

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 102 06 JUNE 2013 PAGES 10875 TO 11060



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



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1 [PROCEEDINGS ON 6 JUNE 2013]
 2 [09:41] CHAIRPERSON: The Commission resumes. I
 3 understand that yesterday was profitably spent and there's
 4 a substantial agreement. It's just been reported to me by
 5 Mr Budlender in chambers before we came in – a substantial
 6 degree of agreement on draft rules that should be issued,
 7 which obviously we'll be considering and I hope to be able
 8 to give notice of the rules either on Monday or Tuesday of
 9 next week but I'm very grateful to all those who
 10 participated in the discussions yesterday and I hope that
 11 the discussions will produce meaningful procedures to
 12 enable us to meet our deadline. National Commissioner,
 13 you're still under oath. Mr Mpfu, you've indicated that
 14 you have some more questions to ask and you've in fact
 15 given notice of documents upon which you will rely.
 16 MANGWASHI VICTORIA PHIYEGA: s.u.o.
 17 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
 18 Thank you, Chairperson. Yes, I have and I think two of the
 19 documents have been put at the Commissioners' table, thank
 20 you Chairperson. Good morning, General.
 21 GENERAL PHIYEGA: Good morning, Advocate.
 22 MR MPOFU: Now what I want to do, I'm
 23 going to deal with two significant topics with you before
 24 we finish but before I do that, I'm going to just deal with
 25 – sorry, just to understand my notes here – just one or two

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1 things which I want to round up from our earlier
 2 discussion. The first one is, I'm not sure if I asked you
 3 this, why did you do the press conference on the 17th at the
 4 Lonmin game farm and not maybe at the police station?
 5 GENERAL PHIYEGA: We needed a facility
 6 with the capacity to handle the nature and scale of press
 7 conference that we held on that day. Our police station
 8 wouldn't have that capacity and that infrastructure.
 9 MR MPOFU: Okay. Then the next of the
 10 smaller issues that I wanted to ask you is, you remember we
 11 had a discussion about phase 6 and don't worry about the
 12 numbering of the phases but you know that part of the plan
 13 was the possibility of collecting the arms and raiding the
 14 hostels and places of residence subsequent to the day of
 15 dispersal itself. I'm just putting it roughly so that
 16 maybe you can remember it without being specific, otherwise
 17 I'll read it out from the plan. Ja, I'm sorry, maybe I
 18 didn't ask a question. I was saying are you aware that
 19 part of what is known as the Scott plan, which I know is
 20 contested, was that at the end the raid for arms would be
 21 done at the hostels and in the places of residence, on the
 22 day subsequent to the 16th?
 23 GENERAL PHIYEGA: I remember that we
 24 referred to it during the testimony.
 25 MR MPOFU: Yes, and I mean it – alright,

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1 thank you very much. Now do you know that that phase of
 2 the operation, the raid into the hostels and the places of
 3 residence, was subsequently carried out about two weeks
 4 later around the 14th of September by a joint SANDF/SAPF –
 5 CHAIRPERSON: It's about a month later,
 6 it was the 14th of September, about a month later.
 7 MR MPOFU: Yes, well okay, three and a
 8 half weeks or a month.
 9 GENERAL PHIYEGA: Yes, I remember.
 10 MR MPOFU: And this was a high-level
 11 operation in the sense that it was one of those that the
 12 President had to refer to Parliament. You do know that
 13 before the SANDF is deployed or for the deployment of the
 14 SANDF to assist in a police operation, the President has to
 15 approach Parliament. You are aware of that.
 16 GENERAL PHIYEGA: Yes, I am.
 17 MR MPOFU: In fact, just for the benefit
 18 of those who might not know, I'm sure you do, in terms of
 19 section 201 of the Constitution of the Republic of South
 20 Africa, it is 201(2) Chairperson, only the President as
 21 head of the National Executive may authorise the employment
 22 of the defence force in co-operation with the police
 23 service, among other things – I'm just jumping the others.
 24 Right. Now, you also know that in the course of that raid
 25 which coincided with phase 6 of the operation, somebody was

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1 fatally wounded, correct?
 2 CHAIRPERSON: Mr Mpfu, what is the
 3 relevance of this line of cross-examination? What's it got
 4 to do with the terms of reference? It deals with something
 5 that happened outside the time period we're busy with. I
 6 understand that things had happened after or even before
 7 that time period may be relevant if they throw light on
 8 what happened during the period we're concerned with, but
 9 would you please explain to me what the relevance of this
 10 line of cross-examination is?
 11 MR MPOFU: Yes. Well, firstly
 12 Chairperson, the reason why I started by posing this as
 13 part, as phase 6, as the issues that were in the phase, in
 14 phase 6, makes – puts that within the purview of the Scott
 15 plan and I would think that –
 16 CHAIRPERSON: No, I understand that but
 17 the death of the councillor which took place in the middle
 18 of September during the period, the time of that operation
 19 –
 20 MR MPOFU: Ja.
 21 CHAIRPERSON: I'm not quite sure what the
 22 relevance of that is. That's why I didn't stop you before.
 23 MR MPOFU: Yes.
 24 CHAIRPERSON: But what the relevance of
 25 that is to our terms of reference.

<p style="text-align: right;">Page 10879</p> <p>1 MR MPOFU: Well, Chairperson, I would 2 have thought – well, what – thanks Chairperson, I was just 3 allowing that exchange. 4 CHAIRPERSON: My colleague and I were 5 debating another aspect where I was more on your side than 6 she was, but anyway. 7 MR MPOFU: Well, then good luck to you, 8 Chairperson. Chairperson, you see this issue keeps on 9 dogging us. Maybe I don't want to use the time of this 10 witness to resolve it. 11 CHAIRPERSON: - question. 12 MR MPOFU: Yes. Let me – I can't answer 13 that without taking you back, Chairperson. Chairperson, 14 you said when we started, I think it was the first day, 15 that if the events that happened prior or subsequently 16 throw some light – 17 CHAIRPERSON: Before, when I asked you 18 the question now? 19 MR MPOFU: Yes. Well, one. Two, as you 20 know we read out sometime in October – I'll look for the 21 date – a letter that we received from the President in 22 respect of our request that the issue of the death of the 23 councillor be incorporated in the terms of reference and 24 I'll show you them now, the President's answer was that as 25 far as he was concerned this matter was already covered in</p>	<p style="text-align: right;">Page 10881</p> <p>1 there because I have to interpret the terms of reference, 2 that if the death of the councillor is linked in some way 3 to the events that happened during our period and throws 4 light on them, then it would be admissible, not otherwise. 5 I am asking you the question, please explain to me how – 6 COMMISSIONER TOKOTA: How it is linked. 7 CHAIRPERSON: How it is linked. 8 MR MPOFU: Yes. Well, then we will go 9 round in circles. It is linked in the sense that it 10 occurred – 11 CHAIRPERSON: I don't we're going round 12 in circles. I can't – I can't control the direction which 13 you choose to move in. I don't propose going round in 14 circles. 15 MR MPOFU: Yes, I speak only for myself, 16 I'll go around in circles. 17 CHAIRPERSON: Please don't, Mr Mpofo, 18 come straight to the point. 19 MR MPOFU: Okay, I'll go back to the same 20 point which is this, it is connected in the sense that it 21 occurred in the course of the completion - after those 22 questions that have been answered now - of the plan, the 23 gist of which was the – happened on the 9th to the 16th but 24 which was clearly completed, or this phase 6 thereof, 25 around the death of the person. That's the connection,</p>
<p style="text-align: right;">Page 10880</p> <p>1 the terms of reference but the Commission, it could be 2 dealt with as between us and the Commission. In other 3 words, they felt sufficiently confident that the matter 4 could be dealt with, without amending the terms of 5 reference. 6 CHAIRPERSON: My recollection of the 7 letter was that it was based upon the point that you called 8 your first point which I put to you earlier, that clearly 9 matters of, things that happened before the dates that 10 we're directly concerned with which throw light on what 11 happened during the period, are relevant. Equally, events 12 that happened after that which throw light as it were, are 13 also relevant and admissible. My understanding of the 14 President's letter was that that was the basis for the 15 comments that he made. So - 16 MR MPOFU: Yes, that's – 17 CHAIRPERSON: - the President's letter 18 and the first point are effectively the same point. 19 MR MPOFU: Yes, but remember Chairperson 20 that the President's letter dealt specifically with the 21 death of the councillor. So that's the only issue that the 22 President was addressing and that's the subject of your 23 question to me on relevance. 24 CHAIRPERSON: I take it the President's 25 attitude was, and whether it wasn't is neither here nor</p>	<p style="text-align: right;">Page 10882</p> <p>1 there's no other connection. 2 CHAIRPERSON: Perhaps we could find out 3 from the witness whether she can throw light on this, 4 whether she has any knowledge herself of what happened and 5 any connection it might have with what happened from the 9th 6 to the 16th and if she doesn't have any knowledge, well then 7 perhaps we can move on to something else but let's find out 8 what she says. you ask the question directly, whether she 9 knows about it. 10 MR MPOFU: Yes, thank you. Okay, I'll 11 just repeat the question. Are you aware that during that 12 raid a person who has now been identified as an ANC 13 councillor, was killed? 14 GENERAL PHIYEGA: I read about it but I 15 don't know if that person was killed. 16 MR MPOFU: Surely the raid of such a 17 level that involves the President, being a joint raid 18 between the SANDF and the police, would have involved 19 people of your calibre before it was executed. I mean the 20 President would – 21 CHAIRPERSON: I take it the proposition 22 was a joint raid involving the defence force and the police 23 force, is that correct? 24 MR MPOFU: Yes, it was. That was 25 confirmed by the witness.</p>

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1 GENERAL PHIYEGA: No.

2 CHAIRPERSON: Was it a joint raid? I'm

3 asking out of ignorance, I'm not suggesting that it wasn't.

4 GENERAL PHIYEGA: No, in fact I mean

5 maybe Adv Mpofu should explain what he understands by a

6 joint raid.

7 MR MPOFU: A raid which is done in terms

8 of section 201 of Constitution, which I read out to you.

9 That's the only reason I read it to you, in terms of which

10 I know as a fact the President had to go to Parliament

11 because it was a joint raid and because this section says

12 only the President, as head of the National Executive, may

13 authorise the employment of the defence force in co-

14 operation with the police service, which is exactly what

15 happened. You can go and get the newspapers or go to

16 Parliament, but I would have expected you to know this.

17 GENERAL PHIYEGA: Advocate, I'm asking

18 what I'm asking because in those walkabouts in that area,

19 there were no soldiers walking about, there were police

20 walking about. The soldiers that were there were in the

21 outer perimeters, not walking about, not raiding and this

22 is what I was asking what your understanding is about this

23 whole thing.

24 MR MPOFU: Fair enough. No, fine.

25 COMMISSIONER HEMRAJ: Mr Mpofu, before

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1 you go any further, just for clarification are you saying

2 that this raid on the 14th September was an implementation

3 of phase 6?

4 MR MPOFU: That means - the witness,

5 Chair. That's why I started with those questions.

6 COMMISSIONER HEMRAJ: I didn't understand

7 that -

8 CHAIRPERSON: Let's put it clearly to

9 her. You know what phase 6 of the plan involved, Operation

10 Platinum as it was called. It involved, as I understand

11 it, going to the hostels and searching for and seizing

12 weapons. Slide 134 of exhibit L describes the, what is

13 described as the operational strategy as including as stage

14 6, cordoning and search of hostels. Now is it your

15 understanding that what happened in the middle of September

16 where the hostels were searched and weapons were seized,

17 was in fact the implementation of stage 6 of the plan? Is

18 that your understanding?

19 GENERAL PHIYEGA: Judge, this advocate

20 asked me that question earlier in his questioning. He

21 asked me about the various stages and I responded to this

22 Commission when I was talking about encircling, disarming

23 and arresting. The very slide was presented to me, to be

24 asked whether I understood the plan through to phase 6 and

25 that slide was read. I understood, as I read it in the

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1 plan, in that manner to say cordon and search of hostels

2 would be phase 6 as it was sitting there. I have already

3 answered that part of the question. What I'm wanting to

4 understand is what this advocate is asking me today, to say

5 involvement of the army and all those type of things. I

6 understand the phases as they are sitting here. I have

7 articulated myself in terms of 1, 2, 3. I have said in

8 terms of 4, 5, 6 surely those that have developed this plan

9 will clearly articulate those type of issues but I do

10 understand the processes I read in there.

11 [10:01] CHAIRPERSON: Well, the National

12 Commissioner says the information she wants from you is as

13 to precisely what you're asking about, so perhaps it's

14 appropriate that you endeavour to answer her question

15 before you ask further questions yourself.

16 MR MPOFU: Yes.

17 CHAIRPERSON: In the interests of clarity

18 and -

19 MR MPOFU: No, of course, yes. I was

20 just about to do that. The question you asked me was my

21 understanding of joint raid.

22 GENERAL PHIYEGA: Mm.

23 MR MPOFU: And I said I defer to you on

24 that one, so if the words "joint raid", if they were on the

25 periphery or what, I don't, I'm not there. Let's not call

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1 it a joint raid because maybe raiding is doing something

2 specific. Was it a joint operation?

3 GENERAL PHIYEGA: I think I've given you

4 my answer on that one and then you would have to still

5 answer me to say what's your understanding. I've said to

6 you the army was there, yes, and they were in the

7 periphery. The army was not walking in those - they were

8 not inside the hostels, they were not inside those

9 villages. So you can then answer [indistinct] better

10 understanding of your question.

11 MR MPOFU: Was it a joint operation or

12 not? I'm asking you this, really I'm sorry to make

13 commentary -

14 CHAIRPERSON: Mr Mpofu, hasn't she

15 answered the question?

16 MR MPOFU: No, she has not.

17 CHAIRPERSON: Give me a chance -

18 MR MPOFU: Yes or no.

19 CHAIRPERSON: What she says is there was

20 - if I can transpose what she said into the way I

21 understand it. What she says, there was a joint operation

22 in the sense that the police - sorry, that the defence

23 force were on the perimeter but that as far as what

24 happened inside the informal settlement was concerned her

25 evidence is, as I understand it, that the defence force

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1 weren't involved there. Now that, in one sense, is a joint
2 operation –

3 MR MPOFU: Yes.

4 CHAIRPERSON: If you look at the
5 totality.

6 MR MPOFU: I'm happy –

7 CHAIRPERSON: But if you look at what
8 happened in the informal settlement, or in the hostels, in
9 the hostels specifically, then it wasn't a joint operation
10 because the defence force weren't involved there. I think
11 that's her answer, as I understand it.

12 MR MPOFU: Well, then that's not an
13 answer then. If it was, but it wasn't. I'm saying –

14 CHAIRPERSON: No, no, it's a question –
15 Mr Mpofu, it's a question of terminology.

16 MR MPOFU: Yes.

17 CHAIRPERSON: What she's saying is in one
18 sense, on one definition a joint operation, looking at the
19 totality it was, but if you concentrate on what happened in
20 the hostels themselves it wasn't. That's her evidence.
21 You may not like it but that's her answer.

22 MR MPOFU: Ja, that's her answer. Okay,
23 let me tell you I'm not interested in what happened in each
24 hostel or each house or whatever. I'm asking you at
25 definitional level whether this was a joint operation or

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1 maybe let me make it clear, was it a joint operation such
2 as envisaged in section 201 of the Constitution?

3 CHAIRPERSON: Mr Mpofu, isn't that a
4 legal question really? I mean the National Commissioner
5 may think or may not think that it's covered by the section
6 but I'm not sure that her views on the matter would bind
7 us, in fact it wouldn't bind us and I'm not sure that they
8 really take the matter any further. You can argue later
9 whether it is, on a proper construction of the section, but
10 what's the point of asking her views on the matter?

11 MR MPOFU: Well, the point is very
12 simple. It is that this is a senior official, a person
13 envisaged by the Constitution. If it was a joint operation
14 designated by the President she obviously would have been
15 the first person to be consulted on this. It could never
16 have happened without her involvement.

17 CHAIRPERSON: Let me ask her that
18 question. Were you consulted about this operation which,
19 on one approach to the expression joint operation, was a
20 joint operation because the defence force were on the
21 periphery? Were you consulted about that before it
22 happened or weren't you?

23 GENERAL PHIYEGA: Judge, that would be a
24 responsibility of our NatJoint because now we're starting
25 to deal – I explained the issues of the NatJoint, the JOC

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1 and all of those type of issues earlier in my testimony and
2 I think I have answered Adv Mpofu. If he is not happy
3 sincerely with my answers, that's the best I can give you,
4 I can't give you more and that has got nothing to do with
5 my seniority.

6 MR MPOFU: On the 16th, part of the forces
7 that were deployed there included the South African Air
8 Force which is part of the South African National Defence
9 Force, are you aware of that?

10 CHAIRPERSON: Mr Semenya, I think we
11 debated this once before and I asked Mr Mpofu if there's a
12 crisis on Table Mountain and a air force helicopter is
13 required, do they have to get the President to ask him
14 whether they can use the helicopter and he said no, but I
15 see you've turned your light on, what do you want to say?

16 MR SEMENYA SC: Well, no more than what
17 the Chair has said but also that the facts are, it was the
18 helicopter belonging to the air force that was used.

19 CHAIRPERSON: I think there were two
20 defence force crew members as well, weren't there?

21 MR MPOFU: There were.

22 MR SEMENYA SC: Because they go in a
23 plane –

24 CHAIRPERSON: No, no, I understand but I
25 mean Mr Mpofu's point is that defence force people were

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1 involved because they flew the helicopter, that's his point
2 for what it's worth but anyway do you object to the
3 question or do you want to just make it clear that it was
4 just the helicopter and the crew involved? Is that your
5 point?

6 MR SEMENYA SC: Only that, Chair.

7 CHAIRPERSON: Alright, well you've made
8 your point. Yes, carry on, Mr Mpofu.

9 MR MPOFU: Thank you. Yes, the question
10 was that you must be aware that on the 16th, part of the
11 deployed forces there included South African Air Force
12 helicopter and crew, crew meaning staff.

13 GENERAL PHIYEGA: I think the earlier
14 articulation that talks about the helicopters that were
15 there would represent my response to you.

16 MR MPOFU: No. Madam, we don't have all
17 day, it's a simple question. Are you aware that part of
18 the deployed forces were, included the South African Air
19 Force and crew, yes or no?

20 GENERAL PHIYEGA: The answer that, the
21 earlier debate that you've listened to about the
22 helicopters that were there, we did not have forces from
23 the defence force.

24 MR MPOFU: Nobody said you had forces
25 from the defence force. I'm saying part of the, let's say

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1 personnel, let's use a neutral term, that was deployed on
 2 the 16th included the crew of the South African Air Force
 3 who were manning or operating a helicopter of the same
 4 organisation.
 5 GENERAL PHIYEGA: Advocate, I'm going to
 6 do this for you. You have met with General Annandale who
 7 would have answered you on that if you had asked and my
 8 other commissioners are coming in terms of deployment. I'm
 9 going to defer this question to them.
 10 MR MPOFU: That I understand. The reason
 11 I'm asking you is because the real question is this, do you
 12 know, since you would have been the person who is high
 13 enough to know or to get involved, whether in respect of
 14 the deployment of those members of the SANDF on the 16th,
 15 the prescript, namely section 201 of the Constitution, had
 16 been complied with? Either you know or you don't know.
 17 GENERAL PHIYEGA: I've already said to
 18 you in the operation that we had, other than the equipment
 19 from the defence force, we did not have defence force
 20 people working where we were.
 21 CHAIRPERSON: [Inaudible] answer Mr
 22 Mpofu's question. Mr Mpofu suggests that because the
 23 defence force members who were the crew of the helicopter
 24 were involved, that somehow brought into operation section
 25 201 of the Constitution and therefore he asks you – and

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1 whether that's correct or not is a matter that can be
 2 debated if the relevancy becomes clear, but that's his
 3 question. He says do you, because of what he says the
 4 section means as applied to the facts of our case, he wants
 5 to know from you were you consulted before the helicopter
 6 and the crew members were released and made available for
 7 service, as it were, at Marikana. That's your question, Mr
 8 Mpofu?
 9 MR MPOFU: Yes, for the operation.
 10 GENERAL PHIYEGA: Judge, I will say the
 11 deployment of equipment and people in terms of our
 12 operations will be clearly explained by the commanders that
 13 are going to come here, but I'm already on record as having
 14 said, I've explained what the NatJoints are and the
 15 NatJoints give us certain latitude to work with other
 16 departments and the commanders will explain it very clearly
 17 because it is within those particular NatJoint prescripts
 18 of operation that that will be explained.
 19 CHAIRPERSON: Carry on please.
 20 GENERAL PHIYEGA: And I'll again just say
 21 to you, Advocate, your interpretation of whether the
 22 equipment was driven by whatever is another issue but we
 23 did not have soldiers in our operation.
 24 MR MPOFU: Okay, I'm not going to debate
 25 that with you. I'll say that the common cause evidence is

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1 that those members were there so I'm not going to debate
 2 that with you and I'm going to assume that you don't know
 3 whether there was this permission or compliance with
 4 section 201 because you are referring that to the
 5 commanders. I was only asking that, I accept what you
 6 said, I was only asking that because my fear is that if I
 7 ask the commanders they will say, well, those things happen
 8 at a higher level between the President and the National
 9 Commissioner and then I'll have another merry-go-round, the
 10 commanders referring me to you but if you don't know, you
 11 don't know.
 12 CHAIRPERSON: Mr Mpofu, I think it's
 13 clear from the answers you've got so far that the National
 14 Commissioner can't throw light on this matter from her own
 15 knowledge –
 16 MR MPOFU: Which is –
 17 CHAIRPERSON: - which is why she has,
 18 very sensibly if I may say so, referred you to other
 19 witnesses who will be coming whom you can ask about it.
 20 MR MPOFU: Yes.
 21 CHAIRPERSON: I think we can move on.
 22 MR MPOFU: Ja, that's why I'm saying I
 23 accept that she doesn't know. Right, then there was an
 24 issue about the fact that – and I'm going to deal with this
 25 when we deal with what I call the two big issues but for

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1 now you remember I suggested to you on Monday that you were
 2 given false information as one of the bases for the
 3 situation in Marikana, namely so-called clashes between NUM
 4 and AMCU. Do you remember that discussion?
 5 GENERAL PHIYEGA: Yes, I do.
 6 MR MPOFU: In your statement –
 7 CHAIRPERSON: Paragraph?
 8 MR MPOFU: 19.
 9 CHAIRPERSON: Thank you. I think you're
 10 also referring to 17.
 11 MR MPOFU: I'm coming to 17.
 12 CHAIRPERSON: Yes.
 13 MR MPOFU: In your statement paragraph
 14 19, would it be correct to say one of the actions that you
 15 took as a result of information supplied to you is
 16 reflected there at paragraph 19 where you say, "I
 17 instructed the Provincial Commissioner to continue with
 18 their efforts to bring the competing unions to the
 19 negotiating table so as to ensure that the violence comes
 20 to an end." Is that correct?
 21 GENERAL PHIYEGA: Yes, it is my
 22 statement.
 23 MR MPOFU: No, that's not my question. I
 24 know it's your statement, that's why I said in your
 25 statement. I'm saying to you is the part that I've just

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1 read from your statement an indication of one of the
 2 actions that you took as a result of the information you
 3 had been given that this thing was, among other things,
 4 rooted in inter-union rivalry, clashes?
 5 GENERAL PHIYEGA: I said it is my
 6 statement.
 7 MR MPOFU: Alright, I'll take that to
 8 mean that it is one, I'll take it as a yes. If I'm right
 9 that it's a yes, then your evidence that you – or rather
 10 the misinformation, such as it may be about this being
 11 rooted in so-called clashes between AMCU and NUM, that it
 12 did not prompt any action on your part, which you gave in
 13 an answer to the Chairperson then cannot be correct.
 14 GENERAL PHIYEGA: You can repeat your
 15 question.
 16 MR MPOFU: Okay, I'll repeat it by –
 17 CHAIRPERSON: Before you repeat it, Mr
 18 Semenya wants to say something which may help you to repeat
 19 it in a more intelligible form.
 20 MR SEMENYA SC: I was going to say that
 21 the question is unclear to me, Chair.
 22 CHAIRPERSON: That doesn't help you to
 23 make it clearer but have a shot on your own.
 24 MR MPOFU: Yes. Okay, I'll try in a more
 25 intelligent form. On Monday I asked you about the –

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1 CHAIRPERSON: I don't know where you were
 2 on Monday but we weren't here on Monday.
 3 MR MPOFU: On the last time we were here,
 4 I asked you about this issue about the misinformation about
 5 inter-union rivalry, remember?
 6 GENERAL PHIYEGA: Yes, I remember the
 7 conversation.
 8 MR MPOFU: And it was in the course of my
 9 thesis that if the base information that you were acting on
 10 was incorrect, then the operation itself would naturally be
 11 doomed to fail. Simply story, if the diagnosis – if we can
 12 take an analogy from a simple, a more simple analogy from
 13 medicine, if the diagnosis of the problem is incorrect then
 14 the cure can hardly be correct. That was the thesis that I
 15 was developing. Now in the course of that I asked you this
 16 issue about NUM and AMCU. Then the Chairperson intervened,
 17 intervened and said – he intervened and said, well, did
 18 that inform any actions that you had and then you said no
 19 and then, so I couldn't ask you anything further. Now I'm
 20 saying from the answers that you've given me now that that
 21 answer was wrong because that information influenced this
 22 action that you and I have just agreed on paragraph 19.
 23 Are you following me now?
 24 [10:21] GENERAL PHIYEGA: No, I don't.
 25 MR BURGER SC: Chair, I don't understand

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1 the diagnosis and the prognosis, the logic, the relevance,
 2 I don't understand what's going on here but on a point of
 3 relevance I object to ask a witness, with an incoherent
 4 summary of evidence given on a non-day and evidence now,
 5 whether there's a conflict. That's clearly a matter for
 6 argument and we're wasting time so I ask for a ruling that
 7 you rule that this is irrelevant and it shouldn't be
 8 pursued and I invite my learned friend to pose a question.
 9 CHAIRPERSON: What do you say about that,
 10 Mr Mpofo?
 11 MR MPOFU: Well, the level of the
 12 objection I think is symbolised by the fact that –
 13 CHAIRPERSON: No – no, don't go there.
 14 Just deal with the objection.
 15 MR MPOFU: Well, he mustn't go there. He
 16 knows I made a mistake about Monday and Tuesday, why is he
 17 making a meal out of it? I'm saying that on the last time
 18 that we were here, whatever day it is if Mr Burger wants me
 19 to specific, the witness gave a particular answer to you,
 20 Chairperson, and I'm saying, I've read a portion of her
 21 statement which shows that that answer was wrong. What's
 22 wrong with that?
 23 CHAIRPERSON: Mr Mpofo, before Mr Burger
 24 answers, where's it taking us? Your point, as I understand
 25 it, is this – Lonmin said to the Commissioner there have

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1 been clashes between the two unions. That, you say, was
 2 incorrect because AMCU were not involved, this is the
 3 contention that you advance. The question was whether,
 4 assuming that the information was incorrect, did the
 5 National Commissioner do anything about it based upon it.
 6 She said no. You now say that, you point out that she said
 7 in her statement para 19 that she instructed the Provincial
 8 Commissioner to continue with her efforts to bring the
 9 competing unions to the negotiation table so as to ensure
 10 the violence comes to an end. You say that was based upon
 11 an acceptance of the information that there'd been clashes
 12 between the two unions. Now assuming all those things are
 13 correct, how does that contradiction, if you call it that,
 14 help us any further? Even if AMCU weren't involved, which
 15 is your thesis, it obviously didn't do any harm inasmuch as
 16 some at least of the strikers were AMCU members, even if
 17 they weren't striking in their capacity as AMCU members and
 18 some of the people who were involved in the clashes were
 19 AMCU members, even if they weren't wearing their AMCU T-
 20 shirts at the time. How could an attempt to bring the
 21 unions together in the hope that the persons who could
 22 exercise an influence on their members, how could that in
 23 any way contribute to the clashes, further clashes and to
 24 what happened ultimately on the 16th? How does that line of
 25 enquiry help us at all to answer any of the questions we're

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1 called upon to answer?
 2 MR MPOFU: Well, Chairperson, unless this
 3 Commission is telling us that the misdiagnosis of the
 4 problem is irrelevant as to whether or not the prescribed
 5 solution will fix the problem, if that is what the
 6 Commission is saying, well then it's completely irrelevant
 7 but if, as I contend, that a series of misdiagnoses of the
 8 problem would inevitably result in a cure or plan or
 9 whatever you call it that is directed at that misdiagnosis,
 10 not at the reality on the ground, if that's irrelevant,
 11 well, I will move on to something else but I cannot for the
 12 life of me –
 13 CHAIRPERSON: Mr Mpofu, you know you put
 14 the proposition hypothetically, if it's irrelevant you'll
 15 move on. Then I'm asking you is it relevant?
 16 MR MPOFU: It is.
 17 CHAIRPERSON: Why?
 18 MR MPOFU: Because – because, well, I'll
 19 say the same thing in reverse, because if the police
 20 planned an operation which killed 34 people and injured so
 21 many people on the basis of the wrong information as to
 22 what is actually happening, then surely that is relevant as
 23 to whether the cure that they prescribed of bringing
 24 whatever they did, was the one that was called for by the
 25 objective situation. That is very relevant, Chairperson.

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1 If I go to a doctor and I say I have a headache and they
 2 gave me pills for a foot, surely that should be relevant as
 3 to whether the cure that they are giving me corresponds
 4 with the real problem that I'm suffering from. I don't see
 5 how that can be irrelevant.
 6 CHAIRPERSON: My colleague Commissioner
 7 Tokota, when the interpretation is finished, wants to ask
 8 you a question.
 9 MR MPOFU: Yes.
 10 COMMISSIONER TOKOTA: May I say this, Mr
 11 Mpofu, bearing in mind that the evidence we have so far
 12 taken from Brigadier Mkhwanazi is that when POP has to deal
 13 with crowd management, the first they do is to consult with
 14 leaders of the people concerned. Also bearing in mind that
 15 the employees, some of them were members of AMCU and some
 16 were NUM or in the transition of being members of AMCU, and
 17 bearing in mind that also the leaders were invited to go
 18 and speak to the employees to try and end the violence,
 19 what is now wrong in the statement of the National
 20 Commissioner asking the Provincial Commissioner to involve
 21 these leaders so as to end this violence? What's wrong in
 22 that?
 23 MR MPOFU: Thank you. No, nothing
 24 whatsoever, Commissioner. Actually it's the greatest thing
 25 to do. That's not what I'm addressing. All I'm addressing

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1 is that that prescription was directly caused by the
 2 misinformation that this was a clash between AMCU and NUM
 3 and bear in mind that the witness of SAPS itself, Mr X, and
 4 the evidence in front of this Commission is this, this is
 5 what Mr X said, "We decided" – paragraph 3 – "We decided
 6 that we are not going to involve the unions in this matter
 7 because we thought that the union members are taking sides
 8 or supporting the employer." That's the evidence. That's
 9 the evidence of Magidiwana, that's the evidence of Mr X and
 10 yet despite that, when the people had decidedly not wanted
 11 to involve the unions, the police acted on the false
 12 assumption – not their fault, because that's what they were
 13 told – on the false assumption that at the root of this is
 14 NUM and AMCU. Mr Mathunjwa came here and said they were
 15 not involved. His involvement was to try and help. Mr
 16 Zokwana came and said they were not involved as a union.
 17 He, obviously, after Mr Gwala's intervention was willing to
 18 help, which is a great thing. No, nobody is pushing that
 19 away, that's not the point I'm addressing. I'm addressing
 20 the issue of prescribing a plan based on mis - on false
 21 premises.
 22 COMMISSIONER TOKOTA: But as I understand
 23 that involvement only relates to the wage negotiations or
 24 wage dispute or remuneration related issues, not to the
 25 violence and as I understood the evidence here of the

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1 police is that they don't want to get involved into these
 2 labour relations, they are only there for the violence,
 3 hence she says to ensure that the violence comes to an end,
 4 involve the leaders – not, she's not talking about the –
 5 that involvement you refer to there where the employees
 6 said we don't want to involve unions, they don't want to
 7 involve them insofar as the remuneration is concerned.
 8 That's how I understood.
 9 MR MPOFU: Well, even if - understands it
 10 the same way as you, Commissioner, but it doesn't say so in
 11 the part that I read so I don't know where that comes from,
 12 but I'll move to something else if it's not clear.
 13 CHAIRPERSON: I've got another problem.
 14 I can understand your analogy. You've got a sore foot, you
 15 go to a doctor and he gives you medicine for a sore neck
 16 and obviously it doesn't help the sore foot, I understand
 17 that, I understand that argument. In this case can you
 18 suggest that the involvement of the union leaders made
 19 things worse? If it was a good idea to get the presidents
 20 of the unions along in the hope that their members, some of
 21 whom were involved, remember, on both sides, would listen
 22 to what the presidents were going to say, that couldn't
 23 have done any harm. The situation wasn't made worse, it
 24 wasn't like giving someone medicine for a sore foot when
 25 he's got a sore neck. So how does the instruction given to

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1 the Provincial Commissioner that you're referring to, based
 2 you say on wrong facts, how does it contribute to the
 3 situation that subsequently arose?
 4 MR MPOFU: Well, Chairperson –
 5 CHAIRPERSON: If it didn't, then that's
 6 irrelevant. If it did, obviously then you can take the
 7 matter further but I don't understand on what basis you can
 8 contend that things were made worse by the instruction to
 9 the Provincial Commissioner to continue with her efforts to
 10 bring the competing unions to the negotiating table, which
 11 is the passage you're dealing with at the moment.
 12 MR MPOFU: Chairperson, I'm not arguing
 13 my case today. I'll do so in six months' time. All I'm
 14 doing now –
 15 CHAIRPERSON: You've got to satisfy us.
 16 It's shorter than six months' time, it would appear –
 17 MR MPOFU: Yes.
 18 CHAIRPERSON: But you've got to satisfy
 19 me that the questions are actually relevant, otherwise
 20 asking them is a waste of time and time is precious.
 21 MR MPOFU: Well, Chairperson, relevance
 22 exactly, is exactly that. Relevance means that if I say
 23 you prescribed a headache tablet for a foot, then surely
 24 that's relevant as to whether you solve the right problem.
 25 As to whether, in this particular instance, that is a

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1 matter that Mr Semenya and I one day will say – all I'm
 2 doing now is just the fact that the wrong prescription was
 3 made, full stop. Once I've done that, one day I will then
 4 come and say – I can't now – so the issue of relevance is
 5 at the side. The question as to whether I will succeed in
 6 persuading you one day that that misdiagnosis was fatal or
 7 helpful or whatever, is a matter for argument.
 8 CHAIRPERSON: Wouldn't that only be –
 9 MR MPOFU: It's not a matter for the
 10 witness.
 11 CHAIRPERSON: Wouldn't that only be the
 12 case if all that was done was to get the presidents of the
 13 two unions to come and address the people? If that was all
 14 that was done, the police put all their eggs, as it were,
 15 in that basket and said we're going to solve the problem by
 16 one thing only, by getting the two presidents to come and
 17 speak and that was the wrong approach for the reasons that
 18 you mentioned, then there'd be something in the point but
 19 that isn't all that happened, is it?
 20 MR MPOFU: I don't know, Chairperson.
 21 That's my answer. The answer –
 22 CHAIRPERSON: The police had a plan – no,
 23 but we know. We know the evidence. The police had a plan
 24 which you say was an ill-conceived plan which was destined
 25 to fail and I can – the police say they have another answer

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1 to that which we'll deal with in due course but it isn't as
 2 if all the police wanted to do was to bring the presidents
 3 of the two unions there and say well, that's it, that's all
 4 we can do and that's all we're going to do and that was the
 5 wrong medicine and therefore the patient died. That is
 6 effectively what you're arguing –
 7 MR MPOFU: No.
 8 CHAIRPERSON: But those aren't the facts.
 9 MR MPOFU: No – no, I'm not arguing –
 10 these are cumulative things. If there's one misdiagnosis
 11 it doesn't mean it's the only one. I never said that. It
 12 might be a cumulative effect of a series of misdiagnoses
 13 which kills the patient, if you'll excuse the pun. That's
 14 the issue, that's one thing, the issue of relevance and the
 15 Chair might be right but we can't – I'm not, I can't be
 16 arguing my case now with the Chair. The question of
 17 relevance is simply whether it is possible that this
 18 misdiagnosis might –
 19 CHAIRPERSON: Alright. Mr Burger, it
 20 seems to me that it would be sensible to just ask the
 21 question and let's get the answer. We've wasted more time
 22 in debating it than we would've done if he'd asked the
 23 question and got the answer.
 24 MR MPOFU: Yes.
 25 CHAIRPERSON: Let's just carry on –

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1 MR BURGER SC: With respect, sir, I have
 2 a right to reply and I have an objection, I'd like to have
 3 a ruling on that.
 4 CHAIRPERSON: I've given you my prima
 5 facie view. I'm not depriving you of your right to reply,
 6 I would never do that and if I did you'd object, correctly.
 7 MR BURGER SC: May I then reply?
 8 COMMISSIONER HEMRAJ: Before you do, Mr
 9 Burger, I just want to pose a question to Mr Mpofo. Do I
 10 understand that for the purposes of your question, the
 11 interpretation you put on the statement in paragraph 19 is
 12 that the Commissioner said to the Provincial Commissioner,
 13 get the two unions together to sort out their problems
 14 between them? Is that the interpretation you're putting on
 15 the statement?
 16 MR MPOFU: No – no. The only issue is –
 17 you see there are two issues here. One is credibility, the
 18 other one is relevance. The relevance issue, the
 19 credibility issue is that the witness said he took no
 20 action in respect of that information, which clearly he
 21 did, she did. So that's the credibility issue and I don't
 22 know how this objection can go around that but put that
 23 aside, the relevance issue, properly so-called, is that if
 24 I'm able at the end of the case to show through this
 25 witness and various others that there was a series of

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1 misdiagnoses of the problem, then I should be able to argue
 2 then that inevitably the plan had to be doomed to fail.
 3 COMMISSIONER HEMRAJ: Yes, I understand
 4 that. I just need to know for the purpose of your question
 5 -
 6 MR MPOFU: Yes.
 7 COMMISSIONER HEMRAJ: - whether you're
 8 interpreting this statement in paragraph 19 as an
 9 invitation to bring the two unions together to settle their
 10 differences between them. Is that how you interpret this -
 11 MR MPOFU: Yes, because it says - I can't
 12 remember the wording now but it says to bring the warring
 13 unions, or something to that -
 14 COMMISSIONER HEMRAJ: It says competing
 15 unions.
 16 CHAIRPERSON: Competing.
 17 MR MPOFU: Yes, that that word suggests
 18 exactly the connection between that and the information
 19 given by Sinclair or whoever. Thank you but I'll leave it
 20 because, to save time. I'll leave it, Chair, in the
 21 interests of time.
 22 CHAIRPERSON: - questions, I don't have
 23 to rule on Mr Burger's objection.
 24 MR MPOFU: No, you don't.
 25 CHAIRPERSON: You're conceding it, by

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1 implication.
 2 MR MPOFU: Ja.
 3 CHAIRPERSON: Carry on.
 4 MR MPOFU: I am. Thank you, I couldn't
 5 put it better than Mr Mahlangu but since it hasn't been
 6 tran - we'll leave it. You then, you described Lonmin as
 7 an economic citizen. What did you mean by that?
 8 GENERAL PHIYEGA: They are a business.
 9 MR MPOFU: And did you understand
 10 therefore that insofar as there might have been a dispute
 11 between them and the protesters it was a dispute between an
 12 economic citizen and human citizens with human rights?
 13 GENERAL PHIYEGA: You articulated it
 14 better yesterday by talking of employer/employee.
 15 MR MPOFU: Yes, thank you. Mr Burger
 16 will tell you that we were not here yesterday but I was.
 17 GENERAL PHIYEGA: You can tell me.
 18 MR MPOFU: I won't tell you such a thing.
 19 Now are you also, are you aware that there was about a 48
 20 hour prelude, peaceful prelude before the massacre?
 21 GENERAL PHIYEGA: No, I'm not. I don't
 22 know about that prelude, maybe you can explain it to me.
 23 [10:41] MR MPOFU: No it's fine. If you really
 24 were not aware there it won't take the matter further. All
 25 - the evidence is that on the 14th and the 15th it was

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1 relatively more peaceful than the other days. The only
 2 blotch to that is that on the 14th the body of Mr Twala was
 3 found but we don't know when he was killed but on all
 4 accounts of the police and even of Lonmin there was more
 5 peace.
 6 MR BURGER SC: Sir, there was certainly
 7 not more peace from Lonmin's side or in my perspective on
 8 the Wednesday and the Tuesday. Mr Twala's body was found
 9 in the road next to the koppie, he had been brutally
 10 murdered and left in the road. We don't know when but we
 11 discovered that on the Tuesday and on the Wednesday - we
 12 have the transcript of the speeches at the koppie as we
 13 have of the transcript on the morning of the 16th. But
 14 speaking for Lonmin that statement is not correct.
 15 CHAIRPERSON: Okay, Mr Mpofo, I think you
 16 can reformulate. I think I know what you want to say, you
 17 can reformulate the question to get around that problem.
 18 MR MPOFU: I will, Chairperson.
 19 CHAIRPERSON: There was violence,
 20 obviously on the Tuesday, someone died on the Tuesday as
 21 Burger says, we don't quite know when but he died on the
 22 Tuesday, the body was found then. Thereafter there were
 23 still a continuation of illegal gathering, illegal in the
 24 sense that the people there had weapons but no one else
 25 died and nobody else was injured as far we known at that

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1 time. I mean that's basically exactly what you want to
 2 say. Reformulate the question in a way that avoids the
 3 objection and just carry on.
 4 MR MPOFU: Thank you, Chairperson.
 5 Please the question touches - actually I was explaining to
 6 you bear in mind the word relatively peaceful which I used
 7 to accommodate all those things that have been said and the
 8 fact that before the following was said by Mr Albert
 9 Jamieson of Lonmin in his email to Mr Ramaphosa.
 10 "Thankfully last night was relatively peaceful,"
 11 relatively, the word that I used, "as is this morning."
 12 Now bearing those two things in mind, all I was saying was
 13 whether you were aware or not that there was this relative
 14 peace and you've already answered the question that you
 15 were not aware, so we can move on. I'm just giving you the
 16 background. Okay hopefully before the break I just wanted
 17 to deal with, and I want to try and short circuit this,
 18 there is a report which is the statement Gareth Douglas
 19 Newham which has been filed by the LRC and I have their
 20 permission -
 21 CHAIRPERSON: Ms Pillay would that be
 22 FFF31?
 23 MS PILLAY: That's correct, Chair.
 24 CHAIRPERSON: While we're about it shall
 25 we mark Mr Ramaphosa's statements as well because I take

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1 it, because you have given notice that you're going to
 2 cross-examine on that, so let's get those exhibits in while
 3 we're about it. The FFF31 is the statement by GD Newham
 4 and FFF32 is the statement MC Ramaphosa. Headings of both
 5 the statements I see are not out of date but nothing turns
 6 on that.

7 MR MPOFU: No. Mr Chairperson, you know
 8 to save time, General, instead of going through the Newham
 9 statement the contents of which were consulted to you by Mr
 10 Bizos. I happy for now that at least it's an exhibit. So
 11 I'm going to ask you a question that almost encapsulates
 12 the gist of what is in that statement and it is something
 13 that I heard on the news this morning coming here which is
 14 that 500 police officers as we speak according to IPID are
 15 facing criminal charges for murder, attempted murder and
 16 fraud. Is that the kind of scale of the problem of alleged
 17 lawlessness within the police?

18 COMMISSIONER HEMRAJ: Do you mean
 19 currently?

20 MR MPOFU: Yes.

21 COMMISSIONER HEMRAJ: Yes.

22 MR MPOFU: Yes, yes this morning, I heard
 23 this as I was parking here this morning.

24 MR SEMENYA SC: Sorry, Chair, does this
 25 have anything to do with the terms of reference.

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1 MR MPOFU: Your answer to Mr Semenya's
 2 question, what's it got to do with the terms of reference?

3 MR MPOFU: Yes it does, Chairperson,
 4 because if one of outcomes that is expected in the terms of
 5 reference from this Commission is that - or could
 6 considerably be that the police behaviour should be
 7 improved. I'm putting it at a very broad level going
 8 forward so that something like this should never happen
 9 again. Then that improvement can only be used with a base
 10 statistic and if that base statistic is bad then you know
 11 what to improve. In other words if the problem was two
 12 people in ten years it's one thing, but if the problem is
 13 500 as we speak then it goes back to the issue of
 14 diagnosis. Before we can diagnose the cure of the problem
 15 you must know the extent of its affliction.

16 MR SEMENYA SC: I've been reticent, Chair
 17 to object because then it attracts this obfuscation. It is
 18 not an answer which you are giving, how does the
 19 statistical information of today, in the news, have any
 20 bearing on how the police conducted themselves during the
 21 relevant period of this inquiry?

22 CHAIRPERSON: Mr Mpofu, I can understand
 23 if 500 is the figure today, it might be relevant to know
 24 what the figure was in August 2012 and might not have been
 25 dramatically different but I don't quite know where this

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1 point takes you. What you've got is a statement in
 2 paragraphs 24 and following of Mr Newham's statement, he
 3 points ways in response to his presentation, I think he's
 4 put his presentation before parliament.

5 MR MPOFU: That is correct.

6 CHAIRPERSON: And he does refer in
 7 paragraph 34 to what - well he gives statistics actually in
 8 that section and he does refer to statements made by the
 9 Minister about the police never getting tired ridding them
 10 - let me quote the exact words, "We should never get tired
 11 of ridding the SAPS of rotten apples." And there's the
 12 statement by this witness's predecessor, "There's no place
 13 for tsotsie cops in the SAPS, we're rooting the rotten
 14 elements out diligently." Now I don't know if you can put
 15 that to her and ask her if she's aware of those statistics
 16 and aware of those statements but how does that take us in
 17 further once you've got that on record?

18 MR MPOFU: Chairperson, please accept
 19 this. I was trying to do a short cut, the path I was going
 20 to choose it's not working, so I'm not going to do the
 21 short cut. I'm going to go through the statements the long
 22 way. I was simply trying to encapsulate the news of this
 23 morning and obviously to say if the problem is as prevalent
 24 as it was this morning, it couldn't have just arisen in the
 25 past six months. But forget all that, we'll have to go

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1 through the -

2 CHAIRPERSON: - tea shortly, National
 3 Commissioner, you've heard what was put to you, the present
 4 statistic is 500 policemen who were, as I understand it are
 5 the subject of proceedings of various kinds. Now I take it
 6 that in August last year the number may not have been
 7 exactly 500, but presumably it had been in that vicinity,
 8 is that correct? I'm not asking you for the exact figure
 9 because I can't expect you to say that but this isn't a
 10 problem that's escalated dramatically since August last
 11 year and the numbers have gone up to 500 from a much lower
 12 figure. Would that be correct?

13 GENERAL PHIYEGA: Chairperson, I think
 14 when we come back for tea we can try and call just to get
 15 you the stats as at that time so that we can deal with it
 16 but it wouldn't be something that would jump to 100%, 100%
 17 more or whatever.

18 CHAIRPERSON: Now what you have, of
 19 course it's IPID putting in place by an act of parliament
 20 to deal with the problem of what one can call rogue
 21 policemen, is that correct?

22 GENERAL PHIYEGA: It is correct, Chair.

23 MR MPOFU: Mr Semenya seems -

24 CHAIRPERSON: Mr Semenya doesn't like -
 25 sorry Mr Semenya what do you want to say?

<p style="text-align: right;">Page 10915</p> <p>1 MR SEMENYA SC: I'm incapacitated, Chair. 2 I don't know whether IPID is investigating matters that 3 commenced three, four, five years ago whether they have 4 de-escalated now because they were higher in the years 5 before, we don't have this information. 6 CHAIRPERSON: There's substance to that 7 point too. 8 MR MPOFU: Chairperson - 9 CHAIRPERSON: I know you've got a 10 difficult job. 11 MR MPOFU: Yes. 12 CHAIRPERSON: And I don't want to hamper 13 you unnecessarily, on the other hand you've heard me on the 14 subject of the water in the bucket, that we need to use the 15 time we have which is limited as profitably as we can. So 16 bear that in mind and let's proceed. 17 MR MPOFU: Yes, Chairperson. 18 CHAIRPERSON: The witness has said she'll 19 get you the information if you want it as it was at August 20 last year to see how it compares with the 500 of this 21 morning but once we have that and she says - assuming that, 22 can we deal with this crisply and move on? 23 MR MPOFU: That's exactly - 24 CHAIRPERSON: Don't go beyond there 25 because you'll really -</p>	<p style="text-align: right;">Page 10917</p> <p>1 the tea adjournment, resume as close to quarter past eleven 2 as we can. 3 [COMMISSION ADJOURNS COMMISSION RESUMES] 4 [11:27] CHAIRPERSON: The Commission resumes. 5 I'm sorry we didn't resume at the time I indicated but that 6 was because of a happy event, it's the birthday of 7 Brigadier Beylveld and we're invited to enjoy some 8 refreshments with him and we wish to extend our good wishes 9 to him and wish him many happy returns and congratulate him 10 on the anniversary of his birth and we look forward to the 11 ongoing co-operation with him, a valuable member of the 12 Commission staff. I also want to say something I should 13 have said earlier, but perhaps I had to wait a little bit 14 longer. The families have now returned from their absence 15 and I wanted to welcome them back but I suppose I better do 16 that just before we adjourn for lunch because I see they're 17 not all in the auditorium at the moment. National 18 Commissioner, you're still under oath. Mr Mpofo, sorry Mr 19 Semenya. 20 MR SEMENYA SC: Chair, I just for the 21 record state that as far as we know the death of the lady 22 councillor was not a part of the incident of the Section C 23 here - 24 MR MPOFU: Of the? 25 MR SEMENYA SC: Was not part of the</p>
<p style="text-align: right;">Page 10916</p> <p>1 MR MPOFU: That's what I was trying to 2 avoid. 3 CHAIRPERSON: Well continue avoiding. 4 MR MPOFU: Ja I will. General, the point 5 that - I'm taking it from the - even better shortcut that 6 the Chairperson has taken. If we assume that there is no 7 dramatic jump the thesis that Mr Newham proposes in the 8 document in front of you is that this problem cannot be 9 resolved if the officialdom, people like yourselves view it 10 as so-called rotten applies, rogue elements when these 11 statistics show that it is so prevalent that it is you know 12 almost endemic so to speak. Do you agree with that thesis 13 of Newham or don't you? If you don't, you don't and then 14 we'll move on. 15 GENERAL PHIYEGA: I don't agree with the 16 thesis. 17 MR MPOFU: Okay so you don't think the 18 problem is endemic as I put it? Okay, Chairperson, I'm now 19 going to move to what I call the two big points. 20 CHAIRPERSON: Before you get into some 21 big points, it's now three minutes to eleven, do you want 22 to start or do you want to resume after tea? 23 MR MPOFU: I'd rather resume after tea, 24 Chair. 25 CHAIRPERSON: We'll take the adjournment,</p>	<p style="text-align: right;">Page 10918</p> <p>1 Section C, it was part of an unrest that happened at the 2 same time. 3 MR MPOFU: During that same season, ja 4 that's also our information. 5 CHAIRPERSON: An attempt was going to be 6 made to ascertain how the - this morning's figure of 500 to 7 which Mr Mpofo referred, compares with the figure that was 8 on the table as it were or on the radio screen in August 9 last year. I don't know if that information isn't 10 available yet. Mr Mpofo. 11 MR MPOFU: Thank you, Chairperson. 12 CHAIRPERSON: Are enough people back for 13 me to - 14 MR MPOFU: No, I will indicate - 15 CHAIRPERSON: Will you indicate? 16 alright. 17 MR MPOFU: Thanks, Chair. 18 CHAIRPERSON: Mr Budlender, do you want 19 to say something? 20 MR BUDLENDER SC: Chair, I just want to 21 note that you have previously ruled that the death of the 22 counsellor is outside the terms of reference of this 23 Commission, so we surely can't re-traverse that ground, 24 you've made a ruling. 25 CHAIRPERSON: You -</p>

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1 MR MPOFU: I was but apropos what Mr
2 Budlender is saying I'm obviously entitled, given the
3 president's stance and the fact that the matter is now in
4 evidence been linked to phase 6. If they would like me to
5 make an application for that ruling to be reconsidered I'll
6 do it at the appropriate time.

7 CHAIRPERSON: I take it it's been
8 unlinked again because it's now accepted I take it, that
9 the shooting didn't take place as part of the search and
10 seize I didn't actually a cordoning and seizure. That took
11 place during some unrest which then occurred, that -

12 MR MPOFU: No, no. That's exactly what I
13 said that the so-called unrest happened in the course of
14 the search and seizure so I don't know what the difference
15 is.

16 CHAIRPERSON: You moved on, if you're
17 going to bring an application do so at the proper time and
18 so it can be properly considered.

19 MR MPOFU: Thank you, Chairperson. Thank
20 you.

21 CHAIRPERSON: Mr Mpofo, please proceed.
22 I did think Mr Madlanga put his light on before we took the
23 adjournment. I don't know whether he wants to say
24 something as well which is relevant to the further progress
25 today.

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1 MR MADLANGA SC: My issue is long
2 resolved, it's related to Mr Burger's objection, Mr Chair.
3 Thank you.

4 CHAIRPERSON: Alright, so Mr Mpofo, would
5 you like to proceed?

6 MR MPOFU: Yes thank you, Chairperson.
7 General, we're now going to move on to some quite serious
8 issues so I think that in - which have some serious
9 implications, I'd like to precede that by asking you
10 without quoting other cross-examiners, whether you are
11 aware of the implications of giving false evidence under
12 oath?

13 GENERAL PHIYEGA: Yes, I do.

14 MR MPOFU: And you are aware that further
15 than the usual criminal sanctions that accompany such
16 conduct it is - there might be additional implications for
17 someone who holds a senior public office.

18 GENERAL PHIYEGA: I'm aware.

19 MR MPOFU: Is it still your evidence that
20 you are not, or you were not ever aware that at the root of
21 this issue was a labour dispute or a wage dispute?

22 CHAIRPERSON: I don't recall the witness
23 quite having put it in those terms. Is that what you said?
24 You weren't aware that there was remuneration dispute -

25 GENERAL PHIYEGA: Judge, I did say in my

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1 testimony that what brought us there was the instability,
2 was the violence as police.

3 MR MPOFU: Ja, okay. I'll ask you again
4 in case my memory or the judge's memory, or yours is not
5 correct. When, if ever did you become aware that the root
6 of the issues in Marikana was a wage dispute or a labour
7 dispute and more specifically a wage dispute?

8 GENERAL PHIYEGA: Advocate, I think I
9 will again say this to you in my response. I've clearly
10 articulated myself in this testimony that the drivers or
11 whatever happened there, it could be whatever but what
12 brought us there was the fact that there was instability
13 and there was violence in that place and our duty as police
14 is to ensure that public order is maintained, law is
15 enforced and stability is maintained so that people can go
16 on with their life.

17 MR MPOFU: General I'm afraid I'm not
18 going to allow you to evade this question. I'm asking you
19 a simple question, when, if ever, if you never, it's never,
20 when, if ever did you become aware that at the root of the
21 issues in Marikana was the labour dispute and wage dispute?
22 If you never became aware, you never became aware, if you
23 did, you did, if you remember when then you say so.

24 GENERAL PHIYEGA: To the best of my
25 ability I've answered this question. If it's not

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1 acceptable then I can't answer that.

2 CHAIRPERSON: National Commissioner, may
3 I ask you a couple of questions on this point? Did you
4 know that there was an unprotected strike taking place at
5 Marikana?

6 GENERAL PHIYEGA: Yes, I have answered
7 those, Judge.

8 CHAIRPERSON: Did you know what the
9 unprotected strikers wanted, what their demand was?

10 GENERAL PHIYEGA: In as far as it's
11 public knowledge for everybody but not the details that
12 he's asking me.

13 CHAIRPERSON: I know it is clear from the
14 evidence that we've heard that they were demanding R12 500
15 per month, the rock drill operators, is that right? Is
16 that your understanding too? Did you know that this
17 unprotected strike was accompanied, according to certainly
18 evidential material before this Commission and I think a
19 matter of public recorded in the newspapers had been
20 accompanied by allegations that there'd been incidents of
21 intimidation and violence, damage to property and murder.
22 Did you know that?

23 GENERAL PHIYEGA: Yes, Judge.

24 CHAIRPERSON: And I take it you knew all
25 that before you went to Marikana.

<p style="text-align: right;">Page 10923</p> <p>1 GENERAL PHUYEGA: It is true, yes.</p> <p>2 CHAIRPERSON: I think that's the</p> <p>3 information you wanted, Mr Mpofo?</p> <p>4 MR MPOFU: Did you say on Tuesday that</p> <p>5 you were not aware of the dispute between Lonmin and the</p> <p>6 protestors being a wage dispute? Or did you not say that?</p> <p>7 CHAIRPERSON: - Mr Mpofo, my recollection</p> <p>8 of Tuesday was there was a bit of a terminological debate</p> <p>9 as to whether it's properly described as a wage dispute,</p> <p>10 industrial dispute and so on and some of these expressions</p> <p>11 I believe have technical meanings in the labour relations</p> <p>12 act but if one uses a neutral term like remuneration</p> <p>13 dispute then I think it's clear there was such a thing but</p> <p>14 I think to be fair to the witness the answers to which you</p> <p>15 are referring were given in the context of what one can</p> <p>16 describe as a terminological dispute. But perhaps - we</p> <p>17 don't have to waste time on it now, the record will</p> <p>18 eventually tell us whether I'm right or you are right.</p> <p>19 MR MPOFU: I think I'll ask this,</p> <p>20 Chairperson, since it was my questioning. I will ask this</p> <p>21 probably better since it was my questioning. How I can do</p> <p>22 that, I was questioning the witness in respect of the issue</p> <p>23 of impartiality, 1. 2. I then said that generally in the</p> <p>24 work that they do would involve disputes and conflicts</p> <p>25 between people. I then said in this case, bringing it here</p>	<p style="text-align: right;">Page 10925</p> <p>1 closing the door on that but I think in the interest of</p> <p>2 clarity and moving the debate forward let's hear what Mr</p> <p>3 Tip has to say because it may well help us to focus our</p> <p>4 thoughts on the right questions as we move forward.</p> <p>5 MR MPOFU: Ja. Subject to this,</p> <p>6 Chairperson, I'm not at this stage in what the legal</p> <p>7 definition, I'm interested in what the witness, whether the</p> <p>8 witness understood there to be a wage dispute, whatever she</p> <p>9 understands that to mean.</p> <p>10 CHAIRPERSON: I'll let you go and ask</p> <p>11 your questions later.</p> <p>12 MR MPOFU: Okay.</p> <p>13 CHAIRPERSON: But let's hear what Mr Tip</p> <p>14 has to say because he is imminent labour lawyer and he will</p> <p>15 be able to direct our thoughts on the right -</p> <p>16 MR MPOFU: I'm also a labour lawyer, I'm</p> <p>17 not imminent but a labour lawyer -</p> <p>18 CHAIRPERSON: Mr Mpofo, you know</p> <p>19 something, [inaudible] don't do it. Carry on Mr -</p> <p>20 MR TIP SC: I'm merely going to, I know</p> <p>21 Mr Mpofo to be a labour lawyer and he will therefore</p> <p>22 appreciate what I'm about to say and that is if one is</p> <p>23 going to use a technical phrase like wage dispute then it</p> <p>24 must be done accurately. And in our law a wage dispute</p> <p>25 arises when there has been a proper process of the</p>
<p style="text-align: right;">Page 10924</p> <p>1 now there was a dispute, without even confining it between</p> <p>2 Lonmin and the protestors and she said she was not aware of</p> <p>3 that and that's when we then moved to the whole debate of</p> <p>4 labour dispute because I was now qualifying the dispute</p> <p>5 that I am referring to. So the first question is whether</p> <p>6 she was aware that underlying in this particular instance,</p> <p>7 was among other things a dispute as between Lonmin and the</p> <p>8 protestors of any kind and then whether she knows that it</p> <p>9 was a wage dispute.</p> <p>10 MR TIP SC: On Tuesday in the course of</p> <p>11 my raising the need for a clarification of what the case of</p> <p>12 Mr Mpofo's clients were concerning Mr Zokwana, I referred</p> <p>13 to the fact that there was a question about correct</p> <p>14 terminology relating to the use of the phrase "wage</p> <p>15 dispute" which Mr Mpofo had put as an acceptable legal</p> <p>16 definition of the position. And in case there might be</p> <p>17 some inherent confusion as a consequence of that, may I be</p> <p>18 permitted to say a few words about what a wage dispute is</p> <p>19 in the field of labour law in this country?</p> <p>20 CHAIRPERSON: Before you do that I want</p> <p>21 to say something to Mr Mpofo. If there is in fact a</p> <p>22 discrepancy or contradiction between what the witness says</p> <p>23 now and what the witness said on Tuesday as reflected in</p> <p>24 the transcriptions then obviously it will be a matter which</p> <p>25 you will be able to deal with in the argument. So I'm not</p>	<p style="text-align: right;">Page 10926</p> <p>1 formulation within recognised fora of demands and responses</p> <p>2 and it is only when there is a formal point of non-</p> <p>3 resolution where the employer says no I'm not going to</p> <p>4 accede to your demand at this level, for wages at this</p> <p>5 level that disputes can be said to arise. And that then</p> <p>6 may be called a wage dispute and there are dedicated</p> <p>7 processes provided for in the Labour Relations Act for the</p> <p>8 dealing with such disputes. But to use it casually, in the</p> <p>9 sense that Mr Mpofo has, with respect, done here is not</p> <p>10 correct and may just have the potential to result in some</p> <p>11 confusion.</p> <p>12 CHAIRPERSON: I want to say despite the</p> <p>13 fact - so I would prefer moving forward and we use the</p> <p>14 expression remuneration dispute, moving forward then we'll</p> <p>15 understand that we're talking about a dispute about wages</p> <p>16 or remuneration in the broad sense. But it doesn't detract</p> <p>17 necessarily from the point Mr Mpofo wants to make about</p> <p>18 what was said on Tuesday. But Mr Semenya you want to say</p> <p>19 something.</p> <p>20 MR SEMENYA SC: Chair, at record page</p> <p>21 107.96 this is what the witness says to the question by Mr</p> <p>22 Mpofo, the witness says "Advocate, it is important to</p> <p>23 contextualise the involvement of the police and I will</p> <p>24 again repeat that our involvement as police was because</p> <p>25 there was an unprotected strike. The drivers thereof are</p>

<p style="text-align: right;">Page 10927</p> <p>1 another thing. The causes, the underlying causes thereof 2 are another thing but what brings us there as police was 3 what put us in that scene is because there is an 4 unprotected, illegal strike." So the witness did mention 5 that they went there inter alia, alive to the fact that 6 there was this what the witness called an unprotected 7 strike.</p> <p>8 MR MPOFU: Chairperson, I'm indebted to 9 my learned colleagues. If ever there's a time when I need 10 you, Chairperson, to bear with me that time is now. 11 Please, I'm begging you, allow me to use the terminology 12 that I'm using in this question. It will become clear very 13 soon why I am doing so. And in doing so I accept that this 14 is a lay witness and is not aware of the things that Mr Tip 15 is saying. If she is then we're lucky but if she's not, 16 she's not.</p> <p>17 [11:47] ... and is not aware of the things that Mr Tip is 18 saying. If she is, she is, then we are lucky but if she's 19 not, she's not. I'm factoring that in, please Chairperson. 20 General, around the time of these events were you aware 21 that underlying the event in Marikana was a wage dispute as 22 between Lonmin and the protesters?</p> <p>23 GENERAL PHIYEGA: I just want to say I've 24 answered that question over and over again.</p> <p>25 MR MPOFU: Answer it again. You can</p>	<p style="text-align: right;">Page 10929</p> <p>1 answer. It depends very much on the context. I think in 2 this case we must let her give the answer she wants. 3 Ultimately if the answer is one that suits you, Mr Mpofu, 4 you'll actually be able to argue it with more force if she 5 gave the answer without any pressure or restriction, so 6 these points sometimes work in favour of cross-examining 7 counsel, bear that in mind too. Carry on please.</p> <p>8 GENERAL PHIYEGA: My answer to you is 9 still the same. The drivers thereof, it didn't matter. 10 What brought us there as police was to come and deal with 11 the unprotected strike, the violence that was taking place, 12 the instability that was there. What was the driver really 13 is something else. Our job is to come and do what I've 14 told you.</p> <p>15 MR MPOFU: General, I'm afraid I need the 16 assistance of the Chairperson now. You have no answered my 17 question. Please accept that I accept what you're saying, 18 that what brought you there primarily was all the things 19 that the Chairperson has said, all the things that you have 20 said, that I accept. All I'm asking you is a simple 21 question, whether you were aware that one of these 22 underlying issues which you say don't matter – let's assume 23 they don't matter but were you aware that one of those 24 underlying issues that was in existence in Marikana was a 25 wage dispute, or not?</p>
<p style="text-align: right;">Page 10928</p> <p>1 answer it again with a yes or no or I don't know and then 2 explain.</p> <p>3 GENERAL PHIYEGA: My answer is by going 4 back to the script of my answer and read the answer as it 5 was.</p> <p>6 MR MPOFU: No, ma'am, can you first 7 answer the question whether you were aware or not and then 8 you can explain as long as you want.</p> <p>9 MR SEMENYA SC: No, Chair. The witness 10 is trying to answer the question as best she can –</p> <p>11 CHAIRPERSON: Mr Mpofu, I must allow her 12 otherwise I'll be accused, rightly, by the police of being 13 unfair to their witness. She must get a chance to answer 14 the questions. You will get a chance to ask further 15 questions.</p> <p>16 MR MPOFU: Well –</p> <p>17 CHAIRPERSON: - we must go forward.</p> <p>18 MR MPOFU: Yes Chairperson, other 19 witnesses were asked to answer the question and then 20 explain if they want to. I'm extending the similar 21 courtesy to the General. I'm not stopping her from giving 22 an explanation but please, I would like my question to be 23 answered.</p> <p>24 CHAIRPERSON: Some people are happier 25 answering, giving the explanation first and then the</p>	<p style="text-align: right;">Page 10930</p> <p>1 MR SEMENYA SC: Chair, this is badgering. 2 The Chairperson asked the witness three, four consecutive 3 questions to which she said she's aware that there is 4 Lonmin, there is a union, there are workers who demanded 5 some salary increase, which she's answered these questions.</p> <p>6 CHAIRPERSON: Mr Mpofu, ask the question 7 again.</p> <p>8 MR MPOFU: General –</p> <p>9 CHAIRPERSON: Then I'll rule. I'm not 10 quite sure exactly the demands of the question so let me 11 hear the question first and then I will consider it.</p> <p>12 MR MPOFU: Ja. General Phiyega, 13 accepting that you as the police were there primarily 14 because of the security issues, I accept that ma'am, my 15 simple question is were you aware or not aware that one of 16 the underlying issues which you say were unimportant, let's 17 assume they were unimportant but were you aware that one of 18 the underlying issues was a wage dispute or not?</p> <p>19 MR BURGER SC: Chair, may I repeat an 20 objection I raised to the very same question on Tuesday? 21 You may remember that I objected on the basis that there 22 was no wage dispute. I said there was an unprotected 23 strike and there was no debate between an employer and an 24 employee and in fact the employees wouldn't identify who 25 they speak for. My learned friend, as I remember it, then</p>

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1 accepted that and changed his terminology to an industrial
2 dispute and we allowed it to go forward on that but
3 certainly the evidence before the Commission is, there was
4 no wage dispute and my learned friend is not entitled to
5 put to the witness that fact as if it's correct.

6 CHAIRPERSON: If you're looking for the
7 relevant passage in the record it's round about 10797 and
8 following, but Mr Mpofo is asking questions I think leading
9 up to a proposed confrontation of the witness with her
10 ipsissima verba on Tuesday. You were effectively referring
11 to what she said because you wanted to repeat the question
12 she was asked and the answers that she gave. So I think
13 that I'll let him continue for the moment but I'll keep a
14 close watch on what's going on and particularly – you see,
15 what Mr Burger says is that when you finally got to ask the
16 question and got an answer, the terminology "wage dispute"
17 was no longer there. What was the terminology in use at
18 that time was industrial dispute. That's his point. Now
19 if you can of course show me a passage in the record which
20 contradicts what he says, shows you're right, then of
21 course it's a different matter. We've been trying to find,
22 my colleague Adv Hemraj has been trying to find it in the
23 record and obviously it's an important point for you
24 because you want to rely on what she said on Tuesday but we
25 must be fair to her and to you –

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1 MR MPOFU: You know Chairperson –
2 CHAIRPERSON: - and maybe it's another –
3 MR MPOFU: You know, Chairperson, I
4 promise you if – we would have been long past this point
5 now. All I want is for you, Chairperson, to give me
6 latitude to ask a couple of questions on this and it will
7 become – if I explain it now then I might as well stop this
8 cross-examination because I'm pursuing a particular point.
9 I've asked the Chairperson, I'm asking again to give me
10 latitude to ask the question. It will become clear where
11 I'm going with this and it's not for me to show the
12 passage, that Mr Burger is wrong, it's for him to show that
13 passage.

14 CHAIRPERSON: Mr Mpofo, I'm not asking
15 you to show your hand but would you be kind enough to tell
16 me the page upon which you are going to rely in due course?
17 That won't destroy the effectiveness of your cross-
18 examination.

19 MR MPOFU: Chairperson no, it won't and
20 even that will become clear. The point I'm making is not
21 this debate about what I said with Mr Burger or Mr Tip, I'm
22 simply asking a simple question, whether this witness was
23 aware that there was a wage dispute.

24 CHAIRPERSON: But you see the problem is,
25 as we've heard, the expression "wage dispute" is ambiguous.

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1 It can have a narrow technical meaning which –
2 MR MPOFU: As understood by her, not – as
3 understood by her.
4 CHAIRPERSON: Alright. National
5 Commissioner, if you were asked the question – I'm not sure
6 you were because I can't find it but if you were asked a
7 question about a wage dispute, what would you have
8 understood that question to mean?
9 GENERAL PHIYEGA: Judge, my insignificant
10 memory is that there was a lot of, you know, discussion
11 around wages, industrial dispute, we spoke about
12 unprotected strike and all that and I really would like to
13 stick to the answer that I have given because I think I
14 have answered this question.
15 MR MPOFU: Well, if indeed you have
16 answered this question then I'm begging you to answer it
17 again and I'll repeat the question. Were you aware at any
18 stage that underlying the issues at Marikana was a wage
19 dispute?
20 GENERAL PHIYEGA: I know I'm going to
21 sound like a scratched record. I have said the reason why
22 we as police came there was because there was an
23 unprotected strike, there was instability, there was
24 violence. I've answered you over and over again since we
25 started and I remain there.

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1 MR MPOFU: No, I'm afraid you have to –
2 General, I'm not going to move from this point until you've
3 answered the question. Let me explain why. This issue, I
4 indicated to you when we were here on Tuesday that one of
5 the central issues, one of the central issues that I'm
6 going to argue around is this issue of the characterisation
7 of what was taking place there. Do you remember that?
8 That issue has far-reaching, but far-reaching to the cross-
9 examination I was pursuing in respect of what I call
10 political interference because you remember that one of the
11 issues that was the subject of that political interference
12 was an attempt to re-characterise what was taking place.
13 So that issue is central, very – very central.

14 COMMISSIONER HEMRAJ: Mr Mpofo, the
15 answers you seek, weren't they given by the witness in
16 response to the Chairman's question?
17 MR MPOFU: Well – [indistinct] I'm asking
18 the question now and I want an answer now so that I can
19 move on to the angle that I'm pursuing now. There's
20 nothing in the law, I've got authorities to show that even
21 if a question has been asked, (a) if you're asking it for a
22 different purpose or – ja, asking it again, you're not
23 barred from asking the question and we would have long
24 moved from here if the witness said to me, yes, I was
25 aware, no, I was aware or I don't know what you're talking

<p style="text-align: right;">Page 10935</p> <p>1 about, whatever, but I want an answer. And maybe to 2 explain it to you, General, and maybe to the panel as well, 3 we have a situation here where, and maybe I'll – 4 COMMISSIONER HEMRAJ: What is it? 5 MR MPOFU: FFF30. Maybe it'll make it 6 easier if I go a step back. We have a mooted 7 characterisation of the issue there that says that it is 8 not a labour dispute of any description. We have another 9 statement from the President that says that – well, it was 10 called a dispute over wages, that's what I read to you at 11 FFF30. Okay, so we have two contending characterisations, 12 one that seems to be accepted by the President that it was 13 a dispute over wages, another one that is sponsored in the 14 e-mails that it was not a labour dispute of any 15 description. Now all I'm asking – 16 CHAIRPERSON: Do the e-mails – give me 17 the reference again? Do the e-mails in terms say not a 18 labour dispute? 19 MR MPOFU: Ja. 20 CHAIRPERSON: Because I could understand 21 you could have a situation where – 22 MR MPOFU: There's a hybrid. 23 CHAIRPERSON: - there was a hybrid. 24 MR MPOFU: Yes. 25 CHAIRPERSON: Where there was, originally</p>	<p style="text-align: right;">Page 10937</p> <p>1 question before it's complete. 2 MR BURGER SC: No, no, I object to the 3 fact that he wants to read from e-mails. 4 MR MPOFU: No. 5 MR BURGER SC: One point has been ruled 6 on before and I'd like to address you on that – 7 MR MPOFU: No, it has not. We are not 8 yet ruled on – 9 CHAIRPERSON: No, Mr Mpofu, let's give Mr 10 Burger a chance to address. 11 MR BURGER SC: Sir, I'm going to be some 12 time. On the 7th of February of this year this very same 13 debate was raised by Mr Mpofu with Mr Zokwana. You may 14 remember then there was a reference to these e-mails which 15 kept popping up from time to time. In one of the e-mails 16 you may remember there's a reference to Mr Zokwana – 17 CHAIRPERSON: No, before you proceed Mr 18 Burger. The members of the public who are present are here 19 on the basis that they will listen and not endeavour to 20 participate and make audible sounds. It's distracting, 21 it's inappropriate. The people who are making – I'm not 22 saying you can't whisper among yourselves, I'm not 23 suggesting you can't do that but if comments are made which 24 are audible, that's not appropriate and that's not allowed. 25 I trust it won't happen again. Mr Burger, please proceed.</p>
<p style="text-align: right;">Page 10936</p> <p>1 there was a remuneration dispute, to use my terminology, 2 but because that led to an unprotected strike, attempts 3 were made to enforce the unprotected strike by violence, 4 intimidation, murder and mayhem, in which case you would 5 have what you call a hybrid. 6 MR MPOFU: Hybrid, yes. 7 CHAIRPERSON: So it isn't a case of, you 8 know, roast duck or no dinner. 9 MR MPOFU: No. 10 CHAIRPERSON: Because you could have a 11 combination. 12 MR MPOFU: Yes. 13 CHAIRPERSON: And so – 14 MR MPOFU: We've had this debate before, 15 Chairperson, and I'll give you the same answer. There is a 16 – I'm not moving from this point because it's very crucial 17 – there is a difference between the hybrid which you and I 18 agree about, Chair, and this which I'm going to read out 19 from the e-mail. 20 MR BURGER SC: I object to my learned 21 friend reading from the e-mail and I'd like to have a 22 ruling before he reads. I'd like an opportunity to address 23 you on that. 24 CHAIRPERSON: - first what he's going to 25 read before I can give you a ruling. You're objecting to a</p>	<p style="text-align: right;">Page 10938</p> <p>1 [12:07] MR BURGER SC: It may assist my 2 colleagues and the Commission if they have the record 3 available. I'm going to deal from page 4744 onward, that's 4 the record of the 7th of February. Mr Zokwana is giving 5 evidence at the time. Mr Mpofu is posing questions to him 6 and he's heading towards this series of e-mails. I raise 7 an objection at page 4744 line 22 and I say, "May I then 8 have clarity, sir? It is not sufficient to give an 9 undertaking. My learned friend is not entitled to debate 10 with an outside witness the existing of a toxic 11 relationship. He doesn't understand one of the two words, 12 I will submit, he cannot debate that with the witness if he 13 doesn't give a factual basis for that, otherwise it's a 14 debate in the air." At that stage the e-mails are being 15 referred to as substance for a toxic relationship between 16 Lonmin and the state, capital and the state. You then say, 17 sir, "Mr Burger, I think, with respect, one of my 18 commissioners wants to -. Mr Burger, there are two points 19 as I understand that we've got to be clear about. The 20 first is the alleged toxic collusion between the state and 21 capital, to use Mr Mpofu's terminology. It's going to be 22 the subject of these questions because this witness can't 23 answer anything about that so you don't have to worry about 24 that for the moment." That's the same question I'm going 25 to raise at the end, to putting excerpts from the e-mails</p>

<p style="text-align: right;">Page 10939</p> <p>1 to this witness and ask her for a comment but I read on at 2 page 4745. The next question you say, Chair, "What he does 3 propose to do is to ask questions about what he calls the 4 unholy alliance between your client and NUM. Now I don't 5 know, I haven't seen the statements that have been 6 exchanged, I don't know whether there's any basis has been 7 laid in the statements that you've received from NUM for 8 questioning along those lines and if that's the basis for 9 your objection, I can understand it but if there is 10 something, either directly or circumstance, from which an 11 inference can be drawn which does not relate to the unholy 12 alliance, so-called unholy alliance, then it may well be 13 that the question can be asked." And I say, "With respect, 14 but I understand the position differently. My learned 15 friend has yesterday, just before we closed, read – at 16 great detail and verbatim – a series of e-mails. I submit 17 he did that as a basis for a submission at the end of the 18 day of this toxic relationship, but of course he needs the 19 courage now to say that and I was waiting for that to be 20 said today. If his suggestion is that his evidence for a 21 toxic relationship between my client and the SAPS is that 22 series of e-mails, he'd better say so because I will ask an 23 opportunity of you to, with this witness - how irrelevant 24 it may be – to debate that very proposition." You then 25 say, Chair, "Mr Burger, of course one of the other</p>	<p style="text-align: right;">Page 10941</p> <p>1 could, I think, legitimately be asked of him about that." 2 Now one would have thought that was the end of that debate, 3 but it wasn't. You then say at the foot of page 4747, "But 4 anyway – you've now got a statement made by Mr Mpofu which 5 appears to deal with the point that you raised, is that 6 correct?" I say, "Yes, sir. I don't understand then why 7 the other e-mails were read and were permitted to be read." 8 I say, "Except if it was for public consumption but apart 9 from that, I don't follow that - so perhaps my learned 10 friend can deal with that also." 11 At the foot of page 4749 you then say, Chair, 12 "May I say that – the point, the question was raised as to 13 why you were permitted to read them. There was, of course, 14 no objection to your reading them yesterday and so I didn't 15 consider it appropriate although I had a problem, I didn't 16 consider it appropriate to raise the point myself if the 17 counsel whose client is directly affected didn't object, 18 but anyway, please proceed with your first question." May 19 I interpose, I don't appear for Mr Ramaphosa. He's got his 20 own attorneys and his own counsel. I appear for Lonmin. 21 He was a director at the time and it's in that capacity 22 that I object today. So Mr Mpofu says, "Yes. Mr Zokwana, 23 you've heard that debate. I intend to question you on all 24 the e-mails –" You then say, "Just ask the question, don't 25 make a speech every time before you ask a question. It's</p>
<p style="text-align: right;">Page 10940</p> <p>1 questions we have to deal with is to what extent any of the 2 e-mails, other than the first one" – that's the one where 3 Mr Zokwana's name was mentioned – "is relevant in relation 4 to this witness. He is mentioned in the first e-mail, the 5 witness is, so clearly questions can be asked about that. 6 Whether there's a basis for cross-examining him about other 7 e-mails which he never received or sent, is a matter which 8 we'll deal with when he, when Mr Mpofu gets there, but 9 you've issued a challenge to him, let's see what his 10 response is." Mr Mpofu then says, "Chair, my response is 11 simply that immediately before Mr Burger interrupted, that 12 was exactly what I was going to say to the witness. Having 13 put those two collusions, as I call them, I was now going 14 to say, what I'm going to ask you about is that in the e- 15 mails this is demonstrated, and then ask the question. 16 That's all. Without that interruption I would, we would be 17 long there now." I interpose, he wants to ask the very 18 question I object to. He wants to read the e-mails to the 19 witness and ask for comment, that's the objection. You 20 then say, sir, "The point you'd have to deal with is, the 21 witness's opinion as to whether something is or is not 22 demonstrated in an e-mail isn't very relevant and we've got 23 to decide on the evidence before us." Mr Mpofu says, "Fair 24 enough." You say, "I understand, however, in relation to 25 the first e-mail he's mentioned by name and questions</p>	<p style="text-align: right;">Page 10942</p> <p>1 not good advocacy –". Mr Mpofu says, "I'm helping the 2 witness." And you say, Chair, "Well, I don't think he 3 needs help. Please just ask questions." Then Mr Mpofu 4 goes and he asks the following question at 4751 of the 5 witness, "Would you agree with me that apart from the e- 6 mail that was sent at the wee hours of the morning at 1AM, 7 the other e-mails constitute a series of e-mails that was 8 exchanged within a period of about five hours or so?" So 9 you say, Chair, "You don't have to ask him that question, 10 it's obvious from the e-mails they were. I mean that's 11 just a padding question. Ask a proper question, please." 12 Mr Mpofu says, "Chairperson, I'm establishing a basis for 13 treating them as a fact." You say, "I know that but we can 14 see, we can read them ourselves -." You then refer to time 15 which is costing the taxpayer and I don't have to read 16 that. 17 At page 4752 my learned friend says, Mr Mpofu, 18 "Thank you, yes, I will. The e-mails, as I read them and I 19 want your comment whether you agree with me or not, form 20 one transaction. In other words, they are each a reply to 21 the other, starting with e-mail number 1, would you agree 22 with that?" The definition of an axiom, I interpose, but 23 that's the line being explored there. 24 You say at page 4753, "You can say that all the 25 e-mails were sent over a period of a few hours, to that</p>

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1 extent they are linked together from the point of view of
 2 almost contemporaneousness. That answer you can give
 3 without trespassing beyond that and exercising a proxy vote
 4 that you haven't been given." "Yes," says Mr Zokwana.
 5 "Chairperson: But Mr Mpofo having established that point,
 6 which is self-evident, will then I take it proceed to ask
 7 you a question directly relevant." And Mr Mpofo says,
 8 "Would you agree with me if I say that, generally speaking,
 9 the government or the state should not take sides in a
 10 dispute between capital and labour or rather –." You say,
 11 Chair, "Mpofo, Mr Mpofo, anyone who can read, can read the
 12 e-mails and see what the purpose is. You don't have to ask
 13 a question to which the answer is self-evident." Mr Mpofo
 14 says, "No." And you say, "You're just wasting time," and I
 15 don't have to read that.

16 Sir, and then I don't have to read all these
 17 passages but at page 4759 the question to which I've
 18 objected is now put. We're now about half an hour into the
 19 debate, it's going to come in any event. At page 4759 Mr
 20 Mpofo said, "As I - I've already called you a veteran trade
 21 unionist, which I think is a description that befits you,
 22 would you agree that if the e-mails exhibit an intention to
 23 put pressure on government to act and to talk in certain
 24 ways in relation to an industrial dispute, that would be
 25 something undesirable?" Mr Zokwana says, "Chairperson, I

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1 have submitted in my response to the same question raised
 2 by the counsel for the police that I have got a particular
 3 view at the stage in question" and he goes on.

4 Sir, I take too much time but let me read one
 5 final passage before I raise my objection formally. At
 6 page 4760 Mr Mpofo says, "Sir, I think I asked you a simple
 7 question and I started with the word 'if' so that I'm not
 8 accused of asking you to agree with me, as you have done
 9 before. I'm saying if the e-mails exhibit an intention to
 10 put pressure on government officials to act or to speak in
 11 a particular fashion in relation to this dispute, would you
 12 agree that that is something that would be undesirable?
 13 You may not agree, you may agree." And you then say, sir,
 14 "But Mr Mpofo, the problem is it's an opinion he's giving.
 15 It's an opinion that the Commission can formulate itself
 16 with the benefit of argument from the various parties. His
 17 answer to it doesn't take the matter any further. He will
 18 either agree with you or he won't, but either way we will
 19 say okay, that's his opinion but we will consider all the
 20 evidence and give a finding on the matter insofar as we
 21 consider to be relevant." So I don't have to formulate my
 22 objection, that's the basis of my objection.

23 Coming to what has now been put, it is now
 24 suggested to this witness that there is a passage in an e-
 25 mail which says A and there is a report on what the

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1 President has said which is B. These two do not coincide.
 2 I don't know what the question is now. The question must
 3 be, what is your view? Well, that would be inadmissible
 4 and if we get there by again today reading those e-mails,
 5 we'll have headlines tomorrow again but we wouldn't have
 6 served the purpose of the Commission and that's why I
 7 object to this.

8 MR MPOFU: Can I? Thank you. Well,
 9 Chairperson, after that long, long, long speech the answer
 10 lies in the last two sentences of what Mr Burger has said.
 11 He doesn't know what the question is. So he's objecting to
 12 a question he doesn't know.

13 CHAIRPERSON: He's saying, as I
 14 understand him, is that if your question is going to be,
 15 what do you say about these two passages, is there a
 16 conflict –

17 MR MPOFU: Ja.

18 CHAIRPERSON: - that the witness's
 19 opinion on the matter will take it no further and therefore
 20 the question shouldn't be allowed.

21 MR MPOFU: Yes –

22 CHAIRPERSON: that's his point –

23 MR MPOFU: That's exactly the point I'm
 24 making, Chair. I think it would be more suitable if I
 25 asked the question and then it's objected to, otherwise we

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1 will avoid all this. Assume that's not the question, then
 2 all this is a waste of time. So he can't object to a
 3 question he doesn't know, that's the first thing. And the
 4 reason why he can't object to the question he doesn't know
 5 is exactly because there is no question. All I was doing,
 6 Chairperson, was answering your question. You put a
 7 proposition to me that, which is fair, that there are three
 8 scenarios. You could say it's a criminal affair or you
 9 could say it's a labour affair or there could be a hybrid,
 10 that's all. And I was simply responding to you,
 11 Chairperson, to say yes, I accept that and to illustrate
 12 that of those three scenarios, what we are dealing with
 13 here is neither the hybrid nor the first situation where
 14 it's, or the second situation where it's a labour dispute
 15 and you said I must show you why and I was just in the
 16 process of showing you why. So there's no question, you
 17 can't object to me answering the Chairperson in the first
 18 place and in the unlikely event that I was going to ask a
 19 question that was objectionable, well, I'm not going to ask
 20 any question, objectionable or not objectionable so all
 21 that can just be cast aside and let me answer your
 22 question, Chairperson.

23 CHAIRPERSON: Well, your job is of course
 24 to ask – may I suggest that you, in view of the fact that
 25 you say you're not asking a question to which objection is

<p style="text-align: right;">Page 10947</p> <p>1 being taken, may I suggest you ask another question, let's 2 see whether objection is taken to that. 3 MR MPOFU: Yes, and first let me answer 4 you, Chairperson. That's all I was doing before the long 5 speech. 6 CHAIRPERSON: Let's hear your question, I 7 don't know that you have to read an e-mail. The objection 8 you see was to the reading of the e-mail but – 9 MR MPOFU: No, I'm – it's not a question. 10 I'm still answering your - 11 CHAIRPERSON: Answer my question on the 12 hybrid point. 13 MR MPOFU: Yes. 14 CHAIRPERSON: Because the hybrid point is 15 actually – 16 MR MPOFU: It leads to the question – 17 CHAIRPERSON: - in relation to this 18 witness's evidence and in fact the matters upon which we 19 have to make findings. 20 MR MPOFU: Yes, Chairperson, which – 21 MR SEMENYA SC: Chair, to remind us, the 22 witness is not available tomorrow. 23 CHAIRPERSON: Maybe you should – that's a 24 very sobering point – may I suggest you ask your other 25 questions and perhaps we can come to this at the end.</p>	<p style="text-align: right;">Page 10949</p> <p>1 MR MPOFU: Chairperson, I'm sorry, this 2 is unfair. The question I've repeated ten times, I'm going 3 to repeat it for the 11th time but that's not – where we are 4 now, I was simply explaining to the witness and the panel 5 why I say this is a crucial part of my case and I was 6 saying because there are two versions. One is that, is the 7 one that was sponsored in the e-mails that this is not a 8 labour matter, the other one is the one expressed by the 9 President that it is. That's all I was doing just to give 10 background. The question remains, though, on the question 11 I've asked since teatime which is, madam, were you aware or 12 not aware that underlying the issues at Marikana was a wage 13 dispute. 14 CHAIRPERSON: She answered that in 15 response to questions I put to her but you've heard the 16 question Mr Mpofu asked you, have you got an answer for it? 17 GENERAL PHIYEGA: Judge, I think I've 18 answered that question. You've even summarised, we know 19 about the 12 500, whether it's a dispute of an industrial 20 nature, of wage, I don't know. I know that there was 21 something about 12 500. 22 MR MPOFU: So any answer that you gave to 23 me on Tuesday which suggests that you were not aware of any 24 wage dispute or labour dispute or industrial dispute or 25 whatever between Lonmin and the protesters would, are you</p>
<p style="text-align: right;">Page 10948</p> <p>1 MR MPOFU: No, Chair – 2 CHAIRPERSON: Look, if the witness is not 3 available tomorrow – remember when we adjourned on Tuesday, 4 initially we were told the Minister wasn't, I beg your 5 pardon, the National Commissioner wasn't available today 6 either. She made special arrangements, she had obligations 7 today and tomorrow, she made special arrangements to move 8 her obligations to tomorrow and Saturday. She's only 9 available today so we must try, we must do our utmost to 10 finish her evidence today. 11 MR MPOFU: Well, Chairperson, one of the 12 ways in which we can succeed in that attempt is for those 13 questions to be answered. I'm sorry, I'm not moving away 14 from this question unless – this is a crucial part of my 15 case. 16 CHAIRPERSON: Well, let me hear what the 17 question - 18 MR MPOFU: So if I'm going to have long 19 speeches and all sorts of things – 20 CHAIRPERSON: Okay Mr Mpofu, let me hear 21 what the question is and if I rule the question is 22 inadmissible you will have to move away from it and if I 23 rule that it's admissible you'll be able to proceed with 24 it, so let's hear the question first and let me then give a 25 ruling if there's an objection.</p>	<p style="text-align: right;">Page 10950</p> <p>1 changing that answer now? 2 COMMISSIONER HEMRAJ: Can you just show 3 us in the record, in the transcript, where she gives that 4 answer, Mr Mpofu? 5 CHAIRPERSON: You say – you put the 6 question hypothetically. Any answer that you gave or may 7 have given which is contrary to what you now say, you now 8 change. I would imagine the answer to that must be simply 9 yes. If she said something different before and she said 10 something different now, then obviously she's got to do 11 something about it but what is the passage which you allege 12 or contend is in contradiction to what the answer is she 13 gave in response to my questions following on from yours? 14 Perhaps now the time has come for us to look at that? 15 MR MPOFU: I don't yet have, we don't yet 16 – we have not been favoured with the record of Tuesday. 17 MS PILLAY: Chair, the record has been 18 circulated. It's day 101. 19 MR MPOFU: Then I haven't – 20 CHAIRPERSON: Mr Mpofu, we have been 21 given a printed version. 22 MR MPOFU: Yes. 23 CHAIRPERSON: We've marked it but the 24 marks don't have to concern you, they're merely 25 underlining. You can look at it for the moment if that'll</p>

<p style="text-align: right;">Page 10951</p> <p>1 assist you. Mr Mpofu, there's quite a long passage. I was 2 looking at it during the course of the debate between you 3 and Mr Burger. I couldn't find anything, but it's now half 4 past 12. I think it may take you a couple of minutes to 5 find the needle in the haystack that may not be there. May 6 I suggest you move on to something else, look at it during 7 the lunch adjournment and then you can, immediately after 8 lunch you can come back to it and refer to the passage that 9 you have identified if you succeed in identifying it. 10 [12:27] MR MPOFU: Yes Chairperson, I was hoping 11 – I hear what you're saying, I was hoping I could sort it 12 easier because – 13 CHAIRPERSON: I had a look at it, it's 14 quite a long passage and I'd hoped that I would be able to 15 pick it up quite quickly and I'm afraid I wasn't able to. 16 Now you may be quicker than I am in that but I think what I 17 put to you is a practical suggestion. I think you've got 18 other arrows in your quiver. May I suggest you leave those 19 now, look at the record during the lunch hour because I 20 think you'll find it'll take a bit of time and then you 21 can, immediately when we resume if you've found the needle 22 in the haystack then you can put the question to the 23 witness. If you haven't, you'll have to concede that there 24 isn't something there. Anyway let's not debate that now. 25 Carry on with your next questions and use the time we have</p>	<p style="text-align: right;">Page 10953</p> <p>1 issue, if they wrongly characterised it certain things may 2 flow which can be explored, but carry on, Mr Mpofu. 3 MR MPOFU: Yes. 4 CHAIRPERSON: I take it you are going to 5 deal with the paragraph in the middle of the second page of 6 FFF30. 7 MR MPOFU: Yes. 8 CHAIRPERSON: The paragraph beginning, 9 "Zuma rejected calls for the Police Minister, Nathi 10 Mthethwa, to quit." 11 MR MPOFU: Yes. 12 CHAIRPERSON: That's the passage, 13 alright. Has the witness got a copy of it before her? Has 14 she? Yes. Please proceed. 15 MR MPOFU: Yes, thank you, Chairperson. 16 CHAIRPERSON: Read the whole of the 17 paragraph. 18 MR MPOFU: Yes, I'm going there but 19 before I do that I'll read this one that I want to read. 20 It says, "I've had two discussions with the DG and in each 21 case have" – 22 CHAIRPERSON: I'm sorry, I'm sorry, that 23 sounds like something being read from the e-mails. 24 MR MPOFU: Yes. 25 CHAIRPERSON: Yes. Now I've already</p>
<p style="text-align: right;">Page 10952</p> <p>1 until lunch time in a gainful fashion. 2 MR MPOFU: Yes. I think I'll have to 3 take it from FFF30 again. Okay, well this obviously 4 disrupts the flow of what I was going to say but let me 5 tell you this, the departure point is that there are two 6 schools of thought or – and I'm not referring you to 7 anything that you said or didn't say on Tuesday, that we'll 8 sort out at lunch time but you are aware that there are two 9 schools of thought as to whether this was a labour dispute 10 only or whether – no, nobody contends that – that it was a 11 criminal act only or whether it was a labour dispute which 12 turned criminal. The one view is that expressed in, by – 13 well, there is one that says in the morning of the 15th 14 Minister Shabangu expressed that it was a labour dispute, 15 take that as a fact. Lonmin's view was that it's not a 16 labour dispute but, but a criminal act which – but a 17 criminal act which needs the intervention of the police and 18 army. 19 MR BURGER SC: That's an incorrect 20 characterisation of Lonmin's – 21 MR MPOFU: No, it's not – 22 CHAIRPERSON: It doesn't really matter 23 what Lonmin's characterisation was. What we're concerned 24 with at the moment, surely, is the characterisation by the 25 police. If they rightly, if they rightly characterised the</p>	<p style="text-align: right;">Page 10954</p> <p>1 ruled, as you've heard, that it's not appropriate to put an 2 e-mail to a witness who's not a party to the e-mail and 3 who's not mentioned in the e-mail. That was a ruling I 4 gave before – don't shake your head. 5 MR MPOFU: No. 6 CHAIRPERSON: That's a ruling I gave 7 before, when Mr Zokwana was in the box but what I allowed 8 you to put was that Lonmin had, you said had characterised 9 it as a law and order issue solely. 10 MR MPOFU: Chairperson – 11 CHAIRPERSON: And Mr Burger objects to 12 that and I said it doesn't really matter how Lonmin 13 characterises it, the real question is how did the police 14 characterise it. If the police characterised it wrongly 15 then obviously you can cross-examine effectively. If the 16 police didn't so characterise it, well then the fact that 17 someone else may have characterised it wrongly, how does 18 that help us? Isn't that just time-wasting? 19 MR MPOFU: Chairperson, no. We're going 20 to be here all month if I don't get through this point. 21 This point about the characterisation – 22 CHAIRPERSON: No – no, Mr Mpofu. Mr 23 Mpofu, Mr Mpofu – 24 MR MPOFU: I have to – 25 CHAIRPERSON: Mr Mpofu, I'm speaking now</p>

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1 to you. Don't make threats for me. I disallow the
 2 questions or a question will be disallowed. We will not be
 3 here all month, you will move on to something else.
 4 MR MPOFU: It's not a question,
 5 Chairperson. This is not a question. All I'm saying, I've
 6 not asked a question. All I'm saying, just as I've read,
 7 you've encouraged me to read from the President's speech,
 8 this witness was not there when the President made that.
 9 I'm equally saying, I'm saying, I'm weighing two
 10 standpoints, one expressing the President's speech which
 11 you, I've said I should read to the witness and I'm saying
 12 there are two. I'm now expressing what the other one is.
 13 How can the one be acceptable and not the –
 14 CHAIRPERSON: Can't we do it simply like
 15 this? If there was a view that it was solely a law and
 16 order issue and not a labour issue, on the one hand, and
 17 another view expressed by the President that it was a
 18 dispute over wages, then presumably the question will
 19 continue with some interrogative portion which is not yet
 20 clear to me. Why can't you do it like that?
 21 MR MPOFU: That's what I'm doing. That's
 22 exactly what I'm doing. I'm saying to you, madam, if there
 23 are two views, one expressed by the President that this was
 24 precipitated by a dispute over wages and another view
 25 expressed in the, by Lonmin and Minister Shabangu in the

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1 afternoon that this was not a labour matter but a criminal
 2 matter, if there are those two views which are not –
 3 CHAIRPERSON: Capable of being
 4 reconciled.
 5 MR MPOFU: Thank you.
 6 CHAIRPERSON: What's the question part of
 7 the question?
 8 MR MPOFU: The question is, of those two
 9 views which one did you understand the situation to be?
 10 Was it the one that says –
 11 CHAIRPERSON: I think she knows what the
 12 views are.
 13 MR MPOFU: Ja.
 14 CHAIRPERSON: Do you understand the
 15 question? It is said, two views, I'm not sure that that
 16 was the President's view because I want Mr Mpofo to read
 17 the whole paragraph but we'll get there in a minute. If
 18 there were two views, one that was that it was about wages,
 19 the other was a law and order matter involving a breakdown
 20 in law and order, which of those two views is the one that
 21 –
 22 MR MPOFU: You subscribe to.
 23 CHAIRPERSON: - you subscribe to, to that
 24 question and when I read your whole paragraph of what the
 25 President said then we can take the matter further, but

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1 what is your answer to the question? There are these two
 2 possible views, shall we say. Which one of those did the
 3 police subscribe to or did they subscribe to another view?
 4 GENERAL PHIYEGA: Judge, for the police
 5 it's a law and order matter.
 6 CHAIRPERSON: Now Mr Mpofo conceded in a
 7 discussion with me that you could have a hybrid. You could
 8 have a law and order matter on the one hand, you could have
 9 a labour dispute or a dispute about wages on another hand
 10 and then you could have a hybrid between the two. Now what
 11 the President said, according to this report which is in
 12 exhibit FFF30, was the following. "Mr Zuma rejected calls
 13 for the Police Minister, Nathi Mthethwa, to quit, saying
 14 the unrest was caused by a dispute over wages. Now you
 15 can't say the Minister of Police is responsible for that,
 16 to start the thing. When the workers were striking, they
 17 had every other kind of weapon in their hands. In fact
 18 long before the shooting, 10 people had died including two
 19 policemen, two security policemen. Now all of that is not
 20 taken into account." And he goes on in the next paragraph,
 21 "How many other people would have died if, for example,
 22 police did not move to disarm these people? Nobody can
 23 tell." And then the paragraph continues. It sounds to me
 24 as if the President regarded it as being a hybrid
 25 situation.

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1 MR MPOFU: I agree and I agree with the
 2 President and the Chairperson but that is unfair to put
 3 that without contrasting it with the other position that
 4 I'm saying was counter posing that, which is what I was –
 5 CHAIRPERSON: Yes, no, I understand that,
 6 Mr Mpofo. My problem is understanding the relevancy.
 7 Let's assume – I know Mr Burger will be dissatisfied when I
 8 say this but let's assume for the moment that Lonmin took a
 9 wrong view, took the view that this was solely a law and
 10 order matter and there was no industrial or remuneration
 11 element involved. Let's assume that's so and it's a view
 12 that you and I don't agree with because we say it's a
 13 hybrid matter.
 14 MR MPOFU: It's false.
 15 CHAIRPERSON: Does it matter?
 16 MR MPOFU: Yes, it does.
 17 CHAIRPERSON: And if it matters, does it
 18 matter in a manner or in a respect which can be - with this
 19 witness?
 20 MR MPOFU: Yes.
 21 CHAIRPERSON: Because if this witness
 22 took the view that it was a law and order matter but was
 23 aware of the fact of the history of the demand for 12 500
 24 or some other number, then how does it take it any further?
 25 MR MPOFU: Well, it goes back to what I

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1 said on Tuesday. It matters for this reason. It matters
 2 for two reasons. One is the fact that, as you know
 3 Chairperson, I am pursuing a third leg of, third game
 4 changer which says that because of the campaign to change
 5 the characterisation to purely a criminal matter – which is
 6 false, by the way, but let's not go there for now – but
 7 because of the campaigns to characterise it solely as a
 8 criminal matter, that was meant to open the way so that –
 9 remember what the Minister said. If it's a criminal
 10 matter, use maximum force, if it's not a criminal matter,
 11 use minimum force. So what is the concomitant action for a
 12 purely criminal act? Maximum force. Alright, so that's in
 13 the first place. In the second place I'm now forced to do
 14 this, which is what I intended to avoid, the
 15 characterisation given by this witness and that is what I
 16 was contesting, in her briefing to the President on the 17th
 17 reads something like this in FFF4. Background, this is now
 18 the problem statement or the characterisation. "The
 19 employees of Lonmin" – FFF4. So I just have to do, like I
 20 say, lose any cross-examination value of this because I
 21 just want us to move. "The employees of Lonmin mine
 22 allegedly" –
 23 CHAIRPERSON: Sorry, what page is this?
 24 MR MPOFU: It's the first page.
 25 CHAIRPERSON: Oh, the first page.

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1 MR MPOFU: The very top, the problem
 2 statement. It says "Background. The employees of Lonmin
 3 mine allegedly belonging to AMCU, a competitor of the NUM"
 4 or rather "of the National Union of Mineworkers, NUM,
 5 started striking on Thursday, 9 August 2012 with regard to
 6 a wage dispute." That's the problem statement that's given
 7 to the President and –
 8 CHAIRPERSON: And then follows a
 9 paragraph headed "Strike history of events."
 10 MR MPOFU: Ja.
 11 CHAIRPERSON: There are five bullet
 12 points in that strike history of events and they indicate
 13 that this, what was originally regarded as, quote, a "wage
 14 dispute" then became a hybrid matter because a number of
 15 details, particulars are given of acts of violence and so
 16 forth which changed the character of what may originally
 17 have been a "wage dispute" into something else –
 18 MR MPOFU: Chair –
 19 CHAIRPERSON: - the document says that.
 20 MR MPOFU: But Chairperson, with respect,
 21 that's exactly what you and I have been debating. I'm with
 22 you, I'm saying this was a hybrid matter, that's not about
 23 this. So to show you that's a hybrid matter is not
 24 reinforcing what I'm saying. I'm with you, I'm with the
 25 President, I'm with everyone who said it's a hybrid matter,

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1 okay, but I'm saying is that any characterisation, any
 2 other characterisation which is saying it is not a hybrid
 3 matter but a purely criminal matter, which is what is
 4 sponsored in the e-mails, which is what is ultimately
 5 adopted by the government which, in my submission, is what
 6 leads to the people being killed with maximum force because
 7 it's purely a criminal matter. Now –
 8 CHAIRPERSON: I'm not sure that that's –
 9 MR MPOFU: Well –
 10 CHAIRPERSON: - we can assume is
 11 necessarily –
 12 MR MPOFU: Well, we can assume one thing
 13 –
 14 CHAIRPERSON: But why not ask the witness
 15 who is after all at the witness table here to answer
 16 questions on the matter.
 17 MR MPOFU: Yes.
 18 CHAIRPERSON: Why don't you ask her for
 19 her views –
 20 MR MPOFU: I have.
 21 CHAIRPERSON: - on what promoted the
 22 police action, whether it was a wrong characterisation or
 23 whether it was something which is reflected in this
 24 document which was sent to the President in the early hours
 25 on the morning of the 17th August where it was stated that

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1 there was a strike with regard to a wage dispute and then
 2 it was set out in five bullet points that there were a
 3 number of incidents which ended up with a number of people
 4 killed, a number of people injured and some property
 5 damaged. And then the statement which is sent out to the
 6 President, to the Ministry of International Affairs for the
 7 President's eyes also, deals with the SAPS acting as
 8 follows, and that. Isn't that the appropriate way to deal
 9 with it?
 10 MR MPOFU: But we have already asked that
 11 question. She said it was not the hybrid, the criminal – I
 12 don't know which variation. She said it was a law and
 13 order – yes, thank you, that's what she said.
 14 CHAIRPERSON: Well, Mr Semenya wants to
 15 object.
 16 MR MPOFU: She said it was law and order.
 17 CHAIRPERSON: Let's hear what Mr Semenya
 18 says about it.
 19 MR SEMENYA SC: In fact, Chair, I think
 20 there is consensus between the Chair and Mr Mpofo and the
 21 witness. He says she says there was an industrial, an
 22 unprotected strike. She has agreed there were those
 23 elements but she says our reason for going there as police
 24 was a law and order issue. It was not to associate
 25 ourselves with the issues relating to labour. This she

<p style="text-align: right;">Page 10963</p> <p>1 said repeatedly over many times.</p> <p>2 MR MPOFU: No, no. I'm afraid that is</p> <p>3 incorrect. The Chairperson asked a specific question</p> <p>4 trying to round off my question to the witness and the</p> <p>5 witness's answer was very clear that whether it was A, the</p> <p>6 hybrid situation or B, the law and order variation and she</p> <p>7 said it was the law and order variation. I don't</p> <p>8 understand now how her answer gets edited in to say when</p> <p>9 she was asked is it A or B she said it's B, it can't also</p> <p>10 be A. That's what she said, the record will show.</p> <p>11 CHAIRPERSON: She had preceded that</p> <p>12 answer by saying that she was aware of the fact that there</p> <p>13 was what I call a remuneration dispute. But in any event</p> <p>14 you've got a number of answers on record which can form the</p> <p>15 basis of an argument in due course. The purpose of our</p> <p>16 being here today with the National Commissioner is not for</p> <p>17 us to have a debate to which she is a reluctant auditor but</p> <p>18 to elicit answers from her which will assist you to argue</p> <p>19 the matter at the end. So may I suggest we carry on with</p> <p>20 that?</p> <p>21 [12:47] MR MPOFU: Thank you. Well, if we get</p> <p>22 answers then, Chair, we will – General, as you may have</p> <p>23 gathered we, at least the people that I represent agree</p> <p>24 only with the characterisation given by the President and</p> <p>25 ourselves that this was a wage dispute which turned into</p>	<p style="text-align: right;">Page 10965</p> <p>1 MR MPOFU: But that point is negated by</p> <p>2 my point which is that maximum force is never, is never</p> <p>3 allowed –</p> <p>4 CHAIRPERSON: That's a separate debate.</p> <p>5 MR MPOFU: In terms of section 13(3)(b)</p> <p>6 of the Act.</p> <p>7 CHAIRPERSON: Mr Burger wants to say</p> <p>8 something.</p> <p>9 MR BURGER SC: Chair, I object to that</p> <p>10 question on two bases. The first is –</p> <p>11 MR MPOFU: Sorry Chair, I object to the</p> <p>12 objection. There's no question.</p> <p>13 CHAIRPERSON: Let him ask the question</p> <p>14 first and if you still don't like the question –</p> <p>15 MR BURGER SC: But it's a proposition he</p> <p>16 put. Mr Mpofo keeps interrupting you, so I can't know what</p> <p>17 you think but he won't interrupt me. I have an objection</p> <p>18 to a proposition which is false. The proposition he puts</p> <p>19 is false for the following reason. He contrasts this</p> <p>20 wonderful consensus between everybody but Lonmin as Lonmin</p> <p>21 being the outsider in this debate. That's not true. He</p> <p>22 handed in this morning FFF32. It's an affidavit by Mr</p> <p>23 Ramaphosa. In paragraph 13.2 of that affidavit Mr</p> <p>24 Ramaphosa says the following.</p> <p>25 CHAIRPERSON: Paragraph?</p>
<p style="text-align: right;">Page 10964</p> <p>1 something else and that something else is what the Chair</p> <p>2 apparently calls a hybrid. And we will argue, we will</p> <p>3 argue at the end that any re-characterisation of the</p> <p>4 problem as anything other than the hybrid was only meant to</p> <p>5 fit within the matrix of criminal equals maximum force, not</p> <p>6 criminal equals minimum force as articulated by Minister</p> <p>7 Mthethwa.</p> <p>8 MR SEMENYA SC: Again, Chair, I object.</p> <p>9 The statement of the Minister in relation to maximum force</p> <p>10 related to cash-in-transit heists. It was never used in</p> <p>11 the context of Marikana.</p> <p>12 MR MPOFU: Well –</p> <p>13 CHAIRPERSON: He's explaining what his</p> <p>14 argument is going to be.</p> <p>15 MR MPOFU: Yes.</p> <p>16 CHAIRPERSON: And when he argues that at</p> <p>17 the end you can –</p> <p>18 MR MPOFU: We'll deal with it, ja.</p> <p>19 CHAIRPERSON: Carry on, Mr Mpofo –</p> <p>20 MR BURGER SC: Can I –</p> <p>21 CHAIRPERSON: The point that Mr Semenya</p> <p>22 makes is of course correct –</p> <p>23 MR MPOFU: No, well –</p> <p>24 CHAIRPERSON: He did make that statement</p> <p>25 in that context.</p>	<p style="text-align: right;">Page 10966</p> <p>1 MR BURGER SC: 13.2 page 3. "Arising</p> <p>2 from the violence, which included the brutal murder of six</p> <p>3 employees, two Lonmin security personnel and two police</p> <p>4 officers over the course of several days, Lonmin management</p> <p>5 took the view that this was not simply an industrial</p> <p>6 dispute and that Lonmin needed the SAPS to restore and</p> <p>7 maintain law and order and prevent further loss of life.</p> <p>8 Lonmin was anxious that the government urgently be informed</p> <p>9 of the seriousness of the situation." So to suggest that</p> <p>10 Lonmin's view is a simple one, that this is a criminal act</p> <p>11 and equates that to maximum force is just nonsense on the</p> <p>12 facts before the Commission. But secondly, my learned</p> <p>13 friend ignores again a ruling made by you earlier. You</p> <p>14 have earlier ruled that he's not entitled to put his</p> <p>15 argument, his closing argument to lay witnesses to get</p> <p>16 their views on it. That's exactly what he's going to do.</p> <p>17 He never puts a question mark after anything he says, but</p> <p>18 he puts propositions which is in the form of a statement</p> <p>19 meaning this is what I will argue. Now with great respect</p> <p>20 to the General, she's not interested in that. She wouldn't</p> <p>21 answer that because it's irrelevant what she thinks of</p> <p>22 that. So on two bases I say that's an improper statement</p> <p>23 to put to the witness.</p> <p>24 MR MPOFU: Chairperson, let me start with</p> <p>25 the statement. This is exactly the point. My argument is</p>

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1 going to be that this latter day version that says, you
 2 throw in one word and you think we're not going to notice,
 3 to say that it was not simply an industrial dispute is
 4 meant exactly to cure the problem that we have been
 5 debating, namely that in the – the version, well, one day
 6 will Mr Ramaphosa will be here but it will be showing that
 7 the version of not simply is in stark contrast to the
 8 version where you put the word "not" –
 9 CHAIRPERSON: Yes, yes, I understand that
 10 but –
 11 MR MPOFU: "Not" is put in –
 12 CHAIRPERSON: I understand but what
 13 you're saying is effectively your argument. When Mr
 14 Ramaphosa comes you're going to cross-examine him, at the
 15 end of the evidence you're going to argue but let's use the
 16 presence of the National Commissioner, while we have her,
 17 profitably. Let's ask her questions to which she can give
 18 answers, not ask her to comment upon arguments you're going
 19 to put up –
 20 MR MPOFU: No –
 21 CHAIRPERSON: Asking her to give opinions
 22 on matters in respect of which her opinions are irrelevant.
 23 MR MPOFU: Chair –
 24 CHAIRPERSON: I don't want to stop you
 25 because I understand you've got a difficult task and I know

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1 how difficult counsel in your position finds the position
 2 he's in, I understand that. I'm not unsympathetic but on
 3 the other hand please ask questions, let's get answers and
 4 at the end of the day those arguments you get you'll be
 5 able to use to argue to persuade us. That's the way
 6 forward, let's do it that way.
 7 MR MPOFU: Which I accept, Chairperson.
 8 That is why I had begged you an hour ago to let me ask, the
 9 question was based on this statement which comes from the –
 10 it was not based on anything else. If at that stage I'd
 11 been allowed to put to the witness what she – she, not
 12 Ramaphosa, not anybody – had said, that's all really I was
 13 going to -. All these other distractions are just imposed
 14 upon me.
 15 CHAIRPERSON: That's water under the
 16 bridge. Now come, let's move our craft further down the
 17 river, around the bridge, down, on the water which has
 18 already gone under the bridge.
 19 MR MPOFU: And yes, Chairperson, if I may
 20 – yes, sorry. I also wanted just to point out for the
 21 record, Chairperson, apropos what Mr Burger was saying,
 22 that Mr Ramaphosa in his statement also says that he stands
 23 by the characterisation in the e-mail so we'll deal with
 24 that –
 25 CHAIRPERSON: I've read paragraph 13.6.

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1 MR MPOFU: Yes.
 2 CHAIRPERSON: And when Mr Ramaphosa comes
 3 to give evidence, you're going to ask him about it.
 4 MR MPOFU: That's correct.
 5 CHAIRPERSON: I look forward to the
 6 debate between you on this topic.
 7 MR MPOFU: So do I, Chairperson.
 8 CHAIRPERSON: Let's have another debate
 9 with this witness in which she can meaningfully
 10 participate.
 11 MR MPOFU: Ja. So effectively then the
 12 point is, well knowing that there was a dispute between
 13 Lonmin and the protesters as you have expressed in FFF4,
 14 you proceeded to act in a manner that I've described –
 15 which I'm not going to go through, as I described on
 16 Tuesday - that in the eyes of the people that I represent
 17 and that includes the sharing of radios, sharing of
 18 equipment and helicopters and what have you, in a manner
 19 that portrayed the police as siding with one of the sides
 20 to that dispute – you know the issues, the radio, the tea,
 21 the tea -
 22 CHAIRPERSON: No, I think she remembers
 23 all of them.
 24 MR MPOFU: She will remember.
 25 CHAIRPERSON: And if she doesn't, she'll

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1 tell us.
 2 MR MPOFU: If she doesn't I will remind
 3 her.
 4 GENERAL PHIYEGA: Advocate, I just want
 5 to deal with that issue of taking sides because I've given
 6 answers to say I really don't think that we took sides and
 7 we, and I just want to cite an example and then you can
 8 tell me whether indeed the statement you are making still
 9 holds. I mean we are on record in our testimony, in some
 10 of the statements, that a person like Mr Mathunjwa was
 11 carried in our car to go to, as the police car, to go to
 12 the koppie. We've allowed him to use our tools to address
 13 people, we've engaged. So this impartiality that you're
 14 talking about, really it's without substance and context.
 15 MR MPOFU: General –
 16 CHAIRPERSON: I'd like to ask you a
 17 question.
 18 MR MPOFU: Sorry.
 19 CHAIRPERSON: I'd like to ask a question.
 20 You said in the statement – well, you didn't say it but the
 21 people who compiled it before it was sent to the Ministry
 22 of International Affairs and for the eyes of the President,
 23 it was said that this problem arose from a wage dispute.
 24 then there are five bullet points describing how it
 25 developed into what I can describe as murder and mayhem,

<p style="text-align: right;">Page 10971</p> <p>1 intimidation, violence, damage to property, murder. If it 2 had remained a peaceful unprotected strike, would the 3 police have interfered? 4 GENERAL PHIYEGA: Judge, two ways of 5 answering you. The first one is that remember that if it's 6 peaceful, unprotected and the mine doesn't report to us, we 7 may not even know so we wouldn't be involved. And if it 8 was unprotected and the mine said look, we have an 9 unprotected strike, it means there's something else that 10 the citizens, some person is concerned for and would ask 11 for that help. So if that hadn't happened we wouldn't be 12 there. We were there because of those points mostly that 13 you see there because they are the outcome of the 14 unprotected strike. 15 CHAIRPERSON: If it had only been a 16 peaceful unprotected strike but Lonmin had still contacted 17 you and said please come onto our premises and help us to 18 break the strike, what would the police have done? Would 19 they have agreed to – would they have agreed to interpose 20 the power of the state on behalf of one party to a peaceful 21 contestation about remuneration? 22 GENERAL PHIYEGA: Judge, I'll answer this 23 with an example. I've spoken about 151 marches that we've 24 taken care of. Some were peaceful and what we do again to 25 say we protect the right of citizens to march, we would</p>	<p style="text-align: right;">Page 10973</p> <p>1 [COMMISSION ADJOURNS COMMISSION RESUMES] 2 [14:01] CHAIRPERSON: Mr Mpofu, are all your 3 clients here now? 4 MR MPOFU: Yes, Chairperson. 5 CHAIRPERSON: We understand that the 6 members of the families and some of the injured parties as 7 well who have been away for some time, are now back with 8 us. We would want to welcome you back. It's nice to see 9 you all here. I hope that you – 10 MR MPOFU: It's the deceased parties that 11 were away. 12 CHAIRPERSON: Oh yes, yes of course, the 13 families of the deceased. Were the injuries parties here 14 all the time anyway already? 15 MR MPOFU: Yes, in some form or another. 16 CHAIRPERSON: Yes, I see. Particularly 17 the bereaved parties, those who lost their husbands and 18 fathers and loved ones and I understand it's very important 19 for you and indeed for us that you should be here to 20 witness the process, to have a chance to hear the evidence 21 and understand what the issues are and I'm very pleased 22 that you've come back safely. I understand some of you 23 were concerned about the seating arrangements and the 24 facilities but I trust that if there are problems you'll be 25 able to communicate them to us through Mr Mpofu and we will</p>
<p style="text-align: right;">Page 10972</p> <p>1 work with the traffic police to ensure that we guide them 2 through the routes that they're going through. We will be 3 there to also give support for a peaceful march, but where 4 there is an issue of disruptions, instability, we must 5 again ensure that public order is maintained. 6 CHAIRPERSON: Simply being a peaceful 7 unprotected strike with no elements of public order 8 disturbance or possible disturbance, would the police – I 9 take it the police might have been there just to monitor 10 the situation to make sure it didn't get out of hand but 11 would the police have done anything to interfere, to favour 12 one side over the other? 13 GENERAL PHIYEGA: No, we would not 14 interfere, we would just give support. 15 CHAIRPERSON: I'll ask a final question. 16 If, in the course of this peaceful – if it had been 17 peaceful – unprotected strike, Lonmin had started 18 misbehaving and beating up the workers and trying to force 19 them to go back to work, would the police have interfered 20 then against Lonmin? 21 GENERAL PHIYEGA: Definitely would 22 intervene because there is public disorder there and that 23 requires us as police to intervene. 24 CHAIRPERSON: We'll now take the lunch 25 adjournment.</p>	<p style="text-align: right;">Page 10974</p> <p>1 do what we can to make your stay as satisfactory and as 2 comfortable as it can be in the circumstances. 3 MR MPOFU: Thank you, and Ms Lewis – 4 CHAIRPERSON: I beg your pardon. Yes, 5 I'm really getting my facts wrong. Ms Lewis of course who 6 is here today and who is a junior to Mr Ntsebeza, she's the 7 main person acting on behalf of the families of the 8 deceased and what I've said applies to you also, Ms Lewis, 9 if you will please, if there are problems which your 10 clients encounter, if you please would tell us and those 11 who are here who are among the injuries parties, who were 12 injured and who are in the group who are described as the 13 victims, Mr Mpofu is your counsel and please communicate 14 with him if there are any problems that you have. I see 15 that we have the Lord Bishop of Pretoria, Bishop Dr Seoka, 16 here. We're pleased to see you as well. If there's 17 anybody else I've left out, I apologise. You're still 18 under oath, National Commissioner. Mr Mpofu, are you ready 19 to proceed with your cross-examination? 20 MANGWASHI VICTORIA PHIYEGA: s.u.o. 21 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 22 I am, thank you, Chairperson. Thank you for the remarks. 23 I may indicate that we, Ms Lewis and I are proposing to 24 approach the evidence leaders about some kind of permanent 25 arrangements for the seating and all that but we will</p>

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1 advise the Commission.

2 CHAIRPERSON: The members of the families

3 should be here.

4 MR MPOFU: Yes.

5 CHAIRPERSON: It's important also that

6 the other parties who have an interest in the matter,

7 including your clients, should be here as well and

8 obviously we want to make it as easy and convenient and

9 comfortable for them so that they can be here and feel that

10 they are welcome –

11 MR MPOFU: Thank you, Chair.

12 CHAIRPERSON: - and that their presence

13 is appreciated.

14 MR MPOFU: Much appreciated, Chairperson.

15 Chairperson, in the interests of time, the homework that

16 you gave me – I'm not going to read through the passages,

17 I'll just make references. The relevant portion where I

18 start discussing this issue about, as I said, I talk about

19 conflict at first between capital and labour and then I –

20 it's 10792 onwards.

21 CHAIRPERSON: 10792?

22 MR MPOFU: 92, yes, then at 10793, that's

23 where I just call it a dispute. I say, "And in this,

24 taking it now away from the esoteric level, in this

25 particular situation you were aware that there was a

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1 dispute as between Lonmin and the protesters, correct?"

2 That's in 10793 and then the witness says, "I must explain

3 it further." And then I say, "Okay. Yes, were you aware

4 that there was a wage dispute as between those two

5 parties," using her words. And then Mr Burger objects

6 before she can answer and then there's a debate about

7 meanings and so on. It ends at about 10796, Chairperson.

8 CHAIRPERSON: Are those the passages that

9 you're going to base your argument on at the end of the

10 case –

11 MR MPOFU: At – yes.

12 CHAIRPERSON: On this topic that you've

13 been debating?

14 MR MPOFU: Yes, on the topic and I'm not

15 going to – yes, the only point I want to emphasise is that

16 I specifically used her wording deliberately.

17 CHAIRPERSON: Yes. No, I understand.

18 Anyway we will go through that in due course and study the

19 passages very carefully.

20 MR MPOFU: Thank you, Chair. General,

21 before we move to the next topic I just wanted to, once

22 again to point out to you where I'm going with this and I

23 do understand, as I said even on Tuesday, that some of the

24 issues that I'm raising here do not concern you directly

25 and I was only raising them with you insofar as they were

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1 relayed to you by others, by those others that they relayed

2 to but insofar as those people are still going to testify,

3 I will canvass them with those people. But the real issue

4 is that if you look General Mbombo's statement, I don't

5 know if it's already been admitted as an exhibit. GGG5,

6 GGG5 I'm sorry. Do you remember I suggested to you on

7 Tuesday that the reason given for, as a trigger for the

8 operation, namely Mathunjwa's alleged reneging from his

9 promise, was not the true reason? Do you remember I

10 suggested that?

11 GENERAL PHIYEGA: Yes, I remember your

12 suggestion.

13 MR MPOFU: One of the bases for that is

14 paragraph 19, if you look at paragraph 19.1 and 19.2 of

15 GGG5 – yes, thank you Chairperson, you will see there,

16 remember that there was a meeting at six at which the phase

17 3 issue was discussed and then here General Mbombo says, "I

18 had a media briefing at 9:30 at the JOC in Marikana with

19 the various media houses to brief them on the prevailing

20 situation" - this is the so-called D-day speech – "as well

21 as efforts of the police in trying to address the

22 situation." And then the important words are the four

23 words of the next paragraph, "After the media briefing I

24 was advised that Mr Mathunjwa did not pitch up at the

25 koppie as promised and the protesters had not laid down

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1 their weapons." In other words, it was only after the 6

2 o'clock meeting and the media conference that she learnt

3 that Mathunjwa had broken the promise, even assuming there

4 was such a promise. And I'm just giving you context, this

5 then takes us to what the Chairperson said on, I think on

6 Tuesday, it takes us to – at least according to the theory

7 that we want to advance – to the circumstantial level. If

8 the reason advanced by the police is not valid for the

9 reasons that I have explained then there must be another

10 trigger for the D-day attitude. Do you follow that?

11 CHAIRPERSON: I don't know whether you

12 understand what Mr Mpofu is saying. He's talking in

13 shorthand, if one can mix one's metaphors. What he's

14 referring to is the fact that Captain Adriaio, after your –

15 not after your, after the media conference addressed by the

16 Provincial Commissioner General Mbombo, told the press that

17 today is D-day and that the matter will be disposed of

18 today and that's what Mr Mpofu is referring to. So what

19 he's saying to you is that, the big question is why was

20 Thursday D-day and he says the reason given was not the

21 true one and therefore there must be another reason. I

22 hope that helps you to understand –

23 MR MPOFU: Thank you, Chairperson.

24 CHAIRPERSON: - where Mr Mpofu is coming

25 from. Is that right, have I got it right?

<p style="text-align: right;">Page 10979</p> <p>1 MR MPOFU: [Inaudible]. And that is why, 2 General, I was maybe too emphatically questioning you on 3 this issue of the characterisation because our argument is 4 going to be that the answer to that 64 million dollar 5 question lies around this issue of characterisation. I 6 just wanted to put that to bed before we move to the next 7 issue and that's why I was questioning you on that issue. 8 CHAIRPERSON: Let me put the point to you 9 as I understand it. If I don't understand it Mr Mpofo will 10 correct me and if I do understand it you can comment on it 11 if you have any comments at all. 12 GENERAL PHIYEGA: Yes. 13 CHAIRPERSON: What Mr Mpofo says is the 14 reason given for deciding to act on the Thursday, in other 15 words the reason why Thursday was regarded as D-day, which 16 was given, was because Mr Mpofo – sorry, Mr Mathunjwa broke 17 an undertaking and that was why, according to this, that 18 was the reason that you decided to act. He says that 19 wasn't correct and it's a matter that we don't have to deal 20 with in detail but there is evidence to suggest that Mr 21 Mathunjwa gave no such undertaking. He says that if that 22 wasn't the true reason, then the reason was, he will argue 23 it's because what was happening was wrongly characterised 24 as not being a hybrid situation of a remuneration dispute 25 plus a breakdown in law and order but the characterisation</p>	<p style="text-align: right;">Page 10981</p> <p>1 am assuming the Chairperson said one should ask people like 2 General Mbombo. So it's not use to ask General Annandale. 3 All we know about General Annandale is that he was 4 instructed by General Mbombo so that's why I think the 5 Chairperson is correct but I won't quibble over that. 6 CHAIRPERSON: Well, maybe I was guilty of 7 an oversimplification and you know, we want to get a 8 meaningful answer from the witness, not one that can be 9 dismissed on the basis that she didn't have all the facts. 10 What also is relevant is that General Annandale said that 11 he, he gave various reasons as to why they did what they 12 did and why they acted that day but he said that – but the 13 evidence was that the decision was taken by General Mbombo 14 and she in fact instructed him to implement stage 3 of the 15 plan, but there were other reasons which General Annandale 16 dealt with as well in his evidence. 17 MR MPOFU: Thank you, Chairperson – 18 CHAIRPERSON: Mr Semanya, will that 19 provide – is that a fair summary? I don't want to be 20 accused of oversimplification later. I prefer to be 21 accused of it now so I can do something about it. I take 22 it silence indicates acceptance. You did say that you had 23 some comments to make, we'd be happy to hear them. 24 GENERAL PHIYEGA: Yes. Because there's 25 been so much talking I may have even missed some points but</p>
<p style="text-align: right;">Page 10980</p> <p>1 of it as purely a law and order issue and in fact seen by 2 those who took the decision as being purely a law and order 3 question which better be sorted out as soon as possible. 4 Is that – that's the point? 5 MR MPOFU: That's the point. Thank you 6 very much, Chairperson. Any comment? 7 CHAIRPERSON: Have you any comment on 8 that or is it something that you feel we must rather ask 9 someone like General Mbombo who took the decision and 10 others who were in the JOC on the JOC COM? Can you help us 11 or must we reserve that question for them – 12 GENERAL PHIYEGA: Judge, I want to talk. 13 CHAIRPERSON: Sorry? 14 GENERAL PHIYEGA: Chair, I would like to 15 say something. 16 CHAIRPERSON: Yes, well, we'll give you 17 an opportunity to say something. 18 MR SEMENYA SC: Chair, in fairness, the 19 witness must be told the evidence of General Annandale on 20 why he, Mr Annandale, instructed phase 3 to take place. He 21 gave us a litany of factors. It was not only this one. 22 MR MPOFU: If I may respond to that, 23 Chairperson? With great respect to Mr Semanya I would 24 prefer your formulation because as we know, General 25 Annandale was instructed by General Mbombo, which is why I</p>	<p style="text-align: right;">Page 10982</p> <p>1 when I look at the statement of General Mbombo I see that 2 on the 18th already she talks about this promise, on the 3 15th already. 4 MR MPOFU: Yes. 5 GENERAL PHIYEGA: On 18 she talk about it 6 and what I'm missing is whether that is not linked to 19.2 7 or what is it that you are contesting? 8 CHAIRPERSON: No, the point is it is 9 linked but Mr Mpofo's point will be that Mr Mathunjwa made 10 no such promise and that General Annandale himself said 11 that there was no promise by Mr Mathunjwa. At best, Mr 12 Mathunjwa seemed confident that he could persuade the 13 people to lay down their arms. That's the basis of the 14 point, you understand. 15 GENERAL PHIYEGA: In that – 16 MR MPOFU: I'm sorry, General, to cut 17 you. Chairperson, if I may, without cutting the General – 18 CHAIRPERSON: You've got to give the 19 witness – 20 MR MPOFU: Yes – 21 CHAIRPERSON: - a fair summary of the 22 facts so that she can answer. She wants to say something. 23 MR MPOFU: Yes. 24 CHAIRPERSON: Before she says what she 25 wants to say, perhaps she'll have the benefit of what</p>

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1 you're now going to say.

2 MR MPOFU: Thank you, Chairperson.

3 CHAIRPERSON: If it will turn out to be a

4 benefit we'll see.

5 MR MPOFU: I hope it will be. In

6 addition to what the Chairperson has said, I have now read

7 to you the, what I read to you, 19.1 and 19.2. In other

8 words, what I'm saying is that what the Chair is saying -

9 firstly, there was no such promise but I'm prepared, for

10 the purposes of this question, to assume that there was.

11 I'm saying even if there was such a promise, according to

12 what I've read here General Mbombo only became aware of

13 that it was "broken", quote/unquote, after she had already,

14 after the D-day press conference had been done. So that's

15 just an addition.

16 GENERAL PHIYEGA: I think what I'd like

17 to say, Judge, is that the statement that was written by

18 General Mbombo and under oath, she will talk to it. And

19 the second thing is that what I want to understand from

20 you, are you saying the media briefing and the decision for

21 her to act, to disarm the protesters and do whatever was

22 based on - because the promise was there. When she

23 finishes the media conference probably she was thinking

24 that at that point in time the weapons were laid and if

25 they weren't, then they would come in, encircle, disarm and

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1 arrest those that they needed to arrest.

2 CHAIRPERSON: As you correctly point out,

3 these are matters that you'll have to take up with her, I

4 think.

5 GENERAL PHIYEGA: Absolutely.

6 [14:21] MR MPOFU: Thank you. Thank you,

7 General, the Chairperson is right. The only point I want

8 to put to you is, why am I saying this to you, you might

9 ask, when I concede that this whole thing about the press

10 conference and so on, I'm not saying you're there. The

11 only connection between all what I've said and you is the

12 fact that you, in your statement, said that maximum force

13 was used or you were told by the what do you call it, by

14 the commanders. And according to what I've just told you

15 those two things, those are the two smoking guns if you

16 like, is the characterisation and the use of maximum force

17 which you have already said - well, I don't want to go back

18 to that debate as to what you meant by it.

19 CHAIRPERSON: Mr Mpofu, that's based upon

20 what she says she was told.

21 MR MPOFU: Yes.

22 CHAIRPERSON: When the people who told

23 her that come, you can ask them what exactly they meant.

24 MR MPOFU: Yes. So only concerning to

25 what you said into the world in the media, the fact that -

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1 and I accept that other people had said that information to

2 you but the only connection between you and this is that on

3 the 17th you stood and told the world that the police were

4 forced to use maximum force, so I'll leave it at that. If

5 you want to comment you can, otherwise we'll move on.

6 GENERAL PHIYEGA: I've no comment. I've

7 already addressed all these issues.

8 MR MPOFU: Thank you, General. I had

9 said to you that I find myself - this is leading to the

10 next topic - in agreement with the President's summary of

11 three specific points, one of which we've now dealt with.

12 In his FFF30, there are three things that I want to

13 isolate. The first one is that he says during apartheid

14 there were many Marikanas by which, without pre-empting the

15 honourable President, I'm sure he means there were many

16 other massacres and -

17 MR SEMENYA SC: Chair, I don't accept

18 that the President says Marikana was a massacre, I don't

19 accept it.

20 MR MPOFU: Okay, let's leave it at

21 Marikanas -

22 CHAIRPERSON: You don't need that for

23 your point -

24 MR MPOFU: No, I don't.

25 CHAIRPERSON: It just introduces things

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1 that may be irrelevant and waste time.

2 MR MPOFU: Unnecessary -

3 CHAIRPERSON: We know what you mean. He

4 means circumstances, tragedies similar to Marikana.

5 MR MPOFU: Yes. Yes, I'm sure the

6 President meant tragedies of a similar nature and in this

7 forum at least comparisons have been made with such

8 tragedies, including those that happened at Sharpeville and

9 for me the most appropriate one is what is called the

10 Trojan Horse massacre, tragedy, but be that as it may,

11 let's not read in too much into it. All I'm just saying,

12 where we stand we will agree with the President that during

13 apartheid there were many Marikanas. The second thing that

14 we agree with the President is one that we've debated all

15 morning so I don't want to spend time on, that is that at

16 the root of this was a dispute over, a dispute over wages.

17 MR BURGER SC: Chair, what is the

18 relevance of the fact that my learned friend agrees with

19 the President?

20 MR MPOFU: Well -

21 MR BURGER SC: To this witness. What is

22 the question?

23 MR MPOFU: It's coming.

24 CHAIRPERSON: I'm waiting for it too.

25 You explain the question before you ask it and sometimes

<p style="text-align: right;">Page 10987</p> <p>1 you explain it afterwards. He's adopting the former 2 procedure at the moment. Carry on, Mr Mpofo.</p> <p>3 MR MPOFU: Thank you. The third issue, 4 which is where you come in, is the President's answer to or 5 explanation as to why he, his explanation as to why he will 6 not fire the Minister of Police because of the tragedy 7 because according to him a mistake happened at the spur of 8 the moment. Now this is a crucial point. We will argue 9 that the reason why the President makes that logical 10 statement that he wouldn't fire the Minister of Police 11 simply because a mistake happened at the spur of the moment 12 on the ground is based on the belief that the Minister of 13 Police did not, as he should not, involve himself with 14 operational matters, which we will show is not the case.</p> <p>15 MR BURGER SC: I object to that question. 16 What this witness says to that is quite irrelevant, what 17 she thinks -</p> <p>18 CHAIRPERSON: - speculation as to what 19 the basis of the President's opinion was, which we don't 20 know is correct.</p> <p>21 MR MPOFU: Yes.</p> <p>22 CHAIRPERSON: The President may have had 23 any number of reasons for believing, (a) it was a mistake - 24 we don't know what the mistake was, neither does the 25 witness - and secondly, he may well have had reasons other</p>	<p style="text-align: right;">Page 10989</p> <p>1 it's FFF3, you've already said that you know the meaning of 2 the oath so I take that for granted. If the Chair would 3 just bear with me.</p> <p>4 CHAIRPERSON: Paragraph 23, are you, on 5 page -</p> <p>6 MR MPOFU: Yes, I am but -</p> <p>7 CHAIRPERSON: And again paragraph 24.</p> <p>8 MR MPOFU: And 24, that's correct, Chair. 9 Yes, thank you, Chair. In FFF3 you stated under oath that, 10 "On the afternoon of August 16, 2012 I received a call from 11 Lieutenant General Mbombo who informed me of the decision 12 to implement stage 3 of the plan, which information I 13 relayed to the Minister." And at -</p> <p>14 CHAIRPERSON: Remember that there was a 15 lot of evidence about that in chief.</p> <p>16 MR MPOFU: Yes. Yes, and -</p> <p>17 CHAIRPERSON: I'm just reminding you of 18 that.</p> <p>19 MR MPOFU: Thank you, Chairperson, yes. 20 That's a fair point, Chairperson. I'm taking that into 21 account as well as Mr Burger's cross-examination which I 22 don't intend to repeat. Now to that, that is a statement 23 to which you said you understand the contents and you swear 24 that it is true and correct. Now, I want to make one thing 25 clear, that unlike Mr Burger although I'm building on what</p>
<p style="text-align: right;">Page 10988</p> <p>1 than the one Mr Mpofo has mentioned for not taking action 2 and not dismissing the Minister. So it's a very 3 speculative question. I don't think the witness can give 4 us an answer that's going to take us any further, I'm 5 afraid.</p> <p>6 MR MPOFU: I want to take you -</p> <p>7 CHAIRPERSON: You may be right, that may 8 be the reason, but then you may be wrong.</p> <p>9 MR MPOFU: No Chair, I'm not - it's not 10 important. I'll abandon that. I want to take you to, 11 without repeating it, the cross-examination of yourself by 12 Mr Burger in relation to the various statements and page 12 13 and so on, you remember all that? I promise you we're not 14 going to repeat it. I just want us to take it from there.</p> <p>15 GENERAL PHUYEGA: Yes, I do.</p> <p>16 MR MPOFU: For various reasons, for 17 various reasons already canvassed with you by Mr Burger as 18 well as additional ones which I'm going to canvass with you 19 - sorry, I was saying for various reasons including those 20 canvassed by Mr Burger - sorry - and additional ones which 21 I'm going to deal with now, I'm going to suggest to you 22 that the Minister's involvement as reflected in some of the 23 statements you made under oath transgressed into the 24 operational arena. That's what I'm going to - you don't 25 have to agree at this stage. You remember that, I think</p>	<p style="text-align: right;">Page 10990</p> <p>1 he did, my concern is not about what was said in what 2 statement, what have you. My concern is what actually 3 happened, you understand that. So I'm prepared to accept - 4 accept might be too strong - to assume that there were 5 clerical issues and this statement came before that one and 6 what have you -</p> <p>7 MR SEMENYA SC: Chair, can Mr Mpofo put 8 questions to the witness? All these prefaces, if you read 9 the record it makes for difficult reading because Mpofo 10 explains almost everything before he can put a question.</p> <p>11 CHAIRPERSON: Mr Mpofo, it seems as if 12 your style of cross-examination is eliciting some disfavour 13 from both Mr Burger and Mr Semenya. It might be an idea, I 14 know it's difficult to abandon the habits of a lifetime but 15 it might be an idea to put the question to her and then if 16 the witness doesn't understand, then explain the other 17 points but you've made the point to her which I think she 18 understands, that you aren't interested in just the 19 differences between different statements, you need to know 20 what really happened.</p> <p>21 MR MPOFU: Okay.</p> <p>22 CHAIRPERSON: That sounds a fruitful line 23 to pursue, I suggest you do.</p> <p>24 MR MPOFU: Thank you, Chairperson. I 25 only do it for the benefit of the witness. If the</p>

<p style="text-align: right;">Page 10991</p> <p>1 witness's representative doesn't want it, I'll withdraw the 2 benefit. Okay, now I put it to you, ma'am, that when you 3 under oath stated that you relayed what General Mbombo had 4 told you to the Minister, that in fact as reflected in your 5 oath, that was true and correct.</p> <p>6 GENERAL PHIYEGA: I disagree and I've 7 explained my statement to this Commission.</p> <p>8 MR MPOFU: The reason that those 9 explanations cannot hold any water is that, at least one of 10 the reasons is that before the confusion of the 7th and the 11 12th March 2013, there was exhibit EE which happened in 12 2012. On page 3 of that exhibit EE, General Mbombo 13 indicated to the meeting and this has been confirmed by 14 General Annandale, indicated the state of affairs that you, 15 four or five months later, put in your statement when she 16 said –</p> <p>17 CHAIRPERSON: Has the witness got exhibit 18 EE in front of her?</p> <p>19 MR MPOFU: I think so, yes. I was just 20 observing that. That's why I was going slowly. I think 21 she now has, yes.</p> <p>22 MR MAHLANGU: It's the document that has 23 got the number 16.11.</p> <p>24 MR MPOFU: Yes – yes.</p> <p>25 CHAIRPERSON: I think your attention is</p>	<p style="text-align: right;">Page 10993</p> <p>1 witness to comment, the last time I checked.</p> <p>2 CHAIRPERSON: Ja, but you must avoid just 3 putting argument and saying what your argument is going to 4 be. I'm sure you can put that into interrogative form 5 without much trouble.</p> <p>6 [14:41] MR MPOFU: Yes, okay. What would your 7 comment be, General, if it was to be suggested that the 8 chances of you, or rather the chances of the Provincial 9 Commissioner saying that you said you were going to tell 10 the Minister in August and you, five months later, saying 11 something similar in your statement and both of you making 12 a mistake about that same fact are less than one in a 13 million.</p> <p>14 GENERAL PHIYEGA: I think the issue of 15 what I communicated with the Minister or in my statement, I 16 really have answered a lot of things. That it's one in a 17 million, I don't have a comment to that.</p> <p>18 MR MPOFU: And for that reason what would 19 be your comment – I was going to say I was going to argue 20 but I'll try to put it this way – what would be your 21 comment if we say the only explanation for this mystery is 22 that your evidence is untruthful in the sense that you did 23 speak to the Minister, as General Mbombo five months before 24 indicated to the meeting?</p> <p>25 GENERAL PHIYEGA: I would say it is my</p>
<p style="text-align: right;">Page 10992</p> <p>1 going to be drawn to 16.13.</p> <p>2 MR MPOFU: 16.13 yes.</p> <p>3 CHAIRPERSON: The third page of the 4 document.</p> <p>5 MR MPOFU: That's correct, Chairperson.</p> <p>6 CHAIRPERSON: The second paragraph under 7 the heading "Closing remarks."</p> <p>8 MR MPOFU: There, I'll read it, the 9 paragraph, "The Provincial Commissioner indicated that she 10 had already communicated with the National Commissioner, 11 informing her of the current situation and that a deadlock 12 was reached with negotiations and also that phase 3 of the 13 operational plan will be executed. She also indicated that 14 the National Commissioner indicated that she will inform 15 the Minister of Police on the current situation and actions 16 that will be taken." Do you see that part?</p> <p>17 GENERAL PHIYEGA: I see the part.</p> <p>18 MR MPOFU: To cut a long story short, let 19 me just say to you that we will argue that it is highly 20 unlikely, the chances are less than one in a million that –</p> <p>21 CHAIRPERSON: Instead of putting your 22 argument to the witness, rather put a question. I 23 understand you'll argue that but –</p> <p>24 MR MPOFU: Well, Chairperson, in cross- 25 examination you are allowed to put your version to the</p>	<p style="text-align: right;">Page 10994</p> <p>1 word against yours because I've given oath and I've given 2 my testimony to this Commission.</p> <p>3 CHAIRPERSON: It's not as simple as that 4 because according to the minutes that were read the 5 Provincial Commissioner said that and General Annandale who 6 gave evidence who was at that meeting, confirmed that 7 that's what the Provincial Commissioner said. So it's not 8 just your word under oath against what Mr Mpofo puts. What 9 you've said is contra – or what is contradicted by his 10 statement made, so it would appear according to the 11 evidence before us, at that JOC COM meeting at 1:30 on the 12 16th, so it's not quite as simple as you say but I put that 13 to you to give you an opportunity to elaborate on your 14 answer if you wish.</p> <p>15 GENERAL PHIYEGA: Judge, my elaboration 16 would be, issues of what we are doing operationally are not 17 the Minister's issue. I will tell the Minister about the 18 situation, what is happening, where we are and even in his 19 statement he talks about the nature of issues that I 20 discussed with him. What is being discussed here is 21 whether I told the Minister that we are deploying to do 22 phase 3 and all – that's not what I discussed with the 23 Minister.</p> <p>24 MR MPOFU: If it was not from you and I 25 accept that the same question will be put to General Mbombo</p>

<p style="text-align: right;">Page 10995</p> <p>1 so don't give me that answer, but if it was not from you, 2 where would General Mbombo have gotten this strange idea 3 that you were going to relay the matter and the action to 4 the Minister? 5 CHAIRPERSON: I don't know that she can 6 be expected to answer that. I mean – 7 MR MPOFU: She might have an idea, we 8 don't know, Chair. She might have spoken to her 9 afterwards, they work together. 10 CHAIRPERSON: Can you throw any light on 11 the question as to where General Mbombo got, appears to 12 have got that idea from? 13 GENERAL PHIYEGA: Maybe what I'm not 14 understanding is this. My testimony, Judge, has been, I do 15 communicate with the Minister on a lot of things and I 16 apprise the Minister about what is happening. What is 17 being argued here is that I went to the Minister and said 18 to the Minister, we are now in stage 3, we are encircling, 19 we are arresting, we are doing this, and I'm saying that's 20 not the nature of discussion I would go into. I would 21 explain that we are operating, people are dead, this is the 22 situation but the nitty-gritty and the crossing of t's and 23 dotting of the i's that is being asked to me by Adv Mpofu – 24 CHAIRPERSON: No, no, I understand – 25 GENERAL PHIYEGA: - that's what I must</p>	<p style="text-align: right;">Page 10997</p> <p>1 going to relay the information to the Minister. Okay, 2 which I've read, I'm not going to read a second – about 3 stage 3 of the plan and so on. You, some five months later 4 under oath say that, in your statement, General Mbombo 5 informed you of the decision to implement stage 3 of the 6 plan, which information I relayed to the Minister. 7 GENERAL PHIYEGA: That's not correct. 8 MR MPOFU: So on that version of your 9 statement it accords directly with what General Mbombo's 10 account is in August. 11 GENERAL PHIYEGA: And my statement which 12 I corrected immediately I got to this place, might we let 13 me read as follows. "On the afternoon of August 16, 2012, 14 I received a call from Lieutenant-General - who informed me 15 of a decision to implement a special operation of the 16 plan." 17 MR MPOFU: Yes and that is why I was 18 making the explanation I was making, which Mr Semenya did 19 not like. I accept that in your other statement you 20 removed, removed the words "which information I relayed to 21 the Minister" but the removal of those words does not mean 22 it did not happen. 23 GENERAL PHIYEGA: I have given my 24 statement under oath and I have just read what my true 25 statement is.</p>
<p style="text-align: right;">Page 10996</p> <p>1 respond to – 2 CHAIRPERSON: I'm sorry to interrupt you. 3 I understand your answer. You say you didn't say that to 4 the Minister, you didn't communicate that information to 5 the Minister. You were saying that what General Mbombo 6 said at the JOC COM was incorrect and what Mr Mpofu wants 7 to know is, can you – if you can't, you can't but can you 8 throw light upon how it came about that General Mbombo 9 apparently got hold of the wrong end of the stick, got 10 wrong information which she communicated to the JOC COM? 11 Now I would imagine you probably can't say how the mistake 12 arose and Mr Mpofu suggests you might have discussed it 13 with her later and she might have told you, so that's why I 14 allowed but question but – 15 GENERAL PHIYEGA: I think, Judge, there 16 is something that we are missing here and what I want to 17 understand from Adv Mpofu. My continuous communication 18 with the Minister is not being argued here, I presume. 19 Maybe let's go to the baseline, what is being argued? 20 CHAIRPERSON: I can't answer that 21 question, maybe Mr Mpofu can. 22 MR MPOFU: I can. I will, very 23 willingly, Chairperson. I'm going to try and simplify it 24 or break it down. What I'm putting to you, General, is 25 that General Mbombo says in August that you said you were</p>	<p style="text-align: right;">Page 10998</p> <p>1 MR MPOFU: And that's exactly the 2 dilemma, General, because the other statement to the 3 contrary was also made under oath, so that's why I need 4 your assistance. 5 GENERAL PHIYEGA: I've explained myself 6 in that regard and I think I don't have any further 7 explanation beyond what I have given, which is the truth 8 and nothing else but the truth. 9 MR MPOFU: Okay, we'll come back to that. 10 In paragraph 24 – 11 CHAIRPERSON: Paragraph 24 of what? Of 12 the statement – 13 MR MPOFU: Of what we're discussing which 14 is FFF – 15 CHAIRPERSON: No – no, 3? 16 MR MPOFU: No, Chair – 17 CHAIRPERSON: There are a couple of 18 versions of paragraph 24. 19 MR MPOFU: Fair enough, fair enough. 20 CHAIRPERSON: I want to know which one 21 you're referring to. 22 MR MPOFU: Yes, fair enough, Chairperson. 23 I'm referring to FFF3. 24 CHAIRPERSON: That's the one that she 25 says is incorrect, the one she signed but on the 7th, I</p>

<p style="text-align: right;">Page 10999</p> <p>1 think it was.</p> <p>2 MR MPOFU: Yes, it's the same as the one</p> <p>3 I read now. It's just a –</p> <p>4 CHAIRPERSON: - but that's the one that</p> <p>5 she says is incorrect.</p> <p>6 MR MPOFU: Chair –</p> <p>7 CHAIRPERSON: So anyway, you remember</p> <p>8 there are two versions so just make it clear. You're</p> <p>9 referring to the one which she swore to, which she swore to</p> <p>10 but which she now says is incorrect, that's FFF paragraph</p> <p>11 24, is that right?</p> <p>12 MR MPOFU: In FFF3 on paragraph 24 you</p> <p>13 say under oath, "She stated" – that she being General</p> <p>14 Mbombo – "stated that 259 protesters had also been</p> <p>15 arrested. I then related the same information to the</p> <p>16 Minister of Police telephonically, who advised me to attend</p> <p>17 to the matter personally so that I can have a first account</p> <p>18 of the incident."</p> <p>19 MR SEMENYA SC: Chair, yes Chair, I just</p> <p>20 want to know that I'm following the right exhibit. I know</p> <p>21 it has been confusing us whether it's FFF2, FFF3, et</p> <p>22 cetera.</p> <p>23 MR MPOFU: 2A.</p> <p>24 CHAIRPERSON: I understood –</p> <p>25 MR SEMENYA SC: The one I have ends</p>	<p style="text-align: right;">Page 11001</p> <p>1 CHAIRPERSON: Then we know where we are.</p> <p>2 MR MPOFU: Let's say – yes okay,</p> <p>3 Chairperson I think it's FFF3 but I stand corrected but to</p> <p>4 use your terminology –</p> <p>5 CHAIRPERSON: The 12th, the statement –</p> <p>6 MR MPOFU: The statement of the 12th.</p> <p>7 CHAIRPERSON: Which she said in chief was</p> <p>8 wrong.</p> <p>9 MR MPOFU: Yes.</p> <p>10 CHAIRPERSON: And she said the one of the</p> <p>11 7th on this issue was correct. Anyway, as long we know, as</p> <p>12 long as we've worked out a language between us which</p> <p>13 communicates what we want to say without confusion, so we</p> <p>14 can carry on.</p> <p>15 MR MPOFU: Yes. In fact I'll avoid the</p> <p>16 FFF. I'm going to say in your statement of the 12th of</p> <p>17 March you said under oath what I read out to you, agreed,</p> <p>18 under oath?</p> <p>19 GENERAL PHIYEGA: Yes and I've corrected</p> <p>20 that.</p> <p>21 MR MPOFU: Yes, we're coming to the</p> <p>22 correction. The issue is that both of these corrections,</p> <p>23 quote/unquote, relate to changes that have something to do</p> <p>24 with discussions between you and the Minister, correct? In</p> <p>25 other words, when I say both I mean in relation to</p>
<p style="text-align: right;">Page 11000</p> <p>1 paragraph 24 with, "I then related the same information to</p> <p>2 the Minister telephonically and advised him that I shall be</p> <p>3 attending to the matter personally." That is what I have</p> <p>4 as FFF3.</p> <p>5 CHAIRPERSON: That's the corrected one.</p> <p>6 The one which you corrected, I think in the course of</p> <p>7 examination-in-chief, by referring to an earlier version</p> <p>8 which had been sworn to on the 7th.</p> <p>9 MR MPOFU: Yes.</p> <p>10 CHAIRPERSON: And I think Mr Mpofo is</p> <p>11 putting the one from the 12th which the witness says is</p> <p>12 erroneous and in fact she says the version of the 7th is the</p> <p>13 correct one.</p> <p>14 MR SEMENYA SC: I'm just asking about the</p> <p>15 number of the exhibit so that I'm not confusing the two.</p> <p>16 MR MPOFU: I think it's FFF3 but –</p> <p>17 MR SEMENYA SC: No –</p> <p>18 MR MPOFU: Yes, Mr Semanya is correct.</p> <p>19 MR SEMENYA SC: It's FFF2 you're reading</p> <p>20 and I'm saying you are referring to FFF2.</p> <p>21 CHAIRPERSON: There's been a bit of</p> <p>22 confusion from the beginning as to which is which but</p> <p>23 anyway, if we talk about the one of the 12th and the one of</p> <p>24 the 7th –</p> <p>25 MR MPOFU: Okay.</p>	<p style="text-align: right;">Page 11002</p> <p>1 paragraph 23 and 24.</p> <p>2 CHAIRPERSON: - agree to that, that's</p> <p>3 obviously so. The 23 one says she informed, relayed</p> <p>4 something to the Minister which is now deleted and the</p> <p>5 second one says the Minister gave her certain advice and</p> <p>6 she says she gave herself that advice and told the Minister</p> <p>7 the advice she'd given herself. So it's clearly right to</p> <p>8 say –</p> <p>9 MR MPOFU: Thank you, Chair.</p> <p>10 CHAIRPERSON: We don't have to waste</p> <p>11 time.</p> <p>12 MR MPOFU: And both corrections or</p> <p>13 mistakes, quote/unquote, relate to issues where the</p> <p>14 Minister, on your version, would have crossed the line</p> <p>15 between the operational issues and what his functions are.</p> <p>16 MR SEMENYA SC: That can't be correct,</p> <p>17 Chair. There's nothing crossing operational lines by</p> <p>18 relaying an incident to the Minister.</p> <p>19 CHAIRPERSON: Mr Mpofo, I must say I'm</p> <p>20 inclined to agree with Mr Semanya. I've always been</p> <p>21 puzzled how this issue could have arisen because there</p> <p>22 didn't seem to be anything improper about her telling the</p> <p>23 Minister that after all the day before it had been conveyed</p> <p>24 to her that concerns had been expressed to him by various</p> <p>25 people. Was there anything wrong with her phoning him up</p>

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1 the next day and saying by the way, just to keep you
 2 informed, this has been happening – but she says she didn't
 3 and she makes the point that she didn't. And equally, I
 4 don't understand whether, if he advised her to go so she'd
 5 know personally what was going on, how that's interference
 6 with an operational matter. She says he didn't advise her,
 7 she advised herself and told him so, but again I don't
 8 understand how either of those crosses any kind of barrier
 9 between operational things that he couldn't talk to her
 10 about and pure matters of information that he got –
 11 MR MPOFU: Let's assume it doesn't, then
 12 I don't want to debate –
 13 CHAIRPERSON: So Mr Semanya is right, I
 14 think –
 15 MR MPOFU: Mr Semanya is 100% right.
 16 This cross-examination, Chairperson – Chairperson, I'm
 17 sorry, I can wait. I thought maybe you were conferring
 18 with the Commissioner.
 19 CHAIRPERSON: My colleague was just
 20 telling me what the difference is but I did indicate to her
 21 that I think I know what it is.
 22 MR MPOFU: Yes.
 23 CHAIRPERSON: I was trying to ask her
 24 whether we should carry on till quarter past 3 because I'd
 25 like to carry on beyond 4 today.

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1 MR MPOFU: Yes.
 2 CHAIRPERSON: Now that we're in
 3 Centurion, one of the advantages is we can do that.
 4 MR MPOFU: Yes.
 5 CHAIRPERSON: Because I'd like to give
 6 you a chance to finish –
 7 MR MPOFU: Thank you.
 8 CHAIRPERSON: - with the witness today
 9 and Mr Gumbo has got some questions too and depending on
 10 the questions you ask from now till the end of your cross-
 11 examination and his, I may have some questions as well.
 12 MR MPOFU: We're getting there, Chair.
 13 CHAIRPERSON: Alright. Quarter past 3.
 14 Commissioner Hemraj agrees, quarter past 3. Carry on till
 15 quarter past 3.
 16 [15:01] MR MPOFU: Thank you, Chairperson. I'm
 17 saying assuming that the Chairperson and Mr Semanya are
 18 right that this doesn't involve the crossing of the line –
 19 that's a matter that may be debated later with the Minister
 20 – the gravamen of this cross-examination right now is about
 21 credibility and statements made under oath which may or may
 22 not be truthful. So the issue I'm saying is whether the
 23 issue crossed or was suspected to cross or whatever – all
 24 I'm putting to you is simply that these changes were made
 25 with a view to remove the Minister from those two

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1 incidents, one, him being informed by, of you, by you of
 2 the plan and secondly, him advising or instructing or
 3 whatever, advising you to do something about what is stated
 4 in paragraph 24, that that was the purpose to falsely
 5 remove the Minister from involvement which was indicated in
 6 the earlier – well, I won't say earlier because the dates
 7 don't make sense – in the corrected statement of the 12th.
 8 GENERAL PHIYEGA: I think I've tried to
 9 explain myself over and over again but I can tell you that
 10 on the 12th of June I'll be a year in this organisation.
 11 There is not a day where the Minister has stopped me, told
 12 me how to operate with my team.
 13 MR MPOFU: On Tuesday, on Tuesday the
 14 evidence – no, sorry – the representatives of SAPS, sorry
 15 for confusing the two, the representatives of SAPS
 16 circulated a series of documents which are called base
 17 documents for your statements which the Chairperson said
 18 were probably going to be used in re-examination.
 19 CHAIRPERSON: If you're going to use
 20 them, I suppose we'd better mark them.
 21 MR MPOFU: Yes, Chairperson.
 22 CHAIRPERSON: And I suppose we'd better
 23 mark them all, otherwise you know – they're numbered you
 24 see. The first one is called, the first one isn't numbered
 25 but it's actually base, it's called "Base document."

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1 MR MPOFU: Base document, yes.
 2 CHAIRPERSON: So let me look at my next
 3 exhibit number. The next exhibit number will be 33. So
 4 let's make these FFF33 –
 5 MR MPOFU: Point 1.
 6 CHAIRPERSON: So the one headed "Base
 7 document" is FFF33, is it?
 8 MR MPOFU: Point 1.
 9 CHAIRPERSON: Point 1.
 10 MR MPOFU: Yes.
 11 CHAIRPERSON: Then the next one is called
 12 "Advancement base document," that's got a square or
 13 actually more accurately – a quadrilateral with a 2 in it,
 14 so that we'll make 33 –
 15 MR MPOFU: Point 2.
 16 CHAIRPERSON: Point 2. Then we've got
 17 one which is 3, a not signed and not commissioned statement
 18 which is FFF33.3. Then we've got one which is 3A, which is
 19 FFF33.4. And then finally in conclusion, as they say, we
 20 have FFF33.5 which has got a 4 in the middle of the
 21 quadrilateral and that's described as "Signed and
 22 commissioned statement – scanned document." So now we've
 23 got them all in a row. Before you carry on, I must
 24 indicate I have a problem with the first one and I don't
 25 know whether I'm just unfortunate or other people share my

<p style="text-align: right;">Page 11007</p> <p>1 misfortune. FFF33.1 doesn't have page 4 on my copy, it 2 doesn't have page 4. It goes from 3 to 5. 3 MR MPOFU: Yes, Chairperson, I share your 4 misfortune, I don't know about the other people. 5 CHAIRPERSON: Now it may be that every – 6 I don't know, perhaps Mr Semenya can help us with that but 7 I take it for the purposes of the questions that you 8 propose to ask, that's not material. 9 MR MPOFU: No. 10 CHAIRPERSON: And that's something that 11 can be sorted out at tea time if there is a page we haven't 12 got. So let's not waste further time on that, you just 13 carry on with your cross-examination. 14 MR MPOFU: Thank you, Chair. 15 MR SEMENYA SC: Chair, maybe may I for 16 the record say that the purpose of producing draft 17 documents which in other words have been privileged in the 18 ordinary course, was to deal only with one specific area of 19 helping the Chair understand the sequence of how the final 20 document appeared, not that there'll be cross-examination 21 about content unrelated to that aspect. 22 CHAIRPERSON: Yes, I did request the 23 documents and they've been furnished. I'm not quite sure 24 how privileged they are because this isn't exactly 25 litigation but is there a missing page 4?</p>	<p style="text-align: right;">Page 11009</p> <p>1 Minister of Police telephonically, who advised me to attend 2 to the matter personally so that I can have a first account 3 of the incident." Do you see that? 4 GENERAL PHIYEGA: Yes, I do. 5 MR MPOFU: And are you the author of that 6 document? 7 MR SEMENYA SC: Chair, this page looks 8 exactly like FFF2. What's the new version? 9 MR MPOFU: Okay, what Mr Semenya is 10 saying is not true unless it's once again where we are 11 mixed up with the numbers. What I have on FFF2 is, it says 12 "I then related the same information to the Minister of 13 Police telephonically and advised him that I shall be 14 attending to the matter personally." That's what it says 15 on FFF2. Maybe Mr Semenya can read his FFF2. 16 MR SEMENYA SC: - confusing numbers, is 17 FFF3 the same as that, FFF3? 18 COMMISSIONER HEMRAJ: Isn't that the same 19 as the statement dated the 7th? 20 CHAIRPERSON: The way it works, as far as 21 I understand it, is FFF3, the one which was dated the 12th, 22 the statement of the 12th, that's got what one can call both 23 mistakes, if they were mistakes, on the same page, the one 24 mistake being that she relayed the information to the 25 Minister, the earlier information before the shootings and</p>
<p style="text-align: right;">Page 11008</p> <p>1 MR SEMENYA SC: No, Chair, the documents 2 that have been – no – no, I'm not talking about any 3 specific question. All I'm saying is the documents would 4 have been created over a whole host of people and inputs. 5 CHAIRPERSON: Yes – yes. 6 MR SEMENYA SC: Until such time as the 7 document is, as the witness did with the two statements 8 which we've made discoveries on, signed, and I accepted the 9 cross-examination. I'm merely saying these documents are 10 placed before the Commission purely to deal with chronology 11 which was a concern – 12 CHAIRPERSON: Yes, I understand that and 13 I assumed that you were going to deal with it in re- 14 examination. Alright, now that that's been clarified we 15 may still have to get to the missing page 4 in the first 16 one but anyway, you're not, you're not going to go – 17 MR MPOFU: No, I don't need – 18 CHAIRPERSON: You carry on with your 19 cross-examination. 20 MR MPOFU: Thank you. If you go to 33, 21 FFF33.4 page 7 thereof you'll see – page 7, yes, you'll see 22 that we have now a new version of page 7 on top of the 23 versions that Mr Burger cross-examined you on in that this 24 one has got the removal on paragraph 23 but on paragraph 24 25 it still says, "I then related the same information to the</p>	<p style="text-align: right;">Page 11010</p> <p>1 that's at the end of 23 and then the second mistake at the 2 end of 24, that the Minister advised her to attend to the 3 matter. And then the document that's now being referred to 4 corrects the first mistake in para 23 but doesn't correct 5 the second mistake, if it's a mistake, at the end of 24. 6 That seems to be the point. 7 MR MPOFU: That's the point. Thank you, 8 Chair. And unless we can be shown that there's another 9 version that corrects only one of the mistakes – 10 CHAIRPERSON: So the point is, the high- 11 water mark is there are two mistakes. 12 MR MPOFU: Yes. 13 CHAIRPERSON: One document corrects the 14 first but doesn't correct the second. 15 MR MPOFU: Yes. 16 CHAIRPERSON: And then the other one 17 which I think, to be fair, is the one of the 7th, has 18 neither of the two mistakes. 19 MR MPOFU: That's correct. 20 CHAIRPERSON: So the case the police, for 21 the National Commissioner, is that her document of the 7th 22 has got neither of these two mistakes. 23 MR MPOFU: That's correct. 24 CHAIRPERSON: When she signed the 25 document on the 12th which someone else had changed, because</p>

<p style="text-align: right;">Page 11011</p> <p>1 she was familiar with the earlier draft she assumed, 2 without reading the thing properly – 3 MR MPOFU: No, no – 4 CHAIRPERSON: - that it was correct. I 5 think that's her evidence. 6 MR MPOFU: Well, let's just say that's 7 what she says, ja. 8 CHAIRPERSON: Well, I said that's her 9 evidence. 10 MR MPOFU: Yes. 11 CHAIRPERSON: There are a number of 12 questions that arise but I mean you're going to ask them, I 13 take it. 14 MR MPOFU: Yes. 15 CHAIRPERSON: Or I think. 16 MR MPOFU: And the only point I'm making 17 is, and this is subject to Mr Semenya's correction which I 18 will gladly accept because this is all too confusing, is 19 that in FFF33.4 which is the one I've just referred to now, 20 page 7, that this is the first time – subject to correction 21 by Mr Semenya – that we have a version where the one 22 mistake is corrected and the other one remains. That's the 23 issue. 24 CHAIRPERSON: I take it you'd agree with 25 that, National Commissioner, that must be right.</p>	<p style="text-align: right;">Page 11013</p> <p>1 ask you to think over tea time about how you're going to do 2 the – 3 MR MPOFU: Yes. 4 CHAIRPERSON: We'll take the tea 5 adjournment. 6 MR MPOFU: Thank you, Chairperson. 7 [COMMISSION ADJOURNS COMMISSION RESUMES] 8 [15:36] CHAIRPERSON: We'll continue until 5, so 9 I hope it will enable us to finish the evidence of this 10 witness. I also wanted to say that we're adjourning at 1 11 tomorrow, it being Friday, so those who wish to make travel 12 arrangements accordingly can do so. National Commissioner, 13 you're still under oath. 14 GENERAL PHIYEGA: Yes, I am. 15 CHAIRPERSON: Mr Mpofo, last lap? 16 MR MPOFU: The last lap, Chairperson. 17 MANGWASHI VICTORIA PHIYEGA: s.u.o. 18 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 19 General, yes, I just wanted to establish and I think maybe 20 now we are on the same page, if you'll excuse the pun, that 21 of all these versions he one on paragraph or rather on page 22 7 of FFF33.4 is the first one that we come across where the 23 one "mistake", quote/unquote, on paragraph 23 is corrected 24 and the other one remains on paragraph 24. I think you did 25 say that is so before we left. Do you accept that?</p>
<p style="text-align: right;">Page 11012</p> <p>1 GENERAL PHIYEGA: Yes. 2 CHAIRPERSON: Ja. 3 MR MPOFU: Thank you. 4 CHAIRPERSON: It's now quarter past 3. 5 I'd like to carry on this afternoon after the usual time so 6 that we can finish with the witness, if possible. I take 7 it we can do that. I don't know how – of course it's 8 difficult for you to predict how long you'll be but – 9 MR MPOFU: I'm going to try, Chairperson. 10 CHAIRPERSON: You'll try and then Mr 11 Gumbi has got some questions. How long does Mr Gumbi think 12 he's going to be? Do you have a projection? 13 MR GUMBI: Yes, Chairperson. Earlier on 14 I indicated that maybe roughly, plus or minus 30 minutes. 15 CHAIRPERSON: Okay. You still think that 16 estimate, is that estimate still valid? 17 MR GUMBI: Yes, it's still realistic on 18 my part. I will try as much as I can to – 19 CHAIRPERSON: Okay. Mr Semenya, do you 20 know how long you're likely to be in re-examination? 21 MR SEMENYA SC: Short. 22 CHAIRPERSON: Short, alright. Okay, well 23 that sounds very promising. Mr Mpofo, if you don't ask the 24 questions I propose asking, I'll have to ask a few as well 25 but I will do my best to be focused and short. So may I</p>	<p style="text-align: right;">Page 11014</p> <p>1 GENERAL PHIYEGA: Yes. 2 MR MPOFU: Having looked maybe over tea. 3 Okay. Now I'm going to ask you an important question which 4 will be pregnant with what we will be arguing on this and 5 that is, were you prevailed upon by anyone to remove the 6 references to the Minister or is it just another 7 coincidence that both corrections relate to the Minister? 8 GENERAL PHIYEGA: Nobody prevailed upon 9 me. 10 CHAIRPERSON: May I propose – Mr Mpofo, 11 before you carry on – I indicated that in the first 12 document, which is now exhibit FFF33.1 there's a page 13 missing, page 4. We've now been handed two documents 3 and 14 4 but they're not the missing pages. If you line them up 15 with 33.1 you'll see they're not the missing page. The 16 page 4 here isn't the missing page so I'm afraid further 17 attempts will have to be made to find that. I just mention 18 it now to save time later. Please carry on, Mr Mpofo. 19 MR MPOFU: Thank you, Chairperson. I 20 must say maybe in favour of Mr Semenya that he did, I don't 21 know if whether - he did show me the actual base document, 22 the original and the page 4 but I'll agree with the 23 Chairperson, it might be sorted out some other time. 24 CHAIRPERSON: You're now talking about 25 page 3.</p>

<p style="text-align: right;">Page 11015</p> <p>1 MR SEMENYA SC: I think, Chair, they 2 printed you a 3 which was not necessary. 3 MR MPOFU: Yes. 4 CHAIRPERSON: Sorry? 5 MR SEMENYA SC: I think they printed you 6 a page – 7 CHAIRPERSON: 3 was not necessary, 8 alright. 9 MR MPOFU: Yes, the 3 is identical to the 10 one in 33.1. 11 CHAIRPERSON: Yes but 4 doesn't seem to 12 be right because 3 – because 4 ends "she relayed" and then 13 that's the piece that's also been filed. Is that, that's 14 part of it. Anyway, we'll get there when we get there. 15 MR MPOFU: Yes, Chairperson. Ja, it 16 makes sense. It says "The operational commanders gave me 17 an overview of the situation," on page 4. Thank you, 18 Chairperson. 19 CHAIRPERSON: Let me put that on record, 20 I'm wrong. Let's carry on. 21 MR MPOFU: Thank you, Chairperson. Yes, 22 General, before I move away from this, in fairness, as you 23 and I have agreed that this, what we're going to argue in 24 relation to these things might have very serious 25 implications on your career, so I just wanted to give you</p>	<p style="text-align: right;">Page 11017</p> <p>1 evolved to this Commission and I think where I'm sitting it 2 is the only truth that I can tell. If I had to tell the 3 other truth I would be lying. 4 MR MPOFU: Yes, and in the new page 7 5 that I read to you, is it correct that from the front page 6 of 33.4 the purpose of generating this version was for the 7 amendment on paragraph 23 and 24, that that was the 8 specific purpose for which this version was done? 9 GENERAL PHIYEGA: You are saying 33.4? 10 MR MPOFU: Sorry, maybe I'm confusing 11 you. If you look at FFF33.4, at the front thereof it says 12 "Statement of the National Commissioner" and then there are 13 the following words, "Amendment on paragraph 23 and 24." 14 I'm saying from that, I'm reading – and correct me if I'm 15 wrong – that the purpose of generating that version of the 16 statement was to amend paragraphs 23 and 24. 17 GENERAL PHIYEGA: 33.4 and 33.3 should 18 read together. If you look at 33.3, that's where you're 19 saying 23 did not have anything about the Minister and 24 20 there's something about the Minister and as at 34A, if you 21 look at it, it has no Minister on paragraph 23, it has 22 "Minister telephonically," "who advised me" towards the 23 end. And that we correct in 3. 24 MR MPOFU: Yes, no, I'm assuming in your 25 favour that – or rather let me ask you which one came</p>
<p style="text-align: right;">Page 11016</p> <p>1 an opportunity to explain those points or rather to say to 2 you what we're going to argue but after this discussion I'm 3 going to still argue at the end that your evidence in 4 respect of these matters should be, should not be accepted 5 and should be taken as being deliberately untruthful. 6 CHAIRPERSON: You shouldn't close your 7 mind to matters, Mr Mpofu, let's hear what she has to say. 8 She may persuade you that her evidence is correct. 9 MR MPOFU: Thank you – 10 CHAIRPERSON: It's never a good idea to 11 say, whatever you say I'll still argue that. It creates a 12 bad impression. 13 MR MPOFU: No – no, that's not, that's 14 exactly the opposite of what I'm saying. I'm saying after 15 the discussion we have had so far, that's what I'm going to 16 argue but the Chairperson is also right, I'm still subject 17 to persuasion. 18 GENERAL PHIYEGA: I would like to say to 19 you, Adv Mpofu, is that what I've given you, what you have 20 before you is a chronology of how I develop my thoughts. 21 Where I started, I factored in further information, we 22 reorganised the information, I have explained myself in 23 terms of the statements that were put in on the Minister, 24 how I corrected that and what has happened and I've done it 25 to try and explain to this Commission how my message</p>	<p style="text-align: right;">Page 11018</p> <p>1 first, 3A or 3? 2 GENERAL PHIYEGA: What came first is 3A. 3 MR MPOFU: Hm? 4 GENERAL PHIYEGA: Let me just check it, 5 3A. 6 MR MPOFU: 3A? 7 GENERAL PHIYEGA: Yes, because I then say 8 that's not my actual message, that's not what I'm saying 9 because remember all along we were not having this thing of 10 the Minister. When I asked them to factor in, that's what 11 was factored in and I said that's not what I'm saying about 12 the Minister. 13 MR MPOFU: Yes. 14 GENERAL PHIYEGA: And then we needed to 15 correct it. 16 MR MPOFU: Okay. No, I think I follow 17 precisely. The only issue really I wanted, the only issue 18 I was just touching on is that when 3A was being generated 19 at whatever time, the objective of doing so was what is 20 reflected at the front thereof, which is "Amendment on 21 paragraph 23 and 24," correct? 22 GENERAL PHIYEGA: That was just my 23 markings to show you how the thing evolved. That's what I, 24 when I submitted this document I put this covering sheet to 25 just show how this thing was evolving and what talked to</p>

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1 what.

2 MR MPOFU: Yes. Yes, that –

3 GENERAL PHIYEGA: Maybe you can rephrase

4 your question.

5 MR MPOFU: Yes. Yes, ma'am, I accept

6 that and we are grateful. The one says "Base document" and

7 then it evolves and so on. The only simple point I'm

8 asking for the last time is, in your assisting the

9 Commission to follow the documents, what you were trying to

10 communicate on the front page or the face of 3A was that

11 that version of the document was intended to be an

12 amendment on paragraph 23 and 24, when you made it.

13 MR SEMENYA SC: No, Chair. The witness

14 has just told us that is a covering sheet to make the

15 chronology. It could not have, that covering sheet could

16 not have been made at the time the statement was made.

17 MR MPOFU: No, sorry, sorry, Mr Mahlangu.

18 That's exactly – Mr Semanya either doesn't understand me or

19 I didn't articulate myself correctly. I'm saying when –

20 I'm assuming, let's say the witness did this covering sheet

21 last week, let's say – all I'm saying is that when she made

22 this covering sheet last week she was helping us to

23 communicate the fact that this version of the statement was

24 intended for the amendment on paragraph 23 and 24, yes or

25 no?

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1 GENERAL PHIYEGA: I'm not sure whether I

2 still understand your questioning.

3 MR MPOFU: No, then I'm sorry. Let me

4 not put it as a leading question. Let me say when you

5 typed those things there for the front that says amendment

6 on paragraph 23, 24, what did you want us to know?

7 GENERAL PHIYEGA: To realise that when I

8 start doing that there are some amendments that are being

9 effected on that statement.

10 MR MPOFU: On those paragraphs.

11 GENERAL PHIYEGA: Supposedly, yes.

12 MR MPOFU: Thank you. Thank you, thank

13 you very much. The problem – okay, we'll argue the problem

14 but what we'll argue or what will your comment be when we

15 argue that some of the problems that relate to your

16 evidence as a whole is that you are attempting to do the

17 nearly impossible task of protecting both your subordinates

18 and your seniors.

19 CHAIRPERSON: It's a little bit on the

20 vague side, I would have thought.

21 MR MPOFU: Yes.

22 CHAIRPERSON: Who were the superiors –

23 the superior presumably is the Minister.

24 MR MPOFU: In this case yes, yes.

25 CHAIRPERSON: But who were the inferiors

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1 or –

2 MR MPOFU: The inferiors are the so-

3 called commanders and anyone else inferior to her.

4 CHAIRPERSON: That's rather vague in

5 itself –

6 MR MPOFU: Yes, no –

7 CHAIRPERSON: Not all of them. I mean

8 presumably –

9 MR MPOFU: Yes. No – no, that's right

10 Chairperson –

11 CHAIRPERSON: I think you'd better made

12 the question a bit more focused.

13 MR MPOFU: Thanks Chairperson. What will

14 your comment be to the argument that we'll pose that one of

15 the central criticisms for your evidence as a whole is that

16 it seeks to achieve the impossible task of protecting both

17 your superior in relation to what we are discussing, namely

18 the Minister, as well as those of the commanders who played

19 a part in this matter.

20 GENERAL PHIYEGA: I shall say it is not

21 true, that's number one, and that even the way we operate

22 and how the prescripts demand of me to operate, does not

23 support that statement.

24 MR MPOFU: And in that same vein we will

25 argue that in trying to achieve that feat which I've

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1 described as impossible, you yourself would expose yourself

2 to be the sacrificial lamb.

3 GENERAL PHIYEGA: Maybe if you make me

4 understand what you mean by me putting myself forward as

5 the sacrificial lamb rather than being the Commissioner of

6 the South African Police Services.

7 MR MPOFU: In the interests of time I'll

8 save that for argument.

9 CHAIRPERSON: I think she's entitled –

10 what, I didn't understand the question either. In what

11 respect is she making herself the sacrificial lamb? Taking

12 blame on herself for something which should rightfully

13 belong to somebody else and possibly being, you know, being

14 sacrificed on the altar in that way –

15 MR MPOFU: Yes. I'm too happy –

16 CHAIRPERSON: You haven't explained that

17 at all. I mean –

18 MR MPOFU: I will explain it –

19 CHAIRPERSON: I don't understand how on

20 earth she can be expected to answer it.

21 MR MPOFU: I'm not expecting her to

22 answer. I'm –

23 CHAIRPERSON: If you're not expecting her

24 to answer it, then why bother to ask the question?

25 MR MPOFU: I will give you an answer, it

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1 was just an attempt to make peace with Mr Burger. We had a
 2 side deal that we'll leave that for argument but in
 3 fairness to the witness –
 4 CHAIRPERSON: Well, I see Mr Burger
 5 smiling so let's carry on.
 6 MR MPOFU: Yes, okay. My only chance to
 7 make peace with Mr Burger but to answer your question,
 8 which is lost, what I mean, ma'am, is this that pursuant to
 9 that argument, what we will be arguing is that the reason
 10 that your evidence should be rejected is what I've already
 11 said but the reason why you might end up being the
 12 sacrificial lamb is that it is well-nigh impossible for you
 13 to be protecting, as we will suggest, both the people above
 14 you and those below you. In other words, it needs such an
 15 acrobatic act that it will result in you crash landing.
 16 CHAIRPERSON: I don't know, I'm getting
 17 more and more mystified. In what respects does her
 18 evidence on this point serve to protect those who are
 19 junior to her, subordinate to her? That's the first
 20 question and secondly, how does it help, how does it
 21 protect the Minister?
 22 MR MPOFU: Yes –
 23 [15:56] CHAIRPERSON: Because even the statements
 24 that she made that she now says were erroneous, I don't see
 25 how that puts the Minister in a difficult position or

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1 anything. It's not suggested that he crossed a line that
 2 he shouldn't cross, is it?
 3 MR MPOFU: No.
 4 CHAIRPERSON: So how is he being, what's
 5 he being protected from?
 6 MR MPOFU: Well, Chairperson, with the
 7 greatest respect, that's exactly the point. The point is
 8 not that the Minister will get hurt, it's that the person
 9 who is trying to protect the Minister will get hurt. What
 10 I'm saying is this, that – and just to qualify, I didn't
 11 say on this point, I deliberately said your evidence as a
 12 whole, to run away exactly from that but let's start with
 13 this point. All I'm saying is that on this point, if she
 14 is found to have been untruthful on this point that we are
 15 debating now, I've already said that the only logical
 16 explanation would have been an intention to protect the
 17 Minister in the sense of removing him from the actions that
 18 are contained in 23 and 24. Whether or not in fact it is
 19 the intention of the protector, the fact that there's no
 20 threat is irrelevant. If someone wants to protect me, the
 21 fact that there are no tsotsis chasing me, it cannot change
 22 the intention of the person wanting to protect me. So
 23 that's the first point. And as that statement relates to
 24 the rest of her evidence, which is why I widened it, I'm
 25 saying that she says and that will come from the record,

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1 she has also separately, nothing to do with what we are
 2 discussing now, sought to protect the underlings - I don't
 3 know if that's the right word, her subordinates – and it is
 4 that, what I call the acrobatic Houdini act of trying to
 5 protect this one above and below, which will result in
 6 whoever is trying that manoeuvre being the one who is hurt.
 7 That's all I'm saying. We'll argue obviously the details
 8 of it later.
 9 CHAIRPERSON: [Inaudible] – meaningfully,
 10 if you want her to answer meaningfully to the question
 11 you've got to give her the details. I mean I don't
 12 understand how, I suppose it's my obtuseness really, for
 13 which I have to apologise but I don't understand what in
 14 her evidence can be described as an attempt to protect her
 15 subordinates. What aspects of her evidence do you say are
 16 false, which she deliberately told us, committed perjury
 17 about in order to protect her subordinates? I mean without
 18 any of those particulars, the witness can't be expected to
 19 answer the question.
 20 MR MPOFU: Okay.
 21 CHAIRPERSON: It's the kind of thing
 22 which isn't allowed. You can't put a broad, undetailed
 23 allegation of that kind to the witness unless the witness
 24 of course denies it, in which case the denial is worthless
 25 anyway because the witness, you don't know what the witness

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1 is denying and the witness doesn't know what she's denying
 2 either, so.
 3 MR MPOFU: Don't worry –
 4 CHAIRPERSON: I've got the problem, I
 5 must put it to you.
 6 MR MPOFU: I asked – ja.
 7 CHAIRPERSON: I don't want you to – I
 8 mean you may think that you've put the question adequately
 9 so you can argue it later. You may find that you haven't
 10 put it adequately and you can't. I've got to alert you to
 11 that too, I've got a duty to you as much as anybody else.
 12 MR MPOFU: I accept that, Chairperson.
 13 Ma'am, as far as – do I take it that the Chairperson is or
 14 understands the statement insofar as it relates to what we
 15 are discussing now with the Minister, so that I just
 16 address the second –
 17 CHAIRPERSON: You will remember that on
 18 Tuesday when you talked about how you couldn't get her
 19 back, depending on what the Minister and Mr Ramaphosa say,
 20 and I said to you if new material comes which is relevant
 21 in respect of her position, you can apply to get her back
 22 to deal with those points.
 23 MR MPOFU: Yes.
 24 CHAIRPERSON: And if you make out a good
 25 case your application will be granted. So if this is a

<p style="text-align: right;">Page 11027</p> <p>1 kind of a question depending on some other evidence coming 2 later and you're lying to protect them in respect of 3 evidence that we don't know about yet but may come, then 4 you're wasting your time but just put something specific or 5 keep your powder dry to use later if you have to. 6 MR MPOFU: No, Chairperson, please give 7 me a turn now to answer my question. All I'm saying is, 8 from what the question the Chairperson is putting to me 9 insofar as you've confined that issue to the leg that deals 10 with the subordinates, should I assume that you do not want 11 me to address you on both legs, that you understand the 12 issue as it relates to the Minister or do you want me to 13 address you on both? 14 CHAIRPERSON: I don't understand either. 15 MR MPOFU: Okay. 16 CHAIRPERSON: My obtuseness is worse than 17 you thought. 18 MR MPOFU: Okay, well then if it covers 19 both aspects then let's start with the first one. 20 CHAIRPERSON: You did turn your machine 21 on. I don't know whether what's happened since the debate 22 between Mr Mpofo and myself renders what you want to say 23 unnecessary but if there's something you want to say I 24 think you should say it first before Mr Mpofo replies. 25 MR SEMENYA SC: I also confess and</p>	<p style="text-align: right;">Page 11029</p> <p>1 explained myself to say the Minister does not get involved 2 in those nitty-gritties. 3 MR MPOFU: Yes. 4 CHAIRPERSON: That's the first part. 5 MR MPOFU: That's the first part, yes. 6 And in relation to the second one, if your evidence, if we 7 succeed in our argument that your evidence should not be 8 believed, then we will say that the – in relation to 9 examples - they are too numerous to mention but I'll 10 mention but I'll mention one or two – that in relation to, 11 for example, your acceptance of the activities of the 12 people who allegedly tampered with the crime scene when a 13 reasonable reading of that report by any reasonable person 14 would show the gaps that you and I discussed in April – I'm 15 just using that as an example. 16 CHAIRPERSON: I'm sorry to interrupt you. 17 Assuming she accepted that, does it matter? Whether she 18 accepts it is neither here nor there – 19 MR MPOFU: Well – 20 CHAIRPERSON: The question is whether we 21 accept it. 22 MR MPOFU: Well, Chairperson, no – no. 23 CHAIRPERSON: Whether we find that there 24 was an improper tampering with the crime scene in order to 25 deceive the evidence leaders and to deceive us into making</p>
<p style="text-align: right;">Page 11028</p> <p>1 apologise for my obtuseness but I was going to invite, 2 Chair, that for my edification I would like to understand, 3 they are being protected from what? 4 MR MPOFU: Yes. 5 MR SEMENYA SC: And then I'll be able to 6 understand. 7 MR MPOFU: Right. In the first instance, 8 as I said we'll start with the first one, we'll argue that 9 your statement in the respect that we have discussed was 10 intended deliberately and falsely to remove the Minister 11 from those two aspects dealt with in paragraphs 23 and 24, 12 in the belief that leaving those statements as they were 13 would expose the Minister to the valid criticism that he 14 interfered and gave instructions to you in the second part 15 and in the first part that he knew about stage 3 of the 16 plan because you couldn't very well say to him, stage 3 – 17 you couldn't say to him, stage 3 of the plan is going to be 18 implemented, if he did not know what that is. In the case 19 of your subordinates. 20 CHAIRPERSON: Shouldn't we let her answer 21 that one first before she hears the other one. Have you 22 got an answer to that? Do you admit that, that you did 23 that to protect the Minister from an allegation that he 24 improperly interfered? 25 GENERAL PHIYEGA: No, I did not and I've</p>	<p style="text-align: right;">Page 11030</p> <p>1 findings about weapons and possession of weapons by 2 particular people. She commissioned an investigation, she 3 got an investigation back which may or may not have 4 satisfied her that there were no mala fides or anything 5 like that. Let's assume she assumed that, incorrectly, 6 that there was no mala fides, does it take it any further? 7 MR MPOFU: No, it does, that's not – 8 CHAIRPERSON: It doesn't help her to come 9 along and give evidence and say I went into it and I'm 10 satisfied it's correct. We'd say thank you for your 11 opinion, please keep it to yourself. 12 MR MPOFU: No. 13 CHAIRPERSON: So how does that help? 14 MR MPOFU: Chairperson, I'll explain to 15 you how it helps. That's not what I'm accusing her of. 16 I'm accusing her of something different and that's why I'm 17 using the issue of the reasonable National Commissioner. 18 I'm saying, not if she innocently accepts a wishy-washy 19 report, I'm saying, I'm putting something much higher than 20 that. I'm saying that we will argue that, objectively, a 21 reasonable person in her position as the National 22 Commissioner could not and should not have accepted a 23 report of that calibre on such a serious matter as 24 tampering with a murder scene. Whether you accept it, with 25 respect Chairperson, I'm not interested in that. It's</p>

<p style="text-align: right;">Page 11031</p> <p>1 whether the victims, the families, the people who were 2 killed and their families, if the reasonable – or the 3 reasonable citizen, let me put it that way, the reasonable 4 citizen says that this was a cover-up of such a matter of 5 such magnitude, then that is the criticism. 6 CHAIRPERSON: No – no, then that's also 7 vague. When you talk about what a reasonable Commissioner 8 would do then I – you know, what General Fivaz would do, I 9 suppose, in a way, that's the most neutral way to put it – 10 then that implies almost that she was negligent. I mean 11 are you suggesting that she was negligent in accepting it? 12 MR MPOFU: Yes. 13 CHAIRPERSON: Or are you suggesting that 14 she was deceitful in pretending that she accepted it? 15 MR MPOFU: I'm suggesting – 16 CHAIRPERSON: the question you ask is 17 vague, is ambiguous. 18 MR MPOFU: No – 19 CHAIRPERSON: It doesn't make it clear 20 what's being put. You say someone like General Fivaz 21 wouldn't have accepted it – 22 MR MPOFU: No, I don't – 23 CHAIRPERSON: - the fact that she didn't 24 – 25 MR MPOFU: - Fivaz as a reasonable</p>	<p style="text-align: right;">Page 11033</p> <p>1 MR MPOFU: Yes. 2 CHAIRPERSON: She's lying, she's 3 committing perjury when she says she accepted that 4 explanation – 5 MR MPOFU: No – no, that's not what I'm 6 saying. I'm saying that she, there are certain standards 7 that the country is entitled to expect from a National 8 Commissioner, one, and I'm saying one of those standards is 9 that when a serious matter has been suggested, as serious 10 as planting of evidence by policemen or women on a crime 11 scene, there are two things that she must do. One is to 12 commission an investigation, she did that, so we exempt her 13 from that one. The second one is once that report is given 14 to her, if it is so full of holes and does not address the 15 genuine concerns of people like the families of those 16 people on whose bodies the arms were planted, then she 17 would have failed the second test of what is expected from 18 a National Commissioner by the public – 19 CHAIRPERSON: The big question is why. 20 If she failed to see the holes because she, is as she 21 confesses herself readily, not – has no experience of 22 police work and she perhaps negligently failed to see the 23 holes, that's one thing. If she actually saw the holes and 24 didn't do anything about them, that's another matter. Now 25 what I'm asking you is, which of those two do you say?</p>
<p style="text-align: right;">Page 11032</p> <p>1 Commissioner but – 2 CHAIRPERSON: Well, let's not debate 3 that. 4 MR MPOFU: Ja. 5 CHAIRPERSON: I was trying to think of 6 the first one since the advent of democracy who appears to 7 have been dealt with quite satisfactorily and didn't have 8 the problems – 9 MR MPOFU: I don't think there's an – 10 CHAIRPERSON: - some of his successors 11 picked up, but we won't go there now. The point is, are 12 you saying she was negligent or deceitful when she appears 13 to have accepted the genuineness of the explanation? 14 MR MPOFU: I'm saying both. 15 MR SEMENYA SC: Is it both negligent and 16 deceitful? 17 CHAIRPERSON: No, well – 18 MR SEMENYA SC: It's confusing – 19 CHAIRPERSON: You can't, you can't have 20 both. I mean are you – I want to know what allegation 21 you're putting – 22 MR MPOFU: Okay, I'm suggesting the 23 higher one. I'm saying - 24 CHAIRPERSON: You think she's been 25 deceitful?</p>	<p style="text-align: right;">Page 11034</p> <p>1 MR MPOFU: It's the second one because 2 she didn't just see the holes, I showed the holes to her on 3 the 4th, on the 5th of April. That's what I'm saying, 4 Chairperson. I myself showed her paragraphs of Van Breedt, 5 there's paragraphs of this and that and the other – 6 CHAIRPERSON: I see, I see. 7 MR MPOFU: So it's the second one. 8 CHAIRPERSON: So what you're saying is 9 after April, once she'd had the benefit of your tutelage 10 and guidance through the inadequacies of the reports, she 11 should have been then said yes, no, I'm persuaded you're 12 right, there are these inadequacies, I didn't see them 13 before but thank you for drawing them to my attention. Is 14 that what you're saying she should have said. 15 MR MPOFU: No, that's not that simple, 16 Chairperson. I'm saying that the South African public and 17 citizenry is entitled to have a National Commissioner who, 18 after a serious matter of this kind has been pointed out to 19 her, will take the necessary steps to satisfy that public 20 that her underlings or rather, sorry, her subordinates did 21 not deliberately plant those weapons. And I go further, 22 which goes to the original issue, that her failure to do so 23 is an example of the instances that I'm saying I'm going to 24 criticise her for, of turning a blind eye in trying to 25 protect those subordinates.</p>

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1 CHAIRPERSON: I think we now know the
 2 question you're asking.
 3 MR MPOFU: Thank you.
 4 CHAIRPERSON: What do you say about that,
 5 National Commissioner? Do you put our hand in the air and
 6 say that's quite correct and you accept the validity of
 7 that criticism or not?
 8 GENERAL PHIYEGA: Judge, the criticism is
 9 invalid. I was not asked to call for the Commission and to
 10 investigate that matter. I did that out of my volition
 11 actually because of the responsibility I carry. The report
 12 came back, it had experts' information and findings there
 13 and whether we are interpreting it the same or differently
 14 is another issue but when I saw that report I understood
 15 the report the way it was positioned.
 16 CHAIRPERSON: Who was in charge of that
 17 investigation – sorry, sorry Mr Mahlangu, carry on. Who
 18 was in charge of that investigation?
 19 GENERAL PHIYEGA: I had appointed –
 20 MR MPOFU: I think it was Mono.
 21 GENERAL PHIYEGA: Mono and Major-General
 22 Jacobs to work on it.
 23 CHAIRPERSON: So the first gentleman,
 24 what was his rank?
 25 MR MPOFU: M-O-N-O.

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1 CHAIRPERSON: What is his rank?
 2 GENERAL PHIYEGA: He is a Lieutenant-
 3 General.
 4 CHAIRPERSON: Is he the top detective in
 5 the country?
 6 GENERAL PHIYEGA: Absolutely.
 7 CHAIRPERSON: - in good company then
 8 obviously then if she was taken in by his report.
 9 MR MPOFU: And you see – sorry. Thank
 10 you, and I take it he's one of –
 11 CHAIRPERSON: Sorry, the thrust of the
 12 criticism then is, however eminent the task team or the
 13 investigation team was, once the inadequacy of their work
 14 was shown to you, you should have adopted a different
 15 attitude. That's your point, Mr Mpofo, is it?
 16 MR MPOFU: yes.
 17 CHAIRPERSON: What do you say about that?
 18 GENERAL PHIYEGA: I think the inadequacy
 19 as articulated by Adv Mpofo and the conclusions of those
 20 who investigated and some of the reports that were filed in
 21 there by the experts who are not police noga, are first
 22 aid people, we arrived at different conclusions but when I
 23 read it I understood the investigation from that
 24 perspective.
 25 MR MPOFU: Thank you, yes. Other

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1 examples I will mention in argument. I'm now going to put
 2 a few propositions to you for comment but if you can just
 3 assist me with one little aspect, I've been asked by the
 4 people I represent to raise this and the best way to do so
 5 is to refer you to FFF27. While you are looking at it, in
 6 fact you might not even have to look at the FFF but if you
 7 do, I'll give you an opportunity. One of the articles
 8 there, it's not this thing about whether you were sorry or
 9 not but one of the articles that fortuitously appears on
 10 that document says, "Chabane will lead inquiry" and it's
 11 about the inter-ministerial committee. Remember the inter-
 12 ministerial committee which was set up with about 10 or so
 13 Ministers. I'll read it out to you. It lists all the
 14 Ministers and one Premier, I think it's seven Ministers and
 15 the Premier of the North-West and the presidential
 16 spokesperson, Mr Mac Maharaj, says "They will co-ordinate
 17 and lead all support to families and relatives including
 18 the identification of family members, counselling and
 19 burials." You are aware that we have complained, I think
 20 at least on one of those occasions in your presence, in
 21 this Commission about the absence of counselling and we
 22 have linked it, obviously speculatively, to the suicides
 23 that have taken place, among other things and Mr Madlanga
 24 and I, I think debated this issue in your presence but you
 25 are aware that there are complaints about the provision of

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1 counselling to the victims.
 2 [16:16] CHAIRPERSON: Is it suggested that it was
 3 the responsibility of the police service to provide
 4 counselling?
 5 MR MPOFU: No.
 6 CHAIRPERSON: This list of Ministers, to
 7 whom is also added the North-West Premier, contains
 8 references to a number of departments, seven departments
 9 plus the North-West government and then as you read, Mr
 10 Maharaj said, "They" – that's the seven Ministers and the
 11 Premier – "will co-ordinate and lead all support to
 12 families and relatives including the identification of
 13 family members, counselling and burials." So if
 14 counselling didn't happen, on what basis is it suggested
 15 it's the National Commissioner's fault or that of her
 16 department?
 17 MR MPOFU: [Inaudible] Chairperson, even
 18 because I've not asked the question yet. The question,
 19 I've not asked the question yet. The question is whether
 20 you, as one of the implementers at least under one of those
 21 Ministers, being Minister Mthethwa, you know whatever
 22 happened to this inter-ministerial committee since, as far
 23 as my clients are concerned at least, it seems either to
 24 have disappeared from the face of the earth or not at least
 25 have assisted them with the things listed here by Mr

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1 Maharaj.
 2 GENERAL PHIYEGA: I do not know and I'm
 3 sure that those that were responsible can –
 4 MR MPOFU: Okay. Now, I am going to put
 5 to you that starting with the last discussions that we had
 6 just before tea and you'll forgive me if I've already put
 7 this to you, that the evidence that you have given to this
 8 Commission on certain key issues including the one we were
 9 discussing about your statement, is not credible and should
 10 be disbelieved as false. You have already answered that
 11 one so I'll go to number 2 unless, I'm sure you don't want
 12 to change your mind. Two, we are going to argue that you
 13 gave your blessings to the implementation of phase 3 when
 14 you were called by General Mbombo and that that phone call
 15 was inter alia premised on false information and which I've
 16 discussed with you, but if I'm prompted to give examples I
 17 will, resulting in 34 deaths. Do you have a comment –
 18 CHAIRPERSON: Did you give your blessing
 19 to the implementation of phase 3 of the plan when General
 20 Mbombo telephoned you and told you what she did?
 21 GENERAL PHIYEGA: I've answered that and
 22 I've disagreed with you.
 23 MR MPOFU: Ja, I know but it's not going
 24 to stop me from arguing it. I'm saying number 3, we'll
 25 argue that there is a valid complaint against the police in

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1 relation to the persons who were injured, a valid complaint
 2 of attempted murder, so to speak, because those people – we
 3 are lucky necessarily that only 34 people died but that
 4 those people who were shot at with live ammunition might as
 5 well have all died and the 300 I'm talking about are the
 6 ones I represent.
 7 CHAIRPERSON: Mr Mpofo, actually for
 8 completeness' sake I take it what you say is the 34 who
 9 died were murdered. Those who were shot but didn't die are
 10 correctly described as complainants on charges of attempted
 11 murder because the shots that were fired at them could've
 12 killed them and the persons who fired them either intended
 13 to kill them or acted recklessly as to whether they died or
 14 not.
 15 MR MPOFU: Thank you, Chairperson.
 16 CHAIRPERSON: So if we put the two
 17 together, those who died and those who could've died.
 18 MR SEMENYA SC: Chair –
 19 MR MPOFU: Any comment?
 20 MR SEMENYA SC: I'm not aware that there
 21 have been criminal charges laid against the SAPS on
 22 attempted murder of Mr Mpofo's people, that they have those
 23 instructions.
 24 CHAIRPERSON: I don't think he suggests
 25 the charges but he's now suggesting from the bar here, as

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1 it were, that that's what he's going to argue. So let's go
 2 to –
 3 MR SEMENYA SC: It has no factual
 4 foundation, Chair, that's my complaint. If there was a
 5 complaint laid by them that there was an attempt to murder
 6 them then I can understand the submission being made.
 7 MR MPOFU: okay.
 8 MR SEMENYA SC: Or the proposition being
 9 made.
 10 MR MPOFU: Alright, Chairperson, let me
 11 remove the legal appellation. Let me put – the people that
 12 I represent, or rather I will argue on their behalf that
 13 the 300 or so who were injured in one way or another, were
 14 just lucky but that the police intended to kill them like
 15 the other 34.
 16 CHAIRPERSON: Intention to kill isn't
 17 enough, you've got to have culpability as well and
 18 illegality. So if the police acted in circumstances which
 19 would be regarded as an intention to kill [inaudible] dolus
 20 eventualis is, but they were acting legitimately in self-
 21 defence or private defence, then a charge of attempted
 22 murder or whatever wouldn't stand. So it's not enough to
 23 put that there was an intention to kill. You have to put,
 24 for the purposes of the proposition you're advancing, that
 25 it wasn't done in circumstances of self-defence or private

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1 defence, which of course is the big issue in respect of the
 2 34 who died anyway but –
 3 MR MPOFU: Yes, well –
 4 CHAIRPERSON: If you accept that
 5 formulation of the question, let's get the witness's
 6 answer.
 7 MR MPOFU: Thank you, Chairperson. Well,
 8 Chair, I think the Chairperson is correct. What I've just
 9 said should be read together with, I think 9.4 of my
 10 opening address which you have, which is that the defence
 11 of self-defence is baseless, so –
 12 CHAIRPERSON: Mr Mpofo, the problem is of
 13 course this witness wasn't there and this witness can't – I
 14 mean all she can say is she doesn't think it was self-
 15 defence, I mean that it was in self-defence or private
 16 defence. Those are, the information she's got.
 17 MR MPOFU: That's fine.
 18 CHAIRPERSON: If she says I think it was
 19 self-defence and private defence, well, that's not going to
 20 take it any further.
 21 MR MPOFU: Well –
 22 CHAIRPERSON: This is one of these points
 23 she can't answer really. You're going to argue that,
 24 you've made that clear. Isn't it better to move on to the
 25 next point?

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1 MR MPOFU: Well, I will move on,
 2 Chairperson, but let's not forget that it is this witness
 3 whose face, across the capitals of this world, said that
 4 these people were killed in self-defence, but I will move
 5 on.
 6 CHAIRPERSON: But that's clearly based on
 7 information she received. Whether the information she
 8 received was erroneous or not, is a matter we have to
 9 decide, isn't it?
 10 MR MPOFU: Ja.
 11 CHAIRPERSON: But I don't think we
 12 benefit directly from any testimony she may give, isn't
 13 that right?
 14 MR MPOFU: Fine. And just to avoid these
 15 delays, you'll see that I'm carefully raising these things
 16 in relation to you, not the police, as National
 17 Commissioner in the sense that you gave blessing, you
 18 presided over and so on, but let's move on.
 19 MR BURGER SC: I wonder, some of these
 20 arguments I'd like to adopt. My learned friend and I are
 21 very much on the same length but I'm very loath to get
 22 drawn into a position where I must put my arguments at the
 23 end of each witness. I wonder whether you shouldn't give
 24 us an indication that you will not hold it against us if we
 25 don't play our argument, so to speak, past the witnesses

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1 and then we won't have problems with formulation and we –
 2 CHAIRPERSON: I can say that now without
 3 a moment's hesitation. If there's a criticism which is to
 4 be directed to, against a witness which the witness can be
 5 expected to deal with from his or her own knowledge, I
 6 obviously expect that to be put. Any other criticism which
 7 is of a generalised nature which the witness can't be
 8 expected to answer from his or her own knowledge, doesn't
 9 have to be put to the witness. It can be argued without
 10 the formal putting of the allegation to the witness at the
 11 end of his or her evidence. Is that the ruling you want?
 12 MR BURGER SC: I'm indebted –
 13 CHAIRPERSON: That seems to be the
 14 appropriate ruling.
 15 MR BURGER SC: Especially after days of
 16 listening to the witness, knowing what her version is.
 17 Time is precious, other people have to ask questions,
 18 there's a time constraint on the witness herself, so I
 19 appreciate the guidance. Thank you very much.
 20 CHAIRPERSON: Mr Mpofo doesn't want to be
 21 caught in an argument later that he didn't put this to the
 22 witness and it's unfair and so on, but he's got the
 23 assurance that that won't happen.
 24 MR MPOFU: Yes. Thank you, thank you
 25 Chairperson, that assurance takes care of, I think four of

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1 the points that I was going to put. I'll confine the rest
 2 to your own specific issues, or rather attaching to
 3 yourself. We're going to argue that you insensitively
 4 described the actions of the police as the best of
 5 responsible policing, even when you were confronted here
 6 with hard evidence to the contrary and –
 7 CHAIRPERSON: That was covered quite
 8 fully, was it not, so she's not likely to plead guilty to
 9 that when you put it to her now.
 10 MR MPOFU: Chairperson –
 11 CHAIRPERSON: You've put your case
 12 clearly to her on that point. When you argue that to the
 13 end - you put it to her in fact after each particular
 14 thing was shown to her, the video clips, and you argued
 15 with her so I can assure you now that if you argue those
 16 points at the end, no point can validly be taken against
 17 you because you failed to put it again now.
 18 MR MPOFU: And we will argue that if
 19 these arguments, those that I've articulated and those that
 20 I have not articulated, are accepted, then some of the
 21 implications thereof should have a bearing on your
 22 suitability for the position. Do you have any comment?
 23 MR SEMENYA SC: Chair, I don't know
 24 whether the suitability of office of the Commissioner has
 25 anything to do with your terms of reference.

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1 MR MPOFU: Okay.
 2 MR SEMENYA SC: Again finishing here for
 3 the newspapers.
 4 MR MPOFU: No, Chairperson, I take strong
 5 exception to that ridiculous –
 6 CHAIRPERSON: The first point is valid,
 7 that it's not one of our terms of reference to decide
 8 whether the National Commissioner is fit or suitable for
 9 the position she holds. That's not a matter that's
 10 relevant -
 11 MR MPOFU: Okay.
 12 CHAIRPERSON: But anyway, you put it to
 13 her. Would I be correct in assuming, National
 14 Commissioner, without being accused of putting words in
 15 your mouth, that you wouldn't agree with that proposition?
 16 GENERAL PHIYEGA: I definitely would not
 17 agree with that proposition and particularly so.
 18 MR MPOFU: Yes. Well, are you aware that
 19 at least one of your predecessors was discharged on the
 20 basis that he was not suitable for that position you hold?
 21 CHAIRPERSON: Mr Mpofo –
 22 MR MPOFU: Well, I've been challenged to
 23 make the connection, Chair, and I will make it –
 24 CHAIRPERSON: There are two points I
 25 would [inaudible]. I think it's so inherently unlikely

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1 that she doesn't know that, that it's pointless asking her
2 the question.

3 MR MPOFU: Okay, I see. I take that
4 point, ja. Now knowing that, knowing what you know, as the
5 Chairperson has correctly pointed out, that at least two of
6 your predecessors were removed on the basis of non-
7 suitability for matters which we will argue are less
8 serious than the deaths of 34 persons –

9 MR SEMENYA SC: Please Chair –

10 MR MPOFU: - in the one case, and I will
11 go into the –

12 CHAIRPERSON: Mr Semenya wants to say
13 something.

14 MR MPOFU: Oh, yes.

15 MR SEMENYA SC: Please Chair, we are
16 asking for protection here. Whatever the reasons may be
17 for the removal from office of the predecessor, has
18 absolutely nothing to do with your terms of reference.

19 CHAIRPERSON: I think that's right, Mr
20 Mpofo.

21 MR MPOFU: No, it cannot be right,
22 Chairperson. If it is right then it means that this
23 Commission is barred, which I doubt, in saying for example
24 that in order to prevent something like this happening
25 again, some of the positions which played a role – whether

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1 it's General Mpembe or whoever it is – in this chain of
2 events, either should be populated, I think is the right
3 word, with persons who will not do A, B, C, D, or are not
4 likely to do this or that or the other in the future.
5 That, after all, is the exact reason and that's why I'm
6 making this – is the exact reason why at least one, I don't
7 know about the other one, at least one of the predecessors
8 was removed on the basis that because of A, B, C, D, I
9 think it was something to do with –

10 CHAIRPERSON: I know but Mr Mpofo, Mr
11 Mpofo –

12 MR MPOFU: That person was –

13 CHAIRPERSON: That's all history. Those
14 things happened –

15 MR MPOFU: Yes, but it can't be
16 irrelevant.

17 CHAIRPERSON: And the allegations that
18 you're seeking to make against this National Commissioner
19 relate to totally different matters –

20 MR MPOFU: No.

21 CHAIRPERSON: And I don't think that the
22 Commission will be assisted in any way in this proposition
23 being put by you. You can argue it perhaps at the end of
24 the day but it's quite clear what the Commissioner is going
25 to say when you put it to her. You've already put the main

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1 propositions to her and she's denied them, so is there any
2 purpose in going any further?

3 MR MPOFU: No. Okay, but if what you're
4 saying to me, Chairperson, is that the – rather the
5 objection is overruled but because the answer is self-
6 evident, I should move to something else, then I will, but
7 if I have to address the objection –

8 CHAIRPERSON: I think you just move to
9 something else.

10 MR MPOFU: Well –

11 CHAIRPERSON: You can argue the point at
12 the end but I don't think there's any point in putting the
13 proposition to this witness now. And no-one can complain
14 that you acted unfairly if you didn't put it to her now to
15 give her a chance to answer it and you argue it later, so
16 let's move on.

17 MR MPOFU: Chairperson, I'm sorry, I'm
18 sorry, I'm going to be like Mr Burger now. Not only do I
19 agree with him but – not only will I agree with him, I'll
20 be like him. I need a ruling on this. The issue –

21 otherwise we're going to have another merry-go-round.

22 CHAIRPERSON: Whether you can put a
23 proposition to the witness that she is not suitable for the
24 job that, the position she holds?

25 MR MPOFU: No.

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1 CHAIRPERSON: Is that what you want to
2 put? What do you want to put to her?

3 MR MPOFU: No, that is not the question –

4 CHAIRPERSON: Because you see, we don't
5 know enough, we know only what we read in the newspapers
6 about what happened to her predecessor, so we can't compare
7 it anyway.

8 MR MPOFU: Well, there is a document
9 which is in front of you –

10 CHAIRPERSON: Anyway, Mr Budlender I
11 think wants to say something but what exactly is the ruling
12 you want and then let's get –

13 MR MPOFU: Well, no, I was saying
14 Chairperson, I thought I was providing a shortcut to this.
15 I was saying if what you are saying to me is that, which is
16 correct, that I'm entitled to put the question on the basis
17 of what I've said about what the Commission is expected to
18 do, but on the basis that the answer is predictable, then I
19 should move to something else. Then that is fine but if Mr
20 Semenya's objection is being entertained then I want an
21 opportunity to answer to it but I'm prepared to move on
22 either way, but I need to know because this is important.
23 I don't want to be accused of putting a proposition or
24 rather I need to know now that later when I argue what I've
25 been instructed to argue, I'm not going to be told that

<p style="text-align: right;">Page 11051</p> <p>1 that, three months ago, that avenue was closed, yes. 2 [16:36] CHAIRPERSON: Mr Budlender? 3 MR BUDLENDER SC: Chair, I propose that 4 you make a ruling – 5 MR MPOFU: Yes. 6 MR BUDLENDER SC: - that it is not 7 relevant or permissible to require the witness to say 8 whether she is better than, equal to or worse than her 9 predecessors. It must be a relevant consideration, with 10 respect. 11 MR MPOFU: That's not what I'm asking. I 12 agree with Mr Budlender if that was my question. That's 13 not my question. 14 MR SEMENYA SC: Chair – 15 MR MPOFU: Can I – 16 CHAIRPERSON: Mr Semenya wants to say – 17 have you finished, Mr Mpofu? May we give Mr – 18 MR MPOFU: Mr Budlender just made a 19 submission, I've not started addressing it but maybe I'll 20 address both him and Mr Semenya. 21 CHAIRPERSON: I'm rather conscious of the 22 time factor but Mr Semenya, what do you want to say? 23 MR SEMENYA SC: Chair, the removal from 24 office of the National Commissioner in respect of a lis and 25 what happened in Marikana are two incongruent matters but,</p>	<p style="text-align: right;">Page 11053</p> <p>1 comparison was simply to – 2 CHAIRPERSON: No, no – 3 MR MPOFU: - if there was no objection, 4 all I was saying to the witness, just to illustrate the 5 reason why I'm asking the question. That's why I said if 6 the Chairperson is saying I'm entitled to ask the question 7 but the answer is so self-evident that – 8 CHAIRPERSON: Well, let me – 9 MR MPOFU: - then I'll leave it for 10 argument. 11 CHAIRPERSON: I don't want to waste time 12 this afternoon. 13 MR MPOFU: Ja. 14 CHAIRPERSON: Whether you have the right 15 to argue that is something that can be decided when you 16 argue. In other words you will put up arguments and then 17 it may be argued but some of your arguments can't be 18 addressed, that could be decided then. We don't need to 19 wait now while this witness is here, to decide that 20 question because, as I've said, that even if it were to be 21 held that that is an appropriate question for us to 22 consider, her evidence is self-evident, the answer is self- 23 evident. 24 MR MPOFU: Fair enough, thank you. 25 CHAIRPERSON: That keeps the point open</p>
<p style="text-align: right;">Page 11052</p> <p>1 two, the previous National Commissioners, for right or 2 wrong reasons, are irrelevant to the terms of reference. I 3 don't see the relevance there. 4 CHAIRPERSON: I think that's right, Mr 5 Mpofu. There are two – there are a couple of, there are 6 two questions really. 7 MR MPOFU: The more you're delaying me – 8 CHAIRPERSON: There are two questions, 9 aren't there? The one relates to a comparison of the 10 positions and their conduct and so forth of this witness 11 with that of her two immediate predecessors. That surely 12 is irrelevant. The second question which I think you want 13 to argue is, it should be open to us to argue or open to 14 you to argue at the end of the day that, by way of a 15 recommendation, that consideration should be given to 16 removing her from office, obviously because we couldn't do 17 that but in order to make sure this kind of thing doesn't 18 happen again, I take it – now is that what you're saying or 19 are you arguing that we must find, compare her behaviour 20 and conduct with that of her predecessors? 21 MR MPOFU: No, Chairperson. I decidedly 22 do not want you to make any finding as to the comparison. 23 The reason I – 24 CHAIRPERSON: I'm sorry to interrupt – 25 MR MPOFU: The reason I brought the</p>	<p style="text-align: right;">Page 11054</p> <p>1 for you to argue later but I don't make a ruling on it now 2 – 3 MR MPOFU: Yes. 4 CHAIRPERSON: Because it - and I'd like 5 to think about it. 6 MR MPOFU: Thank you. Thank you, 7 Chairperson, I'm happy with that and I think – thank you, 8 Chairperson. 9 CHAIRPERSON: Let's make it clear. It's 10 obvious what the witness's answer is going to be. 11 MR MPOFU: Fair enough. 12 CHAIRPERSON: That's the point. 13 MR MPOFU: Yes. 14 CHAIRPERSON: Whether it's a permissible 15 question for you to raise in argument – 16 MR MPOFU: Yes. 17 CHAIRPERSON: - is a matter we'll decide 18 when you raise the argument. 19 MR MPOFU: No, that's good enough. You 20 see the problems is that my clients want to know now 21 whether I'm going to be barred from raising this and that's 22 why I was – 23 CHAIRPERSON: I don't propose to tell 24 them that now, I'd like full argument on that – 25 MR MPOFU: Yes, thank you.</p>

<p style="text-align: right;">Page 11055</p> <p>1 CHAIRPERSON: And not at this stage. 2 MR MPOFU: Then I'm happy, thank you 3 Chairperson. The last question, General, is something I 4 need you to clarify me and maybe the Commission on. There 5 was evidence – and that's because I don't want to criticise 6 you unfairly – there was evidence that the deployment of 7 the special units, or let's start from TRT upwards, was 8 done by yourself – or let's say all the units. Then there 9 was also evidence that it was done by General Annandale, at 10 least some of it when it relates to NIU or STF and then 11 there was your evidence later that it was done by something 12 called NatJOC. Are you able to at least assist me to know 13 who was ultimately responsible – I'm sorry, erase that. 14 Who actually implemented the deployment of the, 15 particularly the units that were carrying what has been 16 described as weapons of war into Marikana? 17 GENERAL PHIYEGA: My evidence that I've 18 given to this Commission and again looking at what the law 19 wants me to do, expects me to do, I've answered the very 20 same questions that you've asked me by telling you that 21 General Mbombo as the Provincial Commissioner of North-West 22 has the delegated responsibility coming from me to deal 23 with those issues in her province. When that 24 responsibility crosses the border, it then becomes my 25 responsibility and then I have said right at the beginning</p>	<p style="text-align: right;">Page 11057</p> <p>1 no further questions. 2 CHAIRPERSON: Thank you. Now Mr Semenya, 3 we heard from Mr Gumbi he's likely to be half an hour. 4 You've then got re-examination, you indicated that will be 5 fairly short. We won't be able to finish by five on any 6 basis. Mr Gumbi's cross-examination I think is likely to 7 be directed to things like – perhaps he can tell us – 8 conditions of service of the police and that kind of thing. 9 I wouldn't have thought that if you interpose Major-General 10 Mpmembe tomorrow you were likely to be prejudiced. I 11 wouldn't want to lose tomorrow. I understand why you were 12 cautious about interposing witnesses but let's just – Mr 13 Gumbi, is that right? What is the topic you're going to 14 cover? 15 MR GUMBI: There are two topics, 16 Chairperson, I wanted to cover with the National 17 Commissioner. 18 CHAIRPERSON: What are they? 19 MR GUMBI: And those two topics they 20 emanate from our opening remarks. I don't think it was 21 entered into as an exhibit before this Commission but – 22 CHAIRPERSON: What are the two points? 23 MR GUMBI: The issues of police killing, 24 the issues of employee health and wellness. Those are the 25 two topics we wanted to cover with the National</p>
<p style="text-align: right;">Page 11056</p> <p>1 when you were starting to look at my role and how we are 2 structured as SAPS as well as the evidence that was led by 3 my lawyer, I've explained very clearly how we work. There 4 are people, as commanders and experts, that do certain 5 things for us. The same arrangement rolls itself out in 6 the provinces. I've gone further to also explain some of 7 the structures that we are using. Once I give command and 8 orders, you have the NatJoint, you have the NatJOC, you 9 have the ProvJOC, made up of those experts and commanders. 10 They know precisely what they do because there are 11 prescripts that actually tells you what needs to be done 12 and I think I've been very, very elaborate in explaining 13 that and I would like to say to you I've answered that 14 question fully in my evidence. 15 MR MPOFU: Yes, thank you. I'm doing 16 this to be fair to you because I don't want to argue at the 17 end that you should be criticised for having deployed 18 weapons of war and all those things if that criticism 19 resides elsewhere. So from that answer you're saying 20 ultimately the deployment of those units, whether or not 21 they were carrying weapons of war, resides with you, 22 correct? 23 GENERAL PHIYEGA: I've answered that and 24 I think it's reasonable [inaudible] even now. 25 MR MPOFU: Thank you, Chairperson, I have</p>	<p style="text-align: right;">Page 11058</p> <p>1 Commissioner. 2 CHAIRPERSON: I wouldn't have thought you 3 were likely to be prejudiced in any way if we call General 4 Mpmembe tomorrow to start off, if that's all Mr Gumbi is 5 going to deal with and if he does deal with anything else I 6 can stop him. 7 MR SEMENYA SC: Chair, through you, we'll 8 invite the National Commissioner to make herself available 9 for Mr Gumbi and such questions that remain after General 10 Mpmembe's evidence-in-chief. 11 CHAIRPERSON: Do I hear you correctly, I 12 must invite the National Commissioner to make herself 13 available after General Mpmembe's finished, just to deal 14 with Mr – or did I mishear you? 15 MR SEMENYA SC: Examination-in-chief. 16 CHAIRPERSON: Oh, after examination-in- 17 chief of Major-General Mpmembe. Yes, okay. National 18 Commissioner, you hear that? The idea is that Major- 19 General Mpmembe will be next, he will be – I think Mr 20 Ngalwana is going to lead him, lead his evidence-in-chief 21 and the idea is that after the evidence-in-chief is 22 completed, we ask that you make yourself available to come 23 back to be questioned by Mr Gumbi, to be re-examined by Mr 24 Semenya and if there are any questions left for me to ask, 25 and my two colleagues, to be asked questions by us. I take</p>

1 it that's acceptable to you. Would you be available – does
2 that mean Monday?

3 MR SEMENYA SC: Subject to her
4 availability for the day.

5 CHAIRPERSON: Yes – yes. Are you
6 available Monday or do you need to look in your diary?

7 GENERAL PHIYEGA: I'll have to consult
8 with the office because, phew, my life is jumbled.

9 CHAIRPERSON: Alternatively Tuesday.
10 Mpembe, the indications I received in chambers were that
11 Major-General Mpembe is likely to be half a day in chief.
12 That's right, is it, Mr Semenya?

13 MR SEMENYA SC: I'm advised that, to a
14 day.

15 CHAIRPERSON: Sorry?

16 MR SEMENYA SC: Half a day to a day.

17 CHAIRPERSON: Half a day to a day. So if
18 we get half a day tomorrow, we'll adjourn at one, you see,
19 and then we'll have another half day on Monday if he's not
20 finished. Fortunately now that we're in Centurion it's
21 easier for you to come over from your office than would be
22 if we were in Rustenburg. Alright, and then we'll be told
23 tomorrow.

24 GENERAL PHIYEGA: Definitely we will
25 relay that tomorrow.

1 CHAIRPERSON: Unless, Mr Gumbi, your
2 first topic, is that likely to take 10 minutes or more?

3 MR GUMBI: Almost 10 to 15 minutes
4 because the way I structured my cross-examination I will be
5 putting a lot of propositions. I don't think –

6 CHAIRPERSON: Okay, well, those who
7 thought we were going to carry on till 5 o'clock have got
8 good news. We'll adjourn now till 9:30 tomorrow morning.

9 [COMMISSION ADJOURNED]

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