

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 228

13 MAY 2014

PAGES 28086 TO 28252



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1 [PROCEEDINGS ON 13 MAY 2014]
 2 [09:06] CHAIRPERSON: The Commission resumes.
 3 Captain Thupe, you're still under oath.
 4 SAMUEL KAY THUPE: (s.u.o.)
 5 CHAIRPERSON: Mr Ntsebeza, I think you
 6 are the next cross-examiner this morning, is that correct?
 7 MR NTSEBEZA SC: Yes, Mr Chairman, after
 8 I've just greeted Mr Mpofo.
 9 CHAIRPERSON: Let me just check, what
 10 time have you been allocated?
 11 MR NTSEBEZA SC: You gave me one and a
 12 half to two hours, Mr Chairman.
 13 CHAIRPERSON: Mr Wesley is the appointed
 14 timekeeper. Five minutes before the end of your allotted
 15 time he will tell us and at the end of the five minutes –
 16 MR NTSEBEZA SC: Five minutes to two
 17 hours, Mr Chairman -
 18 CHAIRPERSON: - I'll call on the next
 19 cross-examiner. Mr Mpofo, you people didn't apply for
 20 leave to cross-examine so you've had no time allocated to
 21 you. Mr Ntsebeza?
 22 CROSS-EXAMINATION BY MR NTSEBEZA SC:
 23 Thank you, Mr Chairman.
 24 CHAIRPERSON: Anyway, welcome back, Mr
 25 Ntsebeza –

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1 MR MPOFU: Thank you.
 2 CHAIRPERSON: We had thought that you
 3 might be before us in a different capacity but apparently
 4 that hasn't happened.
 5 MR MPOFU: It's been postponed,
 6 Chairperson.
 7 CHAIRPERSON: Sine die?
 8 MR MPOFU: Sine die, Chairperson.
 9 CHAIRPERSON: - costs in the cause.
 10 MR MPOFU: Costs reserved, Chairperson.
 11 MR WESLEY: Chair, can I just make a
 12 correction? Mr Ntsebeza has been granted one and a half
 13 hours.
 14 CHAIRPERSON: No, I suspected that he –
 15 MR NTSEBEZA SC: Well, you know – about
 16 two hours.
 17 CHAIRPERSON: No, no, one and a half.
 18 Alright, anyway you're the timekeeper, Mr Wesley, so – and
 19 now we've got Ms Pillay back so we won't get into such a
 20 tangle with exhibits.
 21 MR NTSEBEZA SC: Captain, you made a
 22 statement, I believe it's exhibit QQQ9. Now in paragraphs
 23 5.6 and 5.7 thereof you give your impressions and your
 24 conclusions about what happened at the railway line and you
 25 give a summary of what happened there and you conclude that

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1 the mineworkers were aggressive and they refused to hand
 2 over their weapons and all of that, do you recall that?
 3 CAPTAIN THUPE: I do.
 4 MR NTSEBEZA SC: In fact in 5 point –
 5 yes. Now I want to put it to you, because this is what we
 6 will argue at the end, that your summary of that engagement
 7 between the mineworkers and General Mpmembe is deficient in
 8 a number of very critical and important respects. Firstly,
 9 whilst the mineworkers may have been quite reticent to part
 10 with their weapons, which you call their dangerous weapons,
 11 this is what I want to put to you. Those mineworkers also
 12 said to General Mpmembe the reason they were armed with
 13 those weapons was because just the day before they had been
 14 shot at whilst they were marching on NUM offices and that
 15 in fact the stadium at which they had been gathering had
 16 also been cordoned off by barbed wire and therefore that is
 17 the reason that they gave for being armed as they were.
 18 Now we have seen a video of this exchange, exhibit Z1, and
 19 – Z1 – we are not going to play the video, if we have
 20 played it once we've played it 100 times but you were
 21 there. Do you, what is your comment on that, that one, the
 22 mineworkers told General Mpmembe that they were armed as
 23 they were because they had been shot at the previous day
 24 and that is why they were armed as they were.
 25 CAPTAIN THUPE: Yes, they said so.

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1 MR NTSEBEZA SC: Now we'll also say that
 2 your statement would have assisted your conclusion or you
 3 would have concluded otherwise if you had also mentioned
 4 that they told General Mpmembe that they were not fighting
 5 anyone and that they merely wanted to engage the employer
 6 whom they had a problem with. Do you recall that? What do
 7 you say to that?
 8 CAPTAIN THUPE: Can you repeat your
 9 question because I don't understand?
 10 MR NTSEBEZA SC: The mineworkers also
 11 said to General Mpmembe that they were not fighting anyone,
 12 that they were not fighting the police, that they only
 13 wanted an audience with the employer. Do you recall that?
 14 Yes, it is –
 15 CAPTAIN THUPE: It is so.
 16 MR NTSEBEZA SC: - not in dispute, ja.
 17 Now more importantly we will be arguing and I put this to
 18 you, is that they said they were prepared to hand over
 19 their weapons at the koppie or wherever the general might
 20 direct them, if the police would be keen or would be ready
 21 to escort them to the koppie or to any place of their
 22 choice. Do you remember them saying that?
 23 CAPTAIN THUPE: It is so.
 24 MR NTSEBEZA SC: In fact this is what we
 25 will argue, at some stage the mineworkers – and we'll say

<p style="text-align: right;">Page 28090</p> <p>1 it is up to a stage when General Mpembe received a 2 telephone call ostensibly from General Mbombo. It appeared 3 as though General Mpembe was acquiescing to their proposal 4 to accompany them to the koppie provided they didn't 5 deviate from that commitment and so up to the point where 6 he got that telephone, we will argue that it appeared that 7 General Mpembe was beginning to accept what they were 8 proposing. Escort us to the koppie or wherever you want us 9 to go and we'll hand over weapons. Do you recall that? 10 CAPTAIN THUPE: I only see General Mpembe 11 talking to the telephone – 12 MR NTSEBEZA SC: I think the point here – 13 MS MOSHWANE: I only saw General Mpembe 14 talking on the phone but I am not sure who he was talking 15 to. 16 MR NTSEBEZA SC: That is not the 17 important part but what I'm saying to you is that up to 18 that point, and this is what we'll argue, up to that point 19 it appeared that General Mpembe was acquiescing to their 20 proposal and the proposal was, you escort us to the koppie, 21 when we get to the koppie we'll hand over the weapons to 22 you. Do you recall that, do you agree with that? 23 CAPTAIN THUPE: That's correct. 24 MR NTSEBEZA SC: Yes. So we will then 25 say that –</p>	<p style="text-align: right;">Page 28092</p> <p>1 MR NTSEBEZA SC: So I think finally on 2 this point, Captain, we seem to be having some concerns, we 3 just want to indicate to you that we would argue that when 4 you actually look at that video and as the person was 5 there, when you evaluate the general conduct of those 6 employees in the circumstances I've described, I think it 7 is fair to say that they treated General Mpembe with the 8 utmost respect in the circumstances. 9 CHAIRPERSON: Do you agree with that? 10 CAPTAIN THUPE: No, I don't agree. 11 MR NTSEBEZA SC: I will argue that, thank 12 you. Now I understand that – I want to proceed on the 13 basis that you are one of those police officers who was 14 involved both on the 13th in the skirmish around the railway 15 line as well as on the 16th. I think that's a given, I just 16 wanted to establish that, is that right? 17 CAPTAIN THUPE: Yes, it is so. 18 MR NTSEBEZA SC: Now, Mr Chairman, there 19 is a new exhibit that we want to introduce. It's called a 20 line-up. 21 CHAIRPERSON: It's called? 22 MR NTSEBEZA SC: The line-up. 23 CHAIRPERSON: So this will be RRR13. 24 What exactly is it? 25 MR NTSEBEZA SC: It's a power</p>
<p style="text-align: right;">Page 28091</p> <p>1 CHAIRPERSON: You don't have to interpret 2 into Setswana what he says in English. 3 MS MOSHWANE: Apologies, Chair. 4 CHAIRPERSON: No, it's alright. So the 5 questions are put in English to him, he can understand 6 English. Sometimes he answers in English but as he's 7 entitled to, sometimes he answers in Setswana. Your job is 8 to translate the Setswana bits for us, that's all. 9 MS MOSHWANE: Thank you. 10 CHAIRPERSON: There is translation going 11 on in another room for those who require full translation 12 but your job is limited to what I've just described. I 13 know it's your first time here, we're very pleased to see 14 you. Thank you for coming to help us but you'll get 15 accustomed to it quite soon. 16 MS MOSHWANE: Thank you. Thank you, 17 Chair. 18 MR NTSEBEZA SC: In football, Mr 19 Chairman, there are moments called injury time. I'm sure 20 this is considered in the one and a half hours I've been 21 allotted. 22 CHAIRPERSON: You've cancelled it out now 23 by the comments you've made. 24 MR WESLEY: Mr Chairman, do you want to 25 appoint one of the evidence leaders as fourth referee?</p>	<p style="text-align: right;">Page 28093</p> <p>1 presentation of – I just asked, I've just confirmed with 2 the Captain, Mr Chairman, that he was involved both on the 3 13th and on the 16th and I think the line-up is the line-up 4 of members of the TRT, some members of the TRT on the 16th 5 of August and in the slide, I think there are three or four 6 pages – 7 CHAIRPERSON: So I'll call it the line-up 8 presentation and we'll mark it – 9 MR NTSEBEZA SC: Indeed, Mr Chairman. 10 CHAIRPERSON: - exhibit RRR13. 11 MR NTSEBEZA SC: Yes. 12 CHAIRPERSON: Lucky numbering. 13 MR NTSEBEZA SC: Now on slide 1, with 14 your assistance, have we identified those members 15 correctly? Would you agree that that is Mr Claassen to the 16 far right, Mr Erasmus next to him, Mr Loest second from the 17 left or don't you know? 18 CAPTAIN THUPE: The only one that I can 19 identify I think is Erasmus. 20 MR NTSEBEZA SC: Claassen? 21 CAPTAIN THUPE: Erasmus. 22 MR NTSEBEZA SC: Erasmus. 23 CAPTAIN THUPE: And Claassen was on my 24 far, far right. 25 MR NTSEBEZA SC: Claassen on the far</p>

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1 right?

2 CAPTAIN THUPE: No, no, he's not in this

3 picture.

4 CHAIRPERSON: There is a person here on

5 the right with the name Claassen above his head. Does that

6 look like Claassen seen from the rear?

7 CAPTAIN THUPE: No.

8 CHAIRPERSON: That's somebody else, is

9 it? Has Claassen got a different build?

10 CAPTAIN THUPE: It's not Claassen.

11 CHAIRPERSON: Not Claassen, okay. And

12 Loest, the second one from the left on the screen, that

13 person has got a rectangular block above his head with the

14 word "Loest" inside. Does that look like Captain Loest

15 from the rear?

16 CAPTAIN THUPE: According to the body

17 build, I don't think it's Loest.

18 CHAIRPERSON: You don't think it's Loest.

19 Yes, alright.

20 MR NTSEBEZA SC: Do you know who member A

21 is? He's slightly towards you.

22 CHAIRPERSON: Member B?

23 MR NTSEBEZA SC: B?

24 CAPTAIN THUPE: No, I can't remember.

25 CHAIRPERSON: Where are you in relation

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1 to this line-up, yourself?

2 MR NTSEBEZA SC: Do you see yourself in

3 that line-up, in that slide?

4 CAPTAIN THUPE: I think this one is much

5 better than –

6 MR NTSEBEZA SC: Yes.

7 CHAIRPERSON: It's the same picture –

8 MR NTSEBEZA SC: Do you see yourself?

9 CHAIRPERSON: The representation on the

10 screen is better, yes.

11 CAPTAIN THUPE: Ja. Number 2 can be

12 Loest.

13 CHAIRPERSON: Number?

14 CAPTAIN THUPE: Number 2, Loest.

15 CHAIRPERSON: So the person described as

16 Loest, you think he could be Loest?

17 CAPTAIN THUPE: That's correct.

18 CHAIRPERSON: It looks like him from the

19 rear. Yes, alright and you said you thought Claassen – you

20 said Erasmus was correctly indicated. Sorry? But

21 Claassen, the person described as Claassen isn't Claassen?

22 CAPTAIN THUPE: It's not Claassen.

23 CHAIRPERSON: And are you able, from this

24 better representation or presentation of the picture, to

25 identify member A. You can see him in profile?

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1 CAPTAIN THUPE: No, I don't know him.

2 CHAIRPERSON: And member B, no?

3 CAPTAIN THUPE: I don't know him.

4 CHAIRPERSON: Alright.

5 COMMISSIONER HEMRAJ: You haven't said

6 whether you can tell us where you would have been in this

7 line-up.

8 CAPTAIN THUPE: I was on the far right of

9 this line and Claassen was on my extreme right.

10 MR NTSEBEZA SC: Not my –

11 CHAIRPERSON: Sorry to interrupt. If

12 Claassen were – oh, I see. That's not Claassen on the

13 picture. Claassen was on your extreme right and you are to

14 the right of the picture, you're not on the picture.

15 CAPTAIN THUPE: No.

16 CHAIRPERSON: You're to the right of it.

17 CAPTAIN THUPE: I'm not in the picture.

18 CHAIRPERSON: I see, okay.

19 MR NTSEBEZA SC: Can we load slide 2? Is

20 that you?

21 CAPTAIN THUPE: No, it's not me totally.

22 CHAIRPERSON: Are the others correct?

23 Well, is Browning correctly identified?

24 CAPTAIN THUPE: I think Brown is correct.

25 CHAIRPERSON: Yes and there is a person

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1 with a line proceeding from his helmet in a north-westerly

2 direction and the indication is that it's thought that that

3 was Captain Loest. Do you confirm that that's correct or

4 is that not Captain Loest?

5 CAPTAIN THUPE: Possibly can be Captain

6 Loest but it's not so clear that it's him but it possibly

7 can be, yes.

8 CHAIRPERSON: And then there's someone on

9 the extreme right. We can't see very much of him and it's

10 not too clear but the suggestion is member C with a

11 question mark. Are you able to identify that person?

12 CAPTAIN THUPE: No.

13 CHAIRPERSON: No, I see.

14 MR NTSEBEZA SC: That was my next

15 question, Mr Chairman, but where are you? You have said

16 you are not where you are in the picture but in relation to

17 that slide where are you? You were there on that day?

18 CAPTAIN THUPE: On this picture I'm in

19 the extreme right of this picture. I'm on the right of

20 this picture but I'm not appearing in the pictures here.

21 CHAIRPERSON: When you say you're on the

22 extreme right of the picture, you'll see there's a motor

23 vehicle –

24 MR NTSEBEZA SC: Yes.

25 CHAIRPERSON: The three gentlemen are in

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1 front of the motor vehicle, two of them are leaning against
 2 the front of it and then to their right there is a group of
 3 people. The person who is described as member C is in fact
 4 alongside the vehicle on the left side, next to the left
 5 passenger door. When you say you were to the right of the
 6 picture, were you behind the person who's next to the left
 7 passenger door of the vehicle or are you somewhere to the
 8 left of – sorry, to the right of that line of people who
 9 are to the right of the vehicle? Do you understand what
 10 I'm asking?

11 CAPTAIN THUPE: On the right of the
 12 vehicle in the line of these people, on the line of the
 13 people that are appearing there.

14 MR NTSEBEZA SC: I mean in light of what
 15 you've just said, who we said was you in slide 3, if you
 16 can go to slide 3 or the next slide, that's not you?

17 CAPTAIN THUPE: It's not me.

18 MR NTSEBEZA SC: Do you know who it is?

19 CAPTAIN THUPE: I can't remember –

20 MR NTSEBEZA SC: The person we said was
 21 you?

22 CAPTAIN THUPE: I don't know who is he.

23 MR NTSEBEZA SC: Now, I indicated earlier
 24 on that, and I think your evidence confirms it, that you
 25 were involved both on the 13th in the skirmish that led to

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1 the killing of three mineworkers and two policemen also and
 2 you were also involved in this incident on the 16th where we
 3 know a number of people were killed. Do you confirm that?

4 CAPTAIN THUPE: I was –

5 MR NTSEBEZA SC: Yes.

6 CAPTAIN THUPE: - on the scene on the 13th
 7 and on the 16th.

8 MR NTSEBEZA SC: Yes.

9 CAPTAIN THUPE: That's correct.

10 [09:25] MR NTSEBEZA SC: Now what I want to
 11 explore with you, a couple of things that I would like – on
 12 the 16th, I mean on the 13th after your colleagues had been
 13 killed, how did that affect you? Both of them individually
 14 and if you know, and I would hope or I would imagine that
 15 you do, how did that affect the other police officers? I'm
 16 talking about you first and then the other police officers.

17 CAPTAIN THUPE: It affected me badly and
 18 we do get the counselling from the EHW and other police
 19 officials will get counselling from EHW, employee health
 20 and wellness. It did affect us.

21 MR NTSEBEZA SC: Yes. So it was, it
 22 affected you to an extent that you got a debriefing by
 23 psychologists, is that right?

24 CAPTAIN THUPE: It was the social –

25 MR NTSEBEZA SC: You talk about

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1 counselling.

2 CAPTAIN THUPE: That's correct.

3 CHAIRPERSON: You say the social worker,
 4 you got counselling –

5 CAPTAIN THUPE: That's correct.

6 CHAIRPERSON: - from the social worker.

7 CAPTAIN THUPE: That's correct.

8 CHAIRPERSON: After the incident of the
 9 13th, I take it, and then after the incidents of the 16th,
 10 did you have counselling again?

11 CAPTAIN THUPE: That's correct.

12 MR NTSEBEZA SC: Yes. Now, on the 13th or
 13 between the 13th and the 16th was there a discussion between
 14 police officers –

15 CHAIRPERSON: Sorry, Mr Ntsebeza, you
 16 haven't got – you asked a double question, you haven't got
 17 the answer to the second half. He told you he was affected
 18 –

19 MR NTSEBEZA SC: Oh yes, yes.

20 CHAIRPERSON: - but you were also asked
 21 whether you were able to tell us to what extent your
 22 colleagues, you said some of your colleagues also got
 23 counselling after the 13th also from a social worker or
 24 social workers as part of the EHW section of the police, is
 25 that correct?

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1 CAPTAIN THUPE: That's correct.

2 CHAIRPERSON: Can you give us an idea how
 3 many of your colleagues received that counselling after the
 4 13th? Do you know the number?

5 CAPTAIN THUPE: On the 13th, it was 10 TRT
 6 members and all were counselled.

7 MR NTSEBEZA SC: Yes. And would you say
 8 that there was general anger among the police that these
 9 police officers were killed whilst performing their duties?
 10 They were killed in the line of duty and would you say that
 11 there was relative anger in the way in which they reacted
 12 to the killings on the 13th?

13 CAPTAIN THUPE: I did not see any anger
 14 in them.

15 MR NTSEBEZA SC: They were upset, were
 16 they?

17 CAPTAIN THUPE: No, they were not upset,
 18 they were just traumatised.

19 MR NTSEBEZA SC: You know, I don't know
 20 why it is difficult for people, I can tell you now if we
 21 were in the performance of our duty, whatever it is with Mr
 22 Mpofo here and then one of us got killed, I can tell you
 23 now we would be angry, we would be upset. Why are you
 24 saying that you, I'm talking about you personally and the
 25 other police people were not upset and angry at the fact

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1 that people who were busy performing their duties were
 2 killed in that brutal way in which the pictures were
 3 indicating? Can you tell me that?
 4 CAPTAIN THUPE: (Speaking Setswana) – I
 5 wouldn't say those people they were angry because if they
 6 were angry – something extra.
 7 MS MOSHWANE: Everyone reacts to a
 8 situation his or her own way.
 9 MR NTSEBEZA SC: Speak to –
 10 CHAIRPERSON: Madam Interpreter, you're
 11 going to have to repeat that with your microphone on.
 12 MS MOSHWANE: Oh, my apologies. Everyone
 13 reacts according to his or her –
 14 MR NTSEBEZA SC: Yes –
 15 MS MOSHWANE: Or I can say everyone
 16 reacts differently to a situation.
 17 MR NTSEBEZA SC: Yes.
 18 MS MOSHWANE: And then went on –
 19 COMMISSIONER HEMRAJ: Weren't you saying
 20 that if there was anger there would be something else? Can
 21 you just say that again, please?
 22 CAPTAIN THUPE: Ja, if there was anger
 23 then they could express it so that they were angry.
 24 MR NTSEBEZA SC: How would they express
 25 it, may I ask?

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1 CAPTAIN THUPE: If you express anger then
 2 you become violent which, according to my -
 3 MR NTSEBEZA SC: I don't hear. I hear
 4 half of the things you say because you talk softly.
 5 CAPTAIN THUPE: - angry, then
 6 automatically – act differently.
 7 MS MOSHWANE: If one is angry, one has to
 8 act differently but he had earlier said violently, he used
 9 the word "violent." If you are angry you act violently.
 10 MR NTSEBEZA SC: Now let me just give you
 11 an example of what I would like to get to. You know when
 12 Colonel Vermaak - you know Colonel Vermaak?
 13 CAPTAIN THUPE: I know Colonel Vermaak.
 14 MR NTSEBEZA SC: When Colonel Vermaak was
 15 testifying, part of his testimony was to say General Mpembe
 16 was upset. He kept on saying "My men have been killed, my
 17 men have been killed." In fact, according to Vermaak he
 18 was so upset and he was continuing to say this, that he,
 19 Vermaak, felt that he was no longer now able to take
 20 command of the situation. Now I don't want us to get
 21 there, I'm simply illustrating to you the kind of reaction
 22 that has been testified upon by Mr Vermaak, at least
 23 relevant to General Mpembe. Now I just want to know from
 24 you whether there were no scenes of that nature, reflecting
 25 the extent to which police officers were upset and were

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1 angry that their colleagues died in the course of executing
 2 their duties, because we will argue otherwise if you
 3 persist in saying they just, it was just business as usual.
 4 Just think about it.
 5 CAPTAIN THUPE: What I observed is that
 6 the members were traumatised.
 7 MR NTSEBEZA SC: Were there pictures that
 8 were circulated about – were there photos circulated of the
 9 police officers who had been killed? Do you know if there
 10 were photos that were disseminated amongst the police?
 11 CAPTAIN THUPE: No, no photos were sent
 12 through to me.
 13 MR NTSEBEZA SC: Are you saying no photos
 14 were sent to you, do you know of any photos that were going
 15 the rounds among police officers? I've asked this from a
 16 previous police witness, understand, I just don't want to –
 17 ja, I will take you to that reference but I want to ask you
 18 were there photos of police officers who had been killed on
 19 the 13th? Were photos of those police officers who had been
 20 killed circulated among police officers, do you know?
 21 CAPTAIN THUPE: What I can say is that I
 22 did not receive any photo of the police officers. I do not
 23 know if photos were circulated to other police officers,
 24 that I cannot confirm and I only received this file
 25 yesterday, yesterday evening I received the black file.

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1 MR NTSEBEZA SC: Have you ever seen the
 2 graphic photos of the police officers who were killed?
 3 CHAIRPERSON: Now without necessarily
 4 showing them up on the screen, I'd be grateful if someone
 5 would – I'll hand you a copy of exhibit L and look at
 6 slides 52 and, 52, 53 and 54. I'm not going to put them on
 7 the screen but I want you to look at them. Have you got
 8 them in front of you? Okay, you've got them in front of
 9 you. I see you've got some in front of you, yes. Now,
 10 have you seen them before?
 11 CAPTAIN THUPE: No.
 12 CHAIRPERSON: Haven't seen them before?
 13 CAPTAIN THUPE: No.
 14 CHAIRPERSON: No.
 15 MR NTSEBEZA SC: Are you saying that when
 16 you were being consulted by your legal representative or by
 17 whomever, that you have not been canvassed on what happened
 18 on the 13th and you have not been shown those photos? I
 19 mean if you have seen –
 20 CHAIRPERSON: Mr Ntsebeza, I showed the
 21 three that were in the exhibit, there may well have been –
 22 I'm sure there were – other photographs. The ones, I think
 23 those are post-mortem photographs actually. There may well
 24 have been other photographs taken on the scene that you may
 25 wish to ask about. I wasn't intending to cut off any

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1 cross-examination.
 2 MR NTSEBEZA SC: No.
 3 CHAIRPERSON: I'll ask Mr Wesley to give
 4 you an extra three minutes because of this interruption.
 5 MR NTSEBEZA SC: Thank you, Mr Chairman.
 6 Now Captain, are you saying that you have not seen before
 7 now any photos that depict the officers who were killed on
 8 the 13th of August 2012 and that the first time you have
 9 seen, you are seeing any photos whatsoever showing the
 10 horrific way in which those police officers who were
 11 colleagues died, is as you sit there today because you were
 12 given pictures by the Chairman. Is that what you say your
 13 evidence must be accepted as?
 14 CAPTAIN THUPE: What I say is that I got
 15 this black file last night, so I go through it but I
 16 couldn't see this is a police official, this is not a
 17 police official.
 18 MS MOSHWANE: When I went through the
 19 file and the photos, I could not differentiate if the
 20 victim was a police officer or a striker.
 21 MR NTSEBEZA SC: Now maybe I'm not very
 22 clear, let me just be very clear. Captain Thupe, on the
 23 13th of August 2012 two police officers who are your
 24 colleagues were killed in a skirmish in which you had been
 25 involved on the railway line. Now are you telling me that

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1 the first time ever that you have seen any photos of those
 2 police officers is today when the Chairman gave you that?
 3 CAPTAIN THUPE: That's correct. That's
 4 the photo that I see today.
 5 MR NTSEBEZA SC: You have never seen any
 6 photos showing the deaths of these police officers from the
 7 13th of August to date, is that your evidence?
 8 CAPTAIN THUPE: Up until yesterday, yes.
 9 MR NTSEBEZA SC: The only time you saw
 10 these photos was yesterday?
 11 CAPTAIN THUPE: That's correct.
 12 MR NTSEBEZA SC: And the photos you saw
 13 yesterday are not the same photos that the Chairman has
 14 just handed over to you, has just directed your attention
 15 to.
 16 CAPTAIN THUPE: This exhibit L, it's
 17 here.
 18 MS MOSHWANE: The witness is still trying
 19 to locate the photos.
 20 MR NTSEBEZA SC: Now look, if we have to
 21 come back to that, we'll come back to that. So is it your
 22 evidence, I just want to make sure, is this therefore your
 23 evidence therefore that – do you know, other than you have
 24 just said no photographs were sent to you but do you know
 25 whether there were photos that were circulating? I know

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1 you said no photos were sent to you, but do you know if
 2 there were any photos that were circulating among the
 3 police after the incident of the 13th?
 4 CAPTAIN THUPE: I cannot dispute that the
 5 photos might have been circulated to other police officers
 6 but I cannot confirm that they were circulated.
 7 MR NTSEBEZA SC: I see. Just as a matter
 8 of interest, you know that when this question was put to
 9 Colonel Scott, T15347 lines 10 to 17, his evidence was that
 10 he believed that there were pictures of the dead police
 11 which were disseminated among the police and that – and
 12 this took place as early as that evening, the evening of
 13 the 13th. Does that jog your memory or something, that that
 14 evening there were pictures, according to Colonel Scott,
 15 that were disseminated among police officers.
 16 CAPTAIN THUPE: I do not remember and I
 17 am not sure what Colonel Scott is talking about.
 18 MR NTSEBEZA SC: No, he's saying exactly
 19 what I'm saying to you. I have given you the reference but
 20 you could just check what he said in the reference that
 21 I've given but can I just say this, after the incident on
 22 the 13th, would it be fair to say that you yourself
 23 formulated the view that the protesters as a whole were a
 24 dangerous group of people?
 25 CAPTAIN THUPE: No, I wouldn't say they

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1 were dangerous. What I would say, I would say they were
 2 aggressive.
 3 MR NTSEBEZA SC: Meaning?
 4 CAPTAIN THUPE: When General Mpembe was
 5 busy addressing them, some starting singing, some started
 6 clashing their weapons together.
 7 MR NTSEBEZA SC: It was your view, was it
 8 not that if they were confronted by the police, your view
 9 was that they would fight back. Am I fair in saying so?
 10 CAPTAIN THUPE: Could the question please
 11 be repeated?
 12 MR NTSEBEZA SC: Is it not so that your
 13 view was that if the protesters were confronted by the
 14 police they would fight back? Was it not your view?
 15 CAPTAIN THUPE: While they were seated,
 16 singing and clashing their weapons, I could foresee that
 17 they will fight back.
 18 [09:45] MR NTSEBEZA SC: In fact, based on what
 19 you say in your own statement QQ09 paragraph 7.1, you did
 20 say that when they were, when teargas and stun grenades
 21 were thrown at them, instead of fleeing they turned back
 22 and they attacked the police. Do you remember, that was
 23 your evidence?
 24 CAPTAIN THUPE: Yes, I remember.
 25 MR NTSEBEZA SC: Yes and in fact when the

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1 Chairman was putting questions to you – or I'll come to
 2 that but if the protesters were likely to attack the
 3 police, which is what you say in this paragraph 7.1 that
 4 I've referred you to, then the possibility is that the TRT
 5 would be compelled to take action. Would you agree with
 6 that?
 7 CAPTAIN THUPE: That's correct.
 8 MR NTSEBEZA SC: In fact you said so in
 9 so many words yesterday when the Chairman, from a slightly
 10 different angle, yesterday said if for instance you were
 11 lined behind the TRT, I mean the POP line as the TRT, the
 12 POP for one reason or another in seeing that neither the
 13 teargas or anything deters these and they went and ventured
 14 into their own vehicles, that would then leave the TRT and
 15 as a consequence you would have to take action. Do you
 16 recall that evidence yesterday?
 17 CAPTAIN THUPE: That's correct.
 18 MR NTSEBEZA SC: Yes and the action
 19 obviously would be you would use your firearms, your R5
 20 rifles.
 21 CAPTAIN THUPE: That's correct.
 22 MR NTSEBEZA SC: Now, you know you said
 23 most or some of your members were traumatised by what
 24 happened to those two police officers on the 13th. Now, and
 25 I take it you were one of those who was traumatised by what

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1 had taken place on the 13th – and yet 72 hours thereafter
 2 you were there in the front line. Now could you have opted
 3 out? Could you have said, listen, I've just been involved
 4 in a skirmish involving these same mineworkers and I would
 5 rather not be deployed here. Could you have done that?
 6 CAPTAIN THUPE: After I had received
 7 counselling I recovered and I did not see a reason not to
 8 be deployed.
 9 MR NTSEBEZA SC: Are you seriously
 10 suggesting that within 72 hours, when you had been
 11 traumatised by seeing colleagues of yours killed in the way
 12 in which we now know they were, you were ready to go and
 13 confront whom you regarded as people who will attack, in
 14 terms of your statement, instead of being dispersed by the
 15 use of stun grenades and teargas they turned back and
 16 attacked the police. Did you think that you were in a
 17 proper state of mind to be able to deal with that kind of
 18 possible scenario in a manner that would seek to ensure
 19 that no lives were lost?
 20 CAPTAIN THUPE: As I had already said,
 21 after counselling I recovered, I was ready and I went on
 22 with the operation.
 23 MR NTSEBEZA SC: Now, if you were not
 24 feeling ready and we will argue that the probabilities are
 25 that you were not, you were still angry, you were still

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1 traumatised, what had happened was still very much present
 2 in your mind even as you were approaching that, we will
 3 argue that but taking your answer for what it is, if you
 4 felt you were not ready to go into the front line on the
 5 16th having 72 hours only earlier on been confronted by a
 6 smaller group of people, incidentally, than there were on
 7 the koppie on that day at that time, would you have opted
 8 out? Could you have opted out? Could you have said,
 9 listen, I don't feel I am the person to be deployed in the
 10 front line with these weapons that we have, considering
 11 that I still have this image of what I saw 72 hours
 12 earlier?
 13 CAPTAIN THUPE: I would have done so.
 14 MR NTSEBEZA SC: I see, but you didn't do
 15 it because you felt you were ready.
 16 CAPTAIN THUPE: Correct.
 17 MR NTSEBEZA SC: Now exhibit L, if you
 18 could go to exhibit L slide 140 – perhaps you don't even
 19 need to go to that slide, it merely tells us that there
 20 were about 100 and – there were 20 STF members. Now I
 21 don't think we should spend much time. You know who the
 22 STF are, they are quite a sophisticated group of
 23 paramilitary police. Would you agree?
 24 CAPTAIN THUPE: Ja.
 25 MR NTSEBEZA SC: They deal with dangerous

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1 situations, hostages, acts of terror, sabotage, sieges and
 2 other high risk threats, is that right?
 3 MS MOSHWANE: The first answer was, it is
 4 so.
 5 MR NTSEBEZA SC: I see you're nodding
 6 also, for the – ja. And most of the members of the SAPS
 7 who were deployed on the 16th would know that these are
 8 specialised forces of the nature that you have just
 9 described, isn't it?
 10 CAPTAIN THUPE: It is so.
 11 MR NTSEBEZA SC: Now you were lying - you
 12 did see STF members on the day, did you not?
 13 CAPTAIN THUPE: Yes, I did.
 14 MR NTSEBEZA SC: Yes. Now I believe
 15 there's a video JJJ194.16, can we have that video played,
 16 Mr Chairman, from 9 what, 25 seconds to 32 seconds.
 17 CHAIRPERSON: Do you want the whole clip,
 18 is that the full 15 seconds, shown?
 19 MR NTSEBEZA SC: 25 to 32.
 20 CHAIRPERSON: 25 to? 32.
 21 MR NTSEBEZA SC: No, I'm told that it is
 22 not it.
 23 MS PILLAY: Chair, it's 194.16.
 24 CHAIRPERSON: 194 point?
 25 MS PILLAY: 16.

<p style="text-align: right;">Page 28114</p> <p>1 CHAIRPERSON: 16. We're seeing the whole 2 clip, are we? 3 MR NTSEBEZA SC: 25 to 32, Mr Chairman. 4 CHAIRPERSON: 25 to? 5 MR NTSEBEZA SC: 32. I believe we want 6 to locate a vehicle. 7 CHAIRPERSON: We saw this yesterday. 8 MR NTSEBEZA SC: Stop, just go back a 9 bit. There's a vehicle there. Now to the left there is a 10 camouflaged – 11 CHAIRPERSON: I'm looking at, the reading 12 at the moment is 29 so are you referring to the vehicle 13 with people in camouflage uniforms sitting on the top? 14 MR NTSEBEZA SC: Also camouflage. Now, 15 you see the vehicle? 16 CAPTAIN THUPE: Yes, I do. 17 MR NTSEBEZA SC: And you saw that vehicle 18 on the 16th of August? 19 CAPTAIN THUPE: Can you come again? 20 MR NTSEBEZA SC: Did you see that vehicle 21 on that day because that purports to have been on, that 22 photo is – 23 CAPTAIN THUPE: That's correct. 24 MR NTSEBEZA SC: Ja. And where are you, 25 incidentally, in relation to this picture, in relation –</p>	<p style="text-align: right;">Page 28116</p> <p>1 CAPTAIN THUPE: Yes, it is. 2 MR NTSEBEZA SC: Now Mr Chairman, can we 3 have exhibit HHH55? 4 CHAIRPERSON: Yes, you want that put on 5 the screen? 6 MR NTSEBEZA SC: We just want to have a 7 close-up of the vehicle which you have already identified 8 as the Scorpion. If we could look at slides 4 to 6. Do 9 you see that? 10 CAPTAIN THUPE: Yes, I do. 11 MR NTSEBEZA SC: Ja, that's the – yes, 12 you have already said that is the vehicle you saw on the 13 day. That gun, the big gun on the back of the Scorpion, do 14 you know what type of gun that is? It's a big gun. 15 CAPTAIN THUPE: The big gun, I don't know 16 the name of this gun, to be true. 17 MR NTSEBEZA SC: It's certainly not one 18 to hunt birds with. Just by looking at it, I mean I'm not 19 big on guns but by looking at it, it's a powerful weapon I 20 would think. 21 CAPTAIN THUPE: Yes, it's powerful. 22 MR NTSEBEZA SC: If I recall well, a 23 previous witness had testified that it could destroy a 24 building. Do you agree with that? 25 CAPTAIN THUPE: I do not know about that</p>
<p style="text-align: right;">Page 28115</p> <p>1 are you anywhere among those voorlopers there? 2 CAPTAIN THUPE: At this juncture it was 3 at the time when we went to do the baseline. 4 CHAIRPERSON: Can we see you? Can we see 5 you on the picture? 6 CAPTAIN THUPE: No, I can't see. No, I 7 am not visible in this picture. 8 CHAIRPERSON: Now there is someone, there 9 are two people on the picture giving directions. One on 10 the right-hand side is a policeman with his left hand 11 stretched out, do you recognise that person? One on the 12 right-hand side, one on the left. Now let's look at the 13 one on the right-hand side first. He's third from the end 14 on the right-hand side of the picture, he's got his left 15 hand stuck out. 16 CAPTAIN THUPE: Ja, I can recognise him. 17 CHAIRPERSON: Who is that? 18 CAPTAIN THUPE: He is Constable Mojalele 19 from Brits TRT. 20 CHAIRPERSON: On the left-hand side of 21 the picture is somebody else, also with his left arm stuck 22 out. He's third from the left, do you recognise him? 23 CAPTAIN THUPE: No. 24 MR NTSEBEZA SC: Is that vehicle called a 25 Scorpion, that vehicle?</p>	<p style="text-align: right;">Page 28117</p> <p>1 but I cannot dispute that it could destroy a building. 2 CHAIRPERSON: If it's in working order. 3 There was some evidence that it wasn't in working order, it 4 was there just to scare people and there was no ammunition 5 and so on but certainly if it was in working order, 6 according to what Mr Mpofu put to witnesses, if you wanted 7 to demolish a wall in a hurry it's a useful instrument to 8 have. 9 MR NTSEBEZA SC: Now look, we will argue 10 very much against that at the end of the day but you, as 11 members of the TRT, POP and everybody else who was there, 12 when once you saw that kind of vehicle it certainly must 13 have sent to your minds the fact that this is mobilised 14 because the situation that you are going to be confronting 15 is a dangerous situation, almost a war situation. They 16 bring the big guns. That must have gone through your minds 17 as police officers, didn't it? You see that gun, that kind 18 of a gun on the scene and you see STF members, guys who you 19 have just indicated to the Commission are people who get 20 called for tough situations, hostage situations, sabotage, 21 you name it. I'm putting it to you that when once you saw 22 that gun, it immediately sent into your mind that what you 23 are coming to deal with here on the 16th is going to make 24 what happened on the 13th a picnic, that you are now going 25 to deal with a dangerous situation. Will you concede that?</p>

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1 Captain?

2 CAPTAIN THUPE: Yes, I'll concede that.

3 MR NTSEBEZA SC: Yes. Now, Mr Chairman,

4 if you can bear with me? Now just whilst we are on that, I

5 know you can't talk for the miners but the miners would

6 never have known that, as it is claimed, that that is

7 dysfunctional or it's not functional. Now would you, I

8 think you did, I was going to put a question which I think

9 – you will correct me if I'm wrong – you did respond to

10 yesterday when it was put to you by the Chairman in a

11 slightly different way. I think I've asked you also today,

12 you would have taken action if you saw members or

13 mineworkers approaching the TRT line. You would have taken

14 action, I think you did, you did respond to that.

15 CAPTAIN THUPE: Yes.

16 [10:05] MR NTSEBEZA SC: I will come to that.

17 Now Mr Chairman, I may be closer to the end of my cross

18 than Mr Wesley is going to have to –

19 CHAIRPERSON: Mr Ntsebeza, I see you're

20 looking in your notes for something. Would it be,

21 particularly in the light of what you've just told me would

22 you like us to take the first comfort break now so that you

23 can consult with those assisting you?

24 MR NTSEBEZA SC: Yes.

25 CHAIRPERSON: And be ready for the final

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1 section of your cross-examination. It's an offer, you

2 don't have to accept it.

3 MR NTSEBEZA SC: Mr Chairman, I always

4 take offers from the Chair.

5 CHAIRPERSON: Alright, we'll take the

6 first comfort break now. We'll make it 15 minutes.

7 MR NTSEBEZA SC: Thank you.

8 [COMMISSION ADJOURNS COMMISSION RESUMES]

9 [10:37] CHAIRPERSON: It took longer than the

10 time I indicated but that was because we had housekeeping

11 matters to attend to in chambers which – but it's not going

12 to affect you, Mr Ntsebeza, because the clock was turned

13 off while we took the adjournment.

14 MR NTSEBEZA SC: I'm grateful for that,

15 Mr Chairman.

16 SAMUEL KAY THUPE: (s.u.o.)

17 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):

18 Now Captain, I want us to look at RRR13 again and slide

19 203, ja. No, no, the other one. Now I understood you to

20 be saying that you were to the far right, your position was

21 to the far right in that picture as we see it. Can you

22 again give a sense of where you were relative to that

23 picture? Where were you positioned? How far from, for

24 instance, Browning to the right were you? How far to the

25 right of Browning were you?

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1 CAPTAIN THUPE: Thank you. Chairperson,

2 before I answer the question I want to make a plea.

3 MR NTSEBEZA SC: You want to make a

4 ruling?

5 CAPTAIN THUPE: No, a plea.

6 MR NTSEBEZA SC: Oh, okay.

7 CAPTAIN THUPE: I just saw –

8 CHAIRPERSON: I make the rulings, you

9 make the pleas. What's the plea you want to make?

10 CAPTAIN THUPE: I just saw horrific

11 pictures here so I just want not to go back to the pictures

12 of those people who were killed because they really touched

13 me.

14 CHAIRPERSON: Oh, those pictures that I

15 showed you from exhibit L, you don't want to see those

16 again?

17 CAPTAIN THUPE: That's correct.

18 CHAIRPERSON: I don't, I certainly have

19 no intention of showing them to you and Mr Ntsebeza, I take

20 it you don't intend doing it either.

21 MR NTSEBEZA SC: No, we are past that.

22 CHAIRPERSON: So your plea has been heard

23 and will be granted.

24 CAPTAIN THUPE: Thank you. So back to

25 the question, from where Browning is standing and I think

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1 if the picture can be zoomed a little bit –

2 CHAIRPERSON: Is it possible to zoom this

3 picture so that it makes it, it's clearer for the witness?

4 CAPTAIN THUPE: I was next to the

5 Scorpion vehicle.

6 MS MOSHWANA: On the extreme right there

7 is a picture depicting the Scorpion. I was next to the

8 Scorpion, as he is indicating now with the highlighter or

9 the pointer. If where I am pointing now is the Scorpion, I

10 was near the Scorpion.

11 CHAIRPERSON: He says if that's the

12 Scorpion, as far as I can see what he indicated was indeed

13 the Scorpion.

14 MR NTSEBEZA SC: It is.

15 CHAIRPERSON: So he indicates he was

16 standing near it.

17 MR NTSEBEZA SC: Yes.

18 CHAIRPERSON: That's why he's not on this

19 picture.

20 MR NTSEBEZA SC: Yes. Can you give us a

21 sense in terms of metres? 40 metres, 50 metres, 20 metres

22 -

23 CAPTAIN THUPE: From?

24 MR NTSEBEZA SC: - 15 metres, from

25 Browning.

<p style="text-align: right;">Page 28122</p> <p>1 CAPTAIN THUPE: From Browning I was, it 2 can be 15 metres. 3 MR NTSEBEZA SC: 1-5 or 5-0? 4 CAPTAIN THUPE: 1-5. 5 MR NTSEBEZA SC: 1-5. From where you 6 were, were you able to see Browning? 7 CAPTAIN THUPE: No, I could not see him 8 because we were in the baseline. 9 MR NTSEBEZA SC: Could you hear him above 10 the thunder of gunshots when the volley was unleashed, when 11 the volley of bullets started to be shot could you hear 12 Browning from where you were? 13 CAPTAIN THUPE: Hear him saying – 14 CHAIRPERSON: While the bullets were 15 being fired or just before? 16 MR NTSEBEZA SC: While the bullets were 17 being fired. 18 CAPTAIN THUPE: Hear him saying what? 19 MR NTSEBEZA SC: I didn't get that. 20 MS MOSHWANA: He says hear him say what, 21 because you said could he hear – 22 MR NTSEBEZA SC: Well, you were there. 23 Did you hear him say anything, Browning? 24 CAPTAIN THUPE: What I remember is that 25 Browning heard when I said cease fire and he then also</p>	<p style="text-align: right;">Page 28124</p> <p>1 CAPTAIN THUPE: I am seeing them for the 2 first time today. 3 MR NTSEBEZA SC: Ja, but why are they 4 upsetting you? 5 CAPTAIN THUPE: What upsets me is the 6 type of wounds inflicted on the bodies and the way in which 7 they are depicted. 8 MR NTSEBEZA SC: Yes, it's the wounds 9 that you saw on the 13th, not in the pictures but you were 10 there, did you see your colleagues after they had been 11 injured? 12 CAPTAIN THUPE: No, didn't see any of our 13 colleagues that were injured. Those who were injured, 14 Warrant Officer Lepaaku was taken to hospital – 15 MR NTSEBEZA SC: Did you see those who 16 died? Did you see them on the 13th? 17 CAPTAIN THUPE: I saw them from a 18 distance because they were covered, so I didn't see the 19 wounds. 20 MR NTSEBEZA SC: Yes. Now we know from 21 Scott that those pictures, pictures of those dead police 22 officers were disseminated amongst other members but for 23 some reason you never got to see them when they were 24 disseminated among them. Now if we accept what Colonel 25 Scott says, and we'll argue that you probably have</p>
<p style="text-align: right;">Page 28123</p> <p>1 repeated, cease fire. 2 MR NTSEBEZA SC: Yes. Now from 15 metres 3 away how did you know it was Browning repeating cease fire? 4 CAPTAIN THUPE: I saw him when he moved 5 forward. 6 MR NTSEBEZA SC: So you saw him only when 7 he moved forward, otherwise where you were you were not 8 able to see him. I think that was your evidence. You have 9 just said now you didn't see Browning from where you were 10 near the Scorpion or at the Scorpion, do you recall that? 11 CAPTAIN THUPE: That's correct. 12 MR NTSEBEZA SC: Yes. Is your evidence 13 now that he moved from where you couldn't see him to an 14 area where you then could see him and hear him shouting 15 cease fire after you had said cease fire? 16 CAPTAIN THUPE: Correct. 17 MR NTSEBEZA SC: You know something keeps 18 on worrying me, Captain. You've just said to the 19 Commission you have seen pictures that have upset you, is 20 that correct? 21 CAPTAIN THUPE: That's correct. 22 MR NTSEBEZA SC: Why are they upsetting 23 you? It might be obvious but you know, you made it a point 24 to tell the Commission before we resumed, you don't want to 25 see those pictures again. Why are they upsetting you?</p>	<p style="text-align: right;">Page 28125</p> <p>1 forgotten or you are not being accurate about whether or 2 not you yourself saw these, you were in command of a 3 section of the TRT on the 16th, were you not? 4 CAPTAIN THUPE: I am. 5 MR NTSEBEZA SC: And let's assume that 6 some of the members you commanded had, as Colonel Scott 7 says he believes these pictures were disseminated, had seen 8 the pictures of their colleagues which have upset you 9 almost 18 months down the line in the manner in which you 10 say they did, now – and this is what I want to put to you – 11 did you make it your duty as commander of that TRT unit you 12 were in charge of, did you investigate as to whether those 13 you were deploying on the 16th had been affected by what had 14 happened on the 13th? Did you go out of your way to do so? 15 Do you understand the question? Did you, as commander of 16 the TRT unit which was deployed on the 16th in the frontline 17 behind the POP members, did you evaluate whether the 18 members who had been involved on the 13th were in a state of 19 mind to undertake yet another mission of the nature that 20 was part of the plan on the 16th? 21 CAPTAIN THUPE: I had already testified 22 that all the members who were involved on the 13th were all 23 counselled. Of the ten members who were counselled, only 24 two members were part of the ones deployed on the 16th. 25 MR NTSEBEZA SC: Yes. Now I want to put</p>

<p style="text-align: right;">Page 28126</p> <p>1 this to you and I won't, I won't go further than this, as a 2 commander don't you think it was negligent, in fact it was 3 irresponsible to permit members traumatised in the way in 4 which you say today, so many months down the line you are 5 traumatised by a picture of those officers, don't you think 6 it was negligent or irresponsible for you to deploy those 7 members on duty on the 16th? 8 CAPTAIN THUPE: No. 9 MR NTSEBEZA SC: Captain? 10 CAPTAIN THUPE: I say no, it was not 11 irresponsible or negligent. 12 MR NTSEBEZA SC: Are you then surprised 13 that the evidence shows, as you were asked by the Human 14 Rights Commission yesterday, that it doesn't appear as 15 though those who shot at what you called the attacking 16 mineworkers, shot them below the knees, don't you find it 17 coincidental that from all objective evidence those who 18 shot at the charging miners, as you have characterised what 19 was happening, shot to kill because if they didn't aim to 20 kill they would have shot below the knees. 21 CAPTAIN THUPE: No. 22 MR NTSEBEZA SC: You find it is normal 23 for them to have shot, aimed to kill, to shoot at the upper 24 bodies, at the head. 25 CAPTAIN THUPE: If a member is deployed</p>	<p style="text-align: right;">Page 28128</p> <p>1 CHAIRPERSON: To some extent that's a 2 legal point, isn't it? The law of, the legal rules 3 relating to self-defence don't give a person who considers 4 himself under threat a discretion as to whether he will 5 kill his attacker. He's only entitled to kill his attacker 6 if that's the only thing he can do to save his life or in 7 the case of private defence, save the life of somebody 8 else. So to base it on discretion is in fact legally 9 unsound. I'm not sure that the point need be explored 10 further with the witness. 11 MR NTSEBEZA SC: I don't think it should 12 be, Mr Chairman, given also time constraints that we have. 13 I would have loved to have debated the point with him but I 14 will argue it at the end. 15 CHAIRPERSON: I think at lunch time – 16 MR NTSEBEZA SC: I mean I just need you 17 to know that we will argue very strongly here that, just 18 what you said when we resumed about how those pictures have 19 affected you, it seems to us that it was irresponsible for 20 anyone who had been involved on the 13th to have been 21 deployed on the 16th, but you have given your views about 22 that. 23 CHAIRPERSON: Before we move away from 24 that point. You yourself received counselling from the 25 social worker, I think you said.</p>
<p style="text-align: right;">Page 28127</p> <p>1 to a scene and if that member is attacked, it is for the 2 member to use his own discretion if his life is in danger. 3 MR NTSEBEZA SC: The discretion, as this 4 was canvassed with you by the Chairman yesterday and I mean 5 the Chairman was quite fair to say, I mean you could not 6 guarantee that none of the people would be killed but would 7 you agree that the discretion by any member of the TRT 8 using a lethal weapon, as the R5, would be first to shoot 9 in a way that would preserve life, both of the attacker as 10 well as that of the person who perceives himself to be in 11 danger. To put it simply, as the Human Rights Commission 12 counsel was putting to you, it would have been preferable 13 if you shot below the knee. 14 MR MATHIBEDI SC: Sorry, Mr Chairperson, 15 I think this can't be a general question. I think if the 16 situation permits then that would be expected but if it 17 does not permit, he is entitled to use the necessary force 18 to protect his life. 19 MR NTSEBEZA SC: Mr Chairman, I would say 20 that if that's an objection, I would say the question is 21 put – I would say, Mr Chairman, the question that I put is 22 put on the basis of the witness's answer. The witness's 23 answer is that if his life is in danger then he would be, 24 he would have to exercise a discretion and I'm testing that 25 the discretion is not to aim, shoot to kill.</p>	<p style="text-align: right;">Page 28129</p> <p>1 CAPTAIN THUPE: That's correct. 2 CHAIRPERSON: And there were ten of you, 3 is that right, or was it ten plus you? 4 CAPTAIN THUPE: It was ten plus me. 5 CHAIRPERSON: Ten plus you, there were 11 6 in other words, people in your unit including yourself. 7 CAPTAIN THUPE: It was ten including me. 8 CHAIRPERSON: Sorry? 9 [10:57] CAPTAIN THUPE: It was ten including me. 10 CHAIRPERSON: Ten including you, I see. 11 Ten people including you and do I understand that three of 12 you were involved on the 16th? 13 CAPTAIN THUPE: There's only three that 14 were involved on the 16th. It was me and other two 15 constables – 16 CHAIRPERSON: Yes, so three of you in 17 other words were involved on the 16th. 18 CAPTAIN THUPE: Yes. 19 CHAIRPERSON: The other seven weren't. 20 CAPTAIN THUPE: No, they were not part of 21 the operation. 22 CHAIRPERSON: Now you received 23 counselling, I take it the other two who were with you on 24 the 16th received counselling as well, is that right? 25 CAPTAIN THUPE: Yes.</p>

<p style="text-align: right;">Page 28130</p> <p>1 CHAIRPERSON: Now presumably if the 2 social workers had felt that the counselling hadn't been 3 effective and it was not safe to allow those, you and the 4 other two to go back to Marikana and be involved in further 5 operations, they would have said so. 6 CAPTAIN THUPE: That's correct. 7 CHAIRPERSON: Did you in fact yourself 8 ask them whether they were satisfied that their counselling 9 was sufficient to render it safe for you, safe in the broad 10 sense – appropriate, perhaps is a better word – for you and 11 your two colleagues to go back to Marikana to be involved 12 in operations despite what had happened on the 13th, the 13 fact that you were traumatised and required counselling, 14 did you go into that matter at all? 15 CAPTAIN THUPE: That's correct, after 16 counselling I called all of them, then I asked them those 17 who would be prepared to continue the operation must say so 18 and there were only two that said they are prepared to 19 continue the operation. Then the rest they say they don't 20 feel okay to continue the operation. That is the reason 21 that I exclude them in the operation and they were not part 22 of the operation. 23 CHAIRPERSON: I can understand that but 24 did you interrogate or question the two who said they were, 25 who did think they were able to carry on, as it were, did</p>	<p style="text-align: right;">Page 28132</p> <p>1 specifically – on the 16th I will have fired shots but 2 unfortunately I didn't fire any shots on the 16th in anger. 3 CHAIRPERSON: So we can be satisfied that 4 you weren't actuated by any considerations of that kind. 5 Now the question then relates to the other two. You said 6 you satisfied yourself that it was appropriate for them to 7 come back into the field, as it were, on the 16th at 8 Marikana. That's right, isn't it? 9 CAPTAIN THUPE: That's correct. 10 CHAIRPERSON: And on what basis, what was 11 the basis upon which you were so satisfied? Can you tell 12 us that? 13 CAPTAIN THUPE: They went through 14 counselling, both of them. After counselling I asked them 15 personally whether are they prepared to go back to the 16 operation. Then I also asked the social workers who 17 counselled them what is their progress and she says that 18 they are progressing good. 19 MR NTSEBEZA SC: Now I know it would be 20 another inquiry but seeing that you took the decision in 21 the end, albeit it on advice from the social worker, were 22 you quite satisfied that the social worker is the right 23 person to do a psycho-analysis as to who one is, who is fit 24 and not fit to go into a combat situation of the nature 25 that was expected would take place on the 16th? You have</p>
<p style="text-align: right;">Page 28131</p> <p>1 you interrogate them to satisfy yourself that it was indeed 2 appropriate to send them back into the field at Marikana? 3 Did you question them about it? 4 CAPTAIN THUPE: Ja, the two that were 5 part of the operation I questioned and they said that they 6 are. 7 CHAIRPERSON: Did you also question the 8 social worker about their fitness, these other two people 9 you're talking about, their fitness to go back to Marikana 10 and take part in the operation? 11 CAPTAIN THUPE: That's correct. 12 CHAIRPERSON: Now you see, one of the 13 points that occurs to me and presumably I'm taking a point 14 Mr Ntsebeza would like to make but if he wants to make it 15 he can, there was always a danger, I would have thought, 16 that the other two and possibly even you, subconsciously 17 without being aware of it, might have been actuated by a 18 desire, a subconscious desire perhaps, to act particularly 19 vigorously in future in dealing with the strikers as a form 20 of revenge taking. I'm not saying that happened, I'm just 21 asking you whether it wasn't a factor that perhaps was 22 operating unconsciously or subconsciously which should have 23 been investigated. Have you any comments to make in that 24 regard, in regard to that point? 25 CAPTAIN THUPE: I would prefer to be</p>	<p style="text-align: right;">Page 28133</p> <p>1 access, I would assume, in the SAPS to psychologists, to 2 psycho-analysts and I'm just curious that your choice of a 3 person to provide counselling in these circumstances should 4 be the social worker. Now you took the decision to deploy 5 yourself again on the 16th after having seen the social 6 worker. Are you satisfied that she was the right 7 professional? I assume it was a she. 8 CAPTAIN THUPE: Yes. 9 MR NTSEBEZA SC: Yes. Are you satisfied 10 it was the right professional? 11 CAPTAIN THUPE: I was satisfied after the 12 briefing, after the counselling then I was satisfied. 13 MR NTSEBEZA SC: I mean you have no 14 objective basis to say so, you do not know what the 15 competencies are that should be taken into account when a 16 person does an analysis of who is traumatised to a point 17 where they are or are not able. 18 CAPTAIN THUPE: If - (speaking Setswana) 19 – she could refer me to the psychologist. 20 MS MASHWANA: If I was not fit – he 21 continued in English and said she could have referred me to 22 a psychologist. 23 MR NTSEBEZA SC: Now as I say, Captain, 24 we could spend quite some time on the question of whether 25 or not the right personnel were deployed to do the</p>

<p style="text-align: right;">Page 28134</p> <p>1 assessment of the fitness of people who were to be deployed 2 for the mission on the 16th of August. Now – 3 CHAIRPERSON: Mr Wesley, do I understand 4 you to be indicating that Mr Ntsebeza has five more 5 minutes? If necessary, I may give him a couple more 6 minutes because of some of the questions I asked but 7 perhaps we'll give him another ten minutes. 8 MR NTSEBEZA SC: Thank you, Mr Chairman. 9 We have exhibit EEE16, it's a video, if you could just have 10 a look at that clip at 10:34. EEE16, 10:34. It's 10:34 – 11 CHAIRPERSON: If it's going to be a 12 picture that will cause alarm and emotional distress – 13 MR NTSEBEZA SC: Yes. 14 CHAIRPERSON: I'm told that we're going 15 to see some video clips now which are likely to cause 16 emotional distress to relatives and loved ones of the 17 people whose pictures we're going to see and I request that 18 they not be shown until a minute has elapsed after I've 19 finished speaking. We'll start the minute now but if no- 20 one moves after half a minute we will carry on. No-one has 21 moved for half a minute. I think we can accept that it's 22 unlikely that anyone will want to move thereafter, so we 23 can proceed. 24 [VIDEO IS SHOWN] 25 MR NTSEBEZA SC: Now perhaps we should</p>	<p style="text-align: right;">Page 28136</p> <p>1 were you at the scene when – because paragraph 27 seems to 2 put you at the scene. 3 CAPTAIN THUPE: I was at that scene but I 4 did not move forward to go and remove weapons from the 5 people. 6 MR NTSEBEZA SC: No, I'm not asking that, 7 Captain, and I'm sure you understand what I'm asking. You 8 have said in paragraph 27 of your statement that I've just 9 read to you, some of the police members moved forward, 10 removed firearms and we've seen them in the clip doing 11 exactly that but there is something more that we are going 12 to be putting to you. "Members slowly moved forward to 13 ascertain the nature and extent of the injuries," et 14 cetera, et cetera. I'm just asking whether you were one, 15 were you amongst the group of members whom you saw on the 16 video and whom you refer to in your statement as moving 17 forward slowly to disarm the protesters? That's the 18 question. 19 CAPTAIN THUPE: That's correct. 20 MR NTSEBEZA SC: Yes. Now you see, 21 Captain, we want to, on the basis of what we see in that 22 video, at the end of these proceedings we want to be, we 23 want to argue that your members – by the way, can I just 24 ask, do you have, do TRT members undergo any form of sort 25 of basic training in first aid?</p>
<p style="text-align: right;">Page 28135</p> <p>1 short-circuit. We can stop the video now. Captain, you 2 are – 3 CHAIRPERSON: I think you should put on 4 record what bits of the video we saw. 5 MR NTSEBEZA SC: Oh, okay. 6 CHAIRPERSON: For the benefit of those 7 who read the record later. Some of us re-read it and some 8 read it for the first time. We're now at 10:49 on the 9 clip. 10 MR NTSEBEZA SC: We may just as well go 11 to 11, Mr Chairman. 12 CHAIRPERSON: Alright, let's go to 11. 13 [VIDEO IS SHOWN] 14 CHAIRPERSON: Did we see basically a 15 minute of the clip? Ja, okay. 16 MR NTSEBEZA SC: Now, in paragraph 27 of 17 your statement exhibit QQQ9 you say the following, "Some of 18 the police members then moved forward and removed the 19 firearms from the protesters and some of the dangerous 20 weapons were also removed from the protesters to secure the 21 scene. Members slowly moved forward to ascertain the 22 nature and extent of the injuries and to ensure that the 23 scene is secure for further investigation." That's what 24 you said in your statement. Now the question is, were you 25 one of those members whom we have seen in this video or</p>	<p style="text-align: right;">Page 28137</p> <p>1 CAPTAIN THUPE: No. 2 MR NTSEBEZA SC: They don't? 3 CAPTAIN THUPE: In first aid, no. 4 MR NTSEBEZA SC: So you say you've never, 5 never as police members never undergone any basic aid 6 training. If you saw me bleeding outside here you wouldn't 7 be able to render any first aid, is that what you're 8 saying? 9 CAPTAIN THUPE: That's correct. 10 CHAIRPERSON: When the police go to the 11 Police College, the police, young recruits go to the Police 12 College for basic training before they are sent out on the 13 beat as police constables, do they not have any training in 14 first aid at all? 15 CAPTAIN THUPE: No. 16 MR NTSEBEZA SC: Now what we will submit, 17 training or no training, is that your members – I don't 18 know how many times you have seen this video, if you want 19 to see it again you can see it again but this is what we'll 20 say – in the video you can see that the TRT people are 21 walking amongst the injured and roughly turning and moving 22 and searching them. Did you see that or do you want to see 23 it again? 24 CAPTAIN THUPE: May I see it again? 25 MR NTSEBEZA SC: We'll play it again from</p>

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1 10:34 to 11:00 and watch carefully.
 2 [VIDEO IS SHOWN]
 3 CHAIRPERSON: We've seen the whole
 4 section that you referred, showed previously.
 5 MR NTSEBEZA SC: Now from 10:34 to 11:11,
 6 that's where we see the first point we are making, roughly
 7 turning and moving and searching them, played to 11:11.
 8 MR NTSEBEZA SC: At 11:24, 12:10, 12:36
 9 to 12:38, I just want these to be noted, 12:56 to 12:59, we
 10 will argue that the TRT can be seen dragging injured
 11 persons.
 12 CHAIRPERSON: Perhaps we should see those
 13 now too, while we're about it. It shouldn't take too much
 14 time, I'll give you an extra minute for it.
 15 MR NTSEBEZA SC: I think it was canvassed
 16 with another witness but –
 17 CHAIRPERSON: You're asking the witness
 18 to comment –
 19 MR NTSEBEZA SC: Yes, no, no –
 20 CHAIRPERSON: It's in fairness to the
 21 witness that it is shown.
 22 MR NTSEBEZA SC: I'm with you, Mr
 23 Chairman.
 24 [VIDEO IS SHOWN]
 25 CHAIRPERSON: What the inscription on the

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1 video says, there are no signs of first aid being
 2 administered to the injured. That certainly is in
 3 accordance with what we can see. What we can see, as far
 4 as I can see, is weapons being removed, people being
 5 searched for weapons, I think, and weapons being removed.
 6 There doesn't appear to be any –
 7 MR NTSEBEZA SC: That's what I'm putting
 8 –
 9 CHAIRPERSON: - attempt to give first aid
 10 and there is a picture at round about 12:43 of someone
 11 being, obviously being dragged I suppose is as accurate a
 12 description as any. Another one at 12:58.
 13 [11:16] MR NTSEBEZA SC: In one shot we'll show
 14 that TRT members or one TRT member had his boot on the face
 15 of an injured person. That would be at 13:18 to 13:20.
 16 [VIDEO IS SHOWN]
 17 CHAIRPERSON: 13:18 to 13:20 went past so
 18 fast I didn't see it. Perhaps we can have a look at it
 19 again.
 20 [VIDEO IS SHOWN]
 21 MR NTSEBEZA SC: There is the boot in the
 22 face of an injured person. Did you see that, Captain? Did
 23 you see that boot?
 24 CAPTAIN THUPE: That's correct, I saw it.
 25 MR NTSEBEZA SC: Yes. Now the point has

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1 already been made that they provide no medical assistance
 2 to the injured at scene 1, they treat them in what we'll
 3 argue is the brutal manner that I have described in the
 4 previous references and you know, simply they just stand
 5 around there –
 6 CHAIRPERSON: Sorry, before you – I don't
 7 want to interrupt you unduly but I just want to say that
 8 I'm not sure that we actually see the boot in contact with
 9 the face. It may be and if it isn't in contact with the
 10 face it's certainly very close to the face but I don't
 11 think one could put it higher than that. It doesn't
 12 detract from the main point you're making, of course, that
 13 people are standing around and not doing anything positive
 14 to assist the people who have been injured. That point
 15 appears clearly from the video.
 16 MR NTSEBEZA SC: Well, the witness has
 17 seen it differently, Mr Chairman, he has said he's seen
 18 that boot in the face like I have. Now, but Captain as a
 19 person who was there, we will argue that the most egregious
 20 manner in which the police just stood there and did nothing
 21 for the injured people, and I'm talking to you about, the
 22 person who gets moved by what he sees in photographs but
 23 you didn't seem to have been moved here, is the case of Mr
 24 Ntenetya. Mr Ntenetya is the man in that clip with an
 25 orange shirt and I'm sure you saw him in the clip. You can

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1 see that in the video he seems to be moving a lot, at one
 2 stage he sits up, shaking and obviously in great pain. He
 3 then collapses and the TRT people, your people, you
 4 Captain, simply stand and watch. You do nothing, you don't
 5 try to provide any basic first aid, trained or not. I
 6 would have done something and I've never had any basic
 7 training in first aid. You simply allow him to die, no
 8 dignity.
 9 CHAIRPERSON: What is your answer to what
 10 counsel is putting to you?
 11 MR NTSEBEZA SC: Do you want to see that
 12 clip being played where Mr Ntenetya –
 13 CAPTAIN THUPE: Yes, please.
 14 MR NTSEBEZA SC: If we have seen that
 15 picture we've seen it 100 times and I'm sure you've done so
 16 yourself but let's play it.
 17 CHAIRPERSON: I'm not sure if there's any
 18 basis for saying the witness has seen it 100 times but
 19 anyway let's play it again and look at it. Let's ask them
 20 to show it at decreased speed so that the witness can see
 21 it properly.
 22 MR NTSEBEZA SC: It seems to me, Mr
 23 Chairman, it would start at 14:02 to 14:09 and then from
 24 14:09 to 14:13 just to show the reaction of the unit in
 25 which the witness was.

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1 [VIDEO IS SHOWN]
 2 CHAIRPERSON: That's the picture. What
 3 counsel has put to you appears to be correct, does it not,
 4 that the mineworker concerned sits up, there we see him
 5 sitting up at 14:05 and eventually he falls, he moves
 6 around a bit and then falls over and puts his arm out. You
 7 see that?
 8 CAPTAIN THUPE: That's correct.
 9 MR NTSEBEZA SC: Do you want to comment?
 10 Or can I just say this before you respond, this happens at
 11 a time when you, it is clear from the clip, you have
 12 collected dangerous weapons, you have put them aside in the
 13 previous pictures, this man is being allowed by you to die
 14 without any effort on your part to either see if something
 15 can be done about him. He probably would have died anyway
 16 but there isn't anything in this clip that shows that you
 17 care and when a person is posing no death to you, I mean no
 18 threat to you, you do nothing and that's what we'll argue.
 19 CHAIRPERSON: What's your comment?
 20 What's your response to what counsel has put to you?
 21 CAPTAIN THUPE: As I had specified
 22 earlier, I said I did not undergo basic first aid training
 23 for me to be able to give assistance to an injured person.
 24 I was also afraid that I might aggravate the situation or
 25 the injuries.

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1 MR NTSEBEZA SC: Captain, some of us grew
 2 in semi-urban areas, some of us grew in rural areas and
 3 some of us didn't even have the privilege to have an
 4 education but our Constitution calls upon us to show basic
 5 ubuntu. A person who has any strand of any ubuntu would
 6 err on the side of doing something wrong in trying to save
 7 a person who is obviously injured, than just walking around
 8 when a person is in obvious pain and is dying. Do you
 9 contest that?
 10 MR MATHIBEDI SC: Sorry, Mr Chairman, I
 11 mean the witness has indicated that he does not have basic
 12 first aid training so –
 13 CHAIRPERSON: No, we've heard his answer
 14 but the question has been appropriately put to him and he
 15 can give his answer and if there's something you want to
 16 deal with in re-examination you'll be free to do so. What
 17 is your response to the point that counsel has put to you?
 18 Do you have a response?
 19 CAPTAIN THUPE: It is difficult for me to
 20 answer the question as I have no knowledge of assisting an
 21 injured person. If I had undergone basic first aid
 22 training I would have given assistance.
 23 MR NTSEBEZA SC: Captain, I won't explore
 24 this further, I'll just put this one last question. If you
 25 got to a scene, either a collision or a motor vehicle

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1 accident, I can almost bet a million dollars I don't have
 2 that you would sooner go and try and assist to get a person
 3 out of a car if the car is threatening to burn than sit
 4 around and say I never had any basic training. It's just
 5 the thing that human beings do. Do you disagree?
 6 CHAIRPERSON: What Mr Ntsebeza says,
 7 that's his last question, what's your answer to it?
 8 CAPTAIN THUPE: What is reported is that
 9 you are referring to two different things. If one assists
 10 a person who is injured inside a vehicle and you then take
 11 that person out of the vehicle, it does not mean that you
 12 are now treating that person. The important people like
 13 ambulance people are the ones, paramedics, who will come
 14 and give assistance to an injured person.
 15 MR NTSEBEZA SC: Captain, you have said
 16 what you want to say, I have put what I wanted to put to
 17 you. May I just ask, were there any other members in your
 18 TRT unit with first aid training? Are you saying under
 19 oath that none of those TRT members, I just want for the
 20 record, we want to interrogate that at some stage, is it
 21 your evidence under oath that there were no other TRT
 22 members there with first aid training, or even POPS?
 23 CAPTAIN THUPE: I am referring to the
 24 members who I work with, they did not undergo first aid
 25 training.

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1 MR NTSEBEZA SC: Are you saying that
 2 under oath as a fact or are you saying it is something that
 3 you think is the position?
 4 CAPTAIN THUPE: It's a fact.
 5 MR MATHIBEDI SC: Sorry, Mr Chairman,
 6 sorry Mr Chairperson, something has been omitted. The
 7 witness further said, and some that I know – sorry, and
 8 those that I know.
 9 MS MOSHWANA: My apologies.
 10 CHAIRPERSON: Yes, I see. So repeat the
 11 whole answer again so we've got it completely.
 12 CAPTAIN THUPE: The ones I work with, I
 13 know that they did not undergo first aid training.
 14 CHAIRPERSON: Anything you want to add?
 15 Do you know whether the other – I understand your unit, you
 16 knew the people who were in your unit. Now as far as the
 17 other TRT people who were there from other units, do you
 18 know whether any of them had received first aid training or
 19 do you not know?
 20 CAPTAIN THUPE: No, I don't know.
 21 MR NTSEBEZA SC: You see, just on
 22 privilege from the Chair, on the 13th, the video of the 13th
 23 or some of the – you will see that Loest is applying first
 24 aid to that police officer Monene, the gentleman who
 25 unfortunately died. You've seen that, isn't it, and Loest

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1 was in your unit and he was there on the day, both on the
2 13th and on the 16th.

3 CAPTAIN THUPE: Loest is not in my unit.

4 MR NTSEBEZA SC: Oh, come on. He's TRT,
5 he was there on the 13th. TRT was, he was there on the 13th
6 and I'll take you, there's footage showing him doing what
7 we would, as lay persons, recognise as a person trying to
8 apply first aid, trying to, you know, on his chest – have
9 you seen that footage?

10 CAPTAIN THUPE: No, I have not seen that
11 footage, could it be played?

12 CHAIRPERSON: We don't have to see it.
13 If you haven't seen it, the question is when you were on
14 the scene on the 13th of August after the shootings, did you
15 see Captain Loest who was in the helicopter at the time of
16 the shooting but the helicopter then landed, did you see
17 Captain Loest on the scene on the 13th applying rudimentary
18 first aid to Captain Monene? Was he a Captain? I can't
19 remember his rank but did you see that, you didn't see
20 that?

21 CAPTAIN THUPE: I didn't see.

22 CHAIRPERSON: So were you, did you have
23 any knowledge as to whether Captain Loest had any knowledge
24 of, experience of first aid?

25 CAPTAIN THUPE: No, I did not know if he

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1 has first aid knowledge.

2 MR NTSEBEZA SC: You see the point is, I
3 mean there is a statement which Captain Loest himself has
4 made where he says so, because the point I'm making,
5 whether he has or hasn't got training in first aid, human
6 beings with a good heart –

7 CHAIRPERSON: Mr Ntsebeza, I think you've
8 made this point several times. I've allowed you to make it
9 several times. It doesn't get any stronger if it's
10 repeated. It's either a strong point when it started,
11 which it may well be and you will certainly argue it is –

12 MR NTSEBEZA SC: Yes.

13 CHAIRPERSON: - it doesn't gain strength
14 by repetition. You're now dealing with another matter, his
15 knowledge as to whether any of the other TRT people who
16 were on the scene had experience of first aid which they
17 should have exercised and he says he doesn't know that.
18 You're suggesting he might have known about Loest, he says
19 he didn't know about Loest. I think that point has also
20 been taken as far as it can be taken.

21 MR NTSEBEZA SC: Yes.

22 CHAIRPERSON: Are there any other points
23 you want to put? I don't know how much more time you've
24 got.

25 MR NTSEBEZA SC: Then my cross-

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1 examination, Mr Chairman, has been taken as far as it can
2 go.

3 CHAIRPERSON: Your cross-examination has
4 been taken as far as it can. Well, thank you for your
5 cross-examination, we will now take the tea adjournment.

6 MR MPOFU: Chair – okay.

7 CHAIRPERSON: Mr Mpfu, you've turned
8 your light on. What do you want to say?

9 MR MPOFU: Yes. No, Chairperson, I
10 wanted to just make two quick enquiries. One is whether it
11 would be possible to direct SAPS, just given some of what
12 has happened now, to give us the identities of the TRT
13 members –

14 CHAIRPERSON: Well, I'm sure – yes, you
15 can ask that question but you don't have to ask us. You
16 can ask the question –

17 MR MPOFU: No, I'd like it to be a
18 directive to SAPS –

19 CHAIRPERSON: Well, you can ask Mr –

20 MR MPOFU: I can't give directives, as
21 you indicated –

22 CHAIRPERSON: You can ask Mr Mathibedi.
23 If you have a problem I'm – if you have a difficulty you
24 can raise it with me. So that's your first point. Address
25 the enquiry directly to the police and if you don't get a

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1 response tell me and I will then –

2 MR MPOFU: Make a ruling.

3 CHAIRPERSON: - deal with the matter.
4 That's the first one, second one?

5 MR MPOFU: The second one, Chair, was if
6 a party is not cross-examining, are they also prohibited
7 from questions arising from the Chair's questions?

8 CHAIRPERSON: That's a question which
9 will arise and be considered if the Chair asks questions at
10 the end. We will now take the tea adjournment.

11 [COMMISSION ADJOURNS COMMISSION RESUMES]

12 [12:02] CHAIRPERSON: The Commission resumes. Mr
13 Gotz, I understand I gave you an hour and a half. Is that
14 your understanding as well?

15 MR GOTZ: Yes indeed, Chair.

16 CHAIRPERSON: Five minutes before the –
17 if you use up the whole time, you don't have to but if you
18 use up the whole time, five minutes before you end Mr
19 Wesley will tell us so that you can pull all the strings
20 together.

21 MR GOTZ: Thank you, Chair.

22 SAMUEL KAY THUPE: (s.u.o.)

23 CROSS-EXAMINATION BY MR GOTZ: Good
24 morning, Captain Thupe. I'm sitting over here, can you see
25 me?

<p style="text-align: right;">Page 28150</p> <p>1 CAPTAIN THUPE: Oh, good morning, I can 2 see you. 3 MR GOTZ: Alright. My name is Anthony 4 Gotz. I'm going to be asking you some questions on behalf 5 of AMCU today. Chairperson, perhaps we can deal with the 6 housekeeping issues first. 7 CHAIRPERSON: Yes, certainly. 8 MR GOTZ: We've provided – 9 CHAIRPERSON: How many exhibits do you 10 want to mark? 11 MR GOTZ: Well, there are five new 12 exhibits, Chairperson, so – 13 CHAIRPERSON: The first one will be 14 RRR14. 15 MR GOTZ: Yes. 16 CHAIRPERSON: What will that be? 17 MR GOTZ: That's a short presentation 18 which on the cover reads "The lead group's movement past 19 the small kraal" – 20 CHAIRPERSON: Sorry, go slowly. 21 Presentation which is called "The lead group" – this is 22 this one, yes. I'll mark it now, RRR14, "Lead group's" – 23 you've been given copies of these documents I take it, 24 Captain, have you? So mark yours while we're going along 25 so it will be easier for you to follow. "Lead group's</p>	<p style="text-align: right;">Page 28152</p> <p>1 MR GOTZ: So the zoom in video would be 2 RRR16. 3 CHAIRPERSON: Yes? 4 MR GOTZ: And then the next video would 5 be RRR17 which is a – 6 CHAIRPERSON: What's that, another video? 7 MR GOTZ: Yes, another video which we can 8 entitle "Join of Reuters footage." 9 CHAIRPERSON: Join? 10 MR GOTZ: "Join of Reuters footage." 11 CHAIRPERSON: Yes. 12 MR GOTZ: And Chair, finally, Lieutenant- 13 Colonel Mthimkulu – 14 CHAIRPERSON: Sorry 444, sorry, RRR18 – 15 MR GOTZ: Yes. 16 CHAIRPERSON: - will be a statement by? 17 MR GOTZ: Lieutenant-Colonel Mthimkulu 18 and that's spelt M-T-H-I-M-K-U-L-U. 19 CHAIRPERSON: Yes. 20 MR GOTZ: Chair, the – 21 CHAIRPERSON: I've been handed – 22 MR GOTZ: That was provided yesterday. 23 CHAIRPERSON: Sorry, I've been handed a 24 document called "Possible evidence of a shotgun and the 25 location of the shooter." What's that about?</p>
<p style="text-align: right;">Page 28151</p> <p>1 movements past small kraal," I think that's all we need. 2 Oh, we carry on, "and shout to TRT to form basic line." 3 That's RRR14. RRR15? 4 MR GOTZ: RRR15 is an equally short 5 presentation which we've entitled "One second before the 6 TRT volley." 7 CHAIRPERSON: RRR15, presentation "One 8 second before TRT volley." 9 MR GOTZ: Chair, there are then – 10 CHAIRPERSON: Then TRT – sorry, not TRT, 11 RRR. RRR16 is what? 12 MR GOTZ: RRR16 is a new video which we 13 can simply entitle "Zoom in of JJJ194.17." 14 CHAIRPERSON: Well, give that to me 15 slowly. Video called? 16 MR GOTZ: "Zoom in of JJJ194.17." 17 CHAIRPERSON: 194.17? 18 MR GOTZ: Yes. 19 CHAIRPERSON: Or point 70? 20 MR GOTZ: Indeed. 21 CHAIRPERSON: Point 17? 22 MR GOTZ: Yes. 23 CHAIRPERSON: Alright. 24 MR GOTZ: And then a second video – 25 CHAIRPERSON: That'll be RRR17, will it?</p>	<p style="text-align: right;">Page 28153</p> <p>1 MR GOTZ: Chair, that was a presentation 2 that the families were considering putting to Captain 3 Thupe. I think given the position that Captain Thupe had 4 in the basic line, I think the decision was taken that that 5 should be reserved for someone else so it's not something 6 that will be – 7 CHAIRPERSON: The last one is 8 "Consolidated statement of Dr Paulus Mthimkulu." 9 MR GOTZ: Yes, indeed. 10 CHAIRPERSON: That's RRR18. What is the 11 origin of these new videos, I'm asked to ask you? 12 MR GOTZ: Chair, perhaps it's best if I 13 explain it at the time in my cross-examination. 14 CHAIRPERSON: No, I think it's best if 15 you explain it to me now. 16 MR GOTZ: Well, the first video which is 17 the zoom in is simply taking JJJ194.17 and zooming in on 18 the top left-hand corner of the clip. So the source of the 19 new video is JJJ194.17. 20 CHAIRPERSON: So is it in fact material 21 we have already which has been joined up? It's not new 22 stuff. 23 MR GOTZ: It's not new stuff in the sense 24 of new source material, Chair, but it's a new video in the 25 sense that we've –</p>

<p style="text-align: right;">Page 28154</p> <p>1 CHAIRPERSON: Yes, no, I understand that 2 but you've taken existing clips that are before us. 3 MR GOTZ: Yes. 4 CHAIRPERSON: And joined them together. 5 MR GOTZ: Yes. 6 CHAIRPERSON: Because of what they show 7 and that's fine. 8 MR GOTZ: Yes. 9 CHAIRPERSON: Because before we started 10 hearing evidence we had a meeting with representatives of 11 the media and we received an undertaking that all material, 12 all video material they had, whether or not it had been 13 shown on television, will be made available to us. As time 14 has gone on it appeared that undertaking has not been 15 complied with by everybody and we have from time to time 16 come across video material which was not given to us in 17 terms of the undertaking that we were given and I'm not 18 sure that we've even reached the stage now where all the 19 material that exists has been put before us but that's a 20 matter that we are investigating, but you tell me that your 21 exhibit, in particular RRR17 does not fall into that 22 category. It's not new material that we should have got a 23 long time ago and didn't. It's material we did get, you've 24 just rearranged it, as it were, so that what you would 25 regard as the underlying value of it emerges, is that</p>	<p style="text-align: right;">Page 28156</p> <p>1 CHAIRPERSON: HHH15.1, paragraph 2. 2 MR GOTZ: So picking up from "three 3 suspicious men and searched them and on two of the three 4 men they were in possession of firearms (pistols) and each 5 firearm was loaded with ammunition and the other one was" I 6 think it should be "in possession of a knobkerrie." You 7 then say, "The suspects were taken to Marikana police 8 station for verification of firearm and it was detected 9 that the firearms were licensed." Do you see that? 10 CAPTAIN THUPE: Yes, I can see it. 11 MR GOTZ: Do you recall that incident? 12 CAPTAIN THUPE: That's correct. 13 MR GOTZ: Can we then just compare your 14 consolidated statement which is QQQ9 and look at paragraph 15 5.5? You see you repeat what you say in the second 16 paragraph, but at the end of paragraph 5.5 you say "The 17 suspects were taken to Marikana police station for 18 verification of the firearm." What you've deleted is the 19 words "It was detected that the firearms were licensed." 20 Can you see that? 21 CAPTAIN THUPE: Yes, I can see. 22 MR GOTZ: Is there any reason why you 23 thought it not necessary to say that the firearms were in 24 fact found to be licensed in your consolidated statement? 25 CAPTAIN THUPE: As I've already indicated</p>
<p style="text-align: right;">Page 28155</p> <p>1 correct? 2 MR GOTZ: Yes, and I'll explain that more 3 clearly when we see the footage, Chair, exactly how that's 4 been compiled. 5 CHAIRPERSON: Thank you. Alright, I 6 think Mr Wesley can now turn on the clock and you can 7 start. 8 MR GOTZ: Thank you, Chair. Captain 9 Thupe, can I ask you to have a look at exhibit HHH15.1 10 which was your statement regarding the 13th of August 2012 11 and in particular to look at what you say in the second 12 paragraph of that statement? Do you see there that you say 13 on your way to the illegal gathering the SAPS stopped three 14 suspicious men and searched them – 15 CHAIRPERSON: Sorry, are you – 16 MR GOTZ: Yes. 17 CHAIRPERSON: Are you doing it in your 18 own words? 19 MR GOTZ: Well – 20 CHAIRPERSON: Quote, "On our way to the 21 illegal gathering we stopped" – 22 MR GOTZ: Yes. 23 CHAIRPERSON: That's the one you're 24 referring to. 25 MR GOTZ: So –</p>	<p style="text-align: right;">Page 28157</p> <p>1 in my statement of the 12th of December. 2 CHAIRPERSON: Those suspects whom you 3 took to the police station – I'm not sure if you took them 4 but who were taken to the police station, in respect of 5 whom it was discovered that their firearms were indeed 6 licensed, did they come back to the scene? 7 CAPTAIN THUPE: I don't know really – 8 CHAIRPERSON: It's not suggested, I take 9 it, that those firearms were used in what happened on the 10 field? 11 CAPTAIN THUPE: No. 12 CHAIRPERSON: Because we know the weapons 13 that were used by the strikers appear to have been pangas, 14 no policemen were shot dead or shot, that's correct isn't 15 it? 16 CAPTAIN THUPE: That's correct. 17 CHAIRPERSON: So that there's no 18 relevance, as far as we are concerned, as to what happened 19 to those licensed firearms after it was verified that they 20 were indeed licensed and that the possessors were entitled 21 to possess them, is that correct? 22 CAPTAIN THUPE: That's correct. 23 CHAIRPERSON: Ja. 24 COMMISSIONER HEMRAJ: Captain, did you go 25 with the suspects to the police station to verify the</p>

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1 firearms or was that tasked to somebody else?
 2 CAPTAIN THUPE: It was not me,
 3 Chairperson. I didn't go with them.
 4 MR GOTZ: But Captain Thupe, the suspects
 5 did in fact show you their licences at the scene, did they
 6 not?
 7 CHAIRPERSON: You'll forgive me but what
 8 is the relevance of this line of cross-examination? Is
 9 this not something that's not causally connected to what
 10 happened? We've known about this for a long time, it was
 11 mentioned in statements we saw long ago, shortly after the
 12 Commission began. It turned out to be a dwaalspoor. They
 13 found people in possession of firearms, they were
 14 suspicio8us, they took them off to the police station and
 15 it turned out that they were the licensed owners of the
 16 firearms but if they weren't used on the scene, it's not
 17 even clear that those people went back to the scene, how is
 18 it going to help us?
 19 MR GOTZ: Chair, I'm –
 20 CHAIRPERSON: Isn't it just a waste of
 21 time on an inconsequential issue?
 22 MR GOTZ: Well, Chair, I would like to
 23 play a short clip which is from Z1 which I think will
 24 reveal the significance of it. It picks up on a theme
 25 which is relevant in this Commission. Can we play exhibit

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1 Z1 from 8 minutes and 40 seconds?
 2 [VIDEO IS SHOWN]
 3 MR GOTZ: Sorry, we can stop the video
 4 there.
 5 CHAIRPERSON: We're going to have to put
 6 on record what exactly on this clip we saw so that the
 7 people who follow in our footsteps in years to come won't
 8 have to trawl through the whole of this video just to see
 9 the bit we saw –
 10 MR GOTZ: Captain Thupe –
 11 CHAIRPERSON: - when they read it as part
 12 of the record.
 13 MR GOTZ: Captain Thupe, can you confirm
 14 that this was the –
 15 CHAIRPERSON: First put on record what we
 16 see. It ends at 9:08 but where did you start?
 17 MR GOTZ: Well, we started at 8:40 –
 18 CHAIRPERSON: Okay, thank you.
 19 MR GOTZ: - and the relevant section
 20 started at 8:45.
 21 CHAIRPERSON: Alright, okay, thank you.
 22 Now you can put the question to the witness.
 23 MR GOTZ: So from 8:45 what we see is,
 24 what I'm putting to you is we see two suspects, the two
 25 suspects that you see on screen at the moment having been

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1 arrested and if you listen to the audio it appears that
 2 they are being arrested because of firearms in their
 3 possession. Did you see that, Captain Thupe?
 4 CAPTAIN THUPE: It is so, yes.
 5 MR GOTZ: This was the arrest of the two
 6 suspects, correct?
 7 CAPTAIN THUPE: Yes.
 8 MR GOTZ: Did you see members of the SAPS
 9 trampling on the heads of one of the suspects, Captain
 10 Thupe?
 11 CAPTAIN THUPE: I saw that on video.
 12 MR GOTZ: Was it necessary to trample on
 13 the heads of the suspects, Captain Thupe?
 14 CAPTAIN THUPE: No.
 15 CHAIRPERSON: Let me ask you, is this
 16 going to feature in our report at the end of the evidence?
 17 Is it a matter which is covered by our terms of reference?
 18 I can understand your argument that unnecessary violence
 19 was used, I can understand the argument that that's not the
 20 way people should be treated, suspects should be treated.
 21 It's a matter which should actually be dealt with by the
 22 police and possibly you can arrange for the necessary
 23 information to be conveyed to the police if the Captain
 24 doesn't undertake to do it himself, but if it's not going
 25 to feature in our report at the end of the day, it's not

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1 covered by our terms of reference, you're wasting the time
 2 that we allocated to you.
 3 MR GOTZ: I can move on, Chairperson.
 4 Captain Thupe, can we move on to the issue of the order
 5 that you heard General Mpembe give on the 13th? At the time
 6 of the events of Marikana you were the head of the TRT in
 7 Rustenburg, correct?
 8 CAPTAIN THUPE: It is true.
 9 MR GOTZ: And at the time of the events
 10 in Marikana, General Mpembe –
 11 MR MPOFU: Chair, I'm sorry Mr Gotz,
 12 Chairperson I just, in relation to the previous issue I
 13 just want for my own clarity, whether the suggestion is
 14 that evidence of police or related police brutality is not
 15 a relevant issue in this Commission and placing of boots on
 16 people's heads - we have made an issue.
 17 CHAIRPERSON: This is an exhibit which is
 18 already before us, it speaks for itself.
 19 MR GOTZ: Yes Chair, we will make
 20 arguments in relation to that issue. I don't think I need
 21 to take the point further. General Mpembe was the deputy
 22 Provincial Commissioner of the North-West Province,
 23 correct?
 24 CHAIRPERSON: A deputy commissioner.
 25 MR GOTZ: A deputy commissioner.

<p style="text-align: right;">Page 28162</p> <p>1 CAPTAIN THUPE: Yes, it is so.</p> <p>2 MR GOTZ: So General Mpembe was your</p> <p>3 superior, correct?</p> <p>4 CAPTAIN THUPE: Correct.</p> <p>5 MR GOTZ: Did you report to General</p> <p>6 Mpembe? Did you report to General Mpembe?</p> <p>7 CAPTAIN THUPE: Report in which sense?</p> <p>8 CHAIRPERSON: As one of the deputy</p> <p>9 commissioners, he had a number of officers who were</p> <p>10 reporting to him. He was the person to whom they reported.</p> <p>11 Now was he the deputy commissioner to whom you reported on</p> <p>12 your work or did you report to another deputy commissioner?</p> <p>13 CAPTAIN THUPE: No, he is the one I'm</p> <p>14 reporting to.</p> <p>15 MR GOTZ: Now you have stated that you</p> <p>16 heard General Mpembe give Warrant Officer Kuhn an</p> <p>17 instruction to fire teargas on the 13th of August and you in</p> <p>18 fact confronted General Mpembe with this allegation at</p> <p>19 Roots, correct?</p> <p>20 CAPTAIN THUPE: Correct.</p> <p>21 MR GOTZ: Before making such an</p> <p>22 allegation against a superior officer to whom you reported,</p> <p>23 you would have had to have been satisfied that the</p> <p>24 allegation was correct, is that not so?</p> <p>25 CAPTAIN THUPE: It's correct.</p>	<p style="text-align: right;">Page 28164</p> <p>1 CAPTAIN THUPE: That's correct.</p> <p>2 MR GOTZ: The strikers moved quite close</p> <p>3 to the edge of the kraal, did they not? They moved around</p> <p>4 the kraal quite close to where the kraal is, correct?</p> <p>5 CAPTAIN THUPE: That's correct.</p> <p>6 MR GOTZ: And we see that from the screen</p> <p>7 shot which appears on page 3 of the presentation where,</p> <p>8 between the Nyala and its wire cage, you see the strikers</p> <p>9 just over the edge of the small kraal. Do you see that,</p> <p>10 Captain Thupe?</p> <p>11 CAPTAIN THUPE: Yes, I can see that.</p> <p>12 MR GOTZ: Now it's at this moment, at</p> <p>13 15:52:32 that we hear the call from the TRT to form the</p> <p>14 basic line for the first time and perhaps we can play</p> <p>15 exhibit JJJ194.16 at this point in time which is at 19</p> <p>16 seconds. Perhaps we can take it from a little bit earlier</p> <p>17 at about 15 seconds.</p> <p>18 COMMISSIONER HEMRAJ: While that is being</p> <p>19 put up on the screen, Captain, those two slides that Mr</p> <p>20 Gotz showed to you, those views, were they visible to you</p> <p>21 from where you were before you got into the basic line?</p> <p>22 CAPTAIN THUPE: No, it was not clearly</p> <p>23 visible but I can see it in the picture.</p> <p>24 COMMISSIONER HEMRAJ: You can see it on</p> <p>25 the video?</p>
<p style="text-align: right;">Page 28163</p> <p>1 MR GOTZ: Because making such an</p> <p>2 allegation against a superior officer might have serious</p> <p>3 consequences for you, correct?</p> <p>4 CAPTAIN THUPE: Correct.</p> <p>5 MR GOTZ: You would have no reason to</p> <p>6 fabricate the allegation like this, an allegation of the</p> <p>7 sort that you made against General Mpembe at Roots, would</p> <p>8 you?</p> <p>9 CAPTAIN THUPE: No.</p> <p>10 MR GOTZ: And in fact you did, you were</p> <p>11 in fact satisfied that the allegation was correct, in fact,</p> <p>12 that you heard General Mpembe give Warrant Officer Kuhn an</p> <p>13 instruction to fire teargas on the 13th of August, correct?</p> <p>14 CAPTAIN THUPE: Correct.</p> <p>15 [12:22] MR GOTZ: Can we then move to the events</p> <p>16 of the 16th of August and Chair, perhaps to facilitate</p> <p>17 matters, to turn to the presentation that we've given the</p> <p>18 exhibit number RRR14. Can we start, Captain Thupe, by</p> <p>19 looking at the first two slides, the slides numbered 2 and</p> <p>20 3 in the bottom right-hand corner? Captain Thupe, at</p> <p>21 15:52:29 what we see is from the video material, the</p> <p>22 strikers moved from the position where they were, having</p> <p>23 been cut off by Nyala 4 and you've testified to that, they</p> <p>24 moved around the kraal. Did you see that happening,</p> <p>25 Captain Thupe?</p>	<p style="text-align: right;">Page 28165</p> <p>1 CAPTAIN THUPE: That's right.</p> <p>2 COMMISSIONER HEMRAJ: And on the slides</p> <p>3 that were shown to you?</p> <p>4 CAPTAIN THUPE: That's correct.</p> <p>5 MR GOTZ: Well, Captain Thupe, I'm going</p> <p>6 to show you the video and I am going to ask you whether or</p> <p>7 not you could see what we see, so if we can start from</p> <p>8 around 15 seconds into this clip. And can we play this</p> <p>9 with sound? I beg your pardon to the video operator, I</p> <p>10 think it would be useful if we play this with sound.</p> <p>11 [VIDEO IS SHOWN]</p> <p>12 MR GOTZ: Captain Thupe, what we've done</p> <p>13 is we've taken the two screen shots –</p> <p>14 CHAIRPERSON: You've stopped at 23</p> <p>15 seconds into the clip.</p> <p>16 MR GOTZ: 23 seconds into the clip. Did</p> <p>17 you hear, during that short clip that we played you, the</p> <p>18 shouts to call or shouts or calls for the TRT to form the</p> <p>19 basic line?</p> <p>20 CAPTAIN THUPE: Ja, I could hear it.</p> <p>21 MR GOTZ: And what I wanted to point out</p> <p>22 to you was that it is the first time that we have a record</p> <p>23 of in which the TRT is asked to form a basic line, which</p> <p>24 will be at 15:52:32, which is exhibit JJJ194.16 at 19</p> <p>25 seconds. Now Captain Thupe, that is a full one minute and</p>

<p style="text-align: right;">Page 28166</p> <p>1 18 seconds before the TRT comes into confrontation with the 2 strikers at 15:53:50. Does that accord with your 3 recollection of events? 4 CAPTAIN THUPE: Could you please repeat 5 the question for me to understand correctly? 6 MR GOTZ: The TRT was asked or called 7 upon to form a basic line, a full one minute and 18 seconds 8 before the TRT opened fire or opened fire on the 9 protesters. 10 CHAIRPERSON: What's the question? 11 MR GOTZ: I asked him whether that 12 accords with his recollection of events. 13 CAPTAIN THUPE: I didn't calculate the 14 time so I can't say that. 15 CHAIRPERSON: You see, it's a matter of 16 arithmetic. If one sees and one hears this shout "Form 17 basic line" on the clip we're just looking at and if it's 18 clear that that clip is taken, relates, the particular 19 moment when the shout is heard is 15:52:32, we know from 20 other evidence that the actual volley is heard commencing 21 at 15:53:50. So one simply subtracts 15:52:32 from 22 15:53:50 and you get one minute and 18 seconds. Now 23 obviously you weren't looking at a stopwatch at the time 24 these things were happening but what Mr Gotz is trying to 25 ascertain from you is, is it your impression it was just</p>	<p style="text-align: right;">Page 28168</p> <p>1 recollection. You were in that line of TRT people walking 2 towards the road. Do you recall hearing over the 3 loudhailer the media being told to go away? Do you 4 remember that? 5 CAPTAIN THUPE: I only hear it now in the 6 video – 7 MR GOTZ: You don't remember it, you 8 don't remember it from the day. Do you accept that the 9 media was told to go away? 10 CAPTAIN THUPE: That's what I'm saying, 11 that I didn't recall for the media to be told to go away. 12 I only hear it now in the video that go away, go away, but 13 I don't know whether it was referred to the media or not. 14 CHAIRPERSON: Mr Gotz, your question is 15 really ambiguous, you know. It's one thing to ask him do 16 you accept now, sitting there at the witness table, that 17 the media were told to go away, which I don't think is 18 really what you want. The other interpretation of it is do 19 you accept and did you always accept that the media were 20 told to go away just before the volley was fired. I take 21 it that's what you really want to ask him, am I right? 22 MR GOTZ: Yes. 23 CHAIRPERSON: Were you aware of the fact 24 that either just when it happened or just after it 25 happened, that the media had been told to go away just</p>
<p style="text-align: right;">Page 28167</p> <p>1 about a minute, just over a minute between the instruction 2 that the basic line be formed and the beginning of the 3 volley. That's your question, Mr Gotz? 4 MR GOTZ: Indeed. 5 CHAIRPERSON: What's your answer to that? 6 Was that your impression? Was the time lapse of that 7 order? 8 CAPTAIN THUPE: It could be. 9 MR GOTZ: What is also apparent from this 10 clip and we can play it now again with the sound on, is 11 that at this point in time the media is being told to go 12 away and let's play the clip from this point and listen to 13 what can be heard in the background. 14 [VIDEO IS SHOWN] 15 MR GOTZ: Do you hear over the loudhailer 16 – 17 CHAIRPERSON: It's 034 – 18 MR GOTZ: Did you hear over the 19 loudhailer, Captain Thupe, that the media is being told to 20 go away, go away, go away, several times? Did you hear 21 that? 22 CAPTAIN THUPE: I heard go away, go away, 23 but I don't know whether it was referred to the media or 24 not. 25 MR GOTZ: Well, let's ask you about your</p>	<p style="text-align: right;">Page 28169</p> <p>1 before the volley was fired? 2 CAPTAIN THUPE: No, I was not aware. 3 MR GOTZ: I want to put to you – 4 CHAIRPERSON: Before you carry on, did 5 you know that members of the media were in the vicinity at 6 the time? You were part of that group who were forming 7 that basic line, weren't you? 8 CAPTAIN THUPE: That's correct. 9 CHAIRPERSON: And did you know that – 10 this was in the vicinity of the small kraal – did you know 11 that there were members of the media in the vicinity as 12 well? 13 CAPTAIN THUPE: Yes, I saw them. 14 CHAIRPERSON: And was it appropriate, 15 inter alia for the safety of the members of the media that 16 they should be there at that particular stage? 17 CAPTAIN THUPE: No, for their safety, no, 18 they are supposed not to be there. 19 MR GOTZ: What we also see from this clip 20 and we can see it on the clip on screen is that at this 21 point in time, several members of the TRT draw and cock 22 their weapons, Captain Thupe. Do you agree with that? 23 CAPTAIN THUPE: Yes, I agree. 24 MR GOTZ: So at this point in time three 25 things of significance, we would say, happened. The TRT is</p>

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1 told to form a basic line at this point of the road.
 2 Secondly, the media is told to go away, go away and
 3 thirdly, the TRT can be seen drawing their weapons, lifting
 4 their weapons and cocking their guns. Would you agree with
 5 that as a summary?
 6 CAPTAIN THUPE: They are not lifting
 7 their weapons, they are still pointing on the ground.
 8 MS MASHWANA: What I see is their weapons
 9 are not lifted up. Their weapons are pointing to the
 10 ground.
 11 MR GOTZ: Nevertheless, there are still a
 12 number of people who have, for instance, pistols in their
 13 holsters that can be seen taking their pistols out of their
 14 holsters. Do you want us to play the clip again, Captain
 15 Thupe? We can do that and we can see that they are cocking
 16 their guns.
 17 CHAIRPERSON: In your notes that you've
 18 given us, at eTV time 15:52:40 the media is ordered to go
 19 away and the TRT members can be seen cocking their guns.
 20 MR GOTZ: Yes.
 21 CHAIRPERSON: So that's the particular
 22 point of the video we must concentrate on.
 23 MR GOTZ: Yes. So if we can move back,
 24 if I can just give the video operator the relevant time,
 25 just hold on for a second. It'll be JJJ194.16 at 25

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1 seconds –
 2 CHAIRPERSON: It'll be 27 seconds, I
 3 think.
 4 MR GOTZ: 27.
 5 CHAIRPERSON: The time, the call for a
 6 basic line to be formed according to your notes is 19
 7 seconds.
 8 MR GOTZ: Yes.
 9 CHAIRPERSON: And eight seconds later you
 10 say –
 11 MR GOTZ: Indeed.
 12 CHAIRPERSON: - the media is ordered to
 13 go away and the TRT members can be seen cocking their guns.
 14 So that would be –
 15 MR GOTZ: So it'll be 27 seconds.
 16 CHAIRPERSON: That'll be 27 seconds, but
 17 anyway let's see which of us is right. Let's take it from
 18 34 seconds.
 19 MR GOTZ: Okay, if we can play it from
 20 that point.
 21 [VIDEO IS SHOWN]
 22 MR GOTZ: Stop the video at that point.
 23 CHAIRPERSON: I must confess I didn't see
 24 anybody cocking his firearm there or taking them out of
 25 their holsters either. The pistols had obviously been

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1 taken out of the holsters before this. All the firearms,
 2 all the rifles I could see seemed to be pointing in the
 3 direction of the ground. I didn't see any cocking but I'm
 4 not saying it's not there, I'm just telling you that I
 5 didn't see it.
 6 MR GOTZ: Well, we can –
 7 CHAIRPERSON: Perhaps you can – let's
 8 look at it carefully. There's a media person I see at the
 9 back there, in fact two of them.
 10 MR GOTZ: Certainly the person, if we can
 11 stop it there, there are three police officers to the left
 12 of the screen. The third one from the left certainly
 13 appears to be taking his weapon out and cocking it and at
 14 this point in time the person on the far right of the
 15 screen appears to be taking his weapon out of his holster.
 16 CHAIRPERSON: That's correct.
 17 MR GOTZ: On the far right. Now Captain
 18 Thupe, what I want to put to you is that the TRT must have
 19 known at that point in time that there would be a
 20 confrontation, correct?
 21 CAPTAIN THUPE: That's correct.
 22 MR GOTZ: Can we look further on in this
 23 video at – can we take it forward to one minute?
 24 COMMISSIONER HEMRAJ: Captain, what does
 25 the command "basic line" mean to you in the TRT?

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1 CAPTAIN THUPE: It's to form a line.
 2 COMMISSIONER HEMRAJ: Literally just to
 3 form a line?
 4 CAPTAIN THUPE: That's correct.
 5 CHAIRPERSON: In what circumstances does
 6 it normally happen? In what circumstances is that order
 7 normally given?
 8 CAPTAIN THUPE: To block the people to go
 9 through. To form a line to prevent people to pass.
 10 CHAIRPERSON: I see, thank you.
 11 MR GOTZ: Now for the benefit of the
 12 record, if we are at one minute,
 13 I'm sorry, my eyes are a bit –
 14 CHAIRPERSON: One minute, we're at one
 15 minute.
 16 MR GOTZ: One minute -
 17 CHAIRPERSON: I'm closer to the screen
 18 here that you are, I'll help you out, we're at one minute.
 19 MR GOTZ: - as a slight smudge in the
 20 bottom left-hand corner, that would be 15:53:13 on eTV time
 21 and what we see in this video is the strikers appear to be
 22 moving relatively slowly towards the small kraal. So if we
 23 can play it from this point.
 24 CHAIRPERSON: Towards the small kraal or
 25 past the small kraal?

<p style="text-align: right;">Page 28174</p> <p>1 MR GOTZ: I would say towards the small 2 kraal or towards the edge, the northern edge of the small 3 kraal I think is probably the best way to describe it, 4 Chair, if we can play it and ask for – 5 CHAIRPERSON: The reason I say that is, 6 as far as I understand it they're coming down a corridor or 7 a passage between the small kraal on the one side and what 8 amounts to a wire fence on the other and there are also 9 some Nyalas lining up at one side. They're coming down 10 this corridor with the small kraal on their right-hand 11 side, is that correct? 12 MR GOTZ: Yes, if we can play it from 13 this clip, one minute. 14 [VIDEO IS SHOWN] 15 MR GOTZ: We can stop it there. 16 CHAIRPERSON: You've stopped it at one 17 minute six seconds. 18 MR GOTZ: Would you agree with me, 19 Captain Thupe, that at this point in time the strikers are 20 moving slowly towards the camera? 21 CAPTAIN THUPE: Towards Nkaneng. 22 MR GOTZ: I beg your pardon? Well, 23 they're moving slowly towards the camera which is towards 24 the small kraal. 25 CAPTAIN THUPE: I can –</p>	<p style="text-align: right;">Page 28176</p> <p>1 MR GOTZ: They're not storming towards 2 the police, are they? 3 CHAIRPERSON: He said they're walking 4 slowly. 5 MR GOTZ: I understand – 6 CHAIRPERSON: You've got the answer you 7 want already. 8 MR GOTZ: - my question, but if the 9 Commission considers it to be. The strikers are not 10 attacking the members of the SAPS, are they, at this point? 11 CAPTAIN THUPE: From this video, no. 12 [12:42] MR GOTZ: Can we look then at exhibit 13 JJJ194.17 and if we can just take it back to the start of 14 the clip. At this point in time the relevant eTV time is 15 15:53:36 and just to orientate you, Captain Thupe, what 16 that translates into is the TRT will open fire in 14 17 seconds. So 14 seconds from now the TRT will open fire. 18 If we can take it back to the beginning of the – 19 CHAIRPERSON: What we see actually is a 20 gap between two Nyalas which were along the side of that 21 passage I referred to, on the left-hand side of the 22 strikers as they came forward, on the opposite side of the 23 passage from the small kraal and we can see the gap between 24 the two Nyalas there and in the gap we can see the 25 advancing strikers. I'm not sure if it is the front row, I</p>
<p style="text-align: right;">Page 28175</p> <p>1 CHAIRPERSON: Towards the cameraman, in 2 fact some of them are women too. I'm not sure if this 3 picture was taken by a cameraman or a camerawoman but a 4 camera person was standing with the camera and the strikers 5 were approaching and what counsel puts to you is they were 6 walking slowly. 7 CAPTAIN THUPE: They were walking slowly 8 but I don't see the cameraman so I don't know where the – 9 CHAIRPERSON: No, the cameraman is taking 10 the picture that we can see. The cameraman is actually, we 11 are looking over the shoulder, as it were, of the cameraman 12 at the picture the cameraman took, cameraman or woman took, 13 person. 14 CAPTAIN THUPE: That's correct. 15 MR GOTZ: The important point is that 16 they're walking slowly, correct? 17 CHAIRPERSON: He agrees with that, they 18 were walking slowly, weren't they? 19 MR GOTZ: They're certainly not storming 20 towards the police, Captain Thupe, are they? 21 CAPTAIN THUPE: Here they are walking 22 slowly. 23 CHAIRPERSON: I didn't hear the answer? 24 Here they're walking slowly, yes. 25 CAPTAIN THUPE: That's correct.</p>	<p style="text-align: right;">Page 28177</p> <p>1 think it is but certainly the nearest one to the camera in 2 the front row has got a green blanket. 3 MR GOTZ: Yes and that appears to be Mr 4 Noki. Now eTV time 15:53:36 is approximately nine seconds 5 after the end of the last clip that we saw. So we can 6 conclude, can we not, Captain Thupe, that they have moved, 7 continued to move relatively slowly – 8 CHAIRPERSON: Let's turn the clip on and 9 see them moving. 10 MR GOTZ: We can stop it there. They've 11 continued to move relatively slowly, is that not – 12 CHAIRPERSON: Well, they seem to me to be 13 moving substantially faster than they were a few seconds 14 before on the earlier clip we saw. 15 MR GOTZ: If we can just take it back to 16 the beginning of the clip and play that again? Now what 17 you'll see is that at a particular point in time the 18 striker that you see in brown fires a shot. Do you see 19 that, Captain Thupe? 20 CAPTAIN THUPE: Yes, I saw it. 21 MR GOTZ: What I want you to consider is 22 until that point in time the strikers do not appear to be 23 running, moving particularly quickly, they're moving 24 relatively slowly, correct? 25 CAPTAIN THUPE: No, the pace before is</p>

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1 not the pace as is now. The pace now is faster than the
 2 one you showed before.
 3 MR GOTZ: Sorry, I didn't hear your
 4 answer, Captain Thupe, I apologise.
 5 CAPTAIN THUPE: I said no, the pace they
 6 are moving at now is more faster than the pace you showed
 7 it in the previous one.
 8 MR GOTZ: I'm not saying that it's the
 9 same pace, I'm saying that they're moving, they're not
 10 moving particularly quickly. They've continued to move
 11 relatively slowly until the striker fires, fires the
 12 weapon. Would you agree with that?
 13 CAPTAIN THUPE: Are you referring to the
 14 shot that was fired by the striker or –
 15 CHAIRPERSON: What counsel says is that
 16 in this clip we can see one striker firing a shot with a
 17 pistol and he says that until that time, the strikers were
 18 moving relatively slowly. He doesn't suggest they were
 19 travelling, were moving as slowly as they were in the
 20 previous clip but he says they were still moving relatively
 21 slowly and he says they only picked up speed after that, if
 22 I understand his question correctly. Is that right, Mr
 23 Gotz?
 24 MR GOTZ: Yes, that's in fact correct.
 25 CHAIRPERSON: Do you understand the

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1 question now?
 2 CAPTAIN THUPE: Now I understand.
 3 CHAIRPERSON: Alright, okay. So what's
 4 your answer?
 5 CAPTAIN THUPE: That's correct.
 6 MR GOTZ: Now what I would like to do is
 7 just to focus on that point at which the striker does fire
 8 the shot and perhaps we can play that section again but
 9 with sound. In fact, assist us, if we can play it say at
 10 half or slightly slower, with sound.
 11 [VIDEO IS SHOWN]
 12 CHAIRPERSON: What time do you say the
 13 shot is heard?
 14 MR GOTZ: Chair, my record is at 0:04,
 15 four seconds into the –
 16 CHAIRPERSON: Four seconds into the clip
 17 but what's that translated into eTV time?
 18 MR GOTZ: That would be at 10 seconds
 19 before the TRT opened fire, so 15:53:40.
 20 CHAIRPERSON: Okay, so 40 seconds before
 21 the volley?
 22 MR GOTZ: 10 seconds before –
 23 CHAIRPERSON: Sorry, I beg your pardon.
 24 40, it's 15:53:40.
 25 MR GOTZ: Yes.

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1 CHAIRPERSON: eTV time and that's 10
 2 seconds before the volley.
 3 MR GOTZ: Seconds before the volley.
 4 CHAIRPERSON: Thank you.
 5 MR GOTZ: Now Captain Thupe, you will
 6 agree with me that what you see on the video is that the
 7 striker only fires a single shot, correct? Would you like
 8 to see that again?
 9 CAPTAIN THUPE: If possible, yes.
 10 MR GOTZ: Okay, if we can play it again.
 11 CHAIRPERSON: He says it's possible.
 12 MR GOTZ: But he also asks for it to be
 13 play again, Chair, and I think –
 14 [VIDEO IS SHOWN]
 15 MR GOTZ: Would you agree that the
 16 striker –
 17 CHAIRPERSON: I must confess unless it
 18 was a stun grenade, I thought it was two shots.
 19 MR GOTZ: What I'm putting to the
 20 witness, Chairperson, our impression is that the striker
 21 only fires a single shot. He –
 22 CHAIRPERSON: The striker may fire a
 23 single shot but it sounded to me like two shots, unless I
 24 heard incorrectly.
 25 MR GOTZ: That is correct, Chair, one

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1 hears two shots but the striker only fires one of them, is
 2 that correct, Captain Thupe?
 3 CAPTAIN THUPE: I wouldn't say it's
 4 correct because from this video, immediately the first shot
 5 went then there was two sounds of a shot.
 6 MR GOTZ: Yes. One can hear –
 7 CHAIRPERSON: - how the shots work, if
 8 you – have you ever fired a pistol like that? Have you?
 9 CAPTAIN THUPE: That's correct.
 10 CHAIRPERSON: You have. Now if you fire
 11 two shots one after another, would there be the same time
 12 distance between, lapse of time between the two shots we
 13 heard on the soundtrack or would the time difference be
 14 slightly bigger, slightly greater?
 15 CAPTAIN THUPE: It will be the same as
 16 that sound of –
 17 MR GOTZ: Let's play the video again and
 18 we will argue that the striker can be seen only to have
 19 fired one shot. One does hear the sound of another shot,
 20 Captain Thupe, but I'm going to be putting to you in a
 21 moment that there are other explanations for that. I just
 22 want you to focus on what we see visually at this point in
 23 time and if we focus carefully on the striker, we'll play
 24 it at a reduced speed, look where the striker aims, fires
 25 and what you see.

<p style="text-align: right;">Page 28182</p> <p>1 [VIDEO IS SHOWN]</p> <p>2 MR GOTZ: Captain, you would agree with</p> <p>3 me that the striker only fires a single shot –</p> <p>4 CHAIRPERSON: Can we look at that again,</p> <p>5 please? I'm sorry, can we go back a little bit and see</p> <p>6 him, as you say, firing only one shot?</p> <p>7 [VIDEO IS SHOWN]</p> <p>8 CHAIRPERSON: Why do you say he fires one</p> <p>9 shot? Was he not obscured to some extent by the bush at</p> <p>10 the time the two shots were fired? I don't know, I'm just</p> <p>11 asking. I know – Mr Gotz, you're putting things as facts –</p> <p>12 you say we can see, so I'm interested to know whether we</p> <p>13 can indeed see them. I'm not saying you're wrong, it's</p> <p>14 just not clear to me that you are right.</p> <p>15 MR GOTZ: Chair, you know, it's a</p> <p>16 difficult question to answer. It's certainly what I see in</p> <p>17 the video, having looked at it. The only other</p> <p>18 possibility, Chair, is we can have this professionally</p> <p>19 analysed and –</p> <p>20 CHAIRPERSON: That may be a possibility.</p> <p>21 I mean – anyway, the video is objective evidence and what</p> <p>22 it shows us is what it shows us but let's ask the witness</p> <p>23 because he's the only one who is sworn in to give evidence</p> <p>24 at the moment.</p> <p>25 MR GOTZ: Yes.</p>	<p style="text-align: right;">Page 28184</p> <p>1 the second shot would have been the one that one could see</p> <p>2 him firing when the pistol was raised. Is that an accurate</p> <p>3 summary of what you said?</p> <p>4 CAPTAIN THUPE: That's correct.</p> <p>5 MR GOTZ: Captain Thupe, can I just be</p> <p>6 clear on what you saw on that day. Did you see this</p> <p>7 incident?</p> <p>8 CAPTAIN THUPE: No.</p> <p>9 MR GOTZ: The TRT opens fire some 10</p> <p>10 seconds after the second shot is heard. Would you agree</p> <p>11 with me that the TRT does not react to this shot?</p> <p>12 CAPTAIN THUPE: I heard two shots and the</p> <p>13 TRT line, the TRT line retreated back to identify actually</p> <p>14 – by so doing they wanted to identify the person who was</p> <p>15 shooting from the group but we could not identify the</p> <p>16 shooter because immediately the people ran towards us.</p> <p>17 MR GOTZ: Captain Thupe, I'm putting to</p> <p>18 you a simple proposition. The TRT does not open fire on</p> <p>19 the strikers in response to this shot, correct?</p> <p>20 CAPTAIN THUPE: That's correct. It is</p> <p>21 correct, as I have explained.</p> <p>22 CHAIRPERSON: Sorry, can I ask a question</p> <p>23 about it? It seems to me that your paragraph 26 is a bit</p> <p>24 confused in exhibit QOQ9. Let me say why. There's</p> <p>25 reference to Warrant Officer Kuhn being the last POP member</p>
<p style="text-align: right;">Page 28183</p> <p>1 CHAIRPERSON: Captain, what Mr Gotz has</p> <p>2 put to you is that we can see on the video, we can hear two</p> <p>3 shots but we can only see the gentleman in brown firing</p> <p>4 once. Now do you agree with that proposition?</p> <p>5 CAPTAIN THUPE: If I can explain a little</p> <p>6 bit, the only shot that we see is when the firearm is up</p> <p>7 but we don't know at the time when he pulled up the</p> <p>8 firearm, that he shot a shot, he fired a shot and fired a</p> <p>9 second shot thereafter. So I will say that he fired one</p> <p>10 shot.</p> <p>11 MR GOTZ: Sorry. Captain Thupe, I'm</p> <p>12 sorry, I must confess I didn't understand your answer. Are</p> <p>13 you saying that he fired the shot before that? I'm not</p> <p>14 quite sure I understand your answer.</p> <p>15 CHAIRPERSON: Can you repeat your answer</p> <p>16 for Mr Gotz's benefit?</p> <p>17 CAPTAIN THUPE: No, what I'm saying, we</p> <p>18 only see when the firearm is up that he fire a shot but</p> <p>19 there's a possibility when he pick up the firearm he could</p> <p>20 fire one shot, then the second shot.</p> <p>21 CHAIRPERSON: He's indicating with his</p> <p>22 hand that the hand of the shottist was lower down initially</p> <p>23 and then he was raising it and raising obviously the</p> <p>24 firearm, the pistol with it and he is suggesting there may</p> <p>25 have been a shot fired when the pistol was lower down and</p>	<p style="text-align: right;">Page 28185</p> <p>1 who retreated and you shout – this is in paragraph 25 – you</p> <p>2 shout at him to retreat because in your view his life was</p> <p>3 in danger. It's page 12 of your statement. You then say</p> <p>4 at 26, "The TRT members moved backward to allow Kuhn to</p> <p>5 join the baseline. TRT members started to open fire, most</p> <p>6 of which was into the ground. The strikers kept on</p> <p>7 charging. According to me it was necessary for some of the</p> <p>8 TRT members to open fire to protect their lives and those</p> <p>9 of their colleagues. While the strikers were charging</p> <p>10 towards us, I heard two gunshots fired by the strikers.</p> <p>11 Some strikers fell down," et cetera. Now I'm not sure that</p> <p>12 that, unless I am just not understanding you properly, I'm</p> <p>13 not sure that that is entirely correct the way you phrased</p> <p>14 it because what we see from the video is shots, two shots</p> <p>15 were fired, two gunshots were fired it would seem from the</p> <p>16 ranks of the strikers at 15:53:40 and the volley that is</p> <p>17 the major subject of this Commission is fired at 15:53:50,</p> <p>18 in other words 10 seconds later. So it appears that the</p> <p>19 sequence is two gunshots from the side of the strikers, 10</p> <p>20 seconds later a TRT volley. That's correct, is it?</p> <p>21 CAPTAIN THUPE: That's correct.</p> <p>22 CHAIRPERSON: Now your statement seems to</p> <p>23 have, paragraph 26, unless I misread it, seems to have</p> <p>24 things the other way round. Am I right there too? Let's</p> <p>25 have a look at your statement again? You see, "TRT members</p>

<p style="text-align: right;">Page 28186</p> <p>1 moved backward to allow Kuhn to join the baseline. TRT 2 members started to open fire, most of which was into the 3 ground. Strikers kept on charging the police line. 4 According to me it was necessary for some of the TRT 5 members to open fire to protect their lives and those of 6 their colleagues. While the strikers were charging towards 7 us I heard two gunshots fired by the strikers.” So am I 8 correct in thinking the way it’s phrased it looks as if the 9 TRT fired first and the two gunshots came later but – so it 10 would seem that that sentence, “While the strikers were 11 charging towards us I heard two gunshots fired” is actually 12 in the wrong place in the paragraph. Am I correct in 13 thinking that or have I got it, am I misunderstanding? 14 CAPTAIN THUPE: Yes, but the TRT fired 15 after two shots were heard. 16 CHAIRPERSON: The TRT fired after the two 17 shots were fired, in fact it would seem 10 seconds later. 18 CAPTAIN THUPE: That’s correct. 19 CHAIRPERSON: That’s right. Mr Gotz? 20 MR GOTZ: Can I ask you to look at 21 exhibit KKK21 which is a statement by, I think it’s a 22 Constable Baloyi, a constable but it’s Baloyi and to go to 23 paragraph 3. Can you see on the page following – let me 24 read it to you. “In a bid to push the miners back, water 25 was sprayed from the water cannon in the Nyala. There was</p>	<p style="text-align: right;">Page 28188</p> <p>1 That seems to be referring to shots fired after the group 2 on the front were shooting towards the Nyalas, isn’t that 3 right? 4 MR GOTZ: Yes, but Captain Thupe, all I’m 5 putting to you is that Baloyi says is that he fired two 6 shots at the strikers at a point in time prior to – 7 CHAIRPERSON: He doesn’t actually, he 8 says to the ground to disorientate them and if you look at 9 the video you’ll see that there are – not necessarily the 10 video we’re looking at but one of the relevant videos, that 11 you’ll see there are clouds of dust going up which I assume 12 are caused by bullets being fired into the ground. 13 COMMISSIONER HEMRAJ: Mr Gotz, can we put 14 this statement into context and look at the earlier 15 paragraphs because I have an idea that it’s speaking of an 16 incident slightly earlier than what you were dealing with. 17 Can we just scroll up – 18 MR GOTZ: Alright, if we go up to 19 paragraph 2 – 20 COMMISSIONER HEMRAJ: Yes. 21 [13:02] MR GOTZ: So, I mean maybe I’ve misread 22 this but the barbed wire was put between the miners and the 23 media and such personnel. The miners started moving fast 24 towards the end of the barbed wire next to the kraal under 25 command. Our Nyala,” which was the second in line, “tried</p>
<p style="text-align: right;">Page 28187</p> <p>1 Warrant Officer Malesoena who fired tear smoke as the 2 miners came closer with pangas and spears, walking with 3 their bodies and upper body lower to the ground. People 4 from the crowd starting shooting in our direction. Other 5 police officials were walking on foot on the other side of 6 the vehicles. Seeing that the protesters” – 7 CHAIRPERSON: It should be advanced 8 closer, I would think. 9 MR GOTZ: That’s correct. “I shot from 10 my shotgun seven rounds of rubber rounds. Then there were 11 this group on the front which were shooting towards the 12 Nyalas. I then drew my pistol and through the shooting 13 hole I shot two rounds to the ground to disorientate the 14 people with firearms so they can’t reach police or the 15 other side of the vehicles.” Now you would agree with me, 16 Captain, that this appears to be a description of Constable 17 Baloyi shooting two shots at the strikers before the TRT 18 opens fire, correct? 19 CHAIRPERSON: Hang on, but that sentence 20 appears after a sentence which reads, “Then there were this 21 group of the front which were shooting towards the Nyalas.” 22 So the shooting towards the Nyalas by the group on the 23 front must be shooting by the strikers and he appears to be 24 saying that he shot through, he was obviously in a Nyala, 25 shot through the shooting hole two rounds to the ground.</p>	<p style="text-align: right;">Page 28189</p> <p>1 to stop the miners from crossing over to the police and 2 media personnel,” and then in a bid to push the miners back 3 water was sprayed from the water cannon in the Nyala and 4 then tear smoke was fired, and we know from the analyses 5 that have been done is that water and tear smoke was fired 6 quite late in the proceedings, and it’s on that basis that 7 – I’m sorry – it was fired quite late and it was on the 8 basis of that that I made the, drew the conclusion that we 9 are talking about the same incident. 10 CHAIRPERSON: Mr Gotz, I’ve got a problem 11 with that. Can we go back to para 2, please? Thank you. 12 Where it says, “The miners started moving fast towards the 13 end of the barbed wire next to the kraal under command. 14 Our Nyala tried to stop the miners” – now the difficulty 15 with dealing with the statements by people, but to me it 16 sounds as if the reference to “the end of the barbed wire 17 next to the kraal” is a reference to the so-called incident 18 2 which took place on the left-hand side of the kraal, if 19 you’re looking at it from the point of view of the TRT. In 20 other words not the side of the kraal next to the corridor, 21 as I called it, but the other side of the kraal where 22 Nyala, I think it was Nyala 4 ended up, and that would be 23 the end of the barbed wire next to the kraal, and if that’s 24 correct then the so-called incident 2 is being described 25 here and not incident 3, which is what we’re busy with at</p>

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1 scene 2. Let's have a look at paragraph 1, if they tell us
 2 which Nyala he was in. No, he doesn't say which one he was
 3 in. But anyway, we could find out – again Mr Mpofo wants
 4 to submit questions to the police; perhaps we could avail
 5 ourselves of the same opportunity and ask them if they can
 6 tell us in which Nyala this deponent was in at the relevant
 7 time, which may assist us. But –
 8 MR GOTZ: Chair, I have –
 9 CHAIRPERSON: I don't want to interrupt
 10 you unduly, but it is lunchtime and you might prefer to
 11 gather your forces and continue the campaign after lunch,
 12 unless there's a quick sharp question you want to ask
 13 beforehand.
 14 MR GOTZ: Chair, just to place on record
 15 that I have a record of Constable Baloyi being in Papa2.
 16 CHAIRPERSON: You may well be right.
 17 You've obviously got a better memory of these matters than
 18 I have, but anyway, we'll –
 19 MR GOTZ: Take the lunch break.
 20 CHAIRPERSON: I'm not quarrelling with
 21 you. I'm just saying let's check it out. Can we take the
 22 lunch adjournment now?
 23 MR GOTZ: Yes.
 24 CHAIRPERSON: Would that be convenient
 25 for you?

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1 MR GOTZ: That's fine, thanks, Chair.
 2 CHAIRPERSON: Thank you.
 3 [COMMISSION ADJOURNS COMMISSION RESUMES]
 4 [14:01] CHAIRPERSON: The Commission resumes.
 5 I'll ask Mr Wesley to read out the decisions we've made in
 6 respect of the – no, no, no, we can't do that yet because
 7 we still haven't heard from one of the applicants.
 8 MR WESLEY: There's one annexure which
 9 we're still waiting for, Chair.
 10 CHAIRPERSON: Yes, yes, sorry. We'd
 11 hoped to be able to announce by teatime the allocations in
 12 respect of the cross-examination and times for, in respect
 13 of Captain Loest. The problem is that the, for some reason
 14 we didn't get the application – I gather it was sent but
 15 there was a problem with an attach of something - in
 16 respect of the injured and arrested persons, so we'd like a
 17 hardcopy of that, please, to be given to Mr Wesley, and at
 18 teatime we will make the final allocations. But in the
 19 meanwhile I'd be grateful if the parties would endeavour to
 20 have the list of documents that they'll be relying on
 21 available so that Captain Loest can read them overnight
 22 because it's anticipated he will be giving evidence from
 23 tomorrow morning. Captain Thupe, you're still under oath.
 24 SAMUEL KAY THUPE: (s.u.o.)
 25 CHAIRPERSON: Mr Gotz, you have about 40

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1 minutes left.
 2 MR GOTZ: Chairperson, let me see what I
 3 can get through that.
 4 CHAIRPERSON: You don't have to use the
 5 full 40 minutes. Mr Wesley will tell you if you are still
 6 cross-examining in 35 minutes' time that you have five
 7 minutes left.
 8 CROSS-EXAMINATION BY MR GOTZ (CONTD.): I
 9 may reserve some of the issues for Captain Loest, if we –
 10 so Chair, let me see what, how things go. Captain, can we
 11 look at exhibit RRR18, which is the consolidated statement
 12 of Doctor Paulus Mthimkulu.
 13 MR MOSHWANE: It is before the witness.
 14 MR GOTZ: And can we turn to page 7 of
 15 that witness statement, paragraph 16. What the Lieutenant-
 16 Colonel Mthimkulu says in paragraph 16 is that "After the
 17 strikers moved from the position where barbed wire" -
 18 CHAIRPERSON: [Microphone off, inaudible]
 19 MR GOTZ: Sorry Chair, your mike is not
 20 on.
 21 CHAIRPERSON: [Microphone off, inaudible]
 22 MR GOTZ: Sorry Chair, your mike isn't
 23 on.
 24 CHAIRPERSON: Constable Baloyi's
 25 statement, what about Constable Baloyi's statement, the

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1 matter you were dealing with before lunch? It appeared as
 2 if he was referring to what the SAPS call incident 2,
 3 namely the incident on the side of the little kraal where
 4 Nyala 4 ended up and if that's so then your cross-
 5 examination on that point falls away. Are you going to
 6 take it any further at this stage?
 7 MR GOTZ: Chair, I can't take it any
 8 further. I'm not sure whether Baloyi is going to come and
 9 give evidence. It may be a matter for perhaps further
 10 questions to be addressed to Constable Baloyi.
 11 Unfortunately I can't take it –
 12 CHAIRPERSON: That's probably the
 13 sensible way forward. Send an interrogatory to the
 14 police –
 15 MR GOTZ: Indeed.
 16 CHAIRPERSON: - ask him to indicate what
 17 exactly he's talking about and where the incident to which
 18 he's referring took place.
 19 MR GOTZ: Indeed.
 20 CHAIRPERSON: And then we will know where
 21 we are.
 22 MR GOTZ: Indeed, Chair –
 23 CHAIRPERSON: But of course it's not
 24 going to help you with this witness because this witness
 25 would have come and gone by then.

<p style="text-align: right;">Page 28194</p> <p>1 MR GOTZ: No Chair, and as I explained, 2 I'd read it in a particular way and if my reading is 3 correct then it has significance if, but I accept that 4 there is a different reading and if that contrary reading 5 is correct then the point does fall away. What is, I would 6 suggest a little bit clearer is the evidence of Lieutenant- 7 Colonel Mthimkulu to which we have now turned. 8 In paragraph 16 Lieutenant-Colonel Mthimkulu says 9 as follows, "After the strikers moved from the position 10 where barbed wire Nyala 4 had successfully cut them off to 11 the other side where I had directed barbed wire Nyala 6 to 12 go, the police threw teargas, stun grenades and sprayed 13 water to repel the advancing strikers." So you'll agree 14 with me, Captain Thupe, that what he's talking about is 15 after the strikers had moved from what is generally known 16 as, in these proceedings as incident 2, talking about the 17 time after that event, correct? 18 CAPTAIN THUPE: That's correct. 19 CHAIRPERSON: Do you know what incident 2 20 is about? In exhibit L, which is the presentation of the 21 police case, they allege that there were, as the barbed 22 wire was being uncoiled there were three incidents. The 23 first incident was somewhere near where the negotiating 24 Nyala was. The second incident was where Nyala 4 ended up 25 against the small kraal, little kraal, and incident 3 was</p>	<p style="text-align: right;">Page 28196</p> <p>1 advancing strikers I saw a striker with a red blanket draw 2 a firearm from under his blanket and pointing it in our 3 direction. I drew my pistol and shot three shots at the 4 person. I do not know if I hit the person but he kept 5 coming in our direction after I shot." I don't need to 6 take you through the entire paragraph, but at the end of 7 paragraph 17 Lieutenant-Colonel Mthimkulu then describes 8 that he heard the sounds of rapid gunfire but did not know 9 who was firing. You'll agree with me, Captain Thupe, that 10 when Lieutenant-Colonel Mthimkulu is describing him firing 11 three shots at the strikers he must be referring to a 12 period before the TRT opened fire, correct? 13 CAPTAIN THUPE: That's correct. 14 MR GOTZ: And it would be at a point in 15 time after the incident 2 and as he describes it, probably 16 a few seconds before the TRT shooting, correct? 17 CAPTAIN THUPE: That's correct. 18 MR GOTZ: What we also have by way of 19 evidence is exhibit B, which is the crime scene pack, and 20 I'd like to show you a slide, an extract from that. Can we 21 look at exhibit B, slide 15? Can we go on to slide 15? 22 You'll see, if we can zoom in a little bit, on the right- 23 hand side of exhibit B an area marked in yellow and it is 24 just below where you see the letter M. Do you see that? 25 Do you see that, Captain Thupe?</p>
<p style="text-align: right;">Page 28195</p> <p>1 what we also call scene 1, the actual shooting on the other 2 side of the little kraal. So Mr Gotz is talking, when he 3 talks to you about incident 2 he's talking about the 4 incident which the police say took place at the point where 5 Nyala 4 ended up against the wall of the little kraal. 6 Okay? So I think now that we've explained that to him 7 you'd better repeat your question. 8 MR GOTZ: Then Lieutenant-Colonel 9 Mthimkulu says as follows in paragraph 17, "From among the 10 advancing strikers I saw a striker with a red blanket draw 11 a firearm from under his blanket and pointing it in our 12 direction. I drew" – 13 CHAIRPERSON: No, no, sorry Mr Gotz, I 14 think we should look at 16 first, shouldn't we? "After the 15 strikers moved from the position where barbed wire Nyala 4 16 had successfully cut them off to the other side," in other 17 words after incident 2, "where I had directed barbed wire 18 Nyala 6 to go," that's now the side where scene 1 happened 19 surely, "the police threw teargas, stun grenades and 20 sprayed water to repel the advancing strikers. Members 21 also fired the rubber rounds to repel the strikers. I also 22 observed members using teargas, stun grenades and water 23 cannon," and this was a few seconds before the shooting, 24 and then 17, the passage you put to him. 25 MR GOTZ: Then it says, "From among the</p>	<p style="text-align: right;">Page 28197</p> <p>1 CAPTAIN THUPE: Is it here? 2 MR GOTZ: Yes, indeed. That area marked 3 in yellow. 4 CAPTAIN THUPE: Okay. Yes, I can see it. 5 MR GOTZ: And then towards the bottom of 6 the photograph again in the area marked in yellow, which is 7 surrounded by an area marked in blue – 8 CAPTAIN THUPE: Yes. 9 MR GOTZ: Now Captain Thupe, this is the 10 LCRC's analysis of where cartridge cases were found at 11 scene 1. The yellow area, or the yellow markings indicate 12 where pistol cartridges were found. The blue area 13 indicates where R5 rifle cartridges were found, and we see 14 that on slide 17 of exhibit B. So you can see too the area 15 in yellow indicates the concentration of pistol cartridges 16 in amongst rifle cartridges and shotgun cartridges, and if 17 we go back to slide 15 you'll agree with me that what that 18 does indicate is that there was a concentration of pistol 19 cartridges found on the right-hand side of the scene. That 20 was where the Nyalas were parked, correct? Captain Thupe, 21 that is where the Nyalas were parked, correct? 22 CAPTAIN THUPE: I don't know what, which 23 Nyala are you referring to. Are you referring to the Nyala 24 of the barbed wire or any other? 25 MR GOTZ: Well, it was in fact where</p>

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1 Nyala 6 which had the barbed wire was located.
 2 COMMISSIONER HEMRAJ: Perhaps this
 3 witness doesn't understand, he doesn't have a key to this
 4 photograph and might not know what you're referring to, Mr
 5 Gotz. Perhaps you can help him out there.
 6 MR GOTZ: Captain Thupe, what I'm putting
 7 to you is that what the LCRC found is a concentration of
 8 pistol cartridges separate from where the TRT was firing
 9 and in a position where the, particularly where the barbed
 10 wire Nyala, Nyala 6 was parked at the scene, and that –
 11 CHAIRPERSON: I think the way to solve
 12 the problem, Mr Gotz, is refer him to exhibit RRR15 and to
 13 the last page there –
 14 MR GOTZ: Yes.
 15 CHAIRPERSON: - where you have the
 16 position of the, this is the position of the photographer
 17 behind Papa2, but this indicates where the various police
 18 vehicles were, or where you say the various police vehicles
 19 were.
 20 MR GOTZ: Yes.
 21 CHAIRPERSON: I think that helps to,
 22 would help you to get the witness to appreciate the point
 23 you're trying to make.
 24 MR GOTZ: Yes, in fact, so if we can zoom
 25 in on the area between Nyala 6 and Papa2 – perhaps, Captain

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1 Thupe, while that's being done I can explain what we've
 2 done in this slide. We've, using various photographs and
 3 video evidence, mapped the positions of the Nyalas as they
 4 stood on that, at scene 1 at the time that the TRT opened
 5 fire. Now that yellow circle, or yellow marking that we
 6 saw on the exhibit B slide is the area between Nyala 6 and
 7 P2, which indicates that there were SAPS members firing
 8 pistols at scene 1 while standing between Nyala 6 and
 9 Papa2. Would you agree with that?
 10 CHAIRPERSON: Sorry, before the witness
 11 answers, let me say if you look at RRR15 and you look at
 12 the photograph which is at page 4 you will in fact see two
 13 Nyalas parked there and you see two, this is between Papa2
 14 and Papa4 and you see two policemen firing – well, not
 15 necessarily firing, but certainly holding firearms up in a
 16 position in which they might fire. So that gives you an
 17 idea of what was happening and there were people who may
 18 well have been firing from behind those two Papas.
 19 MR GOTZ: Yes.
 20 CHAIRPERSON: Those two Nyalas, rather.
 21 You then turn to the picture that we looked at, which is
 22 the last page, which is 7, and there you depicted where you
 23 say these various vehicles were parked.
 24 MR GOTZ: Yes.
 25 CHAIRPERSON: And between Papa2 and

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1 Papa4, that's where the doppies are. That's where people
 2 were standing according to that photograph we looked at.
 3 MR GOTZ: Chair, just one correction.
 4 The photograph that you –
 5 CHAIRPERSON: Well, that's part of the
 6 story, isn't it?
 7 MR GOTZ: Yes.
 8 CHAIRPERSON: Fine.
 9 MR GOTZ: But just to correct –
 10 CHAIRPERSON: I'm just trying to help the
 11 witness to understand visually what you're busy with.
 12 MR GOTZ: Yes, indeed. Chair, just one
 13 correction to that; the police personnel that you see on
 14 slide 4, if we can just go back to that – well, before we
 15 do, they're actually standing between Papa9 and Papa2, not
 16 between Papa2 and Papa4.
 17 CHAIRPERSON: Yes, you're correct.
 18 You're quite correct. It's the photographer who is between
 19 Papa2 and Papa4 –
 20 MR GOTZ: Indeed.
 21 CHAIRPERSON: - as indicated on the slide
 22 presently on the screen, which is also, which is in fact
 23 page 7 of your exhibit RRR15.
 24 MR GOTZ: Indeed.
 25 CHAIRPERSON: So you move, you still look

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1 at that picture, which is as I said page 7, and you go
 2 between Papa9 and Papa2 and that's the spot that, where
 3 these two people are depicted on page 4 of the exhibit, and
 4 also presumably it's part of the position where those
 5 cartridge cases were found.
 6 MR GOTZ: Indeed, that –
 7 CHAIRPERSON: Is that correct?
 8 MR GOTZ: That is correct. Does that
 9 help you understand, Captain Thupe, what we – does that
 10 orientate you properly?
 11 CAPTAIN THUPE: That's correct.
 12 MR GOTZ: Now Captain Thupe, what I want
 13 to ask you is - if we can zoom out of slide 7 slightly to
 14 see the line of the TRT - you've indicated that, can you
 15 see the line of the TRT? You'll see it in the bottom
 16 right-hand side of the photograph where we've marked the
 17 Scorpion vehicle as a red block, S-C-O-R-P, running to the
 18 two white vehicles on either side of it. Can you see that?
 19 That is the line of the TRT.
 20 CAPTAIN THUPE: That's correct.
 21 MR GOTZ: Now as I understand your
 22 evidence you were in the line of the TRT approximately
 23 where the Scorpion was located. Would that be correct?
 24 CAPTAIN THUPE: That's correct.
 25 MR GOTZ: And if we can zoom out just a

<p style="text-align: right;">Page 28202</p> <p>1 little bit more, what that means is that you would have 2 full sight of the POPS members who were standing between 3 Papa9 and Papa2, correct? You would be able to see them 4 from your position in the line of the TRT, correct? 5 CAPTAIN THUPE: That's correct. 6 MR GOTZ: Did you see any of those 7 members firing their pistols on the day? 8 CAPTAIN THUPE: No. 9 MR GOTZ: Where were you concentrating 10 your attention in the 10 or 15 seconds before the TRT 11 opened fire? 12 CAPTAIN THUPE: My concentration was on 13 the protesters. 14 CHAIRPERSON: Captain, remind me, where 15 were you – we can see the TRT line on this slide. Where 16 were you? You did tell us before, but just remind me. 17 Near the Scorpion I think you said? 18 CAPTAIN THUPE: That's correct. 19 CHAIRPERSON: So round about – 20 CAPTAIN THUPE: I was – 21 CHAIRPERSON: If you move from the left 22 to the right, you were about two-thirds the way down the 23 line. Is that correct? 24 CAPTAIN THUPE: I was somewhere here. 25 CHAIRPERSON: Oh, what I was told that</p>	<p style="text-align: right;">Page 28204</p> <p>1 CHAIRPERSON: That's a fair answer. 2 Someone fired pistols and some of the cartridge cases were 3 found there, but who it was the witness can't tell us. 4 That seems a fair answer. Mr Chaskalson, you turned your 5 light on. Do you want to say something? 6 MR CHASKALSON SC: Chairperson, from the 7 discharge report on scene 1, which I think was FFF – ja, 8 I'll get the exhibit number in a minute – there were three 9 POPS members who are recorded as firing 9 millimetre 10 pistols at scene 1 and of those three it's only Lieutenant- 11 Colonel Mthimkulu whose cartridges are found at scene 1. 12 MR GOTZ: Can we move on then to- 13 COMMISSIONER HEMRAJ: Are they POPS 14 members, those three members – 15 MR CHASKALSON SC: POPS members. There 16 are a number of, a much larger number of TRT members who 17 fired pistols at scene 1, but there are only three POPS 18 members who fired at scene 1. 19 CHAIRPERSON: And do we know where 20 Lieutenant-Colonel Mthimkulu's cartridge cases were found? 21 MR CHASKALSON SC: We haven't done that 22 exercise, but we may well be able – we know which 23 cartridges are his cartridges and we can do that. 24 CHAIRPERSON: So it can be done, ja, 25 thank you.</p>
<p style="text-align: right;">Page 28203</p> <p>1 you were near the Scorpion was wrong. You were about 2 halfway actually, if you start at the left or the right, 3 whichever way you go, about halfway down the line is where 4 you were, and that is, you've indicated to us as I say 5 about halfway down the line and to the left of the 6 Scorpion. 7 CAPTAIN THUPE: That's correct. 8 MR GOTZ: Captain Thupe, you will accept 9 on the basis of the evidence collected by the LCRC and 10 reflected in exhibit B that some of those members, the POPS 11 members who were standing outside of their Nyalas between 12 Papa9 and Papa2 must have fired their pistols at scene 1, 13 correct? 14 CAPTAIN THUPE: What I saw from the video 15 they were having the pump-actions. 16 MR GOTZ: Well, what I'm saying is that 17 from the LCRC's evidence, their collection of cartridge 18 cases, they collected cartridge, or pistol cartridge cases 19 between where we see Nyala 6, N6 and P2. That must mean 20 that SAPS members fired pistols from that position, 21 correct? 22 [14:20] CAPTAIN THUPE: I don't know. I won't 23 say it's correct is it SAPS members or not, but I won't say 24 that, but if the cartridges were picked up then someone has 25 shot the pistol, but I don't know who shot the pistol.</p>	<p style="text-align: right;">Page 28205</p> <p>1 MR GOTZ: Then what I would like to do is 2 move on to watch the videos that we have prepared, Captain 3 Thupe. Can we start with, go back to JJJ194.17 and play 4 the video from 10 seconds to 14 seconds with the sound on? 5 So if we can go back to JJJ194.17, and what I'd like you to 6 do, Captain Thupe, is to focus your attention in the top 7 left-hand corner of the screen. 8 MR CHASKALSON SC: Maybe just before the 9 video starts I can give the reference; it's FFF35. 10 CHAIRPERSON: Thank you. We're starting 11 at about 8 seconds, are we, on this clip? 12 MR GOTZ: Ja, I think 8 seconds will be 13 fine, if we can play that with sound. 14 [VIDEO IS SHOWN] 15 In the first four seconds of that video you would 16 have seen a photographer in a white shirt, correct? 17 CAPTAIN THUPE: That's correct. 18 MR GOTZ: Did you see that? 19 CAPTAIN THUPE: I saw it, yes. 20 MR GOTZ: In the top left-hand corner. 21 Now in order to assist you and the Commissioners we've 22 actually zoomed in and prepared a new video of what you see 23 in that segment of the video, and we've made that an 24 exhibit RRR16, if we can play that? 25 CHAIRPERSON: Before we do that, can I</p>

<p style="text-align: right;">Page 28206</p> <p>1 ask the witness a question. At the early stage of this 2 video we just saw we saw two, I think they must have been 3 POPS members, standing between the two Nyalas and firing 4 and it sounded to me, although I'm not an expert on this, 5 it sounded to me as if the sound of their firing differed 6 from the sound of the volley we heard later. Are you able 7 to tell us what the two POPS members we saw firing at the 8 beginning, what – there we are, we see them now – what they 9 were firing? Were they firing rifles or shotguns? If they 10 were firing shotguns, were they firing rubber balls or what 11 were they doing?</p> <p>12 CAPTAIN THUPE: They were firing 13 shotguns, but I can't say it's rubber bullets or any other 14 ammunition, but I can see that they are handling firearms, 15 shotguns.</p> <p>16 MR GOTZ: So if we can play RRR16. I 17 think it may assist if we can play this at perhaps a slower 18 speed, maybe at half speed. I think that's good enough. 19 So let's play it from the – now if we, perhaps we can play 20 it again. Now that, Captain Thupe, is the lead group of 21 strikers approaching the TRT line. Sorry, I think we can 22 stop that. That is the lead group of strikers approaching 23 the TRT line. You will agree with me, Captain Thupe, that 24 as they approach the TRT line what we can see is that most 25 if not all of those people are bent over and have blankets</p>	<p style="text-align: right;">Page 28208</p> <p>1 taken one second before the TRT opens fire and what we do 2 in the analysis is we show that that photograph is of the 3 lead group of strikers just prior to the TRT opening fire. 4 Now Captain Thupe –</p> <p>5 CHAIRPERSON: [Microphone off, 6 inaudible] –</p> <p>7 MR GOTZ: Sorry, your mike –</p> <p>8 CHAIRPERSON: You agree now if you see 9 that picture, the one being page 3 of this exhibit RRR15, 10 what Mr Gotz put to you is correct, that the strikers whom 11 we see here appear to be bending forward and they appear to 12 have either blankets or jackets in most cases around their 13 heads. That seems right, doesn't it?</p> <p>14 CAPTAIN THUPE: Yes, I agree.</p> <p>15 MR GOTZ: The reason of course that they 16 have got blankets and jackets over their heads is that they 17 are at this moment being shot at by POP members with rubber 18 bullets, correct, Captain Thupe?</p> <p>19 CAPTAIN THUPE: Correct.</p> <p>20 MR GOTZ: I'm sorry, did you say correct, 21 Captain Thupe?</p> <p>22 CAPTAIN THUPE: I say correct.</p> <p>23 MR GOTZ: Rubber bullets are generally 24 used for dispersal purposes, correct?</p> <p>25 CAPTAIN THUPE: Correct.</p>
<p style="text-align: right;">Page 28207</p> <p>1 or jackets over their heads. Would you agree with that? 2 We can play the video again.</p> <p>3 CAPTAIN THUPE: No, it's not – the video 4 is not clear.</p> <p>5 CHAIRPERSON: That's not very clear, is 6 it, the video? I think there are other videos that make 7 the point more clearly. Is this at half speed?</p> <p>8 MR GOTZ: That's at half speed.</p> <p>9 CHAIRPERSON: This is half speed, they're 10 going quite fast, so imagine what they must have been going 11 in real time.</p> <p>12 MR GOTZ: Well, we can play it at real 13 time, Chair. Would you agree with me, Captain Thupe, that 14 the people that you see are bent over and have, many of 15 them have blankets or their jackets over their heads?</p> <p>16 CAPTAIN THUPE: Yes, I'll agree from that 17 video.</p> <p>18 MR GOTZ: We have in fact also prepared a 19 presentation which we've marked as RRR15, which, if we can 20 have that up on screen – sorry, if we can put RRR15 at the 21 beginning of the presentation page 1, let's start there. 22 What we've analysed, Captain Thupe, is a photograph that is 23 published, and it was published in the Daily Maverick and 24 is accessible online and what we show in this analysis is 25 that the photograph which we see on the next slide was</p>	<p style="text-align: right;">Page 28209</p> <p>1 MR GOTZ: And you'd agree with me also 2 that it is a normal response when one is being shot at with 3 rubber bullets to try and get away from the rubber bullets 4 as quickly as possible, correct?</p> <p>5 CAPTAIN THUPE: Correct.</p> <p>6 MR GOTZ: In other words that the 7 individuals in a crowd of people who are being shot at by 8 rubber bullets will tend to run to get away from the rubber 9 bullets, rather than stand stationary while they're being 10 shot at. You would agree with that, correct?</p> <p>11 CAPTAIN THUPE: I agree.</p> <p>12 MR GOTZ: To give you a sense of the 13 extent of the rubber bullets that were being fired – or let 14 me put, the rubber rounds that were being fired at the 15 strikers at scene 1, can we look at exhibit L on slide 211, 16 if we can have exhibit L211 up on the screen? Now this is 17 a document which was – I'm not sure whether it's entirely 18 accurate, but it does give some sense of the number of 19 rubber rounds that were fired, or munitions expended at 20 scene 1. You'll see in the right-hand column rubber under 21 the, or sub, rubber being a sub-column of the column on the 22 right-hand side, less than lethal. You'll see that POP 23 fired 522 rounds, rubber rounds, at scene 1. Do you see 24 that?</p> <p>25 CAPTAIN THUPE: That's correct.</p>

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1 MR GOTZ: Rubber rounds generally have
2 two rubber balls in them, correct?
3 CAPTAIN THUPE: That's correct.
4 MR GOTZ: That means that over 1 000
5 rubber rounds were fired at the protesters at scene 1.
6 CAPTAIN THUPE: That's correct.
7 MR GOTZ: It's not really surprising
8 under those circumstances that what we see in the
9 photograph on exhibit RRR15, that the lead group of
10 strikers are running, moving at least with blankets and
11 jackets over their heads. If we can go back to exhibit
12 RRR15 and the photograph on slide 3. It's not really
13 surprising, given the number of rubber rounds that were
14 being fired at the strikers, that they're running with
15 blankets and jackets over their heads, correct?
16 CAPTAIN THUPE: I don't understand your
17 question.
18 MR GOTZ: It's given the number of rubber
19 rounds that were being fired at the protesters, or the
20 strikers at this time, it's not really surprising that the
21 strikers were running with blankets and jackets over their
22 heads, correct? Should I try and rephrase my question?
23 Captain Thupe, we can see that the strikers here are
24 running with blankets and jackets over their heads,
25 correct?

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1 CAPTAIN THUPE: Correct.
2 MR GOTZ: That's not really surprising
3 given that there are large numbers of rubber rounds being
4 fired at the strikers at this time, correct?
5 CAPTAIN THUPE: Correct.
6 MR GOTZ: And at the same time you'll
7 agree with me you saw that there were teargas and stun
8 grenades being fired at the strikers at this time, correct?
9 CHAIRPERSON: According to what we saw on
10 the screen there was only one stun grenade. The stun
11 grenades, I thought there were more but I suspect the other
12 stun grenades were fired at the position where incident 2
13 took place, in other words on the side of the small kraal
14 where Nyala 4 ended up. If you go back to that slide we
15 looked at, there's only one stun grenade.
16 MR GOTZ: I shouldn't then use the plural
17 in relation to the stun grenades. So it, but we can agree
18 that there were teargas canisters, teargas being fired at
19 the strikers at this time. You saw that, didn't you,
20 Captain Thupe?
21 CAPTAIN THUPE: That's correct.
22 MR GOTZ: And the effect of teargas is
23 generally to make the eyes sting and it becomes difficult
24 to see, it becomes very uncomfortable and difficult to see,
25 correct?

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1 CAPTAIN THUPE: That's correct.
2 MR GOTZ: Now Captain Thupe, what I want
3 to put to you is that when one looks at the photograph that
4 we see on screen, which is from exhibit RRR15, that it
5 would be fair to say that at this point on the basis of
6 this photograph the strikers do not appear to be attacking
7 the police. They're not running in an attack formation
8 towards the police, are they?
9 CHAIRPERSON: What is attack formation?
10 What is attack formation?
11 MR GOTZ: Well, let's unpack that. The
12 strikers as you see are not looking at the police, correct?
13 CAPTAIN THUPE: I won't say it's correct.
14 MR GOTZ: I beg your pardon, Captain?
15 They're looking at the ground, Captain.
16 CAPTAIN THUPE: They're looking on the
17 ground but towards the police. They are heading towards
18 the police.
19 MR GOTZ: I would suggest to you that the
20 vast majority of the people in this photograph cannot even
21 see where they are going. They've got blankets over their
22 heads, correct?
23 MR MATHIBEDI SC: Sorry, Mr Chairman, I
24 think this is speculation to say that most of the people
25 did not see where they are going.

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1 CHAIRPERSON: You see, there are two
2 people I can see with blankets over their heads, but I'm
3 not sure whether the blankets cover their faces. I mean
4 I'm not sure whether they can see or not. I think there's
5 substance in the suggestion made by Mr Mathibedi that this
6 is a speculative point, but anyway, you know, I've been
7 asking myself for the last couple of minutes where is this
8 cross-examination going? You show the witness a photograph
9 on the screen and you ask him whether he agrees that he
10 sees what you say is there, which we can see as well. It
11 may be that the questions are designed to lead up to a
12 conclusion, so that's why I haven't stopped you, but you
13 know, it's pointless having an argument with him really for
14 any great length as to what one can see because if you
15 don't agree with what he says he can't see then you can
16 still argue to us that we should be able to see it. So I'm
17 concerned about time. I don't want to stop you reaching
18 the conclusion I think you're trying to get to, but I don't
19 think we must get too bogged down in arguing what is or is
20 not visible on the photograph because that's a matter on
21 which the witness's decision is not final.
22 MR GOTZ: Yes, Chair, I agree that I
23 wanted to show this to the witness, but if we can move on
24 and it is really my last topic, which will take about five
25 or 10 minutes, Chair, if, so it's the – I just wanted to

<p style="text-align: right;">Page 28214</p> <p>1 put certain questions on the basis of the video that we –</p> <p>2 CHAIRPERSON: The timekeeper Mr Wesley</p> <p>3 says you've got five minutes left. I take it you'll bear</p> <p>4 that in mind.</p> <p>5 MR GOTZ: I will bear that in mind. Can</p> <p>6 we have the last video which we've prepared up on screen?</p> <p>7 It's exhibit RRR17. Now Captain, I'd like to – sorry, if</p> <p>8 the video operator could just play that from the beginning.</p> <p>9 CHAIRPERSON: This is the so-called</p> <p>10 Reuters joined video –</p> <p>11 MR GOTZ: Indeed, Chair, and let me</p> <p>12 explain where the join is. What we've done is we've, the</p> <p>13 first eight seconds, seven or eight seconds of this we've</p> <p>14 extracted from other media and combined that with the</p> <p>15 exhibit UU3 bis in order to create one continuous stream</p> <p>16 from 22 seconds before the TRT opens fire. So perhaps what</p> <p>17 we can do is just play the video through so that you,</p> <p>18 Captain Thupe, and the Commissioners can get a sense of</p> <p>19 what the video shows. Chair, I should just mention that</p> <p>20 this is a video that's been played on several occasions but</p> <p>21 I think if you can give the customary warning, it does show</p> <p>22 the –</p> <p>23 [14:40] CHAIRPERSON: Well, I have mentioned</p> <p>24 earlier today that videos were going to be shown which</p> <p>25 would show pictures of some of the people killed at</p>	<p style="text-align: right;">Page 28216</p> <p>1 eight seconds. What I want to do is, want you to do is to</p> <p>2 focus on the person who is doing the hand signals that you</p> <p>3 see in the first eight seconds. So let's play that.</p> <p>4 [VIDEO IS SHOWN]</p> <p>5 We can stop it there. Have you got, can you</p> <p>6 enlighten us who that member of SAPS is?</p> <p>7 CHAIRPERSON: Which one?</p> <p>8 MR GOTZ: The one who is doing the hand</p> <p>9 signals. He does two signals, the one is he points out,</p> <p>10 outwards, and then the second hand signal is a signal which</p> <p>11 he clenches his fist in front of him. Do you know who that</p> <p>12 member is?</p> <p>13 CAPTAIN THUPE: Ja, he looks like member</p> <p>14 of Klerksdorp TRT.</p> <p>15 MR GOTZ: And who would that be?</p> <p>16 CAPTAIN THUPE: It's Warrant Officer -</p> <p>17 I'll call his name.</p> <p>18 MR GOTZ: Can you tell me what his hand</p> <p>19 signals mean? What is he telling the TRT line to do?</p> <p>20 CAPTAIN THUPE: The first one when he do</p> <p>21 it like this he say keep the baseline, keep the baseline –</p> <p>22 MR GOTZ: Can the record reflect that</p> <p>23 Captain Thupe is waving his arms horizontally outwards up</p> <p>24 and down?</p> <p>25 CAPTAIN THUPE: Ja, it's to keep line,</p>
<p style="text-align: right;">Page 28215</p> <p>1 Marikana and I said there may well be relatives and loved</p> <p>2 ones of those persons in the chamber and they may find it a</p> <p>3 cause of emotional distress to see these pictures, and I</p> <p>4 gave the people a minute to leave the chamber and nobody</p> <p>5 did. So I repeat what I said before, and I ask that the</p> <p>6 video not be shown until half a minute has elapsed from</p> <p>7 now. Half a minute starts now.</p> <p>8 MR GOTZ: Chair, while we're waiting can</p> <p>9 I also explain that what we've done is we've added to the</p> <p>10 combined videos for the benefit of the Commissioners and</p> <p>11 the witness, the eTV time, so one has on screen the actual</p> <p>12 eTV time as it stands. So the video starts at eTV time</p> <p>13 15:53:28, which is 22 seconds before the TRT opens fire.</p> <p>14 CHAIRPERSON: Thank you. I think we may</p> <p>15 now see the video. No-one is leaving, except someone who</p> <p>16 is not a relative or loved one of one of the deceased, the</p> <p>17 SAPS attorney.</p> <p>18 [VIDEO IS SHOWN]</p> <p>19 MR GOTZ: I think what we can do is stop</p> <p>20 it at that point and just go back to the beginning.</p> <p>21 Captain Thupe, I've got a number of questions to ask you –</p> <p>22 CHAIRPERSON: So the point you stopped it</p> <p>23 at was 38 seconds.</p> <p>24 MR GOTZ: 38 seconds. Captain Thupe,</p> <p>25 let's just go back to the beginning. Let's play the first</p>	<p style="text-align: right;">Page 28217</p> <p>1 then this one is to stop.</p> <p>2 MR GOTZ: Sorry, the clenched fist means</p> <p>3 to what?</p> <p>4 CAPTAIN THUPE: To stop.</p> <p>5 MR GOTZ: To stop?</p> <p>6 CAPTAIN THUPE: That's correct.</p> <p>7 MR GOTZ: Who's he saying stop to?</p> <p>8 CAPTAIN THUPE: I think he was referring</p> <p>9 to the baseline to stop.</p> <p>10 MR GOTZ: To the line to stop?</p> <p>11 CAPTAIN THUPE: That's correct.</p> <p>12 COMMISSIONER HEMRAJ: To hold the line?</p> <p>13 CAPTAIN THUPE: Ja, to hold the line.</p> <p>14 MR GOTZ: This is at a point when the</p> <p>15 strikers have not yet reached the edge of the kraal.</p> <p>16 They're barely visible. At this point they're some 40 or</p> <p>17 50 metres away from the TRT line. Would you agree with</p> <p>18 that?</p> <p>19 CAPTAIN THUPE: Ja, from the video I</p> <p>20 agree.</p> <p>21 CHAIRPERSON: This picture is taken,</p> <p>22 where the video has been stopped at, what is described as</p> <p>23 eTV time 15:53:36:13, so it's 36 and a quarter seconds.</p> <p>24 MR GOTZ: What I want to do is –</p> <p>25 CHAIRPERSON: It's eight seconds into the</p>

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1 video, but if it's 36:13 eTV time it means it's 15 seconds
 2 and, roughly 15 seconds before the volley.
 3 MR GOTZ: Yes, indeed. That will be 14
 4 seconds before the TRT volley. Captain Thupe, can I just
 5 ask a couple of final questions, a final set of questions
 6 in relation to your evidence? You say in paragraph 26 of
 7 your consolidated witness statement that the TRT moved
 8 backwards to allow Warrant Officer Kuhn to join the
 9 baseline. The TRT members started to open fire, most of
 10 which was into the ground. The strikers kept charging the
 11 police line. And then you say, "According to me it was
 12 necessary for some of the TRT members to open fire to
 13 protect their lives and that of their colleagues." Now
 14 Captain Thupe, you didn't open fire. Is that correct?
 15 CAPTAIN THUPE: That's correct.
 16 MR GOTZ: It strikes us that none of the
 17 other commanders opened fire either. Captain Loest did not
 18 fire. Lieutenant-Colonel Ntlati did not fire either, and
 19 nor did Lieutenant-Colonel Claassen. He didn't open fire
 20 either, correct?
 21 CAPTAIN THUPE: I would refer to myself
 22 because I don't know whether Captain Loest shoot or not,
 23 but myself I didn't shoot, and from the point where I was I
 24 didn't shoot.
 25 MR GOTZ: It was clearly you didn't

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1 consider it necessary to act in defence of your own life,
 2 correct?
 3 CAPTAIN THUPE: Can you repeat your
 4 question?
 5 CHAIRPERSON: He said you didn't fire
 6 because you didn't consider it necessary to defend
 7 yourself. You didn't think that, I take it he will put to
 8 you, that your life was under threat, that's why you didn't
 9 fire. If you had thought your life was under threat you
 10 would have fired. Is that the question, Mr Gotz?
 11 MR GOTZ: Yes, indeed.
 12 CHAIRPERSON: What do you say about that?
 13 CAPTAIN THUPE: When the TRT lines moved
 14 back I end up a little bit behind the members and that's
 15 the reason I couldn't fire. If I fired then I will have
 16 shot the members from the back.
 17 COMMISSIONER HEMRAJ: Was it necessary
 18 for you to fire though?
 19 CAPTAIN THUPE: It was not necessary
 20 because there were people already in front of me.
 21 MR GOTZ: Captain Thupe, you also say
 22 that the TRT members started to open fire, most of which
 23 was into the ground. Now we can play the video, but I just
 24 want to be clear, you're not suggesting that the TRT ever
 25 fired warning shots into the ground before taking aim and

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1 firing directly at the strikers, correct? You're not
 2 saying that warning shots were fired?
 3 CAPTAIN THUPE: No, I didn't say that.
 4 MR GOTZ: You didn't see any warning
 5 shots being fired?
 6 CHAIRPERSON: Now the shots that were
 7 fired in the ground, what was the purpose of firing into
 8 the ground? What would the purpose of have? Obviously you
 9 didn't fire into the ground, you didn't fire at all, but on
 10 your interpretation what happened, as someone who was
 11 there, what would the purpose have been of firing into the
 12 ground?
 13 CAPTAIN THUPE: The purpose of firing in
 14 the ground, it was actually to warn those people not to
 15 come closer to the police.
 16 MR GOTZ: Captain Thupe, what we see in
 17 the video is that the first shots are fired into the ground
 18 approximately two seconds after the TRT volley has begun.
 19 We can play the video, but are you saying that warning
 20 shots – are you suggesting to the Commission that warning
 21 shots were fired at the ground of the strikers before the
 22 TRT opened fire?
 23 CAPTAIN THUPE: That's what I'm saying,
 24 that most of the shots were directed to the ground.
 25 MR GOTZ: Captain Thupe, you'll agree

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1 with me that that's completely irrelevant? If there are
 2 shots being fired directly at the strikers, at their upper
 3 bodies, the fact that two or three seconds later some shots
 4 are fired at the ground, that's of no significance
 5 whatsoever. Shots have been fired at the strikers,
 6 correct?
 7 CAPTAIN THUPE: If you can play the video
 8 then you –
 9 CHAIRPERSON: I think we'd better look at
 10 the – your time is nearly up, but let's look at the video.
 11 It's an important point that you're making, or trying to
 12 make.
 13 MR GOTZ: Let's advance the video to
 14 15:53:48 and we can actually play the –
 15 CHAIRPERSON: That's two seconds before
 16 the –
 17 MR GOTZ: Yes.
 18 CHAIRPERSON: - the volley. I'm not
 19 sure –
 20 MR GOTZ: We can actually – well, if we
 21 want to take it back a little bit, and there is sound which
 22 assists, so we can play this with sound.
 23 [VIDEO IS SHOWN]
 24 CHAIRPERSON: I think we can have it
 25 again, I think we should have it again starting at say 47

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1 and let's look very carefully to see the shots that were in
2 the ground, the dust clouds that went up and those that
3 weren't. We can distinguish one from the other.
4 [VIDEO IS SHOWN]
5 MR GOTZ: Captain Thupe, you'll agree
6 with me that a warning shot must give the person who is
7 being warned an opportunity to change their direction or
8 their action? Otherwise –
9 MR MATHIBEDI SC: Sorry, Mr Chairman, I
10 think that should be a legal question because if a person
11 doesn't have that opportunity, what should the person do –
12 CHAIRPERSON: No, no, no, Mr Mathibedi,
13 it's a factual question I think. The witness may not agree
14 with the proposition put, but it's his evidence, not ours.
15 Repeat the question, Mr Gotz, so that the witness
16 understands it and then let's get his answer.
17 MR GOTZ: Captain, a warning shot to be a
18 true warning shot must give the person that is being warned
19 an opportunity to change the direction in which they are
20 running or their actions in some way, correct?
21 CAPTAIN THUPE: It will depend on the
22 people who are attacking, whether they will change their
23 direction or not.
24 MR GOTZ: No, Captain, with respect, I'm
25 not sure I understand why it depends on anything. I'm

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1 simply putting it to you that to be a true warning shot the
2 shot must give the person who is being warned an
3 opportunity to respond in some way.
4 CHAIRPERSON: Do you agree with that
5 proposition? Do you agree that that proposition applies in
6 all circumstances, whatever the circumstances may be?
7 CAPTAIN THUPE: No, I don't agree.
8 MR GOTZ: Well, let me put this to you;
9 do you agree that the shots that were fired did not give
10 the strikers any opportunity to change direction, to stop,
11 or to surrender?
12 CAPTAIN THUPE: Are you referring to the
13 warning shots or the shots –
14 MR GOTZ: I'm saying the shots that were
15 fired by the TRT that we've just witnessed on the video did
16 not give the strikers an opportunity to stop, change
17 direction, or to surrender?
18 CAPTAIN THUPE: No, I wouldn't agree.
19 MR BIZOS SC: Mr Chairman, may I request
20 the witness to speak a little louder? I can hardly hear
21 him.
22 CHAIRPERSON: Yes, well I think Mr Gotz
23 has run out of time, so I'm not sure the witness will get
24 an opportunity to speak louder in answer to him, but let's
25 ask Mr Wesley, what's the position, Mr Wesley? Is Mr

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1 Gotz's time up?
2 MR WESLEY: Chair, yes, about 10 minutes
3 already.
4 CHAIRPERSON: Yes. So you see I have
5 stretched things a bit, created a precedent that I didn't
6 intend to create and by which I will not regard myself
7 bound in future. But I think this is it, Mr Gotz. Do you
8 agree?
9 MR GOTZ: Chair, unfortunately I must
10 bring it to an end then.
11 CHAIRPERSON: No look, if there's some
12 key point that is vital for your case that you haven't put
13 yet, I'll let you do it because we're here to get the
14 truth, not to apply time limits too strictly. On the other
15 hand, I have applied them very unstrictly so far, but if
16 there's a –
17 MR GOTZ: No Chair, I must be bound by
18 the time.
19 CHAIRPERSON: Okay.
20 MR GOTZ: There are other witnesses that
21 I can put these questions to.
22 CHAIRPERSON: Yes, alright. Thank you,
23 Mr Gotz.
24 MR GOTZ: If I were to continue with the
25 witness it would be a considerable period.

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1 CHAIRPERSON: Thank you, Mr Gotz.
2 MR GOTZ: Thank you, Chairperson. Thank
3 you, Captain Thupe.
4 CAPTAIN THUPE: Thank you.
5 COMMISSIONER HEMRAJ: Mr Wesley, can you
6 help me with something? I know you've been dealing with
7 the post mortem reports. The deceased at scene 1, did the
8 medical reports speak of direct shots or are there
9 irregular entrance wounds suggesting something else? Are
10 you able to assist at this stage?
11 MR WESLEY: I'll have a look at the PM
12 reports. As I speak now there is no – are you referring
13 maybe to something that might indicate a ricochet? Is that
14 what you're referring to, Commissioner?
15 COMMISSIONER HEMRAJ: Either way.
16 MR WESLEY: Either way.
17 COMMISSIONER HEMRAJ: Either way, Mr
18 Wesley.
19 MR WESLEY: Could I get back to you on
20 that, have a look and get back to you?
21 COMMISSIONER HEMRAJ: Thank you very
22 much, because I think it relates to something that Mr Gotz
23 was putting to the witness earlier. Thank you.
24 CHAIRPERSON: Now the position is as far
25 as I can – unless I have lost track, there are two cross-

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1 examiners left, Mr Bizos is going to cross-examine and Ms
2 Mosebe is going to cross-examine, and I understood Ms
3 Mosebe said she was prepared to defer to Mr Bizos's
4 seniority. So can we have the pleasure of listening to Mr
5 Bizos's cross-examination after the tea adjournment?
6 MR BIZOS SC: [Microphone off,
7 inaudible].
8 CHAIRPERSON: Alright, I'd like to make
9 the final decision in regard to the allocation of time for
10 Captain Loest as he's going to be giving evidence first
11 thing tomorrow morning. So we'll take the tea adjournment
12 now and then we'll have Mr Bizos.
13 [COMMISSION ADJOURNS COMMISSION RESUMES]
14 [15:20] CHAIRPERSON: The Commission resumes.
15 Captain, you're still under oath.
16 SAMUEL KAY THUPE: (s.u.o.)
17 CHAIRPERSON: Mr Bizos.
18 CROSS-EXAMINATION BY MR BIZOS SC: Thank
19 you, Mr Chairman. Captain Thupe, you are a senior officer
20 in TRT, rank of captain.
21 CAPTAIN THUPE: That's correct.
22 MR BIZOS SC: There were three other
23 captains in TRT on the 16th of August.
24 CAPTAIN THUPE: Two other captains, three
25 including me.

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1 MR BIZOS SC: I'm sorry, would you mind
2 speaking up a little? I find it difficult to hear you.
3 CAPTAIN THUPE: It was two other
4 captains, three including myself.
5 MR BIZOS SC: And there was one
6 lieutenant-colonel.
7 CAPTAIN THUPE: That is so, Chairperson.
8 MR BIZOS SC: Now I'm going to ask you
9 questions. Were all four of you armed?
10 CAPTAIN THUPE: Would you kindly repeat
11 your question?
12 MR BIZOS SC: Were you all armed?
13 CHAIRPERSON: All four of you –
14 MR BIZOS SC: All four of you armed.
15 CHAIRPERSON: All four of you senior
16 officers who's been named by Mr Bizos, were all four of the
17 senior officers armed?
18 CAPTAIN THUPE: That is so, Chair, yes,
19 all of us were armed.
20 MR BIZOS SC: Yes, you were armed with
21 R5s?
22 CAPTAIN THUPE: Only three of us were
23 armed with R5s, except –
24 MR BIZOS SC: Who was not?
25 CAPTAIN THUPE: Colonel Claassen.

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1 MR BIZOS SC: Well, three of you were
2 armed with R5s. Did you shoot at anybody with the R5 that
3 you were armed with?
4 CAPTAIN THUPE: No.
5 MR BIZOS SC: Did the other two shoot
6 with their R5s?
7 CAPTAIN THUPE: No.
8 MR BIZOS SC: We know that 47 officers,
9 or policemen, TRT policemen fired at the people, 18 of whom
10 died at scene 1 on the 16th. Are you prepared to accept
11 that figure? It's in the various exhibits and in exhibit
12 L. Please accept it that 47 people shot.
13 CAPTAIN THUPE: It can be possible.
14 MR BIZOS SC: Right, and please accept
15 that according to the documents before the Commission 46
16 were constables. Would you accept that?
17 CAPTAIN THUPE: It can be possible. I
18 don't have the figures with me.
19 MR BIZOS SC: The reference is to be
20 found in exhibit FFF – the information is on FFF35, Mr
21 Chairman.
22 COMMISSIONER TOKOTA: Thank you, Mr
23 Bizos.
24 MR BIZOS SC: Now do you agree that one
25 of the functions of senior police officers in crowd

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1 management owe a duty to their rank, to their office that
2 they occupy, to the laws in our Constitution, to guide the
3 people with guns in relation to the control of crowds?
4 You've got a, as senior officers you've got a duty not to
5 leave it to constables to decide when to shoot people.
6 What is your answer?
7 CAPTAIN THUPE: It depends on the
8 situation.
9 MR BIZOS SC: How can it depend on the
10 situation, Captain? Have you read the Standing Orders, or
11 any of them?
12 CAPTAIN THUPE: I don't know to which
13 Standing Order you're referring to.
14 MR BIZOS SC: The Standing Orders
15 relating to the management of crowds.
16 CHAIRPERSON: I think Mr Bizos means
17 Standing Order (General) 262.
18 CAPTAIN THUPE: Yes, I've read it.
19 MR BIZOS SC: You've read it? Does it
20 say anything about how crowds are to be managed and the
21 duty of the persons in charge have to the people in the
22 crowd?
23 CAPTAIN THUPE: Ja, it does –
24 MR BIZOS SC: It does.
25 CAPTAIN THUPE: - explain that, yes.

<p style="text-align: right;">Page 28230</p> <p>1 MR BIZOS SC: Now can you please explain 2 - take your time – is it a coincidence that neither, none 3 of the four actually was in control as to when to shoot at 4 people and shoot them dead? What do the orders say? 5 CAPTAIN THUPE: Sir, I don't understand 6 your question. 7 MR BIZOS SC: You say you know the 8 Standing Orders? 9 CAPTAIN THUPE: That's correct. 10 MR BIZOS SC: Do you recall whether 11 anywhere in the Standing Orders it is stated as to whether 12 there is a command structure which shares certain duties in 13 order to manage a crowd? 14 CAPTAIN THUPE: That's correct. 15 MR BIZOS SC: Is it a coincidence that in 16 this instance none of the four senior officers appear to 17 have taken any part or any supervision or any direction of 18 the people that actually did the shooting? 19 CAPTAIN THUPE: Well, I already said that 20 it depends on the situation. 21 MR BIZOS SC: No, no, do the Standing 22 Orders say that it depends on the situation, or do they 23 place duties on senior officers as to how to manage crowds? 24 CAPTAIN THUPE: The situation of the 25 shooting incident on the 16th, it wasn't the time for</p>	<p style="text-align: right;">Page 28232</p> <p>1 correct, is it not? 2 CAPTAIN THUPE: That's correct. 3 CHAIRPERSON: There is an exception and 4 that's in sub (7), " Common law principles of self-defence 5 or private defence are not affected by this order." 6 CAPTAIN THUPE: That's correct. 7 CHAIRPERSON: So an ordinary constable 8 who believes, let's say reasonably, that his is under 9 threat and it's necessary for him to use force to defend 10 himself is entitled to defend himself even though he 11 receives no command from the CJOC or the operational 12 commander. That's correct, is it not? 13 CAPTAIN THUPE: That's correct. 14 CHAIRPERSON: Alright. It may be a 15 matter in respect of which there could be argument that the 16 Standing Order should be amended as far as private defence 17 is concerned and there'll be something to be said for the 18 proposition that Constable A, who thinks the life of 19 Constable B is under threat, shouldn't be allowed to fire 20 in his own discretion without receiving a command. But 21 that's not what the Standing Order appears to require. Is 22 that also your understanding of the Standing Order? 23 CAPTAIN THUPE: That's correct. 24 CHAIRPERSON: Right, now what would you – 25 well, perhaps we can ask counsel for the police later for</p>
<p style="text-align: right;">Page 28231</p> <p>1 managing the crowd by then, that's during the shooting 2 time. 3 CHAIRPERSON: Mr Bizos, can I ask a 4 question dealing with the point at this stage? If you look 5 at Standing Order (General) 262, it is an exhibit here, I 6 can't remember what it is, but it's an exhibit, SS2. If 7 you look at the provisions of paragraph 11, 11(5) and (7) 8 are the relevant ones. (5) reads as follows, "Force may 9 only be used on the command or instruction of the CJOC or 10 operational commander, if appointed. Members may never act 11 individually without receiving a command from their 12 commander." Now I don't know what Mr Bizos is busy about 13 with senior officers. The fact of the matter was even 14 though you and the colleagues to whom you referred were 15 senior officers, in terms of 11(5) even the four of you 16 couldn't order anybody to use force. 17 CAPTAIN THUPE: That's correct. 18 CHAIRPERSON: The only persons who could 19 order it would be General Mpembe, who was the CJOC, and 20 Brigadier Calitz, who was the operational commander and had 21 been appointed as such. Is that correct? 22 CAPTAIN THUPE: That's correct. 23 CHAIRPERSON: So no-one, not a constable, 24 not a colonel could have fired without a command to fire 25 from either General Mpembe or Brigadier Calitz. That's</p>	<p style="text-align: right;">Page 28233</p> <p>1 their submission as to whether the Standing Order should be 2 amended to put constables under an obligation only to act 3 in private defence in appropriate circumstances, if the 4 Standing Order could be so drafted, on command of a senior 5 officer, if present. But for the moment the Standing Order 6 is as I read it to you. Is that correct? 7 CAPTAIN THUPE: That's correct. 8 MR BIZOS SC: Thank you, Mr Chairman. 9 You were part of the line after the POPS people failed to 10 stop the crowd. Is that right? 11 CAPTAIN THUPE: On the 9th, no. 12 MR BIZOS SC: On the? 13 CAPTAIN THUPE: 9th. 14 MR BIZOS SC: I'm not talking about the 15 9th. I'm talking about the 16th. Oh, the line, you were 16 not part of the line? 17 CAPTAIN THUPE: Of the line? 18 MR BIZOS SC: No, no, the line. Part of 19 the line. 20 CAPTAIN THUPE: I was part of the line. 21 MR BIZOS SC: Right, and you were armed. 22 CAPTAIN THUPE: That's correct. 23 MR BIZOS SC: Is it your evidence that 24 everyone in TRT there with their R5s was in personal 25 danger?</p>

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1 CAPTAIN THUPE: I ask you to repeat your
2 question, please.
3 MR BIZOS SC: Yes, is it your evidence or
4 your belief that everyone in TRT on that day, everyone's
5 life was in danger?
6 CAPTAIN THUPE: What I noticed is that
7 those people they were approaching the line of the TRT in
8 the middle. So those in the middle of the TRT they were in
9 danger, that group which was in the middle.
10 MR BIZOS SC: Did you feel in any danger?
11 CAPTAIN THUPE: I said that I moved
12 backward as they were, they line up right in front of me.
13 So by then, that moment, I wasn't in danger because I was
14 behind the other group.
15 MR BIZOS SC: Why did you fall back? I
16 would have thought that you would want to show some
17 leadership to your constables. Why did you fall back?
18 CAPTAIN THUPE: I said that the whole
19 line of the TRT they moved backward. The moment when they
20 stop, by then I was already behind them.
21 MR BIZOS SC: How far away from the
22 frontline?
23 CAPTAIN THUPE: It was not a distance.
24 It cannot be a –
25 CHAIRPERSON: Metre, two metres?

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1 CAPTAIN THUPE: No, it can't be two
2 metres. It's just I'm here, then the other people are here
3 in front of me.
4 CHAIRPERSON: So it's less than a metre?
5 CAPTAIN THUPE: So I –
6 CHAIRPERSON: It looks like less than a
7 metre.
8 CAPTAIN THUPE: Ja, less than a metre
9 because I –
10 MR BIZOS SC: You didn't feel threatened?
11 Or did you?
12 CAPTAIN THUPE: As I already said, the
13 people were already in front of me. Those people who are
14 in the front of me - well I say that I was standing behind
15 the others. Those right in front of me, they were in
16 danger, but not myself, seeing that they've covered, I'm
17 standing behind them.
18 MR BIZOS SC: Didn't you think that being
19 less than a metre before the people that were in such
20 danger, that you yourself may be a victim? They just had
21 to pass one man and then you would be next.
22 CAPTAIN THUPE: Well, if it is happening
23 that way that they have passed the person right in front of
24 me and come to my side, that moment I would say I was then
25 in danger.

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1 MR BIZOS SC: Now if you were –
2 CAPTAIN THUPE: But it didn't happen in
3 that way.
4 MR BIZOS SC: If you were one metre
5 behind, didn't you think as a senior officer, even if
6 somebody did discharge one, or possibly two rounds of
7 ammunition, to say do not shoot at the people, shoot in the
8 ground or in the air, or possibly if you can identify the
9 person that actually did the shooting, bring him down, but
10 do not shoot indiscriminately? Did that not occur to you
11 as a senior officer?
12 CAPTAIN THUPE: So if there were a
13 distance there just between myself and the protesters then
14 one would be having that time to give that warning, but to
15 identify the one who's busy shooting by then.
16 MR BIZOS SC: Well, did you know whether
17 or not one in the front row could actually identify the
18 person that did the shooting and could have brought him
19 down?
20 CAPTAIN THUPE: Time and the space
21 between them, there was none. It was not far away from
22 each other.
23 MR BIZOS SC: I don't understand the
24 answer to the question. Did you understand the question?
25 CAPTAIN THUPE: Just repeat your

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1 question, please.
2 MR BIZOS SC: Yes. Did you not think to
3 shout out 'If anyone of you can then identify that man that
4 shot the one or two shots, bring him down'?
5 [15:39] CAPTAIN THUPE: Well, I've said that the
6 protesters they were coming towards us in a high speed, in
7 a high pace. That moment one wouldn't be in a position to
8 identify the person who's armed with a firearm. That's
9 between them and the TRT members.
10 MR BIZOS SC: Bear with me, please.
11 Generally speaking is a senior officer not obliged to be in
12 front rather than the back of others?
13 CAPTAIN THUPE: There's nowhere where it
14 determines where a senior officer is supposed to stand, as
15 whether in front or on the side.
16 MR BIZOS SC: You were going to be in a
17 baseline formation. Wouldn't the decisions have to be made
18 by the senior officer or one of the senior officers?
19 CAPTAIN THUPE: Well, I've said that
20 there were three captains in the baseline and one colonel
21 in that line-up.
22 MR BIZOS SC: The other senior officers,
23 the other three, was any one of them in the frontline?
24 CAPTAIN THUPE: Baseline is one line.
25 There's no the one who will be standing in front. There is

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1 one line. It's a straight line. All will line up. It's a
2 straight line.

3 MR BIZOS SC: Were the other senior
4 officers like you one behind the front persons, or were
5 there any of the senior officers in line right in front?

6 CAPTAIN THUPE: Well, I don't understand
7 your question. It's ambiguous to me. You are referring in
8 which time?

9 MR BIZOS SC: Immediately –

10 CAPTAIN THUPE: That while we were
11 standing on the baseline? When? Specify what do you mean
12 by the duration.

13 MR BIZOS SC: Immediately before the –

14 CAPTAIN THUPE: During the shooting or
15 when?

16 MR BIZOS SC: Immediately before the
17 shooting were there any other of your senior officers in
18 the frontline, that is not behind anybody?

19 CAPTAIN THUPE: It indicates to me that,
20 Counsel, you don't understand what a baseline is. Baseline
21 is one single line. There's no-one in front, but all line
22 up in the straight line.

23 MR BIZOS SC: Yes, I agree with you fully
24 that it is one line and I would have expected all four of
25 you to be part of that line. It's because you say that you

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1 were behind another that I am asking the questions.

2 CAPTAIN THUPE: [African language]
3 baseline then when you move backwards I end up a little bit
4 back. So [African language] -

5 MR BIZOS SC: Because you said that you
6 were behind, because you say that you were behind I asked
7 you the questions about the others. Is your answer that
8 they, the other three were in the frontline?

9 MR MABUNDA: He said, "We were in the
10 baseline, all of us, before the movement backwards.

11 CAPTAIN THUPE: That movement when we,
12 they started to move backwards, is then I fell back behind
13 them.

14 CHAIRPERSON: You fell back. Were the
15 other three still in the baseline?

16 CAPTAIN THUPE: I couldn't answer that
17 question were they in the line or not but myself, I find
18 myself a little bit back.

19 CHAIRPERSON: You can say you were behind
20 the baseline.

21 CAPTAIN THUPE: Yes.

22 CHAIRPERSON: Where the other three
23 senior officers were, you can't say.

24 CAPTAIN THUPE: I can't really answer for
25 them.

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1 MR BIZOS SC: I'm sorry, I didn't hear
2 the question.

3 MR MABUNDA: He said he cannot answer on
4 behalf of the answers, their whereabouts by then. That's
5 while he was behind now.

6 CHAIRPERSON: Mr Bizos, he knows he was
7 behind the baseline. He doesn't know where the other three
8 senior officers were.

9 MR BIZOS SC: I understood –

10 CHAIRPERSON: They may have been in the
11 baseline, they may not have been. He doesn't know.

12 MR BIZOS SC: Yes. Now you told us that
13 two out of the other three were also armed. Were they
14 armed with R5s?

15 CAPTAIN THUPE: Yes, it's out of four in
16 the officials. So three of us, three captains were armed
17 with R5s, except the Lieutenant-Colonel Claassen, he
18 doesn't have an R5 with him.

19 CHAIRPERSON: Mr Bizos, I'm informed
20 you've got five minutes left.

21 MR BIZOS SC: Do you know whether your
22 senior fellow officers, whether any one of them fired?

23 CAPTAIN THUPE: No.

24 MR BIZOS SC: Well, we know from the
25 figures that none of them fired, only a sergeant, the only

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1 non-constable that fired. Is that a coincidence that they
2 too, whether they were one behind like you or whether they
3 were on the baseline, they did not fire? Is that also a
4 coincidence that only constables and a sergeant fired?

5 CAPTAIN THUPE: Well, I cannot answer on
6 behalf of them because the reason, they can explain on
7 their own how did it become about that they do not fire –

8 MR BIZOS SC: The question was –

9 CAPTAIN THUPE: But I cannot furnish any
10 reason on their behalf.

11 MR BIZOS SC: The question was, is it a
12 coincidence that none of the senior officers fired?
13 Because we know that only constables and a sergeant fired.
14 We can therefore infer that none of your fellow senior
15 officers fired. Was that a coincidence?

16 CAPTAIN THUPE: I won't say it's a
17 coincidence. So I wouldn't say, I cannot furnish the
18 answers why did they, they did not fire. They know their
19 own reason, because that I was behind, they can also come
20 and explain to the Commission on their own, themselves,
21 what happened at that moment.

22 MR BIZOS SC: You know, the reason why I
23 am putting these questions to you, Captain, is because of
24 our experience; from Sharpeville to the Vaal Triangle
25 massacres, we are going to bring the records, if necessary,

<p style="text-align: right;">Page 28242</p> <p>1 in order to show that it is a stratagem of the South 2 African Police for senior officers not to take 3 responsibility, but they come along to the inquests, to the 4 commissions of inquiry, and they say that some unknown 5 constable pulled the trigger and others followed him. 6 Because he pulled the trigger we as officers are not 7 responsible, we never gave an order, we didn't manage and 8 control. Isn't that, do you know about that stratagem of 9 the South African Police? 10 CAPTAIN THUPE: No, unfortunately I don't 11 know about that strategy. 12 MR BIZOS SC: Well, I'm going to put – 13 CHAIRPERSON: Why do you say 14 unfortunately you don't know about the stratagem? 15 CAPTAIN THUPE: I was not part of the 16 Sharpeville and other incidents, so I don't know about 17 them. 18 MR BIZOS SC: Well, youth is on your 19 side, but I don't know whether it is that the police will 20 say that it was coincidental that none of the senior 21 officers gave an order that they should warn the crowd or 22 that they should possibly take someone out or take any 23 other precautions which are expected to be taken in terms 24 of the Standing Orders, our common law, and our 25 Constitution.</p>	<p style="text-align: right;">Page 28244</p> <p>1 it is because you want to avoid responsibility. 2 CAPTAIN THUPE: That's not correct. 3 CHAIRPERSON: That's the end of your 4 cross-examination time, Mr Bizos. Ms Mosebe, do you wish 5 to ask any questions? 6 MR BIZOS SC: Thank you, Mr Chairman. 7 CROSS-EXAMINATION BY MS MOSEBE: Yes, 8 Chair, thank you. Thank you, Chairperson. Captain, good 9 afternoon. 10 CAPTAIN THUPE: Afternoon. 11 MS MOSEBE: Captain, I represent the 12 family of Warrant Officer Tsietzi Hendrick Monene who died 13 on the 13th of August at Marikana and we've got a few 14 questions for you. Captain, just to paraphrase quickly, 15 we've had testimony before this Commission by Warrant 16 Officer Vermaak that on the 13th of August – we've had 17 testimony before this Commission by Lieutenant-Colonel 18 Vermaak that on the 13th of August at the railway line, or 19 you know, after the events of the railway line he escorted 20 a few members of the TRT to follow some protesters who had 21 stolen firearms from the deceased policemen. Do you 22 remember that event happening where Warrant Officer – 23 CHAIRPERSON: The answer must be yes to 24 that, surely. He's given evidence about it in extenso 25 already.</p>
<p style="text-align: right;">Page 28243</p> <p>1 CAPTAIN THUPE: If that is a question, 2 would you kindly repeat your question, please, so that I 3 could understand it? 4 MR BIZOS SC: Yes. Did you know – before 5 I repeat the question – did you know that whatever the 6 Standing Order may say about self-defence, nevertheless, 7 nevertheless it is the duty of senior officers to try and 8 prevent the killing of people? 9 CHAIRPERSON: The answer to that, do you 10 accept that that is the duty of senior officers to try to 11 prevent the killing of people, if it can be done? I take 12 it you don't quarrel with that proposition? 13 CAPTAIN THUPE: According to Standing 14 Order 262 the cluster JOC commander or the operational 15 commander on the scene, those are the people who are 16 supposed to give the decision what must take place. 17 CHAIRPERSON: Mr Bizos, your time has run 18 out, but you said you were going to repeat, before you 19 repeated the question you were going to ask the question 20 you've just asked. So I'll allow you to repeat the 21 question that you were going to repeat before you stop your 22 cross-examination. 23 MR BIZOS SC: I'm going to put to you the 24 reason why you and your fellow officers did not shoot and 25 find reasons to say why you did not shoot is not correct;</p>	<p style="text-align: right;">Page 28245</p> <p>1 MS MOSEBE: Now Captain, Lieutenant 2 Vermaak testified that some of the TRT members had informed 3 him that General Mpenbe had instructed them to leave their 4 firearms in the vehicles before the events of the 13th. Do 5 you have knowledge of that? 6 CAPTAIN THUPE: No. 7 MS MOSEBE: Captain, I would like to 8 refer you to the statement of Sergeant Simpiwe Ntokoso 9 Cebekhule. It is one of the documents that were supplied 10 to you yesterday. Are you in possession – 11 CHAIRPERSON: What passage do you want to 12 refer to? 13 MS MOSEBE: Are you in possession of that 14 statement? 15 CHAIRPERSON: We weren't given these, we 16 ourselves weren't given the document until a minute ago, 17 but which passage in the statement do you want to refer to? 18 MS MOSEBE: On page 1, Chairperson, that 19 is on paragraph 3, the last two sentences wherein he says 20 that, "I was informed by my commander not to use or carry 21 my assault rifle since we were not there to fight with the 22 mineworkers." Are you aware of any commanders who gave 23 instructions to their members not to carry their assault 24 rifles before the events of the 13th? 25 CAPTAIN THUPE: Whatever I said yesterday</p>

<p style="text-align: right;">Page 28246</p> <p>1 that all the TRT members, they were carrying their weapons. 2 The NIU person, member, I don't know how was he briefed. 3 CHAIRPERSON: I've marked the statement 4 of Sergeant Cebekhule as exhibit RRR19. The passage put in 5 paragraph 3 refers to Captain Tshenwinyane, the deponent's 6 commander, who according to him gave, briefed him and his 7 colleagues from the NIU in the Lonmin operational room and 8 it was there according to the statement that Captain 9 Tshenwinyane informed the deponent, Sergeant Cebekhule, 10 that he wasn't to use or carry his assault rifle since they 11 were not there to fight with mineworkers. Did you have any 12 knowledge of that? 13 CAPTAIN THUPE: No. 14 MS MOSEBE: Captain, I would like to move 15 on to something else. I would like to briefly canvass with 16 you the issues that happened when you, you testified 17 actually yesterday that you observed when the protesters 18 were hacking, and were hacking to death Warrant Officer 19 Lepaaku. Am I correct? 20 CAPTAIN THUPE: That's correct. 21 MS MOSEBE: Yes, now I would like to know 22 from you that how many people did you see attacking Warrant 23 Officer Lepaaku? 24 CAPTAIN THUPE: They were four. 25 MS MOSEBE: And how far were you from</p>	<p style="text-align: right;">Page 28248</p> <p>1 asking this question, is that you, it seems – 2 CHAIRPERSON: [Microphone off, inaudible] 3 [15:59] MS MOSEBE: Captain, were you in 4 possession of your 9 millimetre pistol when you observed 5 this attack on Warrant Officer Lepaaku? 6 CAPTAIN THUPE: That's correct. 7 MS MOSEBE: And Captain, you have 8 testified in your consolidated statement that after the 9 events of the 13th when you discovered that after the 10 Warrant Officer Lepaaku and Warrant Officer Monene were 11 attacked, you pursued some of the protesters and you fired 12 eight shots. I presume it was across the river. 13 CAPTAIN THUPE: No, no, it's not across 14 the river. 15 MS MOSEBE: Where did you fire these 16 eight shots? 17 CAPTAIN THUPE: Just after the gravel 18 road. 19 MS MOSEBE: Now when you observed Warrant 20 Officer Lepaaku being attacked, why didn't you fire any 21 shots on the ground or on the air to try and defend Warrant 22 Officer Lepaaku's life? 23 CAPTAIN THUPE: I run, I ran towards 24 Warrant Officer Lepaaku to assist him and immediately when 25 I came nearer those people grabbed an R5 and ran away with</p>
<p style="text-align: right;">Page 28247</p> <p>1 this attack? 2 CAPTAIN THUPE: Plus-minus 25 to 30 3 metres. 4 MS MOSEBE: And you have stated in your 5 consolidated statement, that is on page 7, paragraph 8.5, 6 the last three sentences thereof, that is exhibit QQQ9, 7 that "At the inspection in loco by the Marikana Commission 8 I saw the man who took the rifle from the original 9 possessor and I'll be able to identify him if I see him 10 again." Now my question to you is this; if you were to be 11 requested, or required by any lawful authority to can point 12 out the other three people, will you be able to do so? 13 CAPTAIN THUPE: I can point out one or 14 two of them, but I will not be able to point out – 15 MS MOSEBE: And will you be, are you in a 16 position to can, if requested by this Commission, to can 17 point out the people, if you are to see them on any of the 18 videos that are currently in possession of the Commission, 19 to the evidence leaders? 20 CAPTAIN THUPE: If the video is clear 21 then I can point them out. 22 MS MOSEBE: Okay, thank you. And 23 Captain, since you say that you were about 25 metres – am I 24 correct? – from this attack, what did you do to try and 25 defend Warrant Officer Lepaaku? I'll tell you why I'm</p>	<p style="text-align: right;">Page 28249</p> <p>1 it. Then I follow them. 2 MS MOSEBE: But why didn't you fire shots 3 on the ground or on the air to try and defend his life? 4 CAPTAIN THUPE: There were some POP 5 members that were coming from the gravel road towards 6 Warrant Officer Lepaaku, so if I shoot when I was on the 7 run I could have maybe shot one of the people that were 8 approaching Warrant Officer Lepaaku from the side, that 9 which were the POP members. 10 MS MOSEBE: Did you observe Warrant 11 Officer Monene being attacked? 12 CAPTAIN THUPE: No. 13 MS MOSEBE: Now I would like to move on 14 to the next point. The next point is this, Captain, that 15 Warrant Officer Vermaak testified before this Commission 16 that he observed while the police were being attacked, that 17 is Warrant Officer Lepaaku and Warrant Officer Monene were 18 being attacked, he observed fellow police officers running 19 away and I have, I'm in possession of a few statements of 20 people who've mentioned how they ran away and why they ran 21 away. Now did you observe any of the police officers 22 running away instead of assisting Warrant Officer Monene 23 and Warrant Officer Lepaaku at any stage? 24 CAPTAIN THUPE: Ja, I saw the people 25 running, yes, but I cannot confirm as to whether they were,</p>

<p style="text-align: right;">Page 28250</p> <p>1 they attempted to help – I can't confirm that they were 2 running not to assist Warrant Officer Monene. Seeing that 3 I didn't see when Monene was attacked, I didn't see as to 4 whether they ran away from him or not because when he was 5 attacked I didn't see at all, so that I cannot confirm as 6 to they were running away from him or not.</p> <p>7 CHAIRPERSON: Ms Mosebe, have you got – 8 are you likely to be much longer? You haven't used up all 9 your allotted time yet and you very kindly agreed to stand 10 back to allow Mr Bizos to cross-examine before you. I'm 11 reluctant to do this, but I think in fairness to you, 12 unless you're going to be a couple of minutes only, that I 13 must allow you to continue tomorrow morning.</p> <p>14 MS MOSEBE: Well, Chairperson, I managed 15 to rush through it, so I'm left with two questions which I 16 believe we'll be able to glance whatever points that we 17 need from the record –</p> <p>18 CHAIRPERSON: I don't want to prejudice 19 you in any way. If you would like to continue briefly 20 tomorrow morning to use up the time you were allocated, 21 I'll do that. Alternatively if you want to ask two short 22 questions now you can, but I'm not sure you can control the 23 length of the answers.</p> <p>24 MS MOSEBE: Chairperson, we'll reconsider 25 and we'll let you know tomorrow morning.</p>	<p style="text-align: right;">Page 28252</p> <p>1 Resources Centre, 30 minutes; cross-examination by the 2 injured and arrested, 30 minutes; and then re-examination, 3 15 minutes.</p> <p>4 CHAIRPERSON: Thank you very much. We 5 will adjourn until tomorrow morning at 9 o'clock. 6 [COMMISSION ADJOURNED]</p> <p>7 . 8 . 9 . 10 . 11 . 12 . 13 . 14 . 15 . 16 . 17 . 18 . 19 . 20 . 21 . 22 . 23 . 24 . 25 .</p>
<p style="text-align: right;">Page 28251</p> <p>1 CHAIRPERSON: We'll proceed tomorrow 2 morning at 9 o'clock. I had hoped to finish your evidence 3 today, Captain, but it wasn't possible, but you are only 4 going to be cross-examined further by Ms Mosebe and then 5 there will be re-examination. How long do you think you'll 6 be in re-examination, Mr Mathibedi?</p> <p>7 MR MATHIBEDI SC: Very brief, Mr 8 Chairperson.</p> <p>9 CHAIRPERSON: Very brief. So we can then 10 see Captain Loest. So thank you, Ms Mosebe, you'll proceed 11 tomorrow morning. Mr Wesley, can you announce the times 12 that have been allocated to the various parties in respect 13 of the evidence of Captain Loest? I'm not sure whether the 14 parties have yet indicated the documents on which they will 15 rely so that the Captain can have opportunity to read them 16 tonight, but can you please read out the allocations?</p> <p>17 MR WESLEY: Thank you, Chair. The time 18 allocations in respect of the testimony for Captain Loest, 19 which will commence tomorrow after the completion of re- 20 examination of the present witness, are as follows. 21 Evidence-in-chief, 30 minutes; cross-examination by 22 evidence leaders, 45 minute; cross-examination by the South 23 African Human Rights Commission, one hour; cross- 24 examination by AMCU, 45 minutes; cross-examination by the 25 families, 45 minutes; cross-examination by the Legal</p>	

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