> <p>1 the only one that I know is the one that I gave. 2 CHAIRPERSON: That's right. 3 MR SEMENYA SC: Now was that a Public 4 Order Police management issue when you gave the 5 instruction? 6 COLONEL VERMAAK: That was part of where 7 it started as a Public Order Police incident, although it 8 was unlawful, and just to correct you, there's no proof 9 that the person that was killed was shot by the member that 10 I give the instruction to. 11 MR SEMENYA SC: No, I didn't ask you that 12 question either, Colonel, did I? 13 COLONEL VERMAAK: Well, that is my 14 answers. 15 MR SEMENYA SC: Okay. 16 CHAIRPERSON: You did say the only case 17 where someone was killed as a result of instruction from an 18 officer, that's what I heard. If I heard incorrectly then 19 the witness and I obviously made the same mistake. 20 MR SEMENYA SC: Let me rephrase. The 21 only time a member fired live ammunition at a striker was 22 at the command of you, correct? 23 [10:11] COLONEL VERMAAK: That's correct. 24 MR SEMENYA SC: And you are just trying 25 to explain to us that it was not a Public Order Police</p>
<p style="text-align: right;">Page 27487</p> <p>1 COLONEL VERMAAK: That's correct. 2 CHAIRPERSON: - by Lieutenant-Colonel 3 Scott. 4 COLONEL VERMAAK: That's correct, Chair. 5 MR SEMENYA SC: Well, later we'll deal 6 with that, Colonel, but for now let me take it as I planned 7 to do. In fact maybe let's do this. Let's deal with a 8 whole number of small topics. For the entire duration and 9 the entire operation in Marikana the only time, the only 10 time in the entire operation in Marikana where a striker 11 was shot at, at the command of an officer to fire live 12 ammunition at an attacker was only once to your knowledge. 13 Am I right? 14 COLONEL VERMAAK: That's correct and that 15 was me, if you're referring to that. 16 MR SEMENYA SC: That is the only time 17 where on instructions of an officer – 18 MR FISCHER: Chairperson, I apologise for 19 intervening but there are statements by other SAPS members 20 who claim to have been given orders to fire live 21 ammunition. 22 CHAIRPERSON: Well, the witness doesn't 23 know about them I think, is that right? You don't know 24 about that. As far as you – 25 COLONEL VERMAAK: That's correct, Chair,</p>	<p style="text-align: right;">Page 27489</p> <p>1 incident, you say it was what now? 2 COLONEL VERMAAK: I said it started – 3 MR SEMENYA SC: I know you said it 4 started. Now at that time you are giving this instruction 5 that somebody be shot with live ammunition, what type of 6 incident are you managing now? 7 COLONEL VERMAAK: Well, according to me, 8 it was still public order. 9 MR SEMENYA SC: Okay. Now in a public 10 order we have Standing Order 262 that tells us the highest 11 form of ammunition that can be used is rubber, am I right? 12 COLONEL VERMAAK: That's correct – 13 MR SEMENYA SC: It has to be non-lethal. 14 COLONEL VERMAAK: It depends on the 15 circumstances. 16 MR SEMENYA SC: Sorry? 17 COLONEL VERMAAK: It depends on the 18 circumstances. 19 MR SEMENYA SC: Oh, let's go – 20 COLONEL VERMAAK: There are exceptional - 21 MR SEMENYA SC: Okay, I accept, maybe you 22 are correct. Can we go to that 262 and tell us under which 23 exceptional circumstances – 24 COLONEL VERMAAK: I haven't got it in 25 front of me, Chair. It was also –</p>

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1 MR SEMENYA SC: Okay.

2 MS PILLAY: Chair, it's exhibit SS2.

3 MR SEMENYA SC: Can I give you my copy?

4 COLONEL VERMAAK: No, it's fine, it is on

5 the second part.

6 MR SEMENYA SC: Can we see the exception

7 where live ammunition can be shot at, on command of an

8 officer?

9 COLONEL VERMAAK: Prevent life.

10 MR SEMENYA SC: The?

11 COLONEL VERMAAK: To prevent the loss of

12 lives.

13 MR SEMENYA SC: No, I am saying 262, show

14 us where the exception is stated that live ammunition can

15 be fired on command of an instructor, of a senior officer,

16 or whatever.

17 COLONEL VERMAAK: Part of Public Order

18 Police is to protect life and properties.

19 MR SEMENYA SC: Are you able to show us

20 on Standing Order 262?

21 COLONEL VERMAAK: No, it's not

22 specifically spelled out in 262.

23 MR SEMENYA SC: Can you tell us where it

24 is impliedly stated in 262?

25 COLONEL VERMAAK: The Gatherings Act is

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1 telling us that the police's responsibility is to protect

2 life and property.

3 MR SEMENYA SC: Okay.

4 CHAIRPERSON: 11(7) of Standing Order 262

5 provides that common law principles of self-defence or

6 private defence are not affected by the order.

7 MR SEMENYA SC: Do you want to hang your

8 peg on that one, Colonel?

9 COLONEL VERMAAK: You say 11?

10 MR SEMENYA SC: No, the Chair was just

11 saying that one of the provisions is the common law

12 principles of self and private defence do not apply.

13 CHAIRPERSON: On the screen above you.

14 MR SEMENYA SC: Let me try and establish

15 this; when you gave the instruction that this striker must

16 be shot at, did you say through the head or to the legs, or

17 what was the instruction?

18 COLONEL VERMAAK: No, you will never give

19 instruction to shoot somebody dead and every police member

20 knows when you had to shoot at the person it's not to shoot

21 him dead. It's actually to disable him, and to make sure

22 that you can arrest him, and in these circumstances to

23 prevent that he is shooting with a firearm at the police.

24 MR SEMENYA SC: The question I asked was,

25 do you tell him where to shoot?

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1 COLONEL VERMAAK: No, it's not necessary

2 to tell a trained person where to shoot.

3 MR SEMENYA SC: Did you know the extent

4 of his training when you gave the instruction?

5 COLONEL VERMAAK: Well, Chair, if a

6 member goes through his college training, he is being

7 trained either as a TRT member, then he was supposed to

8 passed it, his course, or a public order police, he should

9 have also passed it, and if he has a firearm with him, he

10 knows according to the law.

11 MR SEMENYA SC: So you didn't know what

12 competence that individual had?

13 COLONEL VERMAAK: If he was not competent

14 to have a firearm, then the commander who issued that

15 firearm to him must be responsible for the fact that he

16 gives a firearm to a person who is not trained and who is

17 not according to, or competent to use that firearm.

18 MR SEMENYA SC: And by the way, the man

19 you instruct to fire this live ammunition is a TRT member,

20 right?

21 COLONEL VERMAAK: Chair, I can maybe

22 answer you on that. For the whole period, since Marikana,

23 up to where I started testifying, everybody was asking me

24 who was the members who was shooting, and every time I said

25 to the people I did not know the members by name, I am not

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1 working every day with him, but what was very surprising to

2 me is that the police was, they had statements of the

3 members who was so-called with me, and they stated that I

4 gave them instructions and never for 18 months did the

5 police ever tell me they had statements from any police

6 member who was with me at that day. Now you want to ask me

7 what I know about the member. I think the police can

8 answer that question because why, they didn't give me that

9 information for 18 months, until I have started testifying

10 in this Commission.

11 MR SEMENYA SC: No, but you remember what

12 my question is Colonel? My question was the man you

13 instructed to fire live ammunition at the striker, was a

14 TRT member, was he not?

15 COLONEL VERMAAK: Yes, according to the

16 statements that the police –

17 MR SEMENYA SC: No, according to your

18 statement, Colonel.

19 COLONEL VERMAAK: Ja, ja. But

20 afterwards, I realised the police already have that

21 information for 18 months and they didn't share it with me,

22 while I was representing at that stage by the legal team of

23 the South African Police Service, and that put the big

24 question for me, why did they not share that information

25 with me and only share it with me after I have started

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1 testifying?

2 MR SEMENYA SC: When you gave him

3 instruction you said he must fire with an R5, right?

4 COLONEL VERMAAK: That's correct.

5 MR SEMENYA SC: Now, I've got two

6 difficulties with that. I thought you said in one of your

7 criticisms is the use of TRT members in Public Order

8 Policing, that changed that day.

9 COLONEL VERMAAK: If you remember I said

10 it started as a Public Order Policing incident. I didn't

11 say it ended as a Public Order Police incident.

12 MR SEMENYA SC: Oh, sorry. It ended up

13 as what?

14 COLONEL VERMAAK: Protect lives.

15 MR SEMENYA SC: No, that happens even in

16 crime prevention. I am just trying to understand the

17 classification this now becomes.

18 COLONEL VERMAAK: What do you want me to

19 say more about it?

20 MR SEMENYA SC: Sorry?

21 COLONEL VERMAAK: What did you want me to

22 say more about? I said it started as a Public Order Police

23 incident, and it escalate in such a way that where firearms

24 were taken from police, and they were shooting at the

25 police and the people have to protect their own life and I

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1 had the guts to sit here in this Commission and said I gave

2 instruction to a police member to shoot at somebody who was

3 shooting at the police, and as far as I remember not one of

4 the witnesses who was testifying before this Commission

5 ever have the guts to say I gave that instruction to a

6 junior member.

7 MR SEMENYA SC: You said one of the

8 criticisms is that this R5 shouldn't be used, I think you

9 were writing to everybody in authority and say it mustn't

10 be used in Public Order Policing. Am I right?

11 COLONEL VERMAAK: Chair, I have already

12 answered, my -

13 MR SEMENYA SC: Well, I've put another

14 angle to it. I say you have as one of the criticisms of

15 Public Order Policing management in North West the fact of

16 the use of R5s. Am I right?

17 COLONEL VERMAAK: It depends on the

18 circumstances, Chair. If people is throwing stones at

19 policemen, is it fair to shoot with R5s at them? No, I

20 don't think so. But if you are in a position where people

21 is shooting with an R5 at you, I think then it is fair to

22 shoot back with an R5. But in normal Public Order Policing

23 incidents, and I can take you back to May, in 2012, and I

24 think you are going to question me on that as well, Chair -

25 MR SEMENYA SC: You can be guaranteed.

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1 Colonel, in all of your six statements, nowhere do you

2 mention the fact that you instructed a member of the TRT to

3 fire live ammunition with an R5 at a protester, am I right?

4 COLONEL VERMAAK: I haven't got them in

5 front of me.

6 MR SEMENYA SC: You can have a look at

7 them.

8 COLONEL VERMAAK: But I am testifying it

9 here, under oath.

10 MR SEMENYA SC: I know.

11 COLONEL VERMAAK: Yes.

12 MR SEMENYA SC: Nowhere in this whole

13 period in any of your six statements, do you say that. Am

14 I correct?

15 COLONEL VERMAAK: Well, I didn't deny it.

16 I acknowledge it and said, yes, I did gave that

17 instruction.

18 MR SEMENYA SC: No, you don't in your

19 statements -

20 COLONEL VERMAAK: Yes, that's why I -

21 MR SEMENYA SC: - that's my difficulty.

22 COLONEL VERMAAK: - I said now.

23 MR SEMENYA SC: Mmmm?

24 COLONEL VERMAAK: I testify here before

25 the Commission.

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1 MR SEMENYA SC: I know you do, Colonel,

2 just answer my question.

3 COLONEL VERMAAK: That is my answer.

4 MR SEMENYA SC: Alright. Instead what

5 you say is, that "Die lede het teruggeskiet."

6 COLONEL VERMAAK: That's correct.

7 MR SEMENYA SC: What you omit to say is,

8 "on my instruction."

9 COLONEL VERMAAK: But I've rectified it

10 before the Commission.

11 MR SEMENYA SC: No, you say - you knew

12 this matter was being investigated by IPID, am I right?

13 COLONEL VERMAAK: That's correct.

14 MR SEMENYA SC: You know IPID was

15 investigating the correctness or otherwise of the shooting

16 that happened at the river there, correct?

17 COLONEL VERMAAK: Chair, no, at no stage

18 IPID asked any statement from me.

19 MR SEMENYA SC: No, no, no -

20 COLONEL VERMAAK: No, no, no, you said

21 they were investigating it. If they did investigate it,

22 why didn't they come to me as a senior member there on the

23 scene and asked me for a statement?

24 MR SEMENYA SC: Are you seriously saying

25 IPID did not investigate the incidents that happened at the

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1 river where you were involved?  
 2 COLONEL VERMAAK: I said they never came  
 3 to me and asked for a statement.  
 4 MR SEMENYA SC: But that's why I didn't  
 5 ask that question.  
 6 COLONEL VERMAAK: Well, I am giving you  
 7 the answer.  
 8 MR SEMENYA SC: No, you are giving me a  
 9 reply, Colonel, with respect. You give me a reply. Let me  
 10 ask the question again. Are you seriously saying to us  
 11 that IPID did not investigate the incidents that happened  
 12 at the river where you were involved?  
 13 COLONEL VERMAAK: Chair, nobody from IPID  
 14 ever approached me up to today to ask me an explanation  
 15 what happened there.  
 16 MR SEMENYA SC: Because –  
 17 COLONEL VERMAAK: Nobody.  
 18 MR SEMENYA SC: Because you did not give  
 19 them a statement and say, you know what, I am aware, I am  
 20 officer, I am aware I gave instructions for a discharge of  
 21 a firearm, a R5 rifle, with live ammunition, and this is my  
 22 statement and my account for it. Weren't you supposed to  
 23 do that?  
 24 COLONEL VERMAAK: Chair, again, sorry,  
 25 never did IPID approach me to question me about that

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1 incident. You said, if I am aware of it, and I am telling  
 2 you, no. Because why? They didn't come to me and ask for  
 3 a statement.  
 4 MR SEMENYA SC: No, I accept that.  
 5 CHAIRPERSON: Mr Semenya, do we have a  
 6 warning statement from the witness? If they'd warned him,  
 7 asked him to make a statement, presumably we would have it  
 8 there. There isn't one as far as I am aware, am I correct?  
 9 MR SEMENYA SC: No, nobody knew what he  
 10 knows. That's precisely my difficulty with the evidence of  
 11 the witness. You are the one who knows that you have  
 12 instructed somebody to discharge an R5 rifle at a striker,  
 13 correct?  
 14 COLONEL VERMAAK: Chair –  
 15 MR SEMENYA SC: Correct?  
 16 COLONEL VERMAAK: - if you said that IPID  
 17 investigate it, I accept if you said that, but I am taking  
 18 you back where I said to you that for 18 months the police  
 19 sit with statements of members who implicate me giving  
 20 instructions to them. Now I am asking why did they not  
 21 approach me then and ask me for a statement if they had  
 22 that information before them? Then I will, then my only  
 23 comment can be that they did not investigate it properly,  
 24 because why, the first thing an investigating officer would  
 25 do is to go to a senior member and ask him an explanation

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1 what happened there. They know I was there. They know it.  
 2 They have statements of members that they keep for  
 3 themselves and not sharing it for me, with me for 18  
 4 months.  
 5 MR SEMENYA SC: Do you have a duty as a  
 6 member of the police service to give a statement in  
 7 instances where you have discharged a firearm?  
 8 COLONEL VERMAAK: Chair, you know what?  
 9 It's very funny, because why you were consulting with me  
 10 for 18 months where I have informed you as the legal  
 11 representative of the police that I was the person that  
 12 gave that instruction. You never asked me, or one of your  
 13 colleagues ask me to correct my statement, and now you want  
 14 to cross-examination me on that?  
 15 MR SEMENYA SC: Are you Colonel,  
 16 seriously saying that? I thought I just heard you say you  
 17 did come and say that matter here in the Commission, when I  
 18 was asking you where in your statement doesn't this appear?  
 19 Why don't you say, no, it's easy, I consulted with you,  
 20 Semenya, I told you that I instructed people to do, and you  
 21 said nothing about it. Now you are saying it.  
 22 COLONEL VERMAAK: But I think you would  
 23 know it because why, you were the people, Mr Pretorius was  
 24 the person who was knowing they had that information. You  
 25 had that information.

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1 COMMISSIONER HEMRAJ: Colonel, sorry,  
 2 Colonel, as a matter of course any and all shootings by  
 3 police are investigated by IPID.  
 4 COLONEL VERMAAK: That's correct, Chair.  
 5 COMMISSIONER HEMRAJ: So the shooting at  
 6 the river, you would be aware, would as a matter of course  
 7 be investigated by IPID as well.  
 8 COLONEL VERMAAK: That's correct.  
 9 COMMISSIONER HEMRAJ: So you would have  
 10 been aware of that?  
 11 COLONEL VERMAAK: That's correct, Chair.  
 12 COMMISSIONER HEMRAJ: Your only complaint  
 13 is that they did not come to you for a statement?  
 14 COLONEL VERMAAK: Nobody came to me for a  
 15 statement.  
 16 COMMISSIONER HEMRAJ: You were aware of  
 17 the investigation?  
 18 COLONEL VERMAAK: That's correct.  
 19 COMMISSIONER HEMRAJ: Thank you.  
 20 MR SEMENYA SC: Would this be a  
 21 convenient stage, Chair?  
 22 CHAIRPERSON: Do you want a comfort break  
 23 now, Mr Semenya?  
 24 MR SEMENYA SC: Indeed Chair, can we –  
 25 CHAIRPERSON: Application granted.

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1 [COMMISSION ADJOURNS COMMISSION RESUMES]

2 [10:55] CHAIRPERSON: The commission resumes. U

3 is nog steeds gebonde aan u plegtige onderneming. Mr

4 Semenya.

5 MR SEMENYA SC: Thank you, Chair.

6 Colonel, I was still exploring this. You have a duty as a

7 member of the police service to file a written report where

8 you use, where you discharge a firearm. Is that right?

9 COLONEL VERMAAK: No, Chair, that is the

10 senior officer who is attending the scene. He must file a

11 report and send it in, not myself. The senior officer on

12 the scene, it is his responsibility.

13 MR SEMENYA SC: Are you saying seriously

14 that if you are a member and you discharge a firearm you do

15 not have a duty to write a report?

16 COLONEL VERMAAK: Chair –

17 MR SEMENYA SC: Or give a statement?

18 COLONEL VERMAAK: You report it to your

19 senior officer or your duty officer if you are at a station

20 and you – if you fire live ammunition you report it to your

21 duty officer and there's a specific form that he must

22 complete and he must report it to higher authority.

23 MR SEMENYA SC: Did you report anything

24 to the duty officer in relation to the discharge of a

25 firearm that was discharged on your instruction?

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1 COLONEL VERMAAK: That's correct. I

2 reported to Brigadier Calitz.

3 MR SEMENYA SC: In writing?

4 COLONEL VERMAAK: No, verbally. He was

5 on the scene.

6 MR SEMENYA SC: And you said to him I

7 instructed the R5 to be fired at that attackers?

8 COLONEL VERMAAK: That is correct.

9 MR SEMENYA SC: The attackers.

10 COLONEL VERMAAK: That is correct. When

11 he arrive at the scene I give him feedback, what have

12 happened. I also give him feedback regarding where I

13 contact the provincial commissioner to – according to the

14 threats against General Mpembe and I also report to him

15 about the incident at the river.

16 MR SEMENYA SC: No, no, no, I'm not

17 asking about incidents. I'm very specific with my

18 questions. Do you say to Brigadier Calitz I instructed

19 members of the TRT to discharge their firearm and aiming at

20 the strikers?

21 COLONEL VERMAAK: Chair –

22 MR SEMENYA SC: Or a striker.

23 COLONEL VERMAAK: I just said I report to

24 Brigadier Calitz the whole incident. That was my answer.

25 MR SEMENYA SC: Including this aspect?

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1 COLONEL VERMAAK: That incident, yes.

2 MR SEMENYA SC: Including this aspect?

3 COLONEL VERMAAK: I said that incident.

4 MR SEMENYA SC: I know, Colonel, you're

5 saying that incident but I don't want any ambiguity. When

6 you say you reported to Brigadier Calitz that incident are

7 you saying inclusive of the detail that you instructed

8 somebody else to fire an R5 rifle at a striker, that also?

9 COLONEL VERMAAK: That was part of the

10 report to him.

11 MR SEMENYA SC: Can I ask that we flight

12 to exhibit 0008?

13 CHAIRPERSON: Certainly. Have you told

14 the operator that you intend flighting? If so can it

15 please be shown? Was there any warning I have to give?

16 MR SEMENYA SC: No, it's a statement.

17 CHAIRPERSON: All right.

18 MR SEMENYA SC: This is your statement,

19 Colonel, that you write on the 16th of August 2012. Am I

20 right?

21 COLONEL VERMAAK: That's correct.

22 MR SEMENYA SC: In your own handwriting.

23 COLONEL VERMAAK: That's correct.

24 MR SEMENYA SC: Uninfluenced by anybody.

25 COLONEL VERMAAK: That's correct.

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1 MR SEMENYA SC: Given to the

2 investigating officer, Brigadier Van Zyl.

3 COLONEL VERMAAK: That's correct.

4 MR SEMENYA SC: Knowing that it is one of

5 the documents that is going to be used to review his bail

6 application?

7 COLONEL VERMAAK: That's correct.

8 MR SEMENYA SC: Nowhere – and you are

9 discussing the matters of the 13th, correct?

10 COLONEL VERMAAK: I can just repeat what

11 I have already stated. Brigadier Calitz, ag, Van Zyl asked

12 me a short statement just to give an overview what happened

13 on the 13th and more or less to explain the fact that the

14 people did not apply for a march without any specific

15 detail to what happened on the 13th. There's a lot of

16 information that on a later stage was given in my

17 statements that was also being required by the police legal

18 team. So this is not specifically handling of all the

19 incidents on the 13th.

20 MR SEMENYA SC: Ja, sure. One of the

21 things I'm able to say, Colonel, that in your entire career

22 – correct me if I'm wrong – it is one of the most

23 significant things to have happened for you to order a

24 member to discharge an R5 at a particular individual. Am I

25 right?

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1 COLONEL VERMAAK: Yes.

2 MR SEMENYA SC: One of the most, single

3 most important most conspicuous elements in your career as

4 a police officer.

5 COLONEL VERMAAK: That's correct. That's

6 why I take the responsibility for that instruction, Chair.

7 MR SEMENYA SC: No, but I'm trying to

8 explore whether you do that or not, Colonel. You remember

9 what amongst others was to happen at Roots was that you

10 must tell everything that happened there, right? Correct?

11 COLONEL VERMAAK: On this incident.

12 MR SEMENYA SC: I know you are –

13 COLONEL VERMAAK: Is it a statement or is

14 it a question?

15 MR SEMENYA SC: It's a question.

16 COLONEL VERMAAK: Yes, I was at Roots.

17 MR SEMENYA SC: And you were there to go

18 and tell what happened in the operation in Marikana

19 including the 13th.

20 COLONEL VERMAAK: That is correct, Chair.

21 I must just maybe also mention that at Roots I gave a

22 statement to Mr Pretorius and he took the statement, go

23 through it, and he make specific places where I make

24 spelling faults and he rectify it. I still have that

25 document. It's not here unfortunately but it is available.

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1 MR SEMENYA SC: I'll come to that

2 statement. I say at Roots the purpose was going to tell

3 exactly what happened including on the 13th.

4 COLONEL VERMAAK: That's correct.

5 MR SEMENYA SC: You don't tell anybody at

6 Roots do you?

7 COLONEL VERMAAK: I did.

8 MR SEMENYA SC: That you instructed

9 somebody to fire at a striker with an R5?

10 COLONEL VERMAAK: Yes.

11 MR SEMENYA SC: Who do you tell at Roots

12 now?

13 COLONEL VERMAAK: It was in the meeting

14 where all the people were together.

15 MR SEMENYA SC: Does it get noted?

16 COLONEL VERMAAK: Chair, I would like if

17 you can show me minutes of all that meetings because why, I

18 tried to get hold of the minutes and –

19 MR SEMENYA SC: Does it get noted,

20 Colonel?

21 COLONEL VERMAAK: I don't know.

22 MR SEMENYA SC: Okay.

23 COLONEL VERMAAK: Was anybody there

24 taking minutes? No, I don't know.

25 MR SEMENYA SC: Okay. One of the

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1 elements of your evidence - you were vociferous that you

2 are not going to allow exhibit L to disclose things that

3 are not truthful, correct?

4 COLONEL VERMAAK: Just repeat your

5 question?

6 MR SEMENYA SC: One of your most

7 vociferous complaints in your evidence around Roots was

8 that Roots must not produce an untruth.

9 COLONEL VERMAAK: My evidence?

10 MR SEMENYA SC: Yes, your evidence. You

11 even went out and sat outside because you don't like what

12 is happening there.

13 MS PILLAY: No, Chair, Chair, just an

14 objection. I think Mr Semenya with the greatest of respect

15 is confusing the witness' testimony in relation to the

16 meeting with the national commissioner. That's when he

17 left – sorry, with Colonel Scott. That's when he left the

18 room and sat outside, not at Roots.

19 MR SEMENYA SC: No, at Roots, Chair, you

20 would remember General Annandale even came to speak to him

21 and calm him down.

22 COLONEL VERMAAK: No, you can, Chair, if

23 you can go back to my statement, my last statement, it was

24 on the 28th of October where we had a meeting at Mpanaga

25 where Colonel Scott made some allegations. Then I went out

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1 and I said I cannot be part of it. So that is in my

2 statement.

3 MR SEMENYA SC: Ja, but that –

4 CHAIRPERSON: I'm sorry, Mr Semenya. If

5 there's a dispute between you and Ms Pillay as to what

6 precisely was said then I think perhaps it can stand over

7 until someone can find it in the transcript. I was reading

8 the transcript yesterday and it's certainly in the

9 transcript somewhere. And it will be a simple matter to

10 ascertain by looking at the relevant passage in the

11 transcript, but perhaps you can go on in the meanwhile and

12 when that passage has been found we can, you can return to

13 the matter and then I can consider the objection if the

14 objection is persisted in, in the light of what's in the

15 transcript.

16 MR SEMENYA SC: Thank you, Chair. The

17 thrust of my question is really, is something different.

18 I'm saying you were very vigilant at Roots that exhibit L

19 does not reflect anything that's inaccurate. Correct?

20 MS PILLAY: Chair, may I just ask what

21 the basis is for this question because that was never the

22 witness' testimony and if we could be referred to the

23 transcript where the witness has testified to that effect?

24 MR SEMENYA SC: Chair, he said he even

25 complained and told people like Colonel Merafe and he was

<p style="text-align: right;">Page 27510</p> <p>1 making complaints in relation to General Mpenbe. He was 2 really making sure that things happened there. I'll ask it 3 as an open-ended question. Am I correct, Chair, Colonel? 4 COLONEL VERMAAK: No. I was not 5 complaining to Colonel Merafe. He was approaching me with 6 a complaint, so that was not me complaining. That was him 7 coming to me. 8 MR SEMENYA SC: I'll ask it as an open 9 question. Were you concerned that exhibit L which is the 10 product at Roots reflect the truth and nothing else but the 11 truth? 12 COLONEL VERMAAK: I cannot agree on that. 13 MR SEMENYA SC: No, maybe it's a language 14 issue. Just examine your answer. Weren't you concerned 15 that exhibit L depicts, reflects nothing but the truth but 16 only the truth? 17 COLONEL VERMAAK: I didn't speak to the 18 people at Roots about the presentation because why, that 19 was not the final document. They were every time just show 20 to us how far they are with compiling the document and I 21 have one problem there and that was the timelines with some 22 of my photos where I object about the timelines that they 23 want to change it to other times and that is the only time 24 that I said I did not agree with that specific 25 presentation.</p>	<p style="text-align: right;">Page 27512</p> <p>1 a question we can be quite satisfied he certainly won't do 2 so from now on. 3 COMMISSIONER HEMRAJ: Colonel, may I just 4 ask you the last time that you would've seen exhibit L 5 before it came to the commission at whichever stage that 6 was – 7 COLONEL VERMAAK: I only saw it here. 8 COMMISSIONER HEMRAJ: No, no, just hear 9 the question please. The last time you would've seen it 10 before it was presented at the commission did you notice 11 that it was missing from the presentation that you gave the 12 order for a person to fire live ammunition on the 13th? 13 COLONEL VERMAAK: Chair, on that 14 presentation I didn't specifically go into each and 15 everybody's instructions. That was only actually a 16 overview what happened there at specific areas, specific 17 incidents, but they never mentioned anybody's name 18 specifically who given any specific instructions. 19 COMMISSIONER HEMRAJ: So do I understand 20 from that answer that it was not there? 21 COLONEL VERMAAK: That's correct, Chair. 22 COMMISSIONER HEMRAJ: Thank you, Colonel. 23 MR SEMENYA SC: Even when the commission 24 was running you were aware exhibit L does not have this 25 most profound important detail which addresses the terms of</p>
<p style="text-align: right;">Page 27511</p> <p>1 MR SEMENYA SC: One of the ringing 2 omissions in exhibit L is the fact that you instructed TRT 3 members to shoot at a striker. Am I right? 4 COLONEL VERMAAK: If they did not put in 5 there I cannot stand in for it. I'm not compiling that 6 report. 7 MR BIZOS SC: - Mr Chairman, the question 8 is the evidence is to shoot at a particular person and the 9 assumption of the questions throughout is not caring 10 whether he should live or die when the witness has made – 11 that he was, that he assumed because of their training that 12 there would not be lethal force used and my learned friend 13 has repeatedly put the question in a manner in the hope 14 that the witness would change his evidence and say, yes, I 15 gave authority to shoot to kill. With respect it is unfair 16 to repeatedly by implication put that across. 17 CHAIRPERSON: Mr Semenya, how do you deal 18 with that comment? 19 MR SEMENYA SC: I have done no such 20 thing, Chair. 21 CHAIRPERSON: He denies it. Certainly 22 he's not going to do it in future if he did it before. I 23 must confess I didn't understand it to be put quite in 24 those terms. The point is maybe is that in view of Mr 25 Semenya has said that that's not his intention to put such</p>	<p style="text-align: right;">Page 27513</p> <p>1 reference, Colonel. Am I right? 2 COLONEL VERMAAK: Chair, I didn't go 3 through that exhibit previously. 4 MR SEMENYA SC: I don't know what you 5 mean by previously but I'm saying even during the running 6 of this commission and reference to exhibit L and your 7 consultation even with the evidence leaders and you gave 8 evidence in relation to exhibit L. 9 COLONEL VERMAAK: Well, even with – 10 MR SEMENYA SC: It must have occurred to 11 you, Colonel, that the most obvious omission, as I call it 12 a ringing omission in exhibit L is that it doesn't have 13 this detail. 14 COLONEL VERMAAK: Chair, you know what, I 15 did not consult so intensive with evidence leaders but I 16 did consult with your legal team and you never mentioned it 17 to me. 18 MR SEMENYA SC: Because you never told it 19 to the legal team. That's why. 20 COLONEL VERMAAK: No. 21 MS PILLAY: Chair, can I just object? As 22 I understood the arrangement on which the SAPS team would 23 be allowed to cross-examine the colonel, it was on the 24 basis that nothing that was covered during consultation 25 would be -</p>

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1 CHAIRPERSON: The trouble is, I  
 2 understand that, but the reason why I didn't stop Mr  
 3 Semenya was he was responding to what the witness said.  
 4 The witness put to him what was said in consultation  
 5 between the witness and Mr Semenya. Mr Semenya didn't  
 6 start it so in the circumstances I didn't think I could  
 7 stop him. If Mr Semenya keeps away from what was said in  
 8 consultation between him and the witness and the witness  
 9 keeps away from what was said in consultation between him  
 10 and Mr Semenya there won't be a problem, but once Mr  
 11 Semenya is confronted with a statement by the witness then  
 12 he's entitled to follow it up.

13 MS PILLAY: Chair, the second part of  
 14 that objection would be now that Mr Semenya is putting it  
 15 to the witness as a positive assertion that this was never  
 16 put, said to us in consultation then unfortunately we're  
 17 going to have to ask for the factual basis on which that  
 18 assertion is made.

19 CHAIRPERSON: I understand what you're  
 20 saying but you see it's the witness who makes the point  
 21 first and what we get is essentially a retort or response  
 22 from Mr Semenya to that. My own feeling, Colonel, is that  
 23 we agreed that something rather unusual could happen here,  
 24 namely Mr Semenya who consulted with you could cross-  
 25 examine you, but it was done on the clear understanding

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1 that he wouldn't ask you any questions about what was said  
 2 in consultation between you and him. Now, the other side  
 3 of that coin must surely be that you won't say anything  
 4 about the consultation either because you can't expect to  
 5 say things about the consultation you had with Mr Semenya  
 6 but Mr Semenya isn't allowed to answer you, so my  
 7 suggestion is let's leave out what happened in consultation  
 8 between you and Mr Semenya.

9 [11:15] You can be asked I think appropriately about what  
 10 you said in consultation with Mr Wesley because that wasn't  
 11 a privileged discussion, and there may well be a number of  
 12 questions that can be asked about that, and I understand  
 13 you've made the point, which I think we now all understand,  
 14 that you say you told Brigadier Calitz you gave the order  
 15 to shoot, you did it orally. No-one came back to you about  
 16 that. IPID never questioned you, asked you to make a  
 17 warning statement or any other statement. They may well  
 18 have been in possession of a statement from the person to  
 19 whom you gave the order saying it, but they didn't follow  
 20 it up, but that point has been covered. We know all that.

21 COLONEL VERMAAK: That's correct, Chair.

22 CHAIRPERSON: I think, I suggest we carry  
 23 on, but without your raising with Mr Semenya what you said  
 24 in consultation with him so that he won't be obliged to  
 25 combat what you said to him. So shall we carry on, on that

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1 basis, Mr Semenya? Would that –

2 MR SEMENYA SC: Thank you, Chair.

3 CHAIRPERSON: - not unduly happy with  
 4 your cross-examination.

5 MR SEMENYA SC: Thank you, Chair. Okay –

6 MS LEWIS: Chair, I'm sorry to intervene,  
 7 interrupt my learned colleague, but I wonder really whether  
 8 further thought should be given to SAPS bringing in an  
 9 independent counsel to cross-examine Colonel Vermaak.

10 CHAIRPERSON: In your absence, Ms Lewis,  
 11 that matter was covered in chambers. The police have tried  
 12 to do so and they haven't been able to do so. There were  
 13 all sorts of problems in relation to counsel, when counsel  
 14 was available, and so on. As you know, we are ending the  
 15 evidence in this matter before the end of July and I was  
 16 told by the police that it wasn't practically possible for  
 17 them to get someone because they have to have evidence from  
 18 Lonmin, they've got to have evidence from other people as  
 19 well, and so it was then because the witness specifically  
 20 waived the – he didn't want this thing hanging over him for  
 21 a long time either and he then came one day and he actually  
 22 said in terms he waived any right he has to object to Mr  
 23 Semenya cross-examining him. But it has previously been  
 24 stated by Mr Semenya that he was not going to ask any  
 25 questions about anything that was said in consultation

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1 between him and the witness and it was on that basis that  
 2 we were happy that the thing would proceed. The witness  
 3 has now actually raised the question and I've admonished  
 4 him in that regard and I take it he will take my admonition  
 5 to heart.

6 MS LEWIS: Chair, sorry, I appreciate all  
 7 of that but it seems from the previous questions from Mr  
 8 Semenya that Colonel Vermaak's response may well be the  
 9 only way in which he has to respond to those questions,  
 10 which is that "I told this to you in consultation" and  
 11 whether it appears, the fact that it doesn't appear in the  
 12 statement –

13 CHAIRPERSON: I think he says it was  
 14 never raised with him and one of his complaints is that -  
 15 never mind what Mr Semenya did or didn't do – one of his  
 16 complaints is that the police generally didn't confront  
 17 him, if that's the right word, with statements made by any  
 18 of the people who were present with him on the day, saying  
 19 that he gave the order, and he wasn't asked about it. As  
 20 far as he was concerned he told Brigadier Calitz about it  
 21 and that's the end of the matter. So I don't know that –

22 MS LEWIS: Chair –

23 CHAIRPERSON: - there's any future in  
 24 going into this further, but we've got, Mr Bizos I think  
 25 indicated he wanted to say something.



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1 MR BIZOS SC: Yes, Mr Chairman, my  
 2 learned friend repeatedly puts questions to this witness in  
 3 the hope of getting an answer that will enable him to argue  
 4 that the fact that the witness ordered a shooting with a  
 5 particular rifle will anew to his advantage. Implied in  
 6 all these questions is that this was deliberately kept  
 7 back. I submit with the greatest respect that the witness  
 8 in the circumstances is entitled to say I did not keep  
 9 anything back, I told you about it. Mr Semenya is looking  
 10 for it and he must pay the price if he continues with that  
 11 line of cross-examination.

12 CHAIRPERSON: Well, that wasn't his  
 13 evidence as I understand it. I can't disallow a question  
 14 on the basis of the hope which is in the breast of the  
 15 question when you ask the question. I never heard that as  
 16 being a basis for disallowing a question. That's the first  
 17 point.

18 The second point is that questions are asked  
 19 which can either be allowed or disallowed, depending on  
 20 what's asked. The matter can be argued at the end. The  
 21 witness's evidence I would have thought so far is very  
 22 clear; he says he gave an order, gave an instruction. He  
 23 mentioned, reported it later to Brigadier Calitz. He  
 24 doesn't know whether that instruction when carried out led  
 25 to the death of anybody. He didn't mention it in his

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1 statement, he admits that. I think on reflection he'd  
 2 probably concede that it would have been wiser to have done  
 3 so, but he didn't. It's a fact we have it wasn't  
 4 mentioned. He says he told Brigadier Calitz that orally.  
 5 IPID never asked him about it, he says, certainly didn't  
 6 take a warning statement from him, didn't take any  
 7 statement from him. If they were in possession of  
 8 statements from the person, or a statement from the person  
 9 who fired the shot that he ordered to be given, then you  
 10 would have expected them to have come back to him. But I  
 11 mean hasn't this matter been fairly thoroughly ventilated?  
 12 I don't know that we can take it any further.

13 MR BIZOS SC: That's part of my point, Mr  
 14 Chairman. Mr Semenya must advise himself as to whether  
 15 it's worth his while seeking an answer to the question that  
 16 he kept this information back deliberately. The witness  
 17 can say I did not keep it back deliberately, I told you so.  
 18 Mr Semenya must make up his mind whether he wants to  
 19 continue along that line of cross-examination on this  
 20 issue.

21 CHAIRPERSON: Alright. Yes, we've heard  
 22 what you have said. Before I get Mr Semenya's reply, Mr  
 23 Fischer who as far as I know is not an admitted South  
 24 African legal practitioner but he is a member of one of the  
 25 ends of court, so on that basis I'll give him the

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1 opportunity to ask a question. This is a commission after  
 2 all, not a court. Mr Fischer?

3 MR FISCHER: I'm grateful, Chair, thank  
 4 you.

5 CHAIRPERSON: What do you want to say?  
 6 MR FISCHER: Chair, my submission is this  
 7 only –

8 MR SEMENYA SC: Chair, I don't know if Mr  
 9 Fischer has the right of audience in this –

10 CHAIRPERSON: This is a commission, it's  
 11 not confined to legal practitioners. Anyway, he is a legal  
 12 practitioner, a member of one of the ends of court, so I in  
 13 my discretion will allow him to speak and you can then  
 14 reply to what he has to say. If you think I shouldn't  
 15 allow it then you can leave what he says unanswered, but  
 16 I'll leave that to you. Yes, Mr Fischer.

17 MR FISCHER: I'm grateful, Chair. In  
 18 order to add to what Mr Bizos has been saying, Chair, I  
 19 would submit that where questions are asked on omissions in  
 20 a statement it must always be available to a witness to  
 21 answer –

22 (a) I was advised not to put that in my  
 23 statement;

24 (b) I told my legal adviser about this and I was  
 25 told, and nothing was said about it.

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1 It seems, Chair, that you're advising the witness  
 2 that he should not give either of those two answers, but  
 3 where the point of the cross-examination is the omission in  
 4 a statement it must be available.

5 CHAIRPERSON: My impression was he'd  
 6 already given an answer, but anyway, let's hear what Mr  
 7 Semenya has to say.

8 MR SEMENYA SC: I will respond with  
 9 questions to the Colonel, if you allow me, Chair.

10 MS PILLAY: Chair, just finally on this  
 11 issue, because it is an extremely important issue; Mr  
 12 Semenya's line of cross-examination is that this, what he  
 13 describes as a most profound important detail was omitted  
 14 from your statement. So this issue is quite a critical  
 15 issue and the witness's testimony, as I understand it,  
 16 Chair, is not only that he told Brigadier Calitz, but that  
 17 he told his team as well. That's how I understand his  
 18 testimony to be to that effect.

19 CHAIRPERSON: I understood him to say he  
 20 didn't tell them and his complaint was that no-one ever  
 21 asked him about it, and his complaint further was that IPID  
 22 should have asked him about it and they didn't, but he says  
 23 he told Brigadier Calitz and as far as he was concerned  
 24 that was it. Obviously it's not in his statement, we know  
 25 that. It may well be the subject of argument later. Even

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1 if he did tell his legal team much, much later, it wasn't  
 2 in any of the statements made earlier. So that point would  
 3 always be there. So I think we should carry on as we are  
 4 for the time being without this question of what was said  
 5 in consultation between Mr Semenya and the witness being  
 6 dealt with further. But I must confess my impression is in  
 7 any event that he doesn't say he told Mr Semenya. His  
 8 complaint is that Mr Semenya didn't ask him. Anyway, let's  
 9 carry on in the meanwhile. Let's not waste time further on  
 10 it –  
 11 MR SEMENYA SC: Okay, let's make it  
 12 easy –  
 13 COLONEL VERMAAK: Chair, can I maybe just  
 14 say something? When I was consulting with the legal team  
 15 they were going through certain incidents and questions  
 16 that might be asked to me in the Commission by other  
 17 advocates. One of them was specifically that person that  
 18 we were shooting, or the member was shooting at, and their  
 19 response to me was you must prepare yourself for an answer  
 20 because why you're going to get that question. So they  
 21 knew about it. They did ask me that and I did report it to  
 22 them because why that was one of the points that they said  
 23 to me I must prepare myself for that questions because it's  
 24 going to come to me.  
 25 MR SEMENYA SC: Can we talk about LLL8,

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1 and if we can have it on the screen as well, with your  
 2 permission, Chair.  
 3 CHAIRPERSON: [Microphone off, inaudible]  
 4 OOO8, as I understand this –  
 5 MR SEMENYA SC: No, no, LLL8, that's the  
 6 statement of –  
 7 CHAIRPERSON: Okay.  
 8 MR SEMENYA SC: - of 2014.  
 9 CHAIRPERSON: Alright.  
 10 MR SEMENYA SC: This is the statement you  
 11 draft on the 21st of January this year, correct?  
 12 COLONEL VERMAAK: That's correct.  
 13 MR SEMENYA SC: And you call it a final  
 14 statement.  
 15 COLONEL VERMAAK: That's correct.  
 16 MR SEMENYA SC: You did it independent of  
 17 any legal advice. Am I right?  
 18 COLONEL VERMAAK: That's correct, Chair.  
 19 MR SEMENYA SC: You wrote it down  
 20 yourself.  
 21 COLONEL VERMAAK: That's correct.  
 22 MR SEMENYA SC: And you made sure that it  
 23 includes in it all relevant material in relation to your  
 24 conduct in this operation?  
 25 COLONEL VERMAAK: That's correct.

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1 MR SEMENYA SC: Without the advice of  
 2 anybody?  
 3 COLONEL VERMAAK: That's correct.  
 4 MR SEMENYA SC: No lawyers at all?  
 5 COLONEL VERMAAK: I did send it to them.  
 6 MR SEMENYA SC: No, no, no, no, no, when  
 7 you drafted the document –  
 8 COLONEL VERMAAK: When I draft it, yes,  
 9 and they were asking me for a final statement with all the  
 10 questions that they have and I sent it through to them.  
 11 MR SEMENYA SC: And your intention was to  
 12 tell the complete truth about what happened?  
 13 COLONEL VERMAAK: That's correct.  
 14 MR SEMENYA SC: Show me in the document  
 15 where you tell us you gave instructions to anybody to shoot  
 16 with an R5 rifle live ammunition at a striker.  
 17 COLONEL VERMAAK: If it is not in the  
 18 statement I acknowledge in this Commission and I said that  
 19 I did give that instruction. I didn't keep it away from  
 20 anybody. I make it public; although it was not in the  
 21 statement I didn't deny anything.  
 22 CHAIRPERSON: In fact what we've got is  
 23 this; we've got two fairly detailed statements that you  
 24 made. The one is GGG17, which is a statement which you  
 25 made - I think you also drafted it yourself, didn't you? -

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1 which you made in, when did you make that statement? It's  
 2 not very clear to me from the – oh yes, you made it on the  
 3 30th of August 2012, typed at the bottom of the second page,  
 4 bottom of the third page. Now did you draft that statement  
 5 yourself?  
 6 COLONEL VERMAAK: That's correct, Chair.  
 7 CHAIRPERSON: Right, then later on you  
 8 prepared, you gave a few other statements dealing with  
 9 various points that arose and then subsequently you then  
 10 compiled another statement, which is LLL8, this is the one  
 11 that Mr Semenya is talking about, which was in January this  
 12 year.  
 13 COLONEL VERMAAK: That's correct, Chair.  
 14 CHAIRPERSON: In that statement you  
 15 incorporate a lot of the material which is in GGG17.  
 16 COLONEL VERMAAK: That's correct.  
 17 CHAIRPERSON: The statement of the 30th of  
 18 August 2012, but you added extra stuff.  
 19 COLONEL VERMAAK: That's correct.  
 20 CHAIRPERSON: Now the passage that we're  
 21 busy with in fact is the same, as I see it, in both these  
 22 statements. Now let's have a look at that. First of all  
 23 let's look at GGG17. GGG17 on the second page, it's in the  
 24 middle of paragraph 5, could we have that on the screen,  
 25 please? GGG17. Let's go down to para 5, it's on the

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1 second page, para 5. About 12 lines down there's a  
 2 paragraph, a sentence that begins as follows, "Ons het die  
 3 groep gevolg tot waar hulle deur 'n waterstroom beweeg het  
 4 en op ons begin skiet het met die R5 geweer en vermoedelik  
 5 'n haelgeweer. Die lede het teruggeskiet op die  
 6 aanvallers." "We followed the group to where they moved  
 7 through a stream of water, or a stream, and began to shoot  
 8 at us with the R5 rifle and presumably a shotgun. The  
 9 members shot back, or returned the fire, I suppose, on the  
 10 attackers," the members, in plural.

11 Exactly the same wording as far as I can see  
 12 appears in exhibit LLL8, that's the statement you made in  
 13 January this year, in paragraph 7, and it's at the top of  
 14 the third page. It's the next page, here we are. Third  
 15 line of this page, this is now the third page, the third  
 16 line – sorry, the fourth line – no, no, the third line says  
 17 – well, perhaps we should start in the first line. "Ek het  
 18 kaptein Loest opdrag gegee om die lede bymekaar te maak  
 19 sodat ons orde kon kry, waarop ek met die groepie SAPD-  
 20 lede, wat bestaan het uit TRT en POP-lede, die groep gevolg  
 21 het tot waar hulle deur 'n waterstroom beweeg het en op ons  
 22 begin skiet het met die R5 geweer en vermoedelik 'n  
 23 haelgeweer. Die lede het teruggeskiet op die aanvallers."  
 24 So to translate that, "I gave Captain Loest an instruction  
 25 to get the members together so that we could get order,

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1 whereupon I together with the small group of SAPS members,  
 2 which comprised, consisted of TRT and POP members, followed  
 3 the group to where they moved through a stream and began to  
 4 shoot at us with the R5 rifle and presumably a shotgun."  
 5 Exactly the same words as in the previous statement. "Die  
 6 lede het teruggeskiet op die aanvallers." "The members  
 7 returned the fire, or fired back at the attackers."  
 8 So effectively the same words are used in both  
 9 your statement at the end of August 2012 and your statement  
 10 of January this year, and in neither of those statements do  
 11 you mention the fact that the return of fire took place on  
 12 your instructions.

13 COLONEL VERMAAK: That's correct, Chair –  
 14 CHAIRPERSON: But that was long before –  
 15 or I don't know what happened in January 2014, but  
 16 certainly the August 2012 statement was made long before  
 17 you consulted any lawyers. Is that right?  
 18 COLONEL VERMAAK: No, Chair, I think at  
 19 that stage we already started consulting, but yes, I was  
 20 asked this question previously and I explained that when I  
 21 updated the statement as information was required you copy  
 22 it and paste from your previous statements and that was a  
 23 mistake from my side that instead of mentioned a member I  
 24 put there members, but –  
 25 CHAIRPERSON: Well, you made two mistakes

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1 actually. One was you said "members" instead of a member,  
 2 and secondly you omitted the fact, which you conceded is an  
 3 important one –  
 4 COLONEL VERMAAK: Ja.  
 5 CHAIRPERSON: - that that member fired in  
 6 compliance with an instruction you gave him.  
 7 COLONEL VERMAAK: That's correct, ja.  
 8 CHAIRPERSON: But the point is the  
 9 original omission of, both those mistakes actually  
 10 originated in August 2012.  
 11 COLONEL VERMAAK: That's correct, Chair.  
 12 CHAIRPERSON: And you – ja.  
 13 MR SEMENYA SC: It is the size of the  
 14 omission that is a concern for me. What could explain it?  
 15 CHAIRPERSON: Let's confine ourselves to  
 16 the omission at the end of August 2012, where no  
 17 complicating factors happened after that. It was an  
 18 important fact that the return of fire took place in  
 19 compliance with a instruction from you. Is that correct?  
 20 COLONEL VERMAAK: That was important and  
 21 I take responsibility that I did not put it in the  
 22 statement, but it was not, there was no, from my side to  
 23 mislead anybody about that fact. That is why I think, and  
 24 when I was testifying here I acknowledged that I didn't  
 25 write it correctly in the statement and that is why I

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1 testify here what was happening there.  
 2 [11:34] MR SEMENYA SC: No, Colonel, you are not  
 3 listening to my question. All admissions granted, it is  
 4 the most significant on your own admission, event that ever  
 5 happened in your career, what could explain that it is not  
 6 in your statement? I know you acknowledge it. What could  
 7 -  
 8 COLONEL VERMAAK: I have given you an  
 9 explanation now, and I will stick with that answer.  
 10 MR SEMENYA SC: No, no, no.  
 11 COLONEL VERMAAK: You can't force me to  
 12 answer something that I already answered to you, Chair.  
 13 MR SEMENYA SC: No, I am entitled to an  
 14 answer, Colonel, not a reply and I am going to put my  
 15 question again.  
 16 CHAIRPERSON: Reply is the same thing.  
 17 Now you want to give us your explanation now, as to why you  
 18 didn't mention it in your statement at the end of August  
 19 2012. You say, the failure to include it in the later one  
 20 was you were cutting and pasting.  
 21 COLONEL VERMAAK: That's correct, Chair.  
 22 CHAIRPERSON: So the big question is, why  
 23 didn't you mention it in your statement at the end of  
 24 August 2012 when I take it, it was fresh in your memory?  
 25 COLONEL VERMAAK: Chair, I can't explain

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1 to you why didn't I mention it, but as I said, I never  
 2 withheld it from anybody that I did give that instruction.  
 3 So as I said, I take the responsibility that I did not  
 4 write it in that statement, but there was no reason that I  
 5 want to mislead anybody about it.  
 6 MR SEMENYA SC: How many shots get fired  
 7 on your command?  
 8 COLONEL VERMAAK: Only one.  
 9 MR SEMENYA SC: Only one shot?  
 10 COLONEL VERMAAK: That's correct.  
 11 MR SEMENYA SC: By one member?  
 12 COLONEL VERMAAK: That's correct.  
 13 MR SEMENYA SC: Nothing more?  
 14 COLONEL VERMAAK: That's correct.  
 15 MR SEMENYA SC: Can I ask that we have a  
 16 look at QQQ7. You will see that is the statement of  
 17 Sekgweleya and I will invite us to go to the last page so  
 18 that we can identify the date when that statement is, you  
 19 see it's in April the 7th of 2014, Colonel?  
 20 COLONEL VERMAAK: That's correct.  
 21 MR SEMENYA SC: Can we go to paragraph  
 22 11? He says there, "Colonel Vermaak drew our attention to  
 23 one striker who had an R5 rifle." You can't contradict  
 24 that, can you?  
 25 COLONEL VERMAAK: That's correct.

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1 MR SEMENYA SC: "The armed striker then  
 2 faced our direction and pointed us with an R5 rifle." You  
 3 can't make issue with that line.  
 4 COLONEL VERMAAK: That's correct.  
 5 MR SEMENYA SC: Say it louder, Colonel?  
 6 COLONEL VERMAAK: That is correct.  
 7 MR SEMENYA SC: "Colonel Vermaak  
 8 instructed us to shoot towards them but on the ground,  
 9 which I did together with Sergeant Mguye." Is that  
 10 correct?  
 11 COLONEL VERMAAK: No.  
 12 MR SEMENYA SC: What's wrong with that  
 13 statement?  
 14 COLONEL VERMAAK: "Us, instructed us."  
 15 MR SEMENYA SC: Did you admonish Mguye  
 16 when he was shooting, and say no, but I didn't even  
 17 instruct you to shoot at all?  
 18 COLONEL VERMAAK: Chair, if you can  
 19 compare the two members who gave their statements,  
 20 Sekgweleya and Mguye on the 7th of April, if I am correct,  
 21 14 of April, and you go and compare those two members'  
 22 statements and you go and look to the LCRC officer, who  
 23 attended that scene, you will see that both these members  
 24 in this last statement stated that they have fired four  
 25 shots, each of them, R5s, but the captain from LCRC stated

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1 that he only gave one R5 cartridge, spent cartridge on the  
 2 scene. Now, for me, it puts a big question over this  
 3 statement, because why, the fact that they make a statement  
 4 on the 14th, and you can see clear from this statement it is  
 5 just concentrating on my instructions, but it is not, if  
 6 you compare it with LCRC statement about the spent  
 7 cartridges, and their statements, then there's something  
 8 wrong.  
 9 MR SEMENYA SC: I am not talking about  
 10 the statements, I am talking about what you observed on the  
 11 13th as you walked with them to the river. You say there's  
 12 only one shot that was fired, but you do see one of the  
 13 gentlemen, I don't know whether this is the one you  
 14 instructed to fire, says they all fired, both fired.  
 15 COLONEL VERMAAK: Both fired? Okay, but  
 16 I want to make clear to you they said both fired and if  
 17 they both fired, where is that spent cartridges? I only –  
 18 CHAIRPERSON: Colonel, you are now  
 19 arguing the case already. These are matters that can be  
 20 argued. What we are concerned about, is your recollection  
 21 what you remember. Now what's been put to you, is that  
 22 Constable Sekgweleya and Sergeant Mguye according to the  
 23 statement, both fired at the person, the armed striker with  
 24 the R5 and Sekgweleya says that you gave the instruction to  
 25 both of them. Now I understand you've got an argument as

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1 to why we should reject the evidence but you are not here  
 2 to argue the case, you are just to give your evidence. Now  
 3 what I want to know from you is this, did you only instruct  
 4 one of them, or both of them or more than two?  
 5 COLONEL VERMAAK: Only one member, Chair.  
 6 CHAIRPERSON: Can you – and I take it,  
 7 it's correct you don't know who they are, so you don't know  
 8 whether you instructed Sekgweleya or Mguye?  
 9 COLONEL VERMAAK: No, Chair.  
 10 CHAIRPERSON: What was the exact  
 11 instruction?  
 12 COLONEL VERMAAK: Excuse me, Chair?  
 13 CHAIRPERSON: What was the exact  
 14 instruction?  
 15 COLONEL VERMAAK: My exact instruction  
 16 was that he must see if he can identify, well, we have it  
 17 identified, my exact instruction was, he must shoot back at  
 18 the person who was shooting at us.  
 19 CHAIRPERSON: Okay, alright. That was  
 20 your instruction. Now, as far as you can remember, did  
 21 only one person respond to your instruction, or is it  
 22 possible, thinking back, that two of them may have fired?  
 23 COLONEL VERMAAK: No, Chair, only one.  
 24 CHAIRPERSON: So if the, if these two,,  
 25 the one constable and the one sergeant come and say

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1 something different, you don' agree with them?

2 COLONEL VERMAAK: That's correct, Chair.

3 CHAIRPERSON: And presumably it will be

4 argued later by someone, that their evidence is to be

5 rejected in preference to yours but it's not your function

6 to argue that now. You've made a point which presumably

7 may be taken up but you are not here to argue, you are here

8 to testify, okay?

9 MR SEMENYA SC: You know, Colonel, maybe

10 even to wrap up the previous topic, nowhere in your diary

11 do you mention the fact that you instructed anybody to fire

12 a firearm at the striker. Isn't that profound?

13 COLONEL VERMAAK: I didn't write it into

14 the diary and there's no specific reason. A diary is not a

15 statement that you write down, the diary is only give you

16 more or less indications what you have done for the day

17 without specific information in your diaries.

18 MR SEMENYA SC: The most important thing

19 that ever happened in your career, you say it's not worthy

20 of entering in your diary.

21 COLONEL VERMAAK: I didn't say it's not

22 worth it, Chair. That's not my words.

23 CHAIRPERSON: Do you accept it's the most

24 important thing in your career?

25 COLONEL VERMAAK: No, no, Chair, I will

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1 accept that.

2 CHAIRPERSON: I won't ask you what the

3 most important thing in your career was but was this one

4 the important thing in your career, most important thing in

5 your career?

6 COLONEL VERMAAK: No, Chair, no, there

7 was a lot.

8 MR SEMENYA SC: Well, some adjectives

9 here or there, but it is a very significant event in your

10 career as a police officer.

11 COLONEL VERMAAK: That's correct, Chair.

12 Maybe in the rest of topics there's been referred to

13 incidents in 1993 and 1996, and I also made copies and I

14 have my diaries of that days available for the Commission,

15 and I can hand it in. That specific one day, the Police

16 Act under my command, and there were seven people killed at

17 that day. So that is also a significant incident, and I

18 will give my diary and you can go through my diary and see

19 what I have wrote down in that diary as well.

20 MR SEMENYA SC: We will get to those

21 things. Let's get back to this one now. You say to the

22 Chairman's question what instructions did you give? What

23 words did you use?

24 COLONEL VERMAAK: What word did I use?

25 MR SEMENYA SC: What word or words did

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1 you use in giving that instruction?

2 COLONEL VERMAAK: I said to the Chair,

3 what the instruction was, that I said to the person you

4 must shoot at the attacker.

5 MR SEMENYA SC: Now that we know that you

6 did not – must shoot at the attacker? Is that the words

7 you used?

8 COLONEL VERMAAK: At the person who was

9 shooting at us. I said to him, shoot at the person who was

10 shooting at us.

11 MR SEMENYA SC: Okay. Now, we know you

12 didn't know his name.

13 COLONEL VERMAAK: That's correct, Sir.

14 MR SEMENYA SC: How did you address him

15 as opposed to the other?

16 COLONEL VERMAAK: He was standing next to

17 me and he was the only person next to me. There was no

18 other people.

19 MR SEMENYA SC: Are you saying Mguye was

20 not with Sekgweleya when you gave the instruction?

21 COLONEL VERMAAK: That's correct, that's

22 what I said just now.

23 MR SEMENYA SC: Are you saying Mguye was

24 not with Sekgweleya when you gave the instruction?

25 COLONEL VERMAAK: No. Chair, I didn't

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1 know the names. I didn't know who was the person who was

2 with me. I said, there was a person without mentioning any

3 names, because why, I only -

4 MR SEMENYA SC: Yes, are you saying that

5 there was only one member of the TRT that was next to you

6 when the instruction was given?

7 COLONEL VERMAAK: That's correct.

8 MR SEMENYA SC: Just the two of you?

9 COLONEL VERMAAK: The other people were

10 to the left side, a little bit further away from us.

11 CHAIRPERSON: Now, Colonel, was it quite

12 clear that you were only speaking to one –

13 COLONEL VERMAAK: That is correct, Chair,

14 the only person who was with me. There was only one person

15 with me.

16 CHAIRPERSON: Only one person, I see.

17 But you say only one person in any event complied with your

18 instruction? That's what you said as well.

19 COLONEL VERMAAK: The person who was with

20 me, he was the one who complied to my instruction.

21 CHAIRPERSON: That is your evidence.

22 COLONEL VERMAAK: Ja.

23 CHAIRPERSON: Can we take tea at this

24 point, Mr Semenya, or would you like to –

25 MR SEMENYA SC: Indeed, Chair.

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1 CHAIRPERSON: - take the –  
 2 MR SEMENYA SC: I am still going to be a  
 3 little while on this point.  
 4 CHAIRPERSON: Alright, we will take the  
 5 tea adjournment.  
 6 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 7 [12:06] CHAIRPERSON: The commission resumes.  
 8 Seeing as you're giving evidence in English I remind you  
 9 you're still under oath. Sorry, I beg your pardon. You're  
 10 still bound by the affirmation that you made. Mr Semenya.  
 11 MR SEMENYA SC: Thank you, Chair.  
 12 Colonel, just also just to tidy it up I take it on the 13th  
 13 General Annandale came there and you gave him an account of  
 14 what happened.  
 15 COLONEL VERMAAK: That's correct.  
 16 MR SEMENYA SC: And you did not tell him  
 17 about this piece of evidence we've been dealing with for  
 18 the morning.  
 19 COLONEL VERMAAK: No.  
 20 MR SEMENYA SC: I take it also the LCRC  
 21 people arrived at the scene on the day, correct?  
 22 COLONEL VERMAAK: That's correct.  
 23 MR SEMENYA SC: You did not give them,  
 24 tell them about this detail we were discussing this  
 25 morning.

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1 COLONEL VERMAAK: No, I didn't.  
 2 MR SEMENYA SC: I take it Brigadier Van  
 3 Zyl of the detectives, was there as well.  
 4 COLONEL VERMAAK: That is correct.  
 5 MR SEMENYA SC: You saw him.  
 6 COLONEL VERMAAK: That's correct.  
 7 MR SEMENYA SC: You did not tell him  
 8 about this detail as well.  
 9 COLONEL VERMAAK: No, I've already  
 10 informed Brigadier Calitz.  
 11 MR SEMENYA SC: No, I'm talking the  
 12 detective now, Brigadier Van Zyl.  
 13 COLONEL VERMAAK: No, I know, but I said  
 14 I already informed Brigadier Calitz about it.  
 15 MR SEMENYA SC: Van Zyl, did Brigadier  
 16 Van Zyl, the detective, you did not tell him about it.  
 17 COLONEL VERMAAK: I said I didn't report  
 18 it to him. I said I reported to Brigadier Calitz.  
 19 MR SEMENYA SC: We were looking at  
 20 exhibit –  
 21 COMMISSIONER HEMRAJ: Are you moving away  
 22 from the incident at the river?  
 23 MR SEMENYA SC: For now but –  
 24 COMMISSIONER HEMRAJ: Colonel, can I just  
 25 ask the exercise in getting together a group of members and

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1 going to the river was for the purposes of recovering a  
 2 firearm that had been taken from one of the members of the  
 3 force?  
 4 COLONEL VERMAAK: That's correct. And  
 5 also the person that we saw from the helicopter that they  
 6 were taking away with the white overall, Chair, is to see  
 7 if we can get that person. We didn't know was injured or  
 8 was he dead and was he part of – well, he was part of the  
 9 incident then so it was also to secure a crime scene if we  
 10 could get hold of him.  
 11 COMMISSIONER HEMRAJ: And was it  
 12 imperative that you did that, that you went to the effort  
 13 of going, following them, getting together a number of  
 14 people, following them and trying to get that firearm back?  
 15 COLONEL VERMAAK: That's correct, Chair.  
 16 COMMISSIONER HEMRAJ: Thank you.  
 17 MR SEMENYA SC: Just to complete the list  
 18 General Mpembe was there as well on the 13th. You didn't  
 19 give him that detail, did you?  
 20 COLONEL VERMAAK: No, when I went to  
 21 General Mpembe the first concern for me was his safety and  
 22 that is why I reported to Brigadier Calitz.  
 23 MR SEMENYA SC: No, I'm talking about the  
 24 whole day. You went back to JOC. You did not tell –  
 25 COLONEL VERMAAK: I did not see General

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1 Mpembe there.  
 2 MR SEMENYA SC: I think the national  
 3 commissioner of police also arrived. Were you there?  
 4 COLONEL VERMAAK: That's correct.  
 5 MR SEMENYA SC: You didn't tell him this  
 6 vital detail. Did you tell her this vital detail? Did  
 7 you?  
 8 COLONEL VERMAAK: Chair, I don't think it  
 9 would be fair to expect from me to go straight to the  
 10 national commissioner and tell her what's going on because  
 11 why there was more senior officers who was addressing her.  
 12 I wasn't addressing her.  
 13 MR SEMENYA SC: You did not tell the  
 14 provincial commissioner this vital detail, did you?  
 15 COLONEL VERMAAK: No, because why, I've  
 16 reported to my commander.  
 17 MR SEMENYA SC: Incidentally it's just  
 18 the chronology of the evidence has been quite unusual  
 19 because Brigadier Calitz denies that you told him anything  
 20 about this detail.  
 21 COLONEL VERMAAK: I can't speak on behalf  
 22 of him.  
 23 MR SEMENYA SC: Okay. Can we go back to  
 24 – no, sorry, I must ask this. Finally the only person you  
 25 can claim to have told this detail despite it appearing

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1 nowhere else is Brigadier Calitz.  
 2 COLONEL VERMAAK: That's correct, Chair.  
 3 CHAIRPERSON: Mr Semenya, you were going  
 4 to discuss with him his diary. His diary is 0007, typed  
 5 version 0007.1. I don't know whether you want to deal with  
 6 it now.  
 7 MR SEMENYA SC: No, Chair.  
 8 CHAIRPERSON: On 0007.1 is the typed  
 9 version of the diary. You don't mention this at all in the  
 10 diary. Is that right?  
 11 COLONEL VERMAAK: Excuse me, Chair.  
 12 CHAIRPERSON: 0007.1 is the typed version  
 13 of your diary for the 13th of August.  
 14 COLONEL VERMAAK: That's correct, Chair.  
 15 CHAIRPERSON: Now, you don't mention this  
 16 incident at all.  
 17 COLONEL VERMAAK: That's correct, Chair.  
 18 CHAIRPERSON: All you say is this, the  
 19 relevant section, this is now 15.30, "Verleen lugsteun waar  
 20 groep SAPD lede aanval (verklaring). Kaptein Oosthuizen  
 21 vlieënier, Kaptein Loest en myself passasiers. Verwyder  
 22 Majoor-Generaal Mpembe van toneel na 'n dreigement dat hy  
 23 geskiet gaan word deur lede. Twee lede doodgekap direk  
 24 onder the helikopter. Traanrook 20 en 10 skok granate  
 25 gegooi. Agtervolg 'n groep wat R5 gewere en beseerde het

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1 geleen." The relevant section then reads really you pursue  
 2 a group, it's not complete, but you've taken an R5 and then  
 3 presumably there's a word missing. I presume that  
 4 hopefully and –  
 5 COLONEL VERMAAK: That's correct.  
 6 CHAIRPERSON: And give assistance or  
 7 whatever.  
 8 COLONEL VERMAAK: That's correct.  
 9 CHAIRPERSON: To an injured person.  
 10 COLONEL VERMAAK: That's correct, Chair.  
 11 CHAIRPERSON: That's all you wrote about.  
 12 COLONEL VERMAAK: It's only small notes  
 13 that you make in your diary normally that you can go back  
 14 later on.  
 15 MR SEMENYA SC: But you have already  
 16 dealt with this that it was not in your diary, either the  
 17 short one or the other new one. Am I right? You've got  
 18 two diaries  
 19 COLONEL VERMAAK: Yes, a rough one.  
 20 MR SEMENYA SC: It doesn't appear in any  
 21 rough one.  
 22 COLONEL VERMAAK: No.  
 23 MR SEMENYA SC: It doesn't appear in the  
 24 other one.  
 25 COLONEL VERMAAK: No, it did.

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1 MR SEMENYA SC: Can you recall again –  
 2 I'm going to come to the events of the river but I just  
 3 want to tidy up some element here. Can we have a look at  
 4 2227 that we had up and paragraph 11 thereof? You would  
 5 see Constable Sekgweleya, "The armed striker then faced our  
 6 direction and pointed us with the R5 rifle." Correct?  
 7 What he doesn't say there is that that individual fired at  
 8 you.  
 9 COLONEL VERMAAK: Chair, I cannot comment  
 10 on his statement.  
 11 MR SEMENYA SC: No, but you see that's  
 12 what the statement says.  
 13 COLONEL VERMAAK: I saw what his  
 14 statement is saying, yes.  
 15 MR SEMENYA SC: And he says the  
 16 instruction was then given to them to shoot towards them.  
 17 COLONEL VERMAAK: Not to them.  
 18 Instruction was given to a person.  
 19 MR SEMENYA SC: Okay. Can we go forward?  
 20 "The striker with the R5 rifle changed direction and  
 21 followed the other strikers running towards the informal  
 22 settlement." Was that your observation?  
 23 COLONEL VERMAAK: I've testified that he  
 24 was on the far right of the informal settlement and after  
 25 the members shoot back at him he were running in between

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1 the houses in the direction – well, I believe in the  
 2 direction of the other people. I couldn't see exactly  
 3 because why he was at the back of the houses.  
 4 MR SEMENYA SC: Is that account factually  
 5 correct that the striker with the R5 rifle change direction  
 6 and followed the other strikers running towards the  
 7 informal settlement?  
 8 COLONEL VERMAAK: No, he was next to the  
 9 informal settlement when he was shooting at us.  
 10 MR SEMENYA SC: I didn't ask where he was  
 11 standing when he was shooting at you. I'm asking whether  
 12 that statement is factually accurate.  
 13 COLONEL VERMAAK: No, that is not  
 14 accurate. I cannot comment on another person's statement.  
 15 MR SEMENYA SC: No, I'm asking whether it  
 16 is consistent with your observations on the day.  
 17 COLONEL VERMAAK: No.  
 18 MR SEMENYA SC: No. Okay. "The armed  
 19 striker all of a sudden changed direction, faced us again  
 20 and pointed us with the R5 rifle." Did that happen?  
 21 COLONEL VERMAAK: That is his  
 22 observation.  
 23 CHAIRPERSON: That's not the question.  
 24 I've told you before we're interested in what you can  
 25 remember. If somebody else says something, it's legitimate

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1 to ask you, well, do you agree with what the person said.  
 2 But all that Mr Semenya is doing now is he's saying  
 3 Constable Sekgweleya is saying the armed striker – well,  
 4 let me read the first sentence. "The striker with the R5  
 5 changed direction and followed the other strikers running  
 6 towards the informal settlement. The armed striker all of  
 7 a sudden changed direction, faced us again and pointed us  
 8 with the R5 rifle." It's not good English but you know  
 9 what he means. "We then shot on the ground as before on  
 10 the instruction of Colonel Vermaak and the armed striker  
 11 ran towards the direction of the informal settlement. This  
 12 happened a few times which resulted in me and Sergeant  
 13 Mgyue utilising the R5 rifles on the instruction of Colonel  
 14 Vermaak." And then he goes on in the next paragraph to  
 15 say, "As members were busy firing live ammunition towards  
 16 the strikers" – that's obviously just not himself and Mgyue  
 17 – "I then observed a striker falling to the ground. He was  
 18 not the protestor who was carried by the other strikers who  
 19 was also wearing a white overall." Now, the question is  
 20 are you able to confirm that what the constable says is  
 21 correct or are you able to say it's not correct or are you  
 22 able to say it may be right but you would argue the  
 23 position to either confirm or deny what he said. Those are  
 24 the three possibilities as I see it. Which is the correct  
 25 one?

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1 COLONEL VERMAAK: That is in read now is  
 2 not correct according to me.  
 3 MR SEMENYA SC: What are the wrong  
 4 elements of it?  
 5 COLONEL VERMAAK: I have said that we  
 6 observed the person who was shooting at us next to the  
 7 informal settlement close to the houses. There was  
 8 instruction given to me, to a member to shoot back. After  
 9 the member have shot one shot the person with the R5 turn  
 10 around and disappear between the houses. That was my  
 11 observation of the incident.  
 12 MR SEMENYA SC: You gave us your  
 13 evidence. Are you saying whatever that has been read to  
 14 you by the chair, all of it is entirely incorrect?  
 15 COLONEL VERMAAK: According to me, yes,  
 16 Chair.  
 17 MR SEMENYA SC: Now, I want us to look at  
 18 the statement of –  
 19 CHAIRPERSON: Before we move on to  
 20 another statement, so a couple of points that interest me,  
 21 the one is Constable Sekgweleya says that the instruction  
 22 was to fire in the ground. Now, did you give such an  
 23 instruction?  
 24 COLONEL VERMAAK: No, Chair, I  
 25 specifically give the instruction you must fire at the

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1 person who was firing at us.  
 2 CHAIRPERSON: The first point. The  
 3 second point is in paragraph 13 having discussed what he  
 4 and Mgyue had did according to him on your instructions he  
 5 then moves on to another point and he says, "As members  
 6 were busy firing live ammunition" – now presumably that's  
 7 not himself and Mgyue. There must be other members I  
 8 assume. "I then observed a striker falling on the ground."  
 9 So this must be the person who was shot and fell down. "It  
 10 was not the protester who was carried by the other strikers  
 11 who was also wearing a white overall." And then he goes  
 12 on, "The members whilst pursuing the strikers did at no  
 13 stage come under fire from the strikers." There he's  
 14 talking about the strikers he's referring to earlier in  
 15 that paragraph. Now, he doesn't suggest as I see the  
 16 statement that the person who was shot, who fell down who  
 17 was shot as a result of the firing by these members who he  
 18 refers to, he doesn't suggest that you gave them any  
 19 instruction so he doesn't appear to be suggesting that the  
 20 person who was actually shot at and fell down was linked in  
 21 any way with any instruction you gave.  
 22 COLONEL VERMAAK: That's correct, Chair.  
 23 CHAIRPERSON: So are you able to tell us  
 24 whether what is set out in paragraph 13 is correct? Apart  
 25 from the one person who shot as you've told us on your

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1 instruction, one shot you said, apart from that were,  
 2 thereafter were other members busy firing live ammunition  
 3 towards the strikers?  
 4 COLONEL VERMAAK: Chair, no, not while I  
 5 was there because why I know on the other – you could see  
 6 on the other side or the direction what the strikers was  
 7 running to was houses so if they did shoot in my presence  
 8 there I should stop him to shoot because why he could have  
 9 injured or killed maybe somebody that was standing around  
 10 the houses.  
 11 MR SEMENYA SC: I don't understand the  
 12 answer. If they should shoot at somebody they would injure  
 13 somebody. The question is did they shoot at all or there's  
 14 only one shot that you heard for the entire duration of  
 15 your stay at the riverside?  
 16 COLONEL VERMAAK: Chair, I said there  
 17 wasn't shooting others than the person who I gave the  
 18 instruction for.  
 19 MR SEMENYA SC: Okay. Now –  
 20 CHAIRPERSON: Can I just interpose?  
 21 First when that one shot was fired that you have referred  
 22 to as far as you could see was anybody hit by that one?  
 23 COLONEL VERMAAK: No, Chair. The  
 24 direction was, of the person who was shooting at us, he was  
 25 on the far right of the informal settlement and he was



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1 running away. I wasn't aware of a person who was shot or  
 2 killed before when we go through the river and we found  
 3 that person that was lying there.  
 4 CHAIRPERSON: So would I be correct to  
 5 say – or I mustn't put it in a leading form. The person –  
 6 you came across as you told us the dead body of Mr Seboloki  
 7 and you took a photograph and you took photographs.  
 8 COLONEL VERMAAK: That's correct, Chair.  
 9 CHAIRPERSON: Now, did you see any – had  
 10 you previously seen anybody falling down there or anyone  
 11 there?  
 12 COLONEL VERMAAK: No, Chair, no, Chair.  
 13 MR SEMENYA SC: Well, let's work at it.  
 14 At the time that you called Captain Loest to organise TRT  
 15 members for you were there any police who were pursuing  
 16 anybody ahead of you?  
 17 COLONEL VERMAAK: Not that I was aware  
 18 of, Chair.  
 19 MR SEMENYA SC: So you are not aware of  
 20 any police officers that are pursuing this group other than  
 21 your people that you are bringing to the scene?  
 22 COLONEL VERMAAK: At that stage when we  
 23 followed that persons there was no other policemen that I  
 24 have –  
 25 MR SEMENYA SC: All right.

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1 COLONEL VERMAAK: Saw around.  
 2 MR SEMENYA SC: Correct, and the fellow  
 3 with an R5 rifle was throughout within your field of  
 4 vision, correct, until he ultimately disappeared in the  
 5 settlement?  
 6 COLONEL VERMAAK: No, we saw him when we  
 7 fly over him with the helicopter. After we have land I  
 8 went to the warrant officer Monene and thereafter we  
 9 followed the group. I get, I asked Captain Loest to get  
 10 some members together for me and after we went through the  
 11 river.  
 12 MR SEMENYA SC: No, Colonel, you really  
 13 know where I am. We started with you and Captain Loest,  
 14 you are getting people, there are no other police line  
 15 ahead of you. You then see this man in your field of  
 16 vision. The next question is at no stage does this person  
 17 disappear out of your field of vision until he's in the  
 18 settlement, correct?  
 19 COLONEL VERMAAK: That's correct.  
 20 MR SEMENYA SC: So there could be no  
 21 explanation why you on the other side of the river find a  
 22 body lying there of Mr Sokanyile, right?  
 23 COLONEL VERMAAK: That's correct.  
 24 MR SEMENYA SC: According to you.  
 25 COLONEL VERMAAK: According to me I

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1 didn't know.  
 2 MR SEMENYA SC: According to you there's  
 3 no reason whatsoever that certain cartridges would be found  
 4 at this other side of the river which we know -  
 5 [12:26] CHAIRPERSON: The cartridges weren't  
 6 found on the other side of the river. The cartridges were  
 7 found in that orange circle remember. On the police side  
 8 of the river, the cartridge cases were found, as I remember  
 9 it, in that orange circle on the police side –  
 10 MR SEMENYA SC: Indeed, Chair, I'm saying  
 11 to the witness you have no account how those cartridges  
 12 could have been there at all, correct?  
 13 COLONEL VERMAAK: That's correct.  
 14 MR SEMENYA SC: But what we do know from  
 15 your evidence when you saw the body lying there the first  
 16 thing you did is to make sure that nobody interferes with  
 17 that crime scene.  
 18 COLONEL VERMAAK: That's correct.  
 19 MR SEMENYA SC: So those cartridges could  
 20 not have arrived there subsequent to that event. Am I  
 21 right – of Mr Sokanyile lying there? Sokanyile, sorry, the  
 22 late Mr Sokanyile.  
 23 CHAIRPERSON: I got the name wrong  
 24 earlier as well, but it is Sokanyile.  
 25 MR SEMENYA SC: Am I right?

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1 COLONEL VERMAAK: Yes, I cannot explain  
 2 when did that cartridges – was fired –  
 3 MR SEMENYA SC: No, but on your version  
 4 you can at least tell us that they must have been fired  
 5 before you and your TRT members went to the river and  
 6 subsequent to that you were in charge of the scene.  
 7 COLONEL VERMAAK: I can only testify  
 8 about the one incident where I gave instruction. If those  
 9 were fired after or before I really cannot give you an  
 10 indication of that.  
 11 MR SEMENYA SC: No they couldn't have  
 12 been fired after, that's my point precisely, Colonel. As  
 13 far as you're concerned the scene after you saw the body  
 14 has been under police observation throughout until the LCRC  
 15 came, so it couldn't have been after. Am I right?  
 16 COLONEL VERMAAK: I cannot say, I don't  
 17 know what happened afterwards but –  
 18 CHAIRPERSON: Sorry, sorry complete your  
 19 answer first, sorry.  
 20 COLONEL VERMAAK: Chair, according to me,  
 21 the members who was with me didn't fire so I cannot comment  
 22 when the cartridges was fired off. I understand Mr  
 23 Semenya's question if it must be before or after.  
 24 According to me I don't know really and I don't know what  
 25 time the LCRC arrived at that scene and I also don't know

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1 when they discovered the cartridges there because why we  
 2 left the scene and I wasn't with the LCRC to that scene  
 3 itself.  
 4 CHAIRPERSON: Yes but – I understand all  
 5 that. Theoretically you can't say whether they were there  
 6 before or after but looking at the overwhelming  
 7 probabilities when you left the scene you left people in  
 8 charge, guarding the scene, making sure it wasn't  
 9 interfered with, right?  
 10 COLONEL VERMAAK: That's correct, at the  
 11 body.  
 12 CHAIRPERSON: Yes that's what I said and  
 13 I take it we can assume, again it's a matter of  
 14 overwhelming probability that they would have stayed there  
 15 until the LCRC people came.  
 16 COLONEL VERMAAK: I believe so yes,  
 17 Chair.  
 18 CHAIRPERSON: And therefore it's unlikely  
 19 that anyone could have fired anything, any shots in that  
 20 vicinity during the period, without anyone knowing about it  
 21 without our having statements about it.  
 22 COLONEL VERMAAK: That's correct.  
 23 CHAIRPERSON: From the time that you left  
 24 the scene, while the scene is being guarded by the people  
 25 you left there until the LCRC people came.

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1 COLONEL VERMAAK: That's correct.  
 2 CHAIRPERSON: So therefore though  
 3 theoretically anything could have happened but in the real  
 4 world we can accept that the evidence points ineluctably to  
 5 the conclusion that those cartridge cases at, what I call  
 6 the orange circle, must have been there before you went to  
 7 this place where the dead body was. And didn't arrive  
 8 there somewhere afterwards. That must be right.  
 9 COLONEL VERMAAK: Yes.  
 10 CHAIRPERSON: Ja.  
 11 COMMISSIONER HEMRAJ: And Colonel, if  
 12 there were as many shots fired as there are cartridge cases  
 13 that were found there and if it was in that vicinity of the  
 14 river then you would have heard those shots being fired  
 15 because you weren't terribly far off.  
 16 COLONEL VERMAAK: Chair, yes. If it was  
 17 fired when I was there I should have heard it.  
 18 COMMISSIONER HEMRAJ: Or even before you  
 19 arrived at that scene you would have heard the shooting  
 20 because you were on the field not very far away from there.  
 21 COLONEL VERMAAK: Chair, yes, ja.  
 22 MR SEMENYA SC: But we do know from your  
 23 evidence is there were no police members ahead of you. You  
 24 were the first line of police to enter that area chasing  
 25 the man with that R5.

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1 COLONEL VERMAAK: I cannot confirm if I  
 2 was the first because –  
 3 MR SEMENYA SC: No you didn't see anyone  
 4 ahead of you did you Colonel?  
 5 COLONEL VERMAAK: I didn't see anybody in  
 6 front of me but –  
 7 MR SEMENYA SC: Can we have a look at  
 8 QQQ8 which is the statement of Mguye, Sergeant Mguye.  
 9 Shall we start at paragraph 7? For completeness sake so  
 10 that we follow the sequence first Sergeant Mguye there "The  
 11 members were inside the Nyala but because the Nyala driver  
 12 was not present at that stage the members got out of the  
 13 Nyala. Colonel Vermaak, myself armed with an R5 rifle and  
 14 9 millimetre pistol together with Constable Sekgweleya also  
 15 armed with an R5 rifle and a 9 millimetre pistol pursued  
 16 the strikers on foot." That's correct, right, so far?  
 17 COLONEL VERMAAK: No not – the part of  
 18 the Nyala, I was not near a Nyala before we went following  
 19 the protestors. There was no Nyala close to –  
 20 MR SEMENYA SC: Okay, the first sentence  
 21 you say you can't comment on it. The second sentence that  
 22 Colonel Vermaak, myself armed with that R5 rifle, a 9  
 23 millimetre pistol and Constable Sekgweleya also armed with  
 24 R5 and 9 millimetre pistol pursued the strikers on foot, is  
 25 that factually correct?

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1 COLONEL VERMAAK: There was other members  
 2 as well, not only the two of them.  
 3 MR SEMENYA SC: Okay.  
 4 COLONEL VERMAAK: There were POP and  
 5 other TRT members as well.  
 6 MR SEMENYA SC: Okay. Just another  
 7 point, you don't have your 9 millimetre this time do you?  
 8 COLONEL VERMAAK: No.  
 9 MR SEMENYA SC: You are unarmed.  
 10 COLONEL VERMAAK: Unarmed, no firearm.  
 11 MR SEMENYA SC: Do your colleagues know  
 12 that you are unarmed that are with you?  
 13 COLONEL VERMAAK: Yes.  
 14 MR SEMENYA SC: Oh you made it clear to  
 15 them that you did not have your side arm.  
 16 COLONEL VERMAAK: That's correct.  
 17 MR SEMENYA SC: Okay, this is before you  
 18 enter the – when you were calling them.  
 19 COLONEL VERMAAK: When Captain Loest  
 20 called them together –  
 21 MR SEMENYA SC: Ja you –  
 22 COLONEL VERMAAK: - and I asked him to go  
 23 with me I did mention them that I haven't got a firearm  
 24 with me.  
 25 MR SEMENYA SC: Okay. Shall we go on?

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1 "It appeared the group of strikers moved after noticing us.  
 2 As the group of strikers moved I noticed that they were  
 3 carrying a person who was wearing a white overall and  
 4 amongst the strikers there was one who had an R5 rifle."  
 5 Is that factually correct, in line with your observation?  
 6 COLONEL VERMAAK: Yes.  
 7 MR SEMENYA SC: "As we followed the group  
 8 of strikers the one who was in possession of a rifle turned  
 9 and looked at us. It is at that stage that I fired one  
 10 warning shot into the ground and utilising the R5 rifle in  
 11 my possession on the instruction of Colonel Vermaak."  
 12 Correct, factual?  
 13 COLONEL VERMAAK: No it's not correct.  
 14 MR SEMENYA SC: Not. "The striker who  
 15 was in possession of the R5 rifle turned and proceeded with  
 16 the others."  
 17 COLONEL VERMAAK: That's not correct.  
 18 MR SEMENYA SC: Okay, but what you do see  
 19 with him too you are not being fired at when the  
 20 instruction is given to one of them, on your version, to  
 21 shoot back.  
 22 COLONEL VERMAAK: I only give instruction  
 23 to one member.  
 24 MR SEMENYA SC: Ja, the thrust of my  
 25 question is, both of them, if they are correct, the

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1 instruction is given not in retaliation of fire but in  
 2 retaliation of a firearm being possessed and the firearm  
 3 being pointed at you.  
 4 COLONEL VERMAAK: No that's not correct.  
 5 MR SEMENYA SC: Okay. "After some time  
 6 the striker with the R5 rifle again turned and faced us at  
 7 which stage I once again fired a warning shot into the  
 8 ground utilising the R5 rifle on the instruction of Colonel  
 9 Vermaak, he also repeats this." You say that's factually  
 10 incorrect.  
 11 COLONEL VERMAAK: It's incorrect.  
 12 MR SEMENYA SC: "After which the striker  
 13 turned and walked with a group of strikers." Did that  
 14 happen?  
 15 COLONEL VERMAAK: No.  
 16 MR SEMENYA SC: "After firing the second  
 17 warning shot was described above I noticed Nyala driving on  
 18 my left side of the gravel road towards the direction of a  
 19 group of strikers." Did you see that, Colonel?  
 20 COLONEL VERMAAK: No that's not correct.  
 21 MR SEMENYA SC: "At the same other POP  
 22 members together with Constable Legota who is based in  
 23 Rustenburg TRT were walking on foot in the same direction."  
 24 Is that what you observed happening?  
 25 COLONEL VERMAAK: No.

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1 MR SEMENYA SC: "As a group of strikers  
 2 approached the river the striker in possession of the R5  
 3 rifle once again came towards us at which stage I responded  
 4 to Colonel Vermaak's instruction and fired another warning  
 5 shot into the ground with the R5 rifle." That didn't  
 6 happen?  
 7 COLONEL VERMAAK: No I only gave once an  
 8 instruction.  
 9 MR SEMENYA SC: "Both groups of members  
 10 joined us in the vicinity of the red spot circle with a  
 11 blue colour described in exhibit OOO23, page 23 as the  
 12 position of the cartridges." You say that's wrong.  
 13 COLONEL VERMAAK: That's wrong, yes.  
 14 MR SEMENYA SC: Okay. I think with your  
 15 cross-examination earlier, not with me you correctly  
 16 conceded that the place where you put the body of the late  
 17 Mr Sokanyile was wrong.  
 18 COLONEL VERMAAK: No.  
 19 MS PILLAY: Chair, you will recall,  
 20 Chair, that there was a dispute around that. The questions  
 21 were put by the families around the placement of Mr  
 22 Sokanyile's body and both the witnesses and the evidence  
 23 leaders reserved their position in regards to the  
 24 placement.  
 25 MR SEMENYA SC: No I don't know what that

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1 means to reserve – did you concede or did you not concede  
 2 that where you placed the body as depicted in the LCRC is  
 3 actually not correct? Did you not concede it?  
 4 MS PILLAY: Chair, the dispute was around  
 5 on whether the placement by the families was consistent  
 6 with LCRC placement. You will recall that the witness  
 7 testified that if that is where the LCRC placed the body  
 8 then he'd accept that that's where the body was. But the  
 9 evidence leaders - there's an objection that that was – we  
 10 took the view that the placement by the families was not  
 11 consistent with the LCRC placement.  
 12 CHAIRPERSON: Once again it's one of  
 13 these things that we'll have to look at the transcript. I  
 14 take it you can carry on the meanwhile, Mr Semenya.  
 15 MR SEMENYA SC: I can, Chair.  
 16 CHAIRPERSON: There's two matters that we  
 17 need the transcripts.  
 18 MR SEMENYA SC: I can, Chair. Now I want  
 19 to ask this question, Colonel, and to me it's very  
 20 important. You would have known that General Annandale  
 21 told everybody who was going to Roots please bring all of  
 22 your photographs, correct?  
 23 COLONEL VERMAAK: That's correct.  
 24 MR SEMENYA SC: And the chairman  
 25 persistently said I've even invited members of the

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1 international media, please I want any material that is  
 2 relevant to the event that happened in Marikana. You are  
 3 aware of that?  
 4 COLONEL VERMAAK: No, I was not aware of  
 5 that.  
 6 MR SEMENYA SC: You were aware that as  
 7 the SAPS we were desirous of giving all evidentiary  
 8 material at our disposal to the Commission weren't you?  
 9 COLONEL VERMAAK: That's correct.  
 10 MR SEMENYA SC: Is it not startling that  
 11 the only photograph that you keep, that is OOO14 is that of  
 12 the late Sokanyile?  
 13 COLONEL VERMAAK: I didn't keep any  
 14 photographs back. I have given everything to Colonel  
 15 Scott.  
 16 MR SEMENYA SC: Even exhibit OOO14?  
 17 COLONEL VERMAAK: Both of that photos  
 18 that I've taken of him I've given it to them, it was on my  
 19 Blackberry.  
 20 MR SEMENYA SC: The question I'm asking  
 21 is are you saying that includes exhibit OOO14 that the  
 22 Commission was seeing for the first time this year?  
 23 COLONEL VERMAAK: No if you can just put  
 24 it up for me I can comment on it. I can't say –  
 25 MS PILLAY: Chair, can I understand this

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1 line of questioning, is the basis for this questioning that  
 2 OOO14 was not on the police hard drive.  
 3 CHAIRPERSON: There were other things on  
 4 the police hard drive also which we didn't see until later  
 5 but the basis of this is, as I understand the question, is  
 6 that this photograph was kept back. It was not made  
 7 available to the police at all. The statement that the  
 8 police put everything before us is a matter that will be  
 9 the subject for argument later but that's not relevant for  
 10 the present discussion. What is being to the witness is  
 11 that he held this photograph and he didn't give it to  
 12 Colonel Scott. Is that right, Mr Semenya?  
 13 MS PILLAY: Chair, can I just understand  
 14 that according to SAPS this picture was not on the police  
 15 hard drive.  
 16 MR SEMENYA SC: SAPS will talk when it  
 17 does, Chair, I want answers from the witness.  
 18 MS PILLAY: Chair, I'm questioning the  
 19 basis for the question because the witness needs to  
 20 understand.  
 21 CHAIRPERSON: The witness can be asked  
 22 the question did you give it, if you didn't, did you or  
 23 didn't you. His answer won't be conclusive one way or the  
 24 other, there will further material that will have a bearing  
 25 on it but I don't see any objection to him being asked the

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1 question now. You say you gave it to Colonel Scott. Did  
 2 you give it together with all your other photographs, or  
 3 how does it work?  
 4 COLONEL VERMAAK: No, as he arrived there  
 5 at Marikana we started giving every photo that was in my  
 6 possession, I gave it to him. Every, every photo, my  
 7 Blackberry photos, my Pentax camera photos, everything.  
 8 Nothing was withheld.  
 9 CHAIRPERSON: I mean this photograph  
 10 we're now talking about, was this a Blackberry photograph  
 11 or a Pentax photograph?  
 12 COLONEL VERMAAK: It's a Blackberry,  
 13 Chair.  
 14 CHAIRPERSON: Now how did you – in what  
 15 way from a physical point of view did you give your  
 16 Blackberry photographs to Colonel Scott?  
 17 COLONEL VERMAAK: Chair, I withdraw it  
 18 from the Blackberry phone onto my computer and then on a  
 19 memory stick I gave it to Colonel Scott.  
 20 MR SEMENYA SC: This is on the 13th.  
 21 COLONEL VERMAAK: No, I said when Colonel  
 22 Scott arrived at Marikana. He wasn't there on the 13th  
 23 during the day.  
 24 CHAIRPERSON: He arrived in the evening.  
 25 COLONEL VERMAAK: The evening yes but –

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1 CHAIRPERSON: The -  
 2 COLONEL VERMAAK: The following day –  
 3 CHAIRPERSON: The following day.  
 4 COLONEL VERMAAK: - he start gather all  
 5 the information, photos, everything that we had.  
 6 MR SEMENYA SC: This is not one of those  
 7 that you BBM-ing to the JOC?  
 8 COLONEL VERMAAK: No, no.  
 9 MR SEMENYA SC: Any particular reason why  
 10 that didn't happen?  
 11 COLONEL VERMAAK: Chair, at that stage  
 12 Brigadier Pretorius was not there. Just after Brigadier  
 13 Pretorius arrived we shared our Blackberry pin numbers and  
 14 then it is from that point that I start sending photos to  
 15 the JOC with the Blackberry.  
 16 MR SEMENYA SC: Can I explore with you  
 17 another area, Colonel? In your police experience whenever  
 18 there is a helicopter used in these type of public order  
 19 operations proper planning entails that there is a aerial  
 20 command, correct?  
 21 COLONEL VERMAAK: No, in other public  
 22 order policing incidents especially in Rustenburg there was  
 23 only the eye in the sky as he was at Marikana as well.  
 24 Sometimes we only have the Robinson R44, that only take the  
 25 pilot and the crew and no other passengers, so then it is

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1 not possible for anybody else to fly with them, then there  
 2 are only the eye in the sky, what they observe they give  
 3 through to the commander on the ground.  
 4 MR SEMENYA SC: No, I'm saying when JOC  
 5 at times at aerial command then that must be the case, to  
 6 give command from the air.  
 7 COLONEL VERMAAK: If you assign somebody  
 8 and it's possible for him to be in a helicopter in the  
 9 area, yes.  
 10 [12:46] MR SEMENYA SC: We know that Brigadier  
 11 Fritz was assigned to do the aerial command by JOCCOM.  
 12 Correct?  
 13 COLONEL VERMAAK: No, I wasn't aware of  
 14 it.  
 15 MR SEMENYA SC: Yes, but I didn't ask  
 16 whether you were aware of it, I say we know, don't we? You  
 17 have looked at the documents, you have seen the assignments  
 18 -  
 19 COLONEL VERMAAK: Afterwards, yes, I take  
 20 notice of that.  
 21 MR SEMENYA SC: Now, you don't have any  
 22 training in avionics and helicopters and aeroplanes, I take  
 23 it.  
 24 COLONEL VERMAAK: I did.  
 25 MR SEMENYA SC: Ja?

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1 COLONEL VERMAAK: I did the ten courses,  
 2 the dangerous goods courses I have attend to.  
 3 MR SEMENYA SC: Is it in your CV?  
 4 COLONEL VERMAAK: No, no. It is a yearly  
 5 thing that you attend. I have a certificate and I can  
 6 organise it, you must get it.  
 7 MR SEMENYA SC: You call it a what  
 8 course?  
 9 COLONEL VERMAAK: Dangerous goods, and  
 10 Kudu resource and -  
 11 MR SEMENYA SC: Tidy that up for me, you  
 12 say you attend a course called?  
 13 COLONEL VERMAAK: Dangerous Goods.  
 14 MR SEMENYA SC: It is offered where?  
 15 COLONEL VERMAAK: In Pretoria by the Air  
 16 Wing.  
 17 MR SEMENYA SC: As what?  
 18 COLONEL VERMAAK: As a workshop that you  
 19 attend yearly.  
 20 MR SEMENYA SC: For what? I am trying to  
 21 understand what course it is and how it relates to the  
 22 helicopters.  
 23 COLONEL VERMAAK: That's everything to do  
 24 with the helicopters.  
 25 MR SEMENYA SC: I will get there, but let

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1 us understand to what the course is first. You are saying  
 2 you attend it yearly.  
 3 COLONEL VERMAAK: That's correct.  
 4 MR SEMENYA SC: And it is called the name  
 5 that you have mentioned. So what else happens there?  
 6 COLONEL VERMAAK: There's a lot of things  
 7 that is being discussed and presented during this workshops  
 8 for LUs, pilots and I am the only commander who is not a  
 9 pilot, who was also attending that workshops.  
 10 MR SEMENYA SC: Workshop, courses, what  
 11 are these?  
 12 COLONEL VERMAAK: You can call it a  
 13 workshop.  
 14 MR SEMENYA SC: It's not a course. There  
 15 is no competency testing -  
 16 COLONEL VERMAAK: No, no, no.  
 17 COMMISSIONER HEMRAJ: What does the  
 18 dangerous goods refer to?  
 19 COLONEL VERMAAK: Chair, that is  
 20 especially things that you are allowed to have on the  
 21 helicopter.  
 22 MR SEMENYA SC: Ja, and one of them is  
 23 not a stun grenade, am I right?  
 24 COLONEL VERMAAK: No, you are wrong.  
 25 MR SEMENYA SC: Okay, let's look at the

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1 document, you say it is authorised to carry a stun grenade  
 2 on a helicopter in terms of the workshop training you got?  
 3 COLONEL VERMAAK: That's correct, when  
 4 you are trained to handle it, you are allowed to use it or  
 5 to have it with you. If I can maybe just explain, if we  
 6 are not allowed to have it on the helicopter, then every  
 7 pilot in the police must be charged, because why, task  
 8 force, every time that they are deploying for specific  
 9 operations they have those with them.  
 10 MR SEMENYA SC: Can we have a look at  
 11 what I will ask to be marked OOO38 now, The Helicopter  
 12 Operations Manual.  
 13 COLONEL VERMAAK: Chair, can I maybe  
 14 assist.  
 15 CHAIRPERSON: A copy we've just been  
 16 handed. We have been handed a document that says, it's an  
 17 extract from the Helicopter Operations Manual section 10,  
 18 that there's dangerous goods and weapons. Is that -  
 19 MR SEMENYA SC: That is the document.  
 20 CHAIRPERSON: Has the witness got a copy?  
 21 COLONEL VERMAAK: Yes, but I must maybe  
 22 assist -  
 23 CHAIRPERSON: Hang on, let's make - let  
 24 me make a note first, of the exhibits.  
 25 COLONEL VERMAAK: Sorry for that, Chair.

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1 CHAIRPERSON: And then we can concentrate  
 2 together on it. Helicopter Operations Manual section 10,  
 3 Dangerous Goods and Weapons. That will be marked OOO38.  
 4 Now do you want to tell us something about this exhibit, do  
 5 you?  
 6 COLONEL VERMAAK: Chair, there's a new  
 7 one, this is an old one.  
 8 MR SEMENYA SC: Yes, but the point is a  
 9 new one -  
 10 CHAIRPERSON: What page is this one, it  
 11 says, "Effective 2007/09/01." So it came into force on the  
 12 1st of September 2007. You say there's another one since  
 13 then.  
 14 COLONEL VERMAAK: That is correct, Chair.  
 15 CHAIRPERSON: And also, at the foot of  
 16 the page, it says "issued to original." Now this was  
 17 presumably part of the original manual. You say it's been  
 18 replaced now?  
 19 COLONEL VERMAAK: That is correct, Chair,  
 20 I am in possession of issue 2, reference 1, effective  
 21 2008/12/01.  
 22 CHAIRPERSON: The difference between the  
 23 two, can you do that?  
 24 COLONEL VERMAAK: Excuse me, Chair?  
 25 CHAIRPERSON: What's the difference

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1 between the two?  
 2 COLONEL VERMAAK: There's a lot of  
 3 differences, that have been changed from 2007 to 2008.  
 4 MR SEMENYA SC: And one of those changes  
 5 you can tell us, Colonel, they haven't altered the fact  
 6 that dangerous goods can only be carried according to the  
 7 International Civil Aviation Organisational technical  
 8 instructions, am I right?  
 9 COLONEL VERMAAK: No, you are wrong.  
 10 MR SEMENYA SC: Huh?  
 11 COLONEL VERMAAK: You are wrong.  
 12 MR SEMENYA SC: It has changed?  
 13 COLONEL VERMAAK: It has changed, because  
 14 why, the police is not falling any more under the Civil  
 15 Aviation Act. They are excluded, the same as the South  
 16 African Air Force.  
 17 CHAIRPERSON: The document we've been  
 18 handed says in paragraph 10.1(a), "Dangerous goods can only  
 19 be carried according to international Civil Organisations  
 20 technical instructions for the safe transport of dangerous  
 21 goods by air (technical instructions.)" Now the document  
 22 you've now referred us to does that have those words at the  
 23 beginning?  
 24 COLONEL VERMAAK: No, Chair, I will see  
 25 if I can get hold during the day of the latest one, but

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1 what is not mentioned in this document is that the South  
 2 African Police Service is not falling, is excluded from the  
 3 Aviation Act regarding specific instructions according to  
 4 the Aviation Act.  
 5 MR SEMENYA SC: Chair, may I be indulged  
 6 to ask for an early lunch adjournment? I want to look at  
 7 this, and -  
 8 CHAIRPERSON: With the extra five minutes  
 9 that you'll get you can use looking at this document. We  
 10 will take the lunch adjournment. And try to resume,  
 11 please, at quarter to two. If you need longer you will let  
 12 me know.  
 13 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 14 [13:52] CHAIRPERSON: The Commission resumes.  
 15 You're still bound by the affirmation that you made,  
 16 Colonel.  
 17 SALMON JOHANNES VERMAAK: (affirms  
 18 further)  
 19 CHAIRPERSON: Mr Semenya, are you now up  
 20 to date with the Helicopter Operations Manual?  
 21 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):  
 22 I am, Chair. [Microphone off, inaudible] if we flight  
 23 OOO38, that would be the new document, Colonel. Am I  
 24 right?  
 25 CHAIRPERSON: [Microphone off,

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1 inaudible]. Let me repeat that. The exhibit OOO38 is the  
 2 original issue of section 10 of the Helicopter Operations  
 3 Manual effective from the 1st of September 2007. Have we  
 4 now got another document you want us to look at?  
 5 MR SEMENYA SC: With permission that  
 6 would be now marked OOO30 -  
 7 CHAIRPERSON: 9.  
 8 MR SEMENYA SC: 39.  
 9 CHAIRPERSON: What's that? I'll write in  
 10 my notebook next to my note on the exhibit OOO38, original  
 11 issue, and then under OOO39 I'll write the same thing and  
 12 say -  
 13 MR SEMENYA SC: Updated version.  
 14 CHAIRPERSON: Updated version. Is the  
 15 one that we've now got the one that's currently in force?  
 16 MR SEMENYA SC: The new one, we only have  
 17 a softcopy and I will request that it be flighted.  
 18 CHAIRPERSON: Yes, yes, I understand, but  
 19 I say is this the one that's now, that's still in force  
 20 today?  
 21 COLONEL VERMAAK: Chair, yes, the latest  
 22 one is 2013-04-01. That is the latest -  
 23 CHAIRPERSON: Yes well of course the one  
 24 that's relevant for us is the one that was in force on  
 25 the -

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1 COLONEL VERMAAK: 1st April 2013.  
 2 CHAIRPERSON: Yes, no, that's no good to  
 3 us. We need the one that was in force, was effective  
 4 firstly on the 13th of August 2012 and thereafter on the  
 5 16th of August 2012.  
 6 COLONEL VERMAAK: Yes.  
 7 CHAIRPERSON: Now you've got the latest  
 8 one.  
 9 COLONEL VERMAAK: The latest one. The  
 10 previous one is 2008.  
 11 CHAIRPERSON: 2008?  
 12 COLONEL VERMAAK: That's correct.  
 13 CHAIRPERSON: That was the one that was  
 14 still in force in –  
 15 COLONEL VERMAAK: That's correct.  
 16 CHAIRPERSON: - in 2012. Okay, thank  
 17 you. So I write in my notebook updated version effective  
 18 August, or in force, in force August 2012, then there will  
 19 be no difficulty.  
 20 MR SEMENYA SC: But Colonel, section 10  
 21 reads, it's identical. Am I right?  
 22 COLONEL VERMAAK: That's correct.  
 23 MR SEMENYA SC: So then it must still be  
 24 reading, "Dangerous goods," in paragraph 10.1.A, "can only  
 25 be carried according to the International Civil Aviation

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1 Organisation's technical instructions for the safe  
 2 transport of dangerous goods by air." Is that right?  
 3 COLONEL VERMAAK: That's correct.  
 4 MR SEMENYA SC: And if you go to page  
 5 140, at the foot of the page it's paginated 140. Oops, all  
 6 of it. Okay, all of them are –  
 7 CHAIRPERSON: Which one are you quoting  
 8 from?  
 9 MR SEMENYA SC: They're identical. The  
 10 documents are identical.  
 11 CHAIRPERSON: So you're saying the one  
 12 effective in August 2012 was for the purposes that we're  
 13 now busy with, identical to the one which is in the  
 14 exhibits?  
 15 MR SEMENYA SC: At least in respect of  
 16 chapter 10 -  
 17 CHAIRPERSON: Even [inaudible] the page  
 18 number.  
 19 MR SEMENYA SC: Yes. If you page the  
 20 first page, the second page, the third page, you will come  
 21 to a page with a block and a table. Do you see that?  
 22 COLONEL VERMAAK: That's correct, Chair.  
 23 MR SEMENYA SC: Above it would be H.  
 24 COLONEL VERMAAK: That's correct.  
 25 MR SEMENYA SC: Reading, "Packages

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1 containing dangerous goods can be identified by labels."  
 2 Correct?  
 3 COLONEL VERMAAK: That's correct.  
 4 MR SEMENYA SC: "When these labels or  
 5 similar ones are seen on items not identified as containing  
 6 dangerous goods, it is often an indication that they do  
 7 contain such goods." Right?  
 8 COLONEL VERMAAK: That's correct.  
 9 MR SEMENYA SC: "The labels indicate the  
 10 hazard of the goods by their class or division. These are  
 11 class 1, with a bomb symbol, explosives generally not  
 12 permitted on a helicopter." Do you see that?  
 13 COLONEL VERMAAK: That's correct.  
 14 MR SEMENYA SC: That, Colonel, would  
 15 relate to things like teargas, right?  
 16 COLONEL VERMAAK: No.  
 17 MR SEMENYA SC: Why not?  
 18 COLONEL VERMAAK: It's not a bomb.  
 19 MR SEMENYA SC: Does it not have  
 20 explosives?  
 21 COLONEL VERMAAK: It is not a bomb.  
 22 MR SEMENYA SC: Does it not have  
 23 explosives?  
 24 COLONEL VERMAAK: That explosives –  
 25 CHAIRPERSON: No, that can't be the right

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1 question, Mr Semenya, because if you look at class 1 with  
 2 bomb signal it says, "Explosives generally not permitted on  
 3 a helicopter," and then the next one is class 1 without  
 4 bomb symbol, "Explosives usually permitted on a  
 5 helicopter." So the test to whether something is a bomb  
 6 cannot depend upon whether it contains explosives –  
 7 MR SEMENYA SC: No –  
 8 CHAIRPERSON: - because some explosives  
 9 are permitted on helicopters and some aren't. So that's an  
 10 enquiry that's not going to help us.  
 11 MR SEMENYA SC: Are you saying the – I  
 12 intended to say they detonate, Chair, but are you saying  
 13 that a stun grenade does not have a bomb symbol?  
 14 COLONEL VERMAAK: No.  
 15 MR SEMENYA SC: No?  
 16 COLONEL VERMAAK: Not a bomb signal.  
 17 MR SEMENYA SC: Symbol, not a signal.  
 18 Symbol.  
 19 COLONEL VERMAAK: I said symbol.  
 20 MR SEMENYA SC: It doesn't have?  
 21 COLONEL VERMAAK: It's only stamped on it  
 22 "explosive." Explosive.  
 23 MR SEMENYA SC: And I think you earlier  
 24 said the STF would also be carrying stuns in the  
 25 helicopter?

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1 COLONEL VERMAAK: That's correct.  
 2 MR SEMENYA SC: Are you saying as a  
 3 matter of practice they detonate these things from the air?  
 4 COLONEL VERMAAK: It depends on  
 5 circumstances.  
 6 MR SEMENYA SC: Are you saying in the  
 7 circumstances where the STF would detonate them from the  
 8 helicopter in the air?  
 9 COLONEL VERMAAK: Chair, I cannot comment  
 10 on what the STF is using in specific incidents, but if it  
 11 is needed they will do it.  
 12 MR SEMENYA SC: Okay Colonel, let us –  
 13 CHAIRPERSON: Sorry, before we carry on,  
 14 aren't we wasting a bit of time? Look at the last page of  
 15 the document you gave us, paragraph 10.5, what does that  
 16 say?  
 17 MR SEMENYA SC: Are you able to comment,  
 18 Colonel? Of course that is correct; members of the SAPS  
 19 would carry all these munitions. The question is whether  
 20 they can carry them and trigger – I mean detonate them in  
 21 the helicopter.  
 22 COLONEL VERMAAK: It's not detonated in a  
 23 helicopter, Chair. You are trained to detonate it when  
 24 your hands are outside the helicopter. You –  
 25 CHAIRPERSON: Sorry, before we carry on

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1 with that, 10.5 seems to me to render a lot of the  
 2 discussion we've had up to now irrelevant. 10.5 in effect  
 3 says that members of the SAPS when they are in helicopters  
 4 may carry weapons, munitions of war and explosives.  
 5 COLONEL VERMAAK: That's correct, Chair.  
 6 CHAIRPERSON: Because this after all is  
 7 part of the Helicopter Operations Manual.  
 8 COLONEL VERMAAK: That's correct.  
 9 CHAIRPERSON: So the previous discussions  
 10 are all irrelevant. But there's one requirement apparently  
 11 and that is they must be stable.  
 12 COLONEL VERMAAK: That's correct.  
 13 CHAIRPERSON: And they must be carried in  
 14 a responsible manner.  
 15 COLONEL VERMAAK: That's correct, Chair.  
 16 CHAIRPERSON: Right, now you say that if  
 17 you take the pin – I take it a stun grenade has got a pin,  
 18 has it?  
 19 COLONEL VERMAAK: That – that's correct,  
 20 Chair. You –  
 21 CHAIRPERSON: Ja, so when you take the  
 22 pin out of a stun grenade you've got to throw it out of the  
 23 helicopter immediately so that it won't explode in the –  
 24 COLONEL VERMAAK: No, you've got the – if  
 25 you take out the pin you've got a release handle. The

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1 moment that you throw it then the release handle will go  
 2 off and depending on what you are throwing, your stun  
 3 grenades have got about two seconds before it, the first,  
 4 shall I call it the explosion and your teargas about three  
 5 seconds more or less before that went off.  
 6 CHAIRPERSON: You're saying there's  
 7 nothing in 10.5 to prevent or prohibit the carrying of stun  
 8 grenades and teargas –  
 9 COLONEL VERMAAK: That's correct.  
 10 CHAIRPERSON: - on a helicopter?  
 11 COLONEL VERMAAK: As long as it is, as it  
 12 stipulated, stable and you handle it with the necessary  
 13 care.  
 14 CHAIRPERSON: And carried in a  
 15 responsible manner. Right, anyway, I'm sorry to interrupt,  
 16 Mr Semenya. I thought that might save a bit of time.  
 17 MR SEMENYA SC: Thank you, Chair. My  
 18 instructions are that it would detonate, that is the stun,  
 19 in 1.5 seconds. You say two seconds.  
 20 COLONEL VERMAAK: I said more or less.  
 21 MR SEMENYA SC: And so too a teargas, my  
 22 instructions are that it is one and a half seconds. Would  
 23 you go along with that? The smoke may –  
 24 COLONEL VERMAAK: The one and a half  
 25 seconds on the stun grenade is between the first and the

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1 second explosions. They've got two that went off and the  
 2 one and a half is between the first and the second one.  
 3 CHAIRPERSON: Lieutenant-Colonel, how do  
 4 these things work? Assuming I was in a helicopter and I  
 5 had a stun grenade or a teargas canister, would I open the  
 6 window as it were and put my hand out and do the necessary  
 7 first, or would I actually –  
 8 COLONEL VERMAAK: Chair, you open the  
 9 door.  
 10 CHAIRPERSON: Open the door?  
 11 COLONEL VERMAAK: We open the door.  
 12 CHAIRPERSON: Yes?  
 13 COLONEL VERMAAK: And they call it you've  
 14 got a monkey chain, it's a safety belt that you put on  
 15 your, on yourself so that you can lean over a little bit  
 16 more than normally when you only have the safety belt on  
 17 you.  
 18 CHAIRPERSON: I seem to remember one of  
 19 the exhibits we saw long, long ago when this Commission  
 20 started, on this video we saw Sergeant Venter leaning out  
 21 of the open door of the helicopter and throwing a stun  
 22 grenade –  
 23 COLONEL VERMAAK: That's correct, Chair.  
 24 CHAIRPERSON: - as far as I remember. So  
 25 that's how it works, is it?



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1 COLONEL VERMAAK: That's correct, Chair.  
 2 CHAIRPERSON: So that the actual – I  
 3 don't know whether the right word is detonation, but the –  
 4 is detonation the right word? But anyway, the right –  
 5 COLONEL VERMAAK: The pulling of the  
 6 pin –  
 7 CHAIRPERSON: Pulling of the – that  
 8 doesn't take place inside –  
 9 COLONEL VERMAAK: No.  
 10 CHAIRPERSON: - the aircraft.  
 11 COLONEL VERMAAK: Not at all.  
 12 CHAIRPERSON: It takes place outside.  
 13 COLONEL VERMAAK: It must be outside,  
 14 Chair.  
 15 MR SEMENYA SC: Whilst we're still on  
 16 this subject, the records I have seen show that the last  
 17 time you ordered stun and teargas, CS gas, was before the  
 18 operation of May 2012. Am I right?  
 19 COLONEL VERMAAK: That's correct.  
 20 MR SEMENYA SC: You did not order any  
 21 ones for the operations in Marikana. Am I right?  
 22 COLONEL VERMAAK: The JOC organised stun  
 23 grenades from National Logistics and I sent Warrant Officer  
 24 Kleynhans one day through to go and fetch the cases for the  
 25 operation.

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1 MR SEMENYA SC: And those that you had  
 2 requisitioned, you haven't written any report as to the  
 3 quantity you used and what remained of those quantities.  
 4 Am I right?  
 5 COLONEL VERMAAK: No, that is in the IRIS  
 6 report. It has been reported. So it is supposed to be on  
 7 the IRIS and also in the OB because why we have, and I  
 8 personally have reported it.  
 9 MR SEMENYA SC: No, what I mean is those  
 10 that were used by yourselves in the operation in May.  
 11 COLONEL VERMAAK: I didn't use any. I  
 12 did not use any in May. I was on the ground.  
 13 MR SEMENYA SC: Where were those that you  
 14 requisitioned, when were they used?  
 15 COLONEL VERMAAK: Chair, I don't know  
 16 what you mean by requisition and from whom, if you can just  
 17 give me clarity on that.  
 18 MR SEMENYA SC: The ones you used on the  
 19 22nd of May operation.  
 20 COLONEL VERMAAK: That was on instruction  
 21 of Colonel Merafe and the helicopter was sent by Colonel  
 22 Merafe to go and fetch it at his unit and they give stun  
 23 grenades and teargas to the members and the, in the  
 24 helicopter, due to the fact that Colonel Merafe used the  
 25 helicopter for the crowd control situation.

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1 MR SEMENYA SC: Okay. Now in Marikana  
 2 you had stun and gas in the helicopter when you were flying  
 3 there, correct?  
 4 COLONEL VERMAAK: That's correct.  
 5 MR SEMENYA SC: You took it in advance  
 6 already.  
 7 COLONEL VERMAAK: I bring it from my  
 8 unit, yes.  
 9 MR SEMENYA SC: Where in your unit do you  
 10 keep this? That's my interest.  
 11 COLONEL VERMAAK: In a safe.  
 12 MR SEMENYA SC: What safe is that?  
 13 COLONEL VERMAAK: In an arms safe.  
 14 MR SEMENYA SC: Is there a book and a log  
 15 where you enter what –  
 16 COLONEL VERMAAK: Everything, everything  
 17 is there. Registers, OB, everything.  
 18 MR SEMENYA SC: Are you able to have us  
 19 access to it?  
 20 COLONEL VERMAAK: Yes.  
 21 MR SEMENYA SC: Okay. And from those  
 22 entries we'll be able to see the amount of stun and teargas  
 23 that you have used during the period in Marikana?  
 24 COLONEL VERMAAK: That will be on the  
 25 IRIS system.

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1 MR SEMENYA SC: Can I ask we explore this  
 2 area relating to the threat on, as you call it, the life of  
 3 General Mpembe. You do know, don't you, that the evidence  
 4 of the PC is that he spoke to General Mpembe on the 13th on  
 5 her way back from Potchefstroom, correct?  
 6 COLONEL VERMAAK: That's correct.  
 7 MR SEMENYA SC: And you do know that her  
 8 evidence is that immediately upon receiving the report she  
 9 instructed that the operation must be stopped? You know  
 10 that evidence?  
 11 COLONEL VERMAAK: Yes, I know the  
 12 evidence.  
 13 MR SEMENYA SC: And her evidence is also  
 14 that you then subsequently called to report the incident  
 15 yourself. You know that evidence?  
 16 COLONEL VERMAAK: Yes, I've read it in  
 17 the transcripts.  
 18 MR SEMENYA SC: And that you made the  
 19 report about the fatalities that have been, that occurred  
 20 in respect of members of the police service, right?  
 21 COLONEL VERMAAK: That's correct.  
 22 MR SEMENYA SC: And her response to you  
 23 was to say that she has already told General Mpembe that  
 24 the operation must cease.  
 25 COLONEL VERMAAK: No, she did not say

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1 anything like that to me.  
 2 MR SEMENYA SC: Okay. Now your account  
 3 is different, of course. You say that you requested that  
 4 the General be removed from the scene.  
 5 COLONEL VERMAAK: Not on the first call.  
 6 It was later when we were moving back from the body.  
 7 MR SEMENYA SC: Yes, and that she, you  
 8 used the words, paraphrased, acquiesce, that she agreed to  
 9 that he may be removed.  
 10 COLONEL VERMAAK: Yes, I report to her  
 11 that I was with members and that they threatened that they  
 12 will shoot the General due to the fact that they take him  
 13 responsible for their colleagues that died that day, that  
 14 is when I immediately phoned General Mbombo.  
 15 MR SEMENYA SC: Okay, now according to  
 16 you the reason the members are angry or irate about how  
 17 General Mpembe handled the operation is that he would have  
 18 instructed them to leave their shotguns in the Nyalas.  
 19 COLONEL VERMAAK: That was reported by  
 20 the members to me, yes.  
 21 MR SEMENYA SC: And that's the only  
 22 reason why they were upset according to the report to you?  
 23 [14:12] COLONEL VERMAAK: They were upset that  
 24 their colleagues were killed and they felt that the general  
 25 was responsible for that.

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1 MR SEMENYA SC: Ja, what I'm trying to  
 2 establish is the reason why they were upset with his  
 3 conduct, that is the general, was that he would have  
 4 instructed members to leave their shotguns in the Nyalas.  
 5 COLONEL VERMAAK: That's correct.  
 6 According to the members that was with me, they said that  
 7 they were instructed by the general there at the railway  
 8 line where the people was sitting where he was negotiating  
 9 with them that they must go and put their long weapons in  
 10 the vehicles or in the Nyalas, not to – for the reason why  
 11 was not to provoke the people. That is according to them.  
 12 MR SEMENYA SC: That is the only reason  
 13 they offer.  
 14 COLONEL VERMAAK: That is correct.  
 15 MR SEMENYA SC: No other reason.  
 16 COLONEL VERMAAK: That's correct, Chair.  
 17 MR SEMENYA SC: Now, the people who are  
 18 this angry, are they POP members or the TRT?  
 19 COLONEL VERMAAK: That was the people who  
 20 was walking back with me that was TRT and POP members.  
 21 MR SEMENYA SC: The people who are irate  
 22 about it, are they POP or POP or both of them?  
 23 COLONEL VERMAAK: All of them were  
 24 talking to me and I, and they confirm each other that that  
 25 was the instruction and that is why they are angry with the

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1 general. It was not only one member who mentioned it to  
 2 me.  
 3 MR SEMENYA SC: Assuming that such an  
 4 instruction was given and I'm going to try and show you it  
 5 wasn't, but assuming it was given can I invite you to look  
 6 at FS2? That is the standing order 262. And if we can  
 7 focus our attention on clause 14 of the standing order this  
 8 relates to first members at the scene of an unforeseen  
 9 spontaneous gathering. Would this describe the incident of  
 10 the 13th?  
 11 COLONEL VERMAAK: The first member?  
 12 MR SEMENYA SC: No, the incident at the  
 13 railway station, did it qualify as one of those unforeseen  
 14 spontaneous gatherings?  
 15 COLONEL VERMAAK: Yes.  
 16 MR SEMENYA SC: It is?  
 17 COLONEL VERMAAK: Ja.  
 18 MR SEMENYA SC: And then under 14 there  
 19 are – it's described there what type of steps can be taken.  
 20 Am I right?  
 21 COLONEL VERMAAK: That's correct.  
 22 MR SEMENYA SC: And that would be the  
 23 steps expected to be taken by General Mpembe, right?  
 24 COLONEL VERMAAK: I believe so, yes.  
 25 MR SEMENYA SC: Okay. And under step

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1 three says the standing order, "Attempt to create an  
 2 atmosphere which is conducive to negotiations but if  
 3 failing from the display of aggression such as for instance  
 4 the brandishing of firearms and special equipment." Did  
 5 you see that?  
 6 COLONEL VERMAAK: I saw that.  
 7 MR SEMENYA SC: And you're familiar with  
 8 that.  
 9 COLONEL VERMAAK: That's correct.  
 10 MR SEMENYA SC: Okay, so it was available  
 11 for you to say to these members who are angry, no, but  
 12 General Mpembe is acting consistent with the standing  
 13 order. In those circumstances we should not display  
 14 firearms and show any aggression. We must show tolerance  
 15 and restraint. Correct?  
 16 COLONEL VERMAAK: Chair, if I may answer  
 17 to that for me it was a very serious threat that was made.  
 18 I was really worried about the general's safety and I  
 19 didn't waste time to go in a argument with the members  
 20 because why, at that stage they was also upset and to go  
 21 and argue with them at that stage I should've waste time,  
 22 because if they really mean to do what they said they will  
 23 do I felt that the first thing was to see over the safety  
 24 of the general.  
 25 CHAIRPERSON: Mr Semenya, what does the

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1 word "brandish" mean? Does brandish mean display or does  
 2 it mean to wave around and point at people?  
 3 MR SEMENYA SC: It's both that.  
 4 CHAIRPERSON: Certainly further on in 5  
 5 they talk about firearms not having to be – must be used  
 6 except in certain circumstances. I've always understood  
 7 the word "brandish" to mean some idea of waving around or  
 8 pointing it or doing something of that kind with it rather  
 9 than just displaying it.  
 10 MR SEMENYA SC: I understand the word to  
 11 include displaying, Chair, with respect. Otherwise if you  
 12 bring all of these things all you're doing is displaying  
 13 and you're not shaking them around and say you are in  
 14 compliance it would be inconsistent with the spirit of what  
 15 that document is intended to convey.  
 16 CHAIRPERSON: The point is what does the  
 17 word – I'm just asking what does the word "brandish" mean.  
 18 MR SEMENYA SC: I'll check the dictionary  
 19 definition.  
 20 CHAIRPERSON: Mustn't we know what the  
 21 word means? And if it means display, well, then you're  
 22 correct. If it means something more than that then you're  
 23 not.  
 24 MR SEMENYA SC: Let us have the benefit  
 25 of your experience, Colonel. What does that mean? How

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1 have you understood that instruction?  
 2 COLONEL VERMAAK: Well, I'll understand  
 3 it as it is put there that you mustn't wear it in a  
 4 aggressive manner. There's different ways that you can  
 5 keep your firearm without to be creating the impression  
 6 that you are aggressive. I mean, because why, it is part  
 7 of your equipment so you can either walk with your shotgun  
 8 pointing it at the people or you can – it's got a belt on  
 9 it, or you can just put it over your shoulder.  
 10 MR SEMENYA SC: Or you can leave it in  
 11 the Nyala.  
 12 COLONEL VERMAAK: You can leave it in the  
 13 Nyala but it will be irresponsible to do that.  
 14 MR SEMENYA SC: What is irresponsible  
 15 about it, Colonel, if you intend to not, if you intend to  
 16 convey non-aggression and you leave a shotgun in a Nyala?  
 17 What would be irresponsible about that?  
 18 COLONEL VERMAAK: Chair, the Firearm Act  
 19 stipulated very clearly if you are in possession of a  
 20 firearm you must have proper control over it all the time.  
 21 If you go and put a shotgun and a R5 in the Nyala I don't  
 22 think you comply then with the Firearm Act.  
 23 MR SEMENYA SC: Colonel –  
 24 COLONEL VERMAAK: No, you asked me a  
 25 question and I answered it.

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1 MR SEMENYA SC: Colonel, are you saying  
 2 in an operation there are shotguns of members in a Nyala,  
 3 each and every time they get out of the Nyala they must  
 4 take it with?  
 5 COLONEL VERMAAK: Yes, because why they  
 6 are responsible for that firearms unless there's a specific  
 7 person appointed to look after it.  
 8 MR SEMENYA SC: Ja, but we know you don't  
 9 know those details. I'm asking –  
 10 COLONEL VERMAAK: That's why I said to  
 11 you so.  
 12 MR SEMENYA SC: You don't know whether  
 13 General Mpmembe left somebody in the Nyalas to look after  
 14 them, do you?  
 15 COLONEL VERMAAK: No, I didn't know but  
 16 you asked me a question regarding the wearing of the  
 17 firearms.  
 18 MR SEMENYA SC: Okay, I'm asking the  
 19 question again. Is a member irresponsible by leaving a  
 20 firearm, a shotgun in a Nyala?  
 21 COLONEL VERMAAK: Yes.  
 22 MR SEMENYA SC: Per se.  
 23 COLONEL VERMAAK: Yes.  
 24 MS PILLAY: Okay, the witness has  
 25 answered this question already.

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1 MR SEMENYA SC: Can we examine even if on  
 2 your version there is somebody to look after it?  
 3 COLONEL VERMAAK: If there's specific  
 4 persons appointed to must look after that firearms and they  
 5 take the responsibility for that firearms that is a  
 6 different situation.  
 7 MR SEMENYA SC: Appointed I don't  
 8 understand. Let me play the scenario for us.  
 9 COLONEL VERMAAK: Or instructed in other  
 10 words.  
 11 MR SEMENYA SC: Let me play out this  
 12 scenario for you, Colonel. A POP unit goes to attend to a  
 13 public order management incident. They are in a Nyala.  
 14 They have in the Nyala shotguns as well. It is suggested  
 15 to them that the POP operation that will be done is a push  
 16 back. They would obviously use their shields, correct?  
 17 COLONEL VERMAAK: That's correct.  
 18 MR SEMENYA SC: Meaning that the shotguns  
 19 would be in the Nyala.  
 20 COLONEL VERMAAK: As I said if somebody  
 21 is given the instruction then it is acceptable for that.  
 22 MR SEMENYA SC: Okay. Now, let's go back  
 23 to this threat to the life of General Mpmembe. You say that  
 24 immediately after you tell him that you then say that you  
 25 want to follow up the people that you saw with the – you

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1 want to go back to the scene. Is that your evidence?  
 2 COLONEL VERMAAK: After?  
 3 MR SEMENYA SC: After you communicated to  
 4 General Mpembe that there is a threat on his life and do  
 5 you then ask him whether you can go back?  
 6 COLONEL VERMAAK: Ja, myself and Colonel  
 7 Moolman went back to the scene.  
 8 MR SEMENYA SC: And I thought your  
 9 evidence was that his response to that was, ja, you can go  
 10 as long as I don't lose any more members.  
 11 COLONEL VERMAAK: No. That was not my –  
 12 MR SEMENYA SC: Okay, refresh my memory,  
 13 Colonel. What was General Mpembe's reaction to your  
 14 request?  
 15 COLONEL VERMAAK: Sorry, can I get  
 16 clarity? You're referring before I went after the people  
 17 or –  
 18 MR SEMENYA SC: No, no, no, as you tell  
 19 him that - I thought your evidence was that his life is in  
 20 danger, you escort him to the car and you say you are  
 21 going.  
 22 COLONEL VERMAAK: No, Chair, that's not  
 23 true.  
 24 MR SEMENYA SC: Is it not?  
 25 COLONEL VERMAAK: No.

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1 MR SEMENYA SC: Sorry, sorry, sorry, my  
 2 sequence is wrong. After you attended to Warrant Officer  
 3 Monene.  
 4 COLONEL VERMAAK: That's correct.  
 5 MR SEMENYA SC: That's the moment.  
 6 COLONEL VERMAAK: That's correct.  
 7 MR SEMENYA SC: And you say you could see  
 8 that he's emotionally unstable as a result of what has  
 9 happened there.  
 10 COLONEL VERMAAK: That's correct.  
 11 MR SEMENYA SC: And you say his response  
 12 to your request is, okay, you can go ahead with this  
 13 operation as long as I don't lose any more members.  
 14 COLONEL VERMAAK: No, I never said that.  
 15 MR SEMENYA SC: How did you put it?  
 16 COLONEL VERMAAK: I said he said that I  
 17 mustn't go because why he don't want to loss any other  
 18 members because why there's already people who were killed.  
 19 And then I said to him but we saw that they were dragging a  
 20 person with a white overall and we also saw a person with  
 21 the R5, but I never said that he said I can continue as  
 22 long as –  
 23 MR SEMENYA SC: Did he give you  
 24 permission to continue?  
 25 COLONEL VERMAAK: No.

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1 MR SEMENYA SC: You went despite –  
 2 COLONEL VERMAAK: Due to the fact that I  
 3 could see what emotional stress he was in and also that  
 4 there is crime scenes that I have to secure that is part of  
 5 any policeman's responsibility.  
 6 MR SEMENYA SC: You went –  
 7 COLONEL VERMAAK: I did go.  
 8 MR SEMENYA SC: You went despite no  
 9 permission being granted by the operational commander.  
 10 COLONEL VERMAAK: That's correct, but due  
 11 to his personal –  
 12 MR SEMENYA SC: And you don't seek  
 13 permission of anybody including JOC to go and do that.  
 14 COLONEL VERMAAK: Chair, at that stage it  
 15 was chaos, nothing else. You can, you can't explain it  
 16 otherwise as chaos.  
 17 MR SEMENYA SC: And in that chaos decide  
 18 that you are going to take some members and go to the  
 19 river?  
 20 COLONEL VERMAAK: Yes, I took the – to  
 21 the river?  
 22 MR SEMENYA SC: To the river.  
 23 COLONEL VERMAAK: I took the  
 24 responsibility as a senior officer for that, yes.  
 25 MR SEMENYA SC: Or as an individual

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1 without informing anybody that that's the operation you're  
 2 doing.  
 3 COLONEL VERMAAK: At that stage I was the  
 4 senior except the general.  
 5 MR SEMENYA SC: Okay. You did know  
 6 though that the instruction that had been given to members  
 7 by before that time was to escort people to the koppie.  
 8 COLONEL VERMAAK: No, I didn't know it.  
 9 MR SEMENYA SC: So you take it upon  
 10 yourself without even knowing what the operational command  
 11 is in respect of this to say I'm going to chase after those  
 12 ones and I'll take my TRT members with.  
 13 COLONEL VERMAAK: Chair, if the people  
 14 were just walking peacefully at that stage it's a other  
 15 story but there was already people killed, policemen were  
 16 killed. The operational commander was in such an emotional  
 17 state that according to me he couldn't really take any  
 18 decisions at that stage and I accept it that he was really  
 19 upset about the policemen that were killed at that stage.  
 20 MR SEMENYA SC: Okay, we know that you  
 21 are able to speak to the PC. Do you say to the PC,  
 22 provincial commissioner, the operational commissioner is  
 23 now in bad emotional condition?  
 24 COLONEL VERMAAK: I did report it to her.  
 25 MR SEMENYA SC: No, just listen to the

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1 question, Colonel. Can I now take over this operation and  
 2 can do what has to be done?  
 3 COLONEL VERMAAK: Chair, I didn't take  
 4 the operation over. It was a isolated incident what I  
 5 followed up. There was no other senior member there.  
 6 MR SEMENYA SC: Because you removed him.  
 7 COLONEL VERMAAK: For his own safety,  
 8 yes.  
 9 MR SEMENYA SC: And I'm going to suggest  
 10 to you that this whole story that General Mzembe's life was  
 11 under threat was a ploy on your part to remove him so that  
 12 you can take control of that scene.  
 13 COLONEL VERMAAK: That's a lie.  
 14 MR SEMENYA SC: Now, the witnesses that  
 15 we have consulted as a team deny that there was ever an  
 16 instruction given to them that they must leave the shotguns  
 17 in the Nyalas.  
 18 MS PILLAY: Chair, if the proposition is  
 19 being put we would like to know which witnesses  
 20 specifically.  
 21 MR SEMENYA SC: Merafe said so  
 22 specifically.  
 23 COLONEL VERMAAK: If I can remember I –  
 24 CHAIRPERSON: Sorry, Colonel, anyway this  
 25 witness doesn't say that that happened. He said that's

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1 what he was told. But it's a perfectly permissible  
 2 question Mr Semenya is asking based on the evidence that  
 3 Colonel Merafe gave so I think you may proceed, Mr Semenya.  
 4 MR SEMENYA SC: And you have no reason to  
 5 question the account of Colonel Merafe on the point. Am I  
 6 right?  
 7 COLONEL VERMAAK: Chair, if I remember  
 8 correctly I read some of the – in his statement, yes,  
 9 that's correct. I read in his statement that at one stage  
 10 when he confront the general about the actions being taken  
 11 there he said in his statement he went back to his vehicles  
 12 so I don't know if he was there when the general gave  
 13 instructions.  
 14 MR SEMENYA SC: No, he said he was there.  
 15 COLONEL VERMAAK: Okay, but in his  
 16 statement he stipulated at one stage he went back to the  
 17 vehicle.  
 18 MR SEMENYA SC: But let me tell you  
 19 another thing. Even the members you are taking with you  
 20 are having weapons with them. Is that consistent with the  
 21 instruction that General Mzembe would have given them?  
 22 COLONEL VERMAAK: Just repeat the  
 23 question please.  
 24 MR SEMENYA SC: Even the members that you  
 25 take with to go to the river had even their own weapons

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1 with them.  
 2 COLONEL VERMAAK: They did have.  
 3 MR SEMENYA SC: Yes, is that consistent  
 4 with the instruction General Mzembe would have given them?  
 5 COLONEL VERMAAK: At that stage I didn't  
 6 know any instructions. It was only when we are back  
 7 walking back from the river I heard –  
 8 MR SEMENYA SC: I accept that but you say  
 9 to them – and you are having them on you. How could the  
 10 general have said you must leave them in the Nyalas? You  
 11 are having them with you.  
 12 COLONEL VERMAAK: I've explained to you  
 13 that why I did not argue with them.  
 14 MR SEMENYA SC: But this is the second  
 15 indicator why the possibility of this threat to General  
 16 Mzembe is dubious. Do you accept that from me?  
 17 COLONEL VERMAAK: No, what will I achieve  
 18 to just go and remove a general from a scene? That will be  
 19 very stupid to do such a thing.  
 20 MR SEMENYA SC: Well, we know that – I  
 21 don't know whether it would be stupid, but we know even  
 22 such a serious threat about the life of a general of the  
 23 South African Police Service spoken to the colonel did not  
 24 trigger in you to the interest to know which individual is  
 25 doing that, correct?

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1 [14:32] COLONEL VERMAAK: Who is making the  
 2 threat?  
 3 MR SEMENYA SC: Yes. It is not, it did  
 4 not occur to you that you must -  
 5 COLONEL VERMAAK: I have already  
 6 testified why I didn't take any names, there was no time  
 7 for that.  
 8 MR SEMENYA SC: Yes, but subsequently you  
 9 could have gone through Colonel Thupe and say, you know  
 10 what, the people who have sat in the General's life, are  
 11 your members. Correct?  
 12 COLONEL VERMAAK: At that stage, Colonel  
 13 Thupe was nowhere to be found.  
 14 MR SEMENYA SC: Even to this day, even to  
 15 this day Colonel, you have never gone to Colonel Thupe and  
 16 say, Colonel, the persons that I moved with are your  
 17 members, can I do an ID and I will identify this threat to  
 18 the life of the General with the police service.  
 19 COLONEL VERMAAK: Chair, that what you  
 20 put to me is not true. I spoke to Captain Thupe. I was  
 21 questioned and asked by senior why the General himself at  
 22 Roots, who was the members while captain Thupe was sitting  
 23 next to him, and I explained to the General there that I  
 24 didn't know the members. I am not working with them every  
 25 day. So I believe that if Captain Thupe, as the commander

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1 should also do some enquiry who the members were.  
 2 CHAIRPERSON: Sorry to interrupt, Mr  
 3 Semenya, this question of the defence, that was raised at  
 4 Roots, wasn't it? Was mentioned at Roots.  
 5 COLONEL VERMAAK: No, it was discussed  
 6 there at Roots.  
 7 CHAIRPERSON: Now one of the things that  
 8 surprised me, and I mentioned this to other witnesses, was  
 9 that no one seems to have investigated, it was a serious  
 10 effect of mutiny effectively.  
 11 COLONEL VERMAAK: There was no –  
 12 CHAIRPERSON: Which doesn't appear to be  
 13 investigated. Now you raised it at Roots. Was anyone, any  
 14 detective for example, appointed to investigate, did anyone  
 15 interview you and ask you if you can identify the people,  
 16 while things are reasonably fresh in my memory, an  
 17 identification parade could have been set up. Was anything  
 18 of that kind done?  
 19 COLONEL VERMAAK: Nothing Chair.  
 20 CHAIRPERSON: Was it for you to take the  
 21 initiative to investigate this matter? You'd reported it.  
 22 Was it for you to take the initiative to investigate it  
 23 further, or should someone have been appointed to  
 24 investigate, interview you or interview the other people?  
 25 COLONEL VERMAAK: Chair, yes, I think it

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1 should have been, the PC, the Provincial Commissioner who  
 2 should have appointed somebody to investigate it.  
 3 MR SEMENYA SC: At Roots you did not say  
 4 that those members are TRT Rustenburg, did you?  
 5 COLONEL VERMAAK: Come again?  
 6 MR SEMENYA SC: At Roots, you did not say  
 7 the people who told you that were TRT members, Rustenburg.  
 8 COLONEL VERMAAK: I did, in that meeting  
 9 where it was being discussed.  
 10 MR SEMENYA SC: Adv Wesley for the  
 11 evidence leaders did an exercise, I am told in the cross-  
 12 examination of Colonel Merafe showing at least 14 members  
 13 who were having shotguns there. Do you want us to play it  
 14 for you?  
 15 COLONEL VERMAAK: Are you referring to  
 16 the – next to the railway?  
 17 MR SEMENYA SC: No, on the incident of  
 18 the 13th.  
 19 CHAIRPERSON: It is next to the railway,  
 20 what happened was, Mr – I think 16 was the number at the  
 21 end. What happened was, Colonel Merafe and Mr Wesley went  
 22 away, during one of these adjournments, and looked at the  
 23 video, that was taken of the events by the railway line and  
 24 they counted people with shotguns, and I think I am correct  
 25 in saying that there was some debate whether the number was

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1 14 to 16, but anyway it was more than a dozen that shotguns  
 2 were visible. So that's what Mr Semenya is referring to.  
 3 So the suggestion is that shot guns, certainly at least 14  
 4 or 16 shotguns weren't put away, that's the thrust of the  
 5 question, Mr Semenya?  
 6 MR SEMENYA SC: That's the thrust of the  
 7 question, and that you would have seen yourself on the  
 8 scene, am I right? There were other people with shotguns  
 9 there.  
 10 COLONEL VERMAAK: On which scene are you  
 11 referring to? To the one at the railway line, or where the  
 12 policemen were killed?  
 13 MR SEMENYA SC: In the operation of the  
 14 13th you did shotgun weapons there, did you not?  
 15 COLONEL VERMAAK: Yes, I did shotguns  
 16 when we landed, after the attacks happened.  
 17 MR SEMENYA SC: And if the version given  
 18 to you that the General would have said they must leave  
 19 them in the Nyalas, you would have seen ample example of  
 20 defiance of that order.  
 21 COLONEL VERMAAK: Just remember, at that  
 22 stage, when I land, the members was already going through  
 23 to their vehicles so if they did go and fetch their  
 24 firearms at that stage, I won't be able to say but what I  
 25 can say is on the video of the police at the railway line,

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1 you could see, I think only one or two policemen with  
 2 shotguns or R5s.  
 3 CHAIRPERSON: That's not the result of  
 4 the exercise that Mr Wesley conducted with Colonel Merafe.  
 5 But the point that strikes me about, strange about the  
 6 whole thing, was that obviously no command could have been  
 7 given for all the weapons to be put away. If that had  
 8 happened, the strikers wouldn't have been able to get hold  
 9 of an R5 or a shotgun, would they? So at least one R5 and  
 10 one shotgun on the scene, but not only that, we know that  
 11 one at least, one striker at least was shot on what I call  
 12 the field, you know, so there was presumably at least one  
 13 other person in the possession of an R5. So the story that  
 14 people were told to put away their firearms, doesn't stand  
 15 up because all the circumstantial evidence indicates that  
 16 some people at least had their firearms with them and  
 17 either didn't hear the command, or if they heard it, didn't  
 18 comply with it, if it was given. But we know at any event  
 19 from Colonel Merafe that no such order was given. Now, the  
 20 real point of the questioning as I understand it, is Mr  
 21 Semenya says, when they made the threat and you actually  
 22 say in your original statement that a "verkeerde opdragte  
 23 gegee het," so they mentioned that he had given wrong  
 24 commands.  
 25 COLONEL VERMAAK: That's correct, yes.

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1 CHAIRPERSON: And then in your more  
 2 recent statement, the one in January this year, you then  
 3 add that they said, they referred to putting the firearms  
 4 away in the vehicles. And you said today, that that was  
 5 the only complaint they made about the wrong commands  
 6 given. But the point made, I think, by Mr Semenya is this,  
 7 that when they said in effect we are going to kill him,  
 8 why, because he gave wrong commands, what wrong commands?  
 9 He told us to put the firearms away in the vehicles. Why  
 10 didn't you say to them, but you people are talking  
 11 nonsense? That can't be right, because there were  
 12 firearms. Firearms were taken, a firearm, one R5 and one a  
 13 shotgun, were taken by the strikers. At least one other  
 14 person had a firearm, an R5 because one of the strikers had  
 15 been killed. So you people are talking nonsense. And that  
 16 is Mr Semenya's point. Now how do you answer that?  
 17 COLONEL VERMAAK: Chair, at that stage I  
 18 only concentrate on the fact about the threat that they  
 19 made, what they informed me, and I didn't want to go in an  
 20 argument with them because why, I couldn't say what they  
 21 said to me about put away the firearms was true or not  
 22 true. They only conveyed that to me and the first thing  
 23 that comes up in my mind is to look after the safety of the  
 24 General at that stage.  
 25 COMMISSIONER HEMRAJ: Another thing, such

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1 a command could not have been a selective one, if such a  
 2 command was given by the General, it would apply to  
 3 everyone there.  
 4 COLONEL VERMAAK: That's correct, I  
 5 believe so.  
 6 COMMISSIONER HEMRAJ: And even if they  
 7 had put away their shotguns and rifles, they all still had  
 8 their 9 millimetres with them.  
 9 COLONEL VERMAAK: That's correct.  
 10 CHAIRPERSON: Did you get the impression  
 11 that this was a serious threat they were making?  
 12 COLONEL VERMAAK: Chair, yes, according  
 13 to me, they were not joking or something like that about  
 14 it, they were very serious because why, they were also  
 15 emotional for the fact that their colleagues died that day,  
 16 and that is -  
 17 CHAIRPERSON: Did you think they were  
 18 capable of being dissuaded from what they threatened to do.  
 19 COLONEL VERMAAK: At that stage, yes,  
 20 Chair.  
 21 CHAIRPERSON: You though they could be  
 22 dissuaded?  
 23 COLONEL VERMAAK: I, in my mind, I  
 24 believed that was possible, that somebody could do it.  
 25 CHAIRPERSON: The question would be, why

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1 didn't you try to dissuade them. I don't think you are  
 2 understanding the question actually. Het u gedink dat dit  
 3 vir u moontlik sou gewees het om vir hulle te sê hulle moet  
 4 dit nie doen nie, om te oortuig om nie die General se lewe  
 5 te neem nie?  
 6 COLONEL VERMAAK: Chair, as I said, the  
 7 only thing that comes into my mind, was contact the PC,  
 8 inform about the threat, ask the permission if I can take  
 9 the General away for his own safety, and that is, that was  
 10 all that I was thinking about.  
 11 MR SEMENYA SC: But why don't you remove  
 12 them? Then the threat is gone. And you are a Colonel, you  
 13 can give them an instruction, 1, 2, 3, you are out of here,  
 14 go away.  
 15 COLONEL VERMAAK: How can I say it was  
 16 only them that was feeling like that?  
 17 MR SEMENYA SC: You will hear from them.  
 18 COLONEL VERMAAK: That's correct.  
 19 MR SEMENYA SC: You say, "out of here."  
 20 COLONEL VERMAAK: Well, the first thing  
 21 that I thought was I must get the General to a safe place  
 22 and that is what I have done. I can sit now in hindsight,  
 23 and say I should have do this, and I should have done that.  
 24 But what I've done, I've done.  
 25 MR SEMENYA SC: Now, I thought that one

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1 of the criticisms about how they -  
 2 COMMISSIONER HEMRAJ: May I just enquire,  
 3 how many of them there were in that group that made the  
 4 threats?  
 5 COLONEL VERMAAK: There were four, Chair.  
 6 COMMISSIONER HEMRAJ: Thank you.  
 7 MR SEMENYA SC: I thought one of the  
 8 criticisms you had about how the General handled the  
 9 incident on the 13th, is you wouldn't have allowed members  
 10 to follow this group on foot. Did you make that as a  
 11 criticism?  
 12 COLONEL VERMAAK: That is correct.  
 13 MR SEMENYA SC: And yet when you get to  
 14 that scene yourself you organise the TRT members and you  
 15 say, we must go on foot chasing after people who are armed,  
 16 now with an R5.  
 17 COLONEL VERMAAK: That's correct.  
 18 MR SEMENYA SC: Just help me reconcile  
 19 the two.  
 20 COLONEL VERMAAK: At least we were  
 21 prepared for what could happen, another thing is the Nyala,  
 22 if I did have an Nyala with me, won't be able to go through  
 23 the river there.  
 24 MR SEMENYA SC: Well, let's test this,  
 25 you were prepared, you didn't have a firearm, am I right?

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1 COLONEL VERMAAK: That's correct.  
 2 MR SEMENYA SC: You were walking on foot.  
 3 COLONEL VERMAAK: That's correct.  
 4 MR SEMENYA SC: - seen somebody who have  
 5 got an R5 rifle.  
 6 COLONEL VERMAAK: That's correct.  
 7 MR SEMENYA SC: That are shooting it at  
 8 you according to your version.  
 9 COLONEL VERMAAK: That's correct.  
 10 MR SEMENYA SC: And you are walking with  
 11 the other members on foot.  
 12 COLONEL VERMAAK: That's correct.  
 13 MR SEMENYA SC: Why is that not the same  
 14 as the criticism that you level at what the General did?  
 15 COLONEL VERMAAK: It's two total  
 16 different incidents.  
 17 MR SEMENYA SC: Help me understand.  
 18 COLONEL VERMAAK: Easily, there was not a  
 19 big group of 100 or so or 300 people when we followed them.  
 20 It was a small group of people. And the other thing is, as  
 21 I said, we were prepared for any actions that might happen  
 22 and that is why TRT is trained to handle such situations.  
 23 MR SEMENYA SC: That's your answer?  
 24 COLONEL VERMAAK: That's my answer,  
 25 Chair.

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1 MR SEMENYA SC: I understood your  
 2 evidence, please correct me if I am wrong, I understood  
 3 your evidence to be this, that from the air, you could see  
 4 nothing, nothing to explain where the tear gas and the stun  
 5 grenade were fired?  
 6 COLONEL VERMAAK: Yes, I said that.  
 7 MR SEMENYA SC: Okay, if we have to play  
 8 the video, I will do it, but we may not need to do that.  
 9 You do accept that Warrant Officer Lepaaku was killed next  
 10 to the road separating the field and the settlement.  
 11 COLONEL VERMAAK: No, next to the gravel  
 12 road.  
 13 MR SEMENYA SC: Yes. And that is not a  
 14 direction to the koppie, is it?  
 15 COLONEL VERMAAK: It is, yes.  
 16 MR SEMENYA SC: Do you want us to play  
 17 it, Colonel? That if you went where Warrant Officer  
 18 Lepaaku and you are looking straight, you would go to the  
 19 koppie.  
 20 COLONEL VERMAAK: That is the direction  
 21 of the koppie.  
 22 MR SEMENYA SC: But it is more the  
 23 direction into the settlement, is it not?  
 24 COLONEL VERMAAK: The settlement is  
 25 between the koppie and the incident.

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1 MR SEMENYA SC: Colonel, I want to put it  
 2 to you, and we may even play the video, the koppie would be  
 3 left of where Warrant Officer Lepaaku was slaughtered.  
 4 COLONEL VERMAAK: It was in the direction  
 5 of the koppie.  
 6 MR SEMENYA SC: Okay, I've -  
 7 COLONEL VERMAAK: You can't, you draw a  
 8 line specifically from this point to that point and say,  
 9 this is the line that they followed. The normal direction  
 10 -  
 11 MS PILLAY: Chair, if I could just also  
 12 enquire just to get some clarity, we know the evidence is  
 13 that Warrant Officer Lepaaku was killed after the tear gas  
 14 and stun grenades were deployed and after the strikers had  
 15 changed direction and come back at the police. So if that  
 16 is the case, how do we use the position of Warrant Officer  
 17 Lepaaku's body to determine the direction in which the  
 18 strikers were moving?  
 19 MR SEMENYA SC: The visuals will tidy up  
 20 this debate between my learned colleague and I. I will  
 21 attempt during afternoon tea to get that played.  
 22 CHAIRPERSON: Perhaps you can move onto  
 23 another point in the meanwhile. Perhaps we can move onto  
 24 another point in the meanwhile.  
 25 MR SEMENYA SC: I want to tidy up

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1 something that we left open. Chair, we have placed before  
 2 you the earlier statements of Sekgweleya and Mguye. The  
 3 index of exhibits would indicate it as QQ7.1 and QQ7.2.  
 4 CHAIRPERSON: Which was which? What's  
 5 Mguye?  
 6 MR SEMENYA SC: Sekgweleya is 7.1, QQ7.1.  
 7 CHAIRPERSON: And Mguye?  
 8 MR SEMENYA SC: QQ7.2.  
 9 CHAIRPERSON: QQ, two Qs.  
 10 MR SEMENYA SC: Two Qs.  
 11 CHAIRPERSON: Two QQs, three QQQs.  
 12 [14:51] So the statement of Constable Mguye is QQQ7.2 and  
 13 the statement of Constable Sekgweleya will be QQQ7.1.  
 14 MR SEMENYA SC: Chair, I'm reluctant but  
 15 I must request that we take the tea adjournment now, Chair.  
 16 CHAIRPERSON: You don't have to explain  
 17 your reluctance. We'll take the tea adjournment.  
 18 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 19 [15:19] CHAIRPERSON: The Commission resumes.  
 20 Lieutenant-Colonel, you're still bound by your affirmation.  
 21 SALMON JOHANNES VERMAAK: (affirms  
 22 further)  
 23 CHAIRPERSON: Mr Semenya, are you ready  
 24 to proceed with your cross-examination?  
 25 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):



<p style="text-align: right;">Page 27614</p> <p>1 I am indeed, Chair. Perhaps to tidy up one element of the 2 cross-examination might I invite you, Colonel, to exhibit 3 HHH29 and HHH30. These are the statements that have been 4 in the Commission for a long time. They are that of 5 Constable Sekgweleya and Sergeant Mguye. 6 CHAIRPERSON: [Microphone off, inaudible] 7 their first statements, the ones they made, did they make 8 them on the 13th, was it not? 9 MR SEMENYA SC: Yes, they're undated – 10 CHAIRPERSON: My copy of Mguye's 11 statement for example doesn't have a date. I suspect it 12 may, I presume we have the – this one hasn't got, yours is 13 exactly the same as mine, but it was on the day or day 14 after. 15 MR SEMENYA SC: Yes. Colonel, the only 16 reason I'm bringing these documents to your attention is to 17 say nowhere in those documents do they mention you by name. 18 You accept that? 19 COLONEL VERMAAK: That's correct. They 20 not mention my name? 21 MR SEMENYA SC: They don't mention your 22 name, not at all. 23 COLONEL VERMAAK: That's correct, Chair. 24 MR SEMENYA SC: Yes, so the legal team 25 could not have known that you are in one way or other</p>	<p style="text-align: right;">Page 27616</p> <p>1 you did not know what plan was agreed upon by that JOCCOM. 2 Am I right? 3 COLONEL VERMAAK: That's correct. 4 MR SEMENYA SC: And you do know that, as 5 we started earlier, that that is where the decision-making 6 about operations get done. 7 COLONEL VERMAAK: That's correct. 8 MR SEMENYA SC: And yet you were up in 9 the air there, critical that they are implementing a plan 10 that is wrong. 11 COLONEL VERMAAK: That's correct. 12 MR SEMENYA SC: But we do know, Colonel, 13 don't we, that because of the work that you were doing 14 yourself you left the area before sunset because of the 15 flying times of the helicopter and you came in the morning. 16 Am I right? 17 COLONEL VERMAAK: That's correct. 18 MR SEMENYA SC: So that we know on the 19 16th that you only landed at 7:40 in the morning of the 20 16th. Am I right? 21 COLONEL VERMAAK: That's correct. 22 MR SEMENYA SC: You could not have been 23 in the JOCCOM meeting at 6 o'clock in that morning. 24 COLONEL VERMAAK: The chopper landed that 25 time. I was with my vehicle to the JOC.</p>
<p style="text-align: right;">Page 27615</p> <p>1 implicated in what they are talking about. Am I right? 2 COLONEL VERMAAK: According to this 3 statements, yes. 4 MR SEMENYA SC: So your accusation that 5 we withheld information from you which was implicating you 6 through reference of these two witnesses would be unfair. 7 Am I right, Colonel? 8 COLONEL VERMAAK: I don't think it can 9 quite be unfair – 10 MR SEMENYA SC: That's alright. Let's 11 talk about something more substantive. I take it that one 12 of your criticisms about the police operation relates to 13 the planning of the operation. 14 COLONEL VERMAAK: On the 13th or 16th? 15 MR SEMENYA SC: No, the 16th. Am I right? 16 COLONEL VERMAAK: That's correct. 17 MR SEMENYA SC: In fact you are 18 criticising the plan that was implemented. Am I right? 19 COLONEL VERMAAK: That is correct. 20 MR SEMENYA SC: And the criticism you 21 have on that plan is a plan that you did not know about 22 when you were up in the air there. Am I right? You were 23 not in the JOCCOM – 24 COLONEL VERMAAK: Of the afternoon, no. 25 MR SEMENYA SC: - meeting of 14:30 and</p>	<p style="text-align: right;">Page 27617</p> <p>1 MR SEMENYA SC: You know, even if I look 2 at your statements you say you reported to work at 7 3 o'clock that morning. Isn't that right? On your own 4 statements. 5 COLONEL VERMAAK: No, it is not correct. 6 MR SEMENYA SC: What is not correct? 7 COLONEL VERMAAK: I didn't report at 7, I 8 was – 9 MR SEMENYA SC: Oh, let's look at the 10 statement – 11 COLONEL VERMAAK: I was at 6 o'clock in 12 the meeting. 13 MR SEMENYA SC: Let us look at your 14 statement then. Shall we go to exhibit LLL8 and look at 15 paragraph 10 of that statement. It reads there, "Op 16 Donderdag 16de Augustus 2012 was ek aan diens gewees vanaf 17 7 uur." 18 COLONEL VERMAAK: Was ek die bemanning. 19 Dit was verwysend na die bemanning op die helikopter. 20 MR SEMENYA SC: Explain that to me. 21 COLONEL VERMAAK: It was referring to 22 that I was from that time the ALEO, or the crew on the 23 helicopter. 24 MR SEMENYA SC: JOCCOM starts at 6. 25 COLONEL VERMAAK: That's correct.</p>

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1 MR SEMENYA SC: You're in JOCCOM at 6?  
 2 COLONEL VERMAAK: That's correct.  
 3 MR SEMENYA SC: And at 7 you left, you  
 4 were in the "bemanning"?  
 5 COLONEL VERMAAK: That's – I was, from  
 6 that time I was the crew, yes. I first drove with my  
 7 vehicle there and then thereafter I was the crew on the  
 8 helicopter.  
 9 MR SEMENYA SC: The helicopter we know on  
 10 the flight logs landed at 7:40.  
 11 COLONEL VERMAAK: That's correct.  
 12 MR SEMENYA SC: You were in that  
 13 helicopter what time?  
 14 COLONEL VERMAAK: After the JOC meeting.  
 15 MR SEMENYA SC: No, you were in that  
 16 helicopter what time? Just give me the time, Colonel.  
 17 COLONEL VERMAAK: You can see in my  
 18 statement round about 9 o'clock myself and Warrant Officer  
 19 Padayachee, the pilot, went on patrol.  
 20 MR SEMENYA SC: Okay, let's look at  
 21 exhibit OOO7, which is a typed version of your diary. The  
 22 typed version, there's the typed version of your diary. Am  
 23 I right? Let's start –  
 24 COLONEL VERMAAK: The 13th –  
 25 MR SEMENYA SC: Let's start with the one

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1 of the 16th, not the 13th. That's the one, correct Colonel?  
 2 COLONEL VERMAAK: That's correct.  
 3 MR SEMENYA SC: It says what at 6  
 4 o'clock?  
 5 COLONEL VERMAAK: I report on duty as  
 6 ALEO, and you can also see that I attend the JOC meeting,  
 7 and as I did –  
 8 MR SEMENYA SC: No, no, no, no, no, no,  
 9 let's not rush it. At 6 o'clock it says you are where?  
 10 COLONEL VERMAAK: I report on duty.  
 11 MR SEMENYA SC: Where?  
 12 COLONEL VERMAAK: For the main purpose of  
 13 ALEO for that day.  
 14 MR SEMENYA SC: Where?  
 15 COLONEL VERMAAK: At the JOC.  
 16 MR SEMENYA SC: No, at 7 it says "JOC  
 17 vergadering." Do you see that?  
 18 COLONEL VERMAAK: That's correct, and  
 19 I've explained many times to you that my diary is only  
 20 giving me – I wrote it up so that I can go back and refresh  
 21 my mind. So there you can see that I wrote that I did  
 22 attend the JOC meeting.  
 23 MR SEMENYA SC: It does so, but it says 7  
 24 o'clock.  
 25 COLONEL VERMAAK: Oh well, and I think it

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1 is –  
 2 MR SEMENYA SC: Why do you enter that  
 3 time if it is not correct?  
 4 COLONEL VERMAAK: Well, then we can go  
 5 and have a look at the minutes and also the attendance list  
 6 if I was in the JOC or not.  
 7 MR SEMENYA SC: The statements say, the  
 8 people who were in JOC they say you always arrived late.  
 9 There was never a time when you were at the JOC at 6  
 10 o'clock because you started at the Air Wing.  
 11 COLONEL VERMAAK: No, that's a lie. I  
 12 was always before the helicopters there because why I was  
 13 driving with the vehicle through and I was taking the fuel  
 14 of the choppers to the Marikana JOC, so there was nowhere  
 15 that I was late ever for a JOC meeting.  
 16 MR SEMENYA SC: Do you know –  
 17 COLONEL VERMAAK: There was once, there  
 18 was one incident where I was late and that is where I was  
 19 in an accident and I have to wait for the duty officer of  
 20 Rustenburg Police Station to attend it.  
 21 MS PILLAY: Chair, in fairness to the  
 22 witness, I think Mr Semenya could put to him which  
 23 statements say that he used to attend the JOC late, the JOC  
 24 meetings late.  
 25 MR SEMENYA SC: Colonel, I want to invite

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1 you to look at – yes, at page 25272 of the transcript. I  
 2 want to demonstrate something to you. If we go to line 24  
 3 onwards the Chair says there, "Before we move on to  
 4 paragraph 9," page 25272, line 24, "Before we move on to  
 5 paragraph 9 I'd like to ask the witness one thing about the  
 6 13th, what happened on the 13th. In your statement, this  
 7 very statement you are being referred to, LLL8, paragraph  
 8 6, I think the passage I'm going to refer you to now is  
 9 actually also in your earlier statement, which is GGG17.  
 10 Yes, it is. In the end of the fourth paragraph there are –  
 11 well, it's four lines from the foot of the paragraph, you  
 12 say, 'Ons het opgemerk dat iemand onbekend aan ons aan die  
 13 regterflank 'n traanrook granaat afgevuur het in die  
 14 rigting van die groep wat die grondpad wou oorstek om  
 15 sodoende te verhoed'" – these are the words I'm stressing –  
 16 "'om sodoende te verhoed dat hulle na die informele  
 17 plakkerskamp kan beweeg.' It can be translated as, 'We  
 18 noticed that someone unknown to us on the right flank fired  
 19 a teargas canister in the direction of the group who wanted  
 20 to cross the gravel road in order to prevent that they  
 21 could move to the informal squatter camp.' Now I take it  
 22 that from the helicopter you couldn't discern what the  
 23 reason was why the teargas canister was fired. Am I  
 24 correct?" To that you answer, Colonel, "Dis korrek."  
 25 Chairperson, "So where did you get this phrase 'om sodoende

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1 te verhoed dat hulle na die informele plakkerskamp kan  
 2 beweeg?" "Mnr die Voorsitter," says you, "tydens  
 3 konsultasie met die regsman was dit die verduideliking  
 4 gewees dat dit die rede is waarvoor die traanrook en die  
 5 skokgranaat gegooi was. Dit is wel in die verklaring  
 6 bygewerk, maar u sal sien ek het in 2014 Januarie het ek 'n  
 7 verklaring opgestel wat ek gesê het finale verklaring, want  
 8 toe het ek beswaar gemaak, die feit dat daar kort-kort  
 9 aanvullende verklarings en verskillende verklarings en 'n  
 10 verduideliking gevra word, so toe het ek gaan sit en ek het  
 11 die hele ding uiteengesit soos wat ek dit ervaar het en nie  
 12 wat daar vir my gemeld is 'n moontlikheid kan wees hoekom  
 13 die traanrook en die skokgranaat sou gegooi gewees het  
 14 nie." Do you see that?  
 15 COLONEL VERMAAK: That's correct.  
 16 MR SEMENYA SC: So you're saying you  
 17 disabused your mind out of the suggestions made to you by  
 18 the legal team in making this statement and that statement  
 19 and that statement. You remember that?  
 20 COLONEL VERMAAK: That's correct.  
 21 MR SEMENYA SC: And you decided you are  
 22 going to write only about that which you experienced.  
 23 COLONEL VERMAAK: That's correct.  
 24 MR SEMENYA SC: Alright. Then it goes  
 25 on, "What is this final statement? It's not HHH because I

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1 was reading to you from LLL8 this passage which appears  
 2 also in the earlier statement." Colonel Vermaak, "Die  
 3 laaste verklaring wat ek afgelê het was die 21ste Januarie  
 4 2014, mnr die Voorsitter." Chairperson, "So that's LLL8,  
 5 and HHH8 has that passage that I read to you, transcribed  
 6 verbatim from the earlier statement which is HHH4 – sorry,  
 7 not HHH4." Ms Pillay, "GGG17." Chairperson, "GGG17, yes.  
 8 The end of paragraph 4, but anyway, so I'm not sure that  
 9 you're right that you left that out of your final  
 10 statement, but the point I wanted to ascertain from you is  
 11 that phrase that the, which purports to give the reason why  
 12 the teargas canister was fired was something that you don't  
 13 know from your own knowledge." Kolonel, "Nee, nee, dit  
 14 is."  
 15 The point that is of interest to me is that you  
 16 import the same connotation which I'm suggesting to you was  
 17 obvious from the helicopter, that the group was going to  
 18 the direction of the settlement. That is what you  
 19 observed. Am I right?  
 20 COLONEL VERMAAK: Chair, it depends on  
 21 which settlement you are talking about.  
 22 MR SEMENYA SC: Next to where Warrant  
 23 Officer Lepaaku perished.  
 24 COLONEL VERMAAK: According to me there  
 25 was no settlement there. The settlement was over the

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1 river. There was only a few houses next to the gravel  
 2 road.  
 3 MR SEMENYA SC: Now you're saying the  
 4 firing of this teargas was so that they don't go into the  
 5 settlement. What –  
 6 COLONEL VERMAAK: Chair, I've –  
 7 MR SEMENYA SC: Which one are you  
 8 referring to?  
 9 COLONEL VERMAAK: I've, as you've read it  
 10 just now, as I have testified there and sorry for, to refer  
 11 back to consultation sessions with you, but it was  
 12 mentioned during a consultation that the reason for firing  
 13 the teargas and the stun grenade was to prevent the people  
 14 to go to the right side of, to the, into the informal  
 15 settlement, and if you will take a look from an aerial  
 16 photo of that area you will see on the right-hand side is  
 17 no informal settlement except for the few houses that is  
 18 standing loose there.  
 19 MR SEMENYA SC: We'll look at that video  
 20 tomorrow morning. Let's deal with something else, Colonel.  
 21 CHAIRPERSON: Colonel, it's not as simple  
 22 as that. Never mind what happened in consultation.  
 23 Already at the end of August 2012 in the passage that I put  
 24 to you in, what we saw in the transcript, you had said in  
 25 the fourth paragraph of your statement GGG17, the last

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1 sentence was, "Ons het opgemerk dat iemand onbekend aan ons  
 2 aan die regterflank 'n traanrook afgevuur het in die  
 3 rigting van die groep wat die pad wou oorstek om sodoende  
 4 te verhoed dat hulle in die informele plakkerskamp  
 5 inbeweeg." No I don't think I have to translate it. I  
 6 think the translation already appeared from the transcript,  
 7 and then I put to you, "You didn't know that from your own  
 8 knowledge." That we see on page 25275, and you said, "Nee,  
 9 dit is." I said it's something you were told later. You  
 10 said, "Dis korrek." "Whether that was the reason, whether  
 11 the person who fired it gives that reason is a matter you  
 12 have no knowledge of," and you said, you agreed with that.  
 13 COLONEL VERMAAK: That's correct.  
 14 CHAIRPERSON: So now it's got nothing to  
 15 do with what you were told in consultation later because  
 16 already long before you'd had a consultation with Mr  
 17 Semanya you made your statement GGG17 and you made that  
 18 statement which I read, and you conceded later in the  
 19 passage we see in the transcript that that was something  
 20 you didn't know of your own knowledge, you put it in  
 21 because it was something that somebody else told you. That  
 22 correct?  
 23 COLONEL VERMAAK: That's correct, Chair.  
 24 CHAIRPERSON: Ja.  
 25 MR SEMENYA SC: But it could not have

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1 been the legal team.  
 2 COLONEL VERMAAK: It was one of the legal  
 3 team.  
 4 CHAIRPERSON: No, no, it couldn't have  
 5 been the legal team because I'm not sure when the legal  
 6 team became involved, but this was a statement you made  
 7 yourself already at the end of August 2012.  
 8 [15:39  
 9 COLONEL VERMAAK: That's correct, Chair.  
 10 CHAIRPERSON: Ja. You made the  
 11 statement, I think Roots had just started.  
 12 COLONEL VERMAAK: That's correct, Chair.  
 13 CHAIRPERSON: Ja, and we are informed -  
 14 and I have no reason to doubt this - that the legal team  
 15 were not at Roots. The police of course had legal people.  
 16 There was legal man, I can't remember his name now, I think  
 17 he was the sort of chairman of Roots and of course someone  
 18 like Captain Moolman, who's later Colonel Moolman, also a  
 19 legal officer, I don't know whether she was at Roots, but  
 20 what is clear I think is the present SAPS legal team  
 21 weren't at Roots.  
 22 COLONEL VERMAAK: Mr Pretorius was there,  
 23 Chair.  
 24 CHAIRPERSON: She's also a legal -  
 25 COLONEL VERMAAK: No, Mr Pretorius.

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1 CHAIRPERSON: Mr Pretorius was at Roots?  
 2 MR SEMENYA SC: No, but -  
 3 CHAIRPERSON: Oh, I see, counsel weren't  
 4 there.  
 5 MR SEMENYA SC: It was an IPID time and  
 6 Mr Pretorius did not have a clue about what had happened at  
 7 Marikana, man, whilst you were in the helicopter. Am I  
 8 right?  
 9 COLONEL VERMAAK: No, because why he was  
 10 part of the discussions there at Roots, so I don't think  
 11 that he didn't have a idea what was happening at Marikana.  
 12 CHAIRPERSON: I assume that anything he  
 13 said at Roots would have been based on information he got  
 14 from somebody else. He didn't have -  
 15 COLONEL VERMAAK: No, I would believe so.  
 16 That's true, Chair.  
 17 CHAIRPERSON: Ja.  
 18 MR SEMENYA SC: And because it would have  
 19 been inconsistent with your observation you would have said  
 20 'No, no, no, Mr Pretorius, absolutely incorrect on that  
 21 one, it couldn't have been. I was there, I was up there;  
 22 there was no reason whatsoever to throw those teargases.'  
 23 Correct?  
 24 COLONEL VERMAAK: I did say to them  
 25 according to me, but the explanation from their side was

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1 that that was the reason why it was being thrown and then  
 2 afterwards I realise that I must write my statement from  
 3 what I said there, what I've experienced, what I saw, and  
 4 not what that I hear from somebody.  
 5 MR SEMENYA SC: Mr Bizos says you're a  
 6 man of your word and your strength and dah-dah-dah. If it  
 7 was factually incorrect it would not be in your statement.  
 8 Fair judgment to make? [Microphone off, inaudible],  
 9 Colonel? Can I then move on and invite you to look at the  
 10 transcript, 25276. If we go to line -  
 11 CHAIRPERSON: 12.  
 12 MR SEMENYA SC: - line 12.  
 13 CHAIRPERSON: Is that the right page?  
 14 MR SEMENYA SC: No, day 205, page 25276.  
 15 CHAIRPERSON: Yes, now you've got 25275  
 16 on the screen. We'll get 76 in a minute, if we're patient.  
 17 There we are. What line did you say?  
 18 MR SEMENYA SC: 12, from line 12, Chair.  
 19 Chairperson says there, "Yes, I'm sorry, I'm not sure that  
 20 what Adv Pillay said was translated because the question  
 21 was partly in Afrikaans. So perhaps I should read in  
 22 English the first sentence of paragraph 9, just in case it  
 23 hasn't been translated. 'On Tuesday the 14th of August 2012  
 24 whilst I was on the way to the JOC at the Lonmin Mine I  
 25 sent a BBM message,' that's a BlackBerry message, 'to

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1 Brigadier Garnett because I was worried about the manner in  
 2 which the situation was being handled since the Sunday."  
 3 Is that right?  
 4 COLONEL VERMAAK: That's correct.  
 5 MR SEMENYA SC: Shall we go to LLL8,  
 6 paragraph 9. You will see in paragraph 9, and I'm going to  
 7 go where the message reads in bold, you see at the bottom,  
 8 the body, you say, 6:37, "More Brigadier, jammer ek is so  
 9 vroeg met 'n boodskap. Hierdie offisiere het geen  
 10 ondervinding van mynonluste nie," but the particular  
 11 interest I have is the time. You're not in the JOC at that  
 12 time.  
 13 COLONEL VERMAAK: Because why the JOC was  
 14 not sitting at that time. It's -  
 15 MR SEMENYA SC: Precisely my -  
 16 COLONEL VERMAAK: It's start at 7 o'clock  
 17 that morning.  
 18 CHAIRPERSON: On Tuesday the 14th?  
 19 MR SEMENYA SC: No, it started after 11,  
 20 but you always say glibly, with respect I must say, that  
 21 the JOCCOM meetings, you attended them at 6, and from the  
 22 14th -  
 23 COLONEL VERMAAK: Ja, most of the JOCCOM  
 24 meetings -  
 25 MR SEMENYA SC: - 14th, 15th and 16th,

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1 should I point you down that road?

2 COLONEL VERMAAK: Most of them were from

3 6 o'clock but if we can maybe get the minutes you will see

4 that morning we meet at 7 o'clock the morning. There were

5 later meetings as well, which I did not attend.

6 MR SEMENYA SC: Shall we have the

7 transcript 25284? From line 7 says you there, "Ja, in die

8 JOC meeting van die 14de, 15de en 16de die oggende het ek

9 pertinent genoem dat hulle heroorweeg ten opsigte van hulle

10 planne wat hulle voorgehou het aan ons." Do you see that?

11 COLONEL VERMAAK: That's correct.

12 MR SEMENYA SC: Is that at 6 o'clock

13 meeting on the 14th?

14 COLONEL VERMAAK: Just repeat.

15 MR SEMENYA SC: Is that the 6 o'clock

16 JOCCOM on the 14th you're referring to?

17 COLONEL VERMAAK: That's the morning when

18 we had the JOC meeting, as you can –

19 CHAIRPERSON: From the passage, let me

20 translate the passage, 'Yes, in the JOC meetings of 14, 15

21 and 16 in the mornings I pertinently mentioned that they

22 reconsider in respect of their plans which they held out to

23 us. I mentioned to them that these people will not

24 voluntarily lay down any weapons and that was established

25 by CIG, Colonel Isaacs from Brigadier Engelbrecht's

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1 office.' So the point is he simply said the JOC meetings

2 of 14, 15 and 16 in the mornings, no time was mentioned in

3 respect of any of them.

4 MS PILLAY: Chair, in the interest of

5 understanding the cross-examination and just getting

6 clarity for our sake as well as the witness, can we

7 understand what the proposition is? That there was a JOC

8 meeting at 6 o'clock on the 14th and that the witness did

9 not attend? Is that the proposition?

10 CHAIRPERSON: No, I understood the

11 proposition to be that he wasn't at the meeting on the 16th

12 at 6 o'clock and this was based upon his diary entry.

13 Diary entry says he was in the meeting at 7, but the diary

14 says he was, has got a reference to his coming on duty as

15 ALEO at 6. So that's part of the, what's been put. It was

16 then suggested to him that all the JOC meetings in the

17 morning started at 6 and that the passage that was cited

18 which showed the text of an SMS that he sent to Brigadier

19 Garnett where he admits he was on his way to the JOC

20 meeting has the time 6:37. So it was said you see, if they

21 all started at 6 you on your own version clearly couldn't

22 have been at the one on the 14th in time because you were

23 still on your way, sending an SMS to Garnett at 6:37.

24 MS PILLAY: Now that's the proposition

25 we're trying to clarify, Chair. Is it being put that there

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1 was a 6 o'clock JOCCOM on the 14th? That's simply the

2 proposition we're trying to establish.

3 CHAIRPERSON: That I can't tell you.

4 That we'll have to ask Mr Semenya.

5 MR SEMENYA SC: Chair, can I continue?

6 If there's no answer to that, there's no answer to it.

7 CHAIRPERSON: No, no, no, no, no, no,

8 it's not as easy as that.

9 MR SEMENYA SC: I'm not persisting with

10 the –

11 CHAIRPERSON: Ms Pillay is entitled to

12 say that if a question is put which is not clear we should

13 get clarity because otherwise when we're reading the record

14 at the end and the matter has been argued and we're writing

15 a report, we won't know what exactly a particular answer

16 means. So I think that's a valid point that she raised, so

17 are you – I understand your point about –

18 MR SEMENYA SC: No –

19 CHAIRPERSON: - he wasn't in the meeting

20 on the 16th in the morning, but do you say that the meeting

21 on the 14th started at 6 and he clearly wasn't there at 6

22 because he was still on his way, sending an SMS at 6:37?

23 What exactly is your case in respect of that?

24 MR SEMENYA SC: No Chair, because of any

25 other reason I don't persist the witness must answer the

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1 question. So the objection cannot be of any value. I'm

2 not insisting on an answer.

3 CHAIRPERSON: So are you abandoning the

4 question?

5 MR SEMENYA SC: I'm abandoning the

6 question.

7 CHAIRPERSON: If you're abandoning the

8 question then we don't have to worry about what any answer

9 may be.

10 MR SEMENYA SC: That's correct.

11 CHAIRPERSON: Okay, now you can't object

12 to that, Ms Pillay.

13 MS PILLAY: I absolutely don't. I

14 don't –

15 CHAIRPERSON: You object to the question,

16 the question is withdrawn, nothing to object to.

17 MS PILLAY: I absolutely don't object to

18 that, Chair.

19 CHAIRPERSON: There's no ruling we can

20 make. Let's move on to the next question.

21 MR SEMENYA SC: Now Colonel, according to

22 you and what you are saying are the objections you have in

23 the JOCCOM, when was the cordon and search to happen? What

24 day?

25 COLONEL VERMAAK: There wasn't decided on

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1 a exact day when the cordon and search must be done.  
 2 Colonel Moolman did prepare the documents to be approved by  
 3 the PC, but as far as I know it wasn't being done and there  
 4 was no cordon and search being done.  
 5 MR SEMENYA SC: No, no, no, no, Colonel,  
 6 if you were in JOCCOM all these days you would know cordon  
 7 and search was one of the various phases, did you not?  
 8 COLONEL VERMAAK: It was one of the  
 9 phases discussed, but there wasn't a date decided on.  
 10 MR SEMENYA SC: Yes, if it is one of the  
 11 stages that are decided, your evidence is you are objecting  
 12 to the ones that they want to implement because you want  
 13 stage 6 to be done as stage 1. Am I understanding you  
 14 correctly?  
 15 COLONEL VERMAAK: Stage 6 refer –  
 16 MR SEMENYA SC: Which is the cordon and  
 17 search.  
 18 CHAIRPERSON: Stage 6 was the cordon and  
 19 search, you see, and that was going to take place according  
 20 to one of the documents we've got, I'm not sure how  
 21 contemporaneous the document is, but there is a document  
 22 before us which purports to be the contemporaneous document  
 23 setting out the plan, the various stages, you see, and the  
 24 tactical option was stage 3. Then there was, other things  
 25 were to happen and stage 6 was to be the cordon and search.

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1 Now what Mr Semenya is putting to you is do you say that  
 2 that was wrong and what should have happened was the cordon  
 3 and search, instead of being the sixth and last stage of  
 4 the operation should have been the first stage? That's  
 5 your –  
 6 COLONEL VERMAAK: That is what I  
 7 suggested, yes, Chair.  
 8 MR SEMENYA SC: Then I must ask you the  
 9 question, when according to you was the cordon and search  
 10 to happen?  
 11 COLONEL VERMAAK: I haven't got –  
 12 MR SEMENYA SC: As the first step.  
 13 COLONEL VERMAAK: No, I don't know. I,  
 14 according to the plan or according to my –  
 15 MR SEMENYA SC: According to your own  
 16 insistence. The reality is you're having a serious  
 17 objection about the plan and your plan is these things  
 18 could have been avoided, the consequences of Marikana could  
 19 have been avoided had they followed your plan, i.e.  
 20 implemented cordon and search as the first stage, right?  
 21 COLONEL VERMAAK: That's correct.  
 22 MR SEMENYA SC: Now when was according to  
 23 your plan the cordon and search to happen in the week of  
 24 the –  
 25 COLONEL VERMAAK: I didn't have a plan.

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1 I suggested it.  
 2 MR SEMENYA SC: According to your  
 3 suggestion when was that cordon and search to happen?  
 4 COLONEL VERMAAK: No, there was no date  
 5 or specific timeframe. I only suggest that they must do a  
 6 cordon and search at the hostels and the surrounding areas.  
 7 MR SEMENYA SC: Let's test it. You  
 8 needed serious intelligence to do a cordon and search. Am  
 9 I right?  
 10 COLONEL VERMAAK: Not necessarily.  
 11 MR SEMENYA SC: I don't follow that word,  
 12 what does it mean?  
 13 COLONEL VERMAAK: I have explained  
 14 previously out of my experience where there was such  
 15 unrests at mines the first thing that we have done is doing  
 16 a cordon and search to remove as far as possible dangerous  
 17 weapons. Information was there that there was dangerous  
 18 weapons at Marikana. Information was that the firearms was  
 19 taken from the security guards, and that is why I suggested  
 20 that they should consider a cordon and search and then at  
 21 every cordon and search there's always arrests being made  
 22 and then they could question that people that they have  
 23 arrested to see if they could maybe get any information.  
 24 MR SEMENYA SC: You require reliable  
 25 intelligence to do a cordon and search, Colonel. Am I

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1 correct?  
 2 COLONEL VERMAAK: No, not necessarily, as  
 3 I explained to you.  
 4 COMMISSIONER HEMRAJ: What area were you  
 5 envisaging would be the subject of this cordon and search?  
 6 COLONEL VERMAAK: Chair, the hostel area  
 7 was specifically a problem and that is also where the  
 8 attack was on the two security guards on the Sunday. So  
 9 mainly we would, I would suggest that they start at the  
 10 hostel area.  
 11 MR SEMENYA SC: Based on which  
 12 intelligence? That you saw people on the –  
 13 COLONEL VERMAAK: It is a preventative  
 14 action.  
 15 MR SEMENYA SC: I accept, Colonel, it is  
 16 a preventative action, but you won't go and cordon and  
 17 search a hostel about which you know nothing. There must  
 18 be intelligence that tells you that the things that you are  
 19 looking for are most probably in that particular hostel,  
 20 not right?  
 21 COLONEL VERMAAK: There are people who's  
 22 staying in that hostel who is working on the mine. Those  
 23 people I believe was also part of the group who was  
 24 protesting.  
 25 MR SEMENYA SC: Belief is based on which

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1 intelligence that was in the JOCCOM?  
 2 COLONEL VERMAAK: That the people have –  
 3 MR SEMENYA SC: The people who are having  
 4 those arms and displaying them are in a particular hostel.  
 5 COLONEL VERMAAK: You cannot cordon and  
 6 search the whole place. You have to start at a specific  
 7 area.  
 8 MR SEMENYA SC: Precisely my point.  
 9 COLONEL VERMAAK: Now the first area that  
 10 you might have the most successes is at the hostel, out of  
 11 experience.  
 12 MR SEMENYA SC: Which hostel?  
 13 COLONEL VERMAAK: The hostel there at the  
 14 mine, at Marikana, at –  
 15 MR SEMENYA SC: Which one?  
 16 COLONEL VERMAAK: I don't know exactly  
 17 what it is – the one next to Nkaneng.  
 18 MR SEMENYA SC: Is this the intelligence  
 19 you are sharing with the members in a JOCCOM meeting of  
 20 that cordon and search you had in mind?  
 21 COLONEL VERMAAK: I said I proposed it to  
 22 them out of experience.  
 23 MR SEMENYA SC: Now we know that the  
 24 people were sleeping at koppie 3. Do you know what that  
 25 operation would have resulted in? Go there, you do a

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1 that according to the plan of the police in the beginning  
 2 was a show of force.  
 3 CHAIRPERSON: You see, what does backfire  
 4 mean? I could understand it flopped, it could flop. It  
 5 could fail. But that doesn't mean backfire. Backfire is  
 6 when you point a pistol at somebody or a cannon at somebody  
 7 and something goes wrong and the bullet comes, the cannon  
 8 ball comes out the wrong direction and hits you in the  
 9 face. That's backfire. That's not the same as flopping or  
 10 failing. So what did you mean? Failing or flop, or  
 11 backfire?  
 12 MR SEMENYA SC: The other backfire I  
 13 recall is what my car engine used to do back in the day,  
 14 but Chair, fail is the point that I'm having in mind.  
 15 Would this be a convenient stage for the day break?  
 16 [15:58] CHAIRPERSON: I still don't know whether  
 17 it's backfiring or flopping, but would you like to think  
 18 about it overnight and tell me tomorrow morning?  
 19 MR SEMENYA SC: May I sleep it over?  
 20 CHAIRPERSON: On that optimistic note we  
 21 will take the adjournment until tomorrow morning.  
 22 [COMMISSION ADJOURNED]  
 23 .  
 24 .  
 25 .

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1 cordon and search and nothing is found there and the people  
 2 and the weapons that you are looking for are in koppie 3.  
 3 COLONEL VERMAAK: Did they know it at  
 4 that time? No.  
 5 MS PILLAY: Chair, can I just understand  
 6 the factual basis on which that proposition is put?  
 7 MR SEMENYA SC: It is the statement of Mr  
 8 X.  
 9 CHAIRPERSON: Koppie 3 or koppie 1?  
 10 MR SEMENYA SC: Koppie 3. Koppie 3.  
 11 CHAIRPERSON: Alright, so it's based upon  
 12 a suggestion that Mr X makes, which may or may not be  
 13 proved to be correct. So, but the question is permissible  
 14 in the circumstances.  
 15 MR SEMENYA SC: Do you see if they had  
 16 implemented your suggestion without reliable intelligence  
 17 it would have backfired badly?  
 18 COLONEL VERMAAK: No, I can't agree, but  
 19 because why Mr X didn't testify so far, I can't say that  
 20 that what he put in on a statement is the truth.  
 21 MR SEMENYA SC: If found to be correct,  
 22 your plan would have backfired terribly, Colonel. That you  
 23 must accept axiomatically.  
 24 COLONEL VERMAAK: No, you must, I cannot  
 25 agree that the plan will backfire. If you can remember

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1 that according to the plan of the police in the beginning  
 2 was a show of force.  
 3 CHAIRPERSON: You see, what does backfire  
 4 mean? I could understand it flopped, it could flop. It  
 5 could fail. But that doesn't mean backfire. Backfire is  
 6 when you point a pistol at somebody or a cannon at somebody  
 7 and something goes wrong and the bullet comes, the cannon  
 8 ball comes out the wrong direction and hits you in the  
 9 face. That's backfire. That's not the same as flopping or  
 10 failing. So what did you mean? Failing or flop, or  
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 12 MR SEMENYA SC: The other backfire I  
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 14 but Chair, fail is the point that I'm having in mind.  
 15 Would this be a convenient stage for the day break?  
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 17 it's backfiring or flopping, but would you like to think  
 18 about it overnight and tell me tomorrow morning?  
 19 MR SEMENYA SC: May I sleep it over?  
 20 CHAIRPERSON: On that optimistic note we  
 21 will take the adjournment until tomorrow morning.  
 22 [COMMISSION ADJOURNED]  
 23 .  
 24 .  
 25 .

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