

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 123 26 AUGUST 2013 PAGES 12593 TO 12758



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<p style="text-align: right;">Page 12593</p> <p>1 [PROCEEDINGS ON 26 AUGUST 2013] 2 [09:14] CHAIRPERSON: The Commission resumes. I 3 asked the evidence leaders to arrange for the application 4 by them in relation to the rulings they seek to be put on 5 the screen, that's now been done. There were two 6 suggestions from Mr Ngalwana. The first has been 7 incorporated, as far as I can see in the second paragraph, 8 the second unnumbered paragraph and if we could scroll it 9 down a bit, a bit further please. It's para 4, you will 10 see that a second sentence has been added which I think 11 deals also with the point Mr Ngalwana made. Do you agree, 12 Mr Ngalwana? 13 MR NGALWANA: I'm still reading it, 14 Chair, I haven't seen the amended version. It seems 15 reasonably okay, Chair. 16 CHAIRPERSON: Yes, I think it is okay. 17 My colleagues and I have discussed the application and 18 we've come to the conclusion that we should grant it, so 19 the rulings sought are made, but I want to say one thing in 20 relation to para 1. It will be understood, of course, that 21 that paragraph will be applied fixedly with due regard to 22 the exigencies of the situation and the parties mustn't 23 feel unduly constrained by that. Obviously we're going to 24 enforce it but we're going to enforce in a flexible and we 25 hope in a sensible manner. And furthermore there's another</p>	<p style="text-align: right;">Page 12595</p> <p>1 CHAIRPERSON: May I ask whether you 2 discussed the statement with the evidence leaders 3 beforehand? 4 MS LE ROUX: I have not. 5 CHAIRPERSON: Well I would have thought 6 as a matter of courtesy it should have been shown to us 7 beforehand also, but anyway having expressed those views 8 would you please now proceed to read the statement. 9 MS LE ROUX: Thank you, Chair. The South 10 African Human Rights Commission welcomes the ruling this 11 morning via the Marikana Commission to move to a more 12 inquisitorial approach. A move to an inquisitorial rather 13 than adversarial approach will achieve two ends. First the 14 move would indicate an intention to address the serious 15 problem caused by the absence of the injured and arrested 16 miners from the commission process. For an adversarial 17 process to continue in the absence of key adversaries would 18 be unjust and unfair. While an inquisitorial process will 19 not eliminate the unfairness of the Commission proceeding 20 in the absence of the injured and arrested miners it will 21 go some way towards mitigating that unfairness. 22 Irrespective, it also will ensure the efficient progress of 23 the Commission in fulfilling its terms of reference within 24 a reasonable period of time and at a reasonable cost. The 25 pace of proceedings to date in which only four police</p>
<p style="text-align: right;">Page 12594</p> <p>1 point I think that should be made and that is that this is 2 really something I'm saying in relation to those who are 3 going to cross-examine, that the fact that a point hasn't 4 been highlighted or even the fact that a minor point has 5 not being dealt with in the written statement, I'm not 6 going to allow that to form the basis of lengthy and 7 tedious and unhelpful cross-examination because experience 8 of litigation indicates that you can't put every fact into 9 a statement and the fact that a detail is not on the 10 statement isn't necessarily something which can lead to an 11 adverse inference. Obviously major points should be put 12 in, if they're not inferences can be drawn from the failure 13 to include them but that aspect is also going to be applied 14 sensibly and flexibly. But we make the ruling that the 15 evidence leaders asked us to make. Does that mean that you 16 are able and prepared and willing to cross-examine Ms Le 17 Roux on behalf of the Human Right Commission? 18 MS LE ROUX: Yes, Chair, we will be able 19 to proceed with cross-examination in light of the 20 Commission's ruling. I've also been instructed to read out 21 a statement from my client regarding the ruling. If I 22 could do that now before we commence. 23 CHAIRPERSON: Well do I know what's in 24 the ruling first, shouldn't I - yes you can carry on. 25 MS LE ROUX: Thank you, Chair.</p>	<p style="text-align: right;">Page 12596</p> <p>1 officers have given evidence in six months due to the 2 adversarial nature of the proceedings cannot continue. The 3 procedural changes necessary, regardless of the number of 4 parties able to participate directly in the Commission, the 5 South African Human Rights Commission again calls on the 6 parties who participate in the Commission to co-operate 7 with the evidence leaders in the new approach to the 8 presentation of evidence to the Commission. And finally, 9 given the delays occasioned by the lack of funding for the 10 injured and arrested miners and given the hugely important 11 work ahead on both phase 1 and phase 2 by the Commission, 12 the South African Human Rights Commission calls on the 13 Presidency to extend the deadline for the completion of the 14 Commission's work beyond the current October 2013 deadline. 15 CHAIRPERSON: The comments of the 16 Commission have been noted. Major-General you're still 17 under oath. Ms Le Roux. 18 MS LE ROUX: Thank you, Chair. 19 MR NGALWANA: Chair, before Ms Le Roux 20 continues I've indicated to her and to the evidence 21 leaders, through Ms Pillay, that we are going to object to 22 a number of these documents being introduced. One of which 23 is the article in the Mail and Guardian. 24 CHAIRPERSON: Why don't you deal with the 25 points as and when they arise?</p>

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1 MR NGALWANA: Well the Mail and Guardian,
 2 I wish to deal with it upfront, Chair, the rest we can deal
 3 with as and when they arise, because of the prejudicial
 4 nature, potential prejudicial nature of reference to that
 5 article and I would now request, Chair, that perhaps when I
 6 address this issue because I may have to refer to the
 7 content of that article and that would be to play directly
 8 into the hands of the South African Human Rights
 9 Commission, with respect. I would request that the media
 10 not be part of the proceedings during my address in that
 11 regard.
 12 CHAIRPERSON: I'm not prepared to exclude
 13 the media in the process of censorship or gagging
 14 procedure, that would be totally inappropriate. I haven't
 15 been given a copy of the article. You're referring to the
 16 article "Miner's assaults, police officers identified." Is
 17 that what you're referring to?
 18 MR NGALWANA: Correct, Chair. The
 19 article wasn't provided to us so we tried to look for it in
 20 the archives ourselves.
 21 CHAIRPERSON: Anyway you've seen it.
 22 MR NGALWANA: Yes, I've seen it, Chair.
 23 CHAIRPERSON: I don't see how I can
 24 possibly consider an objection in vacuo. When Ms le Roux
 25 comes to that point and she wishes to introduce the article

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1 you can then object. I'm not prepared to hear an objection
 2 in limine as it were and I'm certainly not prepared, as
 3 I've said, to bar the media from attending the Commission
 4 when that's discussed. Anything that - the allegations
 5 dealt with in the article received extensive publicity at
 6 the time, they may well for all I know be totally
 7 unfounded. The fact that they're aired here, if they have
 8 any relevance, it's a matter we can discuss when we get
 9 there, isn't going to affect the matter substantially in my
 10 view. But anyway let's deal with that when we get there.
 11 Ms le Roux, please proceed. Possibly, Advocate Hemraj
 12 suggested, possibly this aspect, which to some extent is a
 13 housekeeping matter, can be dealt with in chambers at tea
 14 time. Ms Le Roux.
 15 MS LE ROUX: Thank you, Chair. If I
 16 could start my attorney to hand up the small number of
 17 documents that were not provided to the Commissioners on
 18 Friday, they were indicated in the index. We have now made
 19 copies of those documents and if they could be handed up.
 20 CHAIRPERSON: I take it that the witness
 21 has seen these documents or been given notice of them
 22 beforehand and is able to deal with them.
 23 MS LE ROUX: Yes, Chair, they were
 24 included in the index provided on Friday.
 25 CHAIRPERSON: Provided when? On Friday.

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1 Well let's just be -
 2 MS LE ROUX: On Wednesday and then a
 3 revised index where we had culled our cross-examination in
 4 light of Advocate Gumbi's cross-examination, was provided
 5 on Friday.
 6 CHAIRPERSON: Alright. Major-General,
 7 have you had an opportunity to study the documents to which
 8 your attention has been drawn?
 9 MAJOR-GENERAL MPEMBE: Correct,
 10 Chairperson, but however, there are some of the documents
 11 that the attorney showed me this morning that were not
 12 included in the one that was in. It's a shortened version
 13 of the index.
 14 CHAIRPERSON: Well if it's a shortened
 15 version, if they've cut things out because Mr Gumbi
 16 referred to them then you haven't got a problem. It's only
 17 if they've added things in that you haven't had a chance to
 18 see that you would have a problem, isn't that so? Perhaps
 19 we can also deal with it on a document by document basis.
 20 If Ms le Roux refers you to a document that you haven't had
 21 a chance to see beforehand then let me know and we'll
 22 consider what to do in the light of that. It may well be
 23 she can leave that over for later to give you a chance to
 24 read it over lunch time or this evening or something. But
 25 obviously I don't want you to ambushed, I want you to be

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1 dealt with fairly. I'm not suggesting Ms le Roux isn't
 2 intending to deal with you fairly but I must be satisfied
 3 that your rights are protected and you're being dealt with
 4 fairly.
 5 MAJOR-GENERAL MPEMBE: Correct,
 6 Chairperson.
 7 MR NGALWANA: Chair, may I say we only
 8 received notice of the amended version of this list of
 9 documents to which reference was going to be made yesterday
 10 afternoon at about 5:00. That's when the email came in.
 11 CHAIRPERSON: I understand, the point I'm
 12 making is, if this a shortened list, in other words have
 13 documents been omitted because Mr Gumbi referred to them or
 14 is this to some extent an expanded list with extra
 15 documents you didn't know about beforehand. If the latter
 16 then as I've said to the witness the documents referred to
 17 that he doesn't know about he can mention it and I'm sure
 18 Ms le Roux will be prepared to leave that point aside for
 19 the moment until he's had an opportunity to read it? I
 20 think Ms Pillay -
 21 MS PILLAY: Chair, I should just indicate
 22 that the HRC did provide us with the list on Friday
 23 afternoon. We circulated it on Sunday, simply because it
 24 seemed to be a culled down version of the earlier list and
 25 to the extent that I think there are documents which the

<p style="text-align: right;">Page 12601</p> <p>1 General needs time to look at, further time to look a it, 2 that can be arranged as we go on. 3 MS LE ROUX: And, Chair, just to clarify 4 there were two revisions. The first was that documents 5 were removed and that's provided for with the track changes 6 version that indicated those deletions. There were some 7 additions which amount to three photographs, three power- 8 point slides and General Mzembe's own statement of three 9 paragraphs in length. Those were the two revisions. 10 CHAIRPERSON: When you get to those 11 documents if he needs time he will tell us and his request 12 will be considered. 13 MS LE ROUX: Thank you, Chair. 14 CHAIRPERSON: Shall we start? 15 MR NGALWANA: Chair, I have to respond to 16 that, that's not entirely correct. The last item of 17 statements from members present on the 13th of August 2012 18 which failed to mention any use of teargas or stun 19 grenades, that's a totally new addition. 20 CHAIRPERSON: When we get to those 21 statements the witness will be able to signal his inability 22 if he still is unable to deal with the point then he will 23 be given an opportunity to consider the documents before 24 the cross-examination proceeds. 25 MR NGALWANA: But, Chair, with respect</p>	<p style="text-align: right;">Page 12603</p> <p>1 a file of documents to be used by the evidence leaders in 2 cross-examining you and in that file it's item number 11. 3 MAJOR-GENERAL MPEMBE: May I just get the 4 paragraph that you referred to? 5 MS LE ROUX: 12 which is headed Reporting 6 and Record Keeping. It's on page 9 of that standing order 7 and then in particular it's sub-paragraph 2 which states 8 the CJOC must ensure that a detailed record is kept of all 9 activities during the operation. It then goes on "to 10 require operational diaries, the occurrence book" and then 11 in sub 3 "the records of the operational plans, all reports 12 on executions, debriefing reports, etcetera." 13 MAJOR-GENERAL MPEMBE: Correct. 14 MS LE ROUX: Okay, and as the overall 15 commander that was then your responsibility to ensure that 16 this information was all kept. 17 MAJOR-GENERAL MPEMBE: Correct and there 18 were also officers that assisted me to do that. 19 MS LE ROUX: And who were the officers 20 that assisted you on information management? 21 MAJOR-GENERAL MPEMBE: One of the senior 22 officers, Major-General Annandale. I did also mention that 23 Brigadier Seboloki was there and also different commanders 24 of different units and sections. 25 MS LE ROUX: Was there a single person</p>
<p style="text-align: right;">Page 12602</p> <p>1 it's not just for the witness, we as the people who are 2 leading him have to be keeping step with him so that we - 3 CHAIRPERSON: But, Mr Ngalwana, you're 4 finished leading, he's under cross-examination. When he 5 has to deal with a document, he needs time, you will 6 obviously be afforded the same time. So before the cross- 7 examination of that document commences you'll be in as good 8 a position as he is to deal with the documents because you 9 will also have had an opportunity to read them. So let's 10 not waste further time, carry on Ms - 11 MS LE ROUX: Thank you, Chair. Good 12 morning, Major-General Mzembe. 13 MAJOR-GENERAL MPEMBE: Good morning, 14 Advocate. 15 MS LE ROUX: In the standing order 262 16 which is before this Commission as exhibit SS2 and at 17 paragraph or section 12, sub-section 2 of that standing 18 order it states that the Commander of the JOC must ensure 19 that a detailed record is kept of all activities during the 20 operation and as the overall commander that was your 21 responsibility. correct? 22 MAJOR-GENERAL MPEMBE: May I just see the 23 standing order and then I'll respond? 24 MS LE ROUX: Of course. 25 CHAIRPERSON: Exhibit SS2. We were given</p>	<p style="text-align: right;">Page 12604</p> <p>1 whose responsibility it was to collect and collate all of 2 that information over the week, well more than a week that 3 you were - that the JOC was established? 4 MAJOR-GENERAL MPEMBE: That's correct. 5 As I have mentioned the commanders themselves and they have 6 to bring each document and everything to the JOC. And when 7 they're brought to the JOC they must ensure that they are 8 given to the officers that I have mentioned. 9 MS LE ROUX: Now, General Mzembe, I would 10 like us to clarify what documents are before the Commission 11 that are contemporaneous with the events at Marikana, so if 12 I could ask my attorney to hand up a single page document 13 that I have prepared which summarises categories of 14 documents that are before the Commission and I'd like us to 15 work through that. 16 CHAIRPERSON: May I say I'm not sure to 17 what extent this witness is au fait with precisely what 18 documents are before the Commission. Obviously it's a 19 permissible line of questioning but we may find that he 20 can't help us very much, through no fault of his own. But 21 I mention that before you proceed. 22 [09:33] MS LE ROUX: General Mzembe, if you look 23 at this list, there are seven categories of documents that 24 we assume are contemporaneous and are before the 25 Commission. The first is minutes. The second is</p>

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1 contemporaneous notes, then intelligence reports, the
 2 plans, records of members, which are the SAPS15s,
 3 pocketbook entries, and then the case dockets. Other than
 4 this list that's before you now, the seven types of
 5 documents, can you think of any other types of documents
 6 that would have been generated at the time that you were in
 7 Marikana?
 8 MAJOR-GENERAL MPEMBE: Nothing.
 9 MS LE ROUX: Okay. If we can then start
 10 with the minutes, there are three sets of minutes that are
 11 before the Commission now, the first of the JOC meeting at
 12 6AM on the 15th of August 2012, that's exhibit TT3, a JOC
 13 meeting at 6AM on the 16th of August 2012, which is exhibit
 14 TT4, and then a JOCCOM meeting at 1:30PM on the 16th of
 15 August, which has been exhibited as exhibit EE. Now as I
 16 understand the process around minuting, and this comes from
 17 earlier testimony before the Commission, the minutes were
 18 taken by hand by someone present in the JOC and then typed
 19 up later. Is that correct?
 20 MAJOR-GENERAL MPEMBE: Correct, as I was
 21 informed by those that were taking the minutes.
 22 MS LE ROUX: And do you know how much
 23 later the document was typed up from when the meeting was
 24 held?
 25 MAJOR-GENERAL MPEMBE: No, I don't know

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1 because I was also busy with another responsibilities.
 2 MS LE ROUX: And you know what happened
 3 to the original notes that were taken at the time of the
 4 meeting?
 5 MAJOR-GENERAL MPEMBE: I don't know,
 6 Chairperson.
 7 MS LE ROUX: And as the overall
 8 commander, did you give any instruction to the minute
 9 takers at these three meetings that they must type up the
 10 minutes in any particular way? They must be complete, they
 11 must be summaries. Did you give them any instructions
 12 about how to take the minutes?
 13 MAJOR-GENERAL MPEMBE: Each and every
 14 senior officer knows how the minutes they have to be typed
 15 and they have to be done, and that is incumbent with their
 16 work.
 17 CHAIRPERSON: On the three dates, at the
 18 three meetings referred to in paragraph 1 of this document,
 19 that's to say the meeting on the 15th and the two meetings
 20 on the 16th, who kept the minutes?
 21 MAJOR-GENERAL MPEMBE: Chairperson, I did
 22 explain to this Commission that there were days where
 23 Brigadier Seboloke was supposed to keep the minutes, and he
 24 did submit the statement in regard to that, and there were
 25 also the days where the minutes were taken by Brigadier –

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1 where they should be ensured to be taken by Brigadier
 2 Pretorius. She also explains –
 3 CHAIRPERSON: Yes, I only asked you about
 4 the three dates here that are referred to, in fact two
 5 dates, the meeting on the 15th and then the two meetings on
 6 the 16th. I think the evidence was Brigadier Pretorius took
 7 the minutes, did she not, at the two meetings on the 16th.
 8 Is that correct?
 9 MAJOR-GENERAL MPEMBE: Correct,
 10 Chairperson.
 11 CHAIRPERSON: And can you remember who
 12 took the minutes of the meeting of the 15th? Was that also
 13 Brigadier Pretorius?
 14 MAJOR-GENERAL MPEMBE: That's why I'm
 15 saying there were statements that were submitted –
 16 CHAIRPERSON: Yes, yes, I hear – you
 17 can't remember, but we can get the information from the
 18 statements.
 19 MAJOR-GENERAL MPEMBE: Yes.
 20 CHAIRPERSON: But insofar as the minutes
 21 were taken by Brigadier Pretorius, would you regard it as
 22 part of your duties to tell the Brigadier how to keep
 23 minutes?
 24 MAJOR-GENERAL MPEMBE: No, Chairperson,
 25 as I said, the Brigadier knows how to, how minutes are

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1 supposed to be kept.
 2 MS LE ROUX: Now General Mpeembe, the
 3 reason I'm asking about this is because we found some
 4 errors in the minutes, compared to the other
 5 contemporaneous documents, and I'd like to just explore one
 6 of those with you. If I could ask you to turn to exhibit
 7 TT4, which are the minutes of the JOC meeting 6AM on the
 8 16th.
 9 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 10 I do have TT4.
 11 MS LE ROUX: Thank you, and then on the
 12 first page of that under –
 13 CHAIRPERSON: Is it possible for that
 14 exhibit to be screen, TT4? Thank you.
 15 MS LE ROUX: General, if you could look
 16 at the first bullet entry under 2.1, it says there are, "So
 17 Lieutenant-Colonel Isaacs informed the meeting on the
 18 following," first point, "That there are currently about
 19 3 000 mineworkers that were gathered at the koppie."
 20 CHAIRPERSON: You'll remember, Ms Le
 21 Roux –
 22 MR NGALWANA: Yes.
 23 CHAIRPERSON: - that this point was dealt
 24 with when General Annandale gave his evidence. So you may
 25 have a reason for asking this witness the question so I

<p style="text-align: right;">Page 12609</p> <p>1 won't stop you too soon, but it is a matter that we've had 2 evidence on already. Ms Le Roux, you will also remember 3 that General Annandale said there were errors in the 4 minutes of that meeting and he then went through it 5 overnight and came back with a version, with the amendments 6 as he thought were appropriate, and he handed that in as 7 well. So we know about that, but so I don't want to stop 8 you because you may have reasons for asking this witness, 9 but please try to avoid repetition.</p> <p>10 MR NGALWANA: Chair, with respect, I must 11 ask for some consistency because the Chairperson has made a 12 specific ruling on this issue at day 80 of these 13 proceedings, and you said that you will not allow the same 14 points to be repeated ad nauseam with numerous witnesses –</p> <p>15 CHAIRPERSON: That is correct. I don't 16 say we've reached the nausea stage yet and I assume that 17 Adv Le Roux is asking this question by way of introduction 18 to ask something we haven't got. If she isn't doing that 19 then I will stop her. Thank you for reminding me of my 20 earlier ruling. Carry on, Ms Le Roux.</p> <p>21 MS LE ROUX: Thank you, Chair, and let me 22 progress my cross-examination by saying, General Mpembe, 23 General Annandale said that was one of the typographical 24 errors in the minutes and that it should have reflected 300 25 people on the koppie. Could I ask you to turn to the</p>	<p style="text-align: right;">Page 12611</p> <p>1 documents before this Commission, has a different number to 2 even the corrected minutes of a meeting held two and a half 3 hours earlier. Do you have any comment?</p> <p>4 MR NGALWANA: Chair, I don't know what my 5 learned friend is referring to here. There has been 6 numerous evidence here that the various entries in FFF25 7 are not necessarily contemporaneous.</p> <p>8 CHAIRPERSON: Well, that's not quite 9 accurate. The evidence was that in the hurly-burly when 10 things were happening very fast about 4 o'clock in the 11 afternoon and reports were coming in, they were written on 12 pieces of paper and only written into the book later on. 13 There's been no evidence that I've heard that there was a 14 problem at 8:50 which caused that entry to be made out of 15 time. But in fact the point is more complicated than that. 16 The evidence was that the intelligence report was in fact 17 related to 300 and there was a later intelligence report, I 18 think at 12 o'clock, which spoke about 3 000, and it seems 19 as if that 12 o'clock intelligence entry had been wrongly 20 reflected in the minutes as having been given at 6, which 21 of course indicates, if that's so, that the minutes were 22 only written up after 12 o'clock. General Annandale said 23 it was a typographical error and he referred to certain 24 other things that weren't correct. But anyway, that point 25 has been quite fully covered actually. I don't know what</p>
<p style="text-align: right;">Page 12610</p> <p>1 occurrence book though, which is exhibit FFF25, and in 2 particular entry 972 in the occurrence book.</p> <p>3 CHAIRPERSON: Can we be shown that 4 exhibit as well, please?</p> <p>5 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 6 I do have FFF25.</p> <p>7 MS LE ROUX: And if entry 972 –</p> <p>8 CHAIRPERSON: No, we haven't got there, 9 entry 97?</p> <p>10 MS LE ROUX: 7-2.</p> <p>11 CHAIRPERSON: 972.</p> <p>12 MAJOR-GENERAL MPEMBE: Chairperson, if I 13 may ask, on which day?</p> <p>14 MS LE ROUX: This is on the 16th.</p> <p>15 MAJOR-GENERAL MPEMBE: Yes, I do have it, 16 Chairperson.</p> <p>17 MS LE ROUX: And if entry 972 could be 18 displayed, which appears at page 22 of the occurrence book.</p> <p>19 CHAIRPERSON: It's a very short entry. 20 It reads as follows, "8:50, situation report. Chopper 2 21 reported," we can now see it, "plus-minus 100 people at 22 koppie and other on the way to koppie from the village."</p> <p>23 MS LE ROUX: So the point, General 24 Mpembe, is very simple; it's just that the occurrence book, 25 which is also supposed to be one of the contemporaneous</p>	<p style="text-align: right;">Page 12612</p> <p>1 you wish to make of it now by way of a new point.</p> <p>2 MS LE ROUX: General Mpembe, let me 3 return to the first category of documents, the minutes of 4 meetings. Do you have any idea how many other meetings of 5 the JOC were held of which we have no minutes?</p> <p>6 MAJOR-GENERAL MPEMBE: I did already tell 7 the Commission.</p> <p>8 MS LE ROUX: And could you remind me of 9 your answer?</p> <p>10 MAJOR-GENERAL MPEMBE: I did say 11 Brigadier Seboloke, I think his statement is here in front 12 of the Commission, and Brigadier Pretorius were explaining 13 those days when the minutes were not taken.</p> <p>14 MS LE ROUX: Yes, but they relate to just 15 one meeting. What we've done is having gone through the 16 various statements - and there's no need for the 17 Commissioners to note right now, I'll hand up a summary 18 document at the end of this line of cross-examination – 19 we've calculated that there are at least six meetings 20 referred to by either, in either the Scott or the Isaacs of 21 the National Commissioner's own witness statements, there 22 are at least six other JOC or JOCCOM meetings that we have 23 no minutes for. And let me identify those for you.</p> <p>24 There's a JOC briefing at 8:15 on the 13th of August, which 25 is referenced in the Scott statement at paragraph 6.8 –</p>

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1 CHAIRPERSON: Ms Le Roux, before you
 2 continue, there's a fundamental question you should have
 3 asked first. Let me ask it. When there's a meeting of the
 4 JOC, are minutes always kept? Is every briefing minuted?
 5 If the National Commissioner comes and she attends a
 6 meeting of the members of the JOC and she receives a
 7 briefing, is that always minuted?
 8 MAJOR-GENERAL MPEMBE: No, Chairperson.
 9 I wanted to explain that.
 10 MS LE ROUX: Can you go ahead with your
 11 explanation, General Mpeembe?
 12 CHAIRPERSON: - explanation, he says that
 13 not every meeting is minuted. Before you embark upon a
 14 line of cross-examination like this it's always sensible to
 15 ask the foundational question first, otherwise a lot of
 16 time can be wasted.
 17 COMMISSIONER HEMRAJ: Ms Le Roux, I also
 18 think it was General Annandale's evidence that there are no
 19 minutes taken at certain of the meetings and he was asked,
 20 in fact he was tasked to look for minutes for a particular
 21 meeting and there weren't any.
 22 CHAIRPERSON: You see, if minutes have to
 23 be kept and they haven't been, or apparently haven't been,
 24 then that's the basis that one can investigate because it
 25 raises suspicion, but the premise has to be that there

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1 always are minutes. Alternatively you get a witness to say
 2 that in respect of a particular meeting minutes were taken,
 3 and then the minutes don't come, you can then ask questions
 4 about that, but just a general question about a whole lot
 5 of meetings, where are the minutes when it's not clear that
 6 minutes have been or should have been kept, doesn't help us
 7 very much.
 8 MS LE ROUX: General Mpeembe, in light of
 9 the obligation under the Standing Orders to have notes
 10 taken, to have a record kept of how things occur, what role
 11 do minutes play in complying with that obligation?
 12 MAJOR-GENERAL MPEMBE: Chairperson, the
 13 minutes are important whereby the JOCCOM is taking place,
 14 to record every issue that has been discussed, decision
 15 making, so the minutes are only there to show the decisions
 16 that were taken, but there were meetings where the National
 17 Commissioner wanted a briefing, where sometimes we do the
 18 briefing in another office, not in the JOC, there is no
 19 JOCCOM, and those are the, some of the incidents which have
 20 been referred there. So there we don't normally take the
 21 minutes because it was just a briefing to the National
 22 Commissioner. Or there were some communication between
 23 officers, particularly I know Colonel Scott will
 24 communicate with General Annandale outside the JOCCOM, and
 25 he will refer it as "I met with General Annandale." So the

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1 minutes will not be taken. But Chairperson, I want to
 2 emphasise that where crucial decisions were supposed to
 3 have been taken, the minutes were taken and they were
 4 disclosed to the Commission, and any other meetings that
 5 minutes were supposed to have been taken, it was also
 6 disclosed to the Commission and explanations were provided.
 7 MS LE ROUX: General Mpeembe, if I can
 8 then move on to the second category, which is
 9 contemporaneous notes; we have the occurrence book and
 10 we've had the evidence as to how it's compiled and its
 11 reliability. I won't traverse that again, but do you have
 12 any other notes that you took in the week from the 9th to
 13 the 16th of August, or thereafter when you were preparing
 14 for other events, like the visit of Julius Malema? Do you
 15 have any other contemporaneous notes that you took during
 16 that period of time?
 17 [09:53] MAJOR-GENERAL MPEMBE: No, Chairperson,
 18 and on that day I was in the JOC on the visit of Julius
 19 Malema.
 20 CHAIRPERSON: I think she's moved away
 21 from the -from just the JOC, she asked about
 22 contemporaneous notes you made. You did give us an extract
 23 from your diary, remember, relating to what happened at
 24 Potchefstroom, I think. Now I assume that your diary
 25 covering the period we are busy with, will also contain

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1 notes that you made at the time, is that correct?
 2 MAJOR-GENERAL MPEMBE: Correct,
 3 Chairperson.
 4 MS LE ROUX: General Mpeembe, do you still
 5 have your diary from the middle of August 2012?
 6 MAJOR-GENERAL MPEMBE: Correct,
 7 Chairperson.
 8 MS LE ROUX: And it has not been provided
 9 to your legal team or to the Commission.
 10 MAJOR-GENERAL MPEMBE: Chairperson, I
 11 said for the third time that I did provide it, and it was
 12 circulated to the Commission.
 13 MS LE ROUX: Thank you, General, my
 14 understanding is that only the excerpt around Potchefstroom
 15 has been provided to the parties. I will follow up with my
 16 learned friend for the SAPS and the evidence leaders, and
 17 establish if more was provided, but not circulated.
 18 MR NGALWANA: Chair, I can tell my
 19 learned friend now that's not factually correct, Chair, she
 20 doesn't -
 21 CHAIRPERSON: You dropped your voice in
 22 the last sentence.
 23 MR NGALWANA: I am saying, Chair, our
 24 learned friend doesn't have to approach us during tea, I
 25 can give her the answer now, what - her understanding isn't

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1 correct.

2 CHAIRPERSON: What is the correct facts?

3 MR NGALWANA: Those diaries didn't relate

4 to Potchefstroom, at all. They related to events in which

5 the General was involved.

6 CHAIRPERSON: No, no, she gave us –

7 sorry, he gave us extracts from his diary relating to what

8 happened at Potch, or he said what other people said, this

9 is in relation to the question of whether he gave

10 instructions. That was put before us as an exhibit. What

11 Ms Le Roux wants to know is whether the rest of his diary

12 insofar as it relates to the period that concerns us, I

13 take it, it would be from the 12th of August until after the

14 16th, whether that's been made available to the parties. If

15 it hasn't been, and they ask for it, I take it you won't

16 have a problem making it available. If it has been, well

17 then the point will fall away. It means that the extracts

18 from the diary which have been handed in, starts from the

19 13th, explaining he was on leave. My recollection is that

20 things that happened at Potch were written on a page which

21 was not the page of the date of the Potchefstroom meeting,

22 but anyway, perhaps we can get out that exhibit and have a

23 look at it. In the light of what we see, we will then know

24 whether there's something for Ms Le Roux to persist in or

25 it's appropriate for her to move onto the next point. Ms

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1 Pillay, can you tell us what that exhibit is?

2 MS PILLAY: Chair, HHH9.

3 MS LE ROUX: General Mzembe, I'd like to

4 now move onto the topic of Intelligence, and before this

5 Commission is an exhibit TT5, which is –

6 COMMISSIONER HEMRAJ: Before you move on,

7 Ms Le Roux, the exhibit is before us, it's actually, I am

8 corrected, it starts on the 11th of August.

9 CHAIRPERSON: What we've got are pages

10 relating to the 11th of August, the 12th of August and the

11 13th, and then there's a jump to the 28th. Sorry, I wasn't

12 being recorded. What we have in exhibit HHH9 are extracts

13 from the witness's diary, the pages relating to the 11th,

14 12th and 13th of August and then from the 28th – and then

15 also a page of the 28th of August, those are the only pages

16 we have. The 28th relates to what is known as the meeting

17 at Roots which is the place in Potchefstroom where the

18 meeting was held, but I was, my recollection was in

19 correct. We did have the pages for the 11th, 12th and 13th

20 but of course we haven't got the pages from the 14th to the

21 16th and thereafter. If those pages were made available to

22 the parties, then the question falls away. If they

23 weren't, I take it you want them Ms Le Roux, is that

24 correct?

25 MS LE ROUX: That's correct.

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1 CHAIRPERSON: Perhaps Mr Ngalwana can

2 take instructions on that, and inform you after the tea

3 adjournment what the correct position is.

4 MS LE ROUX: Thank you, Chair. So,

5 General Mzembe, moving onto the – a new topic because

6 that's relating to Intelligence, could you turn up exhibit

7 TT5?

8 MAJOR-GENERAL MPEMBE: Yes, Chairperson,

9 I do have TT5.

10 MS LE ROUX: And this is a three page

11 document, the first two pages come from Brigadier

12 Engelbrecht and then there's a single page from Colonel

13 Isaacs, Crime Intelligence North West. General, other than

14 this document, are you aware of any other contemporaneous

15 documents that capture the intelligence that was provided

16 to the JOC during the events at Marikana?

17 COMMISSIONER HEMRAJ: Before you answer

18 that question, you are not suggesting the TT5 is

19 contemporaneous because it is dated the 28th of August.

20 MS LE ROUX: That's correct,

21 Commissioner, but we, as far as we know this is the only

22 written documentation relating to intelligence and as we

23 understand it, created after the fact, to capture it, but

24 fed into the JOC –

25 COMMISSIONER HEMRAJ: Yes.

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1 MS LE ROUX: - and I am just trying to

2 establish if that was then some other written form at the

3 time.

4 COMMISSIONER HEMRAJ: It's just not been

5 suggested, I just to clarify that you are not suggesting to

6 the witness, that TT5 is contemporaneous, because it's not.

7 MS LE ROUX: Correct.

8 COMMISSIONER HEMRAJ: Yes.

9 MS LE ROUX: I am not. So General

10 Mzembe, with respect to the first two pages, those are –

11 CHAIRPERSON: Mr Ngalwana wants to raise

12 a point.

13 MR NGALWANA: My learned friend also says

14 this is the only intelligence report, it isn't.

15 CHAIRPERSON: I understood it's the only

16 one she had. She wants to know if there are others. So in

17 the light of the objection, reformulate your question,

18 let's carry on.

19 MS LE ROUX: Thank you, Chair. General

20 Mzembe, looking at the last page of that document, the

21 document signed by Colonel Isaacs, that is undated. Do you

22 recognise that document? Have you seen that document

23 before?

24 CHAIRPERSON: I don't think it's correct

25 to say it's undated, it's headed with a date, 16th August,

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1 then the time, noon, and then below, and then it uses the
 2 present tense, "situation is currently very tense." So I
 3 think it's a fair inference that it's – that the time at
 4 the top is the time when the report was made.
 5 MS LE ROUX: General Mzembe, that single
 6 page, have you seen – did you see that document on the 16th
 7 of August at around noon?
 8 MAJOR-GENERAL MPEMBE: Correct.
 9 MS LE ROUX: And when, what were the
 10 circumstances in which you saw that document?
 11 MAJOR-GENERAL MPEMBE: It was in the JOC
 12 committee which I testified here.
 13 CHAIRPERSON: Are you talking about the
 14 document –
 15 MAJOR-GENERAL MPEMBE: Are you talking –
 16 CHAIRPERSON: - that copyright, the
 17 documents relate – sorry, let's not talk over each other.
 18 That' can't be right that document is headed "2012/8/16
 19 12:00 hours," in other words, it refers to the situation as
 20 it was 12 noon, and that's where you see that there were
 21 3 000 people gathered at the koppie at 12 noon which is why
 22 those other minutes probably were written up afterwards,
 23 and the material incorporated in this document was wrongly
 24 included in that one, but let's not worry about that, the
 25 point is, you couldn't have seen this document at six

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1 o'clock, because it only came – it appears only to have
 2 into existence at noon or thereafter. So I think you are
 3 mistaken on that.
 4 MAJOR-GENERAL MPEMBE: Chairperson, what
 5 I wanted to say is that the contents of this document was
 6 the one that was said in the JOCOM, but it is correct for
 7 the Chairperson to say I saw it on the JOCOM meeting of
 8 13:30 when the document was actually compiled at 12
 9 o'clock. But the contents were the same as that one of six
 10 o'clock.
 11 CHAIRPERSON: [Inaudible, microphone
 12 off].
 13 MAJOR-GENERAL MPEMBE: Yes.
 14 MS LE ROUX: General Mzembe, I understand
 15 your evidence to be that the contents, the information that
 16 was being fed into the JOC regarding – from Intelligence,
 17 when you received that at 6am on the 16th, it wasn't
 18 recorded in a document, is that what you are saying? It
 19 was reported to you, but it wasn't in a document. This was
 20 only for the 1:30 meeting. Is that correct?
 21 MAJOR-GENERAL MPEMBE: Correct.
 22 MS LE ROUX: And how was intelligence
 23 gathered from the 12th to the 16th of August? Could you
 24 describe to the Commission how the SAPS went about
 25 gathering intelligence that fed into your planning and

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1 operations?
 2 MAJOR-GENERAL MPEMBE: It is contained in
 3 the minutes of the 16th, six o'clock.
 4 MS LE ROUX: But General Mzembe, my
 5 question is more general, from the period of time that you
 6 were in Marikana, for those days, how was intelligence
 7 being gathered and provided to the JOC, to assist you in
 8 planning and executing your operations?
 9 MAJOR-GENERAL MPEMBE: It was testified
 10 to this Commission that it was compiled by the different
 11 agencies that is SSA, Crime Intelligence and we were
 12 boosted by the number of the police officers being from
 13 Gauteng, and it was compiled and it was given to the JOCOM
 14 meeting.
 15 CHAIRPERSON: Did someone from Crime
 16 Intelligence attend each JOCOM meeting, and provide the
 17 information that had been gathered in the interim?
 18 MAJOR-GENERAL MPEMBE: Correct,
 19 Chairperson.
 20 CHAIRPERSON: And was that Colonel
 21 Isaacs?
 22 MAJOR-GENERAL MPEMBE: It will be Colonel
 23 Isaacs on the other days. On the other days it was
 24 Brigadier Engelbrecht.
 25 MR NGALWANA: Chair, I am appreciative of

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1 the fact that it is in the interests of everyone to save
 2 time, and not to waste it, this line of questioning was put
 3 to Major-General Annandale, and he dealt with it
 4 extensively, also pointing out the difficulties that the
 5 Police were facing in regard to gathering intelligence.
 6 CHAIRPERSON: You don't have to mention
 7 that point. I assume that Advocate Le Roux is asking these
 8 questions by way of preliminary to the new points that she
 9 wants to make. I've already spoken to her about trying to
 10 avoid repetition when doing that, but anyway. You will
 11 take that point aboard – into account, Ms Le Roux, as you
 12 proceed, I take it.
 13 MS LE ROUX: General Mzembe, when you say
 14 that – but what I do want to understand is when you say
 15 that the intelligence was provided to the JOC, that's not
 16 in any documentary form, other than what's captured in the
 17 minutes or in TT5, correct?
 18 MAJOR-GENERAL MPEMBE: I said it was
 19 provided in person in the JOCOM meeting.
 20 CHAIRPERSON: I take what Ms Le Roux
 21 wants to know is was the information provided orally or was
 22 a document containing the information handed in? I think
 23 that's the point of her question. You said, generally it
 24 was either Brigadier Engelbrecht or Colonel Isaacs, they
 25 attended the JOCOM meeting, they gave the information which

<p style="text-align: right;">Page 12625</p> <p>1 had been gathered by Crime Intelligence, and was the 2 information given orally? 3 MAJOR-GENERAL MPEMBE: Chairperson, in 4 the meeting it was given orally, but I cannot say now it 5 was not contained in the documents. I think Brigadier 6 Engelbrecht and Colonel Isaacs can shed a light on that. 7 MS LE ROUX: Thank you, General, and we 8 will explore that with them. Major-General Annandale 9 conceded that the intelligence for the operation was 10 inadequate. What was your view of the intelligence that 11 was provided to the JOC? 12 MAJOR-GENERAL MPEMBE: I was provided 13 with reasons of maybe not, let's say deep intelligence, in 14 terms of different, for example, the persons and the 15 activities, because when we talk about intelligence, maybe 16 we need to be specific because "intelligence" is a very 17 wide word. Maybe if you might be specific in terms of the 18 intelligence that you are referring to, and I need also to 19 be specific in terms of my answer because "intelligence" is 20 very wide. 21 MS LE ROUX: Well, General Mpeembe, let me 22 ask the question another way. What intelligence did you 23 want in order to make decisions and planning when you were 24 in the JOC? What type of intelligence did you want in 25 those circumstances?</p>	<p style="text-align: right;">Page 12627</p> <p>1 informal settlement, we did not know, and the reasons were 2 given why we didn't get them. 3 MS LE ROUX: And then finally with 4 respect to precisely what weapons were involved, did you 5 receive adequate information? 6 MAJOR-GENERAL MPEMBE: Chairperson, I 7 already testified and I think it has been put to the 8 Commission the types of weapons that we did know that they 9 do have, but who was having it and where were their 10 weapons, and those that members of the SAPS were robbed and 11 killed, those of the securities, and some of those weapons 12 and hand radios of the police and the securities are still 13 missing. 14 MS LE ROUX: So returning to my initial 15 question, which was that Major-General Annandale had said 16 that in his view the intelligence that was available was 17 inadequate, do you agree with that opinion of his? 18 MAJOR-GENERAL MPEMBE: Chairperson, I 19 said yes and the reasons why it was inadequate, it was also 20 given. 21 CHAIRPERSON: Was that so right up to the 22 16th? Perhaps I must ask you the next question so that you 23 can deal with both together. From the 14th onwards, 24 probably even from before that - in fact I'm wrong. On the 25 13th you had a lot of photographs, video footage and so on,</p>
<p style="text-align: right;">Page 12626</p> <p>1 MAJOR-GENERAL MPEMBE: I wanted to know 2 who were the people involved, in instigating or 3 destabilising the situations. I wanted to know where they 4 are staying. I wanted to know precisely what weapons are 5 they having. And I was informed that, and with the 6 occurrence at Marikana at that time, it was not easy 7 because people because people got killed, anyone who was 8 just having a cell phone, he was getting killed or maimed. 9 So I was informed that everybody was scared and intimidated 10 for their own life. 11 MS LE ROUX: Let's start at the first 12 question that you wanted answered, who was involved? Did 13 you receive that information from your officers who were 14 engaged in intelligence gathering? Did you understand who 15 was involved? 16 MAJOR-GENERAL MPEMBE: Chairperson, I 17 have already answered that one and I also said that we did 18 not know. 19 [10:13] MS LE ROUX: With respect to your second 20 enquiry, which was where were they staying, did you receive 21 adequate information on that enquiry? 22 MAJOR-GENERAL MPEMBE: Chairperson, I did 23 testify that we did not receive either, whether they were 24 at the mountain or whether they were at the hostel, where 25 in the hostel and which room, if they were in the shack or</p>	<p style="text-align: right;">Page 12628</p> <p>1 of people, the people you met at the railway line who had 2 pangas and assegais and spears and so on, and then from the 3 14th onwards the people congregated every day at the koppie, 4 according to the evidence particularly militant group in 5 the front, and I take it you had ample photographs and 6 video clips of these people. Is that so? 7 MAJOR-GENERAL MPEMBE: Correct, 8 Chairperson. 9 CHAIRPERSON: Now you'll remember that 10 initially when the National Commissioner met Lonmin they 11 said we don't know who these people are, they're faceless 12 people, they don't work for us. You remember that? 13 MAJOR-GENERAL MPEMBE: Correct, 14 Chairperson, it was said even in the briefing when the 15 Provincial Commissioner was there. 16 CHAIRPERSON: Ja, that's right, and then 17 they were shown photographs and they then conceded that 18 they did recognise some of the people. Remember, initially 19 there was a request for, I think it was the shaft foremen 20 or something, you know foremen and people of that kind to 21 come to look at the photographs. Eventually they conceded 22 that they were their employees. So this story they were 23 faceless people, they couldn't negotiate with them, 24 collapsed. Now that's correct, isn't it? You remember 25 that?</p>

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1 MAJOR-GENERAL MPEMBE: Correct,
 2 Chairperson.
 3 CHAIRPERSON: So what I don't understand
 4 – this fits in with what you're being asked, but from
 5 another angle – surely you had photographs of the main
 6 people, certainly the militant people carrying weapons.
 7 You had it from the photographs of the 13th, the 14th, the
 8 15th. Wouldn't it have been possible for the intelligence
 9 people to have sat down with the Lonmin people and said
 10 look, who are – these are your workers, who are they, can
 11 you identify them, and if they could identify them - it's
 12 difficult to think they couldn't have - so where do they
 13 stay? I take it Lonmin would have had details of which
 14 hostels people stayed in, which rooms they had, even which
 15 shacks were occupied in the informal settlement. Isn't
 16 that so?
 17 MAJOR-GENERAL MPEMBE: It is correct,
 18 Chairperson, but the question it was just generalised in
 19 terms of over the period, was not specific in terms of
 20 dates.
 21 CHAIRPERSON: No, no, no, I understand
 22 that. You see, I understand that there was an enormous
 23 amount of intimidation. I understand that if there were
 24 people who were sympathising with Lonmin or sympathising
 25 with NUM on the koppie, they might have been afraid to have

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1 been information. Even people in the hostels and the
 2 informal settlements might have been afraid to give
 3 information because there might have been fatal
 4 consequences for them if they did that, but I'm not talking
 5 about that kind of information; I'm talking about
 6 information from Lonmin based upon the photographs and
 7 video clips of people marching around in public, waving
 8 cutlasses and pangas and spears and assegais. That sort of
 9 information would have been available. Was it ultimately
 10 available by the 16th?
 11 MAJOR-GENERAL MPEMBE: Chairperson, the
 12 tasking was done to Brigadier Engelbrecht and Brigadier Van
 13 Zyl that were leading the teams. Maybe I can hear
 14 specifically from them that before the 16th which
 15 information they obtained.
 16 CHAIRPERSON: What you're really telling
 17 us is you can't tell us whether that information had been
 18 obtained and if so, to what extent. Am I understanding you
 19 correctly?
 20 MAJOR-GENERAL MPEMBE: It's correct,
 21 Chairperson.
 22 CHAIRPERSON: Alright, thank you.
 23 COMMISSIONER HEMRAJ: General, was it
 24 your view or the view of the police that there were persons
 25 other than those that were present at the koppie that were

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1 responsible for what you call the destabilisation?
 2 MAJOR-GENERAL MPEMBE: Chairperson, since
 3 on my arrival nobody was ever being specific in terms of
 4 saying who organises the marchers, who organises the
 5 gatherings, and even when I meet the marchers at the
 6 railway line I could not know whom do I, I was speaking to.
 7 So those were the people that one could see but you don't
 8 know who are they, where were they staying. That is what I
 9 was referring to.
 10 CHAIRPERSON: No, I understand that, but
 11 if the video clips had been shown to Lonmin, surely Lonmin
 12 would have been able to come back and say yes, those
 13 spokesmen are X and – sorry, I mustn't use X – are A and B,
 14 and A lives in this hostel and B lives in that shack in the
 15 informal settlement. That information could have been
 16 obtained, I take it?
 17 MAJOR-GENERAL MPEMBE: Correct,
 18 Chairperson. That's what I was answering Commissioner
 19 Hemraj to say when I was referring to I did not know –
 20 CHAIRPERSON: No, I understand that. You
 21 didn't have to confine your enquiries to those who were the
 22 spokesmen. There were people in the front row who were
 23 clanging spears and pangas together. Isn't that right?
 24 MAJOR-GENERAL MPEMBE: Correct,
 25 Chairperson.

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1 CHAIRPERSON: Other people I think
 2 passing the blades between their lips. I mean these were
 3 people who I think it was important to know, was it not?
 4 MAJOR-GENERAL MPEMBE: Correct,
 5 Chairperson.
 6 CHAIRPERSON: Was that information ever
 7 provided to you? I think you already answered no. Am I
 8 correct?
 9 MAJOR-GENERAL MPEMBE: Correct,
 10 Chairperson.
 11 COMMISSIONER HEMRAJ: You haven't
 12 answered the question, was whether there was a thinking
 13 among the police that there were certain persons behind the
 14 scenes.
 15 MAJOR-GENERAL MPEMBE: It is correct,
 16 Chairperson, because the Chairperson will recall when I
 17 said that when we confronted Lonmin they were also afraid
 18 to tell us. They even asked us not to tell the people. So
 19 then we were even concerned to say but why Lonmin even
 20 themselves they were so afraid, and also not knowing the
 21 names and the places, as I have mentioned before, then we
 22 were thinking that there could have been maybe been some
 23 other people that were also involved that were not at
 24 Lonmin or any other place.
 25 COMMISSIONER HEMRAJ: Now the weapons

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1 that they were carrying was pretty obvious just by looking
 2 at them. What was the concern, what information were you
 3 looking for? What further information were you looking to
 4 as regards to weapons? Did it perhaps relate to firearms
 5 or what was it?
 6 MAJOR-GENERAL MPEMBE: Correct,
 7 Chairperson.
 8 COMMISSIONER HEMRAJ: Thank you.
 9 MS LE ROUX: Major-General Mpeembe –
 10 CHAIRPERSON: Sorry, we interrupted you.
 11 I think you were busy with the paper trail, were you not,
 12 following up the paper trail, existent or non-existent?
 13 MS LE ROUX: Yes, thank you.
 14 CHAIRPERSON: Do you want to return to
 15 that line of questioning or are there other points you want
 16 to deal with?
 17 MS LE ROUX: No, I'm returning to that
 18 line of questioning. General Mpeembe, with respect to the
 19 application for cordon and search of the hostels which was
 20 made, you know, to take place 15/16 August, you obviously
 21 testified that intelligence fed into that plan, which was
 22 placed before the Provincial Commissioner. We'd like to
 23 know where that intelligence exists. Is it in another
 24 document, or is the only intelligence that relates to the
 25 application for cordon and search, what's in the

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1 application for cordon and search? My question is, is
 2 there another document setting out an intelligence report
 3 that fed into that application?
 4 MAJOR-GENERAL MPEMBE: Chairperson,
 5 firstly I had not been told that I'm going to be asked
 6 about a cordon and search, which of course is necessary for
 7 me to answer, but without any Commission's time, I will say
 8 I did also indicate to this Commission that the word
 9 "intelligence" is very wide. So we need to have either a
 10 limitation, interpretation, or whatever, and we need to be
 11 specific in terms of the intelligence. But what I said
 12 there and what has been contained in Brigadier Calitz's
 13 statement, it's what has happened and which that is also
 14 contained as intelligence, the question that there were
 15 firearms that were taken by, they were taken from the
 16 securities, the issue that there were firearms taken from
 17 the police, and as I have already indicated that we did not
 18 know who and which places, so then that's why cordon and
 19 search was applied.
 20 COMMISSIONER HEMRAJ: Does that mean that
 21 the information was not contained in any document? Is that
 22 what your answer means?
 23 MAJOR-GENERAL MPEMBE: Chairperson, I
 24 still remain to my answer to say that Brigadier Engelbrecht
 25 might also be saying that it was contained somewhere in a

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1 document, but it was fitted in, in the JOCCOM, and as I've
 2 said, those were the facts that were known to us.
 3 MS LE ROUX: General Mpeembe, let me take
 4 a step back. Did you instruct Brigadier Engelbrecht to
 5 prepare that application for the search and cordon?
 6 CHAIRPERSON: I think you'll find that
 7 Captain Moolman was instructed to prepare it and the
 8 founding affidavit was by Brigadier Calitz. So who
 9 instructed them? That's the question. Sorry, I'm butting
 10 in unnecessarily. I'm sorry.
 11 MAJOR-GENERAL MPEMBE: Chairperson, I
 12 think it's correct to say that, as I've testified, it's
 13 Colonel Moolman. By then it was –
 14 CHAIRPERSON: She's a Captain, isn't she?
 15 She's been promoted –
 16 MAJOR-GENERAL MPEMBE: Yes, by then she
 17 was a Captain, now she's been promoted.
 18 CHAIRPERSON: I see. The question is,
 19 who gave the instruction, though, for the cordon and search
 20 authorisation to be sought and the relevant documents to be
 21 drawn up. Did you give that instruction or did Brigadier
 22 Calitz or somebody else? What's your answer to that?
 23 MAJOR-GENERAL MPEMBE: Chairperson, I did
 24 say that it's myself.
 25 MS LE ROUX: And when you instructed that

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1 that be prepared, did you – what was your understanding of
 2 the intelligence that was available to prepare that
 3 application?
 4 MAJOR-GENERAL MPEMBE: Chairperson, may
 5 the question be repeated? Because if my mind serves me
 6 well, I did answer this question.
 7 CHAIRPERSON: Perhaps I could ask the
 8 same question with a different angle and more detail. The
 9 cordon and search application related to the Nkaneng
 10 informal settlement. You remember? That was one of the
 11 areas in respect of which the authorisation granted by the
 12 Provincial Commissioner provided for that area to be
 13 cordoned off and then to be search. That's correct, isn't
 14 it?
 15 MAJOR-GENERAL MPEMBE: That's correct,
 16 Chairperson, including the hostels.
 17 CHAIRPERSON: Yes, well let's leave the
 18 hostels out of it for the moment. Let's just concentrate
 19 on Nkaneng informal settlement. Now was there information
 20 that if you go to a specific shack in the informal
 21 settlement you will find weapons? So was the plan to put a
 22 cordon around that shack, for people to go in and search
 23 it, or was there just going to be a general search through
 24 the whole of the informal settlement with the area cordoned
 25 off outside, as it were, by members of the service? How

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1 was the cordon and search going to be executed?
 2 MAJOR-GENERAL MPEMBE: Chairperson, as I
 3 already indicated that we did not know precisely the place,
 4 otherwise we could have applied for a search warrant. For
 5 the fact that we did not know which specific shack or what,
 6 that's why we cordoned off the place.
 7 CHAIRPERSON: Does that mean that you did
 8 not know in which particular shacks in Nkaneng weapons
 9 could be found? In other words your information, the
 10 intelligence you'd received – which takes us back to Ms Le
 11 Roux's question – wasn't specific enough to enable you to
 12 target particular house, so you had to go through the whole
 13 settlement looking for arms. Is that what you're saying?
 14 MAJOR-GENERAL MPEMBE: That's what I
 15 testified about, Chairperson.
 16 MS LE ROUX: General Mpeembe, I may have
 17 misunderstood your earlier testimony then, because I
 18 understood you to have testified that from the people that
 19 were arrested on the 13th, you obtained intelligence. You
 20 obtained some of that specific information that then fed
 21 into the application to search and cordon. Have I
 22 misunderstood your earlier evidence?
 23 COMMISSIONER HEMRAJ: I think the
 24 evidence, Ms Le Roux, was that there was information
 25 obtained from people who were also arrested before the 13th

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1 as well.
 2 [10:33] MS LE ROUX: Thank you, Commissioner.
 3 General Mpeembe, do you have the question? The question is,
 4 is it correct that intelligence received from people
 5 arrested on the 13th and earlier fed into the application to
 6 search and cordon? Did you get intelligence from arrested
 7 persons that helped you do the application for search and
 8 cordon?
 9 MAJOR-GENERAL MPEMBE: Chairperson, I'm
 10 requesting that as it has been extensively deliberated in
 11 this Commission, remember, the Commission will recall that
 12 about how many times I've got –
 13 CHAIRPERSON: No, I know. I know, but
 14 Major-General, simple question which the answer is either
 15 yes or not. I'm not going to allow undue repetition. All
 16 you've been asked is in respect of the people who were
 17 arrested before the 13th and on the 13th, did you not say
 18 that you'd received information which enabled you to
 19 identify where certain weapons and so on could be found,
 20 and if you went with a cordon and search operation you'd
 21 find them there, or hoped to find them? And that's a
 22 simple question; either yes or no.
 23 MAJOR-GENERAL MPEMBE: The cordon and
 24 search, Chairperson, that was done in September, the answer
 25 will be yes.

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1 CHAIRPERSON: You've been asked about the
 2 cordon and search application which was brought and in
 3 respect of which authorisation was obtained from the
 4 Provincial Commissioner for the, I think there was one, it
 5 was for the period the 15th/16th of August. I think that's
 6 what Adv Le Roux is asking you about, August, not
 7 September, and the answer is either yes or no. You either
 8 had some specific information, or you didn't.
 9 MAJOR-GENERAL MPEMBE: Chairperson,
 10 that's why I was asking that the question should be
 11 specific which cordon and search.
 12 CHAIRPERSON: Now it's specific, so
 13 what's your answer?
 14 MAJOR-GENERAL MPEMBE: Yes, so that my
 15 answer should be specific, or is that her question of the
 16 one –
 17 CHAIRPERSON: [Microphone off, inaudible]
 18 if it's not her question, it's my question. In respect of
 19 the cordon and search application for which an
 20 authorisation was sought in, I think it covers the period
 21 the 15th to the 16th of August, was that information –
 22 sorry, was that application based to some extent at least
 23 on specific information which had been obtained from
 24 persons who'd been arrested earlier, which identified, it
 25 was hoped, with some degree of precision where arms and so

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1 forth could be found? The answer is either yes or no, you
 2 know.
 3 MAJOR-GENERAL MPEMBE: No, Chairperson,
 4 for that one, but for September, yes.
 5 CHAIRPERSON: Alright. I think that this
 6 is perhaps a suitable stage – we started at 10 past 9 I
 7 think, so it's a suitable stage for us to take the tea
 8 adjournment, which I hope will only be 15 minutes.
 9 [COMMISSION ADJOURNS COMMISSION RESUMES]
 10 [11:00] CHAIRPERSON: The Commission resumes.
 11 Major-General, you're still under oath. Ms Le Roux.
 12 MS LE ROUX: Major-General, continuing in
 13 the theme of the paper trail as the J has called it, I'm
 14 correct that the only documents relating to the plan which
 15 is exhibit SS3 that that is not a contemporaneous document
 16 because it was "reverse engineered" in the words of its
 17 author. You don't know of any other planning documents
 18 from that period of time that could be provided to the
 19 Commission?
 20 MAJOR-GENERAL MPEMBE: Contemporaneous
 21 means those that were made on that day, Chairperson, if I
 22 may get it correct.
 23 MS LE ROUX: General Mpeembe, let me ask
 24 the question by breaking it down into four specific types
 25 of documents that we would have wanted to see. The first

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1 is that there is no contemporaneous operational plan
 2 document. There isn't an SS3 that was prepared at the
 3 time, correct?
 4 MAJOR-GENERAL MPEMBE: Chairperson, we
 5 submitted a contingency plan of the 10th and we submitted
 6 then a contingency plan of the 13th and thereafter the
 7 planning was also done on the daily basis.
 8 CHAIRPERSON: The question Ms Le Roux is
 9 asking you isn't when the planning was done, she wants to
 10 know if there are any documents what she calls
 11 contemporaneous. Now I understand you to say there are
 12 documents for the 10th and up to the 13th, is that correct?
 13 MAJOR-GENERAL MPEMBE: Correct,
 14 Chairperson.
 15 CHAIRPERSON: Are those documents that
 16 were prepared at the time? Whereas I understand that some
 17 of the other documents were what Lieutenant-Colonel Scott
 18 calls "reverse engineered" they were prepared in document
 19 form after the event in order to reflect what his evidence
 20 is, was the plan at the time. In other words there wasn't
 21 a plan that was documented from the 13th onwards if I
 22 understand him correctly but that he prepared documents
 23 after the 16th to reflect what the non-documented plans were
 24 up to that stage. I think that's an accurate summary of
 25 what he says. Is that also your understanding?

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1 MAJOR-GENERAL MPEMBE: Chairperson, we
 2 testified that Colonel Scott, Lieutenant-Colonel Scott,
 3 Colonel Scott now and by then Lieutenant-Colonel and
 4 Colonel Merafe did prepare the plan and this re-engineering
 5 and engineering yes it was the correction thereafter. But
 6 the plan was there on the 13th and I did mention that it was
 7 after the interception. So there were plans, not plans
 8 done after.
 9 CHAIRPERSON: Major-General, I don't
 10 think you're understanding the question you're being asked.
 11 I understand that your evidence is that those plans were in
 12 existence beforehand but what you're being asked is whether
 13 they were in existence in documented form beforehand. If
 14 you look at SS2 - SS3 sorry, SS2 of course, is the standing
 15 order. I think it's SS3, there it says - is SS3 in front
 16 of you?
 17 MAJOR-GENERAL MPEMBE: Correct,
 18 Chairperson.
 19 CHAIRPERSON: Now my recollection is that
 20 somewhere in that document it is stated that the - some at
 21 least of the pages were not in existence in documentary
 22 form beforehand but they were produced by way of
 23 reconstruction afterwards. Is that correct? SS3 begins
 24 with the contingency plan to which you referred which is
 25 dated the 10th of August but if one goes on then there's a

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1 document headed Operation Platinum Lonmin Mine Marikana 14
 2 August and then 13 before that and then there's Lonmin Mine
 3 Marikana 14 August, stage 1 and then there's a document of
 4 the 15th and a document of the 16th. Now my understanding
 5 is that Colonel Scott very fairly concedes that these
 6 documents did not exist. In fact that is so, if you look
 7 at the document Operation Platinum Lonmin Mine Marikana 16
 8 August 2012 Stage 2, look at that document. It's got a
 9 number of pages and at page 10 it says the following, "The
 10 tasking table to follow were compiled for the Commission
 11 briefing were not displayed visually at the JOC meeting on
 12 the 16th of August 2012. This was because they could not be
 13 fully completed due to the lack of immediate knowledge with
 14 regards to force levels and resources later on in the day"
 15 and he goes on about that. So what he is effectively
 16 saying is that these documents were compiled afterwards but
 17 they were reconstructed as it were by a process of what's
 18 been described as reverse engineering. Now that's what Ms
 19 le Roux is asking you about.
 20 MR NGALWANA: No, Chair, with respect
 21 that's not my understanding.
 22 CHAIRPERSON: Sorry, just to make it
 23 clear, I was talking to you about the plan for the 16th, I
 24 think it's clear that the documents from the 10th to the
 25 13th were what Ms Le Roux describes as contemporaneous

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1 documents, I think they're duly signed and everything. The
 2 question really relates to the 16th. Tables for example
 3 which we see were not in existence at the time for the
 4 reasons mentioned, I assume by Lieutenant-Colonel Scott as
 5 he then was. Do I understand it correctly?
 6 MAJOR-GENERAL MPEMBE: Chairperson, as
 7 you put it and when you specify even the dates I agree that
 8 certain pages, but not all the plan.
 9 CHAIRPERSON: I mean obviously the 10th for
 10 example, for example, is a contemporaneous, well it looks
 11 like a contemporaneous document and I think that applies to
 12 the 13th as well. You see what I was reading to you was
 13 from page 10 of this document headed Operation Platinum
 14 Lonmin Mine Marikana, 16 August Stage 2 and at page 10 in
 15 the third paragraph it says, "The tasking and setting out
 16 of the teams for the day remained as depicted in the tables
 17 was done during the operational briefing that morning once
 18 force levels and resources were confirmed." But in the
 19 first paragraph he says, "The tasking tables to follow were
 20 compiled for the Commission briefing were not displayed
 21 visually at the JOC briefing." So those documents didn't
 22 exist in document form on the 16th, they were compiled for
 23 the Commission but Lieutenant-Colonel Scott alleges that
 24 they set out what the plan was at the time. Am I
 25 understanding the situation correctly?

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1 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 2 as the Chairperson correctly indicated but not all the plan
 3 was not there. Only certain documents in the plan.
 4 MS LE ROUX: And General Mpembe, just so
 5 that we're absolutely clear on the detail, which documents
 6 do you say in SS3 are the contemporaneous documents, we
 7 know the ones for the 10th and the 13th that have a
 8 signature, are you saying everything thereafter you accept
 9 is not contemporaneous? It was prepared by General Scott
 10 for the Commission after the events.
 11 MAJOR-GENERAL MPEMBE: Chairperson, as it
 12 has been indicated to all the other dates the one of the
 13 16th in particular, those pages that have been pointed out
 14 those are the documentations that were made for the
 15 Commission. They were not presented there at the JOCCOM
 16 but the rest were there.
 17 CHAIRPERSON: Ms Le Roux, I think if we
 18 use the phrases before the event and after the event the
 19 witness will understand. What Counsel wants to know from
 20 you is apart from those documents that we're looking at now
 21 were there any other documents which didn't exist before
 22 the event but which were compiled or produced in
 23 documentary form after the event. Is that your question?
 24 MS LE ROUX: Yes, Chair.
 25 MAJOR-GENERAL MPEMBE: It is correct,

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1 Chairperson, the one in SS3 that page 10 there is also the
 2 briefing that was done by Colonel Scott at 13:30.
 3 CHAIRPERSON: Thank you.
 4 MS LE ROUX: But General Mpembe, I'm
 5 still not absolutely clear, I just want to try again. In
 6 SS3 the first document relates to the 10th, the next
 7 document relates to the 13th. Then there's a document that
 8 starts, Operation Platinum Lonmin Mine Marikana 14 August
 9 2012. Am I correct that from that page onwards the rest of
 10 SS3 is what Scott reverse engineered? That's correct,
 11 that's your understanding, correct?
 12 MAJOR-GENERAL MPEMBE: Correct,
 13 Chairperson.
 14 CHAIRPERSON: Before he answers, I know
 15 he used the words reverse engineering but that's a bit
 16 misleading. I think if you put it in the form of finally
 17 produced in documentary form, I think the witness will
 18 understand. Because reverse engineering may or may not
 19 involve other concepts which we're not busy with at the
 20 moment. Let me ask the question crisply, the documents
 21 relating to the plan for the 14th, that was the Tuesday, did
 22 those documents as far as you are aware exist on the 14th or
 23 were they produced in documentary form after the 14th?
 24 MAJOR-GENERAL MPEMBE: Chairperson,
 25 relating to the specific one that you were saying when it's

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1 presented in the JOCCOM my understanding is that it's
 2 documented. And then I did testify that we will deliberate
 3 on it and that in the JOCCOM and then rectification will
 4 thereafter be made to those documents.
 5 MS LE ROUX: General Mpembe, in light of
 6 that answer what was presented in documentary form to the
 7 JOCCOM as the plan for the 14th?
 8 MR NGALWANA: Chair, how many times must
 9 the witness answer this question? He's been asked so many
 10 times, I've lost count.
 11 CHAIRPERSON: These matters were covered
 12 with General Annandale. If the witness - do you say the
 13 documents for the 14th were there on the 14th in documentary
 14 form?
 15 MAJOR-GENERAL MPEMBE: Correct,
 16 Chairperson, in the sense that Colonel Scott, Colonel
 17 Merafe and other officers which Colonel Scott do confirm in
 18 his statement. They will be tasked beforehand to compile a
 19 plan and that plan will be deliberated by different
 20 commissioned officers in the JOCCOM and immediately when he
 21 present it in a slide show in the JOCCOM my understanding
 22 is that it's in a documentary form. And then I did also
 23 testify that immediately after we deliberated it then the
 24 changes will also be inserted in the plan in a documentary
 25 form.

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1 CHAIRPERSON: So do I understand you to
 2 say, tell me - the word document is I suppose ambiguous -
 3 if one looks for a piece of paper one may not be successful
 4 but I take it what you're saying, if I'm misunderstanding
 5 you, you must correct me, but on Colonel Scott's computer
 6 there was a "document" which he showed through a power
 7 point I suppose to the people in the JOCCOM, is that right?
 8 This was discussed, if there were changes he then effected
 9 them on his computer so that they were now on the
 10 electronic document on the screen of his computer. Is that
 11 so?
 12 MAJOR-GENERAL MPEMBE: Correct,
 13 Chairperson.
 14 CHAIRPERSON: If that's what Ms le Roux
 15 wants she's got the answer. If, on the other hand, she
 16 wants to know whether he would then print it on paper and
 17 there was a paper document, a hard copy in other words
 18 available on the 14th what's the answer to that? Do you
 19 understand the difference? You have an electronic document
 20 on the computer but occasionally you press the print button
 21 and you produce a hard copy. Now were there hard copies of
 22 these documents available on the 14th and the 15th or was it
 23 simply an electronic document on the Colonel's computer?
 24 Do you understand the question?
 25 MAJOR-GENERAL MPEMBE: I understand it,

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1 Chairperson.

2 MS LE ROUX: Major-General Mpembe, the

3 standing order 262 requires you as the overall commander to

4 submit an operational plan to the area commissioner for

5 approval, correct?

6 MAJOR-GENERAL MPEMBE: Chairperson, maybe

7 I'll request or maybe should say the that the cluster

8 commander in terms of the current structure and by that

9 time I was a deputy provincial commissioner and then I was

10 submitted to the provincial commissioner and as a

11 provincial commissioner I was not there and I did testify

12 that. Then it was taken upon myself to approve the plan

13 because I was conversant with what was happening.

14 [11:20] MS LE ROUX: And General Mpembe, the

15 signatures that appear in SS3 with respect to the plan for

16 the 10th and the 13th, that's the process that they reflect,

17 correct? They've been submitted for approval and approved.

18 Is that correct?

19 MAJOR-GENERAL MPEMBE: With respect of

20 the 10th, it was approved by the acting cluster commander,

21 Brigadier Seboloke. With regard to the one of the 13th, and

22 the one of the 13th we should understand that the others

23 that were made by Colonel Scott also, they are the

24 annexures to this one; it was approved by myself.

25 MS LE ROUX: So with respect to the

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1 operation for the 14, 15 and 16 period, was anything

2 written submitted for approval, that you're aware of?

3 CHAIRPERSON: Does the question relate to

4 hardcopies or does it include electronic documents on a

5 computer?

6 MS LE ROUX: Chair, it would be either

7 one. It's the process that was followed for the 10th and

8 the 13th, did that process occur again with respect to the

9 plan for 14, 15 and 16 August?

10 MAJOR-GENERAL MPEMBE: Correct,

11 Chairperson, after the deliberation electronically, and

12 after it has been discussed thoroughly by different role

13 players of the JOCCOM, and when all of us we agree with

14 that, that could be approved by myself.

15 COMMISSIONER HEMRAJ: Is it a

16 prerequisite that the plan be printed out and be signed as

17 a token of approval, or does it suffice that it is approved

18 in the meeting and the briefing?

19 MAJOR-GENERAL MPEMBE: Chairperson, the

20 answer in the case of a gathering that was, a notice was

21 served, the answer will be yes. In the case of a

22 spontaneous gathering or a fluidity of the case, the answer

23 will be yes, after the JOCCOM has discussed it thoroughly

24 and every role player understands what it's supposed to do

25 at that time, because it might, it was changing from time

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1 to time.

2 MS LE ROUX: Major-General Mpembe, where

3 will we find that approval? Where do we see that approval

4 recorded for the 14, 15, 16 days of the operation?

5 MAJOR-GENERAL MPEMBE: Chairperson, I

6 said that there were the annexures to the one of the 13th.

7 I was always present and after the JOCCOM has then

8 discussed the plan then it will approve, and as I've

9 indicated, electronically.

10 MS LE ROUX: Then General Mpembe, for the

11 record, the annexure you refer to, those are the Google

12 Earth images that had been used for the planning. Correct?

13 MAJOR-GENERAL MPEMBE: Chairperson, it is

14 routine operational plan from the 14th and then it will also

15 indicate the date, sometimes it will indicate the stage,

16 and then that is what I referred to then it becomes an

17 annexure to the one that I approved, because the situation

18 was changing from time to time.

19 MS LE ROUX: And when changes are made to

20 the plan because of that changing situation, would you

21 approve each of those changes?

22 MAJOR-GENERAL MPEMBE: Chairperson, it

23 depends whether it was discussed in the JOCCOM where I was

24 present, but I did indicate to this Commission that Major-

25 General Annandale, if it becomes operationally at that time

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1 through the radio, those change and when I'm there, he

2 could approve them.

3 CHAIRPERSON: I think this was covered

4 when Major-General Annandale gave evidence, and this

5 witness has also been asked about these matters earlier.

6 So if there's something new you want to get on record,

7 carry on, but I'm afraid at the moment it sounds to me as

8 if we're simply getting repetitions of earlier answers.

9 COMMISSIONER HEMRAJ: Ms Le Roux, it was

10 particularly covered in the cross-examination relating to

11 the minutes of the meetings where the plans were presented

12 and there was any dissention. This line of cross-

13 examination was covered with both General Annandale and

14 this [microphone off, inaudible].

15 MS LE ROUX: Thank you, Chair, I'll move

16 on. Major-General Mpembe, with respect to any written

17 plans or electronic plans for the different section

18 commanders, do you know whether those were prepared and

19 where they are?

20 MAJOR-GENERAL MPEMBE: Chairperson, what

21 I know is that they need to submit to me and to confirm

22 with me that the members have been debriefed, and they need

23 also just to confirm with me, but if, with those plans or

24 whatever that they do have if they arose, they will have to

25 deal with that with their commanders. But I can say now

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1 that that can be answered by each commander. As I have
 2 indicated that my role was to brief the commanders through,
 3 during the JOCCOM, and precisely the presentation was done
 4 to them and they will confirm to me in terms of that
 5 members have been briefed in accordance with the briefing
 6 that will have taken place in the JOCCOM.
 7 MS LE ROUX: Did you instruct all
 8 commanders or section leaders to furnish detailed written
 9 plans on their specific tasks, which is the obligation
 10 placed on your in terms of the Standing Order?
 11 COMMISSIONER HEMRAJ: I'm sorry, Ms Le
 12 Roux, would you repeat that question? I'm sorry, I didn't
 13 quite follow you.
 14 MS LE ROUX: Let me try it again. Major-
 15 General Mpembe, if you turn to section 10 of SS2, the
 16 Standing Order, it's page 7, and specifically 10(2)(c) says
 17 that, "The operational commander," I know that that wasn't
 18 you, "must instruct all commanders or section leaders to
 19 furnish detailed written plans on their specific tasks."
 20 Do you know if that was done?
 21 MAJOR-GENERAL MPEMBE: As the instruction
 22 was given, as I've said to me they will indicate, they will
 23 confirm with me that is done, but as the Standing Order
 24 specified, all commanders or section commanders can testify
 25 to that effect.

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1 MS LE ROUX: Major-General Mpembe, you
 2 say that you know that the instruction was given. How do
 3 you know that?
 4 MAJOR-GENERAL MPEMBE: Advocate, during -
 5 Chairperson, I'm sorry, during the JOCCOM meeting
 6 commanders will always be reminded of all their roles and
 7 responsibilities that they will have to do in respect of
 8 the operations, starting from the briefing of the members,
 9 the equipment, and so on.
 10 MS LE ROUX: And have you seen any of
 11 these detailed written plans by any of the commanders or
 12 section leaders? Have you seen them?
 13 MAJOR-GENERAL MPEMBE: Due to the
 14 changing environment and the enormous responsibilities that
 15 I had, because I had also to do a lot of responsibilities
 16 on those days, I could not see them.
 17 CHAIRPERSON: Ms Le Roux, there's
 18 something I don't understand. I'm not sure whether I must
 19 ask you or the witness; I suppose ultimately the witness,
 20 but I can understand where there's a crowd management
 21 situation and there are various sections and each section
 22 leader is told he must say what he's going to do and
 23 produce a written plan of what he proposes to do, which he
 24 - but where you have a general operation which is planned
 25 at the top, as it were, or near the top, and the planner at

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1 the top has worked out what each section is going to do, I
 2 wouldn't have thought - I know what 10(2)(c) says, but I
 3 wouldn't have thought from a practical point of view the
 4 individual section commander whose, the task of whose
 5 section has been worked out at the top, is obliged then to
 6 produce a written, a detailed written plan setting out the
 7 tasks to be performed by his section. This is a section
 8 where as far as we see, there was a general plan from the
 9 top, or near the top, with a fair degree of detail. So I
 10 would have thought that 10(2)(c) has to be adapted slightly
 11 to cater for that situation, but let's see if the witness
 12 understands what I said and agrees or disagrees. Did you
 13 understand the point I'm making, Major-General?
 14 MAJOR-GENERAL MPEMBE: Exactly correct,
 15 Chairperson.
 16 CHAIRPERSON: Am I correct in thinking
 17 that if Colonel Scott with his computer and a PowerPoint
 18 presentation presented a plan detailing what each section
 19 has to do, it's not necessary then for the individual
 20 section commanders or leaders to in turn furnish detailed
 21 written plans on what the task of their sections are? Is
 22 that correct?
 23 MAJOR-GENERAL MPEMBE: Chairperson, you
 24 are correct in the sense that that section should
 25 understand the role and responsibility that has been

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1 allocated to them, and they should drill it and understand
 2 it in, when, how they are going to execute it, and
 3 thereafter the commander will have to confirm with the
 4 JOCCOM commander, in most cases they will confirm with
 5 Major-General Annandale because I might not be there, but
 6 during the debriefing during the night in the JOCCOM it, I
 7 will also come to understand that.
 8 COMMISSIONER HEMRAJ: General, there was
 9 evidence that some of the plans, the diagrams in
 10 particular, there were copies handed down to be used at the
 11 briefing of the members. Now what is expected of a
 12 commander, what is he supposed to report back? What plan?
 13 MAJOR-GENERAL MPEMBE: Chairperson, it's
 14 to say the role and that responsibility which he has been
 15 allocated, the members who are going to execute it, they do
 16 understand it perfectly well, how they are going to execute
 17 it, and they do have the resources to execute that, those
 18 role and responsibilities. That is what the commander has
 19 to report back, that that has been done.
 20 COMMISSIONER HEMRAJ: And how would he do
 21 this in the middle of an operation? Would there be
 22 documents filed? Would he just report back orally? What
 23 is the procedure?
 24 MAJOR-GENERAL MPEMBE: After the JOCCOM
 25 meeting the commanders will go out and hold parades with,

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1 each section with their members, brief them and drill them
 2 with them what has been discussed in the JOCCOM,
 3 specifically the roles and responsibilities, check whether
 4 members are fit and they complete SAPS15 that is called
 5 commander's report, inspect the commanders, whether
 6 mentally and physically fit to perform the job, indicate
 7 with each member with corresponding figures the name of the
 8 member on the first part of the SAPS15, and then at the
 9 back in terms of all the equipment that the member is
 10 suppose to have and the member should sign. The signature
 11 of the member indicates the acceptance of the equipment,
 12 the understanding of the briefing, and the signature of the
 13 commander means that everything has been complied with, and
 14 the commander will go back to the JOC, then the entry will
 15 be effected in the FF25 to that effect.

16 MS LE ROUX: Major-General Mpembe, taking
 17 you back to your answer that you heard the instruction to
 18 comply with 10(2)(c) of the Standing Order, that you heard
 19 the instruction that commanders and section leaders must
 20 furnish detailed written plans, I just want to understand
 21 your evidence now.

22 [11:40] Are you saying that the section commanders used
 23 bits of the Scott plan and that by doing that, they
 24 complied with 10(2)(c)? Is that your evidence?
 25 MR NGALWANA: Chairperson, there's no

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1 such thing as a Scott's plan. I think that has been
 2 established.

3 CHAIRPERSON: There's no need to debate
 4 about that, Ms Le Roux. I think for the sake of avoiding
 5 unnecessary argument at this stage, find another
 6 terminology, because the police say that it wasn't Colonel
 7 Scott's plan and you've heard the story about the input of
 8 other people and so on. So let's not go there now, that's
 9 just a diversion for the moment. You're busy actually with
 10 something else.

11 MS LE ROUX: Thank you, Chair, I'll
 12 abandon the shorthand. General Mpembe, do I understand
 13 your evidence correctly that you heard the instruction
 14 being given that 10(2)(c) must happen, that commanders must
 15 prepare their written detailed plans, but that by using the
 16 plan that was presented to the JOCCOM, that had been
 17 complied with? Is that your evidence?

18 MAJOR-GENERAL MPEMBE: What I'm saying is
 19 that to comply with briefing of members, that's 10(c), it's
 20 a briefing of members. There are two situations whereby
 21 there is a gathering where a notice has been served, then
 22 the compliance of 10(c) will differ from the one that is a
 23 spontaneous gathering, as it was in Marikana. Practically
 24 speaking we will say POP will disperse the crowd, taking
 25 into account the intelligence that was given in the JOCCOM

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1 where experienced members of different sections of the POP
 2 will be present. Their role and responsibilities will be
 3 specified and debated. Then there will be a discussion
 4 with regard to the role and responsibilities of the STF and
 5 in that respect that will also be done the same as POP in
 6 terms of the roles and responsibilities and the allocation
 7 of resources. It will be like that, Chairperson, with
 8 regard to all the other units, and then it will be expected
 9 of commanders in terms of those roles and responsibilities,
 10 brief the members in terms of 10(c), making the members
 11 understand - almost a similar process that took place in
 12 the JOCCOM will happen, specifically with those platoons
 13 and sections, and that will be also in compliance with
 14 10(c).

15 CHAIRPERSON: Sorry to interrupt this
 16 discussion. I just want to go back a little bit. You
 17 talked earlier about filling in SAPS15 forms. Now we've
 18 got an example before us of an SAPS15 form as exhibit
 19 HHH22, which was referred to on Friday. Now that form
 20 doesn't tell us very much, does it? Have you got it in
 21 front of you? HHH22. It's headed "Report by commander"
 22 and it's got particulars of the members who were involved
 23 with their persal numbers and ranks and so forth, and then
 24 the nature of the duty is given. In this particular one
 25 all that was recorded was "Marikana crowd management," and

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1 then on the following page we have particulars of vehicles
 2 insofar as that would be relevant, and then equipment of
 3 members, and that sets out the equipment that the people
 4 had, whether the address was in order, they had their caps,
 5 whether everything was tidy, and then it says firearms, you
 6 have the number of the firearms and the number of rounds,
 7 the type of firearm, the number of the firearm, number of
 8 rounds, and then the signature.

9 So that's basically all SAPS15 will tell you. In
 10 fact the heading of the section dealing with the task to be
 11 performed is "Nature of duty, changes and casualties."
 12 That's the wording on the SAPS15, and there isn't space
 13 very much, that will then be spelt out in detail, I take
 14 it, at the parade when the members are told specifically
 15 what's expected of them, but the SAPS15, in certainly the
 16 case of this example, simply says, "Marikana crowd
 17 management," which I suppose is all there was space for on
 18 the form to record. Is that correct?

19 MAJOR-GENERAL MPEMBE: Correct,
 20 Chairperson. Chairperson, with regard to my - I was
 21 explaining the process of how briefing in terms of 10(c) is
 22 taking place, and also going back to report to the JOC is
 23 when the commander was now saying I did what was expected
 24 of me after the JOCCOM, and entry in the OB, it would, the
 25 keyword will be "duty on" and he will explain, and then he

<p style="text-align: right;">Page 12661</p> <p>1 will say, "Members were inspected and briefed by me," and 2 then he will sign. 3 COMMISSIONER HEMRAJ: Does that mean that 4 the actual content of the briefing is not recorded 5 anywhere, the detail of what is expected of the members in 6 executing the crowd management? 7 MR NGALWANA: Chair, I think perhaps in 8 fairness to the witness, it doesn't appear to me that he 9 has the SAP15 to which is reference is being made – 10 CHAIRPERSON: I'd be very surprised if 11 he's never seen an SAPS15 in his life, but I'd be very 12 surprised therefore if he's disadvantaged, but in order to 13 accommodate your concern, would you please look at an 14 SAPS15 and tell us whether you have difficulties in 15 answering the question? Would you like to see my copy of 16 SAPS15? 17 MAJOR-GENERAL MPEMBE: Correct, 18 Chairperson. 19 MR MAHLANGU: I've got one. 20 CHAIRPERSON: You haven't got one of your 21 own? No. 22 MR NGALWANA: Chair, for the record, I 23 wasn't suggesting that the General has never seen an SAP15. 24 CHAIRPERSON: What were you suggesting? 25 MR NGALWANA: I was simply saying to</p>	<p style="text-align: right;">Page 12663</p> <p>1 MS LE ROUX: No, no, it's fine, Chair, 2 and I'm indebted to you in progressing the cross- 3 examination. Major-General Mpeembe, I must just put to you 4 why the absence of written detailed plans, whether 5 electronic or on paper, by the section commanders is 6 important to the South African Human Rights Commission, and 7 that's because of what we've been told by our expert, Mr 8 White, who will come and testify in due course, and I need 9 to put it to you and get your reaction to that, in 10 fairness. So my instructions in that regard are that in 11 complex operations with multiple units playing a specialist 12 role, it's necessary for each section commander to prepare 13 their own individual plan, as is required by the Standing 14 Order, on the basis of the overall plan. This is so as to 15 ensure that there's complete understanding of their 16 specialist task by each of the sections and units, and 17 therefore he considers the failure to produce detailed 18 plans prepared by these section commanders to be a failure 19 and a possible explanation for the confusion that arises 20 that we see from the statements of members, where people 21 didn't seem to all be clear on what the overall plan was. 22 Do you have a comment on that? 23 MR NGALWANA: Chair, before the witness 24 answers the question, may I just understand whether this 25 goes to the merits or demerits of the planning? Because my</p>
<p style="text-align: right;">Page 12662</p> <p>1 answer the question that is being put to him, he must have 2 the document to which reference is being made. 3 CHAIRPERSON: That's a good point, and 4 he's now got the document in front of him. You already 5 answered the question, but would you like to revise your 6 answer in the light of the document you've now been shown? 7 MAJOR-GENERAL MPEMBE: Chairperson, in 8 the column of the nature of duty, that's where the 9 commander deals in detail with those members in terms of 10 that nature of duty. 11 CHAIRPERSON: You haven't got much space 12 for detail, have you? 13 MAJOR-GENERAL MPEMBE: Correct, 14 Chairperson, and the members will also filter that in their 15 pocketbooks, and then the commander, it is his duty that 16 members are filtering it in the pocketbooks and any other 17 thing, the understanding of what he's supposed to do is in 18 the pocketbook. 19 CHAIRPERSON: Ms Le Roux, I'm afraid I've 20 anticipated some of the topics you were going to deal with 21 in your cross-examination because I've now – you're still 22 busy with para 4, I think, of this document that you're 23 taking us through, and I've already gone on to para 5 to 24 some extent. So I'm sorry if I've taken you out of the 25 order that you've prepared, but please proceed.</p>	<p style="text-align: right;">Page 12664</p> <p>1 objection is going to arise or not arise depending what the 2 answer to that is. 3 MS LE ROUX: Chair, the question relates 4 to the process of planning and compliance with the Standing 5 Order, which anticipates that there will be a second stage 6 of planning by each section commander, and for good reason, 7 particularly in a complex fluid situation such as this one, 8 and so it goes to whether that process was followed, and 9 since it appears that it was not followed, it seems to 10 explain why we see the disparity of understanding arising 11 from the statements as to what the plan was. 12 CHAIRPERSON: I think you've jumped ahead 13 of yourself, if I may say that, Ms Le Roux, because you 14 haven't yet put to the witness the statements from which it 15 appears that there was a divergence of understanding at the 16 part of the various members who took part. I mean the 17 question presupposes that, but you haven't established it 18 yet and so the witness is at a disadvantage in dealing with 19 it. But that's my objection to your question. Let's see 20 if Mr Ngalwana has got a better one. Yes, Mr Ngalwana? 21 MS LE ROUX: Chair, if I could just 22 respond to that. The decision was that given that General 23 Mpeembe is not one of the section commanders, they haven't 24 yet testified and – 25 CHAIRPERSON: Yes, yes, no I understand</p>

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1 that –

2 MS LE ROUX: - that there were other

3 witnesses that that needed to be put to.

4 CHAIRPERSON: I'm sorry to interrupt you.

5 I understand that, but you put a proposition which

6 presupposed the establishment, as it were, of certain

7 facts, and the facts were stated very generally, namely

8 that people didn't know, various members didn't understand

9 what the plan was and there were divergent understanding

10 and so on. Now I don't think it was fair to put the

11 question in that form to this witness at this stage.

12 Obviously if the divergence was clear and he was asked to

13 comment on it, that would be a different matter, but

14 anyway, that's the answer to that point. But let's hear

15 what Mr Ngalwana's point is, if he's got one.

16 MR NGALWANA: Well, that was precisely

17 the one point. That was the one objection, Chair, and

18 secondly –

19 CHAIRPERSON: Well, that one I have

20 upheld, yes –

21 MR NGALWANA: I have a second –

22 CHAIRPERSON: - and the other one?

23 MR NGALWANA: Chair, I wanted to

24 establish whether it's a criticism of the plan, the

25 planning process. I now understand categorically that it

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1 is. This issue –

2 CHAIRPERSON: What is the relevance of

3 your understanding? Counsel doesn't normally have to

4 explain for the benefit of counsel for the witness what the

5 purpose of the question is. Sometimes a good cross-

6 examiner conceals the purpose until it's too late for the

7 witness to change his or her version. So I'm not sure that

8 the relevance of the question is a factor upon which, which

9 is in any event a matter of concern for us at the moment.

10 Either it's a fair question or an unfair question. What's

11 your objection?

12 MR NGALWANA: Yes, that's where we should

13 have started, Chair, with respect. Mr Madlanga has dealt

14 with the briefing issue as regards the merits or demerits

15 of the planning process. He dealt with it by referring the

16 witness to FFF1, and he went to paragraphs 5.3.4. That

17 dealt with the merits or demerits of the plan and the

18 planning process, which our learned friend is now busy

19 pursuing. The Chairperson has at day 80 at page 8524 made

20 this ruling, and I quote, "I certainly have no intention of

21 allowing the same points to be repeated ad nauseam with

22 numerous witnesses. If the evidence on a particular point

23 is given, take for example the plan, the alleged merits or

24 demerits of the plan, and answers are given to the

25 criticism, well, the criticism won't get stronger by being

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1 repeated over and over again." Our learned friend is busy

2 pursuing the merits or demerits of the planning process,

3 and I submit that that is an objectionable line to follow

4 inasmuch as it has already been exhaustively dealt with,

5 and I'd ask the Chairperson to emphasise the ruling that

6 the Chairperson has made in that regard previously.

7 MS LE ROUX: Chair, to the best of my

8 knowledge and instructions, the point that the section

9 commanders didn't furnish detailed written plans to their

10 members of their specific role in the overall operational

11 plan, has not been put. So it is not a repetition, but

12 perhaps I can reformulate to accommodate both that

13 objection and, Chair, your intervention regarding the

14 foundation. So let me withdraw the question and

15 reformulate it. Major-General Mpembe –

16 MR CHASKALSON SC: Mr Chairperson, I

17 wonder if the evidence leaders could intervene at this

18 point, because Mr Ngalwana's objection raises a matter of

19 considerable importance for us, not just with this witness

20 but also with witnesses going forward. Mr White is a very

21 crucial witness in this Commission. He's the witness of

22 the Human Rights Commission. The evidence leaders have

23 steered clear of cross-examining exhaustively on the basis

24 of Mr White's statement because they've always anticipated

25 that the Human Rights Commission will do that, he's their

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1 witness. Now if that practice and policy is going to have

2 to change, we need to know now because we can't afford a

3 situation where either with this witness or possibly even

4 future witnesses we deliberately leave certain questions

5 unanswered in the expectation that the Human Rights

6 Commission will pursue that line on the basis of Mr White's

7 statement, and then when the Human Rights Commission tries

8 to do so the SAPS object and their objection is sustained.

9 [12:00] CHAIRPERSON: Yes, the passage from my

10 ruling earlier relates to the same point being put over and

11 over – that was the phrase I used – over and over again to

12 different witnesses, so you'll have cross-examination put

13 to one General based on criticism of the plan, the witness

14 gives the answer, an attempt is made to ask the next

15 General or two Generals thereafter the same point, and the

16 same ground is covered over and over again. That's what my

17 ruling related to. Ms Jele asked General Annandale certain

18 specific questions on the plan, based upon Mr White's

19 report and criticism. Mr Madlanga when he cross-examined

20 this witness, dealt in general terms with the plan, not

21 with the specifics of Mr White's objections. So in the

22 circumstances I will allow Ms Le Roux to continue, but she

23 must please try to keep away from points that have already

24 been made and established, because then the points raised

25 by Mr Ngalwana are valid and obviously we've got limited

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1 time and we must use it profitably and not just repeating
 2 points over and over again. I hope that addresses the
 3 concerns that you raised, Mr Chaskalson.
 4 MR CHASKALSON SC: Thank you,
 5 Chairperson, it does. For the record, the evidence leaders
 6 are going to continue to adopt this policy of not cross-
 7 examining exhaustively on the basis of Mr White's statement
 8 because he's the Human Rights Commission's witness; they
 9 are able to consult with him in detail, we are not, and we
 10 don't want a situation to arise in the future where what we
 11 have omitted to address cannot be addressed by the Human
 12 Rights Commission in relation to Mr White's statement. I
 13 emphasise it's in relation to Mr White's statement alone.
 14 CHAIRPERSON: Please proceed, Ms Le Roux,
 15 but bear in mind the caution that repetition is not to be
 16 encouraged.
 17 MS LE ROUX: Major-General Mpenbe, let me
 18 restate the question, and I have reformulated it slightly,
 19 so let me put the question now. The evidence of Mr White
 20 will be that in complex operations involving numerous
 21 specialist units it's necessary for section commanders to
 22 prepare their own individual details plans on the basis of
 23 the overall operational plan relating to the particular
 24 role that they need to play, and this is to ensure that
 25 there's complete understanding of the task by all sections

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1 and units, and Mr White considers that the failure to
 2 prepare such plans gives rise to a significant risk of
 3 confusion arising during an operation when individual
 4 commanders are then forced to act in terms of some unclear
 5 understanding. What's your comment on that?
 6 MAJOR-GENERAL MPEMBE: I will –
 7 MR NGALWANA: Chair, in fairness to the
 8 witness, the paragraph that our learned friend is citing,
 9 perhaps she should refer the witness to. I think she's
 10 referring to paragraph 4.5.3, but perhaps she's referring
 11 to something else, but the witness needs to have the
 12 excerpt to which reference is being made.
 13 CHAIRPERSON: That's correct.
 14 MS LE ROUX: Chair, this is not in Mr
 15 White's provisional statement; this is an instruction that
 16 I've received.
 17 CHAIRPERSON: In putting your instruction
 18 now of course are we going to get a revised final version?
 19 MS LE ROUX: Yes, Chair, as indicated in
 20 Mr White's provisional statement, he only had limited
 21 evidence provided to him. He's busy preparing a final
 22 statement.
 23 CHAIRPERSON: I understand that. Part of
 24 the problem of course is it's very difficult for a witness
 25 such as the present to deal with points of Mr White that he

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1 hasn't seen before and that are just flung at him, as it
 2 were, in cross-examination. He's read the earlier report
 3 and he can deal with that, but on the other hand put the
 4 point slowly to him and let's see if he feels able to deal
 5 with it, despite the fact that –
 6 MS LE ROUX: Major-General Mpenbe, do you
 7 think that the failure of section commanders to prepare
 8 their own detailed plan with respect to their own specific
 9 task, which fits into a broader operational plan, do you
 10 think that the failure by section commanders to prepare
 11 their own plan would increase the risk of confusion as to
 12 what their role should be in the overall plan?
 13 MR NGALWANA: I object to that question,
 14 Chair. What the witness thinks is of absolutely no
 15 relevance and will not assist this Commission in reaching
 16 its decision in terms of the reference in their terms of
 17 reference. I can refer you, Chair, with respect, to day 15
 18 where you made a ruling in this regard. Page 1647, it in
 19 fact starts at 1646 at line 2, and I'll read the entire
 20 thing for – Mr Bizos said, "Do you think that it is in
 21 accordance with the law that you have yourself told us
 22 about, proportionality, is that an appeal to the statement
 23 to police," I'm reading it as it appears, Chair, that's the
 24 language. "Do you think that it is in accordance with the
 25 law that you have yourself told us about, proportionality,

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1 is that an appeal to the statement to police to use
 2 proportional force, the pointing of a firearm, the pointing
 3 of a firearm must lead to the death of the person pointed
 4 at?" and then a whole host of things follow, and this is
 5 the ruling you make in that regard at page 1647, line 13,
 6 Chairperson, "May I please ask what the witness thinks
 7 about what's right or wrong when a gun is pointed is a
 8 matter for him. I am not sure whether his views on the
 9 point will assist us to answer the questions we're called
 10 upon to answer." So what a witness thinks is irrelevant.
 11 CHAIRPERSON: Ms Le Roux?
 12 MS LE ROUX: Thank you, Chair. The
 13 question being posed is distinguishable from the examples
 14 given by my learned friend, Mr Ngalwana. I'm not asking
 15 Major-General Mpenbe as to his opinion on a matter of law,
 16 nor am I asking as to his opinion on some other matter that
 17 is irrelevant to this Commission's inquiry. I'm asking him
 18 in light of the Standing Order which requires that a plan
 19 be broken down in detail for each section commander,
 20 whether the failure to do that here could give rise to a
 21 risk of confusion with respect to the briefing of members,
 22 and as the overall commander his opinion on whether that
 23 raises a risk is entirely relevant and appropriate and is
 24 not a question of law.
 25 CHAIRPERSON: We've already got the

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1 answer from the witness; he doesn't think it's necessary.
 2 You remember I put to him 10(2)(c) in the context such as
 3 the present, and said that where you have a detailed plan
 4 setting out what each section should do, it's not necessary
 5 then for the section commander or leader to come with his
 6 own detailed written plan. That was the point that was put
 7 to the witness, and he agreed with that. Now is this a
 8 variation of that point? I mean Mr Ngalwana is right in
 9 saying that what a witness thinks in itself is normally
 10 irrelevant. It may be relevant in certain circumstances.
 11 The example he quoted from of an earlier ruling of mine
 12 relates to what the witness thought about the law, which if
 13 I may be permitted to say so myself, was clearly a correct
 14 ruling, but in this context what exactly is the basis of
 15 the question? Are you asking just what he thinks in
 16 abstract, or are you asking him as a man with some
 17 expertise in the field? Are you asking him to express an
 18 opinion as an expert on what happened on that particular
 19 day? I don't quite understand what the thrust of the
 20 question is.
 21 MS LE ROUX: Chair, I'm asking the
 22 question of Major-General Mpmembe as the overall commander,
 23 and therefore the person responsible for ensuring
 24 compliance with the Standing Order. I'm also probing the
 25 rationale for that Standing Order and how in the specific

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1 circumstances of what he's described as a fluid changing
 2 set of circumstances, whether he thinks complying with the
 3 Standing Order and requiring further detailed plans by
 4 section commanders would have reduced the risk of any
 5 confusion with respect to briefing. I'm happy to move on,
 6 however, if the Chair and the Commissioners are of the view
 7 that this is not a question that should be put to Major-
 8 General Mpmembe –
 9 CHAIRPERSON: You won't have an option if
 10 I so rule, will you? You not proceeding with the question.
 11 Well, let me ask the witness; I take it you've thought a
 12 lot since the events of that week about what went wrong and
 13 what could have been done which would have either prevented
 14 what happened or certainly reduced the extent of the
 15 calamity. Is that right?
 16 MAJOR-GENERAL MPEMBE: That's correct,
 17 Chairperson.
 18 CHAIRPERSON: Now you've told us that the
 19 section leaders didn't have detailed written plans
 20 themselves on what the members of their sections were to
 21 do. Do you think – now this is as the overall commander, a
 22 policeman with many years of experience – do you think that
 23 the failure to have those detailed plans on the part of the
 24 section leaders contributed in any way to the catastrophe
 25 that occurred?

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1 MAJOR-GENERAL MPEMBE: No, Chairperson –
 2 MR NGALWANA: Chair, I'm not sure if it's
 3 permissible to object to the Chairperson's question –
 4 CHAIRPERSON: Well, I don't [microphone
 5 off, inaudible] objection it is, but it is permissible but
 6 if it's a bad objection, it isn't. So let's just carry on
 7 and get the answer to the question.
 8 MR BUDLENDER SC: Chair, I just want to
 9 clarify what's happening here. The Human Rights Commission
 10 has produced an expert who's expressed certain opinions.
 11 The South African Police Service have not produced thus far
 12 any witnesses who contradict certain of those opinions. In
 13 particular, Mr De Rover has thus far declined to comment on
 14 those matters at all. If the South African Police Service
 15 is going to object to any member of the South African
 16 Police Service expressing his opinion on the matters on
 17 which Mr White has expressed opinions, then those will
 18 stand uncontradicted. If that's what the South African
 19 Police Service wants to achieve, they should understand
 20 that's what they are achieving, that it will be impossible
 21 for them to cross-examine Mr White and Mr White's evidence
 22 will stand uncontradicted on all of these matters on which
 23 they apparently object to senior police officers expressing
 24 a professional opinion.
 25 CHAIRPERSON: Mr Budlender, it's not as

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1 simple as that, for two reasons. Firstly, the final report
 2 of Mr White has not yet been produced. So my understanding
 3 is part of the police's objection to answering White in the
 4 meanwhile is they're waiting for the final report. As far
 5 as this particular point is concerned, that's not in the
 6 original report, the provisional reports that we got, and
 7 that's also one of the bases of objection. But I thought I
 8 put the question in a way which would elicit an answer
 9 which would help us. Either the witness thinks that part
 10 of what happened was caused by this particular omission, or
 11 he doesn't, and as a senior experienced policeman his views
 12 on the matter would be relevant, they would be admissible,
 13 because in terms of the definition adopted by the Appellate
 14 Division of expert witness, he would qualify.
 15 MR BUDLENDER SC: One would have thought,
 16 with respect, that the police service would wish those
 17 opinions to be before the Commission.
 18 MR NGALWANA: Chair –
 19 CHAIRPERSON: Ms Le Roux, can you perhaps
 20 leave this point for a moment - I think you indicated you
 21 would – and we can revisit it later? I understood you to
 22 say you were prepared to move on, so it isn't going to
 23 destroy the structure of your cross-examination, is it, if
 24 you leave it for the moment, because I want to discuss it
 25 with my colleagues, because as Mr Budlender said and Mr

<p style="text-align: right;">Page 12677</p> <p>1 Chaskalson said, the future conduct of cross-examination 2 and so forth may well be determined by this point, so it's 3 not something we should rush into making a ruling on. So 4 if you can move on to something else for the moment, then 5 we can always return to it later. You're not going 6 to [microphone off, inaudible].</p> <p>7 MS LE ROUX: No, Chair. Chair, I can –</p> <p>8 CHAIRPERSON: Sorry, I should have – my 9 colleagues and I would like to discuss the point before the 10 ruling is given, because it may be important for what 11 happens in respect of other questions, points of cross- 12 examination. So if it's convenient for you, if you can 13 move on to deal with something else, then we can revert to 14 it at a later stage.</p> <p>15 MS LE ROUX: Thank you, Chair. Just for 16 clarity, when I said I could move on, it would be in the 17 face of a ruling that the question be disallowed. So 18 certainly if the ruling is that the question is permitted, 19 we'll return to it. But I can now move on, continuing the 20 theme of the paper trail, Major-General Mpenbe.</p> <p>21 [12:19] On Friday during your cross-examination by my 22 learned friend Mr Gumbi, you offered to produce an SMS that 23 you still had on your phone. Has that production taken 24 place? Have you produced the SMS you mentioned on Friday?</p> <p>25 MAJOR-GENERAL MPEMBE: I've never been</p>	<p style="text-align: right;">Page 12679</p> <p>1 my knowledge all those documentations were disclosed to the 2 Commission.</p> <p>3 MS LE ROUX: Major-General Mpenbe, when 4 you say that letters for Marikana were sent by email, what 5 letters are you referring to?</p> <p>6 MAJOR-GENERAL MPEMBE: Chairperson, I 7 will speak about the call-ups that were made for the 8 Potchefstroom and those are the letters that I'm referring 9 to.</p> <p>10 MS LE ROUX: During the period 12 to 16 11 August was email used to communicate by yourself or any of 12 the other members of the JOC?</p> <p>13 MAJOR-GENERAL MPEMBE: No, Chairperson.</p> <p>14 MS LE ROUX: Major-General Mpenbe, there 15 were landlines at the JOC as well, correct?</p> <p>16 MAJOR-GENERAL MPEMBE: Chairperson, I 17 need to establish whether there were landlines because I 18 remember first the JOC was on another place and I shifted 19 it to another one, whether landlines were there, but what I 20 do know is that the cell phones were there, the radios were 21 there. We do also have a television that was there, 22 because if there could have been a landline so arrangement 23 should have been made with the management of Lonmin. 24 That's what I'm saying, then I need just to confirm later.</p> <p>25 CHAIRPERSON: Ms Le Roux, if anything</p>
<p style="text-align: right;">Page 12678</p> <p>1 asked to produce, Chairperson, but I do have it; I can 2 produce it tomorrow.</p> <p>3 MS LE ROUX: Major-General Mpenbe, are 4 there other SMSs for the period of time that you were 5 involved with – let me rephrase that. Are there other SMSs 6 on your phone that relates to the same period of time in 7 the middle of August that you could produce to the 8 Commission, and if there are, could I ask you to produce 9 all SMSs that you still have on your phone that could be 10 relevant to the Commission?</p> <p>11 MAJOR-GENERAL MPEMBE: I do not have, 12 Chairperson.</p> <p>13 MS LE ROUX: Major-General Mpenbe, did 14 you use email at all when you were overall commander of the 15 operation at Marikana?</p> <p>16 MAJOR-GENERAL MPEMBE: No, Chairperson, 17 as there were people who were instructed to do other work 18 where emails could be used.</p> <p>19 MS LE ROUX: And who were the people 20 instructed to perform other tasks that used email?</p> <p>21 MAJOR-GENERAL MPEMBE: Chairperson, as I 22 have said that when there was any letter that was written 23 for Marikana, it would be sent by email to, either to the 24 operational commander or to some, to the cluster commander, 25 or it would be obtained from the province, and according to</p>	<p style="text-align: right;">Page 12680</p> <p>1 turns on the point I suggest you address your query to 2 Lonmin, who'll be able to tell you whether a landline was 3 available on the two places where the JOCCOM was situated. 4 I don't think, the witness obviously doesn't know, so let's 5 not spend further time with him on it.</p> <p>6 MS LE ROUX: Yes, thank you, Chair, we'll 7 take it up with our learned friends for Lonmin. Major- 8 General Mpenbe, could I now ask you to turn to the topic of 9 video evidence, and specifically if you could turn to 10 exhibit L.</p> <p>11 CHAIRPERSON: Before we take up the topic 12 of video evidence, I think it's appropriate that we take a 13 short comfort break for those in need of such a break. So 14 we'll adjourn for five minutes.</p> <p>15 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>16 [12:31] CHAIRPERSON: The Commission resumes. 17 I'm sorry we didn't tell the General that we were going to 18 start. I assumed he was in the room but he's shown how 19 fleet of foot he is. You're still under oath, Major- 20 General. Ms le Roux.</p> <p>21 MS LE ROUX: Major-General Mpenbe, if you 22 could turn to slide 170 in exhibit L and for the record 23 it's a slide recording the events of the 16th headed The 24 Detailed Sequence Of Events, time stamp 13:25 and two 25 bullet points. The first says Captain Dennis Adriaio, the</p>

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1 police's media liaison officer informed both the video
 2 operators of the SAPS that a journalist had reported to him
 3 that the video operators of POP who were in civilian
 4 clothing were identified as "police spies" by the
 5 protestors and might be killed if they remained in the
 6 general media group. Second bullet point Captain Adriaio
 7 informed the video operators of POP about the information.
 8 Based on this information they withdrew from the scene and
 9 returned to the JOC. Major-General Mpembe, does Captain
 10 Adriaio have the authority to withdraw the video operators
 11 in this way? Is that how we must understand the slide?
 12 That it was Captain Adriaio who decided to withdraw them or
 13 was it the video operators themselves that decided to
 14 withdraw?
 15 MR CHASKALSON SC: Sorry, Mr Chairperson,
 16 in fairness to the witness I think that the slide itself
 17 which is not evidence is slightly misleading and that the
 18 version that we have been informed of as evidence leaders
 19 is that the message was ultimately conveyed, I think, to
 20 Colonel Mere and in due course to Brigadier Callitz and that
 21 the ultimate instruction to withdraw came from Colonel
 22 Mere.
 23 CHAIRPERSON: In the light of that
 24 information I take it you don't persist in the question.
 25 MS LE ROUX: That's correct, Chair.

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1 Major-General Mpembe, when did you become aware that there
 2 were no SAPS video operators recording the events on the
 3 16th? When did you become aware that they had been
 4 withdrawn?
 5 CHAIRPERSON: I think that question is a
 6 bit too broadly stated. What you've put related to two
 7 video operators who were on the koppie. There were, of
 8 course, other video operators, SAPS video operators
 9 operating water canons and some of them in aeroplanes and
 10 some in Nyalas or in an Nyala, so the question is too
 11 broadly based for the facts as we have them. Perhaps you'd
 12 like to reformulate it.
 13 MS LE ROUX: Thank you, Chair. Major-
 14 General Mpembe, when did you become aware that these two
 15 video operators had been withdrawn and returned to the JOC,
 16 when did you become aware of that?
 17 MAJOR-GENERAL MPEMBE: After the
 18 incident.
 19 CHAIRPERSON: [Inaudible, microphone
 20 off].
 21 MAJOR-GENERAL MPEMBE: Correct,
 22 Chairperson.
 23 MS LE ROUX: And how did you become aware
 24 that they'd been withdrawn?
 25 MAJOR-GENERAL MPEMBE: I was informed by

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1 Major-General Annandale who was always at the JOC.
 2 MS LE ROUX: Major-General Mpembe, just
 3 so we can get it clear did General Annandale tell you
 4 they'd been withdrawn when you came back from the JOC,
 5 having gone up in the helicopter, is that when he told you?
 6 MAJOR-GENERAL MPEMBE: No, Chairperson,
 7 not at that time. It was long after that time.
 8 MS LE ROUX: Major-General Mpembe, moving
 9 on to your supplementary statement which I'm told is not
 10 yet an exhibit, it's SAPS5B, that's apparently our internal
 11 reference. It won't make any sense to anyone else. This
 12 is the one page, the short supplementary statement.
 13 CHAIRPERSON: Is this the little
 14 statement that you handed us, three paragraphs, dealing
 15 with the lack of a computer?
 16 MS LE ROUX: That's correct, Chair.
 17 CHAIRPERSON: That is not an exhibit, yes
 18 you're correct. So that'll be HHH34 unless Mr Ngalwana
 19 wants to object.
 20 MR NGALWANA: No, Chair.
 21 CHAIRPERSON: Thank you, it will be so
 22 marked, HHH34. You've seen the statement, I mean you made
 23 it but you've seen it recently?
 24 MAJOR-GENERAL MPEMBE: Correct,
 25 Chairperson.

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1 CHAIRPERSON: I don't know when you made
 2 it, it's not dated but I don't think anyone will take that
 3 point. What do you want to ask him about the statement?
 4 MS LE ROUX: Major-General Mpembe, the
 5 last sentence of the statement says, "From the 13th to the
 6 16th there was no computer available for the use of the JOC
 7 personnel." When you wrote this statement what did you
 8 mean by "for the use of the JOC personnel?" What did you
 9 want the computer to be used for or not be used for as the
 10 case may be?
 11 CHAIRPERSON: He doesn't say he wanted a
 12 computer to be used for anything. I think that question
 13 can be reformulated, with more accuracy than you've
 14 displayed up to now with it.
 15 MS LE ROUX: Yes thank you, Chair, that
 16 was mangled. Major-General Mpembe, why did you note that
 17 there was no computer available for the use of the JOC
 18 personnel?
 19 MAJOR-GENERAL MPEMBE: On the 13th?
 20 MS LE ROUX: Well your statement says
 21 from the 13th to the 16th there was no computer available.
 22 MAJOR-GENERAL MPEMBE: Correct,
 23 Chairperson.
 24 CHAIRPERSON: How did this statement come
 25 to be made? It purports to be an affidavit but it's not

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1 because there's no attestations by a Commissioner of Oaths
 2 but we won't take that point. Did somebody ask you whether
 3 there was a computer and you then considered it necessary
 4 to make a statement? In other words were you answering a
 5 query from somebody?
 6 MR CHASKALSON SC: Mr Chairperson, if I
 7 can assist the witness again in this regard, there was a
 8 query from the evidence leaders about whether there was a
 9 computer in the JOC which served as an archive for the
 10 photographic and video material and I think it was in
 11 response to that query that this affidavit was made or this
 12 statement was made.
 13 CHAIRPERSON: Thank you, Mr Chaskalson.
 14 MS LE ROUX: Major-General Mpembe, we've
 15 got photographs of the JOC and they show both desktop
 16 computers and laptop computers and I'd like to understand
 17 why, given that we see computers in the JOC, you make a
 18 statement here that says that from the 13th to the 16th
 19 there were no computers available for the JOC personnel.
 20 MAJOR-GENERAL MPEMBE: As is correctly
 21 put by the evidence leaders, I was just told by Brigadier
 22 Pretorius that I should make a statement whether there was
 23 a computer at the JOC. And in my knowledge as a senior
 24 officer when you talk about a computer for SAPS you're
 25 talking about a computer that has to be linked with the

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1 main frame in SAPS.
 2 CHAIRPERSON: In other words what you say
 3 in the statement, it requires a bit of amplification to be
 4 correct and say it looks from the photograph as if there
 5 were computers in the JOC, presumably personal computers of
 6 particular people who were there. Is that right?
 7 MAJOR-GENERAL MPEMBE: Correct,
 8 Chairperson.
 9 CHAIRPERSON: So what you meant in the
 10 last sentence of paragraph three was something like from
 11 the 13th or the 16th there was no computer available for the
 12 use of JOC personnel which was what an official SAPS
 13 computer linked to their main frame or what exactly did you
 14 have in mind?
 15 MAJOR-GENERAL MPEMBE: I have in mind
 16 where they could register all what is supposed to be
 17 registered according to the SAPS IT. For example
 18 registration of a docket, entering all any other materials
 19 or even sending the email direct to the JOC, that's what I
 20 was talking about.
 21 CHAIRPERSON: Do the SAPS have a code or
 22 a standing procedural protocol relating to IT material? Is
 23 that what you're referring to?
 24 MAJOR-GENERAL MPEMBE: I'm referring to
 25 the mainframe, Chairperson, where if you have to register a

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1 docket, it's only SAPS that have got that IT, not any other
 2 and there were no points to have that.
 3 CHAIRPERSON: Clearly what you're saying
 4 then in the last sentence is that there were no computer
 5 linked to the mainframe SAPS computer, is that what you
 6 meant?
 7 MAJOR-GENERAL MPEMBE: Correct,
 8 Chairperson.
 9 MR NGALWANA: Chair, I fear the
 10 Chairperson has probably run well ahead of me, certainly
 11 because the Chairperson has referred to photographs which
 12 have not yet been submitted.
 13 CHAIRPERSON: - to photographs, you
 14 remember Mr Chaskalson said they asked a question relating
 15 inter alia to a computer on which photographs and so on
 16 were referred to. What I was referring to was the document
 17 that had been handed in hasn't yet been given an exhibit
 18 number but I don't know whether we need it in the light of
 19 the answers we've been given.
 20 MR CHASKALSON SC: Mr Chairperson, from
 21 the evidence leader's side we would like that document to
 22 be an exhibit because it now appears from what the witness
 23 says - answers are that he misunderstood our request, that
 24 our request wasn't properly conveyed.
 25 CHAIRPERSON: No, Mr Chaskalson, I've

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1 already put in the statement, the quasi affidavit as HHH34
 2 but I think that Mr Ngalwana is ahead of you, he's
 3 referring to the fact I spoke about a photograph and in the
 4 bundle of documents we got, which I think to be fair, the
 5 SAPS people may not have got. There is a photograph of the
 6 JOCCOM and it does look from it as if there were computers
 7 there but I take it they were personal computers, laptops
 8 of particular people and they weren't computers as
 9 described by the witness in his amplification of the
 10 statement. Am I correct Mr Ngalwana?
 11 MR NGALWANA: Well I'm not sure, Chair.
 12 Firstly, the statement doesn't refer to any annexure. I
 13 see the Chairperson has stapled them together. My
 14 understanding was HHH34 is a one page document which is a
 15 statement.
 16 CHAIRPERSON: I didn't staple anything
 17 together. I was given an number of documents which were
 18 clipped together and I've forgotten what these special
 19 clips are called, bulldog clips and among the documents we
 20 got were clipped together with a bulldog clip in addition
 21 to the quasi affidavit referred to was a photograph of the
 22 JOCCOM. And it does look from that photograph as if there
 23 were laptops there but the witness has explained that he
 24 wasn't referring to that, he understood the question to
 25 relate to an SAPS computer linked to the mainframe. That's

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1 what he meant and he reflected the way the last sentence of
 2 the statement is to be interpreted. Now does
 3 satisfactorily resolve the difficulties you -
 4 MR NGALWANA: Yes, Chair, I withdraw my
 5 accusing the Chairperson unfairly, stapling the -
 6 CHAIRPERSON: I'm sure you had no
 7 intention to be unfair to me or to anybody else but I
 8 accept the withdrawal. Shall we carry on?
 9 MR NGALWANA: I shall wait until an
 10 attempt is made to introduce these photographs into
 11 evidence, Chair, then I'll deal with it then.
 12 MS LE ROUX: Well, Chair, let me do that
 13 right now. There are two photographs which we would like
 14 to be exhibited. The first is identified with the tag
 15 1020202, this is the photograph where there is someone
 16 writing on a white board in the foreground. If that could
 17 be exhibit HHH35 and then the other photograph of the JOC
 18 showing desktop computers and two blue plastic chairs, if
 19 that could be HHH36.
 20 CHAIRPERSON: The copies we were given
 21 haven't got any numbers on but the first one shows, as you
 22 say, they're not blackboards, they're actually white boards
 23 aren't they? It's actually -
 24 MS LE ROUX: Flipcharts.
 25 CHAIRPERSON: Sorry?

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1 MS LE ROUX: It's a flip chart.
 2 CHAIRPERSON: Flip chart and someone's
 3 writing on the flip chart and it looks like the words
 4 "injured members" have been written at the bottom right-
 5 hand corner of the photograph. Is that the one you're
 6 referring to?
 7 MS LE ROUX: That's correct, Chair.
 8 CHAIRPERSON: And the second shows two
 9 blue chairs, there is various other things, but it shows
 10 two blue chairs and it looks a white X above the chairs, is
 11 that other photograph?
 12 MS LE ROUX: That's correct, Chair, the X
 13 is the reflective jacket being worn by the person sitting
 14 on the chair.
 15 CHAIRPERSON: I see. Now do we know the
 16 problem of these photographs?
 17 MR CHASKALSON SC: Mr Chairperson, if I
 18 could interrupt here and it may be relevant to the
 19 numbering as well. These are photographs taken by, I
 20 think, by Captain Van Heerden of the JOC on the 16th. One
 21 of the issues which we hope to do either by persuading the
 22 SAPS to lead it in chief with Colonel Scott or in our
 23 cross-examination is to have the whole set of Captain Van
 24 Heerden's photographs introduced as an exhibit formally
 25 before the Commission. At the moment these photographs are

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1 on the SAPS hard drive but are not formally exhibits before
 2 the Commission and that may affect the numbering of these
 3 exhibits because there are in fact I think seven or eight
 4 more.
 5 CHAIRPERSON: I'm not sure that -
 6 MR CHASKALSON SC: 19.
 7 CHAIRPERSON: Yes, I'm sorry to interrupt
 8 you, I'm not sure what Ms le Roux wants to make of these
 9 photographs. If she simply wants to ask him about
 10 something in the JOC it will show him that it can be seen
 11 on the photographs, there's no reason to think that if she
 12 puts something to him within the JOC which in fact was
 13 there that he will deny it. So let's see what - what do
 14 you want to do with these photographs at the moment? Do
 15 you want to mess up Mr Chaskalson's order of photographs or
 16 do you want to establish that something was within the JOC
 17 because there's no reason to think that if it was in the
 18 JOC, if the witness saw it that he will falsely deny that
 19 it was there. So what point are you up to or do want it
 20 conceded from - that you asked the witness the question?
 21 MS LE ROUX: Chair, I don't think I'll be
 22 messing up Mr Chaskalson's photograph exhibit in due course
 23 because it's only these two that we wanted to introduce for
 24 now and the point is to understand in light of General
 25 Mpmembe's statement that there were no computers available.

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1 [12:51] CHAIRPERSON: He didn't say that, he said
 2 he'd made it clear -
 3 MS LE ROUX: Yes, and now we understand
 4 what that means -
 5 CHAIRPERSON: So now that's been
 6 clarified do you need the photographs?
 7 MS LE ROUX: Yes, because I'd also like
 8 to understand on the theme of the paper trail and whether a
 9 full search has been made and all contemporaneous documents
 10 have been placed before this Commission, is to ask whether
 11 the five laptop computers and two desktop computers that we
 12 see in the JOC on the evening of the 16th whether documents
 13 from those and their users have been provided.
 14 CHAIRPERSON: Well I understand that now
 15 but you don't need the photographs for that. The way to do
 16 it, if I may say so, is to ask him if there were computers,
 17 laptop computers, depending on his answer whether he was
 18 aware of them, you can then ask him what happened to them
 19 and if he knows. But I don't think you need the
 20 photographs for the moment. So may I suggest you carry on
 21 without the photographs and see how far you get.
 22 MS PILLAY: Chair, if I may just come in
 23 for the purposes of good order. I think that questions
 24 have been asked specifically of these two photographs. So
 25 for the purposes of the record we might need to identify

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1 the two photographs and hence have them marked as exhibits.
 2 CHAIRPERSON: - marked them yet, Ms Le
 3 Roux suggested it but when we read the record and we see
 4 that these photographs are going to be handed in as part of
 5 Captain Van Heerden's photographs - but if the only purpose
 6 of the question is to establish that there were indeed
 7 computers in the JOC then we don't really need the
 8 photographs. That is if the witness admits that he saw
 9 computers, isn't that so?
 10 MS LE ROUX: Chair, there are also
 11 aspects of the JOC reflected in the photographs that I
 12 would like to -
 13 CHAIRPERSON: Alright.
 14 MS LE ROUX: - question Major-General
 15 Mpmembe about beyond -
 16 CHAIRPERSON: They were on the police
 17 hard drive so we will put the first one with the words
 18 "injured members" at the bottom right-hand corner of the
 19 flip chart, we'll call that HHH35 and the second one which
 20 shows two chairs and a member, I take it it's a member with
 21 a black jacket with a white X on the back, we'll call that
 22 one HHH36. I'm a little bit concerned about something.
 23 From the way Mr Ngalwana reacted I got the impression that
 24 he was taken by surprise, so was he in fact given notice of
 25 these photographs were to be used?

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1 MS LE ROUX: Yes, Chair, they were on the
 2 index provided and copies were provided this morning,
 3 printout copies.
 4 MR NGALWANA: I hear copies were provided
 5 this morning. I've just received it now and I didn't know
 6 that it was referred to in the list of exhibits to which
 7 they were going to refer. I now see it, it's 22. I think
 8 it's 23, item 23 of the list.
 9 CHAIRPERSON: So notice was given. So I
 10 think, Ms Le Roux, you can carry on.
 11 MR CHASKALSON SC: Mr Chairperson, I hate
 12 to take this further but given that the entire set is going
 13 to come in can I ask that the numbering is different and
 14 that they be, I forget which exhibit we're on but if it's -
 15 these are numbers 17 and 19 of the full set and if we
 16 number them as WWW whatever it is, I forget the number,
 17 point 17 and point 19 we will then have the full set in one
 18 coherent place at the end which will, I think be better.
 19 CHAIRPERSON: Advocate Hemraj suggests
 20 that the way to do it is that when you come in to hand the
 21 full set of photographs you can make the point that two of
 22 the photographs have already been before the Commission
 23 with these two numbers I've given them. But there's no
 24 major reason why these photographs, informative as they
 25 are, should not appear twice in the record, as long as

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1 there's no confusion.
 2 MR CHASKALSON SC: Thank you,
 3 Chairperson.
 4 MS LE ROUX: Major-General Mpmembe, with
 5 respect to the two desktop computers that we see in the
 6 second photograph, HHH36, do you know whose computers those
 7 were in the JOC? Do you know whether -
 8 MAJOR-GENERAL MPEMBE: No, Chairperson.
 9 MS LE ROUX: Major-General Mpmembe, who
 10 would know who provided those two desktop computers?
 11 MAJOR-GENERAL MPEMBE: There were people
 12 that were coming from head office and so on and then Major-
 13 General Annandale could know about it.
 14 CHAIRPERSON: Again I would imagine that
 15 this is the sort of thing you can sort out by an enquiry to
 16 the SAPS.
 17 MS LE ROUX: Yes, Chair.
 18 CHAIRPERSON: And they'll give you the
 19 answer I'm sure without any trouble.
 20 MS LE ROUX: Yes, Chair. Major-General
 21 Mpmembe, with respect to the other photograph and the five
 22 laptop computers that can be seen in that photograph do you
 23 know whose computers those were?
 24 MR NGALWANA: Chair, I don't see a single
 25 laptop computer, perhaps my learned friend can - has a

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1 better picture.
 2 MS LE ROUX: Chair, HHH35 is
 3 unfortunately quite dark. During the lunch adjournment
 4 I'll sit with my learned friend for SAPS. And if you zoom
 5 in you can count five laptop computers on the desk that you
 6 see, the large table you see in the middle and the desk in
 7 the corner. But the first question for Major-General
 8 Mpmembe is do you know whose laptop computers -
 9 CHAIRPERSON: The answer's no. Do you
 10 know whose computers they were? I take it you saw
 11 computers, let's not get involved with photographs. You
 12 saw computers in the room where the JOCCOM was meeting
 13 right?
 14 MAJOR-GENERAL MPEMBE: Correct,
 15 Chairperson.
 16 CHAIRPERSON: Was any one of those
 17 computers your computer?
 18 MAJOR-GENERAL MPEMBE: No, Chairperson.
 19 CHAIRPERSON: No, do you know who were
 20 the owners or certainly the possessors of the computers
 21 that you saw?
 22 MAJOR-GENERAL MPEMBE: No, Chairperson
 23 except that I saw only Colonel Scott holding a personal
 24 computer. That's the only person that I saw.
 25 CHAIRPERSON: Am I correct in assuming,

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1 I'm told this by Advocate Hemraj, that if one looks at this
 2 photograph HHH35 in a clear form, one can actually see
 3 people sitting in front of the computers. Is that correct?
 4 Well look it's nearly 1 o'clock, let's take the adjournment
 5 now. Those who don't need lunch can spend the lunch time
 6 looking at the photograph on a computer and see who's
 7 sitting where. If you found what you want just before we
 8 resume you can ask the General to look and see if he can
 9 identify the people and then we can carry on. Will half an
 10 hour be enough for that task? We'll adjourn till 1:30.
 11 [COMMISSION ADJOURNS COMMISSION RESUME]
 12 [13:39] CHAIRPERSON: The Commission resumes.
 13 Major-General, you're still under oath.
 14 WILLIAM MPEMBE: s.u.o.
 15 CHAIRPERSON: Ms Le Roux, you have more
 16 questions, I assume.
 17 CROSS-EXAMINATION BY MS LE ROUX (CONTD.):
 18 Yes, Chair. Major-General Mpeembe, could you turn to
 19 exhibit HHH3, which is your supplementary statement.
 20 MR NGALWANA: Chair, shall I take it our
 21 learned friend is done with the photographs? Because
 22 there's an issue I wanted to raise in regard thereto.
 23 CHAIRPERSON: I'm sorry, I didn't catch
 24 what you said. Have you discussed them over the
 25 adjournment?

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1 MR NGALWANA: No, we haven't, Chair. But
 2 I just wanted to find out if she's done with these
 3 photographs because there's an issue I want to raise in
 4 regard thereto.
 5 MS LE ROUX: Chair, I have a question
 6 relating to HHH36, which I'm proceeding with. If my
 7 learned friend wants to make another intervention, he
 8 should do so now.
 9 MR NGALWANA: I'll wait for the question
 10 to come, Chair.
 11 CHAIRPERSON: [Microphone off, inaudible]
 12 know if you're going to object unless you know what the
 13 question is?
 14 MR NGALWANA: I never objected, Chair. I
 15 said I need to know what the question is before I object.
 16 CHAIRPERSON: I see. Yes, but you may
 17 not object if you know the question. Carry on, Ms Le Roux.
 18 MS LE ROUX: Thank you, Chair. General
 19 Mpeembe, do you have your supplementary statement, HHH3?
 20 MAJOR-GENERAL MPEMBE: Correct,
 21 Chairperson.
 22 CHAIRPERSON: I think you mean –
 23 MS LE ROUX: And if you could turn to
 24 paragraph 27 of that? For the record, it reads, "I should
 25 add to what I say in paragraph 48 of my original statement

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1 that we had no visual aids at the JOC and relied on radio
 2 and cell phone reports on what was happening on the ground.
 3 I thought I would be in a better position to give guidance
 4 as overall commander if I could see what was happening from
 5 the sky. I cannot say precisely what time we left, but we
 6 had not yet received reports at the JOC of how the
 7 operation was proceeding." Major-General Mpeembe, where you
 8 refer to visual aids in that paragraph, what do you mean?
 9 MAJOR-GENERAL MPEMBE: CCTV camera that
 10 could cover the whole area of operation.
 11 MS LE ROUX: Major-General Mpeembe, that's
 12 because there was a CCTV feed in the JOC, which we can see
 13 in photographs HHH36 displayed on those two screens. Your
 14 point in your supplementary statement was that you wanted
 15 more than what those two screens were displaying, correct?
 16 MR NGALWANA: Chair, in fairness to the
 17 witness, our learned friend should say what time these
 18 photographs were taken and which period they cover.
 19 MR CHASKALSON SC: Mr Chairperson,
 20 they're taken at 7:30 in the evening of the 16th.
 21 MS LE ROUX: Major-General, do you recall
 22 the question?
 23 MAJOR-GENERAL MPEMBE: There were areas
 24 that were covered and others they were not covered at all,
 25 and when the crowd was moving then the major areas which

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1 were not covered were not there, and then that's what I was
 2 talking about, but probably it could have been better for
 3 me if I would also see not only those areas that could have
 4 been covered by the CCTV camera, because the Commission
 5 will recall that the chopper that I had, it was also
 6 covering far away areas which were not even covered by the
 7 other choppers.
 8 CHAIRPERSON: Ms Le Roux, before you
 9 continue, I don't know if you've had opportunity to look at
 10 GGG19, which is a statement by Mr Botes who was the
 11 security risk manager at Lonmin, who was in the JOC, and in
 12 paragraph 57 he deals with the CCTV surveillance equipment
 13 which was in the JOC at the relevant time, round about 4
 14 o'clock in the afternoon, and I don't know if you've got it
 15 available to you, but if you look at it you'll see that the
 16 question you're asking may well be answered on the basis of
 17 what is contained there.
 18 MS LE ROUX: Yes, thank you, Chair, for
 19 that assistance. The point of my question was to clarify
 20 with Major-General Mpeembe when he referred to visual aids
 21 in his statement, that he was referring to the CCTV
 22 footage, and I can move on from that point now. Major-
 23 General Mpeembe, when did you make the decision to go up in
 24 the helicopter on the 16th?
 25 MAJOR-GENERAL MPEMBE: I did testify that

<p style="text-align: right;">Page 12701</p> <p>1 it was after the 13:30 meeting, but it was not immediately 2 thereafter, and I think in terms of my evidence-in-chief 3 it's clearly covered there. 4 MS LE ROUX: Major-General Mpmembe, what 5 I'd now like to do is summarise where we are after this 6 morning's cross-examination on the theme of the limited 7 amount of contemporaneous evidence that is available to the 8 Commission. That's my characterisation of it. So just to 9 summarise where we are; with respect to minutes we have the 10 three sets of minutes that are TT3, TT4, and exhibit EE, 11 but we've identified at least six other meetings that are 12 not minuted. With respect to contemporaneous notes, we 13 have only the collated occurrence book, not the notes that 14 were kept and then put together in the document that we 15 have, and we have no other notes from the JOC, whether they 16 made their way into the occurrence book or not. With 17 respect to an intelligence report we have only TT5. With 18 respect to the plans we have only SS3. Then we have the 19 SAPS15s which in a piece of cross-examination that will be 20 put to you, other witnesses, there is evidence that even 21 those weren't completed on the 16th, and with respect to the 22 pocketbook entries, certain of those have been, the Human 23 Rights Commission team has been able to go through those; 24 there are, however, still about 200 of those that still 25 need to be reviewed, and then there are of course the case</p>	<p style="text-align: right;">Page 12703</p> <p>1 to move on to the topic of training. You'll agree with me 2 that your expertise as the overall commander is a 3 combination of the training you've received and your 4 experience, correct? 5 MAJOR-GENERAL MPEMBE: In addition with 6 those crowd management that I've managed. 7 MS LE ROUX: And you'll agree with me 8 that there's of course a difference between what you learn 9 when you do training and what you learn from experience by 10 being in command of an operation? 11 MR NGALWANA: Chair, the issue of the 12 Major-General's experience and training has already been 13 covered previously, and Ms Jele also dealt with it with 14 another witness. 15 CHAIRPERSON: The fact that Ms Jele dealt 16 with it with another witness doesn't prevent it being asked 17 now, but it has been dealt with previously. So unless 18 there's a special point that you want to put dealing with 19 that, which hasn't been covered before, I don't think we 20 should plough over that field again. Do you agree? 21 MS LE ROUX: Chair, I don't intend to 22 plough over the field that has already been ploughed. What 23 I do intend to do is cover the propositions that Mr White 24 deals with when he addresses the question of training and 25 leadership experience.</p>
<p style="text-align: right;">Page 12702</p> <p>1 dockets that were prepared in that week of the 9th to the 2 16th of August. So other than these documents that I've 3 just identified now in the summary, you don't know – and 4 the one SMS that you will be providing tomorrow – you don't 5 know of any other contemporaneous documents that are still 6 outstanding and could be provided to the Commission. 7 Correct? 8 CHAIRPERSON: To be fair, I'm not sure if 9 this witness has been concerned with the documents. There 10 are other members of SAPS I think who have been responsible 11 for documents and have been responding to queries and so on 12 relating to documents. Is that correct, General Mpmembe? 13 MAJOR-GENERAL MPEMBE: Correct, 14 Chairperson. 15 CHAIRPERSON: You weren't the clerk of 16 the papers as far as the SAPS were concerned in this 17 matter, were you? 18 MAJOR-GENERAL MPEMBE: Correct, 19 Chairperson. 20 MS LE ROUX: Major-General Mpmembe, are 21 you aware of any other documents that were produced at the 22 time? 23 MAJOR-GENERAL MPEMBE: Not on my personal 24 knowledge. 25 MS LE ROUX: Major-General, I'd now like</p>	<p style="text-align: right;">Page 12704</p> <p>1 CHAIRPERSON: [Microphone off, inaudible] 2 that as succinctly as you can because there's substance in 3 Mr Ngalwana's basic objection. 4 MR NGALWANA: In fact Mr Madlanga dealt 5 with that issue, Chair. 6 CHAIRPERSON: I don't remember that Mr 7 Madlanga dealt with it in relation to what Mr White had 8 said, so I think she's only going to do it in relation to 9 that. I'll allow that, but not anymore than that. We've 10 got his CV which contains all his experience in exhibit 11 HHH2, which has been extensively covered. Perhaps you may 12 wish to put a couple of short crisp points based on what Mr 13 White says in the light of that, but I don't know that we 14 need have more than that to help us – 15 MS LE ROUX: Chair, I don't intend to 16 cover what Adv Madlanga covered with respect to the Major- 17 General's CV. Major-General, what I want to understand is 18 the difference between what you learn when you undergo 19 training, and what you learn from experience on the job, 20 and would you agree with me that what you learn from 21 training would be best practice? That would be the global 22 best practice that the SAPS says it adheres to. That's 23 what you would learn when you went through a training 24 course, and then obviously on the job you're learning 25 whatever it is that you learn from the particular operation</p>

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1 that you are involved in. Will you agree with me that
 2 there are two types of things you are going to learn?
 3 MAJOR-GENERAL MPEMBE: In training it's
 4 theory; in practice it's what also you can come up with
 5 best practice.
 6 MS LE ROUX: And you underwent riot
 7 control training in the 1980s and not since, and that's
 8 been established. Correct?
 9 CHAIRPERSON: - you have to put it to him
 10 as a question. It's based upon his CV. You can just put
 11 it to him as an assertion and carry on. If he disagrees
 12 with the assertion he can deal with it, but you know, to
 13 put something that's already common cause and say that's
 14 correct, I know that's a way some people like to cross-
 15 examine, but it's not really necessary. You can just make
 16 the statement and move on, and if he doesn't like the
 17 statement he can quarrel with you, but then if you've got
 18 it already in his CV, then he's going to have difficulty if
 19 he quarrels with the statement. So I suggest you just put
 20 the statement and then move on to your point.
 21 MS LE ROUX: Major-General Mpembe, do you
 22 know whether best practice in Public Order Policing has
 23 changed since you underwent training in the late 1980s?
 24 MAJOR-GENERAL MPEMBE: Correct,
 25 Chairperson, I did testify on that one.

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1 MS LE ROUX: And indeed the SAPS' own
 2 crowd management for section members, policy document on
 3 crowd management which is before the Commission as exhibit
 4 FFF1, records that international best practice has changed
 5 substantially since the 1980s. So my question to you,
 6 Major-General Mpembe, is although your training remains
 7 valid, as you testified previously, it's not up to date
 8 with the most current idea of best practice either globally
 9 or for the SAPS. Correct?
 10 MAJOR-GENERAL MPEMBE: Not correct,
 11 Chairperson, and my actions in terms of the objective
 12 evidence bears evidence to that, and the approach that we
 13 adopted for Marikana, and in addition I know that Mr White
 14 has wrote a lot in terms of Marikana, but there are two
 15 situations. He only based his opinion on the Regulation of
 16 Gatherings Act, which brought drastic changes, and he did
 17 not elaborate on the mutual agreement where the two parties
 18 they had to undergo to ensure the peaceful march, and as a
 19 result of that Marikana was not falling under the
 20 Regulation of Gatherings, as we said it was not only purely
 21 crowd management; it was the mix, and I have a very much
 22 high respect for Mr White, but in terms of the South
 23 African approach there is a lot that we need also to put,
 24 because he only concentrated on the regulations of
 25 gatherings, but not particularly on the practical what was

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1 happening on the day. In addition, his experience in terms
 2 of the crowd management where he compared Belfast and South
 3 Africa, it's a huge, huge difference.
 4 MS LE ROUX: Major-General Mpembe, it's
 5 not necessary for me to debate Mr White's experience with
 6 you, but I would still like an answer to my question, which
 7 was you accept that best practice both internationally and
 8 as recorded in SAPS' own documents has changed since you
 9 were trained in the late 1980s, and you have not received
 10 formal training since that change?
 11 MR NGALWANA: In fairness, my learned
 12 friend should point us to the SAPS prescripts that says
 13 what she alleges to the witness.
 14 MS LE ROUX: Chair, the point is not
 15 whether there's an obligation to retrain; the point is
 16 simply he has not been retrained since SAPS and global best
 17 practice has changed. That's the very simple and the only
 18 point I'm trying to make.
 19 MR NGALWANA: No, Chair, the premise for
 20 the question is that in SAPS' own prescripts international
 21 best practice has changed substantially. In fairness to
 22 the witness, our learned friend needs to refer to the
 23 excerpt in the SAPS prescripts on which she relies.
 24 [13:59] MS LE ROUX: Chair, I had thought it was
 25 common cause and I was trying to save some time, but I'm

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1 happy to do that. In exhibit FFF1 it commences with an
 2 introductory section which says, "As a result of the vast
 3 socio-political changes that have occurred in South Africa
 4 over the past few years, new approaches, tactics, and
 5 techniques, must be developed to align the management of
 6 crowds with the democratic principles of transparency and
 7 accountability. Police action must also be reconciled with
 8 the Bill of Human Rights and the statutory provisions
 9 pertaining to crowd management. The findings of the
 10 Goldstone Commission on public violence and intimidation
 11 and the subsequent Regulation of Gatherings Act, No. 205
 12 of 1993, were taken into consideration when this document
 13 was drawn up. The emphasis has shifted from the control of
 14 crowds in the past to the philosophy of crowd management
 15 where fundamental rights of all citizens are taken
 16 cognisance of. To put these changing circumstances into
 17 perspective it's important to regard the recent history of
 18 crowd control/management in South Africa. This history
 19 includes the following," then there are five points that
 20 are accounted. Again I'm trying to progress, so I'll skip
 21 over those. It then says, "The changing circumstances
 22 place a high premium on the fundamental rights of the
 23 individual. This requires the South African Police Service
 24 to change and adapt its tactics and strategies according to
 25 the circumstances so that the SAPS, without forfeiting its

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1 ability, will still be able to prevent violence effectively
 2 during gatherings and marches. The goals of the Public
 3 Order Police are the following." It then announces many of
 4 those. It then announces the principles of crowd
 5 management, situational appropriateness, optimisation,
 6 proportionality, then gets into details relating to the
 7 preparation for crowd management operations and the like.
 8 So it is common cause and is recorded in SAPS' own document
 9 that best practice has changed.
 10 MR NGALWANA: No –
 11 MS LE ROUX: To return to my question,
 12 Major-General Mpmembe, I'm correct that you have not
 13 received formal training in the new approach?
 14 MR NGALWANA: That's not correct, Chair.
 15 There's nowhere where our learned friend has just read
 16 which says that international best practice have changed
 17 substantially. She needs to rephrase her question.
 18 MS LE ROUX: Chair, the change in global
 19 best practice not only comes from Mr White, it also is
 20 recorded in the SAPS' own expert, Mr De Rover's statements,
 21 but let me just start with the change – let me rephrase my
 22 question so that it only relates to the change in South
 23 African practice. Major-General Mpmembe, I'm correct that
 24 you have not received training since the late 1980s in the
 25 new approach to crowd management to be followed by the

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1 SAPS?
 2 MAJOR-GENERAL MPEMBE: Not correct,
 3 Chairperson. I did testify that head office by that time
 4 immediately when, after the Goldstone Commission of Inquiry
 5 and also the Standing Order 262 was made, and head office
 6 went out to all the provinces to train us in terms of the
 7 changes and bring the changes to the attention of all of
 8 us, and in, with regard to the human rights, there were
 9 various courses that I have undergone in terms of human
 10 rights courses in ensuring that human rights are being
 11 upheld in SAPS, and it is also in my CV.
 12 MS LE ROUX: Major-General Mpmembe, you
 13 haven't had any – from what I've seen on your CV I haven't
 14 seen any formal training on how to command a public order
 15 operation of the type at Marikana with multiple units.
 16 Have you received such training?
 17 MS LE ROUX: Is my learned friend
 18 suggesting that there is such training, Chair?
 19 CHAIRPERSON: [Microphone off, inaudible]
 20 asking have you had such training. She's not suggesting
 21 whether the training is available or not; she's just asking
 22 as a fact, have you attended training. Have you had any
 23 special training in dealing with a situation such as there
 24 was at Marikana where various units, Special Task Team
 25 people, Reaction people, and National Intervention Unit and

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1 POP people all had to operate together to combat a problem
 2 such as encountered at Marikana? Have you ever attended a
 3 course on that, received training on that?
 4 MAJOR-GENERAL MPEMBE: Chairperson, with
 5 regard to the functioning of different units one can say
 6 yes, in the light of the World Cup, then how you have to
 7 deploy the people in terms of that, but Marikana, I have
 8 testified here that it was the first time that we have an
 9 incident like Marikana, so –
 10 CHAIRPERSON: Do you know anybody else
 11 who's attended a course along the lines suggested in the
 12 question?
 13 MAJOR-GENERAL MPEMBE: As I'm saying, all
 14 officers that we, at a level of deputies, those that were
 15 responsible for the World Cup, and there were different
 16 courses that we have undergone, and I think head office
 17 will be, will bear testimony to that.
 18 MS LE ROUX: Major-General Mpmembe, the
 19 training you received for the World Cup around commanding
 20 multiple units, did you draw on that training at Marikana?
 21 MAJOR-GENERAL MPEMBE: Not only in the
 22 World Cup. I did present various crowd management that
 23 poses serious problem and I did indicate that they were
 24 still not the same as the one that I handled in Marikana,
 25 which were properly being solved in terms of the experience

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1 that one is having, but the one of Marikana was one of his
 2 own, hence I've said it was the combination, particularly
 3 in the sense that SAPS to solve, and that's the lesson
 4 learned and the lessons that one has learned even before
 5 Marikana, that it does not only rest on the police. The
 6 other parties they must bring their side. They must be
 7 honest in what they are doing and then the ultimate outcome
 8 will be positive, and as I've indicated with examples that
 9 I demonstrated to this Commission.
 10 MS LE ROUX: Major-General Mpmembe, have
 11 you ever been trained on how to disarm a crowd of people in
 12 any of your training, whether for World Cup or SAPS
 13 training? Have you ever been trained on how to disarm a
 14 crowd of people?
 15 MAJOR-GENERAL MPEMBE: The training that
 16 one has undergone in 1986, and I did indicate crowd
 17 formation, how to disperse, to disperse the crowd, and in
 18 terms of how you also have, there's a crowd psychology in
 19 terms of you will have to divide the crowd to smaller
 20 groups and then you need also, then you can be able to
 21 overpower them, the utilisation of the teargas, the stun
 22 grenades, to disorientate the people and in the light of
 23 that one can say yes.
 24 MS LE ROUX: Thank you, Major-General
 25 Mpmembe. I understand the training you've had on how to

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1 disperse and manage the crowd, but my question was have you
 2 had training specifically on disarming a crowd of people,
 3 not dispersing them, disarming them?
 4 MAJOR-GENERAL MPEMBE: Chairperson, my
 5 answer still remains the same in the sense that you cannot
 6 disarm the people if you don't disperse them.
 7 CHAIRPERSON: The question is based on
 8 the premise that even if you disperse them, does that
 9 necessarily help you to disarm them?
 10 MAJOR-GENERAL MPEMBE: Correct,
 11 Chairperson, in the sense that if you isolate them and you
 12 concentrate to those that have got arms and then you can be
 13 able to overpower them in terms of the resources that you
 14 do have.
 15 MS LE ROUX: Major-General Mpeembe, when
 16 were you trained in that aspect? You said disperse them,
 17 smaller group, and then overpower them to disarm them.
 18 When were you trained as to how to do that?
 19 MAJOR-GENERAL MPEMBE: Chairperson, I did
 20 testify that in 1986 and when we were doing the crowd
 21 management, crowd dispersal approach and taking into
 22 account the new legislation, that when the new legislation
 23 was enacted and it was brought, the most bigger change, it
 24 was the communication, persuasion, mediation, that was
 25 brought in terms of the new act, and then the dispersal,

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1 and I did indicate that there were no much fundamental
 2 changes in terms of the training that was done by then and
 3 the training that is being done now at the college, but the
 4 most emphasis in the crowd is now crowd management.
 5 Chairperson, in addition, all what I've said now in terms
 6 of communication, persuasion, mediation, negotiation, they
 7 were, that approach was definitely employed in Marikana,
 8 which in all instances that it has happened, it was
 9 initiated by the police.
 10 MS LE ROUX: Major-General, I understand
 11 your testimony generally about the approach to disarming,
 12 but my question still, it's a yes or no question, have you
 13 received training in how to disarm a crowd, specifically
 14 how to disarm a crowd? Not disperse them or manage them or
 15 mediate with them or negotiate with them and persuade them,
 16 but you talked about how you disarmed through overpowering
 17 a smaller group of people. Have you received training in
 18 how to do that?
 19 MAJOR-GENERAL MPEMBE: Chairperson, my
 20 answer will be yes, on the basis of the curriculum content
 21 presented to me in 1986. The combination of it is what was
 22 presented to me when Regulation of Gatherings was brought
 23 into effect.
 24 MS LE ROUX: And what was that training?
 25 How were you trained to disarm a crowd of people?

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1 MAJOR-GENERAL MPEMBE: Disperse the crowd
 2 and in the process of dispersing the crowd, make sure that
 3 the crowd is being isolated and managed in a small manner
 4 of people. Then you utilise the equipment that you can
 5 utilise there, it's the teargas and it's the stun grenade
 6 to disorientate them, utilise the Nyalas in terms of making
 7 sure that the crowd can be overpowered, and then in terms
 8 of that communication is important to tell the, now those
 9 people, if you have separated them from the bigger crowd,
 10 obviously you have taken away what we call a crowd
 11 psychology, or mob psychology, and individuals start to
 12 think for themselves and they will hand themselves over to
 13 you, or they will drop their weapons and in that process
 14 then you disarm them. Chairperson, I need also to state
 15 that in Marikana there were different units specifically
 16 also meant for that purpose, and which were, undergone many
 17 other training in terms of that and that's -
 18 MS LE ROUX: Which other units are you
 19 referring to that have specifically been trained in
 20 disarming crowds?
 21 MAJOR-GENERAL MPEMBE: It was testified
 22 with the roles of the POP, the role of the STF, and also
 23 National Intervention Unit. Now the combination, the
 24 combination of those units should bring about the required
 25 outcome.

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1 MS LE ROUX: As the overall commander at
 2 Marikana, how did you plan the disarming of the crowd? How
 3 did you think the disarming of the crowd would take place
 4 if the plan had proceeded as planned?
 5 [14:19] MR NGALWANA: Chair, evidence has been
 6 given that this was never a one-person job, so the premise
 7 for the question is inaccurate.
 8 CHAIRPERSON: Well, she's entitled to ask
 9 what role you played in the planning, what you planned. I
 10 don't think the objection to the question – I don't know
 11 whether the answer can help us very much, but carry on.
 12 MR NGALWANA: That's not what she asked –
 13 CHAIRPERSON: The point Mr Ngalwana made
 14 was that a number of people had been involved in the plan,
 15 but you're asking effectively, I think, what his role was
 16 or inputs were in that regard. Is that right? If that's
 17 what you intended, I suggest you frame it that way.
 18 MS LE ROUX: Okay, let me reformulate.
 19 Major-General Mpeembe, how was the crowd of people at the
 20 koppie to be disarmed?
 21 CHAIRPERSON: I'm sorry, we've been there
 22 – this was extensively dealt with in General Annandale's
 23 evidence what the plan was. I understand the Major-General
 24 was the overall commander, but it's clear that he had these
 25 other people assisting him. There was an exercise which

<p style="text-align: right;">Page 12717</p> <p>1 allegedly various inputs were made by various people, so I 2 can understand you asking him what input he made and what 3 his approach was, but if the general question you've asked 4 is calculated to elicit the same answers that we got many 5 times over before, they aren't going to contribute to our 6 work really, are they? 7 MS LE ROUX: Chair, let me reformulate 8 again. Major-General Mpeembe, I'm not asking you about the 9 planning process. I'm asking for your understanding, if 10 the plan had been executed, I understand that you intended 11 to disperse the people on the koppie into smaller more 12 manageable groups. You then intended to disarm them. Very 13 practically, what did you expect of your members on the 14 day; how were they to disarm these smaller groups of 15 people? 16 MAJOR-GENERAL MPEMBE: Starting first 17 from the dispersal, which I did explain – 18 MS LE ROUX: Major-General, can I just 19 get you to focus? Assume the dispersal has happened. 20 They've been dispersed. People are now in smaller groups. 21 Assume that you've used your disorientation devices; stun 22 grenades have been used, people are now disoriented, 23 they're in their smaller groups. How were they to be 24 disarmed? 25 MAJOR-GENERAL MPEMBE: The people will</p>	<p style="text-align: right;">Page 12719</p> <p>1 referring to? 2 MAJOR-GENERAL MPEMBE: There are many 3 techniques that, techniques in terms of arrests with regard 4 to the, to equipment that they had, and it also depends in 5 terms of what dangerous weapons that those members they 6 could have, but not taking away any discretion of the 7 members, but overpowering them and with the resources that 8 they had, that could have happened. 9 MS LE ROUX: Major-General, let me move 10 on. There were two water cannons deployed for use at 11 Marikana on the 16th, correct? 12 MAJOR-GENERAL MPEMBE: Correct, 13 Chairperson. 14 MS LE ROUX: And am I correct that the 15 water cannon is one of the most important less lethal means 16 of force available to the SAPS in a crowd management 17 situation? 18 MAJOR-GENERAL MPEMBE: One of them. 19 MS LE ROUX: Yes, one of them. Major- 20 General, whose decision was it to have two water cannons 21 available on the 16th? 22 MAJOR-GENERAL MPEMBE: Not only two, but 23 they were needed but we only have two. 24 CHAIRPERSON: No, the question is, who 25 decided we must have water cannons, send for the water</p>
<p style="text-align: right;">Page 12718</p> <p>1 have been isolated and utilising the Nyalas that were 2 available in the group of, as I have testified in, from the 3 group of five and to 10, and they would have been requested 4 by those units and also to disarm them. Others they could 5 obviously throw their weapons down, and more so we were not 6 aiming at everybody, only those that were carrying weapons. 7 So that could have happened. 8 MS LE ROUX: Major-General Mpeembe, I 9 still don't understand practically what would happen; how 10 would your members disarm the people who decided to keep 11 their weapons? They're in their smaller group. They've 12 been disoriented, but they're still holding on to their 13 panga, their spear, their knobkierie, their iron rod. Your 14 members are in the Nyalas, or where are they, and very 15 practically, what would you expect them to do to disarm 16 that person? 17 MAJOR-GENERAL MPEMBE: It could have been 18 in the same way that as I have explained. Once you divide 19 the people in smaller groups you overpower them. 20 MS LE ROUX: And by overpower, what do 21 you mean? 22 MAJOR-GENERAL MPEMBE: More members with 23 different techniques approaching a smaller group, and 24 disarming the protesters. 25 MS LE ROUX: And what techniques are you</p>	<p style="text-align: right;">Page 12720</p> <p>1 cannons, let them come to Marikana? Who made that 2 decision? 3 MAJOR-GENERAL MPEMBE: Chairperson, 4 normally it's the decision of both the overall and 5 operational commander and in this case it's myself and 6 Brigadier Calitz. 7 CHAIRPERSON: You and Brigadier Calitz 8 decided we need water cannons? 9 MAJOR-GENERAL MPEMBE: Yes, but not – 10 CHAIRPERSON: So you sent – 11 MAJOR-GENERAL MPEMBE: But not two. 12 CHAIRPERSON: You sent for water cannons? 13 MAJOR-GENERAL MPEMBE: Yes. 14 CHAIRPERSON: And how many did you get? 15 MAJOR-GENERAL MPEMBE: Two. 16 CHAIRPERSON: You wanted more; you only 17 got two. Is that – 18 MAJOR-GENERAL MPEMBE: Yes, that's right, 19 Chairperson. 20 MS LE ROUX: Major-General, how many 21 water cannons did you want? How many did you ask for? 22 MAJOR-GENERAL MPEMBE: I actually said as 23 many water cannons as we can have that they were there in 24 the SAPS. 25 MS LE ROUX: And why did you want as many</p>

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1 water cannons as SAPS has?
 2 MAJOR-GENERAL MPEMBE: Chairperson, it's
 3 obvious that when groups are, when you disperse the groups,
 4 they were regrouping somewhere. So the utilisation of the
 5 water cannon was also one of those reasons.
 6 MS LE ROUX: Major-General, you said
 7 you'd like as many as they had. How many – can you give us
 8 a number how many you thought would have been enough? How
 9 many water cannons would have been enough on the 16th?
 10 MAJOR-GENERAL MPEMBE: Chairperson, I've
 11 already said that the number that SAPS could avail to
 12 myself, because in terms of the planning of that size you
 13 need also to put the other one in the reserve force.
 14 MS LE ROUX: Major-General, let's use
 15 hindsight. You know how many people you had to deal with
 16 on the 16th. How many water cannons would you have liked on
 17 the 16th?
 18 MR NGALWANA: Objection, Chair. You
 19 can't ask the witness to use hindsight.
 20 CHAIRPERSON: I've never been aware of
 21 legal authority for the proposition that you can't ask a
 22 witness that.
 23 MR NGALWANA: There is, I'll look –
 24 CHAIRPERSON: Have you got a case, cases
 25 that say that?

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1 MR NGALWANA: I'll look it up. It was a
 2 Supreme Court of Appeal judgment. I'll look it up, Chair.
 3 CHAIRPERSON: Yes, that applies to strict
 4 rules of evidence. Are they binding on this Commission?
 5 MR NGALWANA: You asked me for authority,
 6 Chair. If you're going to take it seriously then I will
 7 look for it.
 8 CHAIRPERSON: No, it's –
 9 MR NGALWANA: I know it does exist.
 10 CHAIRPERSON: Hindsight I discussed with
 11 General Annandale. Hindsight is helpful because it enables
 12 you to discover what went wrong and it enables you, moves
 13 you on to the next question as to what, the things that
 14 went wrong that you didn't foresee were perhaps
 15 foreseeable. So I don't think questions based on hindsight
 16 are inappropriate. I understand they can get out of hand
 17 if there are too many asked, but I think this one is
 18 alright, so we'll carry on with this, if you don't mind.
 19 MR NGALWANA: May I just say this as a
 20 cautionary measure, Chair, that hindsight questions do turn
 21 on the conjectural, and the Chairperson has already ruled
 22 on the conjectural issue, but I'm not going to press the
 23 point.
 24 CHAIRPERSON: - may have to revise that
 25 ruling if it says what you said it says. Carry on, Ms Le

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1 Roux, but don't test this too far into the conjectural area
 2 because Mr Ngalwana is right in saying that the further we
 3 get into conjecture, the less helpful the answers will be.
 4 MS LE ROUX: Thank you, Chair. So Major-
 5 General, knowing how many people you had to deal with on
 6 the 16th, so using what you know today, how many water
 7 cannons would you have wanted on the 16th?
 8 MAJOR-GENERAL MPEMBE: Chairperson, I've
 9 already said that on the 16th itself I said as many as I can
 10 that head office could give me, and that's what I said and
 11 I also having to think that others could be on the reserve,
 12 so maybe then with the hindsight, because I've already said
 13 that I wanted as many as head office can give.
 14 MS LE ROUX: Major-General, I must
 15 persist in that. You've been –
 16 CHAIRPERSON: Can I ask a question on
 17 this point? Now I take it that you know that head office
 18 haven't got 200 water cannons standing by, waiting to be
 19 sent to Marikana. Presumably they had a reasonable number,
 20 but not excessive. Now how many did you expect them to
 21 send you, if they could send all the available ones? You
 22 must have had some kind of idea at the back of your head as
 23 to how many you thought you might get. Can you tell us
 24 that?
 25 MAJOR-GENERAL MPEMBE: Chairperson,

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1 answering from the hindsight, as you say, because at that
 2 time I know that I had General Annandale who was there, who
 3 could be able to tell me whether they were available or
 4 not, and as I've said, if I could have another two which I
 5 can put on the what, on the reserve –
 6 CHAIRPERSON: You had to deal with 3 000
 7 people, so I can imagine four water cannons could usefully
 8 have been deployed to deal with the 3 000 people. Is that
 9 correct?
 10 MAJOR-GENERAL MPEMBE: With the benefit
 11 of the hindsight, yes, Chairperson.
 12 CHAIRPERSON: I mean you could have even
 13 managed with six, I should imagine. That's right?
 14 MAJOR-GENERAL MPEMBE: Chairperson, as
 15 I've said, it depends on the situation and where you could
 16 use it.
 17 MS LE ROUX: And Major-General, I don't
 18 want to detain us too long on something we've touched on,
 19 but can you explain to the Commission why you wanted water
 20 cannons on the 16th? What role were they going to play in
 21 your plan?
 22 MAJOR-GENERAL MPEMBE: Chairperson, the
 23 water cannon has got various advantages, advantages in
 24 terms of if you utilise it members can get scared and they
 25 become too much –

<p style="text-align: right;">Page 12725</p> <p>1 CHAIRPERSON: I don't think you mean 2 members, I think you mean strikers. 3 MAJOR-GENERAL MPEMBE: Thanks, 4 Chairperson, and in the process some of them, also with the 5 benefit of the hindsight, as I'm answering the question, 6 some of them you could even see whether they are being 7 marked and you can be able to arrest them at a later stage, 8 and that is what I had in mind by then, and then the other 9 two that I was speaking about is when these others' water 10 is finished, then we can push the other two in, but what is 11 more important is that you could be able to flush them in a 12 manner that you could actually disperse them, and it 13 encourages the dispersal process. 14 CHAIRPERSON: You're using the word 15 "flush" both literally and metaphorically? 16 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 17 I just wanted to maybe clarify the word "flush," or maybe 18 you've already clarified – 19 CHAIRPERSON: I know what you meant by 20 "flush." 21 MAJOR-GENERAL MPEMBE: Okay, Chairperson. 22 CHAIRPERSON: To physically drive them 23 away. 24 MAJOR-GENERAL MPEMBE: Yes. 25 CHAIRPERSON: And also metaphorically</p>	<p style="text-align: right;">Page 12727</p> <p>1 evidence that the water cannons used at Marikana had some 2 fluid which would have that effect, would it? But it could 3 be done, but it wasn't done at Marikana. 4 MAJOR-GENERAL MPEMBE: Correct, 5 Chairperson. That was, as I'm saying, that was what we had 6 at, in mind at that time, but we couldn't have done it 7 because it's not yet been done. 8 MS LE ROUX: Major-General, when did you 9 request the water cannons? 10 MAJOR-GENERAL MPEMBE: Chairperson, I 11 don't know precisely, but Brigadier Calitz can know. One 12 water cannon is already in the province, but I can find out 13 when precisely the water cannons were requested, but it was 14 before the 16th. 15 [14:39] MS LE ROUX: Thank you, Major-General, if 16 you could establish when they were requested, and of whom 17 were they requested? Who did you ask for the water 18 cannons? 19 MAJOR-GENERAL MPEMBE: The provincial JOC 20 will request the NATJOC, so who in the NATJOC I still have 21 to establish, but the provincial JOC, in that case I could 22 say Brigadier Calitz with certainty, but who received the 23 request at the NATJOC – NATJOC is the national JOC, because 24 we actually work from one JOC to the other - I can 25 establish that.</p>
<p style="text-align: right;">Page 12726</p> <p>1 sort of push them away, as you'd use the word "flush" 2 metaphorically and literally. 3 MAJOR-GENERAL MPEMBE: Thanks, 4 Chairperson. 5 CHAIRPERSON: Here you were doing both at 6 the same time. 7 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 8 particularly when I'm talking to Human Rights Commission. 9 CHAIRPERSON: It's not very lethal. 10 MAJOR-GENERAL MPEMBE: Chairperson – 11 CHAIRPERSON: It's not very lethal. It's 12 unpleasant to have a column of water directed at you, so if 13 you had that happen to you, you might well want to turn 14 away and allow yourself to be dispersed. That's the first 15 point, and as you say it was coloured water, then the 16 persons are identified and it's easy to arrest them 17 afterwards. 18 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 19 and the other reason which of course I understand Major- 20 General Annandale said that they are still undergoing, 21 looking at it, but also at that time when we were busy with 22 the World Cup it was that you could pour something that 23 could irritate the protesters and then when they get 24 irritated, then they can – 25 CHAIRPERSON: I don't think there's any</p>	<p style="text-align: right;">Page 12728</p> <p>1 MS LE ROUX: Thank you, Major-General, if 2 you could follow up on those two enquiries. Do you know 3 when - 4 CHAIRPERSON: Sorry, Ms Le Roux, if I may 5 make a point that I think is relevant not just only in this 6 context, but generally; it's not necessary to ask a witness 7 to make enquiries and come back with the answer. You can 8 send a query to the attorney acting for the SAPS if it's 9 just information that you want, and the information I'm 10 sure will be provided. I can understand in certain 11 circumstances you want the witness to investigate, do 12 something, but it doesn't sound as if it's necessary here. 13 I'm sure - the police attorney is nodding his head, he will 14 get that information for you and as soon as he gets it, 15 he'll pass it on to you. You don't have to give this 16 witness homework; he's here to give evidence, not to pick 17 up homework assignments as well. 18 MS LE ROUX: Thank you, Chair, I'll take 19 it up with my colleague for the SAPS. Major-General, do 20 you know when the two water cannons arrived in Marikana? 21 MAJOR-GENERAL MPEMBE: No, Chairperson. 22 MS LE ROUX: Chair, I'll make a request 23 of the SAPS team to find that out. Major-General, when you 24 requested the water cannons, am I correct that you assumed 25 they would come with people adequately trained to operate</p>

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1 them?

2 MAJOR-GENERAL MPEMBE: Correct,

3 Chairperson.

4 MS LE ROUX: But with respect to the

5 drivers of the, what's known as the Johannesburg water

6 cannon, they only received a two-hour crash course two

7 years ago and that is why we see for example in the

8 transcript of the Ryland video that their erratic driving

9 is cause for some concern. Did you know that the operators

10 of the Johannesburg water cannon had only received a two-

11 hour crash course two years ago and didn't know how to

12 operate the water cannon properly?

13 MAJOR-GENERAL MPEMBE: Chairperson, I did

14 not know.

15 MS LE ROUX: Chair, if I could introduce

16 as a new exhibit the statement by Cedric Leon Fourie?

17 CHAIRPERSON: Is that one of the

18 documents we got this morning, or one that we were given

19 last week?

20 MS LE ROUX: No, Chair, on Friday.

21 CHAIRPERSON: That's the first document

22 in the bundle that you gave us. You want this to be an

23 exhibit?

24 MS LE ROUX: Yes, Chair.

25 CHAIRPERSON: HHH35, statement – oh

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1 sorry, I beg your pardon, we had those photographs. I beg

2 your pardon. 37, statement of Warrant-Officer Fourie.

3 COMMISSIONER HEMRAJ: That statement

4 relates only to the two hours of training that they were

5 given on a particular day in 2012. It says nothing about

6 whether they were received training thereafter.

7 MS LE ROUX: Correct, Chair, through you,

8 Chair, we don't have any other information at present

9 around training of the water cannon operators. Of the

10 Johannesburg water cannon we do have the Fourie statement

11 in that regard. Chair, I don't mean to detain us with the

12 Major-General going through the Fourie statement, other

13 than to highlight for the record that in paragraph 5 it's

14 recorded that, "The following areas were covered in the

15 basic training; filling the water cannon from hydrant, the

16 main control panel, which was then start up and shut down

17 of the water cannon, operation of the water cannon control

18 panel, the selection between the various pressure modes,

19 the selection between the various pulse modes, the

20 calibration of the water cannon, how to use the water

21 cannon if the calibration was not successful, manual mode,

22 how to add water, water and dye, and all three together,

23 the self-defence system and the protection system on the

24 water cannon." On the second page he states, "I covered

25 the on-screen system and the driver's control panel, which

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1 controls the pressure system on the cannon and," a word

2 which I can't make out, "and so forth. I also covered a

3 brief discussion on the recording system hard drive, due to

4 there being no computer system or software to remove

5 information from the hard drive in the SAP. I then

6 informed them about the safety measures that must be kept

7 by when using the water cannon, if need may arise. This

8 entailed not shooting anybody less than 30 metres, no

9 direct shots at people." Then critically at paragraph 7,

10 "The training (crash course) from beginning to end took

11 approximately two hours due to time restraint. I also

12 informed members that this was not official course and that

13 they would have to attend one when available at Benoni SAP

14 Mechanical School, but none have come to light as far as my

15 knowledge knows." So Major-General Mpembe, you didn't have

16 any personal knowledge of whether the operators of the

17 water cannon were adequately trained, did you?

18 MR NGALWANA: This question has been

19 asked and answered.

20 COMMISSIONER HEMRAJ: Ms Le Roux, this

21 statement in paragraph 2 says that this training took place

22 a year and a half ago.

23 MS LE ROUX: That is correct,

24 Commissioner.

25 COMMISSIONER HEMRAJ: Your question to

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1 the General is whether he knows that thereafter, whether

2 the operators of the water cannon received further

3 training. Is that the question, after this incident, one

4 and a half years ago, prior to the statement being made?

5 MS LE ROUX: No, my question is did

6 Major-General Mpembe know whether the operators of the

7 water cannon had received official satisfactory training on

8 how to operate the water cannon, or with respect to the

9 Johannesburg water cannon, only this two-hour crash course?

10 MAJOR-GENERAL MPEMBE: Chairperson, I

11 have already said that I did not know. I am not

12 responsible for training and I'm not responsible for the

13 issuing of equipment, nor procurement process. I'm only

14 the end-user.

15 MS LE ROUX: Major-General, who would

16 decide who would operate the water cannon on the 16th of

17 August? Whose decision was it that those two water cannons

18 would be operated by the particular people that did that?

19 Who decides that?

20 MAJOR-GENERAL MPEMBE: I did explain that

21 when I was testifying about the call-up when you are

22 requesting resources. Every time when a particular

23 resource has been issued there are people that are supposed

24 to be trained. So it's obvious that those that have been

25 trained will use that. It's not one decision; it's given,

<p style="text-align: right;">Page 12733</p> <p>1 it's there in the policy. As I've said, I cannot put any 2 person whom I don't know who's been trained, but the 3 training division or the commanders of where the water 4 cannon will come will decide who operates the water cannon, 5 those that have taken a course. It's not an overall 6 commander's decision, not an operational commander's 7 decision.</p> <p>8 MS LE ROUX: Major-General, if it's true 9 that the two operators of the Johannesburg water cannon 10 received no further training other than this two-hour crash 11 course, and they were deployed to be in charge of what you 12 said is an important, less lethal technique that's 13 available to you –</p> <p>14 MR NGALWANA: Chair –</p> <p>15 MS LE ROUX: - do you have any comment on 16 that?</p> <p>17 MR NGALWANA: Chair, what is the basis 18 for that statement? Because the statement that our learned 19 friend has just referred to nowhere says that was the only 20 training that has been –</p> <p>21 MS LE ROUX: Chair, I've asked him to 22 assume –</p> <p>23 CHAIRPERSON: Here's a statement that's 24 been obtained, taken by the police, and I take it, it was 25 on the police hard drive, was it? So presumably someone</p>	<p style="text-align: right;">Page 12735</p> <p>1 cannon operators, I think it was North West, had not been 2 trained in the use of the water cannon and it was in that 3 context that this batch of statements were furnished to us. 4 So it may not be as – the focus of our enquiry was in 5 relation to video, it wasn't in relation to water cannons 6 generally.</p> <p>7 CHAIRPERSON: No, the point I made was 8 that if the police had been asked for information about the 9 training of these water cannon operators, and a statement 10 is produced dealing with Messrs Dicks and Kruger, who I 11 take it are the two involved, and no other statement is 12 produced, then it may not be absolutely clear that that's 13 the only training they got, but it's a fair assumption that 14 if there had been the police would have provided another 15 statement from somebody else who gave them extra training. 16 So for the purposes of the assumption – and it's no more 17 than that – that Ms Le Roux is making, I think it's 18 something that I will allow her to ask.</p> <p>19 MR NGALWANA: But Chair, the assumption 20 she's making is that the training was about how to drive a 21 water cannon and do other things. As we're understanding 22 the statement was taken purely for purposes of ascertaining 23 whether these persons could operate a video camera that was 24 mounted on these things.</p> <p>25 CHAIRPERSON: Yes, I know, but I suggest</p>
<p style="text-align: right;">Page 12734</p> <p>1 has been asked to find out when Warrant-Officer Dicks and 2 Warrant-Officer Kruger received their water cannon 3 training. So a statement was obtained and it's been part 4 of the police hard drive. I take it one can assume at 5 least for the purposes of the assumption that Ms Le Roux 6 wants us to make that if there was any other training these 7 people would have got, then we'd have had another statement 8 relating to the other training they got. So in the absence 9 of –</p> <p>10 MR NGALWANA: No, with respect –</p> <p>11 CHAIRPERSON: No, surely –</p> <p>12 MR NGALWANA: With respect not, Chair.</p> <p>13 CHAIRPERSON: Why would the police have 14 given us a statement in respect of the training, of one 15 part of the training of these people and no statement about 16 any other training if there was training?</p> <p>17 MR CHASKALSON SC: Mr Chairperson, 18 perhaps if I can help my learned friend here. The 19 statement wasn't on the police hard drive. When we were 20 investigating the absence of video camera footage from the 21 SAPS at a time when there wasn't video camera footage from 22 either water cannon that had been made available, we asked 23 for certain statements relating to that, and why this 24 statement was furnished is that we were informed that – I 25 forget now whether it was Johannesburg or North West water</p>	<p style="text-align: right;">Page 12736</p> <p>1 you read paragraph 5, you'll see what the thrust of the 2 statement taking was about. Please carry on, Ms Le Roux.</p> <p>3 MS LE ROUX: Major-General, let me repeat 4 the question. I want you to assume that these two water 5 cannon operators received no further training other than 6 what's set out in the statement by Fourie, and ask you if 7 you have any comment on that lack of training, lack of 8 further training –</p> <p>9 CHAIRPERSON: I'm sorry, Ms Le Roux, I 10 don't understand where you're going to. He said he doesn't 11 know what training they got. He says he ordered some water 12 cannons and he got water cannons and operators. He 13 assumed, as any reasonable Major-General would have done, 14 that the water cannons he was sent and the water cannon 15 operators he was sent were in working order and with the 16 necessary training and so on. Now if this is all the 17 training they got, it's an inference, I take it, that can 18 easily be drawn by anybody; either they were properly 19 trained, or they weren't. I'm not sure he's got any 20 expertise as to what amount of training a water cannon 21 operator needs, and in any event, never mind the training; 22 if they'd been working at it for a year and a half I think 23 it was, one would expect of them to have picked up some 24 expertise on the job if they were still there, operating 25 the water cannons. So really, is this going to help us?</p>

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1 MS LE ROUX: Thank you, Chair. Major-
 2 General, let me reformulate my question. What is your view
 3 of how the water cannons performed on the 16th at Marikana?
 4 CHAIRPERSON: Were you present when the
 5 water cannons performed, or failed to perform?
 6 MAJOR-GENERAL MPEMBE: No, Chairperson, I
 7 was not there.
 8 CHAIRPERSON: Have you got any, based on
 9 what you saw yourself, experience and so forth, is there
 10 any comment you can make about the way the water cannons
 11 operated?
 12 MAJOR-GENERAL MPEMBE: No, Chairperson.
 13 MS LE ROUX: Major-General, when you were
 14 up in the helicopter, did you observe how the water cannons
 15 were being used on the 16th at Marikana?
 16 MAJOR-GENERAL MPEMBE: Correct,
 17 Chairperson.
 18 MS LE ROUX: And what did you observe
 19 from the helicopter of the water cannons?
 20 MAJOR-GENERAL MPEMBE: I saw when they
 21 were pouring water.
 22 CHAIRPERSON: Could you see anything from
 23 the helicopter that we couldn't see on the videos that were
 24 taken, showing the water cannons in operation? You've seen
 25 the videos which show the water cannons approaching scene

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1 2, and I think in one case there's ordinary water, another
 2 one there was coloured water being sprayed on people on the
 3 koppie. Did you see anything apart from what we saw on the
 4 videos?
 5 MAJOR-GENERAL MPEMBE: No, Chairperson,
 6 that's exactly what I'm saying. I only saw when they were
 7 pouring water.
 8 CHAIRPERSON: Ms Le Roux, would it be
 9 convenient if we took the tea adjournment now? We'll take
 10 the tea adjournment.
 11 [COMMISSION ADJOURNS COMMISSION RESUMES]
 12 [15:14] CHAIRPERSON: The Commission resumes.
 13 Major-General, you're still under oath.
 14 WILLIAM MPEMBE: s.u.o.
 15 CHAIRPERSON: Ms Le Roux.
 16 CROSS-EXAMINATION BY MS LE ROUX (CONTD.):
 17 Thank you, Chair. Major-General, I want to move to a new
 18 point which the point hasn't been put to you, but I'm going
 19 to preface it for you with the aspects that have been
 20 covered already in cross-examination, and I don't want to
 21 repeat those. It relates to the decision to move to stage
 22 3 on the 16th. You've testified that it was your decision,
 23 and I'm not covering that. What I'd like to ask you about
 24 though is if I can take you to the 13th, the decision to
 25 disarm the protesters at the railway line, that was not

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1 yours, correct? That was the Provincial Commissioner.
 2 MAJOR-GENERAL MPEMBE: No, Chairperson.
 3 CHAIRPERSON: [Microphone off, inaudible]
 4 incorrectly formulated and my recollection is – I'm looking
 5 for it in exhibit L. My recollection is that the
 6 Provincial Commissioner gave certain instructions which are
 7 set out, summarised in slide 44 of exhibit L and they're
 8 also in the occurrence book, and they included that the
 9 dangerous weapons had to be confiscated and the meeting had
 10 to be dispersed. But did the instruction include the
 11 identification of the place where the disarming was to take
 12 place? Your question was the decision to disarm them at
 13 the railway line, that was a decision of the Provincial
 14 Commissioner. My understanding is she gave certain
 15 instructions, which you see in slide 44 and in the
 16 occurrence book, but she never identified the place, as I
 17 understand it, as being the railway line. Am I correct?
 18 MS LE ROUX: With respect, no, Chair. If
 19 I could ask you to turn to exhibit GGG5, which is the
 20 statement by the Provincial Commissioner, GGG5, and
 21 specifically paragraph 11, for the record that paragraph
 22 states, "During the abovementioned briefing (JOC) we were
 23 shown live footage of a group of men who appears to be
 24 armed with inter alia knobkieries, spears, and pangas, next
 25 to a railway line on their way in the direction of Nkaneng

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1 informal settlement. I gave Mpebe instructions to attend
 2 to the grouping identified in the footage and made an entry
 3 in the occurrence book in the following terms: Gatherings
 4 had to be dispersed, dangerous weapons had to be
 5 confiscated, persons identified from mine footage who were
 6 involved in criminal activities had to be arrested,
 7 deployment to key strategic areas had to be enhanced and
 8 members of the police had to act professionally and ensure
 9 that peace prevailed." And then in paragraph 12, "Having
 10 given the instruction to Mpebe and made the occurrence
 11 book entry as aforementioned, I left for Potchefstroom."
 12 CHAIRPERSON: Which demonstrates that the
 13 point that I put to you is correct. It doesn't say that
 14 she said that the dispersal of the gathering, 11.1.1, and
 15 the confiscation of the dangerous weapons, 11.1.2, had to
 16 take place at the railway line. The instruction simply was
 17 those people whom we see on the footage, they must be
 18 disarmed. Their gathering must be dispersed and they must
 19 be disarmed. But they were at the railway line when they
 20 were seen in the live footage, but non constat that the
 21 order had to be executed at that spot. So I don't think
 22 it's a serious point, but I suggest you redraft the
 23 question so that it's accurate. The question really is the
 24 decision to disarm the protesters who were coming back from
 25 the Karee Mine and in respect of whom there was live

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1 footage which you saw, the decision to disarm them was a
 2 decision of the Provincial Commissioner, but it wasn't
 3 confined to disarming at a particular place. If you
 4 phrased the question that way I don't think there will be a
 5 problem.
 6 MS LE ROUX: Major-General Mpembe, it's
 7 correct that it was the Provincial Commissioner's decision
 8 that the group seen on the CCTV footage were to be
 9 dispersed and their dangerous weapons confiscated, correct?
 10 MAJOR-GENERAL MPEMBE: It was one of the
 11 instructions, correct.
 12 MS LE ROUX: And then Major-General
 13 Mpembe, if I could ask you to turn to your supplementary
 14 statement, which is HHH3, do you have that document?
 15 MAJOR-GENERAL MPEMBE: Correct,
 16 Chairperson.
 17 MS LE ROUX: And at paragraph 8 and the
 18 second bullet point of paragraph 8, you note that you had
 19 concerns that there was no plan on how the disarmament
 20 would happen beyond the request by the Provincial
 21 Commissioner. So you had a concern that there wasn't a
 22 plan, but you went anyway because the Provincial
 23 Commissioner had instructed you to attend to the group,
 24 correct?
 25 MAJOR-GENERAL MPEMBE: Not correct,

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1 Chairperson.
 2 MS LE ROUX: Major-General, why is that
 3 not correct?
 4 MAJOR-GENERAL MPEMBE: It is not correct
 5 to say it was the Provincial Commissioner say disperse
 6 without a plan. My reasons to go there personally and
 7 disperse, I have highlighted them in terms of the emergency
 8 and the spontaneous, that it was a spontaneous event, and
 9 that it is a duty of the police, particularly on that day
 10 the senior management of the province was called at Lonmin
 11 to ensure the visibility in the area and to ensure that
 12 what has happened on the weekend do not happen again,
 13 constitutionally so, correct.
 14 MS LE ROUX: But Major-General, I'm
 15 correct that the instruction you received from the
 16 Provincial Commissioner is why you left to go and attend to
 17 that group then and there?
 18 MAJOR-GENERAL MPEMBE: It is correct, but
 19 not only that one. There were also others that I should
 20 have carried out.
 21 MS LE ROUX: Then Major-General, with
 22 respect to the overall control, that was shared between the
 23 Major-Generals and the Provincial Commissioner, correct?
 24 MAJOR-GENERAL MPEMBE: Not correct,
 25 Chairperson.

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1 MS LE ROUX: Why is that not correct?
 2 MR NGALWANA: Overall control of what,
 3 Chairperson? Is she talking about the operation or is she
 4 talking about the hierarchy of the police? I don't
 5 understand the question.
 6 CHAIRPERSON: I think the question can be
 7 formulated more clearly. I think Mr Ngalwana is right.
 8 [Microphone off, inaudible] can make it clear what exactly
 9 you mean by overall command – overall command of what? I'm
 10 sure you can reformulate the question in a way which
 11 achieves what you want to achieve, but meets the legitimate
 12 objection raised by Mr Ngalwana.
 13 MS LE ROUX: Major-General, let me take
 14 you back to the Provincial Commissioner's instruction on
 15 the 13th. You were the overall commander on the 13th,
 16 correct?
 17 MR NGALWANA: Chair, may I make another
 18 correction? I think during evidence-in-chief the witness
 19 amended the word "instruction" and said it was in fact a
 20 request. If necessary I could refer to a paragraph,
 21 paragraph 7 of HHH3.
 22 MS LE ROUX: Chair, I'm going to persist
 23 and use the word "instruction" because that's what the
 24 Provincial Commissioner uses in her statement, which hasn't
 25 yet been amended before this Commission.

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1 CHAIRPERSON: You can ask the Provincial
 2 Commissioner about it, but I mean surely this witness
 3 changed it in his statement. So –
 4 MS LE ROUX: Major-General Mpembe, you
 5 were the overall commander on the 13th, correct?
 6 MAJOR-GENERAL MPEMBE: Chairperson,
 7 according to my statement GGG12, paragraph 7 on page 3, I
 8 did stipulate the JOC structure. That was not only from
 9 the 13th, but until the 16th, but from the 13th.
 10 MS LE ROUX: But Major-General, when the
 11 Provincial Commissioner made a request of you, you did what
 12 she requested, correct?
 13 MAJOR-GENERAL MPEMBE: Correct,
 14 Chairperson.
 15 CHAIRPERSON: It appears to have been
 16 treated as an instruction before you amended your
 17 statement, because in exhibit L, slide 44, the word
 18 "instructed" is used. So it sounds as if the people at
 19 Potchefstroom who were responsible for drafting exhibit L
 20 came away with the clear understanding that that was an
 21 instruction. It may be that in retrospect, with hindsight
 22 you see it as a request, but at the time it seems to have
 23 been interpreted as being an instruction.
 24 MAJOR-GENERAL MPEMBE: I would agree with
 25 that, Chairperson, but myself at that time, knowing that

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1 one will have to deal with a complex situation whereby I
 2 have also to utilise my own discretion, that's why I took
 3 it as a request.
 4 MS LE ROUX: Major-General, the
 5 Commission has received evidence about threats to your life
 6 by members on the 13th after the events that took place on
 7 the 13th. In light of those threats by members, did you
 8 discuss with the other Major-Generals or with the
 9 Provincial Commissioner whether your overall command should
 10 be shared or given to somebody else in light of the threats
 11 against your life by members?
 12 MAJOR-GENERAL MPEMBE: Chairperson, I did
 13 testify that when I was warned by Lieutenant-Colonel
 14 Vermaak, he didn't tell me who is actually threatening my
 15 life, and he did not tell me when are they wanting to take
 16 it, but my understanding was that it was at the scene,
 17 which I did comply with his request to say, "General, you
 18 have to leave now. Enter into the Nyala and you go," and I
 19 did testify to say that I will just leave immediately after
 20 I've handed the scene to Brigadier Van Zyl and Calitz, and
 21 that they should also ensure that IPID is in, and that did
 22 happen. In the light of me having handled the situation of
 23 the anger of the members and nothing happened, I couldn't
 24 establish how imminent is the threat. Whether a threat did
 25 exist, I don't know. The only time when I was informed

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1 about the members who were threatening my life, it is when
 2 I was in Potchefstroom. As a Major-General in the police
 3 and in the circumstances like that, I did discuss it with
 4 my Provincial Commissioner; in the light of what I've
 5 discussed now, I couldn't see any reason why I couldn't
 6 continue, but however if I was removed, I could go, but as
 7 I have explained before, like any other member who has got
 8 to fall sick, it's either the member himself should say I
 9 cannot continue, or there should be a social worker or a
 10 psychologist who has got to say you are not fit to do the
 11 work, then the Provincial Commissioner could have removed
 12 me.
 13 MS LE ROUX: Major-General, if I can just
 14 clarify your answer in two respects; the first is it was
 15 only at Potchefstroom that you became aware that the
 16 threats to your life were from SAPS members, correct?
 17 MAJOR-GENERAL MPEMBE: Not becoming
 18 aware; informed by Lieutenant-Colonel Vermaak. Not
 19 becoming aware; informed, and when he realised that I was
 20 with Captain Tupe and as well as Lieutenant-Colonel Merafe,
 21 it's then that he mentioned that.
 22 MS LE ROUX: And then Major-General, you
 23 said that you discussed the threats with the Provincial
 24 Commissioner, but you felt that in light of them you were
 25 comfortable continuing as overall commander. When did you

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1 have that discussion with the Provincial Commissioner?
 2 [15:34] MAJOR-GENERAL MPEMBE: On the 13th.
 3 MS LE ROUX: There's a statement
 4 somewhere, General, I can't put my finger on it right now
 5 that says that you were informed on the 13th at the scene
 6 that there was some danger to you. Am I mistaken?
 7 MAJOR-GENERAL MPEMBE: Correct,
 8 Chairperson, that's when I said it was on the scene itself
 9 when Colonel Vermaak said, "General, you can't do anything
 10 now, enter into the Nyala, go back to the JOC."
 11 CHAIRPERSON: Lieutenant-Colonel
 12 Vermaak's statement GGG17 in paragraph 5 he says that some
 13 of the members mentioned to him that they were very angry
 14 with you because of the members who were dead and that you
 15 were going to lie on the ground together with them because
 16 they were going to shoot you and Colonel Vermaak says he
 17 immediately realised it was a very explosive situation. He
 18 phoned the Provincial Commissioner and informed her of the
 19 threat. He told her he's going to remove you from the
 20 scene and he says he then went directly to you and informed
 21 you that he was going to remove you from the scene "weens
 22 die dreigement op sy lewe." Because of the threat to his
 23 life and then he arranged for an Nyala with two members to
 24 take you away to the JOC. That's what he says in Para 5 of
 25 that exhibit, GGG17. Is that also the way you understand

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1 it?
 2 MAJOR-GENERAL MPEMBE: Correct,
 3 Chairperson. The only thing, Chairperson, which I added
 4 there is that at that time he did not tell me who was
 5 actually threatening me.
 6 MS LE ROUX: Major-General, just one
 7 quick point also on the 13th, you have given a lot of
 8 evidence already about how you gave no order to the members
 9 to block the protesters, to disarm them or to use teargas
 10 or stun grenades and Advocate Gumbi took you through pocket
 11 books and statements that address that topic. I'm not
 12 going through them again but I have one additional pocket
 13 book to place before the Commission. This is by Warrant
 14 Officer Tuwana from POP Rustenburg. It's in the pile of
 15 new documents that you should have before you. It was
 16 provided to the Commissioners on Friday, this will require
 17 -
 18 CHAIRPERSON: It was provided on Friday?
 19 MS LE ROUX: Yes, this will require an
 20 exhibit number.
 21 CHAIRPERSON: Yes, I have the habit of
 22 hitting the microphone, so it turns off. HHH38. Tuwana,
 23 was he a constable?
 24 MS LE ROUX: My instructions are he's a
 25 Warrant Officer.

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1 CHAIRPERSON: Warrant Officer.
 2 MR NGALWANA: Chair, I'm not objecting
 3 here to the admission of this document, I'm still waiting
 4 for the question because this issue has been covered
 5 before, extensively.
 6 MS LE ROUX: Yes, Chair, and as I
 7 indicated there was one pocket book that Advocate Gumbi did
 8 not put to the Major-General. For the sake of completeness
 9 I'm now doing that. It is the pocket book of Warrant
 10 Officer Tuwana and specifically at the top of the page
 11 marked 28, it states "General Mpmembe instructed members to
 12 disarm the warriors and the battle started." Major-
 13 General, my question is I understand your evidence that you
 14 deny giving such an order but do you have any explanation?
 15 Do you know why three captains, one lieutenant, two warrant
 16 officers and two constables claim that you gave these
 17 orders? Do you have any understanding of why they've made
 18 those statements?
 19 MAJOR-GENERAL MPEMBE: Chairperson, I may
 20 not be exactly knowing why they were doing that but my
 21 evidence was very clear that I only spoke to the officers
 22 and I indicated to this Commission the pocket book of
 23 Constable that was actually a female sitting at the JOC and
 24 I asked how could I have given her an instruction when I
 25 was on the scene.

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1 CHAIRPERSON: Ms Le Roux, to ask a
 2 witness normally why another witness has lied against him
 3 doesn't very often provide an instructive answer. There
 4 are various inferences one can draw but this witness cannot
 5 - he was asked the question last week by Mr Gumbi and he
 6 doesn't know. One can draw one's inferences from the facts
 7 but I'm not sure that it would be proper for him even to
 8 expand those inferences himself unless he has direct
 9 knowledge which he has already told us he hasn't got.
 10 MR NGALWANA: There's a further point,
 11 Chair, which is not a concurring observation, the premise
 12 for the question is factually incorrect. The statement
 13 that was put by Mr Gumbi to the witness talked in general
 14 about an instruction being given. It didn't identify
 15 anyone giving that instruction. This pocket book, if I can
 16 call it that, I don't know whether it is a pocket book or a
 17 diary, this pocket book talks about General Mpmembe
 18 instructing members to disarm warriors and battle, at the
 19 battle and so on. The pocket books to which Mr Gumbi
 20 referred didn't deal with the same issue.
 21 CHAIRPERSON: There are other problems
 22 with those entries which we presumably will deal with
 23 later. Anyway she's asked a question, if he does know, if
 24 he's learnt since Friday why the entries, which he says are
 25 false, were made then he could have told us but he doesn't

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1 know, now we know he doesn't know. We can then draw our
 2 own inferences from the entries when we analyse them but
 3 anyway Ms le Roux are you going to move onto your next
 4 point or you going to -
 5 MS LE ROUX: No, Chair, I plan to move
 6 onto my next point but that does require the queuing up of
 7 one of the videos and then some time spent on the video.
 8 CHAIRPERSON: How long will that take?
 9 The reason I ask is that one of the Commissioners has a
 10 doctor's appointment at a quarter past four so I want to
 11 adjourn strictly at 4 o'clock. So if you can get the video
 12 in before then fine. Otherwise we have a problem.
 13 MS LE ROUX: Chair, I don't think I'll
 14 be able to complete the point that relates to the video by
 15 4 o'clock promptly. Could we perhaps adjourn and we'll
 16 commence with that promptly at 9 o'clock tomorrow?
 17 CHAIRPERSON: Unless, of course, we can
 18 see it now and you can ask the questions tomorrow or would
 19 you prefer to ask the questions immediately after we've
 20 seen the video?
 21 MS LE ROUX: Chair, it will be a series
 22 of questions as we move through a video clip.
 23 CHAIRPERSON: I see, what does the video
 24 show?
 25 MS LE ROUX: It's with respect to the -

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1 it's exhibit Z2 with respect to the events of the 13th.
 2 CHAIRPERSON: Is there not another point,
 3 short point you can deal with? I know I'm taking out of
 4 your prepared sequence but if there is a discreet point
 5 that you can deal with now I'd be grateful. I don't want
 6 to waste a quarter of an hour. Yes, Major-General.
 7 MAJOR-GENERAL MPEMBE: Chairperson, with
 8 regard to this pocket book of Warrant Officer Tuwana, at
 9 half past seven he indicated that he was briefed by
 10 Lieutenant-Colonel Merafe, but it doesn't indicate anywhere
 11 where I briefed him or her personally because I don't
 12 whether he is a male or a female. But he's giving a SIT-
 13 REP and a SIT-REP is a report that you do normally give to
 14 the JOC. So maybe he's the only person who said who gave
 15 him that SIT-REP or how did he get the information to give
 16 that information to the JOC. So I just wanted to say that
 17 is what I can see what is written on the pocket book.
 18 Chairperson, if I personally briefed the members he should
 19 have said briefing by Major-General Mpmembe at the time when
 20 the briefing was done and he could have indicated exactly
 21 how I did the briefing to them. As I previously indicated
 22 that my briefing includes also the high level of tolerance
 23 I even used in the case of Tatane but he does not mention
 24 it. Chairperson, I can confirm that the statement of
 25 Lieutenant-Colonel Merafe specify the briefing that I did

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1 to the officers.

2 CHAIRPERSON: Ms Le Roux, I noticed in

3 your bundle you've also got a pocket book of Sergeant

4 Cebekhulu who is from the National Intervention Unit in

5 Durban and I don't know whether the Sergeant is a lady

6 sergeant or a male sergeant but on 55 the Sergeant deals

7 with the events, the relevant events on the 13th and simply

8 says that the strikers are adamant, obviously they wouldn't

9 hand over their weapons and leave peacefully and the

10 General told the police to escort the miners to the

11 mountain. On the way the miners attacked three ACCU police

12 officials. Are you going to deal with -

13 MS LE ROUX: Yes, Chair, that statement

14 is in your bundle for another point but -

15 CHAIRPERSON: It's not a point you can

16 deal with now?

17 MS LE ROUX: No, Chair, but there is a

18 point that I may be able to complete by 4 o'clock, it comes

19 out of sequence now but let me do that.

20 CHAIRPERSON: Well I'd be grateful if you

21 do that.

22 MS LE ROUX: Thank you, Chair. Major-

23 General Mpembe, I want to take you back to SS3, to the plan

24 and we know that it indicates that there is a protester

25 group that was considered to be the threat that was under

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1 assessment. And that it was identified that there was a

2 smaller group and then in the plan that's referred to as a

3 smaller group who is armed and show a militant attitude in

4 the statements that have served before the Commission.

5 That's been referred to as a warrior group but with respect

6 to the - my question is this, was there a plan for dealing

7 with this smaller group in the overall group?

8 MR NGALWANA: Objection, Chair. Mr Bizos

9 dealt with this issue extensively.

10 CHAIRPERSON: Yes, I know he did but he

11 got certain answers which he alleged differed from certain

12 of the documents. I think she's entitled to follow up the

13 points as well. The mere fact that Mr Bizos asked

14 questions of another witness doesn't necessarily mean that

15 the question can't be raised again. It's one of the issues

16 that the police have to deal with and I think Advocate Le

17 Roux is entitled to question this witness about it also.

18 MR NGALWANA: Can I just state, Chair,

19 for the record that, with respect goes against the ruling

20 that you made because the ruling that you made specifically

21 says on - I'll find the exact word but it seems to say on a

22 specific issue, on a particular issue. It doesn't say a

23 particular question.

24 CHAIRPERSON: If there's an issue on

25 which there is controversy and various versions are before

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1 the Commission then the mere fact that one counsel has

2 asked one witness on that issue doesn't mean that other

3 counsel can't ask other witnesses about it, so I'm going to

4 let her ask the question. Obviously we don't want too much

5 repetition but I'll keep an eye on that. She's promised to

6 finish by 4 o'clock on this point.

7 MS LE ROUX: Major-General do you recall

8 question?

9 MAJOR-GENERAL MPEMBE: Chairperson, may

10 you please repeat the question?

11 MS LE ROUX: With pleasure. Major-

12 General, SS3 the planning documentation that is before this

13 Commission identifies a smaller group within the larger

14 protestor group and then in the nearly 400 statements that

15 have been provided by the SAPS members certain of those

16 also refer to a smaller group. Some of them refer to it as

17 a warrior group but in none of statements and we have

18 reviewed every single one, is there a plan for how to deal

19 with that smaller group. The plan only talks about to

20 overall group, the group of 3 000. Was there a plan to

21 deal with this smaller group?

22 MAJOR-GENERAL MPEMBE: The plan deals for

23 the dispersal, it deals with the total number of the group

24 but what we expected what will normally happen in a normal

25 crowd management situation is that when the process of

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1 dispersal is taking place other people will leave

2 voluntarily and the others. But what we did expect is that

3 a certain belligerent group will remain. And in terms of

4 disarmament after the dispersal has taken place they will

5 be disarmed.

6 MS LE ROUX: Major-General, I asked a

7 different question which is was there a plan for dealing

8 with the smaller group identified as being more militant

9 than the larger group? Was there a plan for dealing with

10 that smaller group specifically?

11 MAJOR-GENERAL MPEMBE: I did explain

12 extensively in terms of when we were - after the dispersal

13 what could have happened in terms of also how to disarm

14 that belligerent group. And that's why I'm saying the plan

15 targeted for dispersal purposes, the whole total number of

16 group but at the end you normally expected that group to

17 remain.

18 [15:54] Chairperson, that could also be found in the

19 mission on that plan of the 16th, and also on the

20 operational overview of the 16th.

21 MS LE ROUX: Again, Major-General, I

22 understand your evidence that once the dispersal operation

23 happened you thought there would be a belligerent group

24 that would remain, you would disarm those, but my question

25 is in the plan there was nothing from before dispersal,

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1 there was no plan for dealing with the smaller group that
 2 you'd identified as being more militant, was there?
 3 MR NGALWANA: Chair, I must persist in my
 4 objection, unless the Chairperson overrules me. Not only
 5 was this issue dealt with, with Major-General Annandale, it
 6 was also dealt with, with this witness by Mr Madlanga, and
 7 I recall specifically referring to various, in exhibit L –
 8 not exhibit L, in the slides in SS3 about where reference
 9 is made to the smaller group. So what my learned friend is
 10 doing is rehashing ground that has already been extensively
 11 covered.

12 CHAIRPERSON: Yes Ms Le Roux, it does
 13 sound as if Mr Ngalwana is correct. I remember Mr Bizos
 14 asking General Annandale about it and the suggestion was
 15 made, the suggestion that you are now putting, or were
 16 going to put, was that the police version changed to answer
 17 the criticism of Mr Hendrickx, I think it was, Colonel
 18 Hendrickx, that if they were trying to deal with 3 000
 19 people, they didn't have enough members to deal with them,
 20 and the suggestion was made that they changed their story
 21 to say that they in fact were intending to act against the
 22 400, but then point was then dealt with by Mr Madlanga when
 23 he cross-examined this witness. So to that extent Mr
 24 Ngalwana is correct that this has been traversed with this
 25 witness by Mr Madlanga. So on that basis it is repetition.

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1 There's no point in asking the witness a lot of questions
 2 which effectively were asked by Mr Madlanga because
 3 presumably we'll get the same answers. So we are wasting
 4 time, I think. But obviously that's a prima facie view.
 5 I'm not ruling against you yet. I will give you a chance
 6 to reply, but as at present advised, I think Mr Ngalwana is
 7 right.

8 MS LE ROUX: Chair, my reading of the
 9 evidence is that this particular point has not been put
 10 either to General Annandale or to Major-General Mpembe, the
 11 point being simply the plan identified the smaller group,
 12 but there was no plan specifically for dealing with that
 13 smaller group.

14 CHAIRPERSON: Alright. It's now nearly 4
 15 o'clock. May I suggest we adjourn till 9 tomorrow. You
 16 can then get the references in the record upon which you
 17 rely and quote them and if they bear you out, then I'll
 18 allow the question, subject to what Mr Ngalwana says, but
 19 if they don't, I'm afraid I'll rule against you. So we'll
 20 take the adjournment at this stage till 9 o'clock tomorrow
 21 morning.

22 [COMMISSION ADJOURNED]

23 .
 24 .
 25 .

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