

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 231

20 MAY 2014

PAGES 28586 TO 28801



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1 [PROCEEDINGS ON 20 MAY 2014]
 2 [09:09] CHAIRPERSON: The Commission resumes.
 3 You're still under oath, Captain.
 4 PAUL BISMARCK LOEST: (s.u.o.)
 5 CHAIRPERSON: I received a phone call
 6 this morning from Adv Mpofo who indicated that he needs to
 7 ask you about one further topic and Adv Semenya has no
 8 objection. You did say you needed 10 minutes, Mr Mpofo.
 9 MR MPOFU: Yes, Chair –
 10 CHAIRPERSON: Hopefully you won't need
 11 the full 10 minutes but you may find after 10 minutes that
 12 the red light may go off.
 13 MR MPOFU: Yes, Chair, I'll be mindful of
 14 that. Thank you very much, Chairperson.
 15 CROSS-EXAMINATION BY MR MPOFU: Captain,
 16 there's just one aspect. If you remember on Friday I said
 17 I'd forgotten something, so it's my fault, not yours but
 18 it's quite important so I'm grateful to my learned
 19 colleague Mr Semenya and the Chair for allowing me to put
 20 this question. It relates to a video that I think was
 21 shown to you by the Human Rights Commission and then
 22 another aspect of it deals with something that you and I
 23 had discussed regarding the position of the basic line, as
 24 it were. So it's something, it's not anything new. Could
 25 you please play us RRR17? It's a short one, Chairperson,

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1 so we'll just do the whole video so that's 30 seconds.
 2 CHAIRPERSON: [Microphone off, inaudible]
 3 MR MPOFU: Yes, yes.
 4 CHAIRPERSON: I'm told that we're going
 5 to see a video in a moment which may well cause emotional
 6 distress to relatives and loved ones of some of the people
 7 who died at Marikana on the 16th of August 2012, so I ask
 8 that the video not be shown until 30 seconds has elapsed
 9 after I've finished speaking to enable anyone who thinks
 10 that he or she may be distressed by seeing the video to
 11 leave the chamber. The 30 seconds starts now.
 12 MR MPOFU: Yes, okay.
 13 CHAIRPERSON: I see no-one who is moving
 14 to the door so the video clip may now be shown.
 15 MR MPOFU: Yes, thank you. Maybe before
 16 we play the video, thank you Chairperson, let me just ask
 17 you a few preliminary build-up questions, Captain. Do you
 18 remember that we discussed the issue of the fact that you –
 19 when I say you now I mean your unit or the people in the
 20 basic line – were under instructions to stand firm and not
 21 to retreat, remember that?
 22 CAPTAIN LOEST: That's correct, Mr Chair.
 23 MR MPOFU: Yes. Now, is it also correct
 24 that effectively the basic line, as you can see it in that
 25 still picture, it didn't run parallel to the road, as it

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1 were, but it sort of cut into the road and effectively
 2 closed the road to Nkaneng. In other words, not the people
 3 where you were but the other extreme, those people had
 4 closed off the road, correct?
 5 CAPTAIN LOEST: That's correct, Mr Chair,
 6 I agree.
 7 MR MPOFU: Yes. Now the – okay, let me
 8 ask this as well just before we play the video. So in
 9 effect what I'm going to argue and I want you to confirm
 10 this or dispute it, what I'm going to argue is that the
 11 basic line – and for the purposes of this question you must
 12 assume that the people wanted to go to Nkaneng, we'll come
 13 to the other scenario where we say they wanted to attack,
 14 we'll explore both scenarios – if they wanted to go to
 15 Nkaneng the basic line effectively blocked, would have
 16 blocked them off in the same way that the Nyala 4 had
 17 blocked them off from that road if you know what I mean.
 18 The only difference is that this time it would be a human
 19 barrier as opposed to a physical barrier, would you agree?
 20 CAPTAIN LOEST: I agree on that, Mr
 21 Chair.
 22 MR MPOFU: Thank you. Alright, now we
 23 can play the video and I want you to play, to put special
 24 attention to the POP people, I'm assuming they're POP. Do
 25 you see those two people next to that Nyala, the second

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1 Nyala in the picture from the left? Those two, ja.
 2 CAPTAIN LOEST: Those two there?
 3 MR MPOFU: Yes and the others that you
 4 will see after the last Nyala and I'm going to be
 5 questioning you effectively about their evasive action of
 6 retreating and running away from the crowd so let's just
 7 play –
 8 [VIDEO IS SHOWN]
 9 MR MPOFU: There are three now. Can you
 10 just reverse it for a few seconds?
 11 [VIDEO IS SHOWN]
 12 MR MPOFU: Okay, stop and can you do it
 13 in slow motion?
 14 CHAIRPERSON: We started at 15 seconds.
 15 MR MPOFU: 15 yes, thank you,
 16 Chairperson.
 17 [VIDEO IS SHOWN]
 18 MR MPOFU: Stop. Yes, so you see that
 19 those three persons that we saw earlier were on the other
 20 side of the road, effectively took evasive action and
 21 retreated or ran towards the Nyala.
 22 CHAIRPERSON: We stopped at 20 seconds.
 23 MR MPOFU: Yes, we stopped between 15 and
 24 20. Would you agree with that, Captain?
 25 CAPTAIN LOEST: Yes, I agree with that.

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1 MR MPOFU: So, and that's why I'm saying
 2 we'll look at it from both angles. For the purposes of
 3 this question let's assume that the crowd was coming to
 4 attack, as is the version of yourself and SAPS, you would
 5 agree that those people, those three people would have been
 6 in the first line of attack even before the TRT. If the
 7 crowd was coming to attack they would have been the first
 8 ones to be attacked, correct?
 9 CAPTAIN LOEST: I agree on that, Mr
 10 Chair.
 11 MR MPOFU: Okay. And the only reason
 12 that they were not attacked or if it was an attack, is
 13 simply because they took evasive action and retreated,
 14 correct?
 15 CAPTAIN LOEST: I agree on that as well,
 16 Mr Chair.
 17 MR MPOFU: Yes. And so the only
 18 difference between those people and your line is that your
 19 line was under strict instructions not to retreat, correct?
 20 CAPTAIN LOEST: Mr Chair, there was never
 21 a specific instruction not to retreat. According to my
 22 knowledge, there was never an instruction issued like that.
 23 MR MPOFU: Well, okay, I thought you and
 24 I had agreed that there was, the very first question I
 25 asked you was that, or first couple of questions I asked

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1 you last week was that you, the basic line was under
 2 instructions to stay firm, stand steadfast and I used all
 3 those things and not to retreat and we agreed on that.
 4 CAPTAIN LOEST: No, I conceded that, Mr
 5 Chair. We did agree on that.
 6 MR MPOFU: Yes.
 7 CAPTAIN LOEST: But we did also move back
 8 a little bit, a couple of steps. I can't exactly remember
 9 how many.
 10 MR MPOFU: Yes, a little bit but you did
 11 not, as those three people, take complete evasive action
 12 which you could have done, correct?
 13 CAPTAIN LOEST: No, I agree on that.
 14 MR MPOFU: And you would agree that had
 15 you done as those people had done and moved away even 20
 16 metres, the tragedy might have been avoided, assuming the
 17 people were going to Nkaneng.
 18 CAPTAIN LOEST: Mr Chair, yes, that's
 19 speculative. I'm not sure if it would have happened but
 20 it, it's possible.
 21 MR MPOFU: Yes. No, you remember that
 22 last week you and I agreed that had you been 15 metres
 23 behind the place where you actually were, or so, the
 24 tragedy might have been avoided.
 25 CAPTAIN LOEST: Yes, I agree on that, Mr

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1 Chair.
 2 MR MPOFU: So similarly had you retreated
 3 another 20, 30 metres as those other POP people had done
 4 and if the people were on their way to Nkaneng and they had
 5 no longer blocked that road, they would have moved through,
 6 correct?
 7 CAPTAIN LOEST: That is possible, Mr
 8 Chair.
 9 MR MPOFU: Yes. Who, where did this
 10 instruction to stand firm and not to move back and that
 11 kind of thing, I'm sure I'm not using the exact words,
 12 where did it emanate from in relation to the TRT?
 13 CAPTAIN LOEST: Mr Chair, that was an
 14 instruction given to us throughout the week, that that was
 15 the plan that would, if POP would come under attack that
 16 was what we had to do. It was emphasised again that
 17 afternoon at the 14:30 briefing that was given at forward
 18 holding area 1.
 19 MR MPOFU: Okay, by Brigadier Calitz?
 20 CAPTAIN LOEST: Mr Chair, I speak under
 21 correction. Brigadier Calitz/Colonel Scott.
 22 MR MPOFU: And Colonel Scott. And I
 23 think we also covered this, this is the last question on
 24 this aspect, we also covered this last week that another
 25 aspect of the broad instructions you were given was that

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1 those people should not be allowed to – or let me put it
 2 this way. You are aware that there was the encirclement
 3 plan?
 4 CAPTAIN LOEST: Yes, I was aware of that,
 5 Mr Chair.
 6 MR MPOFU: And that the so-called
 7 militant group was meant to be encircled and disarmed
 8 within the laager or whatever you call it, within the
 9 enclosed area.
 10 CAPTAIN LOEST: That is correct, Mr
 11 Chair.
 12 MR MPOFU: Yes. And one aspect of that
 13 instruction was that they should not be allowed to break
 14 through, to move away outside of the protected area,
 15 correct?
 16 CAPTAIN LOEST: That is correct, Mr
 17 Chair.
 18 MR MPOFU: Thank you very much. Thank
 19 you, Chairperson.
 20 CHAIRPERSON: Mr Mpofo, you've used
 21 almost exactly 10 minutes but it didn't test us into any
 22 forbidden area.
 23 MR MPOFU: I could see the finger moving,
 24 Chairperson.
 25 CHAIRPERSON: Re-examination?

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1 RE-EXAMINATION BY MR SEMENYA SC: Thank
 2 you, Chair. Captain, when we see you raise your arm and
 3 call for cease fire we see you and others have your back
 4 against a car, remember that?
 5 CAPTAIN LOEST: Yes, Mr Chair, I do.
 6 MR SEMENYA SC: Before the response of
 7 the TRT at that point, how close to the road were you?
 8 CAPTAIN LOEST: Mr Chair, I speak under
 9 correction, it's a couple of metres. I can't exactly say
 10 five or six or maybe 10 metres, maybe 15, I can't really
 11 remember.
 12 MR SEMENYA SC: And how come you
 13 retreated to where the car was parked?
 14 CAPTAIN LOEST: Mr Chair, I think it was
 15 a natural instinct that we just felt that we had to move
 16 back to avoid conflict.
 17 MR SEMENYA SC: What do you mean to avoid
 18 conflict?
 19 CAPTAIN LOEST: Mr Chair, like on the
 20 videos it was clear that they were coming towards us and
 21 they were charging us and I think it was without giving any
 22 instruction, everybody just started moving backwards to
 23 such an extent to give them leeway to go where they wanted
 24 to go but they still came straight towards us.
 25 MR SEMENYA SC: If there was no response

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1 by the members of the TRT there, what was probably going to
 2 happen to you?
 3 CAPTAIN LOEST: Mr Chair, I'm very sure
 4 of the fact that if we did nothing then the events of the
 5 13th would most probably repeat itself and some of our
 6 members would have been injured, hacked to death or killed.
 7 MR SEMENYA SC: There's also evidence
 8 about the use of snipers. In that environment was it going
 9 to be possible for anyone to isolate those with weapons and
 10 those without?
 11 CAPTAIN LOEST: No, Mr Chair, not at that
 12 distance. It's way, it's too close. The area is too
 13 confined.
 14 MR SEMENYA SC: And the evidence was that
 15 the group moved in a tight formation. Was that your
 16 observation?
 17 CAPTAIN LOEST: That is correct, Mr
 18 Chair.
 19 MR SEMENYA SC: Now, again speaking about
 20 this group that was attacking, was the attack or the threat
 21 from the front of the group or by the entire group?
 22 CAPTAIN LOEST: Mr Chair, to me it seemed
 23 like the entire group because they were all part – it was
 24 not one or two or three or let's say the first four, five
 25 that came round the corner. Each and every one of them had

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1 exactly the same type of body language and the same mode,
 2 so there was, to me it was like everybody had the same
 3 purpose.
 4 COMMISSIONER HEMRAJ: What do you mean by
 5 body language, Captain?
 6 CAPTAIN LOEST: Mr Chair, they seemed
 7 aggressive. It was not a peace-loving crowd that just
 8 wanted to march to voice their views and that is something
 9 I've experienced in my 27 years dealing with public order
 10 policing and with crowds. This crowd was definitely not a
 11 peace-loving protesting crowd. They were, to me, seeking
 12 conflict.
 13 MR SEMENYA SC: Mr Mpfu just now has it
 14 had TRT should or could have run away like the POP members.
 15 You have heard those questions just now about evasive
 16 action?
 17 CAPTAIN LOEST: Mr Chair, according to me
 18 we did – we did employ evasive action by moving back at
 19 least I would say five to plus-minus 10 metres to give
 20 these or this militant group a chance to move wherever they
 21 wanted to, but they still came straight towards us.
 22 MR SEMENYA SC: Was it open for the TRT
 23 line to move further backwards than they did, given the
 24 time and space?
 25 CAPTAIN LOEST: Mr Chair, yes, I think it

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1 would have been very difficult because of the location of
 2 some of our vehicles, this could have created a scenario
 3 where members could have hurt themselves. So certain
 4 groups or certain parts of the line could move but others
 5 could not.
 6 MR SEMENYA SC: The image we see of
 7 Warrant Officer Kuhn backtracking and almost tripping, did
 8 you observe that happen?
 9 CAPTAIN LOEST: Yes, Mr Chair.
 10 MR SEMENYA SC: If the attacking group
 11 was not stopped, what could have happened to him?
 12 CAPTAIN LOEST: Mr Chair, then I would
 13 presume that most probably the same that happened on the
 14 Monday with Warrant Officer Monene, he would have been
 15 hacked or shot or evidently been killed.
 16 MR SEMENYA SC: Of course you do say you
 17 did not shoot yourself. Help us understand, had the
 18 members of the TRT line not responded, what would you have
 19 done?
 20 CAPTAIN LOEST: Mr Chair, then at some
 21 stage I would have shot myself. Before I actually wanted
 22 to commence to that action, the members already started
 23 firing and I just felt no need to fire as well because I
 24 was in command, I had to control the people.
 25 MR SEMENYA SC: Okay. Now talking about

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1 the events of the 13th, that is the Monday whilst you were
 2 inside the chopper with Colonel Vermaak, were you aware
 3 where the group of people were going to?
 4 CAPTAIN LOEST: Mr Chair, that was the
 5 same day I arrived at Marikana so I did not have any time
 6 to orientate myself but I heard that they said that this
 7 group is going to move to the koppie and at that stage I
 8 had not had a clear idea where the koppie was.
 9 MR SEMENYA SC: I'm directing your
 10 attention to whilst you are still in the chopper.
 11 CAPTAIN LOEST: Mr Chair, yes, from the
 12 few times I saw them moving I had a general idea in which
 13 direction they were going but exactly what they were going
 14 to do and where they're going, I was not sure.
 15 MR SEMENYA SC: Were you alive to the
 16 instructions that General Mpembe had given to the police
 17 personnel that was there.
 18 [09:28] CAPTAIN LOEST: No, Mr Chair, I didn't
 19 hear any instructions given by General Mpembe.
 20 MR SEMENYA SC: Were you alive to the
 21 threat that General Mpembe would have been trying to deal
 22 with, that is to stop the crowd from moving into Nkaneng,
 23 the settlement?
 24 CAPTAIN LOEST: No, Mr Chair, not at all.
 25 MR MPOFU: Sorry, excuse me, are we still

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1 talking about the 13th?
 2 MR SEMENYA SC: Sorry, into the
 3 settlement. I tried to correct myself. So what in real
 4 terms precipitated your conduct with Colonel Vermaak to
 5 throw the stun and the teargas?
 6 CAPTAIN LOEST: Mr Chair, Colonel Vermaak
 7 informed me that he could see that they fired teargas on
 8 the ground and that some of our members are under attack
 9 and some of the members are down on the ground and being
 10 hacked.
 11 MR SEMENYA SC: The purpose of that
 12 teargas and stun was to do what?
 13 CAPTAIN LOEST: Mr Chair, to get the
 14 perpetrators away from our members and to protect them.
 15 MR SEMENYA SC: According to your
 16 observation was that necessary?
 17 CAPTAIN LOEST: Mr Chair, yes, the few
 18 times what I saw I really think it was necessary.
 19 MR SEMENYA SC: Okay. You have also been
 20 shown visuals of some of the members searching the victims
 21 who were lying on the 16th there, remember?
 22 CAPTAIN LOEST: That is correct, Mr
 23 Chair.
 24 MR SEMENYA SC: And you have been
 25 directed at instances where some of the strikers were

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1 dragged?
 2 CAPTAIN LOEST: That is correct, Mr
 3 Chair.
 4 MR SEMENYA SC: In that type of scenario,
 5 if you have a suspicion there might be a weapon underneath
 6 a person, how do you get to that weapon?
 7 CAPTAIN LOEST: Mr Chair, as quickly and
 8 as fast as possible and by means of taking control either
 9 physically or verbally with your commands to make sure that
 10 the person knows and understands that you are under control
 11 of that situation.
 12 MR SEMENYA SC: How different would it
 13 have had to have happened other than the way we saw on the
 14 screen?
 15 CAPTAIN LOEST: Mr Chair, I don't think
 16 there is another way. That's the only way.
 17 MR SEMENYA SC: I think it is Colonel
 18 Scott who tells us how difficult it is if you are having an
 19 R5 rifle and you want to restrain somebody and the evidence
 20 was that you'd even use Calitz, and you want to restrain a
 21 suspect, that it is not uncommon to use your foot?
 22 CAPTAIN LOEST: Mr Chair, I agree on that
 23 because of the instance that if the suspect is capable he
 24 might try and take your firearm away from you. So you must
 25 use any means possible and including your limbs to secure

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1 that specific suspect.
 2 MR SEMENYA SC: There is also the
 3 question of the late Mr Mdze, that he possibly could have
 4 survived his injuries if he had received medical treatment
 5 on time. Did you see him there, the late Mr Mdze?
 6 CAPTAIN LOEST: Mr Chair, yes, I can
 7 remember vaguely, I can remember, yes.
 8 MR SEMENYA SC: At what point do you see
 9 him?
 10 CAPTAIN LOEST: Mr Chair, I think while
 11 we were busy searching, if it comes to mind, I can remember
 12 him there.
 13 MR SEMENYA SC: Did it occur to you that
 14 he might require a tourniquet?
 15 CAPTAIN LOEST: Mr Chair, no, at that
 16 stage there was a lot of movement of a lot of these people
 17 on the ground and we were not sure what was their
 18 intentions and at that stage I had to secure the scene, I
 19 had to make sure that my members are safe.
 20 MR SEMENYA SC: There is also your
 21 evidence that you had told the people the ambulance people
 22 were reticent to come in.
 23 CAPTAIN LOEST: Mr Chair yes, I can
 24 remember, I can't recall who said it, but somebody made the
 25 comment that the medical personnel were reluctant to come

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1 in because of the safety issue and then I informed them, or
 2 the person that gave me this information, I informed him
 3 that the area is now almost safe, they can inform the
 4 medical people to come in as soon as possible.
 5 MR SEMENYA SC: Was that before or after
 6 you had collected the weaponry that was carried by the
 7 strikers?
 8 CAPTAIN LOEST: Mr Chair, that was
 9 basically at the end, almost after we've finalised securing
 10 the scene.
 11 MR SEMENYA SC: Are you able to give us a
 12 time estimate maybe?
 13 CAPTAIN LOEST: No, Mr Chair,
 14 unfortunately not. I can, all I can remember, I was on the
 15 other side of the kraal basically where the last few
 16 strikers lied down. I can't exactly give you a timeline.
 17 I can't remember.
 18 CHAIRPERSON: Perhaps you could help us
 19 in this respect; how long after you'd given what amounts to
 20 the sort of all-clear signal did the paramedics arrive?
 21 CAPTAIN LOEST: No, Mr Chair, I must
 22 speculate. I can't really remember. All I remember is
 23 that I instructed the members that as soon as the medical
 24 people arrive they must assist wherever possible. We had
 25 some people guarding the scene and there were some members

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1 that were available and I said please, when the medical
 2 people arrive, if they need stretcher carriers or people to
 3 assist what, in whatever way, they must please assist
 4 immediately.
 5 CHAIRPERSON: Perhaps one can approach
 6 the matter this way. Once the all-clear signal had been
 7 given did the paramedics come immediately, or was there
 8 some time lapse before they came?
 9 CAPTAIN LOEST: Mr Chair, no, it took
 10 some time. I, when I spoke to Brigadier Pretorius I
 11 informed her that the medics can come in, we need CASEVACS
 12 immediately and the reason why that took so long, I really
 13 don't know why.
 14 CHAIRPERSON: Can one work out by looking
 15 at your, the times of your telephone calls to Brigadier
 16 Pretorius, can one ascertain from that when you conveyed
 17 the all-clear as it were to Brigadier Pretorius?
 18 CAPTAIN LOEST: Mr Chair, if I can
 19 remember correctly I think it was just after 4, I think at
 20 about 10 past 4, if I remember correctly.
 21 CHAIRPERSON: I see. Thank you.
 22 MR SEMENYA SC: Talking about the events
 23 of Monday again, the evidence is that General Mpembe told
 24 Colonel Vermaak not to follow the people to the river.
 25 CAPTAIN LOEST: No, Mr –

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1 MR SEMENYA SC: You did not hear that,
 2 did you?
 3 CAPTAIN LOEST: No, Mr Chair, I wasn't
 4 privy to that conversation.
 5 MR SEMENYA SC: But your response to the
 6 evidence that the General did not show any command and
 7 control of the environment?
 8 CAPTAIN LOEST: No, Mr Chair, I think he
 9 was, to a certain extent he was in command. Like I've
 10 stated before, he is a very busy person, so I think that's
 11 how he acts when things get a bit heated up and he was
 12 running around, but that is how I got to know him. That is
 13 how he is.
 14 MR SEMENYA SC: About the planning of the
 15 operation, was there any planning that live ammunition be
 16 used?
 17 CAPTAIN LOEST: No, Mr Chair, never.
 18 MR SEMENYA SC: What was your
 19 understanding of the plan to encircle?
 20 CAPTAIN LOEST: Mr Chair, basically to
 21 encircle this group and keep them contained and request
 22 them to lay down their arms. Once they've done that they
 23 could leave that police encirclement.
 24 COMMISSIONER HEMRAJ: Encircled as –
 25 sorry, Mr Semenya. Encircled as in after they've been

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1 dispersed?
 2 CAPTAIN LOEST: Mr Chair, no, basically
 3 while they were still in a group, contain them in a safe
 4 area where they could lay down their firearms, or their
 5 arms, and then after that they would be able to leave that
 6 secure area and then we could take the arms and the weapons
 7 and remove it.
 8 MR SEMENYA SC: Was the contemplation to
 9 encircle 3, 400 people?
 10 CAPTAIN LOEST: Mr Chair, no, according
 11 to what I can remember it was the whole group.
 12 MR SEMENYA SC: Yes, of what size? I'm
 13 just trying to understand.
 14 CAPTAIN LOEST: Mr Chair, if I can
 15 remember correctly I think it was about 2 000, if I'm not –
 16 2 to 3 000, if I can remember correctly.
 17 MR SEMENYA SC: Okay. How was that going
 18 to happen?
 19 CAPTAIN LOEST: Well, Mr Chair, that is
 20 why the barbed wire was used, or would have been used, to
 21 act as a force multiplier.
 22 MR SEMENYA SC: Did you have enough
 23 barbed wire to encircle 3, 4 000 people?
 24 CAPTAIN LOEST: Mr Chair, no, I think we
 25 lacked a few rolls of wire to complete that whole exercise.

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1 MR SEMENYA SC: Did you see the line
 2 formation of the Nyalas with the barbed wire?
 3 CAPTAIN LOEST: That's correct, Mr Chair.
 4 MR SEMENYA SC: Would that have been in
 5 line with your contemplated encirclement plan?
 6 CAPTAIN LOEST: To a certain extent, Mr
 7 Chair, but like I said there, the wire was not enough.
 8 COMMISSIONER HEMRAJ: Yes, but the –
 9 MR SEMENYA SC: Which extent – sorry.
 10 COMMISSIONER HEMRAJ: So sorry. But if
 11 the wire was only on the one side of the koppie that could
 12 never have indicated that there was going to be an
 13 encirclement.
 14 CAPTAIN LOEST: Mr Chair, yes, according
 15 to my knowledge, if I remember correctly the whole plan for
 16 POP to encircle these people, we weren't really involved in
 17 that. We were only there to assist when the POP people
 18 could not deal with it anymore. So I didn't really pay
 19 that much attention to exactly the finer detail of exactly
 20 how they're going to do that.
 21 COMMISSIONER HEMRAJ: Thank you. Sorry
 22 to interrupt you, Mr Semenya.
 23 MR SEMENYA SC: So you say the formation
 24 of the barbed wire did not, could not achieve the
 25 encirclement that was contemplated?

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1 CAPTAIN LOEST: Mr Chair, it could have,
 2 it could have worked if the crowd was not so militant and
 3 aggressive towards the police.
 4 CHAIRPERSON: Mr Semenya, could you give
 5 us an indication how long you intend being in your re-
 6 examination? You've actually exceeded the time allotted to
 7 you, but I can see you're dealing with important matters
 8 for your case, that's why I haven't stopped you, but can
 9 you give me an indication how long you're likely to be?
 10 MR SEMENYA SC: I'll try and contain it
 11 in the next 10-odd minutes, Chair. In your past police
 12 experience has it occurred that a use of barbed wire for
 13 instance triggers an attack on the police?
 14 CAPTAIN LOEST: No, Mr Chair, it doesn't,
 15 because that is the specific purpose of the wire, to keep
 16 the people and the police apart and to create a safe zone
 17 where the police can properly function from.
 18 MR SEMENYA SC: In your previous police
 19 experience has the use of teargas ever triggered an attack
 20 on the police?
 21 CAPTAIN LOEST: No, Mr Chair, they
 22 normally, the crowd disperse.
 23 MR SEMENYA SC: The use of a stun
 24 grenade, has it ever provoked an attack on the police?
 25 CAPTAIN LOEST: No, Mr Chair.

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1 MR SEMENYA SC: When we look at the
 2 visuals at the point where the TRT is responding to the
 3 attacking group we see a lot of dust coming off in front of
 4 the crowd. What was that about?
 5 CAPTAIN LOEST: Mr Chair, I would presume
 6 that that was members of TRT firing warning shots to
 7 indicate to the striking workers to stop.
 8 MR SEMENYA SC: Slide 138 of exhibit L
 9 shows you to be in command. You were in command of what?
 10 CAPTAIN LOEST: Mr Chair, I was in
 11 command of the TRT line-up for that specific day.
 12 MR SEMENYA SC: The slide also says it's
 13 at the neutral area response team and then describes you as
 14 a commander details, Captain Loest, personnel 76,
 15 multiplied by TRT members. You see that?
 16 CAPTAIN LOEST: I do, Mr Chair.
 17 MR SEMENYA SC: Were you at any stage in
 18 control or command of the POP action?
 19 CAPTAIN LOEST: No, Mr Chair, I was only
 20 in command of TRT members. At no stage I had any command
 21 over members of POP.
 22 MR SEMENYA SC: Were you ever in command
 23 of or the implementation of Standing Order 262?
 24 CAPTAIN LOEST: No, Mr Chair. Standing
 25 Order 262 applies to members of POP, not to members of TRT.

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1 MR SEMENYA SC: What would have happened
 2 if the strikers did not pose any threat to the TRT members?
 3 CAPTAIN LOEST: Mr Chair, I'm very sure
 4 of it that we would have let them gone past and move
 5 towards wherever they wanted to go and we would not have
 6 acted at all, like our original just stay in a basic line
 7 and not let them into the neutral zone or the safety zone
 8 and let them just be.
 9 MR SEMENYA SC: Okay. Those are the
 10 questions, Chair.
 11 CHAIRPERSON: Thank you. As far as we
 12 can see from the video the firing went on, or what's been
 13 called the volley or fusillade, as I call it sometimes,
 14 went on for about eight seconds before you shouted cease
 15 fire. That's correct, is it?
 16 CAPTAIN LOEST: That's correct, Mr Chair.
 17 CHAIRPERSON: Now if you had thought that
 18 the firing was unnecessary I take it you would have called
 19 cease fire earlier?
 20 CAPTAIN LOEST: That's correct, Mr Chair.
 21 CHAIRPERSON: If you had thought that the
 22 firing was not necessary at all you would have called cease
 23 fire immediately the first shot was fired. Is that
 24 correct?
 25 CAPTAIN LOEST: That's correct, Mr Chair.

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1 CHAIRPERSON: So why exactly did you wait
 2 eight seconds before you called out cease fire?
 3 CAPTAIN LOEST: Mr Chair, I would, I
 4 think because of the dust we couldn't see, I couldn't see
 5 what was happening in front of me and the cease fire came
 6 from the top, from my right-hand side, and I basically
 7 conveyed the message. So I think the first cease fire was
 8 called a couple of seconds before I actually called cease
 9 fire and I just conveyed the message.
 10 CHAIRPERSON: What I'm trying to get at
 11 is prior, from the start of the volley to the time when
 12 cease fire was called, were you satisfied that the firing
 13 was necessary?
 14 CAPTAIN LOEST: Mr Chair, according to
 15 me, I think the first part of the volley was warning shots
 16 and the protesters just kept on coming and I presume that
 17 then the members felt that they needed to fire to the lower
 18 limbs and most probably therefore the eight seconds.
 19 CHAIRPERSON: I see. Thank you. You may
 20 be excused on the usual basis that if something arises
 21 which makes it necessary for us to get you back, you'll
 22 come back without our having to issue a subpoena for you.
 23 If you're happy to accept that condition, you may be just,
 24 you may be excused.
 25 CAPTAIN LOEST: Mr Chair, yes, depending

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1 on, I had consultation with my psychiatrist last week, I
 2 will see how she feels about this whole matter regarding my
 3 mental state at the moment.
 4 CHAIRPERSON: Yes, no I understand that
 5 and certainly that would be – I don't know that it will be
 6 necessary for us to get you back, but just in case, and
 7 obviously we would have regard to the state of your health.
 8 CAPTAIN LOEST: That's fine, Mr Chair.
 9 CHAIRPERSON: You may be excused.
 10 CAPTAIN LOEST: Thank you, Mr Chair.
 11 [NO FURTHER QUESTIONS – WITNESS EXCUSED]
 12 CHAIRPERSON: Mr Semenya, are you going
 13 to call Colonel McIntosh, or is Adv Mathibedi going to do
 14 so?
 15 MR SEMENYA SC: My learned friend will be
 16 calling Colonel McIntosh.
 17 CHAIRPERSON: Are you ready to continue,
 18 Mr Mathibedi, with his evidence now?
 19 MR MATHIBEDI SC: I'm ready, Mr
 20 Chairperson.
 21 CHAIRPERSON: Alright.
 22 MS BARNES: Chair, before this witness
 23 commences, might I place something on record? Chair, we
 24 were given an index by SAPS of the documents they intended
 25 to rely on in their examination-in-chief of Lieutenant-

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1 Colonel McIntosh. We were given that I think on Thursday
 2 last week. It had five items on it. We now arrive here
 3 this morning and there's a new index with an additional
 4 three items, all of which are new exhibits. There are two,
 5 item 6 and 7 are videos which if we'd been told, even if
 6 we'd just, you know, been told yesterday, we would have
 7 been in a position to look at these videos.
 8 [09:48] But we were not able to because we were only told
 9 this morning. The last item on the index is a new
 10 statement by Lieutenant Colonel McIntosh that we've never
 11 seen before. It is a rather lengthy handwritten statement
 12 that I've never ever seen before. I'm the first person to
 13 cross-examine Lieutenant Colonel McIntosh, this statement
 14 may affect my cross-examination in all sorts of ways, I
 15 don't know, I haven't had a chance to read it, so neither
 16 has Mr Mpofo. We've all seen this new index with three new
 17 items for the first time this morning and, Chair, I really
 18 take exception to this. It is unacceptable, it is unfair,
 19 I don't know how we are supposed to prepare to cross-
 20 examine in these circumstances.
 21 Chair, at the very least we need an opportunity
 22 to read this new statement from Lieutenant Colonel McIntosh
 23 before we start today and as for the videos again, Chair,
 24 we haven't had a chance –
 25 CHAIRPERSON: I understand –

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1 MS BARNES: - to look at these videos –
 2 CHAIRPERSON: I understand the videos, am
 3 I correct, are contained in the documentary that has
 4 recently been produced, is that correct?
 5 MR MATHIBEDI SC: That's correct, Mr
 6 Chairperson.
 7 CHAIRPERSON: That's the source of these
 8 videos that I understand hadn't been seen before and
 9 certainly hadn't been given to us before despite the
 10 undertaking we got from the media houses that I referred to
 11 earlier, but I would imagine, I understand the problem that
 12 you're putting to me, but I would imagine the sensible way
 13 for us to proceed is to hear the evidence in chief, see the
 14 videos, the witness will deal with the statement which he,
 15 the new statement to which you refer, and you will be in a
 16 position to decide what extra time you require, if any,
 17 before you commence your cross-examination.
 18 MS BARNES: Yes, Chair, but can there be,
 19 can it be made –
 20 CHAIRPERSON: It –
 21 MS BARNES: - clear to the parties that
 22 there needs to be these indexes? We were required to
 23 provide ours on Friday and the documents we intend to rely
 24 on, which we did. It needs to be made clear to all the
 25 parties that advance notice must be given, –

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1 CHAIRPERSON: If there has been –
 2 MS BARNES: - otherwise it is completely
 3 unfair.
 4 CHAIRPERSON: There has been a deviation
 5 from the practice which we've laid down which is the
 6 appropriate practice to follow and I hope this doesn't
 7 happen again, but we're faced with the situation that
 8 happened and short of throwing all my toys out of the cot
 9 and I unfortunately haven't got any toys with me here,
 10 there is nothing else I can do except to allow the evidence
 11 to be given and then you can tell me whether you need time
 12 to prepare cross-examination, but the point you made about
 13 the fact that this shouldn't happen, this is not the way
 14 evidence should be presented in the light of the way we've
 15 been working for, well some time in this Commission, but
 16 that is corrected and that's noted. Mr Mathibedi, would
 17 you like to –
 18 MR MATHIBEDI SC: Thanks, Mr Chairperson,
 19 -
 20 MR MPOFU: If I may respond, I'm sorry, I
 21 agree with what has been said and what you've said,
 22 Chairperson, I just –
 23 CHAIRPERSON: Two more concurring
 24 judgments, but carry on.
 25 MR MPOFU: Yes, let us just take advance

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1 while we are placing matters on the record, just to place
 2 on the record that the people that were, the arrested
 3 persons are appearing in Court again today but because we
 4 had to do this cross-examination we dispersed some of our
 5 colleagues and that is why they are not here today.
 6 CHAIRPERSON: I'm sure they're in good
 7 hands, your clients.
 8 MR MPOFU: Yes, thanks, Chairperson.
 9 CHAIRPERSON: Mr Mathibedi?
 10 MR MATHIBEDI SC: Thanks, Chairperson.
 11 With regard to item number 7, the manuscript statement, it
 12 has been in the possession of IPID, we only got that, to
 13 know about that this morning and we saw it fit that, you
 14 know we have an obligation and a duty to bring all the
 15 information before the Commission.
 16 CHAIRPERSON: Ja, I can understand it and
 17 I'm surprised you didn't contact IPID before and ask for
 18 the statements that they had, but that's water under the
 19 bridge. The comments that Ms Barnes made were, the points
 20 which she made were well taken and I trust they'll be borne
 21 in mind for the future conduct of the SAPS case, but I
 22 understand the explanation that you've given and I can also
 23 understand if you learned for the first time this morning
 24 of that statement, clearly you had a duty to put it before
 25 us, so I haven't got a problem with that, but anyway let's,

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1 - the captain has now been excused and if he will leave the
 2 witness seat then that will make space, I'm not sure how
 3 ample the space will be but it will make space for Colonel
 4 McIntosh.
 5 MR MATHIBEDI SC: Thanks, Chairperson, I
 6 note the concerns.
 7 CHAIRPERSON: Colonel McIntosh, are you
 8 prepared to take the oath?
 9 COLONEL McINTOSH: Yes, I am.
 10 CHAIRPERSON: Will the oath be binding on
 11 your conscience?
 12 COLONEL McINTOSH: Yes.
 13 CHAIRPERSON: Do you swear that the
 14 evidence you will give before this Commission will be the
 15 truth, the whole truth and nothing but the truth, raise
 16 your right hand and say, I swear, so help me God?
 17 COLONEL McINTOSH: I swear, so help me
 18 God.
 19 CHAIRPERSON: Please be seated? There is
 20 a bottle of water there for you, I hope someone will bring
 21 you a glass so that if necessary you can drink water from a
 22 glass instead from a bottle. Mr Mathibedi?
 23 MR MATHIBEDI SC: Chairperson, if we
 24 could first start with housekeeping matters?
 25 CHAIRPERSON: A bit of housekeeping, Mr

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1 Mathibedi, yes?
 2 MR MATHIBEDI SC: Item 1, already an
 3 exhibit before the Commission, if you could go to item
 4 number 2? Chairperson, I'm told –
 5 CHAIRPERSON: Item 2, the [inaudible,
 6 microphone off]?
 7 MR MATHIBEDI SC: That's correct.
 8 CHAIRPERSON: TTT1 is a statement by
 9 Colonel McIntosh dated 13 May 2014. Then you've got, item
 10 3 is his CV?
 11 MR MATHIBEDI SC: That's correct,
 12 Chairperson.
 13 CHAIRPERSON: So that will be TTT2, I
 14 take it?
 15 MR MATHIBEDI SC: Yes, Chairperson.
 16 CHAIRPERSON: Yes?
 17 MR MATHIBEDI SC: Chairperson, item
 18 number 4 should read as "The Ryland video transcript" and
 19 that is GGG36, it is already before the Commission.
 20 CHAIRPERSON: Yes, is that all you want
 21 to deal by way of housekeeping?
 22 MR MATHIBEDI SC: Number 4, that's
 23 correct.
 24 CHAIRPERSON: Yes. It is GGG, is it, the
 25 previous –

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1 MR MATHIBEDI SC: GGG36.
 2 CHAIRPERSON: GGG36 and then we've got
 3 some other items here, 6, what is 6? Are you going to put
 4 that in now?
 5 MR MATHIBEDI SC: Yes.
 6 CHAIRPERSON: So that will be TTT3?
 7 MR MATHIBEDI SC: That's correct, and
 8 then item 6 –
 9 CHAIRPERSON: Hang on, TTT3 is a video
 10 taken or videos taken on 14 and 15/08/2012 by Warrant
 11 Officer Masenya?
 12 MR MATHIBEDI SC: That's correct.
 13 CHAIRPERSON: Okay, and then we've got
 14 two more, 6.1 and 7, items 6.1 and 7?
 15 MR MATHIBEDI SC: That's correct.
 16 CHAIRPERSON: Now what is item 6., - 6.1
 17 will be TTT4, how would we describe that?
 18 MR MATHIBEDI SC: These are the videos
 19 that were compiled by -
 20 CHAIRPERSON: I'm sure Mr Video, - sorry,
 21 Mr Desai can provide the number of the videos, how do we
 22 describe these particular videos?
 23 MR MATHIBEDI SC: They would be relating
 24 to the negotiations that took place on the 15th.
 25 CHAIRPERSON: Videos –

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1 COMMISSIONER HEMRAJ: Well, are they the
 2 videos as they appear on the documentary or are they the
 3 original videos from whatever the sources are?
 4 MR MATHIBEDI SC: As they appear on the
 5 documentary.
 6 CHAIRPERSON: Okay, so I'll describe them
 7 as videos re negotiations on 15 August 2012 from, what's
 8 this video called, - from documentary, what's the name of
 9 the documentary? What's the name of the documentary?
 10 MS BARNES: It's miners shot down.
 11 CHAIRPERSON: Thank you.
 12 MR MATHIBEDI SC: Thanks.
 13 CHAIRPERSON: Alright, and TTT5 is a
 14 statement by the witness, isn't it?
 15 MR MATHIBEDI SC: That's correct,
 16 Chairperson.
 17 CHAIRPERSON: Well, we'll call it IPID
 18 statements by witness dated 19 August 2012, is that all the
 19 housekeeping?
 20 MR MATHIBEDI SC: Thanks, that's all, Mr
 21 Chairperson.
 22 MS BARNES: Chair, -
 23 CHAIRPERSON: Yes, can anyone else,
 24 sorry, I knew you wanted to say something, if we do so can
 25 I say so? Can anyone help us in relation to the sources of

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1 the videos contained in TTT4? TTT4 is the documentary
 2 called "Miners shot down" which contains, I have a copy but
 3 I haven't had the opportunity to see it yet, but I
 4 understand it contains a number of video clips dating from
 5 the period that we're busy with in the Commission. Some of
 6 them we've seen, some of them we've never seen before, I've
 7 already stated that we received an undertaking from the
 8 media houses which wasn't complied with, to give us
 9 everything they had, whether it has been shown or not, but
 10 does anybody here know what the source of those videos are
 11 or do we just take secondary items of evidence, of videos
 12 that are to be seen on the documentary without knowing
 13 their provenance, who took them and so on? Can anybody
 14 else us?
 15 MR GOTZ: Chair, I might be able to
 16 assist, however we haven't yet seen the portion of the
 17 miners shot down video that my learned friend wishes –
 18 CHAIRPERSON: We are told –
 19 MR GOTZ: - to rely on but –
 20 CHAIRPERSON: We are told they relate to
 21 negotiations on the 15th of August.
 22 MR GOTZ: And my understanding is that a
 23 lot of that material is in fact in the police hard drive,
 24 some of those videos which fall under the folder
 25 "Recycled", a lot of that material is in fact in there and

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1 it is correct that they have yet to be made exhibits and
 2 exhibited in the Commission.
 3 CHAIRPERSON: Well, -
 4 MR GOTZ: But as to whether or not
 5 they've been hidden or –
 6 CHAIRPERSON: Ja –
 7 MR GOTZ: - not previously disclosed,
 8 Chair, I don't believe that that's correct.
 9 CHAIRPERSON: You know I was told by Mr
 10 Chaskalson that some of the material on the documents, I
 11 assume the material we're going to see now had not
 12 previously been seen by the evidence leaders and wasn't
 13 part of the police hard drive, but anyway, sorry? It
 14 emanates apparently from one or other of the media houses,
 15 but anyway, if you can't help us with precise information
 16 it is no good investigating it now, it is obviously
 17 desirable before we make a final decision regarding what we
 18 are going to see, that we should know possibly where it
 19 comes from and so on, but anyway, if the information that
 20 we need is not forthcoming now and I can understand your
 21 problem, Mr Gotz, you haven't seen what we're going to see,
 22 but I take it you've seen the documentary but it is
 23 something we can in fullness of time investigate or look at
 24 or receive information on, but let's start now. Now that
 25 we've got the housekeeping done, let's start with the

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1 evidence.

2 MS BARNES: Chair, just, I apologise –

3 CHAIRPERSON: Oh, sorry, I beg your

4 pardon, you did indicate that you wanted to say something?

5 MS BARNES: Thanks, Chair, just another

6 housekeeping matter –

7 CHAIRPERSON: Forgive me, I didn't intend

8 to be rude to you.

9 MS BARNES: Thank you, Chair. It is item

10 1 on the SAPS index, the statements of Colonel McIntosh,

11 which is already Exhibit HHH14, is in fact dated the 19th of

12 August 2012, it is described here as an undated statement

13 but certainly the copy that I have and that my colleagues

14 have is dated the 19th of August 2012.

15 CHAIRPERSON: Well, the information

16 contained in the coversheet of the documents we've been

17 handed is in that respect incorrect, but we won't allow

18 ourselves to be misled by it.

19 COMMISSIONER HEMRAJ: Well, first, Mr

20 Mathibedi, our first statement is a further statement and

21 it is dated –

22 CHAIRPERSON: No, no, I'm sorry to

23 interrupt my colleague, Advocate Hemraj, she has got a

24 different bundle than the one I have. The one I have

25 contains as the first statement, the document which I

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1 accept is HHH14 and according to my copy it was dated the

2 19th of August 2012, deposed to before Captain Adriaon on

3 that day, so anyway these are untidy housekeeping matters

4 to be sorted out later. Let's start with the evidence and

5 carry on, but the point made by Advocate Barnes appears to

6 be correct.

7 EXAMINATION BY MR MATHIBEDI SC: Thanks,

8 Chairperson. Lieutenant, do you confirm that you made a

9 statement dated the 19th of August 2012?

10 COLONEL McINTOSH: Chair, I would just

11 like to rectify that, I'm a lieutenant colonel, not a

12 lieutenant, thank you for the demotion.

13 MR MATHIBEDI SC: Sorry, Colonel?

14 COLONEL McINTOSH: Yes, I did make

15 statements on the 19th of August.

16 MR MATHIBEDI SC: And you – a statement

17 which is Exhibit TTT1?

18 COLONEL McINTOSH: That is correct,

19 Chair.

20 MR MATHIBEDI SC: If you go to Exhibit

21 TTT2, do you confirm that that is your CV setting out your

22 qualifications and career path in the South African Police

23 Services?

24 COLONEL McINTOSH: That is correct,

25 Chair.

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1 MR MATHIBEDI SC: Can we go to item, -

2 sorry, Exhibit TTT5, do you also confirm that you made the

3 statement?

4 COLONEL McINTOSH: That is correct,

5 Chair.

6 MR MATHIBEDI SC: Now, Lieutenant

7 Colonel, prior to your deployment at Marikana on the 14th

8 did you have an occasion of being involved in any

9 negotiations?

10 COLONEL McINTOSH: Yes, Chair, I've been

11 involved in negotiations quite regularly, especially during

12 my time at Mamelodi where I was the commander of a task

13 team there. We had a lot of time for negotiations with

14 regards to public violence, xenophobia and also the

15 situations of mob justice.

16 MR MATHIBEDI SC: Now can you give an

17 indication or estimation, in how many incidents were you

18 involved?

19 COLONEL McINTOSH: In my five and a half

20 years in Mamelodi, it must be around about 80 to 90 cases

21 that we've had to negotiate people out of situations.

22 MR MATHIBEDI SC: You also confirm that

23 you attended a course dealing with negotiations?

24 COLONEL McINTOSH: That is correct,

25 Chair.

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1 MR MATHIBEDI SC: When was that?

2 COLONEL McINTOSH: That was in 2012 when

3 I attended the official course.

4 MR MATHIBEDI SC: What was the duration

5 of the course?

6 COLONEL McINTOSH: The duration is three

7 weeks, Chair.

8 MR MATHIBEDI SC: Which modules were

9 covered during the training?

10 COLONEL McINTOSH: All modules relating

11 to hostage and crisis negotiation, including your suicides,

12 including your hostage taking, extremists, crowd

13 management, those were included.

14 MR MATHIBEDI SC: Now when it comes to

15 negotiation are there different principles applicable to

16 crowd management related matters and crisis negotiations?

17 COLONEL McINTOSH: There is always

18 different aspects that one has to take into account

19 depending on the size of your crowd, the type of groups and

20 then also you will not deploy the same type of tactics for

21 a hostage situation for, dealing with a crowd management

22 situation.

23 MR MATHIBEDI SC: And the principles?

24 COLONEL McINTOSH: The principles will

25 remain the same.

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1 MR MATHIBEDI SC: Now you were deployed
 2 at Marikana on the 14th, is that correct?
 3 COLONEL McINTOSH: That is correct.
 4 MR MATHIBEDI SC: Were you briefed about
 5 the situation and the happenings at Marikana?
 6 COLONEL McINTOSH: I was briefed by
 7 Brigadier Fritz and Brigadier Calitz of POPS and STF at
 8 Marikana on the 14th, Chair.
 9 MR MATHIBEDI SC: What did the briefing
 10 entail?
 11 COLONEL McINTOSH: The briefing entailed
 12 the run-up to the Marikana incident with regards to what
 13 had happened the previous couple of days, with regards to
 14 the death of the policemen, the death of members of the
 15 various unions as well as the security guards and the
 16 situation that the people had now gone to sit on the koppie
 17 with regards to weapons in their possession which was
 18 creating a problem for safety and security of that area.
 19 MR MATHIBEDI SC: What was the purpose of
 20 your deployment at Marikana?
 21 COLONEL McINTOSH: The purpose of the
 22 deployment was to try and negotiate a successful and
 23 peaceful resolution to have the people put down their
 24 weapons, to have the situation restored to calm.
 25 MR MATHIBEDI SC: Were you alone when the

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1 negotiations were conducted?
 2 COLONEL McINTOSH: No, Chair, there were
 3 various members, remember the negotiators worked in teams.
 4 Part of the team was Brigadier Calitz, who is one of the
 5 POPS negotiators from or a member of POPS who is one of the
 6 most experienced negotiators in the Northwest with regards
 7 to mine related violence, then there was Colonel Corrie
 8 Rheeder from the Psychological Services who is also a
 9 negotiator and a psychologist, Captain Greyling and Captain
 10 Papi Botsane.
 11 [10:08] MR MATHIBEDI SC: Now how did, what was
 12 the purpose of negotiating with the strikers?
 13 COLONEL McINTOSH: Chair, the purpose of
 14 negotiating with the strikers was to find a peaceful
 15 solution so that no other person had to lose their life or
 16 anybody had to be injured further.
 17 MR MATHIBEDI SC: How did the team went
 18 about in building a trust relationship with the strikers?
 19 COLONEL McINTOSH: One must be honest
 20 with your subjects that you work with. You must try and
 21 build a relationship based on give and take with regards
 22 to, we're not there to harm and we expect the same from
 23 their side as well, Chair.
 24 MR MATHIBEDI SC: No, did you manage to
 25 build a relationship with the strikers and if so, how did

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1 you go about in doing that?
 2 COLONEL McINTOSH: In the beginning there
 3 was no sense of trust between the strikers and the police,
 4 taking into consideration what had happened on the 13th
 5 which we had to take into consideration as well but slowly
 6 you have to try and build that trust to allow the people to
 7 approach so that we could discuss. We made certain
 8 compromises such as that we would stay inside the vehicles,
 9 we wouldn't try to harm them, we wouldn't try to take
 10 anybody by force, to get the people to come forward.
 11 Eventually it did work, they did come forward. Five of the
 12 people, of the group, did come forward and we started to
 13 negotiate from there or discuss from there with regard to
 14 the way forward and to get their demands. So there was a
 15 relationship that was starting to form, even by the end of
 16 day 1 the relationship had formed quite well, that we were
 17 informing them what we were doing and why we were doing it.
 18 You will see later with regards to the fact that we brought
 19 in a helicopter later in the afternoon due to certain facts
 20 that we had to our disposal so that it wouldn't be a
 21 surprise to the strikers either and got their permission
 22 basically to be able to do our job with regard to the
 23 deaths next to the koppie.
 24 MR MATHIBEDI SC: The team negotiated
 25 from within the Nyala and the police are being criticised

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1 about that. What is your view about that?
 2 COLONEL McINTOSH: Chair, the first thing
 3 that you have to take into consideration is the fact that
 4 officer safety is the most important. We had issued a
 5 request that if we could be allowed to negotiate it from
 6 outside the vehicle, which remember all decisions made by
 7 negotiators come through the JOC and through the
 8 structures. We don't make decisions based on our own
 9 merits or based on our own feelings. We did request that
 10 could we negotiate from outside, they couldn't adequately
 11 ensure our safety so the request was denied and said we had
 12 to rather negotiate from inside the Nyalas.
 13 MR MATHIBEDI SC: Exhibit L slide 95, the
 14 slide depicts five gentlemen, one of whom is holding a
 15 loudhailer. Are you in a position to tell us what was
 16 happening on that occasion?
 17 COLONEL McINTOSH: Chair, this was in the
 18 initial period when we tried to get the first contact and
 19 so forth. We called the five forward and these, this was
 20 the approach when they were coming to our vehicle, Chair,
 21 this was the first contact we'd actually made with these
 22 people.
 23 MR MATHIBEDI SC: And can we go to slide
 24 number 98? What does the slide depict and what was
 25 happening?

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1 COLONEL McINTOSH: Chair, when we had
 2 called the I forward we had asked them to please just open
 3 their blankets and make sure that they didn't bring any
 4 weapons forward, which they had done and this is the
 5 position that they were in when they came forward. They
 6 came down on their knees and they stood in front of the
 7 vehicle until we called them forward but we still couldn't
 8 hear one another inside the Nyala due to the fact that the
 9 Nyala was also idling at that time. The Nyalas had to idle
 10 the whole time unfortunately due to mechanical issues with
 11 the Nyalas.

12 MR MATHIBEDI SC: In which language were
 13 the negotiations conducted with the strikers?

14 COLONEL McINTOSH: We would get the
 15 information in Fanagolo, it would be translated and then it
 16 would be discussed inside the Nyala and then the results
 17 would then be given back in Fanagolo to the outside on the
 18 PA system.

19 MR MATHIBEDI SC: Now, amongst the five
 20 gentlemen depicted in slide number 5, with whom did you
 21 have a conversation mostly?

22 COLONEL McINTOSH: It would be the person
 23 second from right with the green blanket who is now known
 24 to me as Mr Noki, Chair.

25 MR MATHIBEDI SC: And how did you find Mr

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1 Noki?

2 COLONEL McINTOSH: In the beginning one
 3 could see that they were very agitated and very angry about
 4 certain things which later transpired what the problems
 5 were and in the beginning it was very progressive but as we
 6 progressed on the first day it became slightly calmer and
 7 so forth. He never gave his name to me. I gave my name to
 8 him and so we started to build on what we had.

9 MR MATHIBEDI SC: And what was the
 10 attitude of the crowd at that stage?

11 COLONEL McINTOSH: The attitude of the
 12 people in the crowd, remember there were two basic groups.
 13 There was a large group on the koppie and there was a
 14 smaller group to the front. In the beginning it seems they
 15 didn't want the police to be there at all so they were
 16 quite aggressive and very abrupt in the beginning, Chair.

17 MR MATHIBEDI SC: Now how did you go
 18 about, in dealing with the attitude that – you know,
 19 aggressiveness and abruptness?

20 COLONEL McINTOSH: One must remain calm,
 21 one must remained focused on the purpose, what we were
 22 there for, is to try and get to a situation which no-one
 23 else had to be hurt so you have to remain calm, collected
 24 and try and keep your tone level. Even if the people are
 25 shouting at you, you have to remain calm, Chair.

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1 MR MATHIBEDI SC: Did the team of
 2 negotiators from the side of the police make any
 3 undertakings to the strikers?

4 COLONEL McINTOSH: We gave the
 5 undertaking that they would be safe to come forward, the
 6 people who would come forward. We had no interest in
 7 trying to arrest them or trying to do anything. They would
 8 be free to go back to their group as soon as we'd finished
 9 talking to one another. They had freedom of movement, we
 10 didn't try to impair on that whatsoever and then also that
 11 we would try and find a solution to their situation, to
 12 bring this situation to a calm without any form of people
 13 being injured and also to try and bring things back to
 14 normal as quickly as possible.

15 MR MATHIBEDI SC: What was the attitude
 16 of the five leaders once you gave them the undertaking or
 17 assurance from the side of the police?

18 COLONEL McINTOSH: The five individuals
 19 came forward to the vehicle and actually started to discuss
 20 with us, which is a positive sign and then also later in
 21 the afternoon, like I say, when we had to bring in a
 22 helicopter and so forth we gave them the time to discuss
 23 with the people, to bring back feedback and so forth. So
 24 there was dialogue taking place, Chair.

25 MR MATHIBEDI SC: Now later during the

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1 course of the day it came to your attention that there is a
 2 body in the vicinity which the police had to attend to, is
 3 that correct?

4 COLONEL McINTOSH: That's correct, Chair.

5 MR MATHIBEDI SC: And what happened after
 6 that came to your attention?

7 COLONEL McINTOSH: Chair, due to the fact
 8 that the previous day there was a helicopter involved as
 9 well where the policemen were hacked and people were
 10 injured and killed, we came to the decision it would be
 11 better to inform the people to bring in the helicopter, we
 12 need to bring in the helicopter, we found a body to the
 13 left-hand side in which Mr Noki said they don't know
 14 anything about the body after he'd spoken to his people and
 15 then we're welcome to bring in the helicopter as long as we
 16 don't interfere with what they're doing. And that's what
 17 we'd done, we guided it in, we gave the information back
 18 and they brought the helicopter, not disturbing anything
 19 that was going on on the koppie whatsoever and we had a
 20 relatively peaceful situation and no-one was worried about
 21 the fact that we brought the helicopter in to do that type
 22 of thing but we were just informing them what we need to
 23 do, is it possible, would they have any objections to it.
 24 And they came back and said we could proceed with our work,
 25 they don't mind.

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1 MR MATHIBEDI SC: Why was it necessary to
 2 inform and advise the five leaders as to what the police
 3 would like to do?
 4 COLONEL McINTOSH: We don't want a
 5 situation where the people are suddenly startled by
 6 something happening which could possibly start something
 7 close to what happened on the 13th so everything was taken
 8 into account, that we don't have that same type of
 9 situation happening again. Inform the people what we want
 10 to do and what we need to do and then get their approval to
 11 it so that there wouldn't be any surprises with regard to
 12 that. Also we had to bring in extra vehicles with regard
 13 to photographers, we had to bring in extra vehicles for the
 14 mortuary vehicle and then people to safeguard those people.
 15 So that movement could have also been seen as a form of
 16 volatile reaction from the police and that's what we
 17 informed them about.
 18 MR MATHIBEDI SC: How did the
 19 negotiations end on the 14th?
 20 COLONEL McINTOSH: The negotiations ended
 21 on the 14th when the people actually, the five individuals
 22 agreed that they would like to postpone the meeting until
 23 the following morning at 9 o'clock to give them the
 24 opportunity to talk and we also requested them that they
 25 mustn't bring weapons to the koppie anymore. Their whole

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1 issue was regarding to the weapons in their possession
 2 which made the gathering unlawful. The other thing which
 3 we also said that, they gave us a request that they wanted
 4 to speak to the management of Lonmin. That we gave back to
 5 our JOC as well and said that we need to have this looked
 6 at seriously and then we had to ask them, please, we'd like
 7 to have the guys from Lonmin to give us some type of
 8 decision. We can't negotiate based on labour issues, we
 9 can only negotiate based on safety and security issues. So
 10 we did give their request back to have Lonmin to come
 11 forward and negotiate or discuss with these people further
 12 in some form of manner.
 13 MR MATHIBEDI SC: What was the attitude
 14 of the five gentlemen to your request that they should
 15 leave their weapons behind?
 16 COLONEL McINTOSH: There was no actual
 17 result with regard to that, nothing was said back to us but
 18 we did reiterate it very many times so that includes leave
 19 the weapons at home, we don't need the weapons, we can
 20 negotiate without that and we can proceed to resolve this
 21 issue without weapons.
 22 MR MATHIBEDI SC: Now on the 14th were you
 23 satisfied that there is progress with regard to the
 24 building of a trust relationship with the strikers?
 25 COLONEL McINTOSH: Chair, yes, I did feel

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1 that we had made some form of progress with regard to that
 2 due to the fact that the people were now discussing with us
 3 and also the tone of the spokesperson had also calmed down
 4 quite drastically from one of agitation to one of basically
 5 speaking normally.
 6 MR MATHIBEDI SC: Now did you take the
 7 request of the strikers to Lonmin management?
 8 COLONEL McINTOSH: It was given back to
 9 the JOC on the 14th and then also after we had finished with
 10 the negotiations on the 14th we went back and reiterated it
 11 again, to such a point that the following morning General
 12 Mpmembe, Captain Moolman, myself and Colonel Heyneke from
 13 POPS actually met some of the members from Lonmin before
 14 the JOC meeting started to ask them or to give them this as
 15 well and ask them to please, to look at the possibility of
 16 maybe having someone talk to them at the koppie and if it
 17 was not possible, also to look at the possibility of
 18 getting the various union representatives involved as well
 19 to speak to the people.
 20 MR MATHIBEDI SC: What was the attitude
 21 of the Lonmin management representatives that you met?
 22 COLONEL McINTOSH: It was a situation
 23 where they said that they have got a wage agreement in
 24 place at the moment and that negotiations with the people
 25 would not be able to take place unless they were back at

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1 work and they'd put down their weapons.
 2 MR MATHIBEDI SC: Now on the 15th, knowing
 3 the attitude of the Lonmin management representatives,
 4 would it have been proper for the negotiating team to tell
 5 the strikers that they would bring management to the koppie
 6 for negotiations, once they have laid down their weapons?
 7 COLONEL McINTOSH: No, Chair, it would
 8 not be proper due to the fact that we didn't have that
 9 agreement from Lonmin that they would actually discuss it
 10 with – it was actually if they'd go back to work, was the
 11 words, they would then look at negotiating further with the
 12 people.
 13 MR MATHIBEDI SC: You attended the JOCOM
 14 meeting on the 15th in the morning, is that correct?
 15 COLONEL McINTOSH: Yes, we arrived
 16 slightly late due to the fact that we were having a
 17 discussion with the members from Lonmin at that time.
 18 MR MATHIBEDI SC: What transpired in your
 19 presence during the JOCOM meeting?
 20 COLONEL McINTOSH: It was decided to
 21 proceed with the attempt to negotiate with regard to
 22 finding a non-violent way of resolving the issue, which we
 23 then said we would do and then carry on trying to build a
 24 trust relationship, taking into consideration we had very,
 25 very little to offer except safety and security and the

<p style="text-align: right;">Page 28638</p> <p>1 peace of mind for the people that no-one would be injured.</p> <p>2 MR MATHIBEDI SC: Did you resume</p> <p>3 negotiations with the strikers on the 15th?</p> <p>4 COLONEL McINTOSH: That is correct, your</p> <p>5 honour, we did.</p> <p>6 MR MATHIBEDI SC: Did you give them the</p> <p>7 feedback from the Lonmin management?</p> <p>8 COLONEL McINTOSH: Yes, we did. That was</p> <p>9 the feedback that we received and that's the feedback that</p> <p>10 we also gave. We also came up with other possible options</p> <p>11 such as if they'd wanted to they can maybe decide to take</p> <p>12 someone, some people to go and have a round table</p> <p>13 discussion with the management of Lonmin, a small</p> <p>14 contingency, that's an option that they could look at but</p> <p>15 that would have to be facilitated as well.</p> <p>16 MR MATHIBEDI SC: What was the attitude</p> <p>17 of the five gentlemen once you gave them the feedback from</p> <p>18 Lonmin management?</p> <p>19 COLONEL McINTOSH: Mr Noki was not happy</p> <p>20 with regard to the situation and actually said that they</p> <p>21 don't want the police there, they want the people from</p> <p>22 Lonmin there, they want nobody else.</p> <p>23 MR MATHIBEDI SC: And how did you go</p> <p>24 about in an attempt to resume the negotiations on the 15th?</p> <p>25 COLONEL McINTOSH: Like I said, Chair,</p>	<p style="text-align: right;">Page 28640</p> <p>1 was not well received by the crowd?</p> <p>2 COLONEL McINTOSH: He was at the front</p> <p>3 for only a couple of minutes and was brought back, they</p> <p>4 didn't want to speak to him with regard to anything due to</p> <p>5 the fact that – I'm not sure what the situation was but</p> <p>6 they actually jeered him out and didn't want him there.</p> <p>7 MR MATHIBEDI SC: Are you in a position</p> <p>8 to state whether the strikers at that stage were armed or</p> <p>9 not?</p> <p>10 COLONEL McINTOSH: They still had</p> <p>11 traditional weapons in their possession, that is correct,</p> <p>12 Chair.</p> <p>13 MR MATHIBEDI SC: Now Mr Zokwana</p> <p>14 testified about how the protesters were heavily armed and</p> <p>15 of his fears. Now, was his fear justified taking into</p> <p>16 account the circumstances that prevailed?</p> <p>17 COLONEL McINTOSH: Chair, I would say</p> <p>18 yes, most definitely his fears were justified.</p> <p>19 MR MATHIBEDI SC: Now, the police are</p> <p>20 being criticised, Mr Mathunjwa testified that he wanted to</p> <p>21 address the strikers from outside the Nyala and he was not</p> <p>22 allowed to do so. Can you express a view on that aspect?</p> <p>23 COLONEL McINTOSH: Yes, Chair. Due to</p> <p>24 the fact that the situation was one that the NUM</p> <p>25 Chairperson was not welcomed there, we gave the same</p>
<p style="text-align: right;">Page 28639</p> <p>1 they'd already asked that they look at getting the union</p> <p>2 representatives or the union heads together to see if they</p> <p>3 could come to a solution around a table away from the</p> <p>4 koppie and then allowing these people to address them later</p> <p>5 that day to try and come to some kind of solution because</p> <p>6 remember the union representatives and the union bosses</p> <p>7 would have to then sit and discuss with Lonmin a way</p> <p>8 forward which they could then give the feedback based on</p> <p>9 that to their relative card-carrying and paying members of</p> <p>10 the unions.</p> <p>11 MR MATHIBEDI SC: Now, there is evidence</p> <p>12 that later during the day in the afternoon leaders of both</p> <p>13 unions went and represented, sorry, and addressed the</p> <p>14 strikers. Are you aware of that?</p> <p>15 COLONEL McINTOSH: That is correct,</p> <p>16 Chair. I was present when they arrived at the koppie.</p> <p>17 MR MATHIBEDI SC: There is also evidence</p> <p>18 that the address by the union leaders was done from within</p> <p>19 the Nyalas.</p> <p>20 COLONEL McINTOSH: That is correct,</p> <p>21 Chair, due to the fact, the safety constraints with regard</p> <p>22 to that. The first person to arrive was the Chairperson of</p> <p>23 NUM who went forward in the Nyala, who wasn't so well</p> <p>24 received by the crowd.</p> <p>25 MR MATHIBEDI SC: What do you mean by he</p>	<p style="text-align: right;">Page 28641</p> <p>1 situation analysis and allowed only to go forward in the</p> <p>2 Nyala the people from AMCU as well for their own</p> <p>3 protection. We could not ensure the people's safety if</p> <p>4 they'd walked forward by themselves and something went</p> <p>5 wrong. We wouldn't have been able to contain that</p> <p>6 situation at that time, remember there was only the</p> <p>7 contingency of POPS Nyalas and the negotiation Nyalas that</p> <p>8 were there at that given time and a couple of members who</p> <p>9 came from the STF who brought the members of AMCU and NUM</p> <p>10 to the negotiation point.</p> <p>11 MR MATHIBEDI SC: On the 15th in the</p> <p>12 evening did you attend a JOCOM meeting?</p> <p>13 COLONEL McINTOSH: I did, Chair.</p> <p>14 MR MATHIBEDI SC: What was discussed</p> <p>15 during that meeting?</p> <p>16 COLONEL McINTOSH: It was discussed that</p> <p>17 Mr Mathunjwa had given feedback stating that tomorrow</p> <p>18 morning it would be a very good day probably due to the</p> <p>19 fact that the strikers were going to put down their weapons</p> <p>20 in all likelihood but he would go and see them at 9 o'clock</p> <p>21 in the morning just to get the feedback and so forth with</p> <p>22 regards to that.</p> <p>23 MR MATHIBEDI SC: On the 16th in the</p> <p>24 morning did you attend the JOCOM meeting?</p> <p>25 COLONEL McINTOSH: Yes, I did, Chair.</p>

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1 MR MATHIBEDI SC: What was discussed
 2 during that meeting?
 3 COLONEL McINTOSH: Once again it was
 4 discussed with regard to the situation that there is a
 5 possibility that the strikers would put down their weapons
 6 and that Mr Mathunjwa would be going to see those strikers
 7 at the koppie to facilitate this and then it was decided
 8 also to do the deployment of the Nyalas closer with the
 9 barbed wire in case it didn't go correct, but negotiations
 10 would still take place, requesting the people to put down
 11 their weapons at the koppie.
 12 MR MATHIBEDI SC: Did the negotiating
 13 team go back to the koppie with the intention or idea to
 14 resume talks with the strikers?
 15 COLONEL McINTOSH: Yes, Chair. That was
 16 the instruction, that was the briefing that we were given.
 17 MR MATHIBEDI SC: Then what happened once
 18 the team arrived at the koppie?
 19 [10:28] COLONEL McINTOSH: It was established, we
 20 arrived relatively late in the day to do the deployments.
 21 It was found that Mr Mathunjwa had not gone back to the
 22 koppie on that specific date as was said by him at 9
 23 o'clock in the morning and that we found the group again in
 24 the same type of formations with their weapons still in
 25 their possession, and they had not received feedback from

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1 Mr Mathunjwa.
 2 MR MATHIBEDI SC: And what did the
 3 negotiating team do?
 4 COLONEL McINTOSH: Once again we tried to
 5 establish a communication platform with the strikers. At
 6 this time it was established that they were very aggressive
 7 and several threats were made against the police, Chair.
 8 MR MATHIBEDI SC: What do you mean by
 9 they were aggressive and several threats were made against
 10 the police?
 11 COLONEL McINTOSH: It was not like on the
 12 14th and the 15th. The aggression levels had seem to risen
 13 because there was no feedback given to them, and the
 14 threats that were made were we're going to run from our
 15 Hippos today, referring to our Nyalas. It was also said
 16 that we're going to die in our Hippos today and then also
 17 later on there was a request by Mr Noki that we must sign a
 18 piece of paper to show the world that we're going to kill
 19 one another today.
 20 MR MATHIBEDI SC: Now can we deal with
 21 each and every threat, tell us when and by whom those
 22 threats were made?
 23 CHAIRPERSON: Mr Mathibedi, it's now half
 24 past 10. I was proposing to take the first comfort break
 25 at this stage. If you want to deal with the threats first

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1 you can do so. If you want to take the comfort break now,
 2 you can also do so. Tell me which you would prefer.
 3 MR MATHIBEDI SC: Chairperson, I think we
 4 can take a comfort break.
 5 CHAIRPERSON: Alright, we'll take the
 6 comfort break now, quarter of an hour.
 7 [COMMISSION ADJOURNS COMMISSION RESUMES]
 8 [10:51] CHAIRPERSON: - oath.
 9 STEPHEN JAMES McINTOSH: (s.u.o.)
 10 CHAIRPERSON: Mr Mathibedi.
 11 EXAMINATION BY MR MATHIBEDI SC (CONTD.):
 12 Thank you, Chairperson. Lieutenant-Colonel, can we deal
 13 with the issue of the threats.
 14 COLONEL McINTOSH: That's correct, Chair.
 15 MR MATHIBEDI SC: Will you proceed? When
 16 was the first threat made?
 17 COLONEL McINTOSH: The first threat that
 18 I felt was a threat was made on the 15th, Chair, where Mr
 19 Noki after we gave him feedback with regards to the fact
 20 that Lonmin did not want to came to the face to talk to
 21 them, where he actually said that they were going to burn
 22 our Hippos and we were going to run out of there today.
 23 CHAIRPERSON: I'm sorry, before you carry
 24 on with the threats, there's a question I want to ask you.
 25 You said the negotiations were conducted in Fanagalo. Is

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1 that right?
 2 COLONEL McINTOSH: That's correct, Chair.
 3 CHAIRPERSON: So Mr Noki spoke Fanagalo,
 4 did he?
 5 COLONEL McINTOSH: That's correct, Chair.
 6 CHAIRPERSON: And it was then translated
 7 to you, for you by an interpreter who was sent by Lonmin?
 8 COLONEL McINTOSH: That's correct, Chair.
 9 CHAIRPERSON: He's not willing for his
 10 name to be disclosed and he's produced an affidavit which
 11 doesn't mention his name and it's difficult to know how
 12 anyone can cross-examine someone who's not even prepared to
 13 say what his name is, apart from anything else. But he
 14 translated what Mr Noki had said and all the others as
 15 well. Was Noki the only one who spoke, or did the others
 16 speak as well?
 17 COLONEL McINTOSH: On two occasions two
 18 other people also spoke as well, but Mr Noki was the -
 19 CHAIRPERSON: The main one.
 20 COLONEL McINTOSH: - main person who
 21 discussed.
 22 CHAIRPERSON: I understand, and so what
 23 Mr Noki and the other two said in Fanagalo was translated
 24 for you, interpreted for you. Is that correct?
 25 COLONEL McINTOSH: That's correct, Chair.

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1 CHAIRPERSON: Translated into English, I
 2 take it.
 3 COLONEL McINTOSH: That's correct, Chair.
 4 CHAIRPERSON: Right, you then replied in
 5 English.
 6 COLONEL McINTOSH: That's correct, Chair.
 7 CHAIRPERSON: And what you said was then
 8 interpreted into Fanagalo.
 9 COLONEL McINTOSH: That's correct, Chair.
 10 CHAIRPERSON: Okay, so that was broadcast
 11 as it were over the public address system. Is that
 12 correct?
 13 COLONEL McINTOSH: That's correct, Chair.
 14 CHAIRPERSON: I see. Now do you speak
 15 any of the vernacular languages? I see you come from
 16 Newcastle. Does that mean that you know some Zulu?
 17 COLONEL McINTOSH: I understand some of
 18 it, Chair.
 19 CHAIRPERSON: Fanagalo is one of the
 20 Nguni – I mean sorry, Zulu is one of the Nguni languages,
 21 as is Xhosa. Fanagalo is – can you understand some
 22 Fanagalo? Has that also got an Nguni base or how does it
 23 work?
 24 COLONEL McINTOSH: Chair, it's a mixture
 25 of various languages which is quite difficult to follow if

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1 you don't actually deal with it every day, but some of the
 2 Zulu words I could pick up while he was busy speaking and
 3 so forth, it does come through sometimes as well, Chair.
 4 CHAIRPERSON: Did anybody else in your
 5 Nyala understand Fanagalo or understand Zulu or Xhosa?
 6 COLONEL McINTOSH: Papi Botsane, who
 7 understands Zulu and portions of Xhosa as well, but there
 8 was no-one that spoke Fanagalo as such as a normal everyday
 9 language.
 10 CHAIRPERSON: Ja, I understand. Now, so
 11 when you're telling us what Mr Noki said and what the
 12 others said you were telling us what the interpreter said
 13 they said?
 14 COLONEL McINTOSH: That's correct, Chair.
 15 CHAIRPERSON: Thank you.
 16 COMMISSIONER HEMRAJ: Did it appear to
 17 you that any of the other persons inside the Nyala appeared
 18 to understand what was being said by Mr Noki prior to it
 19 being interpreted to you?
 20 COLONEL McINTOSH: On the first day there
 21 was a gentleman from Lonmin as well, I'm not sure who he
 22 was, a white gentleman that was there as well, who also
 23 spoke Fanagalo as well, who also interpreted the same as
 24 what their interpreter was interpreting as well, and he was
 25 giving it to the back as well as the people were speaking

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1 as well.
 2 MR MATHIBEDI SC: What was the response
 3 of the team or yourself to the threats that was made?
 4 COLONEL McINTOSH: It was given back to
 5 Brigadier Calitz immediately because he was listening to
 6 the interpretations as well, and it was also given to the
 7 JOC, but we also went back to the point where we said we
 8 don't want, we're not here for a fight, we don't have a
 9 fight with them, we want this thing to be sorted out
 10 peacefully. We don't want to fight with them. That's as
 11 easy as that.
 12 MR MATHIBEDI SC: What was the response
 13 to your answer?
 14 COLONEL McINTOSH: Mr Noki walked away
 15 from the vehicle and went back and addressed the crowds
 16 again before coming back slightly later.
 17 MR MATHIBEDI SC: Then let's go to the
 18 next threat.
 19 COLONEL McINTOSH: The next threat was
 20 made on the 16th with regards to the fact when we arrived at
 21 the face we have brought extra vehicles with, the Nyalas
 22 that had the barbed wire were there as well, and again he
 23 reiterated that he doesn't want the police there and that
 24 he would, that they would burn our Hippos and we would day
 25 there today at the koppie.

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1 MR MATHIBEDI SC: And what was the
 2 response?
 3 COLONEL McINTOSH: Once again we tried to
 4 calm the situation, saying we're not there to fight with
 5 them, we didn't want to fight. We wanted to sort this
 6 peacefully. If the weapons get put down, there'd be no
 7 fight whatsoever. We were there to sort out in a peaceful
 8 situation and once again it was given through and to the
 9 JOC as well so that they heard about the threat made.
 10 MR MATHIBEDI SC: Okay, will you proceed
 11 further and tell us if there were further threats?
 12 COLONEL McINTOSH: The following threat
 13 was made with regards to the fact that they were going to,
 14 they'd seen that we were preparing for war and that we were
 15 going to die today. That's when the barbed wire vehicles
 16 started to move forward. They said that they could see
 17 that we were preparing for war and that we were going to
 18 die at the koppie today.
 19 CHAIRPERSON: [Microphone off, inaudible]
 20 that when the barbed wire vehicles started moving forward
 21 the position was, as I understand it, that in the morning
 22 already the Nyalas with the barbed wire trailers were
 23 deployed. Later on of course, much later on in the
 24 afternoon, round about 20 to 4 I think the deployment - or
 25 uncoiling is the word I prefer - of the barbed wire

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1 started. Now what time are you talking about? When the
 2 barbed wire trailers came there with the Nyalas or at a
 3 later stage when the uncoiling started?
 4 COLONEL McINTOSH: After Mr Mathunjwa had
 5 spoken to the crowd on the 16th when they started to uncoil
 6 the barbed wire from the Nyalas, that's when he came
 7 forward to say that he could see we were preparing for war
 8 and that we were going to die there today. He turned away
 9 and then he came back to the vehicle again and said we must
 10 sign a paper, we must sign a paper here today to show that
 11 we're going to kill one another.
 12 COMMISSIONER HEMRAJ: Colonel, from what
 13 you say the situation as at the 15th appeared to be quite
 14 calm. What – on the 14th.
 15 COLONEL McINTOSH: On the 14th it came
 16 down to calmness and on the 15th when we gave the feedback,
 17 that's where the agitation started to come up slightly, but
 18 we didn't take much heed of it due to the fact that I
 19 didn't see any threat at that specific time. Only when he
 20 made the threat that they're going to burn the Hippos,
 21 referring to our Nyalas obviously, that that's where I'd
 22 seen this is going to be a threat now, this seemed to me as
 23 a threat now, I'm starting to get a bit worried about that.
 24 COMMISSIONER HEMRAJ: So what appears to
 25 have precipitated the change in attitude?

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1 COLONEL McINTOSH: I think the change
 2 maybe have come, Chair, as a result of the fact that we
 3 could not get the people from Lonmin to come and have
 4 discussions with them.
 5 MR MATHIBEDI SC: What was your response
 6 to the threat made in relation to the deployment of the
 7 barbed wire?
 8 COLONEL McINTOSH: I explained through
 9 the interpreter that the purpose behind the barbed wire is
 10 to set up a safety zone for both of us, for the South
 11 African Police, the media, and also for themselves as well,
 12 so that no-one could get hurt.
 13 MR MATHIBEDI SC: Were any of the
 14 strikers, especially the five leaders, were they – was an
 15 explanation given to them for the presence of the barbed
 16 wire carts at the koppie?
 17 COLONEL McINTOSH: Yes, it was explained
 18 already in the morning that the purpose behind the barbed
 19 wire was if there was going to be anything that would be
 20 seen as a threat we would deploy the barbed wire to
 21 separate the police and the strikers from one another to
 22 prevent people from being injured.
 23 MR MATHIBEDI SC: And who made the
 24 explanation and it was relayed to who?
 25 COLONEL McINTOSH: It was given on the

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1 feedback from the JOC and reiterated by Brigadier Calitz in
 2 the Nyala that we had to inform them with regards to that
 3 and it was given to them over the PA by the interpreter.
 4 MR MATHIBEDI SC: Now let's go to the
 5 threat relating to the signing of a piece of paper. Do you
 6 remember that?
 7 COLONEL McINTOSH: Yes, I do.
 8 MR MATHIBEDI SC: Can you tell us who
 9 made that and what was happening, and what was the response
 10 of the police?
 11 COLONEL McINTOSH: Mr Noki made the
 12 threat and there is, the reaction from the police was to
 13 tell them that we don't want to have any form of
 14 aggression, we want to sort this out, it can still be
 15 sorted out peacefully and to please put down their weapons,
 16 we don't want to have a fight.
 17 MR MATHIBEDI SC: At that stage where was
 18 Mr Noki when he directed the threats to the police?
 19 COLONEL McINTOSH: He was on the bulbar
 20 of the Nyala that we were using, Papa1.
 21 MR MATHIBEDI SC: Were there any further
 22 threats made to the police?
 23 COLONEL McINTOSH: Mr Noki left and went
 24 back to the group and that's where the group started to
 25 start to move when the barbed wire was being put into

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1 place, and that's where the smaller group in front started
 2 to try and get around the Nyalas. At that time Papa1 moved
 3 towards the kraal.
 4 MR MATHIBEDI SC: Now can you describe
 5 the mood and attitude of the group of strikers that went
 6 towards the Nyala that was busy deploying barbed wire?
 7 COLONEL McINTOSH: It was a frightening
 8 sight, but they seemed to be in a crouching position,
 9 trying to get around the Nyala on their left-hand side of
 10 the Nyala, which was away from us, which was quite a large
 11 group of people coming around. The Nyala was trying to
 12 deploy its barbed wire but it couldn't get around, the
 13 people kept coming –
 14 CHAIRPERSON: Just for the sake of
 15 clarity, the Nyala which ended up at the kraal, on the
 16 left-hand side of the kraal as one faced the koppie, that's
 17 the one we call Nyala 4. There were six altogether, but
 18 that was the fourth one. Is that the one you're talking
 19 about, the one that actually ended up against the kraal?
 20 COLONEL McINTOSH: That is correct,
 21 Chair.
 22 CHAIRPERSON: That's Nyala 4.
 23 COLONEL McINTOSH: That's correct.
 24 CHAIRPERSON: Now what exactly did they
 25 do in relation to Nyala 4?

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1 COLONEL McINTOSH: They tried to get
 2 around, tried to breach around the side of Nyala 4 to come
 3 around it and then also on the radio I heard something
 4 about that there's someone trying to stab the tyres on the
 5 vehicle, trying to get around the vehicle to try and breach
 6 the safety zone that we were trying to set up –
 7 CHAIRPERSON: So were they trying to get
 8 between the Nyala and the kraal before the Nyala succeeded
 9 in uncoiling the wire right up to the kraal, or were they
 10 trying to get around the Nyala on the other side? I don't
 11 understand.
 12 COLONEL McINTOSH: They were trying to
 13 get around the Nyala, between the kraal and the Nyala to
 14 try and block the Nyala from deploying the wire.
 15 MR MATHIBEDI SC: Was that approach –
 16 CHAIRPERSON: I'm sorry, were they trying
 17 to – forgive my interrupting you. Were they trying to
 18 block the Nyala from uncoiling the wire or were they trying
 19 to get past the Nyala, in other words past the kraal before
 20 the passage that they wanted to follow between the Nyala
 21 and the kraal was blocked? Do you understand there's a
 22 difference? Which is correct?
 23 COLONEL McINTOSH: Chair, I would
 24 actually hazard to guess that they were trying to stop the
 25 Nyala from deploying the wire to stop the Nyala from moving

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1 forward.
 2 MR MATHIBEDI SC: The approach to Nyala 4
 3 by the strikers, was it peaceful?
 4 COLONEL McINTOSH: Chair, it's difficult
 5 to say if it was peaceful or not, but they had weapons in
 6 their possession and the weapons were quite clearly shown.
 7 So I wouldn't say it was peaceful.
 8 MR MATHIBEDI SC: And what was the
 9 response of the police to the threat that was made by Mr
 10 Noki?
 11 COLONEL McINTOSH: Which threat would
 12 that be, Chair?
 13 MR MATHIBEDI SC: The threat that, you
 14 know, the police, the piece of paper should be signed.
 15 COLONEL McINTOSH: That was also given
 16 back to the JOC, Chair, and it was informed that this is a
 17 real threat and that's when they started, the barbed wire
 18 already started to be deployed and in that period, that's
 19 when Mr Noki went back and actually took what seems to be
 20 leadership of the group that was in front of 300 to 500
 21 people to try and breach the police's secure zone.
 22 MR MATHIBEDI SC: Now evidence has been
 23 led that early in the morning some time Nyala 6 had to be
 24 repositioned. Are you aware of that?
 25 CHAIRPERSON: It wasn't quite early in

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1 the morning. I think it was after 11 o'clock. I don't
 2 know, some – I know some people's early is other people's
 3 late, but which is it? Isn't the evidence it was some time
 4 after 11 o'clock? It was during the morning apparently.
 5 MR MATHIBEDI SC: Thanks, Chairperson.
 6 Were you aware that during the morning Nyala 6 had to be
 7 repositioned?
 8 COLONEL McINTOSH: Not that I'm aware of,
 9 Chair. I was not involved in the operational side of that.
 10 MR MATHIBEDI SC: Did you hear or witness
 11 any shooting that was done at scene number 1?
 12 COLONEL McINTOSH: I heard a lot of
 13 rubber bullets being shot. I also heard stun grenades
 14 being deployed and then I also heard what seems to be two
 15 low-calibre pistol shots being fired as well at a stage as
 16 we were going through the kraal.
 17 MR MATHIBEDI SC: Are you in a position
 18 to state who fired the two shots that you've just referred
 19 to?
 20 COLONEL McINTOSH: I've got no idea,
 21 Chair. I don't know who fired those shots.
 22 MR MATHIBEDI SC: Do you know the
 23 circumstances surrounding the usage of teargas and rubber
 24 bullets by the members?
 25 COLONEL McINTOSH: I don't understand the

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1 question. Can you just say again?
 2 MR MATHIBEDI SC: Do you know why, or
 3 what was happening at the time that you heard rubber
 4 bullets being fired?
 5 COLONEL McINTOSH: It seemed that there
 6 had been an attack on the police line, or the people tried
 7 to break through the police line and thus POPS had gone
 8 across to a crowd dispersion situation where you use
 9 teargas, rubber bullets and stun grenades and a water
 10 cannon to try and push the people back.
 11 COMMISSIONER HEMRAJ: Did you see that?
 12 COLONEL McINTOSH: I've seen the water
 13 cannon. I heard the stun grenades and I also heard the
 14 deployment of the rubber bullets as we were moving up
 15 towards the kraal with Papa1.
 16 CHAIRPERSON: I'd like to ask you about
 17 that. What you haven't told us so far is where your Nyala
 18 was when the negotiations took place. That was, I
 19 understand, in the middle as it were of what was to have
 20 been the line of the barbed wire barrier. Is that correct?
 21 COLONEL McINTOSH: Our vehicle was
 22 positioned in the centre of the five Nyalas –
 23 CHAIRPERSON: Yes, yes.
 24 COLONEL McINTOSH: The negotiations was
 25 basically directly underneath the power lines.

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1 CHAIRPERSON: Yes, yes.
 2 COLONEL McINTOSH: We actually moved a
 3 little bit forward due to the fact we had very poor radio
 4 communication under the –
 5 CHAIRPERSON: Ja.
 6 COLONEL McINTOSH: But it was in the
 7 middle.
 8 CHAIRPERSON: Yes, yes.
 9 COLONEL McINTOSH: And then when the
 10 deployment started Papa1 moved around to the side of the
 11 kraal, which was the vehicle that we were in, way past the
 12 Nyalas and so forth –
 13 CHAIRPERSON: [Microphone off, inaudible]
 14 sounds a bit ambiguous. As one faces the koppie there's
 15 what one can call a left-hand side of the kraal and a
 16 right-hand side of the kraal. The wire ended up against
 17 the left-hand side of the kraal. That's correct?
 18 COLONEL McINTOSH: That's correct, Chair.
 19 CHAIRPERSON: On the other side of the
 20 kraal there was what one could describe as a passage
 21 between the right-hand side of the kraal and the section
 22 across the way, as it were, where there's a wire fence and
 23 there was a corrugated iron shack I think in the area which
 24 was fenced off by the fence to which I've referred. Now
 25 where exactly did your Nyala go to? You say you left the

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1 central point, as you described it, and you went towards
 2 the kraal. Where did you go?
 3 COLONEL McINTOSH: Where the fence was,
 4 Chair, we actually ended up against the fence closest to
 5 the settlement and we actually had to go through the fence
 6 when the dispersion took place. We actually drove through
 7 the fence with our Nyala, going through to the other side,
 8 because we were actually stuck against the fence
 9 unfortunately.
 10 CHAIRPERSON: And I asked the question
 11 because I'm interested to know where you were, that is to
 12 say where your Nyala was when the stun grenades, when you
 13 heard the stun grenades and you saw the teargas and you
 14 heard the rubber bullets. Where was your Nyala at that
 15 stage when you heard those things for the first time?
 16 COLONEL McINTOSH: It was on its way just
 17 before the kraal where we got stopped at the fence where we
 18 had to stop, Chair.
 19 COMMISSIONER HEMRAJ: You were in the
 20 same Nyala as Brigadier Calitz?
 21 COLONEL McINTOSH: That's correct, Chair.
 22 COMMISSIONER HEMRAJ: As you drove up to
 23 the passage between the kraal and the fence could you see
 24 the strikers approaching?
 25 COLONEL McINTOSH: Just on the side of

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1 the Nyala 4, on the side of Nyala 4 we could see that there
 2 was, people tried to come around and we moved past that up
 3 to the kraal where we were against the fence.
 4 COMMISSIONER HEMRAJ: And at the stage
 5 your vehicle came to stop against the fence could you see
 6 where the strikers were?
 7 COLONEL McINTOSH: Not at that point.
 8 COMMISSIONER HEMRAJ: And where were you
 9 inside the Nyala? What position were you in?
 10 COLONEL McINTOSH: I was left front, left
 11 front next to the driver.
 12 COMMISSIONER HEMRAJ: Thank you, Colonel.
 13 MR MATHIBEDI SC: At the time that the
 14 strikers approached Nyala 4 could you see where the POP
 15 members were?
 16 COLONEL McINTOSH: The POP members were
 17 deployed outside their Nyalas at that time, busy decoiling
 18 the wire, and the other members were in a line from POPS,
 19 as far as I can remember, Chair.
 20 MR MATHIBEDI SC: Exhibit HHH14,
 21 paragraph 27, the third line which reads as follows, it
 22 goes up to line 4, "The SAPS members got back into the
 23 specific Nyala." Which members are you referring to?
 24 COLONEL McINTOSH: Those would be the
 25 POPS members, Chair.

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1 MR MATHIBEDI SC: And are you in a
 2 position to state why they got back into the Nyala?
 3 COLONEL McINTOSH: I'm not in a position
 4 to state, but I do believe it was due to the fact that they
 5 felt threatened.
 6 MR MATHIBEDI SC: "The Public Order
 7 Police members then started to shoot with rubber bullets,
 8 which was not effective." What do you mean that it was not
 9 effective?
 10 COLONEL McINTOSH: Due to the fact that
 11 they had to flee back to their vehicles and due to the fact
 12 that it wasn't stopping the crowds, that was not then
 13 effective.
 14 MR MATHIBEDI SC: Did you at any stage
 15 leave scene 1?
 16 CHAIRPERSON: I'm sorry, before you get
 17 there, that's a very important point you're coming to, but
 18 before you get there I'd like to as a question or two based
 19 on paragraph 27, which is on the screen, exhibit HHH14.
 20 [11:11] You say that, it starts off, "A large group of
 21 the armed men had advanced to one of the Nyala vehicles
 22 that was near the koppie busy to deploy the barbed wire."
 23 I take it that's Nyala 4 you're talking about?
 24 COLONEL McINTOSH: That's correct, Chair.
 25 CHAIRPERSON: That's right. "SAPS

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1 members were outside the vehicle," so they were on the,
 2 what I have described as the left-hand side of the kraal
 3 facing the koppie, is that correct?
 4 COLONEL McINTOSH: Correct, Chair.
 5 CHAIRPERSON: Right. "A group of armed
 6 men stormed them. They got back into the Nyalas," that's,
 7 you talk about the specific Nyala, they got back into Nyala
 8 4, is that right?
 9 COLONEL McINTOSH: That's correct and
 10 also some of them ran past to other Nyalas as well, Chair.
 11 CHAIRPERSON: Yes, alright. "The public
 12 order police members then started to shoot with rubber
 13 bullets which was not effective." Was that being done by
 14 them still at the left-hand side of the kraal facing the
 15 koppie?
 16 COLONEL McINTOSH: Yes, Chair, that's the
 17 people from 4 and 3, the people deploying the wire and the
 18 people in a straight line.
 19 CHAIRPERSON: Yes, I see. You then say,
 20 "I saw the water cannon also spraying towards the group."
 21 Where was your Nyala at that point?
 22 COLONEL McINTOSH: Our Nyala was on its
 23 way down to the place where we went into the fence.
 24 CHAIRPERSON: I see. So you were
 25 proceeding past the kraal with the kraal on your left-hand

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1 side, you were proceeding past the kraal to the point
 2 beyond the kraal, what I've called the right-hand side of
 3 the kraal facing the koppie.
 4 COLONEL McINTOSH: That's correct.
 5 CHAIRPERSON: And then you swung, swung,
 6 you went left as it were up that passage between the fenced
 7 area and the kraal and you came to rest at the point that
 8 you –
 9 COLONEL McINTOSH: Against the fence,
 10 that's correct, Chair.
 11 CHAIRPERSON: Alright. And it was during
 12 that time, was it, that you saw the water cannon being
 13 sprayed?
 14 COLONEL McINTOSH: That's correct, the
 15 water cannon was behind us or on our left-hand side when we
 16 moved out -
 17 CHAIRPERSON: Yes –
 18 COLONEL McINTOSH: - was being deployed.
 19 CHAIRPERSON: And is that also when you
 20 heard stun grenades being discharged?
 21 COLONEL McINTOSH: On the way down to the
 22 kraal when we were more or in line with basically Nyala 4
 23 or 5, in that area there the stun grenades were being
 24 deployed.
 25 CHAIRPERSON: And when did you hear the

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1 shots being fired?
 2 COLONEL McINTOSH: That's when we were at
 3 the fence, at the kraal.
 4 CHAIRPERSON: So you were – and how many
 5 shots did you hear being fired?
 6 COLONEL McINTOSH: I heard two low
 7 calibre type shots being fired and I gave that back in the
 8 Nyala as well to say that I heard shots being fired, it
 9 sounded like live rounds.
 10 CHAIRPERSON: And where was your – and
 11 your Nyala was up against the fence at that point, is that
 12 right?
 13 COLONEL McINTOSH: That's correct, that's
 14 when we broke through the fence with the Nyala to get onto
 15 the other side.
 16 CHAIRPERSON: Yes, thank you.
 17 COMMISSIONER HEMRAJ: You heard as well
 18 the barrage or the fusillade of shots, automatic fire shots
 19 thereafter?
 20 COLONEL McINTOSH: No, I only heard those
 21 two shots but remember we revved up our motor to go through
 22 the barbed wire fence onto the other side. Only after that
 23 we were informed that there had been shooting, sometime
 24 after that and then also while I was in the veld as well
 25 there was a lot of shooting at koppie 3 when I was there as

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1 well when I was trying to help –
 2 CHAIRPERSON: Before we get there, you
 3 say sometime afterwards you said you heard about the
 4 fusillade or the volley, as it were – let's call it the
 5 fusillade, we know what that word means – that you heard
 6 you say while you were driving away from the area where
 7 that kraal was that we were talking about, is that correct?
 8 COLONEL McINTOSH: No, Chair. I only
 9 heard about the shooting of, the large amount of shooting,
 10 once we had stopped and everything had gone back to normal
 11 at the third scene basically where I tried to help the
 12 deceased. Only after that I was informed that there had
 13 been a major shooting at scene 1.
 14 CHAIRPERSON: What time was that
 15 approximately when you heard that?
 16 COLONEL McINTOSH: I'm not sure, Chair.
 17 It's sometime after that because we went through the veld
 18 to the second koppie to the third koppie and we were in the
 19 middle of the veld and that's when the situation happened
 20 where I had to get out of the Nyala or I got out of the
 21 Nyala to try and help –
 22 CHAIRPERSON: Yes, yes. You're going to
 23 tell us about that in a moment but I'm interested to know
 24 when you heard about, when you heard the fusillade happen.
 25 Was that before or after you got out of the Nyala to go and

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1 help, as you put it?

2 COLONEL McINTOSH: No, that was much

3 later, Chair.

4 CHAIRPERSON: Much later.

5 COLONEL McINTOSH: I only heard about it

6 from Brigadier Calitz when we had, when I had gone back to

7 Papa1 after being outside for about 25, 30 minutes in the

8 veld.

9 CHAIRPERSON: I see. And Brigadier

10 Calitz told you that there had been –

11 COLONEL McINTOSH: Brigadier Calitz said

12 that there had been a shooting at scene 1.

13 CHAIRPERSON: I see, thank you.

14 MR MATHIBEDI SC: Lieutenant-Colonel,

15 there is evidence that you left scene 1 and proceeded to

16 scene 2. Do you confirm that?

17 COLONEL McINTOSH: That's correct, Chair.

18 MR MATHIBEDI SC: Can you tell us your

19 movements from scene 1 to scene 2?

20 COLONEL McINTOSH: From scene 1 we went

21 through the veld to a second koppie where we came up next

22 to the water cannon where we actually handed over a radio

23 to the water cannon because they didn't have

24 communications. They, it was a Gauteng water cannon, which

25 I quickly got out of the Nyala, quickly gave the hand radio

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1 to the people from the water cannon from Alpha Juliet from

2 Joburg POPS and I got back into our Nyala, we reversed out

3 and then went up to the top to make a turn basically with

4 the other Nyalas to try and stop the people trying to flee

5 into, further into the veld.

6 MR MATHIBEDI SC: Were you in possession

7 of any hand radio?

8 COLONEL McINTOSH: No, the only time I

9 had the hand radio was when I had to, it was given from

10 behind which I then gave to, out of the door into the water

11 cannon. That's the only time I had a hand radio in my

12 possession.

13 MR MATHIBEDI SC: Now will you proceed

14 and tell us your observation at scene 2?

15 COLONEL McINTOSH: Well, the only thing –

16 that is where the deceased was, is that correct?

17 MR MATHIBEDI SC: [Microphone off,

18 inaudible] besides where the deceased was.

19 COLONEL McINTOSH: Chair, we were moving

20 up and we were in the middle of the veld basically, away

21 from the koppie and we stopped there. At that point a

22 gentleman with a white overall came out of the bush, ran

23 up, ran into members – I think it was from National

24 Intervention Unit – turned around and came back and there

25 was a member of TRT who was directly in the way and at that

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1 point it looked like he was going to go down and then he,

2 he actually had two spear-type items in his hand and

3 actually tried to stab who I now know or believe to be Mr

4 Sebayane or Constable Sebayane, actually lifted the spear

5 and tried to stab Constable Sebayane then drew his firearm

6 and shot several shots at the suspect while falling

7 backwards and the suspect or the attacker then fell onto

8 the ground just next to Constable Sebayane. I then ran to

9 try and assist. I found out from Sebayane that he's okay,

10 then gave immediate attention to the person who had been

11 shot.

12 MR MATHIBEDI SC: In whose company was

13 Constable Sebayane at that stage?

14 COLONEL McINTOSH: It was another member

15 of TRT, I can't remember his name, Chair.

16 MR MATHIBEDI SC: Now when you for the

17 first time, you saw the striker running towards Constable

18 Sebayane, how far was the striker from Constable Sebayane?

19 COLONEL McINTOSH: Chair, if I have to

20 estimate, between 10 and 15 metres from him.

21 MR MATHIBEDI SC: Now you testified that

22 the striker was in possession of two weapons.

23 COLONEL McINTOSH: That's correct.

24 MR MATHIBEDI SC: What kind of weapons

25 were those?

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1 COLONEL McINTOSH: Both of them looked

2 like very sharp spear-type items.

3 MR MATHIBEDI SC: As the striker

4 approached Constable Sebayane how did he, you know, hold

5 the weapons?

6 COLONEL McINTOSH: The weapon was above

7 his head at a stage but it looked like he wanted to go down

8 and surrender and then at a short distance from Sebayane he

9 actually got up, looked like he was getting back up again

10 and lunged straight forward at Sebayane, stabbing towards

11 Sebayane at that time.

12 MR MATHIBEDI SC: Are you aware that the

13 other member, at that stage were you aware that the other

14 member, Constable Mabe who was in the company of Constable

15 Sebayane also shot at the protester?

16 COLONEL McINTOSH: I heard quite a number

17 of shots going off at that time at the third koppie, so it

18 is possible but I didn't know at that time because the

19 person who was with Sebayane was basically directly in line

20 with me on the opposite side and I actually stood the

21 chance of being shot, thinking about it in hindsight.

22 MR MATHIBEDI SC: How far was Mr Mpumza,

23 he is the protester that was shot by Mr Sebayane, how far

24 was he when Constable Sebayane shot him?

25 COMMISSIONER HEMRAJ: How far from

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1 Constable Sebayane?
 2 MR MATHIBEDI SC: That's correct.
 3 COLONEL McINTOSH: It was less than a
 4 metre and a half, definitely less than a metre and a half
 5 when the gun started to recycle.
 6 MR MATHIBEDI SC: Now did you make any
 7 observation about the body of Mr Mpumza or on the body of
 8 Mr Mpumza?
 9 COLONEL McINTOSH: I first tried to
 10 administer emergency medical first aid to him or medical
 11 attention to him by trying to do cardio-pulmonary
 12 resuscitation due to the fact that it was a *11:11/09-29
 13 witnessed arrest of his heart and I spent some time with
 14 that, after which I did notice that there was various bands
 15 and so forth with little bags and so forth on it which the
 16 members said was muti, your honour.
 17 MR MATHIBEDI SC: Now which member said
 18 it was muti?
 19 COLONEL McINTOSH: It was one of the
 20 members of the TRT and from Intervention that were talking
 21 about it at that given time.
 22 MR MATHIBEDI SC: I'm referring you to
 23 exhibit GGG36, that is page 6. Do you see that, line 1?
 24 It reads as follows, "Speaker: There's muti there, there's
 25 muti (inaudible) leave it, leave it, leave it. Speaker:

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1 Ja, that's muti shit" – I'm sorry from the language, for my
 2 language. Do you know who said this?
 3 COLONEL McINTOSH: Chair, with all
 4 honesty I've got no idea.
 5 MR MATHIBEDI SC: But was this said in
 6 your presence?
 7 COLONEL McINTOSH: It is possible, Chair,
 8 but I was busy trying to work on the patient at that given
 9 time so I'm not sure who said it but it is possible it was
 10 said.
 11 CHAIRPERSON: What we see is speaker,
 12 presumably – there are a number of speakers on this
 13 transcript taken from Captain Rylands's cell phone and how
 14 many people were, can you help us, how many people were
 15 speaking on the passage we're looking at here? Every time
 16 the transcript just says speaker, speaker, speaker. It
 17 doesn't say speaker 1, speaker 2, speaker 3 or anything of
 18 that sort. Can you tell us how many people were taking
 19 part in this conversation that is transcribed for us?
 20 COLONEL McINTOSH: Chair, with all
 21 honesty I cannot say due to the fact that my attention was
 22 on the patient at that given time, but there was
 23 conversation going on around. There were several members
 24 of TRT and Intervention at that point as well.
 25 MR MATHIBEDI SC: Thanks, Chairperson.

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1 I'm going to refer the witness to exhibit TTT4, that is the
 2 video of Desai* 11:11/11-57 at 37 minutes.
 3 [VIDEO IS SHOWN]
 4 MR MATHIBEDI SC: Sorry, I think –
 5 CHAIRPERSON: Do I understand you've put
 6 the whole documentary in as an exhibit?
 7 MR MATHIBEDI SC: That's correct.
 8 CHAIRPERSON: Because you are referring
 9 to – you see I just recorded it as "Videos re negotiations
 10 on 15/8/2012 from the documentary 'Miners shot down'" but
 11 in fact what you've inserted as exhibit TTT4 is the whole
 12 documentary, is that correct?
 13 MR MATHIBEDI SC: That's correct.
 14 CHAIRPERSON: Alright and we're now
 15 starting at 37 minutes into the documentary and we see
 16 Captain Adriaio, the police spokesperson.
 17 MR MATHIBEDI SC: Chairperson, I think I
 18 should apologise. My attorney did not get the time –
 19 CHAIRPERSON: Sorry?
 20 MR MATHIBEDI SC: I need to apologise, my
 21 attorney did not get the time correct.
 22 CHAIRPERSON: What is the correct time?
 23 What we now see at 37:39 is a Nyala and the legend on the
 24 screen says "As the standoff continues, a hostage
 25 negotiator is sent in by the police." Is this where you

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1 want to start the –
 2 MR MATHIBEDI SC: That is correct.
 3 CHAIRPERSON: This is the passage which,
 4 where you want to start. That's 37 minutes 30 seconds.
 5 MR MATHIBEDI SC: Do you remember this
 6 clip shown on the video?
 7 COLONEL McINTOSH: The clip that I was
 8 shown yesterday, yes, correct.
 9 MR MATHIBEDI SC: What was happening at
 10 this stage?
 11 COLONEL McINTOSH: This was with regard
 12 to the negotiations, waiting for the people to come
 13 forward. As you can see, the doors on the side of the
 14 Nyala, due to the heat inside those, it was open at that
 15 given time waiting for the strikers to come forward and
 16 discuss and have negotiations.
 17 CHAIRPERSON: Is this now a scene which
 18 was videoed, videographed I think is the right word, on the
 19 Tuesday the 14th, the first day you went or –
 20 COLONEL McINTOSH: That's correct, Chair,
 21 it will be on the 14th.
 22 CHAIRPERSON: In the afternoon I think,
 23 according to your statement you –
 24 COLONEL McINTOSH: Yes, it was in the
 25 late afternoon, Chair.

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1 CHAIRPERSON: - you were there in the
 2 late afternoon.
 3 MR MATHIBEDI SC: Will you please proceed
 4 and show us the clip at 39:45?
 5 [VIDEO IS SHOWN]
 6 MR MATHIBEDI SC: What was happening –
 7 CHAIRPERSON: I'm sorry, Mr Mathibedi,
 8 but is it not better just to start where you started and
 9 then run it through because if you take little bits and
 10 pieces it'll be difficult to follow later. You started it
 11 at – when did you start?
 12 MR MATHIBEDI SC: 37:39.
 13 CHAIRPERSON: 37:39. Let's start, well,
 14 37:37 is the passage I referred to with the Nyala with an
 15 open – well, it's not the one we saw before but it's a
 16 similar one, the Nyala with an open door and the legend,
 17 "As the standoff continues, a hostage negotiator sent in by
 18 police." Can we sent it from then on and then tell us when
 19 you want it to stop.
 20 MR MATHIBEDI SC: Thank you, Chair.
 21 [VIDEO IS SHOWN]
 22 MR MATHIBEDI SC: Stop.
 23 CHAIRPERSON: It's now stopped at 38:02
 24 and we see a number of strikers moving forward, in fact
 25 from left to right across the screen, one of them holding a

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1 loudhailer in his hand.
 2 MR MATHIBEDI SC: Lieutenant-Colonel,
 3 what was happening at this stage?
 4 COLONEL McINTOSH: This is where the
 5 strikers actually came forwards towards us for the first
 6 time, trying to open the dialogue.
 7 MR MATHIBEDI SC: Will you please proceed
 8 and play the clip?
 9 [VIDEO IS SHOWN]
 10 MR MATHIBEDI SC: There is –
 11 CHAIRPERSON: You've now stopped at
 12 38:16.
 13 MR MATHIBEDI SC: Just before this clip
 14 we heard somebody saying they should leave the weapons
 15 behind.
 16 COLONEL McINTOSH: That's correct.
 17 MR MATHIBEDI SC: Are you in a position
 18 to assist us who –
 19 COLONEL McINTOSH: That is my voice
 20 telling the interpreter what to interpret onto the
 21 loudhailer.
 22 MR MATHIBEDI SC: And what was the
 23 response?
 24 COLONEL McINTOSH: The people did stop
 25 and they did open their blankets and did show us that they

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1 were not carrying any weapons with them to the front.
 2 MR MATHIBEDI SC: Will you please proceed
 3 and show us the video?
 4 [VIDEO IS SHOWN]
 5 MR MATHIBEDI SC: It's a portion –
 6 CHAIRPERSON: Let's, just for the sake of
 7 completeness, I think we can recognise the face and the
 8 voice but let's not worry about that for the moment. It
 9 will be rather difficult to follow if we have little bits
 10 and pieces. It will be interesting to hear the comments
 11 made by the speaker on the screen at the moment.
 12 MR MATHIBEDI SC: Thanks, Chair.
 13 [VIDEO IS SHOWN]
 14 MR MATHIBEDI SC: Please stop.
 15 CHAIRPERSON: We're stopping at 39:22.
 16 MR MATHIBEDI SC: Lieutenant-Colonel, can
 17 you tell us what was happening?
 18 COLONEL McINTOSH: What had happened was
 19 we had been discussing with them, we still couldn't hear
 20 and they motioned us to come forward. We requested the JOC
 21 permission to move the Nyala forward about 20 metres to be
 22 closer to them so that we could show we were giving ground
 23 as well. We're not just demanding, we're also giving
 24 ground as well to be closer to them as well.
 25 MR MATHIBEDI SC: Besides the fact that,

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1 you know, you could not hear them properly, was there any
 2 reason why you moved the – you proposed that the Nyala
 3 should be moved forward?
 4 COLONEL McINTOSH: Yes, due to the fact
 5 that, like I've said, they have given ground, we must also
 6 give some ground as well. It's a give-give situation.
 7 MR MATHIBEDI SC: And where the
 8 representatives of the strikers, you know, did they accept
 9 the team when they moved forward?
 10 COLONEL McINTOSH: Yes, they did. They
 11 actually also motioned to us to come forward at a stage and
 12 we did, after getting the approval.
 13 MR MATHIBEDI SC: Will you kindly proceed
 14 and show us the video?
 15 [VIDEO IS SHOWN]
 16 [11:31] Lieutenant Colonel, can you tell us what was
 17 happening?
 18 CHAIRPERSON: The top is, that pause is
 19 39:43.
 20 MR MATHIBEDI SC: Thanks, Chairperson.
 21 COLONEL McINTOSH: At that point I had
 22 motioned him to come forward due to the fact that I
 23 actually asked us if we could switch off the Nyalas.
 24 Unfortunately we were not in a position to be able to
 25 switch off the Nyala, so we motioned him forward through

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1 the, what they call the shooting hole in the front which is
 2 a space about that big, which I can get my arm basically
 3 through.
 4 CHAIRPERSON: You show your two, your two
 5 -
 6 COLONEL McINTOSH: I lean forward with my
 7 hand through.
 8 CHAIRPERSON: You say, a space like this,
 9 you say your two hands together?
 10 COLONEL McINTOSH: I'm showing the size
 11 of the hole which -
 12 CHAIRPERSON: Yes, -
 13 COLONEL McINTOSH: - is more or less that
 14 size.
 15 CHAIRPERSON: Yes, that's correct, more
 16 of that size doesn't mean anything on the transcript, so it
 17 is, it was about 10 centimetres I suppose, the circle
 18 created by pulling your two hands together.
 19 COLONEL McINTOSH: Sorry, Chair, it is
 20 about 10 to 12 centimetres wide, that I can easily pass my
 21 hand through.
 22 MR MATHIBEDI SC: Is there any reason why
 23 you extended your hand?
 24 COLONEL McINTOSH: Yes, it is a form of
 25 greeting as well, to bring the person forward. You will

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1 also see later in the video as well we also greet, also
 2 through the port hole.
 3 MR MATHIBEDI SC: Will you please proceed
 4 and then play the video for us?
 5 [VIDEO SHOWN]
 6 CHAIRPERSON: 39:52.
 7 COLONEL McINTOSH: This is where I'm
 8 actually greet him and I've actually informed him who I am
 9 and then I also requested what is his name and we requested
 10 it again as well.
 11 MR MATHIBEDI SC: And at that stage what
 12 was the attitude of Mr Noki?
 13 COLONEL McINTOSH: Mr Noki was not overly
 14 impressed to see the police there at that given time but
 15 you'll see as we go on he doesn't want to give his name
 16 either, he didn't give us any information with regards to
 17 who he is or anything like that so that we could address
 18 him as such.
 19 MR MATHIBEDI SC: Thanks, will you please
 20 go to Exhibit TTT3, that is Masenya video?
 21 CHAIRPERSON: We're leaving the excerpt
 22 from miners shot down for the moment which is Exhibit TTT4
 23 and we're going now to Exhibit TTT3, you say?
 24 MR MATHIBEDI SC: Thanks, Chairperson.
 25 CHAIRPERSON: Which is a video, videos

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1 actually taken on the 14th and the 15th of August 2012 by
 2 Warrant Officer Masenya.
 3 MR MATHIBEDI SC: Will you -
 4 COMMISSIONER HEMRAJ: Are you, sorry, are
 5 you coming back to this video at all, Mr Mathibedi?
 6 MR MATHIBEDI SC: Ja.
 7 COMMISSIONER HEMRAJ: There is something
 8 on that video about two bull bars being, there can't be two
 9 bull bars or something, do you perhaps know that, is that
 10 something you're going to deal with at all?
 11 MR MATHIBEDI SC: I'll deal with that.
 12 COMMISSIONER HEMRAJ: Yes.
 13 MR MATHIBEDI SC: Can we go to Exhibit
 14 TTT3, that would be 1 minute 40 seconds, that's the video
 15 of Warrant Officer Masenya, video number 1.
 16 CHAIRPERSON: Is this taken on the 14th or
 17 the 15th?
 18 SPEAKER: If I'm not mistaken, Chair,
 19 that was taken on the 15th.
 20 CHAIRPERSON: The 15th, that's the
 21 Wednesday?
 22 SPEAKER: Yes.
 23 CHAIRPERSON: Thank you. Morning or
 24 afternoon?
 25 SPEAKER: It would have been in the

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1 morning, Chair.
 2 CHAIRPERSON: Thank you.
 3 [VIDEO SHOWN]
 4 CHAIRPERSON: It is 34 seconds into the
 5 video.
 6 MR MATHIBEDI SC: What was happening at
 7 this stage, Lieutenant Colonel?
 8 COLONEL McINTOSH: This was the point
 9 when we were giving feedback with regards to the management
 10 requested, they wanted the management to come forward and
 11 address them at the face and this is when we were giving
 12 him feedback at that point, Chair.
 13 CHAIRPERSON: Is this Mr Noki on the, I
 14 think we call it the bulbar, is it, of the -
 15 COLONEL McINTOSH: Ja, that is -
 16 CHAIRPERSON: - of the vehicle?
 17 COLONEL McINTOSH: That's correct, Chair.
 18 CHAIRPERSON: Of the negotiating Nyala?
 19 COLONEL McINTOSH: That's correct, Chair.
 20 COMMISSIONER HEMRAJ: Can I just enquire,
 21 Colonel, the conversation that's taking place there, can it
 22 be heard by other persons outside, other strikers outside
 23 or is it just Mr Noki that's privy in this conversation?
 24 COLONEL McINTOSH: No, no, he is standing
 25 outside, so everything he said could also be heard by the

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1 other four members of his delegation, could also hear it.
 2 They were just standing in the background, not so far, but
 3 they could hear.
 4 MR MATHIBEDI SC: What was the response
 5 of Mr Noki at that stage once you gave him a feedback from
 6 Lonmin management?
 7 COLONEL McINTOSH: He actually asked us
 8 or he actually said that we must understand that they don't
 9 want the police here, they want us to leave and they're
 10 going to burn the hippos and we're going to run out of
 11 there today.
 12 MR MATHIBEDI SC: Sorry, I'm referring
 13 you to Exhibit HHH14, that is the last page, paragraph 29.
 14 COLONEL McINTOSH: That's correct, Chair.
 15 MR MATHIBEDI SC: I'm going to read that
 16 to you. "According to my opinion the lives of the SAPS'
 17 members who were deployed at the koppie were in danger and
 18 threatened by armed group." Why is it your view that the
 19 members were in danger?
 20 COLONEL McINTOSH: Due to the fact that
 21 in a case of an assault or an attack on the police it is
 22 seen as dangerous to your life.
 23 MR MATHIBEDI SC: You further state,
 24 "These people acted as a group and associated each other
 25 with the actions of the other." Can you elaborate on this?

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1 COLONEL McINTOSH: Those who went forward
 2 and attacked the police didn't do like the others who ran
 3 away, the persons who stayed to launch an attack on the
 4 police were the people who were attacking, so thus they
 5 formed an association with one another.
 6 MR MATHIBEDI SC: And they threatened and
 7 endangered the lives of SAPS' members and that of the
 8 public?
 9 COLONEL McINTOSH: Where life is being
 10 threatened it will be against the police and the public.
 11 Remember there was also a media contingent there as well
 12 and also other civilians.
 13 MR MATHIBEDI SC: "They were violent and
 14 aggressive and were well armed with extremely dangerous
 15 weapons which they used to charge and storm with at the
 16 SAPS' members." Now at what stage did they charge and
 17 storm at the SAPS' members?
 18 COLONEL McINTOSH: That was with regards
 19 to the attack on the police officers that you see on the
 20 video with Warrant Office Kuhn, this happened afterwards
 21 and then also in the bush as well when I saw Mr Mpumza
 22 attacking the police officers as well.
 23 MR MATHIBEDI SC: And the last portion of
 24 your statement reads as follows, "According to my opinion
 25 that if the SAPS' members did not defend themselves may of

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1 the SAPS' members would have been injured or killed."
 2 COLONEL McINTOSH: That is my opinion.
 3 MR MATHIBEDI SC: Based on what?
 4 COLONEL McINTOSH: Based on the attack by
 5 the strikers.
 6 MR MATHIBEDI SC: From your, since your
 7 deployment at Marikana on the 14th up until the 16th, what
 8 kind of situation –
 9 CHAIRPERSON: I'm sorry, are you going to
 10 be some time with this point you're busy with or is this
 11 just a short point to conclude?
 12 MR MATHIBEDI SC: It is a short point.
 13 CHAIRPERSON: To conclude, alright.
 14 MR MATHIBEDI SC: I've got just two
 15 points, very short ones.
 16 CHAIRPERSON: Okay, well, I want to take
 17 the tea adjournment soon but I think let's take your two
 18 short points first.
 19 MR MATHIBEDI SC: Thanks, Chairperson.
 20 From your deployment since the 14th of August up until the
 21 16th what kind of situation was the police dealing with?
 22 COLONEL McINTOSH: The police were
 23 dealing with a situation of an armed mob or group of people
 24 that didn't want to surrender weapons.
 25 MR MATHIBEDI SC: How do you characterise

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1 that situation where the police dealing with the crowd
 2 management situation or what kind of situation was the
 3 police dealing with?
 4 COLONEL McINTOSH: In my opinion it
 5 wasn't a crowd management situation due to the fact that a
 6 crowd management situation can be maintained with normal,
 7 everyday pyrotechnics and teargas and rubber bullets, but
 8 this was something totally different.
 9 MR MATHIBEDI SC: I'm going to refer you
 10 to the last point, it is set out in Exhibit TTT4, that is
 11 the Desai video of the 16th.
 12 CHAIRPERSON: Perhaps we can take the tea
 13 adjournment now and we'll resume again, it is now going
 14 after 20 to 12, let's start again at 12 o'clock.
 15 MR MATHIBEDI SC: Thanks, Chairperson.
 16 [COMMISSION ADJOURNS COMMISSION RESUMES]
 17 [12:01] CHAIRPERSON: The Commission resumes.
 18 Lieutenant-Colonel, you're still under oath. Yes, Mr
 19 Mathibedi, you're on your last point I believe, unless
 20 you've thought of a couple more since we adjourned.
 21 PAUL BISMARCK LOEST: (s.u.o.)
 22 EXAMINATION BY MR MATHIBEDI SC (CONTD.):
 23 Will you kindly show us the video, the time is 58:56
 24 seconds?
 25 CHAIRPERSON: Is this –

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1 MR MATHIBEDI SC: It's – sorry,
 2 Chairperson, it's the Desai video.
 3 CHAIRPERSON: This is TTT4.
 4 MR MATHIBEDI SC: TTT4, 3.
 5 CHAIRPERSON: No, TTT4 is Mr Desai's
 6 video. TTT3 is Warrant Officer Masenya's video.
 7 MR MATHIBEDI SC: TTT4, Mr Chairperson.
 8 CHAIRPERSON: So we're looking at TTT4,
 9 what time?
 10 MR MATHIBEDI SC: It would be 58 minutes
 11 56 seconds.
 12 CHAIRPERSON: That's right, thank you.
 13 [VIDEO IS SHOWN]
 14 CHAIRPERSON: Could we have the sound,
 15 please?
 16 [VIDEO IS SHOWN]
 17 MR MATHIBEDI SC: Thank you, Chairperson.
 18 CHAIRPERSON: 59:50.
 19 MR MATHIBEDI SC: Lieutenant-Colonel, did
 20 you observe Mr Noki speaking on the 16th?
 21 COLONEL McINTOSH: Yes, I did, Chair.
 22 MR MATHIBEDI SC: But specifically in
 23 relation to this clip? Did you hear him saying that?
 24 COLONEL McINTOSH: I did not hear him say
 25 that but I did see him speaking to the crowd on the 16th.

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1 MR MATHIBEDI SC: Thanks. The last
 2 aspect relates to –
 3 CHAIRPERSON: Sorry, we heard the
 4 soundtrack, there are sub-titles. We will obviously have
 5 to get a qualified person to tell us whether the sub-titles
 6 are an accurate translation of what was said but I take it
 7 for the moment provisionally we can accept, we can accept
 8 that this translation is correct and we'll also need, in
 9 fact, a transcript of all the communications that have been
 10 recorded and with an appropriate translation but for the
 11 moment I take it you can proceed on the assumption, unless
 12 the assumption is disproved, that what was in the sub-
 13 titles is correct.
 14 COLONEL McINTOSH: That's correct, Chair.
 15 MR MATHIBEDI SC: Is it so that you
 16 attended a meeting at Roots?
 17 COLONEL McINTOSH: That's correct, I
 18 received a call-up instruction for a debriefing session at
 19 Roots.
 20 MR MATHIBEDI SC: What was the purpose of
 21 the meeting?
 22 COLONEL McINTOSH: According to the call-
 23 up instruction it was a debriefing which went through all
 24 the various aspects that we had dealt with which were
 25 written down. Unfortunately I did not stay the whole time

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1 in Roots due to the fact that I had an obligation to be in
 2 the High Court in Cape Town during the same period.
 3 MR MATHIBEDI SC: On the occasions that
 4 you were present, did you give your input?
 5 COLONEL McINTOSH: Yes, I did.
 6 MR MATHIBEDI SC: Thanks, Chairperson, no
 7 further questions for the witness.
 8 CHAIRPERSON: Thank you. Ms Barnes, I
 9 believe you're going to cross-examine first. What is going
 10 to happen, perhaps I should explain, my understanding is –
 11 if I've got it wrong I'll be corrected but my understanding
 12 was that Mr Chaskalson, evidence leader, was going to
 13 cross-examine first and thereafter the parties were going
 14 to cross-examine and a globular time was given to them to
 15 divide up among themselves. Mr Chaskalson unfortunately
 16 has got pneumonia and is not able to cross-examine and so
 17 it's been decided that the parties will cross-examine
 18 first, is that correct? And am I – have I got it right, Ms
 19 Pillay?
 20 MS PILLAY: Unfortunately not, Chair. Ms
 21 Lupuwana will be cross-examining on behalf of the evidence
 22 leaders and she will cross-examine last.
 23 CHAIRPERSON: Oh, cross-examine last?
 24 Yes, yes, I see but I did understand that it was going to
 25 be the other way around first but that's been changed, is

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1 that right or have I got that wrong too?
 2 MS PILLAY: I think that's the
 3 arrangement in relation to Captain Kidd, Chair –
 4 CHAIRPERSON: I see, alright.
 5 MS PILLAY: - and not the Lieutenant-
 6 Colonel.
 7 CHAIRPERSON: Anyway, the fact is we look
 8 forward to Ms, Adv Lupuwana's cross-examination later but
 9 the parties will cross-examine first and Ms Barnes, did you
 10 volunteer or was greatness thrust upon you that you should
 11 cross-examine first?
 12 MS BARNES: It's the arrangement that has
 13 been made between the parties, Chair. Mr Mpofu has also
 14 given me an hour of his time. I see that he's not here to
 15 contest that –
 16 CHAIRPERSON: His attorney is here.
 17 MS BARNES: She is.
 18 CHAIRPERSON: I'm sure if there's a
 19 problem she will be heard from. Alright, so you've got to
 20 cross-examine –
 21 MS BARNES: So I have an hour and a half
 22 then, in effect, Chair.
 23 CHAIRPERSON: And were you prejudiced in
 24 any way by this new material that you complained about at
 25 the beginning this morning?

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1 MS BARNES: Chair –

2 CHAIRPERSON: Or are you able to proceed?

3 MS BARNES: - we were prejudiced in our

4 preparation, Chair, but I am able to proceed.

5 CHAIRPERSON: Those are the documents,

6 we've got the documents that you are going to rely on and I

7 take it the witness has seen them too?

8 COLONEL McINTOSH: Ms Barnes represents

9 the?

10 MS BARNES: I represent AMCU.

11 CHAIRPERSON: She represents AMCU.

12 MS BARNES: Our list of documents was

13 sent to the SAPS lawyers on Friday, Friday morning Chair,

14 as was requested.

15 CROSS-EXAMINATION BY MS BARNES: The

16 first document I'm going to be referring to, Colonel – are

17 you ready, Colonel?

18 COLONEL McINTOSH: The only document that

19 I've got from AMCU will be relying on exhibit GGG13. That

20 was received yesterday afternoon on the 19th of May which

21 was –

22 MS BARNES: Yes, that's an additional

23 document that I drew your attorney's attention to yesterday

24 that we're also going to be relying on but the main list of

25 AMCU documents were sent to your attorney and copied to the

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1 evidence leaders on Friday morning.

2 COLONEL McINTOSH: Chair, the only

3 document that I've got is the one then from yesterday from

4 AMCU at 6:27PM with regard to GGG13, is the only document

5 that I have been provided with, Chair.

6 CHAIRPERSON: It sounds as if there has

7 been some logistical breakdown. Are you going to rely

8 extensively on docs or are you going to question on matters

9 for which you do not require the backing of documents?

10 MS BARNES: I'm going to start with the

11 Colonel's statement HHH14.

12 CHAIRPERSON: He can't complain if you

13 refer to that.

14 MS BARNES: I wouldn't have thought so.

15 CHAIRPERSON: No.

16 MS BARNES: And then a little later I'm

17 going to be referring to some statements by Brigadier

18 Calitz and also Mr Botes of Lonmin. Shall I start, Chair,

19 and – I see Mr Pretorius isn't here so I'm not able to ask

20 my attorney to take it up with him.

21 CHAIRPERSON: Let's not waste time in

22 expressing our indignation of what's happened or not

23 happened, let's get on with it. Do as much as you can

24 before lunchtime. The witness can perhaps be asked to look

25 during lunchtime at the other documents you're referring to

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1 and we'll do as best we can in the time we have.

2 MS BARNES: So if we could start then

3 with exhibit HHH14, if we could have that up on the screen,

4 please, at paragraph 14 and this is the statement you made,

5 Colonel, on the 19th of August 2012, is that correct?

6 COLONEL McINTOSH: That's correct, Chair.

7 MS BARNES: And I'm going to read a

8 portion of paragraph 14 into the record. You say the

9 following – just to orientate you, well, it does say right

10 at the beginning of the paragraph but we are dealing now

11 with Wednesday the 15th of August. You say "We also

12 informed them" and you're referring now to the five men who

13 had approached you on behalf of the strikers, "that the

14 mine stated that there is a two year wage agreement in

15 place with all the unions and that the strike is

16 unprotected but that the mine will talk to the unions again

17 when the workers lay down their weapons and return to

18 normal duties. This agitated the person with the green

19 blanket and the group became more rowdy by singing,

20 chanting, dancing and waving weapons in the air." Do you

21 see that?

22 COLONEL McINTOSH: That's correct, Chair.

23 MS BARNES: Now you'll see there,

24 Colonel, that you stated that – this is now when you were

25 giving feedback to the strikers and you stated that the

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1 mine stated that there is a two year wage agreement in

2 place with all the unions, do you see that?

3 COLONEL McINTOSH: That was correct, yes.

4 MS BARNES: So presumably, Colonel, you

5 would have – your understanding would have been that there

6 was a two year wage agreement in place with NUM, AMCU and

7 perhaps other unions. Presumably you would not have been

8 precisely aware of which unions but your understanding was

9 that there was a two year wage agreement in place with all

10 the relevant unions in Lonmin, would that be correct?

11 COLONEL McINTOSH: If I remember

12 correctly, AMCU at that time was not an officially

13 recognised union according to the mine as well.

14 CHAIRPERSON: Not as far as wages were

15 concerned. They had certain rights at Karee but my

16 understanding is as far as wages are concerned they weren't

17 recognised as having negotiation rights.

18 COLONEL McINTOSH: That's correct, Chair.

19 CHAIRPERSON: There were other unions

20 apart from NUM, I think Solidarity and other unions as well

21 were involved.

22 COLONEL McINTOSH: That's correct, Chair.

23 MS BARNES: Well, you use the plural,

24 Colonel, "unions." You say a two year wage agreement in

25 place with all the unions. So presumably your

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1 understanding was that that agreement was in place with a
 2 number of unions at Lonmin. Was that your understanding?
 3 COLONEL McINTOSH: That's correct and
 4 also the fact that AMCU was not involved in the wage
 5 negotiations as they had not been officially recognised as
 6 that as such.
 7 MS BARNES: Now you also say a little bit
 8 later in that paragraph, "The mine will talk to the unions
 9 again when the workers put down their weapons and return to
 10 normal duties." So again, Colonel, it seems to me that
 11 your understanding was that what Lonmin was saying was that
 12 if the workers put down their weapons and return to work,
 13 management would engage with them through their unions,
 14 whoever the relevant unions were. Was that your
 15 understanding?
 16 COLONEL McINTOSH: That is correct,
 17 Chair.
 18 MS BARNES: And presumably, Colonel, you
 19 would have thought that this, this was in fact something to
 20 offer to the strikers and let me explain. Lonmin was not
 21 saying we're going to dismiss all these strikers, which
 22 they arguably may have been entitled to do, given that it
 23 was an unprotected strike. Lonmin was also not saying we
 24 will not engage with the strikers if they come back to
 25 work. Lonmin was saying put down your weapons, come back

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1 to work and we'll engage with you through your unions. Was
 2 that your understanding?
 3 COLONEL McINTOSH: That is correct,
 4 Chair.
 5 MS BARNES: And you would have thought
 6 presumably, Colonel, that that would have been a reasonable
 7 thing in the circumstances for Lonmin to be saying to the
 8 strikers, is that correct?
 9 COLONEL McINTOSH: It is possible, Chair.
 10 MS BARNES: And presumably – well,
 11 perhaps you can tell me if my presumption is correct, you
 12 would have been somewhat bewildered by the strikers'
 13 reaction when you gave them this message. They became
 14 quite agitated, you said, when you gave them this message,
 15 correct?
 16 COLONEL McINTOSH: They did become
 17 agitated, Chair.
 18 MS BARNES: And you, at the time, would
 19 not have understood the reason why, is that correct?
 20 COLONEL McINTOSH: Chair, the fact that
 21 Lonmin hadn't said they were going to dismiss these people
 22 and so forth wasn't strange either and it wasn't strange to
 23 me that they became agitated, they wanted to try and agree
 24 to earn a living wage.
 25 MS BARNES: Well, let's go through the

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1 true facts, Colonel, what the true facts were in fact at
 2 that time. The true, one of the true facts was that the
 3 two year wage agreement at Lonmin was only a wage agreement
 4 between Lonmin and NUM. There was no wage agreement in
 5 place with any other union that affected these workers at
 6 the time, were you aware of that?
 7 CHAIRPERSON: I don't think that's
 8 factually correct. Because of the way the relevant
 9 sections of the Labour Relations Act work, the only person,
 10 the only union that had rights to negotiate wages was, as
 11 far as this class of workers was concerned, was NUM but my
 12 understanding is that that effectively bound the other
 13 workers as well because of the way the relevant sections of
 14 the Labour Relations Act work. So it's not, the way you've
 15 put it isn't a correct statement of the law.
 16 MS BARNES: Well, Chair –
 17 CHAIRPERSON: It may well be that these
 18 arrangements which were set out in the agreement had been
 19 negotiated by the majority union which only had to have 50%
 20 plus one but there were consequences that flowed from the
 21 fact that those arrangements were made by Lonmin on the one
 22 hand and the majority union on the other, is that not
 23 correct? So I think the question should be reformulated.
 24 MS BARNES: But Chair, I wasn't
 25 suggesting – I apologise if I framed it clumsily – I wasn't

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1 suggesting that the other workers would not be bound. I
 2 asked the question with reference to the witness's
 3 statement that there was a two year wage agreement with all
 4 the unions. The question to the witness is, did he
 5 understand at the time that the two year wage agreement was
 6 between Lonmin and NUM only.
 7 COLONEL McINTOSH: It was with the
 8 majority union and the mine. That's correct, Chair.
 9 MS BARNES: Did you understand at the
 10 time that the majority union was NUM?
 11 COLONEL McINTOSH: Yes, I did, Chair.
 12 MS BARNES: And did you understand at the
 13 time that AMCU had no negotiating rights with Lonmin?
 14 COLONEL McINTOSH: That is correct,
 15 Chair.
 16 MS BARNES: So then you would have
 17 understood, Colonel, that if – that a message to the
 18 strikers, the message that you were conveying, put down
 19 your weapons, come back to work and we will engage with you
 20 through the unions, was really a meaningless message.
 21 Would you agree with that?
 22 COLONEL McINTOSH: No, it was not, your
 23 honour, due to – Chair, due to the fact that AMCU was still
 24 busy gaining membership at that time and could have become
 25 one of the controlling parties.

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1 CHAIRPERSON: Lieutenant-Colonel, that
 2 cock isn't going to fight. It takes time for a union to
 3 get to a majority position. It takes time for it to get
 4 the necessary recognition. What Lonmin were talking about
 5 was, I take it, was let them put down their arms or their
 6 weapons today, we'll negotiate with them tomorrow. They
 7 weren't saying we'll negotiate with them in three months'
 8 time when AMCU have finally got majority rights, if they
 9 ever get it. So that, I'm afraid that cock isn't going to
 10 fight.

11 COLONEL McINTOSH: Chair, to clarify
 12 that, the explanation was that the union, if they went back
 13 to work they would be negotiated with but they are in a
 14 position still busy gaining ground at the mine and that was
 15 said by the mine as well. So they would be in a position
 16 sooner or later as well to go further.

17 CHAIRPERSON: Probably later rather than
 18 sooner but did you have any idea as to what the time lapse
 19 was likely to be between the strikers getting, the strikers
 20 getting negotiating rights or rather the strikers having
 21 negotiating rights conferred upon AMCU between the time you
 22 were talking to them and the time that this thing was going
 23 to happen, if it ever did happen?

24 COLONEL McINTOSH: Well, the arrangement
 25 that was made with regards to that, if they'd put down

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1 their weapons and gone back to work they would have been
 2 consulted straight away, Chair, and then –

3 CHAIRPERSON: Perhaps Ms Barnes –
 4 COLONEL McINTOSH: - and then it was
 5 explained further, it was explained further that the
 6 process that work in terms of labour relations, they would
 7 still be afforded the opportunity to gain ground and
 8 momentum with their membership and that would bring them
 9 into a power, into a situation where they could do formal
 10 negotiations further as well, Chair.

11 CHAIRPERSON: Well, if it – even when
 12 they do that, because part of the evidence also is but
 13 again I take it you didn't know that, was that certainly at
 14 an earlier stage the rock drill operators had been engaged
 15 in negotiations with AMCU, with Lonmin and had said we
 16 don't want to involve the unions, we want to deal directly
 17 ourselves with Lonmin and even though – and some of the
 18 people on the koppie, according to the evidence, were
 19 members of NUM, some were members of AMCU and some were
 20 members of no unions at all. But anyway this is all
 21 background you didn't have and Ms Barnes's point is when
 22 they said the mine will talk to the unions when the workers
 23 lay down their arms and return to normal duties, you
 24 presumably thought that that was a reasonable response, did
 25 you?

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1 COLONEL McINTOSH: That is correct,
 2 Chair.

3 MS BARNES: The other thing you probably
 4 didn't know at the time, Colonel, was that the NUM did not
 5 support the rock drillers' demand for an increased wage.
 6 Am I correct?

7 COLONEL McINTOSH: I did not know that,
 8 Chair.

9 MS BARNES: Is it further correct –
 10 CHAIRPERSON: She is correct, you didn't
 11 know that. She is correct, Adv Barnes is correct, you did
 12 not know that?

13 COLONEL McINTOSH: I didn't know about
 14 them not supporting that, Chair.

15 MS BARNES: So in fact the position at
 16 the time, Colonel, was that if the strikers had put down
 17 their weapons and gone back to work, the only union that
 18 could have come to the negotiating table would have been
 19 the NUM and the NUM was not interested in their demand.
 20 You weren't aware of that, correct?

21 COLONEL McINTOSH: I was not aware of
 22 that, Chair.

23 MS BARNES: So effectively if these
 24 strikers had put down their weapons and gone back to work,
 25 nothing would have happened. There would have been no

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1 engagement with them on their demand and the strikers were
 2 aware of that at the time –

3 CHAIRPERSON: Well, I don't know if the
 4 witness can comment. It's just a proposition you put to
 5 the witness, it may well be correct but I'm not sure the
 6 witness can confirm or deny that that's correct, but the
 7 most you've got is that he wasn't aware of those facts and
 8 that I think you've brought out pretty clearly.

9 MS BARNES: Now that you do know these
 10 facts, Colonel, is it perhaps understandable to you why the
 11 strikers became agitated when they were given this message?

12 COLONEL McINTOSH: Yes, Chair.

13 MS BARNES: Alright. Now if we could,
 14 still on your statement HHH14 if we could go to paragraph
 15 6. Here, Colonel, we're on Tuesday the 14th of August 2012.

16 COLONEL McINTOSH: That's correct, Chair.

17 MS BARNES: And I'm going to read from
 18 that paragraph. "He," referring to Mr Noki here, "He said
 19 that they are there because members of the National Union
 20 of Mineworkers killed some of their members the previous
 21 Friday at approximately 16:40." Do you see that?

22 COLONEL McINTOSH: That's correct, Chair.

23 [12:21] MS BARNES: Now, was this the first time
 24 that you'd heard this or had you heard this previously from
 25 the police?

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1 COLONEL McINTOSH: I'd heard about deaths
2 before the time, the week prior, but when he informed me
3 about this it was the first time I'd heard it from the
4 union themselves, or the strikers themselves.
5 COMMISSIONER HEMRAJ: Well, the deaths
6 prior, did you hear that any of them had been caused by
7 NUM, by members of NUM?
8 COLONEL McINTOSH: No, not at that point,
9 Chair.
10 CHAIRPERSON: My understanding is there
11 weren't deaths on the Friday of people killed by NUM. What
12 happened was there was something on the Saturday where it
13 was apparently thought that people had been killed; in fact
14 two people were injured and taken to hospital, but it was
15 believed, I think that's been established, it was believed
16 for some time that they'd actually died. But anyway, that
17 again is not a matter for the witness. He doesn't know one
18 way or t'other, does he?
19 MS BARNES: But you understood, Colonel,
20 that what was being said to you was that two of the members
21 of the striking group had been killed by NUM over the
22 weekend. That was what was being conveyed to you. That
23 was for the first time on the Tuesday, you say.
24 COLONEL McINTOSH: That's correct, Chair,
25 and also the fact that he didn't mention how many people,

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1 he just said it was on the Friday at about 20 to 5 his
2 members had been killed by NUM.
3 CHAIRPERSON: Did he say how many?
4 COLONEL McINTOSH: He didn't say how many
5 of his members.
6 CHAIRPERSON: Yes.
7 COLONEL McINTOSH: He just said that some
8 of his members had been killed by NUM on the Friday.
9 CHAIRPERSON: Yes, yes.
10 MS BARNES: So presumably, Colonel, you
11 would have been very concerned by this and you would have
12 taken steps to investigate this, correct?
13 COLONEL McINTOSH: That is correct. It
14 was given back to the JOC.
15 MS BARNES: What did you do to
16 investigate the matter other than pass it on to the JOC?
17 COLONEL McINTOSH: The JOC then has to
18 confirm this and there was no confirmation at that point
19 that people had been killed on the Friday, only on the
20 Sunday.
21 CHAIRPERSON: Now the people who were
22 killed on the Sunday of course weren't strikers, they were
23 people who were killed by strikers, as far as we can tell
24 on the evidence so far.
25 COLONEL McINTOSH: That's correct, Chair.

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1 MS BARNES: Well, what –
2 COLONEL McINTOSH: One must also take
3 cognisance of the fact that the JOC was not very fully
4 operational on the 14th at that point. It only came into
5 being when Brigadier Pretorius took over the JOC that
6 everything started to fall into place at the JOC.
7 CHAIRPERSON: The point is this, is it
8 not, that never mind whether they were operational on the
9 Tuesday, you were given the job to negotiate. In order to
10 - propositions of alleged fact were put to you by the
11 strikers with whom you were endeavouring to negotiate.
12 That's right?
13 COLONEL McINTOSH: That's correct, Chair.
14 CHAIRPERSON: So if you're going to
15 continue your negotiations with them surely it's your job
16 as negotiator to find out whether what was put to you was
17 correct; if it wasn't correct, what the true facts were.
18 Even if it was correct, whether there were additional facts
19 that were relevant. All those things you had to do, or
20 cause to be done so that you could negotiate further in a
21 meaningful way with some hope of success. Isn't that
22 correct?
23 COLONEL McINTOSH: That's correct, Chair.
24 MS BARNES: And Colonel, did you speak to
25 Lonmin about this alleged incident at all?

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1 COLONEL McINTOSH: I did not speak to
2 anybody from the Lonmin with regards to these incidents.
3 We sent it back to the JOC due to the fact we were on the
4 frontline, and asked for the feedback from that.
5 MS BARNES: Because it's clear, Colonel,
6 that Lonmin was aware that at the incident involving NUM,
7 which in fact happened on the Saturday as we now know,
8 people hadn't been killed but that two strikers had been
9 injured. Lonmin was aware of that. We know this from the
10 statement of Mr Botes, which is exhibit GGG19. I'm not
11 sure that it's necessary to go to it. I'm just pointing
12 out to you that Lonmin was aware at the time of the true
13 facts surrounding the incident on Saturday involving NUM.
14 CHAIRPERSON: Well, that may be so, but
15 of course the question is whether the witness knew that. I
16 mean for the purposes of cross-examining the witness it's
17 necessary to show that he knew it in some form or other,
18 isn't it? Did you know that?
19 COLONEL McINTOSH: No, I did not know
20 that.
21 CHAIRPERSON: It's been put to you that
22 Lonmin knew about that because that appears from Mr Botes's
23 statement, but you were not aware of that?
24 COLONEL McINTOSH: I was not aware of
25 that.

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1 CHAIRPERSON: Were you ever aware of
 2 that?
 3 COLONEL McINTOSH: No, I was not aware of
 4 that.
 5 MS BARNES: And you said that you met
 6 with Lonmin. You personally were present at the meeting
 7 with Lonmin on Wednesday morning, on the 15th just before
 8 you went back to the strikers to give them feedback. You
 9 didn't discuss this matter with Lonmin at that meeting?
 10 COLONEL McINTOSH: The discussion that
 11 was held on the meeting on the 15th was with regards to
 12 asking the employer to come to the face to see if they
 13 would be willing to come to the face and discuss with the
 14 members of the strikers with regards to the ending of the
 15 strike as such, and then also if that didn't work, to get
 16 hold of the union representatives to come and discuss with
 17 the members as well. At that meeting we did not discuss
 18 that as it had already been channelled back to the JOC to
 19 give us feedback from there.
 20 MS BARNES: And you understood, Colonel –
 21 I mean we've read in your very own words, as you put it, Mr
 22 Noki said that they were there because they had been shot
 23 at by NUM and members had been killed by NUM. That is why
 24 they were at the koppie and carrying weapons. That is what
 25 he said to you, correct?

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1 COLONEL McINTOSH: And the JOC could not
 2 confirm that any of the members had been killed by any NUM
 3 members at that period, Chair, which is actually correct
 4 because none of them had been killed.
 5 MS BARNES: But we know that there was an
 6 incident involving NUM on the Saturday. That must have
 7 been clear to everybody at the time, Colonel, correct?
 8 COLONEL McINTOSH: Yes, Chair.
 9 MS BARNES: So the point is really,
 10 Colonel, you as chief negotiator took no concrete steps to
 11 establish whether there had been an incident with NUM some
 12 time over the weekend and to establish what those true
 13 facts were, correct?
 14 COLONEL McINTOSH: Chair, we worked as an
 15 operational team as the negotiators. There's no chief.
 16 There's a primary, secondary, and so forth, but there is no
 17 chief negotiator on these cases.
 18 MS BARNES: Well, as one of the
 19 negotiators then, Colonel. We're going to argue this, so
 20 I'd like you to comment on it. Surely it was your duty in
 21 these circumstances, given what Mr Noki had said to you, to
 22 investigate, to find out what the true facts were, to go
 23 back to the strikers and say 'Look, we've investigated
 24 this; in fact no-one was killed during that incident. Two
 25 people were injured, they're in hospital. We understand

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1 that you're concerned about NUM, that you see them as a
 2 risk, and we're going to take the following steps to ensure
 3 your safety.' Isn't that what you should have done,
 4 Colonel?
 5 COLONEL McINTOSH: Chair, feedback was
 6 given with regards to the fact that no-one had been killed.
 7 There was no record of anybody being killed on the Friday,
 8 as was alleged. That feedback was given, and then also we
 9 also gave the assurance that if they put down their weapons
 10 as well there will be increased police in the area to
 11 patrol to make sure that nothing further happens.
 12 MS BARNES: But Colonel, you're not
 13 suggesting that you gave feedback to the strikers to the
 14 effect that no-one was killed in that incident, are you?
 15 COLONEL McINTOSH: There was feedback
 16 given with regards to the fact that we could not find the
 17 incident of the Friday and that no-one was thus killed.
 18 CHAIRPERSON: Are you saying that you
 19 said to the representatives of the strikers on the
 20 Wednesday that, what you told us now, that we can't find
 21 any evidence of anyone having been killed on the Friday?
 22 Did you tell them that?
 23 COLONEL McINTOSH: It was conveyed on the
 24 Thursday, Chair –
 25 CHAIRPERSON: On the Thursday you told

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1 them?
 2 COLONEL McINTOSH: On the Thursday
 3 morning, ja.
 4 CHAIRPERSON: I see, and did you say 'You
 5 don't need weapons to protect yourselves because we will
 6 protect you. You lay down your arms. We will see to it
 7 that NUM don't attack you.' Did you actually put it as
 8 clearly and as crisply as that to them?
 9 COLONEL McINTOSH: No, Chair, we didn't
 10 say that NUM wouldn't attack them.
 11 CHAIRPERSON: Did you say that you would
 12 protect them against any attack that NUM may mount upon
 13 them?
 14 COLONEL McINTOSH: We did inform them
 15 that the police would be there to protect them and we'd be
 16 able to protect them if they put down their weapons and
 17 went back to work, or if they put down their weapons,
 18 Chair.
 19 MS BARNES: Colonel, it's odd because we
 20 don't see that anywhere, never in any of your statements
 21 have you ever alleged that that feedback was ever given to
 22 the strikers. That's the first thing, and the second thing
 23 is that we see in public, where strikers are speaking on
 24 the 16th where one striker is addressing the large group, we
 25 see there reference on the 16th at midday still to the fact

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1 that their members had been killed by NUM. So clearly at
 2 midday on the 16th they still thought that people had died
 3 on the Saturday. Would you like to comment?
 4 COLONEL McINTOSH: As I said, the
 5 information that we received was on the Friday and we gave
 6 the feedback that no-one had died on the Friday, Chair.
 7 MS BARNES: I'm going to take you in a
 8 little while to the evidence which shows that the strikers
 9 were still labouring under that misapprehension on the 16th,
 10 but for now I'm going to move on to another topic,
 11 Colonel –
 12 COMMISSIONER HEMRAJ: Just before you do,
 13 what was the reaction when you conveyed to them that there
 14 was, that you could not find anything to support the view
 15 that persons had been killed by NUM on the Friday?
 16 COLONEL McINTOSH: They were not
 17 satisfied with any of the results that we gave them on the
 18 Thursday due to the fact that, with regards to the fact
 19 that the mine would negotiate with them and so forth was
 20 also not acceptable to them. So that was a bit of a
 21 breakdown as well. If you notice around 12 o'clock we
 22 actually deadlocked and we stopped negotiating for some
 23 time until we got the people from NUM and from AMCU to come
 24 and address them, Chair.
 25 CHAIRPERSON: I wanted to say the fact

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1 that they still apparently believed it, or said things that
 2 indicated that they believed that the people had been
 3 killed doesn't prove of course that the police hadn't told
 4 them the opposite. It simply would prove that if they were
 5 told that by the police they didn't believe them. So you
 6 know, you're putting it to him as if it proves that he's
 7 not telling the truth when he said that's what they said to
 8 the strikers. There is the other inference, is there not?
 9 MS BARNES: I accept that, Chair. I
 10 don't take it any further than to say they were clearly,
 11 they clearly appeared to be of that belief still on the
 12 16th. Now Colonel, your further statement, or your
 13 supplementary statement that you deposed to quite
 14 recently –
 15 CHAIRPERSON: Sorry, sorry, can I put one
 16 other thing? You put to him that he never said to, it was
 17 never in his statement that they had said that they would
 18 protect the strikers against NUM or do anything of that
 19 kind. That's not entirely correct because the exhibit that
 20 we now have, which is exhibit TTT5, which is the statement
 21 he made to IPID, it appears to have been made on the 19th of
 22 August 2012, it's what one can call a pre-Roots statement,
 23 which may give it extra credibility, and in that statement
 24 at the end of paragraph 7, which is at the foot of page 4,
 25 on the top of page 5, we see the following – perhaps I

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1 should read the whole paragraph to get it in context.
 2 "Later I informed them that the SAPS wanted solution to the
 3 problem and we want them to disperse peacefully as the
 4 gathering was illegal. We also requested them to leave
 5 their weapons on the koppie and that we will collect it
 6 when they left. I specifically informed them that the
 7 police do not want to fight with them and hurt them, but
 8 that we want a peaceful solution to the problem and that we
 9 guarantee their safety." And a similar statement had
 10 actually been made in exhibit HHH14 at the end of paragraph
 11 7 there, which is the statement made also on the 19th of
 12 August. I haven't compared the two; it may well be that
 13 they are essentially the same, but I looked at the IPID one
 14 because it was an early statement, pre-Roots, and that
 15 statement is there. So it's not quite correct to say that
 16 he didn't say that.
 17 MS BARNES: But Chair, with respect, I
 18 didn't put it in general terms. I said that he didn't say
 19 to the strikers, he didn't give them the truth facts as to
 20 what had happened at the NUM incident, which could have and
 21 should have been established, and it wasn't said that the
 22 strikers would be protected in relation to that concern.
 23 CHAIRPERSON: Well no, but what he did
 24 say apparently was that they would guarantee their safety.
 25 That admittedly is a rather brief statement, but it conveys

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1 quite a lot of meaning, doesn't it?
 2 MS BARNES: Colonel, you're said that in
 3 your supplementary statement, the purpose of your
 4 supplementary statement was to deal with issues that you'd
 5 omitted to deal with in your original statement, correct?
 6 COLONEL McINTOSH: That is correct,
 7 Chair.
 8 MS BARNES: So if there was anything
 9 important that you'd left out of your original statement
 10 you would have put it in your supplementary statement,
 11 correct?
 12 COLONEL McINTOSH: That is correct,
 13 Chair.
 14 MS BARNES: If we can go to your
 15 supplementary statement, which is exhibit TTT1, to
 16 paragraph 6. I need to read the paragraph; it reads as
 17 follows, "On the 15th of August 2012 after we gave feedback
 18 to the delegation of strikers led by the person who I now
 19 know as the deceased Mr Noki, that Lonmin management was
 20 not prepared to come to the koppie to address the strikers,
 21 he went back to the group of strikers. He later returned
 22 to our Nyala and said to us that they did not want the
 23 police there and we must go. I then said that we did not
 24 want any trouble with them and merely wanted a peaceful
 25 resolution to their unlawfully carrying weapons. He left

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1 and later returned again and said that they were going to
 2 burn the Hippos and that we would run out of there. I
 3 considered this a threat, which I took seriously. I'm
 4 aware that Brigadier Calitz reported this threat to the
 5 JOC." Do you stand by that statement, Colonel, the content
 6 of that paragraph?
 7 COLONEL McINTOSH: Yes, Chair, I do.
 8 MS BARNES: Because in your original
 9 statement, Colonel, that's HHH14 that we were looking at a
 10 moment ago, there's no reference to any threat by Mr Noki
 11 in these terms or in any other terms on the 15th of August.
 12 Do you accept that?
 13 COLONEL McINTOSH: I accept that in my
 14 original statement, yes.
 15 MS BARNES: And Brigadier Calitz's
 16 statement also makes no mention of any threat by Mr Noki
 17 whatsoever on the 15th of August. Do you accept that?
 18 COLONEL McINTOSH: I have not studied his
 19 statement, Chair.
 20 MS BARNES: Well, perhaps you can have a
 21 look at it over the lunch break. It's exhibit JJJ107. I
 22 could draw your attention to paragraph 58, which is where
 23 he talks about – that's in Brigadier Calitz's statement,
 24 which you can look at over lunchtime, where he talks about
 25 the events of the 15th, it's around paragraph 58, there's no

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1 mention in his statement of any threat being made on the
 2 15th.
 3 In fact, Colonel, the only place that we've ever
 4 – before your supplementary statement came along the only
 5 place that we ever saw an allegation of a threat having
 6 been made on the 15th was in exhibit L at slide 118, and
 7 perhaps we could have exhibit L, slide 118 on the screen?
 8 So the relevant part would be halfway through the first
 9 bullet point. "At this point one of the representatives
 10 became very aggressive and stated that the police should
 11 not be there and that the people in the Hippos, referring
 12 to the armoured vehicles, would die there and not one Nyala
 13 would leave that ground." Do you see that?
 14 COLONEL McINTOSH: I see that, Chair.
 15 MS BARNES: Now Brigadier Calitz was
 16 asked about this; in his cross-examination he was asked
 17 about this slide and the reference to this threat on the
 18 15th. If we could go to day 174, page 20730, line 17, Mr
 19 Gotz is cross-examining Brigadier Calitz and he says, "You
 20 can't confirm the statement in exhibit L that during the
 21 discussion in relation to Adv Shapiro one of the
 22 representatives became very aggressive and then said to
 23 people in the Hippos, referring to the armoured vehicles,
 24 that they would die there and not one Nyala would leave
 25 that ground? You can't confirm that?" and then Brigadier

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1 Calitz replies in Afrikaans, "Nie op daardie stadium van
 2 mnr Shapiro; daardie dreigement is wel gemaak maar met
 3 daardie woorde op 'n latere geleentheid op die 16de." So
 4 you see, Brigadier Calitz's evidence was that that threat
 5 was not made on the 15th, it was made on the 16th. You see
 6 that?
 7 COLONEL McINTOSH: I see that, Chair.
 8 MS BARNES: Chair, if I might just have a
 9 moment. And Colonel, Brigadier Calitz also does not
 10 corroborate your statement in paragraph 6 of your
 11 supplementary statement that this was reported to the JOC.
 12 In fact you say, "I'm aware that Brigadier Calitz reported
 13 this threat to the JOC." Now firstly, Brigadier Calitz
 14 doesn't say anywhere that he reported this threat to the
 15 JOC, and in fact as we've just seen he says this threat
 16 didn't happen on the 15th, and secondly, there's no
 17 reference in the occurrence book to this threat at all.
 18 COLONEL McINTOSH: Chair, the threat was
 19 definitely made on the 15th and it was given to Brigadier
 20 Calitz to transmit and he did transmit it to the JOC as far
 21 as I'm aware. He was the radio operator, he operated the
 22 radio, not us from the front, Sir.
 23 MS BARNES: Well, what we have, Colonel,
 24 is we have this allegation of this threat having been made
 25 on the 15th.

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1 [12:41] We see it for the first time in your
 2 supplementary statement. It's not in your original
 3 statement, it's not corroborated by Brigadier Calitz, in
 4 fact his evidence in this Commission is to the contrary and
 5 it's also not in the occurrence book. Do you have an
 6 explanation for that?
 7 COLONEL McINTOSH: I do not have an
 8 explanation on that, Chair.
 9 MS BARNES: If we can look then at what
 10 you say in your supplementary statement about what happened
 11 on the morning of the 16th of August, that's paragraph 7 –
 12 COMMISSIONER HEMRAJ: Sorry, before you
 13 get there, the threat on 15th, what precipitated that
 14 according to you?
 15 COLONEL McINTOSH: Chair, I think it was
 16 due to the fact that they did not want us there anymore as
 17 we had not been able to give any of their requests, any
 18 meat to it to allow them to proceed with successful
 19 negotiations with the mine and so forth, Chair.
 20 COMMISSIONER HEMRAJ: Yes, but was there
 21 any display of aggression from their side prior to making
 22 the threat on the 15th?
 23 COLONEL McINTOSH: After Mr Noki had
 24 spoken to the crowd and came back, the crowd was upset with
 25 the feedback that they received and then he came back at

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1 that point as well but that's why I say we also suspended
 2 the negotiations on the 15th around about just after midday
 3 until we got the people from the unions to come out here.
 4 COMMISSIONER HEMRAJ: Yes, thank you.
 5 I'm sorry to interrupt you.
 6 MS BARNES: So Colonel, let's turn now to
 7 the morning of the 16th, paragraph 7 of your supplementary
 8 statement and you are now talking about the morning, you've
 9 just arrived there, it's about 10AM you say. Mr Noki and
 10 one of the other strikers comes over to you and you now
 11 say, "I said to him that we did not want to fight" – sorry,
 12 I need to go above that. Mr, in fact that should be Mr
 13 Noki, correct? It just says Mr.
 14 COLONEL McINTOSH: That's correct, Chair.
 15 MS BARNES: "Mr Noki came to our Nyala
 16 and said that they were going to burn the Hippos and that
 17 we were going to die in our Hippos" and you say this is
 18 just after you arrived on the morning of the 16th at the
 19 koppie at about 10AM. You stand by that?
 20 COLONEL McINTOSH: That is correct,
 21 Chair.
 22 MS BARNES: Because again, Colonel, if
 23 one looks at your original statement exhibit HHH14, there
 24 is no mention of this threat there. If we could go to
 25 HHH14, to paragraph 22. This must be the same time period.

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1 This is – here you say it's about 9:45 you've arrived at
 2 the koppie, it's the morning of the 16th, correct?
 3 COLONEL McINTOSH: That's correct, Chair.
 4 MS BARNES: And you say "The person with
 5 the green blanket was one of the two that came to us. He
 6 then informed us that they do not want the police there and
 7 he was very aggressive towards us." And that's all you say
 8 in that statement, do you see that?
 9 COLONEL McINTOSH: That's correct, Chair.
 10 MS BARNES: You don't say anything about
 11 a threat being made to the effect that the Hippos would be
 12 burnt and you would die in your Hippos, do you see that?
 13 COLONEL McINTOSH: That's correct, Chair.
 14 MS BARNES: And in fact in your original
 15 statement HHH14 there is no threat, there is no threat
 16 there. Do you agree with me?
 17 COLONEL McINTOSH: In the statement,
 18 that's correct, Chair.
 19 MS BARNES: And in fact this is exactly
 20 what Brigadier Calitz says in his statement as well, that
 21 there was no threat effectively. So if one goes to JJJ107
 22 to paragraph, page 17 paragraph 81, paragraph 81, "Mr Noki
 23 and one of the five men approached our Nyala and told us
 24 that they do not want us there and went back to the koppie
 25 singing and displaying aggression." So that accords

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1 entirely with your original statement HHH14. Mr Noki
 2 simply said that he did not want you there. There's no
 3 reference there to any threat to burn the Hippos, do you
 4 agree with me?
 5 COLONEL McINTOSH: I agree with you on
 6 that part of the statement, Chair.
 7 MS BARNES: Now surely, Colonel, if Mr
 8 Noki had in fact said to you that morning that he was going
 9 to burn, the Hippos would be burnt and you would die there,
 10 it would have been recorded in your statement and in
 11 Brigadier Calitz's statement.
 12 COLONEL McINTOSH: Chair, if one takes
 13 into cognizance the fact that these statements that I
 14 deposed to were more than two years ago and was recently
 15 requested by my defence or my advocates that I should also
 16 submit the extra statement with regard to the threats that
 17 were made as they were omitted in the past, I can agree
 18 that it looks strange at this moment but it did in fact
 19 take place.
 20 CHAIRPERSON: The question is why did you
 21 omit them in the past? If you look at the statement which
 22 is the IPID statement exhibit TTT5, that was also made on
 23 the 19th of August 2012. I mean the statement was actually
 24 taken – who took the statement, do you know?
 25 COLONEL McINTOSH: General Johnson took

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1 the statement which is now under TTT and –
 2 CHAIRPERSON: Ja, I thought so.
 3 COLONEL McINTOSH: - then the other one
 4 we set up, myself.
 5 CHAIRPERSON: So Major-General Johnson
 6 took the statement, in fact –
 7 COLONEL McINTOSH: That's correct, Chair.
 8 CHAIRPERSON: - he also took your oath.
 9 COLONEL McINTOSH: That's correct, Chair.
 10 CHAIRPERSON: And it's a 10 page
 11 statement. Is that his handwriting, Major-General
 12 Johnson's handwriting?
 13 COLONEL McINTOSH: That's correct, it's
 14 his handwriting here.
 15 CHAIRPERSON: So he presumably had a
 16 fairly lengthy interview with you on the afternoon of the
 17 19th of August 2012. The statement is, the oath was taken
 18 at 14:56, four minutes to three in the afternoon. I take
 19 it he sat down and had quite a lengthy interview with you.
 20 COLONEL McINTOSH: We had quite a lengthy
 21 conversation, Chair.
 22 CHAIRPERSON: And you told him everything
 23 that you could remember that was important.
 24 COLONEL McINTOSH: All the aspects that I
 25 could remember at that given time, yes, Chair and the –

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1 CHAIRPERSON: A matter of early the
 2 following week. The 16th is a Thursday, so it was on the
 3 Sunday actually?
 4 COLONEL McINTOSH: That's correct, Chair.
 5 CHAIRPERSON: Things were fresh in your
 6 memory.
 7 COLONEL McINTOSH: Yes, things were
 8 relatively fresh in my memory –
 9 CHAIRPERSON: Threats are very important
 10 –
 11 COLONEL McINTOSH: - but also we hadn't
 12 been sleeping very much at that time as well, Chair.
 13 CHAIRPERSON: Yes, no, I understand but
 14 the threats were very important.
 15 COLONEL McINTOSH: Yes, they were, Chair.
 16 I –
 17 CHAIRPERSON: I think what Ms Barnes
 18 wants to know from you is why did that important fact, why
 19 was that important fact not mentioned to the Major-General
 20 when he had this interview with you and took the statement
 21 which was going to IPID, I think, wasn't it?
 22 COLONEL McINTOSH: Ja, this docket did go
 23 to IPID eventually, Chair.
 24 COMMISSIONER HEMRAJ: It actually goes a
 25 bit further on page 6 of that statement. The aggression

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1 that's described by the crowd, you say "We requested them
 2 to stop their behaviour but they ignored us. We stopped
 3 the negotiations and just observed the group." No mention
 4 there of any threats at all or any approach by them to the
 5 police.
 6 COLONEL McINTOSH: I can see that, Chair,
 7 but the threats were definitely made.
 8 MS BARNES: So essentially, Colonel, the
 9 position is that in the earlier statement by yourself, the
 10 two earlier statements by yourself on the 19th of August
 11 plus the statement of Brigadier Calitz, what is said about
 12 the early morning of the 16th is simply that Mr Noki comes
 13 and says he doesn't want you there and the first time we
 14 see any threat about burning the Hippos is in your
 15 supplementary statement. It's the only place we see it.
 16 COLONEL McINTOSH: That is correct,
 17 Chair.
 18 MS BARNES: That alleged threat to burn
 19 the Hippos on the morning of the 16th is also not in the
 20 occurrence book, it's also not recorded in the occurrence
 21 book on the 16th, do you accept that?
 22 COLONEL McINTOSH: I will accept that,
 23 Chair.
 24 MS BARNES: You can look at the
 25 occurrence book over the lunch break if you wish, it's

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1 exhibit FFF25. Perhaps while we're on that I can deal with
 2 that point completely. What you say in your supplementary
 3 statement, Colonel, is that three threats were made by Mr
 4 Noki on the 16th, correct?
 5 COLONEL McINTOSH: That is correct,
 6 Chair.
 7 MS BARNES: It appears in paragraph 7 to
 8 9 of your supplementary statement. You say the first one
 9 was made in the morning and that's the one about burning
 10 the Hippos, the one we've just been talking about. The
 11 second threat you say in paragraph 8 was made just after Mr
 12 Mathunjwa's first address and the third threat you say was
 13 made when the barbed wire Nyalas started to roll out the
 14 barbed wire, correct?
 15 COLONEL McINTOSH: That is correct,
 16 Chair.
 17 MS BARNES: And the threat to the effect
 18 that you were going to sign a piece of paper to the effect
 19 that you were going to die that day, that threat was the
 20 middle threat on the 16th, the one that was made after Mr
 21 Mathunjwa's first address, correct?
 22 COLONEL McINTOSH: No, that was the last
 23 one that he came, before.
 24 MS BARNES: That was the last threat?
 25 COLONEL McINTOSH: That's correct.

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1 MS BARNES: I see, that's in paragraph 9.
 2 Okay, thank you. Now the interesting thing, Colonel, is
 3 that not a single one of these threats is recorded in the
 4 occurrence book or – perhaps you can comment on that first.
 5 COLONEL McINTOSH: As I've said before,
 6 everything gets given back, Brigadier Calitz had the radio
 7 with him and he had reported to the JOC.
 8 MS BARNES: The most that we have in this
 9 regard appears at exhibit FFF25, it's at page 23 of the
 10 occurrence book, it's item 99(h). So it's item 99(h) at
 11 11:20, it says "Situation report – Papa1 reported that the
 12 group are moving towards the Nyalas. The group leader
 13 asked the police official to remove the wires and he said
 14 he's not going to ask them again and he is also
 15 aggressive." That's the only thing that could conceivably
 16 approximate anything resembling a threat on the 16th that's
 17 recorded in the occurrence book.
 18 COLONEL McINTOSH: I can't explain to you
 19 the fact with regard to that. Like I said, I did not give
 20 the feedback back to the JOC. That was done by the person
 21 operating the radio.
 22 MS BARNES: And yet we see fairly
 23 detailed reporting on the 16th, I put it to you Colonel, all
 24 day on fairly minor matters. I'll just give you a couple
 25 of examples. On page 24 there's item 1011, it refers to

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1 some small groups from the koppie leaving the area. Then
 2 1012 reports about a vehicle at the koppie, it gives the
 3 vehicle registration number. We see that kind of
 4 reporting, regular, fairly detailed reporting all day on
 5 the 16th, Colonel, but there's no record of these extremely
 6 serious threats that you say were made directly to
 7 yourself. Have you got an explanation for that?
 8 COLONEL McINTOSH: Chair, I cannot
 9 explain the fact that it was not recorded in the OB but the
 10 fact remains it did take place.
 11 MS BARNES: Now I've had a look this
 12 morning, Colonel, at your new statement, the statement –
 13 well, the statement that was produced certainly to myself
 14 and my team for the first time, the statement that you made
 15 to IPID, exhibit TTT5 and what's interesting, there are a
 16 couple of interesting things about this statement. This
 17 statement of course was also made on the 19th of August
 18 2012, the same as HHH14 and a mere three days after the
 19 massacre, correct?
 20 COLONEL McINTOSH: That is correct,
 21 Chair.
 22 MS BARNES: The first point that I'd like
 23 to note about this statement is that there's no reference
 24 to this statement to any threat at all having been made on
 25 the 15th. Do you agree?

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1 COLONEL McINTOSH: I agree, Chair.
 2 MS BARNES: The second point I'd like to
 3 make about this statement is that it refers to two threats
 4 having been made on the 16th, not three, correct? I think
 5 you refer to the first threat in paragraph 10 and the
 6 second threat in paragraph 11.
 7 COLONEL McINTOSH: Correct, Chair.
 8 MS BARNES: And the third and perhaps
 9 most striking fact about this statement, Colonel, is that
 10 there's no reference whatsoever to a threat to the effect
 11 that we are going to sign a piece of paper to tell the
 12 world that we are going to kill each other today. There is
 13 nothing like that in this statement at all, correct?
 14 COLONEL McINTOSH: Correct, Chair.
 15 MS BARNES: Well, I put it to you,
 16 Colonel, that the evidence in relation to these alleged
 17 threats is such a mess of inconsistencies and
 18 contradictions, coupled with the fact that there's no
 19 record of any of these threats in the occurrence book,
 20 coupled with the contradictions between your evidence and
 21 Brigadier Calitz's evidence that it cannot be accepted.
 22 Would you like to comment on that?
 23 COLONEL McINTOSH: I disagree. The
 24 threats were made. I cannot say what someone else
 25 testified and the fact that it was not given through or is

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1 not recorded is not to say that it didn't happen. It did
 2 happen and it was reported inside the Nyala and it should
 3 have been reported to the JOC.
 4 MS BARNES: Chair, I see it's just before
 5 one. I'm going to move on to another topic. Would this be
 6 a convenient time?
 7 CHAIRPERSON: It sounds like a convenient
 8 time. We'll try to start again, I think we must really be
 9 serious about this, at quarter to two. Oh, I'm reminded
 10 that we've got to be – no, I'll change that. You've been
 11 given documents to read so I think in fairness to you we'll
 12 resume at 2 o'clock. That gives you a full hour to enjoy
 13 your lunch and enjoy the documents you're going to read.
 14 [COMMISSION ADJOURNS COMMISSION RESUMES]
 15 [14:02] CHAIRPERSON: The Commission resumes.
 16 Before I remind the witness that he is still under oath I
 17 want to make some rulings in regard to the way forward in
 18 relation to the experts. The rulings I make are in three
 19 paragraphs, the first, the legal representatives for the
 20 SAPS, for the SAHRC and the LRC must, (a), provide a list
 21 of points of disagreements with the expert evidence with
 22 paragraph references and reasons for disagreements by 31
 23 May 2014. (b), provide any interrogatories to opposing
 24 experts by 31 May 2014. (c), provide a list of broad
 25 issues on which cross-examination will be based at least

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1 one week before the relevant experts will give oral
 2 evidence. Two, where an expert has received
 3 interrogatories from the legal representatives of another
 4 party or from the Commission, he must provide a response to
 5 those interrogatories by 13 June 2014.
 6 Three, a party which has not complied with
 7 paragraph 1 above may be precluded from cross-examining the
 8 relevant experts. Those are the rulings that I make, which
 9 is applicable as I've said to the legal representatives for
 10 the SAPS in respect of Mr De Rover and the SAHRC in respect
 11 of Mr White and the LRC in respect of Colonel Hendrickx.
 12 Colonel, you're still under oath?
 13 COLONEL McINTOSH: Yes, Chair.
 14 CHAIRPERSON: Ms Barnes?
 15 MS BARNES: Yes, thank you, Chair.
 16 Colonel, in your evidence in chief you said something along
 17 the following lines –
 18 CHAIRPERSON: I beg your pardon, before
 19 you start, have you had a chance to read the documents to
 20 which your attention was drawn?
 21 COLONEL McINTOSH: Yes, Chair, I have
 22 been.
 23 CHAIRPERSON: Good, thank you. Sorry, Ms
 24 Barnes?
 25 MS BARNES: Colonel, in your evidence in

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1 chief you said something along the following lines. You
 2 said that one of the options that you considered with
 3 whether a contingency of the miners could be taken to speak
 4 to Lonmin, did I hear that correctly?
 5 COLONEL McINTOSH: That is correct,
 6 Chair.
 7 MS BARNES: Could you just explain what
 8 you were referring to there, were you referring to an
 9 option that you considered within the SAPS or was it
 10 something that you in fact discussed with Lonmin?
 11 COLONEL McINTOSH: It was an option that
 12 we were looking at with regards to if it would be amicable
 13 to them that we could arrange with Lonmin that five people
 14 or six people could go and see them in a boardroom to
 15 discuss the matter so that they could get the information
 16 first hand as they didn't want to come to the face
 17 themselves.
 18 MS BARNES: So you suggested that to
 19 Lonmin?
 20 COLONEL McINTOSH: We suggested it to
 21 Lonmin, - not to Lonmin, to the strikers, if that would be
 22 suitable to try and get something like that set up.
 23 MS BARNES: When did you suggest that to
 24 the strikers?
 25 COLONEL McINTOSH: That was on the

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1 morning of the 15th.
 2 MS BARNES: And did you make the same
 3 suggestion to Lonmin?
 4 COLONEL McINTOSH: It was communicated to
 5 them as well during that morning as well, that it would be
 6 possible and they said they would get back to us on that as
 7 well.
 8 MS BARNES: Did they get back to you?
 9 COLONEL McINTOSH: No, they did not.
 10 MS BARNES: And what was the response to
 11 the strikers. I must say, Colonel, it is the first time
 12 we've ever heard this evidence that such a proposal was put
 13 to the strikers. Who was it put to, Mr Noki specifically?
 14 COLONEL McINTOSH: It was put to Mr Noki
 15 himself, yes.
 16 MS BARNES: And what was the response?
 17 COLONEL McINTOSH: There was no response,
 18 they wanted the people to come to the front, to come and
 19 speak to them and address them at the koppie.
 20 MS BARNES: Colonel, if we could go to
 21 your original statement, HHH14 to paragraph 27, if we could
 22 have that on the screen please? If I could read this
 23 paragraph, "A large group of the armed men then advanced to
 24 one of the Nyala vehicles that was near the koppie busy to
 25 deploy the barbed wire. SAPS' members were outside the

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1 vehicle and the group of armed men stormed them. The SAPS'
 2 members got back into the specific Nyala. The Public Order
 3 Police members then started to shoot with rubber bullets
 4 which were not effective. I saw the water canon also
 5 spraying towards the group and also heard stun grenades
 6 being discharged to move the group of attacking strikers
 7 back. I also heard shots being fired shortly thereafter."
 8 Now, Colonel, I must say on our reading of this paragraph,
 9 although it is brief it seemed to us to describe the events
 10 that occurred that you witnessed from when the strikers
 11 moved off the koppie to when they moved around the kraal
 12 and up until the point that, the point at which shots were
 13 fired at scene 1, would that be correct?
 14 COLONEL McINTOSH: That includes the
 15 whole time that we moved down to the kraal from where we
 16 then went through the fence, that includes all that area
 17 there.
 18 MS BARNES: Yes, in our initial –
 19 CHAIRPERSON: I'm looking for a document,
 20 but carry on.
 21 MS BARNES: Our initial reading of this
 22 statement was that when you say in the last sentence, "I
 23 also heard shots being fired shortly thereafter," that that
 24 is a reference to the volley of shots fired by the TRT, but
 25 you've indicated in your evidence in chief that that's not

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1 correct, that that refers to two pistol shots that you
 2 heard, is that correct?
 3 COLONEL McINTOSH: It sounded like two
 4 pistol shots, yes, Chair.
 5 MS BARNES: And you've said in your
 6 evidence in chief that you did not either witness or hear
 7 the TRT firing live ammunition at scene 1, correct?
 8 COLONEL McINTOSH: I don't know who fired
 9 it at scene 1 at that time, but it definitely sounded like
 10 two pistol shots being fired, that's all that I heard in
 11 the Nyala at that time.
 12 MS BARNES: Yes, I'm not talking about
 13 the pistol shots, I understand what you say about the
 14 pistol shots, I'm just asking if I'm correct in my
 15 understanding of your evidence being that you didn't see or
 16 hear the TRT volley of live ammunition at scene 1.
 17 COLONEL McINTOSH: No, I did not at that
 18 time.
 19 MS BARNES: Could we go then to your new
 20 statements produced today, the one that you made for IPID,
 21 that's Exhibit TTT5, if you could go to page 3, paragraph
 22 12? Sorry, it is page 8, paragraph 12, and here you say,
 23 again this seems to be your description of what happened at
 24 scene 1 and you then moved straight into scene 2, but
 25 paragraph 12 reads as follows, "A large group of the armed

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1 men then advanced to one of the Nyala vehicles that was
 2 near the koppie busy to deploy the barbed wire. SAPS'
 3 members were outside the vehicles and the group of armed
 4 men stormed them. The SAPS' members then opened fire on
 5 the group that was charging them. There was a lot of
 6 shooting," and you then go on to talk about what happened
 7 at scene 2, so you're really talking about scene 1 and
 8 scene 2 in the same paragraph here, but Colonel, you say,
 9 "The SAPS' members then opened fire on the group that was
 10 charging them." Now is that not a reference to the TRT
 11 line opening fire on the striking workers at scene 1?
 12 COLONEL McINTOSH: No, Chair, that was
 13 referring to the Public Order Policing members who were
 14 using the rubber bullets.
 15 MS BARNES: So your evidence is that you
 16 saw strikers charging at POP members, is that your
 17 evidence?
 18 COLONEL McINTOSH: That's correct, as
 19 they came around the Nyala, trying to stop the Nyala from
 20 moving forward, that is when the POP's guys used the rubber
 21 bullets which were not effective.
 22 MS BARNES: And you're saying to the
 23 Commission that when you used the words "open fire" you're
 24 actually referring to rubber bullets, is that what you're
 25 saying?

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1 COLONEL McINTOSH: Yes, I am.
 2 MS BARNES: Colonel, finally if we could
 3 look at paragraph 29 of Exhibit HHH14, your counsel read
 4 this paragraph out to you earlier and perhaps for present
 5 purposes I can simply read from halfway through. Well,
 6 perhaps from the second sentence. "These people acted as a
 7 group and associated each other with the actions of the
 8 other. They threatened and endangered the lives of SAPS'
 9 members and that of the public. They were violent and
 10 aggressive and were well armed with extremely dangerous
 11 weapons which they used to charge and storm at the SAPS'
 12 members." Now this statement was of course part of a
 13 criminal docket, is that correct?
 14 COLONEL McINTOSH: That is correct,
 15 Chair.
 16 MS BARNES: But you would not in fact
 17 have seen the strikers approaching the TRT line as you've
 18 just confirmed, is that correct?
 19 COLONEL McINTOSH: That's correct, Chair,
 20 I was talking about the Public Order members.
 21 MS BARNES: So the only strikers that you
 22 are talking about in this paragraph are these strikers that
 23 were approaching the POP members?
 24 COLONEL McINTOSH: Chair, with regards to
 25 this, this is after the fact, the members who had to defend

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1 themselves were in danger and I did mention that in the
 2 statement and I did say that with regards to this that if
 3 members hadn't had the opportunity to defend themselves
 4 they could have been killed or injured. That's what was
 5 meant with that statement.
 6 MS BARNES: But you didn't –
 7 CHAIRPERSON: What members are you
 8 talking about, the ones at scene 1 or the ones at scene 2,
 9 or both?
 10 COLONEL McINTOSH: At both scenes, Chair.
 11 CHAIRPERSON: Well, how did you know what
 12 happened at scene 1? I thought the actual firing happened
 13 after you had gone?
 14 COLONEL McINTOSH: That's correct, Chair,
 15 but remember –
 16 CHAIRPERSON: So –
 17 COLONEL McINTOSH: This statement was now
 18 made three days after the fact –
 19 CHAIRPERSON: No, no, -
 20 COLONEL McINTOSH: - from the start –
 21 CHAIRPERSON: No, I know that -
 22 COLONEL McINTOSH: - after the –
 23 CHAIRPERSON: I know but you, according
 24 to you the Nyala in which you were a passenger left the
 25 scene at a stage when it drove through the fence, remember,

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1 and when it drove through the fence what was happening?
 2 What was the last thing you saw as far as the strikers were
 3 concerned and what they were doing before your Nyala drove
 4 through the fence?
 5 COLONEL McINTOSH: The water canon was
 6 still deploying and there were still stun grenades being
 7 deployed and then members retreating, back to their
 8 vehicles before it went through the fence.
 9 CHAIRPERSON: And you don't know what
 10 happened after that, at scene 1, do you?
 11 COLONEL McINTOSH: I do not know that,
 12 Chair.
 13 CHAIRPERSON: So how do you know whether
 14 the people at scene, - whether the police members at scene
 15 1 had to defend themselves?
 16 COLONEL McINTOSH: Chair, like I say,
 17 after the fact we found out what had happened when we were
 18 informed –
 19 CHAIRPERSON: No, but that's hearsay,
 20 that's not what you knew yourself.
 21 COLONEL McINTOSH: Okay, then Chair, then
 22 this –
 23 CHAIRPERSON: Is that correct?
 24 COLONEL McINTOSH: This then forms part
 25 of the hearsay on paragraph 29.

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1 CHAIRPERSON: Ja, in fact your, the fence
 2 that your Nyala drove through is, if one looks from the
 3 road on the other side of the kraal towards the koppie, is
 4 more or less in line with the top of the kraal, isn't it,
 5 the other end of the kraal?
 6 COLONEL McINTOSH: That's correct, Chair.
 7 CHAIRPERSON: And at that stage where
 8 was, - the strikers of course had gone around the kraal,
 9 they had first tried to get through near Nyala 4, to do
 10 something to Nyala 4, you thought they were trying to block
 11 Nyala 4 but anyway, they were at Nyala, in the vicinity of
 12 Nyala 4. They then went around the kraal, didn't they, at
 13 the top of the kraal?
 14 COLONEL McINTOSH: That's correct, Chair.
 15 CHAIRPERSON: Now where were they, where
 16 was the front line of those strikers at the time that your
 17 Nyala went through the fence and you went off in the
 18 direction of koppie 2 and then koppie 3?
 19 COLONEL McINTOSH: They must have been
 20 behind the Nyala, because the water canon was in front with
 21 the other lines of Nyalas with the barbed wire, Chair, that
 22 I could see.
 23 CHAIRPERSON: So they, - now the SAPS'
 24 members who fired were in the TRT line, the TRT line was on
 25 the other side of the kraal, the bottom end of the kraal,

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1 if one, with regards to the section I refer to as the top
 2 end, it has been the top, they were at the other end of the
 3 kraal, in fact there was a road between them and the kraal,
 4 is that right?
 5 COLONEL McINTOSH: That's correct, Chair.
 6 CHAIRPERSON: So at the stage you left
 7 they weren't in much danger, were they?
 8 COLONEL McINTOSH: No, not at that stage,
 9 Chair.
 10 CHAIRPERSON: So as you said you've got
 11 no knowledge of your own at all whether those people had to
 12 act in self defence?
 13 COLONEL McINTOSH: No, Chair, only what
 14 we were informed later.
 15 CHAIRPERSON: Ja, so what did you, - you
 16 know, do you not, how long have you been in the police
 17 force?
 18 COLONEL McINTOSH: 27 years, Chair.
 19 CHAIRPERSON: And you passed all sorts of
 20 examinations at the Technikon and the Police College?
 21 COLONEL McINTOSH: That's correct, Chair.
 22 CHAIRPERSON: Do you know about hearsay
 23 evidence?
 24 COLONEL McINTOSH: That's correct, Chair.
 25 CHAIRPERSON: So what are you giving us

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1 hearsay evidence on this point for?
 2 COLONEL McINTOSH: It was part of the
 3 statement that we made to General Johnson at that stage,
 4 Chair.
 5 CHAIRPERSON: Well, paragraph 29, the
 6 statement you made to General Johnson, the one that went to
 7 IPID, that's Exhibit TTT5. The passage that is being put
 8 to you now is a quotation from HHH14, to whom was that
 9 statement made?
 10 COLONEL McINTOSH: That was the one that
 11 was an affidavit by Denis Adriaio, Chair.
 12 CHAIRPERSON: Ja, and that was also a
 13 statement to be put in a docket, was it not?
 14 COLONEL McINTOSH: That's correct, it was
 15 also to be docketed as well.
 16 CHAIRPERSON: So is it customary for you
 17 to put hearsay statements in statements that you make which
 18 are to be filed in the docket which presumably will
 19 represent the evidence that will be led at a trial if the
 20 case dealt within the docket came to court?
 21 COLONEL McINTOSH: Sometimes I do put
 22 hearsay in to my statements.
 23 CHAIRPERSON: Why?
 24 COLONEL McINTOSH: For opinion as well,
 25 Chair.

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1 CHAIRPERSON: But opinion is only based
 2 on hearsay, is that right?
 3 COLONEL McINTOSH: Correct, Chair.
 4 CHAIRPERSON: Ja.
 5 MS BARNES: Chair, thank you. The chair
 6 has made the final point that I wish to make and I –
 7 CHAIRPERSON: I'm sorry, I apologise, I
 8 didn't –
 9 MS BARNES: Not at all, Chair, I'm done
 10 with my cross, Chair. Chair, I have 15 minutes left and I
 11 would like to donate that time to the family's team, if I
 12 may?
 13 CHAIRPERSON: Is the family's team
 14 prepared to accept the donation?
 15 MS LEWIS: Chair, we are grateful.
 16 CHAIRPERSON: Now who is going to cross-
 17 examine, you or Mr Ntsebeza, Ms Lewis?
 18 MS LEWIS: Mr Ntsebeza, but Chair, I
 19 believe that the Human Rights Commission will cross-examine
 20 before we do.
 21 CHAIRPERSON: Oh, you're going to cross-
 22 examine, but they will cross-examine without the benefit of
 23 any donation. Yes, Ms Le Roux?
 24 CROSS-EXAMINATION BY MS LE ROUX: Thank
 25 you, Chair. Lieutenant Colonel McIntosh, I'm the advocate

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1 representing the South African Human Rights Commission and
 2 we just have a few questions for you. Picking up though
 3 with respect to where the chair just left off, the IPID –
 4 CHAIRPERSON: Excuse me, Ms Le Roux,
 5 forgive me?
 6 MS LE ROUX: Yes?
 7 CHAIRPERSON: How much time have you got?
 8 MS LE ROUX: You gave me 15 and then Mr
 9 Mpofo donated 15.
 10 CHAIRPERSON: Alright, so Mr Wesley will
 11 bear that in mind when he keeps the time.
 12 MS LE ROUX: Thank you, Chair.
 13 Lieutenant Colonel McIntosh, when you prepared your initial
 14 statement, HHH14, that's dated the 19th of August 2012 which
 15 is the same date as the IPID statement produced this
 16 morning, TTT5. Is it correct that you prepared both
 17 statements on the same day?
 18 COLONEL McINTOSH: That is correct,
 19 Chair, I was busy preparing my statement when General
 20 Johnson requested me to give him a statement as well.
 21 MS LE ROUX: And where were you when you
 22 were drafting the statement?
 23 COLONEL McINTOSH: I was at the Marikana
 24 base at Lonmin's mine.
 25 MS LE ROUX: And was anyone with you when

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1 you were drafting it?
 2 COLONEL McINTOSH: General Johnson was
 3 the one and myself was the other.
 4 MS LE ROUX: And General Johnson was
 5 there for your IPID statement?
 6 COLONEL McINTOSH: It wasn't going to be
 7 an IPID statement at that time, it turned out to become an
 8 IPID statement because the docket was then taken by IPID,
 9 correct.
 10 MS LE ROUX: And what was it intended to
 11 be at that time?
 12 COLONEL McINTOSH: It had to go onto the
 13 docket with regards to the Cas 134 of 8 of Marikana with
 14 regards to the rest and the attack on police officers.
 15 MS LE ROUX: And what was your
 16 understanding of the purpose of the other statement you
 17 prepared that day, HHH14?
 18 COLONEL McINTOSH: The other statement
 19 was with regards to be handed in as a record with regards
 20 to the completeness of our documentation.
 21 MS LE ROUX: For what purpose?
 22 COLONEL McINTOSH: We generally complete
 23 reports when we're finished with tours of duty.
 24 MS LE ROUX: Did you discuss HHH14 with
 25 anyone while you were drafting it?

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1 COLONEL McINTOSH: I discussed it with
 2 Captain Adriaio just to ask him if he would be willing to
 3 affidavit it for me.
 4 MS LE ROUX: And did you discuss TTT5
 5 with anyone while you were drafting it?
 6 COLONEL McINTOSH: Yes, I discussed it
 7 with General Johnson, he was the person taking the
 8 statement.
 9 MS LE ROUX: Did you discuss TTT5 with
 10 Brigadier Calitz when you were drafting it?
 11 COLONEL McINTOSH: No, only after I had
 12 finished it.
 13 MS LE ROUX: After you had finished it on
 14 the same day?
 15 COLONEL McINTOSH: I don't think it was
 16 on the same day, Chair, I think it was after that.
 17 MS LE ROUX: When do you recall
 18 discussing what became your IPID statement with Brigadier
 19 Calitz?
 20 COLONEL McINTOSH: That was some time
 21 after the fact, I think it was actually at Roots that we
 22 discussed it.
 23 MS LE ROUX: Chair, it will be a matter
 24 for legal submissions in due course, but I do just wish to
 25 place on the record now that paragraph 13 of GGG13, which

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1 is Brigadier Calitz's statement of the same day, 19 August
 2 2012, has strikingly similar language to paragraph 12 of
 3 the IPID statement that was produced this morning, but I
 4 can take it no further in light of the answers given by
 5 Lieutenant Colonel McIntosh. Lieutenant Colonel, your IPID
 6 statement, TTT5, in paragraph 12 is where you deal with the
 7 events at scene 1 and then it seemed to elide through to
 8 the events with Mr Mpumza who we know is body C and then up
 9 to scene 2, but nowhere in this statement do you mention
 10 the use of rubber bullets, the water cannon, stun grenades
 11 or teargas, and in paragraph 27 of HHH14, your initial
 12 statement which is the paragraph we've been looking at this
 13 morning so far, you note the use of rubber bullets and then
 14 water cannon and stun grenades but you don't note anything
 15 about teargas, yet this morning in your evidence in chief
 16 you recall teargas being used as well. Can you explain why
 17 there is no mention of teargas in HHH14?
 18 COLONEL McINTOSH: I can't recall, I
 19 don't know why I didn't include it in my statement
 20 originally, but ja.
 21 MS LE ROUX: And do you have any
 22 explanation for why there is no mention of rubber bullets,
 23 the water cannon, stun grenades or teargas in TTT5?
 24 COLONEL McINTOSH: No, I can't recall.
 25 [14:22] MS LE ROUX: You understood at the time

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1 that you were making these two statements that it was
 2 important to put all relevant and material details into
 3 them, didn't you?
 4 COLONEL McINTOSH: All relevant facts,
 5 yes.
 6 MS LE ROUX: And you'll accept that the
 7 use of a force continuum before live ammunition was used is
 8 a relevant fact?
 9 COLONEL McINTOSH: One must take into
 10 consideration at that time when I was deposing my statement
 11 to General Johnson it was with regards to what we had
 12 actually done and the things that were actually happening
 13 at that time, so I did not include it but it was included
 14 in the statement, in my later statement which I made the
 15 same –
 16 MS LE ROUX: Except you omitted the use
 17 of teargas. As I understand your evidence-in-chief you
 18 stated that you heard live ammunition after the use of
 19 rubber bullets, water cannon and stun grenades, but that
 20 this was two low-calibre shots, pistol shots.
 21 COLONEL McINTOSH: It sounded like pistol
 22 shots, that's correct.
 23 MS LE ROUX: In your IPID statement
 24 though, TTT5, if I could direct your attention to paragraph
 25 12, my learned friend Ms Barnes has covered this to some

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1 extent but do you persist in your evidence that when you
 2 refer to shots that you in fact intend to refer to rubber?
 3 Because what's striking then is the contrast with HHH14
 4 where you distinguish between the use of rubber bullets and
 5 the use of live ammunition. Do you persist in your
 6 evidence that in paragraph 12 of TTT5 when you refer to
 7 shots and shooting, you mean only the use of rubber
 8 bullets?
 9 COLONEL McINTOSH: I refer to the use of
 10 rubber bullets in the IPID statement and the later
 11 statement which I made the same day I refer to both with
 12 the low-calibre shots as well.
 13 MS LE ROUX: And Lieutenant-Colonel
 14 McIntosh, you didn't think it would be important to
 15 differentiate between shots that were rubber bullets and
 16 shots that were live ammunition for the purposes of both of
 17 these statements? You didn't think that was a distinction
 18 worth drawing?
 19 COLONEL McINTOSH: Taking into
 20 consideration with the lack of sleep and the lack of time
 21 that we had I think it was a reasonably accurate statement
 22 for that time period. If I had to do it again and I had
 23 more time I would have changed it to include those facts as
 24 well.
 25 MS LE ROUX: Lieutenant-Colonel McIntosh,

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1 in paragraph 12 of TTT5 you state, "There was a lot of
 2 shooting."
 3 COLONEL McINTOSH: Rubber bullets, Chair.
 4 That's what I was referring to and I have discussed that
 5 with Ms Barnes as well.
 6 MS LE ROUX: When you then testified – if
 7 I can take you then to paragraph 27 of HHH14, just to be
 8 absolutely clear, in the final sentence there where you
 9 state, "I also heard shots being fired shortly thereafter,"
 10 you mean to refer to live ammunition there, not rubber?
 11 COLONEL McINTOSH: That is correct on
 12 that statement.
 13 MS LE ROUX: Okay. You also testified in
 14 chief this morning that you heard all of this when you were
 15 "stuck against the fence," and you said that you told
 16 Brigadier Calitz that you'd heard live rounds. I think the
 17 phrase you used was you gave that back in the Nyala.
 18 COLONEL McINTOSH: That is correct.
 19 MS LE ROUX: Right, so you told Brigadier
 20 Calitz that you'd heard live rounds at the time that you
 21 heard the live rounds when you were pressed up against the
 22 fence?
 23 COLONEL McINTOSH: That's correct, and I
 24 believe that Warrant Officer Nong had also done the same.
 25 MS LE ROUX: What do you recall Warrant

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1 Officer Nong saying in the Nyala at the time that you heard
 2 the two live pistol shots?
 3 COLONEL McINTOSH: He also said he'd
 4 heard the shots.
 5 MS LE ROUX: Did Brigadier Calitz respond
 6 at any time?
 7 COLONEL McINTOSH: At that time he did
 8 not respond.
 9 MS LE ROUX: But both - was it you and
 10 then Warrant Officer Nong, or Warrant Officer Nong and then
 11 you that reported the live shots to Brigadier Calitz in the
 12 Nyala at the time that they happened when you were
 13 positioned against the fence?
 14 COLONEL McINTOSH: It was myself that
 15 gave the information backwards.
 16 MS LE ROUX: And then Warrant Officer
 17 Nong confirmed he'd also heard them?
 18 COLONEL McINTOSH: That's correct, Chair.
 19 MS LE ROUX: Shortly after the shooting
 20 at scene 1 there was the call for medical assistance over
 21 the radio that prompted the movement of the medics from
 22 forward holding area 1. Did you hear that call for medical
 23 assistance over the radio?
 24 COLONEL McINTOSH: No, I could not. The
 25 radio was in the back of the Nyala.

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1 MS LE ROUX: Did anyone in your Nyala
 2 repeat or report that there had been a call for medical
 3 attention on the radio?
 4 COLONEL McINTOSH: I did not hear that.
 5 MS LE ROUX: Shortly after the shooting
 6 at scene 1 Lieutenant-Colonel Vermaak then reports on the
 7 radio that there were 18 bodies down and thereafter reports
 8 that there were 25 bodies down. Did you hear either of
 9 those reports, 18 bodies down or 25 bodies down, on the
 10 radio?
 11 COLONEL McINTOSH: No, I did not.
 12 MS LE ROUX: Did anyone in your Nyala
 13 discuss or refer to the fact that there was a radio
 14 communication firstly about 18 bodies, secondly about 25
 15 bodies?
 16 COLONEL McINTOSH: Not when I was inside
 17 the vehicle. I only found out about the bodies when I got
 18 back from the third koppie, when I'd got out of the Nyala
 19 to go and find Mr Mpumza.
 20 MS LE ROUX: Lieutenant-Colonel McIntosh,
 21 why is it that you couldn't hear these radio communications
 22 in the Nyala?
 23 COLONEL McINTOSH: Chair, if you've ever
 24 been in a Nyala which is revving at – which is working, in
 25 a working environment, you will realise that if the radio

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1 is situated towards the back of the vehicle you can't hear
 2 anything from the back. It's got to be shouted forward.
 3 Also the radios in the Nyalas are normally mounted above
 4 the crews' head, but in this case it did not have the crew
 5 radio in place. The radio was a base station which was
 6 mounted into the back of the Nyala so that the command
 7 could use it from that point, instead of being in the
 8 front.
 9 MS LE ROUX: And when you say the
 10 command, you mean Brigadier Calitz was sitting next to the
 11 radio?
 12 COLONEL McINTOSH: That's correct, it was
 13 at the back of the vehicle.
 14 MS LE ROUX: And given that you had these
 15 difficulties with hearing radio communications because of
 16 the noise of the Nyala, why did you not ask that people
 17 relay to the front of the Nyala what was being said on the
 18 radio at the back next to Brigadier Calitz?
 19 COLONEL McINTOSH: Brigadier Calitz was
 20 giving instructions to Warrant Officer Nong and to say
 21 which direction they must go and so forth. That was the
 22 instructions that were coming from the back. So it was
 23 actually superfluous to have all the information drawn back
 24 to us that was coming in, except for the directions it had
 25 to go because he was the command vehicle.

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1 MS LE ROUX: So was it your perception
 2 that Brigadier Calitz was able to hear all the radio
 3 communications at that time in the Nyala?
 4 COLONEL McINTOSH: I can't say if he
 5 could, or he did or he didn't, due to the fact that the
 6 noise in the Nyalas is quite deafening if you're in the
 7 front.
 8 MS LE ROUX: Did you notice Brigadier
 9 Calitz or overhear him using the radio in the period of
 10 time that you leave scene 1 and you're heading off towards
 11 scene 2? Did you hear Brigadier Calitz using the radio?
 12 COLONEL McINTOSH: I can't say that I
 13 did, Chair. I just, the instructions were coming to which
 14 direction that we must go and which, who, where we must
 15 follow.
 16 MS LE ROUX: Shortly after the shooting
 17 at scene 1 Brigadier Calitz attempted to communicate with
 18 the TRT, who were not following behind you as had been
 19 briefed, and he's heard on the radio saying "TRT, can you
 20 hear me?" Did you hear him trying to get hold of the TRT
 21 and find out why they weren't following behind him?
 22 COLONEL McINTOSH: Chair, no, I did not.
 23 MS LE ROUX: Did you at any point
 24 understand that there was a problem holding the TRT back at
 25 the kraal?

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1 COLONEL McINTOSH: No, I did not, Chair.
 2 MS LE ROUX: Did Brigadier Calitz
 3 communicate to any of you in the Nyala that he was
 4 concerned that the TRT weren't following behind? Not
 5 communicating on the radio, but communicating to you as his
 6 Nyala crew that he was having difficulty that the TRT
 7 weren't following behind him?
 8 COLONEL McINTOSH: Chair, I do not recall
 9 that.
 10 MS LE ROUX: Lieutenant-Colonel McIntosh,
 11 at about 16:01, which is approximately eight minutes after
 12 the shooting at scene 1, is when your Nyala drives up next
 13 to the Johannesburg water cannon and you pass the radio
 14 over to it. From the Protea Coin chopper video of that
 15 interaction we see your Nyala stationary next to the Joburg
 16 water cannon for approximately 40 seconds, and we
 17 understand from Brigadier Calitz that you are the member
 18 that got out and provided the hand radio to the
 19 Johannesburg water cannon. That's correct, isn't it?
 20 COLONEL McINTOSH: That is correct,
 21 Chair.
 22 MS LE ROUX: In the 40 seconds that you
 23 were interacting with the Johannesburg water cannon did you
 24 have any communication with the occupants of the
 25 Johannesburg water cannon about what had happened at what

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1 we now know as scene 1? Did they say anything to you about
 2 what they'd observed?
 3 COLONEL McINTOSH: No, they didn't,
 4 Chair. The only thing I did say to them was "Here's your
 5 radio; just switch it on."
 6 MS LE ROUX: And what did they say to
 7 you?
 8 COLONEL McINTOSH: They accepted the
 9 radio and I got straight back into my Nyala.
 10 MS LE ROUX: So Warrant Officer Dicks
 11 didn't say to you, "We just saw 25 people get shot at the
 12 kraal"?
 13 COLONEL McINTOSH: No.
 14 MS LE ROUX: Are you surprised that he
 15 failed to communicate that to you?
 16 COLONEL McINTOSH: Yes, I am.
 17 MS LE ROUX: So you would have expected
 18 Warrant Officer Dicks to inform you that he had witnessed
 19 the shooting of people at the kraal?
 20 COLONEL McINTOSH: That's correct, Chair.
 21 Well, I would assume that he would do that.
 22 MS LE ROUX: Warrant Officer Dicks didn't
 23 communicate to you at all about the movements of the TRT
 24 that he'd observed at the kraal?
 25 COLONEL McINTOSH: Chair, I got out of

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1 the Nyala. I quickly went across to the water cannon.
 2 They opened the door, I gave them the radio, said "Switch
 3 it on," and I got straight back into my Nyala. There was
 4 no time for discussions. I had to get back into my Nyala.
 5 MS LE ROUX: And before you left your
 6 Nyala Brigadier Calitz didn't say to you ask them what's
 7 happened to the TRT?
 8 COLONEL McINTOSH: No. He gave me the
 9 radio and asked me to give the radio to the guys of the
 10 water cannon.
 11 MS LE ROUX: At 16 –
 12 CHAIRPERSON: May I ask you, were you not
 13 curious as to what had happened at what we call scene 1?
 14 You know what we mean when we talk about scene 1?
 15 COLONEL McINTOSH: Yes.
 16 CHAIRPERSON: I mean you left just at, on
 17 your evidence you left just before the important events
 18 took place there, but clearly a situation was building up
 19 before you left, wasn't it?
 20 COLONEL McINTOSH: There was a –
 21 CHAIRPERSON: Strikers were coming
 22 around, they were, judging from what you've told us they
 23 were in ugly, aggressive mood. So the probabilities were,
 24 I would have thought, based upon what you've told us, that
 25 some violent incident was going to take place. Would you

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1 agree with that?
 2 COLONEL McINTOSH: Chair, yes, I was
 3 curious, but the situation had – we're waiting for the
 4 information to come from the back to tell us what's going
 5 on. We were never briefed with regards to what the
 6 operation was going to be after we stopped negotiating. We
 7 weren't privy to that on that –
 8 CHAIRPERSON: No, no, I understand that,
 9 but you were at the spot, close to scene 1. Something was
 10 building up. Did you see from where you were in the Nyala
 11 that the TRT line was forming up beyond the kraal? You
 12 know if you face the koppie you've got the left-hand side
 13 of the kraal and the right-hand side. You were opposite
 14 the right-hand side of the kraal near the fence. Now on
 15 the side away from the kraal, beyond the kraal – sorry, the
 16 side away from the koppie, beyond the kraal there was a
 17 road and the evidence is that at some stage anyway there
 18 was a line formed by TRT people on the other side of that
 19 road, each of them armed with an R5. Did you see them
 20 there before you left, went through the fence, went off in
 21 the direction of koppie 2 and koppie 3?
 22 COLONEL McINTOSH: Chair, I can't say
 23 that I did see them in the line at that point.
 24 CHAIRPERSON: [Microphone off, inaudible]
 25 because clearly something was going to happen.

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1 COLONEL McINTOSH: Chair, I agree with
 2 that, that I was curious as to what was happening at the
 3 other scene, but we were getting no feedback to the front
 4 of the Nyala except for the directions that we must move
 5 with regards to those strikers who were fleeing. That's
 6 the information that we got from the back to the front.
 7 With regards to anything else we weren't privy to it
 8 because of the noise, number 1, and then just the
 9 instructions of which directions we must go and which one
 10 we must follow.
 11 CHAIRPERSON: When you were at the, in
 12 the original negotiating point in more or less the centre
 13 of that line of the Nyalas, were you aware of the fact that
 14 there were TRT people behind you?
 15 COLONEL McINTOSH: Chair yes, we were
 16 aware of the TRT. They had been there for a day or so
 17 before the time as well. Their vehicles were in that
 18 position –
 19 CHAIRPERSON: And then when your Nyala
 20 went off in the direction of the kraal and beyond the kraal
 21 to the fenced area, do you know what the TRT people did?
 22 COLONEL McINTOSH: Chair, as I say, with
 23 regards to the operational briefing and so forth we didn't
 24 know what they were going to do. We weren't included in
 25 that planning due to the fact that it was the operational

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1 planning that was given. So the instructions that were
 2 given with regards to that what they would do, and if
 3 something happened what they were going to do, we weren't
 4 informed about that.
 5 CHAIRPERSON: You didn't see anything?
 6 COLONEL McINTOSH: Not that I'd seen,
 7 Chair.
 8 CHAIRPERSON: I see, but when you then
 9 saw these other TRT people and you gave – or sorry, it was
 10 the water cannon people, was it?
 11 COLONEL McINTOSH: That's correct, Chair.
 12 CHAIRPERSON: You saw the water cannon
 13 people. They were perhaps in a better position than you
 14 had been to know what had happened. Would that be fair?
 15 COLONEL McINTOSH: I'm quite sure they
 16 would have been in a better position, Chair.
 17 CHAIRPERSON: Yes, so I'm surprised that
 18 you didn't allow your curiosity to take over and you didn't
 19 ask them if they knew what had happened.
 20 COLONEL McINTOSH: Chair, the instruction
 21 was to give the hand radio to the water cannon and to hurry
 22 up because we've got to move.
 23 MS LE ROUX: Lieutenant-Colonel McIntosh,
 24 did you observe the basic line being formed by the TRT at
 25 the kraal?

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1 COLONEL McINTOSH: No, I didn't, Chair.
 2 I was on the left-hand side of the vehicle.
 3 MS LE ROUX: Lieutenant-Colonel McIntosh,
 4 at 16:04:40 we hear Brigadier Calitz make a radio
 5 transmission, saying "No lethal firearms now unless, unless
 6 the targets engage you." Did you hear that radio
 7 communication?
 8 COLONEL McINTOSH: No, I did not, Chair.
 9 MS LE ROUX: By approximately 16:08
 10 you're out of the Nyala, about 150 metres north of koppie
 11 3, correct?
 12 COLONEL McINTOSH: Yes, Chair.
 13 MS LE ROUX: From 150 metres north of
 14 koppie 3 you could hear the live fire from koppie 3, that
 15 we now know as scene 2?
 16 COLONEL McINTOSH: That's correct, Chair.
 17 MS LE ROUX: Did you report that you
 18 could hear live fire to anyone?
 19 COLONEL McINTOSH: Chair, I did not have
 20 a hand radio with me. I was on my own.
 21 MS LE ROUX: When you were making the
 22 arrests Lieutenant-Colonel Pitsi was there, wasn't he?
 23 COLONEL McINTOSH: He would probably be
 24 at the back, yes.
 25 MS LE ROUX: And Lieutenant-Colonel Pitsi

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1 had a hand radio, didn't he?
 2 COLONEL McINTOSH: I wasn't near Colonel
 3 Pitsi.
 4 MS LE ROUX: I thought you just testified
 5 that Lieutenant-Colonel Pitsi was with you when you were
 6 making arrests.
 7 COLONEL McINTOSH: He was not with me.
 8 He was in the same group, but he wasn't near me.
 9 MS LE ROUX: Given that you could hear
 10 live fire, did you not think that you should get on the
 11 radio and report that to the JOC or to command and look
 12 around and find someone with a radio that you could make
 13 that communication?
 14 COLONEL McINTOSH: There were other
 15 members there with hand radios which would obviously have
 16 reported it in any event.
 17 MS LE ROUX: Why do you say they
 18 obviously had reported it? Did you see them report it?
 19 COLONEL McINTOSH: I said obviously would
 20 have reported it.
 21 MS LE ROUX: Did you see them reporting
 22 it?
 23 COLONEL McINTOSH: I was not close to all
 24 the members at any given time.
 25 MS LE ROUX: So Lieutenant-Colonel

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1 McIntosh, you don't know whether anyone reported it from
 2 your position, do you?
 3 COLONEL McINTOSH: Well, I couldn't
 4 report it due to the fact that I didn't have a radio with
 5 me at that given time.
 6 MS LE ROUX: Lieutenant-Colonel McIntosh,
 7 if you answer the question it will go a lot quicker. I
 8 asked you whether you knew whether anyone reported it. I
 9 understand your answer as to why you didn't report it. Did
 10 you see anyone else report it?
 11 COLONEL McINTOSH: There was a lot of
 12 noise and there was a lot of things going on at that time.
 13 I didn't ask everybody did they do it or not –
 14 CHAIRPERSON: No, Colonel, Colonel,
 15 Colonel, the crisp answer is you don't know whether they
 16 did. I understood you to say you assumed they would have,
 17 but as a fact you can't tell us whether they did or they
 18 didn't. Is that so? That's the short answer to the
 19 question.
 20 COLONEL McINTOSH: Correct, Chair.
 21 MS LE ROUX: At around 16:10 Lieutenant-
 22 Colonel Vermaak reports "Two bodies at the back of the
 23 second koppie." Did you hear that radio report?
 24 COLONEL McINTOSH: No, I did not, Chair.
 25 CHAIRPERSON: He didn't have a radio. I

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1 don't see what the point is of asking him questions if he
 2 heard, did he hear a radio report if he said repeatedly he
 3 didn't have a radio.
 4 MS LE ROUX: Well, Chair, what we know
 5 from the objective evidence regarding where Lieutenant-
 6 Colonel McIntosh was at the time of the arrests, there were
 7 members walking around; someone with a hand radio may have
 8 come closer to him than they were earlier and he may have
 9 been able to hear the radio communication.
 10 CHAIRPERSON: He may have been able to.
 11 Right, carry on.
 12 MS LE ROUX: That possibility is all I'm
 13 hoping to explore with the witness. Lieutenant-Colonel
 14 McIntosh, at 16:12 we hear Brigadier Calitz on the radio,
 15 saying, "Live fire, live." Did you hear that
 16 communication?
 17 COLONEL McINTOSH: Chair, no, I did not.
 18 The only time that I asked for a radio to inform something
 19 was when Mr Mpumza was shot, I requested them to get onto
 20 the radio and ask for a medic urgently.
 21 MS LE ROUX: And who did you ask to
 22 obtain a medic?
 23 COLONEL McINTOSH: One of the TRT
 24 members. There was a group of the TRT members in the area
 25 and I asked them just "Could you get onto the radio and ask

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1 for a medic?" That was the first radio communication that
 2 I had again which I didn't do myself.
 3 MS LE ROUX: So prior to when you were
 4 with Mr Mpumza you didn't ask anyone to make any radio
 5 communications for you?
 6 COLONEL McINTOSH: No, I did not.
 7 MS LE ROUX: Okay. You testified in
 8 chief this morning that Brigadier Calitz told you about the
 9 volley of fire from the TRT. When did Brigadier Calitz
 10 tell you about the volley?
 11 COLONEL McINTOSH: That was after
 12 everything was settled and everything was completed
 13 already. That was in the koppie after all the arrests had
 14 been made, and so forth, after I'd retreated Mr Mpumza,
 15 after I'd assisted the medics to assist the other people
 16 that were also injured, which I helped three or four people
 17 as well. Only a long time after he informed me, when I got
 18 back to the Nyala, when I met up with them again.
 19 MS LE ROUX: What would be your best
 20 estimate as to the time of day that you had that
 21 conversation with Brigadier Calitz?
 22 COLONEL McINTOSH: Well, that would have
 23 been after the, just before the Netstar, Netcare chopper
 24 came in.
 25 MS LE ROUX: Before the Netcare chopper

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1 brought the medics in?
 2 COLONEL McINTOSH: No, just before the
 3 Netcare chopper came in to CASEVAC the seriously injured.
 4 MS LE ROUX: Right, out of scene 2?
 5 COLONEL McINTOSH: And that was not the
 6 normal Lonmin chopper or something. That was the Netcare
 7 chopper which was called from Johannesburg.
 8 MS LE ROUX: Right, and what did
 9 Brigadier Calitz tell you about the volley?
 10 COLONEL McINTOSH: He informed me that
 11 there had been a shooting at the first koppie, that's why
 12 TRT aren't with us now. They had to stay behind; there was
 13 a major shooting and there was about 14 to 15 people that
 14 have died at scene 1.
 15 [14:42] MS LE ROUX: Did he indicate how he came
 16 to know about the volley?
 17 COLONEL McINTOSH: No, he did not, Chair.
 18 MS LE ROUX: Then, Colonel McIntosh, I've
 19 been asking you in some detail about the 24 minutes that
 20 there are between the shooting at scene 1 at the kraal,
 21 which you mention in paragraph 27 of HHH14, and then the
 22 shooting of Mr Mpumza which you deal with thereafter and in
 23 both statements you say very little, in fact you say
 24 nothing about these 24 minutes. You don't reference the
 25 arrests, you don't reference the route that your Nyala

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1 took, you don't reference that you'd heard the shooting
 2 from scene 2 and so your statements were quite misleading
 3 because they – from the way we read them it seems to
 4 indicate you went straight from the shooting at the kraal
 5 to Mr Mpumza, whereas we know from the objective evidence
 6 that in fact you went, paused, did arrests, heard scene 2
 7 happening and only then went to Mr Mpumza. Is there any
 8 reason why you didn't give the detail that we've covered
 9 today in either of the statements?
 10 COLONEL McINTOSH: There's no reason
 11 whatsoever, Chair.
 12 MS LE ROUX: You didn't think that this
 13 was important information that needed to be included in the
 14 statements?
 15 COLONEL McINTOSH: No, I did not think
 16 so.
 17 MS LE ROUX: And why didn't you think the
 18 fact that you'd gone and arrested people, that you heard
 19 scene 2 while the shooting was going on, why didn't you
 20 think that was important to include in your statements?
 21 COLONEL McINTOSH: The functions that we
 22 were brought in for was not to be the operational members.
 23 CHAIRPERSON: Ms Le Roux, you've got five
 24 minutes.
 25 MS LE ROUX: Yes, Chair. Once you'd

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1 arrived at Mr Mpumza, I'd just like to understand the order
 2 in which certain SAPS members arrived. Could you tell us
 3 the order in which the following members arrived at Mr
 4 Mpumza, if you remember – Captain Kidd, Lieutenant-Colonel
 5 Pitsi and Brigadier Calitz? What order did they arrive in?
 6 COLONEL McINTOSH: Captain Kidd was there
 7 first. I don't know, I can't even remember seeing
 8 Brigadier Calitz or Colonel Pitsi at Mr Mpumza's body.
 9 MS LE ROUX: At any point in time? I
 10 understand your evidence that you initially were trying to
 11 administer first aid and so you would understandably have
 12 been focused on that task. At any time do you recall
 13 Lieutenant-Colonel Pitsi and Brigadier Calitz joining you
 14 at Mr Mpumza?
 15 COLONEL McINTOSH: I can't recall that,
 16 Chair.
 17 MS LE ROUX: When did you first become
 18 aware of Brigadier Calitz at koppie 3?
 19 COLONEL McINTOSH: I can't recall, Chair,
 20 to be very honest I can't recall that.
 21 MS LE ROUX: The conversation you had
 22 with him about the volley, where was that? Inside the
 23 koppie?
 24 COLONEL McINTOSH: That was inside the
 25 koppie after the people were loaded into the, or being

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1 loaded into the Canters and the ambulance helicopter had
 2 arrived or just before it arrived, Chair.
 3 MS LE ROUX: Did any other senior
 4 officers arrive at Mr Mpumza?
 5 COLONEL McINTOSH: I can't recall, Chair.
 6 I think most of my time working with Mr Mpumza I was
 7 actually looking at him and trying to resuscitate him.
 8 MS LE ROUX: Chair, three final
 9 questions. Lieutenant-Colonel McIntosh, did Lieutenant-
 10 Colonel Pitsi mention to you that he'd seen a large group
 11 of people shot at the kraal?
 12 COLONEL McINTOSH: No, he did not.
 13 MS LE ROUX: Did Captain Kidd mention to
 14 you that he'd seen two other people shot on the western
 15 side of the koppie?
 16 COLONEL McINTOSH: No, he did not.
 17 MS LE ROUX: And on the Johannesburg
 18 water cannon video we've been able to count 11 people
 19 walking from inside koppie 3 towards Mr Mpumza during the
 20 time that we see you there with him. Did any of those 11
 21 people or anyone else report anything to you about the
 22 shootings at scene 1, the fact that people were dead,
 23 anything at all about the events at scene 1?
 24 COLONEL McINTOSH: No, Chair.
 25 MS LE ROUX: And the 11 people we see

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1 walking in and out and coming to you at body C with Mr
 2 Mpumza, did any of them report to you that there were
 3 people that had been shot and killed in koppie 3?
 4 COLONEL McINTOSH: There was, someone
 5 said that there's more people shot inside and the medics
 6 had to get there to attend to them but no-one told me about
 7 people who were deceased at that time.
 8 MS LE ROUX: Did you have a sense of how
 9 many people had been shot at scene 2?
 10 COLONEL McINTOSH: No, I did not, Chair.
 11 Only when I walked through scene 2 did I get the full
 12 picture of what had actually transpired there.
 13 MS LE ROUX: Can you identify the unit
 14 that the member was in who told you about the people that
 15 had been shot in scene 2?
 16 COLONEL McINTOSH: No, I cannot, Chair.
 17 MS LE ROUX: Did you discuss that at all
 18 with Brigadier Calitz when he was discussing the volley at
 19 scene 1 with you?
 20 COLONEL McINTOSH: No, I did not, Chair.
 21 MS LE ROUX: Thank you, Chair, we have no
 22 further questions.
 23 CHAIRPERSON: Thank you. Who is next to
 24 cross-examine? Mr Ntsebeza, how long have you got? And
 25 then Mr Bizos. How long have you got – supplemented by

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1 donations and other things, how long have you got, 45
 2 minutes?
 3 MR NTSEBEZA SC: 45 minutes, Mr Chair.
 4 CHAIRPERSON: Alright, well, do the first
 5 15 minutes till three, then we'll take tea, then you can
 6 come back and continue.
 7 CROSS-EXAMINATION BY MR NTSEBEZA SC:
 8 Thank you very much, Mr Chairman. Colonel, I believe you
 9 have received the documents on which we are going to be
 10 relying for your cross-examination. Can I just check with
 11 you what you received? Did you receive the slide in
 12 exhibit L that we are going to be relying on, slide 247,
 13 248 and all of those in exhibit L, did you receive those?
 14 COLONEL McINTOSH: Yes, Chair.
 15 MR NTSEBEZA SC: I take it also you did
 16 receive Colonel Vermaak's photos, exhibit KKK17.1.
 17 COLONEL McINTOSH: That's correct, Chair.
 18 MR NTSEBEZA SC: Screen shots of exhibit
 19 12 – I've now been told it's 12 or I2, I thought it was 12.
 20 COLONEL McINTOSH: Yes, Chair.
 21 MR NTSEBEZA SC: And you also got the
 22 still shots of exhibit H? I think -
 23 COLONEL McINTOSH: - Chair.
 24 MR NTSEBEZA SC: Yes. You also have
 25 received the presentation which is raising our view of both

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1 the death of Mr Mpumza as well as the location of his body
 2 relevant to what exhibit L says his body was, you received
 3 that, didn't you?
 4 COLONEL McINTOSH: Correct, Chair.
 5 MR NTSEBEZA SC: Now that housekeeping
 6 having been done, I just want to start – I'll come to the
 7 presentation, I just want to start with what you testified
 8 this morning.
 9 CHAIRPERSON: Before we get on to these
 10 matters shall we do some housekeeping quickly, Mr Ntsebeza?
 11 You've given us a list of the documents you want to rely on
 12 and you've taken the witness through it. Now the
 13 PowerPoint presentation entitled "The death of Mr Mpumza,"
 14 do you want me to mark that TTT6?
 15 MR NTSEBEZA SC: Yes, Mr Chairman.
 16 CHAIRPERSON: Then the next new document
 17 is Constable Sebojane's statement, shall we make that TTT7?
 18 And then Captain Kidd's statement, that's TTT8. Now I'm
 19 not sure exactly how many statements you got from Captain
 20 Kidd but – there's something typed and something
 21 handwritten. I haven't had a chance to go through them but
 22 -
 23 MR NTSEBEZA SC: We'll use the typed one
 24 because – are you talking about TTT8, Mr Chairman?
 25 CHAIRPERSON: Yes, that's right.

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1 MR NTSEBEZA SC: Captain Kidd.
 2 CHAIRPERSON: Shall we make that one
 3 TTT8?
 4 MR NTSEBEZA SC: Yes.
 5 CHAIRPERSON: Okay and Sebojane we make
 6 TTT7.
 7 MR NTSEBEZA SC: Well, Sebojane I'm made
 8 to understand there is only a handwritten statement.
 9 CHAIRPERSON: We've got a typed one. In
 10 fact – I see what you mean, we've got a handwritten
 11 statement and a typed one, so shall we make them TTT7.1 and
 12 7.2, the typed one 7.1 and the handwritten one 7.2. Is
 13 that okay, are you happy with that? Your junior doesn't
 14 seem happy.
 15 MR NTSEBEZA SC: Yes, Mr Chairman. We
 16 will be relying mostly – in fact there is the typed one. I
 17 think the typed one has got only four paragraphs.
 18 CHAIRPERSON: Yes.
 19 MR NTSEBEZA SC: The handwritten one has
 20 got –
 21 CHAIRPERSON: Only three, I see.
 22 MR NTSEBEZA SC: - it's three paragraphs
 23 actually –
 24 CHAIRPERSON: We've been given these
 25 statements, alright.

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1 MR NTSEBEZA SC: Yes.
 2 CHAIRPERSON: I've marked them
 3 accordingly.
 4 MR NTSEBEZA SC: Yes.
 5 CHAIRPERSON: So you can now proceed with
 6 your housekeeping duly done.
 7 MR NTSEBEZA SC: Mr Chairman, I just want
 8 to indicate that we will rely, for purposes of our cross-
 9 examination, on the handwritten statement, Sebojane's
 10 handwritten statement which has got about what, eight
 11 paragraphs. I think my 45 begins now, now that we have
 12 done –
 13 CHAIRPERSON: I won't take five minutes
 14 off you for housekeeping. You can – we'll ask Mr Wesley to
 15 set the clock now.
 16 MR NTSEBEZA SC: Thank you very much, Mr
 17 Chairman, that will be appreciated. Now Colonel, I just
 18 want to clear up your evidence which I listened to today
 19 about what happened at the scene where Mr Mpumza died.
 20 You'll correct me if I'm wrong, I seemed to hear you say
 21 today that Mr Mpumza pretended to drop his weapons and then
 22 picked them up again and then charged at Sebojane, your
 23 colleague. Was that your evidence? Did I hear you
 24 correctly?
 25 COLONEL McINTOSH: I did not say he

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1 pretended to put down the weapons, I said it looked as if
 2 he was going to go down.
 3 MR NTSEBEZA SC: Meaning?
 4 COLONEL McINTOSH: In other words, lie
 5 down on the ground.
 6 MR NTSEBEZA SC: He looked as if he was
 7 going to be lying down on the ground and then he stood up
 8 and then he charged.
 9 COLONEL McINTOSH: Yes, Chair, it looked
 10 that way.
 11 MR NTSEBEZA SC: It looked that way,
 12 right. Now that is your evidence today. Do I take it that
 13 that evidence is based on your recollection of what
 14 happened?
 15 COLONEL McINTOSH: That is correct,
 16 Chair.
 17 MR NTSEBEZA SC: Yes. You seem also to
 18 testify that the distance between Sebojane and Mpumza could
 19 not have been more than one and a half metres.
 20 COLONEL McINTOSH: When the shots were
 21 fired at Mr Mpumza it couldn't have been more than one and
 22 a half, maybe two metres.
 23 MR NTSEBEZA SC: Well, are you saying one
 24 and a half to two metres, are you saying two metres, are
 25 you saying one and a half metres?

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1 COLONEL McINTOSH: It was a very short
 2 distance. I estimated maybe a metre, metre and a half,
 3 maybe two, I'm –
 4 MR NTSEBEZA SC: A metre, a metre and a
 5 half –
 6 COLONEL McINTOSH: They asked me for an
 7 estimation, I gave an estimation.
 8 MR NTSEBEZA SC: I see. Now perhaps
 9 let's go to exhibit HHH14, your statement, because I just
 10 want to clear this thing once and for all. If we look at
 11 paragraph 28 of that statement, the way you describe what
 12 happened there is the following. Firstly you say that
 13 there was this male with long Rastafarian hair with a spear
 14 in his hand who was running directly towards a uniformed
 15 SAPS member. We now accept that to have been Mr Sebojane.
 16 I see you nod, Colonel. Do you confirm that?
 17 COLONEL McINTOSH: I'm reading with you.
 18 MR NTSEBEZA SC: Yes.
 19 CHAIRPERSON: No, you were asked a
 20 question. Do you accept that –
 21 MR NTSEBEZA SC: Do you confirm that that
 22 is what –
 23 CHAIRPERSON: - the uniformed SAPS member
 24 you refer to in the third line of paragraph 28 is Constable
 25 Sebojane?

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1 COLONEL McINTOSH: That's correct, Chair.
 2 CHAIRPERSON: Thank you.
 3 MR NTSEBEZA SC: Now according to your
 4 statement, Mr Sebojane fired shots at this person who we
 5 now know was Mr Mpumza and you saw him falling down with a
 6 spear still in his hand. Do you confirm that?
 7 COLONEL McINTOSH: That's correct, Chair.
 8 MR NTSEBEZA SC: This person was about
 9 two metres away from the SAPS member with the spear in an
 10 attacking position above his hand, in his hand. Do you
 11 still confirm that?
 12 COLONEL McINTOSH: That is correct,
 13 Chair.
 14 MR NTSEBEZA SC: "Sebojane, SAPS member,
 15 stepped backwards away from this person before he shot the
 16 person."
 17 COLONEL McINTOSH: That is correct,
 18 Chair.
 19 MR NTSEBEZA SC: Ja and then you say you
 20 ran to this person where he fell and ripped open his shirt
 21 and tried to do cardio-pulmonary resuscitation on him but
 22 you could not help him as he was already dead. You still
 23 confirm that?
 24 COLONEL McINTOSH: I can confirm that,
 25 Chair.

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1 MR NTSEBEZA SC: Now did you get any
 2 training in some first aid or was it just something that
 3 you did because you –
 4 COLONEL McINTOSH: I am a trained medic.
 5 MR NTSEBEZA SC: You are a trained medic.
 6 COLONEL McINTOSH: But remember on that
 7 day I had no equipment except for a mouthpiece and gloves
 8 which had already expired. That's why I had to get new
 9 gloves from another member.
 10 MR NTSEBEZA SC: Yes. Now what is clear
 11 from that passage which I've just read to you is that you
 12 don't say that you also saw the police officer fall down,
 13 is that correct?
 14 COLONEL McINTOSH: Can you just repeat
 15 that, sir?
 16 MR NTSEBEZA SC: You don't say in the
 17 statement in that paragraph that you also saw Sebojane fall
 18 down in the process of firing at, or as he was being
 19 attacked by Mpumza allegedly.
 20 COLONEL McINTOSH: No, I did not say that
 21 in the statement here.
 22 MR MATHIBEDI SC: Sorry, Chairperson, if
 23 I could refer my colleague to paragraph 28 line 3, "The
 24 SAPS member fired shots at this person and I saw him
 25 falling down with the spear still in his hand."

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1 MR NTSEBEZA SC: Well, I don't understand
 2 that to be referring to Sebojane. I understand the person
 3 who was falling to be Mpumza. I think my learned friend is
 4 objecting wrongly there. Can we confirm with you, Colonel,
 5 that in your statement you do not say that Mr Sebojane fell
 6 as he was shooting at Mr Mpumza.
 7 COLONEL McINTOSH: That is correct,
 8 Chair, I did not mention it in the statement but he did
 9 fall backwards and I think that is actually what actually
 10 saved his life.
 11 MR NTSEBEZA SC: Now, Colonel, it's
 12 either he fell or he didn't fall.
 13 MS LE ROUX: Sebojane also fell backwards
 14 and was getting up when I got to him and Mr Mpumza.
 15 MR NTSEBEZA SC: But what I'm saying to
 16 you is that nowhere in your statement which you made whilst
 17 the thing was still fresh in your mind, three days after
 18 the event, there is nowhere where you say Sebojane fell in
 19 the process of shooting Mpumza. That's a sworn statement
 20 you made on the 19th of August 2012 whilst the matter was
 21 fresh in your mind three days after it happened. Do you
 22 see that and do you admit that this is so?
 23 COLONEL McINTOSH: I can see that it's
 24 not mentioned in the statement –
 25 MR NTSEBEZA SC: Yes.

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1 COLONEL McINTOSH: - and I do know that
 2 it did happen –
 3 MR NTSEBEZA SC: No, why didn't you then
 4 put it in there? I mean there are a number of things today
 5 in the course of your testimony, only today, in which you
 6 either bring in things that are hearsay into your statement
 7 or you omit to say things that really happened.
 8 COLONEL McINTOSH: One must take
 9 cognizance of the fact, Chair, I was one of the very first
 10 people to ever make statements at Marikana and I've never
 11 changed my statements ever since –
 12 MR NTSEBEZA SC: I'm not –
 13 COLONEL McINTOSH: - things that I do
 14 remember I will bring up in front of this Commission and
 15 that's the purpose.
 16 MR NTSEBEZA SC: Yes, I'm not seeking you
 17 to change, you know, where you are changing your evidence
 18 is now under oath. That statement was given by you three
 19 days after the event when you were being asked to give an
 20 account of a person who was killed by a member of your
 21 group and you purport in this statement under oath to be
 22 giving the details of what happened and I say you gave this
 23 statement 72 hours after it had happened. Now you want
 24 this court – not this court, this Commission – to accept
 25 that what you now say almost two years after the event,

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1 must be accept and what you said then must not. Is that
 2 what you want the Commission to accept?
 3 COLONEL McINTOSH: No, Chair. I have
 4 added nothing to my statements except the additional
 5 statement that was given at the request of my advocate and
 6 everything that I'm giving evidence here is what happened.
 7 If it's not in the statement I can still give evidence with
 8 regards to that, if I'm not mistaken, in terms of the
 9 correct procedures with the giving of evidence here.
 10 MR NTSEBEZA SC: No, Colonel, I am going
 11 to show you that what you purport to be giving –
 12 CHAIRPERSON: Mr Ntsebeza, would you like
 13 to show him that after tea? We'll take the tea adjournment
 14 for quarter of an hour.
 15 [COMMISSION ADJOURNS COMMISSION RESUMES]
 16 [15:19] CHAIRPERSON: The Commission resumes,
 17 you're still under oath. Mr Ntsebeza?
 18 MR NTSEBEZA SC: Thank you, Mr Chairman.
 19 Colonel, I want to put it to you that the reason you are
 20 giving testimony now about things that are not in your
 21 statement is because you want to tailor your evidence to
 22 what the other people have said in their statements. For
 23 instance this whole thing of you knowing now under oath, as
 24 you're sitting there, that Mr Sebayane also fell as he was
 25 shooting at Mr Mpumza, is a function of you having read Mr

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1 Sebayane's statement. Do you have anything to say to that?
 2 COLONEL McINTOSH: Yes, Mr Chair, I have
 3 something to say to that. I have a career of 27 years in
 4 the South African Police Service, I have got no intention
 5 to start perjuring myself now or to change my evidence to
 6 accommodate other people. What I've seen I'll give
 7 evidence about.
 8 MR NTSEBEZA SC: I'm happy to know
 9 something of your pedigree, but can you answer the question
 10 now? I'm putting to you that you are tailoring your
 11 evidence to what Mr Sibajane himself has said on this point
 12 of falling, otherwise if it was so that you recollect it
 13 you would have said it in your statement, the statement you
 14 made 72 hours after the event.
 15 COLONEL McINTOSH: Mr Chair, I will not
 16 come and tailor my evidence to accommodate other people,
 17 that what I've seen, that what I've smelt, that what I've
 18 seen and that what I felt that day, I will give evidence in
 19 front of this Commission.
 20 MR NTSEBEZA SC: Okay, can we find out in
 21 which hand do you recall was the spear handled by Mr
 22 Mpumza, was it in his right, in his left?
 23 COLONEL McINTOSH: Mr Mpumza had two
 24 weapons, if I remember correctly the spear would be in the
 25 right hand, if I'm not mistaken.

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1 MR NTSEBEZA SC: Two weapons, the spear
 2 would be in his right, and the other hand?
 3 COLONEL McINTOSH: A type of sharpened
 4 knobkierie, there was also a sharp point on the knobkierie
 5 as well.
 6 MR NTSEBEZA SC: So it was definitely not
 7 two spears?
 8 COLONEL McINTOSH: As far as I can
 9 recall, Chair.
 10 MR NTSEBEZA SC: You were there, you
 11 attended to him, you tried to resuscitate him.
 12 COLONEL McINTOSH: Chair, I do believe
 13 there is a difference between trying to resuscitate someone
 14 and trying to check what weapons he had after he had
 15 fallen, the weapons weren't applicable at that time to me.
 16 MR NTSEBEZA SC: Alright, you have seen
 17 one, didn't you? Now let's hear what Mr Sebayane himself
 18 is saying, the person who was being allegedly attacked by
 19 Mr Mpumza. His statement is now Exhibit TTT7.1, it is a
 20 new exhibit, if we can show it up, Mr Chairman? It is the
 21 handwritten statement, paragraph 6 thereof, 6 and 7 is
 22 where he relates the incident in his own words, "As we
 23 finished loading we looked at the western side and noticed
 24 that the police have taken control of the koppie. We then
 25 moved in to load more people in the trucks. As we

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1 approached one black male wearing a white jacket with
 2 dreadlocks or dreadlock hair, came out running in our
 3 direction. We then instructed him to drop his weapons and
 4 lay down. The suspect went down on his knees. I then
 5 holstered my pistol in order to affect an arrest. As I was
 6 about two to three steps to him he stood up, fast with the
 7 spear in his left hand and charged at me. He then speared
 8 me to the direction of my neck. I then twisted my body to
 9 my left side and he missed. Captain Edward," - no, no, can
 10 we continue with 7? "I then fired one round to his chest.
 11 I then moved backwards two to three steps. The suspect
 12 then charged again.
 13 I then fired towards the suspect's body, (upper
 14 body), whilst stepping backwards. I then fell on my back
 15 and continued shooting at the suspect. He then fell next
 16 to me on my left side facing up. Colonel McIntosh came
 17 towards us, he then requested medical personnel to the
 18 scene. As I looked, I noticed that Captain Kidd and
 19 Captain Ryland were also not far from us. I then checked
 20 my firearm and noticed that I fired nine rounds." Now he
 21 is describing the same incident as you. Do you see that?
 22 COLONEL McINTOSH: I see discussing the
 23 death of Mr Mpumza.
 24 MR NTSEBEZA SC: I take it then you would
 25 dispute that version because it contradicts your own

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1 version of what happened at the time?
 2 COLONEL McINTOSH: I can't dispute his
 3 version if that's his version.
 4 MR NTSEBEZA SC: Then, - no, they can't
 5 both be right, to the extent that your version differs from
 6 his, then your version is incorrect, do you accept that?
 7 COLONEL McINTOSH: No, Chair.
 8 MR NTSEBEZA SC: Why, why can't you
 9 accept that?
 10 COLONEL McINTOSH: One must take into
 11 account, Chair, that this gentlemen, Mr Sebayane, the
 12 constable was under attack. He remembers things from what
 13 he has seen from himself, that which I seen came from the
 14 side. I could only see what was happening from the side,
 15 not from his perspective where he was.
 16 MR NTSEBEZA SC: All I want to get from
 17 you, Colonel, if you're able to do so, is to concede that
 18 if your version is the correct one then the version of the
 19 person who was being attacked is incorrect. We need, this
 20 Commission needs to know the circumstances under which Mr
 21 Mpumza was killed by the police. This policeman who was
 22 being attacked tells us that he shot at Mpumza and Mpumza
 23 continued to charge at him, he shot again. At the end he
 24 says he shot nine rounds. Now he gives a fairly detailed
 25 version of what happened to him and he says you were there.

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1 Now it is either you say he is confused about what happened
 2 or your version is incorrect to the extent that it differs
 3 from his.
 4 COLONEL McINTOSH: Chair, with regards to
 5 what I've already said, Mr Sebayane was under attack, I was
 6 a witness to what happened from a side angle, not in his
 7 situation.
 8 MR NTSEBEZA SC: Now there is also
 9 Exhibit –
 10 CHAIRPERSON: I don't quite understand
 11 that, which side angle did you see it from?
 12 COLONEL McINTOSH: I was coming from
 13 Papa1 which was in the veld.
 14 CHAIRPERSON: Yes?
 15 COLONEL McINTOSH: Coming towards the
 16 koppie, just basically where Mr Mpumza, it was basically a
 17 90 degree angle which I'd basically seen what happened, so
 18 I was looking at a 90 degree angle on to what had actually
 19 happened. So if he was running from west to east, then he
 20 would be or Sebayane would be on the eastern side. I was
 21 coming from the northern side towards where Mr Sebayane and
 22 Mr Mpumza were.
 23 CHAIRPERSON: Now he says in paragraph 7
 24 that when he was about two to three steps from his
 25 assailant he stood up fast with the spear in his left hand

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1 and charged at me. Then he speared to me or at me in the
 2 direction of my neck. Now is he wrong about the spear
 3 being in the left hand?
 4 COLONEL McINTOSH: Chair, I can, - well,
 5 either the side –
 6 CHAIRPERSON: Because you say it was the
 7 right hand, you see?
 8 COLONEL McINTOSH: I was under the
 9 impression it is the right hand, but remember I'm looking
 10 from the side as well.
 11 CHAIRPERSON: No, if this is relevant
 12 what must we find? Must we find the spear was in the left
 13 hand or in the right hand, otherwise are you right or is
 14 Constable Sebayane right?
 15 COLONEL McINTOSH: Well, taking into
 16 consideration I was looking from a side, it could have been
 17 in his left hand, there is a possibility, I thought it was
 18 in the right hand.
 19 CHAIRPERSON: Oh, I see, so you're not
 20 too sure?
 21 COLONEL McINTOSH: He had a spear in his
 22 hand and he attacked a police officer, Chair.
 23 CHAIRPERSON: I know but you're not too
 24 sure which hand, when you were asked which hand you could
 25 have said, I don't know, I saw it from the side, I'm not

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1 sure in which it was, but you said without hesitating, in
 2 the right hand.
 3 COLONEL McINTOSH: I said the possibility
 4 is it was in the right hand.
 5 CHAIRPERSON: Well, did he say that? I
 6 see, alright, okay. You said there were two weapons?
 7 COLONEL McINTOSH: That's correct, Chair,
 8 one was like a knobkierie which was relatively sharp –
 9 CHAIRPERSON: Ja, ja, -
 10 COLONEL McINTOSH: - and in the other one
 11 was a spear, Chair.
 12 CHAIRPERSON: Well, I put it too
 13 strongly, so you say that the spear that was in the raised
 14 hand, it was aimed at Sebayane, you say you accept that may
 15 well have been the left hand?
 16 COLONEL McINTOSH: I accept that, Chair.
 17 CHAIRPERSON: Alright, thank you.
 18 MR NTSEBEZA SC: Thank you, Mr Chair.
 19 You see in paragraph 7 of that statement he mentions
 20 Captain Kidd and Captain, was it Royden or Roland? Ryland,
 21 do you see that?
 22 COLONEL McINTOSH: That's correct, Chair.
 23 MR NTSEBEZA SC: Chair, there is an
 24 exhibit, Exhibit OOO11, which is the transcript of video
 25 CC22, if it could be shown up and I would like us to go to

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1 16:20:26 of that transcript? Now I'm assured that I don't
 2 need to explore what I say it is in fact so. You did get
 3 this as part of the papers that you were given yesterday,
 4 isn't it? Anyway, let's just go –
 5 CHAIRPERSON: Did you get it?
 6 COLONEL McINTOSH: Yes, Chair, as far as
 7 I'm aware I did receive it.
 8 CHAIRPERSON: Alright, well, you're ahead
 9 of us in that respect, but never mind, congratulations.
 10 COLONEL McINTOSH: Yes.
 11 CHAIRPERSON: What is the actual entry
 12 you want to put to the witness?
 13 MR NTSEBEZA SC: It is where, Chair, I
 14 would like to, - it is 16:20:26 and then it says Ryland 26
 15 and then OOO139.
 16 CHAIRPERSON: Have you got, - or hang on,
 17 there may be a bit of a problem here. Have you got the
 18 transcript that Mr Ntsebeza is now referring to which is
 19 Exhibit OOO11?
 20 COLONEL McINTOSH: No, Chair, I do not
 21 have that, I've got GGG36, the transcript of the video.
 22 CHAIRPERSON: No, that's a different
 23 thing. No, was he not given OOO11, because we were given
 24 it but I mean that's not necessary fatal. Was he given
 25 this document?

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1 MR NTSEBEZA SC: I'm told he was not, Mr
 2 Chairman.
 3 CHAIRPERSON: Well, anyway, let's put it
 4 the way –
 5 MR NTSEBEZA SC: Mr Chairman, -
 6 CHAIRPERSON: Put it to the witness, if
 7 he can't answer it, well, then he can't answer it but let's
 8 –
 9 MR NTSEBEZA SC: Yes.
 10 CHAIRPERSON: Now what is the particular
 11 entry that you're interested in?
 12 MR NTSEBEZA SC: It is the entry where it
 13 says, "Ja, leave him, leave him, he is alright."
 14 CHAIRPERSON: Alright, that's OO –
 15 MR NTSEBEZA SC: He then says –
 16 CHAIRPERSON: Sorry, OOO139 and then it
 17 is, the transcriber has written, "(Captain Ryland?) in
 18 relation to Sebayane", that's the passage?
 19 MR NTSEBEZA SC: And then the next line,
 20 do you see the next line?
 21 COLONEL McINTOSH: That's correct, Chair.
 22 MR NTSEBEZA SC: Do you see what it says,
 23 "I shot him at least ten times, he keeps coming, coming,"
 24 and then there is, - I don't want to read the profanity,
 25 you see what is said there, do you see there? Read it?

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1 COLONEL McINTOSH: I see it.
 2 MR NTSEBEZA SC: What does it say?
 3 COLONEL McINTOSH: It says, must I read
 4 the profanity as well?
 5 MR NTSEBEZA SC: Yes.
 6 CHAIRPERSON: I don't think -
 7 MR NTSEBEZA SC: Oh, okay. Mr Chair,
 8 well, as long as we'll make the point that we want to make.
 9 COLONEL McINTOSH: "I shot him at least
 10 ten times, he keeps coming, coming."
 11 MR NTSEBEZA SC: And then read the rest
 12 of it until you get to where, "Ek het hom tien, ek het leeg
 13 gemaak, hy kom nog steeds, blom, blom," do you see that?
 14 COLONEL McINTOSH: I can see that, "There
 15 is muti there, there is muti [inaudible], leave it, leave
 16 it, leave it, ja, that's muti, shit, ja, it doesn't work,
 17 hey Baba? Yes, we stay forward, we stay forward, we are
 18 going forward, we stay forward, blom, blom, ready position,
 19 boss, [indistinct], die ding is aanval, Sebayane, ek het
 20 hom tien, ek het hom leeg gemaak, ek kon –
 21 CHAIRPERSON: Not "hom", ek het leeg
 22 gemaak.
 23 COLONEL McINTOSH: Oh, sorry. "Ek het
 24 leeg gemaak, hy kom nog steeds."
 25 MR NTSEBEZA SC: Now, Colonel, who is it

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1 that is saying he shot him ten times?
 2 COLONEL McINTOSH: It would possibly be
 3 Constable Sebayane that would be saying that.
 4 MR NTSEBEZA SC: Yes, and he seems to
 5 repeat it in Afrikaans and that would be consonant with
 6 what he says in his statement, paragraph 7 where he says he
 7 fired nine rounds, but that is what he says. Now don't you
 8 find that kind of discourse very shocking, a person has
 9 just been killed and that is the kind of discourse that
 10 takes place around a dead person?
 11 COLONEL McINTOSH: Chair, I do agree with
 12 that statement made by Mr Ntsebeza, but I also would like
 13 to state that in a lot of cases where policemen are
 14 involved in shootings and so forth there are profanities
 15 that do come out. I can't condone it and unfortunately I
 16 didn't hear it at that specific point because I was
 17 actually busy working on Mr Mpumza, so ja, it is out of
 18 place, but when you've been through a harrowing situation
 19 with something like that it does come out sometimes that
 20 you've got to vent somehow and unfortunately it is one of
 21 the languages the police know very well or armed forces
 22 know very well, and that's profanities.
 23 MR NTSEBEZA SC: Which brings me to
 24 something else, you see that Mr Sibajane in his statement
 25 seems to make the point that when he shot at the attacker

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1 he says, I shot at his body and then he finds it necessary
 2 to in brackets says, (upper body), did you see that in
 3 paragraph 7 of his statement? In paragraph 7 of his
 4 statement he says, "and then I shot the suspect, I shot, I
 5 then fired towards the suspect's body, (upper) whilst
 6 stepping backwards."
 7 COLONEL McINTOSH: Chair, I can see that
 8 but I can't comment on that.
 9 MR NTSEBEZA SC: Yes, but you know what
 10 I'm simply saying is, firstly about the distance between,
 11 it seems to be accepted by you as well as Captain Sebayane
 12 that the distance was 1 and a half metres, 2 metres, 3
 13 metres. Now can I make the point that at that distance
 14 Captain Sebayane, especially given that he said he wanted
 15 to effect an arrest, at that distance he could have fired,
 16 he could have shot at Mr Mpumza on his lower body, at his
 17 legs for instance.
 18 COLONEL McINTOSH: Chair, I'm not
 19 actually quite sure with regards to the question, but a
 20 person can fire a magazine empty in less than a couple of
 21 seconds if you really wanted to or if you really had to.
 22 It depends on how fast you could press the trigger, but
 23 with regards to the question, I don't understand what you
 24 would actually like me to answer, Mr Ntsebeza.
 25 [15:38] MR NTSEBEZA SC: No, the question is, if

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1 Mr Sebayane who says he wanted to effect an arrest and then
 2 when he was being charged there was a distance of two
 3 metres between the two of them. He could have shot at Mr
 4 Mpumza on his legs rather than aim at his upper body,
 5 because at least he would have been able to disable Mr
 6 Mpumza's intention of charging at him, whatever weapons he
 7 was carrying. But if he aimed at his upper body, as he
 8 says he was, then it was clearly going to be lethal at that
 9 distance and the aim was to kill him.
 10 COLONEL McINTOSH: Mr Chair, if it had
 11 been at a distance of 10 or 12 metres I would have said
 12 yes, by all means shoot for the legs, but if you're in
 13 close quarter, that person is already on top of you, have
 14 you got the option of shooting at the legs? I don't think
 15 that, I don't – from my point of view I think that would be
 16 a little bit ludicrous to shoot at the legs if the person
 17 is already at you, trying to stab you.
 18 MR NTSEBEZA SC: Colonel, on your own
 19 evidence, to the extent that you gave it on the 19th, under
 20 oath you say the distance was two metres away. I am going
 21 to argue at the end of these inquiries that at that
 22 distance it was possible for Sebayane to shoot at the
 23 victim's legs, not at his upper body.
 24 COLONEL McINTOSH: Mr Chair, I'm quite
 25 sure that will be something that the Advocate will argue

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1 on, but according to me I would not have taken a shot at
 2 the legs; I would have shot for the body and the head as
 3 well, Chair.
 4 MR NTSEBEZA SC: Now I'm sure it is
 5 common cause between us and my learned friend, the post
 6 mortem reports – and I don't want to take you there – will
 7 show that there were very many bullet wounds, entrance
 8 wounds at which it is fairly clear, I mean the way in which
 9 it is put is no range of fire, which means that he was
 10 quite a distance. At the very least he was more than one
 11 metre away, and I don't think we are in argument about
 12 that, and that is why we are going to argue that it was a
 13 distance in relation to which Mr Sebayane should not have
 14 aimed to kill this man. The –
 15 CHAIRPERSON: You witnessed this
 16 incident. The post mortem report says that he was at least
 17 a metre away, from what Mr Ntsebeza has read you. A metre
 18 is basically the length of one's arm, as I understand it.
 19 Does that coincident with what you remember having seen?
 20 COLONEL McINTOSH: Yes, Chair, it was
 21 close quarter. It was very close. It wasn't 10 metres
 22 apart. It was close, a very close situation where they
 23 were in close quarter.
 24 MR NTSEBEZA SC: Right, now maybe it's
 25 time now that we went to the presentation. Now Mr

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1 Chairman, there is – or before I get there, let’s just hear
 2 what Captain Kidd said about the same event. Mr Chairman,
 3 his statement is TTT8 and he describes –
 4 CHAIRPERSON: But I marked it when you
 5 started.
 6 MR NTSEBEZA SC: Yes, and he narrates
 7 what happened there in paragraph 16 and 17 and 18. “In
 8 another incident two police members were standing on my
 9 left-hand side behind some bushes. I noticed one black
 10 male coming, running from behind some bushes on top of the
 11 hill towards them. I saw that this man had” – it says here
 12 and had – “two what looked like spears in each hand. These
 13 spears were raised in the air as if he was going to attack
 14 someone.” Maybe you would think that he’s talking about
 15 somebody else, or some other incident.
 16 Then in 17 you are able to link that he’s talking
 17 about the same incident as you are talking about because he
 18 says, “I shout to these members to watch out as someone was
 19 running towards them. I started to run towards them, the
 20 police as well. The police members saw the man coming to
 21 them. I heard these members instruct the man to drop his
 22 weapons. The man did not. He ran towards one of the
 23 police members with his spears raised above his head. The
 24 man with the spears had dreadlocks on his head,” so the
 25 connection is there, so it’s Mr Mpumza. “Shots were fired

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1 and the police official and man with the spears fell to the
 2 ground. The policeman stood up and was unharmed. The man
 3 with the spears was shot. He was lying on the ground. The
 4 spears were still in his hand. He made movements as to
 5 point the spears towards the police, but could not. The
 6 man in question had something tight around his arms and
 7 legs by his knees. I was informed by my black members that
 8 it was some type of muti that the sangomas use. The spears
 9 that this man had looked like a traditional assegai with a
 10 sharp point.”
 11 So it’s clear to us that we are talking about the
 12 same event and the same incident, is it? Do you agree with
 13 that? At least the dreadlocks and the incident is the
 14 incident that you also testify about today and which you
 15 also had in your statement. Is that correct?
 16 COLONEL McINTOSH: Chair, I agree with
 17 that.
 18 MR NTSEBEZA SC: Yes, but you know, this
 19 version, if this version is correct then your version is
 20 obviously not correct, and that of Sebayane. It’s a, this
 21 guy talks – I mean this gentleman, Captain Kidd says there
 22 were two spears. He was not just, he was attacking with
 23 two spears. Now how is the Commission ever going to
 24 establish from all the police officers’ statements what
 25 actually happened? All we know is that he was killed,

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1 perforated with bullets a number of times, entrance wounds
 2 at a range it should not have been. Now the question is
 3 what are you making of this version by Captain Kidd?
 4 COLONEL McINTOSH: Chair, I would say
 5 that everybody sees this thing from a different angle. I
 6 don’t even know where Captain Kidd was at this time. I’d
 7 seen it from basically a 90-degree angle. Where he’d seen
 8 it from, I can’t say, but it relates to the same incident.
 9 MR NTSEBEZA SC: And you see also Captain
 10 Kidd doesn’t say, like Sebayane says, that he fell down
 11 also as he was shooting at this person, as Mr Mpumza.
 12 CHAIRPERSON: [Microphone off, inaudible]
 13 shots were fired and the police official and the man with
 14 the spears fell to the ground. The policeman stood up. So
 15 clearly he fell down –
 16 MR NTSEBEZA SC: No, Mr Chairman, I was
 17 making another point, I’m sorry. What he doesn’t say is
 18 that, as you testified this morning, he made as though he
 19 was putting his weapons down and then he stood up and then
 20 charged at Mr Sebayane. You see that?
 21 COLONEL McINTOSH: I can see that, Chair,
 22 but that is something that Captain Kidd can also come and
 23 give evidence about. I’m not going to give evidence about
 24 how people have seen it from a different angle. I can give
 25 evidence about how I’ve seen it and how I perceived it to

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1 be.
 2 MR NTSEBEZA SC: All in good time. All
 3 in good time, Colonel. All we are saying, Colonel, is that
 4 you don’t say it and Captain Kidd doesn’t say it, and what
 5 do you make of that?
 6 COLONEL McINTOSH: I’m sure that Captain
 7 Kidd will be able to give evidence to that effect as well
 8 so that he can also explain how he perceived it, but I say
 9 I’d seen it from the side and I’d seen what was happening.
 10 I actually thought he was going to go to the ground to
 11 surrender.
 12 MR NTSEBEZA SC: Now if we could turn to
 13 exhibit L, slide 247, now the point of this exercise is to
 14 show firstly what the police presentation said was the
 15 alleged path and position of Mr Mpumza’s body. I believe
 16 my time is threatened – oh, five –
 17 CHAIRPERSON: You’ve got five minutes
 18 left, so –
 19 MR NTSEBEZA SC: Five minutes.
 20 CHAIRPERSON: - be as focussed as you can
 21 with your five minutes.
 22 MR NTSEBEZA SC: Mr Chairman, I will not
 23 be – well, when the five minutes is up, it is up. But you
 24 had this thing overnight and you saw –
 25 CHAIRPERSON: Mr Ntsebeza, let me

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1 interrupt you. It's now 10 to 4. I don't propose calling
 2 on Mr Bizos to cross-examine for five minutes, so you can
 3 have those five minutes as well. You can cross-examine to
 4 4 o'clock and I won't deduct anything from Mr Bizos
 5 tomorrow. So carry on.

6 MR NTSEBEZA SC: Thank you, Mr Chairman.
 7 Now the presentation, Mr Chairman, you gave me an exhibit
 8 number. Where is the exhibit number? It's TTT6. Now if
 9 you went to slide 3, the suggestion in the presentation in
 10 the directions which are given – that does not seem to be
 11 slide 3 on the screen. Page 1, slide 1 is the death of Mr
 12 Mpumza and slide 2 is, the exhibit L does not accurately
 13 reflect the position of Mr Mpumza's body. Now slide 3 is
 14 where we are at. Now this was what was presented to the
 15 Commission. Do you see at the end that white, below where
 16 it says "western"?

17 COLONEL McINTOSH: The blue circle?
 18 MR NTSEBEZA SC: I don't know whether
 19 it's blue or – I've never been one for colours. That
 20 circle.

21 COLONEL McINTOSH: Yes, Mr Chair, I see
 22 it.

23 MR NTSEBEZA SC: Yes, now that shows in
 24 terms of the presentation we had earlier in the year, last
 25 year, to be where the body was, Mr Mpumza's body was. Now

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1 can we go to slide – I mean to slide 4 of the presentation.
 2 Now whilst we hold our finger at that page, you will see
 3 that we say that that exhibit which is on slide 5, you know
 4 the slide 5, which is KKK17.1, which also was produced by
 5 the SAPS, is a photo by Colonel Vermaak which shows Mr
 6 Mpumza's body.

7 Now we are making the point, and I do not know if
 8 you will agree, that the position of Mpumza's body as you
 9 saw it on exhibit L in relation to where we have it from
 10 Colonel Vermaak's still photographs is irreconcilable with
 11 Captain Vermaak's photograph. In other words Captain
 12 Vermaak's photographs show Mpumza's body other than where
 13 exhibit L shows it to have been at. Do you agree with
 14 that, having looked at this presentation overnight?

15 COLONEL McINTOSH: Chair, I'd just like
 16 to say this presentation was only given to me this morning
 17 after the first break.

18 MR NTSEBEZA SC: Well, you have it now.
 19 COLONEL McINTOSH: No, I agree.
 20 MR NTSEBEZA SC: You agree?
 21 COLONEL McINTOSH: I agree that I have
 22 received it today. I have it now.

23 MR NTSEBEZA SC: Okay, but are you
 24 suggesting that you would need some time to study it and
 25 reflect –

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1 COLONEL McINTOSH: Chair, I'm just trying
 2 to –

3 MR NTSEBEZA SC: Because the Chair
 4 wouldn't like to be unfair to you. I always wouldn't like
 5 to be unfair –

6 COLONEL McINTOSH: I'm just trying to see
 7 where he is, or where the, trying to align the rocks, and
 8 so forth.

9 MR NTSEBEZA SC: Chair, I don't know if
 10 it would be fair –

11 CHAIRPERSON: Mr Ntsebeza –
 12 MR NTSEBEZA SC: Yes.
 13 CHAIRPERSON: I wonder whether the
 14 practical solution to the problem isn't the following.
 15 It's now 5 to 4. The witness is at a disadvantage. Any
 16 runs that you score while he's in this condition may be
 17 disallowed by the scorers at the end of the game. So isn't
 18 it wiser to let him look at the document overnight. We'll
 19 have to eat a bit into tomorrow's time; you can finish off
 20 this cross – sorry, not tomorrow, on Thursday, so that's
 21 even worse, even better – sorry, even better. He's not
 22 only got till tomorrow, he's got till Thursday morning to
 23 study this and you've got till then to focus your cross-
 24 examination –

25 MR NTSEBEZA SC: To focus, yes.

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1 CHAIRPERSON: And then on Thursday
 2 morning you can deal with this very shortly. The witness
 3 will be on top of the documents and justice will be done to
 4 all concerned. Shall we adjourn now?

5 MR NTSEBEZA SC: Mr Chairman, as always
 6 that's a very sensible suggestion and I accept it.

7 CHAIRPERSON: I'm pleased it receives
 8 your commendation. We'll adjourn now until Thursday
 9 morning 9 o'clock.

10 [COMMISSION ADJOURNED]
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